

Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/pdt.p/2018 Surakarta District Court

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Abstract

This research discusses mixed marriage which is very controversial in society, even though most religions have prohibited the practice of mixed marriage. In Decree No. 454/Pdt.P/2018/PNSKt. The judge allowed the marriage of someone of a different religion, even though the Marriage Law clearly does not regulate and returns to the laws of each religion. HKI (Compilation of Islamic Law) prohibits the practice of interfaith marriage as stated in Article 40 letter c. This study aims to analyze the judge's considerations in granting or rejecting interfaith marriages with the applicable laws in the marriage law and KHI (Compilation of Islamic Law). The research method used is qualitative (library research) with a normative legal approach as an analytical tool to describe existing problems and gain insight. The results of this study indicate that the determination of interfaith marriages in Decision No. 454/pdt.p/2018, it is only the subjectivity of judges in interpreting Article 2 (1) of the Marriage Law and legalizing interfaith marriages which are in stark contrast to the Compilation of Islamic Law which has been in force in the Religious Courts in Indonesia.

Key words: Marriage is different religions; determinations; judges' views

Abstrak

Penelitian ini membahas tentang perkawinan campuran yang sangat kontroversi dimasyarakat, meskipun sebagian besar agama telah

melarang praktik perkawinan campur. Pada Keputusan No. 454/Pdt.P/2018/PNSKt. Hakim mengizinkan perkawinan seseorang yang berbeda agama, padahal Undang-Undang Perkawinan jelas tidak mengatur dan mengembalikan kepada hukum agama masing-masing. HKI (Kompilasi Hukum Islam) melarang praktek perkawinan beda agama sebagaimana pada Pasal 40 huruf c. Penelitian ini bertujuan untuk menganalisis pertimbangan-pertimbangan Hakim dalam mengabulkan maupun menolak perkawinan beda agama dengan hukum yang berlaku dalam undang-undang perkawinan dan KHI (Kompilasi Hukum Islam). Adapun metode penelitian yang digunakan kualitatif (*library research*) dengan pendekatan hukum normatif sebagai pisau analisis untuk menguraikan permasalahan-permasalahan yang ada dan mendapatkan titik terang. Hasil penelitian ini menunjukkan bahwa penetapan perkawinan beda agama dalam Putusan No. 454/pdt.p/2018, menjadi subjektifitas Hakim semata dalam menafsirkan Pasal 2 (1) Undang-Undang Perkawinan dan mengesahkan perkawinan beda agama, padahal sangat berlawanan dengan Kompilasi Hukum Islam yang telah berlaku di Pengadilan Agama di Indonesia.

Kata kunci: Perkawinan beda agama; penetapan; pandangan hakim

Introduction

Mating is one of Allah's sharia for human beings, this is because humans are given a sense of sexuality towards each other, thus it cannot be denied, every human being has this inclination, Quraish Shihab calls it "The law of sex",¹ so Islam is present to regulate the procedures of good sex behavior. The concept of mating must be taken by every Muslim, when one wants to fulfill one's sexual desires which is then often called Marriage. Syaikh Kamil Muhammad 'Uwaidah states that based on the language of marriage it means union, it is also interpreted as an agreement or sexual intercourse, moreover, there are also those who define promiscuity.²

On the other side, God creates diversity, which is a necessity for humans, of course if it is seen from physical to diversity, all of that is visible before us, especially in countries that accommodate more than one diversity, just like the country we live in, Indonesia.³ In difference, people interact, this

¹ Quraish Shihab, *Tafsir Maudbui "Pelbagai persoalan umat"* (Bandung : Mizan,1997), 189.

² Syaikh Kamil Muhammad 'Uwaidah, *al-Jami' Fi Fiqh an-Nisa'*, terj. M. Abdul Ghofar, *Fiqih Wanita*, (Jakarta: Pustaka al-Kautsar, 2002), 375

³ Penetapan Presiden No 1 Tahun 1965 Tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama, secara resmi mengakui enam agama, yakni Islam, Protestan, Katolik, Hindu, Buddha dan Khonghucu.

allows them to pay attention to each other, a Muslim man loves a non-muslim woman, and vice versa, many of the romance does not make it to marriage. But some manage to legalize their union.

In *Undang-Undang* No. 19 year of 2019 changes for *Undang-undang* No. 1 year of 1974 concerning marriage, there is no restriction or enabling of interfaith marriage, there is just a legal requirement for marriage in article 2 paragraph 1:

“Marriage is legitimate if it is done according to the laws of each religion and belief”.

Hilman Hadikusuma translates the clause of “law of each religion” meaning if marriage is carried out by using Islam after that it is conducted again by using different religion then it becomes invalid, likewise the other way around.⁴ From article 2 paragraph (1) it can be concluded that whether or not a marriage is legal is built upon religious rule. It is not a decision from the law stated, therefore there is not marriage that is made outside of religious rule and recognized beliefs in Indonesia.⁵

It is problematic in its implementation, even causing confusion and law uncertainty, this uncertainty surely raises the question, of whether or not the drafting of the marriage law did not estimate that problems like this would arise.⁶

Legislators, should have considered the diversity that exists in Indonesia, because interfaith marriages have existed in the past and in the future, causing interaction between religions in Indonesia undeniable, will always be occurred, especially there will be interactions that spark a deep sense of love and affection.⁷

Interfaith marriage is only regulated by *KEPRES* Number 1 year of 1991 about *Kompilasi Hukum Islam* (KHI).⁸ *Kompilasi Hukum Islam* governs in more detail until the marriage with a woman *Ahl al-Kitab*, Article 40 letter c says: “It is prohibited to hold marriage between man and woman due to particular condition: a woman who is not Muslim”, and in article 44 says: “an Islam woman is not allowed to hold marriage with a non-Islam man”.⁹ If we look at some arguments above, clearly, Islam as well as other religions ban interfaith marriage, *Kompilasi Hukum Islam* assertively stated.

⁴ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundang-Undangan Hukum Adat dan Hukum Agama* (Bandung: Bandar Maju, 2007), 25.

⁵ Ichtiyanto, *Pernikahan Campuran dalam Negara Republik Indonesia* (Badan Litbang Agama dan diklat Keagamaan Depag RI, 2003), 81.

⁶ Eoh, OS, *Perkawinan Beda Agama Dalam Teori dan Praktek*, 12.

⁷ Eoh, OS, *Perkawinan Beda Agama Dalam Teori dan Praktek*, 12.

⁸ *Kompilasi Hukum Islam Nomor 1 Tahun 1991*, “KOMPILASI HUKUM ISLAM,” *Hukum Perkawinan*, no. 22 (2001): 11.

⁹ Nomor 1 Tahun 1991.

However, Article 35 points a *Undang-undang* No.24 year of 2013 about changes for undang-undang no.23 year of 2006 concerning residence administration reads “marriage registration as referred to in Article 34 also applies for marriage determined by the Court.

In the statement of the Article there are several marriages determined by the Court, one of which is interfaith marriages. It opens up opportunities for interfaith marriage couples to legalize their marriages. This makes interfaith marriages become a subjectivity of judges in setting them, can be rejected and can be granted, for instance, the wedding between Mario Herdiyan Saputro (Catholic) and Dina Damayanti (Islam). The author is keen in analyzing the judges’ considerations in deciding interfaith marriages with their respective religious laws and how legal action can be taken by families or actors of interfaith marriages if the application is not granted.

Besides, research associated with this phenomenon has been written by some researchers, one of them done by Muhammad Fahmi Akmal, his research focused on the basis and considerations of judges in deciding case No.191/pdt/P/PN.Yk. The decision made by the Yogyakarta District Court declined the application based on Article 2 paragraph (1) of the Marriage Law. However, the applicant made an appeal to the Supreme Court, and the MA dismissed the decision of the Yogyakarta District Court and rewarded the request with legal considerations based on human rights values.¹⁰

Fanny Fadlina, in her research on Juridical Analysis of Applications for Determination of interfaith Marriages (Case Study No. 14/pdt/P/2008/PN/Ska. dan No. 1/Pdt/P/2009/PN/Ska), explains the procedure for submission and examination of the application for interfaith marriage, the results of this study, the judge granted the case because it prevented immoral behavior which would emerge if the application was turned down.¹¹

Meanwhile, the research conducted by Sinta Felisia Agnes, Permits for Interfaith Marriages (Comparative Study of Determination No. 46/pdt/P/2016/PN/Ska and Determination No. 71/pdt/P/2017/PN/Bla). As usual this research also aimed to see the judge’s considerations in deciding to the case, then analyzed through the Maqashid al-syariah approach.¹²

¹⁰ Muhammad Fahmi Akmal, “Tentang Pernikahan Beda Agama (Studi Dasar Hukum),” 2018.

¹¹ Fanny Fadlina, “Analisis Yuridis Permohonan Penetapan Perkawinan Beda Agama (Studi Kasus Penetapan Nomor : 14 / Pdt . P / 2008 / PN . Ska Dan Penetapan Nomor : 01 / Pdt . P / 2009 / PN . Ska),” 2010.

¹² Sinta Felisia Agnes, “Izin Perkawinan Beda Agama (Studi Perbandingan Penetapan No. 46/pdt/P/2016/PN/Ska Dan Penetapan No. 71/pdt/P/2017/PN/Bla),” no. 46 (2019): 1–9, <https://doi.org/10.37708/0033-2909.I26.1.78>.

Of all the research that has been done with the same circumstance, but in this study, the author tries to present a thorough discussion of the legislation, with an explanation from the institution authorized to interpret, so as to get a full picture, not only related to the analysis of the determination, but the regulations and positive legal view on interfaith marriage.

The author is interested in the verdict of interfaith marriage which is very dependent on the subjectivity of the judge, in addition to the State providing a gap for legal diversity to allow it, and later it will be seen using qualitative methods (library research). In answering the researcher's question, the author also uses a normative legal approach.

And on the one hand there is a uniqueness in this research that the author really needs to describe and discuss, in order to add to the repertoire of references about interfaith marriages that are increasingly happening in Indonesia.

Discussion

Interfaith Marriages According to Religion in Indonesia

Interfaith marriages in the perspective of various religions existed in Indonesia, every religion surely has its own view based on applicable laws as contained in their respective religious books.

1. Interfaith Marriages according to Islam

Marriages in Islam have been codified in Kompilasi Hukum Islam, this is an agreement of the ulama (scholars) which was followed up with Presidential Instruction no. 1 year of 1991, in Islam there are indeed many views regarding interfaith marriages, there are those who allow, there are those who disallow interfaith marriages practice of Kompilasi Hukum Islam, interfaith marriages are regulated and included in Article 40 (c) related to the prohibition of carrying out marriages and Article 44 of Kompilasi Hukum Islam which arranges the prohibition of marriage with non-muslim men.¹³ In the Qur'an Surah al-Baqarah verse 221 explained that marrying a non-muslim man is forbidden, it is also asserted by the fatwa of the Majelis Ulama Indonesia, through fatwa number 4/MunasVII/MUI/8/2005 concerning interfaith marriages. In the fatwa, MUI closed all marriages between a Muslim and a non-Muslim, including marrying a scholar woman, which is haraam.¹⁴

2. Interfaith Marriages according to Christianity

¹³ Abd. Rozak A., "Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)," *Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum Dan Hak Asasi Manusia* 53, no. 9 (2011): 6.

¹⁴ Neng Djubaidah, *Pencatatan Perkawinan Dan Perkawinan Tidak Dicatatkan* (Jakarta: Sinar Grafika, 2010), 122.

Marriage in Protestan it does not just involve the social aspect of the relationship between men and women alone, but it is more than that marriage has other more important aspects such as holiness aspect, the alliance among men, women and God in order to form an institution that is closely related to the values of God.¹⁵

The Bible explains that marriage is God's commandment that has a sacramental (holy) nature, marriage is held on the basis of His power over the created universe, Thus the Church is obliged to reinforce and bless the marriage, not in the sense of legitimizing the marriage, but only reinforcing.

The Church blesses and strengthens existing marriages, so that in its implementation the Church awaits the determination made by the panel of judges in the trial, after interfaith marriage is determined, the Church performs the blessing and confirms marital status, to couples who have been approved by the court and have been recorded in Catatan Sipil (Civil Registry) office.¹⁶

3. Interfaith Marriages according to Catholic

Catholicity views that interfaith marriage between a Catholic with a non-Catholic as an unideal marriage to be held,¹⁷ this is due to marriage is something sacramental (sacred, holy), as explained in Catholic law. The interfaith marriage can be done after getting dispensation from diocese or territorial ordination (catholic 1124).

Thus, indirectly, Catholic forbids interfaith marriages between Catholics and non-Catholics, except for interfaith marriages under certain conditions which accept a dispensation from the diocese. So like it or not, the marriage is done¹⁸ with non-Catholics considering all states and very dependent on the diocese which delivers permission.

In Catholic law interfaith marriage is called mixed marriage, with the explanation as follows:

- a. Marriages of baptized with non-baptized, regardless of their religion or even no religion are known as *disparatius cultus*, as explained in kanon 1129. Someone who is not baptized becomes an obstacle for those who are Catholics to marry him/her, unless one gets dispensation from the diocese.
- b. Mixed marriage between two baptized people or one is baptized as Catholic and the another does not abandon it officially, whereas the other has been

¹⁵ Mohammad Monib & Nurcholis Ahmad, *Kado Cinta Bagi Pasangan Nikah Beda Agama* (Jakarta: Gramedia Pustaka Utama, 2008), 110.

¹⁶ Mohammad Monib & Nurcholis Ahmad, *Kado*, 110.

¹⁷ Sarifudin Sarifudin, "Kawin Beda Agama Dalam Kajian Hukum Islam Dan Peraturan Perundang-Undangan Di Indonesia," *Al-Istinbath : Jurnal Hukum Islam* 4, no. 2 (2019): 213, <https://doi.org/10.29240/jhi.v4i2.787>.

¹⁸ "Kontroversi Perkawinan Beda Agama di Indonesia Sri Wahyuni, M.Ag., M.Hum. 1," *Kontroversi Perkawinan Beda Agama di Indonesia*, no. 1 (n.d.).

recorded in other church, this is often called as *Miixtaa Religio* or a different church.

Therefore, a marriage made by a Catholic with another religion is recommended to take permission from a clergyman, bishop, or church priest, although it is not immediately approved by the diocese due to certain conditions.

4. Interfaith Marriages according to Buddha

In interfaith marriages between Buddhists and non-Buddhists are legally allowed as long as the marriage method is conducted in Buddhist marriage procedures, and there is no forcing non-Buddhists brides to convert to Buddhism, but all prospective brides who want to marry in Buddhist procedures are required mentioning “in the name of Budha, Darma dan Sangka”, as conveyed by the Sangha Agung Indonesia.

Monk Prajnavira Mahasthavira said that like universal Buddhist teachings, marriage is dharma, so the most significant element in marriages is that it does not violate applicable norms, as well as interfaith marriages, if they do not violate norms and morals then it is legal to do so.

5. Interfaith Marriages according to Confucian

Interfaith marriages in Confucian, there are no boundaries for couples wanting to get married, but some rules do limit them, for instance, marriages carried out with partners who are blood relatives or with close family.

Marriage must be compassed to fuse love, and to foster good values, meaning that it must be based on love and not directed at something bad, and is not in line with the value of truth. Marriage ceremonies in the Confucian must be adjusted to the prevailing moral norms because that is the foundation of civilization.

Interfaith marriages or different religions in Confucian are not well-known. The necessary thing is marriage is done with a person of a different descendant or clan, not one blood or close family. Thus, the purpose of marriage to fuse love as well as to spread the seeds of kindness can be achieved, besides marriage must be conducted according to the applied rules in Confucian.¹⁹

6. Interfaith Marriages according to Indonesia's Law

Undang-undang no. 1 year of 1974 about marriage, interfaith marriage becomes controversial marriage, this is because in *Undang-undang* has not listed any article which regulate related to interfaith marriage, “*Kontroversi Perkawinan*

¹⁹ Mohammad Monib & Nurcholis Ahmad, *Kado Cinta Bagi Pasangan Nikah Beda Agama* (Jakarta: Gramedia Pustaka Utama, 2008), 124.

Beda Agama Di Indonesia (Controversy of Interfaith Marriage in Indonesia) Sri Wahyuni, M.Ag., M.Hum. 1,” *Kontroversi Perkawinan Beda Agama Di Indonesia*, no. 1 (n.d.). It is clear that there are two legal views that are present, prohibition and permission. This is due to the tug of war on the interpretation of Article 2 (1) of Undang-undang of marriage.²⁰

Kompilasi Hukum Islam as marriage law for muslim which has been codified, inserting interfaith marriage to marriage prohibition chapter, contained in the article 40 (c), the article states that it is not allowed or prohibited to marry a man with a non-Muslim woman. If we look at non-Muslim women are forbidden, especially if it is done the other way around, Muslim women with non-Muslim men.

Mahkamah Konstitusi (Constitutional Court) also assertively states that Religion as an institution can determine the validity of marriage while Undang-undang only regulates related to administrative legality governed by the country, because marriage is not formal aspect only, it is also seen from spiritual and social aspects.

A marriage is not only as an official aspect, but also it is considered from social and spiritual aspects.. Moreover, religion is the basic for individual communities relation to Ketuhanan Yang Maha Esa (belief in the one and only God), and Country is responsible for the realization of *Tuhan Yang Maha Esa* will.²¹

From the verdict of Mahkamah Konstitusi (MK), it is clear that MK put religion as the decider whether or not marriage is legitimate, therefore, like or not, the couples who want to conduct marriage are obliged to obey towards religious law applied in each respective religion, because our country is not a secular country, not also religion country, but it is from every law applied highly upholds the socio-religious-cultural values in it.

However, *Undang-undang* of residence administration that seems to accommodate interfaith marriages, can be submitted to the District Court for determination, and then registered at the Catatan Sipil office, as stated in article 35 of Undang-undang number 23 year of 2006 concerning Residence Administration.

Determination of Interfaith Marriages (No.454/Pdt.P/2018/Skt.)

This determination contains several discussions which explained the grant of interfaith marriage made at *Pengadilan Negeri Surakarta* (District Court of Surakarta). A marriage was done by Mario Herdiyan Saputro, a Catholic man

²⁰ Aرسال, “Beda Agama Di Indonesia (Kajian Sejarah Sosial Hukum Islam,” *Al-Hurriyah* 14, no. 2013 (1945): 38–58.

²¹ Mahkamah Konstitusi, “Putusan Mahkamah Konstitusi,” *Nomor 68/PUU-XII/2014*, no. 6 (2014): 1–162.

with Dina Damayanti, an Islam woman. This marriage was legally bound on Thursday, 10th of Januari 2019.

The marriage was denied by local of *Catatan Sipil*. It was due to the different religions practiced by the couples, the bridegroom who was Catholic while the bride was Islam. As a result, both submitted a request for interfaith marriage determination at Pengadilan Negeri Surakarta. The couples got the blessing from their respective parents, proven by the letter of permission from the parents. Supported with other files, which are requirements for submitting interfaith marriages.

The couple married in Catholic way at Hati Kudus Yesus Church on the 29th of May 2015, according to the witness, both married in front of the priest viewed by the parents of the woman. Despite their different religion, the two agreed to marry. Even from this marriage, they have been blessed with a child, their second marriage was rewarded by Judge Fredrik F.S. Daniel, SH.²²

There are some considerations of the Judge in deciding the marriage of Mario and Dina as follows:

1. Determination of interfaith marriage is the authority of Pengadilan Negeri according to article 35 a Undang-undang no.23 year of 2006 about residence administration, the article explains that interfaith marriage can be noted if there has been decisions from Pengadilan Negeri;
2. Interfaith couple who gets rejected from Dinas Kependudukan dan Catatan Sipil (Department of Residence and Civil Registration), has the right to apply for determination, according to article 21 paragraph 1 jo 4 Undang-undang of marriage.
3. The Court as a judicial institution obliged to accept, check and decide interfaith marriage, as regulated in article 21 paragraph 4 Undang-undang of marriage;
4. The country guarantees the freedom of each citizen in practicing their respective religions and to worship according to religion and belief, as referred to article 29 paragraph (2) Undang-Undang Dasar Negara Republik Indonesia (Constitution of the Republic of Indonesia);
5. The judge sees that interfaith marriage is the right of every citizen, as stated in Article 28B (second amendment) *Undang-Undang Dasar* on year 1945, that everyone has the right to form and continue offspring through legal marriage;
6. *Undang-undang* no. 1 year of 1974 about marriage, does not explicitly regulate interfaith marriages; as well as
7. Seeing inter-religious association is unavoidable, so it is a natural thing, if couples of different religions love each other.

²² Direktori Putusan et al., "Putusan Nomor 454/Pdt.P/2018/PN Skt," 2018.

In the Judge's considerations, they did not include *Undang-Undang* of Marriage and *Kompilasi Hukum Islam* in deciding the determination, the Judge called the interfaith marriage is Human Rights, even though it is clear that the above marriage involves Muslim woman who should be returned back to religious law, as mentioned in article 2 paragraph (1) Undang-undang of Marriage.

Reflecting on the same event, interfaith marriage happened at Pengadilan Negeri Blora, the Determination No.71/Pdt.P/2017/PN Bla, was legally bound on the 18th of April 2017. The application was requested by a couple of Neneng Oktara Budi Asri Binti Bambang Marjono (deceased), Islam and Yafet Arianto Bin Markus Wartono (deceased) Christian. The Judge declined the application on considerations based on :

1. In article 1 of *Undang-undang* of marriage states, marriage is an inner and outer bond between a man and a woman as husband and wife form a happy family or household;
2. Weighing, based on provision Article 2 paragraph (1) Undang-Undang Number 1 Year of 1974 about Marriage mentioned that marriage is legitimate if it is carried out according to the law and each religion and belief;
3. Weighing, that in Islamic teachings, In Surah Al-Baqarah: 221 mentions, a muslim woman is not allowed to marry a non-Muslim man and in *Kompilasi Hukum Islam* i.e. in article 44 also mentions an Islam woman is prohibited to hold marriage with a non-Islam man so based on this, Islamic teachings prohibit interfaith marriages;
4. Weighing, that based on the witness statement of Yanto Pandiangan, the priest at GBI Arumdaluh Church, Kabupaten Blora told that in Christianity's teachings also prohibited interfaith marriages thus the GBI Arumdaluh Church allowed the two applicants to get married in the church if the applicant of Neneng Oktara Budi Asri converted to Christianity;
5. Weighing, that the applicants, in court stated that both before and after marriage will stay to their respective religions, i.e. Applicant of Neneng Oktara Budi Asri is a Muslim, meanwhile the applicant of Yafet Arianto is Christian;
6. Weighing, that it is due to the applicants expressed to stay with their respective religion i.e. Applicant of Neneng Oktara Budi Asri is a Muslim, meanwhile the applicant of Yafet Arianto is Christian. In Islamic law or Christianity law also prohibits, so based on that provision Article 2 paragraph (1) *Undang-Undang* Number 1 Year of 1974 the desire of the applicants who wanted to conduct interfaith marriage could not be done because interfaith marriage is prohibited according to the applicants' religion thus the applicants' request could not be granted.

In consideration of the above determination, there were many references cited by the Judge in determining interfaith marriages, including the Judge quoting the al-Qur'an Surah Al-Baqarah: 221 to Kompilasi Hukum Islam, as a result, the Judge refused interfaith marriages proposed by a couple of Neneng Oktara Budi Asri Binti Bambang Marjono (deceased), Islam and Yafet Arianto Bin Markus Wartono (deceased) Christian.

Legal effort Towards Determination of Interfaith Marriage

Although the Court has determined the determination requested by the applicant, there are parties who are lost by the decision, then there are legal efforts that can be taken by the parties who feel aggrieved, because our country is a country law. This is also adjusted by the law and Undang-undang regulation applied, several legal efforts that can be taken by the parties involved²³ :

1. Marriage preventive submission

If there are people harmed by the application for interfaith marriage, a marriage prevention process can be submitted, as mentioned in article 13 Undang-Undang of Marriage, which states marriage can avoid if there are unfulfilled conditions by the applicant, who is a member of a straight up or down the family.

2. Resistance Submission During the Application Process in Progress

A legal effort can be carried out toward determination that harmed the other party's interests, the foundation of this legal attempt is an analogy from article 195 paragraph (6) HIR which says that if a decision was denied by other parties, because the confiscated items are recognized as their own, therefore the dispute can be contested in Pengadilan Negeri.

From the article, it can be done legal effort of *derdenverzet* resistance i.e. third party resistance who feel aggrieved by the request of the determination made by the applicant or can act as opposition, basis resistance aims for volunteer lawsuit, the opposition can seek for the request placed by the applicant to be rejected.

3. Civil Lawsuit Submission

If the contents of the application have been granted by the Court and some parties are harmed, then an ordinary civil lawsuit can be used, the injured party acts as the plaintiff while the applicant is withdrawn as the defendant, the argument of the lawsuit departs from the legal relationship related to the problems raised in the application.²⁴

²³ M. Yahya Harahap. *Hukum Acara Perdata ten tang Gugatan. Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Jakarta: Sinar Grafika Offset, Juni 2005), 44.

²⁴ M. Yahya Harahap. *Hukum*, 44-45.

4. Cassation Submission

Cassation legal effort can be the option when a lawsuit against the application is defeated in the first degree of the court, the cassation basis refers to the explanation of article 43 paragraph (1) that cassation can be taken after going through an appeal attempt unless determined otherwise in *Undang-undang*.

In Undang-undang no. 5 year of 2004 reveals that cassation can be submitted after going through an appeal attempt, except there are other provisions according to undang-undang. Because of the explanation of article 43 paragraph (1) that the application cannot be appealed, thus the judicial process continues directly to the cassation.²⁵

Conclusion

If we look at interfaith marriage determination No. 454/Pdt.P/PN Skt. It was more inclined towards Judge's view only, without considering all aspects related to interfaith marriage. Firstly, it has become the Judge's authority in deciding interfaith marriages within Pengadilan Negeri environment, according to article 35 a Undang-undang residence administration. However, as explained by Mahfud MD, there are three purposes of law which are assurance, justice dan expedience of law. It becomes a must for the Judge to fulfill these three purposes of the law, especially the law expedience received by the object of the law.

Secondly, the Judge said that *Undang-Undang* of marriage does not regulate interfaith marriages. Although it is not directly regulated in undang-undang of marriage, article 2 paragraph 1 undang-undang of marriage restores the validity of marriage to their respective religions.

Thirdly, the Judge viewed that the interfaith marriage as a human right, referred to article 28B undang-undang dasar 1945. On the other hand, Constitutional Court explained that it was irrelevant if the freedom to do interfaith marriage be referred to article 28 b Undang-Undang Dasar 1945. Thus every citizen is obliged to obey the rules and applicable laws, article 2 paragraph 1 Undang-Undang of Marriage becomes a law instrument which every citizen should follow. The limitation imposed by undang-undang, solely to ensure recognition and respect for the rights of others and to fulfill the demands of justice as norms, values, religion, public order and security in a society.

Fourthly, in the determination, The Judge explained that it has become the country's obligation to guarantee freedom of religion and worship according to their respective beliefs. As mandated by article 29 paragraph (2) Undang-Undang Dasar 1945. Constitutional Court explained that with the article 2 paragraph 1 Undang-Undang of Marriage which ensures that the

²⁵ M. Yahya Harahap. *Hukum*, 42.

implementation of marriage is adjusted to the applicable law in the religion. Therefore it does not contradict article 29 paragraph 2 Undang-Undang Dasar 1945.

However, there are several attempts that can be done, by a family who does not agree with an interfaith marriage made by a member of the family, with several legal remedies that can be taken, including preventing marriages to be able to propose other efforts.

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