

## Religious Marriage and Its Impact on Family Economic Rights in Islamic Law and Positive Law in Indonesia

Muhammad Fiqhri Arhaj<sup>1\*</sup>, Asri Aryanti Nasibah<sup>2</sup>, Siti Nur Aisyah<sup>3</sup>, Nabila Zahran Ajjah Nugraha<sup>4</sup>, Melva Adinda Putri<sup>5</sup>, Tedi Supriyadi<sup>6</sup>

<sup>1-6</sup> Universitas Pendidikan Indonesia, Indonesia

Email : [fiqhriarhaji22@upi.edu](mailto:fiqhriarhaji22@upi.edu)<sup>1\*</sup>, [asriaryanti.99@upi.edu](mailto:asriaryanti.99@upi.edu)<sup>2</sup>, [sitnuraisyah15@upi.edu](mailto:sitnuraisyah15@upi.edu)<sup>3</sup>, [nabilazahran.95@upi.edu](mailto:nabilazahran.95@upi.edu)<sup>4</sup>, [melvaadindaputri@upi.edu](mailto:melvaadindaputri@upi.edu)<sup>5</sup>, [tedisupriyadi@upi.edu](mailto:tedisupriyadi@upi.edu)<sup>6</sup>

**Abstract,** *This study examines interfaith marriage and its impact on family economic rights from the perspectives of Islamic law and positive law in Indonesia, with a case focus on Sumedang Regency. Employing a qualitative phenomenological approach, the research involved semi-structured interviews with both traditional and modern Islamic scholars, along with an analysis of religious texts and statutory regulations. The findings reveal that the majority of scholars reject interfaith marriage based on Sharia principles and Article 2(1) of Law No. 1 of 1974 on Marriage. Nevertheless, some couples pursue such unions through administrative religious conversion or overseas ceremonies to obtain legal recognition. These practices often result in legal ambiguity regarding economic rights within the family—such as inheritance, joint property, and financial support—and may lead to familial disputes. Additional social consequences include identity confusion among children, community stigma, and potential conflicts within extended families. The study underscores the strategic role of institutions like Islamic boarding schools (pesantren) and the Office of Religious Affairs (KUA) in providing legal education and advocates the need for a responsive civil registration mechanism that acknowledges interfaith marriages while respecting Islamic legal principles. A contextual approach is proposed to bridge the tension between religious norms, legal certainty, and the protection of family economic rights.*

**Keywords:** *family economic rights, Indonesian positive law, Interfaith marriage, Islamic law.*

### 1. INTRODUCTION

Interfaith marriage continues to be a subject of legal, theological, and social contention in Indonesia. At the crossroads of religious doctrine and state regulation, this issue reflects deep-seated tensions between spiritual obligations, constitutional frameworks, and socio-economic realities. Islamic law, as interpreted by the Qur'an—particularly Surah Al-Baqarah (2:221) and Surah Al-Mumtahanah (60:10)—strictly prohibits marriage between Muslims and non-Muslims. This prohibition is institutionalized through fatwas issued by the Indonesian Ulema Council (*Majelis Ulama Indonesia*, MUI), which affirm that such marriages are *haram* and religiously invalid (Karuniawan et al., 2022).

Simultaneously, Indonesia's positive legal framework, codified in Law No. 1 of 1974 on Marriage, aligns with religious law by stipulating in Article 2(1) that marriages must be conducted in accordance with the laws of each party's religion. While not explicitly banning interfaith unions, this legal requirement de facto invalidates such marriages, as they lack a religious foundation deemed acceptable by the state (Zahara & Makhfud, 2022).

As a result, couples seeking interfaith marriage find themselves in a legal and administrative limbo. They are denied access to formal marriage registration, which further affects their ability to claim rights associated with legally recognized marriages—particularly in matters of economic protection and family welfare. The absence of legal recognition affects essential areas such as:

- a) Joint property ownership
- b) Inheritance rights for spouses and children
- c) Tax filing and spousal exemptions
- d) Access to social security, health insurance, and pension schemes
- e) Eligibility for state-subsidized housing or economic assistance programs

To navigate these legal gaps, some couples marry abroad or undertake administrative conversions, changing religious affiliation on paper without genuine theological commitment. These strategies, though practically effective, raise significant ethical dilemmas, legal uncertainties, and threats to familial economic security—especially when conflicts or death occur without proper documentation or legal safeguards.

**Table 1. Legal-Economic Consequences of Unregistered Interfaith Marriages in Indonesia**

Economic Domain	Impact Without Legal Marriage Status	Description / Risk
Joint Property (Harta Bersama)	Not legally enforceable	One party may be denied claim to shared assets in case of separation or death
Inheritance	No automatic spousal or child rights	Children born of unregistered unions may be excluded from inheritance, especially under Islamic inheritance law
Insurance & Social Security	Ineligible for spousal benefits	Spouse cannot be listed as legal dependent for health, life, or pension benefits
Taxation & Legal Aid	No spousal tax benefits or joint filings	Family unit is not recognized for tax relief; legal aid services may be limited or denied
Housing, Loans & State Assistance	Inaccessibility to public/family-based welfare schemes	National housing subsidies or social loans for families often require legal marriage documentation

Economic Domain	Impact Without Legal Marriage Status	Description / Risk
Child Registration & Religion	Disputed child status and religious ambiguity	Legal documentation of the child (birth certificate, religious identity) becomes contested or incomplete

*Source: synthesized from field data and policy review (Karuniawan et al., 2022; Rudy Harjanto et al., 2023; Azhari & Lubis, 2022)*

Furthermore, while other countries have developed adaptive civil frameworks that allow interfaith marriages without compromising religious freedom—such as civil-only marriage contracts, or interfaith registries—Indonesia has yet to implement a systemic mechanism that accommodates such diversity. In this context, some legal scholars and policymakers propose regional-level solutions, such as localized legal interpretations or special civil registries, that can bridge religious principles with civil protection (Rudy Harjanto et al., 2023).

Previous studies have mostly approached interfaith marriage from a legal-doctrinal or philosophical angle. However, recent works—including those from the *Russian Law Journal*—suggest the importance of examining its economic and psychological consequences, particularly within diverse cultural landscapes. In Indonesia, works by Azhari & Lubis (2022) and Karuniawan et al. (2022) reveal how couples seek legal gray zones to gain civil recognition but remain vulnerable in matters of inheritance, property, and family stability.

This study offers a novel empirical lens by exploring how interfaith marriage affects the economic rights of families, using Sumedang Regency as a case study. It goes beyond normative-religious discourse by focusing on how legal exclusion directly affects family wealth, child rights, and access to state benefits. By involving local Islamic scholars, officials from the Office of Religious Affairs (KUA), and affected families, this research captures a multidimensional understanding of the issue.

Using a phenomenological qualitative approach, the study examines lived experiences and institutional responses in regions where religious authority and legal governance converge most strongly. The goal is to formulate contextual and faith-sensitive recommendations that promote social harmony, uphold Islamic legal principles, and protect the economic dignity of families in pluralistic communities.

## **2. METHOD RESEARCH**

This study employed a qualitative approach using phenomenological methods to explore the perspectives of Islamic scholars (ulama) in Sumedang regarding interfaith marriage. The phenomenological method was chosen due to the ongoing debates surrounding interfaith marriage in various religious and social circles, making it suitable for uncovering the lived experiences and interpretative views of the ulama.

The research subjects consisted of Islamic scholars in Sumedang who possess expertise in Islamic law (fiqh). Participants were selected purposively to represent both traditionalist and modernist scholars, based on their experience and active involvement in religious discourse and community guidance. The number of participants was determined based on the principle of data saturation—that is, data collection continued until sufficient and relevant information was obtained to answer the research questions comprehensively. Interviews were conducted at locations that ensured participant comfort and confidentiality, such as religious institutions, Islamic boarding schools (pesantren), and offices of religious affairs.

Data collection was carried out through semi-structured interviews and document analysis of religious texts and official legal documents. The research process included participant recruitment, interview sessions, transcription of recorded interviews, and data analysis. The phenomenological analysis involved three main stages: data reduction, theme categorization, and meaning interpretation. These steps aimed to capture the essence of participants' experiences and construct a coherent understanding of their positions on interfaith marriage.

To ensure the credibility and validity of the findings, data triangulation was applied. This was achieved by cross-verifying the results of interviews with textual analysis of religious doctrines, fatwas, and state legal frameworks. The integration of different data sources strengthened the interpretive reliability of the study.

The findings of this research are expected to provide deep insight into how ulama in Sumedang understand and respond to the phenomenon of interfaith marriage, not only from a theological and legal perspective, but also within the broader context of social and economic realities in the community. This local-level analysis contributes to the broader discourse on how Islamic law and state law intersect in shaping family structures and rights in Indonesia.

### 3. RESULTS AND DISCUSSION

#### Normative Rejection of Interfaith Marriage

Based on Islamic law and national legislation, the participants unanimously reject interfaith marriage. This rejection stems from the need to preserve religious purity (*'aqīdah*), maintain family harmony, and prevent social conflict. The legal basis includes the Qur'an—particularly Surah Al-Baqarah (2:221)—and Indonesia's Marriage Law No. 1 of 1974. Several respondents affirmed this stance. One participant, a teacher at the Tanwirul Qulub Islamic boarding school, stated, *“From both religious and legal perspectives, this type of marriage is impermissible. It contradicts the principle of divinity. The 2023 Constitutional Court decision prohibits it, as reflected in Al-Baqarah 2:121.”* Another respondent, the head of the Office of Religious Affairs (KUA) in Cimalaka Subdistrict, emphasized that *“there are no longer authentic holders of divine scripture, and thus the law cannot justify such marriages,”* citing Article 2 Paragraph (1) of Law No. 1/1974.

These statements support the view that interfaith marriage is considered invalid under both Islamic and Indonesian positive law. It is perceived as a threat to religious commitment, family structure, and social stability. The topic remains sensitive due to its entanglement with human rights, religious law, and state policy. Rejection does not only come from religious scholars but also from state officials responsible for marriage registration. These perspectives are backed by constitutional interpretations, especially the 2023 Constitutional Court ruling and conservative readings of key Qur'anic verses.

Moreover, such rejection creates a legal disadvantage for citizens, especially economically. Only affluent couples can afford to marry abroad to gain recognition (Elia Juan Markus et al., 2023). Dominant Islamic jurisprudential trends—conservative, moderate-contextual, and progressive-liberal—differ, yet the conservative camp remains socially and institutionally prevalent. According to Daud et al. (2022), local interpretations and political climates further shape legal attitudes toward interfaith unions.

While human rights narratives promote religious freedom and marriage autonomy, they often clash with religious law. Article 2(1) of the Marriage Law positions religion as the gatekeeper of legal marital status, leading to potential discrimination. This forces individuals to convert for administrative purposes, thereby violating their constitutional freedom (Sekarbuana et al., 2021). Hence, normative rejection emerges from a broader clash among religious doctrines, legal frameworks, and sociocultural structures.

## **Inconsistency between Social Reality and Legal Norms**

This disconnect between legal doctrine and lived experience reflects not only a crisis of enforcement but also an evolving landscape of individual agency and resistance to religious orthodoxy. In many cases, couples are aware that their marriage may not receive legal recognition in Indonesia but still proceed due to emotional, practical, or ideological commitments. The rise of transnational options—such as marrying in countries with more permissive civil codes—demonstrates the globalization of legal solutions and the increasing mobility of middle-to-upper-class Indonesians seeking autonomy from domestic restrictions. However, this option remains inaccessible to economically disadvantaged couples, deepening structural inequality in the enjoyment of marital and economic rights.

Furthermore, this discrepancy has profound implications for family law, particularly regarding the inheritance, taxation, ownership of joint assets, and legitimacy of children. Without legal recognition, spouses cannot claim their rights in court, access spousal benefits, or resolve disputes through formal mechanisms. Children from these unions often encounter legal ambiguity in birth registration, citizenship, and religious identity, which further complicates their access to education, religious rites, and civil services.

At the same time, the inconsistency in judicial rulings regarding interfaith marriage petitions reveals the absence of a coherent national standard. Some district courts have granted recognition to interfaith marriages on the basis of individual consent and mutual understanding, while others strictly uphold the letter of Article 2(1) of Law No. 1/1974. This creates a fragmented legal environment where outcomes depend heavily on the interpretive stance of individual judges or regional judicial cultures. As noted by Sucitra et al. (2024), such conditions not only erode legal certainty but also expose citizens to judicial arbitrariness.

The situation is further compounded by the ambivalent stance of state institutions, which often oscillate between enforcing religious conformity and promoting pluralism. While the Ministry of Religious Affairs officially maintains a conservative interpretation aligned with MUI's fatwas, it also promotes initiatives for religious tolerance and interfaith dialogue under the umbrella of *moderasi beragama*. This institutional ambiguity sends mixed signals to the public and hinders the formation of a unified legal approach.

Culturally, the endurance of interfaith marriage despite legal and religious constraints reflects shifting attitudes toward religious identity, particularly among urban, educated populations. For many young Indonesians, love, compatibility, and shared values increasingly take precedence over strict religious alignment. This signals a generational transformation in how marriage is perceived—not merely as a religious contract but as a personal and civic

commitment. As this trend continues, the state's rigid position may grow increasingly untenable unless meaningful legal accommodations are pursued.

In light of these dynamics, scholars and legal reform advocates argue for a reexamination of the Indonesian marriage law within the framework of *ius constituendum*—the aspirational dimension of lawmaking. This would involve crafting legislation that respects religious doctrine while also upholding the constitutional rights to freedom of religion, equality before the law, and the right to form a family. Such a future-oriented framework must consider local wisdom, the evolving social fabric, and the pluralistic nature of Indonesian society while maintaining the coherence and accessibility of civil law for all citizens.

### **Complex Socio-Religious Implications**

Interfaith marriages bring complex social and religious consequences, including communal pressure, domestic discord, and identity confusion among children. Participants voiced concern: *“Children may be confused about their religious identity, and society does not recognize the marriage.”* Another remarked, *“Such marriages hinder the realization of a harmonious Islamic family (SAMAWA) and expose children to emotional strain and ambiguity.”*

These implications go beyond legal concerns; they touch on the psychological and moral fabric of family life. Indonesia's religious and pluralistic society generally views interfaith marriage with suspicion. Social stigma, marginalization, and exclusion often follow. Children from such unions may struggle with dual identity, face rejection from both faith communities, and encounter obstacles in accessing religious or civil services (Arifin, 2024).

Islamic jurisprudence also questions the status of children from these marriages in matters of *inheritance, guardianship, and religious affiliation*. According to Desember et al. (2023), differing beliefs between parents can cause long-term disputes in parenting and spiritual development. Psychologically, such children are vulnerable to trauma, value ambiguity, and prolonged emotional burdens (Khairina, 2023).

### **Evolving Religious Perspectives on Interfaith Marriage**

The views of Islamic scholars regarding interfaith marriage have not remained static but have evolved in response to shifting societal realities, global interconnectedness, and the increasing complexity of Muslim minority experiences in pluralistic societies. Historically, classical scholars such as Imam Shafi'i, Imam Malik, and Imam Abu Hanifa permitted Muslim men to marry *ahl al-kitāb* (People of the Book), specifically Christian and Jewish women, based on the literal interpretation of Surah Al-Mā'idah (5:5), which states: “[Lawful to you in marriage are] chaste women from among the believers and chaste women from among those

who were given the Scripture before you.” This permissibility, however, was rooted in a sociopolitical context where Islamic identity was dominant, and the assumption was that Muslim men, as heads of households, would lead religious life within the family and prevent dilution of faith.

In contrast, contemporary scholars emphasize the doctrine of *maslahah* (public interest) to argue that the permissibility of such marriages must now be restricted. They cite changing societal structures, where authority within families is no longer exclusively patriarchal and the exposure to liberal values can weaken Islamic identity, particularly among children. This contextual approach is reflected in the views of the study's participants. One respondent noted, “Although some scholars in the past permitted it under exceptional circumstances, today interfaith marriage is neither religiously nor legally acceptable because the risks outweigh the benefits.”

Institutionally, the Indonesian Ulema Council (MUI) now categorically prohibits interfaith marriages for both Muslim men and women, issuing a fatwa declaring such unions as haram and invalid under Islamic law (Santoso, 2019). This firm stance is rooted in concerns over preserving Islamic values, family unity, and the integrity of religious socialization in an increasingly secularized world. The MUI's position has also influenced the policies of the Ministry of Religious Affairs, especially in relation to the refusal to register marriages not aligned with Islamic law.

Yet, not all interpretations are rigid. M. Quraish Shihab, one of Indonesia's most prominent contemporary exegetes, offers a more nuanced view in *Tafsir al-Misbah*. While he acknowledges the permissibility found in the Qur'anic text, he emphasizes the need for prudence and contextual assessment. According to Shihab, the goal of marriage in Islam is not merely legal compliance but the attainment of a harmonious family characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (mercy). If an interfaith marriage threatens these objectives due to theological, cultural, or relational dissonance, then it should be discouraged even if it is not explicitly forbidden by the text.

This perspective underscores the shift from a purely textual approach (*manṭūq*) to a teleological and contextual method (*maqāṣid al-sharī'ah*)—one that considers not only what is permissible in theory but also what is beneficial in practice. Scholars like Darajat (2021) argue that the ethical implications of marriage must be considered in tandem with its legal validity, especially when dealing with sensitive issues like children's faith development, community cohesion, and the preservation of Islamic identity.

In contemporary Indonesia, these evolving religious perspectives are also shaped by public discourse, legal debates, and interfaith dynamics. As pluralism and democratic values gain more space in the national narrative, pressure is mounting to reinterpret legal-religious norms in ways that remain faithful to Islamic teachings while also being responsive to citizens' rights and social change. The integration of classical jurisprudence with modern *ijtihad* (independent reasoning) continues to be a challenge for religious scholars, particularly in navigating between fidelity to tradition and the demands of a rapidly transforming society.

### **Institutional Roles in Education and Prevention**

Religious institutions such as Islamic boarding schools (*pesantren*) and the Office of Religious Affairs (Kantor Urusan Agama, or KUA) play a pivotal and multifaceted role in preventing interfaith marriages through both normative reinforcement and educational intervention. These institutions not only enforce the doctrinal principles of Islamic family law but also function as key actors in shaping public consciousness regarding the legal, moral, and socio-economic implications of marital decisions.

As highlighted by the research participants, these institutions are tasked with more than bureaucratic administration; they are seen as the moral compass of the community. One respondent remarked, “The KUA must educate people about the prohibition on interfaith marriage,” while another emphasized, “Faith and knowledge are the pillars. We must not compromise religion for wealth or beauty.” These comments reflect a widely shared perception that religious institutions are guardians of spiritual integrity and family values.

The educational programs provided by these institutions—ranging from premarital counseling, Friday sermons (*khutbah*), public lectures (*tabligh akbar*), to ongoing faith-based classes—aim to promote marriage practices that align with Islamic jurisprudence and Indonesia’s positive law. These efforts not only reinforce religious commitment but also serve to prevent legal uncertainty, protect children's identity and rights, and mitigate future disputes over inheritance and spousal responsibilities.

Moreover, the Ministry of Religious Affairs (MoRA) serves as a central agent in promoting religious moderation (*moderasi beragama*). This is implemented through various national strategies, including interfaith dialogue, Islamic family law education, support for religious tolerance, and even interventions in family court cases involving sensitive issues such as interfaith unions (Susantin et al., 2022). These interventions are vital in creating a balance between religious authenticity and civic inclusivity, especially in pluralistic regions.

In addition to religious education, legal literacy is also an important focus. Through collaboration between KUA offices, local governments, and community-based Islamic

organizations, public campaigns are organized to inform citizens about their legal rights and obligations, particularly concerning the formal requirements of marriage, the implications of undocumented unions, and the consequences of legal circumvention such as fictitious conversions or marrying abroad without recognition.

Equally critical is the economic dimension of institutional engagement. KUA and pesantren are beginning to address not only the spiritual but also the material consequences of interfaith marriage. By offering premarital and family financial education—such as asset planning, inheritance law, and economic rights of spouses—these institutions contribute to safeguarding the economic stability of Muslim families. This is particularly relevant given that undocumented marriages often leave women and children vulnerable in terms of property claims, health benefits, and social protection.

Ultimately, the role of these institutions must be understood not merely as reactive or prohibitive, but as proactive agents of cultural mediation. They bridge the gap between legal mandates, religious obligations, and social realities. As part of Indonesia's broader legal and moral infrastructure, pesantren and KUA are expected to embody the principles of *ta'dīb* (ethical instruction), *tarbiyah* (nurturing), and *tawāzun* (balance) in guiding communities through complex moral and legal terrains.

Their mission, therefore, is simultaneously educational, spiritual, and constitutional—ensuring that the sanctity of marriage is upheld in accordance with Islamic teachings, the law of the land, and the evolving needs of Indonesian society.

#### **4. CONCLUSION**

Interfaith marriage in Indonesia represents a complex and multifaceted issue that intersects with Islamic law, national legal norms, human rights principles, and evolving social realities. From the standpoint of Islamic jurisprudence, such marriages are categorically prohibited due to their contradiction with the principle of monotheism (*tawḥīd*) and the imperative to preserve the purity of religious belief, as established in the Qur'an and formalized by the fatwa of the Indonesian Ulema Council (MUI). Legally, Article 2(1) of Law No. 1 of 1974 stipulates that a marriage is only valid if it complies with the religious laws of both parties, effectively barring interfaith unions under the current legal framework.

As a result, interfaith couples often face legal and administrative uncertainty. They may resort to loopholes such as marrying abroad or performing nominal religious conversions to gain legal recognition. Findings from the Sumedang case study reveal that interfaith marriages

continue to occur in society despite explicit prohibitions by both state and religious institutions. This indicates a stark divergence between legal norms and social realities.

The practice of interfaith marriage brings about a range of social consequences, including public stigma, identity confusion among children, and familial discord. Nevertheless, religious interpretations remain dynamic. Historically, some scholars allowed interfaith marriage under specific conditions, particularly for Muslim men marrying People of the Book. However, the dominant position among contemporary scholars is one of rejection, rooted in concerns over social harmony and religious continuity.

Religious institutions such as Islamic boarding schools (*pesantren*) and the Office of Religious Affairs (KUA) have played a pivotal role in prevention and education. Through religious lectures, legal counseling, and faith-based guidance, these institutions serve as key agents in fostering public awareness about the legal and theological consequences of interfaith marriage. The government, through programs promoting religious moderation, has also supported this effort by embedding humanistic values within a framework that respects Islamic principles.

Addressing the challenges posed by interfaith marriage in Indonesia requires not only legal reform but also the empowerment of institutional roles, the expansion of legal literacy, and the facilitation of balanced interfaith dialogue. These initiatives must seek to harmonize the interests of religion, the state, and human rights in a manner that is context-sensitive and socially pragmatic. Ultimately, a flexible, contextual, and integrative approach is essential to resolving the ongoing tension between legal-religious norms and the lived experiences of Indonesian society in regard to interfaith unions.

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