



# Impact of Constitutional Court Decision No. 24/PUU-XX/2022 Regarding Marriage as a Prerequisite for Fulfilling the Right to Have a Family and Continuing Offspring: A Socio-Legal Perspective

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**Abstract.** MK Decision No. 24/PUU-XX/2022 comes with legal considerations in the form of an affirmation that marriage cannot be interpreted as a right but is a prerequisite for fulfilling the right to have a family and continue offspring. The construction of the Constitutional Court Decision impacts people's legal behavior and changes people's understanding so that the Constitutional Court Decision carries out marriages. It is legal and socio-legal research that puts forward the legal sociology approach. The results of the study confirmed that the Constitutional Court Decision No. 24/PUU-XX/2022 emphasizes that marriage is a means to guarantee everyone's right to have a family and continue offspring. The substance of the Constitutional Court Decision No. 24/PUU-XX/2022 has an impact on society, especially how people's understanding of marriage, in which the Constitutional Court Decision states that the essence of marriage is a prerequisite for realizing the right to have a family and to have children is actually by the substance of the Compilation of Islamic Law.

**Keywords:** Family Rights and Continuing Offspring; Marriage Law; Constitutional Court Decision.

## 1 INTRODUCTION

Marriage is a legal relationship that binds men and women in a new legal bond that aims to form an eternal family. Marriage is one of the means to realize the implementation of human existence to be able to continue their offspring.[1] Even though it is a form of legal action, marriage cannot be separated from cultural orientation, religion, or the social reality of the local community. Aspects of culture, religion, and the social reality of the local community are essential orientations in viewing marriage practices which are not only based on legal validation but also refer to the development of culture and religious norms developing in Indonesia.[2]

Arrangements regarding marriage law in Indonesia also cannot be separated from non-legal aspects such as culture and religious values. In Indonesia, where most of the

population is Muslim, religious values, especially Islamic law, also color the substance of the arrangements in marriage law.[3] It can be seen from the provisions of Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage (Marriage Law) which emphasizes that the validity associated with marriage is left to the laws of belief and religion adhered to by each.

One of the legal products that also provides a new perspective on marriage law in Indonesia is the Constitutional Court Decision No. 24/PUU-XX/2022 (Marriage Court Decision 2022). One of the substances in the 2022 Marriage Constitutional Court Decision is that marriage is not positioned as a right but is a prerequisite for fulfilling the right to have a family and continue offspring. The 2022 Marriage Constitutional Court decision confirms that if everyone wants to fulfill the right to have a family and continue offspring, they must carry out the prerequisites, namely marriage as regulated by religious law and their respective beliefs.

The orientation of the 2022 Marriage Constitutional Court Decision is quite interesting, considering that there has been a paradigmatic change in the understanding of marriage not as a right but as a prerequisite for fulfilling the right to continue offspring and the right to have a family. As a legal product, the 2022 Marriage Court Decision has impacted both juridical and non-juridical. This study aims to analyze the impact of the 2022 Marriage Constitutional Court Decision on marriage law in Indonesia and the factors that influence the impact of the 2022 Marriage Constitutional Court Decision on Indonesian marriage law.

## **2 Research Methods**

This socio-legal legal research does not only see law as a building of "internal logic" that is separate from the social dimension.[4] Socio-legal research, in Reza Banakar's view, is legal research that is of a mix-method nature, namely analyzing the normative aspects of the law as well as looking at the non-legal dimensions of the applicability of a particular legal product.[5] The approaches used in this study are conceptual, statutory, and case approaches. The primary legal materials used are the 1945 Constitution of the Republic of Indonesia, the 2022 Marriage Court Decision, the Marriage Law, and the Compilation of Islamic Law (KHI). The secondary legal materials in this study are journal articles, books, and various studies that discuss marriage law in Indonesia. Non-legal materials are reference books that discuss aspects of marriage from a non-legal perspective relevant to this research.

### 3 Discussion

#### 3.1 Impact of the Constitutional Court Decision No. 24/PUU-XX/2022 Against Marriage Law in Indonesia.

The term self-effect in legal science often equates with the term effect or implication. According to Jazim Hamidi, impacts, consequences, and implications have different essences.[6] The impact is a term that means that a legal product influences various aspects, both juridical and non-juridical.[7] The consequence is a legal term that is a direct juridical consequence of a specific legal action. Legal implications are indirect legal consequences of legal action. Therefore, the impact of the 2022 Marriage Constitutional Court Decision is synonymous with the influence of legal products, in this case, the 2022 Marriage Constitutional Court Decision, on various aspects, both juridical and non-juridical.

The 2022 Marriage Constitutional Court decision is substantively familiar in Indonesian marriage law. It is because both Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Marriage Law, and the KHI orientation, which emphasizes that marriage is a prerequisite for fulfilling the right to have a family and continue offspring through a legal marriage. The difference is only the arrangement explicitly or not regarding the position as a prerequisite.[8] Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the constitution's provisions explicitly state that marriage is a prerequisite for fulfilling the right to have a family and continue offspring. However, even though the Marriage Law and KHI are not explicitly (and only implicitly), there is an orientation that marriage is a prerequisite for fulfilling the right to have a family and continue offspring.

The 2022 Marriage Constitutional Court Decision substantively discusses testing the existence of interfaith marriages in Indonesia. However, substantively, the affirmation of the judge's considerations in the 2022 Marriage Constitutional Court Decision confirms marriage as a prerequisite to be an exciting discussion. This substance simultaneously emphasizes that marriage has relevance to forming a family and efforts to continue offspring. The main characteristics of the 2022 Marriage Constitutional Court Decision are paradigmatically different from the substance of marriage in the 1948 Universal Declaration of Human Rights (UDHR), which confirmed the guarantee of human rights after the second world war. Article 16, paragraph (1) of the UDHR substantively affirms that every man and woman has the right to marry and continue their descent. The brief construction of Article 16 paragraph (1) of the UDHR, when it is related to marriage, has three implications, namely: first, in the construction of the UDHR, marriage is a right for men and women, which means that men and women can marry as they please, both between men and women, men and men, and women and women. It consequence can be understood considering that in Salmond's view, rights become the free will of each individual as long as they do not interfere with fulfilling other people's rights.[6] The first implication of the UDHR is irrelevant to how Indonesian law views marriage. For Indonesian people who emphasize religious and cultural aspects, marriage is not only considered an agreement or engagement to have sex between one party and another but also permanently attached to forming a family.

This view can be considered Indonesia's margin of appreciation, which continues to view the universalization of human rights based on the UDHR, but still emphasizes the essence of human rights from an Indonesian perspective.[9]

Second, the construction of Article 16 paragraph (1) of the UDHR separates the right to marry and continue offspring. It means UDHR affirms marriage as a right. In addition, with the separation between the right to marry and continue offspring, the construction of the regulations in the UDHR emphasizes that there are marriages that are not oriented towards efforts to produce offspring, so this is part of human rights. In Indonesia, the understanding of Article 16 paragraph (1) of the UDHR, which separates the rights to marry and continue offspring, is irrelevant to the characteristics of Indonesian marriage law, which places religious values as the primary value of holding marriages for the community. For Indonesians, marriage is synonymous with efforts to form offspring and have a family. It means that between marriage, family, and continuing the lineage is a unity that cannot be separated. The consequence of the interpretation of the 2022 Marriage Constitutional Court Decision is that there should not be a marriage that is not oriented towards efforts to have a family and continue offspring.

Third, understanding Article 16 paragraph (1) of the UDHR regarding marriage above clearly does not include religious aspects in Indonesian marriage law. For Article 16, paragraph (1) of the UDHR, the right to marry, the right to have a family, and the right to religion are separate things. It is different from the view of marriage law in Indonesia which, based on Article 28A, actually emphasizes that carrying out marriage is a prerequisite for fulfilling the right to have a family and continue offspring. It also relates to efforts to affirm and guarantee the implementation of religious provisions.[10] It is reinforced in the Marriage Law and KHI, which explicitly identify marriage as an effort to implement the laws of each religion. The Marriage Law and KHI also emphasize that marriage is only valid if it conforms to each religion's teachings. It understanding at the same time shows that in Indonesian marriage law, there is an identification that marriage is a religious service, so carrying it out must be based on specific terms and conditions by religious teachings.[11]

from the substance of the 2022 Constitutional Court Decision on Marriage above, various aspects are affected by the consequences of the substance of the Constitutional Court Decision above, such as: first, marriage in Indonesia is seen as one unit with the fulfillment of the right to have a family and have children. Its substance implicitly reinforces the ban on child-free practices currently surfacing in Indonesia and the world. Childfree is a practice in which a husband and wife make a particular program not to have children.[12] This program for not having children is based on a modern materialistic view, where children are seen as a "burden." Therefore the commitment of not having children can make a husband and wife not have this burden. Referring to the substance of the 2022 Constitutional Court Decision on Marriage above, understanding marriage as a prerequisite for the right to have children and a family implicitly prohibits childfree practices in Indonesia.

Second, the substance of the 2022 Marriage Constitutional Court Decision emphasizes that marriage "is not a right" and, consequently, marriage cannot be carried out "at will" by the bride and groom. As a prerequisite for realizing the right to have a

family and to have children, marriage must be carried out based on specific procedures based on the religion and beliefs of the bride and groom.[13] It impacts the practice of interfaith marriages in Indonesia, where the bride and groom carry out the marriage "at will." Referring to the 2022 Constitutional Court Ruling on Marriage, the practice of interfaith marriages that carry out a marriage procession based only on the agreement of the bride and groom is not permitted by referring to the 2022 Marriage Constitutional Court Decision.[14]

Third, the 2022 Marriage Constitutional Court Decision is substantive, emphasizing the coherence between marriage and fulfilling the rights to have a family and children. Consequently, marriages not carried out to start a family and continue offspring are prohibited. It confirms the existence of the phenomenon of same-sex marriage, commonly referred to as LGBT, which consequently cannot produce offspring.[15] Referring to the 2022 Marriage Constitutional Court Decision above, this cannot be justified because the essence of marriage is to continue offspring and have a family.

Based on the analysis above, the impact of the 2022 Marriage Constitutional Court Decision on marriage law in Indonesia paradigmatically affirms the existence of marriage, which is substantively related to family orientation and continuing offspring. It confirms that if a marriage is not intended to continue offspring and have a family, it is considered irrelevant and contradicts the substance of the 2022 Marriage Constitutional Court Decision.

### **3.2 Factors Influencing the Impact of the 2022 Marriage Constitutional Court Decision on Marriage Law in Indonesia**

The 2022 Marriage Constitutional Court decision as a legal decision has a non-legal impact that affects people's legal behavior. It is similar to the substance of the 2022 Marriage Constitutional Court Decision, which implicitly prohibits LGBT practices because marriages according to sex or LGBT are marriages that do not have an orientation to continue offspring. Judging from its impact, the 2022 Marriage Court Decision implicitly prohibits same-sex or LGBT marriages. Another impact of the 2022 Marriage Constitutional Court Decision is prohibiting childfree practices, namely marriages not oriented towards the desire to continue offspring.

From the various impacts contained in the 2022 Marriage Court Decision, as a legal decision, the 2022 Marriage Court Decision certainly has an impact, especially for non-legal impacts. The non-legal impact of the 2022 Marriage Constitutional Court Decision is related to the orientation and direction of community behavior to identify marriage with efforts to continue offspring and have a family. It means that any community behavior that does not identify marriage as an effort to continue offspring and have a family can be said to be behavior that does not carry out the legal substance of marriage.

The existence of non-legal impacts in the 2022 Marriage Constitutional Court Decision is a form of the existence of a legal decision in a social reality. Talcott Parsons, with the theory of legal cybernetics, sees that even though the law is claimed to be an "impermeable" institution of social reality by adherents of legal positivism, it cannot be understood in concreto in this way.[16] As Talcott Parsons views with his theory of

legal cybernetics, that law also impacts societal realities such as social, economic, political, and other non-legal impacts. [17]

Looking at the impact of the 2022 Constitutional Court Decision on Marriage, in general, the impact is more of a social impact, namely directing people's behavior regarding marriage so that marriage has relevance to efforts to have a family and continue offspring. In this context, laws that impact social reality are also not "impermeable" to non-legal influences. Referring to the substance of the 2022 Marriage Constitutional Court Decision, at least three factors influence the substance of the 2022 Marriage Constitutional Court Decision: first, religious/religious factors. The religious factor is an essential factor that prompted the formulation of the substance of the 2022 Marriage Constitutional Court Decision, in which it has been emphasized that marriage has relevance to the right to have a family and have children. This religious factor, especially Islam, is the most important social force in marriage law, so various substances must refer to various provisions in Islamic law.[18]

The second factor is the socio-cultural factor. It sociocultural factor is seen from the reality of Indonesian society, which has an Eastern culture and emphasizes the behavior of marriage as a means to continue offspring. These sociocultural factors are also rooted in the traditions and practices of society that have been passed down from generation to generation, so these sociocultural dimensions also significantly influence the substance of marriage law in Indonesia.[19] The third factor is the ideological factor. Ideological factors are factors in which the ideological values of a nation have a significant role in the formulation of marriage law. Pancasila, as the state ideology of Indonesia, emphasizes the dimension of religiosity so that in the perspective of Pancasila, marriage in Indonesia must accommodate and be based on religious values and beliefs.[20]

The existence of the three influential factors in the 2022 Constitutional Court Decision on Marriage, which includes the religious, sociocultural, and ideological factors above, are essential factors that make the substance of the 2022 Constitutional Court Decision emphasize the importance of identifying marriage as a prerequisite for the realization of the right to have a family and continue offspring.

## 4 Conclusion

The impact of the 2022 Marriage Constitutional Court Decision on marriage law in Indonesia is paradigmatically an affirmation of the existence of marriage which is substantively related to family orientation and continuing offspring. It confirms that if a marriage is not intended to continue offspring and have a family, then the marriage is considered irrelevant and contradicts the substance of the Constitutional Court's decision. In addition, factors that influence the substance of the Constitutional Court's decision regarding the position of marriage as a prerequisite for the realization of the right to have a family and continue offspring are influenced by religious, sociocultural, and ideological factors. These three factors influence the substance of the Constitutional Court's decision, which is consistent with the substance of the Compilation of Islamic Law.

## Authors' Contributions

The author comprises four members where all are contributed to writing the article. Article writing is separated into numerous stages of research and writing that are completed in 2 (one) months. The author investigates related themes based on observations made in the field over many months. The writer offers the ideas in this scientific article based on observable data.

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