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THE LEGAL VACUUM OF INTERRELIGIOUS MARRIAGE IN INDONESIA: THE STUDY OF JUDGES' CONSIDERATION IN INTERRELIGIOUS MARRIAGE COURT DECISIONS 2010 -2021

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Abstract

There are a legal vacuum and contradictory provisions in the Marriage Law, which states that it is not permissible for an Indonesian citizen to have an interreligious marriage. It has been requested for judicial review through the Decision of the Constitutional Court No. 68/PUU-XII/2014. Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage stated that marriage is legitimate if the parties concerned have similar religions and beliefs. Moreover, it has become more obvious through judicial review of the Decision on Indonesian Constitutional Court Number 68/PUU-XII/2014, which decided that Article 2 paragraph (1) Law No. 1 of 1974 which amendment by Law No. 16 of 2019 required similarity in religions and beliefs of the marriage concerned parties are not necessary to do a judicial review. On interfaith marriage, the application proved that the judge on the district court's decisions stated that Law No. 1 of 1974 on Marriage is not regulated, not emphasized, and not containing regulation of any sort about interfaith marriage. It's proven in most judges' court considerations of interreligious marriage around 2010 – 2021. This study takes two research formulations such as how a legal vacuum in interreligious marriage happens and how the judges in the court consider the law of interreligious marriage. This research uses a normative method which uses a conceptual and law approach. This research results that judges always consider interreligious marriages as a legal vacuum, it happened because the law that marriages do not clearly determine textually in law no. 1 of 1974. Therefore, even if clarified by Constitutional Court is clearly but practically interpreter different by judges in district court.

Keywords: *legal vacuum, interreligious marriage, not emphasized, court decision.*

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A. Introduction

Article 2 Paragraph (1) Law No. 1 of 1974 on Marriage (the "Marriage Law") sets forth that marriage is legitimate when it is done concerning the religion and faith towards their marriage.[3] After the marriage process is sanctified by the Marriage Chief as the validity of the marriage from a religious perspective, the marriage will be registered by the Office of Religious Affairs for Muslim brides and the district civil registry office for non-Muslim brides. For Muslim Marriages,[4] it is held before the Office of Religious, and for non-Muslim is in front of their own priests. After the marriage was done before the Chief of Marriage, the Chief of Marriage reports to the Office of Religious Affairs or District Registry Office. The Marriage registrar in the Office of Religious Affairs and District Civil Register Office in accordance with Article 2 Paragraph (1) Law No. 1 of 1974 on Marriage requires that marriage can only be registered if it is carried out according to the brides' religions and beliefs.

Registering a marriage in the District Registry Office or Religious Affairs Office has legal consequences.[5] The legal consequence is an obligation between husband and wife to build a household based on God Almighty. Therefore, marriages must be registered to the District Civil Registry Office or the Religious Affairs Office. If it is not registered yet, legal consequences still arise between the brides.[6]

In 2014, the Constitutional Court did a judicial review requested by Anbar Jayadi, a law student, with three of his attorneys.[7] The applicant explained that Article 2 Paragraph (1) of the Marriage Law is ambiguous.[8] That phrase stated, "A marriage is legitimate if it has been performed according to the laws of the respective religions and beliefs of the parties concerned." The applicant had an opinion that the verse should be added from "A marriage is legitimate, if it has been performed according to the laws of the respective religions and beliefs of the parties concerned" to "A marriage is legitimate, if it has been performed according to the laws of the respective religions and beliefs of the parties

[3] Juliana Pretty Sanger, 'Akibat Hukum Perkawinan yang Sah Disasarkan Pada Pasal 2 UU. Nomor 1 Tahun 1974 Tentang Perkawinan' (2015) 3 Lex Administratum.

[4] A person who believes in Islam.

[5] Beby Sandy, 'Hak Yang Diperoleh Anak Dari Perkawinan Tidak Dicatat' (2019) 7 Hukum Responsif 5.

[6] Kadriah, Teuku Saiful and Muhammad Naufal Hidayat, 'Interreligious Marriage According to Indonesian Legislation' (2020) 549 Atlantis Press 465.

[7] Decision on Indonesian Constitutional Court Number 68/PUU-XII/2014.

[8] Mulyadi Milati Fatma Sari and Yunanto, 'Analisis Putusan Judicial Review Mahkamah Konstitusi Nomor 68/PUU-XII/2014 Atas Pasal 2 Ayat (1) Undang-Undang No.1 Tahun 1974 Terhadap Perkawinan Beda Agama' (2016) 5 Diponegoro Law Journal 6.

concerned, as long as an interpretation about religious law give back into to the parties concerned." It should be added there because the state must protect parties who have, are currently, or will be married whose permissibility is still debatable such as interfaith marriage. Interfaith marriage is an undeniable social phenomenon so it must be protected by the law. The Constitutional Court decides as such upon application under Decision No. 68/PUU-XII/2014.

The applicants have an opinion that the additional phrase in article 2 Paragraph (1) of the Marriage Law would not cause the loss of the religious aspect in legal practice about marriage law.[9] Nevertheless, it is just a right to interpret the legality of marriage given to all people who want to marry.

There are eight penal judges who examine this judicial review, they are Arief Hidayat;[10] Anwar Usman; Maria Farida Indrati; Aswanto, Patrialis Akbar; I Dewa Gede Palguna; Suhartoyo; and Manahan M.P. Sitompul.[11] The penal judges have examined this, stating that it was clear and unneeded to add the phrase "as long as an interpretation about religious law gives back into to the parties concerned."[12] It is because the fourth paragraph of the Preamble of the 1945 Constitution stated "which is structured in a form of the State of the Republic of Indonesia, with people's sovereignty based on the belief in One and Only God, ..." which is an affirmation that people should prioritize religious values in all of their life aspects.

The applicant postulated that his constitutional right to marriage had been violated by the regulation of article 2 paragraph 1 Law No.1 of 1974.[13] In accordance with the applicant's opinion, the right to marriage was regulated by article 28E Paragraph (2) of the 1945 Constitution, which stated "Every person shall be entitled to the freedom to be convinced of a belief, to express thought and attitude in accordance with his/her conscience." Accordingly, by the existence of Article 2 above, the applicant feels restricted in his right to do an interfaith marriage with his girlfriend.[14]

[9] Arizal Himawan, 'Tinjauan Yuridis Permohonan Pencatatan Perkawinan Beda Agama Dalam Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014' (2016) 6 Gloria Yuris 3.

[10] As the chief of penal judges.

[11] As the members of penal judges.

[12] Agus Darmawan, 'Analisis Hukum Islam Terhadap Pertimbangan Hakim Mahkamah Konstitusi Dalam Putusan MK Nomor 68/PUU-XII/2014 Tentang Perkawinan Beda Agama' (UIN Raden Intan Lampung 2017) 16.

[13] Danu Aris Setianto, 'Perkawinan Beda Agama Pasca Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014 Dalam Perspektif HAM' (2016) 9 Al Ahwal Jurnal Keluarga Islam 22.

[14] But in accordance with the consideration of penal judges in exercising citizenship rights people must be based on moral values, religious values, security values, and social order in a democratic society.

The applicant postulated that Article 2 Paragraph 1 of the Marriage law tends to be interpreted as if the state 'forces' people to obey their religious law.[15] Based on penal judges' considerations, marriage is one of the people's life concerns under the law. Marriage law in Indonesia aimed to build a household based on God Almighty because Indonesian state ideology and constitution emphasize community life based on God Almighty. Hence, this judicial review requested by Anbar Jayadi was refused by the Constitutional Court. With the refusal of judicial review from the penal judges, Article 2 Paragraph (1) of the Marriage Law is already clear.

However, there is sometimes a contradiction between these regulations [16] and practices in society. More precisely, the contradiction with the decisions of the District Courts occurs. For example, the decision by Lubuklinggau District Court, on decision number 3/Pdt.P/2015/PN.Llg[17] there was an interreligious marriage application between Irawan Wijaya, a Buddhist bride, who will marriage with Claramitha Joan, a Roman Catholic Groom. In their consideration, judges note that interreligious marriage is not regulated in Indonesian Law. In other words, interreligious marriage in Indonesia is a legal vacuum, and also is a social need that must be disputed so there will be no negative impact on inter-religious life.

The contradiction has also occurred in Semarang District Court, by decision application number 42/Pdt.P/2014/PN.Unr. [18] There was an interreligious marriage application from Purwaningsih, a Protestant, who will marry Irfan K. Lahay, a Moslem. In the judges' consideration, there was a legal vacuum in Law No. 1 of 1974 on Marriage in the case of interreligious marriage between a bride and groom. Penal judges also contended that Article 2 Paragraph (1) of Law No. 1 of 1974 on Marriage applies for bride and groom to have the same religion.

Another case on Probolinggo District Court Decision No. 17/Pdt/P/2014/PN.Prob,[19] applied by Issac Nur Alam Andriyan, a Protestant, and Charolina Tristian Wijaya, a Moslem. Judges also stated that Indonesian positive law does not regulate interreligious marriage yet. Penal judges also considered Law No. 12 of 2005[20] on the Ratification of International Covenant on Civil and Political Rights that stated:

[15] Decision on Indonesian Constitutional Court Number 68/PUU-XII/2014.
[16] Law No. 1 of 1974, art 2.
[17] Decision on Lubuklinggau District Court Number 3/Pdt.P/2015/PN.Llg 6.
[18] Decision on Ungaran District Court Number 42/Pdt.P/2014/PN.Unr 12.
[19] Decision on Probolinggo District Court Number 17/Pdt/P/2014/PN.Prob 14.
[20] Law No. 12 of 2005 on Ratification of International Covenant on Civil and Political Rights.

> Men and women who are adults without being limited by nationality, ethnicity, or religion, have the right to marry and to form a family, both have the same right to marriage, during the period of marriage and at the time of divorce.

The judges of Probolinggo District Court similarly held that marriage is just in terms of the agreement factor between bride and groom. Therefore, marriage is subject only to unconditional agreement between the parties.

The last, it also occurs in Banyuwangi District Court by the decision number 14/Pdt.P/2015/PN.Bwi.[21] There was an interreligious marriage between Agus Pujianto, a Buddhist, and Eveline Djohan, a Christian. In this case, judges stated that interreligious marriage does not violate the Marriage Law. It is very different from the interpretation of Article 2 of the Marriage Law given by the Constitutional Court decisions mentioned before.

Therefore, there was a contradiction between the considerations of judges on interreligious marriage. In accordance with judicial reviews before Constitutional Court Decision No. 68/PUU-XII/2014, interreligious marriage contradicts the ideological practice of Pancasila and the 1945 Constitution. It was shown that each person's decision should be based on moral values, religious values, and social order and practically judges in district courts grant the interreligious marriage application with consideration of there is a legal vacuum in interreligious marriage towards marriage law in Indonesia.

B. Problem Formulation

This article focuses on: how has a legal vacuum in interreligious marriage occurred in Indonesia? and how have the judges in district court decisions considered interreligious marriages?

C. Research Methodology

This research was conducted in normative research, which means that research is using the principle of law and doctrine to answer the object of the study also this research tries to examine the judge's reasons for finding a legal vacuum in the application for interreligious marriages. The research will describe by qualitative approach to know how the law is applied in the fact, thus this research author uses the statute, conceptual, and case approach to answering the objective of the study. The primary resources such as twenty (20) interreligious marriage court decisions to search the consideration of the

[21] Decision on Banyuwangi District Court Number 14/Pdt.P/2015/PN.Bwi.

judge in determining the statement of interreligious marriages consideration which have a different interpretation from Constitutional Court Decision No. 68/PUU-XII/2014. Besides the primary, also there is support data such as secondary data, which is carried out by means of library research, primary legal materials, secondary legal materials, and tertiary legal materials. This study uses qualitative data, and the described data are in the form of sentences and explanations, not statistics.

D. Discussion and Results

1. The Existence of Legal Vacuum in Interreligious Marriage

a. Legal Vacuum

Paul Scholten stated that a legal vacuum occurs under two conditions:[22] First, emptiness in the law, which occurs if the judge stated that the case has a void in law and the judge does not know how to decide the case. Second, emptiness in legislation occurs when the legal construction and the legal analogies used are unsynchronized, leaving a gap between the legal construction and law in practice. In this condition, a legal vacuum can be described as a condition when there are some terms or legal matters that are not being regulated by the law yet, which makes the law cannot be implemented.

A legal vacuum is caused by a formulation of the law, both from the legislative parties and executive parties that is necessary for a long duration.[23] That means, in many circumstances, the dynamic of the community that is not accommodated by laws potentially becomes a legal vacuum. The legal vacuum that happened in law is still potentially regulating the prohibition or permission in the community, under those circumstances, the law does not have a binding power yet to make a social order. The legal vacuums are unqualified for reaching the third purpose of the law - justice, social order, and legal certainty.

A legal vacuum can cause legal uncertainty (*rechtsonzekerheid*), specifically a legal vacuum results in legal chaos (*rechtverwarring*). When legal chaos that is implicated in the law is confused to be implicated in the law, the legal vacuum becomes the obscurity of the law. It means a legal vacuum is a condition of the law if not regulated a matter is permitted by the law, and as long as there is a clear

[22] Satjipto Rahardjo and Ronny Hanintijo Soemitro, *Pengantar Ilmu Hukum, Buku Materi Pokok Modul 1-5* (Karunia 1986) 93.

[23] Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)* (Penerbit Toko Gunung Agung, 2002) 164.

procedure for doing a matter that is not prohibited by the law. This point to the implication of the law being confused, there is legal uncertainty for disputes if the matters in the community are legal vacuum. That is a dynamic in the social community more rapidly than the dynamic of law.[24] For fulfilment of a legal vacuum that behalf of the authority of legislator role which enacted the general regulation, for consideration as furthermore submitted to the judge as the implementer of the law. The law is always outdated from the social reality, which is revealed, not all the social reality not all accommodated by the law, from that explanation the judge often adds the others' regulations to fulfil a legal vacuum.

The fulfilment of the law in a legal vacuum cannot be separated from legal findings as the dispute over the existence of a legal vacuum. Especially for constructing and implementing the law, judges have the authority to change, construct, and legal findings through a legal interpretation. Theoretically, legal interpretation consists of:

1) Interpretation. An interpretation method means a tool used to identify the meaning of the law. Based on Soeroso, "An interpretation methods are a search and enacted the meaning of the law based on the purpose of the legislator." It means an effort of the judge for enacting the meaning of the law based on the purposes of the legislator with rational consideration toward justice;
2) Legal Construction. Principally, a judge does not refuse a case considered to the legal vacuum (*ius curia novit* principle).[25] The methods of legal construction are aimed to gain the judge's decision in concrete legal events to reach justice, benefits, and legal certainty as the purposes of the law.[26] To construct the law, judges have to be adjusted between the law and a dynamic legal event in the community, if necessary, judges also have the authority to add to the law; and
3) Hermeneutics in Legal Interpretation, as a method which is purposed to offer a contemporary perspective on legal interpretation more widely legal construction. This is a method for reconciling multiple interpretations and finding a unity of hermeneutics in the past. The contradiction between legal scholars in the scope of ontology and epistemology debated how the truth and legal hermeneutic methods reflected an interaction between pro and contrary argumentation towards hermeneutic methods. Based on Brad Sherman's writing the contradiction between legal hermeneutics marks less

[24] Dhoni Yusra, 'Politik Hukum Hakim Dibalik Penemuan Hukum (Rechtvinding) dan Penciptaan Hukum (Rechtsschepping) pada Era Reformasi dan Transformasi' (2013) 10 Lex Jurnalica 66–72.

[25] Bambang Sutiyoso, *Metode Penemuan Hukum Upaya Mewujudkan Hukum Yang Pasti Dan Berkeadilan* (UII Press 2002) 190.

[26] Jazim Hamidi, *Hermeneutika Hukum: Sejarah, Filsafat, Dan Metode Tafsir* (Universitas Brawijaya Press 2011) 58–61.

> to know about hermeneutics.[27] From the explanation before to legal finding through the legal hermeneutic methods judges must identify the meaning of the law which is arranged by the legislator by observing ontology and epistemology as necessary of the law to reach the purposes of the law.[28]

b. Legal Vacuum in Interreligious Marriage in Indonesia

The Marriage Law is a unification of the marriage law based on Indonesian positive law. Besides, that interaction can be confirmed if an interreligious marriage occurs. The Marriage Law, article 2 Paragraph (1) states that "A marriage is legitimate if it has been performed according to the laws of the respective religions and beliefs of the parties concerned." It means this law emphasized that there is none or illegal if a marriage performed outside the law based on the respective religions of the marriage of each party concerned.

Based on Raden Subekti,[29] the phrase "according to the laws of the respective religions and beliefs of the parties concerned" of article 2 Paragraph (1) of Law No. 1 of 1974 is obscuring the purpose of that law. If there is a future husband or wife must be of similar faith or religion, or once the marriage is performed based on the religion of the bride, and once again the marriage is performed based on the religion of the groom. It implies obscurity.

Even though it is practically interpreted as 'the same religion,' that appears a legal uncertainty. There is a contradiction between the district court decision which granted an interreligious marriage, such as in Decision on Surakarta District Court No. 118/Pdt.P/2016/PN.Skt.[30] In that Court's consideration, it was stated that in Indonesian positive law on marriage, both Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975 on Implication of Law No. 1 of 1974 on Marriage, is not regulating interreligious marriage. It means a legal vacuum remains for the interreligious marriage considered Indonesian Positive Law.

Emphasized in Supreme Court Decision No. 1400 K/Pdt/1986, which stated: "different religion of prospective husband and wife is not a prohibition of marriage".

[27] Gregory Leyh, *Legal Hermeneutics, History, Theory, and Practice* (University of California 1992) 221–228.

[28] Zainal Arifin, 'Perkawinan Beda Agama' (2019) 18 Jurnal Lentera, Kajian Keagamaan, Keilmuan dan Teknologi, 144-145.

[29] Djaja S Meliala, *Perkawinan Beda Agama Dan Penghayat Kepercayaan Di Indonesia Pasca Putusan Mahkamah Konstitusi* (Nuansa Aulia 2015) 7.

[30] Applied by Iskak Prihatmaji, a Christian, who will marry Retno Winarsih, a Muslim. *See* Decision on Surakarta District Court Number 118/Pdt.P/2016/PN.Skt.

This decision emphasized that Indonesian Positive Law does not prohibit interreligious marriage. Plus, there is a procedure for interreligious marriage in Law No. 23 of 2006 on Civil Administration which states that:[31] "Marriage registration which term of Article 34 also applied by: a. Marriage which is decided by the court" and on the general overview is "The terms of 'Marriage with court decision' is an interreligious marriage." It clearly means interreligious marriage is permitted by Indonesian Law.

The Marriage Law, Article 2 Paragraph (1) become a problem in Indonesia with pluralities. In 2014 that article was brought to the Indonesian Constitutional Court for judicial review. The judicial review was applied by Anbar Jayadi. This judicial review was registered and decided in Constitutional Court Decision No. 68/PUU-XII/2014.[32] Basically, she stipulated Indonesian community is a pluralistic society. There are six religions majorly known in Indonesia.[33] Based on the applicant have an opinion the statement in the Law No. 1 of 1974 on Marriage Article 2 paragraph (1) which stated "[a] marriage is legitimate, if it has been performed according to the laws of the respective religions and beliefs of the parties concerned" appears uncertain because of certain reasons, including:

1) The regulation implicated to legitimate of marriage has one interpretation which is embraced by the stated and the citizens must obey that interpretation, that becomes as though the state is forcing all the citizens to obey that interpretation enacted by the state;
2) That regulation causes legal uncertainty because the implications of religious law depend on interpretation towards each religious people or religious institution.[34] For example, in interreligious marriage, each religion has a different interpretation to deal with this. That means any probability of the legitimacy of interreligious marriage, can be permitted and can be prohibited. That depends on each religious thought that exists in Indonesia;[35]
3) This matter is a complex problem when citizens who do interreligious marriage still have an administration obligation to register their marriage;
4) Interreligious marriage is a different interpretation between a religious institution and a marriage registrar.

[31] Law No 23 of 2006 on Civil Administration.

[32] Patrick Humbertus, 'Fenomena Perkawinan Beda Agama Ditinjau Dari UU Tahun 1974 Tentang Perkawinan' (2019) 4 Law and Justice Journal 108.

[33] Islam, Catholic Christianity, Protestant Christianity, Hinduism, Buddhism, and *Konghucu* (Taoism).

[34] Setiyowati, 'Perkawinan Beda Agama Dalam Perkawinan Campuran' (2016) 13 Jurnal Spektrum 89.

[35] Hasan Ainurridha Ahmad Bajuber, Fathurrahmah Alfa and Syamsu Madyan, "Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Perundang-Undangan Di Indonesia" (2020) 2 Hikmatina Jurnal Ilmiah Keluarga Islam 8.

This interpretation of marriage as legitimate only with one shared religion is mandated by the state, citizens who will perform an interreligious marriage break the law through two options, the first option is the marriage performed overseas or performed their marriage by *adat* law, or the second where religious marriage law from the one party or convert the religion as temporary for the consecration of the marriage.[36] Breaking the law is deviant behaviour and decreases the dignity of the marriage law in Indonesia. The solution for the dispute of the decrease of dignity in the marriage law in Indonesia, the applicant gives a suggestion in this judicial review is to change the statement in Article 2 paragraph (1) Law No. 1 of 1974 on Marriage states that "[a] marriage is legitimate if it has been performed according to the laws of the respective religions and beliefs of the parties concerned, as long as an interpretation about religious law gives back into to the parties concerned."[37] That means this added statement does not contradict b the religious institution which permitted an interreligious marriage and the marriage registrar with whom the parties implicated the marriage law.

The applicant argued that the result of a single interpretation of marriage requiring the same religion or faith violates rights regulated in Article 28 E Paragraph (1) of the 1945 Constitution of the Republic of that stated:[38]

> Every person shall be free to choose and to practice the religion based on his/her own choice, to choose education, employment, citizenship, and place of residence within the state territory, to leave and to subsequently return to it.

From the explanation above, a single interpretation of Article 2 Paragraph (1) Law No. 1 of 1974 on Marriage which required similarity of religion for the future husband and wife is considered as an obstruction, limitation, or restriction towards religious citizens or religious institutions allowing interreligious marriage. Then, being restricted by the law, interreligious marriage cannot be carried out.[39]

A penal judge handed down an opinion that consideration of judicial review does not have legal standing. The Constitutional Court Decision No. 68/PUU-

[36] Alberta Felia Lokawijaya and Mulati, 'Analisis Penetapan Pengadilan Negeri Surakarta No. 46/Pdt.P/2016/PN.Skt. Terkait Perkawinan Beda Agama Ditinjau Berdasarkan Undang-Undang No. 1 Tahun 1974' (2019) 2 Jurnal Hukum Adigama 19.

[37] Dwi Ferdiansyah Adi Baskara, 'Analisis Yuridis Pernikahan Beda Agama Berdasarkan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan' (Universitas Wirajaya 2020) 43 (emphasis added).

[38] Bajuber, Alfa and Madyan (n 36) 8.

[39] Enrico Simanjuntak, "Peran Yurisprudensi Dalam Sistem Hukum Di Indonesia" (2019) 16 Jurnal Konstitusi 86–88.

XII/2014 refuses the judicial review of Article 2 paragraph (1) Law No. 1 of 1974 on Marriage. That means that Article 2 Paragraph (1) of the Marriage Law is clear, and not necessary to be judicially reviewed. The state adheres to a singular interpretation that marriage is legitimate if that has been performed according to the respective religion and beliefs of the parties concerned. From the explanation above, interreligious marriage in view of Indonesian Positive Law has no legal vacuum because based on Article 2 paragraph (1) of the Law No. 1 of 1974, marriage can be legitimated by the law if that marriage is performed based on the law respective religion and beliefs of the parties concerned.

From the previous explanation, it can be concluded that there was a contradiction between the decision of the district court which granted an interreligious marriage such as in Surakarta District Court Decision No. 118/Pdt.P/2016/PN.Skt.,[40] on that decision, the judges stated that any legal vacuum on interreligious marriage in perspective of Indonesian Positive Law and Constitutional Court Decision No. 68/PUU-XII/2014 the judicial review towards Article 2 paragraph (1) Law No. 1 of 1974 on Marriage stated that regulation too clear which marriage legitimate if performed based on the law respective religion and beliefs each party concerned.[41]

Therefore, it can be concluded that there is still a legal vacuum in interreligious marriage. It is because, in fact, the law practice of the district court judge granted the application of interreligious marriage as exemplified in Surakarta District Court Decision No. 118/Pdt.P/2016/PN.Skt. That added with regulation as support for legitimate interreligious marriage, such as Indonesian Supreme Court Number 1400 K/Pdt/1986 dated January 20th, 1989 that states "[t]hat difference religion of future husband and wife are not a prohibition of marriage," this regulation as supporting regulation for legitimate interreligious marriage in the essence of an interreligious is not the concern of marriage under Indonesian Law. Especially supported by regulation for the procedure on interreligious marriage, this is Law No. 23 of 2006 on Civil Administration which stated that "Marriage

[40] Wedya Laplata, 'Pelaksanaan Perkawinan Beda Agama Dalam Perspektif Yuridis (Studi Kasus Di Pengadilan Negeri Surakarta)' (2014) 4 Jurnal Jurisprudence 2.

[41] Fachrizza Sidi Pratama, 'Rechtsvacuum phenomenon in Government regulation of the Republic of Indonesia number 51 of 2020 related to passport renewal period to 10 years' (2019), 1 Journal of Law and Border Protection (JLBP) 55.

registration which term of on the Article 34 also applied by: a. Marriage which decides by the court" and on the general overview is "The terms of 'Marriage with court decision' is an interreligious marriage."[42] That makes it clear that interreligious marriage is permissible in the perspective of Indonesian Law even though on basic marriage regulation in Indonesia, the Marriage Law does not regulate interfaith marriage. That emphasized the legal vacuum in interreligious marriage based on Indonesian Law.[43]

Any gap between law in practice related to the Marriage Law with Constitutional Court Decisions is problematic in practice where the judge considered that legal vacuum in interreligious marriage which exemplified in Surakarta District Court Decision No. 118/Pdt.P/2016/PN.Skt. [44] That decision on interreligious marriage application applied by Iskak Prihatmaji, a Christian, and Retno Winarsih, a Muslim, to register their marriage at the Surakarta District Civil Registry Office. Nevertheless, the Constitutional Court Decision No. 68/PUU-XII/2014[45] stated that regulation is clear about which marriage is legitimate if performed based on the law's respective religion, and beliefs of each party concerned show a gap between interreligious marriage review on the judge on the district court and Constitutional Court Decision No. 68/PUU-XII/2014. That emphasized a gap between the Decision on District Court which was exemplified in the Decision on Surakarta District Court Number 118/Pdt.P/2016/PN.Skt.,

2. Legal Vacuum of Interreligious Marriage Based on Judge's Consideration at the District Court Level

Therefore, twenty decisions from district courts from 2010 until 2021 provided that any legal vacuum on interreligious marriage will be recorded through the following table.

[42] Syarif Toha, "Kajian Atas Perkawinan Beda Agama Berdasarkan Penetapan Pengadilan Negeri Surakarta (Studi Penetapan Nomor 173/Pdt.P/2011/PN.Ska)" (Universitas Negeri Sebelas Maret 2012) 63.

[43] Barlian A and Herista A, "Pembangunan Sistem Hukum Indonesia berdasarkan nilai-nilai Pancasila sebagai Ideologi Politik Bangsa", (2021) 9 Jurnal Kajian Lembaga Ketuhanan Nasional Republik Indonesia, 550-555.

[44] Decision on Surakarta District Court Number 118/Pdt.P/2016/PN.Skt.

[45] Decision on Indonesian Constitutional Court Number 68/PUU-XII/2014.

Table . 1
Interreligious Marriage Court Decision around 2010 – 2021

No	The Court Decision Number	The Name of the Party as husband and his religion	Name of the party as the wife and her religion	The Judge's Consideration which is determined Legal Vacuum
1.	Decision on Surakarta District Court Number 186/Pdt.P/2010/PN.Ska.	David Setiyawan / Christian	Dewi Putri Nugraheni / Muslim	Legal Vacuum[46]
2.	Decision on Surakarta District Court Number 156/Pdt.P/2010/PN.Ska.	Achmad Julianto / Muslim	Listyani Astuti / Christian	Legal Vacuum[47]
3.	Decision on Surakarta District Court Number 90/Pdt.P/2011/PN.Ska.	Bendara Raden Mas Wahyoe Soeryo Wicaksono / Muslim	Yenny Pramawati / Christian	Legal Vacuum[48]
4.	Decision on Surakarta District Court Number 185/Pdt.P.2013/PN.Ska.	Widyarto / Muslim	Lucky Pringga Widayanti / Catholic	Legal vacuum[49]
5.	Decision on Malang District Court Number 772/Pdt/2013/PN.Mlg.	Jong Yongky Handoko / Buddhist	Oy Ling a.k.a. Oemiati Halim / Catholic	Legal Vacuum[50]
6.	Decision on Surakarta District Court Number 04/Pdt.P/2014/PN.Skt	Djiauw Ping Shen / Christian	Ipung Indriyani / Muslim	Legal Vacuum[51]
7.	Decision on Pati District Court Number 85/Pdt.P/2014/PN.Pti.	Bambang Yanuardi / Muslim	Listia Anggelina / Christian	Legal Vacuum[52]
8.	Decision on Surakarta District Court Number 109/Pdt.P/2014/PN.Skt.	Setiawan / Christian	Fika Frebuwati / Muslim	Legal Vacuum[53]
9.	Decision on Malang District Court Number 110/Pdt.P/2014/PN.Mlg	Engelbert Hariyanto / Catholic	Johanita Hartono / Christian	Legal Vacuum[54]
10.	Decision on Ungaran District Court Number 42/Pdt.P/2014/PN.Unr	Irfan K. Lahay / Muslim	Purwaningsih / Christian	Legal Vacuum[55]
11.	Decision on Probolinggo District Court Number 17.Pdt.P/2014/PN.Prob	Issac Nur Alam Andriyan / Christian	Charolina Tristian Wijaya / Muslim	Legal Vacuum[56]
12.	Decision on Lubuklinggau Number 3/Pdt.P/2015/PN Llg	Irawan Wijaya / Buddhist	Claramitha Joan / Catholic	Legal Vacuum[57]
13.	Decision on Surakarta District Court Number	Raden Mas Rizky Hertansa / Muslim	Ika Mariska / Christian	Legal Vacuum[58]

[46] Decision on Surakarta District Court Number 186/Pdt.P/2010/PN.Ska.
[47] Decision on Surakarta District Court Number 156/Pdt.P/2010/PN.Ska.
[48] Decision on Surakarta District Court Number 90/Pdt.P/2011/PN.Ska.
[49] Decision on Surakarta District Court Number 185/Pdt.P.2013/PN.Ska.
[50] Decision on Malang District Court Number 772/Pdt/2013/PN.Mlg.
[51] Decision on Surakarta District Court Number 04/Pdt.P/2014/PN.Skt.
[52] Decision on Pati District Court Number 85/Pdt.P/2014/PN.Pati.
[53] Decision on Surakarta District Court Number 109/Pdt.P/2014/PN.Skt.
[54] Decision on Malang District Court Number 110/Pdt.P/2014/PN.Mlg.
[55] Decision on Ungaran District Court Number 42/Pdt.P.2014/PN.Unr.
[56] Decision on Probolinggo District Court Number 17/Pdt.P/2014/PN Prob.
[57] Decision on Lubuklinggau District Court Number 14/Pdt.P/2015.
[58] Decision on Surakarta District Court Number 195/Pdt.P/2015.

	195/Pdt.P/2015/PN.Skt.,			
14.	Decision on Surakarta District Court Number 87/Pdt.P/2015/PN Skt.	Achmad Bagus Suryanto	Ambar Sekar Mawarni / Christian	Legal Vacuum[59]
15.	Decision on Surakarta District Court Number 209/Pdt.P/2016/PN.Skt.	Rio Koesuma Widagdo / Muslim	Felysia Ardiyana Suharyo / Christian	Legal Vacuum[60]
16.	Decision on Wonosobo District Court Number 04/Pdt.P/2016/PN.Wsb.	Jidhas Anaxagoras Widya Ari Aksonta / Muslim	Deasy Ariyani Aditya / Catholic	Legal Vacuum[61]
17.	Decision on Surakarta District Court Number 118/Pdt.P/2016/PN.Skt.	Iskak Prihatmaji / Christian	Retno Winarsih / Muslim	Legal Vacuum
18.	Decision on Surakarta District Court Number 333/Pdt.P/2018/PN.Skt.	Gigih Prayogo / Muslim	Aurora Hanggarani / Catholic	Legal Vacuum[62]
19.	Decision on Makassar District Court Number 87/Pdt.P/2020/PN.Mks.	Arrifadhana Muhammad Satyabudi / Muslim	Dian Istikasari / Christian	Legal Vacuum[63]
20.	Decision on Bangil Number 111/Pdt.P/2021/PN.Bil	Rupo Harjo / Hindu	Alimatul Hukma / Muslim	Legal Vacuum[64]

Therefore based on data from 20 district court decisions including 10 from the Surakarta District Court, two decisions from Malang District Court, one from Lubuklinggau District Court, one decision from Bangil District Court, one from Probolinggo District Court, one decision from Ungaran District Court, one from Purwokerto District Court, one decision from Makassar District Court, one data from Wonosobo District Court, and one decision from Pati District Court proven that legal vacuum on interreligious marriage based on judge's consideration in district courts.

Interfaith marriage based on Article 2 paragraph (1) of the Marriage Law is considered legitimate if the parties concerned have similar religions and beliefs. This was clarified by Constitutional Court Decision No. 68/PUU-XII/2014[65] which decided that Article 2 paragraph (1) of the Marriage Law which requires similarity of religion and beliefs of the concerned parties of marriage not necessary. But the fact proves that twenty data obtained of the decision on the first trial level on the district court, the

[59] Decision on Surakarta District Court Number 87/Pdt.P/2015/PN Skt.
[60] Decision on Surakarta District Court Number 209/Pdt.P/2016/PN.Skt.
[61] Decision on Wonosobo District Court Number 04/Pdt.P/2016/PN.Wsb.
[62] Decision on Surakarta District Court Number 333/Pdt.P/2018/PN.Skt.
[63] Decision on Makassar District Court Number 87/Pdt.P/2020/PN.Mks.
[64] Decision on Bangil District Court Number 111/Pdt.P/2021/PN.Bil.
[65] Decision on Indonesian Constitutional Court Number 68/PUU-XII/2014.

judge's consideration is the legal vacuum that regulation is obscurity or not obvious towards regulation on Article 2 paragraph (1) of the Marriage Law.[66]

This fact is proven based on this research obtained from the judges' decisions in district courts across Indonesia show a legal vacuum in the interreligious marriage application. If a legal vacuum is a legal event without law regulation or obscurity of the law in a legal event related to the fact of district court decision towards interreligious marriage application proven that the judge stated on their consideration is a legal vacuum, not regulated yet in Indonesian Positive Law in the scope of interfaith marriage, obscurity in regulation.[67] That to be concluded as an interreligious marriage application is a legal vacuum from the perspective of the judges at the district court level. Therefore, even though it is obvious that Article 2 Paragraph (1) of Law No. 1 of 1974 on Marriage that marriage required performed by similar religion and beliefs of the parties concerned. but the fact proved that the judge's consideration at the district court level granted interreligious marriage and stated that it is a legal vacuum.[68] It can be concluded that interreligious marriage faces a legal vacuum from the bench's perspective on the district court level. Because of that, any imbalance between law in regulation and law in the practice of interreligious marriage application is a legal vacuum.

E. Conclusion

A legal vacuum in interreligious marriage begins from the interpretation of article 2 paragraph (1) of Law No. 1 of 1974. Practically, that article does not provide a clear explanation of the phrases of religious law and beliefs in marriage, thus that article is interpreted subjectively by each people in Indonesia even from society, government, or religious institution. Constitutionally, article 2 paragraph (1) requested judicial review in Constitutional Court in 2014 which has a proposal by adding phrases, but it was rejected based on Constitutional Court No. 68/PUU-XII/2014. That decision clarifies that article 2 paragraph (1) has a clear meaning to performance toward marriage. Marriage in Indonesia should be performed based on the law of religion and beliefs because marriage is not only

[66] Law No. 1 of 1974 on Marriage.

[67] Mathias Jebaru Adon, 'Perkawinan Lili di Manggarai: Antara Hukum adat dan agama' (2021) 21 Dharmasmrti Jurnal Imu Agama & Kebudayaan 43.

[68] Umar Haris Sanjaya, Agus Yudha Hernoko, Prawitra Thalib, 'Prinsip Maslahah pada putusan Mahkamah Konstitusi terhadap Perkawinan Bagi Umat Beragama dan Penghayat Kepercayaan' (2021) 28 Ius Quia Iustum, 260-261.

a contract but it contained also by moral values, religious values, and social order. Even if the Constitutional Court has given a clarification toward article 2 paragraph (1) but in practice, it would be a different interpretation. These differences happen in the judges in the district court when giving consideration toward interreligious marriage. Most judges in the district court consider interreligious as not regulated or not determined well by norms.

According to twenty court decisions, all of the judges considered interreligious marriage as unclearly or not regulated well in Law No. 1 of 1974. It means that interreligious marriage has been interpreted as a legal vacuum toward judges at district court levels. Each court decision from data on interreligious marriage shows that word "legal vacuum" is stated in every judge's consideration from the tittle "*menimbang hukumnya*"[69] that always being written in the opening of consideration. Thus, there is a different interpretation between judges in constitutional court referring to Constitutional Court No. 68/PUU-XII/2014 and judges in the district court level in interpreting article 2 paragraph (1), especially toward interreligious marriage.

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[69] Translated "with legal consideration".

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