CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 24/PUU-XX/2022

Concerning

Legitimacy and Registration of Interfaith Marriages

Petitioner	:	**E. Ramos Petege**
Type of Case	:	Judicial review of Law 1 of 1974 concerning Marriage (Law 1/1974) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Article 2 paragraph (1) and paragraph (2) and Article 8 letter f of Law 1/1974 are contrary to Article 29 paragraph (1) and paragraph (2), Article 28E paragraph (1) and paragraph (2), Article 27 paragraph (1), Article 28I paragraph (1) and paragraph (2), Article 28B paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	To dismiss the Petitioner's petition entirely
Date of Decision	:	Tuesday, January 31, 2023
Overview of Decision	:	

The Petitioner is an individual Indonesian citizen who has been harmed due to the enactment of the provision of Article 2 paragraph (1) and paragraph (2) and Article 8 letter f of Law 1/1974, which has caused the Petitioner being unable to enter into a marriage with a partner of a different religion. The Petitioner is of the opinion that the *a quo* Article has reduced and mixed the meaning of marriage and freedom of religion as well as a form of the state's arbitrariness in interfering in the internal affairs of citizens through the authority to determine whether or not a marriage is administratively valid only from the similarity of the religion of the prospective husband and wife pair.

Regarding the authority of the Court, because the Petitioner petitions for the review of Law *in casu* Article 2 paragraph (1) and paragraph (2) and Article 8 letter f of Law 1/1974 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of individual citizen who has constitutional rights as guaranteed in Article 29 paragraph (1) and paragraph (2), Article 28E paragraph (1) and paragraph (2), Article 27 paragraph (1), Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution, Article 28B paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, the Petitioner has been able to explain his constitutional rights which

are deemed to have been harmed due to the enactment of the norms being petitioned for review, and the loss of constitutional rights is specific, actual or at least potential, which according to reasonable reasoning may occur. Such presumption of loss arises because of the causal relationship (*causal verband*) between the norms being petitioned for review and the loss presumed to be suffered by the Petitioner in terms of the Petitioner's constitutional rights guaranteed by the 1945 Constitution, so that if the petition is granted, such loss will not occur. Therefore, regardless of whether or not the norms of Law 1/1974 being petitioned for review is unconstitutional, the Court is of the opinion that the Petitioner has the legal standing to submit the *a quo* petition.

Concerning the subject matter of the petition for the review of Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of Law 1/1974, before assessing their constitutionality, the Court will first consider whether the *a quo* norms can be re-submitted for review under Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation (*Peraturan Mahkamah Konstitusi* or PMK) 2/2021. Whereas even though the article being petitioned for review is the same as the case Number 46/PUU-VIII/2010 and Number 68/PUU-XII/2014, namely Article 2 paragraph (1) and paragraph (2), the *a quo* petition also petitions for review of Article 8 letter f of Law 1/1974. In addition, there is a different formulation of conditionally unconstitutional *petitum*, so that regardless of whether or not the *a quo* petition substance is proven or not, formally, the *a quo* petition may be re-submitted.

Furthermore, before assessing the constitutionality of the validity and registration of marriages, it is essential for the Court first to quote the considerations of the Decision of the Constitutional Court Number 46/PUU-VIII/2010 and the Decision of the Constitutional Court Number 68/PUU-XII/2014, which have been clear and have answered that the validity of a marriage is a religious domain through religious institutions or organizations that are authorized or have the authority to provide religious interpretations. The state's role, in this case, is to follow up on the results of the interpretation given by the religious institution or organization. The implementation of the registration of marriages by state institutions is in the context of providing certainty and order in population administration in accordance with the spirit of Article 28D paragraph (1) of the 1945 Constitution. Thus, since in the case of marriage, there are closely related interests and responsibilities of religion and the state, then through the two decisions above, the Court has provided a constitutional basis for the relationship between religion and the state in marriage law in which religion determines the validity of marriage and at the same time the state determines the administrative validity of marriage within the legal corridor.

Pursuant to the legal considerations of the two decisions above, the Court will then consider the constitutionality of Article 2 paragraph (1) *juncto* Article 8 letter f and Article 2 paragraph (2) of Law 1/1974, *in casu* prohibition of marriage with partners of different religions including its registration, as follows:

1. There are differences in the construction of protection guarantees between the Universal Declaration of Human Rights (UDHR) and the 1945 Constitution. Article 16 paragraph (1) of UDHR guarantees the protection of the right to marry. Meanwhile, Article 28B paragraph (1) of the 1945 Constitution guarantees protection for the right to form a family and to procreate based upon legal marriage as requirements for fulfilling these two rights so that the requirements become mandatory. By using the rule of law that “something that is a requirement for an obligation is then obligatory (*ma laa yatiimmu alwajibu illa bihi fahuwa wajib*)”, then a legal marriage is also a constitutional right that must be protected.

2. Whereas marriage is part of a form of worship as a religious expression, it is categorised as a *forum eksternum* in which the state can intervene. Marriage is one of the affair areas regulated in the Indonesian legal order as stated in Law 1/1974. The existence of such regulation is also in line with Article 28J of the 1945 Constitution. However, the state's interference does not include becoming a religious interpreter for the validity of marriage. The state follows up on the results of the interpretation of religious institutions or organizations to ensure that marriages must be in accordance with their respective religions and beliefs, which are then declared by the state in statutory regulations. In the context of the *a quo* case as well as the case that has been previously decided through the Decision of the Constitutional Court Number 68/PUU-XII/2014, which is also the reference for the *a quo* decision, religious organizations who provided explanation, it is apparent that there was no coercion by the state on the holding of marriages for any religion. In this case, the state's role is to follow up on the interpretation results agreed upon by religious institutions or organizations. Thus the existence of Article 2 paragraph (1) *juncto* Article 8 letter f of Law 1/1974 is in accordance with the substance of Article 28B paragraph (1) and Article 29 of the 1945 Constitution, namely related to the state's obligation to guarantee the implementation of religious teachings.

3. Whereas the registration of marriages as referred to in Article 2 paragraph (2) of Law 1/1974 must be a registration that brings validity in paragraph (1). Thus, Law 1/1974 requires that a registered marriage is a valid marriage. The obligation to register marriages by the state is an administrative obligation. Meanwhile, regarding the legality of marriage, with the norms of *a quo* Article 2 paragraph (1), the state instead leaves it up to religion and belief because the conditions for a valid marriage are determined by the laws of each religion and belief. Meanwhile, Article 34 of Law Number 23 of 2006 concerning Population Administration (Law 23/2006) as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration confirms that every citizen who has entered into a marriage which is legal according to statutory regulations has the right to register their marriage at the civil registry office for non-Muslim couples and at the Office of Religious Affairs (*Kantor Urusan Agama* or KUA) for Muslim couples. Guarantees for registering marriages for every citizen can also be carried out for marriages determined by the court. Although the elucidation of Article 35 letter a of Law 23/2006 describes that what is meant by marriage determined by a court is a marriage between people of different religions, the Court is of the opinion that it does not necessarily mean that the state recognizes interfaith marriages because the state, in this case, follows the interpretation that has been carried out by religious institutions or organizations that have the authority to issue interpretations. In the event of a difference in interpretation, the individual's religious institution or organization has the authority to resolve it. As a population event, the interests of the state, *in casu* the government, is to correctly record any changes in a person's residence status so that they get protection, recognition, personal status and legal status for each of these population events [*vide* the Preamble letter b of Law 23/2006], including in this case the registration of marriages carried out through a determination by the court. Without intending to assess the constitutionality of the norms of articles in Law 23/2006, the Court is of the opinion that such provision must be understood as a regulation in the field of population administration carried out by the state because the matter of the validity of a marriage still has to refer to the norms of Article 2 paragraph (1) of Law 1/1974, namely a marriage is valid if it is carried out according to the laws of each religion and belief. The regulation on the

implementation of marriage registration above shows no constitutional issue in Article 2 paragraph (2) of Law 1/1974 that every marriage is recorded according to statutory regulations. On the contrary, the existence of regulations on marriage registration for every citizen who enters into a legal marriage indicates that the state has played a role and function in providing guarantees for the protection, advancement, enforcement and fulfilment of human rights, which are the responsibility of the state and must be carried out in accordance with the principle of rule of law as set forth in statutory regulations as guaranteed in Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution [*vide* the Legal Considerations in Paragraph [3.12] of the Decision of the Constitutional Court Number 46/PUU-VIII/2010].

4. Whereas after the Court read and listened carefully to the statements of the parties, experts and witnesses and examined the facts in the trial, the Court did not find any changes in circumstances and conditions or new developments related to the issue of the constitutionality of the validity and registration of marriages, so there is no urgency for the Court to shift from the Court's stance on the previous decisions. Through a series of legal considerations above, the Court remains in its stance on the constitutionality of valid marriages, which are those carried out according to their religion and belief and that every marriage must be registered in accordance with statutory regulations.

Pursuant to the entire description of the considerations mentioned above, it has been proven that Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of Law 1/1974, are not contrary to the principle of the guarantee of the right to embrace religion and worship according to one's religion and belief, the equality of position in the law and government, the right to live and be free from discriminatory treatment, the right to form a family and to procreate, the right to recognition, guarantee, protection, and legal certainty that is just and fair as well as equal treatment before the law, as guaranteed by Article 29 paragraph (1) and paragraph (2), Article 28E paragraph (1) and paragraph (2), Article 27 paragraph (1), Article 28I paragraph (1) and paragraph (2), Article 28B paragraph (1), as well as Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioner's petition is legally unjustifiable entirely.

Accordingly, the Court subsequently passes down a decision in which the verdict is to dismiss the Petitioner's petition entirely.

Concurring Opinions

Whereas against the *a quo* Constitutional Court decision, there are concurring opinions from Constitutional Justice Suhartoyo and Constitutional Justice Daniel Yusmic P. Foekh.

The concurring opinion of Constitutional Justice Suhartoyo

Regarding this Decision of the Constitutional Court, Constitutional Justice Suhartoyo has an additional concurring opinion as follows:

The issue of interfaith marriages arises from the provision in Article 2 paragraph (1) of Law 1/1974, which is also related to the provision of the norms of Article 8 letter f of Law 1/1974, which can be said to be the central article of all the norms regulated in the

Marriage Law, where the provisions of these norms become its soul and spirit as well as are closely related to (underlie) the determination of norms of other articles in the *a quo* Law. Therefore, if the Court uses its authority to interpret the norms being petitioned for review in the *a quo* case, there is a concern that the interpretation of these norms may affect the applicability of other norms in the *a quo* Law. In addition, the subject matter is substantially related to something of a fundamental nature and related to the issue of religious law and belief. Therefore, I think it is more appropriate for the Court to return it to the legislators with the authority to amend the Marriage Law if any changes are to be made. So that the problem of interfaith marriage can be resolved from the root cause, not only resolved in the field of administrative registration but also obtained a wise middle way while still prioritizing the fulfilment of citizens' rights to have the freedom to embrace religion and beliefs as well as to worship according to their respective religions and beliefs.

Whereas in accordance with the legal facts mentioned above, I agree with the majority of the panel of judges in dismissing the *a quo* petition. However, the Court should have added my concurring opinions as a part of the legal considerations of the *a quo* petition decision.

Constitutional Justice Daniel Yusmic P. Foekh

Regarding this Court Decision, Constitutional Justice Daniel Yusmic P. Foekh has a concurring opinion as follows:

Whereas thus, I share the same opinion as the majority of judges in dismissing the Petitioner's petition, but because the issue of interfaith marriage is a sensitive issue involving various parties and interests, the House of Representatives and the President/Government should re-arrange the regulations of the *a quo* articles to be more humane, accommodate various interests, and provide more protection to all citizens, so that the norms of Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of the Marriage Law, should become an open legal policy. Moreover, I think that was the intent of the founding fathers of the nation, as stated in Paragraph IV of the Preamble of the 1945 Constitution, namely "*…a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia….*"