



Implications of The Decision of The Constitutional Court No. 68/PUU-XII/2014 on The Position of Children From Interfaith Marriages

Ellyna Setiawati^{1*}, Syamhudian Noor², Karlinae D. Bangas³

¹Universitas Palangka Raya, Palangka Raya, Indonesia, ellynatie7823@gmail.com

²Universitas Palangka Raya, Palangka Raya, Indonesia, syamhudian@law.upr.ac.id

³Universitas Palangka Raya, Palangka Raya, Indonesia, karlinaedb51@gmail.com

*Corresponding Author: ellynatie7823@gmail.com

Abstract: Constitutional Court Decision No. 68/PUU-XII/2014 is an important milestone in the legal debate regarding the validity of interfaith marriages in Indonesia. Although the decision does not change the normative provisions in Article 2 paragraph (1) of Law No. 1/1974 on Marriage, the implications for the position of children from interfaith marriages are very real. Children born from such relationships often face administrative obstacles, uncertainty of legal status, and potential discrimination in obtaining their basic rights as citizens. This study aims to analyze the juridical implications of the Constitutional Court's decision on the legal protection of children from interfaith marriages, and to encourage the formulation of affirmative policies that guarantee the protection of children's rights as a whole. The research method used is normative juridical with the approach of legislation and analysis of court decisions. The results of the study show that derivative regulations and concrete steps are needed from the state to ensure recognition of the legal status of children, in line with the constitutional principles of child protection and respect for human rights.

Keyword: Constitutional Court Decision, Religious Marriage, Child Status, Legal Protection of Children, Human Rights

INTRODUCTION

Marriage between two individuals of different religions often raises debates and challenges, both in social, cultural and legal aspects. In Indonesia, which has a majority Muslim population, the issue of interfaith marriage is not only a personal issue, but also touches on broader social and legal dimensions. On the one hand, Indonesia as a Muslim-majority country recognizes religious diversity, but on the other hand, the regulation of interfaith marriages is still controversial within the framework of state law, especially in relation to the rights of children born from such marriages (Pratama & Andi, 2020). In the context of Indonesian law, both civil law and religious law, the regulation of interfaith marriage and its impact on children's inheritance rights has a very different position. In Indonesian civil law, the rules regarding marriage and inheritance are regulated in the Civil Code (KUHPer). Article 2

paragraph (1) of the Civil Code states that a marriage is only valid if it is conducted according to the laws of each religion and belief. Therefore, a marriage between two individuals who have different religions cannot be legally recognized under Indonesian civil law, unless both parties first comply with the provisions of their respective religions (Fitriani & Nur). This has implications for the legal status of children born from such marriages, where children born from interfaith marriages are not automatically recognized as legitimate children in the context of inheritance law. Article 852 of the Civil Code states that a legitimate child is a child born in or as a result of a valid marriage according to applicable law. Thus, a child born from an interfaith marriage cannot inherit the estate of the father who is of a different religion, because the marriage is considered invalid according to state law.

On the other hand, in Islamic law, the rules regarding marriage and inheritance rights are very clear. In Islamic fiqh, a marriage between a Muslim and a non-Muslim is not recognized as valid, especially if the non-Muslim is not a People of the Book (Jew or Christian). Article 2 of Law No. 1/1974 on Marriage states that a valid marriage in Indonesia is one that is conducted according to the laws of each religion and belief. However, in practice, Islamic law in Indonesia does not recognize a marriage between a Muslim and a non-Muslim as valid. As a result, children born from such marriages do not receive inheritance rights from their non-Muslim fathers (Hidayat & Aisyah, 2021). In this case, Article 171 of the Compilation of Islamic Law (KHI) states that children born from a valid marriage according to Islamic law are entitled to inheritance from both parents. However, children born from non-Muslim marriages are not recognized as legitimate children in Islamic law, so they cannot inherit the property of their non-Muslim fathers. In Islamic inheritance law, the inheritance system applied is also strongly influenced by religious principles that regulate inheritance rights based on blood relations (*nasab*) and religion. In Islamic fiqh, children born to parents of different religions are not recognized as heirs of their father, because religion is the main requirement in the recognition of inheritance rights. Only children born from a marriage between two individuals of the same religion can legitimately inherit from their parents. Therefore, in this case, Article 213 KHI explains that only children who are religiously legitimate are entitled to inherit from their parents, and this ignores the existence of children from marriages of different religions (Suryani & Eka, 2020).

With differing opinions in Indonesian civil law and Islamic law regarding the inheritance rights of children from interfaith marriages, there is a major challenge in providing fair legal protection for these children. This requires a deeper understanding of the legal position of children from interfaith marriages, both in the context of state and religious law. For this reason, efforts to harmonize these legal provisions are very important, so that the rights of children can be protected to the fullest, without discrimination based on the religion of their parents. Although state law recognizes marriage between two individuals of different religions through certain regulations, in practice, legal uncertainty regarding the inheritance rights of children from interfaith marriages is still an issue that requires more attention from the government and legal institutions in Indonesia.

It is in this context that Constitutional Court Decision No. 68/PUU-XII/2014 is relevant to be studied. This decision was a response to a petition for judicial review of the provisions of Article 2 paragraph (1) of the Marriage Law, which was filed by the petitioner who felt that his constitutional rights were impaired because he could not legally register a marriage of a different religion in Indonesia. In its decision, the Court rejected the petition, but in its reasoning the Court emphasized that the state must guarantee the protection of the constitutional rights of every citizen, including in terms of freedom of religion and the right to form a family. This decision does not necessarily legalize interfaith marriages, but it does open up a new discourse on how the state should respond to this social phenomenon, especially in guaranteeing the rights of children born from such marriages. In the absence of a firm

regulation, what occurs is a legal vacuum that has the potential to result in violations of children's rights, both from the aspects of civil law and human rights.

Therefore, a study of the implications of Constitutional Court Decision No. 68/PUU-XII/2014 on the position of children from interfaith marriages is important. Not only from the normative and dogmatic sides of the law, but also from the philosophical and sociological sides, given the importance of the existence of children in the structure of the family and society. This study is expected to contribute to the formulation of legal policy recommendations that are more just, inclusive, and in accordance with the development of Indonesia's pluralistic society.

Based on the background of the problem above, the problem formulations in this study are: How is the Impact of Religious Marriage on the Legal Status of Children in Civil Law and How is the Implication of the Constitutional Court Decision No. 68/PUU-XII/2014 on the Position of Children from Religious Marriage.

METHOD

This research uses the normative juridical method, which is an approach that starts from the prevailing positive legal norms, both in the form of laws and regulations, court decisions, and legal doctrines. This approach was chosen because the main focus of the research is to examine the implications of the Constitutional Court Decision No. 68/PUU-XII/2014 on the position of children from interfaith marriages, by examining their relationship to existing legal norms and their application in practice. The data sources used in this research consist of primary legal materials such as laws and regulations and decisions of the Constitutional Court, as well as secondary legal materials in the form of legal literature, scientific journals, and opinions of legal experts. Data collection techniques are carried out through library research by tracing relevant literature and legal sources. Data analysis is done qualitatively by interpreting existing legal norms, then drawing prescriptive conclusions to provide legal solutions or recommendations related to the protection of children's rights in the context of interfaith marriage.

RESULTS AND DISCUSSION

The Impact of Religious Marriage on the Legal Status of Children in Civil Law

In the context of Indonesian civil law, the non-recognition of the legal status of children born from interfaith marriages in terms of inheritance raises many questions and problems, both in theory and practice. The provision in Article 2 of the Civil Code (KUHPerdata) states that a marriage is only valid if it is conducted according to the laws of religion and belief of each partner, which means that a marriage between two individuals with different religions is not considered valid under Indonesian marriage law. As a result, children born from interfaith marriages are not recognized as legitimate children under Indonesian inheritance law. This is reinforced by Article 852 of the Civil Code which explains that a legitimate child is a child born from a legal marriage, and only legitimate children have the right to inherit their parents' property. In this case, children born from a non-religious marriage, although legally recognized by the state, are still not entitled to their parents' inheritance, unless there is an inheritance agreement or will that regulates this, as regulated in Article 1315 of the Civil Code regarding the validity of an agreement between two capable parties. Therefore, the issue of inheritance rights for children born from interfaith marriages becomes a problem that needs to be resolved through an agreement or will (Arief & Muhammad 2018).

However, although there is a possibility to regulate inheritance through agreements or wills, this still creates legal uncertainty (Suryana & I Wayan, 2017). A case that occurred in 2015, the Case of Inheritance of Property of a Different Religious Marriage involving couple X and Y, serves as an example that illustrates this problem. Couple X and Y were married despite having different religions, and they had a child, Z. When couple X and Y passed away,

child Z felt entitled to inherit his parents' property. However, the extended family of both parents X and Y rejected Z's claim as they held the opinion that Z could not inherit his parents' estate based on the provisions in Article 852 of the Civil Code, which requires a valid marriage between two individuals of the same religion. Z, as the child of an interfaith marriage, took the case to court. In its analysis, the court considered two main issues: first, whether the marriage between X and Y was valid under their respective religious laws; second, whether Z was entitled to his parents' inheritance despite not being recognized as a legitimate child under the Civil Code. The court ruled that the marriage between X and Y was not valid in the context of religious law, which meant that Z was not entitled to inherit their parents' property under the applicable legal provisions.

However, the court also recognized that Z was entitled to inheritance rights based on a will made by her parents before they died. The will was validly made before a notary public and granted inheritance rights to Z even though she was born in an interfaith marriage. This case shows that although children of interfaith marriages do not have inheritance rights based on the provisions in Article 852 of the Civil Code, they can still obtain inheritance rights if there is a valid agreement or will. This case reveals a legal loophole that allows inheritance to be regulated despite the restrictions in marriage law. However, this also creates legal uncertainty that can lead to disputes, especially if there is no will or inheritance agreement made by the parents. In addition, this case also shows that Indonesian law, although providing a way for children of interfaith marriages to obtain inheritance rights through wills, still provides challenges for them in terms of clearer and more equal protection of inheritance rights (Amalia & Siti, 2021).

In this case, Indonesian law follows the provisions of Article 2 of the Civil Code, which requires a marriage between two individuals of the same religion to be considered valid under the law. This creates a restriction for children born out of a non-religious marriage, as the legal status of the child depends on the validity of the marriage in the eyes of religious law. In this case, the marriage between X and Y is not valid in the context of religious law, which impacts Z's inheritance rights. Article 32 of Law No. 39/1999 on Human Rights guarantees the protection of children's rights, including the right to inheritance. However, Indonesian law stipulates that children born from interfaith marriages are not automatically recognized as legitimate children in the context of inheritance, which creates inequality in the protection of children's inheritance rights (Nurhidayati & Siti, 2020). Although Z can obtain inheritance rights through a will, this shows that there is legal uncertainty that can harm children from interfaith marriages who do not make a will. This case shows that although children born in an interfaith marriage cannot inherit their parents' property under the Civil Code, there is a solution through a valid will. However, this creates inequality in legal protection, as not all children of interfaith marriages have the opportunity to receive inheritance if their parents do not make a will. This case reveals the need for reform in Indonesian family law, particularly in relation to the status of children of interfaith marriages in terms of inheritance rights. A more inclusive and equitable approach is needed to ensure that children's inheritance rights, regardless of parental religion, are protected without discrimination. This legal reform is important to ensure equality in the protection of children's rights and provide legal certainty for all parties involved in inheritance disputes.

Implications of the Constitutional Court Decision No. 68/PUU-XII/2014 on the Position of Children from Religious Marriage

Constitutional Court Decision No. 68/PUU-XII/2014 was the result of a petition to review the constitutionality of Article 2(1) of Law No. 1/1974 on Marriage. This petition was filed by the petitioners who felt that their constitutional rights were harmed because they could not legally register their marriage in Indonesia due to religious differences between the

prospective husband and wife. The article states that a marriage is valid if it is conducted according to the laws of each religion and belief (Sihombing & Julita, 2021). In its decision, the Court rejected the petition and emphasized that marriages that are not conducted based on the religious law of each party cannot be considered valid by the state. This decision affirms the principle that Indonesia as a country that upholds the values of Pancasila and pluralism still provides space for religious law as the basis for the validity of marriage (Rosyada & Dede, 2019).

However, behind the rejection of the petition, the Court still conveyed progressive legal considerations, especially in relation to the protection of human rights and the constitutional rights of citizens. The Court stated that the state still has the obligation to guarantee, protect, and fulfill the constitutional rights of all citizens, without discrimination, including children born from interfaith marriages that cannot be officially registered. This consideration reflects the Court's approach that is not merely legalistic, but also considers aspects of substantive justice and protection of vulnerable groups, such as children (Nurbani & A. Mahrus, 2016).

The implications of this consideration are quite important in the context of family law in Indonesia. Although interfaith marriages are normatively not recognized, the Court opens up space for the state to still ensure that children from such relationships still receive legal status, birth certificates, and protection of their rights as guaranteed in the 1945 Constitution of the Republic of Indonesia and ratified international conventions, such as the Convention on the Rights of the Child. Thus, although the petition was rejected, this decision affirms that the protection of children's rights remains a constitutional priority, and that the state must not allow children to become victims of a legal vacuum due to the inconsistency between religious and state law. As a result of the legal non-recognition of interfaith marriages in Indonesia, various problems arise that have a direct impact on the children born from these relationships. These problems are not only administrative in nature, but also concern the civil, social and legal protection of children as a whole. The following is a description of the various implications that arise for children as a result of the invalidity of interfaith marriages under national law.

1) Civil Status of Children

The main implication of Constitutional Court Decision No. 68/PUU-XII/2014 on children from interfaith marriages lies in the uncertainty of their civil status. Because marriages between parents of different religions cannot be officially registered, the legal status of children born from such relationships is often qualified as unmarried under Indonesian positive law. This status has an impact on various aspects of the child's civil rights, such as legal birth registration, the use of the father's name in population documents, the right to inherit from the father's side, and rights in guardianship and maintenance. Although Article 43 paragraph (1) of Law Number 1 Year 1974 (after Constitutional Court Decision No. 46/PUU-VIII/2010) has recognized the civil relationship between an unmarried child and his/her father if it can be proven through technology and other means of evidence, in practice, this proving process faces administrative and social challenges. Families often face bureaucratic obstacles and hesitation from civil registration officials in following up on claims of civil relationships, which ultimately makes the child's legal position unstable and vulnerable.

2) Discrimination against Children

Although Constitutional Court Decision No. 68/PUU-XII/2014 does not explicitly regulate children, its legal implications open up a space for discrimination against children from interfaith marriages. When the state refuses to recognize the parents' marriage because of different religions, the children of such relationships are indirectly affected, especially in terms of recognition of their legal status and civil rights. This situation creates inequality between children born from legal marriages according to the state and those born from unrecognized marriages. In fact, the principle of non-discrimination and the best interests

of the child have been expressly regulated in the Convention on the Rights of the Child (CRC), which has been ratified by Indonesia through Presidential Decree Number 36 of 1990. Based on the convention, every child has the same right to be legally recognized, regardless of the status of their parents. Therefore, although juridically the Constitutional Court rejected the petition for constitutional review, normatively this decision has not answered the problem of structural discrimination against children from interfaith marriages (Supriadi & Dedi, 2017).

3) Administrative and Legal Barriers

Children of interfaith marriages often face complex administrative and legal obstacles, especially in terms of birth registration. The Population and Civil Registration Office (Disdukcapil) generally requires an official marriage certificate from the parents as the basis for issuing the child's birth certificate. In cases where the marriage is not recognized by the state because it does not meet the legal requirements of the respective religion, the birth registration process is hindered, leaving the child without a valid identity document. As a result, the child has difficulty accessing basic services such as education, social security and health, all of which require official identity data. The absence of documents also complicates other legal processes such as inheritance or appointment of guardians. This kind of legal uncertainty puts children in a socially and legally unfavorable situation, and contradicts the principle of maximum protection for children as mandated in the Child Protection Law.

4) Social Recognition and Stigmatization

In addition to facing legal issues, children from interfaith marriages also face serious social issues, especially the stigma of being an unmarried child. In Indonesian society, where religious and cultural values are still strongly held, the status of an unmarried child is often viewed negatively, even though the child had no part in the conditions that led to this legal status. This stigmatization can have a long-term impact, including in the school environment, social relationships, and in extended family relationships. The child may experience rejection, bullying, or ostracization which inhibits their psychological and social development. Article 28D paragraph (1) of the 1945 Constitution guarantees that everyone has the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law. The state should not only ensure formal legal protection, but also create an inclusive social system so that children do not experience discrimination based on conditions beyond their control.

5) The Need for Legal Policy Reformulation

Constitutional Court Decision No. 68/PUU-XII/2014 underscores the urgent need for reformulation of legal policies related to interfaith marriage and child protection. Indonesian marriage law, which currently relies heavily on the legitimacy of religious law, has not adequately accommodated the social diversity and dynamics of modern life, where the reality of interfaith marriage is inevitable. In the context of child protection, the state should develop legal instruments that ensure the legal status of children does not depend on the legal status of the parents' marriage. The state must come up with an inclusive legal approach, which provides certainty and justice to all children without exception. This reform is important to close the legal loopholes that have placed children from interfaith marriages in a vulnerable position, and to ensure that the principle of child protection is prioritized in the formation and implementation of national legal policies.

Constitutional Court Decision No. 68/PUU-XII/2014 has important implications for the recognition and protection of the rights of children from interfaith marriages in Indonesia. In the decision, the Court stated that Article 2 paragraph (1) of Law No. 1/1974 on Marriage, which requires a marriage to be valid if it is conducted according to the laws of each religion and belief, remains constitutional, but the Court also emphasized that the state has an obligation to protect the rights of children born from interfaith marriages, including in terms of birth

registration, citizenship, inheritance rights, and other legal identities. Thus, although interfaith marriages often cannot be officially registered due to religious provisions, children born from such relationships should not be discriminated against and should still be recognized as legal subjects with constitutional rights. This decision emphasizes that the best interest of the child must be the primary consideration of the state, including in providing legal and administrative protection. Therefore, the real implication of this decision is the encouragement of state institutions, especially the Population and Civil Registry Office, to continue to provide access to birth registration and legal identity to children from interfaith marriages, even though the marital status of the parents is not officially registered with the state.

CONCLUSION

Although the Constitutional Court Decision No. 68/PUU-XII/2014 does not directly change the normative provisions regarding the validity of interfaith marriages as stipulated in Article 2 paragraph (1) of Law No. 1/1974, its implications for the legal position of children born from such marriages are significant. Children of interfaith marriages are often caught in legal uncertainty due to the lack of a legal record of their parents' marriage, which impacts on their legal status, citizenship rights, birth registration, and access to other legal and social protections. The absence of administrative recognition indirectly creates a form of discrimination that contradicts constitutional and human rights principles, especially those concerning the principle of the best interest of the child. In this context, the state has a constitutional and moral responsibility to ensure that children's rights remain maximally protected, regardless of the legal status of their parents' marriage. Therefore, progressive steps are needed in the form of derivative regulations, implementing regulations, or affirmative policies that explicitly guarantee the recognition and legal protection of children from interfaith marriages. This can be done through population administration reform, providing more inclusive access to birth registration, and improving the national legal framework that is more responsive to the social reality and plurality of Indonesian society. Thus, the state not only carries out the mandate of the Constitutional Court's decision normatively, but also realizes substantive justice for children born from interfaith marriage situations.

REFERENCE

- Amalia, Siti. "Implikasi Hukum Perkawinan Beda Agama Terhadap Hak Waris Anak dalam Sistem Hukum Indonesia." *Jurnal Hukum dan Pembangunan*, vol. 18, no. 1, 2021,
- Arief, Muhammad. "Konflik Antara Hukum Agama dan Hukum Negara dalam Pembagian Warisan bagi Anak dari Perkawinan Beda Agama." *Jurnal Hukum dan Pembangunan*, vol. 32, no. 5, 2018,
- Fitriani, Nur. "Perkawinan Beda Agama dan Implikasinya terhadap Status Hukum Anak di Indonesia." *Jurnal Hukum Keluarga*, vol. 10, no. 2, 2019
- Hidayat, Aisyah. "Penerapan Hukum Waris dalam Perkawinan Beda Agama: Studi Kasus di Indonesia." *Jurnal Hukum dan Keadilan*, vol. 8, no. 3, 2021
- Nurbani, A. Mahrus. "Anak Luar Kawin dan Status Hukumnya Pasca Putusan MK Nomor 46/PUU-VIII/2010." *Jurnal Legislasi Indonesia*, Vol. 13, No. 4 (2016): 279–291.
- Nurhidayati, Siti. "Perlindungan Hak Anak dalam Perkawinan Beda Agama Menurut Perspektif Hukum Nasional." *Jurnal Konstitusi*, Vol. 17, No. 3 (2020): 543–558.
- Pratama, Andi. "Analisis Hukum Terhadap Hak Waris Anak dalam Perkawinan Beda Agama di Indonesia." *Jurnal Hukum Islam*, vol. 22, no. 1, 2020,
- Rosyada, Dede. *Paradigma Pendidikan Demokratis*. Jakarta: Kencana, 2019. Hlm. 32
- Sihombing, Julita. "Implikasi Hukum Terhadap Anak dari Perkawinan Beda Agama yang Tidak Dicatatkan Secara Negara." *Jurnal Yuridis*, Vol. 8, No. 1 (2021): 21–35

- Supriadi, Dedi. "Problematisasi Perkawinan Beda Agama dalam Perspektif Hukum Nasional dan Hak Asasi Manusia." *Jurnal Konstitusi*, Vol. 14, No. 3 (2017): 482–498.
- Suryana, I Wayan. "Putusan MK No. 68/PUU-XII/2014 dan Realitas Hukum Perkawinan Beda Agama di Indonesia." *Jurnal Hukum dan Peradilan*, Vol. 6, No. 2 (2017): 183–198.
- Suryani, Eka. "Kedudukan Anak dalam Perkawinan Beda Agama dalam Hukum Perdata Indonesia." *Jurnal Ilmu Hukum*, vol. 14, no. 4, 2020