

THE PROHIBITION OF INTERFAITH MARRIAGE IN FIQHIYAH RULES: AN ANALYSIS OF THE CONSTITUTIONAL COURT DECISION NUMBER 212/PUU-XXIII/2025

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Abstract. The prohibition of interfaith marriage in Islamic jurisprudence (fiqh) is rooted in definitive Quranic texts and scholarly consensus (ijma'). However, in the Indonesian legal context, this issue is not only a matter of religious validity but also involves the administrative registration of marriage by the state. Constitutional Court Decision Number 212/PUU-XXIII/2025 emerged in response to a judicial review petition against Article 2(1) of Law Number 1 of 1974 on Marriage, filed by a Muslim civil servant who intended to marry a Christian woman. This research aims to examine fiqhiyah rules regarding the prohibition of interfaith marriage, analyze the Constitutional Court's legal considerations in Decision Number 212/PUU-XXIII/2025, and assess whether the decision is consistent with fiqhiyah rules. This research uses a normative juridical method with a statute approach, conceptual approach based on fiqhiyah rules and maqashid shariah, and a case approach. The results show that fiqhiyah rules explicitly prohibit interfaith marriage, particularly through the established fiqhiyah maxim لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ (it is not permissible for a Muslim woman to marry a non-Muslim man), supported by QS. Al-Baqarah: 221 and the ijma' of scholars from the four major madhabs. The Constitutional Court in its decision affirmed that the validity of marriage is the domain of religion, not the state, and rejected the petition entirely. There is normative consistency between the fiqhiyah prohibition and the Court's decision in terms of not legalizing interfaith marriage through religious law. However, a normative tension remains regarding the administrative recording of interfaith marriages that have been declared valid under their respective religious laws. The maqashid shariah approach particularly *hifz al-din* and *hifz al-nasl* supports the fiqhiyah prohibition while also demanding legal certainty for the civil rights of citizens.

Keywords: Interfaith Marriage, Fiqhiyah Rules, Constitutional Court, Marriage Registration, Maqashid Shariah.

I. INTRODUCTION

Indonesia is a country with extraordinary plurality. Based on data from the Central Statistics Agency (BPS) and the Ministry of Culture of the Republic of Indonesia, this nation has more than 1,200 ethnic groups, 694 regional languages, 6 official religions, and 161 native faith believers [1]. This plurality is not merely a sociological reality, but has become an inseparable part of the nation's constitutional identity reflected in the motto *Bhinneka Tunggal Ika*.

Amidst this plurality, interfaith marriage emerges as a phenomenon that cannot be ignored. Data from the Indonesian Conference on Religion and Peace (ICRP) records at least 1,655 interfaith couples who married in the period from 2005 to July 2023. Research by Noryamin Aini, Ariane Utomo, and Peter McDonald based on the 2010 BPS census found around 228,778 couples out of a total of 47 million cohabiting married couples have different religions [2]. This figure shows that interfaith marriage is not a marginal anomaly, but a real social phenomenon that requires legal clarity.

The main problem faced by interfaith couples in Indonesia is not solely a matter of the validity of the marriage according to religion, but rather the issue of marriage registration by the state. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that "a marriage is valid, if it is conducted according to the laws of each respective religion and belief." In practice, this provision is interpreted inconsistently by the courts. Some courts permit the registration of interfaith marriages such as the Gianyar District Court Determination No. 29/Pdt.P/2019/PN.Gin and Surabaya District Court No. 916/Pdt.P/2022/PN.Sby, while others reject it such as the Blora District Court No. 71/Pdt.P/2017/PN.Bla and Pati District Court No. 122/Pdt.P/2020/PN.Pti.

This inconsistency was further affirmed with the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023 which provides guidelines for judges not to grant applications for the registration of marriages between people of different religions and beliefs. This condition prompted Muhamad Anugrah Firmansyah, a Muslim civil servant who intended to

marry a Christian woman, to file a judicial review petition to the Constitutional Court which was registered as Case Number 212/PUU-XXIII/2025. This case presents a fundamental normative conflict between Islamic law (fiqh) which explicitly prohibits interfaith marriage through the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ, the constitutional obligation of the state to provide legal certainty to all citizens, and the social reality of the increasing number of interfaith marriages in Indonesia's pluralistic society.

The author highlights several writings related to this research as a means of comparison: First, the research conducted by Mihradi and Wicaksono in the *Jurnal Hukum dan Pembangunan* titled "Perkawinan Beda Agama dalam Hukum Indonesia: Tinjauan Hukum dan HAM" [3]. This research discusses the human rights dimension in interfaith marriage from the perspective of Indonesian positive law, but has not specifically examined the linkage with fiqhiyah rules. Second, the research by Zulfa in *Al-Manahij: Jurnal Kajian Hukum Islam* titled "Perkawinan Beda Agama dalam Perspektif Hak Asasi Manusia dan Hukum Islam" [4]. This research examines from two perspectives but has not discussed the development of the latest Constitutional Court decision. Third, the research by Alfin Hidayat from UIN Syarif Hidayatullah Jakarta titled "Wali Nikah Yang Fasik Menurut Ijtihad dan Konsep Maslahah Imam 'Izzuddin Ibn Abd As-Salam" [5]. This research is relevant in the method of using fiqhiyah rules and the maslahah approach in marriage issues.

Based on the issues above, the researcher is interested in discussing the problem regarding the prohibition of interfaith marriage in fiqhiyah rules and analyzing it against the Constitutional Court Decision Number 212/PUU-XXIII/2025.

II. RESEARCH METHODS

This research uses a normative juridical research method (normative legal research) which examines law as norms, principles, and doctrines [6]. Three approaches are used integratively: first, the statute approach which examines laws and regulations related to marriage; second, the conceptual approach based on fiqhiyah rules and maqashid shariah; and third, the case approach towards the Constitutional Court Decision No. 212/PUU-XXIII/2025 along with relevant previous decisions. Primary legal material sources include the Qur'an, hadith, Constitutional Court decisions, and laws and regulations. Secondary legal materials include classical fiqh books, constitutional law literature, and related research results.

III. RESULTS AND DISCUSSION

A. Fiqhiyah Rules on the Prohibition of Interfaith Marriage Quranic Foundation

The fiqhiyah rules regarding the prohibition of interfaith marriage originate directly from the definitive (*qath'i*) texts of the Qur'an. Allah SWT says in Surah al-Baqarah verse 221: وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ ۚ وَلَأَمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا "And do not marry polytheistic

women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe." [QS. Al-Baqarah/2: 221] This verse explicitly prohibits two things at once: the marriage of a Muslim man to a polytheistic woman and the marriage of a Muslim woman to a polytheistic man. Exegetes (*mufasir*) such as Ibn Katsir and al-Qurthubi agree that this prohibition is absolute [7], [8]. As for the marriage of a Muslim man to a woman of the People of the Book (*Ahli Kitab*), the Qur'an provides room through Surah al-Ma'idah verse 5. However, the majority (*jumhur*) of contemporary scholars, including the Indonesian Ulema Council, hold the view that this permissibility cannot be applied absolutely in the context of modern Indonesia by considering the greater harm (*mafsadah*) [9].

B. Scholars' Opinion (Jumhur)

In general, scholars from the four major madhabs agree that the marriage of a Muslim woman to a non-Muslim man under any circumstances is *haram* (forbidden) and null and void by law [10]–[12]. This consensus is formulated explicitly in the fiqhiyah rule which serves as the main foundation for all madhabs: لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ "It is not permissible for a Muslim woman to marry a non-Muslim man." This rule is *qath'i* (definitive) and contains no exceptions under any circumstances. Imam al-Nawawi in *al-Majmu'* reinforces the rule: "It is not lawful for a Muslim woman to marry a non-Muslim man, whether he is a non-Muslim of the People of the Book or otherwise, and on this there has been an *ijma'* (consensus) of scholars" [10]. This prohibition is based on a strong *ratio legis*: in the Islamic marriage system, the husband has *qiwamah* (leadership) over the wife. If the husband is a non-Muslim, it is feared that there will be pressure on the faith of the wife and children, thereby threatening the continuity of Islamic teachings in the family [13].

C. Relevant Fiqhiyah Rules

Besides the primary rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ which serves as the main foundation of this prohibition, several general fiqhiyah rules also strengthen and complement the prohibition. First, دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَىٰ جَلْبِ الْمَصَالِحِ (preventing harm is given precedence over bringing benefits). This rule justifies the prohibition of interfaith marriage because the potential harm to faith caused is greater than the benefits that might be obtained. Second, الْأَصْلُ فِي الْأُبْضَاعِ النَّحْرِيُّ (the original ruling regarding sexual intercourse is prohibition). Sexual relations and marriage are only lawful in conditions that are explicitly permitted by the Sharia. Third, لَا ضَرَرَ وَلَا ضِرَارَ (there should be neither harming nor reciprocating harm). Interfaith marriage has the potential to cause *dharar* (harm) to the religious life of the couple and children.

D. The Concept of Marriage Validity versus Registration

One of the most important conceptual distinctions in Indonesian marriage law is the difference between the validity of marriage according to religion and the registration of marriage by the state. The Constitutional Court has affirmed this distinction in the Constitutional Court Decision No. 46/PUU-VIII/2010 which states that "marriage registration is

not a factor that determines the validity of a marriage" and that "registration is an administrative obligation required based on laws and regulations" [14]. In the perspective of fiqh, the validity of a marriage contract (*akad nikah*) is determined by the fulfillment of the pillars and conditions of marriage according to Islamic law: the prospective husband, the prospective wife, the marriage guardian (*wali nikah*), two witnesses, and the offer and acceptance (*ijab qabul*) [15]. Registration by the state is not part of these pillars, so its absence does not invalidate the marriage according to religion. Al-Qardawi acknowledges that official marriage documentation is a form of modern benefit (*maslahah*) that is in line with *maqashid syariah*, because it protects the rights of the couple, especially the wife and children, from denial in the future [16]. However, the benefit of this registration can only apply to marriages that have been valid according to religion beforehand, as affirmed by the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ that a marriage which is not valid according to religion cannot be legitimized through the state's administrative mechanism.

E. The Case of Constitutional Court Decision No. 212/PUU-XXIII/2025

The petition was filed by Muhamad Anugrah Firmansyah, a Muslim civil servant residing in Bandung City, who intended to marry Gabriela Agmassini Pramesvari, a Christian woman. Their relationship had been going on for two years. The petition was filed on November 3, 2025, and recorded in the Constitutional Case Registration Book on November 4, 2025, with Number 212/PUU-XXIII/2025. The Petitioner challenged the constitutionality of Article 2 paragraph (1) of the Marriage Law against Article 1 paragraph (3), Article 28D paragraph (1), and Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The Indonesian Ulema Council (MUI) and the Indonesian Islamic Da'wah Council (DDII) were accepted as Related Parties.

F. Petitioner's Arguments

The Petitioner built his arguments on three main premises. First, Article 2 paragraph (1) of the Marriage Law causes legal uncertainty because it opens room for diverse interpretations so that the norm which should regulate the conditions for the validity of marriage according to religion shifts into a discriminatory marriage registration norm. Second, the inconsistency of court decisions in handling applications for interfaith marriage registration creates unacceptable uncertainty in a state of law. Third, SEMA Number 2 of 2023 further strengthens the interpretation which according to the Petitioner is unconstitutional, namely that the refusal of registration is a violation of his constitutional right to legal certainty (Article 28D paragraph [1]) and the failure of the state to fulfill its human rights protection responsibilities (Article 28I paragraph [4]).

G. Constitutional Court's Legal Considerations

Before entering into the subject matter of the petition, the Constitutional Court considered the linkage of the petition with the *ne bis in idem* provision as in Article 60 of the Constitutional Court Law. The Constitutional Court stated

that the petition was not barred by *ne bis in idem* because it used different bases for review, namely Article 1 paragraph (3) and Article 28I paragraph (4) of the 1945 Constitution which had never been used in previous reviews, as well as different reasons for the petition which focused on the registration aspect, not the validity of the marriage. In its subject matter, the Constitutional Court affirmed three fundamental things. First, the validity of marriage is the domain of religion. The state does not act as a religious interpreter for the validity of marriage, but rather follows up on the interpretation results of religious institutions or organizations. Second, registration is an administrative obligation of the state that functions to provide legal certainty and protection to citizens in line with Article 28D paragraph (1) of the 1945 Constitution. Third, the marriage being registered must be a valid marriage, because "the registration referred to in paragraph (2) must be a registration that brings validity in paragraph (1)." The Constitutional Court also affirmed that the constitutional issue questioned by the Petitioner is basically regarding the validity of marriage, so the legal considerations in Decision No. 68/PUU-XII/2014, No. 24/PUU-XX/2022, and No. 146/PUU-XXII/2024 apply *mutatis mutandis* [17]–[19]. With eight justices holding the opinion that the petition was legally groundless, the Constitutional Court handed down the decision: "To reject the Petitioner's petition in its entirety." Constitutional Justice M. Guntur Hamzah delivered a dissenting opinion which was actually more conservative: The Petitioner should have been declared to have no legal standing (*no legal standing*) because as an adherent of Islam, the Petitioner is bound by MUI Fatwa No. 4/MUNAS VII/MUI/8/2005 which states that interfaith marriage is *haram* and invalid. This means that the obstacle for the Petitioner did not originate from the norm of Article 2 paragraph (1) of the Marriage Law, but from his own religious law which in fiqhiyah rules has been explicitly established through لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ.

H. Analysis of the Consistency of the Constitutional Court Decision with Fiqhiyah Rules

At the most fundamental level, Constitutional Court Decision No. 212/PUU-XXIII/2025 does not contradict the fiqhiyah rules regarding the prohibition of interfaith marriage, particularly the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ. The Constitutional Court did not legalize interfaith marriage according to religion. By affirming that the validity of marriage is entirely the domain of religion and rejecting the Petitioner's petition, the Constitutional Court implicitly maintained that if the Petitioner's religious law prohibits interfaith marriage through the said rule, then the prohibition remains in effect and the state cannot intervene in it. The Constitutional Court's stance that the state does not act as a religious interpreter for the validity of marriage is also an acceptable position from the perspective of fiqh. Fiqh places the authority of religious legal interpretation on scholars and religious institutions, not on state apparatus. By leaving the assessment of the validity of marriage to religious authorities, the Constitutional Court adopted a principle that is aligned with the epistemology of fiqh and indirectly recognized the applicability of the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ in the domain

of religious law. However, there is a more complex and unresolved issue: does the registration of interfaith marriage by the state through a court determination as per Article 35 letter a of the Population Administration Law implicitly mean that the state recognizes the validity of interfaith marriage? The Constitutional Court in Decision No. 24/PUU-XX/2022 answered: "Even though the explanation explains that what is meant by a marriage determined by a court is a marriage conducted between adherents of different religions, according to the Court, it does not mean the state recognizes interfaith marriage" [18]. From the perspective of fiqh, the difference between registration (*tautsiq*) and recognition of validity (*ithbat*) can be theoretically maintained. Al-Zuhayli in *al-Fiqh al-Islami wa Adillatuhu* distinguishes between *al-nikah al-sahih* (a marriage that is valid according to religion) and *tautsiq al-nikah* (marriage documentation) as two different domains [13]. However, the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ affirms that even *tautsiq* cannot be given to a marriage that is fundamentally invalid according to religion from the beginning, because doing so is tantamount to legalizing something forbidden through an administrative back door. From the perspective of the *sadd al-dzari'ah* rule (blocking the means to evil/forbidden acts), there is a legitimate concern that the registration of interfaith marriage—although not a formal recognition—in practice creates a situation that is socially and legally equivalent to a valid marriage. This is what underlies the issuance of SEMA No. 2 of 2023, which functionally strengthens the applicability of the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ in the national legal system.

I. Maqashid Shariah Approach

A more comprehensive approach to evaluating this issue is through the lens of *maqashid shariah*. Al-Ghazali and al-Syathibi formulated the five main objectives of sharia: *hifz al-din* (safeguarding religion), *hifz al-nafs* (safeguarding life), *hifz al-nasl* (safeguarding lineage), *hifz al-aql* (safeguarding intellect), and *hifz al-mal* (safeguarding wealth) [20], [21]. The two most relevant *maqashid* in the context of interfaith marriage are *hifz al-din* and *hifz al-nasl*. *Hifz al-din* demands that every legal regulation must not endanger the continuity of someone's religious practice. In interfaith marriage, the threat to *hifz al-din* arises in two forms: pressure on the Muslim partner to follow the religious practices of the non-Muslim partner, and ambiguity in the religious education of children born from the marriage. This is the main *ratio legis* of the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ, namely the protection of the religion of the Muslim woman and her offspring from the domination of the non-Muslim husband. *Hifz al-nasl* demands clarity of lineage and the validity of filial relationships (*nasab*). A marriage that is not recognized according to religion, even if it is registered administratively, creates legal ambiguity that can harm the children born from it, especially in terms of inheritance rights according to Islamic law. On the other hand, *maqashid shariah* also recognizes the need for *hifz al-nafs* which in a modern context can be interpreted to include the protection of someone's civil rights. Al-Qardawi in *Fiqh al-Aulawiyyat* emphasizes that real benefit (*maslahah mu'tabarrah*) must be seriously considered, including the social impact of the application of a law [22].

However, in the hierarchy of *maqashid*, *hifz al-din* occupies a higher position than *hifz al-nafs*, so the consideration of religious protection as reflected in the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ remains the main priority.

IV. CONCLUSIONS

First, fiqhiyah rules explicitly prohibit interfaith marriage through the primary rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ (it is not permissible for a Muslim woman to marry a non-Muslim man) which originates from the definitive (*qath'i*) text in the Qur'an (QS. al-Baqarah: 221) and is supported by the *ijma'* of scholars from the four major madhabs. This prohibition has a strong *ratio legis* related to the protection of faith, the continuity of the Muslim family, and the interests of the child, which is in line with the principles of *hifz al-din* and *hifz al-nasl* in *maqashid shariah*.

Second, the Constitutional Court Decision No. 212/PUU-XXIII/2025 rejected the judicial review petition by affirming that the validity of marriage is the domain of religion, not the state. The Constitutional Court maintained its consistent stance that the state cannot intervene in religious authority in determining the validity of marriage and that marriage registration can only be carried out for marriages that are valid according to religion—a position that is aligned with the applicability of the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ in the national legal system.

Third, there is normative consistency between the fiqhiyah prohibition formulated in the rule لَا يَجُوزُ نِكَاحُ الْمُسْلِمَةِ مِنْ كَافِرٍ and the Constitutional Court decision in terms of not legalizing interfaith marriage through religious law. However, there remains an unresolved normative tension between the absolute fiqh prohibition, the state's obligation to provide legal certainty to all citizens, and the social reality of the increasing number of interfaith marriages in Indonesia.

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