



## THE EXISTENCE OF MARRIAGE POST THE CONSTITUTIONAL COURT DECISION: AS A RIGHT OR A PREREQUISITE?

*Nurul Hikmah,<sup>1\*</sup> Syahid Akhmad Faisol,<sup>2</sup> Mohd Aderi Che Noh<sup>3</sup>*

<sup>1,2</sup>Faculty of Social Science and Law, Universitas Negeri Surabaya, Indonesia

<sup>3</sup>University Sains Islam Malaysia, Malaysia

Email: [1nurulhikmah@unesa.ac.id](mailto:nurulhikmah@unesa.ac.id), [2syahidfaisol@unesa.ac.id](mailto:syahidfaisol@unesa.ac.id), [3aderi@usim.edu.my](mailto:aderi@usim.edu.my)

\*Corresponding Author

---

DOI: 10.21154/justicia.v21i1.7333

Received: Nov 12, 2023

Revised: May 24, 2024

Approved: June 20, 2024

---

**Abstract:** The practice of marriage is always closely related to the arrangements in religious law and state law. This research aims to answer two legal issues, namely the existence of marriage after Constitutional Court Decision No. 24/PUU-XX/2022 and the implications of Constitutional Court Decision No. 24/PUU-XX/2022 in Islamic law and national law. This research is a normative legal research with case, conceptual, and legislative approaches. The findings of this research confirm that the existence of marriage after the Constitutional Court Decision No. 24/PUU-XX/2022 is not only seen as a human right but as a freedom for everyone to enter into marriage. But it must be based on the values of religious law as a representation of the legality of marriage by the state. The orientation of the Constitutional Court Decision is important because KHI and the Marriage Law have the same perspective in viewing marriage as a prerequisite and not as a right. The practical contribution of this research is related to ideal legal policy, namely the need for affirmation and formulation in Indonesian legislation that marriages that do not aim to form families and are oriented towards continuing offspring are invalid following the aspects of *maslahat mursalah* and the Indonesian legal system.

**Keywords:** family rights; right to continue offspring; human rights.

**Abstrak:** Praktik perkawinan selalu berkait erat dengan pengaturan dalam hukum agama dan hukum negara. Penelitian ini bertujuan untuk menjawab dua isu hukum yaitu eksistensi perkawinan pasca Putusan MK No. 24/PUU-XX/2022 serta implikasi Putusan MK No. 24/PUU-XX/2022 dalam aspek hukum Islam dan hukum nasional. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kasus, konseptual, serta perundang-undangan. Temuan penelitian ini menegaskan bahwa eksistensi perkawinan pasca Putusan MK No. 24/PUU-XX/2022 tidak hanya dipandang sebagai hak asasi manusia sebagai sebuah kebebasan setiap orang untuk melangsungkan perkawinan. Tetapi harus berpijak pada nilai-nilai hukum agama sebagai representasi legalitas perkawinan oleh

negara. Orientasi Putusan MK tersebut penting karena antara KHI dan UU Perkawinan memiliki perspektif yang sama dalam memandang perkawinan yaitu sebagai prasyarat dan bukan sebagai hak. Kontribusi penelitian ini secara praktis yaitu berkaitan dengan kebijakan hukum ideal yaitu perlu penegasan dan perumusan dalam peraturan perundang-undangan di Indonesia bahwa perkawinan yang tidak bertujuan untuk membentuk keluarga serta berorientasi untuk melanjutkan keturunan adalah tidak sah sesuai dengan aspek masalah mursalah dan sistem hukum Indonesia.

**Kata Kunci:** hak berkeluarga; hak melanjutkan keturunan; hak asasi manusia.



Copyright: © 2024 by author (s). This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/).

## INTRODUCTION

One of the differences in religious and state law regulations regarding marriage law in Indonesia is in the context of interfaith marriages.<sup>1</sup> In state law, marriage is emphasized because its validity refers to religious law and beliefs.<sup>2</sup> However, in the regulations, there is room for registration for interfaith marriages based on Law No. 23 of 2006 concerning Population Administration (*UU Adminduk*), thus making it even more confusing whether interfaith marriages are permitted in Indonesia.<sup>3</sup> This issue has arisen in the constitutional case with the existence of a judicial review at the Constitutional Court.

The results of the judicial review at the Constitutional Court were in the form of Constitutional Court Decision No. No. 24/PUU-XX/2022 (MK Decision on Different Religions 2022). In the 2022 Constitutional Court Decision on Different Religions, one of the judges' considerations emphasized that marriage is not a right but a prerequisite for fulfilling the right to have a family and continue offspring.<sup>4</sup> The 2022 Constitutional Court's Decision on Different Religions has the consequence that, as a prerequisite, marriage cannot be carried out at will or as the bride and groom wish. As a prerequisite, marriage must comply with religious law and belief provisions. Judging from its legal considerations, the 2022 Constitutional Court Decision on Different Religions has formulated the relationship between

<sup>1</sup> Imam Wahyu Jati, "Pengaturan Perkawinan Beda Agama Di Indonesia," *'Aainul Haq* 2, no. 1 (2022): 49–63.

<sup>2</sup> Moh. Zeinudin, *Hukum Perkawinan Beda Agama Di Indonesia: Perkembangan Norma Dan Praktik* (Jakarta: Damera Press, 2023).

<sup>3</sup> Aspandi Muhammad Romli, Nurul Huda, "Interfaith Marriage Registry in Indonesia Pencatatan Perkawinan Beda Agama Di Indonesia," *Al-'Adalah* 7, no. 2 (2022): 377–405.

<sup>4</sup> Siti Khoiriyah, "Analisis Implementasi Pendekatan Judicial Restraint Terhadap Putusan Mahkamah Konstitusi Nomor 24 / Puu-Xx / 2022" (<https://conference.untag-sby.ac.id/>, 2022).

religious and state law in marriage. In the context of marriage, the 2022 Constitutional Court Decision on Different Religions tends to confirm the existence of religious law and belief as the primary orientation of marriage in Indonesia.

The affirmation of marriage as a prerequisite, as in the 2022 Constitutional Court Decision on Different Religions, confirms the Indonesian aspect and the existence of religious law (especially Islamic Law) as the basis for the validity and orientation of marriage in Indonesia.<sup>5</sup> This confirms that marriage in Indonesia has relevance to family orientation and continuing offspring. Apart from the 2022 Constitutional Court Decision on Different Religions, the existence of religious law in marriage law in Indonesia is increasingly emphasized in the Supreme Court Circular No. 2 of 2023, which are instructions and guidelines for judges in adjudicating cases of interfaith marriages (*SEMA Beda Agama*). Further, it has been analyzed carefully, the orientation of the 2022 Constitutional Court for Different Religions Decision and the *SE* (*surat edaran*; circular letter) for different religions' supreme court have similarities, namely that they both affirm the existence of marriage as a prerequisite so that it must be subject to the laws of their respective religions and beliefs.<sup>6</sup> The marriage provisions contained in the 2022 Constitutional Court for Different Religions Decision and the *SE* for Different Religions have fundamental differences with marriage according to the Universal Declaration of Human Rights 1948 (UDHR 1948), which emphasizes marriage as a right so that every individual can express and orient their marriage without must adapt and have relevance to efforts to start a family and continue offspring.<sup>7</sup> This study focused on analyzing the 2022 Constitutional Court Decision for Different Religions, which places marriage as a prerequisite and links the regulation of marriage in Indonesia in Islamic Law and national law as an implication of the 2022 Constitutional Court Decision for Different Religions.

The novelty of this study is in the form of an analysis of Indonesia's legal arrangements for marriage after the 2022 Constitutional Court Decision on

---

<sup>5</sup> Rudolf S. Mamengko Brigita D. S. Simanjorang, Suriyono Suwikromo, "Kajian Hukum Perkawinan Anak Dibawah Umur Menurut Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Lex Privatum* 10, no. 1 (2022): 55, <https://doi.org/10.2207/jjws.91.328>.

<sup>6</sup> Isnawati Rais and Ya Rakha Muyassar, "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development," *Jurnal Cita Hukum* 10, no. 2 (2022): 205-22, <https://doi.org/10.15408/jch.v10i2.27800>.

<sup>7</sup> Iqbal Saujan, Seyed Mohamed Mohamed Mahazir, and Nasrin Muhammadu Ibrahim, "Islamic Law of Inheritance and Its Implication amongst Muslim Society: An Empirical Analysis," *Journal of Contemporary Islamic Law* 1, no. 1 (2022): 35-51, <https://doi.org/10.26475/jcil.2022.7.1.04>.

Different Religions which places the existence of marriage as a prerequisite so that marriage is not a human right. The novelty of this research was obtained from a compilation of five previous studies that discussed marriage in positive law and religious law in Indonesia, which include: first, research conducted by Harsono et al. (2024), which discusses the social-social dimensions related to marriage, such as its relevance to social status and customary norms in society.<sup>8</sup> Second, research conducted by Ariyani and Putra focused on discussing legal pluralism related to marriage registration in Indonesia.<sup>9</sup> Third, Yamani's research discussed the increase in the age limit for marriage in Indonesia, especially regarding women whose minimum marriage age is 19 years, as stated in Law No. 16 of 2019.<sup>10</sup> Fourth, Safiera and Retnaningsih's research discusses the relevance of marriage to SEMA concerning interfaith marriages.<sup>11</sup> Fifth, research conducted by Maula explains and analyzes related marriages with different nationalities in Indonesia.<sup>12</sup> Dealing with the five previous studies, the originality of this research lies in the analysis of the Constitutional Court's decision relating to the nature of marriage and the review from a legal philosophy perspective, especially relating to the aspect of the *maṣlahah mursalah*. This indicates that this research is original and different from the previous studies.

These statutory regulations and court decisions were chosen because, in terms of the solvency aspect of Islamic law, there is a close relationship between Islamic law, which regulates marriage, and court decisions representing state law, in this case, the 2022 Constitutional Court Decision for Different Religions. Apart from that, we also briefly discussed the differences. The orientation of marriage between the 1948 UDHR, which places marriage as a right, and the 2022 Constitutional Court Decision on Different Religions, which places marriage as a prerequisite. The critical point of this analysis is also a brief analysis of the SEMA

---

<sup>8</sup> Iwan Harsono et al., "The Influence of Socio-Economic Factors on Marriage Patterns in Indonesia : A Quantitative Analysis of the Relationship between Social Status and Marriage Decisions," *Sciences Du Nord Humanities and Social Sciences* 1, no. 1 (2024): 33-39.

<sup>9</sup> Novandi Dwi Putra Ariyanti, Cindy Yulia, "The Unregistered Child Marriage on Lumbang Society Norm Perspective Legal Pluralism," *International Journal of Law Dynamics Review* 2, no. 1 (2024): 40-56.

<sup>10</sup> Akhmad Zaki Yamani, "The Analysis Of The Marriage Age According To The Marriage Law Of The Republic Of Indonesia No. 16 Of 2019," *International Journal of Society Reviews* 2, no. 4 (2024): 941-45.

<sup>11</sup> Dhea Eldi Safiera and Sonyendah Retnaningsih, "Registration of Interfaith Marriages in Indonesia Based on Supreme Court Circular Number 2 of 2023," *Asian Journal of Engineering, Social and Health* 3, no. 6 (2024): 1157-69.

<sup>12</sup> Bani Syarif Maula, Muhammad Fuad Zain, and Syifaun Nada, "Marital Property in Marriages of Different Nationalities in Indonesia According to National Law and Islamic Law," *El-Aqwal: Journal of Sharia and Comparative Law* 3, no. 1 (2024): 1-16, <https://doi.org/10.24090/el-aqwal.v3i1.10508>.

for Different Religions, which is substantially relevant to the spirit of the 2022 Constitutional Court for Different Religions Decision. Dealing with the novelty orientation above, it can be concluded that this research is original and has not been specifically discussed by previous researchers.

This study is normative legal research, with the focus being analysis of legal products in the form of court decisions and statutory regulations accompanied by analysis based on legal philosophy, primarily referring to the aspect of the *maslahat/benefit of murlah*.<sup>13</sup> The approach used in this research is a case, legislation, and concept approach. The primary legal materials used are the 1945 Constitution of the Republic of Indonesia, Constitutional Court Decision No. No. 24/PUU-XX/2022 (MK Decision on Different Religions 2022), Law no. 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and Law no. 23 of 2006 concerning Population Administration. The statutory regulations and court decisions above were chosen concerning the qualifications of Islamic legal products (religious law that regulates marriage) with state legal products that equally regulate marriage. This is essential to analyze the relationship between religious law and state law regulating marriage. Secondary legal materials are books, journal articles, and various research results discussing marriage law in Indonesia. Non-legal materials are language dictionaries. The technique for collecting legal materials is compiled and classified, namely collecting all existing legal materials and sorting which ones are appropriate and relevant to the existing problem formulation.<sup>14</sup> Legal materials are analyzed qualitatively by orienting legal prescriptions or solutions to existing problem formulations.<sup>15</sup>

## **MARRIAGE ARRANGEMENTS IN ISLAMIC LAW AND NATIONAL LAW**

Marriage arrangements in Indonesia can be said to be unique because they accommodate various types of applicable laws. This starts from religious law, national law, to customary law.<sup>16</sup> The complexity of the law that applies in marriage law can be seen from two aspects: first, marriage viewed from a cultural

---

<sup>13</sup> Tunggal Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.

<sup>14</sup> Galang Taufani Suteki, *Metodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)*, 1st ed. (Depok: Rajawali Pers, 2018).

<sup>15</sup> Cynthia Hadita Eka N.A.M. Sihombing, *Penelitian Hukum*, 1st ed. (Malang: Setara Press, 2022).

<sup>16</sup> Robert N. Hornick Sudargo Gautama, *An Introduction To Indonesian Law : Unity In Diversity* (Bandung: Alumni, 2022).

aspect is part of a culture that lives and develops in society.<sup>17</sup> Knick-knacks and wedding parties are comprehensively part of the community's culture.<sup>18</sup> Therefore, it is natural that cultural aspects and customary law are essential aspects that must be accommodated in marriage.<sup>19</sup> Second, religious law in Indonesia (especially Islamic law) also regulates marriage in principle. Marriage is a "sacred promise" between the bride and groom, which is accountable to God Almighty, so religious law must regulate these provisions.<sup>20</sup> From these two aspects, it can be concluded that marriage law in Indonesia adopts aspects of culture and customary law along with religious laws and respective beliefs.

Marriage in Indonesia is based on plural laws or more than one law. In marriage, at least three types of law apply: religious law, law that applies in society (including customary law), and state law.<sup>21</sup> The assertion that marriage must be based on the laws of each religion and belief is based on the provisions of Article 2, paragraph (1) of the Marriage Law, which emphasizes that the laws of each religion and belief determine the validity of a marriage.<sup>22</sup> This confirmation strengthens the domain of religious law and belief relating to the validity of marriage. Marriage, which must be based on religious law and belief, is also regulated in detail in the laws of each religion and belief, which for Muslim communities is required to be based on the Compilation of Islamic Law (KHI).<sup>23</sup>

Marriage in Indonesia is also required to refer to the laws that apply in society (including customary law).<sup>24</sup> This is mainly related to procedures, customs, and certain marriage rituals, generally regulated by a set of rules that have been

---

<sup>17</sup> Imelda J. Loppies, "Persepsi Masyarakat Terhadap Adat Perkawinan Suku Biak Di Kampung Yendidori Distrik Yendidori Kabupaten Biak Numfor," *Gema Kampus* 14, no. 1 (2019): 2.

<sup>18</sup> Sriyana Sriyana, Anita Pratiwi, and Silvia Arianti, "Keserasian Sosial Masyarakat Majemuk Di Kelurahan Beriwit Kecamatan Murungkabupaten Murung Raya," *Anterior Jurnal* 22, no. 1 (2023): 73-80, <https://doi.org/10.33084/anterior.v22i1.3927>.

<sup>19</sup> Kazuaki Nishioka Anselmo Reyes, Wilson Lui, *Choice of Law and Recognition in Asian Family Law* (Oxford: Hart Publishing, 2023).

<sup>20</sup> Siti Hawa, "Pengaruh Pendidikan Dan Ekonomi Keluarga Terhadap Pernikahan Usia Dini," *Jurnal Ekonomi Syariah* 2, no. 2 (2019): 368-95.

<sup>21</sup> Amiruddin Asrul Hamid, Titi Martini Harahap, Resi Atna Sari Siregar, Syaipuddin Ritonga, "Sociological Analysis of the Concept of Divorce In Marriage Law in Indonesia," *Journal of Religious, Social and Cultural* 1, no. 1 (2022): 42-51.

<sup>22</sup> Irma Riyani, *Islam, Women's Sexuality and Patriarchy in Indonesia: Silent Desire* (London: Taylor & Francis, 2020).

<sup>23</sup> Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah* 6, no. 2 (2022): 1046-64, <https://doi.org/10.22373/sjhk.v6i2.12466>.

<sup>24</sup> Andi Enri et al., "Legal Pluralism of the Ammatoa (Ilalang Embaya) Indigenous Community in Marriage Aspects (Analysis Study of Maqasid Al-Shari'Ah)," *Transformatif* 1, no. 1 (2022): 131-42.

agreed upon and live in practice in society. Although the laws in force in society (including customary law) do not determine the validity of a marriage, the existence of laws in force in society (including customary law) is also essential to implement because practices in the form of rituals and customs in marriage have been considered a "usual form" so that efforts to deny or not implement the laws that apply in society (including customary law) will have a social impact.<sup>25</sup> State law is another law that also exists and is implemented about marriage. State law about marriage is more facilitative and administrative.<sup>26</sup> The facilitative is state law provides facilities so that the terms of marriage can be ratified following the provisions of the laws of each religion and belief as well as the state accommodating the administrative aspects of marriage, especially in the aspect of marriage registration to guarantee legal certainty as well as to ensure the orderly implementation of administrative law.<sup>27</sup>

The enactment of three types of laws that apply in marriage practices in Indonesia confirms that in marriage practices Indonesia implements legal pluralism. The practice of legal pluralism in marriage in Indonesia refers to John Griffiths' conception of two types of legal pluralism, namely weak legal pluralism and legal solid pluralism, which can be categorized as robust legal pluralism. The primary substance of legal solid pluralism is an equal position regarding the validity of state and non-state laws. Another critical aspect of legal solid pluralism is that in marriage practices in Indonesia, there is non-state law that has an essential position in marriage, namely the law of religion and belief.<sup>28</sup> Religious law and belief in marriage occupy a central position because they relate to the validity of a marriage.<sup>29</sup>

The pluralism of marriage law in Indonesia, which places religious law and belief as the main parameters for the validity of marriage, emphasizes that marriage law in Indonesia is legal solid pluralism. The characteristic of marriage law in Indonesia, which is robust legal pluralism, actually has implications for

---

<sup>25</sup> Russell Sandberg, *Religion and Marriage Law: The Need for Reform* (Bristol: Bristol University Press, 2021).

<sup>26</sup> Itok Dwi Kurniawan, Suyatno Suyatno, and Hanuring Ayu, "Kebijakan Pencatatan Perkawinan Beda Agama," *Jurnal Penelitian Serambi Hukum* 16, no. 02 (2023): 23–30, <https://doi.org/10.59582/sh.v16i02.748>.

<sup>27</sup> Siti Hamidah Nadya Rizki Emeraldalda, "Rekonstruksi Pencatatan Perkawinan Berdasarkan Relevansi Antara Hukum Administrasi Negara Dengan Hukum Administrasi Sipil," *Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 1 (2022): 90.

<sup>28</sup> Reny Yunia Ningtias et al., "Conflict Resolution in Maintaining Early Marriage Relationships in Alasumur Village, Bondowoso," *Proceedings of the 3rd International Media Conference 2021 (IMC 2021)* 672, no. 1 (2022): 163–73, <https://doi.org/10.2991/assehr.k.220705.017>.

<sup>29</sup> Arskal Salim, *Contemporary Islamic Law in Indonesia* (Edinburg: Edinburg University Press, 2015).

three things related to marriage in Indonesia. First, the position of marriage in Indonesia emphasizes religious law and belief, especially regarding the validity of marriage.<sup>30</sup> Suppose we refer to the conception of the religious nation-state. In that case, the dominance of religious law and belief about marriage is significant because, according to the religious nation-state conception, the religious aspect (especially religious law and belief) occupies the most critical aspect of marriage law in Indonesia.<sup>31</sup>

Second, marriage in Indonesia is constitutionally regulated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia which substantively states the right of every person to live in a family and continue their offspring. The regulation of Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which regulates marriage expressively verbis, does not mention marriage as a right as formulated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia only mentions human rights. Humans have the right to have a family and continue their descendants. Referring to the formulation of Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it can be seen that constitutionally, there are different conceptions regarding marriage and the right of every person to live in a family and continue their offspring. Marriage refers to the provisions of Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia as a prerequisite for realizing the right to have a family and continue offspring.<sup>32</sup> This implies that any marriage that does not have an orientation towards starting a family and continuing offspring cannot be guaranteed its existence and validity in the Indonesian legal system.

Third, the substance of marriage, as emphasized in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Marriage Law, and the KHI, refer to the same substance: not confirming that marriage is a right. Marriage, which is not categorized as a right, has the important implication that apart from being a prerequisite for fulfilling the right to have a family and continue offspring,

---

<sup>30</sup> Tim Lindsey and Helen Pausacker, *Religion, Law and Intolerance in Indonesia* (London: Taylor & Francis, 2016).

<sup>31</sup> Sinung Mufti Hangabei et al., "The Ideology of Law: Embodying the Religiosity of Pancasila in Indonesia Legal Concepts," *Law Reform* 17, no. 1 (2021): 77-94.

<sup>32</sup> Ahmad Arun Nafidz Sularno, Muhammad Roy Purwanto, Moh. Nadi, *Hukum Perkawinan Bawah Tangan Di Indonesia* (Ponorogo: Uwais Inspirasi Indonesia, 2023).



marriage is also carried out and limited by religious law and belief provisions.<sup>33</sup> From this aspect, it can be seen that marriage cannot be carried out according to the free will of the bride and groom or both families. Still, marriage must be based on fulfilling certain conditions following religious law and belief provisions.<sup>34</sup>

Comprehensive customary law and religious law have specific roles and regulations regarding marriage.<sup>35</sup> Apart from customary and religious laws, state law is also essential to facilitate marriage practices in Indonesia. State law, which was "born" after the implementation of customary law and religious law, is obliged to facilitate the provisions of customary law and religious law that regulate marriage.<sup>36</sup> In Indonesia, provisions regarding the importance of religious law regarding the validity of marriage are regulated in Article 2, paragraph (1) of the Marriage Law, where the law of each religion and belief determines the validity of marriage. In this context, for the Muslim community in Indonesia, this provision is further regulated in the KHI, which specifically regulates the application of Islamic law in marriage law.<sup>37</sup> Regarding the practice of applying customary law in marriage, this is adjusted to the conditions of each local area. The application of customary law in marriage is more determined by the attitude of the surrounding community to apply existing customary law and customs.<sup>38</sup>

Regarding the application of state law in marriage, apart from facilitating it in the form of law (in this case, the Marriage Law), state law also facilitates the registration of marriages. Marriage registration is an administrative activity that ensures order and legal certainty regarding marriage.<sup>39</sup> The provisions for marriage registration are regulated in Article 2, paragraph (1) of the Marriage Law. Apart from that, the specifics of marriage registration are also regulated in the

---

<sup>33</sup> Ahyuni Yunus, *Hukum Perkawinan Dan Itsbath Nikah: Antara Perlindungan Dan Kepastian Hukum*, 1st ed. (Makassar: Humanities Genius, 2020).

<sup>34</sup> Marwin, "Pencatatan Perkawinan Dan Syarat Sah Perkawinan Dalam Tatanan Konstitusi," *Asas* 6, no. 2 (2014): 98-113.

<sup>35</sup> Muzakkir, "Integrasi Hukum Adat Dalam Hukum Perkawinan Di Indonesia," *Jurnal Hukum Samudra Keadilan* 17, no. 1 (2022): 61-69, <https://doi.org/10.33059/jhsk.v17i1.5609>.

<sup>36</sup> Bertrand Silverius Sitohang et al., "The Validity of Marriage Through Constitutional Court Decision Number 69 / Puu-XIII / 2015 Reviewed from Law Number 1 Of 1974," *Jurnal Pendidikan Tambusai* 7, no. 1 (2023): 20637-42.

<sup>37</sup> Ainur Rofiq Dwi Dasa Suryantoro and Prodi, "Pernikahan Dibawah Tangan (Sirri) Perspektif Kompilasi Hukum Islam," *Samawa* 2, no. 2 (2022): 1-23.

<sup>38</sup> Fathul Hamdani and Ana Fauzia, "Tradisi Merariq Dalam Kacamata Hukum Adat Dan Hukum Islam," *Jurnal Hukum Lex Generalis* 3, no. 6 (2022): 433-47, <https://doi.org/10.56370/jhlg.v3i6.245>.

<sup>39</sup> Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, "Pencatatan Pernikahan Perspektif Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974," *Asy-Syari'ah : Jurnal Hukum Islam* 8, no. 1 (2022): 25-40, <https://doi.org/10.55210/assyariah.v8i1.765>.

Administer Law which more technically explains the procedures for registering marriages.<sup>40</sup> Dealing with the three types of law that apply to marriage above, it can be concluded that marriage in Indonesia refers to three legal contexts: religious law, customary law, and state law. The harmonization and relationship of these three laws determine the optimization of marriage practices in Indonesia, which guarantees justice for society.

The relationship between religious, customary, and state law relating to marriage has given rise to polemics. This is as in the study conducted by Ali Sodiqin et al., which emphasized that related to the registration of marriages and the validity of marriages in their arrangements actually gave rise to disharmony and even legal conflicts.<sup>41</sup> Even so, the main focus of this research analysis does not focus on disharmony or legal conflicts related to marriage arrangements but focuses more on the existence of marriage after the 2022 Constitutional Court Decision on Different Religions, which emphasizes that marriage is not essentially a right, but rather a means of realizing the right to family and children. The construction of the 2022 Constitutional Court Decision on Different Religions is interesting because it emphasizes that the existence of religious law is essential for determining the validity of marriage because by confirming that marriage is not a right, the marriage cannot be carried out based solely on the wishes of the bride and groom.

The relationship between the above legal types of marriage in Indonesia can be relationally identified based on the solvency theory of Islamic law. Solvency of Islamic Law, according to Abdul Chair Ramadhan is a conception that explains how relations and harmonization between types of law can be optimally established to realize justice in society. Furthermore, the solvency theory of Islamic law is also oriented towards efforts to place state law precisely in maintaining its relationship, especially with state law.<sup>42</sup> The solvency of Islamic Law is related to the idea of "the law-society framework," as put forward by Brian Z. Tamanaha. In Tamanaha's view, the different types of law in society must be maintained in

---

<sup>40</sup> Mustofa Heriyanto, "Penetapan Pengadilan Negeri Syarat Pencatatan Perkawinan Beda Agama Analisa Yuridis Putusan Nomor: 87/Pdt.P/2020/Pn Mks.," *Al Hukmi* 2, no. 1 (2021): 18.

<sup>41</sup> Bian Ambarayadi Hasna Lathifatul Alifa, Ali Sodiqin, "Interreligious Marriages In Indonesia: From Legal Disharmony to Legal Conflict," *Justicia Islamica* 20, no. 2 (2023): 198-200.

<sup>42</sup> Sriono Sriono et al., "Reconstruction of Marriage Dispensation Regulations in the Perspective of Human Rights Based on the Value of Justice," *Scholars International Journal of Law, Crime and Justice* 6, no. 04 (2023): 225-33, <https://doi.org/10.36348/sijlcj.2023.v06i04.005>.

harmony so that the types of law do not conflict with each other but complement each other.<sup>43</sup>

Solvency of Islamic Law also has relevance to legal pluralism, as stated by Werner Menski, who stated that legal pluralism is a new legal theory because it has an orientation to look at law broadly along with non-legal norms that exist in society.<sup>44</sup> Menski's idea emphasizes the need for state law to be an "intermediary" and facilitator of the development of law in society, both religious law and customary law.<sup>45</sup> From its relevance to the two legal ideas above, the organization theory of Islamic Law explicitly refutes the practice of secularizing Islamic Law. Secularly, Islamic law is seen as a law that can only be applied privately, whereas, in the public and state domains, Islamic law is considered not applicable.<sup>46</sup> This view is not in line with the solvency theory of Islamic law, which considers the importance of proportionality in the role of each type of law regulating society. Furthermore, the solvency theory of Islamic law also contradicts the *receptie* theory, which places customary law as superior to religious law.<sup>47</sup>

As a theory developed by Abdul Chair Ramadhan, Islamic Law solvency orients religious law and state law in a "soluble" country. In this case, one aspect of the law adopts and influences other laws. In the context of marriage law, the solvation of Islamic law identifies Islamic law as "dissolving," thereby influencing various aspects of state law. Referring to the 2022 Decision of the Constitutional Court for Different Religions and the *SE* for Different Religions, it is clear that Islamic law influences national law in regulating marriage.

From the various views above, the theory of solvency of Islamic Law can be said to have the same spirit as the theory of *receptio a contrario* put forward by Hazairin and Sajuti Talib, which emphasizes that Islamic Law, which is part of a Muslim's legal ideals, becomes a filter for the application of other types of law.<sup>48</sup>

---

<sup>43</sup> Brian Z. Tamanaha, "Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences," in *Washington University in St. Louis Legal Studies Research Paper No. 21-06-01*, 2021, 30–33.

<sup>44</sup> Dicky Eko Prasetyo, "Inventarisasi Putusan Peradilan Adat Sendi Sebagai Upaya Memperkuat Constitutional Culture Dalam Negara Hukum Pancasila," *Jurnal Hukum Lex Generalis* 2, no. 3 (2021): 249–73.

<sup>45</sup> Keebet Von Benda-Beckman, "Relational Social Theories and Legal Pluralism," *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021): 4, <https://doi.org/10.54828/ijsls.2021v1n1.2>.

<sup>46</sup> Muchamad Ali Safa'at, *Dinamika Negara Dan Islam Dalam Perkembangan Hukum Dan Politik Di Indonesia*, 1st ed. (Jakarta: Konstitusi Press, 2018).

<sup>47</sup> Nurul Hikmah and Gelar Ali Ahmad, *Hukum Islam*, 1st ed. (Surabaya: Unesa University Press, 2018).

<sup>48</sup> Iza Hanifuddin and Moh. Ihsan Fauzi, "A Concept of Islamic Notary as Registrar on Sharia Contract: Al-Muwaththiq Perspective," *Justicia Islamica* 18, no. 2 (2021): 281–97, <https://doi.org/10.21154/justicia.v18i2.2887>.

This means, for a Muslim, other types of law, including customary law, must comply with the principles of Islamic Law so that they do not conflict with the spirit of it. Hazairin and Sajuti Talib's views are also relevant to H.A.R. Gibb's views that society's acceptance of the authority of Islamic law is based on society's view of Islamic law, which is considered part of the religious aspect. This confirms that in a particular context, society will implement the substance of Islamic Law. If the substance of Islamic Law does not regulate specific actions or things, then other types of law (state law) can be applied.<sup>49</sup>

From the various explanations above, it can be concluded that the solvency theory of Islamic Law emphasizes the position of Islamic Law, especially about state law. Concerning state law, the solvency theory of Islamic Law positions Islamic Law in three aspects: first, the existence of Islamic Law must be facilitated by state law.<sup>50</sup> This indicates that state law must not be "anti" or even contrary to the substance of Islamic law. Second, Islamic law is the source of state law. The source here means Islamic law principles can apply to state law.<sup>51</sup> This phenomenon is visible in the construction of the Marriage Law, a generalization process of Islamic Law. Third, in specific contexts, Islamic law and state law are complementary so that state law can have characteristics to protect the practice of Islamic law.<sup>52</sup> This can be seen from the construction of marriage registration, which aims to ensure legal certainty in implementing Islamic Law practices in the form of marriage.<sup>53</sup>

Viewed from the conception of Islamic Law solvency, the substance of the 2022 Different Religion Constitutional Court Decision and the Different Religion Supreme Court SE can be concluded to have strengthened the theory of Islamic Law solvency in marriage law. Even so, several examples of court decisions fail to construct a conception of the solvency of Islamic law, one of which is the Central Jakarta District Court Decision No.155/PDT.P/2023/PN.JKT.PST (Central Jakarta District Court Decision on Different Religions 2023). Substantially, the decision

---

<sup>49</sup> Maria Francesca Cavalcanti, "Islamic Family Law and the Legal Pluralism Approach - Case Studies of Reasonable Accommodation in Europe," *Ius Comparatum* 1, no. 1 (2020): 358.

<sup>50</sup> Fathonah K. Daud and M. Ridlwan Hambali, "Living Law Dalam KHiṭbah Dan Lamaran Perspektif Sosiologi Hukum," *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 16, no. 1 (2022): 92-107, <https://doi.org/10.35316/lisanalhal.v16i1.92-107>.

<sup>51</sup> Moh. MahfudMD, *Membangun Politik Hukum, Menegakkan Konstitusi*, 2nd ed. (Jakarta: Rajawali Pers, 2017).

<sup>52</sup> Yashomati Ghosh and Anirban Chakraborty, "Secularism, Multiculturalism and Legal Pluralism: A Comparative Analysis Between the Indian and Western Constitutional Philosophy," *Asian Journal of Legal Education* 7, no. 1 (January 2020): 73-81, <https://doi.org/10.1177/2322005819859674>.

<sup>53</sup> Raden Ajeng Cendikia Aurelie Maharani, "Akta Penegasan Perjanjian Perkawinan Kaitannya Dengan Pemenuhan Prinsip Publisitas," *Notaire* 4, no. 2 (2021): 285, <https://doi.org/10.20473/ntr.v4i2.27168>.

granted the request for registration of interfaith marriages with several arguments, including first, the 2023 Central Jakarta District Court's Decision on Interfaith Marriages saw that in an interfaith marriage carried out by the applicant, the bride and groom committed to carry out the marriage and its implications. The existence of a statement letter from the bride and groom proves this. The second argument is that the interfaith marriage carried out by the applicant also received approval from both families of the bride and groom. Both families of the bride and groom have even given their blessing and the consequences that will be faced regarding an interfaith marriage. The third argument is that the Panel of Judges is of the view that there is a legal vacuum that regulates interfaith marriages, and this harms the applicant who has good intentions in carrying out the marriage.

Regarding the three arguments in the 2023 Central Jakarta District Court Decision on Different Religions above, it can be seen that the judges lack understanding regarding the concept of solvency in Islamic law. This is due to the Panel of Judges being of the view that there is a legal vacuum that regulates interfaith marriages, and this harms applicants who have good intentions in carrying out marriages. Referring to the concept of solvency in Islamic law, this view is incorrect because what is happening is not a legal vacuum but rather interfaith marriages being left to the rules of each religion and belief. This emphasizes that the argument in the 2023 Central Jakarta District Court Decision on Different Religions only views marriage arrangements as being regulated only by positive law made by the state, even though marriage arrangements are pluralistic, which accommodates religious law, customary law, and state law. In this context, the validity of marriage is within the realm of religious law and individual beliefs.

Based on the conception regarding the solvency of Islamic Law above, the position of Islamic Law and state law are complementary and complementary. This can be proven by registering marriages, a state legal effort to protect the substance of Islamic law. Furthermore, viewed from the aspect of the solvency of Islamic Law, the 2022 Constitutional Court Decision on Different Religions is the most crucial aspect that accommodates the theory of solvency of Islamic Law. The 2022 Different Religion Constitutional Court decision adopts the substance of Islamic law, especially in the KHI, regarding the existence of marriage, which is an integral part of family right and having children. This means that, from the aspect of Islamic Law solvency theory, the 2022 Constitutional Court Decision on Different Religions has strengthened the substance of religious law in state law,

namely the affirmation of marriage as a prerequisite so that it must be by the provisions of the law of each religion and belief.<sup>54</sup> The importance of the 2022 Constitutional Court Decision for Different Religions, which accommodates the theory of solvency of Islamic Law, is urgent because, in practice, various court decisions fail to understand the theory of solvency of Islamic Law as contained in the 2023 Central Jakarta District Court Decision for Different Religions.

In another aspect, the 2022 Constitutional Court Decision on Different Religions has also confirmed the constitutional mandate as in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which confirms the existence of the right to family and children as a constitutional right. This orientation emphasizes that from the aspect of state law (especially from a constitutional perspective), marriage is synonymous with having a family and having children, so the 2022 Constitutional Court Decision on Different Religions has accommodated implementing the solvency theory of Islamic Law.<sup>55</sup>

Regarding the explanation above, the regulation of marriage in Islamic law and national law is complementary, as described in the solvency theory of Islamic law. This complementary nature can be seen in that religious law applies regarding the validity of marriage, while marriage registration is subject to state legal provisions. The presence of the 2022 Constitutional Court Decision on Different Religions also strengthens the substance of the solvency theory of Islamic Law, which emphasizes the existence of marriage as an integral part of the rights to family and offspring, which is in line with the spirit of the KHI and Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

## **THE EXISTENCE OF MARRIAGE AFTER THE CONSTITUTIONAL COURT DECISION**

According to the Indonesian Dictionary, existence means various things identical to existence.<sup>56</sup> The existence of marriage in this context is interpreted not only as the "presence" or "absence" of marriage but also as the implementation of the essence and function of marriage. Therefore, it can be concluded that the existence of marriage is maintained when the essence and function of marriage are

---

<sup>54</sup> I Wayan Arthanaya Made Widya Sekarbuana, Ida Ayu Putu Widiawati, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia," *Preferensi Hukum* 2, no. 1 (2021): 18.

<sup>55</sup> Zezen Zainul Ali and Mega Puspita, *Pembaharuan Hukum Keluarga Di Asia Tenggara: Dari Negara Mayoritas Sampai Minoritas Muslim*, Cetakan pertama (Banguntapan, Bantul, Yogyakarta: Jejak Pustaka, 2023), 37.

<sup>56</sup> KBBI, "Kamus Besar Bahasa Indonesia Online" (KBBI, 2022).

undertaken well.<sup>57</sup> Referring to the formulation of the constitution, Article 28A paragraph (1) explicitly emphasizes that marriage is a "means" to realize the fulfillment of the right to have a family and continue legitimate offspring. From a constitutional perspective, human rights are having a family and continuing legitimate offspring. This means that for the right to have a family and continue legal offspring to be fulfilled, the consequence is that this right must be obtained through a marriage process following the teachings of each respective religion and belief, which is then registered based on state law.

Referring to Article 1 of the Marriage Law in *juncto* with Article 28A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that human rights are to have a family and continue their offspring. This is interesting because by confirming having a family and continuing your offspring as human rights, the characteristics of these two rights are optional, meaning that every citizen can have a family and continue their offspring or not. These consequences include that as a marriage prerequisite, it is identical to the procedure. This means that marriage cannot be carried out as the bride and groom please but must comply with specific procedures and provisions according to the guidelines contained in their respective religions and beliefs.

The affirmation of marriage as a prerequisite and not a right is also emphasized in Article 3 of the KHI, which emphasizes that marriage aims to form a family that is *sakinah, mawaddah, and rahmah*.<sup>58</sup> This formulation systematically emphasizes that marriage is a prerequisite for creating a *sakinah, mawaddah, and rahmah* family and refers to the 2022 Interfaith MK Decision, which is a judicial review submitted by E. Ramos Petege that questions the position of interfaith marriages in Indonesia. The result of the judicial review submitted by E. Ramos Petege, namely the 2022 Interfaith Constitutional Court Decision, confirms that the existence of interfaith marriages is adjusted to each religion and belief. In Islam, for example, interfaith marriages are generally prohibited. However, there are minor views regarding the permissibility of marriage between Muslim men and women from people in the book, which include Jewish and Christian women. However, in general, in Islam, interfaith marriages are not permitted. This also emphasizes that in Islamic law, marriages between different religions are invalid.

---

<sup>57</sup> Syariful Alam, "Reconstruction of Marriage Zonation in Islamic Law Perspective," *Legality: Jurnal Ilmiah Hukum* 27, no. 2 (2019): 161, <https://doi.org/10.22219/jihl.v27i2.10154>.

<sup>58</sup> Agung Ari Subagyo Nurul Hikmah, "Perlindungan Hukum Bagi Perempuan Terkait Praktik Poligami Siri Dalam Perspektif Hukum Islam," *LENTERA: Journal of Gender and Children Studies* 2, no. 1 (2020): 35-54.

The construction of the 2022 Constitutional Court Decision on Interfaith Marriage in its ratio decidendi emphasizes that marriage is not a right but a prerequisite for fulfilling the right to have a family and continue offspring. Regarding social reality, the 2022 Constitutional Court Decision on Interfaith Marriage can confirm societal marriage practices. Through the construction of the 2022 Constitutional Court Decision on Interfaith Marriage, the Constitutional Court provides meaning to the nature of marriage in Indonesia which has relevance to the dimensions of having a family and continuing offspring.<sup>59</sup> This confirms that marriage is the "entrance" to realizing family orientation and continuing offspring. The legal implication is that a marriage not oriented towards starting a family and continuing offspring cannot be interpreted as a marriage in the Indonesian legal system.

The 2022 Constitutional Court Decision on Interfaith Marriage, which provides meaning to the nature of marriage in Indonesia and has relevance to the above dimensions of family and continuing offspring, has a significant impact on the reality of life in society, especially in the socio-legal dimension. The socio-legal dimension of Sulistyowati Irianto's view must be understood broadly and holistically. Namely, socio-legal is the relevance of normative legal aspects and non-legal aspects that exist in society.<sup>60</sup> Views related to the socio-legal aspect were also expressed by Fachrizal Afandi, who quoted the view of Reza Banakar that the socio-legal dimension in law can be interpreted as an external dimension of the law where the term socio-legal is not interpreted narrowly as just the social aspect of the law but including various other aspects that review or look at the law at an external level.<sup>61</sup> This effort to review law externally through socio-legal aspects differentiates it from legal studies in the juridical-normative aspect, where law is viewed internally from a legal system.

Referring to the socio-legal dimension in the 2022 Constitutional Court Decision on Interfaith Marriage, which means that marriage is not a right but is a prerequisite for fulfilling the right to have a family and continue offspring, it has relevance to the development of marriage practices in society. The development of marriage practices, with the massive development of inter-religious marriages,

---

<sup>59</sup> Meliyani Sidiqah, "Legal Vacuum in Interfaith Marriage Rules in Indonesia," *Iblam Law Review* 3, no. 1 (2023): 99-110, <https://doi.org/10.52249/ilr.v3i1.119>.

<sup>60</sup> Sulistyowati Irianto, "Praktik Penelitian Hukum: Perspektif Sosiolegal," in *Metode Penelitian Hukum: Konstelasi & Refleksi* (Jakarta: Yayasan Pustaka Obor Indonesia, 2013), 1-38.

<sup>61</sup> Fachrizal Afandi, "Penelitian Hukum Interdisipliner Reza Banakar: Urgensi Dan Desain Penelitian Sosio-Legal," *Undang: Jurnal Hukum* 5, no. 1 (2022): 240.



same-sex marriages, and the phenomenon of contract marriages in one of the tourist attractions in Indonesia, has resulted in the 2022 Constitutional Court Decision on Inter-Religious Marriages which means that marriage is not a right but is a prerequisite for fulfilling the right to have a family and continue offspring. So, the various existing marriage phenomena and practices should be adapted to the perspective of marriage in the Indonesian legal system, as confirmed in the Constitutional Court Decision on Interfaith Marriage 2022. In Indonesia, it must be based on the laws of each religion and belief.

About interfaith marriages, for example, it must be seen whether they are prohibited or not in the laws of each religion and belief. Same-sex marriage can be said to be inconsistent with the views of the 2022 Constitutional Court Decision on Inter-Religious Marriage, which refers to the theory of legal pluralism that marriage in Indonesia is substantively based on regulations in religious law and belief so that same-sex marriage is something that is not following the substance of marriage law in Indonesia. The phenomenon of contract marriage in one of the tourist attractions in Indonesia can also be said to be inconsistent with the substance of marriage law in Indonesia, which is confirmed in the 2022 Constitutional Court Decision on Interfaith Marriage, which substantively states that marriage is oriented towards starting a family and continuing offspring. The phenomenon of contract marriage at one of the tourist attractions in Indonesia has no orientation related to the substance of marriage in Indonesia, which emphasizes the orientation to starting a family and continuing offspring, so contract marriage at one of the tourist attractions in Indonesia is not following the spirit of the 2022 Constitutional Court Decision on Interfaith Marriage. It also contradicts the substance of marriage in the legal system in Indonesia.

The impact of the 2022 Constitutional Court Decision on Interfaith Marriage in the socio-legal dimension is related to the construction of marriage law in Indonesia, namely the confirmation that marriage has relevance to family orientation and continuing offspring so that any marriage that is not oriented towards family life and continuing offspring is considered to be contrary to the substance marriage in the legal system in Indonesia. This means that various marriage phenomena in society, such as interfaith marriages, same-sex marriages, and the phenomenon of contract marriages at one of the tourist attractions in Indonesia, must be reviewed from the laws of each religion and belief to assess the validity of the marriage.

Referring to the legal considerations in the 2022 Constitutional Court Decision on Different Religions above, it can be concluded that the Constitutional Court's constitutional interpretation regarding marriage is that marriage is a prerequisite and not a right. Consequently, marriage cannot be carried out as the bride and groom wish. Marriage must also be oriented towards creating a happy family and oriented towards continuing offspring. The legal considerations in the 2022 Constitutional Court Decision on Different Religions only confirm the existence of marriage as in the Marriage Law and KHI. The Marriage Law and KHI do not explicitly explain marriage as a prerequisite. Still, the Marriage Law and KHI implicitly emphasize the importance of the relevance of marriage starting a family, and continuing offspring. After the 2022 Interfaith Constitutional Court Decision, Indonesian national law emphasized that interfaith marriages are within the legal domain of each religion, so their validity depends on religious law. This confirms that after the 2022 Constitutional Court Decision on Different Religions, there is uniformity of views between Islamic Law and national law regarding interfaith marriages, which can be considered invalid from both Islamic and national law aspects.

The impact of the 2022 Constitutional Court Decision on Different Religions is that marriage is not a right, meaning marriage arrangements cannot be based solely on the parties' wishes. The 2022 Constitutional Court Decision on Different Religions places marriage as a prerequisite, which indicates that marriage is aimed at fulfilling the right to procreation and family. The most obvious impact is that because marriage is a prerequisite, marriage must be based on the laws of each religion. This has an impact on marriage practices in society, which can be categorized as invalid, such as interfaith marriages, same-sex marriages (such as LGBT, etc.), and also the other aspects of marriage that conflict with the values and laws of each religion.

Referring to the impact of the 2022 Constitutional Court Decision on Different Religions, viewed from the aspect of legal philosophy, especially concerning the conception of *maslahah murlah*, this has two relevances, namely: first, referring to Imam Malik's views regarding *maslahah murlah*, then the primary orientation of *maslahah murlah* to confirm the objectives of implementing the Shari'ah and prevent evil (*mudharat*) in society.<sup>62</sup> This is relevant to the 2022 Constitutional Court Decision on Different Religions, which emphasizes the link between

---

<sup>62</sup> Said Syaripuddin, "Maslahat as Considerations of Islamic Law in View Imam Malik," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* Volume 4, no. 1 (2020): 1-23.

marriage and the right to have a family and continue offspring. This is also to minimize the practice of marriage in some communities, which is not intended to guarantee the right to have a family and continue offspring, so it conflicts with maqashid sharia. Second, one crucial aspect that needs to be considered regarding maqashid sharia is the habits or *'urf* that develop and live in society.<sup>63</sup> For Indonesians, marriage is identical and related to the right to have a family and continue offspring. This means that the 2022 Constitutional Court Decision for Different Religions follows the views and values developing in Indonesian society, so the 2022 Constitutional Court Decision for Different Religions is appropriate and follows the *maṣlaḥah mursalah* perspective.<sup>64</sup>

This view of marriage as a prerequisite is different from international human rights provisions, especially in Article 16, paragraph (1) of the UDHR, which substantively confirms that every man and woman has the right to enter into marriage and continue their offspring.<sup>65</sup> Article 16, paragraph (1) of the UDHR constructively emphasizes that marriage and continuing offspring are human rights. Consequently, marriage is a right to be carried out according to each individual's agreement. From the description of Article 16 paragraph (1) of the UDHR above, it can be concluded that there are differences in views between the UDHR and marriage law in Indonesia. Article 16, paragraph (1) of the UDHR holds that marriage is a right and, therefore, each individual's privacy. The procedures and how the marriage procession takes place are the wishes of each party which must be respected. This is different from Indonesian marriage law, which views marriage as a prerequisite so that if every citizen wants to have a family and continue their descendants, they are obliged to carry out a marriage following the procedures and legal provisions of their respective religions and beliefs. The differences in perspectives regarding marriage in Article 16, paragraph (1) of the UDHR and marriage law in Indonesia are explained in the table below.

**Table 1.** The Difference of Marriage Perspective between UDHR and Marriage Law in Indonesia

No	Determinant Indicator	UDHR	Marriage Law
----	-----------------------	------	--------------

<sup>63</sup> Rahmat Hidayat Nasutio Muhammad Syukri Albani Nasution, *Filsafat Hukum Islam Dan Maqashid Syariah*, 2nd ed. (Jakarta: Prenada Media Group, 2022).

<sup>64</sup> Muhammad Habibi Siregar, "Scheme of Maslahat Within Sharia and Transcendental Fiqh," *Ijtihad* 15, no. 1 (2021): 35–62.

<sup>65</sup> Arif Sugitanata and Ahmad Muhasim, "Living Law And Women Empowerment Weaving Skills As A Marriage Requirement In Sade, West Nusa Tenggara," *Al Ahwal* 15, no. 1 (2022): 145–60, <https://doi.org/10.14421/ahwal.2022.15108>.

1.	Ideology Orientation	Liberal	Pancasila (Legal Solvency)
2.	Scope	Private	Private-Public
3.	Marriage Position	As Human Rights	As The Requirement in The Fulfilment of Human Rights
4.	Marriage Validity	Private Field/Civil	Religion, Law, and Belief of Each
5.	The Correlation with The Right to Have Family and Continue Descendant	Indirectly	Directly

Source: Analysis by The Author

The table indicates at least two orientations between marriage law in Indonesia and the orientation contained in the UDHR. Marriage law in Indonesia directly identifies marriage law as one that must pay attention to religious law. In this context, marriage law in Indonesia considers religious law as a "partner" that equally regulates marriage. This is in contrast to the UDHR, which separates marriage from the existence of a religious norm. Another difference is that Indonesian marriage law also integrally links the right to enter into marriage to fulfillment. This contrasts the UDHR perspective, which sees marriage rights as independent and independent. Dealing with the results of the analysis above indicates that the 2022 Constitutional Court Decision on Different Religions confirms the existence of marriage following the Indonesian perspective, which emphasizes the correlation between marriage as a prerequisite for fulfilling the right to have a family and continuing offspring. This also confirms that the 2022 Constitutional Court Decision on Different Religions seeks to strengthen Indonesian marriage law, both contained in the KHI and the Marriage Law, which implicitly places marriage as a prerequisite for fulfilling the right to have a family and continue procreation.

## CONCLUSION

Marriage regulations in Islamic law and national law complement each other, as explained in the solvency theory of Islamic law, where the validity of marriage is regulated by religious law and marriage registration is regulated by state law. The 2022 Constitutional Court Decision on Different Religions strengthens this theory by confirming that marriage is integral to family and children's rights following Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the spirit of the KHI. However, court decisions are still not in line with this theory, such as the 2023 Central Jakarta District Court Decision on Different Religions. After the 2022 Constitutional Court Decision on Different Religions, the validity of

interfaith marriages is considered in religious law. This decision confirms that marriage is a prerequisite for the right to have a family and continue offspring, as asserted in the KHI and the Marriage Law. The impact is the rejection of invalid marriages such as interfaith marriages, same-sex marriages (such as LGBT, etc.), as well as other aspects of marriage that conflict with the values and laws of each religion. This is seen from the benefit and *murlah* aspect that the 2022 Constitutional Court Decision on Different Religions is following the aspects of benefit and values that are developing in Indonesian society.

## REFERENCES

- Afandi, Fachrizal. "Penelitian Hukum Interdisipliner Reza Banakar: Urgensi Dan Desain Penelitian Sosio-Legal." *Undang: Jurnal Hukum* 5, no. 1 (2022): 240.
- Alam, Syariful. "Reconstruction of Marriage Zonation in Islamic Law Perspective." *Legality: Jurnal Ilmiah Hukum* 27, no. 2 (2019): 161. <https://doi.org/10.22219/jihl.v27i2.10154>.
- Ali, Zezen Zainul, and Mega Puspita. *Pembaharuan Hukum Keluarga Di Asia Tenggara: Dari Negara Mayoritas Sampai Minoritas Muslim*. Cetakan pertama. Banguntapan, Bantul, Yogyakarta: Jejak Pustaka, 2023.
- Alifa, Hasna Lathifatul, Ali Sodiqin, and Bian Ambarayadi. "Interreligious Marriages In Indonesia: From Legal Disharmony to Legal Conflict." *Justicia Islamica* 20, no. 2 (2023): 198-200. <https://doi.org/10.21154/justicia.v20i2.5922>.
- Ariyanti, Cindy Yulia, Novandi Dwi Putra. "The Unregistered Child Marriage on Lumbang Society Norm Perspective Legal Pluralism." *International Journal of Law Dynamics Review* 2, no. 1 (2024): 40-56.
- Benda-Beckman, Keebet Von. "Relational Social Theories and Legal Pluralism." *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021): 4. <https://doi.org/10.54828/ijsls.2021v1n1.2>.
- Cavalcanti, Maria Francesca. "Islamic Family Law and the Legal Pluralism Approach - Case Studies of Reasonable Accommodation in Europe." *Ius Comparatum* 1, no. 1 (2020): 358.
- Daud, Fathonah K., and M. Ridlwan Hambali. "Living Law Dalam KHiṭbah Dan Lamaran Perspektif Sosiologi Hukum." *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 16, no. 1 (2022): 92-107. <https://doi.org/10.35316/lisanalhal.v16i1.92-107>.
- Djubaedi, Dedi, and Abdul Aziz. "The Value System of Pancasila and Islam and Their Implementation in Sharia Economics in Indonesia: A Conceptual-Qualitative Approach." *Hikmatuna: Journal for Integrative Islamic Studies* 8, no. 2 (2022): 134-43. <https://doi.org/10.28918/hikmatuna.v8i2.6323>.

- Dwi Dasa Suryantoro, Ainur Rofiq, and Prodi. "Pernikahan Dibawah Tangan (Sirri) Perspektif Kompilasi Hukum Islam." *Samawa* 2, no. 2 (2022): 1-23.
- Eka N.A.M. Sihombing, Cynthia Hadita. *Penelitian Hukum*. 1st ed. Malang: Setara Press, 2022.
- Emeralda, Nadya Rizki, and Siti Hamidah. "Rekonstruksi Pencatatan Perkawinan Berdasarkan Relevansi Antara Hukum Administrasi Negara Dengan Hukum Administrasi Sipil." *Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 1 (2022): 90. <http://dx.doi.org/10.17977/um019v7i1p87-98>
- Enri, Andi, Erna Sari, Qadir Gassing, Universitas Islam, and Negeri Alauddin. "Legal Pluralism of the Ammatoa (*Ilalang Embaya*) Indigenous Community in Marriage Aspects (Analysis Study of Maqasid Al-Shari'ah)." *Transformatif* 1, no. 1 (2022): 131-42.
- Gautama, Sudargo and Robert N. Hornick. *An Introduction To Indonesian Law : Unity In Diversity*. Bandung: Alumni, 2022.
- Gelar Ali Ahmad, Nurul Hikmah. *Hukum Islam*. 1st ed. Surabaya: Unesa University Press, 2018.
- Ghosh, Yashomati, and Anirban Chakraborty. "Secularism, Multiculturalism, and Legal Pluralism: A Comparative Analysis Between the Indian and Western Constitutional Philosophy." *Asian Journal of Legal Education* 7, no. 1 (January 2020): 73-81. <https://doi.org/10.1177/2322005819859674>.
- Hamdani, Fathul, and Ana Fauzia. "Tradisi Merariq Dalam Kacamata Hukum Adat Dan Hukum Islam." *Jurnal Hukum Lex Generalis* 3, no. 6 (2022): 433-47. <https://doi.org/10.56370/jhlg.v3i6.245>.
- Hamid, Asrul, Titi Martini Harahap, Resi Atna Sari Siregar, Syaipuddin Ritonga, and Amiruddin. "Sociological Analysis of the Concept of Divorce In Marriage Law in Indonesia." *Journal of Religious, Social and Cultural* 1, no. 1 (2022): 42-51.
- Hangabei, Sinung Mufti, Khudzaifah Dimyati, Absori, and Akhmad. "The Ideology of Law: Embodying the Religiosity of Pancasila in Indonesia Legal Concepts." *Law Reform* 17, no. 1 (2021): 77-94.
- Hanifuddin, Iza, and Moh. Ihsan Fauzi. "A Concept of Islamic Notary as Registrar on Sharia Contract: Al-Muwaththiq Perspective." *Justicia Islamica* 18, no. 2 (2021): 281-97. <https://doi.org/10.21154/justicia.v18i2.2887>.
- Harsono, Iwan, Himawan Sutanto, Siti Zuhroh, Ivon Arisanti, and Yossy Dwi Erliana. "The Influence of Socio-Economic Factors on Marriage Patterns in Indonesia : A Quantitative Analysis of the Relationship between Social Status and Marriage Decisions." *Sciences Du Nord Humanities and Social Sciences* 1, no. 1 (2024): 33-39.
- Hawa, Siti. "Pengaruh Pendidikan Dan Ekonomi Keluarga Terhadap Pernikahan Usia Dini." *Jurnal Ekonomi Syariah* 2, no. 2 (2019): 368-95.

- Heriyanto, Mustofa. "Penetapan Pengadilan Negeri Syarat Pencatatan Perkawinan Beda Agama Analisa Yuridis Putusan Nomor : 87/Pdt.P/2020/Pn Mks." *Al Hukmi* 2, no. 1 (2021): 18.
- Hikmah, Nurul and, Agung Ari Subagyo. "Perlindungan Hukum Bagi Perempuan Terkait Praktik Poligami Siri Dalam Perspektif Hukum Islam." *LENTERA: Journal of Gender and Children Studies* 2, no. 1 (2020): 35-54.
- Ideham, Wahidah. "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin." *Samarah* 6, no. 2 (2022): 1046-64. <https://doi.org/10.22373/sjhc.v6i2.12466>.
- Irianto, Sulistyowati. "Praktik Penelitian Hukum: Perspektif Sosiolegal." In *Metode Penelitian Hukum: Konstelasi & Refleksi*, 1-38. Jakarta: Yayasan Pustaka Obor Indonesia, 2013.
- Jati, Imam Wahyu. "Pengaturan Perkawinan Beda Agama Di Indonesia." *'Aainul Haq* 2, no. 1 (2022): 49-63.
- KBBI. "Kamus Besar Bahasa Indonesia Online." KBBI, 2022.
- Khoiriyah, Siti. "Analisis Implementasi Pendekatan Judicial Restraint Terhadap Putu San Mahkamah Konstitusi Nomor 24 / Puu-Xx / 2022." <https://conference.untag-sby.ac.id/>, 2022.
- Kurniawan, Itok Dwi, Suyatno Suyatno, and Hanuring Ayu. "Kebijakan Pencatatan Perkawinan Beda Agama." *Jurnal Penelitian Serambi Hukum* 16, no. 02 (2023): 23-30. <https://doi.org/10.59582/sh.v16i02.748>.
- Lindsey, Tim and Helen Pausacker. *Religion, Law, and Intolerance in Indonesia*. London: Taylor & Francis, 2016.
- Loppies, Imelda J. "Persepsi Masyarakat Terhadap Adat Perkawinan Suku Biak Di Kampung Yendidori Distrik Yendidori Kabupaten Biak Numfor." *Gema Kampus* 14, no. 1 (2019): 2.
- Sekarbuana, Made Widya, Sekar Ida Ayu Putu Widiawati, and I Wayan Arthanaya. "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia." *Preferensi Hukum* 2, no. 1 (2021): 18.
- Maharani, Raden Ajeng Cendikia Aurelie. "Akta Penegasan Perjanjian Perkawinan Kaitannya Dengan Pemenuhan Prinsip Publisitas." *Notaire* 4, no. 2 (2021): 285. <https://doi.org/10.20473/ntr.v4i2.27168>.
- Mahfud MD, Moh. *Membangun Politik Hukum, Menegakkan Konstitusi*. 2nd ed. Jakarta: Rajawali Pers, 2017.
- Marwin. "Pencatatan Perkawinan Dan Syarat Sah Perkawinan Dalam Tatanan Konstitusi." *Asas* 6, no. 2 (2014): 98-113.
- Maula, Bani Syarif, Muhammad Fuad Zain, and Syifaun Nada. "Marital Property in Marriages of Different Nationalities in Indonesia According to National Law and Islamic Law." *El-Aqwal : Journal of Sharia and Comparative Law* 3, no. 1 (2024): 1-16. <https://doi.org/10.24090/el-aqwal.v3i1.10508>.

- Muzakkir. "Integrasi Hukum Adat Dalam Hukum Perkawinan Di Indonesia." *Jurnal Hukum Samudra Keadilan* 17, no. 1 (2022): 61-69. <https://doi.org/10.33059/jhsk.v17i1.5609>.
- Nasution, Muhammad Syukri Albani, and Rahmat Hidayat Nasution. *Filsafat Hukum Islam Dan Maqashid Syariah*. 2nd ed. Jakarta: Prenada Media Group, 2022.
- Negara, Tunggul Ansari Setia. "Normative Legal Research In Indonesia: Its Origins And Approaches." *ACLJ* 4, no. 1 (2023): 5.
- Ningtias, Reny Yunia, Windri Saifudin, Nada Oktaviani Wibowo, and Yunita Safitri. "Conflict Resolution in Maintaining Early Marriage Relationships in Alassumur Village, Bondowoso." *Proceedings of the 3rd International Media Conference 2021 (IMC 2021)* 672, no. 1 (2022): 163-73. <https://doi.org/10.2991/assehr.k.220705.017>.
- Prasetyo, Dicky Eko. "Inventarisasi Putusan Peradilan Adat Sendi Sebagai Upaya Memperkuat Constitutional Culture Dalam Negara Hukum Pancasila." *Jurnal Hukum Lex Generalis* 2, no. 3 (2021): 249-73.
- Quthny, Abu Yazid Adnan, Ahmad Muzakki, and Zainuddin. "Pencatatan Pernikahan Perspektif Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974." *Asy-Syari'ah: Jurnal Hukum Islam* 8, no. 1 (2022): 25-40. <https://doi.org/10.55210/assyariah.v8i1.765>.
- Rais, Isnawati, and Ya Rakha Muyassar. "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development." *Jurnal Cita Hukum* 10, no. 2 (2022): 205-22. <https://doi.org/10.15408/jch.v10i2.27800>.
- Riyani, Irma. *Islam, Women's Sexuality and Patriarchy in Indonesia: Silent Desire*. London: Taylor & Francis, 2020.
- Reyes, Anselmo, Wilson Lui, and Kazuaki Nishioka. *Choice of Law and Recognition in Asian Family Law*. Oxford: Hart Publishing, 2023.
- Romli, Muhammad, Nurul Huda, Aspandi. "Interfaith Marriage Registry in Indonesia Pencatatan Perkawinan Beda Agama Di Indonesia." *Al-'Adalah* 7, no. 2 (2022): 377-405.
- Safa'at, Muchamad Ali. *Dinamika Negara Dan Islam Dalam Perkembangan Hukum Dan Politik Di Indonesia*. 1st ed. Jakarta: Konstitusi Press, 2018.
- Safiera, Dhea Eldi, and Sonyendah Retnaningsih. "Registration of Interfaith Marriages in Indonesia Based on Supreme Court Circular Number 2 of 2023." *Asian Journal of Engineering, Social and Health* 3, no. 6 (2024): 1157-69.
- Salim, Arskal. *Contemporary Islamic Law in Indonesia*. Edinburg: Edinburg University Press, 2015.
- Sandberg, Russell. *Religion and Marriage Law: The Need for Reform*. Bristol: Bristol University Press, 2021.



- Saujan, Iqbal, Seyed Mohamed Mohamed Mahazir, and Nasrin Muhammadu Ibrahim. "Islamic Law of Inheritance and Its Implication amongst Muslim Society: An Empirical Analysis." *Journal of Contemporary Islamic Law* 1, no. 1 (2022): 35–51. <https://doi.org/10.26475/jcil.2022.7.1.04>.
- Sidiqah, Meliyani. "Legal Vacuum in Interfaith Marriage Rules in Indonesia." *Iblam Law Review* 3, no. 1 (2023): 99–110. <https://doi.org/10.52249/ilr.v3i1.119>.
- Simanjorang, Brigita D. S., Suriyono Suwikromo, Rudolf S. Mamengko. "Kajian Hukum Perkawinan Anak Dibawah Umur Menurut Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang- Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Lex Privatum* 10, no. 1 (2022): 55. <https://doi.org/10.2207/jjws.91.328>.
- Siregar, Muhammad Habibi. "Scheme of Maslahat Within Sharia and Transcendental Fiqh." *Ijtihad* 15, no. 1 (2021): 35–62.
- Sitohang, Bertrand Silverius, Sahata Manalu, Mancur Sinaga, and Niswan Harefa. "The Validity of Marriage Through Constitutional Court Decision Number 69/PUU-XIII / 2015 Reviewed from Law Number 1 Of 1974." *Jurnal Pendidikan Tambusai* 7, no. 1 (2023): 20637–42.
- Sriono, Sriono, Anis Mashdurohatun, Sri Kusriyah, and Ahmad Rofiq. "Reconstruction of Marriage Dispensation Regulations in the Perspective of Human Rights Based on the Value of Justice." *Scholars International Journal of Law, Crime and Justice* 6, no. 04 (2023): 225–33. <https://doi.org/10.36348/sijlcj.2023.v06i04.005>.
- Sriyana, Sriyana, Anita Pratiwi, and Silvia Arianti. "Keserasian Sosial Masyarakat Majemuk Di Kelurahan Beriwit Kecamatan Murungkabupaten Murung Raya." *Anterior Jurnal* 22, no. 1 (2023): 73–80. <https://doi.org/10.33084/anterior.v22i1.3927>.
- Sugitanata, Arif, and Ahmad Muhasim. "Living Law And Women Empowerment Weaving Skills As A Marriage Requirement In Sade, West Nusa Tenggara." *Al Ahwal* 15, no. 1 (2022): 145–60. <https://doi.org/10.14421/ahwal.2022.15108>.
- Sularno, Muhammad Roy Purwanto, Moh. Nadi, Ahmad Arun Nafidz. *Hukum Perkawinan Bawah Tangan Di Indonesia*. Ponorogo: Uwais Inspirasi Indonesia, 2023.
- Suteki and Galang Taufani. *Metodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)*. 1st ed. Depok: Rajawali Pers, 2018.
- Syaripuddin, Said. "Maslahat as Considerations of Islamic Law in View Imam Malik." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 1–23.
- Tamanaha, Brian Z. "Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences." *Washington University in St. Louis Legal Studies Research Paper No. 21-06-01*, 30–33, 2021.

- Yamani, Akhmad Zaki. "The Analysis of The Marriage Age According to The Marriage Law of The Republic of Indonesia No. 16 of 2019." *International Journal of Society Reviews* 2, no. 4 (2024): 941-45.
- Yunus, Ahyuni. *Hukum Perkawinan Dan Itsbath Nikah: Antara Perlindungan Dan Kepastian Hukum*. 1st ed. Makassar: Humanities Genius, 2020.
- Zeinudin, Moh. *Hukum Perkawinan Beda Agama Di Indonesia: Perkembangan Norma Dan Praktik*. Jakarta: Damera Press, 2023.