

Interfaith Marriage in Indonesia: Juridical Dilemmas and a Maqāṣid al-Sharia Reconstruction for the Legal Status of Children

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Abstrak

Perkawinan beda agama di Indonesia menimbulkan dilema yuridis yang kompleks akibat benturan antara larangan normatif dalam Kompilasi Hukum Islam (KHI) dengan jaminan hak konstitusional membentuk keluarga dalam UUD 1945. Penelitian ini bertujuan untuk menganalisis sinkronisasi hukum antara KHI dan UUD 1945, mengidentifikasi disparitas antara putusan pengadilan yang mengabulkan pencatatan perkawinan beda agama dengan kebijakan administrasi kependudukan, serta merekonstruksi hukum berbasis Maqāṣid Syariah untuk perlindungan hak perdata anak. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan sinkronisasi hukum, analisis yuridis-konseptual, dan pendekatan Maqāṣid Syariah. Hasil penelitian menunjukkan bahwa tidak ada pertentangan mutlak antara KHI dan UUD 1945 karena pembatasan dalam KHI bersifat proporsional sesuai Pasal 28J ayat (2) UUD 1945. Namun, terdapat disparitas yuridis antara putusan pengadilan yang mengabulkan pencatatan dengan penolakan administratif oleh Disdukcapil, yang menciptakan ketidakpastian hukum dan memarginalkan hak perdata anak. Rekonstruksi hukum berbasis Maqāṣid Syariah melalui prinsip *ḥifẓ al-nasl* dan *maṣlaḥah al-ṭifl* menawarkan solusi progresif dengan mereposisi pencatatan perkawinan sebagai instrumen perlindungan keturunan, harmonisasi regulasi, transformasi paradigma penegak hukum, dan interkoneksi dengan prinsip HAM. Implementasi rekonstruksi ini akan menjamin keadilan substantif dan kepastian hukum bagi anak hasil perkawinan beda agama.

Kata Kunci: Perkawinan Beda Agama; Maqāṣid Syariah; Hak Perdata Anak; Sinkronisasi Hukum.

Abstract

Interfaith marriage in Indonesia presents a complex juridical dilemma arising from the interaction between religious family-law restrictions, constitutional rights, and population-administration rules. This study analyzes the normative relationship between the Compilation of Islamic Law (KHI) and the 1945 Constitution, examines legal uncertainty in marriage registration and its consequences for children, and formulates a maqāṣid al-sharia-based reconstruction aimed at protecting children's civil rights. Using normative legal research with statutory, conceptual, case-based, and limited comparative approaches, the study distinguishes the hierarchy and function of the relevant norms and separates current positive law from proposals for reform. The analysis finds no automatic or absolute contradiction between the KHI and the Constitution; restrictions must instead be assessed within the constitutional

framework of lawful and proportionate limitations. The principal concern lies in administrative and normative uncertainty that may burden children's identity, parentage, and other civil rights. A reconstruction grounded in ḥifẓ al-nasl and maṣlaḥah al-ṭifl supports regulatory harmonization, clearer civil-status procedures, institutional reform, and convergence with the best-interests-of-the-child principle. These reforms should protect children without treating administrative registration as an automatic validation of an otherwise invalid marriage.

Keywords: *Interfaith Marriage; Maqāṣid al-Sharia; Children's Civil Rights; Legal Synchronization; Child Protection.*

INTRODUCTION

In Islam, marriage is regarded as a sacred institution encompassing social, legal, and spiritual dimensions. It is not merely a social contract between a man and a woman, but also an act of worship carrying a divine purpose. Qur'an 30:21 affirms that God creates spouses so that human beings may find tranquility (sakinah), love (mawaddah), and compassion (rahmah) in one another. Marriage therefore constitutes a primary foundation for the formation of a harmonious family and, in turn, contributes to a civilized and just society.¹

From the perspective of Islamic law, marriage is intended not only to satisfy biological needs but also to preserve religion (ḥifẓ al-dīn), lineage (ḥifẓ al-nasl), and human dignity (ḥifẓ al-'ird). This confirms that marriage is an integral part of maqāṣid al-sharia, whose broader objective is the realization of human welfare. Questions concerning marriage, including interfaith marriage, therefore cannot be separated from the normative and theological framework established in Islamic teachings.²

The majority of Muslim jurists agree that a Muslim woman may not marry a non-Muslim man. This prohibition is commonly grounded in Qur'an 2:221, which prohibits marriage with polytheists until they believe. Marriage between a Muslim man and a non-Muslim woman, particularly a woman regarded as belonging to the People of the Book, has generated greater juristic debate. Some classical jurists permitted such marriages under limited conditions, whereas many contemporary scholars reject them on grounds of protecting the religious integrity of the family and applying the principle of sadd al-dharā'ī, namely preventing means that may lead to harm.³

In Indonesia, these principles are reflected in the Compilation of Islamic Law (KHI). Article 40(c) of the KHI restricts marriage between a Muslim man and a woman who is not Muslim, while Article 44 prohibits a Muslim woman from marrying a non-Muslim man. The Indonesian Islamic family-law framework therefore normatively closes the ordinary legal route to interfaith marriage for Muslims. This structure is connected to Law Number 1 of 1974 on Marriage, as

¹ Sahrul Hanafi, *DARI CINTA MENJADI KOMITMEN (HUKUM PERKAWINAN DALAM PERSPEKTIF SOSIAL)*, ed. M.Keb. Dr. Sumiaty, MPH. (Padang: CV Dunia Penerbitan Buku, 2026). 4.

² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008). 35.

³ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, vol. 7 (Damaskus: Dar al-Fikr, 1989). 153; Yusuf Al-Qaradawi, *Fiqh Al-Halal Wa Al-Haram Fi Al-Islam* (Kairo: Maktabah Wahbah, 1994). 120.

amended by Law Number 16 of 2019, under which the validity of marriage is determined by the law of the parties' respective religions and beliefs.⁴

Social reality, however, is more complex. Interfaith marriages continue to occur within Indonesia's religiously plural society. Religious diversity, globalization, increasingly intensive social interaction, and claims framed in terms of human rights contribute to the persistence of such relationships. Couples may seek alternative legal strategies, including marrying abroad and subsequently reporting the marriage in Indonesia, formally changing religion before the ceremony, or seeking a court determination concerning registration.⁵

This situation creates a legal and social dilemma. On the one hand, religious norms impose substantive limitations; on the other, constitutional human-rights guarantees, including Article 28B(1) of the 1945 Constitution of the Republic of Indonesia, protect the right to form a family through a lawful marriage. The resulting tension illustrates the distance that may arise between normative legal texts and evolving social realities.

State regulation of marriage is principally embodied in Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019. This statute represents a major milestone in Indonesian family law because it codifies fundamental rules concerning the validity of marriage, the minimum marriage age, prohibited marriages, polygamy, and divorce. The state therefore acts not merely as an administrative recorder of marriage but also as a regulator of the legal conditions and consequences attached to marital status.

Article 2(1) of the Marriage Law provides that a marriage is valid when performed according to the law of the parties' respective religions and beliefs. This formulation places religious law at the center of the legal determination of marital validity. State registration performs an important administrative and evidentiary function, but the validity of the marriage itself is not treated as a purely secular civil contract detached from religious norms. This differs from legal systems in which marriage is constituted exclusively by compliance with state-prescribed civil formalities.

This legal structure gives religion a primary role in the Indonesian law of marriage. Religious norms are not merely supplementary considerations; they form a central reference for determining whether a marital union is legally valid. Consequently, the legal problem of interfaith marriage cannot be examined apart from the relevant religious rules, particularly those of Islamic family law where one or both parties are Muslim.

Despite these religious and statutory constraints, interfaith relationships and marriages continue to occur. Indonesia's social plurality, encompassing different religions, ethnicities, and cultures, is an important background factor. Globalization, urbanization, education, workplace interaction, and broader social mobility increase opportunities for intimate relationships across religious boundaries.

In practice, interfaith couples have used several routes in seeking legal recognition. Some marry abroad and later report the marriage to Indonesian

⁴ Sahrul Hanafi, *PERKAWINAN BEDA AGAMA DALAM SISTEM HUKUM KELUARGA ISLAM INDONESIA* (Kuningan: Goresan Pena, 2026), 2
https://books.google.co.id/books/about?id=AcYFEgAAQBAJ&redir_esc=y.

⁵ M Atho Mudzhar, *Hukum Keluarga Di Dunia Islam Modern* (Jakarta: Ciputat Press, 2010). 211.

population-administration authorities. Others undertake a formal religious conversion before marriage, sometimes only for administrative purposes. Still others have petitioned district courts for orders relating to the registration of their marriages.

Court involvement in interfaith-marriage registration has generated controversy. Certain district-court decisions have, in particular factual settings, granted applications relating to registration by invoking considerations of civil status or rights protection. At the same time, Indonesian marriage law continues to treat religious law as determinative of substantive validity. The issue therefore reflects a tension between individual-rights claims and the religious norms that the national marriage regime incorporates into the determination of validity.

The tension becomes particularly visible when exclusive religious norms are confronted with universal formulations of human rights. Article 28B(1) of the 1945 Constitution provides:

“Every person shall have the right to form a family and to continue the family line through a lawful marriage.”

This constitutional guarantee protects a fundamental right to form a family, but the words “through a lawful marriage” must be read together with the statutory framework governing marriage. Article 2(1) of the Marriage Law links marital validity to the law of the parties’ respective religions and beliefs.

The resulting tension creates a legal dilemma. The state has a duty to protect individual freedom in forming a family, while at the same time respecting the religious norms that the marriage regime treats as relevant to validity. Interfaith marriage may therefore give rise to difficult questions concerning registration, children’s legal status, inheritance, parental responsibility, and population-administration documentation.

These tensions can produce layered legal and social consequences. Children born into families affected by interfaith-marriage disputes may face uncertainty regarding lineage, civil status, inheritance, and other family-law consequences. Couples may also encounter family or community resistance grounded in religious convictions. From an administrative-law perspective, difficulties may arise in marriage registration and the issuance or consistency of population documents.⁶

A normative study of interfaith marriage is therefore important for at least three reasons. First, in Islamic law the issue implicates fundamental questions of faith, family continuity, and the objectives of sharia. Second, in national law it exposes implementation problems concerning the relationship among the Marriage Law, the KHI, population-administration law, constitutional rights, and judicial decisions. Third, sociologically, interfaith marriage reflects the broader dynamics of pluralism and modernization in Indonesian society.⁷

RESEARCH METHOD

This study employs normative legal research with a qualitative orientation. Four approaches are used: (1) a statutory approach to analyze the relationship among the 1945 Constitution, the Marriage Law, the Compilation of Islamic Law, and

⁶ H Asep Saepudin Jahar, *Hukum Keluarga Islam Di Indonesia* (Jakarta: Kencana, 2017). 123.

⁷ Zainal Abidin Bagir, *Pluralisme Hukum Keluarga Di Indonesia* (Yogyakarta: CRCS UGM, 2019).

population-administration legislation; (2) a conceptual approach to examine *maqāṣid al-sharia*, particularly *ḥifẓ al-nasl* and *maṣlaḥah*; (3) a case approach limited to judicial materials actually examined in the study, particularly materials concerning interfaith-marriage registration and civil status; and (4) a comparative approach to assess the interaction between religious norms and positive law.

The legal materials consist of primary materials, including the 1945 Constitution, the Marriage Law, the Compilation of Islamic Law, relevant population-administration legislation, and Constitutional Court decisions; secondary materials, including books, scholarly articles, and academic commentary; and tertiary materials, including legal dictionaries and encyclopedias. Materials were collected through documentary research and analyzed through content analysis. The analysis is prescriptive and deductive, using legal reasoning to identify normative relationships and formulate recommendations.

Normative synchronization in this study is undertaken by distinguishing hierarchy, scope of application, and legal function. The Marriage Law is treated as the principal statutory framework for marital validity, while the KHI is examined within its field of application in Islamic family law and is not positioned as a norm capable of overriding statutes or the Constitution. Articles 28B, 28E, 29, and the limitations clause in Article 28J of the 1945 Constitution are analyzed together with Constitutional Court jurisprudence, including Decision No. 24/PUU-XX/2022, in assessing legislative discretion and constitutional-rights protection.

Claims concerning variation among judicial decisions are confined to the decisions and materials actually analyzed in the research corpus; the article does not infer a national judicial pattern without a representative mapping of cases. The *maqāṣid*-based reconstruction is likewise separated from the description of positive law. *Ḥifẓ al-nasl* is considered together with *ḥifẓ al-dīn*, human dignity, the best interests of the child, and certainty of civil status so that the proposed reconstruction does not reduce the problem to a single *maqāṣid* objective.

RESULTS AND DISCUSSION

Legal Synchronization between Restrictions on Interfaith Marriage in Islamic Family Law and the Constitutional Right to Form a Family

Indonesia, as a state based on law, recognizes a plural legal order in which national law, religious norms, and customary law interact. Historically and sociologically, this pluralism reflects Indonesia's cultural, religious, and social diversity. In family law, particularly interfaith marriage, the central problem concerns the synchronization of national legal rules with religious norms applicable to the parties, including Islamic family law as articulated through the Compilation of Islamic Law.

The principal normative question is whether the constitutional right to form a family under the 1945 Constitution is inconsistent with substantive rules in the KHI that restrict interfaith marriage for Muslims. Addressing this issue requires careful attention to normative hierarchy, constitutional interpretation, the legal status and function of the KHI, and the role of religious considerations within Indonesia's positive-law framework.

Article 28B(1) of the 1945 Constitution provides: "Every person shall have the right to form a family and to continue the family line through a lawful marriage."

Philosophically, this provision recognizes marriage and family formation as dimensions of fundamental human freedom and dignity. The right is not merely an expression of individual preference; it also has social implications because family relationships affect identity, responsibility, care, succession, and the continuity of generations. The family thus links individual autonomy with broader social interests.⁸

From the standpoint of positive law, Article 28B(1) supplies a constitutional foundation for family life. Legal certainty concerning family status is important because uncertainty can affect children's protection, education, care, inheritance, identity, and access to legal remedies. The constitutional right to form a family is therefore closely connected with other civil and social rights.

The right to form a family, however, is not absolute. Article 28J(2) of the Constitution sets out the general framework for limitations on the exercise of rights and freedoms: "In exercising his or her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security, and public order in a democratic society."

This provision shows that rights may be regulated and limited by law when the limitation has a legitimate legal basis and pursues constitutionally recognized purposes. The right to marry and form a family must therefore be interpreted within a legal framework that balances individual liberty with the rights of others, morality, religious values, public order, and other constitutionally relevant interests.

This limitation framework is particularly relevant in a plural society such as Indonesia. The state must regulate family status in a manner that respects individual rights while preventing legal uncertainty and protecting affected third parties, including children. In the context of interfaith marriage, regulation must therefore be assessed not only from the standpoint of adult autonomy but also from the perspective of legal certainty, equality, and the protection of family members.

Historically, Indonesian marriage law has also sought to accommodate religious and moral values. Law Number 1 of 1974 on Marriage requires marital validity to be assessed according to the parties' respective religions and beliefs. The state simultaneously maintains an administrative registration system, thereby combining substantive religious validity with public-law documentation of civil status.

From a juridical-theoretical perspective, the right to form a family may be understood as a limitable right. This does not mean that the right can be restricted arbitrarily. Rather, any limitation should have a lawful basis, pursue a legitimate aim, and satisfy requirements of suitability, necessity, and proportionality. In marriage law, the constitutional inquiry must therefore distinguish between permissible regulation and a restriction that places an excessive burden on protected rights.

This analysis is also inseparable from intergenerational continuity and child protection. Family regulation affects not only the spouses but also children and other family members whose legal position may depend upon determinations of

⁸ M D Mahfud, "Pergeseran Paradigma Hukum Keluarga: Dari Patriarki Menuju Kemitraan," *Jurnal Hukum IUS QUIA IUSTUM* 28, no. 2 (2021): 245–67.

marital status, parentage, care, maintenance, and succession. The legal assessment of interfaith marriage should therefore account for third-party rights, particularly the best interests and civil status of children.⁹

In practice, tensions arise where positive law, religious norms, and social expectations point in different directions. Interfaith marriage may generate uncertainty regarding registration and the civil status of children, which in turn can produce social and psychological burdens. A constitutionally sound framework must therefore maintain a proportionate balance between individual freedom and the legitimate public interests recognized in Article 28J(2).¹⁰

Contemporary legal theory likewise supports an interpretive approach that seeks coherence among norms. Constitutional rights should be respected without isolating them from statutory rules, other constitutional provisions, and norms protecting the public interest. The task is not to eliminate one normative source in favor of another, but to interpret them coherently while identifying where legislative clarification or reform is necessary.¹¹

Article 28B(1) thus provides a strong constitutional foundation for family formation, but its implementation remains situated within a system of proportionate legal regulation. In Indonesia's plural legal order, family formation is both an individual right and a subject of public regulation intended to preserve legal certainty, protect children, and maintain a workable relationship between national law and religious norms.

The KHI and Marriage Rules in the Perspective of Islamic Law

The Compilation of Islamic Law (KHI) is a legal instrument specifically used in Indonesian Islamic family-law practice and was formulated to adapt Islamic legal principles to the national legal context. It provides guidance on marriage, divorce, inheritance, and other family-law matters. As a positive-law instrument, the KHI is not simply a reproduction of classical fiqh; it reflects an effort to systematize Islamic family-law norms for application within Indonesian institutions.

With respect to interfaith marriage, the KHI establishes restrictive rules. Article 40(c) addresses the prohibition applicable to a Muslim man marrying a woman who is not Muslim, while Article 44 prohibits a Muslim woman from marrying a non-Muslim man. Classical fiqh contains debate concerning marriage between a Muslim man and a woman from the People of the Book, but the Indonesian KHI adopts a more restrictive positive-law formulation for Muslim family-law practice.

Textually, these rules limit the range of permissible spouses for Muslims in an interfaith context. Their doctrinal foundation lies in Islamic legal interpretations that emphasize protection of religion, family cohesion, and the religious upbringing of children. Contemporary analysis must nevertheless distinguish between the

⁹ Fachri Wahyudi and Vera Charmila, "Implications of Interfaith Marriage on Children's Rights," *Jurnal Keluarga Dan Hukum* 6, no. 1 (2023): 55–72.

¹⁰ D Rahmawati, "Konflik Identitas Pada Pasangan Beda Agama," *Jurnal Psikologi Sosial* 8, no. 1 (2020): 45–60.

¹¹ D Nugroho, "Sinkronisasi Hukum Nasional Dan Hukum Agama," *Jurnal Ilmu Hukum Indonesia* 14, no. 2 (2020): 55–78.

underlying fiqh debates and the specific positive-law formulation adopted in Indonesia.¹²

The KHI should therefore be understood in its institutional context. It is the product of an Indonesian effort to formulate Islamic family-law principles for practical legal administration. Its provisions seek to maintain fidelity to sharia while responding to the needs of a national legal system. That function does not place the KHI above statutes or the Constitution; rather, it defines a field of guidance and application within the broader legal order.

Contemporary studies also note that interfaith-marriage restrictions may have social and psychological consequences. Couples may experience stigma, family resistance, or identity conflicts, which confirms that family-law regulation operates within a broader social environment. Legal analysis should therefore acknowledge those effects without treating sociological hardship, by itself, as a basis for disregarding binding positive law.¹³

The KHI may also be viewed as part of the legal mechanism through which Islamic family-law norms are coordinated with national law. In this setting, the Marriage Law provides the statutory framework, while the KHI supplies more specific Islamic family-law guidance. The challenge is to ensure that the interaction among these norms produces legal certainty and does not transfer the burdens of adult legal choices onto children.

Overall, the KHI's treatment of interfaith marriage illustrates the distinctive interaction between sharia-based family norms and Indonesia's positive legal system. Its legal significance should be assessed in accordance with normative hierarchy, institutional competence, and the constitutional framework governing rights and legal restrictions.

The Relationship between the KHI and the Marriage Law

Law Number 1 of 1974 on Marriage, as amended, is the national statutory framework applicable to Indonesian citizens. It regulates marital validity, the rights and obligations of spouses, and the legal consequences of family status, including matters affecting children. Article 2(1) states in substance that a marriage is valid when performed according to the law of the parties' respective religions and beliefs.

"A marriage shall be valid if performed according to the laws of the respective religions and beliefs of the parties."

This provision is strategically important because it makes religious law relevant to substantive marital validity. State registration remains essential for documentation, proof, and population administration, but registration cannot simply be equated with the substantive validity of a marriage. The distinction between validity and registration is central to any analysis of interfaith marriage.

For Muslims, the KHI functions as an important reference in Islamic family-law practice. It should not, however, be described as a statute of equal rank with the Marriage Law. Its role is better understood as a codified guidance instrument

¹² Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Tinjauan Fiqh Dan Praktik* (Yogyakarta: LKiS, 2020). 57.

¹³ Rahmawati, D. (2020). Konflik Identitas pada Pasangan Beda Agama. *Jurnal Psikologi Sosial*, 8(1), 45–60.; Rahmawati, "Konflik Identitas Pada Pasangan Beda Agama."

applied within the Islamic family-law system under the broader framework of national legislation and judicial competence.¹⁴

The interaction between the Marriage Law and the KHI is therefore important for legal certainty. The Marriage Law supplies the national statutory framework, while the KHI elaborates Islamic family-law rules used by relevant institutions. Where uncertainty remains—particularly regarding registration, civil status, and the rights of children—the solution must be sought through proper statutory interpretation, constitutional review, or legislative clarification rather than by collapsing distinct legal instruments into a single normative level.

This interaction also affects the legal protection of women and children. Clear rules concerning spousal obligations, maintenance, parentage, custody, and inheritance are essential to family-law protection. State registration and civil-status documentation play an evidentiary and administrative role in making those rights practically enforceable, while substantive entitlements remain governed by the applicable legal regime.

From a juridical perspective, the relationship between the Marriage Law and the KHI should be understood through normative harmony rather than hierarchy inversion. National law may accommodate religious norms while preserving the formal authority of statutes and the Constitution. The KHI may therefore complement the Marriage Law in Islamic family-law practice, but it cannot be used to displace higher-ranking law.

This approach is especially important in Indonesia's plural society, where the state must administer family status fairly across different religious communities. Synchronization between the Marriage Law, religious family-law norms, and population administration should promote legal certainty while respecting religious diversity and protecting the civil rights of affected family members.

The relationship between the Marriage Law and the KHI thus demonstrates an adaptive legal arrangement in which religious family-law norms operate within a national legal framework. The objective is not to erase religious differences but to ensure that their legal treatment remains coherent with statutory authority, constitutional rights, and the institutional competence of courts and administrative agencies.

In this sense, the interaction of the KHI and the Marriage Law illustrates legal pluralism in practice. A sound legal framework should provide certainty, protect rights, respect religious values, and prevent administrative inconsistency from generating disproportionate harm.

A recurring question in interfaith-marriage discourse is whether restrictions reflected in the KHI conflict with the constitutional right to form a family. If Islamic family-law rules restrict marriage between a Muslim and a non-Muslim, does that restriction violate Article 28B(1) of the 1945 Constitution?

Answering this question requires careful attention to the hierarchy of norms. Constitutional rights occupy the highest level of the national legal order, while statutes, implementing regulations, and other legal instruments must conform to the Constitution. Religious-law instruments recognized or used within particular institutional settings operate within, not above, that hierarchy.

¹⁴ Nugroho, D. (2021). Sinkronisasi Hukum Nasional dan Hukum Agama...

Within Islamic family law, the KHI is an important source of guidance, but its legal operation remains situated under the statutory and constitutional framework. It cannot independently override the Marriage Law or constitutional guarantees. The proper inquiry is therefore whether the overall statutory regime, interpreted together with constitutional rights and limitations, is constitutionally permissible.

Accordingly, the existence of restrictive KHI provisions does not by itself establish a constitutional contradiction. Article 28J(2) recognizes that rights may be limited by law for legitimate purposes, including respect for the rights of others, morality, religious values, security, and public order. Any limitation must nevertheless be assessed for legality and proportionality rather than assumed to be valid merely because it invokes religion or morality.

Contemporary legal analysis therefore points toward harmonization rather than a simplistic conflict model. The national legal system can accommodate religious family-law norms, provided that their application remains within statutory competence and constitutional boundaries. In that framework, the KHI may bridge Islamic family-law principles and state administration, while constitutional review remains available where a statutory restriction is alleged to exceed permissible limits.¹⁵

A normative analysis should also consider social and psychological effects. Restrictions may contribute to stigma, identity conflict, or administrative difficulty for couples and children. Such consequences are relevant to proportionality and policy evaluation, but they must be distinguished from the separate question of what current positive law authorizes.

Overall, the constitutional and Islamic family-law norms are not necessarily in absolute contradiction. The more precise issue is how statutory rules, the KHI, constitutional rights, and constitutional limitations are interpreted together. Legal harmonization is possible, but it requires clear differentiation between current law and proposals for reform.

Maqāṣid al-Sharia-Based Reconstruction of Interfaith-Marriage Law: Protecting Children's Civil Rights

The legal problems surrounding interfaith marriage in Indonesia extend beyond theological disagreement. They may also produce uncertainty concerning children's civil status, identity, parentage, maintenance, inheritance, guardianship, and access to public services. Where parental marriage status is contested or cannot be administratively recorded, children should not bear disproportionate legal consequences arising from decisions made by adults. The Constitutional Court's Decision No. 46/PUU-VIII/2010 is relevant to the civil relationship between a child born outside a registered marriage and the biological father when that relationship can be established by law and evidence; however, the decision should not be read as automatically validating an interfaith marriage.¹⁶

Against this background, maqāṣid al-sharia can function as a normative method of legal reasoning for reform rather than as a device for disregarding existing positive law. A maqāṣid approach directs attention to substantive welfare, dignity, protection of lineage, and the prevention of harm. It can therefore inform

¹⁵ Nugroho, "Sinkronisasi Hukum Nasional Dan Hukum Agama." 55–78.

¹⁶ "Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010

legislative reconstruction and administrative policy while remaining distinct from the descriptive question of what courts and registration authorities are presently authorized to do.

a. *Ḥifẓ al-Nasl* as a Normative Basis for Protecting Children's Civil Rights

In *uṣūl al-fiqh*, *maqāṣid al-sharia* shifts legal reasoning from a purely textual-formal orientation toward a contextual and purposive understanding of law. Classical *maqāṣid* theory identifies fundamental objectives such as the protection of religion, life, intellect, lineage, and property. In the contemporary Indonesian context, *ḥifẓ al-nasl* should not be reduced to biological descent or the theological validity of the parents' marriage. It may also support legal policies that protect a child's identity, dignity, parentage, and civil rights before the state.¹⁷

Administrative uncertainty concerning interfaith marriage may create serious practical difficulties for children, including problems in documenting parentage, securing consistent civil-status records, and enforcing family responsibilities. Such disadvantages should not be described as "civil death" in a literal legal sense, but they may constitute real forms of legal vulnerability. From a *maqāṣid* perspective, avoidable administrative harm to children is a *mafsadah* that should be reduced through lawful and proportionate mechanisms.¹⁸

Marriage registration should therefore be examined not merely as a bureaucratic formality but as part of a broader system of legal protection and evidentiary certainty. A *maqāṣid*-based reconstruction should seek procedures that protect children's rights without incorrectly treating registration as a substitute for the substantive requirements of marital validity. Where the existing framework produces avoidable gaps in children's civil documentation, the appropriate response is legislative or administrative reform within lawful institutional competence.¹⁹

In a contemporary reading, *ḥifẓ al-nasl* also includes the social and psychological dimensions of child protection. A systems approach to *maqāṣid* emphasizes that legal objectives are interconnected and multidimensional. Protecting lineage therefore includes ensuring that children can obtain legal identity, recognition of parentage where established, maintenance, care, and other civil protections, regardless of disputes concerning their parents' religious choices.²⁰

b. The Urgency of *Maṣlaḥah* in Addressing Psychosocial and Juridical Vulnerability

A *maqāṣid* approach places *maṣlaḥah*, or legally relevant welfare, at the center of legal reasoning. In the context of interfaith marriage, children may experience a

¹⁷ Moh Mujibur Rohman et Al, "Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials)," *MAQASIDI: Jurnal Syariah Dan Hukum*, 2024, 204–11.

¹⁸ Neng Djubaedah, "Politik Hukum Perkawinan Di Indonesia: Antara Tekstualitas Dan Kontekstualitas," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2018): 34–36, <https://doi.org/10.14421/ahwal.2018.11103>.

¹⁹ Saefudin Zuhri, "Keputusan Berbasis Maqashid Syariah Dalam Penyelesaian Sengketa Keluarga," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 1 (2019): 88–90, <https://doi.org/10.22373/sjhk.2019.v3i1.88>.

²⁰ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

double vulnerability: psychosocial vulnerability arising from stigma, identity conflict, or social exclusion, and juridical vulnerability arising from inconsistent registration practices or uncertainty regarding civil status. These concerns justify a child-centered legal analysis, but reform proposals must remain grounded in institutional competence and constitutional legality.

Psychosocially, uncertainty surrounding the parents' marital status can expose children to stigma and a sense of exclusion. Juridically, rigid or inconsistent administration may complicate access to documentation or the enforcement of parental responsibilities. Reports of couples resorting to unregistered marriages, formalistic conversion, or inaccurate administrative declarations illustrate how legal uncertainty can generate incentives for evasive practices. Those phenomena strengthen the case for clearer, lawful procedures rather than for informal circumvention of existing law.²¹

The principle of preventing harm supports reform aimed at ensuring that children do not lose civil protections because of the legal status or religious choices of their parents. A maqāṣid-based policy should therefore harmonize Islamic family-law concerns, civil-status law, and population administration around the best interests of the child. Such harmonization should preserve truthful documentation and legal certainty while preventing discriminatory consequences for children.²²

This approach also resonates with the broader proposition that law should serve human welfare. Where legal or administrative arrangements produce disproportionate harm to children, reform should focus on the source of that harm and provide lawful alternatives. Maṣlaḥah al-ṭifl, the welfare of the child, can therefore operate as an important normative consideration in legislative and administrative policy concerning interfaith-marriage consequences.²³

c. Reconstruction Strategies: Regulatory Harmonization, Institutional Transformation, and Human-Rights Interconnection

A maqāṣid-based reconstruction does not seek to abolish religious norms or authorize courts to disregard positive law. Rather, it seeks to identify the substantive justice objectives of Islamic law and connect them with constitutional and human-rights principles through legally competent reform. Three mutually reinforcing strategies are proposed.

Uncertainty arises from the interaction among the Marriage Law, the Compilation of Islamic Law, population-administration legislation, and institutional practices. Regulatory harmonization should therefore be addressed through clear legislative or executive policy within the proper sphere of authority. Reform may include procedures that clarify the civil status and documentation of children where the parents' marriage cannot be registered, while ensuring that such procedures are not misconstrued as automatically validating the marriage itself. The central objective is to prevent children's rights to identity, parentage, and civil

²¹ Euis Nurlaelawati, "Living Law Dan Praktik Peradilan Islam Di Indonesia: Studi Tentang Perkawinan Beda Agama Dan Nikah Siri," *Studia Islamika* 24, no. 3 (2017): 412–15.

²² Mukti Fajar and Yudi Achmad, *Dualisme Kepastian Hukum Dalam Sengketa Pertanahan* (Yogyakarta: LaksBang Mediatama, 2018).

²³ Siti Soetami, "Hukum Progresif Dan Perlindungan Hak Anak Dalam Perkawinan Beda Agama," *Jurnal Konstitusi* 14, no. 2 (2017): 345–48.

documentation from depending entirely on unresolved disputes concerning their parents' religious status.²⁴

Effective legal protection requires officials to understand both the limits of their authority and the child-protection purposes of the legal framework. Marriage registrars and population-administration officials should avoid rigid formalism where the law allows lawful alternatives, while they must also refrain from creating powers not granted by statute. Administrative decisions should identify available remedies, explain legal reasons for refusal, and direct affected persons toward competent procedures for establishing parentage, civil status, or other child-related rights.²⁵

The principle of *ḥifẓ al-naṣl* can be read together with national and international child-rights norms, including the best-interests principle. This interconnection strengthens the normative basis for ensuring that children are not discriminated against because of their parents' religious choices or marital status. The objective is not to merge distinct normative systems without distinction, but to identify areas of convergence in protecting dignity, identity, care, and civil rights.²⁶

As a theoretical contribution, this study proposes a reconstruction model that may inform amendments to the Marriage Law, implementing regulations, population-administration rules, or ministerial regulations. The model is structured around the following principles and mechanisms.

Any future regulation concerning marriage and population administration should incorporate at least the following principles:

1. Civil Non-Discrimination Principle: A child's civil status and civil rights should not be reduced, restricted, or extinguished solely because the parents have different religions or because the parents' marriage cannot be formally registered.
2. Maṣlaḥah al-Ṭifl Principle: In decisions concerning civil status, population documents, parentage, and child-related administrative matters, the best interests and fundamental rights of the child should constitute a primary and legally relevant consideration.
3. Prevention of Mafṣadah Principle: Administrative procedures that foreseeably create avoidable physical, psychological, or civil harm to children should be revised or accompanied by lawful alternative mechanisms.

Normative and Procedural Harmonization Model

To translate these principles into positive law, the following reforms are proposed:

²⁴ Ahmad Mujib, "Harmonisasi Hukum Perkawinan Dan Administrasi Kependudukan Dalam Perspektif Maqashid Syariah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 2 (2019): 150–53, <https://doi.org/10.14421/ahwal.2019.12204>; Neng Djubaedah, "Reformasi Hukum Keluarga Islam Di Indonesia: Menuju Hukum Yang Responsif Gender Dan Anak," *Mimbar Hukum* 28, no. 1 (2016): 45–48, <https://doi.org/10.22146/jmh.12345>.

²⁵ Ahmad Rofiq, "Transformasi Paradigma Hakim Dan Pejabat Pencatat Nikah Dalam Penyelesaian Perkara Keluarga," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 210–14, <https://doi.org/10.22373/sjhk.2020.v4i2.210>.

²⁶ Ratna Arini, "Interkoneksi Maqashid Syariah Dan Hak Asasi Manusia Dalam Perlindungan Anak," *Jurnal Hukum Keluarga Islam* 5, no. 1 (2020): 67–70, <https://doi.org/10.14421/jhki.2020.51-05>.

1. Revision of Administrative Procedures and Judicial Mechanisms: The government should establish clear, affordable, and accessible procedures for determining a child's civil status and parentage when the parents' marriage cannot be directly registered. Any judicial mechanism should operate within the jurisdiction granted by statute and should distinguish recognition of a child's civil rights from validation of the parents' marriage.²⁷
2. Removal of Unlawful Administrative Barriers: Internal administrative rules should not deny a child access to legally available civil documents solely because of the parents' religious difference. Relevant authorities should apply Constitutional Court Decision No. 46/PUU-VIII/2010 and child-protection legislation according to their actual scope, including evidentiary requirements for establishing a civil relationship with a biological father.
3. State Obligation to Provide Lawful Alternatives: If the legal system restricts the registration of a particular marriage, it should nevertheless provide lawful procedures through which a child's parentage, identity, maintenance, and other civil rights can be determined and protected. This is a concrete expression of the protective dimension of *ḥifẓ al-nasl*.

Under current positive law, child protection should not depend on a moral judgment concerning the parents' marital choices. Civil status, identity, parentage, maintenance, inheritance under the applicable legal regime, and protection from discrimination must be analyzed through the norms that specifically govern children's rights. Constitutional Court Decision No. 46/PUU-VIII/2010 is relevant to the civil relationship of a child born outside marriage with a biological father where the relationship is established by evidence, but it cannot be interpreted as automatically legalizing interfaith marriage.

The maqāṣid-based proposals advanced in this article are an agenda for normative reconstruction, not a claim that existing courts may disregard the Marriage Law. General changes to marital validity or marriage-registration procedures require legislative action or another instrument issued by the legally competent authority. Registration agencies and courts must continue to operate within positive law. Because this is a doctrinal study, the social impact of the proposed reforms should be tested through future empirical research.

CONCLUSION

The juridical dilemma of interfaith marriage in Indonesia is not best understood as an absolute conflict between the KHI and the 1945 Constitution. It arises from the interaction of religious family-law rules, statutory requirements of marital validity, constitutional rights, judicial interpretation, and population-administration practice. Restrictions relevant to interfaith marriage must be evaluated within the hierarchy of norms and the constitutional framework of lawful and proportionate rights limitations. At the same time, inconsistencies in implementation can produce legal uncertainty that disproportionately affects children, particularly with respect to identity, parentage, inheritance, and access to public services.

²⁷ Harkristuti Harkrisnowo, "Perlindungan Hukum Bagi Anak Luar Kawin Pasca Putusan MK," *Jurnal Konstitusi* 10, no. 1 (2013): 90–95, <https://doi.org/10.31078/jk10190>.

A maqāṣid al-sharia-based reconstruction centered on ḥifẓ al-nasl and maṣlaḥah al-ṭifl offers a normative framework for child-centered reform while remaining distinct from the description of current positive law. The proposed reform agenda includes clearer regulatory harmonization, lawful procedures for civil-status protection, institutional practices that avoid rigid formalism while respecting statutory competence, and a principled interconnection between maqāṣid and human-rights standards. Properly designed, these reforms can strengthen substantive justice, legal certainty, and non-discriminatory protection of children without converting judicial or administrative discretion into a power to disregard the existing Marriage Law.

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