

## The Validity of Interfaith Marriages According to MA No. 1400K/Pdt/1986 Perspectives on Islamic Jurisprudence

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### Abstract

*This research discusses the law on interfaith marriage according to the Supreme Court No. 1400K/Pdt/1986 and the perspective of Islamic jurisprudence. The method used in this research is the library research method, namely research by studying and analyzing data obtained from library sources such as books, papers, articles, journals and so on which relate to the law of interfaith marriage, so that you will get exact data. Then the data was copied and compiled into a thesis after careful research. The results of this research can be concluded that, the first: There is not a single regulation, be it religious regulations or legislation that allows or requires marriages of different religions. Because the Supreme Court decision No. 1400K/Pdt/1986, does not have strong legal legality as a legal source for interfaith marriages. The second: The law on interfaith marriage is divided into several parts from the perspective of Islamic jurisprudence, namely: The law is for Muslim men to marry women from people of the book, that is, most scholars tend to allow such marriages and some of them only consider it a harbinger. The law on marriage between Muslim men and polytheist women is that the scholars agree that it is forbidden for a Muslim man to marry a polytheist woman. The law for Muslim women marrying non-Muslim men is that Islamic legal experts consider this marriage to be prohibited by Islam, whether the prospective husband is from people of the book (Jews and Christians) or adherents of other religions who have holy books such as Hinduism and Buddhism or adherents of other religions. beliefs that do not have a holy book. Muslim women cannot marry men other than those of their religion, whether from the people of the book or others under any circumstances.*

**Keywords:** *validity of marriage; different religion; Islamic jurisprudence.*

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## Introduction

Marriage is something that Allah SWT really likes. Marriage is also the most important factor as one of the aspects of Indonesian society's life. By marriage, humans can create legitimate offspring in accordance with law and religion. Marriage is also a civil law, which every person must experience. Because Indonesia is a country of law, every citizen must comply with regulations and laws throughout the country, which are implemented appropriately and fairly.<sup>1</sup>

Among the decrees of Allah SWT is that humans are created in pairs and the conditions for halal relations between partners must be based on marriage. Marriage is to fulfill one's desires in a halal way and for the safety of the family in a state of love and affection between the couple. By carrying out a marriage, humans will get their desires in living a prosperous life, which in Islam is known as *sakinah mawaddah warahmah*, namely a calm and happy life. Allah SWT says in QS. al-Rum/30:2:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا  
لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ  
فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation:

"And among His signs (of His greatness) is that He created mates for you from among yourselves, so that you would be inclined and feel at ease

<sup>1</sup>R. Subekti, *Hukum Adat Indonesia dalam Yurisprudensi Mahkamah Agung*, (Cet. Bandung: Penerbit Alumni, 1991), h.105.

with them, and He made affection among you. Indeed, in this there are truly signs (of Allah's greatness) for those of you who think." <sup>2</sup>

Al-Qurtubi's interpretation of QS. al-Rum/30:21 above which is the foundation of an ideal family or household as well as the concept of the *sakinah* family itself is: وَمِنْ آيَاتِهِ namely some signs of the divinity and oneness of Allah SWT who created from earth. Namely creating the father of your descendants from the kind of soil (Prophet Adam).<sup>3</sup>

Basically, humans need a companion in their lives, both to perfect their religion, continue their descendants, share their love and affection, and to prevent them from falling into disobedience. Therefore, for religious followers, marriage bonds are not considered ordinary bonds, but are sacred in nature and contain religious teachings. For their followers, of course they cannot escape from the legal provisions regulated by religion and the laws of certain countries.

According to Islam, marriage is a strong sacred agreement to live together in happiness, safety, peace, tranquility and mutual love. Marriage is a human nature that must occur in life, as a means to bestow the love and

<sup>2</sup>Departemen Agama RI, *Alquran dan Terjemahannya* (Lajanan Pentashihan, 2019), h. 406.

<sup>3</sup>Abu Abdillah Muhammad bin Ahmad Al-Anshari Al-Qurtubi, *Al-Jami' lil Ahkam AlQuran*, juz 21, (Mesir: Dar Al-Ghad Al-Jadid, 2010), h. 411.

affection that God Almighty has given to His servants.<sup>4</sup>

There are many lessons and lessons that can be learned in carrying out a marriage, starting from building a new household, to caring for children. So all of this will be a physical and spiritual challenge for those who are married, between the joys and sorrows experienced by the couple. Therefore, people who are healthy in their minds and minds certainly want to build a household with the partner they like.

In trying to choose a partner, of course this is the right of those who want to get married, because marriage is intended to continue living together safely, happily and peacefully in the household. In the household, we have a role in molding and creating the seeds of a good generation for the future, so it is important to look for and choose a partner who is compatible, who is kind, has the same faith, and agrees in beliefs. On the religious side, everything regulates everything from finding a partner to getting married. For example, in Islam, one of the core teachings of Islam in finding a partner is based on one's religion. As in the hadith of Rasulullah SAW:

عن أبي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم قال "تُنكحُ المرأةُ لِأَرْبَعٍ لِمَاهَا،

وَلِحَسَبِهَا، وَجَمَالِهَا، وَدِينِهَا، فَاطْفَرُ بِذَاتِ الدِّينِ تَرَبَّتْ يَدَاكَ<sup>5</sup>

Meaning:

"From Abu Hurairah r.a, the Prophet SAW said: women are married because of four things: because of their wealth, because of their position, because of their looks, and because of their religion. So you should choose because of your religion so that you will be lucky."

In Syarah Bulugh al-Maram, this hadith states that men should choose women to marry based on one of these four things. And the final choice is to choose from the religious side. So Rasulullah SAW ordered that if a man finds a woman who has a good religion, he should make her his choice in choosing a life partner.<sup>6</sup>

This gets more attention that same religion is the main goal in finding a partner for the family. However, when it comes to marrying a partner from a different religion, scholars differ in their opinions about the permissibility of this. Family harmony will be realized perfectly if husband and wife adhere to the same teachings. Differences in belief or religion between the two parties often cause various difficulties in the family environment. For example, in carrying out worship, children's education, food

<sup>5</sup>Muhammad bin Ismail Abu Abdullah al-Bukhari al-Ja'fiy, *Shahih al-Bukhari* ( Beirut: Daar thariq al-najat, 1422H), h. 7

<sup>6</sup>Al-Imam Muhannad Bin Ismail, *Subulussalam Syarhu Bulughul Marram*, jilid 3, (cet. IV Beirut-Dar Al-Kutub Al-Ilmiyah, 2012), h. 113.

<sup>4</sup>Zaeni Asyhadie DKK, *Hukum Keluarga Menurut Hukum Positif DI Indonesia* (Cet 1, Depok: PT. Raja Grafiando Persada, 2020) h, 31.

arrangements, and other activities related to religious traditions such as Eid al-Fitr celebrations, Christmas, Nyepi and other things.

In terms of marrying a partner of a different religion, Islam has its own requirements, so that this incident becomes an important religious teaching for individuals in choosing a partner to carry out the marriage. In Indonesia, there are diverse social conditions, both in terms of ethnicity, religion and race, so there are various kinds of problems that arise in it. For example, problems regarding the distribution of inheritance within the family, problems regarding what types of customs apply in family rules, even the problem that is in the spotlight in the conflicts that arise in today's society is that we often encounter interfaith marriages.

The issue of interfaith marriage is a problem that has been discussed from the past until now. With interfaith marriages, there will be differences in the principles of the marriage, so it is feared that this will give rise to various complicated problems to be resolved in the future. On the other hand, this case is still a matter of debate regarding the legal basis for declaring the validity and invalidity of the marriage.

The reality in people's lives of interfaith marriages is a reality that cannot be denied. Interfaith marriages still occur among society. We see the phenomenon that occurs with artists as public figures or from other levels of society, that they do this out of like, and are no longer considered

something taboo for Indonesian society. Therefore, marriages between followers of each religion are interesting to study, whether from Islamic law or from the law established by the Supreme Court. and studied carefully. Because, this has always been a concern and view of society so it requires quite serious and in-depth understanding to answer this matter.

What is the validity of interfaith marriages according to Supreme Court decision no. 1400K/Pdt/1986?, What is the basis for the Supreme Court decision no. 1400K/Pdt/1986 according to Islamic jurisprudence?.

### **Methods**

This research is library research in which the techniques used in collecting data are literal collection, namely library materials that are continuous with the object of discussion in question. The research methods used are data collection and data analysis techniques. In this case, researchers also use primary legal materials and secondary legal materials.

### **Results and Discussion**

#### ***Interfaith Marriage in Indonesia.***

A marriage that is recognized as legally valid from the perspective of Indonesian marriage law is a marriage that is carried out according to the provisions of the religious law adhered to by both prospective partners, namely based on Islamic religious law for Muslim couples, Catholic religious law for Catholic couples, and Protestant Christian religious law for couples who are Protestant Christians, Hindu religious laws for Hindu couples, Buddhist religious laws for

Buddhist couples, Confucian religious laws for Confucian couples, and so on.<sup>7</sup>

The reality in society of interfaith marriages is something that cannot be denied. Interfaith marriages still occur in line with the understanding of religious plurality. Cases of interfaith marriages are carried out by some people from various professions. Wahyono Damabarata explained as quoted by Sirman Dahwal that the implementation of interfaith marriages that occur in society can be done in three ways, namely, requesting a court order first, then the couple registering their marriage at the Civil Registry Office, the marriage is carried out according to the religious laws of each partner, and getting married abroad.<sup>8</sup>

The implementation of a marriage between two people who follow different religions, one party usually submits himself or converts to the other party's religion, either a pseudo-religion or a real one, then if he wants to convert to Islam with the condition that he must say the shahada pledge, then it is recorded by the KUA. However, if a religion other than Islam wants to marry, such as a Buddhist and a non-Buddhist, then he must change his KTP in his religious statement.<sup>9</sup>

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<sup>7</sup>Muhammad Amin Suma, *Kawin Beda Agama di Indonesia Telaah Syariah dan Qanuniah*, (Tangerang: Penerbit Lentera, 2015), h. 26.

<sup>8</sup>Danu Aris Setiyanto, *Jurnal Tentang Perkawinan Beda Agama Pasca Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014 dalam Perspektif HAM*, 2016, h. 18.

<sup>9</sup>Sri Wahyuni, *Nikah Beda Agama Kenapa ke Luar Negeri?* (Jakarta: PT Pustaka Alvabet, 2016), h. 171.

There are so many couples who marry different religions, but in practice it is difficult to register in Indonesia. So the husband and wife took another route by marrying abroad and then registering at the Civil Registry Office in Indonesia, including Yuni Sara and Hendri, Titi Kamal and Christian Sugiono from among Indonesian celebrities.

### ***Validity of Interfaith Marriages According to the Supreme Court. No. 1400K/Pdt/1986***

As a result of not clearly regulating interfaith marriages in the Marriage Law, various interpretations have arisen regarding whether interfaith marriages are permissible or not. What researchers understand is that an interfaith marriage is where two people from different religions are about to get married, but each prospective bride and groom maintains the religion they adhere to. When the new Marriage Law was implemented, there was a problem of certainty about where interfaith marriages would be registered, because there was no certainty about the legal position of interfaith marriages.

According to Eoh, S.H. in his book entitled "Interfaith Marriages in Theory and Practice", explains that the Marriage Law does not specifically regulate interfaith marriages. such as the GHR (Regeling op de Gemengde Huwelijken) and HOCI (Huwelijks Ordonantie Christen Indonesiaers) which were in effect previously. According to him, based on Article 66

of the Marriage Law, it can be concluded that the provisions regarding interfaith marriages in previous regulations remain valid, because the Marriage Law does not regulate them. The law does not materially regulate interfaith marriages, but formally they are still recognized.<sup>10</sup>

Then on April 20 1981 a letter came out from the Chief Justice of the Supreme Court No. KMA/72/IV/ 1981 to the Minister of Religion and the Minister of Home Affairs regarding the implementation of Mixed Marriages. In this letter, the Supreme Court considers that marriages between different religions are included in Mixed Marriages. In carrying out inter-religious marriages, the provisions in the GHR are applied, so it is based on the law of the husband regardless of his religion. According to the Supreme Court, this is to provide legal certainty with implementation instructions from the relevant minister.

After that, the Supreme Court decision Number 1400/Pdt/K/1986 was issued, in essence the decision was that marriage between different religions is not an obstacle to marriage for those who have agreed and intend to carry out the marriage while maintaining their respective religions and beliefs. According to Prof. Zainal Asikin Atmaja, who once served as Junior Chairman of the Supreme Court,

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<sup>10</sup>Eoh SH, *Perkawinan Beda Agama Dalam Teori dan Praktek*, h. 76.

Supreme Court decision Number 1400/Pdt/K/1986, is jurisprudence.<sup>11</sup>

This jurisprudence arose in the case of Andy Vonny Gani P., a woman who adheres to the Muslim religion, and Adrianus Petrus Hendrik Nelawan, a man who adheres to the Protestant religion.<sup>12</sup>

The short story until this case reached the cassation level was that the two of them initially went to the Tanah Abang Jakarta Religious Affairs Office (KUA) to request that their marriage be carried out according to the Islamic religion. It turned out that the Head of the Tanah Abang KUA rejected the request, because the two of them had different religions. So the rejection letter No. K2/NJ-I/834/III/1986.<sup>13</sup>

The two prospective bride and groom then went to the Civil Registry Office (KCS), but the civil registry was also rejected with letter No.655/1.755.4/CS/1986. So Vonny submitted a petition to the Central Jakarta District Court. In the decision of the Central Jakarta District Court No. 382/Pdt/P/1986/ PN.JKT.PST., rejected Vonny's application and confirmed the rejection by the Office of Religious Affairs and the Civil Registry Office.

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<sup>11</sup>Monib, & Nurcholis, *Fiqih Keluarga Lintas Agama (Panduan Multidimensi Mereguk Kebahagiaan Sejati)*, h. 127.

<sup>12</sup>Amrullah Ahmad SF dkk, *Dimensi Hukum Islam dalam Sistem Hukum Nasional*, (Jakarta: Gema Insani Press, 1996), h. 70.

<sup>13</sup>Mawarti Djoned Poesponegoro dkk, *Sejarah Nasional Indonesia Jilid III*, (Jakarta: Balai Pustaka Departemen Pendidikan dan Kebudayaan, 1984), h. 197.

Vonny did not appeal based on the consideration that the Court's decision on this matter could not be appealed again, as in the provisions of Article 60 paragraph (3) of the Marriage Law. So Vonny filed an appeal to the Supreme Court and decision Number 1400/Pdt/K/1986 was issued, at least giving the following decision:

Granted Andy Vonny Gani P.'s cassation request in part. Canceling the Determination of the Central Jakarta District Court dated April 11 No. 382/Pdt/P/1986/PN.JKT.PST. as far as the refusal to consummate the marriage by the Extraordinary Civil Registrar of the Province of the Special Capital Region of Jakarta with No. 655/1755.4/CS/1986. Canceling the rejection letter from the Extraordinary Civil Registrar of the Province of the Special Capital Region of Jakarta with No. 655/1,755.4/CS/1986 dated 5 March 1986; Ordered the Registrar Officer at the Provincial Civil Registry Office for the Special Capital Region of Jakarta to carry out the marriage between Andy Vonny Gani P. and Andrianus Petrus Hendrik Nelwan after fulfilling the marriage requirements according to the Law.<sup>14</sup>

The things above can show us that according to the jurisprudence above, religious differences are not an obstacle to getting married. In essence, marriages can take place at the Civil Registry Office, because according to the Supreme Court, marriages in Indonesia are *staatshuwelijk*, meaning that the marriage is valid if it meets the

provisions of State Law, while matters relating to Religious Law are matters of the husband and wife individually.

In this case, the government has obtained a stronger legal basis, namely in the form of Law Number 23 of 2006 concerning Population Administration Article 35 and its explanation, that marriages determined by the Court or more clearly, namely marriages between different religions which through a Court determination can be registered at the Civil Registry Office.<sup>15</sup>

The Population Administration Law does not regulate the substance of interfaith marriages, but only limited to administration, namely recording them at the Civil Registry Office after obtaining a determination from the District Court.

However, according to researchers, the meaning of marriage referred to by the Supreme Court is no longer familiar to us since the birth of Law Number 1 of 1974 concerning Marriage, precisely to refute this in Article 1 and Article 2.

So a marriage that only focuses on ordinary civil law or state law can be said to be invalid until it is recognized as valid religiously, as explained in Article 2 of the Marriage Law. However, there is a dilemma regarding the legality of inter-religious marriages, because another law which in fact came into existence recently actually allows the Civil Registry Office to register such marriages if they already have a decision from the related Court,

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<sup>14</sup>Putusan Mahkamah Agung Nomor 1400k/pdt/1986.

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<sup>15</sup>Lihat Undang-Undang Nomor 23 Tahun 2006 Beserta Penjelasannya.

and indirectly wants to confirm the above jurisprudence.

Based on Supreme Court Decision No. 1400K/Pdt/1986, the Civil Registry Office is permitted to perform interfaith marriages. This case started with the marriage that Andy Vonny Gani P (female/Muslim) wanted to register with Petrus Hendrik Nelwan (male/Christian). In its decision, the Supreme Court stated that by submitting a marriage registration application at the Civil Registry Office, Vonny had ignored Islamic religious regulations regarding marriage and therefore it must be considered that she wanted her marriage not to take place according to the Islamic religion. Thus, if they are not Muslim, the Civil Registry Office must carry out the marriage. In our opinion, at the time of the marriage the two were not of different religions.

In fact, in theory and practice from several literatures, such marriages usually involve actions, including: One party changes religion, following the religion of the husband or wife. One party submits themselves to religious law and the husband or wife. Marriages are only carried out at the Civil Registry Office.

Apart from the above, what is easier to do now and is often done is marriage abroad, in countries where interfaith marriages are legal. After returning to Indonesia, his marriage was registered at the Civil Registry Office. According to the researcher, the things above are not justified if we really try to look at the Marriage Law universally regarding this issue. Where marriages

wherever and whenever are carried out as long as Law Number 1 of 1974 concerning Marriage remains in force, Indonesian marriages must remain subject to this Law. In the hierarchy of Legislative Regulations, the position of jurisprudence is below the Law.

### ***Interfaith Marriage from the Perspective of Islamic Jurisprudence***

*Talking about people who are permissible and forbidden to marry, we will talk about the law of marrying people of the book first and we will first define what is meant by people of the book. Because some people think that every infidel or non-Muslim is an expert in the book. The term "people of the book" comes from the Arabic word which is composed of the form idhafah, namely ahlu and bible. The word ahlu consists of the letters alif, ha, and lam, which literally mean friendly, happy and like. The word "expert" is an absorption from Arabic which means family which refers to a group, family, relatives or people. Al-Kitab itself linguistically means the Qur'an, Torah and Gospel. The word kitab or al-kitab is well known in Indonesia with the meaning of book. A more specific meaning is the holy book or God's recorded revelation. In the Complete Indonesian Dictionary it is stated that people of the book are people who adhere to holy books other than the Qur'an.<sup>16</sup>*

People of the book in term are people to whom Allah's book was revealed. Meanwhile, in the book Encyclopedia of Islamic Law, people of the book are

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<sup>16</sup>Em Zulfajri, Ratu Aprilia Senja, *Kamus Besar Bahasa Indonesia*, (T.P: Aneka Ilmu, 2008), h. 27.



people who have books. People of the book are the term for those who believe and adhere to a religion that has a holy book originating from Allah other than the Koran.<sup>17</sup>

There are many opinions regarding who the people of the book are, if we refer to several verses in the Koran which mention people of the book, usually these verses refer to Christian and Jewish communication. In understanding the term people of the book in the Koran, the scholars agree that they are Jews and Christians. However, regarding the scope of the meaning of the book, scholars have different opinions. There are those who say that the people of the book are Jews and Christians who are descendants of the children of Israel only and there are those who think that the people of the book are Jews and Christians at any time, wherever they are.

M. Quraish Shihab said that the people of the book are Jews and Christians, anytime, anywhere, and descendants of anyone without exception. Meanwhile, Hamka stated that the people of the book consist of Jews and Christians, but he did not provide specific criteria so that every Jew and Christian is called an expert of the book.<sup>18</sup> In contrast to the two shops above, Imam al-Syafi'i in the book *al-Umm* limits the definition of people of the book to only Jews and Christians of Bani Israel descent. This does not

mean people who follow the Jewish and Christian religions, because the Prophets Moses and Jesus were only sent to them, not other nations. So according to Imam Syafi'i, if you are not a Jew or a Christian of Israeli descent, then you are not considered a Jew or a Christian who is allowed to marry a Muslim man. Ibn Kathir also mentioned that the people of the book were Jews and Christians. However, he also informed that Abu Tsaur Ibrahim bin Khalid al-Kalbi, one of the fiqh scholars following the Shafi'i school of thought and Imam Ahmad bin Hanbal, allowed eating slaughter and marrying Magian women.<sup>19</sup>

#### **Opinion of Imam Al-Qurthubi**

Imam Al-Qurthubi's views on marriage between different religions can be seen in his tafsir book *al-Jami' li Ahkam al-Quran*, juz 2 pages 235-236. The verse used as an explanation is QS. al-Baqarah verse 221 and surah al-Maidah verse 5. Surah al-Baqarah verse 221 forbids marrying Muslim women and surah al-Maidah verse 5 writes down some of the laws contained in surah al-Baqarah verse 221. Women of the Ahl al-Kitab are permitted in Surah al-Maidah verse 5. It is reported that this is the opinion of Ibn Abbas, as was also said by Malik bin Anas and Sufyan bin Sa'id al-Tsuri and Abdurrahman bin Umru al-Auza'i. According to some scholars, the two verses, namely Al-Baqarah verse 221 and Al-Maidah verse 5, do not conflict with each other, because the lafadz *ash-shirk* does not cover the people of the Bible.

<sup>17</sup>Muslim Djuned, Nazlah Mufidah, *Makna Ahli Kitab dalam Tafsir al-Mannar*, Journal of Qur'anic Studies, Vol. 1, No. 1, (2017), h. 3.

<sup>18</sup>Hamka, *Tafsir al-Azhar*, (Jakarta: Panjimas, 2000), juz. V, h. 143.

<sup>19</sup>Ibnu Katsir, *Tafsir Ibnu Katsir*, (Bogor: Pustaka Imam Ast-Syafi'i, 2006), h. 6.

### Hamka's explanation in Tafsir Al-Azhar

Hamka expressed the views of scholars in fiqh books which explain that if a Muslim is asked by his Christian wife to accompany him to church, the husband should accompany him, and at home, the husband should not prevent his wife from practicing her religion. According to Hamka, the permissibility of marrying women from the people of this book is for Muslim men who are strong in their Islam or religion. Hamka said: "If there is a meeting of fate, getting a Jewish or Christian woman to marry with a Muslim man who is strong in his Islam is not prohibited." For a man who is strong in his religion, so that he can guide his wife and his wife's family to the right path or convert to Islam, then this marriage is not only permissible but is even a commendable marriage in Islam.<sup>20</sup>

### Opinion of Ulama Yusuf Al-Qordawi

According to Yusuf Al-Qordawi, contemporary scholars say that marrying women who are people of the book is permissible. However, he differentiated between the dhimmi and the harbiy. However, the only thing that is halal to marry is dhimmi, while the one that is harbiy is haram. That marrying a Muslim woman is much better and more important from various aspects.<sup>21</sup>

According to Yusuf al-Qardhawi, the marriage of Muslim men to polytheist women such as idol worshipers, magi or infidels is haram. Yusuf al-Qordhawi also forbids the marriage of Muslim men to polytheist women based on surah al-Baqarah verse 221 and surah al-Mumtahanah verse 10. Yusuf al-Qordhawi explains in his book entitled halal and haram who polytheist women are. He explained that polytheist women worshiped idols like the previous Arab polytheists.<sup>22</sup>

Regarding the problem of Muslim men marrying women who are people of the book, Yusuf al-Qordhawi wrote a long article explaining why men are allowed to marry women who are people of the book, including to motivate their wives to convert to Islam, reducing the gap between the Muslim community and the community of people of the book, expanding the scope of tolerance between the three divine religions, encouraging positive interactions between the Muslim community and the community of people of the book. However, looking at the results of observations in the field, the negative influence is much greater. Therefore, referring to Yusuf al-Qardhawi's fatwa, it is better to prohibit interfaith marriages.<sup>23</sup>

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<sup>20</sup>Hamka, *Tafsir Al-Azhar*, (Singapura: Pustaka Nasional Pte Ltd, 2003), Cet V, Juz VI, h.260.

<sup>21</sup>Yusuf Al-Qordhawi, *Min Hadi Al Islam Fatawa Muasirah*, (Beirut Darul Ma'rifah, 1988), terjemhah Drs As'ad Yasin, fatwa-fatwa

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kontemporer, (Jakarta: Gema Insani, 2008), h. 596.

<sup>22</sup>Yusuf Al-Qordhawi, *Halal dan Haram*, terj. Gtim Kuadran, Surabaya (Penerbit Jabal, 2007), h. 190.

<sup>23</sup>Aldil Nuari, *Nikah Beda Agama dalam Pandangan Yusuf al-Qardhawi*, (Tesis diterbitkan oleh Universitas Islam Negeri Riau, 2020), h. 3.

### Opinion of Rasyid Ridha

According to Rasyid Ridha, by adhering to QS. Al-Maidah verse 5, women from the people of the book are absolutely halal for Muslim men to marry. In contrast to the majority of fiqh scholars who interpret the people of the book as only Jews and Christians, in his interpretation of the meaning of the people of the book in this verse, Rasyid Ridha is of the opinion that the people of the book are not only limited to the two religious groups, Jews and Christians, as is the opinion of the majority of fuqaha scholars. According to Rasyid Ridha, ahl kitab are all adherents of religions and beliefs who own and are guided by a book that is considered a holy book, such as Majusi, Shabi'un, Hinduism, Buddhism, etc.<sup>24</sup>

According to Rasyid Ridha, the above is also based on existing historical facts as well as explanations and statements from the Al-Quran itself, that to each people, Allah SWT has sent a Messenger to them. They also have a holy book as a guide to their life which was brought by the prophet who was sent to them, only there is misuse (tahrif) of this holy book as happened in the Jewish and Christian holy books. According to Rasyid Ridha, the original law of marriage is that it is permissible.<sup>25</sup>

### Madhab's Opinion

#### Madhab Imam Hanafi

The clerics of the Hanafi school of law forbid a male believer from marrying a

woman from an expert on the book who lives in an area that is at war with Islam (dar al-harb). Because they do not submit to Islamic law, this can open the door to slander. It is feared that a Muslim husband who marries a woman who is an expert on the book will comply with the attitude of his wife who struggles to allow her children to have religions other than Islam. What is meant by an expert of the book according to Imam Hanafi is anyone who believes in the prophets and books that were revealed by Allah SWT, including the prophet Ibrahim AS. and the prophet Musa (a.s.). with his Zabur book.<sup>26</sup> Meanwhile, marrying a woman who is a member of the Dhimmi book is only makruh, because they are subject to Islamic law. Imam Hanafi believes that marriage between different religions is:

The marriage of a Muslim man to a non-Muslim woman (musyrikah) is haram.

Marriage between Muslim men and women from people of the book (Jews and Christians) is permissible or permissible.<sup>27</sup> What is meant by an expert of the book according to Imam Hanafi is anyone who believes in the prophets and books that were revealed by Allah SWT, including the prophet Abraham and the prophet Moses and his book of Zabur, then that woman

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<sup>24</sup>Muhammad Rasyid Ridha, *Tafsir al-Quran al-Hakim*, h. 193.

<sup>25</sup>Suhadi, *kawin lintas agama*, (Yogyakarta : LkiS, 2006), h. 40.

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<sup>26</sup>Muhammad bin Ali bin Muhammad As-Syaukani, *Fathu Al-Qodir Al-Jami'i Baina Fannai Al-Riwayah wa Al-Dirayah min 'Ilmi al-Tafsir*, (Beirut: Darul Ma'rifah, 1428 H/2007 M) JUZ III, h. 228.

<sup>27</sup>Sihabuddin bin Muhammad *as-Shana'ni, Bada'i Ash-Shana'i*, (Lebanon: Darul Ma'arif Arabiyah, t.th) Juz 11, h. 270.

can be married. It is makruh tahrim to marry a kitabiyah woman who is in dar al harbi, because it will cause slander and can cause great damage.

### **Madhab Imam Malik**

The opinion of the Maliki school of thought is divided into two, the first group views that marrying a woman from an expert on the book, whether in *dar al-harb* or *dzimmiyah*, is absolutely makruh. It's just that the quality of the chaos in Dar Al Harb is heavier. The second group views that it is not absolutely makruh because of the zohir of QS. al-Maidah verse 5 allows it absolutely. But it is still makruh because the Islamic government relies on its makruhness, because women who are people of the book can still drink wine, eat pork, and go to church. Even though her husband didn't do any of that. It is legally permissible to marry a woman from the Bible. This closes down evil, if there is fear that evil will arise in an interfaith marriage, then it is forbidden.<sup>28</sup>

Imam Maliki believes that there are two opinions about interfaith marriages, namely:

Marrying according to the law is makruh for both dhimmi (non-Muslim women who live in a country that uses Islamic law) and harbiyah. However, the makruh of marrying a harbiyah woman is greater. However, if it is feared that the wife who follows the Bible will influence her children and leave their father's religion, then the law is haram. Marrying according to

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<sup>28</sup>Abdul Aziz Muhammad Azzam dan Abdul Wahhab Sayyed Hawwas, *Fiqh Munakahat* (Jakarta: Amzah, 2009), h. 37.

the Biyah is permissible because it covers evil. If there is concern that evil will arise in an interfaith marriage, then it is prohibited.

### **Madhab Imam Syafi'i**

The fuqaha of the Shafi'i school of thought consider it makruh to marry women from people of the book who live in *dar al-Islam*, and it is very makruh (*tasydid al karahah*) for those who live in dar al-harb, as is the opinion of the malikiyah fuqaha.<sup>29</sup>

However, Imam Syafii said that the people of the book were Jews and Christians, descendants of the Israelites and did not mean other nations, even Jews and Christians.<sup>30</sup> Imam Syafii's reasons are:

The prophets Moses and the prophet Isa were only sent to the Israelites, not other nations.

QS. al-Maidah verse 5 refers to two groups of Jews and Christians of the Israeli nation. According to this school of thought, what is meant by Jews and Christians are women who have adhered to this religion since the time of the Prophet Muhammad before he was sent as an apostle, that is, since before the Koran was revealed, strictly speaking people who embraced Judaism and Christianity after the Koran was revealed. It does not include Jews and Christians in the category of people of the book, because it does not

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<sup>29</sup>Suhadi, *Kawin Lintas Agama*, (Yogyakarta : LkiS, 2006), h. 41.

<sup>30</sup>Muhammad Syamsuddin bin Ahmad AL-Khatib Asy-Syarbini, *Mughni Al-Muhtaj*, (Beirut – Lebanon: Darul Ma'rifah, 1992 M), Juz II, h. 187.

match the sound of the min qoblikum verse.<sup>31</sup>

### Madhab Imam Hanbali

Muslim men are allowed and even not at all prohibited from marrying women from people of the book based on the generality of the QS. al-Maidah verse 5. It is required that women who are people of the book are free women (not slaves), because the al-muhsanat referred to in this verse are free women. Hanbali imams tend to support Imam Syafi'i's opinion. In this case, the Hanbali imam does not limit the people of the book, because he means the people of the book adhere to Judaism and Christianity since the Prophet Muhammad SAW had not yet been sent as an apostle.<sup>32</sup>

### The Law on Muslim Women Marrying Non-Muslim Men

Islamic legal experts consider this marriage to be prohibited by Islam, whether the prospective husband is from people of the book (Jews and Christians) or adherents of other religions who have holy books such as Hinduism and Buddhism or adherents of religious beliefs that do not have holy books. Muslim women may not marry men other than those of their religion, whether from the people of the book or others under any circumstances. As Allah says QS. Al-Baqarah: 221.<sup>33</sup>

<sup>31</sup>Badaruddin bin Abi Muhammad al-Nawawi, Raudhah Ath-Thalibin (Cairo : Darul Maarif, 1327 H), Juz VII, h. 132.

<sup>32</sup>Syafii, *Ringkasan Kitab al-Umm*, (Jakarta: Pustaka Azzam, 2010), h. 325.

<sup>33</sup>Syekh Muhammad Yusuf Qordhawi, *Halal dan Haram dalam Islam*, (Bangil: PT. Bina Ilmu, 1976), h. 252.

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ

Translation:

"And do not marry polytheist women, until they have believed."<sup>34</sup>

The meaning of the polytheist wording in the verse "and do not marry polytheist women until they believe" is all infidels who are not Muslim, namely Watsani (idol worshipers), Magians, Jews, Christians and apostates from Islam. Everything mentioned above is haram for them to marry Muslim women. A husband has power over his wife, it is possible for a husband to force his wife to leave her religion and take her to Judaism or Christianity or the religion adhered to by the husband. In general, children will follow their father's religion, if their father is Jewish or Christian then they will follow him. Meanwhile, a Muslim man will glorify the Prophet Musa and Isa As. Believe in their message and the revelation of the Torah and Gospel. A Muslim will not harm his wife who is a Jew or Christian for reasons of their different faiths. It's different if a husband doesn't believe in the Qur'an and the Prophet Muhammad SAW, his lack of faith in Islam causes harm to Muslim women and belittles their religion.<sup>35</sup>

Apart from mentioning Jews and Christians, al-Quar'an also mentions Shabi'ah several times (al-Baqarah,

<sup>34</sup>Kementrian Agama RI, Al-Hufaz Al-Qur'an Hafalan dan Terjemahnya, h. 35.

<sup>35</sup>Muhammad Ali As-Shabuniy, *Rawaih Al-Bayan Tafsir Ayat Al-Ahkam Min Al-Quran*, (Damasyq: Maktabah Al-Ghazali, 1980), h. 289-290.

2:62; al-Maidah, 5:69; al-Hajj 22:17); Magians and people who adhere to the Shuhuf (sheets of the holy book) of the prophet Abraham whose name is Shit and the shuhuf of the prophet Moses whose name is the Torah (al-A'la, 87:19), and the book of Zabur which was revealed to the prophet Dawud. The mention of these religions may be closely related to the religions that had developed and were known to Arab society at that time. Meanwhile, there are two opinions regarding marrying a woman whose book is not Jewish, Christian, Magian and Shabi'ah. The Hanafi Madhab scholars stated: whoever embraces the Samawi religion, and according to him a holy book such as Shuhuf Ibrahim and Dawud, it is legal to marry them as long as they are not shirk. Because they adhere to all of Allah's books, they are equated with Jews and Christians. Meanwhile, the Shafi'i and Hambali school of thought scholars do not allow it. The reason is because these books only contain advice and parables, and do not contain laws at all.

Regarding Shabi'ah women, the Hanafi school of jurisprudence is of the opinion that they are actually people of the book, only that their book has been distorted and is false. They are equated with Jews and Christians, so that believing men can marry them. Meanwhile, the Shafi'iyah and Hanabilah fuqaha differentiate between people of the book and adherents of the Shabi'ah religion. According to them, Jews and Christians agree with Islam in basic religious matters (ushul ad-din), confirming the apostles and believing in the books.

Whoever differs from him in terms of religious principles (meaning Shabi'ah) is not part of his group. Therefore, the law of marrying her is also like marrying an idol worshiper, that is, it is haram.

### Muslim Men Marry Women from People of The Book

In classical literature, it is found that most scholars tend to allow this marriage and some of them only consider it makaruh, they refer to the QS. Al-Maidah/5:5:

أَيُّوَمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا  
الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ  
وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ  
الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ  
أُجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسْلِفِينَ وَلَا مُتَّخِذِي  
أَحْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ  
وَهُوَ فِي الْآخِرَةِ مِنَ الْخٰسِرِينَ

Translation:

“On this day everything that is good is permitted to you. The food (sacrifice) of the People of the Book is halal for you, and your food is halal for them. And (it is permissible for you to marry) women who maintain honor among believing women and women who maintain honor among those who were given the Book before you, if you pay their dowry to marry them, not with the intention of committing adultery. and not to make women pets. Whoever disbelieves after believing, then indeed, their deeds are in vain,

and in the afterlife he will be one of the losers.”<sup>36</sup>

The scholars interpret that this verse shows that it is halal to marry women from the people of the book, namely Jewish and Christian women. Al-Maraghi in his interpretation says that al-muhshanat is meant here, namely free women, that is, it is permissible for you, O believers, to marry free women from among the believing women, or free women from among the believers. given the book before you, namely Jewish and Christian women, if you give them a dowry when you marry them.<sup>37</sup> Al-Qurtuby also said that Ibn Abbas said that the women of the people of the book here are those who live in Muslim areas (Darul 'Ahd), not those who live in non-Muslim countries.<sup>38</sup>

At-Thabari concluded, from the many interpretations of scholars regarding this verse, the correct interpretation is: it is permissible to marry free women from among the Muslims and people of the book. The word al-Muhshanat does not mean women who maintain their honor, but free women. Because if it is interpreted as women who maintain honor, then slaves are included in it, whereas marrying a non-Muslim slave is prohibited. And he concluded that marrying a free woman who is a Muslim or an expert of the book is absolutely halal, a dhimmiyah or harbiyah woman, whether she

maintains her honor or not, as long as the person marrying is not worried about their child being inclined or forced into disbelief, based on the Zahir verse.<sup>39</sup>

*Jumhur ulama* are of the opinion that the verse "and do not marry polytheist women until they believe" shows that it is haram for Muslim men to marry Magian women and those who worship idols. Meanwhile, women who are people of the book are permitted to marry as mentioned in surah al-Maidah verse 5. The argument is that the word musyrikah in the Al-Baqarah verse does not include people of the book. There is a history about Hudzaifah marrying a Jew.<sup>40</sup>

Another basis that is used as a basis is what the Prophet Muhammad and several of his companions did. The Prophet Muhammad SAW once married a woman who was an expert on the book (Maria al-Qibtiyah), Usman bin Affan once married a Christian woman (Nailah bint al-Qarafisah al-Kalabiyah), while other friends at that time did not oppose or forbid it. However, there are some scholars who prohibit this marriage because they consider that the people of the book (Jews and Christians) are included in the polytheist category, especially in the doctrine and practices of Jewish and Christian worship which contain elements of shirk, where the

<sup>36</sup>Kementrian Agama RI, Al-Hufaz Al-Qur'an Hafalan dan Terjemahnya, h. 107.

<sup>37</sup>Al-Maraghi, *Tafsir Al-Maraghi*, (Mesir: Mustafa Al-Bab Al-Halby, 1969), h 59.

<sup>38</sup>al-Qurtuby, *Jami' lil Ahkam al-Quran*, (alqohirah: darel kutub al- misyhiriyah , tth), h.79.

<sup>39</sup>Abi Ja'far Muhammad Ibnu Jarir At-Thabari, *Tafsir At-Thabari* (Bairut-Lebanon: Dar Al-Kutub Al-Ilmiyah, 2000), jilid 12, h 589.

<sup>40</sup>Muhammad Ali As-Shabuniy, *Rawaih Al-Bayan Tafsir Ayat Al-Ahkam Min Al-Quran*, (Damasyq: Maktabah Al-Ghazali, 1980), h. 287-289.

Jewish religion considers Uzair the son of Allah and worships Haikal. Prophet Solomon, while Christianity also considers Isa al-Masih as the son of Allah and worships his mother, Maryam.<sup>41</sup>

### Muslim Man Marries a Mushrik Woman

The scholars agree that it is forbidden for a Muslim man to marry a Muslim woman. This opinion is based on QS. Al-Baqarah/2:221:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ تُؤْمِنَ وَلَا مَآءَةً  
مُّؤْمِنَةً خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا أَعْجَبَتْكُمْ وَلَا  
تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ  
خَيْرٌ مِّنْ مُّشْرِكٍ وَلَا أَعْجَبَكُمْ أُولَٰئِكَ يَدْعُونَ  
إِلَى النَّارِ وَاللَّهُ يَدْعُوا إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ  
وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Translation:

“And do not marry polytheist women until they believe. Indeed, a believing female servant is better than an idolatrous woman, even if she attracts your heart. And do not marry polytheists (men) (to believing women) before they believe. Indeed, a faithful male servant is better than a polytheist male slave, even if he attracts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with His permission.

<sup>41</sup>Abi Ja'far Muhammad Ibnu Jarir At-Tabari, *Tafsir At-Tabari* (Bairut-Lebanon: Dar Al-Kutub Al-Ilmiyah, 2000), jilid 12, h. 364.

(Allah) explains His verses to people so that they learn a lesson.”<sup>42</sup>

According to Qotadah: the meaning of the verse "and do not marry polytheist women until they believe" is for polytheist women who are not people of the book. This verse is general externally and specific internally and there is no legal text for this verse. Another verse regarding the prohibition of marriage between Muslim women and non-Muslim men is also based on the QS. Al-Mumtahanah/60:10:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ  
مُهَاجِرَاتٍ فَاْمَحِوهُنَّ اللَّهُ أَعْلَمَ بِإِيمَانِهِنَّ فَإِنْ  
عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ  
لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَاتُّوهُنَّ مَا  
أَنْفَقُوا وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا  
أَتَيْتُمُوهُنَّ أَجُورَهُنَّ وَلَا تُمْسِكُوا بِعِصَمِ الْكُوفَارِ  
وَسَأَلُوا مَا أَنْفَقْتُمْ وَلَيْسَ لَكُمْ أَنْفَقُوا ذَلِكَ  
حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Translation:

“O you who believe! When believing women come to emigrate to you, then you must test their (faith). Allah knows better about their faith; If you know that they (really) believe, then do not return them to the disbelievers (their husbands). They are not lawful for those who disbelieve and those who disbelieve are not lawful for them. And

<sup>42</sup>Kementrian Agama RI, *Al-Hufaz Al-Qur'an Hafalan dan Terjemahnya*, h. 35.



give to their (husbands) the dowry they have given. And there is no sin for you in marrying them if you pay them the dowry. And do not remain tied to (marriage) ties with unbeliever women; and ask for the dowry you have given back; and (if the husband remains an unbeliever) let them ask for back the dowry they have paid (to their ex-wife who has believed). Such is the law of Allah which He established among you. And Allah is all-knowing, all-wise.”<sup>43</sup>

Imam At-Thabari in his tafsir interpreted "if you know that they (really) believe, then do not return them to the disbelievers (their husbands)" that women have acknowledged that they have proven their faith and Islam when tested, then they should not be returned to their husbands who are infidels, even though the contents of the hudaibiyah agreement that occurred between the prophet and the Quraish polytheists required returning the Quraish people who came to the prophet Muhammad, the agreement was intended for men who believed. So the conditions proposed in the peace agreement do not apply to women who emigrate to the prophet whom they tested and proved their faith and Islam. They must not be returned to their husbands, because it is not halal for believing women for unbelievers, and it is not halal for unbeliever men for believing women.<sup>44</sup>

<sup>43</sup>Kementrian Agama RI, *Al-Hufaz Al-Qur'an Hafalan dan Terjemahnya*, h. 550

<sup>44</sup>Abi Ja'far Muhammad Ibnu Jarir At-Thabari, *Tafsir At-Thabari* (Bairut-Lebanon: Dar Al-Kutub Al-Ilmiyah, 2000), jilid 12, h 327.

In this verse, an affirmation of the law relating to interfaith marriages is the word of Allah "and do not stick to ties (marriages) with unbeliever women", at-Thabari interprets this verse of Allah as prohibiting believers from marrying women. -Infidel women, that is, they are polytheistic women who worship idols. And Allah ordered them to divorce if a marriage contract had been entered into.<sup>45</sup>

As-Shabuni in his tafsir also explains: if the women who emigrate have proven that they are truly believers, then they should not be returned to their husbands who are unbelievers, because in fact Allah has forbidden believing women to be Muslim men. And pay dowry for them to their husbands who disbelieve (as a reward). Likewise, a man who believes must not maintain his marriage to an unbeliever woman who does not emigrate with her husband. In fact, his marriage bond was broken due to disbelief, because Islam does not allow marrying a polytheist woman.<sup>46</sup>

The verse above explains that there is a prohibition against continuing a marriage relationship with an unbeliever woman, until they believe in Allah. The global ban on interfaith marriages with non-Muslims/infidels has been agreed upon by the ulama. The two verses above strictly prohibit the marriage of a Muslim to a polytheist, whether between a Muslim

<sup>45</sup>Abi Ja'far Muhammad Ibnu Jarir At-Thabari, *Tafsir At-Thabari* (Bairut-Lebanon: Dar Al-Kutub Al-Ilmiyah, 2000), jilid 12, h 329.

<sup>46</sup>Muhammad Ali As-Shabuni, *Rawaih Al-Bayan Tafsir Ayat Al-Ahkam min Al-Quran*, (Damasyq: Maktabah Al-Ghazali, 1980), h 553.

man and a polytheist woman or between a polytheist man and a Muslim woman. Although there are still different interpretations among the ulama regarding who is meant by a polytheist woman who is forbidden to marry. Tafsir scholars say that the interpretation of polytheist women in this verse is Arab polytheist women because at the time the Koran was revealed they did not know the holy book and they worshiped idols. Others say that polytheist women are not only limited to Arab polytheist women, but have a general meaning, including all types of idolatry whether from Arab tribes or from other tribes, including idol worshipers, Jews and Christians, but most Ulama are of the opinion that all women are polytheists, both from Arab and non-Arab tribes, apart from people of the book from Jews and Christians.<sup>47</sup>

### Conclusion

From the discussion above, it can be concluded that Muslim men are prohibited from marrying polytheist women, and vice versa, if the man worships idols, it is not permissible for Muslim women to marry him and maintain their marriage. From all the interpretations above, the commentators all emphasize that the infidel woman who should not be married is the one who is a polytheist, as this verse was revealed due to the Hudaibiyah agreement between the Prophet SAW and the polytheists of Quraish Mecca. So this sparked

differences of opinion among the ulama about marrying non-Muslim women other than polytheists.

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<sup>47</sup>Abi Ja'far Muhammad Ibnu Jarir At-Tabari, *Tafsir At-Tabari* (Bairut-Lebanon: Dar Al-Kutub Al-Ilmiyah, 2000), jilid 12, h. 711-713.

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