FIQH AL-MUWAZANAH IN DEALING WITH INTERFAITH MARRIAGE IN EUROPEAN MUSLIM MINORITY CONTEXT

Muhammad Shahrul Ifwat Ishak[1a*], Nur Syahirah Mohammad Nasir[2b], Abdulmajeed M. R. Aderemi[2c], Huzaifa Aliyu Jangebe[3d] and Halimaton Mohamad[4e]

[a]Islamic Social Finance Research Centre, Universiti Sultan Zainal Abidin,
21300 Kuala Nerus, Terengganu, MALAYSIA.
E-mail: shahrulifwat@unisza.edu.my[1]
[a]Faculty of General Studies and Advanced Education, Universiti Sultan Zainal Abidin,
Kuala Nerus, Terengganu, MALAYSIA.
E-mail: syahirahnasir@unisza.edu.my[2]
[b]Islamic Finance Connect, Manchester, UNITED KINGDOM
E-mail: majeedity@gmail.com[3]
[c]Federal University Gusau, Zaria Road, Gusau, NIGERIA
E-mail: h.jangebe@fugusau.edu.ng[4]
[d]Faculty of Shariah, University of Jordan, JORDAN
E-mail: halimaton.hm@gmail.com[5]

*Corresponding Author: shahrulifwat@unisza.edu.my

ABSTRACT

This paper aims to apply the concept of fiqh al-Muwazanah on the issue of interfaith marriages among Muslims that widely occur in non-Muslim majority countries, especially the Western world. Two cases discussed among scholars regarding their permissibility are analyzed: A Muslim man who marries an ahl al-Kitab woman and a newly converted wife whose marriage to her non-Muslim husband has already been established. Even though both issues have been discussed within classical and contemporary works, a new Muslim minority context may require some considerations. Thus, by applying fiqh al-Muwazanah, this study analyses the weighing of maslahah and mafsadah for both issues. A qualitative research method is employed to achieve this objective by interviewing selected local muftis and scholars. It was found that maslahah is significantly considered by muftis and scholars when dealing with both issues, especially the maslahah of religion and family. While both cases have different views among scholars, they share similarities in terms of considering maslahah must be in accordance with priority, the application must be based on a case-to-case basis, and the potential of da'wah is the central pillar for both permissibility. Despite the limited number of interviewees, this study provides rigorous analysis by referring to related literature, practical discussion, and recommendations on both issues.

1. INTRODUCTION

While Shariah is part of religious practice, its rulings are not merely meant for spiritual obedience or ritual action. Instead, God reveals His rulings through His Shariah to promote the well-being of life, especially for Muslims. In other words, Shariah rulings act as a means for Muslims who practice them to achieve a better life in the world and the hereafter. This is the concept of *maqasid al-Shariah* (objective of Shariah), which reflects God's wisdom through His guidance for humans to ensure that they can achieve so-called *maslahah* (well-being) and to protect them from *mafsadah* (harm) by applying Shariah rulings (Al-Yubi, 1998). In this regard, it is essential for those who intend to apply Shariah rulings to modern laws, fatwa, or policies to consider *maslahah* behind the rulings, not merely adopt literal texts from the Quran and the Sunnah without understanding the wisdom and justification behind both sources (Al-Qaradawi, 2008).

While achieving a total *maslahah* and removing the whole *mafsadah* may not be too pragmatic, it is vital to harmonize between Shariah principles and the current circumstances (Al-Kailani, 2008). Thus, policymakers, lawmakers, or muftis must weigh between *maslahah* to identify the most dominant before deciding. Different times, places, and groups of people may significantly affect how far Shariah rulings can achieve the *maslahah* intended by God (Al-Qaradawi, 2008). In this regard, Shariah, in principle, recognizes the change in its certain rulings, subject to specific parameters to achieve *maslahah*. In addition, Shariah allows different approaches to be taken to apply its ruling because of varying situations that may affect the original objective of the ruling (Ishak, 2018). All matters related to human life, including economic activities, political approaches, and family matters, must consider this element. Thus, *fiqh al-Muwazanah* (weighing between *maslahah*) *plays* a significant role in ensuring Shariah rulings or fatwa issued bring dominant *maslahah,* if not all (Al-Qaradawi, 2006).

Previous studies have discussed the theoretical concept and the role of *fiqh al-Muwazanah.* For example, Mutalib et al. (2024) have analyzed the role of *fiqh al-Muwazanah* in the political approach, especially during the case of COVID-19. Their findings show that *fiqh al-Muwazanah* plays a significant role in balancing *maslahah* to issue Shariah laws. Meanwhile, Mahmood et al. (2011), in their study on the implication of *fiqh al-Muwazanah* towards fatwa, found that this concept is a practical mechanism in connecting rulings and their objectives, which makes the rulings more relevant to the current reality. Al-Haji and Solah

(2018), in his study on *fiqh al-Muwazanah* towards Islamic jurisprudence, found that *fiqh al-Muwazanah* plays a role in dealing with the clash between *maslahah* by considering the Shariah text, reality, and consequences of action. Shallal (2020) has listed several *maslahah* that should not be viewed, including *maslahah mulghah* (rejected) and *maslahah wahmiyah* (doubt), as only strong support *maslahah* should be considered. While many studies have significant contributions in terms of theoretical aspects, studies on the application side are still limited.

Interfaith marriages that widely practiced in non-Muslim majority countries, especially the Western world can be an interesting issue to be analysed through the concept of *fiqh al-Muwazanah*. Two issues need a special consideration: A Muslim man who marries an *ahl al-Kitab* (People of the book) woman and a newly converted wife whose marriage with non-Muslim husband has already been established. Both issues are part of *ijtihad* (legal reasoning), and scholars have different opinions. In general, Muslims are not allowed to have non-Muslim spouses, except for Muslim men, to marry Jewish or Christian women under the category of *ahl al-Kitab* with certain requirements (Al-Qurtubi, 2003; Al-Tabari, 1997). This permissiblily is mentioned in the Quran, and its wisdom lies in attracting non-Muslim women to embrace Islam. However, the second caliph was reported to ban this marriage after considering its *mafsadah* is more dominant than *maslahah* (Al-Baihaqi, 2005; Al-Jawarnah, 2008). As for the second case, Muslim women are not allowed to marry non-Muslim men. This prohibition aims to protect the women's religion from potential interference by their non-Muslim husbands, who may become dominant in the family (Al-Sobuni, 2000). Nevertheless, the case would be different if the marriage had already been established before the wife chose to be Muslim without her husband. Similar to this case, it was reported that Caliph Umar and Ali had allowed wives who converted to Islam to stay with their non-Muslim husbands as they had married before becoming Muslim (Al-Majlis al-Urubi li al-Ifta', 2010; Al-Qaradawi, 2005).

In modern times, interfaith marriage may not be a serious issue in Muslim-majority countries where Shariah laws have become enforceable in family matters, coupled with strong cultures, except for certain isolated cases. Conversely, in Muslim minority countries, especially in Europe, where the laws are based on a secular framework and the culture of freedom is more dominant, interfaith marriage has become the norm even for Muslims. This needs special consideration from the Shariah, particularly from the *maslahah* perspective. Previous studies have been conducted on this issue under the light of *maqasid*. Elmali-Karakaya (2022) found that a different approach has been considered between classical and contemporary scholars as the former focuses on the Shariah text, while the latter thinks about the impact on Muslim life.

Meanwhile, in their study, Sebayang and Tanjung (2024) found that modern interfaith marriage does not align with *maqasid*, especially in fulfilling the five necessities, mainly because this marriage leads to disputes over children's religion and inheritance issues. On the other hand, Amin et al. (2023) emphasized the need to harmonize the Shariah principle with reality, in which human rights and individual freedoms should be considered. Mohammad Nasir et al. (2024) found that the immediate dissolution of interfaith couples could harm women in terms of emotions, and it may tarnish the image of religion. Thus, a gradual approach should be considered when dealing with this issue.

Therefore, this study aims to apply the concept of *fiqh al-Muwazanah* in analyzing the issue of interfaith marriage in the Muslim minority context. The data is obtained through interviews with several local muftis and scholars in the United Kingdom (UK). The finding is presented as a thematic analysis before continuing the discussion based on applying *fiqh al-Muwazanah.* While this study may be limited in terms of the number of interviewees, it provides insight through the real engagement on the issue from the perspective of *maslahah*.

2.   LITERATURE REVIEW

2.1   *Fiqh al-Muwazanah: An Overview*

This section covers three areas: *fiqh al-Muwazanah,* interfaith couples from Shariah perspective and the situation of Muslim minority. As for *fiqh al-Muwazanah,* this term combines two words: *fiqh* and *al-Muwazanah*. While *fiqh* means understanding, its technical concept refers to a science of practical rulings extracted from specific Shariah sources. As for *al-Muwazanah*, it means to measure, evaluate, and weigh. While this combined term may not be popular among classical scholars, some scholars have defined and developed this term. For example, Al Atif (2016) refers *to fiqh al-Muwazanah* as knowledge that evaluates and weighs arguments and principles by prioritizing between *maslahah* and *mafsadah* or between each other when there is a contradiction to know which ruling is more substantial to be applied. Meanwhile, Al-Dusi (2001) defines *fiqh al-Muwazanah* as a collection of rulings or procedures that act as an intermediary to produce the best judgment between several *maslahah* or between several *mafsadah* or between both when there is a contradiction between each other. According to Al Kamali (2000), *fiqh al-Muwazanah* balances conflicting and competing *maslahah* and *mafsadah*, which means prioritizing or delaying.

The discussion on *fiqh al-Muwazanah* centers on the concept of *maslahah* itself. The word *maslahah* means benefit or interest. As for its technical meaning, scholars come up with several definitions. Al-Ghazali (1992), for example, has defined *maslahah* as protecting five essential elements: *din* (religion), *nafs* (soul), *aql* (intellect), *nasab* (progeny) and *maal* (wealth). Then, al-Shatibi (2004), who is well known as the father of *maqasid,* comes up with a meaning that *maslahah* is concerned with the subsistence of human life, the completion of man's livelihood, and the acquisition of his emotional and intellectual qualities, which require him to be in an absolute sense. Meanwhile, Ibnu Ashur, one of the pioneers in *maqasid* contemporary discourse, has defined *maslahah* as an attribute of an act in realizing goodness, which always or usually benefits the public or individuals. At the same time, *mafsadah* is an attribute of an act that always or usually results in corruption or harm to the public or individuals (Ibn Ashur, 2001).

All of the above indicate that *maslahah* reflects the element of well-being that must be achieved for the sake of a better life both in this world and in the hereafter. From the Shariah perspective, *maslahah* reflects the core spectrum of *maqasid al-Shariah* by realizing this element through the main objective of Shariah, which is the application of its rulings (Al-Raisuni, 1995). Since every Shariah ruling is revealed with a special *maslahah,* it must be considered during implementation. In this regard, the first step begins with critically analyzing the *maslahah* aspect in any verse about Shariah rulings (Ishak & Mohammad Nasir, 2022). In principle, every permissible Shariah action should initially bring *maslahah*, while the prohibited one can cause *mafsadah*. Without considering this element, the ruling could be applied in the wrong context, causing unintended consequences (Al-Kailani, 2008).

While *maslahah* seems to be a general concept of promoting well-being based on God's revelation, applying this concept in the actual situation is not as easy as its theoretical discussion. Although the theoretical idea of *maslahah* has been intensely discussed by scholars, the application stage would be challenging (Auda, 2007). The main dilemma in dealing with *maslahah* is when the implementation of any Shariah ruling does not achieve its *maslahah* due to current circumstances (Al-Najjar, 1989). In this regard, it is essential to consider *maslahah* based on real situations, particularly the consequences in practice (Al-Alam, 1994). When the *maslahah* of a ruling cannot be achieved in a particular application, it means the *maslahah* is no longer relevant in that case (Al-Khadimi, 2010). In addition, a specific *maslahah* in a ruling may be treated as having less priority if it affects general *maslahah*, which the latter is a more

critical consideration (Al-Kailani, 2000).

Nevertheless, dealing with this situation must be strictly carried out under the discipline of *maqasid al-Shariah*. In other words, *maqasid al-Shariah* provides a guideline for *mujtahids* to distinguish between *maslahah* and *mafsadah* in terms of their priority (Al-Raisuni, 1999) as they may encounter the following several situations: (i) clash between *maslahah*, (ii) clash between *mafsadah*, and (iii) clash between *maslahah* and *mafsadah* (Rahal, 2006). Thus, weighing the best choices for *fiqh al-Muwazanah* is crucial to deal with the clash between *maslahah* and *mafsadah*.

Despite *fiqh al-Muwazanah* may not appear in classical works of scholars, it is part of *maqasid al-Shariah* that emphasizes priority after consideration. The story of Musa and Khidir is among the basis for *fiqh al-Muwazanah*, where Khidir applied to consider the best choice in terms of *maslahah* and *mafsadah* in his decision to damage the boat that belonged to the poor, killing an innocent boy and re-building the wall without requesting a fee (Al-Qurtubi, 2003; Al-Tabari, 1997; Ibn Ashur, 2007). Even though it is part of the revelation of the future, it shows that *fiqh al-Muwazanah* is applied. Another practical fundamental support for the idea of *fiqh al-Muwazanah* is the case of the Hudaibiyyah accord between Quraysh Mecca and Muslim Medina. Even though some of the prophet's companions seemed unsatisfied with the list of accords proposed by Quraysh, especially when they were required to return to Medina without performing umrah except for the next year, and the point whoever flees to Medina without the permission of his guardian must be sent back to Mecca. Still, whoever came to Mecca from the Muslims would not be sent back. The prophet agreed due to 10 years of truce between the two parties (Harun, 1989).

Based on the concept of *fiqh al-Muwazanah*, it is realistically accepted that not all *maslahah* can be achieved while not all *mafsadah* can be removed (Al-Wakili, 1997). Instead, it is vital to consider the best option after weighing between *maslahah* and *mafsadah*. This is the role of *fiqh al-Muwazanah* to ensure that considering a *maslahah*, *one* must not thwart a *maslahah* superior to it or a *maslahah* of equal degree. For example, the level of *daruriyyat* (necessities), *hajiyyat* (needs), and *tahsiniyyat* (complementary) must be considered based on their priority. The priority is *daruriyat*, which reflects the core life of humans as it ranks first. Then, it is followed by *hajiyyat*, which facilitates human needs before the least priority of *tahsiniyat*, which reflects the complementary (Al-Shatibi, 2004).

In addition, the level of *daruriyyat* is not at the same priority. If the clash occurs at the same level of *maslahah* or *mafsadah* of *daruriyyat*, the following five elements will be the indicator: protecting religion, life, intellect, lineage, and wealth (Al-Buti, 2005). Another angle could be the general and specific coverage of *maslahah* and *mafsadah*. As for the former, it influences a large group of people, while the latter might cause an impact on a particular group. In this regard, general *maslahah* precedes specific *maslahah*. Finally, the timeframe of *maslahah* is among the considerations in weighing between *maslahah*. At this point, the long-term *maslahah* is more important than the temporary one (Al-Khadimi, 2010).

While the terms of *fiqh al-Muwazanah* were not mentioned in classical works, contemporary scholars have discussed the theoretical concept and the role of *fiqh al-Muwazanah*. Al-Qaradawi (2006) views the *fiqh al-Muwazanah* as part of *the maqasid* approach to empowering the 20th-century resurgence of Islam through its Shariah system. In this regard, *fiqh al-Muwazanah* plays a crucial role in promoting the moderation and well-being of Shariah along with the other five new fiqhs, including *fiqh al-Maqasid* (understanding the objectives of Shariah), *fiqh al-Awlawiyat* (considering priorities), *fiqh al-Maalat* (considering implications), and *fiqh al-Ikhtilaf* (understanding disagreement).

For example, Mutalib et al. (2024) have analyzed the role of *fiqh al-Muwazanah* in the political approach, especially during the case of COVID-19. Their findings show that *fiqh al-Muwazanah* plays a significant role in balancing *maslahah* to issue Shariah laws. Meanwhile, Mahmood et al. (2011), in their study on the implication of *fiqh al-Muwazanah* towards fatwa, found that this concept is a practical mechanism in connecting rulings and their objectives, which makes the rulings more relevant to the current reality. Al-Haji (2018), in his study on *fiqh al-Muwazanah* towards Islamic jurisprudence, found that *fiqh al-Muwazanah* plays a role in dealing with the clash between *maslahah* by considering the Shariah text, reality, and consequences of action. Shalal (2020) has listed several maslahah that should not be viewed, including *maslahah mulghah* (rejected) and *maslahah wahmiyah* (doubt), as only strong support *maslahah* should be considered. While many studies have significant contributions in terms of theoretical aspects, studies on the application side are still limited.

2.2 *Interfaith marriage in Islam*

In principle, interfaith couples or marriage does not align with Shariah principles. Like other matters, marriage is a way to seek God's blessing. The verse of the Quran is clear on this matter as God says: "Do not marry

polytheistic women until they believe; for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe" (2:221). A Muslim is required to follow *halal* and *haram* guidelines in their lives, including matters pertaining to family; it is unimaginable to achieve this by living in one family where the wife and husband have different ways of life (Al-Zuhaili, 2006). This includes food consumption, lifestyle, and intimate relationships (Al-Qaradawi, 1980). In addition, marriage aims to build a family and form a Muslim generation (Al-Daqilan, 2010). Thus, children must grow under Islamic teachings and values. All these objectives seem unrealistic if a Muslim marries or lives with non-Muslim spouses.

Nevertheless, there is a particular exceptional situation. Based on the surah al-Maidah, verse 5, men are allowed to marry women from *ahl al-Kitab* with specific requirements. This limitation is for the case of men marrying *ahl al-Kitab*, not for Muslim women (Al-Qurtubi, 2003; Al-Tabari, 1997). In addition, this permissibility is only limited to *ahl al-Kitab*: mainly Jewish women and Christian women, not other types of non-Muslims like Buddhists, Hindus, or atheists (Zuhaili, 2006). However, by exploring classical scholars, it was found that scholars have different interpretations of the meaning of *ahl al-Kitab*. Hanafis and some scholars view that this group includes Jewish, Christian, and other *samawi* like *suhuf* Ibrahim (Al-Sobuni, 2000). Most views on this group are limited to Jewish and Christian. As for Shafiis, *ahl al-Kitab* is required to be the actual descendant of the family of Israel (Zuhaili, 2006; Milani, 2023)

In terms of application, some scholars view that the general permissibility of surah al-Maidah may not be totally accepted. For example, Ibn Umar viewed the verse al-Baqarah as evident, indicating that women from *ahl al-Kitab* are part of polytheists. In addition, some scholars argue that the verse of al-Maidah is *mansukh* (abrogated). In contrast, the majority view that, in general, Shariah has distinguished between non-Muslims into *ahl al-Kitab* and *mushrikah* (polytheists) (Zuhaili, 2006; Al-Syartowi, 2007). Moreover, marriage between men and women *ahl al-Kitab* has been practiced among the prophet's companions (Al-Qurtubi, 2003). The most popular one is Uthman, who married Nailah, who was originally a Christian woman and became a Muslim (Al-Sobuni, 2000).

As for the case of interfaith couples between Muslim women and non-Muslim husbands, it is prohibited in Shariah. Moreover, scholars unanimously agree with this prohibition, making it a matter of consensus (Murad, 2020). Unlike

the previous case where Muslim men were allowed to marry *ahl al-Kitab*, Muslim women must find Muslim men as their spouses. Nonetheless, there is a situation where the marriage has already been established with both couples being non-Muslim, and then the wife prefers to revert to Islam. Based on the classical discussion, it was found that all main schools of thought, including Hanafis, Malikis, Shafiis, and Hanbalis, did not allow new Muslim wife to stay with their non-Muslim husband (Al-Syartowi, 2007). However, they have different opinions regarding the time of dissolution. Mazhab Zahiri, for example, views that this marriage must be immediately dissolved (Ibn Hazm, 2016). As for the majority, it is permissible for wives to stay with their husbands during the iddah period (Ibn Abd Bar, 1992; Ibn Qudamah, 1997). Mazhab Hanafis has distinguished the case between an Islamic country known as *dar Islam* and a war country known as *dar harb*. As for the first case, the couple must go to court, and the judge will propose that the husband become a Muslim if he intends to remain in the marriage. If the husband refuses, then the judge will dissolve the marriage. As for the second case, the marriage must end immediately. Another unique view in this case is from Ibn Taimiyyah and Ibn Qayyim, who believe the marriage should be suspended rather than dissolved until the husband chooses to be a Muslim (Ibn Qayyim, 2005). Al-Qaradawi (2005) concludes that there is no consensus among scholars. Thus, it is open to new *ijtihad*.

2.3   *The integration of fiqh al-Muwazanah and the Muslim minority context.*

Regarding the Muslim minority, it is one of the unusual situations that need consideration before issuing a fatwa. This situation refers to a group of Muslims that live within the non-Muslim majority countries. The situation today is much different, unlike the previous time when Muslims could not live peacefully in non-Muslim majority societies as religious differences that exposed them to discrimination and oppression. The world has widely recognized the freedom of religion and the freedom to practice it freely. In addition, the world is more connected through the globalization era, where traveling for business, work, and education has become the norm (Al-Qaradawi, 2007).

In general, Muslim minorities may be an original nation that converted to Islam, so they are considered a minority relative to their fellow citizens. They share many similarities in terms of identity and culture with others. Secondly, Muslim minorities may comprise immigrant groups who reside in non-Muslim majority countries such as those in Europe, America, or China. These

immigrants may be temporary residents, arriving for business, employment, or education, or they may settle permanently. Some non-Muslim majority countries like Europe offer many opportunities for Muslims, in comparison to Muslim majority countries (Al-Shaikhi, 2010). From another perspective, Muslim communities in non-Muslim majority countries play a significant role in promoting Islam and the image of Islam. Unsurprisingly, Islam has been recognized as the fastest-growing religion in the Western world (Haider, 2015).

While the world has become more civilized and many individual rights have been widely recognized, there are certain obstacles to practicing religion in some aspects (Jaballah, 2009). This includes *ibadat* (worship), where certain parts seem to be sensitive among the majority of non-Muslim society—for example, azan through loudspeakers during fajr. In addition, particular local cultures or norms may be against Shariah, like providing alcohol at events. Another challenge could arise from geographical factors, such as weather and seasonal changes between summer and winter, which may lead to difficulties in ritualistic worship acts, such as fasting (Hanafi, 2000).

As a result, a new term of *fiqh al-Aqaliyyat* has emerged as a special consideration in issuing fatwa for Muslim minorities. This includes profoundly understanding the verse and the circumstances, especially when dealing with non-Muslims. Understanding *fiqh al-Aqaliyyat* provides insight into how the mufti issues a *fatwa* (religious ruling) (Al-Wani, 2010). In this regard, the fatwa is Shariah ruling and a solution for Muslims who face difficulties in applying or practicing some religious affairs (Marzaki et al., 2017; Al-Hajiri, 2017).

While there is no official fatwa council in Europe, the European Council for Fatwa and Research (ECFR) has become the primary reference for Muslim scholars, making it the leading authority on Shariah for European Muslims (Shavit & Spengler, 2017). ECFR was established in 1997 to provide practical, integration-oriented solutions for Muslims living in Europe. Not only issuing specific fatwas, ECFR sometimes has proposed several approaches in dealing with Shariah issues within the Muslim minority context (Mohammad Nasir, et al., 2025). For example, in 2006 ECFR proposed the concept of *fiqh al-Maalat* as a means of harmonizing revelation with contemporary realities. *Fiqh al-Maalat* is closely related to *fiqh al Muwazanah*, in which the outcome is considered based on weighing between *maslahah*. In this regard, it is crucially important to consider *the maslahah* of Muslims in practicing their religion since there are no Islamic authorities in the context of non-Muslim majority countries (ECFR, 2012). Among examples of applying this concept is a fatwa in allowing interest

banking facilities for mortgages, considering the prohibition of *riba* (interest) with the practical need for housing in Europe, thereby weighing the *maslahah* of owning housing and *mafsadah* of *riba* with strict parameters (ECFR, 1999).

At individual level, Muslim scholars consider *fiqh al-Muwazanah* which emphasizes the need for Islamic legal standards to consider interfaith marriages in a Western environment. Caeiro (2011) notes that the members of the ECFR, who were the focus of his study, are consciously taking their breadth of scholarly approach toward religious legal sources, being aware of diverse perspectives and establishing a purpose for each new fatwa they generate. Their methodological approach is carried out in three: they first specify their considerations toward particular *maslahah*; next examine a range of legal sources to clarify what priority or degree of importance each separate *maslahah*; and finally develop their decision with a larger aim in mind that targets an intentional outcome such as social integration or social cohesion or community values. ECFR scholars also examine their rationale for changing circumstances might open opportunities for movements towards elements of law which were previously impermissible and how they might consider relaxing strict prohibitions might support broader goals. Their procedures using the principles of *taysir*, which means to 'simplify', which deals with 'not leaving (something) neglected, are important principles.

Regarding interfaith marriage, previous studies have illustrated how an equitable lens influences decisions on interfaith marriage thereby better informing our understanding of this regulatory framework. Mohiuddin and Borham (2023) make this argument and explain how the aims of Muslim women who marry non-Muslim men are incorporated into the decisions of the European Court of Human Rights (ECHR). The Council regularly maintains consistent opposition to marriage to non-Muslims but upholds limited flexibility for marriages made before one's decision to convert to Islam. If a Muslim man converts to Islam and his Jewish or Christian wife does not convert because of certain expectation set by different counsels and research organization, the ECFR recognizes this marriage. If she converts, she can still be married to him while she waits for him to convert as well; there would only need to be separation if the marriage compositions were not consummated. These comprehensive rulings follow the approach taken by minority fiqh and establish a study of *fiqh al-Muwazanah* by assessing the need for family connectivity and integration versus the role of legalism. This then explains why European scholars will continue to promulgate Shariah principles while also reconfiguring them to allow for the welfare of Muslim converts living in secular

society.

While interfaith marriage has become a norm recognized by many countries, especially Western countries, which are more open-minded, Shariah would not tolerate the majority aspects of interfaith marriage or couples. Instead, any approach taken must consider the consequences. For example, it may not be practical to force Muslims from marrying *ahl al-Kitab*. Moreover, it may be harmful to dissolve the marriage when a wife chooses to convert to Islam. All these need considerations from the *maslahah* perspective.

3. METHODOLOGY

This study is designed based on qualitative research methodology. Qualitative research is applied when the data is collected, analyzed, and presented in a narrative rather than a numerical form, such as a quantitative approach. At the same time, qualitative research methodology provides in-depth insight into topics when it is based on words, opinions and feelings (Levy, 2006). Thus, it is practical to achieve the objective, which is to apply the concept of *fiqh al-Muwazanah* on the issue of interfaith marriages in a non-Muslim majority context.

In terms of data collection, qualitative research seeks to comprehend social phenomena as a naturalistic approach to thoroughly investigating. Thus, the data collection for this method is based on information through phenomena, interactions, and linguistic materials, including interviews (Hsieh & Shannon, 2005). The interview method is practical to reach the objective of this study as it enables researchers to analyze how *maslaḥah* is applied to the issue of interfaith marriage in Muslim minorities.

In this study, the data is collected through interview sessions conducted with 7 local muftis or imams and related scholars in UK comprising England, Scotland and Wales. Since this is phenomenological studies, the number is sufficient according to Creswell (2007) and Morse (1994). In terms of reliability of the data, all interviewees have formal Shariah academic background. The UK is selected since it is among the largest Muslim populations in Europe and at the same time, the UK is among Western countries that embrace diversification, including religion and culture.

As for analysis, after the data was recorded, all words were transcribed. Then, thematic analysis begins with the following process: data familiarization, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and writing up the analysis (Braun & Clarke, 2006). The

findings will be discussed in a separate section to analyze the issue from a *maslahah* perspective. This begins with understanding *maqasid* behind related rulings, harmonizing with the current situation known as *fiqh al-Waqi'*(understanding reality), and finally weighing between *maslahah,* which is part of *fiqh al-Muwazanah* (FIGURE I).
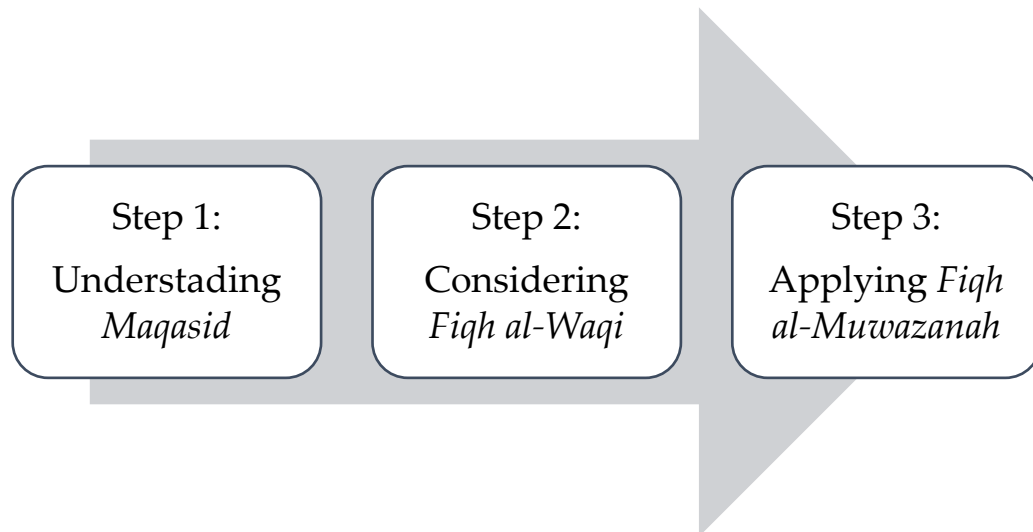

Figure I: Application process for *fiqh al-Muwazanah*

4. RESULTS & DISCUSSION

4.1 *Results*

In general, all interviewees unanimously agree that Muslim men must not marry non-Muslims except *ahl al-Kitab* women. Thus, Hindus, Buddhists, and Atheists are not under this category. Secondly, they agree that Muslim women must not marry non-Muslims men from the beginning, whether they are *ahl al-Kitab* or other categories of non-Muslims. These are the matters of consensus among scholars all over the time due to apparent prohibitions mentioned in the Quran and the Hadith.

However, interviewees agree that Muslim men can choose to marry *ahl al-Kitab*. This matter has already been the subject of discussion within scholarly works. Secondly is the case where a married woman, originally non-Muslim, converted to Islam with the guidance of God while her husband remained non-Muslim. While they agree on principles, they have different approaches to dealing with real cases.

Theme 1: Maslahah of interfaith marriage between Muslim men and Ahl al-Kitab.

Based on the series of interviews, all interviewees believe that Shariah allows interfaith marriage between Muslim men and women from *ahl al-Kitab*. However, they think this permissibility relies on certain conditions to ensure this interfaith marriage leads to *maslahah*, which is intended by Shariah, not to *mafsadah*. Nowadays, in Europe, it has been found that most interviewees view this marriage as significantly leading to negative consequences. IV1 shares his point of view:

> *"This marriage did not last in most cases, and there are some cases where a Muslim married a woman of the People of the Book, which ended in divorce. As a result, the children lost their Islamic identity."* (IV1)

IV1 shares his thoughts that the most *mafsadah*, in this case, is divorce, which is against the objective of marriage in Islam to remain forever. The high possibility of divorce in the case of interfaith marriage is also agreed upon by IV2, who explained it in more detail:

> *"There are disadvantages to this marriage. In this country, for example, a woman can request separation through the court. If a divorce occurs between the husband and his wife, the custody of the children will be given to the woman, which affects the upbringing and religion of the children."* (IV2)

As mentioned by IV2, divorce is the end of *mafsadah*, leading to another *mafsadah*, which is the custody of children. Another point of view shared by IV3 is that this kind of marriage is misused to obtain permanent living in this country. Thus, men do not intend to stay in the marriage longer or take care of their children:

> *"The truth is that there are some young Muslims who marry women of the Book to obtain residency. They did not care about their children and did not give them any attention to Islamic education, and they did not teach their wives Islam so that she would respect his religion. If they divorce, the woman will take his children."* (IV3)

Nevertheless, IV4 has a different view on specific cases where the original permissibility of this marriage has some advantages as the following:

> *"It is in the interest of refugees who are looking for marriage, for example. They are easier for them than Muslim women because most Muslim families set difficult conditions for those who want to marry their daughters, especially in terms of work and money. For example, this marriage is easy*

for refugees who are looking for a wife, and their marriage to a woman of the Book is easier than their marriage to a Muslim woman; because most Muslim families set difficult conditions for those who want to marry their daughters, especially in terms of work and money" (IV4).

In addition, IV5 views this prohibition as not being due to differences. Instead, if couples can respect each other, this marriage is allowed:

"There is an interest, especially if this marriage is based on respect between the man and the woman; the purposes of marriage are affection and mercy, and they may be applied in this marriage as well." (IV5)

Based on the first case, it can be concluded that *mafsadah* in the marriage between Muslim men and their spouse from *ahl al-Kitab* could be the risk of divorce, the uncertain future of children in terms of Islamic teachings, and the negative attitude of men that misuse this type of marriage. Nevertheless, the original permissibility of this marriage still can be acceptable in the case where Muslim men find it challenging to marry Muslim women due to family status. Also, this marriage was initially allowed, like other marriages, if there was respect between the couple.

Theme 2: Maslahah of remaining marriage between Muslim women who converted without their husbands.

It is agreed that if their husbands force the wife to leave their new religion or at least disturb her from practicing Islam, interviewees have different perspectives on the case where the husband supports her wife, even though he is not a Muslim. Since this study aims to analyze interfaith issues based on *maslahah*, the themes are presented as *maslahah*. As for the second case, interviewees differ as they are more tolerant. For example, IV1 emphasizes religious freedom as the following:

"It is a matter of religion freedom. In other words, a woman becomes a Muslim, because of her option. Then, if her husband intends to join her, then it is his option, if not it is also his option. Islam cannot force other be Muslim." (IV1)

In addition, IV2 views that it is neither urgent nor necessary to require the husband to be Muslim:

"Perhaps he is not Muslim today, but he can be a so-called friend of Islam. This will bring to them to be close to Islam. In fact, this religion is din of family, din of mercy, how can it allow its followers to suffer?" (IV2)

Interestingly, IV3 views the current husband as the main supporter.

> *"My experiences, there were non-Muslim husband who can give more freedom and support than a Muslim husband. There is case a non-Muslim husband came to the mosque to ask prayer schedule for their newly converted wife."* (IV3)

IV4 view that religion should not be the cause of breaking family:

> *"Why Islam should cause problem with her and her family. She would absolutely be suffered after knowing that must leave her family."* (IV4)

IV5 shares his point of view on this matter:

> *"It is her option to accept Islam. It is common view that this decision would lead to marriage dissolve. But what happen to her family then? If dissolve happen, the civil law may give the right to the husband because the wife who begin this problem first"* (IV5)

IV6 views that the remaining wife in the family would bring to *maslahah da'wah.*

> *"If the husband observes his wife is good and remains a good wife even though after being Muslim, this would be an opportunity for the wife to show the beauty of Islam. As a result, with the guidance of Allah, husband may accept Islam. Love can change something."* (IV6)

Based on the second case, all interviewees agreed that marriage should not be dissolved immediately after the women choose to be Muslim without their husbands as long as their husbands accept their new wives and respect their choice. Several *maslahah* are identified for marriage to be remained. Such *maslahah* is to protect women emotionally, to protect the family, and to protect the image of Islam.

4.2   *Discussion*

Understanding *maqasid* is the primary key to dealing with any issue that requires a Shariah perspective. Every ruling and Shariah as the whole system aims is based on wisdom for the sake of *maslahah*. Thus, understanding the issue must begin with *maslahah* as a whole and then look in more detail. It starts with the *maslahah of dharuriyyat* that reflects what is crucially needed by humans in their affairs and religion, as they are essential to ensure the existence of human and their sustainability. In contrast, any matter related to *dharuriyyat*

could lead to a total disorder in human life (Al-Shatibi, 2004). All scholars agree that the five fundamentals of *dharuriyyat*: religion, life, intellect, lineage, and wealth are vital for human life sustainability. Thus, these elements must be upheld by individuals, society, and government (Alam, 1994).

In both cases, all interviewees seem to prioritize the *hifz din* (protecting religion) in their approaches. For example, in the case of Muslim men marrying their *ahl al-Kitab* women, they must ensure that the scarcity of Islam is not tainted. For example, marriage must not be held in the church, and all words or events must not contain the element of *shirk* (polytheism). This marriage is permissible in Islam as it can be a way to promote Islam to non-Muslims since *ahl al-Kitab* is the closest group to Muslims in comparison to other religions. As for the second case, all interviewees put the condition that a newly converted woman must ensure that her husband accepts and respects her decision to be Muslim and to practice Islam in her life. For example, conducting five days of prayers, fasting during Ramadhan, and living with *halal* foods in the house.

Another aspect of *hifz din* is the image of Islam itself. While Islam protects its dignity, freedom of religion is guaranteed. A Muslim husband must not force his *ahl al-Kitab* wife to accept Islam. Similarly, a newly converted wife must not force her non-Muslim husband to be Muslim like her. In fact, given the opportunities for *da'wah* in today's open world, any approach must be carefully considered. The aspect of *hifz din* seems to be considered in this case, especially for the case of a newly converted wife. While in principle, it could not be accepted for a Muslim wife to be under the obedience of her non-Muslim husband, this case is exceptional due to the impact that may affect women's lives. Given that women are more emotional and caring for their families, all interviewees agree that they must not be forced to leave their beloved families, mainly when their husbands accept their new religion.

Lastly, the interviewee considers *hifz nasab* or *hifz nasal*, family in Islam must be shaped according to Islamic values and teachings. In the case where a Muslim man chooses a non-Muslim wife, he must ensure that all children are raised according to Shariah. They must be Muslim and grew up as Muslim kids. Similarly, in the case of the newly converted wife, she must ensure she influences her kids to follow her pathway. In addition to general *maqasid*, specific *maqasid* need to be considered too. For example, the *maqasid* of marriage in Islam is meant to achieve love and compassion between men and women. Because of the special relationship between husband and wife, it lead to the survival of humans. In addition, love between husband and wife spreads love within the whole family. According to Al-Qaradawi (2005), this *maqasid* also applied to interfaith marriage between Muslim men and *ahl al-Kitab*. Thus, religion should not be the reason to spread hate within the family. Similarly,

most interviewees stress this point in the case of a newly converted wife.

The next is *fiqh al-Waqi'* which can be understood as the need to understand the reality before applying Shariah ruling or issuing a fatwa. After implicitly discovering the rulings and objectives, considering the reality is part of weighing between *maslahah*. In fact, different situations may lead to different outcomes. Unsurprisingly, in theory, any action that leads to *maslahah* can have different consequences when implemented. This study focuses on the context of the Muslim minority. More specifically, the Muslim minorities in Europe may differ from those in other regions. In the case of Europe, especially in the UK, many Muslims enjoy the privileges of its system. One of them is that their rights and freedom are protected. Moreover, European societies are generally open-minded. This may be different with the situation of Muslim minorities in third-world countries where the religion-based culture remains strongly dominant.

In addition, their legal system is entirely secular, meaning that no other religion can be superior to others. In this regard, applying the Umar's *ijtihad* in the case of banning Muslims from marrying *ahl al-Kitab* may differ, since at that time, *Siyasah Syari'yyah* (political approach) was part of the governance. Also, the case of Umar may be suitable in Muslim-majority countries where family laws are based on religion. Based on European culture, even though the interviewee suggested that all children must be raised according to Islamic teachings and values, this approach must be carried out carefully and wisely. This is vital to prevent Islam from clashing with European values that embrace more freedom. Thus, *da'wah*, through examples, is a very relevant approach that needs to be adopted.

Finally, *fiqh al-Muwazanah* is applied by weighing between *maslahah* and *mafsadah:* theory and reality. Based on two cases, there is no room for tolerating these two situations even though there are *maslahah*:

1. Muslim men marry non-Muslim *mushrikah*
2. Muslim women must not originally marry non-Muslim husbands
   Therefore, only the case of Muslims marrying *ahl al-Kitab* women and the case where a woman becomes Muslim without their husband whose marriage has already been established.

As for the case of Muslim men marrying *ahl al-Kitab*, the *maslahah* and *mafsadah* are the following:

Table 1: Comparison between *maslahah* and *mafsadah* for the case of Muslim men marrying *ahl al-Kitab*

Maslahah	Mafsadah
1 It is an opportunity to conduct *da'wah* toward a wife to be a Muslim	This marriage can be misused for residence application
2 To fulfil the need of Muslim men to find a halal relationship in the case where there is no Muslim spouse	The high potential of divorce can occur due to different ways of life
	Negative impacts can highly occur towards children in terms of growing them or instilling Islamic values in their lives.

Based on *maqasid,* it is learned that the wisdom behind the permissibility of allowing Muslim men to marry ahl al-Kitab women is to promote Islam. Since men are dominant in the family, they may influence the way of life of their wives to be in line with Islamic values, and with the guidance of God, those wives may end up being Muslim. However, the verse of Maidah clearly indicates the condition of ahl al-Kitab, and the Caliph Umar observed that this marriage was misused; consequently, he banned this marriage. Nevertheless, through *fiqh al-Waqi',* the reality of Muslims in Europe, the marriage may facilitate the needs of some Muslims. Moreover, since interfaith marriage has become a norm, it can be an advantage to support this objective of *da'wah.* Finally, based on *fiqh al-Muwazanah,* even though there are still *maslahah* and *mafsadah* of allowing this marriage, the latter occurs due to the wrong intention and the unqualified men in terms of a religious perspective. Thus, it should not be generalized to ban this marriage since the *maslahah* is still applicable within the Muslim minority context.

In the case of allowing women to become Muslim to remain with their husbands, the *maslahah* and *mafsadah* are the following:

Table 2: Comparison between *maslahah* and *mafsadah* allowing women to become Muslim to remain with their husbands

Maslahah	Mafsadah
1 It is an opportunity to conduct *da'wah* toward the husband to be Muslim	It is challenging for the wife to practice religion
2 To protect the family institution	The wife could return to their

		original religion.
3	To protect emotional impacts towards the wife and the whole family	
4	To avoid accusing Islam as a religion to break the family.	

The main Shariah principle in family, wives must be under the authority of their Muslim spouses. Based on *maqasid*, this ruling aims to protect the religion of women. However, based on *fiqh al-Waqi'* within the context of Muslim minority, it is learned that when an original non-Muslim woman who has a family intends to be Muslim without being accompanied by her husband, it should be treated as a different case. In this regard, through *fiqh al-Muwazanah*, forcing the immediate dissolution of marriage may lead to more *mafsadah* than *maslahah*. Thus, allowing this marriage to remain as far as it would not harm the new converted wives is in line with the spirit of Shariah.

Based on the discussion, it can be concluded as the following:

1. *Maslahah* must be considered based on priority.

    For both cases, the main key consideration is the *maslahah* of *dharuriyyat*, particularly on *hifz al-Din*. In this regard, Muslim men who intend to marry *ahl al-Kitab* must ensure all processes of marriage and life after marriage are according to Shariah. It is not allowed to conduct marriage in the church, even though it is not necessary to do it in the mosque. Living together in the house requires only halal items. Thus, it is not allowed to put alcohol in the house. In addition, both husband and wife must agree that children will grow according to Islamic teachings. As for the case of a newly converted woman, the primary condition to remain is freedom in the practice of Islam.

2. Each case must be examined separately.

    Since *maslahah* and *mafsadah* depend on the situation, each case must be analyzed individually. In the case of Muslim men intending to marry *ahl al-Kitab*, they are allowed to do so, though it is not encouraged. This is permissible if the men have a strong religious background and intend only for marriage, not other things like gaining citizenship. As for the case of a newly converted woman, her husband's condition may be different. It should be allowed if the husband is supportive and respectful of their wife. At the same time, the situation can change. For example, if the husband dislikes Islam, the wife must find a way to leave him.

3. The *da'wah* effort must be continuously carried out.

In principle, both interfaith marriage and interfaith couples should not be allowed in Islam since a Muslim cannot live together with a non-Muslim spouse for an extended period. Islam is not only a belief or doctrine. Instead, it is a way of life that guides a Muslim with halal and haram in all aspects. Thus, living as a Muslim requires obedience as an individual or family. Nevertheless, both cases are allowed with the hope that the non-Muslim spouse will follow their Muslim partner. Therefore, it is essential for both Muslim men who marry *ahl al-Kitab* or a newly converted wife to attract their spouse to be Muslim. The *da'wah* effort can be carried out by words or showing good examples. At the same time, Muslim communities should play a significant role by supporting Muslims and their non-Muslim partners.

5.   CONCLUSION

This paper aims to apply *fiqh al-Muwazanah* in dealing with interfaith marriages in Muslim society in non-Muslim majority countries from the perspective of *maslahah.* Two situations are identified as case studies. Firstly, Muslims marry Ahl al-Kitab, and secondly, a newly converted woman without her husband. Although both issues have been discussed within classical works, the contemporary context may require more consideration in issuing a special fatwa. Thus, this study analyses the relationship between *maslahah* and *mafsadah* for both issues.

Through qualitative research, several *maslahah* and *mafsadah* are identified. As for the case of Muslim marries *ahl al-Kitab*, several potential *mafsadah* have been identified, including the risk of divorce, the uncertain future of children in terms of Islamic teachings, and the negative attitude of men that misuse this type of marriage. Nevertheless, the original permissibility of this marriage still can be acceptable in the case where Muslim men find it challenging to marry Muslim women due to family status. In addition, this marriage was initially allowed, like other marriages, if there was respect between the couple. As for the case of newly converted women without their husbands, several *maslahah* are identified for marriage to remain. Such *maslahah* is to protect women emotionally, to protect the family, and to protect the image of Islam.

Even though there is a limited number of interviewees, this study has contributed to a more practical discussion and recommendations on both issues since previous studies rely on secondary data or literature. Future research is suggested to interview the couple who have this experience.

6. ACKNOWLEDGEMENT

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