



Principle of Consideration of the Consequences (I'tibār al-Ma'ālāt) on the Conflicting Fatāwā in Malaysia about the Interfaith Marriage between Muslims and the Women from the People of the Book: A Comparative Juristic Analysis

مبدأ اعتبار المآلات على الفتاوى المتضاربة في ماليزيا: دراسة فقهية مقارنة لفتاوى الزواج بين المسلمين والكتابيات

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Abstract

There are two main fatwā institutions in Malaysia which discuss the problems faced by the Muslim community. These institutions are the state fatwā institutions, which exist in every state and the national fatwā council, which issues a ruling on the national level. The existence of these institutions with independent legislative jurisdiction has led to disagreements and conflicts in Malaysian fatāwā issues. One of the conflicting issues is the ruling on the permissibility of the interfaith marriage between Muslims and the People of the Book. It is very significant to examine this issue in light of the principle of consideration of the consequences (i'tibār al-ma'ālāt) in order to investigate whether the permissibility of this marriage in the context of Malaysia will bring maṣlahah, or the common good to the society. Therefore, this paper explores the opinions of Muslim scholars related to this issue in light of their consequences which will determine the appropriate ruling in the context of Malaysia. Analytical and comparative methodologies are employed to elaborate on the perspectives of scholars and the fatāwā pertaining to this issue. This study demonstrates that even though the general ruling for marrying the women from the People of the Book is permissible, the permission will bring great harm to the Islamic familial system. Thus, the researcher concurs with the fatwā that prohibits marrying the women from the People of the Book based on the principle of consideration of the consequences.

Keywords: I'tibār Al-Ma'ālāt, Interfaith Marriage, Fatwā.

ملخص البحث

في ماليزيا، هناك مؤسستان رئيسيتان للفتوى تناقشان المشاكل التي تواجه المجتمع المسلم. هاتان المؤسستان هما مؤسسات الفتوى التي توجد في كل ولاية، ومجلس الفتوى الفدرالي، الذي يصدر حكماً على المستوى الدولي. ووجود هاتين المؤسستين ذات الاختصاص التشريعي المستقل قد أدى إلى خلافات وصراعات في قضايا الفتوى الماليزية. ومن القضايا المتضاربة التي حدثت في ماليزيا هي قضية الزواج بين المسلمين والكتابيات. إن الدراسة لهذه القضية في ضوء مبدأ اعتبار المآلات في سياق ماليزيا مهمة جداً من أجل التحقيق هل هذا الزواج سيؤدي إلى المصلحة المرجوة للمجتمع. لذلك، يستكشف هذا البحث آراء العلماء المتعلقة بهذه القضية في ضوء مآلاتها التي ستحدد الحكم المناسب في سياق ماليزيا. من خلال هذا البحث، لقد تم استخدام منهجيات تحليلية ومقارنة لتوضيح وجهات نظر العلماء والفتاوى المتعلقة بهذه القضية. وتبين هذه الدراسة أنه على الرغم من جواز حكم الزواج من الكتابيات من حيث حكمه العام، إلا أن هذا الزواج سيلحق ضرراً كبيراً إلى النظام الأسري الإسلامي، ومن ثم يتفق الباحثان مع الفتوى التي تحرم الزواج من الكتابيات استناداً إلى مبدأ اعتبار المآلات سدا للذريعة.

الكلمات المفتاحية: اعتبار المآلات، الزواج بين الأديان، الفتوى.

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1. Introduction

1.1 Background of the Study

Malaysia consists of 13 states and each of them has its own independent *fatwā* institution, in addition to the two other *fatwā* institutions for Wilayah Persekutuan and National *Fatwā* Council. State *fatwā* institutions have the authority to issue *fatwā* at the state level without being bound by other *fatwā* issued by other *fatwā* institutions since the jurisdiction over matters pertaining to Islam, including the practice of issuing *fatwā* is constitutionally assigned to the state (Zulfaqar Mamat, 2020). This leads to a situation where the state *fatwā* institutions have the authority to issue *fatwā* which contradicts the *fatwā* issued by other *fatwā* institutions and this may cause confusion to the public. Among the conflicting *fatāwā* issued by these institutions is the issue of the interfaith marriage between Muslims and the women from the People of the Book, or the *ahl al-kitāb*.

The issue of interfaith marriage between Muslims and the People of the Book is a contentious issue in the Muslim world. In Malaysia, there are three different *fatāwā* issued regarding this marriage; the first *fatwā* permits the interfaith marriage only with the original People of the Book, the second permits the marriage with the original and non-original People of the Book while the third *fatwā* prohibits the interfaith marriage. Other than the confusion it will cause to the public due to the

existence of these conflicting *fatāwā*, interfaith marriage also carries a great risk to the Muslim family system. This harm was highlighted by Umar when he prohibited the Companions such as Hudhayfah to marry the People of the Book, as it will lead to an unwanted consequence where a lot of Muslim women will be left unmarried (Baltaji, n.d). Besides, interfaith marriage also carries a great risk to the faith of the family, especially to the children, when they are raised without a Muslim mother. Due to the risks and harms involved in the interfaith marriage, there is a need for research regarding this issue in light of its consequences in order to prevent the possible harms it may inflict to the Muslims in Malaysia.

1.2 Literature Review

There are a number of earlier studies which explored the issue of interfaith marriage in Islam between Muslims and the People of the Book. However, there is a need to examine this issue in light of the conflicting *fatāwā* issued in Malaysia and the consequences of the rulings. Md. Zahidul Islam (2014) has written an article entitled *Interfaith Marriage in Islam and Present Situation*. This research highlights the juristic analysis as well as the evidence used by the proponents and the opponents of this issue. This article briefly touches the ruling issued by the *Fatwā* Committee of the National Council of Islamic Religious Affairs and the author expounds his opinion based on the objectives of the Shariah (*Maqāṣid al-Sharī'ah*) as well as the social context and dual judiciary system in Malaysia which underlines that *Shari'ah* court has no jurisdictions over non-Muslims.

The next article entitled *Interfaith Marriage in Islam: Classical Islamic Resources and Contemporary Debates on Muslim Women's Interfaith Marriage* written by Ayse Elmali-Karakaya. This article studies the classical and contemporary scholars' approaches in dealing with this issue. This article is beneficial in providing juristic analysis of both classical and contemporary scholars regarding interfaith marriage. However, the discussion is focused on the issue of interfaith marriage between Muslim women and the People of the Book and on the

juristic analysis of the scholars while this paper examines the conflicting *fatāwā* issued and its consequences regarding interfaith marriage between Muslim men and women from the People of the Book.

There is also another literature entitled *Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law* written by Mohamad Abdun Nasir. This article examines the occurrence of interfaith marriage in Indonesia. While this research focuses on the approaches and patterns in which interfaith marriage takes place in Indonesia, it highlights the practical challenges in this marriage.

A comparative analysis regarding the *fatāwā* on interfaith marriage between Malaysia and Indonesia has been written in an article entitled *Comparison of Interfaith Marriage Fatwas Between the National Council for Islamic Religious Affairs Malaysia and the Indonesian Council of Ulema from the Perspective of Maqasid Shariah* by Abdul Hakim, Ridzwan Ahmad and Syed Mohd Jeffri Syed Jaafar. This article examines the Islamic ruling of interfaith marriage and the *fatāwā* issued between the National Council for Islamic Religious Affairs of Malaysia and the Indonesian Council of Ulema. While these two institutions issue different *fatāwā*, the authors conclude that the *fatāwā* manage to fulfill the objectives of the *Shari'ah* (*Maqāsid al-Shari'ah*) based on the context of each country.

These literatures are beneficial as they are all related to the epicenter of this research. However, there is a need for a study which focuses on the conflicting *fatāwā* issued in Malaysia regarding the interfaith marriage between Muslims and the women from the People of the Book as there is a clear contradiction between the *fatāwā*. By examining the Islamic ruling of this marriage as well as the context of Malaysia and the consequences of interfaith marriage, this study intends to highlight the preferred *fatwā* which suits the objectives of the *Shari'ah*.

1.3 Methodology

Throughout this article, the researchers have followed the qualitative methodology. The research examines the

existing primary and secondary material, namely the *fatāwā* issued by the *fatwā* institutions and the *muftūn*, as well as other books, articles and videos related to this discussion. This study also adopts a comparative approach focusing on the analysis of *fatāwā* issuance, both at the national and state levels, and the juristic opinions, respectively.

2. Fatwā and Fatwā Institutions in Malaysia

The literal meaning of the term *fatwā*, singular for *fatāwā*, is to clarify and explain an issue by providing answers to any queries that arise (Al-Fayrūz Ābādī, 2005; Ibn Manẓūr, 2003). The technical definition for *fatwā* shares similar notion with its literal definition, albeit the technical definition is more specific as it directly relates to the explanation and clarification of Islamic legal rulings (Muḥammad Yusri, 2007). Ibn Rushd (1987), for example, defines *fatwā* as the process of elucidating Islamic legal rulings which are derived from the Qur'an, *Sunnah*, *ijmā'* (consensus) and *qiyās* (analogy). With the emerging issues and problems that the Muslims face in all facets of their daily life, it is the responsibility of the *muftī*, or person who issues *fatāwā*, to come up with solutions and responses to help the Muslims comprehend the Islamic Law. Ibn al-Qayyim (1991) has stated that historically, the Prophet peace be upon him (pbuh) himself was the first *muftī* to speak on behalf of the Lawgiver as the Companions had frequently questioned the Prophet (pbuh) over the Islamic Law. Al-'Izz bin 'Abd al-Salām (1968) also notes that the majority of the actions and teachings revolve around providing *fatwā* and conveying knowledge on behalf of the Lawgiver.

In Malaysia, the practice of *fatwā* issuance has been institutionalized and is constitutionally under the purview of the state (Federal Constitution). As a result, apart from Wilayah Persekutuan, each of the 13 states has its own independent *muftī* and *fatwā* institution that issues rulings to resolve local problems (Wan Mohd Khairul Firdaus et.al, 2019). Consequently, as the jurisdiction regarding *fatwā* issuance is handed over to the

state, there are noticeable *fatwā* differences between states. On top of that, the *muftūn*, plural for *muftī*, appointed in each state are free to issue *fatwā* without being restricted by the decision of other *muftūn* (Zulfaqar Mamat, 2020).

Due to the inconsistencies between Islamic *fatwā* institutions, an entity was established to coordinate the administration of Islam throughout Malaysia, namely the National Council of Islamic Affairs, or Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia (MKI) (Ikhlās Rosele, 2017). In line with the establishment of MKI, another *fatwā* committee was established under the MKI called the *Fatwā* Committee of the National Council of Islamic Affairs of Malaysia, or Jawatankuasa Fatwa Kebangsaan (JFK) which issue *fatāwā* on the national level. The national *fatwā* committee's responsibilities include standardizing and coordinating conflicting *fatāwā* in Malaysia and discuss major contemporary issues related to Islamic law at the national level as the rulers are aware of the differences in *fatāwā* that arises between the states due to the separate jurisdiction (Zulfaqar Mamat et.al, 2013; Nisar Mohammad et.al, 2020). Therefore, in Malaysia, there are a total of 15 institutions that are in charge of issuing *fatāwā* and Islamic rulings: the national *fatwā* council, 13 institutions for each state, and another one for Wilayah Persekutuan.

It has to be noted that since *fatwā* issuance falls under the jurisdiction of the state, *Fatwā* Committee of National Council of Islamic Affairs does not have legal authorities to standardize the *fatwā* in all states. Any ruling from the Muzakarah, or the *fatwā* committee discourse, is not binding to the states. It is still subjected to the states' *fatwā* institutions to accept, amend or to gazette the decisions (Ikhlās Rosele, 2017). Furthermore, independent jurisdiction of the *fatwā* issuance also allows the institutions to use different methodologies. The enactment of Islamic administration in the Malaysian states, with the exception of Perlis, prioritizes the Shāfi'i School of thought as the primary source for issuing *fatwā* (Noor Naemah, 2007). Perlis, on the other hand, in its enactment is not tied to any particular school of thought. Rather, it prioritizes the public interest of the society

(Administration of Muslim Law Enactment (Perlis, 2006). Notwithstanding the non-binding effect, the existence of separate independent *fatwā* institutions have caused conflicts and differences between *fatwā* in Malaysia.

It is important to note that in this study, conflicting *fatāwā* is defined as the contradictory *fatāwā* between *muftūn* and *fatwā* institutions on a ruling for a certain issue, either regarding the decision of the *fatwā* itself or in the details of the *fatwā*. There are numerous conflicting *fatāwā* issued in Malaysia and these conflicts can take place in various forms including:

1. Conflict between *fatwā* institutions:
 - a) Conflict between the state *fatwā* institutions and the national *fatwā* council.
 - b) Conflict between state *fatwā* institutions with other state institutions.
2. Conflict regarding personal *fatāwā*:
 - a) Conflict between the personal *fatwā* of a *muftī* and the *fatwā* issued by a *fatwā* institution.
 - b) Conflict between *muftī*'s personal *fatwā* and another *muftī*'s personal *fatwā*.

It should be noted that differences in *fatwā* issuance is not uncommon in Islamic history. Indeed, there have been numerous instances where the Companions and the Muslim jurists have issued different and conflicting *fatāwā*. Ibn al-Qayyim (1991), for example, has recorded the practices of the Companions which show that a *fatwā* can change due to certain factors. Ibn al-Qayyim has recorded various examples that illustrate that the Companions have changed their *fatāwā* due to changes in circumstances, times and places with the aim of realizing the objectives of Shariah, which is to achieve *maṣlaḥah*, or the public interest. This proves that *fatwā* is not immutable and stagnant in nature. Rather, it constantly evolves and changes to cope with the change in place, time and circumstances. However, in the context of Malaysia, unstandardized *fatāwā* in matters pertaining to national interests will cause confusion to the public and inefficiency in the issuance of *fatwā* (Ikhlās Rosele, 2013).

3. The Principle of Consideration of the Consequences

There is no concise definition given by the classical jurists regarding this term (Al-Sanūsī, 2003). However, contemporary scholars such as al-Sanūsī (2003) have made an effort to give a clear definition for this term. He defines the principle of consideration of the consequences as “achieving the basis of the ruling by considering the consequential requirement that it has when it is implemented in terms of achieving its objective and building on what that requirement requires.”

This means that when the mujtahid and the *muftī* issue a *fatwā* or Islamic ruling, he must consider the consequences of that ruling whether it will inflict good or harm to the people. In practicing this principle, it is not enough to issue a *fatwā* solely based on textual evidence, without giving any consideration to what that particular *fatwā* may inflict. If the *muftī* does not take the consequences of his *fatwā* into account, then he is either falling short of the level of *ijtihād* or is not practicing it to the full extent (Al-Raysūnī, 1995).

Regarding this matter, al-Shāṭibī (1997) notes that “taking into account the consequences of an action is regarded an objective of the *Sharī'ah*. This is because the *mujtahid* should not give a ruling to an action performed by the *mukallaf*, whether to allow or refrain it, except after considering the consequences of that action.”

The same notion has also been mentioned by al-Shāfi'ī (1983) in his famous book, *al-Umm*, which states that “anything that is a means to prevent what Allah has permitted is not permissible, and likewise anything that is a means to permit what Allah the almighty has forbidden is not permitted.”

There are numerous examples for this principle in the Qur'ān, *Sunnah* as well as in the Islamic jurisprudence (Kamāl al-Dīn Imām, 2012, Yūsuf bin 'Abd Allāh, 2012). In the Qur'ān, for instance, the necessity to examine the consequences of an action is highlighted in a number of verses such as in the verse, “O believers! Do not insult what they invoke besides Allah or they will insult Allah spitefully out of ignorance. This is how We have made each people's

deeds appealing to them. Then to their Lord is their return, and He will inform them of what they used to do” [Al-An'ām: 108].

In this verse, Allah forbids the Prophet (pbuh) and the believers from insulting the gods of the polytheists as it will lead to greater evil and bad consequences for the Muslims. The verse highlights one of the consequences, which is the polytheists will respond to the insultation by insulting Allah (Ibn Kathīr, 1999). The same principle can be found in the *Sunnah*. The Prophet (pbuh) refrained from killing the hypocrites despite knowing the name of every hypocrite and despite his knowledge that they deserve to be punished. The Prophet (pbuh) says, “*I am afraid people will say that Muhammad kills his companions*” (Al-Bukhārī, 1993; Muslim, 1955).

Another example of the practice of this principle can be seen when the Prophet (pbuh) abandons the idea of rebuilding the Kaaba as it will stir confusion among the Arabs, many of whom were new to Islam. Regarding this incident, the Prophet (pbuh) addresses this issue to his wife 'Aishah, “*Did you not see that your people built the Kaaba and did not build on the foundations of Ibrāhīm? 'Aishah said: O Messenger of Allah, will you not return it to the foundations of Ibrāhīm? He said: Had it not been for the recent disbelief of your people, I would have done so*” (Al-Bukhārī, 1993). This shows that the consequence of an action plays a role in the practice of the Prophet. He refrains from executing the idea of rebuilding the Kaaba as it gives bad consequence to the newly converted Arabs.

The Prophet (pbuh) also prevents the Companions from reprimanding and stopping an Arab who urinates in the mosque (Al-Bukhārī, 1993; Muslim, 1955). Regarding these incidents, al-Raysūnī (1995) notes that if not for the consequences that are taken into consideration, it would have been necessary to kill the hypocrites, rebuild the Kaaba on the foundations of Ibrāhīm and prevent the Arab from completing his reprehensible act. However, the first would alienate people from Islam for fear that they would be killed on charges of hypocrisy, the second would have led the Arabs to believe that the Prophet destroys the sacred place and the latter would only have made the

person urinating defile his body and clothes, and perhaps defile other parts of the mosque and it might have been harmful to his health.

Al-Shāṭibī (1997) notes that a true mujtahid who is involved in issuing *fatwā* should not disregard the consequences of a ruling before issuing it and a *muftī* must “look into the consequences before answering the questions.” Indeed, there are numerous examples from the practices of the Companions and Muslim scholars which highlight the implementation of this principle in their rulings. However, there is no need for the researcher to discuss all the examples. The aforementioned examples from the Qur’ān and the *Sunnah* are sufficient in highlighting the authenticity of this principle in Islamic jurisprudence.

4. Interfaith Marriage Between Muslims and the People of the Book: Juristic Analysis of the *Fatāwā* Issued in Malaysia

Fatwā institutions in Malaysia have issued conflicting *fatāwā* regarding the permissibility of the marriage between Muslim men and the women from the People of the Book. The majority of scholars agree that the People of the Book, as stated in Islamic written works, are people from the Christian and Jewish religions who were sent with the *Tawrah* and books of *Injil* (Ibn Qudāmah, 1985; Al-Sāwī, n.d). This is supported by the verse “Lest you should say, *“The Book was sent down only to two communities before us, and we were indeed unaware of their studies”* [al-An‘ām: 156] which, according to various Muslim exegetes, signals to the Jews and Christians (Al-Ṭabarī, n.d; Al-Qurṭubī, n.d; Al-Ālūsī, n.d; Al-Biqā‘ī, n.d)

Regarding the *fatāwā* pertaining interfaith marriage between Muslims and the People of the Book, several *fatwā* institutions have issued conflicting *fatāwā* on this issue. It has to be noted that the *fatāwā* on this matter touches the issue of the marriage between Muslim men and the women from the People of the Book and not vice versa as there is a clear consensus (*ijmā‘*) between Muslim scholars that it is forbidden to allow non-Muslims to marry Muslim women (Ibn Qudāmah, 1985). The

fatāwā issued on this matter can be categorized into three categories:

1. The first approach has underlined the distinction between Jew and Christian women and divided them into *kitābī* and non-*kitābī*. *Kitābī* refers to the original Jews or Christians who are:
 - i. Descendants of Jaacob, if cannot be identified that their ancestors have embraced their religions after they have been abrogated by other subsequent Abrahamic faiths.
 - ii. Other non-Jacob descendants, if there is proof that their ancestors practiced that faith prior to its abrogation.

The proponents of this opinion have asserted that it is permissible for a Muslim to marry non-Muslim *kitābī* women, while marrying non-*kitābī* is forbidden (Pernikahan Dengan Perempuan Kitabiah-2). However, marriage with unoriginal People of the Book women that has been done in the past is valid, based on other opinion of scholars, provided that the marriage is conducted in Islamic way and the family must live in the Islamic environment, including the education of the children. This opinion is held by National *fatwā* committee and Selangor state *fatwā* institution.

2. The second approach is held by Perlis state *fatwā* institution which issues a *fatwā* that it is permissible for Muslims to marry People of the Book women, without further distinction as seen in the previous approach (Hukum Perkahwinan Dengan Wanita Ahli Kitab).
3. As for the third approach, Sabah state *fatwā* institution has issued a *fatwā* which mentions that a marriage between non-Muslim man and a Muslim woman and vice versa is invalid, without any distinction regarding the category of the non-Muslims whether they are the People of the Book or not (Perkahwinan Seorang Muslimah Dengan Orang Bukan Islam).

These conflicts stem from the differences of opinions between Muslim scholars regarding this issue.

While the permission for marrying the women from the People of the Book is highlighted in the Quran, the scholars disagree on the details of this permission. It is mentioned in Sūrat al-Mā'idah, *"Today all the good things have been made lawful to you: —the food of those who were given the Book is lawful to you, and your food is lawful to them— and the chaste ones from among faithful women, and chaste women of those who were given the Book before you, when you have given them their dowries, in wedlock, not in license, nor taking paramours"* [al-Mā'idah: 5].

This verse emphasizes the permissibility ruling of marrying women from the People of the Book. Indeed, the majority of scholars from different schools of thought agree on permissibility of this issue (Al-Qudūrī, 1997; Al-Shirbīnī, 1997; Ibn Qudāmāh, 1985). Ibn Qudāmāh (1985) notes that there is no dispute among scholars regarding the lawfulness of the ruling that permits marrying women from the People of the Book. He further records various Companions such as 'Umar, 'Uthmān, Ṭalḥah, Ḥudhayfah, Salmān, Jābir, and the majority of *tābi'ūn* such as al-Ḥasan, Ibrāhīm and al-Sha'bī who have all narrated in favor of this opinion. Al-Jaṣṣāṣ (1992) also mentions that all of the Companions, aside from Ibn 'Umar, agreed that it is permitted to marry the women from the People of the Book. Due to this strong evidence, particularly the aforementioned verse from Sūrah al-Mā'idah, the majority of jurists from Ḥanafī (Al-Sarakhsī, nd; Al-Kāsānī, 1986; Ibn 'Ābidīn, 1966), Mālikī (Al-Sāwī, n.d), Shāfi'ī (1983; Al-Shirbīnī, 1997) and Ḥambalī (Ibn Qudāmāh, 1985) have reached a consensus about the permissibility of Muslims marrying women from the People of the Book.

However, among the Companions, Ibn 'Umar holds a different opinion regarding this matter. It has been narrated by al-Bukhārī (1993) that when Ibn 'Umar was questioned about marrying a Christian woman or a Jewess, he would respond, "Allah has made it unlawful for the believers to marry idolatresses, and I do not know of a greater thing, as regards to ascribing partners in worship to Allah, than that a lady who says that Jesus is her Lord although he is just one of Allah's slaves." Ibn 'Umar's argument is based on the verse, *"Do not marry idolatresses until they embrace faith. A faithful slave girl is better than*

an idolatress, though she should impress you" [al-Baqarah: 221].

Indeed, the People of the Book fall into the prohibition highlighted in this verse as they also committed idolatry in their belief, as illustrated in the verse, *"The Jews say: Ezra is the son of Allah, and the Christians say: Christ is the son of Allah"* [al-Tawbah: 30] and other similar meaning verses. However, the verse from al-Mā'idah has excluded these two religions from the general prohibition (Al-Kāsānī, 1986).

The evidence used by majority of scholars, in the researcher's perspective, seems stronger as it is backed by the verse in al-Mā'idah which has clearly stated the permissibility ruling regarding this issue. As for the aforementioned verse from al-Baqarah, the verse can be understood in a couple of different interpretations. First, it is a general ruling that is restricted by the verse in al-Mā'idah, hence the People of the Book women are an exception from the general prohibition of marrying idolatresses. Moreover, the idea that the verse from al-Baqarah abrogates the verse from al-Mā'idah also cannot be accepted since it contradicts the opinion of majority of the Companions. Besides, Sūrat al-Baqarah was revealed early in Madinah while al-Mā'idah is among the latest Sūrah revealed to the Prophet (Al-Qurṭubī, n.d).

Secondly, the term *mushrikāt*, or the idolatresses or the polytheists, does not include the women from the People of the Book. This is proven by the fact that the term People of the book is mentioned side by side with the polytheists in the Qur'an which implies that there is a distinction between the two terms. This can be seen in a number of verses such as the verse *"The faithless from among the People of the Book and the polytheists were not set apart until the proof had come to them"* (al-Bayyinah: 1) and in the verse *"Indeed the faithless from among the People of the Book and the polytheists will be in the fire of hell"* (al-Bayyinah: 6) (al-Qaraḍāwī; Al-Jaṣṣāṣ, 1992; Ibn Qudāmāh, 1985).

As for the first approach of the *fatwā* which has been issued by the National *fatwā* committee and Selangor state *fatwā* institution, this opinion is built upon

the views of the Shāfi'ī jurists. Al-Shāfi'ī (1983) has noted in *al-Umm* that the marriage is only permissible with the original Jewess and Christians. He further elucidates that it is not permissible for a Muslim to marry Christian Arab women because they are not originally from that religion. Instead, they converted to the religion of the People of the Book afterwards, not because they used to profess the Torah and Injeel. The same thing can be said about the non-Arabs where their ancestors are not the original People of the Book. If they convert to Christian or Jew, they are not considered as the original People of the Book and cannot be married by Muslims. Al-Shāfi'ī (1983) supports his opinion with a narration in which 'Aṭā' said, "Arab Christians are not the People of the Book. Instead, the People of the Book are the children of Israel (descendants of Jaacob) and those to whom *Tawrah* and *Injil* are sent. As for those who convert to that religion, they are not considered as the People of the Book."

This notion has been also mentioned by al-Shirāzī (n.d) when he points out that Muslims are not allowed to marry women who convert to Judaism or Christianity once the religions have been altered since in doing so, these women have converted to an invalidated religion. Because of this, these women are unable to be married and the same laws as Muslims who have committed apostasy apply to them. This proves that both National *fatwā* committee and Selangor state *fatwā* institution have followed Shāfi'ī jurists' opinion in their *fatwā*. Indeed, both institutions have issued identical *fatwā* which highlights their tendency to follow Shāfi'ī school of thought in this matter. In their *fatāwā*, it is stated that "The marriage of a Muslim with a Kitābiyyah (a woman from the people of the Book) woman is invalid according to the Shāfi'ī school of thought" (Pernikahan Dengan Perempuan Kitabiah-3). With that being said, this approach still considers the marriage with non-original People of the Book which occurred in the past as valid, based on other jurists' opinion that permit it if the marriage is done in Islamic way and the family can live in Islamic environment. This is in line with the principle of *mura'ah al-khilāf*, or 'consideration for opposing points of

view', which is more prominent in Mālikī school of thought (Al-Raysūnī, 1995).

These *fatāwā*, however, contradict the second approach opinion which broadens the definition of the People of the Book to either original proponents of those religions or non-original Jews and Christians who convert into that religion (Hukum Perkahwinan Dengan Wanita Ahli Kitab). While the second approach follows the same footstep as the previous approach in permitting Muslims to marry the women from the People of the Book, this approach does not limit them to only descendants of Jaacob as seen in the previous approach. Instead, the *fatwā* from this approach considers all followers of the religions of Christianity and Judaism, whether from descendants of Jaacob or not, as the People of the Book. It is recorded particularly among Mālikī jurists that Muslims are permitted to marry original People of the Book or the non-original Jewess who convert to Christian, or vice versa. They also mention that Muslims are allowed to marry the women of other religions, such as Zoroastrians, if they convert to Judaism or Christianity. It is only prohibited for the Muslims to marry Christian women and Jewess if they convert to religions other than Christianity or Judaism (Al-Sāwī, n.d; 'Illysh, 1984).

Various evidence has been marshalled in order to prove that the permissibility of marrying the People of the Book include all followers of Christianity and Judaism, both original and converted believers. Other than the general verse from al-Mā'idah, the practices of the Companions also prove its permissibility. It is recorded that 'Uthmān has married Nā'ilah Bint Furāfiṣah al-Kalbiyyah, who is from Arab origin, when she was still a Christian and then she converted to Muslim after marrying 'Uthmān (Al-Baghawī, n.d; Al-Jaṣṣāṣ, 1992; Al-Bayhaqī, 2003). It is also narrated that Ṭalhah bin 'Ubaydillāh also married an Arab Jewess from *ahl al-Shām* (Levantine Arabs) and Ḥudhayfah bin al-Yamān who also married a Jewess (Ibn Abī Shaybah, 1994; Sa'īd bin Manṣūr, 1982; Al-Jaṣṣāṣ, 1992).

On top of that, this approach is supported by the letter sent by the Prophet to Heraclius, the Byzantine emperor which reads, "*In the name of Allah, the Merciful,*

the Compassionate, from Muḥammad, the slave of Allah and His Messenger, to Heraclius, ruler of the Byzantines. Peace be upon the one who follows guidance. I call you to Islam. If you become Muslim, you will be safe, and Allah will double your reward. If you turn away, then you incur the wrong action of your subjects." The letter is followed by a verse from Āl 'Imrān, "Say, "O People of the Book! Come to a common word between us and you: that we will worship no one but Allah, and that we will not ascribe any partner to Him, and that we will not take each other as lords besides Allah." But if they turn away, say, "Be witnesses that we are Muslims" [Āli 'Imrān: 64] (Al-Bukhārī, 1993).

From this evidence, Ibn Ḥajar (1986) concludes that everyone who converts to the religion of the People of the Book will follow the ruling applied to the original People of the Book in terms of permissibility of marrying their women and eating their slaughtered meat. This is because of the fact that Heraclius and his people are not originally from *Banī Isrā'īl*, or the descendants of Jaacob. Rather, Heraclius is the emperor from *Banī Aṣfar*, or the Byzantine, who converted to Christianity after the religion had been altered. Despite that, the Prophet still sent him a letter consisting a verse which calls for the People of the Book to come to a same proposition between their religion and Islam (Ibn Ḥajar, 1986).

This contradicts the idea that the People of the Book are solely from the descendants of Jaacob or anyone who converts to that religion before it was altered. Besides, alteration of the religion of the People of the Book has occurred since before the age of the Prophet. In *Sūrat al-Mā'idah*, for instance, it is stated, *"They are certainly faithless who say, "Allah is the Messiah, son of Mary." But the Messiah had said, "O Children of Israel! Worship Allah, my Lord and your Lord. Indeed, whoever ascribes partners to Allah, Allah shall forbid him [entry into] paradise, and his refuge shall be the Fire, and the wrongdoers will not have any helpers." They are certainly faithless who say, "Allah is the third [person] of a trinity," while there is no god except the One God. If they do not relinquish what they say, there shall befall the faithless among them a painful punishment"* [al-Mā'idah: 72-73].

Despite that, the Qur'ān still considers Christians and Jews as the People of the Book and Muslims are allowed to marry their women and eat their slaughtered meat. Due to these evidences, the researcher tends to agree with the second approach as the general juristic ruling for the issue of a Muslim's marriage with the People of the Book.

Despite the permission and the permissibility ruling highlighted in the Qur'ān, numerous Muslim scholars have detested the marriage with the People of the Book as it will lead to the absence of a Muslim mother in the family. Indeed, a Muslim mother plays an important role in a family in nurturing children with piety, Islamic morals, and values. Additionally, there is the risk that the non-Muslim mother's traditions and beliefs will have an effect on her Muslim spouse and children. In the Ḥanafī jurists' discussion regarding this matter, Ibn 'Ābidīn (1966), for example, states that marriages to the women of the People of the Book, who believe in the Prophet, the revealed Book and believe that the Jesus is the God, is valid and lawful in the Islamic law, even though it is considered detested (*makrūh tanziḥī*). The same opinion can be seen among Mālikī jurists, who permit marrying the People of the Book. However, it is detested by Mālik as they may practice non-Islamic behaviours such as eating pork and consuming intoxicants. This is because the Muslim husbands do not have any right to prevent them from consuming these foods, even if they are affected by the smell, or the right to prevent their wives from going to the church. Ibn Qāsim notes that it is more detestable if the marriage takes place in the Territory of War (*dār al-ḥarb*) (Al-Sāwī, n.d.).

The same notion has been echoed by Ibn Qudāmah (1985). He notes that even though the general ruling of the marriage is permissible, it is better for Muslims not to marry the women from the People of the Book, based on 'Umar's opinion. It is because during his time, 'Umar had restricted the practice of marrying the People of the Book due to the risk and harm involved in the consequence of that particular marriage. He insisted on some of the Companions who married the People of the Book to divorce their wives. One of them is Ḥudhayfah

bin al-Yamān who married a Jewess. When this incident reached 'Umar, he wrote to Ḥudhayfah to tell him to divorce his Jewish wife. Ḥudhayfah responded to 'Umar, asking whether marrying a Jewess is prohibited (*ḥarām*). 'Umar responded to the inquiry by mentioning, "I am not claiming that it is *ḥarām*. However, I am afraid that they would come to mingle with the promiscuous from amongst them" (Ibn Abī Shaybah, 1994; Sa'īd bin Manṣūr, 1982).

An additional rationale is that it will create unbalance in the society if a lot of Muslims decide to marry People of the Book, while there are a lot of Muslim women who are not married. In another narration, 'Umar mentions, "*A Muslim man marries Christian woman, while Christian man cannot marry Muslim woman*" ('Abd al-Razzāq, 1983). From 'Umar's statement, it can be understood that 'Umar does not prohibit the marriage because he sees the marriage as prohibited (*ḥarām*), but, rather, he prevents Ḥudhayfah from marrying the People of the Book because he considers the consequences of the marriage which will bring great harm to Muslim society. During his time, Ḥudhayfah was a leader and 'Umar was afraid that the Muslims will follow the footsteps of Ḥudhayfah in marrying the People of the Book, leaving many Muslim women unmarried (Baltāji, n.d). This rationale is particularly evident in a statement of 'Umar in other narration in which Ḥudhayfah asks 'Umar whether this marriage is *ḥarām*, 'Umar answers, "No, but you are a leader of the Muslims, so leave her" (Sa'īd bin Manṣūr, 1982). Other than Ḥudhayfah, there are other narrations in which 'Umar prevents the Muslims to marry the People of the Book by saying, "Stay away from her and marry a Muslim woman" (Al-Qāsim bin Sallam, 1997).

The justifications made by 'Umar have shown that during his time, he prefers the Muslims to marry the Muslim women, as opposed to the women from the People of the Book. On top of bringing harm to Muslim women as it will risk them to be left unmarried, 'Umar also considers the risk that the Muslims will overlook the requirement of chastity which is the restriction to the permissibility of marrying them as mentioned in the Qur'ān, consequently making them engage in marriage

with the immoral and promiscuous among them. 'Umar's opinion does not mean that he has abrogated or went against Qur'ānic verses, as clearly seen in the narrations in which he did not find marriage to People of the Book as prohibited (*ḥarām*), rather it is a temporary prohibition in accordance to his policy in order to uphold public interest (*maṣlaḥah 'āmmah*) (Baltāji, n.d). This shows that while the general ruling of marrying the women of the People of the Book is lawful and permissible in Islam, the ruler has the right to limit the permission (*taqyīd al-mubāḥ*) if the marriage can lead to greater harm to the society.

5. Consideration of the Consequences in the Issue of Marrying the Women from the People of the Book in Malaysia

The issue of marriage with the women from the People of the Book has been discussed by numerous contemporary scholars in light of the context of the current day. While the Qur'ān highlights the general ruling in permitting this marriage, Muslim scholars have underlined the condition and the requirements that must be met, lest the marriage will bring great harm to the family, the religion of the children and the society. The requirements can be divided into two, namely, the requirements for the wife and the husband.

5.1 The People of the Book: Wife

One of the contemporary scholars who underlines the requirements for this marriage is al-Qaraḍāwī. In his *fatwā*, al-Qaraḍāwī (2014) highlights four requirements that must be met.

First, it needs to be confirmed that the woman is, in fact, a People of the Book, meaning that she largely accepts the existence of God and the afterlife as well as the revealed religion. If the woman is an atheist, Muslims are not allowed to marry her. Second, it is required that the women must be chaste and virtuous, as the verse in al-Mā'idah restricts the permission to chaste women from the People of the Book, "*Today all the good things have been made lawful to you: —the food of those who were given*

the Book is lawful to you, and your food is lawful to them—and the chaste ones (muḥṣanāt) from among faithful women, and chaste women of those who were given the Book before you” [al-Mā'idah: 5].

Regarding this verse, Muslim jurists have different opinion regarding the meaning of the word *muḥṣanāt* mentioned in the verse; some believe it refers to chaste women, while others believe it refers to free women who are not slaves (Abū Zahrah, n.d; Al-Bayḍawī, n.d). For instance, Ibn 'Abbās notes that *muḥṣanāt* is chaste women while al-Sha'bī mentions that it refers to women who protects their dignity and do not commit adultery (Al-Qurṭubī, n.d). However, it goes without saying that chastity and virtue are essential requirements for marriage, regardless of the difference in opinions. Additionally, according to Ibn Kathīr (1999), the word *muḥṣanāt* in this verse appears to be referring to chaste women who abstain from fornication, as it is highlighted in another verse, “*Muḥṣanāt (chaste women), not licentious ones or those who take paramours*” [al-Nisā': 25].

As for the third requirement, al-Qaraḍāwī (2014) notes that the women must not be from the people who are hostile and in fight with Muslims. Based on this condition, Muslims in today's context are not allowed to marry a Jewess, as long as the war and hostility between Muslims and Israel exists. Fourth, it is required that the marriage does not cause conflict, turmoil and harm as all practices of permissible actions are tied to not causing harm to the practitioner or to others based on hadith, “*There should be neither harming (ḍarar) nor reciprocating harm (dirār)*” (Ibn Mājah, n.d). Al-Qaraḍāwī also notes that this marriage should be prohibited according to the harm it inflicted to the Muslims; if the marriage causes harm to the whole society, then the prohibition should be given to all people and if the harm is inflicted to certain individuals if they perform this marriage, then the prohibition should be limited to those particular people.

It is crucial to remember that Islamic law allows marrying the People of the Book in order to achieve a number of objectives. Compared to atheists, the People of the Book are more likely to accept Islam because, among

other things, they already generally believe in the existence of God, revealed Books, and the afterlife (Al-Kāsānī, 1986). Islam also accepts this marriage as a sign of harmony and peace, which helps to lessen the wife and the non-Muslims' negative opinion of Islam. She can live with her Muslim husband despite their differing religious beliefs, and through their daily interactions, she is able to witness the beauty of Islam. Furthermore, she continues to enjoy complete freedom to practice her religion and acquire full rights as a wife (Shaltūt, 2001). Islam views the husband as the wife's guardian, as highlighted in the verse, “*Men are the protectors and maintainers of women*” [al-Nisā': 34].

5.2 The Husband

The husband should provide leadership to steer the family into following Islamic teachings (Shaltūt, 2001). When a Muslim husband dedicates his life to following Islamic law and its teachings, his wife often ends up being the one who is influenced rather than the one who is influencing her family. This can serve as a *da'wah*, or an act of inviting to Islam, for his wife. Even if the wife refuses to convert to Islam, which is her right, she will be still assimilated into the Muslim community and customs and she will follow the Islamic morals, even if she does not follow Islamic beliefs (Al-Qaraḍāwī, 2014).

However, the marriage cannot accomplish the previously described objectives if the Muslim husband does not have the strength and character to lead the family in the right direction. Otherwise, the marriage could negatively impact the children's religious upbringing rather than serving as an opportunity for the *da'wah*. In this regard, Maḥmūd Shaltūt (2001) points out that it would be against the wisdoms and goals of the marriage if the Muslim husband renounces his role in providing leadership and hands over control of himself, his family, and his children to his non-Muslim wife until she is able to conduct him and his children in accordance with her faith. Hence, Maḥmūd Shaltūt (2001) gives his opinion that it is not permissible for Muslim men who cannot lead his family and wife to marry women from the

People of the Book and he considers this as “an undisputable principle”.

On the other hand, Islamic law has prohibited Muslim women to marry non-Muslim men in order to prevent the Muslim women from being influenced by their husband. The same prohibition should also be given to Muslim men if they cannot lead the family as they will be influenced by their wives. This leads Maḥmūd Shaltūt (2001) to his conclusion that the permissibility of this ruling should be restricted in accordance to the principle of restricting permissible actions (*taqyīd al-mubāḥ*) and should not be permissible to every Muslim.

As for al-Qaraḍāwī (2014), while he concurs with the opinion that it is permissible to marry the women from the People of the Book, he also takes into account the complexities of modern life and the implications of implementing this opinion. Al-Qaraḍāwī not only asserts that men’s leadership is weaker compared to the heyday of Islamic law, but he also points out that Muslim society has become weaker and does not completely embrace Islam as a belief, law, concepts, customs, morals and as a comprehensive civilization. He insists that if the Muslim society does not exist in the desired way, then the Muslim family must remain present to compensate the deficiency resulting from the absence of a functional Islamic society. As a result, al-Qaraḍāwī observes that, in order to avert all likely harm, marriage with non-Muslim women should be avoided in the modern world in accordance with the principle of blocking the means (*sadd al-dharī’ah*). The marriage should only be allowed when there is compelling necessity or urgent need.

6. Findings

In the context of Malaysia, while the approach which permits the marriage with the People of the Book is supported by strong evidence from the Quran, the researcher tends to agree with both al-Qaraḍāwī and Maḥmūd Shaltūt’s approaches in restricting its ruling due to unfavourable consequences and harms to Muslim women in particular and the Muslim family institution as a whole. Indeed, Perlis *muftī* (Mohd Asri Zainul Abidin,

2013) has stated that, in Malaysia, it is preferable for Muslim men to marry the Muslim women rather than the People of the Book, and he further points out that this permissibility is limited only to devout Muslims. Nevertheless, this restriction is not mentioned in the official *fatwā*.

In 2014, the Fifth Malaysian Population and Family Survey Report (2016) identified three primary causes of Malaysian women’s single status: not finding a suitable partner (35.7%), financial difficulties (26%) and pursuing career progression (18.1%). Since Muslim women are prohibited from marrying men of other religions, the number of suitable candidates for Muslim women will decrease if Muslim men are permitted to wed People of the Book. In this regard, the rationale presented by ‘Umar in forbidding the Companions from marrying the People of the Book is quite relevant when he mentions, “A Muslim man can marry a Christian woman, while a Christian man cannot marry a Muslim woman” (‘Abd al-Razzāq, 1983). The permission to this marriage carries a serious risk in creating instability in the Muslim family institution and abandonment of Muslim women which is a great harm that should be avoided.

As for the *fatwā* from the first approach which underlines the distinction between the People of the Book and divides them into *kitābī* and non-*kitābī*, this opinion carries great difficulty in practice. If a woman claims herself as a *kitābī*, there is insufficient method and mechanism to ensure the authenticity of the claim. Even if the *kitābī* women do exist in Malaysia, they cannot be differentiated from other Jewish or Christian women (Md. Zahidul Islam, 2014).

On top of that, there are also issues from legal and law point of views. Regarding the *Shari’ah* court, amendment of Article 121(1A) of the Federal Constitution in 1988 gives exclusive jurisdiction over Muslims. However, *Shari’ah* court does not have jurisdiction when one of the parties is not Muslim (Azhani Arshad et.al, 2022; Hussin Che Pa et.al, 2016). The Shariah court has no jurisdictions over the non-Muslims. Hence, the existence of dual legal framework in family law and the limited jurisdiction of the *Shari’ah* court system which holds

jurisdiction only to govern Muslims are insufficient to administer People of the book.

Notwithstanding the permissibility of its general ruling, the researcher is inclined to agree with the opinion of al-Qaraḍāwī in restricting the permissibility of this ruling due to its serious harm and consequences. Such marriage should not be permitted due to the context of Malaysia as well as its legal framework. While the interfaith marriage does have its *maṣlahah*, or benefits, as mentioned previously, it also consists of *mafsadah*, or harm, if it is applied in an uncondusive environment. Based on the aforementioned consequences, it can be said that the harm in permitting this marriage in the local context is greater than its benefit. Thus, the researcher strongly believes that this marriage should be prevented by the government based on the principle of consideration of consequences (*i'tibār al-ma'ālāt*).

7. Conclusion

1. The principle of consideration of consequences (*i'tibār al-ma'ālāt*) is crucial in the process of *fatwā* issuance. Hence, it is compulsory to consider the consequences of a ruling in order to provide *maṣlahah*, or benefits, to the people.
2. The permission for Muslims to marry the women from the People of the Book in the context of Malaysia carries a significant risk to Muslims' familial system and religiosity. There is also risk from judiciary perspective where Shariah court has no jurisdiction over non-Muslims.
3. Based on the implications and the harms it will bring, the interfaith marriage between Muslims and the women from the People of the Book should not be allowed in Malaysia. The general permission from the Islamic law should be restricted in the context of Malaysia due to the harm and unwanted consequences.
4. It is highly recommended to the *fatwā* institutions to revisit the issue of the interfaith marriage and consider the consequences of this marriage.

5. It is also recommended for the researchers to analyse the conflicting *fatāwā* in Malaysia in order to highlight the root of disagreement between the institutions. This can contribute to the process of giving preponderance (*tarjih*) to the *fatāwā* that will provide the most benefits (*maṣlahah*) to the people.

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