Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law

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Abstract
Conflict can emerge from marriage involving parties of a different faith. However, interfaith marriage may also expose negotiation to secure the union. Although interfaith marriage is normatively restricted in Islamic law, it does occur. This study departs from the normative discourse of Islamic law and the empirical research of Muslim family law. It uses the theory of law, conflict, and integration to analyse the textual debates and practice of interfaith marriage in Lombok, Indonesia. This study reveals the patterns of Muslim interreligious marriage and the conversion that applies. The first pattern shows that non-Muslim partners convert to Islam before the marriage can be concluded. The second pattern involves Muslims who leave Islam to marry their non-Muslim partner. The third pattern suggests that each couple adheres to a different belief during the marriage even though the marriage contract was performed according to Islamic law. From the perspective of Islamic law, in the sense of sharia and Muslim family code, the first pattern is the most ideal because it follows these Islamic legal normativities. Although all practices have the potential for family and social integration, the second pattern is the most susceptible to conflict.

Keywords: interfaith marriage, conflict, integration, Islamic law

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Introduction

Marriages involving couples of different religions are not uncommon in Indonesia. In most cases, one of the couples converts to the faith of the other before the marriage. Since the normative discourse of religious and state laws in Indonesia does not allow the marriage of couples from a different religion, other couples may take different strategies to cope with legal, religious and social hindrances that restrict the marriage, including rejection from family members and relatives. Despite such problems, marriages amongst couples of different religions happen in Lombok, eastern Indonesia. Muslims, men and women alike, marry Hindus or Christians and vice versa. While occasionally stipulating tension or conflict, interfaith marriage also reveals compromises to secure the union and integrate the parties involved.

In this study, Muslim interfaith marriage is defined as a process or negotiation to establish a union between couples where one of them is a Muslim. Such negotiation entails conversion before, during, or, if the marriage dissolves, after the marriage. Exploring these marital sequences helps map out the complexities of interfaith marriage and delineate processes that bring about integration or incite conflict. Although the dominant discourse of sharia law prohibits Muslims from marrying non-Muslims because it is feared that it will cause theological issues, namely Muslim conversion out of Islam, in practice, the marriage happens.

In the study of Islamic law, interfaith marriages have hardly been studied from the combination of the normative perspective and empirical method of investigation, even though it is not a novel topic.[1] While the normative

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[1] Noryamin Aini, "Interrreligious Marriage from Socio-Historical Perspectives", Brigham Young University Law Review, no. 3 (2008),

discourse of Islamic law tends to prohibit interfaith marriage, the empirical evidence offers richer perspectives, as this study demonstrates. In my previous study, I focused on the role of the religious and secular authorities and personal agency in resolving problems concerning interfaith marriage.[2] Other studies analyze state

pp. 669-706; Johanna Marie Buisson, "Interfaith Marriage for Muslim Women: This Day are Things Good and Pure Made Lawful unto You", *Crosscurrents,* vol. 66, no. 4 (2016), pp. 430-449; Khamami Zada, "Arus Utama Perdebatan Hukum Perkawinan Beda Agama", *Ahkam: Jurnal Ilmu Syariah,* vol. 13, no. 1 (2013), pp. 39-46; Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam", *Media Syariah: Wahana Kajian Hukum Islam dan Pranata Sosial*, vol. 22, no. 1 (2020), pp. 48-64; Nur Cahya, "Perkawinan Beda Agama dalam Perspektif Hukum Islam", *Jurnal Hukum Islam,* vol. 18, no. 2 (2018), pp. 141-156; Muhammad Yusuf, "Pendekatan al-Maslahah al-Mursalah dalam Fatwa MUI tentang Pernikahan Beda Agama", *Ahkam: Jurnal Ilmu Syariah*, vol. 13, no. 1 (2013), pp. 99-108; Mohammed Gamal Abdelnour, "The Islamic Theology of Interfaith Marriages between Theology, Law and Individual Ijtihad" Singapore, RSiS *Interreligious Relations Issue 17*, June (2020), pp. 1-14; Alex B. Leeman, "Interfaith Marriage in Islam: An Examination of the Legal Theory behind the Traditional and Reformist Positions", *Indiana Law Journal*, vol. 84, issue 2 (2009), pp. 743-771; Muhammad Amin Summa, *Kawin Beda Agama di Indonesia: Telaah Syariah dan Qanuniyah* (Jakarta: Lentera Hati, 2015); Budi Handriyanto, *Perkawinan Beda Agama dalam Syariat Islam* (Jakarta: Khairul Bayan, 2003; Maria Ulfa Anshor dan Martin L. Sinaga, *Perkawinan Beda Agama: Perspektif Perempuan dan Pluralisme* (Jakarta: Kapal Perempuan 2004).

[2] Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia", Islam and Christian-Muslim Relations, vol. 31, issue 2 (2020), pp. 131-150. See also some other studies on interfaith marriage, for example, Gavin W. Jones, Chee Heng Leng, and Maznah Mohamad, *Muslim-Non-Muslim Marriage: Political and Cultural Contestation in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2009); Myengko Seo, "Falling in Love and Changing Gods: Inter-Religious Marriage and Marriage Conversion in Java, Indonesia", *Indonesia and the Malay World,* vol. 41, issue 119 (2013), pp. 76-96; and Noryamin Aini, Ariane Utomo and Peter McDonald, "Interreligious Marriage in Indonesia", *Journal of Religion and Demography*, vol. 6, no. 1 (2019), pp. 189-214.

administration and regulations on interfaith marriage.[3] Meanwhile, other studies emphasize judges' arguments for or against interfaith marriage and the final court decision.[4] By looking at the norms and practices of Muslim interfaith marriages, this study aims to document and take a closer look at interfaith marriage couples and their experiences in dealing with state law and sharia. Further, this study also aimed at analyzing the ways in which the marriage creates integration or stimulates conflict.

As the title suggests, this research departs from the normative-textual study and empirical analysis of Islamic law on Muslim interfaith marriage. It answers the following questions: what is the sharia argument about marriage between Muslims and non-Muslims, and how do Muslims perceive and negotiate interreligious marriage? How does the union establish integration and stimulate conflict within the family and beyond? What does the Muslim interfaith marriage reflect the nature of contemporary Islamic family law in its relation to the state, law, conflict, and integration? This research gathered data through random surveys and interviews with interfaith married couples or their adult dependants. This study shows various patterns of Muslim interfaith marriages. From the normative perspective of sharia and Muslim family code, the marriage that yields Muslim conversion from Islam

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[3] Ahmad Tholabi Kharlie, Fathudin, and Windy Triana, "Reforming Islamic Marriage Bureaucracy in Indonesia: Approaches and Impacts, *Al-Jamiah: Journal of Islamic Studies*, vol. 59, no. 2 (2021), pp. 255-286.

[4] Ermi Suhasti, Siti Djazimah, and Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practice", *Al-Jamiah: Journal of Islamic Studies*, vol. 56, no. 2 (2018), pp. 376-394 and Judith Koschorke, "Legal Pluralism in Indonesia: The Case of Interfaith Marriage Involving Muslims," in *Legal Pluralism in Muslim Contexts*, ed. by Norbert Oberauer, Yvonne Prief and Ulrike Qubaja (Leiden: Brill, 2019), pp. 199-231.

constitutes the pronest union to incite theological tension and social conflict. While the ideal marriage is the one that involves Muslim couples, interfaith marriage can be renegotiated through conversion to secure the union and create a family and social integration. Three case studies proposed in this study will show how conflict and integration occur in Muslim interfaith marriage and how Islamic law play roles in these processes and negotiations.

Islamic law, integration, and conflict

This study analyzes the normative discourse of Islamic law about interfaith marriage. It uses the theoretical framework of sharia and Islamic law, especially the concept of *istiqrāī* in Islamic legal methodology (*usūl fiqh*). This conceptual framework is beneficial in understanding the complexity of the practice of interreligious marriage. The idea of *istiqrāī* refers to the notion of inductive law-making, in contrast to *istinbaṭi,* which is deductive law-making. Uṣūl fiqh scholars introduce the istiqrāī to solve or answer questions by understanding the complex and actual problem and then draw a conclusion.[5] Looking at the law from its daily life reveals how it is critically re-contested and re-constituted by many actors. Such contestation, in turn, creates a particular pattern of legal practice. The phenomena of Muslim interfaith marriage is interesting to be studied not only from the normative and deductive (*istinbaṭi*) approach but also from the inductive (*istiqrāī*) method to enable critical analysis of complex relationships between Islamic law and the state and between law, integration, and conflict.

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[5] Abdul Mun'im Shaleh, *Hukum Manusia sebagai Hukum Tuhan: Berfikir Induktif Menemukan Hakikat Hukum Model Qawa'id Fiqhiyah* (Yogyakarta: Pustaka Pelajar, 2009).

According to Mohammad Atho' Mudzhar,[6] there are three patterns of the relation between Islamic law, the state (or the state with a Muslim majority population), and the influence of such relationship on the implementation of Islamic law by the state. The first model is the idealistic-reciprocal relationship. In this pattern, the state adopts Islamic law and implements it entirely, as it applies in the state where Islam serves as the state ideology or the basis of the constitution. It may also apply in Muslim-majority countries that adopt all or the majority of the field of Islamic law, including criminal law (*jināyat/ḥudūd*). The second is the "secular" relation. The state applies non-religious law and is very strict in making any law that contradicts national secular law. The third type works in a country that is neither Islamic nor secular. The state is willing to adopt parts of Islamic law to supplement its law, which is generally not based on shari'a. Indonesia best represents the third category. However, such three categories or classifications need to be revisited because many countries with Muslim minority populations in Europe, South and North America, the former Soviet Union, and others are willing to adopt a limited aspect of sharia.[7] The complex relationship between the state and Islam in those countries, and the implication of such ties for sharia application, call for a particular study, which is beyond the scope of this study.[8]

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[6] Muhammad Atho Mudzhar, *Membaca Gelombang Ijtihad antara Tradisi dan Liberasi* (Yogyakarta: Titian Ilahi Press, 1997).

[7] Maurits S. Berger (ed.), *Applying Sharia in the West: Facts, Fears, and the Future of Islamic Rules on Family Relations in the West* (Leiden: Leiden University Press, 2013).

[8] See, the pioneers in this field, for example, Adam Possamai, James T. Richardson, and Bryan S. Turner (eds.), *The Sociology of Sharia: Case Studies from around the World* (Dordrecht: Springer, 2015).

As for the Indonesian case, the country is neither secular nor Islamic. However, it accepts several aspects of sharia law and transfers them into state law.[9] The law's enactment suggests that marriage constitutes the state's and religion's domain. This condition can be seen, for example, in Marriage Law No. 1/1974. Although designed as a national law that applies across ethnic, cultural, and religious boundaries, the marriage law is very much related, and is substantially not contrary, to the provisions of *fiqh munakaḥa* (Islamic marriage law). Articles concerning *idda* (women's waiting period upon divorce), polygamy, interfaith marriage, and others, just to mention some, are proof of the convergence of sharia and state law.

Accepting *fiqh* provisions into the national marriage law shows that state law builds a cooperative relationship with Islamic law. This acceptance, of course, cannot be separated from the fact that the majority of the Indonesian population is Muslim and that for Muslims, personal status and family law, including marriage law, cannot be separated from religion. This phenomenon is the uniqueness of Islamic marriage law, where the refusal of it creates theological and even social problems. The rejection of the bill in 1973 concerning Marriage Law[10] because several provisions of it are deemed contrary to sharia, suggests this argument. Moreover, the failure of the Counter Legal Draft of Compilation of Islamic Law in 2002

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[9] Jan Michiel Otto, "Sharia and National Law in Indonesia" in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010). See also M. Zainal Anwar, "Sharia Expression in Contemporary Indonesia: An Expansion from Politics to Economic, *Ulumuna* vol. 22, no. 1, 2018, pp. 77-95.

[10] Nani Soewondo, "The Indonesian Marriage Law and its Implementing Regulation", *Archipel*, vol. 13 (1977), p. 285. See also Muhammad Kamal Hasan, *Modernisasi Indonesia: Respon Cendikiawan Muslim*, terj. Ahmad Thaha (Jakarta: Lingkaran Studi Indonesia, 1987).

that permissible interreligious marriage further points to the religious dimension of Muslim personal and family law.[11]

The marriage law functions as a means of social engineering that underpins social integration and stability for Indonesians since it applies nationally. Since the state accommodates *fiqh*, it offers Islamic law a role in social integration. This condition is relevant to social construction theory. Eric Dieth argues that law has a vital role in social integration because of its anti-disorder and instability character. According to Dieth:

"The law does not like instability. It likes to stabilize what is stable. Revolutionary changes are, per se, anti-legal because you cannot rule them. You do not control revolution. You do not know the outcome of the revolution. Law gets into the games when an established consensus has to be reproduced and secured. That is why law cannot guide an actual new construction or the construction of a community out of nothing. It is during the new construction phase that the interactors agree on certain legal rules. However, the law upholds its integrative effects when the community is set up. In the reproduction phase,

[11] Siti Musdah Mulia and Mark R. Cammack, "Toward a Just Marriage Law: Empowering Indonesian Women through a Counter of Legal Draft to the Compilation of Islamic Law", in *Islamic Law in Contemporary Indonesia: Ideas and Institutions* ed. by R. Michael Feener and Mark E. Cammack (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2007), pp. 128-145 and Siti Musdah Mulia "Promoting Gender Equity through Interreligious Marriage: Empowering Indonesian Women", in *Muslim-non-Muslim Marriage: Political and Cultural Contestation in Southeast Asia* ed. by Gavin W. Jones, Chee Heng Leng and Maznah Mohamad (Singapore: Institute of Southeast Asian Studies, 2009), pp. 255-282.

the law becomes an effective tool to guide the actors and to secure important achievement."[12]

However, Dieth also warns that law may turn into a means of domination used by the majority to suppress the minority. Austin Turk maintains that "the conception of law as power, i.e., a set of resources whose control and mobilization, can in many ways generate and exacerbate conflicts rather than resolving or softening them."[13] Minority groups often see no opportunity for change because the majority supports and favors the law. The issue of interfaith marriage can be analyzed from these theoretical perspectives. On the one hand, the national marriage law was created to establish social order for religious and social relationships in marriage. The aspiration to marry a partner of a different faith in the eyes of the state and law creates irregularities. On the other hand, the marriage law's opponents reject the provisions prohibiting interreligious marriage.

I want to develop this perspective on the relationship between law, integration, and conflict and apply such ambiguous relationships in the context of Islamic marriage law. This study does not simply look at the normative discourse of interfaith marriage in Islamic law and analyzes its practice. This study, therefore, needs a tool or method to approach marriage beyond the textual basis and employs an empirical investigation known as *istiqrāī* in the Islamic legal methodology. This method will help determine the strategies the Muslim parties apply to negotiate their marriage involving partners from other religious

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[12] Eric Dieth, *Integration by Cooperation: A Constructivist Social Theory and a Theory of the State and the Law* (Dordrecht: Springer, 2012), p. 301.

[13] Austin Turk, "Law as a Weapon in Social Control", *Social Problem*, vol. 23, Issue 3 (1976), p. 276.

backgrounds. It means that to understand the complexity of the relationship between Islamic law, integration, and conflict in Muslim interfaith marriage, an empirical approach and the method of *istiqrāī* are inevitable.

The concept of *istiqrāī* is introduced by Muslim jurists, such as al-Ghazali (W. 1111 AD). Quoted from Saleh,[14] the *istiqrāī* method is "a careful investigation of particular cases to draw a common conclusion that covers all of these cases." There are two types of *istiqrāī: Tamm* (complete) and *juz'ī* (particular). The first means the conclusion drawn after investigating all the specific cases becomes strong. The second is the conclusion that comes out after investigating some particular cases so that the deduction only applies to the particulars. According to al-Baiḍawi (W. 1291), al-*istiqrā* or induction is the legal basis disputed, but its validity is accepted.[15]

Interfaith marriage is a very diverse and complex phenomenon, so there is no single normative sharia legal ground that can easily explain it or provide a legal basis for or against it. The *istiqrāī* method helps elucidate interfaith marriage cases in depth and detail. In this study, the *istiqrāī* explains particular or unique cases of Muslim interfaith marriage. I use *istiqrāī juz'i* because I will not examine all cases of interfaith marriages. Since this is qualitative research, it takes a few samples representing the forms or patterns of interfaith marriage from the field where this study was conducted.

The concept of *istiqrāī* helps to understand problems that arise in the field that are not mentioned implicitly or explicitly by the text. As a reference or argument taken mainly from the Qur'an and hadith, the text is often

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[14] Shaleh, *Hukum Manusia sebagai Hukum Tuhan,* p. 48.
[15] *Ibid.*, p. 51.

positioned as a reference norm in which solutions for any arising problems must be returned to its normative provisions. Such an approach is easy to apply if the problem has a clear textual basis. However, such an approach is ineffective when dealing with issues for which no explicit legal provisions exist in the text or when the problems are complicated and no detailed and direct textual guides are available. For example, when a Muslim woman wishes to marry a non-Muslim man, the normative discourse of Islamic law will reject her proposal. It does not offer room for her to negotiate her marriage proposal, which may include the invitation to her couple to embrace Islam. From the beginning, the definite normative approach of Islamic law will justify her intention to marry an invalid.

However, empirical evidence shows that non-Muslim men and women may convert to Islam after marrying Muslim women or men. This marriage can happen empirically in the field and can be shown as a new point for the integrative social role of Islamic law. It is unfortunate if this phenomenon is blurred, and there is no attempt to theorize it just because of the apologetic attitude that emerges from the dominant textual discourse. To solve the problem of the textual-normative approach, it is necessary to employ the *istiqrāī* method. Adopting this method, this study will understand and analyze the issue of interfaith marriage from the bottom inductively and from here to conclude. The theoretical framework built in this study is how the extraordinarily complex practice of interfaith marriage is seen from the variegated religious background. Besides, it is also looked at the marriage negotiation process, and the span during which the couples live in the marital union contributes to the discourse of Islamic law on interfaith marriage, integration, and conflict.

Normative Islamic Law Discourses on Interfaith Marriage

The Qur'an and the hadith (Prophet Tradition) constitute the two most authoritative sources in Islamic law from which any Islamic legal issue or problem is deductively addressed. This method of normative legal argument applies to interfaith marriage as well. The Qur'anic perspective toward interfaith marriages can be seen in several verses. The Quranic verses emphasize the prohibition of marriage between Muslims and non-Muslims. However, the understanding of those verses is not singular. Some opinions interpret the verses textually; while others perceive them contextually.[16] Generally, the verses related to interreligious marriage can be classified into two categories.

First, some verses are concerned explicitly with interreligious marriage. These include Sura al-Baqara [2]: 221 and Sura al-Mumtaḥana [60]: 10. Another verse deals with the people of the book (*ahl al-Kitāb*), such as Sura al-Mā'ida [5]: 5. Second, some verses deal with the people of the book. These verses are understood as the disapproval of marrying the people of the book because they are categorized as unbelievers. Sura al-Baqara [2]: 105 and Sura al-Bayyina [96]: 6 falls under this category.

Unlike the Qur'an, the issue of interfaith marriage is less addressed in the hadith or *khabar* (reports about Companions). One hadith describes the marriage of the Prophet Muhammad with Maria Qibtia. There is controversy about whether Maria had converted to Islam or not when she married the Prophet. Meanwhile, another opinion maintains that Maria had converted to Islam before

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[16] See also Mun'im A. Sirry (ed.), *Fiqh Lintas Agama: Membangun Masyarakat Inklusif-Pluralis* (Jakarta: Paramadina, 2004).

marrying the Prophet. Ibn Sa'ad, as quoted by Syamhudi,[17] describes the Prophet's marriage to Maria as follows:

> "Muhammad bin Umar informed me. He said that Ya'qub bin Muhammad bin Abi Sa'sa'ah told him from Abdullah bin Abdurrahman bin Abi Sa'sa'ah. He said that Muqauqis, the ruler of Alexandria, sent Maria to the Messenger of Allah in the seventh year of Hijra with his brother Sirin and some gold and twenty fine garments along with *bighāl* and *ḥimār*. Khissi and her brother accompanied them. All with Hatib bin Abi Balta'ah. Then Hatib offered to Maria to convert to Islam. She also accepted the offer with pleasure, including her sister Sirin. Meanwhile, *Khissi,* her older sister, remained true to her religion until she finally embraced Islam at the time of the Prophet in Medina."[18]

The second hadith narrated by Ibn Abbas states, "Sahrun bin Hushib said, I heard Abdullah ibn Abbas said that the Messenger of Allah prevented from marrying certain groups of women other than believing women who had emigrated and the Messenger of Allah forbade marrying women who were not Muslim."[19]

At least three points can be drawn from these textual sources. The first point is that the majority of the texts disapprove interfaith marriage. The Qur'an pays considerable attention to this issue, where some verses explicitly express such prohibition. The second point is that the issue of interfaith marriage is closely related to the

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[17] Hasyim Syamhudi, *Satu Atap Beda Agama: Pendekatan Sosiologi Dakwah di Kalangan Masyarakat Muslim Tionghoa* (Yogyakarta: Pustaka Ilmu, 2013), pp. 183-184

[18] Ibid.

[19] Ibid., p. 171.

people of the book. Interestingly, in the second verse category above, the Qur'an equates, or places a parallel position, between [some groups of] people of the book and polytheists under the category of unbelievers. This quranic understanding has solid juridical implications, namely the absolute prohibition of marriage with non-Muslims, including people of the book, because they are categorized as unbelievers. The third point is the lack of sources of hadith regarding interfaith marriages. This point is certainly not common. What is expected is that there are verses regarding a particular issue, and there will be many hadiths that further explain such an issue. However, in the case of interfaith marriage, there seem to be very few hadiths related to it.

I want to emphasize that this normative-discursive-textual discourse significantly impacts the debates on interfaith marriages in Islam among Muslim scholars. Therefore, it is not surprising that the dominant sharia perspective tends to view Muslim interfaith marriage negatively because of the explicit Qur'anic prohibition of such union. However, the issue remains debatable amongst Muslim scholars. There are at least three perspectives on this matter. First is the view that prohibits Muslim marriages with non-Muslims. Neither Muslim men nor Muslim women are allowed to marry non-Muslim men and women. Several companions and commentators support this view, such as Umar bin Khattab, Atha, Abdullah bin Umar, and Muhammad ibn Hanafia.[20] The primary basis for the prohibition of marriage that these Companions and scholars refer to is Sura al-Baqara [2]: 221. As quoted by Syamhudi, Ibn Jarir al-Tabari said that the verse means the prohibition of marrying polytheists,

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[20] Ibid., p. 170.

both men and women, without exception, such as idol worshipers or people of the book, and there is no single verse that can enforce the marriage.

It seems that this first opinion received widespread support, not least in Indonesia, including the Indonesian Council of Ulama (MUI). In a fatwa issued in 1980, the MUI asserted that marriage between Muslim women and non-Muslim men is forbidden. Likewise, the union of Muslim men with non-Muslim women is also prohibited. Meanwhile, the MUI has its view about marrying the people of the book. The MUI admits that some Muslim scholars allow marriage with women of the people of the book. However, after considering the pros and cons of interfaith marriage in society, the MUI sees that the marriage could create problems relating to children's upbringing and their religion, spousal relationships, and more extensive family relationships between the husband and the wife due to differences in faith. On this basis, the MUI forbids Muslims from marrying the people of the book.[21]

Huzaimah Tahido Yanggo stands on that opinion.[22] She considers that the prohibition of Muslims marrying non-Muslims, both infidels, and people of the book, is correct. She sees the potential for conflict theologically and socially, and such disputes must be prevented earlier. This principle meets the basic methodology of Islamic law, namely containing bad (*sad al-dzarī'a*). She further

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[21] Majelis Ulama Indonesia, *Himpunan Keputusan dan Fatwa Ulama Indonesia* (Jakarta: Sekretariat Majelis Ulama Indonesia Masjid Istiqlal, 1995), p. 91. The MUI fatwa covers a wide range of issues and now attains a quasi legislative power. See Alfitri, "Bureaucratizing Fatwa in Indonesia: The Council of Indonesian Ulama and its Quasi Legislative Power" *Ulumuna*, vol. 24, no. 2 (2020), p. 367-397.

[22] Huzaimah Tahido Yanggo, *Masail Fiqhiyah: Kajian Hukum Islam Kontemporer* (Bandung: Angkasa, 2005), p. 160.

emphasizes that although there are differences among Muslim scholars' opinions on marrying women from the people of the book, she follows the view that prohibits such marriages on the grounds of preventing badness. This view is similar to the one proposed by another Indonesian Muslim, Amin Suma.[23] He argues that the *illat* or the primary basis for the prohibition of interfaith marriages is due to *kufr* (infidelity). Furthermore, Suma, referring to the opinion of contemporary cleric Wahbah al-Zuhaili, said that the ban on marriage between couples of different faiths is because there will be no harmony (*al-insijām*), peace (*al-iṭmi'nan*) and because of the difficulty of cooperation or help amongst the couples because of different religions.[24]

Second, the view that allows Muslims to marry non-Muslims under certain conditions, namely Muslim men marrying women of the people of the book. However, the opposite does not apply. Muslim women remain prohibited from marrying non-Muslim men, including the men of the people of the book. Scholars such as Said bin Musayyab, Ibn Abbas, and the Hanbalite school endorse this view. The early generation of Qur'an interpreters, such as Muhammad Ibn Jarir al-Tabari, asserts that the permissibility of interfaith marriages is only limited to marrying women from the people of the book. Furthermore, he said that "the verse forbidding marriage to polytheist women for Muslims was originally intended for all types of polytheist, such as idol worshipers or Jews, Christians, Magians, and others, then this verses is abrogated".[25] By this, he meant that marrying women of the people of the book is an exception to the prohibition of interfaith marriage in Islam. Ibn Abbas informs which is supported

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[23] Summa, *Kawin Beda Agama di Indonesia,* p. 109.
[24] Ibid., p. 108.
[25] Syamhudi, *Satu Atap*, p. 175

this view, namely the permissibility of marrying women of the people of the book, who maintain their honor. When it is stated, *"do not marry a polytheist woman unless she has faith"*, then the women of the people of the book are excluded. This law means it is lawful to marry a good and honored woman of the people of the book.[26]

The third view suggests that interfaith marriage between Muslims and non-Muslims is permissible. Among the figures of the third group are the modern scholar Muhammad Abduh and his student Rasyid Rida.[27] They interpret polytheists to whom Muslims are prohibited from marrying them (al-Baqara [2]: 122) as polytheists at the time of the Prophet, with an indication of the connection of it in this verse with slavery (*'abd*), which only existed at that time. Because slavery no longer exists, the verse is understood to only apply in a limited way according to the context and the era of its revelation. According to Abduh, the verse concerning the prohibition of marrying polytheists and the permissibility of marrying enslaved people is actually one verse and was revealed only once and did not come down twice with two different events. Furthermore, this third view emphasizes that the restriction on marrying unbelievers, as mentioned in Sura al-Mumtaḥana [60]: 10, is closely related to conditions in the early days of Islam which were still in the context of war. If the conditions have changed, and now the situation has changed, then the restriction on marriage is lifted. Moreover, the prohibition against marrying polytheist has been annulled by Sura al-Mā'ida [5]: 5.

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[26] Ibi., p. 176. A similar view is offered by Syihab. See M. Quraisy Syihab, *Wawasan al-Qur'an* (Bandung: Mizan, 2004), p. 198.

[27] Siti Musdah Mulia, *Muslimah Reformis: Perempuan Pembaharu Keagaam* (Bandung: Mizan, 2005), p. 82.

Beyond such textual and normative debates that predominantly prohibit interfaith marriage, let us now look at the actual practice of marriage, its patterns, negotiations, integration, and conflict in it.

Negotiating Interfaith Marriage: Integration, Conflict, and Compromise

This study reveals the Muslim interfaith marriage patterns involving conversion from and to Islam. It means that non-Muslim partners convert to Islam because they marry Muslim partners, and Muslims leave Islam after marrying non-Muslim partners. My data shows the total number of conversions to Islam is 47 cases, while the conversion out of Islam reaches 29 instances. Of these 29 cases, eight women reconverted to Islam after divorce. Meanwhile, seven other cases demonstrate that each couple persistently holds their respective faith.

Most cases of interfaith marriage are found in Mataram, the capital of West Nusa Tenggara Province. Mataram, located on the western coast of Lombok, marks the province's most pluralistic and multicultural site, where people from various religious and ethnic backgrounds reside. According to the Office of Statistical Bureau (*Badan Pusat Statistik/BPS*) of West Nusa Tenggara,[28] Muslims are predominant in Mataram (and in Lombok in general), consisting of 82.26% of the total population. Hindus and Christians/Protestants constitute the second and third largest population, reaching 14.27% and 1,60%, respectively. The office records 1,06% of the population are Buddhists, 1,02% Catholics and 0.01%

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[28] This 2020 statistical data is obtained from the BPS NTB's website. See https://ntb.bps.go.id/indicator/108/333/1/persentase-penduduk-menurut-kabupaten-kota-dan-agama-yang-dianut-.html

Confucians. The ethnic composition suggests that the Sasak (mostly Muslim) are the majority while the Balinese (mostly Hindu) are the most significant minority. Other ethnics include Javanese, Bimanese, Sumbawa, Bugis, Bataknese, Arab, and others from the eastern province of East Nusa Tenggara.

My demographic data shows that marriage across religious and ethnic lines mainly occurs in Mataram, involving Muslim and Hindu couples. Muslims are generally predominant in Mataram (and Lombok), consisting of 82.26% of the total population. Hindus and Christians/Protestants constitute the second and third largest populations, reaching 14.27% and 1,60%, respectively. The office records 1,06% of the people are Buddhists, 1,02% Catholics, and 0.01% Confucians. The ethnic composition suggests that the Sasak (predominantly Muslim) are the majority while the Balinese (primarily Hindu) are the most significant minority. Other ethnicities include Javanese, Bimanese, Sumbawa, Bugis, Bataknese, Arab, and others from the eastern province of East Nusa Tenggara. Below are the examples that represent the pattern of Muslim interfaith marriage.

Interfaith Marriage, Conversion, and Integration

The first pattern shows that non-Muslims, both men and women, convert to Islam to marry their Muslim partners, who require conversion to Islam as a prerequisite for marriage. In many cases, the conversion on the part of the non-Muslim female partner is more accessible than the male partner, and disputes due to this conversion are less controversial. However, Muslim women may also persuade their male partners to convert to Islam. Although religious conversion can become a grave issue because it entails a theological shift and a new familial and even social alignment, it remains negotiable. This phenomenon

happened to a Balinese man who wished to marry a Muslim woman. According to the Balinese cultural system, a son is considered the family's principal heir; this privilege will be lost when he leaves Hinduism and embraces another religion. Despite such cultural restrictions, Balinese men may convert to Islam due to marriage to Muslim women.

For example, ING, 56 years old, is now a retired civil servant and married a woman, M, 55, in 1984. The story began early of that year when he worked as a state civil servant in Mataram and lived in a dormitory with his colleagues, most of whom were Muslims. ING made a very close relationship with one of his Muslim colleagues and often visited him in East Lombok. One day he spent a night in his friend's house and dreamt of performing Islamic prayer, an experience that later prompted him to convert to Islam in 1984. He met M, a female relative of his colleague, and was impressed by her and wished to marry her. However, ING's parents and relatives opposed the proposal since the marriage necessitated the conversion to Islam. They sent ING's brother to Mataram to persuade him to go back to Bali to perform a marriage under the Balinese religious and cultural tradition. The couple went to Bali for about two weeks. They married in the village in 1984 according to the Balinese custom, but the marriage was not officially recorded. Even though the marriage was carried out in the Balinese custom and using the Hindu tradition, M admitted that she did it for a cultural purpose and never intended to leave Islam. This strategy, namely accepting the Balinese marriage procession in Bali, pushed the ING family to get M.

However, after the couple returned to Mataram at the end of 1984, their marriage was officially registered according to Islamic and state laws by the Office of Religious Affairs (*Kantor Urusan Agama*/KUA). Her family

accompanied M while ING was alone to keep the marriage secret from his parent and relatives. One day, ING's parents visited him in Mataram and were shocked to find that ING had converted to Islam. This condition caused a problematic relationship between ING, his wife, and his parent and relatives. To ease the tension and to maintain a good relationship, ING and his new small family often visited his parents, relatives, family, and colleagues in his native village in Bali. Even when they intended to perform Islamic pilgrim (hajj), they performed a "farewell" ritual in Bali in 1985 to mark his complete cosmological break with his natal family, who now accepted him and his family.

Interfaith Marriage, Conversion, and Conflict

A marriage that involves conversion and transgresses local conventions may stimulate tension and conflict. One example of this occurred in Cakranegara, Mataram. A Muslim woman, 25 years old, with a noble lineage, eloped with a non-Muslim man, 28 years. They came to know each other since their respective office was close, rendering the encounter between the two frequently possible. They agreed to marry through elopement. The man took her away from her house to mark the initial traditional marriage procession in 2010. According to the local marriage tradition (*merariq*), once a girl under her consent has eloped, she must marry the man who eloped her. The girl's parents and relatives rejected the elopement and insisted she be brought back home. They argued that the elopement was unbalanced because the girl was a noble while the man was just a lay person and, more importantly, not a Muslim. However, a few days later, she eloped again with the same man. Her parents forced her to for the second time to return, but she refused, and the eloping man and his relatives fully supported her decision. Under the instruction of the village head as the mediator, several

involved parties agreed to settle the issue at the office of the sub-district. Under high alert and tension, since each party came along with their supporters to intervene in the mediation, the girl persisted in marrying. Since the situation at the village office was increasingly tense and avoiding a communal conflict was necessary, the mediator decided that the girl should return to her parent and cancel the elopement. However, the decision disappointed the man and his relatives.

However, after a while at home, the girl ran away again, looking for the man of her choice for the third time. This time, the situation was even more complicated and tense. The village official felt they could no longer solve the problem since each party insisted on their own will. According to the local convention, the girl holds the final decision to decide whether or not she will marry. In the third mediation, the girl stated that she wanted to marry the man she had eloped with. Conditions had heated up because the girl's extended family could not accept this fact. However, because it was final, the parents had no other choice but to release the daughter. The girl married the man of her will. She converted to Hinduism in 2010 but lost the relationship with her family.

Interfaith Marriage, Conversion, and Compromise

The third case involved a local Muslim woman who married a foreign businessman who ran a business in Lombok. After having a close relationship and knowing each other for a while, they decided to get married in 1990. The man embraced Islam, as the woman required so, before concluding the marriage contract, which was conducted in accordance with Islamic and state law. His conversion helped facilitate the easy process of marriage procession and familial acceptance, although it was seemingly meant

to be more a strategy to have the marriage accepted rather than an actual acceptance of Islam. The son, 18 years old, and a high school student, told me his father is not a kind of religious person. He acknowledges that his father believes in God but does not consider religious practices and rituals necessary. Meanwhile, her mother is strict in practicing Islam, and constantly reminds him to perform the daily Islamic prayer. She even asks him to perform an Islamic pilgrim to Mecca once he can do so.

His father does not feel bothered by his son performing Islamic rituals consistently, but he is earnest in selecting a school for him. He insisted on sending his son to a Christian school, which he thought of qualified educational institution. The son further told me that he received a Christian religious education at the school and even went to a church to perform religious services. However, when he moved to a Catholic school, he joined his Muslim schoolmates to receive Islamic religious education. "My big family always celebrate *Idul Fitri* (Islamic religious celebration upon the end of the fasting month), but we also have a party for Christmas", signaling that having two religious or cultural practices does not matter.

The finding of this present study confirms the argument put forward by Ziba Mir-Hosseini; that only in the field of family, inheritance, and endowment that sharia remains applicable amidst the wave of legal modernization and secularization in the modern Muslim world, although it must now be acknowledged that other fields of sharia are also applied through state legal system.[29] Mir-Hosseini contends the decline of sharia in modern times after the end of the colonization and the rise of the nation-state in many Muslim countries occurred since it has been replaced

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[29] See again Otto and Anwar.

by secular (Western and national) laws. Nevertheless, Islamic family law has been able to resist such reform for two main reasons. First, family law is the most elaborated area of sharia law under the supervision of the traditional ulama, so the state is willing to reform other domains of the law. Second, modern law reform follows the Western concept of the division between public and private law. The public belongs to the state; the private is left untouched since it is up to the individuals and their relation with God. Family law falls in the second category, so it skips from the reform.[30] She further states sharia law that *"…a great many of its rules, including those regulating familial life, remained a matter between individual and God, the ultimate authority. Perhaps its durability and hold can be partly attributed to the fact that there was little legal coercion to apply it. A greater portion of compulsion to conform came from one's conscience and social pressure; it was not enforced on an individual by the state"*.[31]

But Mir-Hosseini also suggests that the codification of sharia law shifted its nature and created a hybrid of law, which is neither sharia nor Western. Commenting on the trend of the codification of Islamic family law in the Middle East, Lynn Welchman states that

> *"…however much what is presented by current state as shari'a (or Shari'a based) differs in form and substance from the previous articulation of 'sharia', the principle that Muslim family law is 'Shari'a-based' is still a notion explicitly deferred to by the state, and thus constitute a form of basic legal postulate".[32]*

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[30] Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London and New York: I.B. Tauris, 2000), p. 10

[31] Ibid., p. 11.

[32] Lynn Welchman, *Women and Family Laws in the Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), p. 16.

To An-Naim, the binding of the sharia by virtue of the state power and legislation has reduced the nature of sharia, whose application is contingent upon Muslim's personal awareness, not the state coercion.[33]

These scholars emphasize that what is often claimed as sharia law application today is, in fact, not sharia in the traditional sense (*fiqh*). Since it is the state that plays a more critical role than the conventional guardian (the ulama) in shaping the substance and procedure of Muslim family law. Based on its findings, this present study wants to add to this debate and contends that Muslim family law has gained power through state legislation in Indonesia. Marriage Law No. 14/1974 is one example. Although the marriage law applies nationally regardless of the religion and ethnicity of the Indonesian citizens, it is very much influenced by *fiqh*. The failure to replace the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) with Counter Legal Draft (CLD) of the Compilation of Islamic law/CLD, demonstrates that the secularization of Islamic family law has been less successful. The CLD was imbued with the modern principle of gender justice, equality, human rights, and interreligious tolerance, which fully tolerates Muslim marriage with non-Muslims. The KHI, which disallows interfaith marriage, constitutes the representation of *fiqh* issued by the state through a presidential decree as the normative reference by religious court judges up to the present time to adjudicate legal cases relating to Muslim personal status and family law.

Of course, political struggles and social contexts caused the refusal of the CLD, such as strong opposition from the traditional ulama. Still, from the normative

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[33] Abdullahi A. An-Naim, *Islamic Family Law in a Changing Global World: A Global Resource Book* (London and New York: Zed Books), p. 3.

discourse of Islamic family law, the draft's failure is simply because personal and family law is a matter of religious identity in Islamic legal discourse. At least, the family law has normatively and symbolically played this sacred role. The role of family law is popularly called guarding the religious identity of Muslims. Therefore, any reform that dismantles such religious characteristics of family law receives stiff resistance, as these are reflected in the failure of the CLD at the beginning of the twenty-first century and, previously, the bill of Marriage Law in 1973. They contradicted the normative provisions of Muslim family law stipulated by *fiqh*. While transactions in commercial sharia laws (*muāmala*) are open to everyone and abandonment of criminal law (*jināya*) does not impact the religious status as Muslim, being a Muslim is required to sign a marriage contract. The same rule applies in another field of family law, such as inheritance (*warith*). In other words, the finding of this present study confirms the power of traditional Islamic family law in defending the religious nature of marriage law. Integration and conflict are just logical consequences of the religious nature of Muslim marriage law.

Conclusion

The finding of this present study enriches our insight to understand how Muslim family law is (re)negotiated, especially when it deals with interfaith marriage. Three Muslim interfaith marriages above suggest that Islamic law remains one of the most fundamental elements in the contemporary practices of Muslim family life. However, how Islamic law works in each case differs significantly. While the dominant normative discourse of Islamic law idealizes Muslim partners, it may also accept others, like in case one, through conversion, at least symbolically, as case

three shows. The failure to comply with this principle may cause conflict, as the second case reveals. The conflict thus suggests the very nature of Muslim family law as 'religious and sacred law' that shape Muslim's identity. Conflict and integration, as this study has discussed, symbolize such religious identity of the family law in Islam.

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