

## BETWEEN SHARIA PROHIBITIONS AND LEGAL VACUUM Islamic Law and State Perspectives As Guidelines In Interfaith Marriages

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ARTICLE INFO	ABSTRACT
<p><i>Article History</i>  <i>Recieved Sept 2025</i>  <i>Accepted Okt 2025</i>  <i>Available Nov 2025</i></p>	<p>The prevalence of interfaith marriages in Indonesia has become a serious issue and has attracted significant public attention. Islamic law clearly prohibits interfaith marriages, but this differs from state law, causing a conflict of views among the public. This study aims to determine the reasons why Islamic law prohibits interfaith marriage, to understand why the state does not legalize interfaith marriage, which creates a legal vacuum, and to analyze how the two perspectives, namely Islamic law and state law, address the issue of interfaith marriage. The research method used is qualitative research with a literature study approach, using data obtained from Google Scholar from 2020 to 2024 and other sources such as the Qur'an, applicable laws and regulations, scientific journals, and news articles discussing interfaith marriage. The results of the study show that state law leaves the validity of marriage to the religious laws of each party through Article 2 paragraph (1) of the Marriage Law. Meanwhile, Islamic law strictly prohibits interfaith marriage as stipulated in Article 40 letter (c) and Article 44 of the Compilation of Islamic Law (KHI). Thus, there is a common ground between Islamic law and state law, namely that both place religious norms as the basis for determining the validity of marriage, so that interfaith marriage cannot be legalized in practice.</p>
<p><i>Keywords:</i>  <i>Interfaith Marriage,</i>  <i>Islamic Law, State Law,</i>  <i>Legal Vacuum</i></p>	

## **Introduction**

Marriage is an important part of human life that not only unites two individuals, but also involves religious, social, and legal values (Agustian, Pebiola, Fitriani, & Padilah, 2025). In the context of Indonesian society, every individual who is mature and physically and mentally healthy generally needs a life partner to achieve peace and prosperity in marriage (Amri, 2020). Through marriage, families, communities, and even civilized nations are formed. However, in social and legal practice in Indonesia, complex issues arise regarding interfaith marriage, as this involves tension between religious norms that are absolute in nature and state laws that are intended to regulate communal life. This situation has given rise to debate and legal uncertainty, which then became the main focus of this study.

From an Islamic legal perspective, interfaith marriage is essentially prohibited, especially between a Muslim woman and a non-Muslim man. This prohibition exists because interfaith marriage can cause religious conflict, both in daily life and in family relationships. Differences in beliefs, religious practices, and values can cause tension and division within the family. Therefore, Islamic law sets strict limits to avoid damage to faith and a shift in Islamic values within the family, which is ultimately related to the objectives of protecting religion and offspring within the framework of maqashid sharia.

Meanwhile, from a state legal perspective, provisions regarding interfaith marriage have not been explicitly regulated. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage only states in Article 2 paragraph (1) that “Marriage is valid if it is carried out according to the laws of their respective religions and beliefs.” This formulation creates legal uncertainty, as it does not explicitly mention the validity or invalidity of interfaith marriages. As a result, there is a legal vacuum that creates a dilemma between religious law, which prohibits such marriages, and state law, which does not provide certainty.

This legal vacuum has caused serious problems, whereby devout Muslims tend to follow Sharia prohibitions and reject interfaith marriages. On the other hand, couples who still want to get married are looking for ways to make their marriages valid under state law, even though this contradicts religious rules. This situation creates a legal and sociological dilemma and has the potential to cause conflict within families and communities.

In this context, the legal dynamics have become even more complex with the issuance of Supreme Court Circular Letter (SEMA) No. 2 of 2023, which provides guidelines for judges in handling marriage registration applications. The presence of this SEMA is seen as an effort by the state judiciary to respond to the existing legal vacuum and provide certainty in judicial practice. However, this policy also raises critical questions regarding its compatibility with the principles of Islamic law, especially when viewed from the perspective of maqashid syariah as a normative-critical framework for assessing substantive benefits in Islamic law.

A number of previous studies have discussed this phenomenon from various perspectives. Togatorop (2023) in the *Journal of Religious and Socio-Cultural Highlights*

that interfaith marriage often symbolizes a shift in religious values in modern society, where individual freedom often conflicts with religious norms and positive law. Meanwhile, Setiawan (2025) in his dissertation at UIN Sunan Gunung Djati Bandung criticizes the prohibition of interfaith marriage in Islamic law and Indonesian legislation. He argues that both Islamic law and positive law need to be re-examined in order to provide contextual solutions for societies living in a multicultural reality.

Although these studies have made important contributions to understanding the complexity of interfaith marriages, they have not specifically positioned and critically analyzed the latest judicial policy, particularly SEMA No. 2 of 2023, from the perspective of maqashid syariah. In addition, previous studies have not yet highlighted in depth how Islamic law and state law can be positioned complementarily in responding to the ongoing legal vacuum. Therefore, this study seeks to make a conceptual contribution by examining the relationship between the two legal systems and finding common ground that can be used as a reference in legal practice in Indonesia.

Thus, this study focuses on examining the factors underlying the prohibition of interfaith marriage from the perspective of Islamic law, analyzing the regulatory vacuum in Indonesian positive law, and critically evaluating the role of SEMA No. 2 of 2023 in responding to these conditions. The discussion presented is not only descriptive-normative in nature, but also includes in-depth analysis and conceptual recommendations that are expected to serve as a reference for Muslims and input for policymakers in responding to the issue of interfaith marriage in Indonesia.

Several articles in the Maqashid Journal have discussed the issue of interfaith marriage from various perspectives. One example of a journal related to interfaith marriage has been studied by Khoirul Muhtadin (2025), in his journal entitled *Intersection Between Interfaith Marriage, Celibacy, and Childfree: The Perspective of Imam Ar-Razi's Ushul Fiqh*, explains that from the results of the analysis, the practice of interfaith marriage is not in line with the verses found in the Quran, such as QS. Al-Baqarah: 221, which emphasizes the prohibition of marrying polytheists. The above verse uses *fi'il nahy* or prohibition. Based on the rules put forward by al-razi, every prohibition indicates that it is haram and the prohibition applies continuously, not only when it is mentioned.

In addition to discussing interfaith marriage, this journal also discusses social trends, namely celibacy and childfree. In his study, celibacy and childfree are understood as lifestyle choices whose laws can change depending on the intentions and conditions of the person. Through Imam Ar-Razi's *ushul fiqh* approach, this study attempts to examine and map the relationship between these three phenomena within the normative framework of Islamic law.

However, Khoirul Muhtadin's (2025) research emphasizes a normative analysis based on Imam Ar-Razi's *ushul fiqh* of religious texts, without specifically examining the relationship between sharia prohibitions and legal vacuums from the perspective of Islamic law and state law. Therefore, this study was conducted as an effort to complement previous studies by emphasizing the analysis of Islamic law and state law

provisions as guidelines in the practice of interfaith marriage, thus placing this study in a different position and not directly overlapping with previous studies.

The research was conducted using qualitative methods through a literature study approach aimed at exploring a deep understanding of interfaith marriage. The main focus of the research was to analyze and examine the issue of interfaith marriage from the perspective of Islamic law and state law. The data sources for this research were divided into two types, namely primary and secondary data. Primary data was obtained from the Qur'an as a source of Islamic law, legislation as state law, and journals relevant to the research issues. In addition, there was secondary data in the form of articles related to interfaith marriage issues in Indonesia, which were used to strengthen the primary data.

The data sources were obtained systematically from the selection results based on inclusion and exclusion criteria to ensure data validity. The inclusion criteria include: (1) Journals that discuss interfaith marriage from the perspective of Islamic law, (2) Journals that discuss interfaith marriage from the perspective of state law in Indonesia, and (3) Journals and articles published between 2020 and 2025. Meanwhile, the exclusion criteria are: (1) Journals that discuss interfaith marriage but do not touch on legal aspects, and (2) journals and articles published before 2020. These limitations were applied in order to obtain strong and relevant data.

The data collection technique in this study was a literature study using a legal-normative approach. This literature review was conducted in stages, whereby the researcher examined, reviewed, and identified various literature in depth to obtain the required data. The data obtained was then analyzed to make comparisons and interpretations of Islamic law and state law. The analysis technique used is descriptive-comparative analysis by examining the applicable laws and comparing the arguments and legal bases used. The results of the analysis are presented in the form of a descriptive description to reveal the similarities and differences in interfaith marriage in the view of Islamic law and state law in Indonesia so that the formulated problems can be answered.

### **Islamic Legal Perspective On Interfaith Marriage**

According to the compilation of Islamic law, marriage is a very strong contract or *mitsaqan ghalizan* to obey one of Allah SWT's commands, the implementation of which is a form of worship. According to Azhari (2022), marriage is generally practiced by couples of different genders who share the same religion, faith, and belief. Azhari (2022) also stated that interfaith marriage in Indonesia is a topic of constant discussion. According to Muhammad (2020), marriage is a serious agreement and must be followed according to Allah SWT's commands. The goal is to build and strengthen the bond between a man and a woman as husband and wife for a happy and lasting household life, in accordance with Islamic teachings.

The bond of marriage emphasizes a deep spiritual bond or spiritual bond that grows within the heart. In other words, it is not merely a physical and material relationship. Allah SWT. uniting soul mates in a marriage bond to create a household that creates a *sakinah, mawaddah* and *warahmah* family, which is filled with sincere love

and affection. On June 1, 1980, the Indonesian Ulema Council (MUI) issued a fatwa on interfaith marriage. The fatwa stipulated two provisions: First, that a Muslim woman may not marry a non-Muslim man. Second, that a Muslim man is not permitted to marry a non-Muslim woman, including Christians (people of the book). As stated by Muhammad (2020), this fatwa was signed by Hamka, the General Chairperson, and Kafrawi, the Secretary of the MUI.

Marriage between two people of different religions is the physical and emotional union of a man and a woman to become husband and wife, with the goal of building a happy and lasting family. This has become a modern and quite controversial issue in Indonesia. The controversy arises from varying views on interfaith marriage, both for and against. Some groups consider interfaith marriage to be impermissible, citing Surah al-Baqarah: 221, which clearly forbids men from marrying women who are unbelievers or polytheists. In the view of the ulama, the term polytheists refers to those who do not adhere to a clear religion. Analysis of the prohibition of interfaith marriage in Islam should not stop at textual aspects alone, but must be reviewed through the lens of Maqashid Syariah. This prohibition is actually a systematic effort to realize benefits through the concept of Al-Dharuriyyat al-Khamsah (five basic needs). First, the protection of religion (Hifdz ad-Din) is a priority in order to maintain the sanctity of faith and the continuity of worship within the household. Second, the protection of offspring (Hifdz an-Nasl) is essential in order to avoid confusion regarding lineage, guardianship, and the religious education of children. By using the instrument of Sadd adz-Dzari'ah (closing the path to harm), Islamic law views that the potential for internal and social conflict in interfaith families is far greater than the personal benefits, so this prohibition is a form of preventive protection for individuals and society.

It has been stated by Muhammad (2020) that based on the MUI's concerns which refer to the principles of fiqh: Preventing harm is more prioritized than attracting benefit. Which means that from the perspective of the ulama, inter-religious marriages are not justified and cannot produce a harmonious family. The principles of fiqh also explain that paths or means that lead to damage should be prevented or avoided in order to achieve benefit.

### **The State's Legal Perspective On Interfaith Marriage**

Interfaith marriage in Indonesia presents a complex philosophical challenge, intertwined with individual freedom and religious moral obligations. This issue arises from the conflict between an individual's freedom to choose a life partner, the moral demands of religion, and the role of the state in upholding values deemed collectively important. Choosing a partner is a fundamental right that supports human dignity, while the moral obligations of religion and the state serve to maintain the unity of values within society. This tension demonstrates that the law not only regulates human relationships but also reflects the moral foundations of society. However, the lack of clear regulations regarding interfaith marriage creates a legal vacuum that has the potential to disrupt the balance between individual rights and collective norms (Setiawan, 2025).

The debate over interfaith marriage in Indonesia still lacks clear legal provisions. Law No. 1 of 1974 is the national legal framework governing marriage and attempts to accommodate the diversity of society (Soemitro, 1998), but it does not explicitly address interfaith marriage. Article 2 paragraph (1) states that “a valid marriage is one that is conducted according to the religious laws and beliefs of each party,” while Article 8 letter f prohibits marriages that “have relationships that are prohibited by religion or other applicable regulations.” Thus, the validity of interfaith marriages is determined based on the religious laws of each party.

The ambiguity in this regulation has led to an increase in interfaith marriage cases brought to court. The number increased from 235 cases in 2021 to 290 cases in 2022, and 320 cases in 2023. Although most of the petitions were approved by the District Court, the Supreme Court remained strict with a rejection rate of around 70% in 2022 and 68% in 2023. This pattern of decisions shows that the Supreme Court prioritizes the principle of *maqāṣid al-sharī‘ah*, particularly the protection of religion (*ḥifz al-dīn*), over the individual's right to choose a spouse, although it still allows for limited exceptions based on “*maslahah*” (public interest) (Aziz, Nugraha, Aminudin, & Hakim, 2024).

The reinforcement of the sanctity of marriage is also evident in Law No. 16 of 2019, which amends Law No. 1 of 1974, indicating that a person's religious beliefs are an important part of the national legal system in determining the validity of marriage. The debate over interfaith marriage continues to be an issue with no definitive resolution. Although Indonesia has Law No. 1 of 1974, which provides a comprehensive legal framework for marriage, this regulation still leaves a number of gaps. This law not only establishes basic principles but also attempts to build a legal foundation that is in accordance with the diverse cultures in Indonesia (Soemitro, 1998). However, in its implementation, the Marriage Law still has shortcomings, one of which is that it does not clearly state whether interfaith marriage is permitted or not. The Marriage Law only emphasizes that the validity of a marriage depends on the religious provisions of each party, as explained in Article 2 paragraph (1). Article 8 letter f also explains the prohibition of marriage, implying that “those who have a relationship that is prohibited by their religion or other applicable regulations from marrying.” Thus, the Marriage Law leaves the determination of the validity of an interfaith marriage entirely to the religious laws of each party.

Meanwhile, from an Islamic perspective, the prohibition of interfaith marriage is expressly stated in the Compilation of Islamic Law (KHI). Article 44 states that Muslim women are prohibited from marrying non-Muslim men, and Article 40 (c) also states that Muslim men are prohibited from marrying non-Muslim women. Therefore, under both state law and Islamic law, interfaith marriage is not permitted and has no legal force.

## **The Meeting Point between Islamic Law and State Law in Viewing Interfaith Marriage**

Islamic law and state law basically have different foundations in addressing interfaith marriage. In Islamic law, marriage is part of the perfection of worship. This is based on Q. S. Ar-Rum/30 verse 21, which states that worship is part of Allah's power, not just a worldly relationship. Through marriage, humans are invited to build a life based on love (*mawaddah*) and mercy (*rahmah*), as desired by Allah (Amri, 2020). Thus, marriage in Islamic law is not only viewed as a social or biological matter, but as a form of worship performed to obtain Allah's pleasure, which must be in accordance with Islamic law. Therefore, in practice, a Muslim is certainly not allowed to marry someone who follows a different sharia. This is also emphasized in Q. S. Al-Baqarah/2 verse 221, which prohibits a Muslim from marrying a polytheist. This prohibition aims to maintain the integrity of Muslim families and avoid religious conflicts in the household.

Meanwhile, Indonesian law is positive and pluralistic. Positive law in Indonesia regulates marriage in Law No. 1 of 1974 concerning marriage, which was later updated through Law No. 16 of 2019 concerning the minimum age for marriage and the provisions for a legally valid marriage (Kholifah, 2025). As for interfaith marriages, Indonesian law is pluralistic. This is based on Article 2 of Law No. 1 of 1974. This article states that the state does not directly determine the validity of a marriage. The state emphasizes the validity of a marriage based on the laws of their respective religions. This approach has resulted in legal uncertainty regarding interfaith marriage in state law because there is no explicit prohibition (Lian, Isnaeni, & Alpiya, 2025).

Although the basis of the two laws is separate—that is, in Islamic law it is a binding religious teaching that focuses on worship, while in state law it is a written legal procedure that focuses on administrative legality—there is a crucial meeting point between the two. This meeting point arises when the law is implemented and interpreted by state institutions.

The debate over interfaith marriage reflects the difficulty of applying the concept of *maslahah* in Islamic law. In the Compilation of Islamic Law (KHI), interfaith marriage is considered impermissible because it is believed to undermine religious conviction, domestic harmony, and the religious upbringing and education of children. This shows that Islamic law places greater importance on protecting the spiritual and social aspects of the family, especially in an effort to preserve religion (*hifzh al-dīn*) as one of the main objectives of *maqāsid al-sharī'ah*. Although some scholars allow for certain conditions, Islamic law in Indonesia takes a stricter approach as a measure to prevent conflicts of belief, as well as a form of adjustment between classical thinking and an increasingly diverse society.

The relationship between religious law and state law is evident in the state's recognition of religious law as the basis for the validity of marriage, as stipulated in Article 2 Paragraph (1) of the Marriage Law. This provision states that marriage between a Muslim and a partner of a different religion must be assessed based on Islamic law. In the KHI, Islamic law explicitly prohibits interfaith marriage. Failure to fulfill the

requirements for a valid marriage according to Islamic law, especially equality of faith, has a direct impact on the invalidity of the requirements for a valid marriage according to state law. Thus, state law acts as a tool to affirm and administer the provisions of religious law, so that Sharia prohibitions effectively determine the limits of the state's recognition and authority over the validity of a marriage. (Busriyanti, Pujiono, & Chamdan, 2025)

This convergence is further strengthened and given certainty from the previous legal vacuum with the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023, which was issued by the judiciary. Previously, the legal vacuum in the Marriage Law was often exploited by some parties to find legal loopholes through District Court rulings, by prioritizing human rights (Sekarbuana, Widiawati, & Arthanaya, 2021). This SEMA serves to close existing legal loopholes and explicitly instructs judges to reject interfaith marriage applications. This Supreme Court decision is an important turning point that shows that State Law chooses to accommodate and strengthen the prohibitions in Islamic law, prioritizing religious validity over legal formalities (Rosita, 2024).

Critically, the enactment of SEMA No. 2 of 2023 can be viewed as a 'meeting point' or synthesis between the sovereignty of state law and the supremacy of religious law. Previously, there was a dualism of law that led to a legal vacuum, whereby the Marriage Law prohibited certain practices but the courts often granted them on administrative grounds. This SEMA serves as a definitive legal resolution. From the perspective of *Maslahah Ammah* (public interest), this policy harmonizes state regulations with the religious consciousness of Indonesian society. The socio-legal implication of this harmonization is the creation of social order in a multi-religious society, where the state is no longer positioned as a party that ignores Sharia law in favor of liberal human rights, but rather as a protector of the religious identity of its citizens. This ensures that religious harmony in Indonesia remains based on respect for the legal boundaries of each religion, rather than obscuring the differences between these rules.

Thus, religious law has a high normative power that must be recognized and respected by state law. Furthermore, this judicial step also serves to end the conflict between Sharia prohibitions and the legal vacuum regarding interfaith marriages in Indonesia. This harmonization affirms the principle of sociological jurisprudence, in which positive (state) law acts as a reflection and enforcer of the fundamental values of the religion embraced by the majority of society.

## **Conclusion**

This study explains that interfaith marriages are fundamentally not legally recognized in Indonesia, as both Islamic law and state law regulate the validity of marriages based on religious provisions. The prohibition based on sharia law and legal principles that refer to religion as the primary basis demonstrate that the problems that arise are not due to differences in norms, but rather due to unclear technical implementation, which is then explained through legal policy. The results of this study provide an understanding that harmony between religious values and the state's legal

framework is a crucial foundation for maintaining social, cultural, and family stability in a religiously pluralistic society.

The presence of SEMA No. 2 of 2023 is not merely a technical administrative regulation, but rather a critical analysis of the intersection between the sovereignty of state law and the principles of Islamic law in Indonesia. Substantively, this SEMA ends the ambiguity in the interpretation of Article 2 paragraph (1) of the Marriage Law, which has often been ‘circumvented’ through district court rulings. This policy affirms the state's position, which is no longer passively neutral, but actively facilitates the application of religious law as a condition for the validity of marriage. Thus, this harmonization becomes a strong legal synthesis in which the state provides legal certainty (legality), while Islamic law provides spiritual validity (religiosity), so that the legal dualism that has long caused uncertainty for Muslims can be definitively resolved.

Socially and legally, this harmonization has significant implications for the multireligious society in Indonesia. This step strengthens the national legal identity based on the value of Belief in One God, while minimizing the potential for horizontal conflicts related to the status of children and inheritance rights that often arise as a result of interfaith marriages. Although on the one hand it appears to limit individual freedom in choosing a partner across faiths, on a macro level, this policy functions as a social protection instrument that maintains the stability of religious values in the public sphere. This implication confirms that in the Indonesian context, interfaith harmony is not achieved through the standardization of legal procedures (liberalization), but rather through respect for the boundaries of the sharia of each religion, which are recognized and protected by the state.

Overall, the government must establish clearer regulations regarding interfaith marriage to avoid confusion when implementing them. Religious institutions are expected to improve their educational and guidance services so that the public can understand the risks and impacts of interfaith marriage on families. Couples with different beliefs should consider their decision to marry rationally and carefully. In addition, further research with an empirical approach is needed to enrich our understanding of the social dynamics and practices of interfaith marriage, so that it can be used as a basis for developing more appropriate policies.

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