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Interfaith Marriage from the Perspective of Maqashid Al-Syari'ah Jasser Auda (Analysis of Decision Number 916/Pdt.P/2022/PN.Sby.)

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Abstract

Interfaith marriage has emerged as a significant and complex issue within Indonesian society, encompassing academic, social, and religious dimensions. This research aims to explore and address the academic, social, and religious challenges posed by interfaith marriages in Indonesia, referencing both previous research findings and a recent court decision. In the academic sphere, the study delves into the legal aspects, rights, obligations, and judicial implications of interfaith marriages. It sheds light on how Indonesian law regulates such unions. The recent Surabaya District Court's Decision Number 916/Pdt.P/2022/PN.Sby, permitting an interfaith marriage, is analyzed through the lens of Jasser Auda's Maqasid al-Shariah theory, which emphasizes social welfare, justice, and human rights in Islamic law. The decision reflects a shift from classical to contemporary Maqasid, focusing on human development and rights, particularly the freedom to marry across religious boundaries. This study contributes to a comprehensive understanding of interfaith marriage in Indonesia, emphasizing a contemporary interpretation of Islamic law and universal human rights, ultimately working towards harmony and inclusivity in this diverse society.

Keywords: Interfaith Marriage, Maqashid Al-Syari'ah, Jasser Auda

A. INTRODUCTION

Interfaith marriage has become an important topic in social, religious¹ and academic contexts in Indonesia.² The phenomenon encompasses complex issues and involves a number of diverse academic, social and religious challenges. This research aims to investigate the crucial issues that arise in interfaith marriage in Indonesia, taking into account academic, social,

¹ Trimargono Meytrias Ebenheser, *Interfaith Marriage: A Study of Contextual Church Polity in the Religiously Plural Context of Indonesia* (Amsterdam: LIT Verlag Münster, 2021), 1.

² Noryamin Aini, Ariane Utomo, dan Peter McDonald, "Interreligious Marriage in Indonesia," *Journal of Religion and Demography* 6, no. 1 (6 Mei 2019): 189–214, <https://doi.org/10.1163/2589742X-00601005>.

and religious issues. It also refers to previous relevant research in the context of interfaith marriage in Indonesia.³

Interfaith marriage creates various academic challenges that need to be understood and studied in depth.⁴ Issues such as the law of marriage, the rights and obligations of spouses, and the legal and judicial implications are often the main focus in the academic context.⁵ This research will seek to answer these academic questions and analyze the role of the law in regulating interfaith marriage in Indonesia.

Interfaith marriage also has significant social impacts. Not only does it impact relationships between individuals, but it also affects society and culture more broadly. Social issues such as stigmatization, discrimination, and the psychological impact on couples and their families are issues that need to be examined.⁶ This research will seek to understand the social dynamics that emerge in the context of interfaith marriage and seek possible solutions to address these challenges. Interfaith marriages often deal with complex religious issues.⁷ Each religion has its own rules and views on marriage, and these discrepancies can lead to conflict and disagreement. This research will investigate different religious perspectives on interfaith marriage and explore ways in which these differences can be accommodated.

Previous research has provided valuable insights⁸ into interfaith marriage in Indonesia.⁹ Some previous research may have identified specific challenges, patterns and trends relating to this topic. This study will refer to key findings from previous research in order to understand previous developments in the field and fill in any knowledge gaps that may still exist. In order to comprehensively understand interfaith marriage in Indonesia, this research will incorporate these various dimensions and seek to provide deeper insights into the phenomenon as well as contribute to the understanding and solutions to the problems that arise.

This research will look at the decision NUMBER 916/Pdt.P/2022/PN.Sby. As understood and emphasized by thinkers such as Jasser Auda, has great relevance in solving the problems of interfaith marriage. *Maqasid al-Shariah* is a concept that encompasses the basic principles in Islamic law that emphasize social welfare, justice, and the fulfillment of human rights.

B. METHODOLOGY

To obtain optimal results in analyzing judges' decisions, the researcher used a systematic and comprehensive approach. The initial stage involved collecting the relevant judgments to

³ Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian-Muslim Relations* 31, no. 2 (2 April 2020): 131–50, <https://doi.org/10.1080/09596410.2020.1773618>.

⁴ Muhammad Ansor dan Yaser Amri, "BEYOND PIOUS CRITICAL AGENCY: WOMEN, INTERFAITH MARRIAGE AND RELIGIOUS CONVERSION IN ACEH," *Analisa: Journal of Social Science and Religion* 1, no. 2 (21 Desember 2016): 217, <https://doi.org/10.18784/analisa.v1i2.368>.

⁵ Mary Ann Glendon, "Fixed Rules and Discretion in Contemporary Family Law and Succession Law," *Tulane Law Review* 60 (1986 1985): 1165, <https://heinonline.org/HOL/Page?handle=hein.journals/tulr60&id=1185&div=&collection=>.

⁶ Naomi Schaefer Riley, *Til Faith Do Us Part: How Interfaith Marriage Is Transforming America* (Oxford University Press, 2013), xii–xvi.

⁷ Muhamad Ali, "Fatwas on Inter-Faith Marriage in Indonesia," *Studia Islamika* 9, no. 3 (30 Maret 2014): 1–2, <https://doi.org/10.15408/sdi.v9i3.658>.

⁸ Mohamad Abdun Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law," *Mazahib* 21, no. 2 (27 Desember 2022): 155, <https://doi.org/10.21093/mj.v21i2.5436>.

⁹ Agus Sutono dan Fuad Noorzeha, "Abed Al-Jabiri's Epistemology of Intelligence: A Case Study of Interfaith Marriage In Indonesia," *Religia: Jurnal Ilmu-Ilmu Kelslaman* 25, no. 2 (18 Oktober 2022): 149–51, <https://e-journal.uingusdur.ac.id/Religia/article/view/814>.

be analyzed, ensuring the existence of full copies that included both legal and factual considerations. An in-depth content analysis was then applied to the judgments, which included understanding the legal arguments used, the evidence presented, and the reasoning. Next, the use of a structured analytical framework, starting with an understanding of the context of the case, identification of the legal issues, evaluation of the arguments of the parties involved, and an in-depth understanding of the legal considerations underlying the decision, is then analyzed from the perspective of *maqasid al-shariah* developed by Jasser.

C. RESEARCH AND DISCUSSION RESULTS

1. Decision of The Judge of The Surabaya District Court Decision Number 916/Pdt.P/2022/Pn.Sby About Different Agency Marriage

That based on the jurisprudence of Stipulation Number: 421/Pdt.P/2013/PN.Ska dated August 21, 2013 and Stipulation Number: 3/Pdt.P/2015/PN Llg. dated February 27, 2015 which essentially states:

"Considering, that Article 27 of the 1945 Constitution stipulates that all citizens are equal before the law, which includes the equal rights to enter into marriage with fellow citizens even though they are of different religions, while Article 29 of the 1945 Constitution stipulates that the state guarantees the freedom of citizens to embrace their respective religions;

"Considering, that based on Law Number 39 of 1999 concerning Human Rights (HAM), Article 10 paragraph (1) states that every person has the right to form a family and continue their descendants through legal marriage and of free will;

"Considering that interfaith marriage is not expressly regulated in Law Number 1 of 1974 Concerning Marriage, but the situation is a reality that occurs in society and has become a social need that must be found a way out according to the law so as not to cause negative impacts in social and religious life." Due to these reasons, PARA PEMOHON filed a petition to the Surabaya District Court in order to provide a stipulation in order to ensure the principles of law, namely justice, certainty and expediency.¹⁰

Based on the chronology above, the author observes that the case of recording a marriage of different religions at the Surabaya District Court was carried out by the applicant named Rizal Adikara, who is Muslim, while his prospective wife Eka Debora Sidauruk is Christian, as stipulated in Law Number 23 of 2006 concerning Population Administration, especially Article 35 letter a, marriages of different religions can be recorded at the civil registry office by requesting a district court decision which is the basis for its registration.

According to the researcher, Article 2 (2) of the Marriage Law stipulates that every marriage is recorded according to the applicable laws and regulations, in this case stated in Article 2 of Government Regulation No. 9 of 1975 for those who are Muslims, the recording is carried out by a marriage registration officer at the religious affairs office, while for those who are not Muslims, it is carried out at the civil registration office, including interfaith marriages with the condition of a court decision to obtain legal certainty.

According to Professor Satjipto Rahardjo, discussing the issue of legal certainty using a sociological perspective is very interesting and clear. The following is an excerpt of his opinion, every sphere of life has a kind of icon. For the economy the icon is efficiency, for medicine; escorting life and so on. The icon for modern law is legal certainty. Everyone will see the

¹⁰ "Direktori Putusan," diakses 23 Oktober 2023, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaecc51c755dad32a412313135303536.html>.

function of modern law as producing legal certainty. Society, especially modern society, is in dire need of legal certainty in the various interactions between its members and that task is placed on the shoulders of the law.

According to the researchers, the chronology of the filing of cases of recording marriages of different religions in the Surabaya district court has legal certainty in accordance with article 35 letter a of the Population Administration Law, so that judges with their authority and creativity can examine and decide cases.¹¹

2. Jasser Auda's Decision Analysis Perspective

Marriage is a matter related to one's spirituality or religion,¹² because each religion has its own rules regarding marriage, so it must follow the provisions of the teachings of the religion adhered to. Besides being related to religion, marriage is also related to human relations,¹³ so marriage can be considered a legal act. In fact, the most dominant influence of religion on legal regulations is in the field of marriage law.

One of the problems in the field of marriage that is still being discussed today is about inter-religious marriage or inter-religious marriage. The diversity of religions and beliefs,¹⁴ especially in the territory of Indonesia,¹⁵ does not rule out the possibility of marriages of different religions or beliefs, and even today there are still many marriages of different religions in Indonesia.¹⁶ As the author discusses in this research on the Decision regarding the application for a marriage license of different religions, in determination Number 916/Pdt.P/2022/PN.Sby between the applicant Rizal Adikara (Islam) and his future wife Eka Debora Sidauruk (Christian).

In the decision, it is explained that the applicant and the applicant's prospective wife love each other and have even received the blessing of the parents of the bride and groom, both of them are determined to immediately carry out the marriage and have registered at the Surabaya City Civil Registry Office, and according to the testimony of witnesses that the applicant and his prospective wife have entered into a marriage based on their respective religions in March 2022, so here the author will analyze the decision using Jasser Auda's Maqasid ash-Syari'ah Theory, namely the study of the objectives to be achieved by the law maker (Allah) in establishing a law by examining the decision that the author has discussed above.

Broadly speaking, marriage law has regulated the basis of marriage, which in Article 1 of Law Number 1 of 1974 concerning marriage¹⁷ is emphasized regarding the understanding that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God. In the explanation,

¹¹ Satjipto Rahardjo, *Hukum dalam Jagat Ketertiban* (Jakarta: Uki Press, 2006), 133–36.

¹² Widodo Budidarmo dan Rineke Sara, "Juridical Review of Interfaith Marriages and Its Legal Consequences Regarding Inheritance Sharing," 2022, 1, <https://eudl.eu/doi/10.4108/eai.30-10-2021.2315772>.

¹³ Lolita Permanasari, "LEGAL ANALYSIS OF INTERFAITH MARRIAGE IN INDONESIA," *Ius Positum (Journal Of Law Theory And Law Enforcement)*, 20 Januari 2023, 39, <https://doi.org/10.56943/jlte.v2i1.282>.

¹⁴ Kathryn Robinson, "Muslim Women's Political Struggle for Marriage Law Reform in Contemporary Indonesia," dalam *Mixed Blessings* (Brill Nijhoff, 2006), 184, https://doi.org/10.1163/9789047409656_010.

¹⁵ Aldi Subhan Lubis dan Zaini Muhawir, "The Dynamics of Interreligious Marriage in Indonesian Religious and Legal Perspectives," *ARRUS Journal of Social Sciences and Humanities* 3, no. 1 (11 April 2023): 43, <https://doi.org/10.35877/soshum1658>.

¹⁶ Nofrizal Nofrizal dkk., "Implications of Supreme Court Jurisprudence No.1400k/Pdt/1986 on Marriage Different Religions," *Unram Law Review* 6, no. 1 (28 April 2022): 32, <https://doi.org/10.29303/ulrev.v6i1.205>.

¹⁷ Elisabeth Pudyastiwi dan Agoes Djatmiko, "THE LEGALITY OF MARRIAGE ACCORDING TO LAW NO. 1 OF 1974 CONCERNING MARRIAGE IS REVIEWED FROM THE LAW OF THE AGREEMENT," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 3 (11 Oktober 2021): 937, <https://doi.org/10.23887/jpku.v9i3.40170>.

it is emphasized in more detail that as a State based on Pancasila, where the first principle is Belief in One God, marriage has a very close relationship with religion and spirituality so that marriage not only has an inner and outer element but also has a very important role. Forming a happy family and having offspring.

In this case the author analyzes the consideration of judges who allow marriages of different religions in Decision Number 916/Pdt.P/2022/PN.Sby, in the decision between the Petitioner who has carried out a marriage and has registered at the Surabaya City Civil Registry Office for marriage, but because the Petitioner and his prospective wife have different religions, in this case the Petitioner is Muslim and the Petitioner's prospective wife is Christian, the Surabaya City Civil Registry Office cannot carry out and record the marriage. The Surabaya City Civil Registry Office can perform and record the marriage if there is a Determination Letter from the Surabaya District Court granting permission to the Applicant to enter into a marriage of different religions.

In giving a decision on a case, the judge always uses considerations as the basis for making a decision. In the determination of Case Number 916/Pdt.P/2022/PN.Sby. Surabaya District Court judges consider that it is true that religious marriages are not expressly regulated in Law Number 1 of 1974 concerning marriage and the Law also does not expressly prohibit marriages of different religions so that there is a legal vacuum, then in article 2 paragraph (2) of the marriage law states that every marriage is recorded according to the applicable laws and regulations, for those who are Muslims, the recording is carried out by the Office of Religious Affairs (KUA) and for those who are non-Muslims, it is carried out by the Marriage Recorder at the Civil Registry Office, now the Population and Civil Registration Office.¹⁸

Then it is explained in Article 35 letter a of Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration¹⁹ stipulates that the Office of the Population and Civil Registration Fund can record marriages that have been determined by the court, and then in the explanation of the article it has been emphasized that what is meant by "court-ordered marriages" is marriages conducted between religious communities.

As mentioned above, Law No. 1/1974 does not regulate the marriage of couples of different religions. Supreme Court Decision Number. 1400 K/Pdt/1986 dated January 20, 1989 emphasizes more on marriage between different religions which reads: "That the difference in religion of the prospective husband and wife does not constitute a prohibition of marriage for them". Similarly, Government Regulation No. 9 of 1975 does not contain a single article that regulates how to solemnize marriages between people of different religions or beliefs.²⁰

In this case, it is in line with Article 27 of the 1945 Constitution which states that every citizen is equal before the law, which includes the human right to marry a fellow citizen even though they have different religions and or beliefs as long as it is not determined by law that differences in religion and or beliefs constitute a prohibition on marriage, also in line with Article 29 of the 1945 Constitution that the state guarantees the freedom of every citizen to

¹⁸ Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Soumatara Law Review* 2, no. 2 (20 November 2019): 298, <https://doi.org/10.22216/soumlaw.v2i2.4420>.

¹⁹ "Implementation of the Constitutional Court Decision Regarding Amendments to Law No. 23 of 2006 Concerning Population Administration | International Journal of Research in Social Science and Humanities (IJRSS) ISSN:2582-6220, DOI: 10.47505/IJRSS," 25 Agustus 2022, 53, <https://www.ijrss.org/index.php/ijrss/article/view/184>.

²⁰ Elok Rofiqoh, "ANALISIS PUTUSAN NO. 04/Pdt.P/2012/PN.Mgl TENTANG PERKAWINAN BEDA AGAMA PERSPEKTIF MAQASHID AL-SYARI'AH" (bachelorThesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020), 5–6, <https://repository.uinjkt.ac.id/dspace/handle/123456789/55704>.

embrace their respective religions and or beliefs, that in addition to that in Law Number 39 of 1999 concerning Human Rights, in article 10 paragraph (1), (2) and article 16 paragraph (1) in essence regulates that every person has the right to marry and form a family and continue the offspring which is carried out or free will in accordance with the provisions of the Law.

That from the juridical facts revealed in the trial that the Plaintiffs had agreed and had received approval and permission from both of their parents that the marriage process was before the Officials of the Population and Civil Registry Office of Surabaya City and then they had agreed to form a happy and eternal household based on the Almighty God, then the Court Judge considered the Plaintiffs to release their religious beliefs which prohibited interfaith marriage.

Based on the considerations as described above, the Judge may grant permission to the Plaintiffs to enter into a marriage between Plaintiff I, who is a Muslim, and Plaintiff II, who is a Christian, before an official at the Surabaya City Population and Civil Registry Office, and therefore the Plaintiffs' petition is legally reasonable to be granted. Furthermore, the staff of the Surabaya City Population and Civil Registry Office shall record the marriage of the Plaintiffs in the Marriage Register after fulfilling the requirements for marriage according to the applicable laws and regulations.

If we refer to classical Islamic law and the decisions of several religious authorities such as the Indonesian Ulema Council, then marrying between different religions is prohibited. MUI has issued a fatwa that prohibits marriage between a Muslim and a non-Muslim, whether it is a non-Muslim who is included in the category of ahl al-kitab (who has a holy book) or who is not ahl al-kitab (who does not have a holy book).²¹ This fatwa applies to both Muslim men and Muslim women. This fatwa is based on the consideration of preventing harm or badness (*mafsadat*) that is greater than the benefit or goodness (*maslahat*) that may arise. This approach is in line with the principle in Islamic law which states that avoiding loss or damage takes precedence over seeking good.²²

In the event that a Muslim man wants to marry a woman of ahl al-Kitab who belongs to a group that does not support the Islamic government (*harbiyah*), according to the view of the Hanafi school of thought, this is considered *makruh tahrim* (forbidden) because it can cause damage and fitnah. However, if the woman of ahl al-Kitab is subject to Islamic law (*dzimmiyah*), then according to the same view, such a marriage is considered *makruh tanzih*, which is *makruh* with a lower level.²³ In essence, this MUI fatwa confirms the prohibition of marriage between Muslims and non-Muslims to avoid the potential damage that outweighs the benefits that may arise, with certain exceptions depending on the status and attitude of the woman ahl al-Kitab concerned.²⁴

However, looking at the Judge's reasoning mentioned above, it seems that this context is not on the radar of the reasoning. The majority of the considerations are state laws that are

²¹ R. Cecep Lukman Yasin, "THE FATWA OF THE COUNCIL OF INDONESIAN ULAMA ON INTER-RELIGIOUS MARRIAGE," *De Jure: Jurnal Hukum Dan Syar'iah* 1, no. 1 (1 Juni 2009): 51, <https://doi.org/10.18860/j-fsh.v1i1.326>.

²² Ermi Suhasti, Siti Djazimah, dan Hartini Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (6 Desember 2018): 374, <https://doi.org/10.14421/ajis.2018.562.367-394>.

²³ Ibnu Radwan siddik Turnip, "Perkawinan Beda Agama: Perspektif Ulama Tafsir, Fatwa MUI dan Hukum Keluarga Islam di Indonesia," *Al-Tadabbur: Jurnal Ilmu Al-Qur'an dan Tafsir* 6, no. 01 (26 Juni 2021): 132, <https://doi.org/10.30868/at.v6i01.1337>.

²⁴ Nur Cahaya, "PERKAWINAN BEDA AGAMA DALAM PERSPEKTIF HUKUM ISLAM," *Hukum Islam* 18, no. 2 (1 Agustus 2019): 145–46, <https://doi.org/10.24014/hi.v18i2.4973>.

closer to human rights. This has similarities with Jasser Auda's *maqasid shariah* thinking which divides *maqasid shariah* into three levels, namely general *maqāshid*, specific *maqāshid*, and partial *maqāshid*. Its systems approach involves characteristics such as comprehensibility, wholeness, openness, hierarchical interplay, multidimensionality, and good intentions. The goals emphasized in his *maqāshid* concept have undergone a shift in meaning from focusing on preservation and protection to focusing more on development, particularly human development, human rights, and overall well-being.

The renewal of the concept of *maqāshid al-sharīah*, formulated by Jasser Auda, focuses on four main aspects. *First*, *maqāshid* is divided into three levels, namely universal, specific, and partial. *Second*, the goal has changed from preservation and protection to development and human rights. *Third*, the scope of *maqāshid* has been expanded from individuals to communities, nations, Muslims globally, and even all humanity. *Fourth*, the source of *maqāshid* is taken directly from the sacred texts (Qur'an and hadith) rather than relying on the opinions of madzhab scholars.²⁵

Auda uses diverse legal evidence, not only based on one legal source, but by comparing with other relevant texts. This is because there are many possibilities of interpretation, sometimes a law taken from one text only applies in certain conditions, or a verse in a text has many different meanings or even changes from its original meaning.

In Indonesia, non-Muslims, from a sociological point of view, are not considered kafir based on the terminology in the verses and hadiths regarding the prohibition of marriage between Muslims and *kafirs*. Likewise, they were not classified as kafir at the time when the Prophet led the City of Medina, where there were four designations of kafir based on the terminology produced in the 2019 NU National Conference and Konbes in Banjar Patroman, West Java, regarding the term kafir designation. The term "kafir" has two dimensions in classical fiqh, namely the theological dimension (creed) and the sociological dimension (law and politics). In the theological dimension, kafirs are those who do not believe in Allah and His Messenger, so in this context, anyone who is not Muslim will be considered a kafir and is considered not going to heaven. In the sociological dimension, there are four criteria that divide the term "kafir," namely *dzimmi*, *mu'āhad*, *musta'min* or *musta'man*, and *harbi*. In this context, the use of the term *dzimmi* comes from the agreement made by Prophet Muhammad with the Christian inhabitants of Najran.²⁶

Therefore, sociologically (legally and politically) non-Muslims in Indonesia also have human rights equal to Muslims. In fact, as the reasoning used by the Judge, it clearly uses human rights arguments, as stated:

In this case, it is in line with Article 27 of the 1945 Constitution which states that every citizen is equal before the law, which includes the human right to marry a fellow citizen even if they have different religions and or beliefs as long as it is not determined by law that differences in religion and or beliefs constitute a prohibition on marriage, also in line with Article 29 of the 1945 Constitution that the state guarantees the freedom of every citizen to embrace their respective religions and or beliefs, that in addition to that in Law Number 39 of 1999 concerning Human Rights, in article 10 paragraph (1), (2) and article 16 paragraph (1) in

²⁵ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008), 41.

²⁶ Sugianto Sugianto, Rahmat Hidayat, dan Agus Sujarwo, "Partisipasi Politik Dalam Pemerintahan Non Muslim Perspektif Yusuf Qardawi," *Istinarah: Riset Keagamaan, Sosial Dan Budaya* 3, no. 2 (2 Desember 2021): 58, <https://doi.org/10.31958/istinarah.v3i2.4837>.

essence regulates that everyone has the right to marry and form a family and continue the offspring that are carried out or free will in accordance with the provisions of the Law.

This statement is in accordance with the *maqasid* perspective put forward by Jasser Auda. In this context, the point about the right of citizens to marry fellow citizens regardless of differences in religion or belief is an example of the implementation of *maqasid sharia* which prioritizes aspects of humanity and freedom.²⁷ This is in line with the concept of *maqasid* that combines Islamic principles with universal values that include human rights.

The judge's consideration that alludes to:

Law Number 1 Year 1974 does not regulate the marriage of couples of different religions. Supreme Court Decision Number. 1400 K/Pdt/1986 dated January 20, 1989 emphasizes more about marriage between different religions which reads: "That the difference in religion of the prospective husband and wife does not constitute a prohibition of marriage for them". Likewise, government regulation No. 9 of 1975 does not contain a single article that regulates how to marry people of different religions or beliefs.

In the context of *maqasid* Sharia according to Jasser Auda, this statement reflects an effort to respect and understand *maqasid* principles in more detail in the context of marriage between couples of different religions. A more detailed analysis follows:

Protection of Human Rights: Law No. 1/1974 which does not regulate the marriage of couples of different religions can be considered in accordance with *maqasid* which emphasizes the protection of individual human rights. This includes the individual's right to choose a life partner regardless of differences in religion or belief.

Humanity and Freedom: Supreme Court Decision No. 1400 K/Pdt/1986 which states that religious differences are not a bar to marriage demonstrates a deeper understanding of humanity and freedom in *maqasid*. This is in line with the concept of *maqasid* which values the right of individuals to live a married life in accordance with their respective beliefs.

Religious Impartiality in Regulation: The absence of articles in Government Regulation No. 9/1975 regulating marriage between people of different religions or beliefs reflects an inclusive approach in *maqasid*. It respects individual freedom in choosing a spouse without excessive interference in religious matters.

Contemporary *maqasid* Context: This statement also indicates an attempt to understand *maqasid shariah* in the context of contemporary times where plurality of religions and beliefs is becoming increasingly common. Contemporary *maqasid* tends to be more inclusive and recognizes changes in society.

While consideration with regard to juridical facts: that from the juridical facts revealed in the trial that the Plaintiffs had agreed and had received approval and permission from both of their parents that the marriage process was before the Surabaya City Population and Civil Registry Office Officials and then they had agreed to form a happy and eternal household based on the Almighty God, the Court Judge considered the Plaintiffs to release their religious beliefs which prohibited interfaith marriage.

The analysis of this statement in the perspective of Jasser Auda's *maqasid syariah* can be explained as follows:

Individual Human Rights Interests: The statement reflects the concern for individual human rights described in *Maqasid*. The Trial Judge confirmed that the Plaintiffs had agreed

²⁷ Siti Mutholingah dan Muh Rodhi Zamzami, "RELEVANSI PEMIKIRAN MAQASHID AL-SYARIAH JASSER AUDA TERHADAP SISTEM PENDIDIKAN ISLAM MULTIDISIPLINER," *journal TA'LIMUNA* 7, no. 2 (8 Oktober 2018): 95, <https://doi.org/10.32478/talimuna.v7i2.183>.

and received permission from their parents to marry, respecting the individual's freedom to choose his or her life partner.

Acceptance of Contemporary Reality: The Trial Judge recognized that the Plaintiffs had agreed to form a happy and lasting household based on the One True God, reflecting acceptance of the contemporary reality where marriages between individuals of different religions can occur. This is in accordance with the *maqasid* approach which recognizes changes in society and adapts the law to those realities.

Balance Between Religion and Humanity: Although the Plaintiffs renounce religious beliefs that prohibit interfaith marriages, the decision appears to try to strike a balance between religious and humanitarian values. This is in line with the *maqasid* view that the law should consider religious values while ensuring the protection of individual rights.²⁸

Protection of Human Rights: The judge's decision can be considered a protection of human rights, including the right to marry and choose a life partner without discrimination based on religion or belief. This reflects the *maqasid* approach that prioritizes the protection of human rights in the context of marriage.

Thus, this has alignment with *maqasid shariah* developed by Jasser Auda in his book entitled "*maqasid shariah* as Philosophy of Islamic Law: A Systems Approach" with the aim of overhauling traditional views that limit the scope of *ijtihad*. This highly influential work emerged as an approach that is relevant to the conditions of modern times and seeks to answer contemporary problems faced by Muslims.

The change in outlook from the earlier *maqasid* theory to the new *maqasid* theory can be found in its scope and orientation. The older *maqasid* theory focused more on protection and preservation, while the newer *maqasid* theory emphasizes more on development and rights. In an effort to develop the *maqasid* concept in this millennial era, Jasser Auda proposes several foundations for formulating laws by considering the human development index and human development targets that have been set and designed by world organizations such as the United Nations.

In the case of interfaith marriage, it basically has a relationship with *hifdz nasl* and *hifdz din* at the same time. *Hifdz nasl* can be seen in the marriage relationship, while *hifdz din* can be seen in the debate about whether it is permissible to marry someone of a different religion. If we look at *maqasid* from the perspective of the classical meaning, it is clear that the aspect of *hifdz din* in this case cannot be achieved. However, when looking at this from the perspective of the new meaning of *maqasid shari'ah*, these two aspects are clearly still covered in *maqasid shari'ah*. Protecting religion in the new interpretation does not only mean the narrow religion of Islam, but more than that respect and freedom for all beliefs become the spectrum of *hifdz din*. In other words, *maqasid sharia hifdz din* requires no coercion of certain individuals or groups to leave their old beliefs and enter new beliefs.

This is because classical *maqasid* has an orientation that focuses more on prevention efforts, while the contemporary *maqasid* approach proposed by Jasser Auda emphasizes more on the development and protection of human rights. This is in line with the demands and problems faced by Muslims today. In addition, if classical *maqasid* focuses more on individual aspects, contemporary *maqasid* expands its scope to social and community aspects.

This is due to the fact that efforts to prevent violations of the law can be less effective or even useless if human resources are not developed. Moreover, in the context of increasingly

²⁸ Slamet Firdaus, "AL-QUR'AN DAN PEMBANGUNAN LINGKUNGAN BERKELANJUTAN DI INDONESIA: ANALISIS MAQASHID SYARIAH UNTUK PENCAPAIAN SDGs," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 7, no. 2 (26 Oktober 2022): 128, <https://doi.org/10.24235/jm.v7i2.11594>.

modern times, with the loss of territorial boundaries in terms of technology and information that have an impact on the social and cultural aspects of human beings, law, including Islamic law, needs to adapt to the changing times without ignoring the existing principles of Islamic law.

Jasser Auda does not reject or set aside the classical *maqasid* Sharia principles. Instead, he criticizes it and then develops it into a more universal, holistic, humanity-oriented, and systematically structured *maqasid* concept. In essence, the concept proposed by him includes the principles of classical *maqasid*, but emphasizes contemporary aspects that he believes are more relevant and effective.

D. CONCLUSION

In the Decision of the Judge of the Surabaya District Court, Decision Number 916/Pdt.P/2022/Pn.Sby, regarding different religion marriages, the judge's consideration is grounded in the principles of human rights, freedom, and the recognition of contemporary societal realities. The decision aligns with Jasser Auda's *maqasid syariah* perspective, which seeks to adapt Islamic law to the changing times and address contemporary issues. In this case, the judge emphasizes that Law No. 1/1974 does not explicitly regulate marriages between individuals of different religions. The Supreme Court's Decision No. 1400 K/Pdt/1986 further supports this view by stating that differences in religion do not prohibit marriage. Additionally, Government Regulation No. 9/1975 lacks specific articles on interfaith marriages. From the perspective of *maqasid syariah*, this reflects a commitment to protecting individual human rights, allowing freedom of choice in selecting a life partner regardless of religious differences. The decision acknowledges the equal treatment of citizens before the law, in line with Article 27 of the 1945 Constitution, emphasizing the right to marry a fellow citizen irrespective of religious or belief differences. It also aligns with Article 29 of the 1945 Constitution, which guarantees the freedom of citizens to practice their respective religions or beliefs. Moreover, Law No. 39/1999 on Human Rights underscores the right of every person to marry and form a family in accordance with their free will. The decision prioritizes human rights, human development, and overall well-being, which are essential components of Jasser Auda's contemporary *maqasid* concept. Furthermore, the judge's consideration reflects a balance between religious values and humanitarian principles. The decision recognizes the contemporary reality of diverse religious and belief systems, allowing for interfaith marriages while respecting individual rights. The acknowledgment of sociological and human rights perspectives in this decision is consistent with Jasser Auda's *maqasid* framework, which combines Islamic principles with universal values, including human rights. It represents a more inclusive and adaptable approach to Islamic law, ensuring the law's relevance and effectiveness in addressing modern challenges. In conclusion, the Decision of the Surabaya District Court reflects a *maqasid syariah* perspective that seeks to harmonize Islamic legal principles with the evolving needs and rights of contemporary society, especially in the context of interfaith marriages. This approach prioritizes human rights, individual freedoms, and societal realities while respecting the principles of Islamic law, ultimately providing a balanced and relevant legal framework.

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