

## Analysis of Religious Court Judges' Decisions Class IA City Of Medan: Case Study Of Marriage Confirmation Case Reg Number: 51/Pdt.P/2015/PA Medan

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<p><b>Article History</b> Received : 2017-07-03 Revised: 2017-07-12 Published: 2017-07-30</p> <p><b>Keywords:</b> <i>Islamic Law, Judge's Decision, Guardian Judge, Marriage Confirmation</i></p>	<p>This study starts from a decision of a judge of the Class IA Religious Court of Medan City who accepted and determined the application for Marriage Confirmation registered by Applicant I and Applicant II on behalf of Arifin bin Mhd Isya and Dahniar binti Burhanuddin who were married by the Judge Guardian on behalf of Anwar who in this case has the status of Assistant Marriage Registrar (P3N), then the decision issued by the judge of the Class IA Religious Court of Medan City on the application for Marriage Confirmation submitted by the applicant is legally flawed, because the judge did not take the PMA RI as a consideration, the judge only used the Circular Letter of the Supreme Court Number 3 of 2014 as a consideration where the Religious Court can validate the application for Marriage Confirmation submitted with the consideration of providing facilities to the applicant so that they can complete the population administration and civil registration which ultimately ignores the order of Law Number 1 of 1974 which mandates the Ministry of Religion to register marriages as well as to regulate marriage requirements where the position of the marriage guardian is a very urgent position in a marriage.</p>

### I. INTRODUCTION

The Religious Courts are one of three specialized courts in Indonesia. As specialized courts, the Religious Courts adjudicate certain civil cases and only for certain individuals. In other words, the Religious Courts are authorized only in certain Islamic civil matters and only for Muslims in Indonesia. Therefore, the Religious Courts can be called Islamic courts in Indonesia, the implementation of which has been limited and adapted to the conditions in Indonesia (Roihan A. Rasjid, 1991: 6). One of the competencies of the Religious Courts is Absolute (Coercive) competence, namely matters that have been determined to be the power or authority or jurisdiction of a Religious Court, become the absolute authority for the Religious Court in question to examine, decide, and resolve cases.

In subsequent developments, Law No. 7 of 1989 concerning Religious Courts has been issued, which regulates the structure, powers,

and procedural law of Religious Courts. This law was then amended in Articles Certain articles to adapt to the development of existing legislation as well as to the needs in the practical field with the issuance of Law No. 3 of 2006. The duties and authorities of the Court according to Article 49 of Law No. 7 of 1989 are to examine, decide, and resolve civil cases in the fields of marriage, inheritance, wills, gifts made based on Islamic law, waqf and alms. The authority of the Religious Court is based on the principle of Islamic personality, namely that those who can be subjected to the authority of the Religious Court environment are only those who are Muslim.

Currently, with the issuance of Law No. 3 of 2006 concerning Amendments In Law No. 7 of 1989 concerning Religious Courts, one of the provisions is regarding changes or expansion of the authority of the Religious Court institution in Article 49 of Law No. 3 of 2006, which includes: marriage, inheritance, wills, grants,

endowments, zakat, infaq, alms, and sharia economics. One of the central points in this Law is the principle of Islamic personality. The principle of Islamic personality in the field of marriage, covers all groups of Muslims. In other words, all matters relating to matters that occur in marriage and the consequences of a marriage become the working area of the Religious Court (M. Yahya Harahap, 2000: 147-148), including in the case of Isbat Nikah or the determination of marriage that occurred before the issuance of Law No. 1 of 1974 and also every marriage that is not registered by the authorized official (KUA) can be legalized through the Religious Court.

Marriage confirmation is one of the absolute (compelling) authorities or competencies of the Religious Court. Confirmation or determination comes from Arabic from wazan which means fixed or to determine 4. Confirmation or determination according to the Religious Court Law is a court decision or application case submitted by the Applicant. In the application submitted by the Isbat applicant, the judges will pay attention to whether the marriage that has taken place can be accepted as a valid marriage in accordance with the provisions of Islamic law and the provisions of applicable laws, both from the provisions of the conditions and pillars of a marriage, so that it can be used as a consideration that the marriage is worthy of being determined or confirmed.

However, in the decision of the Class IA Religious Court of Medan City as in the decision of the Marriage Confirmation case listed in the Determination of the register number: 51/Pdt.P/ 2015/PA.Mdn dated March 5, 2015, a decision was made that validated the marriage that took place on February 10, 1994 between Arifin bin Mhd Isya and Dahniar binti Burhanuddin who was married by the Judge Guardian named Anwar in terms of his status as an Assistant Marriage Registrar (P3N) without any authority from the Head of the KUA of East

Medan District.

Because, of the many conditions and pillars for a valid marriage (nikah) according to Islamic law, the position of the marriage guardian is very important and decisive. In fact, according to Shafi'i, a marriage is not valid without a guardian for both parties. the bride, while for the prospective groom a marriage guardian is not required for the validity of the marriage. The presence of a marriage guardian in a marriage is absolutely necessary. Without the permission of the marriage guardian, the marriage is considered invalid or nullified. The role of the marriage guardian in a marriage is very important and decisive, as regulated in Article 19 of the Compilation of Islamic Law, which states that the marriage guardian in a marriage is a pillar that must be fulfilled by the prospective bride who acts to marry her.

According to Islamic law, the role and existence of a marriage guardian is crucial, as their presence or absence determines the validity of a marriage. A woman who marries without her guardian's consent is considered null and void. Another reason why the presence of a marriage guardian is crucial in marriage is the physical and mental differences between men and women. These differences also create distinct positions between men and women, and it is natural for men to be the leaders and protectors of women.

In terms of being a marriage guardian, the biological father's position is the main position that has the right to be a marriage guardian, because the father is the person who understands and loves his daughter the most. After that, the recipient of the will from his father (representing his father), because his position is the same as his father. After that, the grandfather from the father upwards, with the closest one being prioritized, because this woman is still his descendant, in this position (grandfather) is equal to his father. After the grandfather is the

woman's child (if a widow), then her grandson, and so on down, with the closest one being prioritized. And it is not permissible for a more distant relative to become a marriage guardian while there is still a closer relative. Because this is the same as usurping the right of guardianship, so the marriage is invalid.

If the guardian who has the right to *mafqud* is prevented or is unable to perform the marriage, the marriage can be performed by a judge. The Head of the KUA is the official officer in charge marriage matters. Therefore, in this case, an official KUA official is the legal guardian who has the right to act as a marriage guardian when a relative is unavailable or when a dispute arises. Therefore, anyone who does not hold the status of an official KUA official or someone equivalent in the government hierarchy cannot be called a legal guardian. This also applies to KUA officials who attend on their own behalf, not on behalf of an institution. Because the legal guardian is the official who officially attends on behalf of the institution, not on their own behalf.

In the case of the appointment of a Guardian Judge as intended by PMA RI number 30 of 2005, the Head of the District Religious Affairs Office (KA KUA) as the Marriage Registrar is appointed as the Guardian Judge in his/her area to marry the bride. If the Head of the District Religious Affairs Office is prevented or absent in the sub-district, then the Head of the Islamic Religious Affairs Section on behalf of The Head of the Regency/Municipal Department of Religion Office is authorized to appoint, on behalf of the Minister of Religion, a Deputy/Assistant Marriage Registrar to temporarily act as a Guardian Judge in his/her area.

Therefore, as stated in the Republic of Indonesia PMA Number 30 of 2005, the case was declared null and void due to the unfulfilled conditions and pillars, namely the presence of a judge's guardian who did not have the right to represent as a judge's guardian, namely P3N,

because the position of P3N in terms of the structural implementation of the Religious Affairs Office is a Marriage Registrar, while the PMA appoints an authorized official in the area of the Religious Affairs Office (KA KUA) at the sub-district level.

## II. RESEARCH METHODS

This study employs a normative legal research method using both a statutory approach and a case approach. The statutory approach examines legal instruments governing marriage registration and marriage validation in Indonesia, including the Marriage Law, the Compilation of Islamic Law, and other related regulations. The case approach focuses on the analysis of the Decision of the Medan Religious Court Class IA Number 51/Pdt.P/2015/PA.Mdn concerning a petition for marriage validation (*isbat nikah*). The research relies on secondary data obtained through library research, including legislation, legal literature, scholarly articles, and court decisions. The collected data were analyzed qualitatively to evaluate the conformity of the judges' legal reasoning with the applicable legal framework.

## III. RESULTS AND DISCUSSION

### 1. The Nature of Judges and Decisions Judges and Judicial Power

Among the law enforcement officers who are most dominant in carrying out law enforcement is the judge. It is the judge who ultimately determines the decision on a case, based on the judge's intellect, morals, and integrity regarding the values of justice. Judges include judges at the Supreme Court and judges at lower courts, including general courts, religious courts, military courts, state administrative courts, and judges at special courts within those courts.

The Judicial Power is an independent power

to carry out the judiciary is responsible for upholding law and justice. The requirements for becoming and being dismissed as a judge are stipulated by law. This means that the position of judges must be guaranteed by law. One characteristic of a state based on the rule of law is the independence of judges who are free, impartial, and not influenced by the legislative and executive branches. This independence of judges does not mean that judges can act arbitrarily in a case they are handling; rather, judges remain bound by existing legal regulations.

Judges are different from other officials, they must truly master the law, not just rely on honesty and good will. The difference between courts and other institutions is that courts in carrying out their daily duties always positively and actively pay attention to and implement various legal regulations that apply in a country. In the field of criminal law, judges are tasked with implementing what in concreto exists by a defendant in violation of criminal law. To determine this, the judge must state precisely which Criminal Law has been violated (Wirjono Prodjodikoro, 2003: 26-27).

During the examination at the court hearing, the judge who leads the trial must actively ask questions and give the defendant, represented by his legal counsel, the opportunity to ask questions of the witnesses, as well as the public prosecutor. With thus it is hoped that the material truth will be revealed, and the judge will be responsible for everything he decides.

The issue of judicial independence needs to be linked to the issue of how judges can find the law based on their beliefs in handling a case. The freedom of judges in finding the law does not mean creating the law. However, to find the law,

judges can reflect on jurisprudence and the opinions of renowned legal experts, commonly referred to as doctrine.

A good judge's decision must meet two requirements: theoretical and practical requirements. The theoretical requirement here means that, by emphasizing legal facts and their considerations, the decision must be accountable from a legal perspective. It is not uncommon for the decision to form jurisprudence that can determine new law (constitute a source of law). Meanwhile, the practical requirement is that the judge's decision is expected to resolve existing legal issues/disputes and, as far as possible, be accepted by the disputing parties and society in general because it is perceived as fair, correct, and based on law (Zaenuddin Ali, 2006: 41).

On Ultimately, the judge must decide the case he is trying solely based on law, truth, and justice without discriminating against people with the various risks they face. In order for the judge's decision to be taken fairly and objectively based on law, truth, and justice, in addition to the examination being conducted in a trial that is open to the public (unless the law stipulates otherwise), the judge is also required to make legal considerations that are used to decide the case.

## 2. The Essence of the Decision

In the existing literature, legal experts have attempted to define what is known as a judge's decision, or what is commonly referred to as a court decision. There are several different definitions of a judge's decision, but a careful examination of these definitions reveals a common understanding.

The purpose of holding a process before the court is to obtain a decision. A judge's decision, or

what is commonly referred to as a court decision, is something that is highly desired or anticipated by the parties in a dispute in order to resolve the dispute between them as best as possible. Because with the judge's decision, the parties in dispute expect legal certainty and justice in the case they are facing. To be able to provide a decision that truly creates legal certainty and reflects a sense of justice, the judge, as a state apparatus who carries out justice, must truly understand the actual circumstances of the case, as well as the legal regulations that govern it that will be applied, both legal regulations written in statutes and unwritten laws, such as customary law. Therefore, the law on judicial power states that judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society.

Sudikno Mertokusumo defines a judge's decision as a statement which is pronounced by the judge, as an authorized official, in court and aims to end or resolve a case or a dispute between the parties, in this definition Sudikno tries to emphasize that what is meant by the judge's decision is that which is pronounced in court. In fact, the decision pronounced in court (*uitspraak*) must not be different from the written one (*vonnis*) (Sudikno Mertokusumo, 2003: 159).

In order to be able to provide a decision that truly creates legal certainty and reflects a sense of justice, judges as state officials who carry out justice must truly know the actual circumstances of the case, as well as the legal regulations that govern it that will be applied, both legal regulations written in statutory regulations and unwritten laws (Riduan Syahrani, 1998: 83), such as customary law. Therefore, in the law on

judicial power it is stated that judges are obliged to explore, follow and understand the legal values and sense of justice that live in society.

Meanwhile, several other legal experts, such as Lilik Mulyadi and Riduan Syahrani, provide definitions of decisions that are limited to the scope of civil procedural law. Lilik Mulyadi provides a definition of a judge's decision from both a practical and theoretical perspective namely a decision pronounced by a judge due to his position in a civil trial that is open to the public after going through the process and procedures of civil procedure or ending a case (Lilik Mulyadi, 2002: 62). Meanwhile, Riduan Syahrani prefers to use the term court decision as a statement pronounced by a judge that is pronounced in a court hearing that is open to the public to settle or end a civil case.

From the description above, a conclusion can be drawn that what is meant by a judge's decision is a statement made in written form by a judge as a state official who is authorized to do so and is pronounced before a civil trial that is open to the public with the aim of resolving and ending a civil case in order to create legal certainty of justice for the disputing parties. It should be reminded again that the discussion regarding judge's decisions or court decisions in this writing will only be limited to the scope of civil procedural law.

### **3. Power of Judge's Decision**

Regarding the legal force of this decision, it is not actually included in the HIR or R.Bg, except for Article 180 of the HIR and Article 191 of the R.Bg, which only mention a decision that has permanent legal force. Therefore, while there are judge's decisions that have permanent legal force, there are certainly also judge's decisions that do not yet have permanent legal force.

A judge's decision that does not yet have permanent legal force is a decision that according to the provisions of the law still has the opportunity to use legal remedies against the decision, for example resistance (*verzet*), appeal or cassation. Meanwhile, a decision that has permanent legal force is a decision that according to the provisions of the law there is no longer an opportunity to use ordinary legal remedies (resistance (*verzet*), appeal or cassation) against the decision, so the decision can no longer be challenged.<sup>1</sup> According to doctrine, in a decision that has permanent legal force there are 3 (three) types of power that can be implemented.

#### 1) Binding Power

A court decision is intended to resolve a problem or dispute and establish rights or law. If the disputing parties are unable to resolve the dispute between them amicably and then submit and entrust their dispute to the court or judge for examination and trial, then this means that the disputing parties will submit to and comply with the decision issued, so that the decision has binding force on the disputing parties.

#### 2) Power of Proof

The written form of the decision, which is an authentic deed, has no other purpose than to be used as evidence for the parties, which may be needed to file legal proceedings. Because even though the judge's decision or the court's decision does not have binding force on third parties, but has evidentiary force on third parties.

#### 3) Strength Executorial

As explained previously, the term "executory power" in a judge's decision or court ruling refers to the force exercised by state apparatus against parties who do not voluntarily comply with the decision. What actually gives the judge's or court's decision its executorial power are the words "For the Sake of Justice Based on the One Almighty God" found in each decision.

However, not all decisions can be enforced by the court. Only condemnatory decisions can be

enforced by the court. while the decision declaratory and constitutive does not require any coercive means to be able to carry it out.

Every civil case in its court decision must contain a clear summary and response to the lawsuit, the reasons and basis of the decision, articles and unwritten laws, the main points of the case, court costs, and the presence or absence of the parties to the case when the court decision is pronounced, this is determined in article 184 HIR / 195 RbG. Although the provision stipulates that the lawsuit and response to the lawsuit in the decision are included in a summary, in reality all the lawsuits and responses are included in the decision. If the decision is based on a specific article of law, that article must be stated. The grounds used as reasons are intended to be considerations that support the decision.

If a court decision in providing its legal considerations is less than then it can be used as a reason for cassation and the decision must be cancelled. Apart from that, decisions whose legal considerations deviate from the basis of the lawsuit must be cancelled. Regarding the ruling or dictum of the decision. A court decision is an answer to a request or demand, whether the demand is granted or rejected. The verdict contains a legal statement, the determination of a right, the loss or emergence of a legal situation and the content of the decision is called a penalty in the form of imposition of a certain achievement. The subject matter of the case is the most important thing in a decision. The dictum contains which party is right regarding the subject matter of the dispute.

#### **4. Decision of the Judge of the Class IA Religious Court of Medan City Regarding the Decision of the Class IA Religious Court of Medan City Register Number 51/Pdt.P/2015/PA Medan**

##### a. The Facts

That Applicant I and Applicant II came together with their application letter which

was registered on February 13 2015 at the Class IA Religious Court Clerk's Office, Medan City with Registration Number: 51/Pdt.P/2015/PA.Mdn by stating the following matters:

Position:

- 1) Whereas the Petitioners were legally married based on Islamic Sharia on Jalan Perwira I No. 49 Pulau Brayan Bengkel Village, East Medan District, Medan City on February 10 1994 with the guardianship of a judge named Anwar, the marriage contract was attended by 2 witnesses, the first named Abdul Rahman and the second named Muhammad Azhari, both of whom are still alive, with a dowry of Rp. 10,000 (Ten thousand rupiah)
- 2) That at the time of the marriage, Applicant I was single, while Applicant II was a virgin and there was nothing that could prevent this from happening. The marriage is based on law and sharia or applicable legal regulations.
- 3) That the applicants' marriage has never been registered at the Office of Religious Affairs East Medan District.
- 4) That during the marriage of Applicant I and Applicant II, they were blessed with 2 (two) children, each named:
  - a) Siti Sarifah, Female, born September 18, 1995
  - b) Siti Aminah, Female, born November 24, 1996
- 5) That during the marriage period, Petitioner I and Petitioner II never divorced and no one in the community objected to the marriage of Petitioner I and Petitioner II.
- 6) That Applicant II is the only wife of Applicant I and has never been divorced
- 7) The applicant uses this marriage confirmation letter to take care of administrative population requirements

at the Population Service, therefore the applicants really need a marriage confirmation letter as proof of the applicants' marriage.

Petition:

- 1) That based on the descriptions above, the Applicant requests that the Chief Justice of the Medan Religious Court cq. Panel of Judges be pleased to set a trial date by summoning the Applicant and the required witnesses and then issue a decision whose ruling is as follows:
  - 2) Granted the Petitioner's request
  - 3) Declaring the marriage between Applicant I (Arifin bin Mhd. Isya) and Applicant II (Dahniar binti Burhanuddin) valid, which was carried out on February 10, 1994 at Jalan Perwiran I No. 49, Pulau Brayan Bengkel Village, East Medan District, Medan City
  - 4) Charge court costs in accordance with applicable laws and regulations.
- b. Legal Considerations in Making Decisions
- The following are some considerations of the judges of the Class IA Religious Court of Medan City who have determined the Application for Marriage Confirmation submitted on February 13 2015 based on the copy of the Marriage Confirmation Decision with Number: 51/Pdt.P/2015/PA.Mdn from the Medan Religious Court.
- 1) That's the intention and the purpose of the Applicants' application is essentially as stated above.
  - 2) That the applicants' application for marriage confirmation regarding the validation of the marriage even though it occurred after 1974, which is basically according to the provisions of Article 49 paragraph n 92 Point 22 of the General Explanation of Law Number 7 of 1989 is not justified, however because The applicants stated that the application was

- very necessary for the purposes of making a marriage book and birth certificates for children - it was necessary to determine the legalization of the marriage, therefore for the sake of the public interest and by referring to the provisions of Islamic Law Article 7 paragraph (2) and (3) points (d) and (e) of the Compilation of Islamic Law, the applicants' application can be formally accepted and considered.
- 3) That based on the petitioners' petition, the panel assessed that Petitioner I was married to Petitioner II with a guardian named Anwar and witnessed by more than two witnesses, including Rusman Effendi bin M. Ali and Rajali bin Raja'i.
  - 4) That based on the statements of the parties to the case, the evidence and witnesses presented by the applicants mentioned above, the panel has found facts in this trial which are in essence as follows:
    - a) That Applicant I was married according to Islamic law to Applicant II, which took place on February 10, 1994 in the area of the Religious Affairs Office of East Medan District, with a judge named Anwar as guardian, with a dowry of Rp. 10,000 (Ten Thousand Rupiah) and witnessed by 2 witnesses named Abdurrahman and Muhammad Azhari, and have never been divorced and until now Petitioner I and Petitioner II are still Muslims.
    - b) That between Petitioner I and Petitioner II there is no religious relationship, they are not blood relatives, there is no prohibition on marriage either according to religion or according to applicable laws and regulations and they are not bound by a marriage and/or not within another person's iddah period.
  - c) That during the marriage, Applicant I and Applicant II had sexual relations (back to the dukhul) and has 2 children.
  - d) That with the considerations above, it is proven that the marriage of Applicant I with Applicant II was carried out in accordance with Islamic law as stated in Article 14 of the Compilation of Islamic Law.
  - e) That with the discovery of the fact that the marriage of Applicant I with Applicant II has fulfilled the provisions of Islamic law, then based on the provisions of Article 2 paragraph (1) and Article 64 of Law Number 1 of 1974 concerning Marriage, in line with the provisions of Islamic Law as As stated in Article 4 of the KHI, the petitioners' request that their marriage which was carried out on February 10 1994 in the area of the Religious Affairs Office of East Medan District be declared worthy of acceptance and granted.
  - f) That the Assembly agrees with the opinion of Islamic Law experts, and furthermore The Panel of Judges took the following legal considerations into account in this decision:
    - In the Book of Fath Al-Muin, page 91 explains: "The pledge (confession) of amukallaf that is not forced can be accepted legally"
    - In the Book of l'anah al-Thalibin, Juz 12 page 308 explains: "It is acceptable to accept the confession of an adult and virtuous man regarding his marriage to a woman, and vice

versa, the wife confirms the confession."

- In the Book of Tuhfah page 122 explains
  - "A marriage confession from an adult woman is acceptable"
- g) That the panel of judges needs to present a syar'i argument in the form of a hadith of the Prophet SAW narrated by Daruqutni from Siti Aisyah which reads: "A marriage is not valid except with a guardian and two just witnesses."
- h) Based on Based on the above considerations, the applicants' application is deemed to have sufficient grounds and therefore the application should be accepted and granted.
- i) That based on Article 2 paragraph (2) of Law Number 1 of 1974 in line with the provisions of Islamic Law in Article 5 of the Compilation of Islamic Law, it is deemed necessary to order the Applicants to register their marriage with the Marriage Registrar of the relevant District Religious Affairs Office.
- j) That this case falls within the field of marriage, then based on Article 89 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts which has been amended by Law Number 3 of 2006 and last amended by Law Number 50 of 2009, the costs incurred in this case are justified to the Applicants.
- k) That this case falls within the field of marriage, then based on Article 89 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts which has been amended by Law Number 3 of 2006 and last amended

by Law Number 50 of 2009, as well as all provisions of applicable laws and regulations and relevant Islamic law.

## 5. Analysis of the Considerations and Decision

In consideration, there areThe inconsistency of the applicant and the witnesses in providing information which was then used by the judge as a reference in issuing the decision. In their application, Applicant I and Applicant II stated that ANWAR was the Registrar/Guardian Judge appointed by Applicant II to be their guardian in the marriage, while in their witness statements, ANWAR was The older brother of Applicant II, which means, in the witness' statement, ANWAR's position is the legal guardian of Applicant II who, according to Islamic law, is legally the guardian of the marriage.

Likewise with his request, that with ANWAR's position which according to the statement of the Head of the KUA of East Medan District is as a Marriage Registration Officer (P3N) based on the provisions of the Regulation of the Minister of Religion (PMA RI) Number 30 of 2005 is not entitled to be a judge guardian, because the PMA mandates the Head of KUA as a judge guardian, whereas according to the statement that the author confirmed with the Head of KUA that at the time of the marriage, the Head of KUA was at the location and was not traveling or in a condition that did not allow him to be a judge guardian in the marriage as intended by the PMA.

Then, that with Anwar's position, he is also a Marriage Registrar(P3N) is an employee appointed by Law Number 1 of 1974 to implement and realize the law, ideally providing advice and appeals to Applicant I and Applicant II to register their marriage if the marriage is permitted according to Islamic Law and Statutory Provisions, not to become part of the implementation of an illegal marriage according to statutory provisions.

As mandated by the Regulation of the Director General of Islamic Community Guidance Number DJ.II/491 of 2009, the position of Marriage Registrar also doubles as BP4 whose duty is to provide advice and invitation to the community to obey and be aware of the law so that every marriage is registered with the Office of Religious Affairs so that the marriage is recognized by the State and the offspring born from the marriage receive State facilities for their needs including the need for population and civil registration as per the reasons and pretexts stated by the applicant in submitting the application for Marriage Confirmation, so that the objectives of Law Number 1 of 1974 can be realized.

As referring to the theoretical basis and literature review in the previous chapter which contains the position and standing of the Judge Guardian in marriage and how Ideally, a decision is accountable to both the parties to the case, society, the state and God, so that the court as a judicial institution is able to actualize its function of providing justice to society based on "Belief in the One Almighty God".

However, in the ruling regarding the issue of determining the marriage confirmation, according to the author's analysis, there is an inconsistency in making a decision. As in its consideration, the panel of judges in determining and validating the marriage based on Supreme Court Circular Letter Number 3 of 2004, which is a derivative of Law Number 1 of 1974. Where the Circular Letter provides leniency for marriages that are not registered at the District Religious Affairs Office, can apply for Isbat Nikah, and the SEMA serves as a guide for judges in determining and validating the marriage.

Although legally, the existence of SEMA violates Law Number 1 of 1974 Article 2 which states that every marriage must be registered according to the provisions of the applicable laws, so that the existence of SEMA can provide opportunities for marriages that are illegal

according to the law to be carried out, regardless of the reasons for the practice of the marriage being carried out.

In the hierarchy of legislation, the existence of Law Number 1 of 1974 must be prioritized, because SEMA and PMA RI are derivatives of the Law, although in principle the legal Lex specialist *dergorat lex generalis* positions SEMA and PMA RI as legal guidelines for judges in making a decision, but it does not necessarily set aside the existence of Law Number 1 of 1974 as a provision in terms of the implementation of marriage, so that the implementation of subsequent marriages is in accordance with applicable provisions, because the judge's decision becomes jurisprudence for other judges and courts in making decisions. Juridically, the application of the principle of Legality, namely that the law does not apply retroactively, becomes a guide for judges in making the decision (Abdul Kadir Muhammad, 1992: 72), because, with the presence of PMA RI regarding the provisions of the Guardian Judge and its implementation, the judge can reject the application. Because it does not comply with the provisions, even with the argument of the existence of SEMA which is the legal umbrella in accepting the application.

Then, in accordance with the considerations made by the judge in determining This marriage provides a signal to unregistered marriages that their marriage is not legally problematic, because later it can also be confirmed in court if there are problems with population and requirements for their children to receive education.

So, from a legal perspective, the author provides an analysis which states that The decision of the Class IA Religious Court of Medan City according to Register Number: 51/Pdt.P/2015/PA.Mdn is null and void, due to inconsistencies in its legal considerations, as explained in the legal considerations above which explain that the contents of the application do not correspond to the witness's statement, and the

implementation of the marriage is contrary to PMA RI number 30 of 2005, which ideally the PMA is the basis for the panel of judges to reject the application, so that there are no more problematic marriages according to legal provisions.

That based on this decision, the judge must adhere to the principle of legality must also use PMA as a guide, even though the existence of SEMA Number 3 of 2014 provides an opportunity for judges to validate the marriage on the grounds of population and civil registration. Then, the implications of this decision become biased towards other marriages which are also illegal according to the provisions of the law, so that the birth of this decision becomes a signal to other marriages that such marriages are not become a problem and can later be confirmed in court if problems arise regarding the offspring born from the marriage.

Legally, the decision is considered null and void because it is contrary to Law Number 1 of 1974 which according to the Hierarchy of legislation must be prioritized in its implementation, even though in theory with the principle of *lex specialist derogat lex generalis*, it must take into account problems that are universal in nature regarding other marriage events.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

That the Isbat Marriage Decree issued by the Class IA Religious Court of Medan City is considered null and void because it does not correspond to the application and witness statements regarding the position and role of the judge's guardian, which in its regulations states that the guardian is a requirement for the validity of the marriage, then the argument used by the judge in determining the Isbat

Marriage request is that there are no provisions that can prevent the marriage of Applicant I and Applicant II, the requirements and pillars of a marriage have been fulfilled and there is an administrative need for Civil Registration which is a mandate from the Circular Letter of the Supreme Court Number 3 of 20114 which permits the Isbat Marriage.

The implications arising from a marriage conducted by a Judge Guardian are that it is not valid according to statutory provisions because it was not conducted by an authorized official, namely The Head of the KUA of East Medan District, although according to Islamic Law the marriage is valid as long as the Applicant II (wife) has fully handed over the guardianship issue to the Guardian Judge, then the implications arising from the decision are as a legal basis for marriages that will occur in the future, that marriages that are illegal according to statutory provisions are not a problem, and can be confirmed if problems arise from the marriage such as Civil Registration.

##### B. Suggestions

Judges should exercise greater scrutiny in assessing the consistency of facts, evidence, and witness testimonies presented in marriage validation cases. A more comprehensive evaluation of applicable regulations is necessary to ensure that judicial decisions uphold both legal certainty and justice. In addition, government institutions and religious authorities should strengthen public awareness regarding the importance of marriage registration, thereby reducing the occurrence of unregistered marriages and minimizing future legal disputes that require judicial validation. with strong moral character and a deeper understanding of Islamic values.

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**REFERENCE LISTAN**

Abdul Kadir Muhammad. (1992). Hukum Acara Perdata Indonesia, Cet. V Bandung: PT. Citra Aditya Bakti

Abdul Manan. (2006). Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama, Jakarta: Kencana Prenada Media Group

Hasbullah Bakri. (1985). Kumpulan Lengkap Undang-undang dan Peraturan Perkawinan di Indonesia, Jakarta: Terbitan Jambatan

Lilik Mulyadi. (2002). Putusan Hakim dan Hukum Acara Pidana, Jakarta: Citra Grafika

M. Nur Rasaid. (2003). Hukum Acara Perdata, Cet. III Jakarta : Sinar Grafika Offset

M. Yahya Harahap, Kedudukan Kewenangan dan Acara Peradilan Agama, UU No. 7 Tahun 1989, Jakarta: Sinar Grafika.

Moh. Taufik Makarao. (2001). Pokok-pokok Hukum Acara Perdata, Jakarta: Rineka Cipta

Muchsin. (2004). Kekuasaan Kehakiman yang Merdeka dan Kebijakan Asasi, Jakarta: STIH IBLAM

Riduan Syahrani. (1998). Hukum Acara Perdata di Lingkungan Peradilan Umum, Cet. I Jakarta: Pustaka Kartini

Roihan A Rasjid. (1991). Hukum Acara Peradilan Agama, Jakarta: Rajawali Pers

Sudarsono. (1992). Pokok-pokok Hukum Islam, Jakarta: Rhineka Cipta

Sudikno Mertokusumo. (2003). Hukum Acara Perdata Indonesia, Yogyakarta: LIBERTY

Sulaikin Lubis, Wismar 'Ain Marzuki dan Gemala Dewi. (2008). Hukum Acara Perdata Peradilan Agama di Indonesia, Jakarta: Kencana

Zaenuddin Ali. (2006). Hukum Perdata Islam di Indonesia, Jakarta: Sinar Grafika