

# test 1

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## The State Role through Court Warrant in Protection of Interfaith Marriage in Indonesia

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### Abstract

There is a vacuum of regulation in Marriage Law Number 1 of 1974 in Indonesia which does not provide protection for interfaith marriage couple. Meanwhile the data shows increasing numbers of interfaith marriage in Indonesia. There are many ways have been done by interfaith marriage couple in order to legitimate their marriage by going overseas and to convert each couple religion temporarily. There is another way which couple can obtain marriage endorsement by request a court warrant. However, the fact increasing number of judges to refuse giving court warrant. There are preferences from the judges to refuse giving court warrant rely on different reasons. Meanwhile the function of Government Office Register Department in interfaith marriage only to record and issue marriage certificate. Besides Marriage Act Number 1 of 1974, there are some law regulations which can be used by judges for giving court warrant. Those law regulations if applied by judges may give broader access to justice to interfaith marriage couple.

**Keywords:** The State Role, Law Protection, Court Warrant, and Interfaith Married.

### 1. Introduction

Current technological development helps society in making various social interaction in easier ways. Mind sets in society are more widely spreaded and exchanged. Inter-cultural interaction also resulted in inter-faith marriage. This phenomenon also happens in Indonesia. Inter-faith marriage in present times is indeed an inseparable phenomenon from pluralism embedded Indonesian society (Rusli & R. Tama, 1986). Data shows the number of inter-faith marriage keep on rising. There are at least 15 inter-faith marriage from 100 marriage recorded in Yogyakarta in 1980. In 1990, this number increased to 18 cases. (Badan Pembinaan Hukum Nasional, 2011). Indonesian Conference on Religion and Peace (ICRP) noted that since 2005-2007, from around a hundred inter-faith couples there are 60 inter-faith couples managed to conduct inter-faith marriage. This number keeps on growing. Since 2004 to 2012, the number of recorded inter-faith marriage reach 1.109 couples. Data shows this keeps on rising. Unfortunately, the validity of inter-faith marriage is not strictly regulated by the rules of law in Indonesia (Mohamad Monib, 2009). Adriaan and Stjin (2010) also found there is perspective difference between society and government on the validity of marriage, and in Indonesia it will be difficult to implement a rule to regulate good behaviour in all aspects of marriage that can be implemented to all citizens.

Essentially, the validity of marriage is regulated in Article 2 verse 1 of Marriage Law which stated that a marriage is conducted through each couple's religion or belief. In the explanation section for Article 2 verse 1 of Marriage Law, it is stated that *no marriage outside the law of religion and belief*. Furthermore in Article 2 verse 2 it is stated that the marriage is registered according to the rules of law. The requirements on registering marriage are regulated through Government Regulation Number 9 Year 1975 on The Implementation of Law Number 1 Year 1974 (Government Regulation Number 9/1975). If marriage is conducted by moslems, the registration is conducted through registration officer as meant in Law Number 32 Year 1954 on Marriage Registration, Divorce, and Reconciliation. Meanwhile, for non-moslem couple who conducted their marriage via their religion and belief, the marriage is registered in DKCS (Article 2 of Government Regulation Number 9 Year 1975).

Viewing the substance in Marriage Law and Operational Regulation, interfaith marriage is not exactly regulated, therefore there are various interpretations occurs in society, especially among judges and registration officers. There are 3 perspective among scholar in viewing the validity on interfaith marriage relate to the Article 2 Verse 1 on Marriage law: First, Interfaith marriage is prohibited by 1974 Marriage Law based on Article 2 verse 1 and Article 8 point f which is stated clearly. The argumentation that every religion try to prevent interfaith marriage, at least they do not suport it Secondly, Interfaith marriage is valid therefore can be done because this marriage including mix marriage based on Articel 57 Marriage Law that stated mix marriage based on two people in Indonesia submitt to different law.

Based on second opinion mix marriage not only between two nationality but also interfaith marriage.. Third, 1974 Marriage Law did not regulate interfaith marriage. Generally, there are four popular ways taken by interfaith couple to be able to have their marriage conducted and legitimated in Indonesia (Wahyono Darmabrata, 2003), which are: 1) requesting court decision, 2) marriage conducted through each religion, 3) temporary convert into one of the couple's religion law, and 4) marriage abroad. These four ways show how big state role related to this matters where Indonesia have not fully guarantee the freedom and the rights of it's citizens. The

state role is getting more obscure with the absence of uniformity in registration conducted by DKCS for these interfaith marriage practices. There are DKCS that is willing to register interfaith marriage if it considered religiously legitimate, but there are also DKCS that unwilling to register interfaith marriage, by reason of having no implementing guide and technical guide (Justinus P, Aribowo, 2012). Whereas state role is to guarantee law certainty, which in this case registering marriage, where the state regulates marriage as a part of administrative aspect.

The law vacuum in Marriage Law and various interpretations among apparatuses, caused many couples attempted to "run from law" by many ways that are unnecessary to happen if the state is more resolute. On that ground this paper examines: 1) How is the development of the state role in technical implementation towards interfaith marriage in Indonesia in present times? 2) What rules of law and policies regulating interfaith marriage in Indonesia? 3) What are the problems faced by registration officer in registering interfaith marriage in Indonesia?

## 2. Research Method

This legal research using purposive sampling in order to determine the location of study. This study conducted in two cities Denpasar and Bogor. It uses two kinds of data source: (1) primary data, the data acquired from the first party, i.e.: judge. Meanwhile the second (2) use law material consisted from primary law material, secondary law material, including rules of law and court decision related with interfaith marriage, text books, and law journals

## 3. Result And Discussion

Law Number 1 Year 1974 on Marriage Law only regulates the concept of mixed marriage. Article 57 of Law Number 1 Year 1974 stated that mixed marriage is marriage between Indonesian and a person with different nationality. According to GHR, what is meant by mixed marriage from Article 1 is marriage between people in Indonesia who submitted to different laws. Article 7 verse (2) states: religion differences, nationality differences, or origin differences are not obstacles at all for the marriage. Therefore interfaith marriage fall into the category of mixed marriage.

International laws that can be referred on interfaith marriage are: 1) Universal Declaration of Human Rights (DUHAM) 1948, 2) International Covenant on Civil and Political Rights (ICCPR) 1966. 3) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

Regulations in Indonesian that regulates interfaith marriage are; 1) Law Number 1 Year 1974 on Marriage Law, 2) Article 10 verse 1 from Law Number 39 Year 1999 on Human Rights and 3) Supreme Court Decision Number 1400/1986/1989. Marriage Law does not contain any requirement that states interfaith marriage between man and woman is forbidden. Supreme Court argued that it is unjustifiable that because of vacuum of law, social reality, and social need as mentioned above remains lawfully unsolved, because it will create negative impacts in both in societal life and religious life. Finally, 4) Law Number 23 Year 2006 on Civil Administration

### 3.1 State role in the development of technical implementation of interfaith marriage in Indonesia.

This research is conducted in Denpasar State Court with judge can be described as following; When he is asked on judge opinion about interfaith marriage phenomenon in society: he argued that it is better not being conducted. He stated that the reason of this is because the concept of marriage according to Law No. 1 Year 1974 is: physical and spiritual bond between two people to form a happy family based on Belief on One God. Furthermore, the judge explained what is meant by physical and emotional bond is not only based on mutual consents, love, and affection, but also spiritual unity. If the couple's religions are different how can it be said that it is a physical and spiritual bond? The highest love and affection is submission towards God's order.

Regarding why Marriage Law does not explicitly regulate interfaith marriage, the Law formulator has the same argument with the judge. Moreover religious matter in Indonesia is a very principled matter in societal life. Moreover, each religion in Indonesia have established rule on marriage which all of them refers to marriage among husband and wife with the same religion and belief. The issuing of marriage validation by judge not only has fulfilled formal requirements, but also because of emergency situation. Here the state role gave a way out to give law protection for the child or children from interfaith marriage.

The submission for interfaith marriage in Denpasar State Court is very few. There is a validation issued by Denpasar State Court No. 136/Pdt.P/2009/PN.DPS, dated August 19th, 2009, which is requested by Hj. Emmy Herawati, SH before issuing Validation, as following: a) considering on the day of the session the applicants submitted letters of evidence as following: 1) Copy of Birth Certificate, 2) Copy of Pronouncement Letters from the bride, 3) Copy of Pronouncement Letters from the groom, 4) Copy of ID Card with the name of the groom, 5) Copy of temporary ID Card with the name of the bride. c) Considering, that the submission of letters of evidence from 1 to 6 are in accord with the original. d) Considering that the applicants and her husband

insisted to hold to each of their own religion, both of them were unable to conduct legitimate marriage according to Article 2 Verse (1) Marriage Law, e) Considering, based on Article 35 letter a and Explanation of Law Number 23 Year 2006 on Civil Administration, what is meant by marriage set by the Court is interfaith marriage.

The same thing was conducted on October 5th, 2007, where the applicants submitted their request letter on permission to marry in Bogor State Court under No. 111/Pdt.P/2007/PN.BGR on October 9th, 2007. In this case the judge's considerations are:

- a. Considering that in positive law in Indonesia, things related to marriage are regulated in Law Number 1 Year 1974 and Government Regulation No. 9 Year 1975, where Article 2 Verse (1) Law No. 1 Year 1974 stresses that a marriage is legitimate if it is conducted according to each participant's religious law and belief. The requirement in Article 2 Verse (1) of Law No. 1 Year 1974 is a requirement for same faith marriage couple. Thus, for interfaith marriage it is not applicable based on that decision (Supreme Court's Verdict Number 1400 K/ Pdt/ 1986 January 20th, 1989).
- b. Considering that interfaith marriage is only regulated by the explanation of Article 35 point a of Law Number 23 Year 2006 on Civil Administration stresses "what is meant by marriage legitimated by State Court is interfaith marriage". Such requirement basically provides possibility for interfaith marriage with the legitimation acquired from state court, while on the marriage process as meant by Law No. 1 Year 1974 and Government Regulation No. 9 Year 1975, it is not further regulated. Therefore, things related to marriage, from marriage legitimacy, marriage requirements, marriage prohibitions, and marriage procedure, are still referring to Law No. 1 Year 1974.
- c. Considering that based on the witnesses' accounts on applicants' marriage, there is following law testimony:
  - Both applicants know each other and fall in love since they were in senior high school but their relationship faces ups and downs caused by religious differences between the two.
  - Both applicants' parents gave permission to their relationship and their plan for marriage regardless of marriage procession according to each religion.
  - The applicants have tried to register their marriage to city Civil Registration office but the officer told them that the office demand a validation or verdict from the court to allow the civil records office to register their marriage.

Based on previous considerations and observing the law facts above, therefore State Court argued:

1. That in Law No. 1 year 1974, there is no prohibition towards interfaith marriage.
2. Based on Article 28 B Verse (1) Second Ammandment of 1945 Constitution it is stated that everyone has the rights to form a family and to have child or children through legitimate marriage. This requirement is in accordance with Article 29 of 1945 Constitution on the State's guarantee for freedom of religion for every citizen.
3. Based on the witnesses' testimony, law facts are acquired and proved that the applicants love each other and agree to take their relationship to the next level: marriage, where their wish is blessed by their respective parents.
4. That basically the applicants' wish for marriage is not prohibited by Law No. 1 Year 1974, and considering the formation of family through marriage is also one of Human Rights, including for the applicants who have the rights to maintain their own religion, therefore in Article 2 Verse (1) Law No. 1 Year 1974 on the legitimacy of marriage approved if it is conducted based on the procedure of the couple's religion and belief is unimplementable by interfaith couple.
5. That marriage according to Religion and Belief is not implementable by interfaith marriage due to religious differences, therefore Article 10 Verse (3) of Government Regulation No. 9 Year 1975 gave possibility towards interfaith marriage where the requirement in Article 10 Verse (3) of Government Regulation No. 9 Year 175 states "by honoring each religion's marriage procedure, a marriage is conducted in front of Registration Officer by the attendance of 2 (two) witnesses".

Based on the considerations supported by truthful facts, Judge finally decided to: (1) Approve the applicants request; (2) Order the Marriage Registration Officer in Bogor Civil Registration office to immediately accept this Copy of Validation to register the marriage after all requirements according to the Law are fulfilled; (3) Punish the Applicants to pay the expense of this case with the ammount of money: Rp 129.000,- (one hundred twenty nine thousand rupiahs).

Furthermore, the Verdict of Bogor State's Court Number 527/Pdt/P/2009/PN/Bgr that rejected the applicants' request for marriage validation. The following is judge's considerations:

- a. Applicant I is Muslim and Applicant II is Catholic Christian.
- b. Applicant II previously married in Catholic procession and had divorced with her ex husband.
- c. According to Islam, marriage between muslim and non-muslim is prohibited and according to Council of Indonesian Islamic Clergymen (MUI), marriage must be based on Al-Qur'an and Hadits, and a muslim is prohibited to marry non-muslim.



- d. Article 35 point a of Civil Administration gives possibility on the registration of interfaith marriage, while marriage process meant by Marriage Law and Government Regulation was not regulated further in those requirements therefore things related to marriage process still refers to both rules.
- e. According to Catholic, if the person once married and then divorced and then marry again, he/she is considered as against the Catholic faith.
- f. Applicant II was previously married in Catholic procession and divorced, and a blessing will not and can not be given to a person who wish to marry again.
- g. Article 2 Verse (1) Marriage Law on the legitimacy of marriage states that a marriage is conducted according to the husband and wife's religion therefore in essence it makes interfaith marriage impossible.
- h. Judge respects the applicants' religious law therefore the applicants request is unlawful and unapprovable.

Based on those considerations, the judge rejected the applicants' request for marriage legitimacy. The judge in law considerations' respects the applicants' law but the judge did not explain what is in the applicants' religions, especially from the side of Applicant I, i.e.: Islam. In fact a Muslim man can marry a women from outside Islam.

The judge mentioned Catholic teaching that states if a person has married and then divorced and then married again is considered as a violation towards Catholic's faith therefore no blessing can be given to that marriage. Based on Christian teaching (II Corinthians 6:14-18), interfaith marriage is indeed prohibited. (Hukum online.com, question and answer according to Indonesia law, 2014). Having Judges' difference perspective on interpretate because of the vacuum norm on Article 2 Verse (1) Marriage Law.

Furthermore, judges should have knowledge and understanding relate to human right principal ....

### 3.2 Rules Of Law And Policies Regulating Interfaith Marriage In Indonesia

a. Rule on mixed marriage (Ordonance Stb. 1989 Number 158 /*Regeling op de gemengde Huweliyken* (GHR). Based on GHR requirement, what is meant by mixed marriage according to Article 1 is: marriage between people in Indonesia that submit to different laws. According to Article 7 verse (2) it is stated that: religious, national, or parentage differences are not an obstacle for such mixed marriage.

b. Law Number 1 Year 1974 on Marriage

Marriage in Indonesia is regulated through Law Number 1 Year 1974 on Marriage. Several articles will be described below to acquire understanding on interfaith marriage. The requirements of Article 2 verse 1 are the most commonly quoted to stress the religious nature of a marriage. In Article 2 Verse 1 mentioned that, "A marriage is legitimate if conducted according to each couple's religion and belief. " The explanation of this Article 2 of Marriage Law further stressed "No marriage outside each couple's religion and belief, based on 1945 Constitution." In article 2 verse 2 it was stated that each marriage is based on existing rules of law. The requirement in article 2 verse 2 of this Law shows that the state role is only to register marriage. It means, the government only regulates marriage administrative aspect.

The definition of interfaith marriage according to Law No. 1 Year 1974 Marriage is regulated in article 57 which states what is meant by mixed marriage in this Law is marriage between a couple in Indonesia that submit to different laws caused by different citizenship where one of them is Indonesian citizen. Clearly, Law No. 1 Year 1974 on Marriage does not regulates interfaith marriage. If closely observed, in article 57 above, what is meant by mixed marriage is only inter-citizenship marriage (citizens with different nationalities). Meanwhile interfaith marriage in Marriage Law does not specify whether forbidding of allowing interfaith marriage, and therefore caused different interpretations in several parties.

Furthermore, the requirement in article 66 states: for marriage and things related to marriage based on this Law, therefore with this Law put in effect, the requirements regulated by Civil Code (*Burgelijk Wetboek*), Ordonance of Christian Indonesian Marriage (*Huwelijks Ordonantie Christen Indonesiers* S. 1933 No. 74), Mixed Marriage Regulation (*Regeling op de gemengde Huweliyken* S. 1898 No. 158), and other regulations on marriage, which according to this Law is invalid.

If article 66 Law Number 1 Year 1974 on Marriage connected to Article 7 Verse (2) Regulation on Mixed Marriage (Mixed Marriage Ordonance Stb.1989 No. 158 /*Regeling op de gemengde Huweliyken* (GHR), as long as regulated in Marriage Law, then other regulation is no applies. On interfaith marriage, Marriage Law does not regulate clearly nor forbid it, but in GHR it is clearly stated that interfaith marriage is not forbidden.

c. Law Number 39 Year 1999 on Human Rights.

In Article 10 Verse 1 it is stated that every person has the right to form a family and to continue their generation through lawful marriage. Verse 2 mentioned that a legitimate marriage can only occur based on free will of the husband and wife to be, based on the rules of law. Actually, in Law of Human Rights there is no mentioning at all that the legitimacy of a marriage based on each religion and belief, but based on the free will of the husband and wife to be. This free will means that two soul mates meets based on love and affection without considering the religion of the couple. But a thorough reading towards Article 10 Verse 2 of Law of Human Rights, it is mentioned that a legitimate marriage can only be conducted based on free will of the couple based on the

requirements of rules of law. The sentence of “based on the rule of law” is ambiguous, since it does not clearly state which law. If it must in accordance with the legitimate marriage requirements based on Marriage Law, it is clear that the bride and groom of interfaith marriage can not hold on firm to their own religion and belief. To be able to conduct a marriage in Indonesia, one of the couple has to convert to other’s religion. Therefore, the Law of Human Rights that is expected to be able to provide a basic protection in the freedom of religion and belief is in fact has a serious flaw. In other words, Law No. 39 Year 1998 have not in accordance with it’s spirit yet, as a law that fight for human rights, especially in the matters of interfaith marriage. It only added “free will” but in the end the free will must be in accordance with the rules of law. If it is interpreted as in accordance with Marriage Law then the “free will” is no longer a free will.

d. Supreme Court Decree Number 1400/1986/1989

Supreme Court Decree Number 1400 K/Pdt/1986 tanggal 20 Januari 1989, states that Article 60 Marriage Law referred by Head of Religious Affair Office and Jakarta Province Civil Registry Extra Ordinary Registration Officer to reject interfaith is mistaken. Article 60 based on Supreme Court Decree have to be connected to Article 57, 58, and 59 of Marriage Law between two people in Indonesia submitted to different laws caused by different citizenships (mixed marriage).

Marriage Law contains no requirement of any kind that mention religious differences between the couple is a based for marriage prohibition. Supreme Court argued it is unjustified that the vacuum of law made real and social needs lawfully unsolved. Keeping the problem remains unsolved will definitely cause negative impacts, both in societal or religious life. MA Decree here shows a priority towards sense of justice by considering Indonesian society pluralism which is undeniable especially the regulation as the basis of prohibition in this case is unclear.

e. Law Number 24 Year 2013 on The Amendment of Law Number 23 Year 2006 on Civil Administration. The amendment towards Law No. 23 Year 2006 towards Law Number 24 Year 2013 states there are changes. But the articles regulates interfaith marriage remains unchanged. In Article 35 requirement it is stated that Marriage Registration as meant by Article 34 also applies to: a) Marriage determined by Court; and b) Foreign Citizens Marriage conducted in Indonesia based on the involved Foreign Citizen.

In addition, in the Requirement of Article 36: In case the marriage can not be proven by Marriage Certificate, the marriage registration is conducted after court decision. Paragraph 2: Marriage Registration outside the territory of Republic of Indonesia is obliged to be registered in authorized state institution in the corresponding state and reported to Republic of Indonesia. (2) If the corresponding state as meant by Verse (1) does not conduct marriage registration for Foreign Citizens, the registration is conducted through local representation of Republic of Indonesia. (3) The representation of Republic of Indonesia meant by Verse (2) records marriage event in Marriage Certificate Register and issue Marriage Certificate Quotation. (4) Marriage Registration meant by Verse (1) and Verse (2) reported by the couple involved to Implementer Institution in their area. Otherwise, marriage can not be proven by Marriage Certificate and Marriage Registration.

### 3.3 International Regulation on Interfaith Marriage

1) Universal Declaration of Human Rights (DUHAM) Year 1948.

Article 16 Verse (1) mentioned, “adult man and woman from any nationality, citizenship, and religion have the rights to get married and to form a family. They have the same rights in marriage and divorce.” Based on Verse (2) it is mentioned that: “Marriage can only be conducted based on freedom of choices and full consent of both bride and groom.” The definition given by DUHAM Year 1948 on marriage is giving full freedom for adults to conduct marriage based on their own choice and decisions regardless of nationality, citizenship, belief, and religion.

2) International Covenant on Civil and Political Rights (ICCPR) 1966.

Article 18 Verse (1) mentions: “Every person has the rights of freedom of thought, belief, and religion. This rights includes freedom to determine their religion or belief based on their own choice, and freedom whether individually or collectively, whether publicly or privately, to hold their religion and belief”.

ICCPR has been ratified through Law No. 12 Year 2005 on Ratification of International Covenant on Civil and Political Rights.

3) Convention on the elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

Article 16 states “Same rights to choose a wife/husband and to bond into marriage only based on their free and full consent. CEDAW itself has been ratified by Indonesia through Law Number 7 Year 1984 on July 24th, 1984.

### 3.4 The Basis Of Regulations And Policies Used By Dkcs To Register Interfaith Marriage

The basis of regulation used by DKCS in its service specifically in handling interfaith marriage affair is Law Number 23 Year 2006, where Article 35 point (a) states that Marriage Registration as meant by Article 34 also applies to: “a. Marriage validated by court”. The explanation of Article 35 point a mentions, “What is meant by

Marriage validated by court is interfaith marriage.”

With the existence of Law Number 24 Year 2013 on Civil Administration enables interfaith marriage to register their marriage through court validation. Before Law Number 23 Year 2006 and the new one exist, interfaith couple usually married abroad to avoid Marriage Law that forbid interfaith couple to marry. Furthermore, interfaith marriage which is being legalized by State Court (Pengadilan Negeri) does not mean that the couple marry in State Court. Therefore the Court's authority is only to permit not to conduct marriage for the couple, since it is not the Court's capacity (based on interview with Joni Witanto, Bogor State Court, in Achmad Baso's book, 2005).

Therefore the basis of reference used here is court's decision or court warrant. Besides that, the authorized DKCS register interfaith marriage in Indonesia based on domicile according to ID card (KTP) not based on where the wedding is conducted.

### 3.5 Difficulties Faced by Registration Officer In Registering Interfaith Marriage

Registration officer face no difficulty since the basis of law used is clear which is Law Number 24 Year 2013 on Civil Administration. When being asked the civil registration officer's (DKCS) opinion on interfaith marriage and how the state regulate spiritual things, it is stated that DKCS only to register not to validate. If the bride and groom intend to submit the fulfillment of marriage requirements (in order to acquire marriage certificate), DKCS only require them to bring court's validation or court's verdict and does not require any ritual recommendation letter from religious leader or clergymen. For those who married abroad, DKCS only require them to bring marriage certificate from abroad to be registered.

In relation to the state role in providing law protection for interfaith couple who want to marry, actually there is already a law basis for this. Eventhough in Law Number 1 Year 1974 on Marriage itself, there is a vacuum of law. As we know there are several ways that can be taken by interfaith couple who want to marry but still want to hold to their religion firmly from 1) marry overseas and return to Indonesia to have their marriage registered, 2) requesting court's validation or verdict, 3) married according to each religion's and belief, 4) temporary submission to one of the couple's religion (Wahyono Darmabrata, 2003).

For couple with wealthy economic background, they are able to go overseas and married abroad, whereas those who are not actually can request court's validation or verdict. However, in reality most of interfaith couple who want to get marry chose no. 4, i.e.: a person in interfaith couple (whether man or woman) submit temporarily to the other person and after marriage certificate acquired, in daily life they are still practicing their previous religion and belief. They chose this because it is the most practical compared to others which are also being made difficult by some bureaucracies. For example in 2011, Denpasar State Court rejected a request for interfaith marriage legitimacy under the reason it will complicate the children of interfaith marriage couple.

The judge consideration is not in accordance with Supreme Court decision and the concept of human rights. That is similar to the interview with the judge in Denpasar State Court who has perspective to avoid interfaith marriage. The basis of law used is marriage legitimacy according to Law Number 1 Year 1974 on Marriage, which according to norms does not regulate interfaith marriage. The shift of perception among the judges can be caused by several possibilities, one of them is because the basis of law used as reference to court warrant (since it needs a deep examination for this case) and also law and judge's verdict is a formal law source.

If the judge taking consideration refer to rules of law in the same level with Marriage Law, i.e.: Law Number 24 Year 2013 on Civil Administration, Law Number 39 Year 1999 on Human Rights, Supreme Court Decision Number 1400/1986/1989, International Laws, and requirement on freedom of religion which is law principle regulated in Constitution), possibly judge can approve the legitimacy of interfaith marriage. If this possible, the interfaith couple will feel that justice is indeed for all.

What need to be comprehensively examined as well is the requirement in Article 28 E of 1945 Constitution in Verse 1 states: Everyone has the right of freedom of religion, whether to choose their own religion or to practice their ritual. It means that the principles in that norm is the freedom of religion which is one of human rights for every human being. Furthermore in Article 29 (2) of 1945 Constitution stresses: The state guarantee every citizen for their rights of freedom of religion and to practice it according to each religion and belief. The principle in Article 29 (2) on freedom of religion is a human right and the state is obliged to protect that rights.

Essentially, the concept of human rights generally is the rights that every human being has (not because it is given by the state or society). This right is inherent for everyone due to their status and dignity as a human being. Furthermore, the human rights is law rights that belong to everyone as human being. In discussing human rights, there are two basic aspects to discuss: are we talking about the improvement aspect for human rights or the protection aspect of human rights. For interfaith marriage, it falls into the category of human rights protection.

Furthermore, the requirements in Article 28 I (4) it is mentioned that the protection, the improvement, the implementation, and the fulfillment of human rights belong to the state's responsibility. In the case of



interfaith marriage, the state through law enforcement apparatuses who are closer to this case are the judges (who handles the applications or requests for legitimating a marriage) and DKCS (in term of registration).

Actually there are three basic things that need to be observed in analyzing law problems, especially on law enforcement that involves law enforcers, including the judges, need to (i) understand deeply the principles of universal law, judicature, and human rights, (ii) understanding the spirit of 1945 Constitution (Achmad Ali, 2009, page 492).

As mentioned by Holmes and Gray, law expert from realism perspective, it was explained that the judge in providing new means and interpretation to an existing regulation must taken source from the need of their times. As we know, the laws only regulates general things and it is the judge's job to relate it with real case (Achmad Ali, 2009, Page 95). In other words, the judge should be willing to approve and give legitimacy for interfaith marriage couple who request it.

In relation to judicial decision taking theories where the judges them selves who are the key on attitude and values determiner. The judges have value, attitude, and intuition, but they also exercise their role as a judge. In this case the judges are also the product of their institutional situation besides they are also the products of their background. What cause the judge to play their role as judge in a case not in another (Dorothy B. James, 2009, page 228). There is a general theory on judicial decision making that can not ignore the social powers that pressure the judges. This thing cause the judge decision making not in uniform manners. (Dorothy B. James, 2009, p. 238).

In the future the judges are expected to allow the legitimacy of any marriage as long as the requirements are fulfilled. There should not be any judge taking decision in non uniformed manners anymore. Instead, with the societal development the judges are expected to be more flexible in examining and assessing the rules of law and international laws related to law law protection for interfaith marriage in current times.

The DKCS jobs are clear with Article 34 of Law of Citizenship also applies to: a) Marriage validated by Court; and b) Foreign Citizens' Marriage conducted in Indonesia under the request of the Foreign Citizens involved. DKCS will register interfaith marriage as long it has the validation or legitimacy from the court and fulfilled requirements.

In regards to the marriage certificate issued by DKCS for interfaith marriage, there is a particularity for the interfaith marriage certificate where each religion of the interfaith couple are mentioned (Picture B). Not like interfaith marriage based on submission or conversion of one of the person into other person's religion (Picture B).



A

B

#### 4. Conclusion

Based on the description above, it can be concluded that for the protection for interfaith couple who want to get married but unable or unwilling to marry abroad, they can submit their request for validation or legitimacy of their interfaith wedding to State Court, as long all the requirements are fulfilled. After that the Court's Decision or the Court's Verdict with other requirements need to be taken to Civil Registration Office (DKCS) to be registered. However since year 2010 until recently there is no number data from interfaith marriage couple who apply court warrant. That is caused by interpretation of the judges toward Article 2 (1) Marriage Law stated that couple who want to get marriage should have the same religion.

Regarding the rules of law, whether it is national or international law, that regulates the interfaith



marriage, all of them can be referred by the judge in approving the legitimacy of an interfaith marriage. The Civil Registration Office (KDCS) role is only to issue marriage certificate for interfaith couple if the requirements of court's decision or court's verdict is already fulfilled. Therefore in exercising its role as stated in Law Number 24 Year 2013 on Civil Administration have no difficulties to carry its tasks. If judges have knowledge of Law Number 24 Year 2013 and have understanding of human right principal, then condition of interfaith marriage can be solved. The Civil Registration do not face obstacles in act their role due to regulation on Marriage Law Number 24 Year 2013 in Articles 34 is very clear.

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# test 1

## ORIGINALITY REPORT

11 %  
SIMILARITY INDEX

9 %  
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