

**JURIDICAL IMPLICATIONS OF THE LEGAL NORM VOID OF  
INTERFAITH MARRIAGES IN INDONESIA  
(A Study on Judge's Considerations)**

**Kadek Wiwik Indrayanti <sup>1</sup>, Suhariningsih <sup>2</sup>, Masruchin Ruba'I <sup>3</sup>, Nurini Aprilianda<sup>4</sup>**

<sup>1</sup> **Doctorate Program at Brawijaya University, Malang, as well as a lecturer at the Faculty of Law at Merdeka University, Malang.**

<sup>2</sup> **Law Faculty, Brawijaya University**

<sup>3</sup> **Law Faculty, Brawijaya University**

<sup>4</sup> **Law Faculty, Brawijaya University**

**E-mail: [astinaagra@yahoo.com](mailto:astinaagra@yahoo.com)**

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**ABSTRACT**

Legal void of interfaith marriages in Indonesia to date has not offered legal certainty and sense of fairness to couples of differing religions. Particularly, their rights to form a family and to freedom of religion are unprotected; whereas those rights are guaranteed by the 1945 Constitution of the Republic of Indonesia. Furthermore, the Constitutional Court's ruling had rejected Judicial Review on Article 2 section 1 of Law No. 1 of 1974 against the 1945 Constitution of the Republic of Indonesia. The rejection was based on the judge's interpretation of article 2 section 1, that married couples should have same faith. This articles seeks to analyze the reasons behind the consideration in legalize the interfaith marriage. It analyzes whether the principle of interfaith marriage contradict the principles contained in the Constitution.

This article argued that as it was stated that the constitutional rights of marriage entailed the obligation to respect the constitutional rights of other people and thus to avoid any conflicts in the implementation of those constitutional rights, it is necessary to have a regulation on the implementation of constitutional rights conducted by the state. It is further submitted that without legalizing interfaith marriage, there will be children status issue and heritage issues in the future. Thus, it is argued that the principle of interfaith marriage does not contradict the principles contained in the constitution with regard to the rights to form a family and to freedom of religion.

**Keywords:** *Juridical implication, legal norm void, interfaith marriage*

**I. INTRODUCTION**

Legal norm void in Law No. 1 of 1974 on Marriage caused interfaith couples do not get protection and justice. Meanwhile, there is an increase in interfaith marriages carried out by Indonesians. The most recent data showed that in 2011 the number of interfaith

marriages had reached 229 couples, and in 2004-2012 the number recorded had reached 1,109 couples: the highest number of interfaith couples was between Muslims and (Protestant) Christians, followed by Muslims and Catholics, after that Muslims and Hindus, and then Muslims and Buddhists. The smallest were marriages

between Buddhists and Christians.<sup>1</sup> In addition, the Central Organization of the Study of Religion and Peace, led by Nurcholish Achmad, until June 2015, had married off at least 238 interfaith couples throughout Indonesia.<sup>2</sup>

Due to the legal void, there have been several ways which interfaith couples may take in order to marry: (1) performing the marriage abroad and having the marriage registered upon returning to Indonesia; (2) requesting a validation from the court; (3) performing the marriage according to each of their religions; (4) temporary subjection to the religious decrees of one of the partners.<sup>3</sup> In reality, these ways are not as easy as expected, in particular when applying for a court's validation. Furthermore, well off couples might perform marriages abroad and those who are not may request a court's validation. Yet in reality most couples choose number 4 above, i.e. one of the couple subjects themselves to their partner's religion and after the marriage certificate is obtained they continue to practice their original faith. This is often done because it is deemed more practical than other ways

such as applying for a court validation which is currently even made more difficult to do. Performing marriage abroad is more frequently carried out by middle-class couples, with Singapore and Australia the most popular places to perform these marriages. Whereas interfaith marriages are currently evenly distributed at all economic levels so that couples who wish to marry in Indonesia are often obstructed, especially when one of them is a Muslim.

In reality, there is one more way that interfaith couples can choose in order to have their marriages registered, i.e. by applying for a court validation. However, among the judges themselves there is no agreement regarding the interpretation of Article 1 section 2 of Marriage Law, as evidenced by the rulings in which some approved the marriage and some did not. Furthermore, after the Constitutional Court denied the plea for Judicial Review of Article 2 section 1 of Marriage Law by the 1945 Constitution of the Republic of Indonesia, interfaith couples were subsequently denied their rights, such as the right to freedom of religion and to form a family; whereas these are the

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<sup>1</sup> Since 2004-2011 there had been 1,109 interfaith marriages, See also [www.hidayatulalah.com](http://www.hidayatulalah.com). Accessed on January 30, 2017.

<sup>2</sup> Talk with Nurcholish Achmad and Interfaith Marriages, see further [www.bbc.com](http://www.bbc.com). accessed on January 30, 2017.

<sup>3</sup> Wahyono Darmabrata. *A Review of Law No. 1 of 1974 on Marriage with the Law Itself and Its Regulatory Implementations*, (Jakarta: CV. Gitama Jaya, 2003).

fundamental rights guaranteed by the Constitution. Based on this description, the current study discusses the following: what are the rationale for the considerations made by district court judges toward requests for marriage ruling, and what is the rationale for Constitutional Court judges' denial of Judicial Review of Article 2 section 1 of Marriage Law by the 1945 Constitution of the Republic of Indonesia? Does the principle of interfaith marriage contradict the principles contained in the Constitution? Moreover, what are the juridical implications of legal norm void for interfaith marriage in Indonesia?

## **II. LEGAL MATERIALS AND METHODS**

The legal materials of this paper are primary and secondary legal materials. Using the statute and conceptual approaches, this paper is divided into several parts. The introduction employs the background of interfaith married problems. It elaborates the actual conditions of interfaith marriage in Indonesia and what future problems posed if interfaith marriage is considered illegal. The following part analyzes the constitution of Indonesia, UUD NRI 1945, which guarantee the freedom of religion and the right to build a family in Indonesia.

Primary legal materials used in this paper include Indonesian Constitution, UU NRI 1945, Indonesian Act number 1 Year 1974 on Marriage. In addition to this, various Court Decisions on interfaith marriage in Indonesia are also analyzed, which include Bogor Court Decision Number 527/Pdt/P/2009/PN.Bgr and Denpasar District Court Decision Number 136/Pdt.P/2009/PN.DPS. Furthermore, Indonesian Constitutional Court Decision Number 68/PUU/XII/2014, dated June 18, 2015 on the Judicial Review on Article 2 Law Number. 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia is also examined.

## **III. RESULT AND DISCUSSION**

### **1. The rationale for the considerations of judges that approved interfaith marriages**

In Decision No. 136/Pdt.P/2009/PN.DPS of August 19, 2009, on behalf of Ratu Ayu Isyana Bagoes, the judge's consideration was as follows:

Considering that based on Article 1 of Law No. 1 of 1974 on Marriage, it is stated that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the intention of forming a happy and everlasting family (household) founded in the belief in the one

and only God”. Furthermore, Article 2 section 1 states that “A marriage is legal if it is done according to the decrees of each person’s religion and faith”;

Considering that based on documentary evidences and statements of witnesses presented at the trial, both the Petitioner and George Albert Tulaar have fulfilled the terms of marriage as stipulated in Article 6, and there are no obstructions to performing the marriage as stipulated in Article 8 of Marriage Law;

Considering that since both the Petitioner and their would-be spouse, George Albert Tulaar, have been steadfastly and persistently holding on to their own religions, the two are subsequently unable to perform a marriage that is decided by law as stipulated in Article 2 section 1 of Marriage Law, necessitating a Marriage Ruling from the District Court;

Considering that based on Article 35a, and its explanations, of Law No. 23 of 2006 on Civil Affairs, what is meant by a marriage decided by the court is that which is performed between individuals with different religious faiths; therefore, in order for the marriage between the Petitioner and George Albert Tulaar to be deemed valid and able to be recorded in civil marriage register, the Petitioner has made a petition

for a Marriage Ruling from the District Court of Denpasar;

Considering the evidences and the above considerations, the District Court of Denpasar deems the petition to be sufficiently grounded to be granted in its entirety;

Considering that the petition may be granted in its entirety, then the Petitioner should pay the cost of application;

Given the articles in Law No. 1 of 1974 on Marriage, and Article 34 and Article 35 point a of Law No. 23 of 2006 on Civil Affairs, as well as articles in other legislations relating to this petition case, it is DECIDED that the petition is granted in its entirety.

Decision No. 527/Pdt/P/2009/PN.Bgr was issued by Bogor District Court that examined and adjudicated civil affairs cases. The judge’s consideration in this case is:

Considering that, based on the above facts, the arguments made by the Petitioner as set forth in point 1 of the claims have been proven true by the law;

Considering that, by claim 2 which states that Petitioner I and Petitioner II have never performed religious marriage, the claim contradicts the reality of law above as Petitioner II has had a Catholic marriage before and therefore the

Petitioners' argument as set forth in claim 2 is not attested by law;

Considering that the principal purpose for the petition is that the Petitioners, who are both religious, may marry and register their marriage at the Civil Registry Office; of Bogor City;

Considering that before further consideration of the principal purpose of the Petitioners' petition above, the judge will first have to consider the jurisdiction of the court, namely the authority of the District Court to examine and decide on the petition;

Considering that the purpose of the Petitioners' is that their marriage may be registered at Bogor Civil Registry Office;

Considering that a marriage between individuals of differing faiths is only regulated in the explanation of Article 35 point a of Law No. 23 of 2006 on Civil Affairs, wherein the explanation of point a it is asserted that "what is meant by a marriage decided by the court is a marriage between individuals of different faiths". The provision is essentially one which allows for the registration of a marriage between two individuals of differing faiths following a court validation regarding it, whereas the marriage process as stipulated in Law No. 1 of 1974 and Government Regulation No. 9 of 1975 is not further regulated in the provision, therefore issues

relating to the marriage process itself, such as the validity of the marriage, the terms of marriage, prohibition of marriage, and the implementation of marriage process, are still governed by the provisions set forth in Law No. 1 of 1974 and Government Regulation No. 9 of 1975;

Considering that the purpose of the Petitioners' petition is to have their marriage registered at Bogor Civil Registry Office and based on the statements of witnesses which are principally about the Petitioners' effort to register the marriage at Bogor Civil Registry Office, and that the domicile of the Petitioners is in the jurisdiction of Bogor District Court, therefore in this case it is within the authority of Bogor District Court to accept, examine and adjudicate, and to decide the Petitioners' petition;

Considering that based on the Petitioners' information, written evidence marked P-1 to written evidence P-5, supported by the testimonies of first witness WARSA and second witness TATANG bin IMU, and those of first expert witness ASEP LUKMAN HAKIM, S.Ag from Bogor Office of Religious Affairs and second expert witness YOHANES DRIYANTO from the Diocese of Bogor, in the examination of the petition several legal facts have been obtained as follows:

- a. That Petitioner I is of Islamic faith while Petitioner II is of Catholic faith;
- b. That Petitioner I has never had religious marriage before, whereas Petitioner II has had a Catholic marriage and has divorced their husband and this ex-husband is still alive;
- c. That according to Islamic beliefs a marriage between a Muslim and a Non-Muslim is prohibited; and that according to the views of Indonesian Ulema Council (MUI) a marriage should be based on the Quran and the Hadith, and therefore a Muslim should not marry a Non-Muslim;
- d. That the Office of Religious Affairs (KUA) only register Islamic marriages;
- e. That according to Catholic beliefs married individuals who divorced their partners and then seek to remarry have transgressed against their Catholic faith and should be punished with a spiritual sanction in the form of, among others, denial of communion and denial of sacraments after death;
- f. That concerning interfaith marriages, the Catholic Church may bless the marriage of a Catholic who has never had a Catholic marriage before, in which the marriage is not regarded as a sacrament but it is still valid according to the Church;
- g. That when related to the fact that the Petitioner had been married once, if the

ex-spouse is still alive but they are already divorced the second marriage will not be blessed, but if the ex-spouse has passed away the remaining individual may remarry and be blessed;

Considering that based on the facts above the judge opines that even though the wish of the Petitioners to marry is essentially not prohibited by Law No. 1 of 1974 and that the establishment of a household through marriage is the fundamental right of the Petitioners as citizens of the state, and maintaining their faiths is their fundamental right as well, and even though the provisions in Article 2 (1) of Law No. 1 of 1974 on the validity of a marriage when performed according to the religious beliefs of a couple state that the validity does not constitute an obstacle for interfaith couples to enter into marriage, considering that the provision is essentially in contact with the procession or the procedure of performing a marriage according to the couple's religious beliefs which *in casu* cannot be done by Petitioners of differing faiths;

Considering that, based on the explication above and related to the testimonies of expert witnesses which basically do not allow any religious marriage between the Petitioners, the following should be taken into account:

- a. The marital status of the Petitioners, in particular Petitioner II who had been married before and whose first marriage was blessed in the church, and who even though had divorced but the ex-husband is still alive;
- b. The Catholic beliefs of Petitioner II;

Having regarded the articles of the legislations concerned as well as the legal regulations pertaining to the petition, the judge therefore decides to REFUSE the Petitioners' petition.

## **2. The rationale for the consideration made by the Constitutional Court judge No. 68/PUU/XII/2014, dated June 18, 2015, on the Judicial Review on Article 2 Law No. 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia**

Presented below are the considerations submitted by the judge at the Constitutional Court and the writers' own arguments:

That the core of the petition made by the Petitioners is a review on the constitutionality of Article 2 section 1 of Law 1/74 against Article 27 section 1, Article 28B section 1, Article 28D section 1, Article 28E sections 1 and 2, Article 28I sections 1 and 2, Article 28J section 2, and

Article 29 section 2 of the 1945 Constitution. According to the Petitioners, the norm contained in Article 2 section 1 of Law 1/1974 opens the door to interpretations and restrictions so that it cannot guarantee the right to a fair legal certainty as well as being contrary to the provisions of liberty as mandated by the 1945 Constitution;

1) That the fourth paragraph of the Preamble of the 1945 Constitution states, '... which is formed in a structure of the Republic of Indonesia based on the sovereignty of the people and belief in the one and only God'. That the state ideology of Indonesia, belief in the one and only God, is also asserted in Article 29 section 1 of the 1945 Constitution. The principle of Godhead mandated by the 1945 Constitution is an embodiment of religious admission. As a nation that is based on Godhead, any action or deed conducted by the citizens is closely tied to religion. One of those actions or deeds which are closely related to the state is marriage. Marriage is one of the manifestations of the citizens' constitutional rights which must be respected and protected by everyone within an orderly structure of society, nation and state. The constitutional right of marriage entails an obligation to value other people's constitutional rights. Therefore, to avoid any conflict

in the implementation of that constitutional right, it is necessary for the state to regulate it;

In reality, in interfaith marriages there are no conflicts with other people's constitutional rights since the principle held by the couple is to fulfill and to respect each one's religion and beliefs, so they are not in conflict.

- 2) That the Petitioners argue that their constitutional right to marry and form a family has been violated by the provisions of Article 2 section 1 of Law 1/1974. According to the petitioners, their right to form a family through a valid marriage is guaranteed by Article 28B section 1 of the 1945 Constitution so the existence of Article 2 section 1 of Law 1/1974 is regarded as restricting the rights of the citizen to perform such marriage. According to the Court, however, the rights and freedom of every citizen should be subject to restrictions set forth by the law with the sole purpose of securing due recognition and respect for the rights and freedom of others as well as to meet the demands for fairness in accordance with moral judgment and religious values, with public security and order in a democratic society {cf. Article 28J 1945 Constitution}. In line with the state philosophical foundations, Pancasila and the 1945 Constitution, according to

the Court, Law 1/1974 has been able to embody the principles contained in Pancasila and the 1945 Constitution as well as been able to accommodate all realities of social living;

In relation with interfaith marriage: the nature of marriage in general has been set forth in the Constitution, within the principle that states that the rights to freedom of religion and to form a family are fundamental rights in which the state has no right to intervene, unless in its implementation public order and the rights of others are violated. In the case of interfaith marriage, no public order or the rights of others are violated since it is the rights of the marrying couple: made by mutual agreement between adults. When the principle of human rights is examined, it is clear that the two rights are universal rights. So initially the provisions of Article 2 (1) were meant to ensure legal certainty for citizens of Indonesia but in its development it is yet to be able to accommodate the aspirations or social needs of society, especially interfaith marriage.

- 3) That the Petitioners argue that their constitutional right has been violated since Article 2 (1) of Law 1/1974 "forces" every citizen to obey the laws of each one's religion and beliefs in the area of marriage. According to the

Court, marriage is one of the problem areas regulated in the order of law in Indonesia. Every conduct and behavior of the citizen, including matters relating to marriage, must be subject to law and must not contradict or violate it. Legislation regarding marriage was formed to regulate and protect the rights and obligations of citizens in relation to marriage. According to Law 1/1974 marriage is defined as the physical and spiritual relationship that exists between a man and a woman who are bound by marriage ties which confirms their status as husband and wife. Marriage is intended to form a happy and long-lasting family or household based on the trust in God. A marriage is considered valid if performed in accordance with the laws of each partner's religious beliefs and is registered according to the legislation. As a physical bond, a marriage is a legal relationship between a man and a woman in order to live together as husband and wife. The physical bond is a formal relationship which truly exists for those who bind themselves to each other as well as for others or the society, whereas as a spiritual bond, a marriage is a soul affinity woven together due to mutual willingness and sincerity between a man and a woman to live together as husband and wife. The physical and spiritual

bond within a marriage is also a strong assertion that a man and a woman wish to form a happy and long-lasting family (household) based on the trust in God; The comprehension and interpretation of the concept of spiritual bond by the Constitutional Court judge as a bond between a man and a woman who are mutually willing to be husband and wife is still open for debate, namely the mutual willingness of interfaith couples to pursue the purpose of marriage, which is to form a happy and long-lasting family based on the trust in God. The points mentioned above are acceptable as they form the same bond. However, spiritual bond also includes two souls of differing foundation resulting in the desires of the couple to keep each one's religious beliefs. And the desire is manifested in an agreement between the couple itself to be carried out within the marriage. That desire has not been accommodated in Law No. 1 of 1974 on Marriage.

- 4) That the Petitioners argue that their rights to practice religion and to freedom of religion have been violated by the enactment of Article 2 section 1 of Law 1/1974 since the article *a quo* gives legitimacy to the state to confound the administration and implementation of religion as well as to dictate religious

interpretations in the area of marriage. According to the Court, in a life which is based on Pancasila and the 1945 Constitution, religion is the foundation and the state has an interest in marriage. Religion is the foundation of the community of individuals which becomes the vehicle for the individuals to live together in their relationship with God and the community has the responsibility to realize the will of God to continue and ensure the survival of mankind. The state also plays a role in providing a guidance to ensure the legal certainty of living together in a marriage bond. In particular, the state plays the role of protecting those who wish to form a family and continue their line through a valid marriage, which is the embodiment and insurance of human survival. Marriage should not be seen merely from the spiritual and social aspects. Religion establishes the validity of a marriage, whereas the law establishes the administrative validity conducted by the state;

In principle, the state also regulates marriage to ensure the legal certainty of citizens in the area of marriage, thus providing legal protection. The state should also protect its citizens in the area of interfaith marriage, following some principles which are based on the perspectives of Human Rights (HR), i.e.

the right to freedom of religion and the right to form a family are fundamental rights whose implementation cannot be reduced even by the state. Protection for both rights is guaranteed by the Constitution.

- 5) Considering all legal considerations above, the Court found the petition to be unreasonable under the law.

**RULING: It is decided to reject the petition in its entirety.**

The court ruling on case number 136/Pdt.P/2009/PN.DPS dated August 19, 2009, given to the Hindu petitioner Ratu Ayu Isyana Bagoes and the Christian petitioner George Albert Tulaar, shows that the judge's considerations did not seem to pay attention to the religious aspect of each petitioner. Upon investigation, Hindu position does not allow interfaith marriage; this is unlike the (Protestant) Christian position that does not preclude interfaith marriage. The ruling would likely be different if one of the petitioners had been a Muslim, especially if they had been a woman. According to Hindu faith, particularly the Balinese version with its patrilineal kinship system, whenever a Balinese woman marries a non-Hindu she is encouraged to embrace her husband's faith. Religious aspect for a Balinese Hindu woman is therefore not as emphasized as it

is for a man. This is because the status of a father according to the customary law is a *purusa*, meaning that it is the most important in the personal and social life of a Balinese and which should be given priority over that of the mother or of her family.

The status and position of women in a society which is governed by religious values and kinship values, particularly patrilineal values, have always been discriminated against; compared to men, women are viewed as second-class citizens so that even their right to form a family with a person of different faith is regulated by a ban.

Whereas the rejection made by the judge in court ruling on case number 527/Pdt/P/2009/PN.Bgr dated July 16, 2009, filed by the Muslim petitioner Saepudin and the Catholic petitioner F. Lily Elisa, shows that the judge in their legal considerations respected the petitioners' religious affiliations. However, the judge did not explain clearly what was contained in the petitioners' religious teachings, particularly in petitioner I's Islamic religion. Yet the primary measures employed by the judge are that a marriage between a Muslim and a non-Muslim is not allowed and that according to views of Indonesian Ulema Council (MUI) a marriage must always be based on the

Quran and the Hadith. While a proposition that in Islamic teaching a Muslim man is allowed to marry a Jewish or a Christian woman as long as the woman keeps her honor and never harms her husband and children's religion (al-Ma'idah: 5), was not used as a reference.

On the other hand, the judge also touched upon the Catholic faith of petitioner II. According to Catholic teaching, couples who divorce their spouses and then remarry have transgressed against their faith. In this case, Petitioner II had been married before as a Catholic but then had a divorce; therefore, if she wished to remarry her second marriage could never be blessed. Due to the judge's intention to respect the petitioners' religious affiliations, the petition was deemed to have no legal basis and thus could not be granted.

The judge's ruling which rejected an interfaith marriage petition made by a Muslim man and a Catholic woman is based more on the provisions of the religion of each interfaith marriage petitioner. In this case, the woman was a divorcee and legally her divorce status was legitimate. However, had she practiced her religious interpretations she would have not had a divorce. The moment she decided to remarry the judge should have deemed her to be outside of Catholic religious

norms. The court ruling which rejected this case had a significant impact on the interfaith couple as it closed their chance to legalize their marriage; wherein petitioning the court to obtain a validation should have made it easier for the couple. It is back again to the judge's culture which was strong enough to affect their reason for rejecting, coupled with the most prevalent values in society that affect the society's perception of interfaith marriage.

One cultural aspect generates implications due to the dominant positivistic way of thinking among judges, i.e. many of the decisions and rulings made by these judges do not reflect substantial justice. In fact, a person involved in a case/dispute might find themselves be disenfranchised. As stated by Achmad Ali: "... As a result of the use of rigid positivistic point-of-view in interpreting various laws, the decisions made by judges often failed to produce substantial justice and merely produced procedural justice."<sup>4</sup>

We understand judges as people who live in the midst of the reality of everyday life; they are also open to and are affected by their environments. Regarding the latter

(environment factor), Robert B. Seidman stated that all legal actors were affected by "personal and societal factors".<sup>5</sup> Furthermore, according to Schubert, the attitude of the judge in relation to decision making is an important factor as well. Differences of decision are not due to differences in the reasoning, but in the positions taken during making the decisions. Since personality factor had become essential, Schubert suggested that the reasons behind a judge's decision to trust something and reject another were worth exploring. This is because a judge's trust depends on their affiliation to various things such as politics, religion, ethnicity, education, economy, certain ideology, pre-judge career, etc.<sup>6</sup>

In addition, the possible reason of a judge who refused to give a validation for interfaith couples is that they might not know or not understand the stance of Article 35 of Law No. 24 of 2013 (previously Law No. 23 of 2006) on Civil Affairs, where in the explanation of Civil Affairs Law, point 34a, it is asserted that "the definition of a marriage validated by the court is a marriage between persons of

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<sup>4</sup> Achmad Ali. *From Formal Legalistic to Delegalization: The Face of Law in the Reformation Era*, (Bandung: Citra Aditya Bhakti, 2000), 35-7.

<sup>5</sup> On Judges who Decide the Cases in Prof. Dr. Satjipto Rahardjo, SH, *Compendium of*

*Writings: A Textual Reading for Students of the Law Doctorate Program of UNDIP* (Semarang: UNDIP, 2009), 3.

<sup>6</sup> Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2006).

differing faiths”. This means that it is the duty of Civil Registry to register marriages validated by the court, i.e. interfaith marriages. Such unfamiliarity, coupled with the judge’s legal culture, will result in interfaith marriages be unprotected.

Based on the analysis relating to judges’ rulings, whether it is a rejection or a granting, it turns out the ruling has a direct impact on interfaith couples in Indonesia, particularly with judges who refused to give a validation the couples are subsequently unable to register their marriages at the Civil Registry Office. It is the duty of the state to provide legal protection in the area of mixed marriages, in particular interfaith marriages, due to the phenomenon where a state apparatus, in this case the judge, either refuses to validate the marriage due to the interpretation employed or grants a validation. In fact, according to a marriage registrar at the Civil Registry there was an indication that a court made it difficult for interfaith couples to obtain a validation. The varying opinions and interpretations were due to the Marriage Law, which as a product of the New Order is quite problematic since it does not regulate mixed marriages, in particular interfaith marriages conducted in Indonesia (internal).

What happens in Indonesia is perceptual differences in making meaning of Article 2 section 1, resulting in the lack of protection of the right to form a family for interfaith couples hoping to marry in Indonesia. The phrase “to protect the whole nation and homeland of Indonesia” transcribed in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia reveals that the State, in this case represented by the Government, is obliged to provide protection not only physically but also non-physically for every Indonesian citizen. The provisions of Article 29 section 2 of the 1945 Constitution oblige the state to guarantee the freedom of every citizen to profess his or her religion and to worship according to his or her religion. This does not mean that the State should regulate every aspect of a person’s religious affairs. From the perspective of the State, every citizen is its people and as such is entitled to legal protection by the State and must be protected without discriminating whether said person is obedient, less obedient, or disobedient to their religion. On the above basis the principle of interfaith marriage is therefore in accordance with the principles contained in the Constitution.

#### IV. CONCLUSION

From the discussions, it is submitted that the reasons behind the judge decision is that there are still multiple interpretations of Article 2 section 1 of Law No. 1 of 1974 on Marriage and this way made judges reluctant to make a distinct decision on interfaith marriage. Furthermore, it is also submitted that the interfaith marriage does not contradict the principles contained in the constitution with regard to the rights to form a family and to freedom of religion.

It is argued that while interfaith marriage is considered illegal in Indonesia, such condition raised future issues such as the issues of the status of woman involved in interfaith marriage and the heritage issues. Thus, it is submitted that interfaith marriage should be legalized in Indonesia.

#### REFERENCES

##### Journals

Danu Aris Setiyanto, 'Interfaith Marriage after Constitutional Court's Numner XII/2014 On Human Rights Perspective', v.19, n.1, 2016 , *Syariah Law Journal*.

Faiq Tobroni , 'Freedom of Ijtihad on Interfaith Marriage After Constitutional Court's Decision',

v.12, n.3, 2015, *Constitutional Law Review*

Leeman , Lee B, 'Interfaith Marriage in Islam; An examination of the Legal Theory Behind the Traditional and Reformist Position', v. 84, n.2, *Indiana Law Journal*

MD Zahidul Islam, ' Mariage Islam and Present Situation', v.2, n.1, 2014, *Global Journal of Politics and Law Research*

##### Books

Ali, Achmad. 2000. *From Legalistic Formal to Delegalization: The Face of Law in the Reformation Era*. Bandung: Citra Aditya Bakti.

Darmabrata, Wahyono. (2003) *Review of Law No. 1 of 1974 on Marriage, with the Law and Its Implementation Regulations*. Jakarta: CV Gitama Jaya.

Rahardjo, Satjipto. (2006) *Legal Studies (6<sup>th</sup> ed.)*. Bandung: Citra Aditya Bakti.

----- (2009) On Judges Who Decides the Cases. In *Compendium of the Writings by Prof. Dr. Satjipto Rahardjo: A Textual Reading for Students of the Law Doctorate Program of UNDIP*. Semarang: UNDIP.

##### Acts

Law No. 1 of 1974 on Marriage

Law No. 24 of 2013 on Civil Affairs.

**Cases**

Constitutional Court judgement No. 68/PUU/XII/2014, dated June 18, 2015, *on the Judicial Review on Article 2 Law No. 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia*

Decision No. 527/Pdt/P/2009/PN.Bgr was issued by Bogor District Court .

Decision No. 136/Pdt.P/2009/PN.DPS of August 19, 2009 was issued By Denpasar Court

**Internet**

www.hidayatulalah.com. Since 2004-2011 *there had been 1,109 interfaith marriages.* March 31, 2012. Retrieved on January 30, 2017.

www.bbc.com. June 2015 *Talk with Nurcholish Achmad and Interfaith Marriages.* Retrieved on January 30, 2017.