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The Constitutional Court's Assessment of The Relationship between Religion and The State in The Context of Marriage Law

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Abstract: *The study of the relationship between religion and the state, especially within the framework of marriage law, is essential in the Indonesian context which has cultural and religious diversity. This research was driven by the need to understand the complexity of the Constitutional Court's interpretation of religious and constitutional principles in regulating marriage. This research is qualitative research and includes normative legal research with a statutory approach. The data analysis method used is content analysis, key decisions of the Constitutional Court which are related to this research. The findings show variations in the Constitutional Court's interpretation of religious and constitutional principles, both emphasizing equality and freedom of religion and strengthening religious norms in marriage laws. The implications of these findings detail the complex dynamics between legal policies, religious values, and constitutional aspects, highlighting the need to maintain a balance between religious principles and the protection of individual rights.*

Keywords: *Constitutional Court, Relations between Religion and State, Marriage Law.*

A. Introduction

Indonesia, as a country with diverse cultures, religions, tribes and nations, shows itself as a multicultural country that faces complex dynamics.¹ This diversity, if managed effectively, is not only a valuable gift but also a characteristic and source of strength for the community. However, this extraordinary diversity can also be a challenge if not faced wisely and intelligently. The lack of wise policies in responding to plurality can open up opportunities for division and conflict that have the potential to shake social stability.²

In the context of diversity of beliefs and religions, Indonesia has the potential for conflict regarding religious interpretation and faces significant challenges, especially in formulating marriage legal policies that are able to accommodate various religious beliefs. With the majority of Muslims and the existence of other religions, the relationship between religion and state in the context of marriage law becomes complex. This diversity creates challenges in creating policies that can accommodate various religious beliefs without discriminatory elements.

The differences between religious norms and secular law in the context of marriage create a legal dilemma in Indonesia. Therefore, the Constitutional Court's assessment of the extent to which marriage law can harmonize religious norms with state legal principles is essential to achieving justice and equality. This process must be carried out without forgetting individual human rights which often conflict with certain religious norms. The hope is that the Constitutional Court can evaluate the extent to which the protection of these rights is guaranteed in marriage law and maintain a balance between religious freedom and individual human rights.

Marriage is a basic human need, describing the inner and outer bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family (household), which is based on

¹ Julita Lestari, "Pluralisme Agama di Indonesia: Tantangan dan Peluang Bagi Keutuhan Bangsa," *Al-Adyan: Journal of Religious Studies* 1, no. 1 (August 6, 2020): 30, <https://doi.org/10.15548/al-adyan.v1i1.1714>.

² Agus Akhmadi, "Moderasi Beragama dalam Keragaman Indonesia," *Inovasi-Jurnal Diklat Keagamaan* 13, no. 2 (April 23, 2019): 47.

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the Almighty Godhead.³ The status of husband and wife is recognized if they fulfill the requirements stipulated by law,⁴ which are divided into internal requirements, related to the parties getting married, and external requirements, related to the formalities of the marriage. The main purpose of marriage is to form a formal bond between two individuals, as husband and wife. Marriage is considered the social and legal basis for the division of responsibilities, rights, and obligations between partners.⁵

In recent years, problems related to marriage have emerged, such as child marriages, interfaith marriages, recognition of illegitimate children, and registration of interfaith marriages. Several parties have made efforts to examine regulations related to marriage, as a form of legal effort by the community to fight for their constitutional rights as citizens. This is as regulated in the 1945 Constitution, which states that every citizen has the basic right to religion, belief and a decent life.⁶

Several material tests have been carried out by the Constitutional Court regarding Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019 (hereinafter referred to as the Marriage Law). For example, in Case Number 24/PUU-

³ Novita Lestari, "Problematika Hukum Perkawinan di Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 4, no. 1 (July 7, 2018): 43–52, <https://doi.org/10.29300/mzn.v4i1.1009>; See also Leo Perkasa Maki, "Pemberian Mahar dalam Bentuk Hiasan Uang Kertas Menurut Perspektif Hukum Islam," *Syakhshiyah Jurnal Hukum Keluarga Islam* 1, no. 1 (July 7, 2021): 50–51.

⁴ Rachmadi Usman, "Makna Pencatatan Perkawinan dalam Peraturan Perundang-Undangan Perkawinan di Indonesia," *Jurnal Legislasi Indonesia* 14, no. 3 (May 3, 2018): 255–273, <https://doi.org/10.54629/jli.v14i3.80>.

⁵ Ahmad Fadhil Haidar *et.al.*, "Tantangan Hukum dan Aspek-Aspek Multikultural dalam Pernikahan Internasional," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 6 (November 28, 2023): 1–10, <https://doi.org/10.3783/causa.v1i6.880>; See also Lily Faizal *et.al.*, "Age Limit for Marriage in Indonesia from The Perspective of Maqashid Sharia," *Analisis: Jurnal Studi Keislaman* 22, no. 2 (December 30, 2022): 298, <https://doi.org/10.24042/ajsk.v22i2.14068>.

⁶ Bobi Aswandi and Kholis Roisah, "Negara Hukum dan Demokrasi Pancasila dalam Kaitannya dengan Hak Asasi Manusia," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (January 29, 2019): 128–145, <https://doi.org/10.14710/jphi.v1i1.128-145>; See also Nathania Griseldis Kirsten Moendoeng, "Peran Pemerintah dalam Mengatasi Pelanggaran Hak dan Peningkaran Kewajiban Warga Negara Berdasarkan UUD 1945," *Lex Et Societatis* 7, no. 7 (2019): 44, <https://doi.org/10.35796/les.v7i7.26840>.

XIX/2022, the application was submitted by E. Ramos Petege, a Catholic who wishes to marry a Muslim woman.⁷ The marriage had to be annulled because the Marriage Law does not accommodate interfaith marriages. The Petitioner argued that his constitutional rights were impaired because he was unable to enter into a marriage and lost his freedom to continue his offspring by forming a family based on free will.

Another example is Case Number 71/PUU-XX/2022 which concerns the review of Law Number 23 of 2006 concerning Population Administration against the 1945 Constitution. This application was submitted by Emir Dhia Isad, Syukrian Rahmatul'ula, Rahmat Ramdani, in where the petitioners submitted a review of the Explanation to Article 35 letter a of the Population Administration Law which states that marriages determined by the court are marriages between people of different religions.⁸

The request for material review was submitted because there was an allegation that a law might conflict with the 1945 Constitution. The review was carried out by the Constitutional Court, which is known as an institution that guards the constitution, a democratic institution that balances and directs the democratic system, the highest interpreting institution of constitutional provisions, as well as institutions that guard the constitutional rights of citizens.⁹

Basically, religion in the sense of believing in a particular religion is the domain of the *internal forum* which cannot be limited by coercion and cannot even be judged. Meanwhile, religion in the sense of religious expression through statements and attitudes

⁷ Sri Pujianti, "Pemohon Uji Ketentuan Perkawinan Beda Agama Kurangi Objek Pengujian," April 6, 2022, Retrieved from <https://www.mkri.id>, accessed October 14, 2023.

⁸ Utami Argawati, "Menguji Konstitusionalitas Perkawinan Beda Agama Dalam UU Adminduk," July 21, 2022, Retrieved from <https://www.mkri.id>, accessed October 14, 2023.

⁹ Fitri Mindari Handayani and Mohammad Saleh, "Hukum Perkawinan Beda Agama Menurut Putusan MK NO.71 PUU-XX 2022," *Jurnal Hukum Bisnis* 7, no. 1 (April 28, 2023): 938–950; See also Janedjri M Gaffar, "Kedudukan, Fungsi dan Peran Mahkamah Konstitusi dalam Sistem Ketatanegaraan Republik Indonesia," *Jurnal Mahkamah Konstitusi*, Jakarta 2009, 12.

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according to one's conscience in public is the domain of *external forums*. Marriage is part of a form of worship as a religious expression,¹⁰ and categorized as an *external forum* where the state can intervene. The role of the state is not to limit a person's beliefs, but rather to ensure that religious expression does not deviate from the main teachings of the religion adhered to. Understanding that there is state interference in marriage shows that there is a relationship between religion and the state.

Studies related to the Constitutional Court's assessment of the relationship between religion and the state in the context of marriage law are quite interesting to study further. In this context, the Constitutional Court acts as the highest interpretive institution that determines the legal framework that regulates the relationship between religion and the state in the institution of marriage. This research is also important because it provides an in-depth understanding of how the Constitutional Court views and decides on this sensitive issue. This not only influenced marriage law itself, but also created the basis for relations between religion and state more broadly. By understanding the Constitutional Court's judgment, we can see to what extent constitutional principles and religious freedom are respected in the context of marriage. This study can also help the public to better understand the dynamics of the relationship between religion and the state and its impact on marriage legal policies in society.

This research is a follow-up study that seeks to obtain elements of novelty related to the Constitutional Court's decision and matters related to the relationship between religion and the state in the context of marriage law. Previous research, Udiyo Basuki's research, examined the implications of wrong decisions by the Constitutional

¹⁰ Rizky Prameswari, Djanuardi, and Betty Rubiati, "Tinjauan Hukum Mengenai Penetapan Pengadilan Negeri yang Mengabulkan Izin Perkawinan Pasangan Beda Agama Dihubungkan dengan Peraturan Perundang-Undangan Terkait," *Hakim* 1, no. 3 (July 1, 2023): 100–122, <https://doi.org/10.51903/hakim.v1i3.1230>; See also Arya Dwi Wibisono, "Hak Muwaris Anak yang Lahir dari Pernikahan Beda Agama Pasca Putusan Mahkamah Konstitusi Nomor 24/PUU-XX/2022," *Court Review: Jurnal Penelitian Hukum* 3, no. 02 (March 1, 2023): 1–10.

Court. According to his study, there have been at least three reviews of marriage laws before the Constitutional Court, regarding polygamy, civil relations with children outside of wedlock, and divorce requirements.¹¹ Meanwhile, related to the study of the relationship between religion and the state, Sutopo and Basri's research, where the results of their study found that Islam and the state are different things, religion is transcendental and sacred, while the state is the result of human civilization in regulating relations between humans. However, in its development there is a unique kind of dialectic, where according to several scholars the two have a strong relationship.¹²

This research is qualitative research with a focus on text analysis as a form of data.¹³ This research includes normative legal research that uses secondary data with a legislative approach and case studies with analysis of legal interpretation using grammatical and systematic interpretation,¹⁴ the aim is to obtain a complete explanation of the aspects examined in a statutory regulation and Constitutional Court decision. Meanwhile, the data analysis method used is *content analysis*, which aims to explore deeper information from written and printed content or information.¹⁵

¹¹ Udiyo Basuki, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/ PUU-VII/2010 Terhadap Hukum Perkawinan Indonesia," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 7, no. 1 (May 20, 2016): 42, <https://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/1077>.

¹² Umarwan Sutopo and Achmad Hasan Basri, "Islam dan Negara Menguak Relasi Agama dan Negara dalam Sistem Ketatanegaraan di Indonesia," *Al-Syakhsyiyah: Journal of Law & Family Studies* 5, no. 1 (August 11, 2023): 85, <https://doi.org/10.21154/syakhsyiyah.v5i1.6162>.

¹³ Lexy J. Moleong, *Metode Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2006), 36; See also Russell W. Belk, *Handbook of Qualitative Research Methods in Marketing* (United Kingdom: Edward Elgar Publishing, 2007), 21–35.

¹⁴ I. Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media, 2016), 156; See also Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021), 12.

¹⁵ Krippendrof Klaus, *Analisis Isi: Pengantar Teori dan Metodologi*, Terj. Farid Wajidi (Jakarta: Rajawali Pers, 1993), 15; See also Ali Abdul Wakhid *et.al.*, "The Islamic Perspective Of Non-Muslim Leaders In Indonesian Muslim Majority Communities," *Akademika : Jurnal Pemikiran Islam* 26, no. 2 (December 14, 2021): 277–296, <https://doi.org/10.32332/akademika.v26i2.3753>.

**B. The Constitutional Court's Assessment of The Relationship
between Religion and The State in The Context of Marriage
Law**

The relationship between religion and the state has several tendencies. First, there is a state model based on religion, where state authority holders unite and the implementation of government is based on certain religious principles. In this model, there are two possibilities, citizens are required to embrace the official state religion or are given the freedom to embrace a religion according to their beliefs. Second, there is a model of religion as a state spirit, where the state does not formally follow a particular religion, but religious values become the spiritual basis for state administration. In this model, there is a guarantee from the state for citizens to embrace a certain religion and worship according to their respective religious beliefs. Third, there is a secular state model, where state authority is separated from religion, even in extreme cases, the state does not interfere in religious affairs and vice versa religion has no direct influence on the state.¹⁶

Indonesia tends to follow the second model, where religion is considered the spirit of the state. Indonesia does not follow a particular religion, but is based on divine principles, and guarantees freedom of religion to its citizens.¹⁷ The relationship between religion and the state in the Indonesian context is reflected in legal practices, such as marriage, inheritance, buying and selling and various other aspects. In the formulation of ideology and constitution, the substance of the Indonesian state is a religious nation state. This country does not deny the role of religion, and religion also does not reject the existence of the state. The relationship between religion and the state has an important role in achieving the ideals of independence for the

¹⁶ Hasyim Asy'ari, "Relasi Negara dan Agama di Indonesia," *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional*, 2014, 1–7.

¹⁷ Mohamad Badrun Zaman *et.al.*, "Harmonisasi Pendidikan Islam dan Negara: Pengarustamaan Nilai-nilai Pancasila dalam Orientasi Pendidikan Pesantren di Indonesia," *Tarbawi* 10, no. 2 (February 28, 2022): 149, <https://doi.org/10.36781/tarbawi.v10i2.213>; See also Muhammad Soleh Aminullah, "Agama dan Politik: Studi Pemikiran Soekarno Tentang Relasi Agama dan Negara," *Jurnal Sosiologi Agama* 14, no. 1 (June 1, 2020): 35–50, <https://doi.org/10.14421/jsa.2020.141-03>.

Republic of Indonesia, realizing social welfare and educating the life of the nation and state within the framework of the Unitary State of the Republic of Indonesia (NKRI).¹⁸

In general, the relationship between religion and the state can follow various models, including a state based on religion, religion as the spirit of the state, and a secular state. In the Indonesian context, the tendency is towards the second model, where religion is considered the spirit of the state. Legal practices and religious values reflect the relationship between religion and the state in Indonesia.¹⁹ Even though this country does not adopt a particular religion, the substance of the Indonesian state is recognized as a religious country, which respects the role of religion without denying it. The relationship between religion and the state has a significant role in achieving the goal of independence, realizing social welfare and improving national and state life within the framework of the Unitary State of the Republic of Indonesia (NKRI).

In the context of marriage issues, the relationship between religion and the state is reflected in the decision of the Constitutional Court. Based on Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, which has been amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 stated that “the Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the 1945 Constitution”. The Constitutional Court's role is as an institution to guard the constitution, meaning that if there is a law that is inconsistent with or contrary to the constitution, the Constitutional Court can annul it by revoking the validity of the law in its entirety or in its individual articles. The Constitutional Court even has the

¹⁸ Moh Dahlan, “Hubungan Agama dan Negara di Indonesia,” *Analisis: Jurnal Studi Keislaman* 14, no. 1 (April 6, 2017): 1–28, <https://doi.org/10.24042/ajsk.v14i1.635>.

¹⁹ Nasarudin Umar, “Konsep Hukum Modern: Suatu Perspektif Keindonesiaan, Integrasi Sistem Hukum Agama dan Sistem Hukum Nasional,” *Walisongo: Jurnal Penelitian Sosial Keagamaan* 22, no. 1 (June 15, 2014): 157–180, <https://doi.org/10.21580/ws.22.1.263>; See also Bagir Manan, Ali Abdurahman, and Mei Susanto, “Pembangunan Hukum Nasional yang Religius: Konsepsi dan Tantangan dalam Negara Berdasarkan Pancasila,” *Jurnal Bina Mulia Hukum* 5, no. 2 (March 26, 2021): 176–195, <https://doi.org/10.23920/jbmh.v5i2.303>.

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authority to provide interpretations of statutory articles so that they are in line with constitutional values. The Constitutional Court's interpretation of the constitutionality of articles which have ambiguous, unclear meaning and/or multiple interpretations, is recognized as *the sole interpreter of the constitution* which has legal force.²⁰

The Constitutional Court gave its legal considerations and stated that in marriage there are interrelated religious and state interests and responsibilities. This can be examined in several Constitutional Court decisions regarding applications for material review. Through this decision, the Constitutional Court has provided a basis for the constitutionality of the relationship between religion and the state in marriage law, where religion determines the validity of marriage, while the state determines the administrative validity of marriage²¹ within legal limits.

Several decisions of the Constitutional Court regarding the material review of the Marriage Law include the decision of the Constitutional Court Number 46/PUU-VIII/2010. The main content, Article 43 paragraph (1) of the Marriage Law, states that children born out of wedlock only have a civil relationship with their mother and their mother's family, contrary to the 1945 Constitution as long as it is interpreted as eliminating civil relationships with men who can be proven based on science and technology and/or other evidence according to the law to be related to his father by blood.

Constitutional Court Decision Number 69/PUU-XIII/2015. The main content, Article 29 paragraph (1), is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted at the time, before it takes place or during the marriage,

²⁰ Despan Heryansyah and Harry Setya Nugraha, "Relevansi Putusan Uji Materi oleh Mahkamah Konstitusi terhadap Sistem Checks and Balances dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 2, no. 2 (2019): 353–379, <https://doi.org/10.22437/ujh.2.2.353-379>; See also Hufron, "Mahkamah Konstitusi Republik Indonesia dalam Penataan Kelembagaan Terbaru," *Jurnal Hukum Magnum Opus* 2, no. 2 (August 14, 2019): 114–124, <https://doi.org/10.30996/jhmo.v2i2.2496>.

²¹ Muhammad Ashsubli, "Undang-Undang Perkawinan dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama)," *Jurnal Cita Hukum* 3, no. 2 (2015): 95592, <https://doi.org/10.15408/jch.v2i2.2319>.

both parties can, by mutual agreement, submit a written agreement which is ratified by a marriage registrar or notary, after which the contents also apply to third parties as long as third parties are involved. Then the Constitutional Court decision Number 22/PUU-XV/2017. The main content material is Article 7 paragraph (1) as long as the phrase "16 (sixteen) years of age" of the Marriage Law is contrary to the 1945 Constitution and has no binding legal force.

Constitutional Court Decision Number 24/PUU-XX/2022. The main content material is the conditions for the validity of a marriage which are regulated in the provisions of the Marriage Law which provides the widest possible space for the law of various religions and beliefs in interpreting the validity of a marriage, but does not provide regulations if the marriage is carried out by those who have different beliefs and religions. Furthermore, the Constitutional Court decision Number 71/PUU-XX/2022, reviewing Law Number 23 of 2006 concerning Population Administration. The main content material is the explanation of Article 35 letter a of Law Number 23 of 2006 concerning Population Administration, as amended by Law Number 24 of 2013.

Based on the review of the Constitutional Court decision above, it can be concluded that religious values are expressly recognized in Article 29 of the 1945 Constitution, in line with the first principle of Pancasila as stated in the Preamble to the 1945 Constitution. This understanding indicates that it is wrong One constitutional basis for establishing a state and administering government is religious values.²² In Article 29 paragraph (1) of the 1945 Constitution it is stated: "The State is based on the belief in One Almighty God". In paragraph (2) it is stated: "The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs." This article reflects that the state is obliged

²² Nur Rofikoh, "Kebebasan Beragama di Indonesia Perspektif Ratio Legis Hukum Riddah," *Al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2 (2017): 454–484, <https://doi.org/10.15642/aj.2017.3.2.454-484>; See also Musleh *et.al.*, "Urgensi Asas Ketuhanan dalam Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial* 3, no. 2 (November 30, 2023): 176–198.

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to formulate all forms of legislation or implement policies to support the implementation of the realization of a sense of faith in God Almighty.

The 1945 Constitution does not separate religion from the state, and the state guarantees freedom of religion, while religious values are considered the source of state policies.²³ Therefore, all policies that conflict with religious values are considered to violate and conflict with the constitution. In the "Court's Opinion" section, the Constitutional Court's decision states that belief in the Almighty God is considered *the domain of the forum internum* which is a consequence of the acceptance of Pancasila as the basis of the state. As good citizens, any propaganda that brings citizens away from Pancasila is unacceptable.

The Constitutional Court in its decision regarding Review of Marriage Laws stated that "The principles of the Indonesian rule of law must be seen in the light of the 1945 Constitution, the rule of law which places the principle of Belief in One Almighty God as the main principle, as well as the underlying religious values movement of the life of the nation and state, not a state that separates the relationship between religion and state (separation of state and religion), and does not solely adhere to the principles of individualism or communalism".

Based on Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, human rights are explained as follows: Paragraph (1) states: "Everyone has the right to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a residence within the territory of the country and leave it, and have the right to return." Paragraph (2) states: "Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience." This article means that every individual has the freedom to determine and choose his religion and beliefs, and has the right to thoughts and attitudes that are in accordance with his conscience, as long as they do not harm other people.

²³ Ahmad Nurcholish, "Pernikahan Beda Agama dan Jaminan Kebebasan Beragama di Indonesia," *Jurnal Hak Asasi Manusia* 11, no. 11 (2014): 165–220, <https://doi.org/10.58823/jham.v11i11.92>.

Constitutionally the rights of every citizen and resident of Indonesia are guaranteed, however, in exercising their rights and freedoms there are certain limitations which cannot be violated in order to ensure respect for the rights and freedoms of other people as stated in Article 28J paragraph (2) which states that "In carrying out rights and freedoms, every person is obliged to comply with the restrictions determined by law with the sole aim of ensuring recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society." The existence of a philosophical basis as described above is the reason for requesting *a judicial review*.

Based on the analysis of the Constitutional Court's decision, it can be understood that religious values are clearly recognized in the 1945 Constitution, along with the first principle of Pancasila. This understanding indicates that Indonesia's constitutional foundation in establishing a state and government lies in religious values. Article 29 of the 1945 Constitution emphasizes that the state is based on the belief in One Almighty God and guarantees freedom of religion and the implementation of worship in accordance with one's beliefs. The 1945 Constitution ensures that the state does not separate religions and values religion as a source of policy. Policies that conflict with religious values are considered to violate the constitution. The Constitutional Court emphasized that belief in the Almighty God is a personal domain and is a consequence of accepting Pancasila. Propaganda that damages Pancasila values is considered unacceptable by good citizens. The Constitutional Court's decision regarding the Review of Marriage Laws confirms that Indonesia is a legal state that places the principle of belief in one Almighty God and religious values as the main principles, rejects the separation between religion and state and opposes individualism or communalism. Article 28E of the 1945 Constitution states human rights, ensuring freedom of religion and the right to express one's thoughts according to one's conscience, with certain limitations in order to respect the rights and freedoms of others. With this philosophical basis, the request for

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judicial review was carried out to ensure respect for constitutional values and human rights in Indonesia.

Examining it from an Islamic perspective, the relationship between religion and the state has given rise to debate among Islamic scholars, especially regarding the concept of the formation and application of Islam in the state.²⁴ This debate arose because the Prophet Muhammad implemented an Islamic-based government. In order to answer this question, in general, there are two dominant views regarding Islam and the state, First, the substantialist group, which believes that the essence of faith and charity is more significant than its form. They argue that the messages of the Qur'an and hadith have eternal essence and universal meaning, so that each generation of Muslims is expected to reinterpret them according to their social context. Apart from that, they accept the current government structure as the final form of the Indonesian state. Second, the scripturalist group, who believe that most religious messages are clearly stated in the Koran and hadith, and only need to be applied directly in life. This group tends to focus more on the implementation of sharia.²⁵

Referring to the two groups above, it can be understood that on the one hand, Islamic institutions (the state) are considered not mandatory, while what is most important is seriousness in implementing Islamic values in national life. This view is held by the substantialist group. On the other hand, the scripturalist group believes that to regulate religious messages, Islamic state institutions are needed that are based on sharia. Even though there are differences in views, basically both groups have the same goal, namely articulating a religious message with full commitment and integrity (*kaffah*). Therefore, it is best to prioritize this common goal in responding to various development problems of the times.

According to most Muslim thinkers, the separation of religion and state is unacceptable. The separation of religion and state is contrary to Islamic teachings which cover all aspects of human life,

²⁴ Abdul Aziz, *Chieftdom Madinah: Salah Paham Negara Islam* (Jakarta Timur: Pustaka Alvabet, 2011), 1.

²⁵ Mark R. Woodward, *Jalan Baru Islam, Memetakan Paradigma Mutakhir Islam Indonesia*, Terj. Chaniago (Bandung: Mizan, 2004), 285–289.

including the realm of the state. Likewise, seen from a philosophical aspect, the separation of religion and state is not in line with the Islamic worldview.²⁶ This opinion is in line with al-Maududi's view that the state is an integral part of Islam, Islam has its own complete concept of state and government system.²⁷

In line with al-Maududi's opinion, Ibn Taymiyah believed that many religious duties, which are explained in the Koran and Sunnah, can only be carried out by the government (state). Engaging in activities such as collecting zakat, enforcing the law, and various other religious duties requires government involvement. For Ibn Taimiyah, the existence of state power that has coercive authority is very important to maintain the position of religion, because without it, many religious provisions cannot be implemented. On the other hand, a country that does not have the guidance of revelation and religion can also be a source of danger and potential tyranny. Thus, he emphasized that the relationship between religion and the state should be complementary.²⁸

In contrast to Gus Dur, who firmly stated that there are three types of responses in relation to the relationship between Islam and the state (state): *integrative* (being one unit), *facultative* (can choose), and *confrontational* (conflicting).²⁹ The concept of an integrative relationship, in accordance with the term used by Gus Dur, shows that Islam has no formal position and does not link religious teachings with government affairs. The relationship between their lives and the state is determined by the social lifestyle they adopt.

²⁶ Ahmad Sadzali, "Hubungan Agama dan Negara di Indonesia: Polemik dan Implikasinya dalam Pembentukan dan Perubahan Konstitusi," *Undang: Jurnal Hukum* 3, no. 2 (December 1, 2020): 348, <https://doi.org/10.22437/ujh.3.2.341-375>.

²⁷ Abul A'la Al-Maududi, *The Islamic Law and Constitution*, Terj. Asep Hikmat dengan judul: *Hukum dan Konstitusi Sistem Politik Islam*, Cet. Ke-IV (Bandung: Mizan, 1995), 176.

²⁸ Sadzali, "Hubungan Agama dan Negara di Indonesia," 350; See also Khalid Ibrahim Jindan, *Teori Pemerintahan Islam Menurut Ibnu Taimiyah*, Terj. Mufid (Jakarta: Rineka Cipta, 1994), 50.

²⁹ Abdurrahman Wahid, "Membangun Hubungan Islam dan Negara," *Kompas*, November 5, 1998, 6; See also Fenni Febiana, "Formulasi Undang-Undang Nomor 1 Tahun 1974 dalam Persinggungan antara Negara dan Agama," *Millah: Journal of Religious Studies* 16, no. 2 (August 26, 2017): 321-340, <https://doi.org/10.20885/millah.vol16.iss2.art8>.

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The debate regarding the relationship between religion and the state from an Islamic perspective gave rise to a debate involving substantialist and scripturalist groups. Although there are differences of opinion, their main goal is to articulate the religious message with full commitment. The majority of Muslim thinkers reject the separation of religion and state, holding the view that the state is an integral part of Islam. Al-Maududi and Ibnu Taymiyah emphasized the role of the state in religious duties, while Gus Dur proposed three types of responses to the relationship between Islam and the state.

In the context of marriage law according to an Islamic perspective, the relationship between religion and the state has complex dynamics. Basically, Islam regulates aspects of life including marriage as an integral part of its legal system. Islam provides detailed guidelines and rules regarding marriage, including the conditions for its validity, the rights and obligations of husband and wife, as well as procedures for carrying out marriage. The state from an Islamic perspective is expected to be the protector and implementer of these religious rules. In this case, the state has a role to enforce Islamic law in the context of marriage. This includes the creation of marriage laws that are in line with Islamic principles, such as age limits for marriage, guardian consent, and other provisions.

However, it needs to be recognized that the reality is often complex, especially in countries with heterogeneous societies or more secular legal systems. Some countries may integrate Islamic principles directly into marriage laws such as Indonesia, while other countries may implement civil laws that do not explicitly refer to religious teachings. In Indonesia, marriage law is regulated by Law Number 1 of 1974 concerning Marriage, which was later revised with the issuance of Law Number 16 of 2019.

In the context of marriage law in Indonesia, there are efforts to integrate religious principles, including Islam, into marriage regulations. This is reflected in various legal provisions that recognize the role of religion in the marriage process, such as the requirement to obtain the consent of the marriage guardian and to carry out the marriage in accordance with religious teachings. However, along with

the heterogeneous characteristics of Indonesian society and a more secular legal framework, there is a dynamic of harmonization between Islamic principles and positive legal principles. Even though the marriage law recognizes the role of religion, the Indonesian state still maintains aspects of civil law in its regulations. This then underlies the Constitutional Court's assessment of various decisions related to marriage issues in Indonesia.

The debates and challenges that arise in efforts to harmonize Islamic principles with marriage laws in Indonesia reflect the complexity of the relationship between religion and the state. Incompatibility between religious principles, including Islam, and positive state law can give rise to tensions and differences of opinion that need to be accommodated wisely in the formulation and implementation of marriage laws. Thus, the relationship between religion and the state in the context of marriage law according to an Islamic perspective requires a wise and detailed approach to achieve a balance that respects religious principles while taking into account the reality of the country's social and legal context.

In the context of marriage law according to an Islamic perspective, the relationship between religion and the state has a crucial role. The Constitutional Court faces issues related to human rights (HAM) and sharia obligations. An understanding of the 1945 Constitution shows that the Indonesian state does not separate religions, but rather guarantees freedom of religion while recognizing religious values as a source of state policy. The Constitutional Court's decision also confirms the principle of the rule of law which places belief in one Almighty God as the main principle. Human rights, including the right to practice religion and worship, are constitutionally guaranteed, but with certain limitations to maintain balance and respect for the rights of others. There is also debate regarding state institutions and the implementation of sharia, which reflects the diversity of views in understanding the relationship between religion and state in the context of marriage.

**C. Harmonization Between Human Rights and Marriage Law:
Perspective of the Constitutional Court**

The Constitutional Court recognized Human Rights (HAM) as rights recognized by Indonesia and then recognized as constitutional rights of Indonesian citizens in the constitution.³⁰

However, human rights that apply in Indonesia must be in line with Indonesia's ideological philosophy which is based on Pancasila as the nation's identity. The guarantee of universal human rights protection is contained in the *Universal Declaration of Human Rights* (UDHR).³¹ Even though it has been declared as a form of agreement between countries in the world, the implementation of human rights in each country is adjusted to the ideology, religion, social and culture of the people in each country.

Based on the formulation of Article 28B paragraph (1) of the 1945 Constitution, there are two rights that are expressly guaranteed, "the right to form a family" and "the right to continue offspring". The next phrase indicates that "legal marriage" is a prerequisite for the protection of the two rights mentioned previously. In other words, marriage is not only considered a right but also a prerequisite for the implementation of the right to form a family and the right to continue offspring. Therefore, in the context of protecting the right to marry, there are fundamental differences between the UDHR and the 1945 Constitution. As a legal state that upholds the supremacy of the constitution, the Constitutional Court should use the 1945 Constitution as the main basis for assessing citizens' constitutional rights. state without prejudice to universal human rights in the UDHR.

Even though Article 28B paragraph (1) of the 1945 Constitution stipulates that a valid marriage is a requirement to protect the right to form a family and the right to continue offspring, this requirement is mandatory. This is because it is impossible to form a family and

³⁰ Yuli Asmara Triputra, "Penguatan Hak-Hak Perempuan (Sebagai Bagian dari Hak Asasi Manusia) dalam Konstitusi," *Journal Equitable* 2, no. 1 (2017): 1–25; See also Adam Muhshi, *Teologi Konstitusi: Hukum Hak Asasi Manusia atas Kebebasan Beragama* (Yogyakarta: Lkis Pelangi Aksara, 2015), 20.

³¹ M. Arfan Mu'ammam and Abdul Wahid Hasan, *Studi Islam Kontemporer Perspektif Insider Outsider* (Yogyakarta: IRCISOD, 2017), 250.

continue offspring without going through a legal marriage. In the context of legal rules, something that is a condition of a legal obligation is considered mandatory, so that a legal marriage is also a constitutional right that must be protected.

Every action and deed carried out by citizens, including in the context of marital affairs, must be obedient and submissive and not conflict with or violate statutory regulations. Legislation relating to marriage is designed to regulate and protect the rights and obligations of every citizen in relation to marriage.³² The existence of regulations like this is in line with the principles contained in Article 28J of the 1945 Constitution, where every citizen is obliged to comply with restrictions stipulated by law. These restrictions are aimed solely at ensuring recognition and respect for the rights and freedoms of other individuals, as well as to fulfill fair demands, in accordance with moral considerations, religious values, security and public order in a democratic society based on law.

The existence of Article 2 paragraph (1) in conjunction with Article 8 letter f of the Marriage Law is understood in accordance with the essence of Article 28B paragraph (1) and Article 29 of the 1945 Constitution, which emphasizes the state's obligation to guarantee the implementation of religious teachings. The concept of marriage in the Marriage Law is defined as an inner and outer bond that exists between a man and a woman, bound by the marriage cord, creating the status of husband and wife. The purpose of marriage is to form a family in a happy and eternal household based on the belief in Almighty God.³³ Article 28B paragraph (1) of the 1945 Constitution underlines the importance of "legal marriage", which must be carried out in accordance with the laws of each religion and belief.

In the provisions of Article 2 of the Marriage Law, registration as described in paragraph (2) must be a recording that carries validity as

³² Ahmad Jukari, "Landasan Konstitusional tentang Pengaturan Perkawinan Beda Agama dalam Undang-Undang Perkawinan Menurut Putusan Mahkamah Konstitusi," *Journal of Law (J-Law)* 1, no. 2 (2022): 129–136, <https://doi.org/10.56322/.v1i2.22>.

³³ Firdaus Renuat *et.al.*, *Hukum Keluarga* (Padang Sumatera Barat: Get Press Indonesia, 2023), 79; See also Tengku Erwinsyahbana and Tengku Rizq Frisky Syahbana, *Aspek Hukum Perkawinan di Indonesia* (Medan: Umsu Press, 2022), 82–83.

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stated in paragraph (1). Therefore, the Marriage Law mandates that marriage registration be carried out for marriages that meet the legal requirements. The administrative obligation to register marriages by the state is mandatory, while determining the validity of a marriage, in accordance with the norms of Article 2 paragraph (1) above, is left to each religion and belief, bearing in mind that the conditions for the validity of a marriage are determined by the law of that religion and belief.

According to the Constitutional Court, the provisions of Article 2 paragraph (1) of the Marriage Law provide the basis for the implementation of marriage, where in order for a marriage to be considered valid, the marriage must be carried out in accordance with the teachings of religious law and the beliefs held by each individual. The enactment of these provisions is not intended to hamper individual freedom in choosing their religion and beliefs. The rules for setting norms in Article 2 paragraph (1) focus on the aspect of the validity of marriage in accordance with religious teachings and beliefs, not on the right to choose religion and belief. Therefore, the individual's right to choose, adhere to and express their beliefs remains guaranteed, as expressed in Article 29 paragraph (2) of the 1945 Constitution.

Related to the above provisions, Article 34 of Law Number 23 of 2006 concerning Population Administration confirms that every citizen who has entered into a valid marriage according to statutory regulations has the right to register their marriage at the civil registry office for non-Muslim couples and at the KUA for non-Muslim couples. Muslim. Marriage registration can also be carried out on marriages that have been determined by the court. Although the explanation of the law states that marriages determined by the court include marriages between people of different religions, the Constitutional Court emphasized that this does not mean the state automatically recognizes marriages between different religions. This determination follows the interpretation that has been given by a religious institution or organization that has authority in matters of interpretation. In the context of differences in interpretation, the

relevant religious institution or organization has the authority to resolve them.

In the context of population events, the interest of the state, especially the government, is to properly record changes in a person's population status, so that they can obtain protection, recognition, personal status and legal status for every population event, including registration of marriages through court decisions. The Constitutional Court considered that this provision should be interpreted as a regulation in the field of population administration by the state. This is because the validity of a marriage must still refer to the norms of Article 2 paragraph (1) of the Marriage Law, which stipulates that a valid marriage is one that is carried out in accordance with the laws of each religion and belief. This regulation of the implementation of marriage registration shows that there is no question of the constitutionality of Article 2 paragraph (2) of the Marriage Law. On the other hand, the regulation of marriage registration for every citizen legally entering into a marriage shows the role and function of the state in providing guarantees for the protection, enforcement and fulfillment of human rights. State responsibility in this case must be carried out in accordance with the principles of statutory regulations as guaranteed in the 1945 Constitution.

Referring to the view above, it can be understood that marriage registration must ensure the validity of marriages that meet the legal requirements, with administrative obligations by the state and the determination of validity being left to the religion and beliefs of each individual. This conclusion emphasizes the state's responsibility in providing guarantees for the protection, enforcement and fulfillment of human rights, which must be carried out based on the principles of statutory regulations as mandated in the 1945 Constitution.

D. Conclusion

The findings show the complexity and dynamics of the relationship between religion and the state. In-depth analysis of key Constitutional Court decisions reveals variations in interpretation of religious and constitutional principles in the context of marriage. In

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some cases, the Constitutional Court may emphasize the principles of equality and religious freedom, creating space for plurality in marriage practices. On the other hand, judgments are more likely to reinforce certain religious norms in marriage laws, creating challenges to the concept of equality. These findings illustrate the complex dynamics between legal policies, religious values, and constitutional aspects. The implications involve implementing marriage laws that are in line with specific religious principles, while ensuring the protection of individual rights and maintaining a balance between religion and state.

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