

BAN ON INTERFAITH MARRIAGE IN INDONESIA: AN ANALYSIS OF CONSTITUTIONALITY IN THE PERSPECTIVE OF ISLAMIC LAW AND HUMAN RIGHTS

LARANGAN PERKAWINAN ANTAR AGAMA DI INDONESIA: ANALISIS KONSTITUSIONAL DARI PERSPEKTIF HUKUM ISLAM DAN HAK ASASI MANUSIA

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Abstract

*Interfaith marriage is a family law issue that continues to generate debate in Indonesia because it lies at the intersection of the protection of citizens' constitutional rights, religious values, and human rights principles. This debate has become increasingly prominent after the Constitutional Court, through Decision Number 24/PUU-XX/2022, affirmed the constitutionality of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage. This study aims to analyze the constitutionality of the prohibition on interfaith marriage from the perspective of Islamic law and human rights and to examine the relevance of the Constitutional Court's decision to the principles of the Indonesian constitution. This research is a normative legal research with a statutory approach, a conceptual approach, a case approach, and a comparative approach. The legal materials are analyzed qualitatively through a descriptive-analytical method by reviewing laws and regulations, Constitutional Court decisions, international human rights instruments, and Islamic legal literature. The results of the study indicate that the prohibition on interfaith marriage is a constitutional legal policy because it is in line with the principle of Belief in One Almighty God as Indonesia's constitutional identity and is a form of open legal policy of lawmakers. From an Islamic legal perspective, this prohibition has a strong normative basis in the Qur'an, the Hadith, and the objectives of the *maqāṣid al-syarī'ah* (the principles of Islamic law), particularly the protection of religion, lineage, and the well-being of the family. Meanwhile, from a human rights perspective, this regulation cannot be classified as a human rights violation, but rather as a justifiable constitutional limitation as long as it meets the principles of legality, legitimate purpose, necessity, and proportionality. This research proposes the concept of constitutional *fiqh* as an integrative framework that harmonizes Islamic law, the constitution, and human rights in the formation of family law in Indonesia.*

Keywords: *interfaith marriage; Constitutional Court; Islamic law; human rights; constitutionality; Constitutional Fiqh.*

Abstrak

Perkawinan beda agama merupakan salah satu isu hukum keluarga yang terus menimbulkan perdebatan di Indonesia karena berada di persimpangan antara perlindungan hak konstitusional warga negara, nilai-nilai agama, dan prinsip-prinsip hak asasi manusia. Perdebatan ini semakin mencuat setelah Mahkamah Konstitusi melalui Keputusan Nomor 24/PUU-XX/2022 menegaskan konstitusionalitas Pasal 2 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Penelitian ini bertujuan untuk menganalisis konstitusionalitas pelarangan perkawinan beda agama dari perspektif hukum Islam dan hak asasi manusia serta meneliti relevansi keputusan Mahkamah Konstitusi terhadap prinsip-prinsip konstitusi Indonesia. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan legislatif, pendekatan konseptual, pendekatan kasus, dan pendekatan komparatif. Materi hukum dianalisis secara kualitatif melalui metode deskriptif-analitis dengan meneliti undang-undang dan peraturan, putusan Mahkamah

Konstitusi, instrumen hak asasi manusia internasional, dan literatur hukum Islam. Hasil penelitian menunjukkan bahwa pelarangan perkawinan beda agama merupakan kebijakan hukum konstitusional karena sejalan dengan prinsip Tuhan Yang Maha Esa sebagai identitas konstitusional Indonesia dan merupakan bentuk kebijakan hukum terbuka bagi para pembuat undang-undang. Dari perspektif hukum Islam, pelarangan tersebut memiliki landasan normatif yang kuat dalam Al-Qur'an, hadits, dan tujuan maqad al-syari'ah, khususnya perlindungan agama, generasi penerus, dan kesejahteraan keluarga. Sementara itu, dari perspektif hak asasi manusia, peraturan tersebut tidak dapat dikualifikasikan sebagai pelanggaran hak asasi manusia, tetapi sebagai bentuk pembatasan konstitusional yang dapat dibenarkan selama memenuhi prinsip legalitas, tujuan yang sah, kebutuhan, dan proporsionalitas. Penelitian ini menawarkan konsep fiqh konstitusional sebagai kerangka integratif yang menyelaraskan hukum Islam, konstitusi, dan hak asasi manusia dalam pembentukan hukum keluarga di Indonesia.

Kata kunci: *perkawinan beda agama; Mahkamah Konstitusional; hukum Islam; hak asasi manusia; konstitusionalitas; fiqh konstitusional.*

Introduction

Marriage is a legal institution that has a fundamental position in the life of society because it not only forms a civil relationship between a man and a woman, but also becomes a means of forming the family as the basic unit of the life of the nation and state. In the perspective of international law, the right to marry and form a family is recognized as part of the inherent human rights of every individual as stated in the *Universal Declaration of Human Rights* (UDHR) of 1948 and the *International Covenant on Civil and Political Rights* (ICCPR).¹

However, the implementation of these rights is not absolute because each country has the authority to regulate the terms, procedures, and limits of marriage in accordance with the legal system, cultural values, and philosophy of their respective constitutions. Therefore, the regulation of marriage is one of the areas of law that shows a close relationship between the protection of human rights, state authority, and the recognition of religious values that live in society.² In this context, marriage is not only understood as a private relationship between individuals, but also as a public institution that has social, moral, religious, and constitutional implications so that its regulation has always been an important concern in the development of national and international law.³

Indonesia has different characteristics compared to countries that adhere to the principle of secularism because the national legal system is built on the value of the One Godhead as affirmed in the Preamble and Article 29 of the Constitution of the Republic of Indonesia in 1945. Consequently, religious law has acquired a very important position in the formation of national family law, including in the regulation of the validity of

¹ Lamhot Hutahaean, "The Constitutionality of SEMA Number 2 of 2023 concerning the Prohibition of the Registration of Interfaith Marriages in the Context of Human Rights," *Journal of Law and Social Science Scholars Literature* 3, no. 2 (2025): 170–79, <https://pchukumsosial.org/index.php/pchs>.

² D P D MURI and W B Pratiwi, "Legal Reform on Legal Protection in Mixed Marriage After the Constitutional Court Decision No. 69/PUU-XII/2015: (A Study of Norms and Values)," *Journal of Law Review* 5, no. 1 (2026): 49–61, <http://journal.ppsuniyap.id/index.php/jolr/article/view/180>.

³ Mochamad Firdaos, "SiRad: Pelita Insight on the Reform of Islamic Family Law through Law Number 1 of 1974 on Marriage in Indonesia," 1974, 113–22.

marriage.⁴ The provisions of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 affirm that a marriage is declared valid if it is carried out according to the laws of each religion and belief. The formulation shows that the state does not independently determine whether a marriage is valid or not, but rather leaves the judgment to the religious norms embraced by the prospective bride. This legal construction reflects the distinctive character of the Indonesian legal system that integrates state law with religious law in the implementation of family life, as well as the basis for various debates regarding the position of interfaith marriage in the perspective of national law.⁵

The development of an increasingly plural and open Indonesian society has given birth to social dynamics that affect the pattern of relations between communities, including increased interaction between individuals from different religious backgrounds. Population mobility, advances in information technology, higher education, urbanization, and globalization have expanded the social space of the community so that interfaith personal relationships are increasingly frequent. This condition has an impact on the increasing desire of some couples to get married even though they have different beliefs. In practice, not a few couples face legal obstacles because the national legal system has not provided a mechanism that explicitly accommodates interfaith marriage. Various efforts were then made, such as marrying abroad, submitting an application for determination to the court, making an administrative religious conversion, and taking advantage of loopholes in civil registration practices. This phenomenon shows that the social needs of the community are developing faster than the development of regulations, thus raising the question of the effectiveness of the law in answering the increasingly complex reality of life.⁶

This problem is increasingly evident from the differences in law enforcement practices before the birth of the Constitutional Court Decision Number 24/PUU-XX/2022. In a number of cases, there are courts that provide a determination for couples of different religions to have a marriage taking into account the constitutional rights of citizens and the principle of legal utility. On the other hand, there are also courts that reject similar applications on the grounds that they are contrary to the provisions of Article 2 paragraph (1) of the Marriage Law. These differences in interpretation cause legal *uncertainty* because the public does not get certainty about the legal mechanisms that can be taken to obtain recognition of interfaith marriage. Such conditions show that the issue of interfaith marriage is not only related to the substance of legal norms, but also concerns the consistency of the application of the law by judicial institutions. The inconsistency of the decision finally prompted the birth of a law test application to the Constitutional Court as an institution authorized to interpret the constitution and ensure the harmony of legal norms with the 1945 Constitution of the Republic of Indonesia.⁷

⁴ Ernawati Huroiroh and Vera Rimbawani Sushanty, "The Conflict of Norms between Constitutional Rights and the Regulation of Interfaith Marriage in Indonesia," *Justice* 23, no. 3 (2025): 490–509, <https://doi.org/10.37090/g7xprm71>.

⁵ Norayanti Simaremare, Pristika Handayani, and Dwi Afni Maileni, "The Challenges of Cross-National Marriages : A Comparative Study of Indonesian Law and Private International Law," *USM Law Review Journal* 8, no. 3 (2025): 4–9, <https://doi.org/http://dx.doi.org/10.29240/jhi.v7i2.4574>.

⁶ Ahmad Rajafi, Arif Sugitanata, and Vinna Lusiana, "The 'Double-Faced' Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia," *Journal of Islamic Law* 5, no. 1 (2024): 19–43, <https://doi.org/10.24260/jil.v5i1.2153>.

⁷ Paweł Jaros, "The Holy See's Charter of Rights of the Family and the Family Law of Contemporary European States," *Biuletyn Stowarzyszenia Kanonistów Polskich* 34, no. 37 bis (2024): 69–110, <https://doi.org/10.32077/bskp.8725>.

Through the Constitutional Court Decision Number 24/PUU-XX/2022, the Court rejected the application for testing Article 2 paragraph (1) of the Marriage Law and emphasized that the provisions regarding the validity of marriage based on religious law are constitutional norms. The Court held that the arrangement is in line with the character of the Indonesian state which is based on the One Godhead and is part of the *open legal policy*. The ruling also strengthens the position of religious law as the main parameter in determining whether or not a marriage is legal. However, the verdict does not necessarily end the academic debate. Rather, the ruling raises questions about the extent to which restrictions on interfaith marriage are justified in a democratic legal state that also guarantees everyone's right to form a family, obtain legal certainty, and exercise religious freedom. Therefore, an analysis of the constitutionality of the prohibition of interfaith marriage is important to understand the relationship between state authority, religious values, and the protection of citizens' constitutional rights.⁸

From the perspective of Islamic law, the discussion of interfaith marriage is one of the classic themes that continues to develop along with changes in the social and constitutional context. The majority of scholars are of the opinion that Muslim women are not allowed to marry non-Muslim men, while regarding marriage between Muslim men and women of the Ahlul Kitab there are differences of opinion based on the interpretation of the Qur'an, hadith, and the legal *istinbat* method used by each sect.⁹ These differences of views show that Islamic law has a wealth of intellectual treasures that allow for *ijtihad* space in accordance with the development of the times without ignoring the basic principles of sharia. In the context of a modern country like Indonesia, it is not enough to study interfaith marriage only through a normative fiqh approach, but must also consider the principles of *maqāṣid al-syarī'ah*, the protection of family welfare, and the relationship between religious norms and the applicable constitutional legal system. This multidisciplinary approach is important so that the resulting analysis is more comprehensive and able to respond to contemporary legal challenges.¹⁰

Various previous studies have discussed the prohibition of interfaith marriage from the perspective of Islamic law, positive law, and human rights. However, most of the research still places the three perspectives separately so that it has not provided a complete analysis of the constitutionality of the Constitutional Court Decision Number 24/PUU-XX/2022 in the framework of the relationship between constitutional law, Islamic family law, and human rights. This study seeks to fill this gap by using a normative approach that integrates the three perspectives in one comprehensive analytical framework. The novelty of this study lies in the effort to evaluate whether the prohibition of interfaith marriage as affirmed by the Constitutional Court has reflected a balance between the protection of religious values that are the basis of national law and the fulfillment of the constitutional rights of citizens. Thus, this research is expected to make a theoretical contribution to the development of Islamic family law and constitutional

⁸ Chinwe Umegbolu and Susan Guthrie, "A Comparative Perspective: Marriage, Engagement, and Divorce Laws in Guyana, Trinidad and Tobago (TT) and the United States (US)," *Athens Journal of Law* 11, no. 4 (2025): 697–716, <https://doi.org/10.30958/ajl.11-4-18>.

⁹ Trust from a Positive Perspective and Law, "SEMA Analysis No. 3 of 2023 on Guidelines for Judges in Adjudicating Cases of Marriage Registration Applications Between People of Different Religions and Beliefs: A Positive Legal Perspective," *VISA: Journal of Visions and Ideas* 4, no. 3 (2024): 2709–15, <https://doi.org/47467/visa.v4i3.5855>.

¹⁰ David Esteban Trujillo Hidalgo and Yanet Nápoles Naples, "Marriage in Notarial Headquarters. Need for Its Regulation in the Ecuadorian Legal Order," *Lex Magazine* 8, no. 31 (2025): 2177–91, <https://doi.org/10.33996/revistalex.v9i31.405>.

law, as well as become an academic reference in the formulation of marriage law policies in Indonesia in the future.

Discussion

A. The Dynamics of Interfaith Marriage Arrangements in the Indonesian Legal System

1. The Philosophical Foundations of Marriage Arrangements in Indonesia

The marriage arrangement in Indonesia cannot be separated from the philosophical foundation of the state which is rooted in the values of Pancasila, especially the first precept, the One Godhead. In contrast to countries that adhere to the principle of secularism, Indonesia has built a national legal system that integrates religious values into various areas of law, including family law. Therefore, marriage is not only seen as a civil relationship between a man and a woman, but also as a birth and mental bond that has spiritual, moral, social, and legal dimensions. This conception is reflected in Article 1 of Law Number 1 of 1974 concerning Marriage which defines marriage as an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead. This formulation shows that the national marriage law from the beginning was designed not solely based on the principle of individual freedom, but also paid attention to the religious values that became the identity of the Indonesian nation.¹¹

The value of the One God provides philosophical legitimacy for the state to make religious law one of the sources of national law formation. In the context of family law, this principle is manifested through the recognition that the validity of a marriage depends on the religious provisions embraced by the prospective bride. Thus, the relationship between the state and religion in the marriage arrangement is not a subordinate relationship, but a complementary relationship in order to realize legal order while maintaining the moral values of society. This perspective places marriage as a religious institution as well as a legal institution, so that its regulation is not only aimed at providing legal certainty, but also maintaining the sanctity of the family institution as the foundation of community and state life.¹²

2. Constitutional Basis

The constitutional basis of marriage regulation in Indonesia comes from several provisions in the 1945 Constitution of the Republic of Indonesia which are interrelated and form a systematic unit. Article 28B paragraph (1) affirms that everyone has the right to form a family and continue their offspring through a valid marriage. The provision provides constitutional recognition of the right of every citizen to marry as part of human rights. However, the constitution does not provide a definition of the meaning of "legal marriage", so the determination is left to the lawmakers through further provisions in laws and regulations.¹³

In addition to guaranteeing the right to form a family, the constitution also guarantees freedom of religion as stipulated in Article 28E paragraph (1) and paragraph (2) and Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This freedom includes the right of everyone to embrace religion, worship according to their religion, and practice their beliefs without coercion.

¹¹ Paulin Alfantina Nelci et al., "The Role of Divine Values in Pancasila as the Foundation of the Nation in Facing Global Secularism," *Garuda: Journal of Civic Education and Philosophy* 3, no. 3 (2025): 13–19, <https://doi.org/10.59581/garuda.v3i3.5461>.

¹² Dul Jalil, "Interfaith Marriage: A Normative and Psychological Study in the Context of Urban Society," *USRAH: Journal of Islamic Family Law* 6, no. 4 (2025): 339–53, <https://doi.org/10.46773/usrah.v6i4.2437>.

¹³ Hamdan Arief Hanif, "SiRad: Pelita Wawasan Forced Marriage and Its Impact on Household Unity from an Islamic Law Perspective" 21 (2025): 105–12.

However, this freedom is not a right that cannot be restricted. Article 28J of the 1945 Constitution of the Republic of Indonesia emphasizes that the exercise of human rights is obliged to respect the rights of others and be subject to restrictions set by law in order to ensure recognition and respect for the values of religion, morality, security, and public order in a democratic society.¹⁴

The relationship between Article 28B, Article 28E, Article 28J, and Article 29 of the 1945 Constitution of the Republic of Indonesia shows that the Indonesian constitution adopts a *constitutional balancing approach* between the protection of individual rights and respect for religious values as part of the nation's constitutional identity. Therefore, the analysis of the prohibition of interfaith marriage cannot be carried out using only one constitutional norm partially, but must pay attention to the systematic relationship between the provisions of the constitution in order to obtain a complete understanding of the limits of the protection of the constitutional rights of citizens.

3. Regulations in Laws and Regulations

Normatively, the regulation of marriage in Indonesia is regulated in various interrelated laws and regulations. The main instrument is Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. Article 2 paragraph (1) of the law states that marriage is valid if it is carried out according to the laws of each religion and its beliefs. This provision is the main basis that connects the validity of marriage with religious norms, so that the state does not set its own substantive requirements regarding the validity of a marriage. Furthermore, Article 2 paragraph (2) stipulates that every marriage must be recorded according to the provisions of laws and regulations as a form of state administration.¹⁵

These provisions were then further elaborated through Government Regulation Number 9 of 1975 which regulates the procedures for the implementation of marriage and its registration mechanism. In practice, marriage registration is carried out by the Office of Religious Affairs for Muslims and by the Population and Civil Registration Office for believers of religions other than Islam. In addition, for Muslims, the Compilation of Islamic Law also provides guidelines on the terms and principles of marriage, including provisions regarding the prohibition of marriage under certain conditions. Meanwhile, Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 regulates the administrative aspect of recording marriage events as part of the national population administration system.¹⁶

However, these regulations do not explicitly regulate the mechanism for implementing interfaith marriage. This void of norms then gives birth to various different interpretations in the practice of implementing the administration of marriage and in court decisions. Thus, the positive legal regulation regarding interfaith marriage still leaves a wide enough room for interpretation so that it becomes one of the main sources of the birth of legal debates in Indonesia.

¹⁴ Onytra Nirwana Prihatin and Muhammad Faozan, "The Problem of Interfaith Marriage in the Context of Islamic Law and Its Solutions" 7, no. 1 (2022): 76–86.

¹⁵ Bambang Hartono, "The Value of Pancasila as an Ideological Based for the Development of the Legal System in Indonesia," *International Journal of Law and Politics Studies* 6, no. 4 (2024): 50–56, <https://doi.org/10.32996/ijlps.2024.6.4.6>.

¹⁶ Izuddinsyah Siregar, "Islam and Pancasila from the Perspective of Maqashid Sharia," *An-Nabdloh: Journal of Education and Islamic Studies* 1, no. 2 (2025): 190–200, <https://doi.org/10.58788/jeis.v1i2.18%0Ahttps://ejournal.magisterpaiunira.com/index.php/annahdloh/article/download/18/14>.

4. Implementation Problems

The main problem in regulating interfaith marriage does not solely lie in the substance of legal norms, but also in its implementation in practice. The absence of provisions that explicitly regulate interfaith marriage procedures has led to the emergence of various interpretations among marriage registrars and judicial institutions. Prior to the Constitutional Court Decision Number 24/PUU-XX/2022, there were a number of courts that gave determination to couples of different religions to carry out marriages, while other courts rejected similar applications on the grounds that they were contrary to Article 2 paragraph (1) of the Marriage Law. These differences in practices show that there is no uniformity in the application of the law, which ultimately causes legal uncertainty for the community.¹⁷

This uncertainty has prompted some couples to seek alternative solutions outside the national legal mechanism, such as marrying abroad, making an administrative conversion, or taking advantage of loopholes in the civil registration system. This phenomenon shows that the social needs of the community often develop faster than the development of existing regulations. As a result, the law is not always able to provide adequate solutions to the problems faced by society.¹⁸

From the perspective of legal protection, this condition also has wide implications for the legal status of husband and wife, the validity of marriage, the position of children, inheritance rights, common property, and population administration. Therefore, the problem of implementing interfaith marriage arrangements does not only concern the relationship between religion and the state, but also touches on aspects of legal certainty, justice, and protection of citizens' constitutional rights. This issue then became one of the important bases for the birth of a constitutional test of Article 2 paragraph (1) of the Marriage Law in the Constitutional Court and became the focus of analysis in this study.

B. Analysis of the Constitutionality of the Prohibition of Interfaith Marriage in the Constitutional Court Decision Number 24/PUU-XX/2022

1. *Ratio Decidendi* of the Constitutional Court in Decision Number 24/PUU-XX/2022

The Constitutional Court Decision Number 24/PUU-XX/2022 is one of the important decisions in the development of family law and constitutional law in Indonesia because it affirms the constitutionality of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. The application for a test of the law was submitted by the petitioners who basically argued that the provision had limited the constitutional right of citizens to form a family through marriage, as guaranteed in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹⁹ The petitioners also argue that the complete surrender of the validity of marriage to religious law has created legal uncertainty, discrimination against couples of different religions, and restricted the exercise of religious freedom and the right to choose a life partner. According to the

¹⁷ Nilasari Siagian and Ilham Ilham, "Indonesian Independence and the Value of Religiosity: Reflection on the Value of Divinity in Pancasila," *Puteri Hijau : Journal of History Education* 10, no. 1 (2025): 46, <https://doi.org/10.24114/ph.v10i1.68381>.

¹⁸ Hamdy Sukra Laden and Novi Permita Sari, "Pancasila as the Glue of the Nation's Diversity," *Garuda: Journal of Civic Education and Philosophy* 3, no. 1 (2025): 116–24, <https://doi.org/10.59581/garuda.v3i1.4652>.

¹⁹ Devy Stany Walukow and Tobian Habel Pesik, "Pancasila as a Noble Agreement Strengthens Indonesia's Humanitarian Values in the Technological Era," *Proceedings Of The National Conference On Indonesian Philosophy And Theology "Encounter: Philosophical And Humanities Approach"* 3 (2025): 102–15.

petitioners, the state should provide a legal mechanism that allows every citizen to marry without being restricted by religious differences, as long as they meet the administrative requirements prescribed by law.²⁰

The Constitutional Court in its legal consideration rejected all the petitioners' arguments on the grounds that Article 2 paragraph (1) of the Marriage Law does not conflict with the 1945 Constitution of the Republic of Indonesia. The Court emphasized that the arrangement is a manifestation of the character of the Indonesian constitution which is based on the One Godhead as stated in Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. According to the Court, the lawmaker has the authority to formulate legal policies that place religious law as the basis for determining the validity of marriage. Therefore, the state does not take over religious authority in determining the substantive conditions of a marriage, but only regulates the administrative aspects through a recording mechanism. These considerations show that the Court views the relationship between state law and religious law as a complementary relationship in order to maintain legal order and reflect the constitutional identity of the Indonesian nation.²¹

One of the important considerations in the decision is the use of *the open legal policy doctrine*. The Court is of the opinion that the regulation of the requirements for the validity of marriage is a legal policy that is the authority of the lawmakers as long as it does not manifestly contradict the constitution. The doctrine of *open legal policy* provides space for lawmakers to determine policy choices that are considered most appropriate to the social, cultural, and cultural conditions that live in Indonesian society. Thus, the Court does not assess whether the policy is the most ideal option, but only tests whether it exceeds constitutional limits. In this context, the Court concluded that making religious law the basis for the legality of marriage is still within the corridor of the constitution so there is no reason to declare the norm unconstitutional.

The ratio decidendi of the Constitutional Court Decision Number 24/PUU-XX/2022 ultimately shows that the protection of religious values is placed as one of the main considerations in testing the constitutionality of norms. The Court does not view the right to form a family as an absolute right, but as a constitutional right whose implementation must be read systematically along with the provisions regarding the One Godhead, freedom of religion, and restrictions on rights as stipulated in Article 28J of the 1945 Constitution of the Republic of Indonesia. Thus, the basis for the Court's consideration is not only based on the legalistic approach, but also on the philosophy of the Indonesian constitution which places religion as one of the foundations of the life of the nation and state.²²

2. Constitutional Interpretation of the Prohibition of Interfaith Marriage

The analysis of the Constitutional Court Decision Number 24/PUU-XX/2022 cannot be separated from the constitutional *interpretation method* used by the Court. From the aspect of *original intent*, it can be understood that the drafters of the 1945 Constitution of the Republic of Indonesia wanted the formation of a state based on

²⁰ Politika Progresif et al., "Conflict of Authority Between State Institutions in Indonesian Constitutional Affairs: The Indonesian Constitutional System Places the Division of Authority Between State Institutions as a Central Element to Maintain the Principle of State Law and Mechanism of Checks" 2, no. September (2025).

²¹ Firdaos, "SiRad: Lamp of Insight on the Reform of Islamic Family Law through Law Number 1 of 1974 on Marriage in Indonesia."

²² D a n Child, D I Outside, and Kawin Related, "Legal Thoughts on the Status of Children as a Result of Marriage Siri," *Familia: Journal of Family Law*, n.d., 20–33, <https://doi.org/https://doi.org/https://doi.org/10.23920/jphp.v.511.1499>.

the One God without making Indonesia a religious or secular country. This conception provides space for the state to accommodate religious values in the formation of national law. Therefore, the placement of religious law as the basis for the validity of marriage can be seen as an implementation of the initial will of the constitution formers who wanted a harmonious relationship between the state and religion.²³

On the other hand, the development of modern society requires that the constitution be understood as a *living constitution* so that its interpretation must be able to adapt to social dynamics. The phenomenon of increasing interfaith marriage, globalization, population mobility, and the development of human rights shows that the issue of interfaith marriage has a much different complexity than when the Marriage Law was established in 1974. Therefore, the *living constitution approach* opens up space for a more adaptive reading of the constitution to the development of society without ignoring the basic values that are the identity of the Indonesian constitution.

The Court in the decision also applied a *harmonious interpretation approach*, namely by reading Article 28B paragraph (1), Article 28E, Article 28J, and Article 29 of the 1945 Constitution of the Republic of Indonesia as a systematic unit. The right to form a family is not positioned separately from religious freedom or the obligation to respect religious values as the basis of national life. Such an approach is in line with the principle that the constitution must be interpreted in *its entirety (holistic interpretation)*, so that no single norm is understood in absolute terms without considering its relationship with other constitutional norms.²⁴

When analyzed through the concept of *constitutional morality*, the Court's decision shows an effort to maintain Indonesia's constitutional identity with religious characteristics. However, from the perspective of *margin of appreciation* theory, the state still has policy space to determine how the relationship between religion and law is regulated according to the character of its society. Thus, Indonesia's choice to make religious law the basis for the legality of marriage can be seen as a form of exercising constitutional *discretion* that is still within the limits of state authority, as long as it does not eliminate the essence of protecting the constitutional rights of citizens.

3. **Constitutional Balancing: Balancing Constitutional Rights and Religious Values**

One of the fundamental issues in the Constitutional Court Decision Number 24/PUU-XX/2022 is the conflict between several constitutional rights and interests that both receive protection from the 1945 Constitution of the Republic of Indonesia. On the one hand, there is the right of everyone to form a family through marriage as guaranteed by Article 28B paragraph (1). On the other hand, there is freedom of religion based on Article 28E and Article 29 of the 1945 Constitution of the Republic of Indonesia, as well as the obligation to respect the restriction of rights as stipulated in Article 28J.²⁵ The conflict shows that the issue of interfaith marriage is not a

²³ Shafira Muqsitha and Arif Wibowo, "The Existence of the Constitutional Court in the Constitutional System of the Republic of Indonesia," *Journal of Multidisciplinary Research* 2, no. 1 (2023): 1–9, <https://doi.org/10.58705/jpm.v2i1.81>.

²⁴ Dewi Andriani, Sahrudin Sahrudin, and M. Yazid Fathoni, "Registration of Interfaith Marriages," *Private Law* 3, no. 2 (2023): 315–23, <https://doi.org/10.29303/prlw.v3i2.2588>.

²⁵ Nurul Syafriyani, Dwi Febri Susilawati, and Kevin Rivaldi, "The Role of the Constitutional Court in Defending the Rule of Law and Seeking the Protection of Human Rights," *Journal of Education and Social Humanities* 2, no. 3 (2024): 90–99, <https://doi.org/10.59581/jipsoshum-widyakarya.v2i3.3401>.

conflict between rights and prohibitions, but a conflict between two constitutional values that both have legitimacy.²⁶

In the perspective of *principles theory* developed by Robert Alexy, constitutional rights are basically principles that must be optimized according to the concrete conditions faced. When two principles contradict each other, the solution is not done by removing one of the principles, but through a balancing process to determine which principle has greater weight in a given situation. Based on this approach, the Constitutional Court seems to give greater weight to the protection of religious values as part of the identity of the Indonesian constitution than to the interests of individuals to perform interfaith marriages.²⁷

This view can also be analyzed using Ronald Dworkin's theory which distinguishes between *rules* and *principles*. According to Dworkin, it is not enough for judges to simply apply the rules mechanically, but also to consider the moral principles underlying the legal system. In the context of Decision Number 24/PUU-XX/2022, the Court not only bases its decision on the reading of Article 2 paragraph (1) of the Marriage Law, but also on constitutional moral principles in the form of the One Godhead as the basis of the state. This shows that the Court's decision is built on a combination of positive legal norms and fundamental values that live in the Indonesian constitution.²⁸

In addition, if using the *proportionality principle* from Aharon Barak, restrictions on the right to form a family must meet four elements, namely legitimate *aim*, rational *connection*, *necessity*, and *balance*). The Court's ruling shows that the purpose of the restriction is directed at protecting religious values and maintaining national legal order. However, the academic question that remains open is whether there are no alternative policies that can still protect religious values without significantly restricting the right of individuals to form families. This issue is a critical analysis of the proportionality of rights restrictions in the context of interfaith marriage.

4. Critical Assessment of the Constitutional Court's Decision

From the perspective of legal certainty, the Constitutional Court Decision Number 24/PUU-XX/2022 succeeded in affirming the position of Article 2 paragraph (1) of the Marriage Law as a constitutional norm. The decision ended the differences of interpretation that had previously developed in judicial practice regarding the possibility of interfaith marriage through court determination. Thus, from the aspect of *legal certainty*, this decision provides a clearer direction for law enforcement officials and marriage registry institutions in implementing applicable legal provisions.²⁹

However, from a substantive justice perspective, the verdict still leaves a number of problems. The Court's decision has not fully provided a solution to the legal needs of people living in an increasingly pluralistic social reality. As a result,

²⁶ Aulia Mahenda, "The Role of the Constitutional Court in Maintaining the Constitutionality of the Law in Indonesia," *JPNM Multidisciplinary Nusantara Literature Journal* 3, no. 2 (2025): 1–5, <https://doi.org/10.59945/jpnm.v3i2.454>.

²⁷ Dody Wahono Suryo Alam, "Protection of Children's Rights in Marriage Series Perspectives of Islamic Family Law and Child Protection Law," *Al Fudhiy Journal of Islamic Family Law* 7, no. 1 (2025): 106–20, <https://doi.org/10.55606/af.v7i01.1558>.

²⁸ Ernawati Huroiroh and Vera Rimbawani Sushanty, "The Conflict of Norms between Constitutional Rights and the Regulation of Interfaith Marriage in Indonesia."

²⁹ et al. Rizki Yudha Bramantyo, "Journal of Legal Transparency," *Journal of Legal Transparency* 07, no. 02 (2024): 62, [https://peraturan.bpk.go.id/Download/.287456/UU Number 1 of 2023.pdf](https://peraturan.bpk.go.id/Download/.287456/UU%20Number%201%20of%202023.pdf).

some couples of different religions are still looking for alternative paths, such as marrying abroad or making an administrative religious conversion, which essentially shows a gap between legal norms and social practices. This condition shows that legal certainty is not necessarily synonymous with the achievement of substantive justice for all citizens.

When measured using the principles of proportionality and protection of human rights, the Court's decision has basically fulfilled the element of *legitimate aim*, which is to protect religious values as part of Indonesia's constitutional identity. However, the aspects of *necessity* and *balancing* are still debatable because it has not been analyzed in depth whether these restrictions are the only available means or whether it is still possible to have another regulatory model that still respects religious law while providing more optimal protection for citizens' constitutional rights. Therefore, the academic discourse space regarding the constitutionality of the prohibition of interfaith marriage remains open.³⁰

Based on the overall analysis, this study argues that the Constitutional Court Decision Number 24/PUU-XX/2022 can be normatively considered constitutional because it is in line with the structure of the Indonesian constitution which places the One Godhead as a fundamental principle in the formation of national law. However, this constitutionality should not be interpreted as the end of the state's obligation to continue to evaluate the effectiveness of marriage law regulations in responding to the increasingly plural dynamics of society. Thus, the protection of religious values and respect for the constitutional rights of citizens should not be positioned as two mutually negligible interests, but rather as two constitutional principles that must continue to be harmonized through the formation of laws and constitutional interpretations that are adaptive, proportionate, and oriented towards substantive justice.³¹

C. The Prohibition of Interfaith Marriage in the Perspective of Islamic Law

1. The Normative Basis for the Prohibition of Interfaith Marriage in Islamic Law

The discussion of interfaith marriage in Islamic law departs from the primary source of law, namely the Qur'an and Sunnah, which were then developed through the *ijtihad* of the scholars. In the treasure of jurisprudence *munakahat*, this issue includes issues that have faith, family, and community dimensions so that the arrangement is not only based on civil relations, but also aims to maintain the sustainability of Islamic values in family institutions. Therefore, the majority of scholars place religion as one of the fundamental requirements for the formation of a harmonious family (*sakinah, mawaddah, wa rahmah*). This perspective is based on the belief that the family is the main medium in the inheritance of faith, moral education, and the formation of the character of the next generation. Thus, the discussion of interfaith marriage in Islamic law cannot be separated from the purpose of the sharia (*maqāṣid al-syarī'ah*) which requires the realization of benefits and the avoidance of various forms of harm.³²

³⁰ College, Sharia Sciences, and Stis Al-Shaikh Abdul, "The Problem of Interfaith Marriage in the View of Fiqh and Marriage Law in Indonesia Falah Sabirin has a different religious background. In this case, the understanding of Islamic Fiqh and Marriage in the perspective of Islamic Fiqh in Islamic Fiqh, Marriage," 2023.

³¹ Al. Andang Listya Binawan, "Philosophical Reflection on Interfaith Marriage Law in Indonesia," *Legal Reflections: Journal of Law* 7, no. 2 (2023): 249–66, <https://doi.org/10.24246/jrh.2023.v7.i2.p249-266>.

³² Sulis Fauziah, "Institutional reform of the Constitutional Court in maintaining the independence of judicial power is a state of law. Judicial power includes the functions of the state that are free from evil. Julius Stahl defines "rechtstaat" as the concept of the 1st legal state. *Court: Journal of Legal Research* 2, no. April (2025): 54–62.

The first normative basis is found in Q.S. al-Baqarah [2]: 221, which prohibits Muslim men and women from marrying polytheists until they become believers. This verse emphasizes that the main consideration in choosing a life partner is not social position or material aspects, but the quality of faith. The prohibition is understood by the majority of scholars as an effort to maintain the purity of the faith and prevent potential religious conflicts in domestic life. Furthermore, Q.S. al-Mumtahanah [60]:10 affirms that a believing woman is not halal to be a wife for an infidel man and vice versa. This verse is seen as a normative basis that shows that there is a strict prohibition on the marriage of Muslim women with non-Muslim men. As for Q.S. al-Mā'idah [5]:5 it is permissible for Muslim men to marry women who maintain the honor of the Ahlul Kitab. However, the space of these abilities is not understood absolutely, because its implementation must still consider benefits, social conditions, and potential impacts on family life.³³

In addition to the Qur'an, the normative basis for the prohibition of interfaith marriage is also strengthened by a number of hadiths of the Prophet Muhammad (saw) which emphasize the importance of religion as the main consideration in choosing a life partner. The hadith narrated by al-Bukhari and Muslim regarding the admonition to choose a spouse because of his religion (*fazfar bizāti al-dīn*) shows that religious qualities are the main foundation in building a harmonious household. Although there is no hadith that explicitly discusses all forms of interfaith marriage, the fuqaha use the legal *istinbāt* approach through the combination of Qur'anic verses, hadiths, *ijma'*, and *qiyas* to formulate the applicable legal provisions. Therefore, the normative basis of Islamic law regarding interfaith marriage is not only textual, but also built through an interpretive process that considers the purpose of the sharia and the benefit of the ummah.

2. Views of Scholars and Schools on Interfaith Marriage

The difference in views on interfaith marriage in Islamic law is inseparable from the *istinbāt* method used by each sect. Despite differences in some aspects, the majority of scholars from the four sects agree that Muslim women are not allowed to marry non-Muslim men. The agreement is based on an understanding of Q.S. al-Mumtahanah verse 10 which is seen as firm (*qaṭ'ī al-dalālah*) and aims to keep the leadership of the family in an environment that is in line with Islamic values. Thus, the prohibition is not only understood as a *fiqh* rule, but also as an instrument of protection for the sustainability of religion in family life.³⁴

The Hanafi, Maliki, Shafi'i, and Hanbali schools basically have something in common in prohibiting the marriage of Muslim women with non-Muslim men. More differences arise regarding the ability of Muslim men to marry the women of the Ahlul Kitab as mentioned in Q.S. al-Mā'idah verse 5. The Hanafi school tends to provide a wider space of abilities as long as it does not cause harm to religion or descent. On the other hand, the Maliki school views that this ability is *makruh* if it is feared to have a negative influence on children's religious education. The Shafi'i and Hanbali schools also recognize this ability normatively, but provide strict conditions regarding the status of women as Ahlul Kitab who truly meet the criteria as referred

³³ Harlina Hamid and Nurasia Natsir, "Reform of the Judicial Review System: Evaluation of the Constitutional Court's Authority in Maintaining Constitutional Supremacy," *Proceeding of the International Conference on Law and Human Rights* 2, no. 1 (2025): 43–48, <https://doi.org/10.62383/iclehr.v2i1.58>.

³⁴ Irvan Juli Alfredo Manik, Nunung Rodliyah, and Sepriyadi Adhan S, "The Legal Status of Marriage for One of the Couples Who Have Apostatized," *Academic: Journal of Humanist Students* 5, no. 3 (2025): 1210–19, <https://doi.org/10.37481/jmh.v5i3.1469>.

to in the Qur'an. These differences show that the *ijtihad* space in the issue of interfaith marriage remains open in accordance with social conditions and the benefit of the community.³⁵

The views of classical and contemporary scholars of interpretation further enrich the discourse on this issue. Ibn Kathir interpreted the prohibition of marriage with polytheists as a form of protection for the faith of Muslims and an effort to maintain the stability of Muslim families. Al-Qurṭubī emphasizes that the ability to marry an Ahlul Kitab woman is a form of *rukhsah* (leniency), not an encouragement, so its application must take into account social conditions and the potential for damage that may arise. Wahbah al-Zuhaili views that these abilities remain normative, but in the context of modern society they must be measured based on the principle of benefit and protection of the goals of the Shari'a. Meanwhile, Yusuf al-Qaradawi tends to emphasize a contextual approach by stating that if interfaith marriage has the potential to threaten faith, children's education, and family stability, then its restrictions can be justified based on the principles of *sadd al-dharī'ah* and *maqāṣid al-syarī'ah*. These differences of view show that Islamic law has methodological flexibility in responding to the development of society without ignoring the basic principles of sharia.

3. Analysis of the Prohibition of Interfaith Marriage in the Perspective of *Maqāṣid al-Syarī'ah*

The *maqāṣid al-syarī'ah* approach provides a more comprehensive framework of analysis than the *fiqh* approach which is only oriented to textual normative aspects. According to al-Syātībī, all provisions of Islamic law are essentially aimed at realizing benefits and preventing harm through the protection of the five main elements (*al-ḍarūriyyāt al-khams*), namely the protection of religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), offspring (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). In the context of interfaith marriage, analysis based on *maqāṣid* allows the law to be understood more substantively by looking at the goals to be achieved, rather than merely the sound of a normative text.

The aspect of *ḥifẓ al-dīn* is the most dominant goal in the arrangement of interfaith marriage. The family is seen as the first environment in the formation of religious beliefs and practices so that religious similarities are considered to minimize the potential for theological conflicts in domestic life. In addition, the principle of *ḥifẓ al-nasl* emphasizes the importance of maintaining the continuity of offspring, including in aspects of religious education, religious identity, and the formation of children's character. Religious differences between the two parents under certain conditions can cause problems regarding educational patterns, determining the child's religious identity, and conflicts in the implementation of worship. Therefore, restrictions on interfaith marriage are seen as a preventive instrument to maintain the continuity of the family's function as a religious educational institution.³⁶

Furthermore, the principle of *ḥifẓ al-'aql* is related to the protection of the intellectual and psychological development of family members through the creation

³⁵ Neysa Brilliant Abida and Nasywa Syifa, "Citizenship Status of Children in Mixed Marriages: An Analysis of the Marriage Law and the Citizenship Law," *Journal of Education and Citizenship of Indonesia* 2, no. 3 (2025): 76–87, <https://doi.org/10.61132/jupenkei.v2i3.698>.

³⁶ 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," *Journal of Legal Ideals* 10, no. 2 (2022): 205–22, <https://doi.org/10.15408/jch.v10i2.27800>.

of a harmonious environment. Meanwhile, *ḥifẓ al-māl* deals with certainty regarding the rights and obligations of husband and wife, the management of joint property, inheritance, and the protection of the economic rights of family members. Thus, the prohibition of interfaith marriage in the perspective of maqāṣid is not solely intended to limit individual freedom, but is directed at efforts to safeguard the welfare of the family, protect religion, ensure the best interests of children, and create social stability which is the main goal of Islamic law.³⁷

4. The Relevance of the Islamic Law Perspective to the Constitutional Court Decision Number 24/PUU-XX/2022

When analyzed from the perspective of Islamic law, the Constitutional Court Decision Number 24/PUU-XX/2022 is basically in accordance with the basic principles of sharia that place religion as the main foundation in the formation of the family. The Court's affirmation that the validity of marriage is determined based on the respective religious laws reflects the state's respect for the religious norms that live in Indonesian society. From the point of view of maqāṣid al-syarī'ah, the policy can be understood as an effort to maintain *ḥifẓ al-dīn* and *ḥifẓ al-nasl*, namely protecting the continuity of religion and heredity as the two main objectives of sharia in the field of family law.³⁸

However, the Court's Decision cannot be understood as an absolute form of adoption of classical jurisprudence. The Court did not base its consideration solely on fiqh postulates, but placed religious law as part of the construction of the Indonesian constitution based on the One Godhead. Thus, the Court's argument is built through a constitutional approach, not through the direct determination of fiqh law. This shows that the Court's consideration moves to the area of constitutional law by making religious values as one of the sources of constitutional legitimacy.³⁹

Based on this analysis, this study argues that the Constitutional Court Decision Number 24/PUU-XX/2022 is more appropriately understood as a form of constitutional fiqh development, which is an approach that harmonizes the principles of Islamic law with modern constitutional values within the framework of the Pancasila legal state. This approach does not simply reproduce the opinions of classical jurisprudence, but integrates the goals of sharia, constitutional principles, and the needs of a pluralistic Indonesian society. Thus, the constitutionality of the prohibition of interfaith marriage derives legitimacy not only from a positive legal perspective, but also from the substantive goals of Islamic law that are oriented towards the protection of religion, the family, and the welfare of society as a whole.

D. The Prohibition of Interfaith Marriage in a Human Rights Perspective

1. The Right to Marry in International Human Rights Instruments

The right to marry and form a family is one of the fundamental rights recognized in the international human rights regime. The recognition is based on the view that the family is a natural and fundamental unit in society that must obtain

³⁷ Salsabila Putri Nadira, Djanuardi Djanuardi, and Betty Rubiati, "Juridical Analysis of Mixed Marriage Divorce Due to Violence Committed by the Wife Reviewed from the Related Laws and Regulations," *Amendment: Indonesian Journal of Defense, Political and Legal Sciences* 2, no. 3 (2025): 152–63, <https://doi.org/10.62383/amandemen.v2i3.1038>.

³⁸ Mardius Mardius, Wiwin Putra, and Supeno Supeno, "Juridical Analysis of Decision No.87/Pdt.G/2020 PN.Bdg concerning Divorce Caused by One Party Converting at the Bandung District Court," *The Face of the Law* 8, no. 1 (2024): 468, <https://doi.org/10.33087/wjh.v8i1.1481>.

³⁹ Iskandar Muda, Bintan R Saragih, and Ferry Edwar, "Constitutional Authority Based on the Constitutional Court Decision in Indonesia A . Introduction The Constitutional Court Was established in 2003 in Indonesia . This Court Has Various Functions as Stipulated in the 1945 Constitution of the State of The," *FIAT JUSTISIA: Journal of Legal Science* 17, no. 3 (2023): 221–42, <https://doi.org/10.25041/fiatjustisia.v17no3.2636>.

protection from the state. Therefore, various international human rights instruments guarantee the right of everyone to marry and form a family without unjustified discrimination. However, this recognition does not mean that the right to marry is absolute. International human rights law still provides space for states to regulate the terms and procedures of marriage as long as the arrangement is based on law, has a legitimate purpose, and does not conflict with the principles of human rights protection. Thus, the analysis of the prohibition of interfaith marriage must be placed within the framework of the relationship between the individual's right to marry and the state's authority to regulate the institution of marriage based on the characteristics of its national legal system.⁴⁰

The regulation of the right to marry was first affirmed in Article 16 of the Universal Declaration of Human Rights (UDHR) of 1948 which states that men and women who have reached adulthood have the right to marry and form a family without restrictions on the basis of race, nationality, or religion. The provision also emphasizes that marriage can only take place with the free and full consent of both prospective brides. In addition, Article 16 paragraph (3) of the UDHR places the family as a natural and fundamental community group so that it has the right to receive protection from society and the state. However, as an international declaration, the UDHR does not regulate in detail the mechanism for the implementation of the right to marry or the limits of its regulation. Therefore, the implementation of these rights remains dependent on the national legal system of each country.⁴¹

A more legally binding guarantee is contained in Article 23 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Indonesia through Law Number 12 of 2005. The article recognizes the right of men and women who have reached the age of marriage to marry and form a family, and requires the state to guarantee the free consent of the bride-to-be. However, the UN Human Rights Committee through various *General Comments* also affirms that the exercise of these rights can be regulated by national law as long as the regulation is not discriminatory and does not eliminate the substance of the right itself. Thus, the ICCPR does not require each country to legalize all forms of marriage, including interfaith marriage, but provides space for states to establish the conditions of marriage in accordance with their respective legal systems and constitutional values.⁴²

Unlike the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not specifically regulate the right to marry, but pays attention to the protection of the family as a basic institution of society. Article 10 of the ICESCR emphasizes that families must obtain the widest possible protection and assistance from the state because they have an important role in community development. Meanwhile, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Indonesia has ratified through Law No. 7 of 1984, emphasizes the equal rights of men and women in marriage and the freedom to choose a life partner without discrimination based on sex. However, CEDAW does not

⁴⁰ Cornelia Angelica, Simplexius Asa, and Rizal Thene, "The Impact of the Erga Omnes Principle in the Constitutional Court's Decision," *Journal of Administrative and Social Science* 6, no. 1 (2025): 261–71, <https://journal-stiayappimakassar.ac.id/index.php/jass/article/view/2127>.

⁴¹ Erlina Erlina and Muhammad Fathinnuddin, "The Legal Impact of the Enactment of the Postnuptial Agreement from the Date of the Deed on Joint Property in Marriage," *Iblam Law Review* 5, no. 3 (2025): 26–33, <https://doi.org/10.52249/ilr.v5i3.638>.

⁴² Fatriansyah Fatriansyah, "The Existence of the Constitutional Court Decision," *Legality: Journal of Law* 15, no. 2 (2024): 339, <https://doi.org/10.33087/legalitas.v15i2.537>.

explicitly require states to remove all marriage requirements based on religion. Therefore, when read systematically, international human rights instruments basically recognize the right to marry as a fundamental right, but still provide space for the state to regulate its implementation through national law in accordance with the character of its constitution and legal system.⁴³

2. Human Rights Restrictions on the Right to Marry

In international human rights law, not all rights are absolute. Most civil and political rights, including the right to marry, are restricted rights as long as they meet certain requirements. This concept is known as **limitation of rights**, which is the state's authority to limit the exercise of individual rights in order to protect the public interest, the rights of others, public morality, and national security. Therefore, the analysis of the prohibition of interfaith marriage is not enough to assess the existence of a restriction of rights, but also to test whether it meets the accepted standards of international human rights law.⁴⁴

The first principle is legality, which is that any restriction of rights must have a clear legal basis, be accessible, and provide legal certainty. In the Indonesian context, restrictions on the implementation of interfaith marriage originate from Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, which stipulates that the validity of marriage is determined according to the laws of each religion. These norms have been strengthened constitutionally through the Constitutional Court Decision Number 24/PUU-XX/2022. Thus, from the aspect of legality, the restriction has a clear legal basis and is formed through a constitutional mechanism.⁴⁵

The second principle is legitimate aim, which is that restrictions must have a legitimate purpose. In the Constitutional Court Decision Number 24/PUU-XX/2022, the purpose of restrictions is directed to maintain religious values, protect family institutions, and maintain the character of the Indonesian constitution based on the One Godhead. This goal is basically in line with Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which allows restrictions on the right to respect religious, moral, security, and public order values in a democratic society. Therefore, conceptually, the restriction fulfills the elements of legitimate objectives according to national law and international human rights doctrine.

Next is the principle of necessity and proportionality. The principle *of necessity* requires the state to prove that the restriction is really necessary to achieve the goal it seeks to protect, while the principle *of proportionality* requires that the restriction does not go beyond what is necessary so that the balance between individual interests and the public interest is maintained. In the context of the prohibition of interfaith marriage, academic debates arise on these two aspects. Some people argue that the ban is a necessary way to maintain religious values and family law order. On the other hand, another view states that it is still possible to have a model of arrangement that still respects religious law without significantly restricting the individual's right to form a family. This difference of views is a space for

⁴³ Deva Tri Ananda, Lukmanul Hakim, and Ansori Ansori, "The Legal Impact of the Breakdown of Marriage of Couples of Different Religions on Joint Property and Child Custody," *Justicia Ciencias: Journal of Legal Sciences* 8, no. 2 (2023): 316–31, <https://doi.org/10.24967/jcs.v8i2.2547>.

⁴⁴ Mellysa Febriani Wardoyo, "Legal Standing" 2, no. 1 (2018): 1047–62, <https://news.detik.com/berita/d-3567290/polling-58-masyarakat-puas-kinerja-kpk>.

⁴⁵ Husni Abdulah et al., "Judge's Decision in Resolving Polygamous Marriage Disputes in Indonesia," *Justisi | University of Muhammadiyah Sorong* 9, no. 2 (2023): 133–44, <https://doi.org/http://dx.doi.org/10.29240/jhi.v7i2.4574>.

constitutional analysis as well as human rights discourse on the issue of interfaith marriage.⁴⁶

3. Comparison of Interfaith Marriage Arrangements in Several Countries

Comparative studies show that the regulation of interfaith marriage is greatly influenced by the relationship between religion and the state in their respective constitutional systems. Malaysia, for example, implements a *dual legal system* that distinguishes between Islamic and civil law jurisdictions. For Muslims, marriage is regulated under Islamic family law in each state so interfaith marriages are generally not allowed unless non-Muslims convert to Islam first. This model shows the dominance of religious law in family law arrangements for Muslim citizens.⁴⁷

In contrast to Malaysia, Singapore adopts a more pluralistic approach. Civil marriages can be solemnized under *the Women's Charter*, while Muslims are subject to the *Administration of Muslim Law Act* (AMLA). The system provides a choice of marriage mechanism according to the religious status of the parties, so that the space for interfaith marriage is relatively more open than in Indonesia and Malaysia. This arrangement reflects a more flexible model of state and religious relations while maintaining recognition of Islamic family law for the Muslim community.⁴⁸

Meanwhile, Turkey as a country built on the principle of secularism makes civil marriage the only form of marriage recognized by the state. The religious aspect does not determine the validity of marriage according to state law so that couples of different religions can marry through civil mechanisms. In contrast, Egypt still exerts a strong influence on Islamic law in marriage arrangements. Muslim women are not allowed to marry non-Muslim men, while Muslim men can marry Ahlul Kitab women according to the provisions of fiqh. Tunisia has undergone more progressive developments through family law reforms, so restrictions on interfaith marriage, especially for Muslim women, have changed in recent years. The comparison shows that interfaith marriage arrangements do not have a uniform model, but are strongly influenced by state ideology, constitutional history, and the relationship between religion and the national legal system.⁴⁹

4. Critical Analysis: Is Indonesia Violating Human Rights

Based on an analysis of international human rights instruments and the practices of various countries, there is no provision that explicitly obliges each country to legalize interfaith marriage. On the contrary, international human rights law provides a *margin of appreciation* to the state in regulating the implementation of the right to marry in accordance with the legal system and its constitutional character. Therefore, an assessment of Indonesia's policies cannot be made based solely on the existence of rights restrictions, but must consider whether they meet the principles of legality, legitimate purpose, necessity, and proportionality.

In the Indonesian context, the prohibition of interfaith marriage has a clear legal basis through the Marriage Law and has been declared constitutional by the Constitutional Court. The purpose of restrictions is also directed to protect religious

⁴⁶ Hendi Setiawan and Fahklur, "The Ratio of Legalities of Interfaith Marriage in Positive Law in Indonesia," *J-CEKI : Journal of Scientific Scholars* 2, no. 1 (2022): 95–101, <https://doi.org/10.56799/jceki.v2i1.1180>.

⁴⁷ Najichah Najichah, "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions," *Walisono Law Review (Walrev)* 4, no. 2 (2022): 221–56, <https://doi.org/10.21580/walrev.2022.4.2.13407>.

⁴⁸ Yuana Adella and Sandela Ilka, "Journal of Ius Civile (Reflection on Law Enforcement and Justice)" 6 (2022): 291–301, <http://jurnal.utu.ac.id/jcivile>.

⁴⁹ Muhammad Ihsan Firdaus and Article Info, "Legalization of Interfaith Marriage in Indonesia (Between Universalism and Cultural Relativism)," *The Easta Law and Human Rights* 01, no. 02 (2023): 64–72, <https://doi.org/https://doi.org/10.23920/jphp.v5i1.1499>.

values as part of the nation's constitutional identity as reflected in Article 29 of the 1945 Constitution of the Republic of Indonesia and Article 28J paragraph (2). Thus, from the perspective of constitutional law and international human rights doctrine, the policy is more appropriately understood as a form of constitutional limitation, which is a restriction of rights carried out under the constitution and laws to protect legitimate interests in a democratic society.⁵⁰

Nevertheless, these restrictions must still be evaluated on an ongoing basis so as not to have an undue impact on the protection of citizens' constitutional rights. The state has an obligation to ensure that the application of legal norms does not create discrimination, legal uncertainty, or disproportionate administrative obstacles for citizens. Therefore, this study argues that Indonesia's policy on the prohibition of interfaith marriage cannot be immediately categorized as a violation of human rights, but rather a form of constitutional restriction that in principle can still be justified. However, in order to remain in line with the development of international human rights law, its implementation must continue to be evaluated through an approach that ensures legal certainty, proportionality, respect for human dignity, and a balance between the protection of religious values and the fulfillment of citizens' constitutional rights.⁵¹

Conclusion

This study concludes that the prohibition of interfaith marriage in Indonesia as affirmed in the Constitutional Court Decision Number 24/PUU-XX/2022 is a constitutional legal policy because it is in line with the principle of the One Godhead as Indonesia's constitutional identity. The right to form a family is not absolute, but must be implemented in harmony with religious freedom, respect for religious values, and restrictions on rights regulated in the 1945 Constitution of the Republic of Indonesia.

From the perspective of Islamic law, the prohibition has a strong normative foundation in the Qur'an, hadith, and the views of the majority of scholars, and is in line with the goals of *maqāṣid al-syarī'ah*, in particular the protection of religion (*ḥifẓ al-dīn*), heredity (*ḥifẓ al-nasl*), and the welfare of the family. Meanwhile, from a human rights perspective, the regulation cannot be seen as a violation of human rights, but as a form of *constitutional limitation* that in principle can be justified as long as it meets the principles of legality, legitimate purposes, necessity, and proportionality.

The contribution of this research lies in integrating the perspectives of constitutional law, Islamic law, and human rights in assessing the constitutionality of the prohibition of interfaith marriage. This approach shows that the protection of religious values and respect for the constitutional rights of citizens are not two conflicting interests, but can be harmonized through an interpretation of the constitution that is oriented towards justice, benefit, and legal certainty.

ADVICE

⁵⁰ Fredy Alpin Gunawan, Indah Dwi Qurbani, and Tunggul Anshari, "Juridical Review of the Legis Minimum Age Requirement for Marriage After the Decision of the Constitutional Court Number 22/PUU-XV/2017," *Media Iuris* 6, no. 1 (2023): 85–114, <https://doi.org/10.20473/mi.v6i1.40285>.

⁵¹ Anisa Citra Riza, M. Amin Qodri, and Sulhi Muhammad Daud, "The Validity of Marriage Via Video Conference," *Business: Journal of Civil and Business Law* 3, no. 3 (2022): 448–67, <https://doi.org/10.22437/zaaken.v3i3.18808>.

Based on the results of the research, the author provides the following recommendations:

1. For lawmakers, it is necessary to harmonize and improve regulations in the field of marriage law to strengthen legal certainty without ignoring the values of the constitution and the characteristics of the Indonesian legal system.
2. For the Supreme Court and the judiciary, there is a need for more uniform guidelines for the application of the law in handling cases related to interfaith marriage to avoid disparity in verdicts and ensure legal certainty.
3. For the Ministry of Religion and the Ministry of Home Affairs, it is necessary to improve coordination in the implementation of marriage administration and civil registration so that the implementation of laws and regulations runs consistently and accountably.
4. For academics and researchers, further research needs to be directed to empirical studies on the implementation of the Constitutional Court Decision Number 24/PUU-XX/2022 as well as comparative analysis with countries that have different characteristics of religious and state relations.
5. For the development of legal science, it is necessary to strengthen interdisciplinary studies that integrate constitutional law, Islamic law, and human rights to produce family law formulations that are adaptive to the development of society, but still based on constitutional principles and religious values.

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