


# Artikel 5

## IMPLICATIONS OF INDONESIAN CONSTITUTIONAL COURT RULING NO. 46/PUU-VIII/2010 ON THE CIVIL RELATIONS O...

 Muhammad Luthfi

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## IMPLICATIONS OF INDONESIAN CONSTITUTIONAL COURT RULING NO. 46/PUU-VIII/2010 ON THE CIVIL RELATIONS OF CHILDREN BORN OUT OF WEDLOCK: A MAQASHID ASY-SYARIAH PERSPECTIVE

**Muhammad Luthfi, Yaris Adhial Fajrin**

Faculty of Law, University of Muhammadiyah Malang  
Jl. Karyawiguna No.358, Babatan, Tegalondo, Kec. Karang Ploso,  
Kabupaten Malang, Jawa Timur 65152  
E-mail: [muhammadluthfi@umm.ac.id](mailto:muhammadluthfi@umm.ac.id); [yaris@umm.ac.id](mailto:yaris@umm.ac.id)

**Khusnul Rofida Novianti**

University of Queensland, Australia  
The University of Queensland, Brisbane QLD 4072 Australia  
E-mail: [khusnul.rofida@gmail.com](mailto:khusnul.rofida@gmail.com)

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### ABSTRACT

This article delves into the implications of the Constitutional Court's decision on Law Number 1 of 1974 through the lens of Maqashid Asy-Syariah, aiming to comprehend its impact on gender equality within Indonesian marriage law, aligning with the principles of Maqashid Asy-Syariah. Employing a normative legal research method with a legislative approach, the study analyzes legal norms, drawing from relevant legal documents and literature as data sources. The descriptive-normative data analysis method is applied to articulate the implications of the Constitutional Court's decision from the Maqashid Asy-Syariah perspective and its consequential effects on Indonesian marriage law. This pivotal decision reinterprets Article 43, paragraph (1), enabling children born out of wedlock to establish a civil relationship with their fathers. This alteration serves to protect individual rights, uphold principles of justice, ensure family welfare, and synchronize state and religious laws. Furthermore, the decision abolishes discriminatory polygamy provisions and equalizes age limits for marriage between men and women, fostering gender equality. This move not only safeguards individual rights, particularly those of women but also upholds the principles of justice, equality, and social welfare within the Maqashid Asy-Syariah framework.

**Keywords:** Constitutional Court Decision, Maqashid Asy-Syariah, Marriage, Gender Equality.

## INTRODUCTION

With the development of society and changes in social values, Law Number 1 of 1974 concerning Marriage has become a topic of debate. Constitutional Court Decision Number 46/PUU-VIII/2010 serves to reinforce the implementation of the Marriage Law. By rejecting the request for a review of this law, the Indonesian Constitutional Court has affirmed its compatibility with the 1945 Constitution of the Republic of Indonesia. One of the significant aspects in Maqashid Asy-Syariah is the protection of offspring (Suhendi, 2013). In Islam, offspring is considered one of the primary objectives of marriage (Santoso, 2016). The Constitutional Court's decision, which strengthens the application of the Marriage Law, can be viewed positively as it helps safeguard this aspect. The law governs legal marriages and, therefore, contributes to ensuring that offspring within marriages are recognized both legally and religiously.

Maqashid Asy-Syariah encompasses the protection of individual rights (Kasdi, 2014). This aspect is crucial in ensuring that individual rights are upheld and safeguarded within the institution of marriage, aligning with the principles of Maqashid Asy-Syariah. Additionally, from the perspective of Maqashid Asy-Syariah, the preservation of religion is also a significant aspect (Khakim & Ardiyanto, 2020). The Constitutional Court's decision affirms the legitimacy of the Marriage Law, which includes requirements that must be met for a marriage to be recognized as valid according to Islamic law.

Some parties argue that the Marriage Law may not fully adhere to the principles of gender equality in Islam. It is crucial to consider how the Constitutional Court's decision can influence social and cultural values in Indonesia from the perspective of Maqashid Asy-Syariah. While the Constitutional Court's decision can affirm certain aspects of the marriage law that align with the principles of Maqashid Asy-Syariah, its impact can also be significant in communities with diverse cultural and religious backgrounds. Therefore, this article aims to discuss the implications of the Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 on Law Number 1 of 1974 concerning

Marriage, specifically from the perspective of Maqashid Asy-Syariah and its implications on gender equality.

## RESEARCH METHOD

This article adopts the normative legal research method, specifically utilizing a legislative approach, which focuses on analyzing relevant legal documents. The data sources for this research will include legal documents and pertinent literature. Additionally, literature related to Maqashid Asy-Syariah, Islamic marriage law, and principles of Islamic law will serve as important data sources. The data collection techniques will involve conducting library research, encompassing the search for legal documents and relevant literature in libraries and online databases. The collected data will consist of quotations from legal documents and literature, which will serve as the foundation for analysis. The data analysis technique employed in this research is descriptive-normative. The analysis process begins with identifying and formulating the legal norms outlined in Constitutional Court Decision No. 46/PUU-VIII/2010 and Law Number 1 of 1974 concerning Marriage. Subsequently, these norms will be evaluated to determine the extent to which they align with the principles of Maqashid Asy-Syariah. The analysis results will be presented in a descriptive manner, providing a clear understanding of the implications of the Constitutional Court's decision from the perspective of Maqashid Asy-Syariah, as well as its potential impact on marriage law in Indonesia.

## RESEARCH OUTCOME AND DISCUSSION

### 1) The Decision of the Constitutional Court from the Maqashid Asy-Syariah Perspective

The decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 has significant implications for Law Number 1 of 1974 concerning Marriage from the perspective of Maqashid Asy-Syariah. This decision changes the interpretation of key articles in the Marriage Law, especially Article 43 paragraph (1), which states, "Children born outside of marriage only have a civil relationship with their mother and her mother's family." The following is an

analysis of the implications of this decision from the perspective of Maqashid Asy-Syariah:

### 1. Protection of Individual Rights (Hifz An-Nafs)

In Article 43 paragraph (1) through this decision, important changes in legal interpretation have occurred. The Constitutional Court's decision has changed the interpretation of Article 43 paragraph (1), opening the way for children born out of wedlock for children who previously only had a civil relationship with their mother, now have the opportunity to obtain legal recognition and protection from their father as well. The implication of this change is the strengthening of the protection of individual rights, which is a fundamental aspect of the principles of Maqashid Asy-Syariah. Islam views the importance of protecting individual rights, or "Hifz An-Nafs" (Maudhunati & Muhajirin, 2022), and this decision reflects efforts to ensure that children's rights are recognized and maintained in accordance with Islamic values.

### 2. Justice (Al-'Adl)

Prior to this decision, Article 43 paragraph (1) of the Marriage Law created injustice towards children born outside of marriage, because they did not have the right to have a civil relationship with their father. The Constitutional Court's decision changed this dynamic by recognizing the child's right to have a civil relationship with his father. So that children born outside of marriage have the opportunity to obtain legal recognition from their father (Adillah, 2014). This is a significant step towards justice, as it eliminates existing discrimination against children in these situations. The principle of justice is one of the main principles in Islam, and Islam places great emphasis on fair treatment of all individuals, including children (Harisah, Rahmah, & Susilawati, 2020). This decision reflects the values of justice in religion and Islamic law, by giving equal rights to all children, regardless of their birth status. This creates a fairer legal basis for all individuals in society, which is in line with the spirit of justice advocated by Islam.

### 3. Family Welfare (Al-Maslaha)

The Indonesian Constitutional Court's decision Number 46/PUU-VIII/2010 has a positive impact on family welfare from the perspective of Maqashid Asy-Syariah. Previously, legal ambiguity regarding father-child relationships in cases of children born out of wedlock could damage family stability and harmony. This ruling provides a clearer legal framework and reduces the potential for conflict that could disrupt family relationships (Kurnia, 2023). Apart from that, this ruling also promotes the social and economic responsibility of fathers towards their children. This is in line with Islamic principles which encourage fathers to provide protection and support to their families, including children. Thus, this decision can improve the economic welfare of families, reduce the potential for child neglect, and ensure that children's rights to support and care are fulfilled.

### 4. Religious Protection (Hifz Al-Din)

In Islam, marriage is an important act of worship and is regulated by strict religious rules (Amiri, 2021). The ruling does not interfere with the implementation of religious norms, so people still have the freedom to practice their religion or beliefs according to their own beliefs. The importance of respecting religious norms in the context of marriage is a principle that is firmly held in Islam and many other religions (Tarantang, Khosyi'ah, & Saepullah, 2023). Thus, the Constitutional Court's decision recognizes the importance of maintaining individuals' rights to practice their own religious beliefs without interference from the authorities. This reflects aspects of Maqashid Asy-Syariah, namely Protection of Religion (Hifz Al-Din). Apart from that, maintaining a balance between state law and religious teachings is also very important in this case. This ruling provides the view that positive law must create a framework that respects the religious values and beliefs of individuals, without imposing certain views on them.

### 5. Protection of Public Interests (Hifz Al-Maslaha Al-'Amah)

The Indonesian Constitutional Court's Decision Number 46/PUU-VIII/2010 has a positive impact in the context of protecting public interests or

Hifz Al-Maslaha Al-'Amah. One of the positive implications is to create social order. This helps overcome serious problems that often arise from unregistered marriages, as well as preventing potential fraud and uncertainty in marital relationships. Apart from that, legal marriage registration also provides legal protection to vulnerable parties, especially women and children, by providing clear rights and obligations in the context of marriage, as well as preventing child neglect and uncertainty about children's legal status (Asnawi, 2016).

#### 6. Synchronization between State Law and Religious Law (Tashri' Al-Shari'ah)

The Indonesian Constitutional Court's decision Number 46/PUU-VIII/2010 underlines the importance of synchronization between state law and religious law, especially in the context of marriage in Indonesia. Prior to this ruling, there was an inconsistency between national marriage law and principles in Islamic law. This ruling corrects this incongruity by creating a legal basis that is more in line with Islamic values that encourage the protection of individual rights and avoid legal conflicts. Harmony between positive law and religious law in marriage also has a positive impact in the context of the principles of Maqashid Asy-Syariah. This enables the achievement of broader sharia goals, such as protecting individual rights, justice, and preventing legal conflicts that could harm society (Rokhmadi, 2017). Thus, this Constitutional Court decision is a positive step towards achieving Maqashid Asy-Syariah in marriage in Indonesia, by creating a legal environment that is more just, inclusive, and in accordance with religious principles.

#### 7. Prevention of Negative Impacts (Dafi' Al-Darar)

The Indonesian Constitutional Court's Decision Number 46/PUU-VIII/2010 has a positive impact in preventing negative impacts that often arise as a result of not recording marital status. The phenomenon of unregistered marriages often has a negative impact on children and society as a whole (Hamzani, 2016). The Constitutional Court's decision which allows children to have civil relations with their fathers clearly helps overcome child neglect. Apart from that, uncertainty about the legal status of children is another problem that often occurs when marital status is not registered. Children born

into such marriages often experience unclear legal status, which can affect their rights, such as inheritance rights, education, and access to public services.

In the context of Maqashid Asy-Syariah, this decision can be considered a positive step towards achieving broader sharia goals, including the protection of individual rights, justice, family welfare, and harmonization between state law and religious law in matters of marriage. However, it should be noted that the understanding and application of this ruling may vary in various contexts and social environments in Indonesia.

## 2) The Decision of the Constitutional Court, Gender Equality and Principles of Maqashid Ash-Syariah

Constitutional Court Decision Number 46/PUU-VIII/2010 was issued on 2 June 2011 as a result of a material review of the articles in the Marriage Law which regulate polygamy and age limits for marriage. In that decision, the MK stated that the articles allowed the practice of polygamy for men with permission from the first wife.

### 1. Impact on Gender Equality in Polygamy

The Indonesian Constitutional Court Decision 46/PUU-VIII/2010 has a significant impact on gender equality in the context of polygamy. Previously, in the Marriage Law, there were provisions that allowed a man to carry out polygamy with permission from his first wife, while women did not have equal rights to carry out polygamy. This creates real gender inequality in the context of marriage in Indonesia, and this is contrary to the principles of equality emphasized in the principles of Maqashid Asy-Syariah (Mustofa, Hefni, & Wijayati, 2021). However, the Indonesian Constitutional Court Decision Number 46/PUU-VIII/2010 expressly eliminates the provisions that allow this discriminatory practice of polygamy. The ruling stated that polygamy was no longer the exclusive right of men. This creates gender equality in the context of polygamy, which is in line with the principles of equality emphasized in Maqashid Asy-Syariah.

## 2. Impact on Marriage Age Limits

The Indonesian Constitutional Court's decision Number 46/PUU-VIII/2010 has a major impact on the age limit for marriage in Indonesia. Prior to this ruling, the Marriage Law permitted marriage at different ages for men and women. However, the ruling states that the age limit for marriage must be the same, namely 19 years, for men and women. Within the framework of the principles of Maqashid Asy-Syariah, this reflects the principle of gender equality, provides protection for individual rights, especially women, and creates consistency in marriage law (Emira, 2016). Prior to this ruling, differences in marriage age limits between men and women demonstrated gender inequality that was contrary to this principle. By setting the same age limits for men and women, this ruling creates a legal basis that is more in line with the principles of gender equality, protects women's rights, and eliminates discrimination based on sex in marriage law. In addition, it also strengthens protection for women who may be vulnerable to marriage at an early age, by giving them better opportunities to develop themselves, get an education, and reach their full potential.

To better understand the impact of the Indonesian Constitutional Court Decision Number 46/PUU-VIII/2010 on aspects of gender equality in marriage law in Indonesia, the following is an evaluation of the decision within the framework of the principles of Maqashid Asy-Syariah.

Firstly, Justice (Al-Adl). The principle of justice (Al-Adl) within the framework of Maqashid Asy-Syariah has strong relevance. The ruling takes this principle into account by removing polygamy provisions that previously granted exclusive rights to men. Previously, the Marriage Law in Indonesia allowed a man to practice polygamy with the permission of his first wife, while women did not have equal rights. With this decision, the Constitutional Court abolished this provision (Aldira, 2017).

Secondly, Equality (Al-Musawah). Gender equality is a very important value in Maqashid Asy-Syariah, and the Indonesian Constitutional Court Decision Number 46/PUU-VIII/2010 clearly strengthens this principle of equality. The

ruling makes the same marriage age requirement, namely 19 years, apply to both men and women. This is a significant step in achieving the principles of gender equality that underlie Maqashid Asy-Syariah. This creates inequality in marital rights and treats men and women differently in law. Within the framework of Maqashid Asy-Syariah, which emphasizes the importance of equal treatment of individuals regardless of gender, the decision to equalize the marriage age is a very appropriate step (Salim, Judiasih, & Yuanitasari, 2021). With the same marriage age for men and women, this ruling eliminates unfair differences in legal treatment. It also respects women's rights and provides better protection against potential exploitation and marriage of children. Gender equality in marriage is an important foundation for creating a fairer society and is in line with the principles of Maqashid Asy-Syariah which emphasizes equal treatment, fairness and equality between individuals.

Thirdly, Protection of Individual Rights (Hifz al-Nafs). Maqashid Asy-Syariah principles which prioritize the protection of individual rights, are known as "Hifz al-Nafs" (Marsaid, 2015), has a significant impact in the context of Constitutional Court Decision Number 46/PUU-VIII/2010 regarding marriage law in Indonesia. This decision expressly eliminates the provisions on polygamy which previously harmed women, and requires the same age limit for marriage for men and women. This reflects a commitment to protecting individual rights, especially women's rights, in the context of marriage. Prior to the ruling, polygamy provisions in Indonesian marriage law gave men the exclusive right to practice polygamy with permission from their first wife. This has the potential to harm women, because they may not have control or decision in cases of polygamy carried out by their husbands. The Constitutional Court ruling removed this provision and thereby protected women's rights to fair and equal treatment in marriage. This protection of individual rights is in line with the principles of Maqashid Asy-Syariah, which prioritizes justice and protection of individuals in society. Apart from that, this decision also requires the same marriage age limit for men and women, namely 19 years. Previously, there was an age gap that allowed men to marry younger than women.

Fourthly, Kemaslahatan (Al-Maslahah). The principle of Maqashid Asy-Syariah relating to the benefit (Al-Maslahah) has an important impact in the context of the Indonesian Constitutional Court decision Number 46/PUU-VIII/2010 which abolishes polygamy provisions that are not in line with gender equality. The Al-Maslahah principle emphasizes the importance of creating benefits for society as a whole (Harun, 2022). In the context of marriage, this decision can strengthen stability and harmony in the household, which will ultimately have a positive impact on society as a whole. By removing polygamy provisions that give exclusive rights to men, the Constitutional Court's decision has created a stronger basis for achieving the benefit of society. Polygamy is often a source of inequality and conflict in the household, and by giving women equal rights to practice polygamy, this ruling can reduce tensions in marital relationships and prevent potential conflicts between wives. This, in turn, can create a more stable and harmonious household environment. Benefits created at the household level can also have a positive impact on society as a whole, creating a psychologically and emotionally healthier generation, as well as reducing gender inequality which may be a source of tension in society. Overall, the decision supports the Al-Maslahah principle in creating greater social benefits.

Fifthly, Social Justice (Al-'Adalah al-Ijtima'iyah). The principle of social justice (Al-'Adalah al-Ijtima'iyah) within the Maqashid Asy-Syariah framework is very relevant in the context of the impact of the Indonesian Constitutional Court Decision Number 46/PUU-VIII/2010 on gender equality in marriage law in Indonesia. The ruling removed discriminatory provisions against women in marriage law, creating a fairer legal basis. This supports the creation of a more inclusive and socially just society, in line with the principles of social justice in Maqashid Asy-Syariah, which aims to ensure equality and equal rights for all individuals in various aspects of life (Qonita, 2023).

It can be concluded that the Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 has a significant impact on the gender equality aspect of marriage law in Indonesia. The decision promotes the principles of Maqashid Asy-Syariah, such as justice, equality, protection of

individual rights, benefit and social justice. However, implementing this decision requires comprehensive efforts, including revision of the Marriage Law, community outreach, strengthening supervision and law enforcement, and empowering women. Challenges such as cultural norms, resistance to change, and gender inequality that still exist in society must be overcome to achieve gender equality in line with Maqashid Asy-Syariah principles in Indonesian marriage law.

## CONCLUSION

The Constitutional Court of the Republic of Indonesia's decision, Number 46/PUU-VIII/2010, carries significant implications for Law Number 1 of 1974 concerning Marriage from the perspective of Maqashid Asy-Syariah. This decision brings about a reinterpretation of Article 43, paragraph (1), which previously only recognized a child's civil relationship with its mother. Now, it allows children born out of wedlock to establish a civil relationship with their father as well. This decision has several positive implications, including the protection of individual rights, justice, family welfare, and the synchronization between state law and religious law. Moreover, it prevents negative consequences such as child neglect and uncertainty regarding the legal status of children, which often arise in unregistered marriages. Furthermore, this decision has a significant impact on gender equality within Indonesian marriage law, aligning with the principles of Maqashid Asy-Syariah. The ruling abolishes discriminatory provisions related to polygamy, which previously granted exclusive rights to men, and equalizes the age limit for marriage between men and women. This reflects a commitment to achieving gender equality in marriage, protecting individual rights, particularly those of women, and establishing consistency within marriage law. Additionally, this decision upholds the principles of justice, equality, protection of individual rights, social benefit, and social justice within the framework of Maqashid Asy-Syariah.

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A MAQASHID ASY-SYARIAH PERSPECTIVE**

**Muhammad Luthfi, Yaris Adhial Fajri**  
Faculty of Law, University of Muhammadiyah Malang  
Jl. Karyawiguna No.358, Babatan, Tegalondo, Kec. Karang Ploso,  
Kabupaten Malang, Jawa Timur 65152  
E-mail: [muhhammadluthfi@um.ac.id](mailto:muhhammadluthfi@um.ac.id); [yaris@um.ac.id](mailto:yaris@um.ac.id)

**Khusnul Rofida Novianti**  
University of Queensland, Australia  
The University of Queensland, Brisbane QLD 4072 Australia  
E-mail: [khusnul.rofida@gmail.com](mailto:khusnul.rofida@gmail.com)

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**ABSTRACT**

This article delves into the implications of the Constitutional Court's decision on Law Number 1 of 1974 through the lens of Maqashid Asy-Syariah, aiming to comprehend its impact on gender equality within Indonesian marriage law, aligning with the principles of Maqashid Asy-Syariah. Employing a normative legal research method with a legislative approach, the study analyzes legal norms, drawing from relevant legal documents and literature as data sources. The descriptive-normative data analysis method is applied to articulate the implications of the Constitutional Court's decision from the Maqashid Asy-Syariah perspective and its consequential effects on Indonesian marriage law. This pivotal decision reinterprets Article 43, paragraph (1), enabling children born out of wedlock to establish a civil relationship with their fathers. This alteration serves to protect individual rights, uphold principles of justice, ensure family welfare, and synchronize state and religious laws. Furthermore, the decision abolishes discriminatory polygamy provisions and equalizes age limits for marriage between men and women, fostering gender equality. This move not only safeguards individual rights, particularly those of women but also upholds the principles of justice, equality, and social welfare within the Maqashid Asy-Syariah framework.

**Keywords:** Constitutional Court Decision, Maqashid Asy-Syariah, Marriage, Gender Equality.

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