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THE INTERFAITH MARRIAGE IN INDONESIA REVIEWED FROM A *MAQASID SHARI'AH* PERSPECTIVE

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Abstract: Interfaith marriage has always been becoming a polemic, especially because of there is not yet awareness to impact long time toward own household and in society. Furthermore, it is so important to understand philosophically mean of forbidden interfaith marriage in perspective of *maqasid ash-shari'ah*. This study explains about interfaith marriage in perspective of *maqasid ash-shari'ah* as reflection efforts to consider benefits and damage, possibility bigger damage. There are two focus which is researched it. *Firth*, how is interfaith marriage in Islamic law and positive law in Indonesia. *Second*, how is reflection-analysis of *maqasid ash-shari'ah* to respond Islamic law and positive law.The results show that interfaith marriage, according to Islamic law and positive law, has been banned by them which is in line-relevant principles of *maqasid ash-shari'ah* on reflection-analysis. Base on reflection-analysis *maqasid ash-shari'ah* show that interfaith marriage, in side *dharuriyah* that will threaten the existence of priority descent-religion and soul, property and mind. Hajiyyah is to support and strengthen pro-Islamic law and positive law. Tahsiniyah is to educate people and society as preventive and participation to realize building a household which will become sakinah mawaddah warahmah finally.

Keywords: *Reflection; Interfaith marriage; Maqasid ash-shari'ah.*

INTRODUCTION

One of the interfaith marriage issues in Indonesia that has always been interesting to discuss here is, for example, Jonas Rivanno and Asmirandah they have been married secretly with changing religion. Reverse of them about marriage of Marcel Siahan and Rima Melati adams where they have changed religion: from Christian moved to Islam reverse. Dimas Anggara and Nadine Chandrawinata that both of them is keep each other's faith (www.tvonenews.com). Besides that contemporary issues to be easy giving permission of interfaith marriage familiarly who have married overseas in Singapura but they could do be registered in the head of the civil registration service in Tangerang (www.detiknews.com). For many Indonesian, interfaith marriage no longer has the stigma or the consequences that it once did. [1] Probably by according writing there are

[1] Maurice Fishberge, *Jews, Race and Environment*, (New Brunswick, NJ: Translation Publisher, 2006), pp.221

many challenge in family life of interfaith marriage.[2] Furthermore, Many Islamic countries in general are facing the challenges of globalization and modernity, and interfaith marriage is one of the issues that currently pitting staunch traditionalists against modern reformist on Muslim society, especially in Indonesia.[3] Because of Indonesia law system only have received marriage that base on constitution the beliefs of each religion but it is not cross religion beliefs. We knew that every religious have each other's beliefs.

Historical and contemporary dynamics associated with interfaith marriage are a lens to broader changes in the Indonesia religious landscape. This writing is interfaith marriage is both a reflective and a predictive material representation of the continual movement and redefinition of the boundaries of religious traditions and the boundaries of the religious. [4] Base on command that Allah prohibited to marriage available in letter al-Baqarah paragraph 221 about interfaith marriage.

Regulation of interfaith marriage, in Indonesia context, is very difficult to organize, because formally juridical that Indonesia law prohibit such as interfaith marriage in legislation and also prohibit to be registration in KUA, but interfaith marriage can be done in civil registry office, such as someone ask to be registered in civil registry office to get explanation from informant of marriage in overseas, it based on decision of Constitution Court Number 1400 K/Pdt/1986 about couples interfaith marriage who can ask determining of court.[5]

Decision of Court Constitution No 1400/K/Pdt/1986 contradicted to formal juridical with Constitution Number 1 year 1974 and presidential intructions Number 1 year 1990 about Islamic Law Compilation (KHI) concerning ban of interfaith marriage. Besides that interfaith marriage have been prohibited to be registered in KUA, as the same time it can be registered in civil registry office. Subsequently how do it respond to the problems above, to look for a way out in interfaith marriage, especially interfaith marriage happened a lot among artists and upper middle social status.

This far there have been several studies before, which have correlation with problem of interfaith marriage, one of it is study that is conducted by Erok Rofiqoh toward Decision No. 04/Pdt.P/2012/PN.MGL about interfaith marriage. Rofiqoh have observed it that interfaith will appear in the harmony of the household and descendants.[6] This is because interfaith marriage is not accordance with Islamic prinsiples, the meaning it is, to create benefit for humans being in this world and the hereafter.[7]

Interfaith marriage is not only deemed inappropriate with the legal philosophical values of Indonesian wedding when it base upon religious law, but also it hurt the

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[2] Here this is important to know as added value by candidate of interfaith marriage about family life education, look Carol A. Darling dkk, Family Life Education Working with Family Across the Lifespan Fourth Edition, (United States of Amirica: Waveland Press,INC, 2022), pp.4

[3] Jana Van Niekerk & Maykel Verkuyten, Interfaith Marriage Attitudes in Muslim Majority Countries: A Multilevel Approach, (The International journal for the Psychology of Religion, Vol 28, No. 4, 2018), pp.258

[4] Erika B. Seamon, The Shifting Boundaries of Religious Pluralism In Amirica Through the Lens of Interfaith Marriage, (Wongshinton, D.C: Faculty of The Graduate School of Art and Sciences of Georgetown University, 2011), pp.4

[5]https://jdih.tanahlautkab.go.id/artikel_hukum/detail/menelaah-perkawinan-beda-agama-menurut-hukum-positif, Accessed Saturday 2 October 2021

[6] Elok Rofiqoh, "Analisis Putusan No. 04/Pdt.P/2012/PN.Mgl Tentang Perkawinan Beda Agama Perspektif Maqashid Al-Syari'ah" (Jakarta, Program Studi Perbandingan Madzhab, Fakultas Syariah dan Hukum, Universitas Islam Negeri Syarif Hidayatullah, 2020).

[7] *Ibid*

struggle history of Indonesia marriage law. Therefore, interfaith marriage, in the context of Indonesia administratively where registration have been done by civil registry office, was not illegal. It based on research of Teti Hadiati and Makrum before this matter. It is just discussion of interfaith marriage which the research resultmen show that interfaith marriage practice, in Indonesia, is very far from the purpose of marriage and the practice that is ever done by Rasulullah and his best friend.[8] Because marriages are not carried out in the context of Islamic preaching and social interests, but are only driven by pseudo-interest and love.

Therefore, this writing actually want to study further related interfaith marriage to discuss in depth, because society always has something novelty in context of multicultural Indonesia in the case of interfaith marriage. Even though guidelines and reference of Islamic law which have already discussed many things and also interpreted al-qur'an's paragraph about ability and interdiction whitin interfaith marriage, however it need to study and review something important, which invited controversy interfaith marriage, it unfinished. All at once it provide some alternatives in problem solving toward general public. To respond controversy of interfaith marriage, accordingly the writing will present maqasid syariah as reflection-analysis instrument to know how many mafsadah and maslahah of interfaith marriage and associated with relevance it in context of yuridical formal law at Indonesia. In yuridical formal context which oriented for regulation of interfaith marriage can be looked by the law politics of history. [9] This article discuss interfaith marriage on reflection-analysis of maqasid ash-syari'ah, where never before it has written this as analytical framework to respond Islamic law and positive law.

To answare this problem, how do analyze maqasid ash-shari'ah for phenomen of interfaith marriage in Indonesia, so this writing uses approach of normative-philosophic. This research is library research, so data collection technique use primary data source, secondery, and tertiary. Primary data source is UU No.1 Years 1974. Seconder data source is KHI, fatwa MUI No: 4/Munas VII/MUI/8/2005 about interfaith marriage and Instruction of President No 1 Years 1991 Date 10 Jun 1991 and Decision of The Minister of Religion No.154 Years 1991 Date 22 July 1991. Tertiary data source is yellow book, journal and books of interfaith marriage. Analysis method which is used, is qualitative with using analysis-reflection of maqasid ash-shari'ah. Normative approach is as design to resolve the problem of interfaith marriage in the aspect of fikih, law and provision of legislation. Than it'll use philosophical approach through reflection of maqasid ash-shari'ah as analysis instrument to dissect problem of interfaith marriage deeply and comprehensive.

After conducting research, the writing will begin from discussion about definition of interfaith marriage, which is equipped by view of ulama about interfaith marriage. Next discussion, it is interfaith marriage in Islamic law and positive law, which is equipped by practice of interfaith marriage in several countries. The writing is ended by reflection-analysis of interfaith marriage under maqasid syariah in Indonesia.

DISCUSSION

1. Interfaith Marriage in the Opinion of Ulama

Before explain interfaith marriage, formerly we need to know about definition of marry, etymologically, derived from the word—nakaha-yankihu-nakahan, which means

[8] Nurlizam, "Pernikahan Beda Agama dalam Perspektif Al-Qur'an dan Hukum Positif di Indonesia," *Jurnal Ulunnuha* 8, no. 2 (December 2019).

[9] Teti Hadiati, *The Law Politics in the Reformation of Interfaith Marriage In Indonesia*, jurnal, Mizan: Wacana Hukum Ekonomi dan Keagamaan, Vol 7, No.1, 2022, pp. 23

it is ''al-dammu (assemble), al-jam'u (gather), al-wat'u (intercourse sex), al-aqdu (agreement).[10] Whereas in interminology that definition of marry is:

جيوزئلا وا حاكنلا ظفلب ءطولا ةحابا نمضئيِ دئع

''the meaning of it is akad or agreement which contains destination to allow doing sex by using the word of nakaha or zawwaja''.[11]

While in Constitution No.1 Year 1974 (UUP No. 1 Year 1974), paragraph mentions that ''marriage is bond of inner between a man and girl as husband and wife with which intend to shape family or happy household and everlasting based on almighty divinity''. Afterwards, it is emphasized on chapter 1 paragraph 1 explains that marry is legal, when it is done as maintened by the law of each religion and this trust. This is emphasized on Islamic law compilatian (KHI) chapter 2 mentions that marriage on the word of Islamic law is wedding, is very strong agreement (contract of marriage) or *mitssaqan ghalidzan* to obey god's command and also doing it is part of worship. On the other hand looking at chapter about principles of marriage, it means is that Islamic law compilation (KHI) and constitution No.1 year 1974 (UUP No.1 Year 1974) is clear, so it become perfection of marriage law.

Comparing with fiqh law, which determine validity that marriage is, there must be a agreement (contract of marriage), besides too it need to fulfill *syarat* and *rukun* as guidelines about valid marriage, but in constitution No.1 year 1974 (UUP No.1 Year 1974), it do not explain that there is a contract and requirement of marriage, this matter it is be found in Islamic law compilation. Finally, it can be concluded that marriage law have been already appointed in constitution No.1 Year 1974 plus it is perfected in Islamic law compilation. In consequence, marriage law in Islamic law compilation in Indonesia is implementation from Presidential Intructions Republic of Indonesia No.1 Year 1991 (Inpres No. 1 Year 1991) about deployment Islamic law compilation, which have been follow up with determination Minister of Religion's Decision Number 154 Year 1991 about implementasi of presidential Intructions Republic Indonesia Number 1 Year 1991.[12]
The below this writing will discuss about interfaith marriage from several viewing to clarify and strengthen data, and that writing will analysis reflection of maqasid syari'ah to respond Islamic law and positive law.

Interfaith marriage, on the report of Huzaimah Tahido, is marriage between a Muslim man with a girl, but she is not Muslim girl or otherwise.[13] In line as said by Amir Syarifuddin in his book about marriage law in Indonesia, that interfaith marriage is muslim girl with non-muslim man and otherwise muslim man with non-muslim girl, in terming of fiqh is called as marry with disbeliever (*kafir*).[14] The same of opinion, interfaith marriage in the opinion of Masjfuk Suhdi, is marriage a Moslem (man or girl) with non-moslem (non-muslim man or girl).[15] In context interfaith marriage, it can be categorized into three parts; marriage between muslim man with mushrik women, marriage between muslim man with women of ahlul kitab, and marriage muslim women with non-muslim

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[10] Ahmad Warson Munawwir, *al-Munawwir Kamus Arab-Indonesia*, (Surabaya: Pustaka Progressif), pp.1461

[11] Lajnah Pentashihan Mushab al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, *Tafsir Tematik* (Jakarta: Kamil Pustaka, 2014), pp. 19.

[12] Kementerian Agama RI Direkorat Jendral Bimbingan Masyarakat Islam, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Bina KUA, 2018), pp. 3.

[13] Huzaimah Tahido Yanggo, *Masail Fiqhiyyah* (Bandung: Penerbit Angkasa, 2005), pp. 154.

[14] Luis Ma'luf, *Al-Munjid* (Beirut: Daar Al-Masyriq, 1986), pp. 240.

[15] Musjfik Suhdi, *Masail Fikhiyah*, 10 ed. (Jakarta: Gunung Agung, 1997), pp. 4.

man. In the Koran, there is form of assertiveness in ban about marriage between muslim men with mushrik women (idolater).[16]

ولا تنكحوا المشركات حتى يؤمنن ولأمة مؤمنة خير من مشركة ولو أعجبتكم ولا تنكحوا المشركين حتى يؤمنوا ولعبد مؤمن
خير من مشرك ولو أعجبكم أولئك يدعون إلى النار والله يدعو إلى الجنة والمغفرة بإذنه ويبين آياته للناس لعلهم يتذكرون

''Do not marry unbelieving women (idolaters), until they believe: A slave woman who believes is better than an unbelieving woman, even though she allures you. Nor marry (your girls) to unbelievers until they believe: A man slave who believes is better than an unbeliever, even though he allures you. Unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of bliss) and forgiveness, and makes His Signs clear to mankind: That they may celebrate His praise.''(QS. al-Baqarah/2:221)

The verse above that show ban of interfaith marriage in general, but specifically interfaith marriage can be classified into three parts, one of them is ban of marriage with unbelieving women, ban of marriage *ahlul kitab*, and ban of marriage non-muslim.

First, ban of marriage between a muslim man with unbelieving women (mushrik).[17] The same of in the opinion of Hamka such as as said by Quraish Shihab, that ban of marriage between muslim men and muslim women with mushrik men and mushrik women and which apply to disbeliever and *ahli kitab* who they is Yahudi and Nasrani.[18]

Second, interfaith marriage between male of moeslim marry with ahlul kitab. Majority of moeslim scholar have allowed to marriage male of moeslim with women of ahlul kitab (Christen and yahudi) where based on law that is used by saying of Allah al-Maidah paragraph 5. This is strengthened by prophet's sunnah, where prophet have ever married with ahlul kitab, that called name of Maria al-Qibtiyah, he has religion of Nasrani (christen). Thus, other prophet's friend was there not yet who opposed him.[19]

Third, marriage between moeslim women with non-moeslim men is forbidden (to be proscribed), such as candidate of husband is religion's adherent in having scriptures like Jewis and Nasrani, or be similar to adherent of religion such as Hindhuism, Budhaism, as well as trust religion adherent that have not be scripture and also similar of scripture such as adherent of Animism, Atheism, and Polyteism.[20] According to Umar Bin Khattab said that:

المسلمة لا تزوج النصراني ولا النصرانية تزوج المسلم

''a moeslim man will be allowed to marriage with Nasrani women, on the contrary, Nasrani women will not allowed to marriage with moeslim women''.

Opinion of Umar Bin Khattab above, of course, he has strong reason, clearly there is worry that moeslim women marriage with non-moeslim man, she will be bereaved freedom right in religion and operating religion's teaching her, until she will be affected by her husband. On the other hand, there is worry that her children will keep up her husband's religion, which will cause lost generations Islamic future.

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[16] Ibrahim Imam, Shariah and Human right Perspectives on Interfaith Marriage: Challenges Impeding its Practice in Nigeria, (Islamic and Civilisational renewal: ICR 7.4 Produced and Distributed by IAIS Malaysia), pp.499

[17] Ibnu Manzhur Anshori, *lisanul Arabi*, vol. 12 (Mesir: Darul al-Misriyyat Li atta'lif wa An-nashr, t.t.), pp. 333.

[18] Syamsuddin Nasution, *Pernikahan Beda Agama dalam Al-Qur-an* (Riau: Yayasan Pusata Riau, 2011).

[19] Musjfik Suhdi, *Masail Fikhiyah*.

[20] Musjfik Suhdi, *Masail Fikhiyah,* pp. 6.

Moeslim man married to unbelieving women (mushrik women), according to Imam Abu Hanifah, That is absolutely illegimate. Whereas moeslim man marriage with women of ahlul kitab, in the opinion of Imam Abu Hanifah, that is be permitted, where ahlul kitab have not be holy book heavenly (samawi), the meaning of it is ahlul kitab have believed prophet of Ibrahim and prophet of Musa who was having psalmbook. Different in the opinion of Imam Maliki that he said, moeslim man marriage with women of ahlul kitab is punish *makruh* absolutely, either *ahlul kitab dimmiyah* or *ahlu kitab harby*. But *ahlul kitab harby* is the bigger of *makruh*. This is interesting, where punishing of *makruh* can become illegitimating, as stated by Imam Maliki, if *ahlul kitab* predispose her children to move on religion and leave his father's religion, so She will become illegitimating. Imam Maliki has been used by perspective *sad dzari'ah* (close the road to achieve *mafsadah*) as respond about marriage of ahlul kitab, the meaning is punish illegitimating when it's damage (*mafsadah*) is the bigger than benefit (*maslahaha*). [21]

Imam Hambali have tended to support opinion of Imam Syafi'i as his teacher about marriage with ahlul kitab without liminting in the marriage. The next, another Imam Madzahab such as Imam Maliki, Imam Syafi'i, dan Imam Hambali have said that if moeslim man married to women of *dzimmy* (non-moeslim/infide get protection), so the marriage would not be valid except there are witness as moeslim. Different opinion of Imam Abu Hanifah said that marriage was valid when they have just witnessed by two people of *dzimmy*.[22]

Interfaith Marriage In Islamic Law and Positive Law

1. Islamic Law Compilation

In Islamic law compilation chapter 40 paragraph (C), mentions: ''be forbidden to marry between a man with women is not be Islamic religion, including women of *ahlul kitab*. And for paragraph 44 mention, ''it is prohibited marriage between women of moeslim with male who is not religion of Islam.'' Than, for paragraph 61 called that marriage is not equal (not *sekufu*') in religion--the meaning of different religion--, so this marriage can be prevented by which KHI has called resolutely that interfaith marriage can be applied by society of moeslim in Indonesia.[23]

Determination of prohibition interfaith marriage in Islamic Law Compilation can be strengthened in enactment No.1 Year 1974 about marriage, Chapter 1 paragraph 2 verse (1) mentins, ''marriage is legal, when marriage can be done based on each of religion and belief.'' Therefore, Interfait marriage, which was being in Islamic Lawa Compilation, was strictly prohibited without being tolerance. This is clear, that Enactment of marriage's determination is very tight in the case of interfaith marriage in Indonesia. And than, Expalining Islamic Law Compilation, we have known that moeslim man has been forbidden marriage with mowen of non-moeslim included *ahlul kitab*.[24] Accordingly, interfaith marriage within positive law in Indonesia is illegitimate and forbidden, except based on each religion and their belief.

Based on determinatif of Fatwa MUI Number: 4/Munas VII/MUI/8/2005 about interfaith marriage. Its' legal determination is that refers to al-Qur'an, hadist and *kaidah*

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[21] Sodig, dkk., "Pernikahan Beda Agama Menurut Imam Madzhab dan Hukum Positf Di Indonesia," *Jurnal Al-Mashlahah: Jurnal Hukum dan Pranata Sosial Islam* Vol. 7 (2019), pp. 11-19.

[22] Muhammad bin Abdurrahman Ad-Dimasyqi, *Fiqih Empat Madzhab* (Bandung: Hasyimi, 2014).

[23] Abdul Jalil, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Andragogi: Jurnal Diklat Teknis* Vol. VI, No. 2 (December 2015), pp. 62.

[24] Pipin Armita, "Analisis Pasal 39 Ayat 3 Khi Tentang Larangan Kawin Karena Sesusuan: Perspektif Filsafat Hukum Islam," *Jurnal Al-Ahwal* Vol. 9, No. 2 (December 2016), pp. 162.

fiqhiyyat nor kaidah ushuliyyah. Based on determination of al-Qur'an is: QS. an-Nisa' paragraph 3, QS. al-Rum paragraph 30, QS. at-Tarim paragraph 6, QS. al-Maidah paragraph 5 and 25, Qs. al-Mumtahana paragraph 6. Kaidah fiqhiyyat is used that is *dar'u mafasid muqaddimun ala jalbil mashalih* and kaidah ushuliyyah *sadz dzari'ah*, as principles of basic MUI to forbid interfaith marriage. The meaning is MUI considering benefit more priority to protect religion, protect their children and avoid damage for marriage.

3. Decision of Constitutional Court

Prohibition of interfaith marriages have been strengthened by Constitutional relatively, such as it has be taken out by decision Constitutional Court about ban of interfaith marriage through decision of material test towards chapter in enactment No.1 year 1974 about marriage, said that: ''*marriage is legal when it is done by according to law of each religion and their belief.*'' Based on decision of Constitutional Court Number 68/PUU-XII/2014. Decision of Constitutional Court responded that enactment No.1 year 1974 about marriage can be realized by principles of being Pancasila and UUD 1945, according to writer that interfaith marriage is different principles and different within realizing marital relationship. Therefore, decision of Constitutional Court strengnthened UU No.1 year 1947 which it strictly reject interfaith marriage, because marriage is not in accorandance with principle of belief and confidence their religion. Whereas marriage every religion is different, so marriage can't be done by coercion, interfaith marriages which different reliance can be performed one of religion in the wedding procession. [25]

On the authority of Constitutional Court, marriage is one of civil field which regulated for arrangement law in Indonesia. This context, Constitutional Court, as principles of law, is ban of interfaith marriage that having purpose to protect minority right and they don't intervene morality's personal belief in orde to protected dispute with people which will appear in the future. Even though interfaith marriage become a problem in life of religion and social, until this moment In Indonesia, interfaith marriage always will become public attention.[26]

In the study research's book about interfaith marriage have explained that application of family law at some moeslim countries can be categorized by three parts; *first*, country which have applied family law based on Madzhab and it hasn't changed such as Saudi Arabia applied Hambali's Madzhab, Yemen too applied Zaidi's Madzhab, same as Yemen South Yemen applied Syafi'i's Madzhab and Hambali, and too Behrain used Maliki's Madzhab, Syafi'i and Syi'i. *Second*, country which completely changed family law trough concept of modern law, such as Turkey and Albania applied modern law from West Country. *Third*, country, which applied family law, has been reformed by process of modern legislation such as Brunei, Malaysia, Singapore, Cylon, Libanon, Yordania, Algeria, Iran. [27]

Malaysia was country which forbad interfaith marriage even though Indonesia society is multi-religion, but Islam become official religion. It's unique, Islam became state religion, why? because of majority is Islam. Whilst Islamic law is to regulate behavior of

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[25] Fathol Hadi, Legal Policy of Interfaith Marriage In Indonesia, Hasanuddin Law Review, Vol. 3, Issue. 3, 2017, pp.265

[26] Erna Ratnaningsih, https://business-law.binus.ac.id/2016/03/27/perkawinan-beda-agama-di-indonesia/ Accessed 28 September 2021.

[27] Abd Rozak A Sastra, dkk, Pengkajian Hukum tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara), (Jakarta: BPHN Kementerian Hukum dan Hak Asasi Manusia), pp. 33 and see too https://www.matamatapolitik.com/belajar-politik/pernikahan-beda-agama-di-negara-negara-muslim-analisis, accessed Thursday 18 November 2012

the believer. And than, other religion have been protected by Constitution and also given freedom to perform their religion. Not surprisingly That Malysia have applied Islamic law, because of Islamic practice based on Sultan's authority by that been influenced and ever mastered by Islamic kingdom such as kingdom of Johor, Malaka, Kelantan and Trengganu.[28] Hance, at Malaysia is every group of religion having right to take care of their own problems.

While Singapore is not the same of Malaysia that has banned interfaith marriage, but Singapore have allowed interfaith marriage because Singapore has applied for all resident is equal and has not look having religion or not, the meaning is that religious issues is not considered important (urgency) in public mainly about problem of marriage. It's unique, Singapore do not have nasional religion unlike other countries such as Malaysia, Indonesia and so forth. One of the interesting in carry on marriage at Singapore is required to minimum stay 20 days continued, then after fulfilling requirement it is future bride and groom, they are allowed to register administratively trough online at building of Registration For Merried, even government of Singapore has provide service with registration by Singapore citizen, permanent resident as well as foreigner 100% only 20 minutes to register oneself toward marriage legislation at a cost 20 dollars, and than they will get marriage certificate guarantee legally, and also they can be accepted by law without making contradiction about religious differences.[29]

Canada, Duch, Tunisia like Singapure that have allowed interfaith marriage. Inggris and Singapora the sama of applying system common law, whereas there are not requisite in equality of religion, religion do not become a problem in marriage that is important is appropriate with procedure and which is be registered legally.[30] And than, at Canada that requisite their marriage's legal do not look equality of religion, so that interfaith marriage do not become barrier, one of requisite about their marriage's legal is different kind of sex, having sexuality potential, not having relationship of blood (genealogy) or genealogist, not tied-up with marriage before, and being a agreement.[31]

F. Prohibition of Interfait Marriage in Contex of Indonesia Maqasid Syariah Perspective.

Interfaith marriage has been often appeared in society, even since at the time of prophet until at the moment, interfaith marriage still became different of opinion among various scholar, student, intellectual and public figure, even the legislation has not given enlightenment for society, because of Indonesia positive law having rules about being prohibition of interfaith marriage but practice in the field has still done a lot interfaith marriage, even some cases have moved religion, effect of interfaith marriage, for the sake of afford an opportunity interfaith marriage. So therefore, this need to reformulate and know deeply prohibition background of interfaith marriage or ability in Indonesia context.

To simplify maqasid syar'ah, according to Imam Syatibi, is to create benefit the values of world life and hereafter, so this is be required which there are three different

[28] *Ibid*, pp. 48

[29] *Ibid,* pp. 52

[30] https://www.tagar.id/tunisia-dan-empat-negara-ini-legalkan-nikah-beda-agama,accessed Thursday 18 November 2021

[31] https://www.hukumonline.com/klinik/detail/ulasan/lt4ff5a7dfb11ca/negara-negara-yang-membolehkan-kawin-beda-agama, accessed Thursday 18 November 2021

priorities but complete each other it: al-dharuriyyat, al-hajiyyat and al-tahsiniyyat.[32] This al-Dharuriyat there must be, its absence will be induce destruction, this here have to take into consideration five mains that must be maintained and realized by social life. This five mains is:

First, religion, Imam Syatibi have been applied consept to protect religion that is base of worship which is strong in believing from side of theological relationship and society relations. Theological relationship such as confenssion of faith, salat, fast. Social relations such as alms (zakat).[33] Be related with interfaith marriage that appear is being distance of marriage, such as when fasting month, all moeslims is obligatory to do worship as pillars of Islam, at the same time non-moeslim is not fast, when couple is not mutual respect both of them and their spiritual worship is not the same or different, so bigger impact in the household. As well worship of non-moeslim is different the spiritual way, it will be more eppear damage (*mafsadah*).

So, to salvage religion in marriage affair, accordingly marriage of fellow moeslim become compulsion at once forbid something which bring in damage, if interfaith marriage is be done, so interfaith marriage will be cause damage (mafsadah) in household. Interfaith marriage will actually be effect turmoil of confidence and trust so that marriage can not be realized *sakinah mawaddah warahmah*. Consequently religion become one of element is so important which can create household *sakinah mawaddah warahmah*. So we can look it, that interfaith marriage is contradict for principles of maqasid ash-shari'ah, that is every religion is not the same of principle and different beliefs and trust. So therefore, there is no compulsion in religion (laikraha fid deen), only the sake of allowing interfaith marriage. Religion is very close to be related with every individual's belief, where religion can not be mixed up by marriage based on unification of faith or someone's trust in household who is different religion, so interfaith marriage is prohibited, bacuse of contain element of harm bigger than benefit in long term.

Second, soul, accoding to Imam Syatibi, is part of al-adat to protect soul. To protect soul, than Islam such as about marriage, need to oblige to choose couple based on conscience for own choice that is equal from aspect of religion at a time not choosing interfaith couple, which will be effect defective mentality-psychological cause mixed different religion, this will be effect danger in religion. Interfaith marriage will be tested psychologically someone, what is someone capable to maintain or affected for someone's psychology non-moeslim, so as potential to move religion because one of the couple have been influenced by him, so interfaith marriage must be prevented the way is ban of interfaith marriage in order to they do not fall in moving belief which has been strictly prohibited by Islam. Therefore, to protect soul in order that has not been dominated her psychology move religion, so interfaith marriage is prohibited by Islam. Protect soul, one of which is, avoid interfaith marriage, because interfaith marriage will influence life pattern, mentality and someone's psychology. so, to create a harmonious family and equal in religion, not cross religion, that must protect soul in order that is not tarnished by other religions.

Third, mind, according to Imam Syatibi, is part of al-adat, its character is routine or habit such as drinking, eating, and dress.[34] So, that is something based on habit, which long time will be affected by factor of habit. Reciprocally, interfaith marriage when

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[32] Imam Syatibi, *al-Muwafaqat*, jilid 2 (Arab Saudi: Darul Afan, 1997).

[33] *Ibid.* pp. 18.

[34] *Ibid*, pp. 19.

continuously accept interaction with non-moeslim, so someone will most likely be affected. To protect mind, so obligate such as giving education about impact interfaith marriage in household in orde to not affected outright ban of something destroying religion like moving religion or belief and trust in Islam. Mind is element which is the most important to protected, because mind is very easy to influence, one of entrance of faith and belief is through mind. Because of this, to protect mind, so they must dissociate something that bring decay, this context is interfaith marriage, it must be avoided and prohibited, because of affecting faith which is begins from religion doctrine such as mind of someone has been influenced through doctrine that able to influence finally move away religion. This matter can bring on moving religion if one's faith is not strong.

Fourth, offspring, according to Imam Syatibi, is part of muamalah. Islam have arranged about marriage and prohibit marriage with someone of unbelieving (mushrik). Offspring is element of the most important to reserve future regeneration or guard generation of Islam. In the case of interfaith marriage is contains a lot of failure more than benefit. Because interfaith marriage can influence psychology-religious for children. In fiqh, something, which will induce offspring, has been influenced by religion other than Islam, so absolutely interfaith marriage is prohibited by opinion of Imam Maliki, because of falling in offspring to other religion—moving of religion, except there is guarantee to take care children for maintaining of belief and trust of Islamic religious, according to Imam Maliki is makruh. As far as the writer's observation, interfaith marriage will predispose for child after 17 years, who is required to determine identity himrself. What is he follow father's religion or mother's religion, by state administration who has obligated to choose citizen identity and called religion in KTP. So, to protect offspring that must preserve children's religion in order to lose regeneration of Islam future, in a way that is preventing interfaith marriage and giving security, protection for child related belief and trust toward Islam. On the other hand, impact of interfaith marriage is that children will feel confused to chose, what is it religion of father or mother; Islam or non-Islam. Hence, interfaith marriage which become victim is child and descendants.

Fifth, wealth, in opinion of Imam Syatibi, is part of muamalah same as protection of offspring. To protect wealth, Islam have required inheritance rules and forbid to inherit wealth for other religion. Wealth is element the most important which has been preserved and protected ownership rights, because wealth is necessary principles of basic in life. As well as in religion, do not let wealth that will be utilized in the name of religion. Because of this, protection of wealth, in Islam, is part of maqasid ash-shari'ah which need to be defended as in interfaith marriag, for example if child born from interfaith marriage other religion of Islam, child non-muoslim will not get inheritance and disconnected inheritance as paragraph 171 letter C KHI said that testator and heir must be condition in religion of Islam between both of them. If one of them is not religion of Islam, both of them is not mutual inheritance. Accordingly, provision of inheritance rights automatically has been disconnected when related with interfaith marriage. This need to remember that terms above related to each other and binding. For example, prohibition of interfaith marriage oriented to protect religion, soul, wealth, mind and offspring and so forth.

Maqasid al-hajiyyat (secondary need) is something which must be needed by human to simplify achievement interests included in *dharuriyyat*. To support and complete *dharuriyyat*, so attendance of *hajiyyat* is be required as formal legal of Indonesia positive law. The meaning of it is that interfaith marriage consider dharuriyyat: from religion, soul, wealth, soul, and offspring. And than, attendance of *hajiyyat* to support and complete *dharuriyyat* is that attendance of formil legal in Indonesia positive law, which have been

arranged by, *first*, Islam law compilation article 40 paragraph (C) and paragraph 44. *Second*, constitution numer 1 year 1947 about marriage, chapter 1 article (2) paragraph (1). *Third*, Fatwa of MUI Number: 4/Munas VII/MUI/8/2005 about interfaith marriage. Fourth, decision of court constitution number 68/PUU-XII/2014. This context is strength of law that is needed in legalitation to apply positive law about interfaith marriage in Indonesia.

On the other hand, maqasid *at-tahsiniyat* (tertiary neeed) is something its attendance not certainly or needed by, but based on create interests of *dharuriyyat* and *hajiyyat*. How do it create *at-tahsaniyat* in interests of *dharuriyyat* and *hajiyyat*. *First*, to create *at-tahsiniyat*, so this need to be socialiszation for society, this context is that KUA have a responsibilities in the case of marriage. So, KUA give a socialiszation for candidate of couple or general society about problematical and conseqences of interfaith marriage. Second, to create at-tahsiniyyat, so this is needed education for society about interfaith marriage in detail, the meaning is in orde to society able to know and understand damage and benefit about interfaith marriage, especially for adolescent and young that is given supplies of knowledge to understand law that is applied at Indonesia, with the result that will achieve benefit at Indonesia as *maqasid ash-shari'ah* perspective.

CONCLUSION

Writer can conclude from resulting of reconstruction from text to context about interfaith marriage with using maqasid ash-shari'ah perspective, that is:

First, In Islamic law that is different opinion of interfaith marriage, there is between allowing and too forbid. In opinion of Madzhab moeslim who forbid interfaith marriage; one of it is that male marry with women of unbelieving (mushrik), according to Imam Syafi'i, Hambali and Hanafi is punishment of illegitimate. Male marry with ahlul kitab, some of Madzhab moeslim is there permitted such as opinion of Ima Syafi'i, but by according to Imam Maliki and Abu Hanifah is makruh. Women of moeslim merry with male non-moeslim is illegitimate, which is taken by opinion of Umar bin Khattab.

Second, in positive law that is applied at Indonesia about interfaith marriage is illegitimate based on decision of Fatwa MUI number: 4/Munas VII/MUI/8/2005 about interfaith marriage, and also decision of Constitution Court Number 68/PUU-XII/2014. On the other hand, KHI has prohibited to interfaith marriage and Constitution Number 1 year 1974 is not legal related with interfaith marriage.

Third, interfaith marriage on reflection-analysis of maqasid ash-shari'ah to respond Islamic law and positive law is not appropriate with principles of maqasid ash-shari'ah in creating and achieving prosperity, safety, tranquillity, and walfare to build family of sakinah mawaddah warahmah, but more having a lot of damage than benefit. This is proven that reflection of maqasid syariah is consider priority of dharuriyyat, hajiyyat and tahsiniyyat which mutual complete it, but interfaith marriage is tendency toward damage bigger looked from side of religion, mind, soul, offspring and wealth. Finally prohibition on interfaith marriages is very important to apply in family life before and in society as reflection of maqasid syari'ah to strengthen Islamic law and positive law.

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