THE AMBIGUITY OF INDONESIAN CONSTITUTIONAL COURT DECISIONS CONCERNING ISLAMIC FAMILY LAW CASES

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Abstract: This article examines the decision of the Constitutional Court on polygamy and interfaith marriage in Indonesia and its relationship to the human rights principles adopted in the 1945 Constitution. After the collapse of the New Order, the state was faced with the possibility of various interpretations of Islamic law. The reform opens opportunities for the emergence of new interpretations of Islamic law legislated in Indonesia, especially after adopting human rights principles in the state constitution. This interpretation is indicated in several judicial review cases to the Constitutional Court regarding the material of Law No. 1 No. 1974. This article argues with the Islamic legal philosophy approach that the interpretation of fiqh and the interpretation of human rights principles are always debated and negotiated in Indonesia. In the case of polygamy and interfaith marriage, human rights are acceptable as long as they do not conflict with the established fiqh interpretation for the sake of state stability.

Keywords: Islamic Law, Human Right, Constitutional Court, Judicial Review, Maqasid Sharia

INTRODUCTION

The legislation of Islamic law in Indonesia is stipulated in Law No. 1 of 1974, Government Regulation (Peraturan Pemerintah) No. 9 of 1975, and the compilation of Islamic law (KHI) (Jahar, 2019). The legislation unites the diversity of Islamic law in Indonesia. However, after reforms, the Constitutional Court in 2003 provided an opportunity to review existing Islamic law in Indonesia. Several cases of the Islamic law that have been reviewed at the Constitutional Court are polygamy, divorce, the status of children out of wedlock, and interfaith marriages. These cases occur because the Constitutional Court is an institution that can guarantee the constitutional rights of citizens. Judicial Review is the hope for citizens to review the material of the law that is not following the Indonesian Constitution. Material of Law No. 1 of 1974 until now has often clashed with human rights principles ratified in Indonesia. It should be admitted that Law No. 1 of 1974 was legislated during the New Order era, which did not consider human rights principles. Therefore, the relationship between Islamic law and human rights has become problematic after reform.

The study of the relationship between Islamic law and human rights has developed with various perspectives and approaches. Existing studies focus on several concerns, including the relationship between democracy, human rights, and Islamic family law in Indonesia after the fall of the Soeharto regime (Cammack, Bedner, & Huis, 2015). After the reformation, human rights have always been challenged. In the context of the Constitutional Court's decision, it also discussed the ambiguous legal logic used by the Constitutional Court judges in making decisions in judicial review cases. (Butt, 2018). Armia has also studied Islamic principles contained in the Indonesian constitution. (Armia, 2018). Recent studies have examined the relationship between religion and the state in the context of accommodation politics. The study focused on negotiations between religion, the state, and human rights in Indonesia (Rumadi, 2020). The analysis in this article will focus on the legal arguments of the Constitutional Court in
cases of Islamic law. This article explores the legal considerations of the Constitutional Court in cases of polygamy and interfaith marriage.

This paper assumes that interpretations of Islamic law can be constructed from four perspectives: divine Sharia, classical Sharia, historically transferred Sharia, and contemporary Sharia (Otto, 2010). The understanding of classical Sharia dominates law No. 1 of 1974 and KHI because they are adopted from the four schools of thought, Hanafi, Maliki, Syafii, and Hanbali. Meanwhile, the Indonesian constitution has just ratified the principle of human rights. Therefore, there is a relationship that is complex and even difficult to reconcile between Islamic law and human rights. The view of the Constitutional Court, in this case, is interesting to note because, on the one hand, the Constitutional Court is a secular institution that does not refer to any of the religions in Indonesia. On the other hand, the Constitutional Court must interpret Islamic law that does not recognize human rights principles.

This article is not intended to contradict the principles of human rights and Islamic law because, conceptually, the two concepts come from different roots. Specifically, this article aims to show how Islamic law and human rights principles relate. The relationship will be explained based on the facts found in Constitutional Court Decision No. 12/PUU-V/2007 concerning Polygamy and the Decision of Constitutional Court No. 68/PUU/XII/2014 concerning Marriages with Different Religions. There are two reasons for choosing the two cases. First, both cases were submitted to review the constitutionality of Law No. 1 of 1974. Second, both cases were submitted for human rights reasons. Apart from seeing the Constitutional Court's interpretation's tendency to determine decisions in polygamy and interfaith marriage cases, this article also shows the extent to which the Constitutional Court decisions reflect human rights principles in making decisions on judicial review cases of Islamic law.

**METHOD**

Research on the relationship between Islamic law and human rights in constitutional court decisions is qualitatively based on two Constitutional Court decisions: polygamy and interfaith marriage. The two decisions are relevant to the focus of the research because cases resolved by judges were filed on human rights grounds. Since this research investigates the legal considerations of the Constitutional Court between Islamic law and human rights, the scope to be discussed is the consideration of the judges of the Constitutional Court in deciding the case. This consideration is also supported by the arguments of the parties filing the judicial review. Hence, this study is library research that uses something other than field data as material for analysis. This research is conducted by collecting Islamic law and human rights documents. Another secondary data was also collected to examine the relationship between Islamic law and human rights from a broader perspective, such as through books and journal articles. Secondary literature is collected based on articles published in reputable journals since this issue was discussed until this article was written. The collected literature is classified based on the scope of the study.

After collecting data, the data will be analyzed in several stages: data classification, data memoing, data description, and data interpretation. Data classification will be intended to classify the data that has been collected according to the perspective used in arguing the case of Islamic law judicial review. After data memoing, at this stage, certain
notes will be given to the classified data to facilitate the description of the grouped data. Data descriptions will be intended to explain the typology of legal argumentation from the applicant and the judge. Then, data interpretation will be intended to analyze these arguments contextually. Specifically, the context is constitutional and philosophical. The stages of analysis described are the basis for conclusions.

RESULTS AND DISCUSSION

This section will present several things related to the results and discussion of this research. In the first part, a brief description of Islamic law, human rights and the state will be presented in previous studies. This description briefly explains the complexity of the state's attitude toward modernizing Islamic law in Indonesia. After that, the arguments used by the constitutional court judges in resolving Islamic law cases will be explained. The judge's argument will be discussed to see how Islamic law and human rights principles are positioned in the Constitutional Court's decision.

Islamic Law, Human Rights and the State in Previous Studies

The bureaucratization of Islamic law was a form of modernization of Islamic doctrine. Asep found that this effort was necessary for the life of Muslims within the framework of a modern state (Jahar, 2019). Otto's study also showed that Islamic law (Sharia) was reformed through legislation (Otto, 2019). However, not all aspects of Islamic law could be legislated in Indonesia's democratization context, except for marriage and financial issues (Salim, 2016). Marriage and financial issues were the aspects most likely to be in line with democratic principles.

Meanwhile, Islamic criminal law could not be legislated because it was considered to contain physical punishment that is cruel and contrary to human rights principles (Otto, 2010). However, it does not mean that the issue of marriage is not problematic if it is related to democracy and human rights. Several studies have demonstrated this problem.

Nadirsyah Hosen found that the principles of Sharia are contained in the Indonesian constitution, but these principles must be understood substantively rather than formally (Hosen, 2019). Armia agreed with Hosen's study; Armia's study showed that the Indonesian constitution contains maqasid sharia principles, although these principles may need to be maximally applied (Armia, 2018). Nevertheless, Simon Butt pointed out that the Indonesian constitution does not explicitly favour one of the religions in Indonesia (Butt, 2020). Fenwick's study also showed that in the Indonesian constitution, there are roots of pluralism that can be used to realise democracy if secularism cannot be applied in Indonesia (Fenwick, 2018). Some studies above showed that the Indonesian constitution contains only abstract principles that need further interpretation. Concretely, the relation between Islamic law and the constitution can be seen practically in the following study.

Simon Butt has conducted a study related to judicial review. Butt found inconsistencies in the constitutional court decisions related to Islamic law. Simon Butt stated that the Constitutional Court's arguments differ in several decisions related to Islamic law (Butt, 2018). In previous research, Simon Butt stated that the constitutional court also uses Islamic legal arguments in deciding cases of polygamy and religious courts (Butt, 2010). In this case, the
Constitutional Court's legal argument is considered not only to use constitutional arguments but also to adopt the interpretation of Islamic law.

In contrast to Butt's study, Nadirsyah Hosen's study showed that there were restrictions by the Constitutional Court Judges on the application of Sharia. Constitutional Court judges with an "Islamic" background have guarded the Constitution with a limited application of Sharia (Hosen, 2016). Rumadi also found that the state, through the Constitutional Court, had limited accommodation to Islamic law even though it was implemented in a limited manner in Aceh (Rumadi, 2020).

Based on the study above, it is worth noting that continuous negotiations will always take place in Indonesia between religion, state, and human rights (Crouch, 2012; Rumadi, 2020). The reason he put forward was that Indonesia was neither a religious state nor a secular state. The fact that Indonesia does not adhere to Sharia as a source of law in Indonesia needs to be revised. Al-Fitri's study found that the unclear religion in the constitution allows the state to interpret religion so that the state freely intervenes in the religious bureaucracy in Indonesia (Alfitri, 2018). This problem then led to religious freedom in Indonesia. Existing studies state that the state can limit religious freedom in Indonesia to create public order (Butt, 2016).

**Religious Arguments and Judicial Review**

The submission of a judicial review on polygamy and interfaith marriage led the Constitutional Court Judges to refer to the interpretation of religion, especially Islam. Judges use relevant Islamic and religious legal arguments as a basis for consideration in resolving cases. The Constitutional Court Judges referred to various religious interpretations in the judicial review case.

The arguments presented by the Justices of the Constitutional Court included historical approaches and legal objectives (*maqasid sharia*). First, Islam wants to put polygamy in order. In this perspective, polygamy is interpreted based on the historical approach that polygamy is not an Islamic tradition. Second, polygamy must be based on the wife's permission. In this argument, the judge saw that the wife would be hurt if polygamy was practised without permission. Third, the principle of marriage in Islam is monogamy. In this case, the judge explained that the requirements for polygamy must be applied to achieve justice in the household. Fourth, the requirement of polygamy is intended for the benefit of the public. These arguments can be seen in the following table.

**Tabel 1. Religious Arguments by Judges in Polygamy Cases**

<table>
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<tr>
<th>Code</th>
<th>Religious Arguments by Judges in Polygamy Cases</th>
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</table>
(The practice of polygamy in the era of ignorance greatly demeaned women. Men can marry or divorce women at will, whatever the number. In the era of ignorance, women were treated almost no differently than goods. For example, the widows of a father who died can be passed on to his children to be married. Thus, polygamy is not a creation of something newly created by Islamic teachings. Islamic teachings want to gradually order polygamy, which aims, among others, so that in its implementation, there is no abuse of men and to maintain the dignity of women)

<table>
<thead>
<tr>
<th>Polygamy must be based on the wife's permission</th>
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<tbody>
<tr>
<td>mawaddah bersifat altruistik, bukan egoistik. Sikap egoistik, yaitu hanya ingin mendapatkan segala hal yang menyenangkan bagi diri sendiri, sekalipun akan menyakitkan hati pasangannya, akan berarti menutup mawaddah. Dengan terputusnya mawaddah dengan sendirinya sakinah pun tidak terpelihara lagi. Itulah sebabnya, demi menjaga keluarga sakinah adalah wajar jika seorang suami yang ingin berpoligami, terlebih dahulu perlu meminta pendapat dan izin dari isterinya agar tidak tersakiti hatinya</td>
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<th>The principle of marriage in Islam is monogamy</th>
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<tr>
<td>Bahwa berdasarkan firman Allah sebagaimana dikutip di atas, sebagian besar ulama berpendapat bahwa hukum asal poligami itu adalah mubah atau halal, yakni merupakan suatu hal yang dibolehkan. Namun kebolehan itu harus dipenuhi syarat-syarat tertentu, yaitu berlaku adil. Poligami mungkin dapat berubah menjadi sunnah atau makruh. Namun hal ini bukan disebabkan karena substansinya, melainkan karena kondisi pelaku, waktu, dan keadaan yang melatar-belakanginya. Dengan demikian, sebenarnya asas perkawinan yang dianut oleh ajaran Islam sebagaimana pendapat Ahli Prof. Dr. M. Quraish Shihab tersebut di atas adalah asas monogami.</td>
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<tr>
<th>Polygamy requirements as a public benefit</th>
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<tr>
<td>Oleh karena itu, menurut ajaran Islam, negara (ulil amri) berwenang menentukan syarat-syarat yang harus dipenuhi oleh warga negaranya yang ingin melakukan poligami demi kemaslahatan umum, khususnya dalam mencapai tujuan perkawinan, yaitu membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa, yang identik dengan pengertian keluarga yang sakinah</td>
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</table>

(Whereas based on the word of Allah as quoted above, most scholars believe that the law of origin of polygamy is permissible or lawful, that is, it is permissible. However, certain conditions must be fulfilled, namely being fair. Polygamy may turn into sunnah or makruh. However, this is not due to the substance but because of the condition of the actor, the time, and the circumstances that underlie it. Thus, the principle of marriage is adhered to by Islamic teachings, as in the opinion of Prof. Dr. M. Quraish Shihab mentioned above, is monogamy.)

(Therefore, according to Islamic teachings, the state (ulil amri) has the authority to determine the conditions that must be met by its citizens who wish to practice polygamy for the sake of public benefit, especially in achieving the goal of marriage, namely forming a happy and eternal family (household) based on The One and Only Godhead, which is synonymous with the meaning...
In the case of Marriage with Different Religions, the Constitutional Court also presented religious arguments. Marriage can be considered valid when it follows religious law. In the judge's consideration, marriage cannot be seen formally but spiritually. The arguments can be found in the following judge's considerations:

**Tabel 2. Religious Arguments by Judges in Interfaith Marriage Cases**

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<thead>
<tr>
<th>Code</th>
<th>Religious Arguments by Judges in Interfaith Marriage Cases</th>
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<tbody>
<tr>
<td>A legal marriage is in accordance with religious law</td>
<td>Perkawinan menurut UU 1/1974 diartikan sebagai hubungan lahir batin yang terjalin antara seorang pria dan seorang wanita yang diikat oleh tali pernikahan dan menjadikan status mereka sebagai suami istri. Perkawinan ditujukan untuk membentuk keluarga atau rumah tangga yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa. Suatu perkawinan dianggap sah apabila dilakukan sesuai dengan hukum masing-masing agama atau kepercayaannya serta dicatat menurut peraturan perundang-undangan. (According to Law 1 of 1974, marriage is defined as a physical and spiritual relationship between a man and a woman who is bound by the rope of marriage and makes their status as husband and wife. Marriage is intended to form a happy and eternal family or household based on One Godhead. A marriage is considered valid if it is carried out following the laws of each religion or belief and is recorded according to statutory regulations.)</td>
</tr>
<tr>
<td>Marriage has a spiritual aspect.</td>
<td>Agama menjadi landasan bagi komunitas individu yang menjadi wadah kebersamaan pribadi-pribadi dalam hubungannya dengan Tuhan Yang Maha Esa serta turut bertanggung jawab terwujudnya kehendak Tuhan Yang Maha Esa untuk meneruskan dan menjaga keberlangsungan hidup manusia. Negara juga berperan memberikan pedoman untuk menjaga kestabilan hukum kehidupan bersama dalam tali ikatan perkawinan. Secara khusus, negara berperan untuk memberikan perlindungan untuk membentuk keluarga dan melanjutkan keturunan melalui perkawinan yang sah yang merupakan wujud dan jaminan keberlangsungan hidup manusia. Perkawinan tidak boleh hanya dilihat dari aspek formal semata, tetapi juga harus dilihat dari aspek spiritual dan sosial. Agama menetapkan tentang keabsahan perkawinan, sedangkan Undang-Undang menetapkan keabsahan administratif yang dilakukan oleh negara. (Religion becomes the foundation for individual communities, which become a forum for the togetherness of individuals in their relationship with God Almighty and are responsible for realising God's will to continue and ensure the continuity of human life. The state also plays a role in providing guidelines to ensure legal certainty of life together in the bonds of marriage. In particular, the state has a role in protecting forming a family and continuing their offspring through a legal marriage which is a form and guarantee of human survival. Marriage should not only be seen from the formal aspect alone but also from the spiritual and social aspects. Religion determines the legality of marriage, while law stipulates administrative legality exercised by the state.)</td>
</tr>
</tbody>
</table>
The Judicial Review of Islamic law on polygamy and interfaith marriage shows that the Constitutional Court judges cannot give up religious arguments in their considerations. At least the data show two models of religious argumentation submitted by the judges of the Constitutional Court, interpreting religious law, especially Islam, and referring to the fact that Indonesia is a country based on belief in Almighty God (Ketuhanan Yang Maha Esa).

Human Rights Arguments and Judicial Review

In the case of polygamy and interfaith marriage, the human rights aspect of the applicant's argument is freedom of religion. This section describes the applicant's arguments in filing a judicial review because human rights arguments are the main reason for the applicants. The applicant, Insa, filed an amendment to the articles governing the requirements for polygamy. The requirement for polygamy is seen as reducing his constitutional right to worship. The applicant's argument can be seen in the following statement.

“Pasal 3 Ayat (1) asasnya monogami, sedangkan Pemohon menganut agama Islam yang mempunyai 2 asas yaitu poligami dan monogami, dengan demikian pasal a quo telah mengurangi hak beragama Pemohon dengan cara diskriminatif, tidak ada pasal khusus poligami, yang ada justru persyaratan yang juga inconstitusional karena bersifat memperkuat asas monogami”

(Article 3 (1) is monogamy, while the Applicant professes Islam, which has two principles: polygamy and monogamy. This a quo article has reduced the Applicant's religious rights in a discriminatory manner. There is no special article on polygamy, which is precisely an unconstitutional requirement because it reinforces the principle of monogamy)

In the case of interfaith marriage, the applicants named Damian Agata Yuvens, Rangga Sujud Widigda, Luthfi Sahputra, and Anbar Jayadi filed an amendment to the article that prohibits interfaith marriage. The state is considered to be subject to a religious interpretation, while in their view, religious law depends on individual and institutional interpretations.

“That this arrangement causes legal uncertainty for people who wish to get married in Indonesia because the application of religious and belief law is highly dependent on interpretations both individually and institutionally”

In responding to the applicant's argument, the Constitutional Court judges interpreted the human rights adhered to in Indonesia. In the case of polygamy, two views can be found in the judge's consideration. First, the judges at the Constitutional Court said that the requirement for polygamy was an effort to protect the wife's rights. Second, human rights must be limited if they interfere with the rights of others. These arguments can be found in the following table:

<table>
<thead>
<tr>
<th>Code</th>
<th>Human Rights Arguments by Judges in Polygamy Case</th>
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</table>
Polygamy requirements to guarantee the rights of the wife

<table>
<thead>
<tr>
<th>Code</th>
<th>Human Rights Arguments by Judges in Interfaith Marriage Case</th>
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<tbody>
<tr>
<td></td>
<td>Perkawinan merupakan salah satu bentuk perwujudan hak konstitusional warga negara yang harus dihormati dan dilindungi oleh setiap orang dalam tertiub kehidupan bermasyarakat, berbangsa dan bernegara. Dalam hak konstitusional perkawinan tersebut terkandung kewajiban penghormatan atas hak konstitusional orang lain. Oleh karenanya untuk menghindari benturan dalam pelaksanaan hak konstitusional tersebut diperlukan adanya pengaturan pelaksanaan hak konstitusional yang dilakukan oleh negara.</td>
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<tr>
<td></td>
<td>(Marriage is a form of manifestation of the constitutional rights of citizens, which must be respected and protected by everyone in an orderly life of society, nation, and state. The constitutional right of marriage contains the obligation to respect the constitutional rights of others. Therefore, to avoid conflicts in implementing these constitutional rights, it is necessary to)</td>
</tr>
</tbody>
</table>

In the case of interfaith marriage, the judge also presents two models of human rights arguments presented by the judge. First, the judge said that citizens' rights to freedom of religion must also be understood as a form of respect for the rights of others. Second. Citizens must comply with restrictions to create order in a democratic society. This view is reflected in the views of the Constitutional Court as follows:

Tabel 4. Human Rights Arguments by Judges in Interfaith Marriage Case
regulate the implementation of constitutional rights carried out by the state.)

<table>
<thead>
<tr>
<th>Rights must reflect justice and public order</th>
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| Dalam menjalankan hak dan kebebasannya setiap warga negara wajib tunduk terhadap pembatasan yang ditetapkan dengan Undang-Undang dengan maksud semata-mata untuk menjamin pengakuan dan penghormatan atas hak dan kebebasan orang lain serta untuk memenuhi tuntutan yang adil sesuai dengan pertimbangan moral, nilai-nilai agama, keamanan, dan ketertiban umum dalam suatu masyarakat demokratik [vide Pasal 28 UUD 1945]. Sesuai dengan landasan falsafah Pancasila dan UUD 1945, menurut Mahkamah, UU 1/1974 telah dapat mewujudkan prinsip-prinsip yang terkandung dalam Pancasila dan UUD 1945 serta telah pula dapat menampung segala kenyataan yang hidup dalam masyarakat (In using his rights and freedoms, every citizen shall be subject to the restrictions laid down by Law for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and meeting fair demands following moral considerations, religious values, security, and public order in a democratic society [see Article 28] of the 1945 Constitution]. Following the philosophical foundation of Pancasila and the 1945 Constitution, according to the Court, Law 1/1974 has established the principles contained in Pancasila and the 1945 Constitution. It has also been able to accommodate all living facts in society)

Based on the explanation above, it is worth noting that in the case of polygamy, the judges of the Constitutional Court prioritize protecting women's rights. Maintaining women's rights represents guarding the soul, known in the maqasid sharia with the term (hisz al-nafs). However, guarding the soul, in the arguments of the Constitutional Court judges, is inseparable from safeguarding religion (hifz al-din). In this regard, the interpretation of the Constitutional Court on the requirements of polygamy is supported by the maqasid sharia considerations, even though it is from a traditional perspective. Apart from safeguarding women's rights, the Judge's decision also showed the safeguarding of religious interpretations. The guardianship of religion was also found in the Judge's consideration in cases of interfaith marriage. In the case of interfaith marriage, religious considerations could not be abandoned because the Judge states that marriage also has a spiritual aspect. The Judge also argued that a legal marriage follows religious law, even though the interpretation of religion depends on religious adherents and is not monopolized by the government.

Islamic Law and Human Rights in The Constitutional Court Decisions

This study's results indicate that constitutional court judges' considerations in resolving cases of polygamy and interfaith marriage are based on religious and human rights considerations. However, the considerations of the constitutional court support certain religious interpretations compared to the human rights principles adopted in the 1945 Constitution. The tendency for Constitutional Court decisions emphasized that the maintenance of religion (hifz al-din) from a traditional perspective is still dominant. The results of this study also indicate that the constitutional court further strengthened the establishment of Islamic law interpretation in Law No. 1 of 1974. The Constitutional Court's decision showed the imbalance between the interpretation of the majority and the interpretation of the minority regarding Islamic law. The state appreciates the interpretation of religion, which is the majority and established, while the interpretation of the minority tends to be neglected to maintain public stability. In other words, the
interpretation of the Constitutional Court has reflected the limited application of human rights in cases of polygamy and interfaith marriage.

The tendency of the Constitutional Court to defend Islamic law, which has been legislated in Law No. 1 of 1974 (classical sharia), reflects those human rights cannot be fully accepted in Indonesia. The minority interpretation seems to have no place in filling the gap in legislation in Indonesia. In comparison, it is plausible that the Counter-Legal Draft of Kompilasi Hukum Islam (CLD KHI) designed by the Gender Mainstreaming Team is controversial and cannot be adopted by the State (Nurlaelawati, 2010). Based on the results of this research, I argue that proposals for judicial review in the future will always receive a rejection from the Constitutional Court Judges if the submission tries to position an established interpretation of Islamic law vis-à-vis human rights. Although human rights have been ratified in Indonesia, the fact is that the state has not maximized the application of human rights principles through the Constitutional Court in cases of judicial review of polygamy and interfaith marriage. Therefore, the research results confirm that Indonesia's right to freedom of religion cannot be realized through a judicial review of Islamic law.

Nadirsyah Hosen found that judges with religious backgrounds had guarded the constitution with restrictions on Sharia (Hosen, 2016). In this study, it is found that the constitution is also limited by guarding Sharia. Restrictions on implementing the constitution, which contains human rights, were caused by the absence of a clear measurement standard for the interpretation of Islamic law adopted by the constitutional court. This ambiguity can be seen based on the results of this study, that the constitutional court, in the decision on polygamy, uses the argument that Islamic law safeguards human rights, in this case, women's rights. Meanwhile, in the case of interfaith marriage, it has been shown that Islamic law does not adopt human rights. In other words, the Constitutional Court's considerations in polygamy and human rights cases seem biased. On the one hand, the values or principles held in resolving marriage cases were based on human rights - although they are supported by the interpretation of fiqh - and on the other hand, were based on public order.

If several previous studies have found ambiguity in several decisions of the Constitutional Court (Butt, 2018), this research found that there is a serious threat from the perspective of the constitutional court in completing the judicial review of Islamic law. This threat means that Islamic law in Indonesia will develop slowly. Admittedly, Law No. 1 of 1974 had taken a step forward in aspiring for women's rights (Cammack et al., 2015). However, this does not mean the ban on polygamy is wide open. The prohibition of polygamy will generate controversy due to the established interpretation that polygamy is allowed. Based on the results of this study, if a judicial review on the prohibition of polygamy is submitted to the Constitutional Court, it is probable that the prohibition will be rejected.

The results of this study indicate that the judge's considerations are only partially constitutional in the context of human rights. In the future, a state interpretation mechanism is needed in translating Islamic law that goes hand in hand with human rights principles. The fact that Indonesia is neither a religious state nor a secular state (Rumadi, 2020) demands the state's position to guarantee all the rights of citizens, even the minority. In this case, the development of maqasid sharia as a method or perspective makes it possible to bridge the interpretation of traditional Islamic law and principles of human rights contained in the constitution. In this context, the state is expected to provide a research-based handbook of bureaucracy for Constitutional Court judges in solving cases related to Islamic law.
CONCLUSION

This study concludes that the human rights argument in the Constitutional Court's decision to resolve the Judicial Review of Islamic family law goes back and forth. Consequently, the existence of the Constitutional Court as a state institution in guarding constitutional rights has yet to be maximally implemented. The findings in this study indicate that the articles in Law No. 1 of 1974 will mostly stay the same in the future. Judicial reviews that negate Islamic law (fiqh) will tend to be rejected by the Constitutional Court as long as there is no state version of the dynamic *maqasid sharia* mechanism in handling cases of Islamic law in Indonesia. On the one hand, the state's interpretation of religion will tend to discriminate against the interpretation of minority religions because the state prioritizes state stability. On the other hand, changing Islamic family law will tend to be slow in Indonesia's democratization context.

The concept of *maqasid sharia* can help to see the principles of the Islamic law that the Constitutional Court defends. In the context of *maqasid sharia*, each law produced has its purpose. The Constitutional Court decision cannot be viewed as a law that only comes from textual sources but also considers the socio-political reality in Indonesia. Through this concept, the objectives of the Constitutional Court decision can be clearly defined. Although this study has described the considerations of the constitutional court in dealing with cases of polygamy and interfaith marriage, this study has limitations. The limitations of this study can be seen in the need for field data. Further research can be carried out with a broader perspective and a more comprehensive approach.

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