



# Analyzing Court Decisions On Interfaith Marriage: A Maqāṣid Al-Shari'ah Perspective

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## Abstract

The purpose of this study is to analyze the court's determination on interfaith marriage, namely determination number 916/Pdt.P/2022/PN. Sby and number 71/Pdt.P/2017/PN. Blah. This research uses qualitative methods with a juridical normative approach. The data in this study is digital data. The results of this study show a different interpretation of Article 2 paragraph (1) of the Marriage Law. The Surabaya District Court's decision interpreting Article 2 paragraph (1) of the Marriage Law as a religious difference is not a prohibition to hold a marriage. There was a legal vacuum that caused judges to use the explanation of Article 35 (a) of the Population Administration Law to allow interfaith marriages and Article 10 paragraph (3) of PP No. 9 of 1975 to provide a basis for the implementation of interfaith marriages. The decision of the Blora District Court interprets Article 2 paragraph (1) to consider the validity of marriage based on the religion of each applicant. The results of the analysis based on the theory of maqāṣid al-shari'ah initiated by Jamaluddin Athiyah showed that the determination of the Surabaya District Court was not guarded while the determination of the Blora District Court showed guard. Analysis based on the methodology of Islamic law, maqāṣid al-shari'ah initiated by Jasser Auda shows that both determinations do not fully meet the standards of the system approach.

**Keywords:** Interfaith Marriage, Court Order, Maqāṣid Al-Shari'ah

## Abstrak

Tujuan penelitian ini untuk menganalisis penetapan pengadilan tentang perkawinan beda agama yaitu penetapan nomor 916/Pdt.P/2022/PN. Sby dan nomor 71/Pdt.P/2017/PN. Bla. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif yuridis. Data dalam penelitian ini merupakan data digital. Hasil penelitian ini menunjukkan adanya perbedaan penafsiran akan Pasal 2 ayat (1) UU Perkawinan. Penetapan Pengadilan Negeri Surabaya menafsirkan Pasal 2 ayat (1) UU Perkawinan sebagai perbedaan agama bukanlah larangan untuk melangsungkan perkawinan. Sehingga terjadi kekosongan hukum yang menyebabkan hakim menggunakan penjelasan Pasal 35 (a) UU Administrasi Kependudukan untuk mengizinkan perkawinan beda agama dan Pasal 10 ayat (3) PP No. 9 Tahun 1975 untuk memberikan dasar pelaksanaan perkawinan beda agama. Penetapan Pengadilan Negeri Blora menafsirkan Pasal 2 ayat (1) untuk mempertimbangkan keabsahan perkawinan berdasarkan agama masing-masing pemohon. Hasil analisis berdasarkan teori maqāṣid al-syari'ah yang digagas oleh Jamaluddin Athiyah menunjukkan penetapan dari Pengadilan Negeri Surabaya tidak ada penjagaan sedangkan penetapan dari Pengadilan Negeri Blora menunjukkan penjagaan. Analisis berdasarkan metodologi hukum Islam, maqāṣid al-syari'ah yang digagas oleh Jasser Auda menunjukkan kedua penetapan tidak sepenuhnya memenuhi standar *system approach* tersebut.

**Kata Kunci:** Perkawinan Beda Agama, Penetapan Pengadilan, Maqāṣid Al-Syari'ah

## Introduction

Over the past five years, interfaith marriage has become a widespread phenomenon and even a trend among young people. However, this does not mean that the practice of interfaith marriage is not a problem because this marriage tends to be controversial. Marriage is not only seen as a worldly ritual but also seen as a sacred event influenced by the beliefs of each human being. So such a practice of marriage must again question how religion regulates its practice.

The Indonesian state also agrees with the principle that the implementation of marriage must still be subject to the provisions of the religious teachings adhered to. This is stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage and Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage.<sup>1</sup>

Some religions in Indonesia reject interfaith marriage, such as Islam which in its law stipulates that interfaith marriages are allowed with women of the Book, and what is prohibited is marriage between Muslim men with polytheists and Muslim women with polytheistic men or people of the book. However, the existence of the people of the book itself is still doubtful, so in Indonesia through the MUI Fatwa interfaith marriage is prohibited. In addition to the MUI fatwa mentioned the prohibition of interfaith marriage in Indonesia is also stated in the Compilation of Islamic Law, namely in Articles 40 letters c and 44.<sup>2</sup>

Relatively, the Constitutional Court categorically rejected the practice of interfaith marriage through several submissions for judicial review of several articles in Law Number 1 of 1974 concerning Marriage in Constitutional Court Decision Number 68/PUU-XII/2014<sup>3</sup> and Constitutional Court Decision Number 24/PUU-XX/2022. However, regulations related to interfaith marriage in Indonesia are contradictory. If you look at Article 21 of Law Number 1 of 1974 concerning Marriage juncto Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration provides a loophole to become the legal basis for the implementation of interfaith marriage.

Juncto with the explanation of Article 35 letter (a) of Law Number 23 of 2006 concerning Population Administration which states that marriages determined by the court are marriages carried out by people of different religions. These articles automatically override other statutory provisions, namely Article 2 and Article 8 letter (f) of Law Number 1 of 1974 and the Supreme Constitutional Court Decision.

According to the Supreme Court Decision Directory website, there were 15 cases of interfaith marriage applications during 2022, but interestingly, this is the first time the Surabaya District Court has determined the permissibility of interfaith marriage and this decision has caused various responses from the public. The provisions mentioned were used as one of the judge's considerations in the case of an interfaith marriage application with Number 916/Pdt.P/2022/PN. Sby. The Surabaya District Court on April 26, 2022, allowed interfaith marriages between RZ who is Muslim, and EDS who is Christian.

Whereas previously in 2017, reported from the Supreme Court Decision Directory website, there was a determination similar to the Surabaya District Court's determination, namely the

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<sup>1</sup> Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam," *Media Syari'ah* 22, no. 1 (2020): 48, doi:10.22373/jms.v22i1.6719.

<sup>2</sup> Srimurhayati Nurcahaya, Mawardi Dalimunthe, "Perkawinan Beda Agama Perspektif Hukum Islam," *Hukum Islam* 15, no. 2 (2018): 141-56, doi:10.54090/mu.19.

<sup>3</sup> Abdul Jalil, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Andragogi: Jurnal Diklat Teknis Pendidikan Dan Keagamaan* 6, no. 2 (2018): 46-69, doi:10.36052/andragogi.v6i2.56.

determination of interfaith marriage issued by the Blora District Court with Number 71 / Pdt.P / 2017 / PN Bla. Interestingly, the application for interfaith marriage filed by NO who is Muslim, and YES who is Christian, was rejected entirely by the court with the same legal consideration, namely Article 2 paragraph (1) of the Marriage Law, but interpreted differently by the judge. This determination then also went through the cassation stage with determination number 1977/K/Pdt/2017 where the application was also rejected because *the judex facti* did not misinterpret Article 2 paragraph (1) of the Marriage Law.<sup>4</sup>

In terms of interfaith marriage, many studies have studied it, for example, Peni Rinda Listyawati<sup>5</sup>, Zaidah Nur Rosidah<sup>6</sup>, Zalma Afika Nandapratwi<sup>7</sup>. However, the difference between this study and previous studies lies in the use of different designations. Both of these determinations were chosen because there was a use of the same article but interpreted by the judge differently, this is the appeal of this study. Therefore, this study aims to find out how the determination of the two rulings.

The theory of *maqāṣid al-syarī'ah* in this study was used to discuss various data findings. The theory of *maqāṣid al-syarī'ah* used is the theory presented by Jamaluddin Athiyah who is a scholar of *maqāṣid al-syarī'ah*. The theory, especially on *maqāṣidul usro*, is used by researchers to discuss findings related to the establishment of interfaith marriage. In addition, researchers also use the theory of *maqāṣid al-syarī'ah* presented by Jasser Auda who is a Muslim intellectual figure. The methodological theory of Islamic law, namely *the system approach*, is used by researchers as an analytical tool for the two determinations of interfaith marriage. This research is very important to become literature in development in resolving cases of applications for the legalization of interfaith marriage, as well as being taken into consideration for the development of clear and harmonized regulations related to interfaith marriage.

## Method

This study used qualitative research. This research will also be more inclined to juridical normative research. This research uses a case approach, a statutory approach, and a conceptual approach.

The data obtained is digital data directly from the website of the Supreme Court of the Republic of Indonesia which refers to the determination of the Surabaya District Court and Blora District Court, namely a copy of the Determination Study Number 916 / Pdt.P / 2022 / Pn. Sby and Determination Number 71 / Pdt.P / 2017 / Pn Bla. In addition, relevant secondary and tertiary data were also used in this study.

In this study, the technique used is by documentation. The primary data collection technique of this study uses how to find related decisions in the Surabaya District Court and Blora District Court. Furthermore, secondary and tertiary data collection techniques were obtained from literature borrowed from online and offline libraries, and purchased in bookstores and journals and legal articles from other media related to interfaith marriage and *maqāṣid al-syarī'ah*. To analyze existing data using content analysis, comparative analysis, and critical analysis methods.

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<sup>4</sup> Mahkamah Agung Republik Indonesia, Penetapan Nomor: 1977 K/Pdt/2017 (n.d.).

<sup>5</sup> Peni Rinda Listyawati, Indah Setyowati, and Latifah Hanim, "LEGAL ANALYSIS OF THE REJECTION REGISTRATION INTERFAITH MARRIAGES," *International Jurnal of Law Reconstruction* 4, no. 2 (2020): 110–23, <http://dx.doi.org/10.26532/ijlr.v4i2.11265>.

<sup>6</sup> Zaidah Nur Rosidah, Lego Karjoko, and Mohd Rizal Palil, "The Government's Role in Interfaith Marriage Rights Protection: A Case Study of Adjustment and Social Integration," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 265–87, doi:10.53955/jhcls.v3i2.105.

<sup>7</sup> Zalma Afika Nandapratwi, Anjar Sri Ciptorukmi Nugraheni, and Andina Elok Puri Maharani, "A Juridical Analysis of Abroad Interfaith Marriage's Position in Indonesia's Law," *Interdisciplinary Social Studies* 1, no. 10 (2022): 1242–49, doi:10.55324/iss.v1i10.230.

## Interfaith Marriage

*Interfaith marriage* or interfaith marriage is an inner birth bond between two people, a man and a woman of different religions which results in the union of two different rules regarding the terms and procedures for their implementation according to their respective religions intending to form an eternal and happy family.<sup>8</sup> According to some jurists, such as Abdurrahman, interfaith marriage is defined as a marriage of two people who believe in two different religions. I Ketut Artadi and I Ketut Mandra also said that this marriage is a relationship between the birth and mind of a man and woman accompanied by differences in beliefs between the two, and live a marriage by sticking to each other's beliefs but having the same goal of building a happy and lasting family with a divine basis.<sup>9</sup>

The provisions regarding interfaith marriage in Law No. 1 of 1974 concerning Marriage are contained in Article 2 paragraph (1) and are further strengthened by Article 8 letter (f) which stipulates that marriage is carried out with the provisions of the religious provisions of the prospective spouse and if indeed in that religion prohibits marriage, the state also prohibits the marriage.<sup>10</sup>

However, some provisions open up opportunities for the legalization of interfaith marriages as in Article 2 paragraph (2) of the Marriage Law.<sup>11</sup> In addition, article 35 letter a of Law Number 23 of 2006 concerning Administration also states in its explanation that what is meant by marriage determined by the court is marriage between people of different religions.<sup>12</sup> One of the jurisprudence in Supreme Court Decision Number 1400K / Pdt / 1986 granted the marriage request of a man and a woman of different religions in consideration of Article 35 of the Administrative Law.<sup>13</sup>

However, regulatively, interfaith marriage in Indonesia is strictly prohibited. The Constitutional Court has several times submitted for judicial review several articles in Law Number 1 of 1974 concerning Marriage. One of them is in Constitutional Court Decision Number 68/PUU-XII/2014. In the judgment, the plaintiff rejected the ammar filed because the provisions in the Marriage Law had accommodated all the realities of life in society.<sup>14</sup> In line with this decision, the latest in Constitutional Court Decision Number 24/PUU-XX/2022 also rejected the application for judicial review of some articles in Law Number 1 of 1974 concerning Marriage in its entirety.

In Islam, the explanation of interfaith marriage in classical literature is not specifically explained. The classical literature only describes women who are haram to marry or marriages that are haram to perform. In this regard, classical fiqh literature divides interfaith marriage into three types, namely:<sup>15</sup>

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<sup>8</sup> Listyawati, Setyowati, and Hanim, "LEGAL ANALYSIS OF THE REJECTION REGISTRATION INTERFAITH MARRIAGES."

<sup>9</sup> Tinuk Dwi Cahyani, *Hukum Perkawinan* (Malang: Penerbit Universitas Muhammadiyah Malang, 2020).

<sup>10</sup> Nurlizam Nurlizam, "Pernikahan Beda Agama Dalam Perspektif Al-Quran Dan Hukum Positif Di Indonesia," *Jurnal Ulunnuha* 8, no. 2 (2020): 267–90, doi:10.15548/ju.v8i2.1258. 1

<sup>11</sup> Albert Tanjung, "Legalitas Penyelundupan Hukum Pada Perkawinan Beda Agama Berdasarkan Hukum Positif Dan Receptio A Contrario," *National Journal of Law* 1, no. 1 (2019): 52. 8

<sup>12</sup> Fakhurrazi M. Yunus and Zahratul Aini, "Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)," *Media Syari'ah* 20, no. 2 (2020): 138, doi:10.22373/jms.v20i2.6512.

<sup>13</sup> Sindy Cantonia, Dan Ilyas, and Abdul Majid, "Dan Hak Asasi Manusia (Juridical Review on Interfaith Marriage in Indonesia in the Perspective of Marriage Law and Human Rights)," *Jurnal Hukum Lex Generalis* 2, no. 6 (2021): 510–27, <https://jhlg.rewangrencang.com/>.

<sup>14</sup> Jalil, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia."

<sup>15</sup> Amri, "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam."

1. Marriage between a Muslim man and a polytheistic woman
2. Marriage between a Muslim man and a woman of the Book
3. Marriage between a Muslim woman and a non-Muslim man (be it a polytheist or a man of the book)

Interfaith marriage is also explained in this KHI in Article 40 Letter C and Article 44 of the KHI. Both articles explicitly prohibit interfaith marriages between Muslim men and non-Muslim women and Muslim women with non-Muslim men.<sup>16</sup> The fatwa of the Indonesian Ulema Council expressly forbids marriage between a Muslim and a non-Muslim (both *ahl al-Kitab* and *non-ahl kitab*). The consideration of issuing the fatwa is because interfaith marriage will cause greater *mafsadat* than *maslahat*.<sup>17</sup> The reaffirmation of the MUI fatwa in 1980 was carried out through the issuance of another MUI Fatwa, namely MUI Fatwa Number: 4/Munas VII/MUI/8/2005 concerning Interfaith Marriage. The fatwa contained no significant difference from the 1980 fatwa, which still prohibits interfaith marriage so the marriage is not valid either. This fatwa further clarifies that the marriage of a Muslim man with a woman of the Book is haram and invalid.<sup>18</sup>

### Court Determination

If in a trial the applicant only asks for a determination instead of a verdict or justice from the judge, then the case is referred to as a petition case. Application cases are usually filed based on unilateral interests that are pure free and absolute one party (*ex-parte*) so that no third party is drawn as an opponent.<sup>19</sup> The application case is not caused by a dispute, so the judge is only a state administrative officer who provides his services to issue a determination most commonly called a *declaratoir decision*.<sup>20</sup>

One of the things that must be in a decision or determination is the basis for the judge's consideration. The judge's consideration is the soul and essence of a determination that contains analysis, argumentation, opinion, or conclusion from the Panel of Judges who examine the case. This judge's consideration needs to be addressed properly, thoroughly, and carefully. If this is not done, the judge's decision derived from the judge's judgment will be annulled by the High Court or Supreme Court.<sup>21</sup>

Furthermore, the judge must also give a judgment in every decision or determination he makes. Amar ruling/determination is an important term that exists in the legal world. Amar judgment/determination is a judgment handed down by a judge. Determination is the settlement of cases in voluntary courts.<sup>22</sup> This determination itself is in the form of a court decree containing the dictum for the settlement of the application.

### Maqāṣid Al-Syarī'ah

Imam ash-Shaitibi popularly referred to as the Father of *maqāṣid al-syarī'ah* never mentioned the definition of *maqāṣid al-syarī'ah* terminologically. He only said that the purpose of the *Shari'ah* is actually to bring about the benefit of the world and the Hereafter of man, or the laws decreed for the

<sup>16</sup> Nurcahaya, Mawardi Dalimunthe, "Perkawinan Beda Agama Perspektif Hukum Islam."

<sup>17</sup> Ayub Mursalin, "Legalitas Perkawinan Beda Agama : Mengungkap Disparitas Putusan Pengadilan Di Indonesia," *Undang Jurnal Hukum* 6, no. 1 (2023): 113–50, doi:10.22437/ujh.6.1.113-150.

<sup>18</sup> Ibnu 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 (2021): 116, doi:10.30868/at.v6i01.1337.

<sup>19</sup> Elza Syarief, *Praktik Peradilan Perdata* (Jakarta Timur: Sinar Grafika, 2020). Thing. 4-5

<sup>20</sup> Ny Retnowulan dan Iskandar Oeripkartawinata Sutantio, *Hukum Acara Perdata Dalam Teori Dan Praktek (Edisi Revisi)* (Bandung: CV. Mandar Maju, 2019).

<sup>21</sup> Mukti Arto, *Praktek Perkara Perdata : Pada Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 2011).

<sup>22</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2009).

welfare of man.<sup>23</sup> Maslahat itself has a classification that has an order of levels. These levels start from the basic/primary rank (*dharuriyyat*), then the needs / secondary level (*hajjiyyat*), and finally the complementary/tertiary level (*tahsiniyyat*). The sorting of these levels is seen from the level of importance.<sup>24</sup>

The level of benefit that is needed by humans is *dharuriyyat* which aims to realize in real life and guard against its existence.<sup>25</sup> The level of *dharuriyyat* should be centered on five points of benefit, namely religious benefit (*hifz al-din*), mental benefit (*hifz al-nafs*), hereditary benefit (*hifz al-nasl*), the benefit of reason (*hifz al-aql*), and wealth (*hifz al-mal*).<sup>26</sup> Al-Hajjiyah is the level of human life needs to him which is not at the level of *dharuriyyat*. These needs are supporting needs (secondary) or needed in benefit, namely to avoid difficulties and if not fulfilled the consequences do not damage human life.<sup>27</sup> While *al-tahsiniyyah* is a human need to perfect something and make it more beautiful and full of authority. In essence, this need, if not obtained by man, will not damage the order of his life nor complicate his life.<sup>28</sup>

#### a. *Maqāṣid al-Syarī'ah* Jamaluddin Athiyah

One of the Muslim thinkers who discussed *Maqāṣid Ushrah* was Jamaluddin Athiyah. In terms of the scope of the family initiated by Jamaluddin Athiyah, the state is obliged to eradicate all forms of deviations against it such as adultery and everything that triggers it.<sup>29</sup> In this case Jamaluddin Athiyah divided it into *tanzim al-'alaqab baina al-jinsain* (maintaining the relationship between men and women), *hifz al-nasl* (nurturing offspring), *tahqiq al-sakinah wa al-mawaddah wa al-rahmah* (realizing a sense of tranquility, love, and affection), *hifz al-nasab* (maintaining nasab), *hifz al-tadayyun fi al-usrah* (maintaining diversity in the family), *tanzim al-janib al-mu'assasi li al-usrah* (managing the basic aspects of the family), *tanzim al-janib al-mali* (managing family finances).<sup>30</sup>

#### b. *Maqāṣid al-Syarī'ah* Jasser Auda

Jasser Auda was a Muslim thinker born in Egypt. He actively propagated *Maqāṣid Al-Sharī'ah* as one of the solutions to the methodological problems of Islamic law presented in his work as a result of his fascination with international terrorists claiming to be Muslims.<sup>31</sup>

In his work entitled *How do we realize Maqāṣid Al-Sharī'ah in the Shariah*, Jasser Auda quotes the opinion of Ibn Ashur in explaining *Maqāṣid Al-Sharī'ah*, he explains that *Maqāṣid Al-Sharī'ah is the objective or purposes or intents or ends or principle behind the Islamic rulings which found expression in the Islamic philosophy or theory or fundamentals of law in various ways*. The laws in

<sup>23</sup> Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 22, no. 1 (2020): 52–70, doi:10.24252/jumdpi.v22i1.15534.

<sup>24</sup> Musolli Musolli, "Maqasid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (2018): 60–81, doi:10.33650/at-turas.v5i1.324.

<sup>25</sup> Nasitotul Janah and Abdul Ghofur, "Maqashid As-Ayari'ah Sebagai Dasar Pengembangan Ekonomi Islam," *International Journal Ihyā' 'Ulum Al-Din* 20, no. 2 (2018): 167–92, doi:10.21580/ihya.20.2.4045.

<sup>26</sup> Ibid.

<sup>27</sup> Abdul Helim, *Maqasid Syariah versus Ushul Fiqh (Konsep Dan Posisinya Dalam Metodologi Hukum Islam)* (Yogyakarta: Pustaka Pelajar, 2019).

<sup>28</sup> Busyro, *Pengantar Filsafat Hukum Islam* (Jakarta: Kencana, 2020).

<sup>29</sup> Muhammad Nanda Fanindy, "Formulasi Maqasid Syariah Perspektif Jamaluddin Athiyah," *Islamitsch Familierecht Journal* 1, no. 01 (2020): 23–45, doi:10.32923/ifj.v1i01.1489.

<sup>30</sup> Busriyanti, "Maqasid Al-Syari'ah Dalam Penegakkan Hukum Lalu Lintas Di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (2021): 69–84, doi:10.29240/jhi.v6i1.2470.

<sup>31</sup> Sulhan Hamid A. Ghani, "Paradigma Jasser Auda Tentang Maqashid Al Syari'ah," *Jurnal Paradigma* 7, no. 1 (2019): 1–28.

question include *al-masalih al-ammah*, *al-masalih al-mursalah*, *mafsadah*, *al-hikmah*, *munasabat al-qiyas*, *asl al-istihsan*, *asl al-istishab*, and others.<sup>32</sup>

One of the systems presented by Jasser Auda is the System *approach* or system approach is a unity in which there are systems and subsystems whose features can influence each other and determine the way these subsystems communicate with their internal environment or with their external environment. Jasser Auda himself uses six system features as an analysis tool,<sup>33</sup> including *cognitive nature*, *wholeness* or *holistic*, *openness* and *self-renewal*, *interrelatedness*, *multi-dimensionality*, and *purposefulness*.<sup>34</sup>

## Research Results

### 1. Judge's Consideration of Surabaya District Court Judge's Determination Number: 916/Pdt.D/2022/PN. Sby<sup>35</sup>

In this case, the case of his position is briefly described by the author, namely in the Surabaya District Court there is a civil case for an application for interfaith marriage in which the parties are RA, who is a man, born on April 28, 1986, and is Muslim, so that subsequently RA is called Applicant I. Applicant II is a woman named EDS who was born on May 12, 1991 and is a Christian.

The judge's consideration by explaining Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage *juncto* Government Regulation Number 9 of 1975. In this case, the judge used the jurisprudence of Supreme Court Decision Number 1400 K / Pdt / 1986 dated January 20, 1989. These two provisions according to the judge cannot be used in considering this case, because the Petitioners are each of different religions, while this provision is reserved for those of the same religion. So it can be understood here that the judge agrees with the Jurisprudence already mentioned that the marriage between the Petitioners i.e. RA and EDS of different religions cannot use the mentioned laws and government regulations.

Furthermore, the judge also used Article 35 Letter A of Law Number 23 of 2006 concerning Population Administration. The use of this article is because only this article regulates its relation to interfaith marriage. This is precisely explained in the explanation of Article 35 letter A which states that the purpose of marriage determined by the court is interfaith marriage.

The judge also mentioned related to Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage. This was mentioned by the judge as the basis that interfaith marriage itself is not prohibited if it is based on the above provisions. So the judge connected this provision with the explanation of Article 35 letter a of Law Number 23 of 2006 concerning Administration which was also mentioned above as a further consideration that the Surabaya District Court has the right to examine and also decide the case of the application for interfaith marriage submitted by the Applicants.

So the judge concluded from several legal arguments that had been mentioned based on juridical facts revealed in the trial that the wishes of the Petitioners were not prohibited under

<sup>32</sup> Jasser Auda, "How Do We Realise Maqasid Al-Shariah in the Shariah," Retrieved June, 2018, 1–26, <https://www.jasserauda.net/portal/wp-content/uploads/2016/12/4.pdf>.

<sup>33</sup> Hawa' Hidayatul Hikmiyah, Ahmad Faisol, and St Sariroh, "Implikasi Larangan Pernikahan Tunagrahita Berat Perspektif Maqasid Shariah Jaser Auda," *Ijlil* 1, no. 3 (2021): 236–62, doi:10.35719/ijl.v1i3.85.

<sup>34</sup> Alivermana Wiguna, *Memahami Maqashid Al-Syari'ah Perspektif Khaled M. Abou El Fadl Dan Jasser Auda* (Yogyakarta: Penerbit Deepublish, 2022).

<sup>35</sup> Mahkamah Agung Republik Indonesia, Penetapan Nomor: 916/Pdt.P/2022/PN SBY (2022).

Law Number 1 of 1974 concerning Marriage. In fact, according to the judge, marriage is the human right of the Petitioners as citizens and the right of the Petitioners to defend their respective religions.

Regarding the marriage procedure, the judge argued that the use of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage regarding the validity of marriage carried out in a religious or belief manner, in the case could not be carried out by the Petitioners. The judge then mentioned Article 10 paragraph (3) of Government Regulation Number 9 of 1975 as his argument as to what procedures the Petitioners could take in constituting their marriages. In the determination with Number 916/Pdt.P/2022/PN. Sby Amar the judgment explained that the judge granted the petitioners' application in its entirety.

## **2. Judge's Consideration of the Blora District Court Judge on Determination Number: 71/Pdt.D/2017/PN. Blah**<sup>36</sup>

In this case, the case of his position can be briefly elaborated, in the Blora District Court there is a civil case of interfaith marriage application in which his party is Applicant I, namely NO who was born on October 7, 1979, and is a Muslim woman. Applicant II is YES, a man born on January 25, 1980, and a Christian.

The judge mentioned Article 1 of Law Number 1 of 1974 concerning Marriage to categorize this case as the same as the marriage case. Furthermore, the judge gave consideration related to legal arguments by mentioning Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage to specialize this case into interfaith marriage cases.

In explaining the Islamic side of religion, the judge argued based on QS. Al-Baqarah verse 221 In addition, the judge also mentioned Article 44 of the Compilation of Islamic Law to strengthen his legal argument. Meanwhile, in explaining the Christian side, the judge argued based on the testimony of witness Yanto Pandagian who is a pastor at GBI Arumdaluh Church, Blora Regency. He argued that Christianity does not permit interfaith marriage, but if the Petitioners persist then it is permissible to perform the marriage by relinquishing religious attributes that are not attributes of Christianity.

The judge further concluded on the consideration of his legal arguments which with the juridical fact that the Petitioners wanted to continue to profess their respective religions where Petitioner I was Muslim and Applicant II was Christian. Therefore, Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage also becomes a barrier to the implementation of this interfaith marriage. This is because if traced to Islam and Christianity, both do not allow interfaith marriage.

In the determination with Number 71 / Pdt.P / 2017 / PN. Bla Amar's injunction explained that the judge dismissed the petitioners' application in its entirety.

### **Discussion**

#### **1. Analysis of Judges' Considerations in the Determination of Interfaith Marriage of Surabaya District Court *Maqāsid Al-Syari'ah* Perspective**

In the legal argument submitted by the judge that Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage *juncto* Government Regulation Number 9 of 1975 which is based on the jurisprudence of Supreme Court Decision Number 1400 K / Pdt / 1986 dated January 20, 1989, which was later interpreted by the judge with both provisions according to the judge cannot be used in considering this case, because the Petitioners are of different religions, while this provision is reserved for those of the same religion. In addition, the Judge also mentioned related to Article 8 letter (f) which is interpreted that religion itself is not a prohibition if it is based on

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<sup>36</sup> Mahkamah Agung Republik Indonesia, Penetapan Nomor: 71/Pdt.P/2017/PN Bla. (2017).



the above provisions. So it can be understood that the two legal arguments presented by this judge do not consider the religion of each of the Petitioners, namely Islam and Christianity.

In addition, the judge in considering the marriage procedures that can be carried out by Petitioners with different beliefs based their arguments on Article 10 paragraph (3) of Government Regulation Number 9 of 1975. In addition, the judgment decided by this judge, not only stipulates the recording but also to carry out the marriage at the Surabaya City Population and Civil Registration Office.

Such considerations are contrary to the provisions in QS. Al-Baqarah verse 221, Fatwa MUI, as well as Article 40 letter c of the Compilation of Islamic Law. In the author's opinion, it can be concluded that the judge did not pay attention to the religious law of each of the Petitioners and also did not pay attention to the *mafsadat* that can occur from marriages performed by the Petitioners. So this determination both in terms of consideration, *legal reasoning*, and Amar determination does not meet the care of religion in the family (*hifz al-tadayyun fi al-usrah*) as referred to by Jamaluddin Athiyah.

Further related to *hifz al-nasl*, it is stipulated that the Petitioners be able to carry out their marriages by the judge to be able to produce children. In his ruling, the Judge granted permission to the petitioners, the Petitioners to perform interfaith marriages before the Surabaya Municipal Population and Civil Registration Office Officials.

Further concerning *hifz al-nasab*, if you look at the juridical facts revealed in the trial that Applicant I, namely RA, is Muslim, and Applicant II, namely EDS, based on the provisions initiated by the MUI and KHI Fatwas which say that their marriage is considered null and invalid. This is because, in the above provisions, Muslim men are prohibited from marrying non-Muslim women. So in this case, if the Petitioners have conjugal relations then the law is haram. This also ultimately results in the child's relationship with his parents, namely if the father is a Muslim while the mother is non-Muslim, then if the child cannot choose the religion he wants to follow, the child will be considered to follow the religion of his father. However, if later the child chooses not to follow the religion of his father or follow his mother's religion or other religions outside the religion of both parents, then this child will be cut off from his Muslim parents.

In the case of *maqāsid al-syarī'ah* initiated by Jasser Auda in his first legal methodology, cognitive *nature*. The existing conflict is related to the use of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage *juncto* Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage, both of which are interpreted by the judge not as a barrier to the occurrence of interfaith marriage. This is contrary to the decision of the Blora District Court judge who interpreted the law as a way to look at the applicant's religion.

Furthermore, based on the determination of the application for interfaith marriage at the Surabaya District Court, the judge's consideration did not even consider the religious law of each Applicant, only considering its relation to juridical law and morals. So that the *wholeness* or *holistic* system initiated by Jasser Auda in his renewal of *maqāsid al-syarī'ah* did not materialize.

If *multi-dimensionality* is implied in the determination of interfaith marriage determined by the Surabaya District Court judge from using only juridical and moral considerations. So if it is equated, in the writer's opinion, this determination is not entirely the same as the thought initiated by Jasser Auda, namely modern thinking with *multi-dimensional*.

Regarding *purposefulness*, the basis for judges' considerations, legal reasoning, and Ammar this determination does not at all maintain religious faith (preserving faith) and guard against offspring on the part of the child's fate.

## **2. Analysis of Judges' Considerations in the Determination of Interfaith Marriage of the Blora District Court *Maqāsid Al-Sharī'ah* Perspective**

In his consideration, the judge mentioned Article 1 of Law Number 1 of 1974 concerning Marriage which the judge mentioned as the basis for his consideration that the case filed was a marriage case even though there were religious differences between the Petitioners. So even though this matter is a matter of interfaith marriage, if you look at the theory of *maqāṣid al-syarī'ah* initiated by Jamaluddin, the matter proposed is a matter that belongs to the realm of the family.

In essence, the guarantee of religion in the family (*hifz al-tadayyun fi al-usrah*) through marriage has been realized in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage. In this determination, the judge also used the provision to argue that the consideration of the validity of the marriage by the Petitioners took into account the juridical facts revealed during the trial. The judge then argued with the Islamic side of religion based on QS. Al-Baqarah verse 221 and Article 44 of the KHI, while on the Christian side, it is explained through the witness statement of Yanto Pandagian who is a pastor at GBI Arumdaluh Church, Blora Regency. Therefore, in this determination, the judge rejected the petition of the Petitioners in its entirety.

In the author's sparing, it can be concluded that the judge considered the religious law of each of the Petitioners. So the determination is Number 71 / Pdt.P / 2017 / PN. Bla has fulfilled the care of religion in the family (*hifz al-tadayyun fi al-usrah*) as intended by Jamaluddin Athiyah.

In the case of *maqāṣid al-syarī'ah* initiated by Jasser Auda in his first legal methodology, cognitive nature. In the writer's frugality, nature. The existing conflict is related to the use of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage *juncto* Article 8 letter (f) of Law Number 1 of 1974 concerning Marriage, both of which were interpreted by the judge of the Blora District Court as a barrier to the occurrence of interfaith marriage. This is contrary to the decision of the Surabaya District Court judge who interpreted the law as not a barrier to the occurrence of the marriage.

In addition, the use of Q.S Al-Baqarah paragraph 221 as the basis for the judge's argument against the validity of marriage and strengthened by Article 44 of the KHI does not cause conflict. Because basically in the view of Islamic jurists, marriage between a Muslim woman and a non-Muslim man (whether polytheist or bookmaker) is forbidden by Islam. This is finally in harmony with the *preserving of faith* in Jasser Auda's *maqāṣid al-Sharī'ah* theory.

If the *wholeness* system is applied to this determination, then this system has been applied by the judge. The judge not only based his judgment on Q.S. Al Baqarah verse 221 and KHI, but also considered this case from the side of Christianity by presenting the pastor's witness.

If the *multi-dimensional* system is implicated in the determination of interfaith marriage by the judge of the Blora District Court, it uses both juridical and legal considerations of the respective religions of the Petitioners even though it does not consider moral and sociological aspects. So if it is likened, in the writer's opinion, this determination is the same as the thought initiated by Jasser Auda, namely modern thinking with *multi-dimensional*.

Related to *purposefulness*, the basis for judges' considerations, legal reasoning, and the judgment of this determination of preserving faith can be seen from the consideration of religious law from both Islam and Christianity in this determination.

## Conclusion

The Surabaya District Court, however, granted the entire request. The basis for consideration used by the judge was the jurisprudence of Supreme Court Decision Number 1400 K / Pdt / 1986 according to which Article 2 paragraph 1 of the Marriage Law could not be used so that there was a legal vacuum. To fill the legal vacuum, the judge used Article 35 of the Population Administration Law. Article 8 letter (f) of the Law on Marriage is interpreted by judges of religious differences not

to prohibit marriage. Meanwhile, the Blora District Court in its decision rejected the application in its entirety. Article 2 paragraph (1) of the Marriage Law is used as the basis for the judge's argument to consider the validity based on the religion of the Petitioners.

In the case of *Maqāṣid Al-Syari'ah* by Jamaluddin Athiyah, the Surabaya District Court did not maintain *hifz al-tadayyun fi al-usrah* and *hifz-nasab*. The Blora District Court in terms of the family domain appointed the custody of *hifz al-tadayyun fi al-usrah* and *hifz al-nasl*. In *Maqāṣid Al-Shari'ah* by Jasser Auda in the cognitive nature of systems, the two have contradictions and justifications. The Surabaya District Court does not show a wholeness or holistic system, while the Blora District Court does. Openness and self-renewal in Surabaya District Court are visible, but Blora District Court is not visible. Both of these assignments also use *a multi-dimensional system*. Regarding *purposefulness*, the Surabaya District Court's determination did not show guarding, while the Blora District Court's determination showed.

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