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Validity Of Marriage And Registration Of Different Religions After The Constitutional Court Decision Number 24/PUU-XX/2022 (Study of Determination Number 155/PDT.P/2023/PN.Jkt.Pst)

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Abstrak**:** *This study aims to analyze the considerations of the Central Jakarta District Court Determination Number 155/PDT.P/2023/PN.Jkt.Pst which granted the registration of interfaith marriages in the perspective of the Indonesian legal system and its implications for the duties and authority of Notaries. This research is prescriptive with a statutory case approach and case approach method. The legal materials used are primary legal materials and secondary legal materials. The legal material collection technique is done through literature study. The research analysis is done by deductive method. The research found that by ignoring the Constitutional Court decision, in essence, the judge of the Central Jakarta District Court has reduced the position of the Constitutional Court as the guardian of the constitution and the Pancasila ideology. Considering that Pancasila is stated in the Preamble of the 1945 Constitution. Therefore, negating the Constitutional Court decision means the same as negating the Constitution and Pancasila. The Determination of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst indirectly affects the validity of marriage agreement deeds made by notaries. To avoid legal problems in the future for notaries and the parties involved, notaries must adhere to the principle of caution and provide legal counseling to the parties who will make interfaith marriage agreement deeds before a notary.*

Keywords : Interfaith Marriage, Constitutional Court Decision, Legal System, Notary.

INTRODUCTION

According to Law Number 1 of 1974 in Article 1 states that Marriage is a physical and spiritual bond between a woman and a man as husband and wife with the aim of forming a happy and eternal family based on the belief in the Almighty God. In Article 2 paragraph (1) of the Marriage Law together with Government Regulation No. 9/1975 Article 10 paragraph (2) states that a marriage is declared valid if carried out in accordance with the beliefs or religions of each party. Although the regulation regarding marriage in Indonesia has been clearly regulated in the Marriage Law as the need of the society for regulations governing all types of community groups, it does not mean that the Marriage Law has regulated all aspects related to marriage. The aspect referred to is interfaith marriage.

Controversies regarding the validity of interfaith marriage and registration have long been occurring because there is no clear rule prohibiting interfaith marriages, in addition, there are regulations that still provide opportunities for interfaith couples to obtain recognition of the validity of marriage and registration through court decisions.

The legal opportunity or loophole referred to is in Article 35 letter a of the Population Administration Law which

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states that the registration of marriage as referred to in Article 34 also applies to marriages determined by the court and the explanation of Article 35 letter a of the Population Administration Law
emphasizes that marriages determined by the Court refer to marriages conducted between people of different religi The Constitutional Court seeks to provide an interpretation to close this legal loophole through Decision Number 24/PUU-XX/2022 which examines Article 2 paragraph (1) and Article 8 letter (f) of the Marriage Law. This decision strengthens Constitutional Court Decision Number 68/PUU-XII/2014 regarding the material review of the same case which challenges the wording of "religious law and beliefs" which is considered unclear and thus gives different interpretations in its mplementation in society. The request was not granted by the Constitutional Court in Constitutional Court Decision Number 24/PUU-XX/2022.

In its legal considerations, the Constitutional Court considers that the prohibition of interfaith marriage and registration is not a violation of human rights, because Indonesia adheres to the principle of particularity rather than universality. This means that human rights applicable in Indonesia must be in line with the philosophical ideology of Indonesia based on Pancasila as the nation's identity. Therefore, the guarantee of protection of human rights universally enshrined in the Universal Declaration of Human Rights (UDHR), when implemented in each country, will definitely be adjusted to the ideology, religion, social, and cultural values of the people in each country.[1]

In Indonesia, there are still couples who enter into interfaith marriages as can be seen in Decision Number 155/PDT.P/2023/PN.Jkt.Pst.The applicants JEA (Christian) and SW (Muslim) who do not intend to abandon their religious beliefs wish to solemnize their marriage legally but are hindered by different religions. Therefore, the applicants filed a petition to the Central Jakarta District Court so that their marriage could be recorded at the Civil Registry Office of Central Jakarta. Based on the need to protect Human Rights (HR), and to cover legal loopholes and avoid the smuggling of social and religious values, the Central Jakarta District Court granted the applicants' request by allowing them to enter into an interfaith marriage and registration at the Civil Registry Office of Central Jakarta.

With the increasing number of interfaith marriage petitions and the majority being granted by the courts as in the Decision of the Central Jakarta District Court Number155/PDT.P/2023/PN.Jkt.Pst, indirectly impacts the notarial world. Notaries as public officials authorized to make authentic deeds are required to be careful and wise in observing this phenomenon. Problems arise when a notary makes an authentic deed of an interfaith marriage agreement. On one hand, the parties bring court decisions and marriage certificate from the Civil Registry Office as evidence that their interfaith marriage has been recorded, while on the other hand, the law and the Constitutional Court's decision prohibit the practice of interfaith marriage and registration. The question then arises as to the validity of the interfaith marriage agreement deed, and the role of the notary in convincing the parties that the marriage deed is contrary to the law.

This article aims to examine the Decision of the Central Jakarta District

[1] Fardhan Wijaya Kosasi, *Deklarasi Universal Human Right dan Pemenuhan Hak Asasi Bagi Narapidana*, Justitia:Jurnal Ilmu Hukum dan Humaniora, Vol. 7 No.4, 2020, Hlm 800

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Court Number 155/PDT.P/2023/PN.Jkt.Pst issued after the Constitutional Court Decision Number 24/PUU-XX/2022, viewed from the perspective of the Indonesian legal system to determine the validity of such interfaith marriage and registration and the implications of the Decision of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst in the notarial world.ons.

RESEARCH METHOD

This research is prescriptive legal research. The nature of the research used by the researcher is prescriptive research. The researcher uses a statutory approach and a case approach. Legal sources in this research consist of primary legal materials and secondary legal materials. Data collection techniques are carried out through literature study. The analysis of legal materials uses the syllogism method with a deductive mindset. Basic principles provide the foundation of the deductive thinking pattern, after which the researcher offers the subject of study. In the meanwhile, the syllogism technique, which begins with the submission of key premises, follows Aristotle's teachings and employs a deductive approach. After that, a little premise is put out, and a conclusion is derived from these two premises.[2]

RESULTS OF RESEARCH AND DISCUSSION

1. Decision of the District Court Number 155/PDT.P/2023/Jkt.Pst regard ing InterfaithMarriage and Registration in the Perspective of the Indonesian Legal SystemSSION

The entry of legal positivism thinking in Indonesia is due to an effort to unify laws carried out during the colonialism of the Dutch East Indies (now Indonesia) which adhered to the Continental European legal system or commonly known as civil law system. This civil law system is identical to written laws in the form of legislation and recognizes the existence of legal codification.[3] The influence of the Dutch legal system that lasted for a long period made the Indonesian people accustomed to a written legal system and developed under the banner of legal positivism eventually becoming the "main tree and lighthouse" that shelters and illuminates the legal system in Indonesia until now[4]

Far before the birth of legal positivism thought, there was a legal thought stream known as legalism. This stream emerged around the Middle Ages and still influences various countries including Indonesia. Legalism highly values written legal provisions, and considers that there are no legal norms outside of positive law.[5] Evidence of the influence of legalism thought in Indonesia can be found in Article 15 of the Algemene Baplingen ban Wetgeving which states "except for deviations determined for Indonesians and those equated with Indonesians, customs are not law unless the law specifies it". Based on this statement, what is called law must be written or in the form of regulations and this had an influence on the legal system in Indonesia at that time.[6]

[2] Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, Cet 7, 2005, Hlm. 46

[3] Citra Metasora Wau, Dkk, *Implikasi Positivisme Hukum Terkait Pengaturan Teknologi Finansial Di Indonesia*, Jurnal Alethea, Vol. 3 No. 2, 2020, Hlm. 78

[4] Widodo Dwi Putro., *Kritik Terhadap Paradigm Positivisme Hukum*, Yogyakarta: Genta Publishing, 2009, Hlm. 7

[5] Mukhidin, *Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat*, Jurnal Pembaharuan Hukum, VOL. 1 NO. 3, 2014, Hlm. 270

[6] Sudiyana Dan Suswoto, *Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencari Keadilan Substantive*, Jurnal Ilmu Hukum Qistie, Vol. 11 No. 1, 2018, Hlm. 110

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The positivization of the Proclamation of Independence of the Republic of Indonesia into the Preamble of the 1945 Constitution did not immediately end the colonial legal regime of the Netherlands. The birth of the Proclamation of Independence of the Republic of Indonesia and the establishment of the 1945 Constitution as the legal basis or constitution of the Indonesian state on August 18, 1945, the nuance of legal positivism still remained.[7] The nuance of legal positivism can be seen in Article I of the Transitional Provisions of the 1945 Constitution (fourth amendment) which states that all existing laws and regulations still apply until new ones are made. The amendment of the 1945 Constitution brought about significant and fundamental changes in the legal system of Indonesia. Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state based on law. As a consequence, all aspects of life in society and the state must be based on law, which is then known as positive law. Indonesian law or positive law of Indonesia is law made and enacted by the authorized authority to be enforced in Indonesia. This concept of positive law is concrete evidence of the influence of legal positivism.[8]

In the context of the legal system in Indonesia, there are types and hierarchy of laws and regulations as regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations which consist of:

a. The 1945 Constitution of the Republic of Indonesia;
b. Decisions of the People's Consultative Assembly;
c. Laws/Government Regulations in Lieu of Law;
d. Government Regulations;
e. Presidential Regulations;
f. Provincial Regulations; and
g. Regency/City Regulations.

In addition to the above types of laws and regulations, Article 8 of the Law on the Formation of Laws and Regulations still allows for other types of positive law, namely various regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions, or commissions of equivalent level established by law or the Government under the mandate of the law, Provincial Regional RepresentativeCouncils, Governors, Regional Representative Councils/Cities, Regents/Mayors, Village Heads or equivalent authorities.

In addition to influencing the legal system in Indonesia, the civil law system which is strongly influenced by legal positivism, according to Andi Hamzah, also dominates the way judges think in Indonesia.[9] Judges are identified only as mouthpieces of the law or in other words judges are under the understanding that "law as it is written in the book" meaning that judges when examining, adjudicating, and deciding cases brought before them including issues of legal discovery must first look at the text of the law rather than other legal sources.[10]

The above description aims to illustrate how positivism flows in the civil law legal

[7] Jazim Hamidi, *Kedudukan Hukum Naskah Proklamasi 17 Agustus 1945 Dalam Sistem Ketatanegaraan Republic Indonesia*, Jurnal Konstitusi, VOL. 3 NO. 1, 2006, Hlm. 100
[8] Citra Metasora Wau, *Op.Cit*, Hlm. 84
[9] Andi Hamzah, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2010, Hlm. 7
[10] Tunjung Herning Dan Ade Adhari, *Positivisme Dan Implikasinya Terhadap Ilmu Dan Penegakan Hukum Oleh Mahkamah Konstitusi (Analisis Putusan Nomor 46/PUU-XIV/2016*, Jurnal Konstitusi, Vol. 17 NO. 1, Hlm. 119

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system affect law enforcement, in this case law enforcement by judges in the Central Jakarta District Court. This is evident from the issuance of Decision Number 155/PDT.P/2023/PN.Jkt.Pst regarding mar riage applications and different religion registrations.

In this decision, the judge interprets legal provisions by linking them to other laws or the entire legal system. This can be seen in the judge's considerations, which begin by considering Article 2 paragraph (1) of the Marriage Law, which states that marriage is valid if conducted according to each person's religion and beliefs, hence interfaith marriages cannot be applied. Therefore, the judge finds the law by referring to Article 10 paragraph (1) of the Human Rights Law and Supreme Court Decision Number 1400K/Pdt/1986 dated January 20, 1989. Not only that, the judge also systematically considers other legal rules in the decision, namely Article 35 letter a and its explanation, which states that marriage registration as referred to in Article 34 also applies to: letter a marriages determined by the court. Marriages determined by the court refer to marriages between people of different religions.

According to the author referring to Arief Sidharta's opinion, the method used by the judges of the Central Jakarta District Court who follow positivism in proving the truth of the law as a reality in that decision is a legalistic positivist way of thinking based on rules (rule bound) that is unable to capture the truth, because they do not want to see or acknowledge it.[11]

In Islamic jurisprudence, issues that are still disputed (their prohibition) should not be denied, but must deny issues (their prohibition) that have been agreed upon (la yunkar al mukhtalaf). By using this principle, it can be understood that the legality of interfaith marriages in Indonesia is clearly and strictly prohibited by positive law, namely Law Number 1 of 1974 concerning Marriage (Marriage Law) and Constitutional Court Decision Number 24/PUU-XX/2022.

In the considerations of the Marriage Law, it is stated that in accordance with the Pancasila philosophy and the aspirations for the development of national law, there needs to be a law on marriage that applies to all citizens. The definition of a valid marriage according to Article 1 of the Marriage Law is as follows:

"Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One and Only God.".

Then Article 2 paragraph (1) of the Marriage Law regulates marriages between citizens of different religions, stating:

"Marriage is valid if conducted according to the laws of each respective religion and belief."

The Marriage Law also contains provisions regarding marriages that are prohibited between two people, namely Article 8 letter f which states:

"Having a relationship that is prohibited from marrying by their religion or other applicable regulations."

According to the author citing Syofyan Hadi's opinion, the Indonesian legal system is not entirely influenced by the civil law system but Indonesia has a unique legal system, namely the Pancasila legal state. Therefore, in addition to laws as the main legal source, Indonesia also recognizes the living law as one of the

[11]B. Arief Sidharta, *Struktur Ilmu Hukum*, Bandung: Alumni, 2002, Hlm. 23

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legal sources, one of which is the Marriage Law.[12]

The constitutionality of the provisions of the Marriage Law, especially Article 2 paragraph (1) regarding the prohibition of interfaith marriages, has been validated by the Constitutional Court. In summary, the considerations of Constitutional Court Decision Number 24/PUU-XX/2022, which reaffirms Constitutional Court Decision Number 68/PUU-XII/2014, are more or less as follows:

a. The One and Only God as the foundation so that every action has a close relationship with religion
b. Marriage is a right, so it must protect each other's rights
c. Article 2 paragraph (1) does not limit, but is a limitation aimed at respecting the rights of others.
d. Marriage is a relationship of body and soul
e. Government regulation is a legal certainty
f. Marriage should not be seen from formal aspects alone
g. Marriage still refers to religious guidelines and beliefs that are not interpreted individually but are returned to the teachings of each religion
h. Indonesia is not a secular state but a state that adheres to the Pancasila ideology, so it is not appropriate to consider the prohibition of interfaith marriage as a violation of human rights, considering that each country has its own limitations in adopting international human rights law
i. Adding phrases actually creates legal uncertainty and leads to various interpretations for each prospective couple

Based on the summary of the Constitutional Court's considerations, it can be understood that if interfaith marriage is allowed, Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of the Marriage Law by the Constitutional Court as a negative legislator will certainly declare those articles unconstitutional. But in Constitutional Court Decision Number 24/PUU-XX/2022, the Constitutional Court ruled to reject the entire petitioner's request so that the provisions of Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of the Marriage Law are declared still valid and constitutional.

In the Indonesian legal system, Pancasila is not just a national philosophy, but a legal principle, and normatively serves as the basis for the Indonesian legal system as stated in Article 29 paragraph (1) of the 1945 Constitution which states "The state is based on the belief in the One and Only God". This principle of the One and Only God is followed by other pillars (five pillars), which are the foundation of Indonesia's ideology. Moreover, Pancasila (five pillars) with all its aspects is considered as a source, goal, and aspiration of the law, meaning that Pancasila is a benchmark and foundation for assessing legal policies or used as a paradigm that serves as the basis for making legal policies and legislation as well as law enforcement.[13]

In relation to Pancasila as the foundation of the Indonesian legal system, Constitutional Court Decision Number 140/PUU-VII/2009 states:

[12] Syofyan Hadi, *Hukum Positif Dan The Living Law (Eksistensi Dan Keberlakukannya Dalam Masyarakat)*, Jurnal Ilmu Hukum, VOL. 13 NO. 26, Hlm. 265

[13] Widihartati, Dkk, *Legal Protection For Women In Transcendental-Based Marriage (Analysis Of Underage Marriage)*, International Journal Of Law, VOL. 4 NO. 4, 2018, Hlm. 89

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> "The principle of the Indonesian legal state must be viewed from the perspective of the 1945 Constitution, namely a legal state that places the principle of the One and Only God as the main principle, as well as the religious values that underlie the movement of the nation and state, not a state that separates the relationship between religion and state (separation of state and religion), and does not solely adhere to the principles of individualism and communalism".

The interpretation of the Constitution al Court is further emphasized by the provisions of Article 17 of the Law on the Formation of Laws and Regulations which state:

> "The national legal system is a legal system that applies in Indonesia with all its elements and mutually supports each other in order to anticipate problems that arise in the life of the nation, state, and society based on Pancasila and the 1945 Constitution of the Republic of Indonesia".

In addition to the legal basis and legal system, Pancasila is a legal source, Article 2 of the Law on the Formation of Laws and Regulations states that: "Pancasila is the source of all legal sources of the state" This legal basis will lead to a concept which according to Arief Hidayat as quoted by Enggar Wijayanto is called a "Religious Nations State".[14] Such a form of state does not emphasize a specific religion as the sole foundation of the state system, but the religious definition here is the principle of the One and Only God universally. The state provides recognition for all religions, and religion serves as a function of social control and morality of citizens according to their beliefs, thus realizing a relationship between religion and state that is integrative-eclectic and mutually supportive and strengthening. This principle is diametrically opposed to the doctrine of "secularism" which separates religion and state. Secularism views the supremacy of law as lying in the rationality of humans as subjects and objects with will.

In the dimension of the national legal system, Pancasila is placed as the source of all laws as stipulated in Article 2 of the Law on the Formation of Legislation. In its explanation, it is stated that "Placing Pancasila as the foundation and ideology of the state and at the same time the philosophical basis of the state so that every content of Legislation must not contradict the values contained in Pancasila." The position of Pancasila as the source of all sources of state law provides direction and spirit and becomes the paradigm of norms in Article 1945 of the Constitution. The interpretation of norms in the 1945 Constitution as the highest law will be based on the nation's spirit in Pancasila, which functions as the legal ideal that will be the basis and source of the nation's way of life or philosophy of life that serves as a guide in the formation of legislation and other lower regulations .[15]

Maria Madalina views Pancasila as a critical norm, which can be a benchmark for norms below it, and as a guiding star, which can be used as a guide in the formation of laws below it.[16] The position

[14] Enggar Wijayanto, *Konvergensi Politik Hukum, Hak Asasi Manusia, Dan Pancasila Terhadap Perkawinan Beda Agama Di Indonesia*, Jurnal Wicarana, Vol. 2 No. 1, 2023, Hlm. 50

[15] Fais Yonas Bo'a, *Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional*, Jurnal Konstitusi, VOL. 15 NO. 1, 2018, Hlm. 45

[16] Maria Madalina, Dkk, *Penegakaan Hukum Progresif Dalam Perkara Judicial Review: Telaah Pancasila Sebagai Batu Uji Pengujian Undang-Undang Terhadap Undang-Undang Dasar*, Jurnal Majelis, VOL. 4 NO. 4, 2020, Hlm. 14

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of Pancasila as the source of all state laws has the consequence that all legislation in the legal pyramid structure must be in accordance with and must not contradict Pancasila, including the actions of law enforcers which in this context are judicial decisions. Article 2 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law) states "The State Judiciary applies and upholds the law and justice based on Pancasila." This provision provides a philosophical foundation for judges in examining, adjudicating, and deciding cases to be guided by a thinking paradigm based on Pancasila.[17]

One of the authorities of the Constitutional Court regulated in Article 24C paragraph (1) of the 1945 Constitution is to review laws against the 1945 Constitution with its decisions being final and binding. With this authority, the Constitutional Court carries out its functions as a guardian of the constitution, protector of democracy, interpreter of the constitution, protector of the constitutional rights of citizens, protector of human rights, and guardian of the Pancasila ideology. The actualization of the Constitutional Court's function as the guardian of the Pancasila ideology is seen when the Constitutional Court uses Pancasila as a parameter in the decision of the Constitutional Court Number 24/PUU-XX/2022. The Constitutional Court sees marriage as an act closely related to the Almighty God and the concept of human rights within the framework of Pancasila. Therefore, it can be understood that interfaith marriage is not a recognized model of marriage in Indonesia when looking at the conceptualization of the Pancasila legal state used as the legal argument basis in the considerations of the Constitutional Court Decision Number 24/PUU-XX/2022.

Based on the above description, according to the author, the judges of the Central Jakarta District Court in examining, adjudicating, and deciding on interfaith marriage and registration cases are not careful in exploring and understanding the legal values that exist in society. The judges deliberately disregard Constitutional Court Decision Number 24/PUU-XX/2022. Thus, the judges are also disregarding the Marriage Law. The judges' actions of not adhering to the Marriage Law and instead choosing the Human Rights Law, and the Population Administration Law, contradict the legal principle of lex specialis derogate legi generali, which means that a law that is specific overrides a law that is general.

In addition, the use of Supreme Court Jurisprudence Number 1400/K/pdt/1 986 as a legal reference in the judge's considerations in the decision of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst before the Constitutional Court Decision Number 24/PUU-XX/2022, then that can be understood because the interpretation of Article 2 paragraph (1) of the Marriage Law has not been reviewed by the Constitutional Court. But Supreme Court Jurisprudence Number 1400/K/pdt/1986 becomes irrelevant since the explanation in the Constitutional Court Decision Number 24/PUU-XX/2022. The consequence of this decision emphasizes that marriage in Indonesia should not be considered to have a "legal vacuum" regarding interfaith marriage.[18]

[17] Abdul Hakim, *Menakar Rasa Keadilan Pada Putusan Hakim Perdata Terhadap Pihak Ketiga Yang Bukan Pihak Berdasarkan Perspektif Negara Hukum Pancasila*, Jurnal Hukum Dan Peradilan, VOL. 6 NO. 3, 2017, Hlm. 370

[18] Umar Haris Sanjaya, *Penafsiran Perkawinan Beda Agama Dan/Atau Kekosongan Kepercayaan Oleh Hakim: Disparsitas Dan Kekosongan Hukum*, Jurnal Konstitusi, VOL. 20 NO. 3, 2023, Hlm. 546

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As a result of the non-compliance of the judge of the Central Jakarta District Court with the decision of the Constitution al Court Number 24/PUU-XX/2022 in determining the decision Number 155/PDT.P/2023/PN.Jkt.Pst, is as follows:

a. The failure to use the Constitution al Court decision as a legal source by the judge of the Central Jakarta District Court has the potential to disrupt the legal certainty that has been issued by the Constitutional Court, in this case the legal certainty related to the validity of interfaith marriages and registrations. This is evidenced by the fact that post the issuance of Constitutional Court Decision Number 24/PUU-XX/2022, interfaith couples who submit applications to the District Court are still often granted their requests, such as in the decision Number 155/PDT.P/202 3/PN. Jkt.Pst and decision Number 423/PD T.P/2023/PN.Jkt.Pst.

b.This non-compliance results in a delay in constitutionalism or justice based on the constitutional values of Indonesia, because justice for the constitutional rights of citizens protected by the Constitutional Court decisions is not implemented by the judges. For example, Article 28D paragraph (1) of the 1945 Constitution which guarantees the right to legal protection. When interfaith couples make marriage agreements to protect and safeguard their separate assets, these agreements are hindered because interfaith marriage agreements are not valid and legally void because they do not meet the objective requirements for a valid agreement, namely they must not be contrary to a lawful cause. Even though an interfaith marriage has been granted permission by the court for registration, it does not mean that the marriage is legally valid according to religious and state laws as stipulated in Article 2 paragraph (1) and Article 8 letter f of the Marriage Law.

c. By disregarding the Constitutional Court decision, the judge of the Central Jakarta District Court diminishes the position of the Constitutional Court as the guardian of the constitution and Pancasila ideology. Considering that the essence of Pancasila is enshrined in the Preamble of the 1945 Constitution. Therefore, negating the Constitutional Court decision is equivalent to negating the Constitution and Pancasila.

2.The Implications of Decision Number 155/PDT.P/2023/PN.Jkt.Pst regarding Interfaith Marriages and Registrations that Refuse to Acknowledge but Allow for Registration at the Civil Registry Office in the Notary World

The judicial power is an independent state power to administer justice based on Pancasila for the establishment of the rule of law in the Republic of Indonesia. Article 2 paragraph (2) of the Judicial Power Law states that "The state judiciary applies and upholds the law and justice based on Pancasila." Judges in upholding the law and justice must be guided by the spirit of justice based on the belief in One Almighty God. Based on Article 5 paragraph (1) of the Judicial Power Law, judges are required to explore, follow, and understand the legal values and sense of justice that exist in society. Therefore, in accordance with Article 10 paragraph (1) of the Judicial Power Law, judges are prohibited from refusing to examine, adjudicate, and decide on a case on the grounds that there is no clear legal basis, but are required to examine and adjudicate it.

The judge of the Central Jakarta District Court positions himself/herself bound by the principle of ius curia novit as regulated in Article 10 paragraph (1) of the Judicial Power Law above. In examining and adjudicating cases of interfaith marriage applications, the judge, in his

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legal considerations, assesses that there is a legal vacuum regarding interfaith marriages, for legal certainty, the judge refers to Article 10 paragraph (1) of the Human Rights Law, Article 35 letter a of the Population Administration Law, and Supreme Court Decision Number 1400K/Pdt/1986.

Although the judge of the Central Jakarta District Court in the decision Number 155/PDT.P/2023/PN.Jkt.Pst refused to acknowledge the interfaith marriage application submitted by an interfaith couple between Islam and Christianity, the judge, through the operative part of the decision, granted permission to the applicants of different religions to register their marriage at the Civil Registry Office in Central Jakarta.

According to the author, the appointment of a judge who refuses to approve interfaith marriages but grants permission for the registration of interfaith marriages in that case is contrary to Article 2 paragraph (1) of the Marriage Law and Constitutional Court Decision Number 24/PUU-XX/2022. These two positive legal norms only recognize a marriage as valid if it is carried out according to each person's religion and beliefs. In addition to disregarding the law and Constitutional Court decisions, the author believes that the judge also violates the Supreme Court Letter Number 231/PAN/HK.05/1/2019, w hich clearly states that "Interfaith marriages are not recognized by the state and cannot be registered".

From the perspective of deconstruction theory, which offers a strategy of intertextuality in legal texts, it can be understood as the interdependence of one positive legal product with another positive legal product, and even with legal products outside positive law. The registration of marriages as referred to in Article 34 paragraph (1) of the Administration Law determines that valid marriages according to the regulations must be registered at the Population and Civil Registration Office for non-Muslims, while for Muslim citizens, registration is done by the Office of Religious Affairs. The definition of a valid marriage is only found in Article 2 paragraph (1) of the Marriage Law, which states that a marriage is valid if conducted according to each person's religion and beliefs. This means that the entry point for a marriage to be registered is that the marriage must meet the provisions of Article 2 paragraph (1) of the Marriage Law.

According to the author, the principle of freedom and independence of judges in delivering decisions or determinations is guaranteed by the constitution, but this does not mean that a judge is free to act arbitrarily. In this regard, the author refers to the opinion of Alfred M. Scott as quoted by Yuristyawan Pambudi who stated:[19]

> "a judge who deviates and refuses to follow existing law, and improvises and establishes law according to his own will is a usurper of power that is not legally his, he is a tyrant who exercises judicial dictatorship, and consciously or not (the judge) changes the state governance from a government based on law to a government by an individual with dictatorship".

The determination of judge Number 155/PDT.P/2023/PN.Jkt.Pst, whichdeviate s and rejects existing positive law, causes legal disorder in marriages in Indonesia. The judge in this case takes a positivistic-reductionistic view and focuses only on deviant behavior. The use of a positivistic-

[19] Yuristyawan Pambudi Wicaksana, *Implementasi Asas Ius Curia Novit Dalam Penafsiran Hukumm Putusan Hakim Tentang Keabsahan Penetapan Tersangka*, Jurnal Lex Renaissance, VOL. 3 NO. 1, 2018, Hlm. 94

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reductionistic approach by the judge, instead of realizing legal certainty by separating law from morality, thus producing a structured, logical, and consistent legal order, actually results in legal disorder. The deviant behavior referred to here is interfaith marriage, which is explicitly prohibited by the Marriage Law and Constitutional Court Decision Number 24/PUU-XX/2022 from being practiced in Indonesia.

This legal disorder is known in the chaos theory of law. This legal disorder can be interpreted as both positive and negative. It is considered positive when this legal disorder arises among bad legal practices, so this legal disorder can improve the relationship between law enforcement and legislation through reflection on this legal disorder. It is considered negative when this legal disorder damages the legal system, principles, and patterns of legislation and law enforcement that have been running well .[20]

The determination of the Central Jakarta District Court Number 155/PDT.P/ 2023/PN.Jkt.Pst, if used as a reference or precedent for law enforcement officials or the public, will lead to negative legal disorder in the legal system, principles, and patterns of legislation. This negative legal disorder is a legal disorder that leads to legal uncertainty and the erosion of justice that arises from the intentional reduction of the integrity of legal reality, both in terms of approach, scope, and object of study, as done by the judge in determining the decision Number 155/PDT.P/2023/PN.Jkt.Pst.

Based on the description above, acco rding to the author, the Decision of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst which grants permission for the registration of marriages between couples of different religions indirectly has implications for the notary world. Referring to the wording of Article 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position (Notary Law) states that:

> "A notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws"

In more detail, the legislator regulates the authority of notaries in Article 15 paragraph (1) of the Notary Law which states:

> "Notaries are authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of deed creation, keep the deed, all of which as long as the deed creation is not also assigned or exempted to other officials or other persons designated by law"

In addition to the aforementioned authority, in Article 15 paragraph (2) of the Notary Law, notaries are also authorized to:

a. Certify signatures and determine the certainty of the date of private documents by registering them in a special book.
b. Record private documents by. registering them in a special book.
c. Make copies of the original private documents in the form of copies containing descriptions as written and depicted in the respective documents;

[20] Rio Christiawan, *Penetapan Pengadilan Sebagai Bentuk Upaya Hukum Pada Proses Eksekusi: Kajian Putusan Nomor 1/Pen/ Pdt/ Eks/ 2017/ Pn.Mbo*, Jurnal Komisi Yudisial, VOL. 11 NO. 3, 2018. Hlm 381-382

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d.Verify the conformity of photocopies with the original documents
e.Provide legal counseling related to deed making.
f.Make deeds related to land
g.Make auction minutes deeds.

Based on these legal provisions, the existence of a notary is known to be very necessary in creating a written authentic evidence of a legal act carried out by the community. Therefore, it is not uncommon for various laws and regulations to require certain legal acts to be made in authentic deeds. Notaries and their deed products can be interpreted as the state's efforts to create legal certainty and protection for members of the community.[21]

Article 16 paragraph (2) letter (a) of the Notary Law regulates that a notary, in carrying out his duties, must act responsi y, honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal acts. The meaning of "carefully" in this article can be interpreted as thorough, careful, and cautious), in carrying out tasks must be careful just as in getting to know the visitors.

According to the author, with the increasing practice of marriages and registrations of different religions in Indonesia, some of which are legalized through the decision of the District Court, such as in the Decision of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst, this needs to be considered by notaries in carrying out their duties in making an authentic deed related to the scope of marriage issues, for example, making a marriage agreement deed.

Faced with such issues, notaries need to prioritize the principle of caution (Prudential Principle) as regulated in Article 16 paragraph (2) letter (a) of the Notary Law. Notaries must conduct careful and comparative analysis and research regarding the process of preparing authentic deeds by: First, getting to know the parties, Second, carefully verifying the data of the subjects and objects of the visitors, Third, acting carefully, wisely,car efully, and diligently in the deed making process, and Fourth, fulfilling all technical requirements for deed making. This principle must be adhered to and firmly held by notaries, so as not to cause legal problems with the deeds made in the future.[22]

In addition to emphasizing the prudential principle, based on Article 15 paragraph (2) letter (e) of the Notary Law which authorizes notaries to provide legal counseling related to the deeds they will make. The notary provides understanding to clients regarding the validity of interfaith marriages in Indonesia. Indonesian positive law basically does not recognize and prohibits the practice of interfaith marriages. This results in the deed of agreement for interfaith marriages made before a notary being invalid and null and void because according to Article 2 paragraph (1) of the Marriage Law and Constitutional Court Decision Number 24/PUU-XX/2022 interfaith marriages in Indonesia are not valid and also violate Article 8 letter (f) of the Marriage Law because they have entered into a marriage prohibited by their religion or other applicable regulations. And violate Article 29 paragraph (2) of the Marriage Law that a marriage agreement cannot be legalized if it violates legal, religious, and moral boundaries.

[21] Hartanti Dan Nisya, *Prinsip-Prinsip Dasar Profesi Notaris Berdasarkan Peraturan Perundang-Undangan Terbaru*, Jakarta: Dunia Cerdas, 2013, Hlm. 2-3

[22] Ida Bagus Paramaningrat Manuaba, Dkk, *Prinsip Kehati-Hatian Notaris Dalam Membuat Akta Autentik*, Jurnal Akta Comitas, Vol. 1 NO. 1, 2018, Hlm. 67

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Based on this, legally the deed of agreement for interfaith marriages made based on interfaith marriages is an invalid deed. In addition to being invalid, the deed of agreement for interfaith marriages made based on interfaith marriages also violates the requirements for a valid agreement based on Article 1320 of the Civil Code because it contains things or reasons prohibited by law, thus violating the objective requirements of the agreement and the legal consequence is that the deed of agreement for interfaith marriages is null and void.

CONCLUSION

1. The Indonesian legal system not only adheres to the civil law principle but is also influenced by Pancasila. Pancasila is the foundation for the Indonesian legal system and law enforcement. The decision of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst whic h disregards Constitutional Court Decision Number 24/PUU-XX/2022 as a legal source indicates the Central Jakarta District Court's non-compliance with the Constitutional Court decision. Such actions, similar to the decision of the Central Jakarta District Court Number 155/PDT.P/2023/PN.Jkt.Pst, are not compliant with Pancasila and the Constitution.

2. The decision of the Central Jakarta District Court Number 155/PDT.P/2023/P N.Jkt.Pst indirectly affects the authority of notaries as public officials authorized to make authentic deeds. This needs to be carefully considered and addressed by notaries. When a notary exercises the authority to make authentic deeds regarding interfaith marriages, the notary must adhere to the prudential principle and provide legal counseling to the parties regarding the validity of the deed of agreement for interfaith marriages. Considering that interfaith marriages and registrations in Indonesia are an invalid and prohibited act according to the laws and regulations.

SUGGESTIONS

1.The Supreme Court through the Supreme Court Supervisory Board needs to synergize with the Judicial Commission to enhance supervision related to the decisions of first-instance court judges, especially when adjudicating cases of interfaith marriage applications. So that the judge's decision is in line with the law based on Pancasila.

2. Notary organizations should provide legal counseling and guidance regarding regulations on interfaith marriages and registrations in Indonesia. This is necessary to create a uniform understandin g of the law, legal protection, and legal certainty for both notaries and the general public.

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