

## THE POSITION OF HEIRS FROM INTERFAITH MARRIAGES IN THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 71/PUU- XX/2022 AND CIVIL INHERITANCE

Hanafi Urwatil Usqo<sup>1\*</sup>, Arifuddin Muda Harahap<sup>2</sup>, Ramadhan Syahmedi Siregar<sup>3</sup>

<sup>1,2,3</sup>Program Studi Magister Hukum Islam, Universitas Islam Negeri Sumatera Utara, Medan, Indonesia

<sup>1</sup>[hanafiurwatilwusgo@gmail.com](mailto:hanafiurwatilwusgo@gmail.com)

(\*) Corresponding Author

[\(hanafiurwatilwusgo@gmail.com\)](mailto:hanafiurwatilwusgo@gmail.com)

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### ABSTRACT

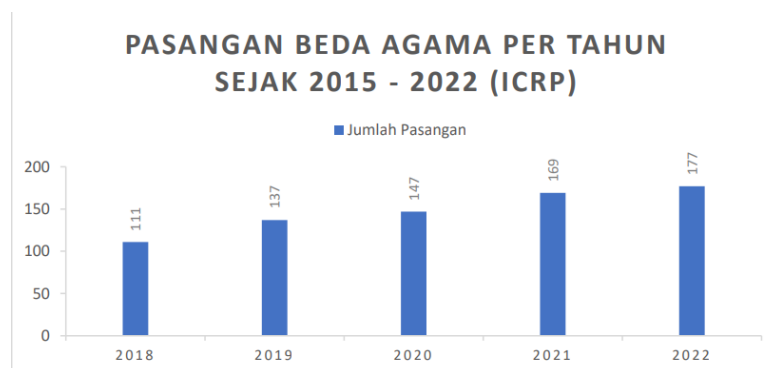
The purpose of this study is to determine the position of heirs from interfaith marriages in the analysis of the decision of the constitutional court number 71/PUU-XX/2022, Interfaith marriages often cause problems in terms of legal status and inheritance rights, especially in Indonesia which has cultural and religious diversity. This research uses a normative juridical approach with the aim of examining various legal phenomena through analysis of the relationship between legal norms and their impact. The data used as the basis for this research is secondary data, which consists of various sources such as books, scientific journals, and academic articles. The results of the research indicate. Based on Constitutional Court Decision No. 71/PUU-XX/2022, it confirms that interfaith marriages that are not valid according to religious law cannot be recognized by the state. The state asserts that the validity of a marriage depends on the provisions of religious law, not just administrative registration. Because the petition was formally rejected (because it did not fulfill the legal standing requirements), the Court did not assess the substance of the norm being tested, so there was no change to the legal position of interfaith marriages. The provisions of Constitutional Court Decision No. 71/PUU-XX/2022 have not provided adequate constitutional protection for heirs of interfaith marriages. The rejection of the petition on formal grounds resulted in no change to the norm in Article 2 paragraph (1) of the Marriage Law.

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## INTRODUCTIONS

Interfaith marriage in Indonesia is a phenomenon that has been increasingly discussed and highlighted in recent years. The number of couples entering interfaith marriages in Indonesia shows an increasing trend. According to data compiled by the Indonesian Conference on Religion and Peace (ICRP), from 2005 to 2017, 825 couples chose to marry despite their differing beliefs. The ICRP also recorded the latest developments through July 2023 regarding interfaith marriages. Data from the last five years, from 2018 to 2022, shows an annual increase in the number of interfaith couples, according to the ICRP report (Larasati et al., 2024).



**Figure 1.** Number of Interfaith Marriages in Indonesia

Referring to the information from the ICRP above, it was recorded that by the end of 2022, there were 1,566 couples who had entered into interfaith marriages, with an additional 89 couples joining in July 2023. Thus, the total number of interfaith couples by July 2023 reached 1,655 couples. Based on the graph presented, there is a quite striking upward trend in the number of interfaith married couples. In the 2018–2019 period, the increase was 10.48%; then rose 3.52% in 2019–2020; continued to rise 7.74% from 2020 to 2021; and increased again by 2.32% in 2021–2022. This fact reflects the increasing trend in the number of interfaith marriages from year to year.

Law No. 1 of 1974, which regulates marriage in general, provides a legal framework to address various marriage-related issues for all Indonesian citizens. However, this law does not cover all aspects of the institution of marriage. Several important issues, such as divorce, interfaith marriage, temporary marriages, mixed marriages, and the practice of unregistered marriages, are not explicitly addressed in the law.

The existence of this condition has given rise to debate regarding the validity of the marriage, as it creates legal implications that raise questions about its legal status. In this context, one important aspect that needs to be considered in mixed marriages is the issue of inheritance. A significant impact of mixed marriages is the distribution of inheritance, which is normatively stated in Article 57 of Law Number 1 of 1974 concerning Marriage, which states: *"What is meant by mixed marriage in this law is a marriage between two people who are subject to different laws in Indonesia, due to differences in citizenship and one party is an Indonesian citizen."*

This was then amended through Law Number 16 of 2019. However, this provision does not explicitly regulate the mechanism for inheritance distribution in the context of mixed marriages.

The main issues arising from the implementation of mixed marriages were previously not expressly regulated in Law Number 1 of 1974 or in other legal norms. However, this issue has now received legal certainty through the issuance of Supreme Court Circular Letter (SEMA) No. 2 of 2023 and Constitutional Court Decision Number 24/PUU-XX/2022. In this decision, the Constitutional Court declared the annulment of several provisions in Marriage Law No. 1 of 1974 relating to marriages between citizens of different nationalities. This decision confirms that the validity of a marriage is a religious matter and falls under the authority of religious institutions to interpret their teachings. In addition, based on Article 28D Paragraph (1) of the 1945 Constitution, marriage registration is seen as part of efforts to ensure orderly population administration and provide legal certainty for citizens.

Couples of different religions generally show attention to small aspects of their relationship, such as mutual understanding, respect, and negotiation within the family. They emphasize their relationship with a commitment to mutual support, acceptance, and responsibility for their children, without allowing religious differences to become a barrier. Instead, these differences become a source of strength and acceptance. Interfaith couples in Indonesia still have the opportunity to build a harmonious home life and even contribute to interfaith harmony in the country (Titirloloby & Refo, 2022).

Interfaith marriage cannot be judged unequivocally as either entirely positive or negative. The problem in this study is reflected in the fact that the practice of interfaith marriage in Indonesia is not officially encouraged.

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### **Legal Consequences of Interfaith Marriage Following Constitutional Court Decision Number 71/PUU-XX/2022**

Constitutional Court Decision Number 71/PUU-XX/2022 marks a significant milestone in limiting the legal space for interfaith marriage practices in Indonesia, affirming that interfaith marriages that are not valid according to religious law cannot be registered administratively, even though there was previously a loophole through a court ruling. This decision strengthens the validity of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that a marriage is valid if it is conducted according to the laws of each respective religion. Therefore, if two people of different religions marry without performing rituals according to the provisions of their respective religions, the marriage is considered invalid under national law.

Children born from interfaith marriages that are not legitimate according to religious law will be considered illegitimate children. This is in accordance with Article 43 paragraph (1) of the Marriage Law, which states "*A child born outside of marriage only has a civil relationship with his mother and his mother's family.*" This article states that an illegitimate child only has a civil relationship with his mother and his mother's family. This means that legally the child does not have inheritance rights, support rights, or recognition of identity from his biological father, unless the father makes legal recognition or through a court decision (Aolia et al., 2025). In Article 100 of the Indonesian Criminal Code, an illegitimate child does not have a lineage to his father, so the father's civil rights cannot be claimed. Prior to Constitutional Court Decision No. 71/PUU-XX/2022, interfaith couples frequently filed a decree with the district court to have their marriages registered by the Civil Registration Office (Disdukcapil). This legal loophole arose from the Explanation of Article 35 letter a of the Population Administration Law (UU Adminduk), which states, "*A marriage declared by the court is a marriage between people of different religions.*" This article was interpreted to mean that the court could declare interfaith marriages. However, the Constitutional Court in its decision stated that the explanation of this article must be interpreted in a limited manner, namely, it only applies to cases such as marriage confirmation, marriage dispensation, or the ratification of a marriage that has not been registered for administrative reasons, not as a means of legalizing interfaith marriages (Mutiarany et al., 2025).

As a result, interfaith marriages that are not religiously valid cannot be registered in the state population system. This impacts various administrative aspects, such as the inability to issue marriage certificates, the inability to include partners on a single Family Card, and difficulties in registering children. Research by Safithri and Shiddiqi revealed that this situation not only creates legal problems but also has psychosocial impacts on children and mothers, as the children's status is considered unclear both legally and socially (Awaliya Safithri & Ash Shiddiqi, 2024).

The problem is further emphasized by SEMA Number 2 of 2023 which prohibits district courts from granting decrees of interfaith marriages that are invalid according to religious law, thus closing the way for interfaith couples to legalize marriages outside the religious system. Although these children are protected by the Child Protection Law (Law No. 35 of 2014) and the Convention on the Rights of the Child, in practice they cannot easily access basic rights such as identity registration, inheritance, and legal treatment from both parents. Ridwan's research shows that children from interfaith couples have the potential to experience multiple levels of discrimination: from the legal, administrative, and social sides. Therefore, although the Constitutional Court Decision and SEMA No. 2 of 2023 are intended to maintain the basic values of the constitution and religious principles in marriage, they have indirectly created a new vulnerable group in society, namely children born from interfaith relationships (Ridwan, 2025).

### **Legal Status of Interfaith Marriages Following Constitutional Court Decision Number 71/PUU-XX/2022**

From a legal perspective, the legal status of interfaith marriages in Indonesia can be seen in Law Number 1 of 1974 concerning Marriage. Article 2 paragraph (1) of this law states that "*A marriage is valid if it is conducted according to the laws of each respective religion and belief.*" This means that the legality of a marriage substantially depends on the religious recognition of each party entering into the marriage. Furthermore, Article 8 letter f states that "*marriage is prohibited between two people who have a relationship that is prohibited by their religion or other applicable regulations from marrying.*" According to this article, marriage is prohibited between individuals who are prohibited from marrying according to their religion. Therefore, normatively, national law does not provide space for the formal legalization of interfaith marriages without conversion or change of faith by one of the parties. However,



this mechanism creates tension between the certainty of administrative law and the principle of religious legality which is the foundation of the validity of marriage (Latif, 2024).

The controversy continued to the Constitutional Court in case No. 71/PUU-XX/2022, where the applicant challenged the constitutionality of the Explanation to Article 35 letter a of Law No. 23/2006 which permits interfaith marriages, considering it to be in conflict with Article 29 paragraphs (1) and (2) of the 1945 Constitution and Article 28B paragraph (1), and was concerned that it would legitimize interfaith marriages that are not in accordance with religion. In Case No. 71/PUU-XX/2022 filed by Emir Dhia Isad, SH, Syukrian Rahmatul'ula, SH, and Rahmat Ramdani, SH, the Petitioners argued that there had been a violation of constitutional rights as stipulated in Article 27 paragraph (1), Article 28B paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (1) and (2), Article 28I, and Article 29 paragraph (1) and (2) of the 1945 Constitution. The Court emphasized that legal standing must be proven by specific, actual or potential losses, as well as the existence of causality. *verband*. For example, Petitioner III's argument regarding his child's future was deemed baseless because, based on P-3 evidence in the form of an ID card, his status was still unmarried.

The Court considered that the Petitioner's argument linking Article 35 letter a with free sex, cohabitation, and speculative prostitution, was not legally proven, and did not show a direct relationship with the norms being tested. The Panel of Constitutional Justices concluded that the Petitioners did not meet the legal standing requirements according to Article 51 paragraph (1) of the Constitutional Court Law which reads: "*The Petitioner is a party who considers that his/her rights and/or Constitutional Rights have been harmed by the enactment of the Law, namely: (a) individual Indonesian citizens, customary law community units as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law, (c) public or private legal entities, (d) state institutions.*" In its decision, the Court did not test the constitutionality of the material of the Explanation of Article 35 letter a of the Population Administration Law, because the formal requirements in the form of legal standing of the Petitioners were not met.

Although the majority of judges agreed with the ruling, Constitutional Justices Enny Nurbaningsih and Arief Hidayat expressed a dissenting opinion. According to Justices Enny and Arief, the Court should not stop at legal standing but instead proceed to the merits of the case, as the Explanation to Article 35, letter a of Law 23/2006 creates legal ambiguity and requires a clear constitutional interpretation.

The Court emphasized that marriage is not only an administrative matter, but also a spiritual and social one related to religious values. In Constitutional Court Decision No. 68/PUU/XII/2014, it was stated that religion is the basis for the substantial validity of a marriage, while the state has the authority to register it administratively. Therefore, interfaith marriages that do not meet the requirements according to religious law are still considered invalid under national law, even if they are administratively recognized by the civil registry (Tarring, 2022). This view is in line with the Islamic legal approach in the Compilation of Islamic Law (KHI), which expressly prohibits interfaith marriages in Article 40 letter c and Article 44 of the KHI. Even the Indonesian Ulema Council (MUI) in Fatwa Number 4/MUNAS VII/MUI/8/2005 stated that "Interfaith marriages are haram and invalid."

Article 42 of the Marriage Law states that legitimate children are born from a legal marriage, while Article 43 paragraph (1) of the Marriage Law and Article 100 of the Compilation of Islamic Law (KHI) emphasize that illegitimate children only have a civil relationship with the mother. An illegitimate child does not have the right to inherit from the biological father. Constitutional Court Decision No. 71/PUU-XX/2022 shows that the problem of interfaith marriage has not been substantially resolved because the application failed in formal requirements. Research by Mursalin also emphasizes that unclear regulations in this case open up space for multiple interpretations and the practice of legal smuggling through administrative channels, which actually has the potential to violate the principle of religious-based legal supremacy (Mursalin, 2023).

### **The Position of Heirs of Different Religions from the Perspective of Civil Inheritance**

In the system applicable law in something country, expert inheritance own role important in continue rights on treasure owned by heir. In the context of Indonesia, the Civil Code (KUHPPerdata) is runway the main one who regulates position expert heir, good for those who have similarities group or that be at a difference A belief.

In view inheritance civil, expert inheritance more often seen based on connection line descendants they with heir, or similar with family system parental according to law customs. Principle This regulated in Article 832 of the Civil Code, which states that expert inheritance is family blood relatives, whether recognized legitimate in a way law or those born outside marriage, as well as husband or wife who is still life longest (Pratama et al., 2023). Conditions get treasure inheritance divided into two: conditions absolute that is existence death, and conditions general that is existence expert inheritance (Article 836 of the Civil Code) and treasure inheritance (Article 1100 of the Civil Code). In addition, the absolute conditions provide exceptions such as the provisions stated in Articles 467 and 470 of the Civil Code. about life status or death someone who is considered is lost.

Incident inheritance arise after death. If not There is expert inheritance main, Article 854 of the Civil Code applies : inheritance fall to parents and siblings birth. If they don't either there is, inheritance divided in two, half For family mother and half For father's family. If the children or brothers from heir die world before heir, so place they replaced by descendants Which legitimate as provision Article 853 of the Civil Code (Hariyanto, 2020). In the inherent nature of civil inheritance recognizes the existence of a hierarchy system, which means that each expert inheritance will can get treasure legacy If own higher degree near with heir, so that cover expert declared heirs degree Far from heir.

View about expert inheritance in perspective inheritance Civil inheritance is not limited by the existence of a status of obstruction, because civil inheritance only explains matters of impropriety for heirs. The term impropriety or what is called *onwaardig* mention a number of criteria as stipulated in Article 838 of the Civil Code among others (Rantung, 2018):

- a) Because has kill or try kill heir.
- b) Because slander or has submit complaint to heir do crime with threat sentence of over 5 years.
- c) Because with violence or actions No prevent si heir For make or pull out letter his will.
- d) Because has darken, damage or falsify letter will heir.
- e) Reject For become expert inheritance.

Compared to Islamic inheritance, there are specific provisions outlined in the pillars of inheritance, one of which is the absence of barriers to inheritance. These barriers, which can result in the loss of an heir's rights, are barriers due to differences in religion (Syafi'ie, 2011).

If If an heir is non-Muslim, then the inheritance law used is Western Civil Code (BW) (Sari, 2014). This context is strengthened by the existence of Supreme Court Jurisprudence Number: 172 K/Sip/1974, that if an inheritance dispute occurs, the inheritance law used is the law of inheritance. With the condition that if there is an heir who lives longer, even if with status different religion, will still attached right inherit it as long as the heir does not lose the right to inherit due to *onwaardig*. So that the status of heirs of different religions can still be considered as part of the legal heirs according to the Civil Code.

The creation of the inheritance certificate refers to the Supreme Court of the Republic of Indonesia's letter dated May 8, 1991, No. MA/kumdil/171/V/K/1991, which refers to the Circular Letter dated December 20, 1969, No. Dpt/12/63/12/69 from the Directorate of Agrarian Affairs. The letter emphasizes the importance of uniformity based on population classifications that have been known since before independence.

Inheritance (SKHW) For Inhabitant Indonesian country:(R. Subekti & R. Tjitrosudibio, 2013)

- a) Group Descendants Europe (West) made by Notary Public.
- b) Group resident original Letter Information by Expert Inheritance, witnessed by the Village Head and known by the Sub-district Head.
- c) Group descendants Chinese Hoa, by Notary.
- d) Group East Foreign No Chinese Hoa, by Hall Treasure Legacy (BHP)

To determine the acquisition of heirs based on the ab intestato system which is the same reference for the acquisition of inheritance for different heirs religion, need known moreover formerly distribution group expert the heirs divided become 4 (four) groups, namely:

- Heir Group I includes straight line children to below, living husband / wife longest, child outside recognized marriage, and children equal adoption with child valid (Article 852 of the Civil Code).
- Heir Group I includes straight line children to below, husband / wife longest, child outside recognized marriage, and children adoption equated with child valid (Article 852 of the Civil Code).
- Expert inheritance group III covering grandpa And grandma from second party both father and Mother with a straight line to above (provisions in Articles 850 and 853 of the Civil Code).
- Heir group IV includes father and mother's family until the line diverges degrees sixth (Article 858 of the Civil Code).

Each heir's share is determined in several articles, and the distribution calculations are then adjusted based on the number of heirs. Some of these provisions include: (Sagala, 2018)

- Group I: Children receive the same share as their father/mother; the second wife/husband receives a share of at least one child, a maximum of  $\frac{1}{4}$  if there are children from the first marriage.
- Group II: Father or Mother get part The same with you content, minimum  $\frac{1}{4}$ . If only There is you same father and same mother, part divided by  $\frac{1}{2}$  each.
- Group III: Division done with klovng, namely  $\frac{1}{2}$  for grandparents father's side and  $\frac{1}{2}$  for grandparents party Mother.
- Group IV: Division with klovng,  $\frac{1}{2}$  for family father's side (uncle / aunt) and  $\frac{1}{2}$  for family party mother (uncle / aunt).

In Chapter 875 Civil Code mention what is called a will or testament is a deed that contains a statement somebody about What Which he wants will happen after he die world, And Which by him can revoked back. Article 899 of the Civil Code states that For can enjoy something based on letter will, someone must Already There is moment si heir die, with heed the regulations stipulated in Article 2 of this Code.

The heir can establish a trust or set certain conditions to ensure their financial security. However, heirs of different religions may face the choice of accepting or rejecting the inheritance. Under Article 1023 of the Civil Code, heirs have the right to investigate the circumstances of the inheritance before making a statement in the District Court.

### The Position of Heirs of Different Religions from an Islamic Legal Perspective

The position of a child depends on the marriage of his parents, the position of a child is stated in Article 42 of the Marriage Law which explains that "A legitimate child is a child born or as a result of a legitimate marriage", the same as the provisions in Article 99 letter a KHI which explains that "A legitimate child is a child born from a legitimate marriage (Satriawan et al., 2022). Children from interfaith marriages only have a civil relationship with their mother and her family, while civil relations with their father are not recognized, according to Article 43 paragraph 1 of the Marriage Law and Article 100 KHI." A child born outside of marriage only has a blood relationship with his mother and his mother's family", meaning that the child's bloodline is cut off from his father who processes biologically (Shaleh, 2019).

According to the Compilation of Islamic Law (KHI), the requirements for inheritance are that the heir and heirs must be Muslim, related by blood/marriage, and not be impeded by law (Article 171 letters a and c). However, religious differences are not explicitly regulated in the KHI or the Quran. Instead, the clear legal basis is the prohibition on interfaith inheritance, as narrated by Imam Al-Bukhari, who states that the Prophet Muhammad (peace be upon him) said:

لا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ

Meaning : " Muslim people No Can inherit from unbelievers (and vice versa) unbelievers do not Can inherit a Muslim." (HR Bukhari and Muslim).



In book Which written by his students that is book *Ahkamu Expert Zimmah* explained that Ibn Taimiyah said: " *It has been mentioned in the mutawatir sunnah that the Prophet treated the Zindiq and the hypocrites in matters of dhahiriyah the same as the law that applies to Muslims and they can inherit from each other.*" When someone like Abdullah bin Ubayy who pretended to be a believer died, prayers were forbidden for him and forgiveness was asked for, but his inheritance could still be accepted by Muslims. In Islamic law, the heir and the heirs must both be Muslims. The hadith narrated by Bukhari and Muslim confirms that Muslims and non-Muslims cannot inherit from each other. This provision is reinforced by MUI Fatwa No. 5/MUNAS which states:

- a) Islamic inheritance law does not give right each other inherit between people of different religions (Muslims and non-Muslims).
- b) Giving treasure between people of different religions only can done through bequests, wills, and gifts.

According to Alnshoruddin, " *inheritance and property legacy is actions taken by the authorities or judge, while the legacy that should be shared is decision mandatory law given to the people who have died, and things This given to a particular person in condition certain too.*" With thus, inheritance and property legacy is things that have been arranged For given to someone who has died, even though in reality, he No leave inheritance the.

Istilah will mandatory first introduced in Egypt, namely by the most entitled grandson inherit and acquire legacy. The solution is, a grandson who is not in a way direct inherit from guardian inheritance main can get inheritance through form inheritance Salan mandatory, with provision as following :

- a) If the lineage man counted sequentially until level lastly, lineage women also count sequentially from child Woman until grandma ancestors, based on inheritance each other.
- b) Inheritance in life Not yet Once give right to the rightful person accept inheritance the in accordance with part from inheritance mandatory.
- c) Amount of inheritance portion must The same like legacy, good from party man and women, with 2:1 ratio if recipient from second party.
- d) Wills and obligations follow applicable law ; heir may bequeath until one third property. Recipient mandatory get part maximum one third moreover first, the rest shared as will.

As for testament, the jumhur of fiqh scholars different opinion about law testamentary. As following :

- a) According to view the Imams of the Schools, obligations will in Surah Al-Baqarah verse 180 has deleted with Surah An-Nisa verse 11 about inheritance. So, making a will to Mother or expert heirs who are not accept part inheritance the law No must.
- b) Daud Az Zahiri together with Masruq, Tawus, Iyas, Qatadah, and Ibnu Jarir argued will to expert inheritance deleted Because obligation inheritance, whereas will to relatives who are not expert inheritance the law obligatory, based on Surah Al-Baqarah verse 180;

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدُكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

Meaning: *Obligated to you, if someone among You attended by (signs of) death currently he leave goodness (a lot of wealth), making a will to both parents and close friends relatives with appropriate way (as) an obligation for people who are devout.*

- c) Ibn Hazm is of the opinion that bequeath treasure must for every person who dies with assets, based on Surah Al-Nisa verses 11 and 12 which regulate distribution treasure legacy:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِلْمِائَةِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْمِائَةِ السُّدُسُ مَنْ بَعْدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنْ الْإِلَهِ إِنْ الْإِلَهِ كَانَ عَلِيمًا حَكِيمًا

Meaning : *Allah has prescribed (obligated) you about (division inheritance for) your children, (that is) the portion a child man The same with part two of the children girls. If the child That everything women whose numbers more of two, part they are two -thirds from abandoned property. If he (child that woman a just, he get half (the assets left*



*behind). For both parents, each one sixth from assets left behind, if he (who died) had child. If he (who died) no have child and him inherited by both parents (only), the mother get one third. If he (the deceased) has a number of brother, mother get one-sixth. (Inheritance the divided) after (fulfilling) the will he made or (and pay off) his debt. (About) your parents and your children, you No know who among those who are more Lots the benefits for you. This is God's decree. Indeed, Allah is All- Knowing Again All-wise.*

This verse explain distribution inheritance: children man have two children woman; one child Woman half, more of two two thirds. If the testator has children, the father and mother each have the same; without mother 's child one third, the rest is the father. If there are two brothers or more without mother 's child like, the rest is father.

### **Guarantee of Constitutional Protection for Heirs from Interfaith Marriages Through Constitutional Court Decision Number 71/PUU-XX/2022**

Constitutional Court Decision No. 71/PUU-XX/2022 affirms the state's obligation to protect all citizens, including children from interfaith marriages, in accordance with Article 28B paragraph (1) of the 1945 Constitution which states that *"Everyone has the right to form a family and continue their lineage through a legal marriage."* In this case, the validity of a marriage has direct legal consequences for the child's status as an heir. Furthermore, Article 28D paragraph (1) of the 1945 Constitution guarantees that *"Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law."*

In Decision Number 71/PUU-XX/2022, the Constitutional Court challenged the Elucidation to Article 35, letter a, of Law Number 23 of 2006 concerning Population Administration, which states that "marriages decreed by the court" include marriages between people of different religions. The petition was filed because it was deemed to create a legal vacuum and uncertainty regarding the validity of interfaith marriages and the rights of children as heirs. In practice, the existence of children from interfaith marriages often raises legal issues, especially regarding civil registration, inheritance, and recognition of lineage (Dayanty, 2023). In both civil and Islamic inheritance laws, legitimate children are entitled to full inheritance (Article 42 of Law No. 1/1974). If the marriage is not registered due to different religions, the child is considered illegitimate and only has a civil relationship with the mother and her family (Article 43 paragraph 1 of the Marriage Law & Article 100 of the Compilation of Islamic Law).

This is contrary to Article 28B paragraph (2) of the 1945 Constitution which guarantees the right of children to live, grow, develop, and receive protection from violence and discrimination. Law No. 35 of 2014 guarantees the right of children to know their origins, so that restrictions on inheritance rights due to differences in parental religion violate the constitution and human rights. Academics, including Riyanti, emphasize that the state is obliged to protect children's rights without discrimination. Refusal to register interfaith marriages has a systemic impact on children's inheritance rights, legal identity, and legal certainty (Riyanti & Indah Riyanti, 2023). Meanwhile, Failin *et al.* emphasized that the Indonesian national legal system needs to adopt the principle of non-discrimination as stated in the Convention on the Rights of the Child and the principle of equality in Article 28 I of the 1945 Constitution which states: (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances; (2) Every person is free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment; (3) Cultural identity and the rights of traditional communities are respected in line with developments in the times and civilization; (4) Protection, advancement, enforcement and fulfillment of human rights is the responsibility of the state, especially the government; (5) To uphold and protect human rights in accordance with the principles of a democratic state based on the rule of law, the implementation of human rights is guaranteed, regulated and set out in laws and regulations (Failin *et al.*, 2022).

In Constitutional Court Decision No. 46/PUU-VIII/2010, the Court affirmed that illegitimate children who are proven to be biologically related to their father retain civil rights, including inheritance rights. Although Constitutional Court Decision No. 71/PUU-XX/2022 did not grant the petition, this ruling is crucial in affirming the

state's obligation to protect children from interfaith marriages, guaranteeing family rights, child protection, and equality before the law.

## CONCLUSION

- a) Based on Constitutional Court Decision No. 71/PUU-XX/2022, it is stated that interfaith marriages that are not valid under religious law cannot be recognized by the state. Consequently, the wife No own legitimate position in the eyes of law as expert inheritance, and children born from marriage the considered child outside marriage that only own connection civil law with his mother in accordance with provision from Article 43 paragraph (1) of the Marriage Law. With so, good wife and child No own right inheritance in a way automatic from father's side (husband) except There is confession or determination court.
- b) Following Constitutional Court Decision No. 71/PUU-XX/2022, interfaith marriages remain legally unrecognized if they are not valid according to the respective religions of the parties. The state asserts that the validity of a marriage depends on the provisions of religious law, not merely administrative registration. Because the application rejected in a way formal (because No fulfil legal standing requirements), the Court No evaluate the substance of the norms being tested, so that No happen change to position law marriage different religions.
- c) Position child from marriage different religions from Civil Code perspective considered as child valid. This is based on Article 250 of the Civil Code which explains child legitimate is child born throughout marriage, obtaining husband as his father. The child who was born from marriage different religions are expert legitimate heir while child the truly born from marriages that have been registered at the Civil Registry Office. Different with KHI, marriage different religions are not legitimate Because No in accordance with religious rules and teachings. Children who have the same religion with father or his mother (Islamic religion), then child the will get right inheritance from father or mother of the same religion. Legal marriage will bring consequence valid law also included with child born. Marriage different religions are considered violate religious values and beliefs. Causes existence marriage different religions, namely someone who doesn't hold firm teachings his religion.
- d) Provision from Decision Constitutional Court Decision No. 71/PUU-XX/2022 fails to provide adequate constitutional protection for heirs from interfaith marriages. application on base formal cause No existence change against the norms in Article 2 paragraph (1) of the Marriage Law, so that the legal status of wives and children from marriages that are not valid according to religious law remains vulnerable. As a result, neither wives nor children receive automatic recognition as heirs.

## REFERENCES

- Aolia, A. M., El Hakam, G. A., Yusup, D. K., & Astarudin, T. (2025). Status Hukum Anak Hasil Pernikahan Beda Agama Menurut Hukum Perdata dan Hukum Islam. *Jurnal Penelitian Ilmiah Multidisipliner*, 2(01), 1967–1975.
- Awaliya Safithri, & Ash Shiddiqi, H. (2024). Pencatatan Perkawinan Beda Agama (Kajian terhadap Perlindungan Hak Sipil dan Keutuhan Keluarga Perspektif Maqasid Syariah). *JURNAL HUKUM DAS SOLLEN*, 10(2), 164–186. <https://doi.org/10.32520/das-sollen.v10i2.3802>
- Dayanty, W. (2023). *Analisis Yuridis Terhadap Legalitas Pernikahan Beda Agama di Indonesia*. Universitas Islam Negeri Ar-Raniry.
- Erlangga, I., Ibrahim, I., & Ranto, R. (2021). Negosiasi Identitas Budaya Etnis Pendatang dengan Etnis Lokal di Kecamatan Pulau Besar Kabupaten Bangka Selatan. *Journal of Government and Social Issues (JGSI)*, 1(1), 18–32. <https://doi.org/10.23960/jgsi.v1i1.1>

- Failin, F., Yuserlina, A., & Ibrahim, E. (2022). Protection Of Children's Rights And Women's Rights As Part Of Human Rights In Indonesia Through Ratification Of International Regulations. *JCH (Jurnal Cendekia Hukum)*, 7(2), 312. <https://doi.org/10.33760/jch.v7i2.557>
- Hariyanto, B. (2020). Tinjauan yuridis terhadap pembagian harta waris beda agama menurut kitab undang undang hukum perdata (KUH Perdata) dan kompilasi hukum Islam (KHI). *IUS: Jurnal Ilmiah Fakultas Hukum*, 8(2), 28–42.
- Larasati, M. J., Mahadian, A. B., & Pradana, Y. (2024). Negosiasi Identitas Pada Pasangan Suami Istri Beda Agama. *EProceedings of Management*, 11(6).
- Latif, A. B. D. (2024). *Harmonisasi Hukum Positif, Hukum Islam, Dan Hak Asasi Manusia Dalam Perkawinan Beda Agama Di Indonesia (Study Putusan Nomor 155/Pdt.P/2023/PN.Jkt.Pst)*. Universitas Islam Negeri Khas Jember.
- Mursalin, A. (2023). Legalitas perkawinan beda agama: Mengungkap disparitas putusan pengadilan di Indonesia. *Undang: Jurnal Hukum*, 6(1), 113–150.
- Mutiary, M., Hidayat, A., & Tjahyani, M. (2025). Keabsahan Hukum dan Prosedur Isbat Nikah Contentius. *Begawan Abioso*, 15(2), 61–73. <https://doi.org/10.37893/abioso.v15i2.1106>
- Pratama, D. Y., Rahmawati, S., Suhendika, D. A., Priyonggo, M. D., Rizky, A. A., & Mustikarini, I. D. (2023). Pluralisme Hukum Mengenai Hak Waris Anak dari Perkawinan Beda Agama di Indonesia. *Proceeding of Conference on Law and Social Studies*, 4(1).
- R. Subekti, & R. Tjitrosudibio. (2013). *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*. PT. Balai Pustaka (Persero).
- Rantung, C. M. (2018). Hilangnya Hak Seorang Ahli Waris Menurut Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, 6(9).
- Ridwan, S. (2025). Pernikahan tanpa Pencatatan: Kegagalan Negara dalam Melindungi Hak Sipil Perempuan dan Anak. *JURNAL ILMIAH GEMA PERENCANA*, 4(1), 77–96. <https://doi.org/10.61860/jigp.v4i1.196>
- Riyanti, I., & Indah Riyanti, S. H. (2023). Perlindungan Hukum Hak-Hak Warga Negara Indonesia Bagi Anak Dalam Perkawinan Campuran Seumur Hidup. *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik*.
- Sagala, E. (2018). Hak Mewaris Menurut Ketentuan Hukum Waris Perdata. *Jurnal Ilmiah Advokasi*, 6(2), 116–124.
- Sari, I. (2014). Pembagian hak waris kepada ahli waris ab intestato dan testamentair menurut hukum perdata barat (bw). *Jurnal Ilmiah Hukum Dirgantara*, 5(1).
- Satriawan, I., Evarini, G. A. K., & Indrawati, A. A. S. (2022). Pengaturan Hukum Perkawinan Beda Agama Ditinjau Dari Undang Undang Perkawinan. *Jurnal Kertha Negara*, 10(1), 1–10.
- Shaleh, M. (2019). Hukum Perkawinan Berbeda Agama Menurut Kompilasi Hukum Islam (KHI). *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*, 1(2), 182–195.
- Syafi'ie, M. (2011). Hak Non Muslim terhadap Harta Waris. *Jurnal Al-Mawaris*, Vol, XL, 2.
- Tarring, A. D. (2022). Perkawinan Beda Agama dalam Perspektif Hukum Positif di Indonesia. *Jurnal Litigasi Amsir*, 9(4), 269–277.
- Titirloloby, B., & Refo, I. S. S. (2022). Motif-Motif Dan Masalah-Masalah Perkawinan Beda Agama Di Kota Ambon Provinsi Maluku. *Fides et Ratio: Jurnal Teologi Kontekstual Seminari Tinggi St. Fransiskus Xaverius Ambon*, 7(2), 95–105.