

# LEGAL CERTAINTY OF MARRIAGE BETWEEN CHRISTIANS AND CATHOLICS IN THE DECISION OF THE NORTH JAKARTA DISTRICT COURT NUMBER 423/PDT.P/2023/PN JKT.UTR

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## Abstract

Interfaith marriages can be registered by the state as long as there is a court decree declaring the validity of the marriage and registerable, as regulated in the act of marriage and act of population administration. This also applies to interchurch marriages between Catholics and Christians in Indonesia. Regarding this matter, The North Jakarta District Court issued Decree Number 423/Pdt.P/2023/PN Jkt.Utr, which granted the petitioners' request for registration of their interchurch marriages. However, in its legal reasoning, the Judge stated that the petitioners' interchurch marriage was not considered an interfaith marriage. Furthermore, the Judge did not obtain evidence of the Christian Church's approval of their interchurch marriage. Through this study of this decree, the author conducted legal research using a statutory, a conceptual, and a systematic approach, thus concluding that the decree order does not fulfill the principle of legal certainty.

**Keywords:** law, Christian, Catholic, marriage, judge.

## A. INTRODUCTION

Religion and marriage are inseparable in the context of positive law. Within marriage law, religion is a determining factor. The essence of marriage, which describes its existence as a physical and spiritual bond, upholds eternity as the goal of family formation, and points to the One Almighty God as the foundation of family life,<sup>4</sup>reflecting the divine values of religion. Furthermore, the validity of a marriage is determined by religion.<sup>5</sup>Likewise, the conditions for marriage are determined by positive law, as long as religious law does not specify otherwise.<sup>6</sup> Marriage essentially involves the bond between 2 (two) people<sup>7</sup>(may involve involvement of more than 2 (two) people)<sup>8</sup>When related to a citizen's religion, it has its own complexities, particularly in relation to interfaith marriage. For Muslims, positive law prohibits interfaith marriage, specifically in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (hereinafter referred to as Inpres 1/1991).<sup>9</sup>Likewise for a Hindu, whose religion prohibits interfaith marriages.<sup>10</sup>This is different from Catholicism and some Christian religions which allow interfaith marriages, especially marriages between Catholics and Christians. It should be explained beforehand that the distinction between the terms Catholicism and Christianity

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<sup>4</sup>Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, State Gazette of the Republic of Indonesia 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019, Article 1.

<sup>5</sup>Ibid, Article 2 paragraph (1).

<sup>6</sup>Ibid, Article 6 paragraph (6), Article 8 letter f, Article 10.

<sup>7</sup>Ibid, Article 3 paragraph (1).

<sup>8</sup>Ibid, Article 3 paragraph (2), Article 4, and Article 5.

<sup>9</sup> Supreme Court of the Republic of Indonesia, 2011, Collection of Legislation Relating to the Compilation of Islamic Law and Definitions in its Discussion, Supreme Court of the Republic of Indonesia, Jakarta, pp. 72-73.

<sup>10</sup>Constitutional Court (1), Decision Number 68/PUU-XII/2014, p. 142.

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Samuel Fajar Hotmangara Tua Siahaan et al

was first legally regulated in Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion (hereinafter referred to as Law 1/PNPS/1965).<sup>11</sup> In fact, every person who focuses their faith on the person of the Lord Jesus Christ is called a Christian.<sup>12</sup> The theological basis for this naming is in the Bible which states, "It was in Antioch that the disciples were first called Christians."<sup>13</sup> The time context referred to in the Bible verse above is the first century.<sup>14</sup> While the term Catholic has been officially used by Christianity since the second century, namely popularized by Ignatius of Antioch, which means universal.<sup>15</sup> Before the Church split, all Christians belonged to one Church, known as Catholicism. However, after the Reformation in the 16th century, Protestant churches rarely used the term Catholic, even abandoning it. Only the Orthodox Church remained.<sup>16</sup> and the Roman Catholic Church, which uses the term Catholic. However, because the Orthodox Church's mission to spread Christian teachings has only been successful in Indonesia since 1988,<sup>17</sup> while the mission of spreading Christian teachings by the Protestant Church<sup>18</sup> and the spread of Christian teachings by the Roman Catholic Church<sup>19</sup> has developed long before independence, so the term Catholic religion has only been attached to the Roman Catholic Church, while the term Christian religion has been attached to churches that are not affiliated with the Roman Catholic Church, which was then normalized in Law 1/PNPS/1965.

From the perspective of Catholic religious law, marriages that occur between members of the Catholic Church (Catholic believers) and members of non-Catholic Churches (Christian believers) can be carried out as long as the marriage is carried out between 2 (two) people who have been baptized, one of whom has been baptized in the Catholic Church or received into it after baptism, while the other party is a member of the Church or an ecclesiastical community that does not have full unity with the Catholic Church, as per Canon 1124 of the Code of Canon Law.<sup>20</sup> Baptism received by Christians must be valid, namely using water as a medium and accompanied by the Trinity formula.<sup>21</sup> Apart from that, there is also a Church permit that must be completed by Catholics.<sup>22</sup> From the perspective of Christian (non-Catholic) religious law, interfaith marriages are regulated by the respective Church regulations. Some non-Catholic churches recognize interfaith marriages with the Catholic Church, but some other non-Catholic churches do not recognize interfaith marriages with the Catholic Church, or even with fellow Protestant churches, due to differing teachings.<sup>23</sup> For example, the Evangelical Christian Church in Timor (hereinafter referred to as GMIT) recognizes inter-church marriages, as long as there is an agreement between the congregation council, church leaders, both parents, and the prospective bride and groom.<sup>24</sup> Likewise, the Pasundan Christian Church (hereinafter referred to as GKP) recognizes inter-church

<sup>11</sup> Law of the Republic of Indonesia Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, State Gazette of the Republic of Indonesia 1965 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 2726, Explanation of Article 1.

<sup>12</sup> Ernst Wilhelm Benz, et.al., Christianity, Britannica, <https://www.britannica.com/topic/Christianity>, (August 31, 2025), 2025.

<sup>13</sup> Team Indonesian Bible Society, 1974, New Translation of the Bible, Indonesian Bible Society, Jakarta, Acts 11: 26B.

<sup>14</sup> William Hunter, The Church History of Antioch, Saint Ignatius of Antioch Orthodox Church, <https://saintignatiusbelfast.org/the-church-history-of-antioch>, (February 16, 2017), 2025.

<sup>15</sup> Stefanus Tay and Ingrid Listiati, Since When is the Church Called the Catholic Church, Katoliisitas.org, <https://katoliisitas.org/sejak-kapan-gereja-disebut-gereja-katolik/>, (December 2, 2012), 2025.

<sup>16</sup> John Meyendorff, Eastern Orthodoxy, Britannica, <https://www.britannica.com/topic/Eastern-Orthodoxy>, (August 26, 2025), 2025.

<sup>17</sup> Nabila Jayanti, The Rise of the Indonesian Orthodox Church, KumparanNews, <https://kumparan.com/kumparannews/geliat-gereja-ortodoks-di-indonesia-1yOgY8gNLK7>, (July 11, 2022), 2025.

<sup>18</sup> Verelladevanka Adryamarthanino and Tri Indriawati, History of the Arrival of Christianity in Indonesia, Kompas.com, <https://www.kompas.com/stori/read/2022/12/21/170000479/sejarah-masuknya-kristen-di-indonesia>, (December 21, 2022), 2025.

<sup>19</sup> Antara, The Oldest Catholic Church in Indonesia is Actually in This City, Built in the 15th Century, iNews.ID, <https://maluku.inews.id/berita/gereja-katolik-tertua-di-indonesia-ternyata-ada-di-kota-ini-dibangun-abad-ke-15>, (December 28, 2022), 2025.

<sup>20</sup> Canonical Meeting Team of the Java Region, 2006, Code of Canon Law (Official Indonesian Edition), Indonesian Bishops' Conference, Jakarta, p. 248.

<sup>21</sup> Robertus Rubiyatmoko, 2011, Catholic Marriage According to the Code of Canon Law, PT Kanisius, Sleman, p. 134.

<sup>22</sup> Ibid, p. 135.

<sup>23</sup> P. Geo and Suharto, 1991, Mixed Marriages of Different Religions and Different Churches (Historical, Theological, Pastoral, Church Law, and Civil Law Review), Dioma, Malang, p. 103.

<sup>24</sup> Evangelical Christian Church in Timor, Pastoral Regulations for the Service of Holy Matrimony, Article 8.

marriage blessings, on the condition that non-GKP congregations must submit a letter of application for marriage blessing services from their church of origin.<sup>25</sup> This is different from the Batak Protestant Christian Association (hereinafter referred to as HKBP) which states that its members who marry Catholic Church members in the Catholic Church are considered to have left the HKBP.<sup>26</sup> Likewise, if a Catholic Church member wants to marry a HKBP member, they must first undergo catechism at HKBP and become a HKBP member.<sup>27</sup> This means that HKBP is a Christian Church that rejects interfaith marriages with the Catholic Church. Every legal marriage must be registered.<sup>28</sup> However, in relation to the registration of interfaith marriages, population administration law has basically opened up space for registering interfaith marriages as long as there is a court ruling that validates the marriage.<sup>29</sup> However, on July 17, 2023, there was a Circular Letter of the Supreme Court Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Marriages Between People of Different Religions and Beliefs (hereinafter referred to as SEMA 2/2023), the contents of which prohibit judges from granting applications for registration of marriages of different religions and beliefs.<sup>30</sup>

On July 13-14, 2023, a legal event occurred, namely an application for registration of an interfaith marriage submitted by Gregorius Agung Beyeng Amoh and Regina Yasmina Augustine as the Applicants to the North Jakarta District Court.<sup>31</sup> The Applicants are a Catholic and Christian couple who had their marriage blessing at St. John Bosco Church, Danau Sunter Parish, Jakarta Diocese on February 1, 2023.<sup>32</sup> In response to the request, Judge Yuli Effendi from the North Jakarta District Court on August 8, 2023 issued the North Jakarta District Court Decision Number 423/Pdt.P/2023/PN Jkt.Utr which in essence granted the request for registration of interfaith marriages.<sup>33</sup> The judge's decision was based on legal considerations, including:

1. the marriage between the Applicants is not an interfaith marriage because in reality Protestant Christianity and Catholicism are within the scope of one faith; and
2. The Applicants' marriage was conducted in a Catholic ceremony at St. John Bosco Church, Danau Sunter Parish, Jakarta Diocese on February 1, 2023.<sup>34</sup>

Regarding the Decision of the North Jakarta District Court Number 423/Pdt.P/2023/PN Jkt.Utr, the researcher raised a question as to whether the verdict handed down by the Judge a quo had fulfilled the principle of legal certainty because it was based on these two considerations.

## **B. RESEARCH METHODS**

The type of research conducted by the researcher is legal research, namely examining the legal certainty of marriage between Christians and Catholics in the Decision of the North Jakarta District Court Number 423/Pdt.P/2023/PN Jkt.Utr. The approaches used by the researcher in this study include a legislative approach, a conceptual approach, and a systematic approach. The legislative approach is a method that focuses on analyzing the application of laws and regulations related to the legal issues being studied. The conceptual approach is a method that focuses on examining legal concepts derived from legal doctrine and experts, and is relevant to the formulation of the problem being studied. The systematic approach is a research approach that focuses on systematically examining laws relevant to the formulation of the problem being studied. The legal material search conducted by the researcher is through library studies and documentation studies found at documentation centers or searches via the internet. Legal material analysis techniques used by researchers is prescriptive in nature using various interpretation techniques, namely grammatical interpretation, teleological interpretation, systematic interpretation, restrictive interpretation, authentic interpretation, interdisciplinary interpretation, multidisciplinary interpretation.

<sup>25</sup> Pasundan Christian Church, Regulations on the Implementation of Church Order, Article 29.

<sup>26</sup> Huria Kristen Batak Protestan, Implementation Instructions for the 2022 HKBP RPP, page 24.

<sup>27</sup>Ibid.

<sup>28</sup>Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration, State Gazette of the Republic of Indonesia 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674, Article 34 paragraph (1).

<sup>29</sup>Ibid, Explanation of Article 35 letter a.

<sup>30</sup>Circular Letter of the Supreme Court Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Marriages Between People of Different Religions and Beliefs.

<sup>31</sup>North Jakarta District Court, Decision Number 423/Pdt.P/2023/PN Jkt.Utr, p. 1.

<sup>32</sup>Ibid, pp. 1-2.

<sup>33</sup>Ibid, pp. 10-11.

<sup>34</sup>Ibid, p. 9.

## C. RESEARCH RESULTS AND DISCUSSION

### 1. The Theory of Legal Certainty and Legal Uncertainty

Legal certainty can be interpreted in 2 (two) ways, namely interpreting the scope of legal certainty or vice versa, namely interpreting the scope of legal uncertainty.

*First*, via understanding the scope of legal certainty. Legal certainty according to Gustav Radbruch is a condition in which the law functions as a regulation that must be obeyed.<sup>35</sup> For Gustav Radbruch, Legal certainty is not certainty through law, but certainty from law.<sup>36</sup> Gustav Radbruch put forward 4 (four) conditions of legal certainty, namely: the law must be positive law (stated by law as law), positive law must be based on reality, facts or reality, not just the judge's assessment of a particular case, the reality underlying the law must be as free from error as possible, and positive law must be as less likely to change as possible.<sup>37</sup> Slightly broader than Gustav Radbruch, Humberto Avila expressed the scope of legal certainty as follows: legal certainty as a normative principle, namely the stability and predictability of the law; legal certainty can be interpreted as legal certainty, certainty through law, certainty before the law, certainty of rights, certainty under the law, certainty for a right, and certainty as a right; legal certainty as a definition element is interpreted as the requirement for a legal order to have certainty; legal certainty as a fact is interpreted as a factual state or legal reality that can be verified; legal certainty as a value is interpreted as an axiological assessment of certainty as a substantive value in accordance with the value system; legal certainty as a principle norm is interpreted as a legal principle that must be obeyed; legal certainty as a legal idea is interpreted as a legal ideal; and legal certainty as a product of positive law is interpreted as a prevailing norm.<sup>38</sup> Furthermore, Jan Michael Otto stated that legal certainty can be created if the following conditions are met: There are clear (firm) and consistent (non-conflicting and harmonious) legal rules; the government complies with and consistently applies the legal rules; society behaves in accordance with these legal rules; judges must be independent, impartial, consistent, and astute in enforcing the law when resolving cases; and judges' decisions are implemented concretely.<sup>39</sup>

*Second*, via interpreting the scope of legal uncertainty. Legal uncertainty according to Jorg Kammerhofer consists of 4 (four) levels, namely substantive uncertainty of legal norms, even if the norms are valid; uncertainty of norms for making legal regulations; uncertainty of sources for making legal regulations; and uncertainty of theory regarding legal norms.<sup>40</sup> Regarding the four levels of legal uncertainty, Hyronimus Rhiti is of the opinion that the level of uncertainty of the norms for making legal regulations and the level of uncertainty of the sources for making legal regulations are not a problem because there is a hierarchy of legal norms.<sup>41</sup> In addition, Hyronimus Rhiti explains that legal uncertainty has various meanings, namely legal uncertainty arises in the practice of applying law in certain cases, namely at the stage of determining legal rules, reviewing facts, and applying law to facts; legal uncertainty arises when legal norms are unclear and cannot be understood; legal uncertainty arises when legal norms do not facilitate or hinder certain matters; legal uncertainty is interpreted as ignorance of legal norms; legal uncertainty is reflected in judges' decisions related to non-legal factors, which are non-ceteris paribus (not fixed) in nature; legal uncertainty in an irregular legal system; uncertainty as a legal problem often has solutions that move in different directions; legal uncertainty is interpreted as ignorance of existing legal norms in the future; legal uncertainty which is the final result of legal certainty which is "allegedly" final; and legal uncertainty is caused by social factors and legal factors themselves.<sup>42</sup> So understanding the scope of legal certainty can also be done by understanding legal uncertainty, namely by understanding the opposite.

<sup>35</sup> Bagir Manan and Kuntana Magnar, 2017, *Several Problems of Constitutional Law*, PT Alumni, Bandung, p. 54.

<sup>36</sup> Gustav Radbruch, 1948, *Vorschule der Rechtsphilosophie*, Heidelberger Gutenberg-Druckerei, Heidelberg, p. 28.

<sup>37</sup> *Ibid*, pp. 28-29.

<sup>38</sup> Humberto Avila, 2016, *Certainty in Law*, Springer International Publishing, Switzerland, p. 2-72.

<sup>39</sup> Muh. Afif Mahfud, 2024, *Introductory Textbook of Legal Science*, Yoga Pratama, Semarang, p. 48.

<sup>40</sup> Jorg Kammerhofer, 2011, *Uncertainty in International Law: Kelsenian Perspective*, Routledge, New York, p. 3.

<sup>41</sup> Hyronimus Rhiti, 2025, *Legal Certainty: A Theoretical and Philosophical Introduction*, PT Kanisius, Seleman, pp. 32-33.

<sup>42</sup> *Ibid*, pp. 33-48.

**2. The Principle of Legal Certainty in the Decision of the North Jakarta District Court Number 423/Pdt.P/2023PN Jkt.Utr which Granted the Application for Registration of Interfaith Marriages**

AmarThe North Jakarta District Court's Decision Number 423/Pdt.P/2023PN Jkt.Utr reads:<sup>43</sup>

"SET

- a. Grant the APPLICANTS' petition in its entirety;
- b. Declaring that the marriage between the APPLICANTS, who are Indonesian citizens who have entered into a Catholic marriage on February 1, 2023, is legally valid;
- c. Granting permission to the APPLICANTS to register their Interfaith Marriages at the Office of Population and Civil Registration of North Jakarta City and ordering the Employees of the Office of Population and Civil Registration of North Jakarta City to register the Interfaith Marriages of the APPLICANTS in the Marriage Registration Register;
- d. "Charge the Petitioners court costs amounting to Rp. 135,000.00 (one hundred thirty-five thousand rupiah)."

In essence, the determination of the *ordera quois* to grant the petitioners' request. At first glance, especially in practice, it appears that a decision that has not been challenged by legal action is immediately effective and enforceable because it has permanent legal force, as defined in the Explanation of Article 195 HIR.<sup>44</sup>However, academically, even certain things can still be examined for substantive truth. Satjipto Rahardjo (as quoted by Hyronimus Rhiti) stated that "when a regulation is made, what emerges is regulatory certainty, not legal certainty. Academically, it is incorrect to assume that legal certainty immediately follows the regulation's creation."<sup>45</sup>If Satjipto Rahardjo's speech is interpreted as implying that legal certainty does not necessarily arise from the certainty of regulations as law in abstracto, then the same interpretation can be applied to a judge's decision (in this case, a ruling) as law in concreto. Based on this, we will further examine legal certainty in the amar kabul Penetapan a quo.

The first ruling issued by the judge was to grant the Petitioners' entire petition. This first ruling is the principal ruling, reflecting the cumulative granting of the other three rulings. Therefore, to assess the legal certainty of this first ruling, it is necessary to first examine the second, third, and fourth rulings. The second ruling handed down by the Judge was to state that the marriage between the Petitioners, who are Indonesian citizens who have entered into a Catholic marriage on February 1, 2023, is legally valid. There is no legal certainty issue regarding the Judge's acceptance of the phrase "The marriage between the Petitioners, who are Indonesian citizens who have entered into a Catholic marriage on February 1, 2023" because all of it has been proven by the Petitioners as a trial fact. All of these facts have been proven through documentary evidence: Evidence P-1: Photocopy of Petitioner I's ID card in the name of Gregorius Agung Beyeng Amoh with NIK: 3172020109760013; Evidence P-2: Photocopy of Petitioner II's ID card in the name of Regina Yasmina Augustine, with NIK: 3172026608760006; and Evidence P-11: Photocopy of Marriage Certificate (Testimonium Matrimony) No. Register III Page 028 Number 1634 issued by St. John Bosco Church, Lake Sunter Parish, Jakarta Diocese dated February 1, 2023.<sup>46</sup>However, the problem of legal certainty arises when the phrase, "marriage... is valid according to law" is stated by the Judge in the decision.

Referring to positive marriage law, the validity of a marriage occurs if it is carried out according to the laws of each religion, as in Article 2 paragraph (1) of Law 1/1974, and is not prohibited by the religion or positive law, as in Article 8 letter f of Law 1/1974. Based on the trial facts, it is clear that the marriage carried out by the Applicants is an interfaith marriage, as proven through the Letter of Evidence P-1 and P-2, namely the KTP of each Applicant.<sup>47</sup>Therefore, it is necessary to review whether the two different religions of the Petitioners have approved the marriage. This religious approval is represented by the views of the competent religious authorities regarding the Petitioners, as mandated by Constitutional Court Decision 24/PUU-XX/2022 through its legal considerations, namely "... the Court has clearly and firmly answered that the validity of marriage is the domain of religion through religious institutions or organizations that are authorized or have the authority to provide religious interpretation. ... The Court has provided a constitutional basis for the relationship between religion and the state in marriage law, namely that religion determines the validity of marriage, while the state determines the administrative validity of marriage within the legal

<sup>43</sup>North Jakarta District Court, Op.Cit., pp. 10-11.

<sup>44</sup> **Herzien Inlandsch Reglement**, Op.Cit., Explanation of Article 195.

<sup>45</sup> Hyronimus Rhiti, Op.Cit., p. 13.

<sup>46</sup>North Jakarta District Court, Op.Cit., pp. 5-6.

<sup>47</sup>Ibid, p. 9.

Samuel Fajar Hotmangara Tua Siahaan et al

corridor.<sup>48</sup>The approval of the Catholic religion does not need to be legally questioned because the Applicants' marriage was conducted in a Catholic manner, as proven by Evidence Letter P-11, namelyPhotocopy of Marriage Certificate (Testimonium Matrimony) No. Register III Page 028 Number 1634 issued by St. John Bosco Church, Lake Sunter Parish, Jakarta Diocese dated February 1, 2023.<sup>49</sup>The legal issue arises from the side of Christian religious approval, namely the religion of Regina Yasmina Augustine as Petitioner II. Normatively in the context of mixed-church marriage (marriage between churches according to the Canon Law of the Catholic Church) as regulated in Chapter VI (Canon 1124-1125) of the KHK, permission or approval from an authorized church for one of the non-Catholic brides is not a requirement demanded by the Catholic Church to be fulfilled, so it is not an important matter in the continuation of an interfaith marriage in the Catholic Church. Therefore, it is the Judge's duty to assess whether or not there is permission or approval from the authorized Church for Petitioner II, before declaring the marriage of the Petitioners valid. Considering that not all Christian Churches grant permission for interfaith marriages, it is necessary for the Judge to obtain evidence whether the authorized Church for Petitioner II grants permission for the marriage.

There are 2 (two) ways for the Judge to explore whether or not there is permission or approval for an interfaith marriage from the authorized Church for Petitioner II. First, the judge passively waits for the applicants to present evidence related to this matter, as is the principle of passive judges in civil procedural law.<sup>50</sup>Passive judges assumethe principle of verhandlungsmaxime, which means that the parties are burdened with the obligation to provide proof.<sup>51</sup>However, in fact, at the trial of Application Number423/Pdt.P/2023PN Jkt.Utr, the Petitioners did not prove whether or not there was permission or approval for an interfaith marriage from the Christian Church which is authoritative for Petitioner II. In such a situation, the Judge can remain passively silent, then declare the petition rejected because the Petitioners failed to prove that their marriage is valid from both sides of different religions, or the Judge can choose the second method, namely the Judge chooses to be active. Even though in the principles of civil procedural law, the judge is passive, the passive judge framework must be seen in the context of a dispute trial between 2 (two) parties. In adjudicating a dispute, the judge must be passive because if he is active, the judge will definitely side with one of them. Meanwhile, in the ex parte framework, the judge cannot side with one of them, but the Judge acts as an administrative official.<sup>52</sup>which is required to obtain sufficient evidence before issuing a decision, so that it is possible for the judge to advise the Applicant to complete the evidence.

The judge's activeness in civil procedural law, especially during the trial, according to Sunarto is permitted as long as normative provisions do not prohibit it in several matters, namely examining the validity of the release of the court summons; seeking reconciliation between the parties; giving the parties the opportunity to answer each other; giving the parties the opportunity to present evidence and assess its validity; conducting a local examination hearing; and summoning and hearing expert testimony.<sup>53</sup> However, the facts of the trial in the a quo Determination do not show the active role of the Judge. Even the evidenceThere is also no permit or approval for an interfaith marriage from the authoritative Christian Church for Petitioner II. Therefore, it can be concluded that there is no evidence that Christianity allows Petitioner II to conduct an interfaith marriage with Petitioner I, who is Catholic, legally in the Catholic Church. On this basis, the Petitioners' marriage should be deemed invalid by the Judge. Therefore, the Judge's conclusion that the Petitioners' marriage is a valid marriage because the marriage was conducted in a Catholic manner on February 1, 2023, is incorrect. The judge's inaccuracy in issuing the second ruling of the a quo ruling is problematic from a legal certainty perspective. This inaccuracy aligns with Hyronimus Rhiti's theory of legal uncertainty, which frequently arises in the practice of applying the law in certain cases, particularly at the stages of determining legal rules, examining the facts, and applying the law to the facts.<sup>54</sup>First, at the stage of determining the legal rules. The judge in the a quo case applied Article 35 letter a of Law 23/2006 and Article 50 paragraph (3) of Home Affairs Ministerial Regulation 108/2019, but ignored the provisions of Article 2 paragraph (1) of Law 1/1974 and Constitutional Court Decision 24/PUU-XX/2022. These norms

<sup>48</sup>Constitutional Court (2),Decision Number 24/PUU-XX/2022,p. 624.

<sup>49</sup>North Jakarta District Court, Loc.Cit.

<sup>50</sup> Danialsyah, 2023, Civil Procedure Law Theory and Practice, CV Sentosa Deli Mandiri, Medan, p. 22.

<sup>51</sup> *Ibid*,p. 23.

<sup>52</sup> Laila M. Rasyid and Herinawati, 2015, Civil Procedure Law, Unimal Press, Lhokseumawe, p. 20.

<sup>53</sup> Sunarto, 2019, The Active Role of Judges in Civil Cases, Prenadamedia Group (Kencana Division), Jakarta, pp. 20-21.

<sup>54</sup> Hyronimus Rhiti, Op.Cit., p. 33.

Samuel Fajar Hotmangara Tua Siahaan et al

are both explicitly stated in the Closing Before the Decision.<sup>55</sup> Neither explicitly nor implicitly in the legal considerations were used by the Judge to assess the validity of the Applicants' marriage. These norms should be an important principle in assessing the validity of an interfaith marriage because the marriage involves 2 (two) authoritative religions. Second, at the stagefactual analysis. In his legal considerations, it is clear that the Judge understands that interfaith marriages between Christians and Catholics can be conducted according to the Catholic religion in the Catholic Church. However, the Judge did not explore further what conditions must be met according to the rules of mixed religious marriage in Chapter VI (Canon 1124-1125) of the KHK. At first glance, this is not very important to discuss because the Catholic Church has legalized the marriage. However, this becomes important when connected with the application of positive marriage law to the facts.

Third, at the stage of applying the law to the facts. Because the Judge did not heed the provisions of Article 2 paragraph (1) of Law 1/1974 and the Constitutional Court Decision 24/PUU-XX/2022, then the Judge did not explore further what conditions must be met according to the rules of mixed religious marriage in Chapter VI (Canon 1124-1125) of the KHK, the Judge was trapped in cognitive distortion, so that he jumped to the conclusion by saying that interfaith marriages that have been legally conducted based on the Catholic religion must be considered valid according to positive law. This conclusion is unacceptable because the mixed religion marriage rules in Chapter VI (Canon 1124-1125) of the KHK do not accommodate Christian (non-Catholic) permission or approval as part of the validity of the continuation of mixed religion interfaith marriages, so the Judge requires proof of permission or approval of interfaith marriages from the authoritative Christian Church for Petitioner II. The Judge did not obtain such evidence, but immediately concluded that the marriage was valid. Here the Judge ignored the authority of the Christian Church towards Petitioner II. These three aspects have shown that the Second Ruling of the a quo Determination is not legally certain because basically the Judge was not careful in enforcing the legal provisions of Article 2 paragraph (1) of Law 1/1974 and Constitutional Court Decision 24/PUU-XX/2022.

In line with the conditions for legal certainty put forward by Gustav Radbruch, namely Positive law must be based on reality, facts or reality, not just the judge's assessment of a particular case. If the meaning of positive law is not limited to law in abstracto, but also law in concreto, then this theory also applies to a judge's decision. Because the Judge has ignored the reality, facts or reality in the form of the provisions of Article 2 paragraph (1) of Law 1/1974, Constitutional Court Decision 24/PUU-XX/2022, and Chapter VI (Canon 1124-1125) of the Catholic Church's Criminal Code, the Judge's assessment is distorted from these provisions, so that it subsequently validates the marriage of the Petitioners. The third ruling handed down by the Judge was "To grant permission to the Applicants to register their Interfaith Marriage at the North Jakarta City Population and Civil Registration Office and to order the North Jakarta City Population and Civil Registration Office Employees to register the Applicants' Interfaith Marriage in the Marriage Registration Register."<sup>56</sup> Looking at the sentence structure in the a quo order, there are several problems in it.

The first problem is that the Judge's statement in the ruling is inconsistent with his own statement in the legal considerations. In the ruling, the Judge stated that the Applicants' marriage can be followed up by registering an interfaith marriage, thus meaning that the Applicants' marriage is an interfaith marriage. Meanwhile, the Judge's legal considerations (which have been explained previously) state that, "... The marriage between Applicant I and Applicant II is not considered an interfaith marriage because in fact Applicant I, who is Catholic, and Applicant II, who is Protestant, are still within the scope of one faith and in reality the Applicants' marriage was carried out in a Catholic manner..."<sup>57</sup> From a legal certainty perspective, this is problematic because:

a. Basically, a ruling must be supported by consistent legal considerations because legal considerations consist of the basis and reasons for a decision, as regulated in Article 184 paragraph (1) HIR. This conflict between the ruling and legal considerations creates ambiguity because the reasons are different from the conclusions in the ruling. This kind of situation falls into the category of legal uncertainty, as stated by Hyronimus Rhiti who stated that legal uncertainty arises when legal norms are unclear and cannot be understood. The legal norms outlined by Hyronimus Rhiti must be interpreted as law in concreto which is reflected in the judge's ruling;

<sup>55</sup>North Jakarta District Court, Op.Cit., p. 10.

<sup>56</sup>North Jakarta District Court, Op.Cit., p. 11.

<sup>57</sup>Ibid, pp. 9-10.

b. conflict of judgment and legal considerations in the determination of a quo, the aspect of judge consistency emphasized by The Judge a quo did not fulfill Jan Michael Otto's requirement for legal certainty. This consistency is met if:

- 1) The decision was based on the Judge's legal considerations which stated that the Applicants had indeed carried out an interfaith marriage; or
- 2) The Judge's legal considerations were upheld, but his ruling became "the Petitioners' application cannot be accepted" because registration of interfaith marriages does not require a court ruling, so the application is not within the authority of the District Court; and

c. the conflict between the ruling and legal considerations can be equated with a determination of a judicial nature *onvoelvoende gemotiveerd* or a determination that lacks consideration, which results in the determination being cancelled.<sup>58</sup> Cancellation of a court decision can be done through cassation, lawsuit or resistance., as stipulated in Number 1 letter c of the Circular Letter of the Supreme Court Number 3 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Court<sup>59</sup> (hereinafter referred to as SEMA 3/2018) In this case, an appeal cannot be filed because the a quo ruling complies with the Petitioners' request, even though the legal considerations are unclear and inconsistent. However, there is still the possibility of annulment through a lawsuit or a third-party objection that has no time limit. Therefore, this situation falls under legal uncertainty, as stated by Hyronimus Rhiti argued that a law that was "presumably" certain could become uncertain, one of the possible outcomes being annulment. Even though the Petitioners' interfaith marriage has been registered, this does not preclude the possibility of a lawsuit or opposition from a third party that could annul the a quo decree, thus legally canceling the registration.

The second issue concerns the lack of authority of judges to grant applications for registration of interfaith marriages. Following the enactment of SEMA Regulation 2/2023 on July 17, 2023, all judges must not grant applications for registration of marriages between people of different religions and beliefs.<sup>60</sup> There are no transitional provisions in SEMA 2/2023. Therefore, even though the Applicants' marriage took place on February 1, 2023, and the Applicants' petition was registered at the North Jakarta District Court Clerk's Office on July 14, 2023 (this occurred before SEMA 2/2023 came into effect), the decree of acceptance of marriage (kabul) issued on August 8, 2023, by the Judge a quo constitutes a *contra legem* act. A judge's *contra legem* act can be justified, as long as the violated rule is unjust.<sup>61</sup> However, before determining the fairness of a law, in the case of SEMA 2/2023, a judge needs to examine whether the facts of interfaith marriage proven by the Applicants have met the requirements for validity? These requirements for validity are in the legal basis cited and binding SEMA 2/2023, namely Article 2 paragraph (1) and Article 8 letter f of Law 1/1974. If the Applicants are able to prove that their interfaith marriage is permitted by both religions of the Applicants, then the Judge has the authority to deviate from SEMA 2/2023 and adhere to Article 2 paragraph (1) and Article 8 letter f of Law 1/1974. The basis for this authority is derived from the judge's oath/promise, namely *practice Pancasila*, the 1945 Constitution of the Republic of Indonesia, all laws and other regulations in force in Indonesia, as per Article 17 paragraph (1) of Law Number 2 of 1986 concerning General Courts (hereinafter referred to as Law 2/1986).<sup>62</sup> This phrase all assumes that judges evaluate norms hierarchically, then apply *lex superior* in cases of conflict. However, The Petitioners were unable to prove the existence of Christian permission or approval for Petitioner II to conduct an interfaith marriage in a Catholic Church. Therefore, the basic assumption of the Judge a quo regarding this situation should be that the Petitioners'

<sup>58</sup> M. Yahya Harahap, 2014, Civil Procedure Lawsuits, Trials, Confiscation, Evidence, and Court Decisions, Sinar Grafika, Jakarta, p. 798.

<sup>59</sup> Circular Letter of the Supreme Court Number 3 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Court, Number 1 letter c.

<sup>60</sup> Circular Letter of the Supreme Court Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Marriages Between People of Different Religions and Beliefs.

<sup>61</sup> Rian Van Frits Kapitan and Tonji Christian Rafael, Application of the *Contra Legem* Principle by Judges in Corruption Crime Cases, Jurnal Spektrum Hukum, Volume 17, Faculty of Law, Artha Wacana Christian University, Kupang, Kupang, 2020, p. 138.

<sup>62</sup> Law of the Republic of Indonesia Number 2 of 1986 concerning General Courts, State Gazette of the Republic of Indonesia 1986 Number 20, Supplement to the State Gazette of the Republic of Indonesia Number 3327, Article 17 paragraph (1).

Samuel Fajar Hotmangara Tua Siahaan et al

interfaith marriage is invalid and prohibited from being granted by SEMA 2/2023, and there is no conflict of norms in the existing legal system, so that the Judge can issue a ruling that the petition cannot be accepted. The Judge a quo's disregard of SEMA 2/2023 is a violation of the principle of legal certainty, especially the scope of legal certainty as a positive legal product as outlined by Humberto Avila, namely legal certainty within applicable norms. AbandonmentThe judge a quo's action against SEMA 2/2023 not only violates SEMA 2/2023 per se, but also violates the judge's oath of office as stipulated in Law 2/1986. This constitutes a violation of the principle of legal certainty.

The third problem, namely the Judge's order as a follow-up to the a quo Determination was not appropriately directed at the Employees of the North Jakarta City Population and Civil Registration Office. Article 50 paragraph (3) of Home Affairs Ministerial Regulation 108/2019 stipulates that "...marriage registration is carried out based on a court decision by fulfilling the following requirements:

- a. copy of court order;
- b. Husband and wife's e-KTP;
- c. passport photos of husband and wife; and
- d. Travel Document for Foreigner husband or wife."<sup>63</sup>

Under this article, a court ruling permitting the registration of an interfaith marriage does not automatically authorize the Civil Registration Officer to perform the civil registration of the marriage. In addition to a copy of the court ruling, the Civil Registration Officer requires the husband and wife's e-KTP. Passport photos of the husband and wife, and travel documents for foreign husbands or wives before civil registration of interfaith marriages. Therefore, further action is required after the court ruling, before the Civil Registration Officer conducts civil registration of interfaith marriages. Referring to Article 3 of Law 23/2006, interfaith marriages are categorized as important events.<sup>64</sup> It must be reported by every resident who experiences it.<sup>65</sup> On this basis, the civil registration order from the Judge a quo to the Employees of the Population and Civil Registration Office of North Jakarta City is not on target. The Judge should have ordered the Petitioners as residents who experienced the important event of an interfaith marriage, so that the third order should read, "Ordering the Petitioners to report the Determination of Interfaith Marriage Registration to the Population and Civil Registration Office of North Jakarta City, no later than 30 (thirty) days from the receipt of a copy of this order to be recorded in the Marriage Certificate Register and the issuance of a Marriage Certificate Extract in the names of Gregorius Agung Beyeng Amoh and Regina Yasmina Augustine respectively as mentioned above." The Judge's error in determining the subject as the target of the follow-up order for the a quo Determination is a form of legal uncertainty because the conditions for creating legal certainty according to Jan Michael Otto: It is mandatory for a judge to be observant in enforcing the law when resolving cases. The ignoring of Article 3 of Law 23/2006 in conjunction with Article 50 paragraph (3) of Home Affairs Ministerial Regulation 108/2019 by the Judge a quo shows the Judge's lack of thoroughness in issuing the decision, resulting in a lack of legal certainty..

The fourth ruling handed down by the Judge does not pose a legal certainty problem because it relates to the imposition of court costs on the Applicants.

Therefore, because the second and third rulings do not meet the principle of legal certainty as outlined above, the Judge's first ruling regarding the granting of the Petitioners' entire petition also immediately fails to meet the principle of legal certainty. Therefore, the North Jakarta District Court's Decision Number 423/Pdt.P/2023PN Jkt.Utr granting the interfaith marriage registration request does not meet the principle of legal certainty.

## **D. CONCLUSION**

The North Jakarta District Court's Decision Number 423/Pdt.P/2023PN Jkt.Utr, which granted the application for registration of an interfaith marriage, does not fulfill the principle of legal certainty. In order to fulfill the principle of legal certainty in the North Jakarta District Court's Decision Number 423/Pdt.P/2023PN Jkt.Utr,

<sup>63</sup>Regulation of the Minister of Home Affairs Number 108 of 2019 concerning Implementing Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, Loc.Cit.

<sup>64</sup>Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration, Op.Cit., Article 1 number 17 in conjunction with Article 35 letter a.

<sup>65</sup>Ibid, Article 3.

a. Judges must pay attention to several things in formulating a ruling, namely:

- 1) Judges must avoid legal uncertainty that often arises in the practice of applying law in certain cases, namely in the stages of determining legal rules, reviewing facts, and applying law to facts. In the context of adjudicating cases of applications for registration of interfaith marriages, namely before the Judge declares the Applicants' interfaith marriage as a valid marriage according to law, there must be trial facts that state that the interfaith marriage is permitted by each of the Applicants' religions, as stipulated in Article 2 paragraph (1) of Law 1/1974;
- 2) Judges must avoid legal uncertainty arising from unclear and incomprehensible legal considerations because this causes the Determination as a legal product of the Judge to be uncertain. In the context of adjudicating a case of an application for registration of an interfaith marriage, the Judge must not on the one hand state "the marriage of the Petitioners is not considered interfaith," but on the other hand accept the application to examine the main case as his authority or state in the ruling that "grant permission to the Petitioners to register an interfaith marriage" because this contradicts each other and makes the decision unclear and uncertain. The Judge must be consistent in determining his stance from compiling legal considerations to his ruling, so that there is legal certainty. The Judge must also minimize the potential for the annulment of the decision he has issued because the greater the potential for the annulment of the decision, the more it creates false legal certainty;
- 3) Judges must comply with applicable norms for the sake of legal certainty, except for reasons of justice, Judges must apply *ius contra legem* by using *lex superior*. In the context of adjudicating cases of requests for registration of interfaith marriages, Judges are prohibited from granting requests for registration of interfaith marriages through SEMA 2/2023. However, if the Judge finds the fact that both religions of the bride and groom permit a marriage that has already taken place, then the Judge can set aside SEMA 2/2023 and apply Article 2 paragraph (1) in conjunction with Article 8 letter f of Law 1/1974; and
- 4) Judges must be discerning in upholding the law. In the context of adjudicating interfaith marriage registration requests, judges must accurately determine the parties to whom the order applies. The applicants must follow up on the acceptance of the marriage and register it by reporting it to the Civil Registry Officer, as outlined in Article 3 of Law 23/2006.

b. Applicants who have entered into an interfaith marriage between a Christian and a Catholic, appearing in person or represented by their legal counsel, should complete and present evidence of the validity of the marriage from each religious institution that has authority over them, so that the Judge can issue a ruling with legal certainty, especially regarding marriage law.

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