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Questioning Human Rights, Looking for Justice: Analyzing the Impact of Supreme Court Circular Letter on Interfaith Marriages in Indonesia

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Abstract

The issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases on Applications for Registration of Marriages between People of Different Religious Beliefs has caused problems regarding interfaith marriages in Indonesia. Both conceptually and in practice, interfaith marriages have long been controversial. Using a human rights approach, this article analyzes SEMA's position in the hierarchy of laws and regulations and the impact of SEMA Number 2 of 2023 on the independence of judges and the practice of interfaith marriages in Indonesia. The results of the analysis indicate that SEMA Number 2 of 2023 is contrary to human rights principles, especially the principles of religious rights, the right to choose a partner and the right to get married. Although the content of SEMA should only be related to technical matters of court processes, SEMA Number

2 of 2023 targets the substance of citizens' rights; it asks judges to reject requests for the validation of interfaith marriages, even though the issue is clearly regulated by the Law on Population Administration. As a result, the chances of validating interfaith marriages through court decisions are closed. This policy not only limits the independence of judges in deciding such cases but also violates the human rights of citizens.

KEYWORDS *Supreme Court Circular Letter (SEMA), Interfaith Marriage, Human Rights, Indonesia*

Introduction

Though not a new phenomenon, interfaith marriages continue to generate endless debates and remain a sensitive and controversial issue in Indonesia. In many Muslim-majority countries, religion plays an important role in regulating marriage and forming the norms of religious endogamy. However, many Islamic countries are facing the challenges of globalization and modernity, and interfaith marriage is one of the issues that currently brings traditionalist groups and modern reformers together in the Muslim community[1], including Indonesia. While interfaith marriage has many pros and cons, in everyday life, many couples of different religions still decide to get married[2].

Several studies have been conducted to produce data regarding the number of interfaith marriages from 1980 to the 2000s[3]. Based on data collected by the Indonesian Conference on Religion and Peace, from 2005 to

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1 Jana Van Niekerk and Maykel Verkuyten, "Interfaith Marriage Attitudes in Muslim Majority Countries: A Multilevel Approach," *The International Journal for the Psychology of Religion* 28, no. 4 (October 2, 2018): 257–70, https://doi.org/10.1080/10508619.2018.1517015.

2 Noryamin Aini, Ariane Utomo, and Peter McDonald, "Interreligious Marriage in Indonesia," *Journal of Religion and Demography* 6, no. 1 (May 6, 2019): 189–214, https://doi.org/10.1163/2589742X-00601005.

3 Aini, Utomo, and McDonald; Dasman Maningkam, and Agus Dwiyanto, "Studi Implementasi UU No. 1 Tahun 1974 Tentang Perkawinan: Studi Kasus Pelaksanaan Pencatatan Perkawinan Campuran Beda Agama Di Kantor Catatan Sipil Provinsi DKI Jakarta" (Thesis Public Administration, Yogyakarta, Gadjah Mada University, 2000); B. Agus Rukiyanto, T. A. Deshi Ramadhani, and B. S. Mardiatmadja, *Menerobos Pintu Sempit: Nafas Ilahi dalam Gereja KAJ* (Deresan, Yogyakarta: Penerbit Kanisius, 2009).

2022, there were 1655 interfaith marriages[4]. By 2010, the total number of couples involved in interfaith marriage had reached 233,000. Information submitted by the Department of Population and Civil Registry of the Ministry of Home Affairs in 2022 indicated that there were 34.6 million married couples with the status of "unregistered marriages," including those who could not register their marriage since they were involved in interfaith marriage[5]. This figure continues to increase.

At this point, a pertinent question arises: are interfaith marriages valid based on the extant laws of Indonesia? The answer may be yes or no. However, the question can be slightly changed, as follows: are interfaith marriages legally registered by the state administration based on the extant laws of Indonesia? The answer is yes. Obviously, the answers to the above questions are confusing. However, this is the reality based on the legal construction of marriage in Indonesia's marriage law, Supreme Court decisions, district court decisions, and decisions of the Constitutional Court. The position of the law on interfaith marriage will be elaborated on subsequently.

The formulation of norms in Law No. 1 of 1974 concerning Marriage (hereinafter referred to as Marriage Law) sparked debate about interfaith marriages. Article 2 (1) stipulates that "Marriage is valid if it is carried out according to the laws of the respective religious beliefs. (2) Every marriage is recorded according to the applicable laws and regulations." Based on this article, the basis of whether a marriage is valid or not refers to the religious beliefs of the bride and groom. Furthermore, the marriage must be registered by the state administration to receive legal recognition in the state. Explicitly, none of these formulations prohibit interfaith marriages, but at the same time, there are also no specific regulations on it. According to several parties, the statement of Article 2 (1) proves that the Marriage Law makes provision for interfaith marriages if religious belief does not prohibit it. However, a general view that is often expressed by the public is that the Indonesian marriage law does not recognize interfaith marriages.

The registration of interfaith marriages in Indonesia is currently regulated by Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration, hereinafter referred to as

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[4] Syahriani Siregar, "ICRP Catat Tren Kenaikan Pasangan Beda Agama Dari Tahun Ke Tahun," July 20, 2023, https://pontianakpost.jawapos.com/nasional/1462746656/icrp-catat-tren-kenaikan-pasangan-beda-agama-dari-tahun-ke-tahun.

[5] Markus Saragih, "Komnas Perempuan Minta SEMA Larangan Nikah Beda Agama Dicabut," July 28, 2023, https://pgi.or.id/komnas-perempuan-minta-sema-larangan-nikah-beda-agama-dicabut/.

Population Administration Law. Article 35 letter (a) states that "marriage registration as intended in Article 34 also applies to marriages validated by the court." To clarify the meaning of this statement, the explanation of Article 35 letter (a) states that marriages validated by the court are marriages between people of different religions. Based on this article, in practice, several courts in Indonesia have granted requests for interfaith marriages. For example, the Surabaya District Court, which legalized the interfaith marriage of a Muslim and Christian couple in June 2022, argued that citizens have the right to maintain their religious beliefs when they want to build a family with someone of a different religion[6]; the Tangerang District Court also legalized the marriage of a Muslim woman and Christian man in November 2022, and the judge stated that the validation was based on Article 2 of the Marriage Law[7]; the Yogyakarta District Court legalized the marriage of a Muslim and Catholic couple to prevent cohabitation[8]; the South Jakarta District Court allowed a Muslim and Catholic couple to marry, referring to Article 35 letter (a) of Law Number 23 of 2006[9]; and most recently, the Central Jakarta District Court allowed an interfaith marriage of a Muslim and Christian couple in July 2023, basing its decision on sociological reasons, namely the diversity of society[10].

The approval of interfaith marriages in several district courts has received attention, and some parties have reacted negatively to it. As a result, on July 17, 2023, the Supreme Court issued the Supreme Court Circular Letter (SEMA) No. 2 of 2023 concerning Instructions for Judges in Adjudicating Applications

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6 CNN Indonesia, "PN Surabaya Izinkan Warga Beda Agama Menikah," *CNN Indonesia*, June 20, 2022, https://www.cnnindonesia.com/nasional/20220620173909-12-811262/pn-surabaya-izinkan-warga-beda-agama-menikah#:~:text=Pengadilan%20Negeri%20(PN)%20Surabaya%2C,Kependudukan%20dan%20Pencatatan%20Sipil%20Surabaya.

7 Andi Saputra, "PN Tangerang Juga Sahkan Nikah Beda Agama Sepasang Katolik-Kristen Ini," *Detik News*, November 30, 2022, https://news.detik.com/berita/d-6434910/pn-tangerang-juga-sahkan-nikah-beda-agama-sepasang-katolik-kristen-ini.

8 Detik News, "PN Yogja Sahkan Nikah Beda Agama Islam Dan Katolik," *Detik News*, December 16, 2022, https://www.dw.com/id/cegah-kumpul-kebo-pn-yogya-sahkan-nikah-beda-agama-islam-dan-katolik/a-64122362.

9 CNN Indonesia, "PN Jaksel Izinkan Pasangan Menikah Beda Agama Islam-Katolik," *CNN Indonesia*, April 18, 2023, https://www.cnnindonesia.com/nasional/20230418132223-12-939282/pn-jaksel-izinkan-pasangan-menikah-beda-agama-islam-katolik.

10 CNN Indonesia, "Hakim PN Jakarta Pusat Kabulkan Pernikahan Pasangan Beda Agama," *CNN Indonesia*, June 25, 2023, https://www.cnnindonesia.com/nasional/20230625112541-12-966266/hakim-pn-jakarta-pusat-kabulkan-pernikahan-pasangan-beda-agama.

for Registration of Marriages between People of Different Religious Beliefs. The SEMA only contains two articles, as follows: (1) "A valid marriage is a marriage carried out according to the laws of the respective religious beliefs, in accordance with Article 2 paragraph 1 and Article 8 letter f of the Marriage Law. (2) The court should not grant the application for registration of marriages between people of different religious beliefs."

For couples and prospective marriage partners of different religions as well as legal and human rights experts and activists, SEMA No. 2 of 2023 is contrary to Law No. 1 of 1974 concerning Marriage. Also, it is seen as a setback for law enforcement agencies in interpreting the sociological principles of the Indonesian society. Using human rights theory, legal protection theory and progressive legal theory, this normative legal research analyzes the impact of SEMA No. 2 of 2023 on the practice of interfaith marriage in Indonesia, using various primary and secondary legal materials. The first part of this article discusses marriage as a human right and a constitutional right, according to both international and national standards in Indonesia, and it continues with a discussion on the recognition of interfaith marriages in Indonesia. The second part discusses the position of SEMA in the hierarchy of Indonesian laws and regulations and the impact of SEMA on the independence of judges. Meanwhile, the third section discusses the impact of SEMA on the practice of interfaith marriage in Indonesia.

Interfaith Marriage as a Human Right and a Constitutional Right

Various general international agreements in the fields of civil, political, economic, social, and cultural rights as well as specific conventions that eliminate discrimination against women clearly provide rights and freedom to men and women to marry[11] and form families without being limited by religious barriers, ethnicity, and other social status. The International Covenant on Civil and Political Rights (ICCPR)[12], for example, stipulates that the rights of men

[11] United Nations General Assembly, "Universal Declaration of Human Rights," 217A General Assembly resolution § 23 (1948); United Nations General Assembly, "The Convention on the Elimination of All Forms of Discrimination Against Women," § 16 (1979).

[12] United Nations, "International Covenant on Civil and Political Rights" (1966), https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=_en.

and women of marriageable age to marry and form a family must be recognized, and marriages must not take place without the free and full consent of the couple getting married. The ICCPR was ratified by Indonesia in 2006 through Law Number 12 of 2005 without reservation. In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has similar regulations, was ratified by Indonesia in 2006 through Law Number 11 of 2005 without reservation.[13] Further, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), regulating the freedom to choose a partner, was ratified by Indonesia in 1984 with reservations only related to Article 29 regarding dispute resolution at the ICJ.[14] This means that Indonesia as a state party has an obligation to guarantee and protect the rights of its citizens emphasized in those human rights treaties. In fact, according to the UN Special Rapporteur, the state guarantees in its law the possibility of holding interfaith marriages for individuals who have different religious affiliations or no religion at all.[15]

1. Interfaith Marriage Worldwide

   Every country has its laws regarding the validity of interfaith marriages. Many countries allow interfaith marriage, such as Canada, USA, Singapore, United Kingdom, Hong Kong, and Australia. In those countries, any adult person may marry any other adult person regardless of their religion. According to statistics, there is an increasing trend of interfaith marriages in many countries globally.[16] In the United States, for example, around 40 percent of Americans currently have partners of different religions. The number of couples with different religions in the

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[13] United Nations, "International Covenant on Economic, Social and Cultural Rights," 2200A General Assembly Resolution § (1966), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en.

[14] United Nations, "Convention of the Elimination of All Forms of Discrimination Against Women" (1979), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en.

[15] UN Special Rapporteur on Freedom of Religion or Belief, "Rapporteur's Digest on Freedom of Religion or Belief" (Geneva: The United Nations Commission on Human Rights, 2023), https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf; Asma Jahangir, "Elimination of All Forms of Religious Intolerance" (Geneva: United Nations General Assembly, July 29, 2010).

[16] Jannik Lindner, "Interfaith Marriages Statistics: Market Report & Data," Gitnux Marketdata Report 2024 (New York: Gitnux: A Global Commerce Media LLC Company, December 20, 2023), https://gitnux.org/interfaith-marriages-statistics/.

US increased to more than 40 percent in 2017 compared to 20 percent in 1960.[17, 18] A similar increase also occurred in Canada, where the number of interfaith marriages increased to 33% in 2011, 13 percent higher than in 1981.[19, 20]

On the other hand, in many other countries, marriage is governed by Sharia law; hence, interfaith marriage is restricted. Such countries include Afghanistan, Algeria, Egypt, Kuwait, Lebanon, Libya, Malaysia, Maldives, Morocco, Pakistan, Saudi Arabia, Sudan, Syria, and United Arab Emirates.[21] In these countries, certain conditions and procedures are attached to interfaith marriage, and they vary from one jurisdiction to the other. For example, in the United Arab Emirates, interfaith marriages are permitted by law except in the case of a Muslim woman and a non-Muslim man.[22] In Egypt, interfaith marriages are allowed except when the woman is a Muslim and the man has a different faith.[23] It is not possible for a non-Muslim man to marry a Muslim woman in Afghanistan, but it is possible for a Muslim man to marry a non-Muslim, foreign woman.[24] The general rule in the countries mentioned above is that a Muslim man is allowed to marry a non-Muslim woman, but a Muslim woman is not allowed to marry

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17 Gregory Smith et al., "America's Changing Religious Landscape" (Washington, D.C.: Pew Research Center, May 12, 2015), https://www.pewresearch.org/wp-content/uploads/sites/20/2015/05/RLS-08-26-full-report.pdf.

18 Kelsey Dallas, "The Latest Data on Romance and Religion," February 15, 2022, https://www.deseret.com/faith/2022/2/15/22923491/lds-mormon-church-latest-data-on-religion-marriage-aei-american-family-interfaith-marriage-dating/.

19 Lindner, "Interfaith Marriages Statistics: Market Report & Data."

20 Ray Temmerman, "Mixed Religion Marriage in Canada and Australia: A Gift for the People of God," August 27, 2021, https://international.la-croix.com/news/religion/mixed-religion-marriage-in-canada-and-australia-a-gift-for-the-people-of-god/14807.

21 Hiddush for Religious Freedom and Equality, "Freedom of Marriage World Map," accessed May 8, 2024, https://marriage.hiddush.org/table.

22 Hazim Darwish, "Interfaith Marriage Laws in the UAE," January 8, 2024, https://hhslawyers.com/blog/interfaith-marriage-laws-in-the-uae/.

23 The British Embassy in Egypt, "Guidance Family Law in Egypt," April 18, 2023, https://www.gov.uk/government/publications/family-law-in-egypt/family-law-in-egypt#:~:text=Interfaith%20marriage,is%20Muslim%2C%20Christian%20or%20Jewish.

24 U.S. Embassy Kabul, "Marriage," accessed May 8, 2024, https://af.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/marriage/#:~:text=It%20is%20not%20possible%20for,to%20a%20Muslim%20religious%20ceremony.

a non-Muslim man. However, due to continuous changes in Muslim-majority countries, the general rule stated above has been changed in some Muslim-majority countries. Muslim women in Tunisia, for instance, are now allowed to marry non-Muslim men; the government overturned a law that prohibited Muslim women from marrying outside of Islam in 2017.[25] Interfaith marriages are common in Albania, including marriages between Muslims and Christians.[26] In addition, although it is a Muslim-majority country, Turkey applies a non-religious and unified law to matters related to family, making interfaith marriages legally possible.[27] These countries are considered more moderate, as social changes and demands from the people have resulted in legal reforms in the marriage law.

2. Interfaith Marriage in Indonesia

In Indonesian law, Article 28B paragraph (1) of the 1945 Constitution gives every person the right to form a family and produce offspring through legal marriage. A legal marriage can only take place with the free will of the prospective husband and prospective wife concerned, in accordance with the provisions of statutory regulations.[28] The same thing is emphasized in the Human Rights Law. According to the Marriage Law, as previously stated, a marriage is valid if it is carried out according to the laws of the respective religious beliefs. Also, interfaith marriages can be validated based on a court order, in accordance with the Population Administration Law.

Based on the different regulations above, the right to form a family and produce offspring through marriage is a form of realization of the free will (free consent) of citizens as holders of basic rights (right holders), which are fundamentally included in the realm of private or civil law. All civil activities related to forming a family, in principle, fall within the purview of

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[25] Par Daniele Selby, "Muslim Women In Tunisia Are Now Free To Marry Non-Muslim Men," September 15, 2017, https://www.globalcitizen.org/fr/content/womens-rights-tunisia-marriage-religion/#:~:text=Muslim%20Women%20In%20Tunisia%20Are%20Now%20Free%20To%20Marry%20Non%2DMuslim%20Men&text=Tunisia%27s%20government%20will%20no%20longer,from%20marrying%20outside%20their%20faith

[26] Refugee Review Tribunal. Australian Government, "Country Advice Albania" (Albania, June 29, 2010), https://www.ecoi.net/en/file/local/1135976/1930_1352460396_alb36850.pdf.

[27] Sinem Adar, "Religious Difference, Nationhood and Citizenship in Turkey: Public Reactions to an Interreligious Marriage in 1962," *The History of the Family* 24, no. 3 (July 3, 2019): 520–38, https://doi.org/10.1080/1081602X.2019.1633380.

[28] Article 10 of "Law of the Republic of Indonesia Number 39 of Year 1999 on Human Rights" (1999).

the freedom of each individual to decide (positive liberty) and to be free from the intervention of other parties (negative liberty). In reviewing the concepts of law (rule of law), social justice and human rights, the freedom of all individuals to form a family has quite complex dimensions, and the concepts complement each other.[29]

Therefore, the presence of state law in the process of forming a family is complementary and acts passively to ensure respect for the civil rights of citizens. This is because the right to marry is part of civil and political rights, and the role of the state is passive; that is, negative rights constrain other people or governments by limiting their actions against the rights holder. The right holder has the right to exercise this power without state interference. In the context of interfaith marriages, there are two fundamental rights, namely the right to freedom of religion and the right to form a family. It is the state's obligation to provide a conducive environment for every citizen to have and experience these rights without discrimination.

Recognition of Interfaith Marriages in Indonesia

Interfaith marriage was recognized in Indonesian law before the 1974 Marriage Law existed, through the Regeling op de Gemengde Huwelijken (RGH) Stbl. 1898 No. 158, which is a product of the Dutch Government based on the principle of concordance.[30] At that time, marriages between different religions were included in mixed marriages. Article 1 of the RGH states that mixed marriages are marriages carried out by people in Indonesia for whom different laws apply. Furthermore, Article 7 paragraph (2) of the RGH states that differences in religion, class or descent cannot possibly be an obstacle to marriage. Therefore, interfaith marriages were valid in Indonesia, without any

[29] Muktiono, "AMICUS CURIAE Untuk Mendukung Para Pemohon Dalam Perkara Nomor 68/PUU-XII/2014 Perihal Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (Malang: Pusat Pengembangan Hak Asasi Manusia dan Demokrasi, 2014), https://www.mitrahukum.org/wp-content/uploads/2014/11/Amicus_Curiae_Muktiono.pdf.

[30] Umar Haris Sanjaya, "Interpretation of Interfaith and/or Belief Marriage by Judges: Disparity and Legal Vacuum: Penafsiran Perkawinan Beda Agama Dan/Atau Kepercayaan Oleh Hakim: Disparitas Dan Kekosongan Hukum," *Jurnal Konstitusi* 20, no. 3 (September 1, 2023): 536–55, https://doi.org/10.31078/jk2039.

obstacles.[31] After the enactment of the 1974 Marriage Law, all regulations relating to marriage in Indonesia were revoked and were no longer valid, including the RGH. However, in the Marriage Law, there is absence of legal clarity regarding interfaith marriages. Thus, parties, judges, and state officials were encouraged to seek legal precedents, based on RGH or other legal reasons, to resolve legal disputes arising from interfaith marriages. As a result, state institutions came up with different interpretations and positions regarding this issue.[32]

The Marriage Law has been tested three times before the Constitutional Court, namely in 2010, 2014 and 2022. In the Constitutional Court Decision No. 24/PUU-XX/2022, the Court emphasized that Article 2 paragraphs (1) and (2) and Article 8 letter f of the Marriage Law do not conflict with the 1945 Constitution. The court stated 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. Meanwhile, the role of the state is to follow up on the results of the interpretation provided by the religious institutions or organizations. Therefore, the court is of the view that there are no changes or new developments regarding the issue of the constitutionality or validity of marriage registration, so there is no urgency to shift from its previous decisions. The court reaffirmed its stance in its 2010 decision (The Constitutional Court Decision No. 46/PUU-VIII/2010) and its 2014 decision (The Constitutional Court Decision No. 86/PUU-XII/2014) regarding the validity and registration of interfaith marriages. It should be noted that in the court's decision in 2010, Constitutional Justice Maria Farida Indrati submitted a concurring opinion, which opined that the issues associated with interfaith marriages could not be resolved simply by passing regulations. According to Maria, the Marriage Law should provide a solution for those who, due to compulsion, must enter marriages of different religious beliefs, both regarding the validity of the marriage and its registration.

Meanwhile, in the realm of the Supreme Court, recognition of interfaith marriages has existed since 1986 through Supreme Court Decision Number 1400K/PDT/1986, which stated that interfaith marriages are legal in Indonesia by way of validation by the court. This decision of the Supreme Court is often used as a jurisprudential reference for determining the status and permitting

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[31] Sudargo Gautama, *Hukum Antar Golongan Suatu Pengantar* (Jakarta: Ichtiar Baru Van Hoeve, 1980).

[32] Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian–Muslim Relations* 31, no. 2 (April 2, 2020): 131–50, https://doi.org/10.1080/09596410.2020.1773618.

interfaith marriages, even until now. The content of the decision cancels Court Order No.382/Pdt/P/1986/PN.JKT.PST, which rejected the request for an interfaith marriage between Andi Vonny Gani P (female/Islamic) and Andrianus Petrus Hendrik Nelwan (male/Protestant). The panel of judges acknowledged that there was a legal vacuum in the Marriage Law regarding interfaith marriages, especially in cases where the religion adhered to by one or both prospective bride and groom prohibits interfaith marriages. This Supreme Court decision granted the request to perform an interfaith marriage at the civil registry office.

The Marriage Law has a legal loophole, which has been used as a basis for couples of different religious beliefs to validate and register their marriage through a court order. The legal basis for validating such a marriage is Article 21 paragraph (3), which states that "parties whose marriage is rejected have the right to submit an application to the court in the area where the marriage registrar officer who made the rejection of the marriage is authorized to make a decision, by submitting a certificate of rejection as mentioned above." However, since the enactment of Law No. 23 of 2006 concerning Population Administration, the legal gaps that allow couples of different religious beliefs to validate and register their marriages have widened. This is because in Article 35 letter (a) of the Population Administration Law, it is stated that "marriage registration as intended in Article 34 also applies to a marriage validated by the court." Furthermore, the explanation of Article 35 letter (a) confirms that "what is meant by marriage validated by the court is a marriage between people of different religions".

Several district courts in Indonesia have issued decisions considering the 1986 Supreme Court decision and the Population Administration Law. Based on the consideration, they allowed interfaith marriages by providing marriage decrees, which stipulate that interfaith marriages can be recorded by the civil registry office because the job of that office is to document and not to validate.[33] It is noteworthy that in Indonesia, marriage registration is carried out at the religious affairs office for those who are Muslims and at the civil registry office for those who are not Muslims, as stated in Government Regulation No. 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage. Interfaith marriages were validated by several courts in various regions in Indonesia, such as the Surabaya District Court, Tangerang District Court,

[33] Imam Wahyujati, "Pengaturan Perkawinan Beda Agama Di Indonesia," *Aainul Haq: Jurnal Hukum Keluarga Islam* 2, no. 1 (2022): 49–63.

Yogyakarta District Court, South Jakarta District Court and Central Jakarta District Court, due to both juridical and non-juridical reasons.[34]

1. Juridical Reasons for Validation of Interfaith Marriages

First, Article 28 B of the 1945 Constitution clearly states that every person has the right to form a family and produce offspring through a legal marriage. Meanwhile, Article 29 paragraph (2) of the Constitution states that the state guarantees the freedom of every citizen to embrace their own religion and worship according to their religion and beliefs. Thus, everyone receives protection from the state to embrace and practice their religion, so that no one is forced to embrace a religion they do not want. This also includes a prospective husband and wife who have applied to the court for permission to actualize an interfaith marriage.

Article 2 paragraph (1) of the Marriage Law defines marriage as a "physical and spiritual bond," which is not only based on a worldly or horizontal relationship between a pair of people but also involves a vertical relationship with God Almighty. Several judges, through court decisions, have granted the application for permission to carry out interfaith marriages. According to their assessment, the applications submitted to them, which involved the couples maintaining their respective religions, was in accordance with the 1945 Constitution, which indicates that the applicants have the right to marry and form a family and receive all legal consequences emanating from the marriage.

Second, the Universal Declaration of Human Rights (UDHR) was confirmed by the birth of ICCPR (which was ratified through Law Number 12 of 2005) and ICESCR (which was ratified through Law Number 11 of 2005). Article 16 of the UDHR states that men and women who are adults, without being limited by nationality or religion, have the right to marry and form a family; both have the same rights in marriage, both during the marriage and at the time of divorce. It should be remembered that Indonesia has ratified both agreements mentioned above without reservation regarding the articles related to their substance. UHDR has also been accepted as part of customary international law.[35]

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[34] Desimaliati, "Legality of Registration for International Religious Marriage Based on Court Decisions According to Law and Regulations in Indonesia," *Cepalo* 6, no. 2 (November 15, 2022): 77–90, https://doi.org/10.25041/cepalo.v6no2.2704.

[35] European Parliament, "The Universal Declaration of Human Rigjts and Its Relevance for the European Union," 2018, https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATA(2018)628295_EN.pdf; Rossana Deplano, "Is the Universal Declaration of Human Rights

Third, based on Supreme Court Decision Number 1400K/Pdt/1986, Article 8 of the Marriage Law is no longer an obstacle to interfaith marriages, including for Muslim applicants if the person concerned has neglected their religious status. In some cases, before an application for permission for an interfaith marriage is submitted to the court, the Muslim applicant first applies to the civil registry office. This means that the applicant has ignored his religious status because he wants to enter an interfaith marriage. Until now, the Supreme Court decision is often used as a jurisprudential reference for determining the status and permitting interfaith marriages in Indonesia.[36]

Fourth, according to Article 5 and Article 10 of Law Number 48 of 2009 concerning Judicial Power, judges should not reject cases on the grounds that the law does not exist or is unclear. However, as enforcers of law and justice, judges are obliged to study, examine, and understand the law and the sense of justice that exists in the society. This provision mandates that judges must continuously study and recognize legal developments in the society as a source of law and apply the insights gained in making decisions on concrete cases that are being handled.

2. Non-juridical Reasons for Validation of Interfaith Marriages

First, regarding the teleological and sociological aspects, the judges considered the merits of the case. In this regard, the applicants' religious differences were not a prohibition against marriage. The judges' consideration of the petition uses a teleological interpretation. They considered the purpose of marriage and the benefit that it would bring to society.[37] In this context, the difference in the religions of the applicants does not affect the purpose of marriage and does not constitute a prohibition against getting married. In addition, the sociological interpretation shows that establishing a family through marriage while maintaining their respective religions is the human right of the applicants as citizens.[38]

Second, the judges considered the implication of rejecting the request for permission for an interfaith marriage. It would have a negative impact

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Customary International Law? Evidence from an Empirical Study of US Case Law," 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3518106.

[36] Sanjaya, "Interpretation of Interfaith and/or Belief Marriage by Judges."

[37] Irwan Ramadhani and Nahrowi, "Penemuan Hukum Hakim Terhadap Pemberian Izin Pernikahan Beda Agama," *Journal of Law and Family Studies* 5, no. 1 (2023): 35–50, https://doi.org/10.21154/syakhsiyyah.v5i1.6297.

[38] Surabaya District Court Decision Number 916/Pdt.P/2022/PN.Sby (n.d.).

in terms of social life, religion, and positive law. It could cause the affected couple to live in fear, as they would be afraid to live together outside marriage or bear children outside marriage. Then, there is also the issue of "temporary conversion" of one of the partners to the religion of the other partner, with the intention of returning to their original religion after the marriage process is finished. This practice needs to be avoided because its sole aim is to obtain religious approval, which is a requirement for registration by the religious affairs office and the civil registry office.

Some of the arguments used by the courts above are also supported by the opinions of several modern experts outside Indonesia who advocate for new interpretations of the rules of interfaith marriage.[39] Some modern Islamic scholars argue that the nature of modern society warrants a re-evaluation of these rules and that such actions are not prohibited by Islamic law. Muslim women, they argue, should have self-defense options like their male partners. There is a growing argument that some of the rules of the Qur'an address the specific situations in which they were revealed. Dr. Khaleel Mohammed claims that the traditional interpretation of the Koran, which prohibits interfaith marriages for women, is based on the historical assumption that a woman must accept her husband's religion. Dr. Mohammed emphasized that Muslim women today live in a different time and place.[40] By recognizing that women are equal to men, that women have legal rights, and that these rights include placing conditions on marriage, he argues that interfaith marriages can be entered into provided that neither partner wants to be forced to convert to another religion. Dr. Mohammed's ideas are largely based on the changing social conditions of women today. He also noted that in the classical period when there was a consensus prohibiting interfaith marriages for women, there were no laws protecting women's rights.

Similarly, Abdullahi Ahmed An-Na'im, an Islamic family law expert at Emory University, recently noted the impact of modern gender dynamics and argued that "in today's social reality, men are not dominant in the marriage relationship. The rationale of historic rule is no longer valid".[41]

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[39] Johanna Marie Buisson, "Interfaith Marriage for Muslim Women: This Day Are Things Good and Pure Made Lawful Unto You," *CrossCurrents* 66, no. 4 (December 2016): 430–49, https://doi.org/10.1111/cros.12211.

[40] Khaleel Mohammed, "Imam Khaleel Mohammed's Defense of Inter-Faith Marriage," 2012, https://freethinkingstokie.files.wordpress.com/2012/04/eng_bothpages.pdf.

[41] Michelle Boorstein, "Muslims Try to Balance Traditions, U.S. Culture on Path to Marriage," *Washington Post*, May 27, 2008, https://www.washingtonpost.com/wp-

For An-Naim, state power and law has reduced the nature of sharia, whose implementation depends on the personal awareness of Muslims, not state coercion.[42]

Indeed, the problem of unclear law on marriages involving different religious beliefs does not only occur at the level of statutory regulations but also at the level of implementation. This can be seen in various judges' decisions. Some judges opine that interfaith marriages can be carried out, while others hold the opposite opinion. The judgments are not uniform[43] but depend on the level of progressive views of the judges.

The Position of SEMA in Indonesia's Legislation and the Impact of SEMA Number 2 of 2023 on the Independence of Judges

The Supreme Court, one of the institutions established based on the Constitution, is a state institution which has the obligation to promote the protection, promotion, enforcement, and fulfillment of human rights, as stated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The basis for the establishment of the Supreme Court is Law No. 14 of 1985 concerning the Supreme Court as amended by Law No. 5 of 2004 and Law No. 3 of 2009 (hereinafter referred to as Supreme Court Law). The aim of its establishment is to guarantee the equal position of citizens under the law. Efforts are needed to uphold order, justice, truth, and legal certainty to provide protection to the community (consideration letter b).[44] In Indonesia, certain

dyn/content/article/2008/05/26/AR2008052602150.html?hpid=sec-religion; Alex B. Leeman, "Interfaith Marriage in Islam: An Examination of the Legal Theory Behind the Traditional and Reformist Positions," *Indiana Law Journal* 84, no. 2 (2009): 743–71.

42 Abd Allāh Aḥmad Na'īm, *Islamic Family Law in a Changing Global World: A Global Resource Book* (London and New York: Zed Books, 2002).

43 Hukum Online, "Pengadilan Belum Seragam Dalam Memandang Nikah Beda Agama," November 30, 2015, https://www.hukumonline.com/berita/a/pengadilan-belum-seragam-dalam-memandang-nikah-beda-agama-lt565c049ed65ba/.

44 National Commission on Violance Against Woman, "Siaran Pers Komnas Perempuan Perempuan Merespon Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Tentang Petunjuk Bagi Hakim Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar-Umat Yang Berbeda Agama Dan Kepercayaan, Mahkamah Agung Menerbitkan Kebijakan Diskriminatif," July 27, 2023, https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-perempuan-merespon-surat-edaran-mahkamah-

institutions, including the Supreme Court, are given the authority to make regulations; such regulations are recognized and have binding legal force as long as they are ordered by higher legislation or are formed based on authority.[45] In addition, the Supreme Court is given the authority to provide instructions and necessary warnings to courts in all judicial environments,[46] in the form of a Supreme Court Circular Letter (SEMA).

SEMA is a circular from the head of the Supreme Court to all members of the judiciary. It contains guidance on the administration of justice and notifications about certain matters that are considered important and urgent.[47] SEMA is a policy document through which the Supreme Court carries out its supervisory function based on existing developments. This is in line with the provisions of Article 79 of the Supreme Court Law, which stipulates that "the Supreme Court may set forth further matters necessary for the smooth administration of justice if there are matters that are not sufficiently regulated in this law."

SEMA is classified as a policy regulation (*beleidsregel*). Policy regulations (*beleidsregel, pseudowetgeving, policy rules*) are regulations whose authority and content are not based on statutory regulations, delegations or mandates but are based on the authority arising from the freies ermessen (discretion) attached to state administration to realize a certain goal that is permitted by law.[48] Policy regulations function as part of the operational implementation of government tasks, so they cannot change or deviate from statutory regulations. Policy regulations are a kind of shadow law and are, therefore, referred to as psudo-wetgeving or pseudo-legislation.[49] According to Bagir Manan, policy regulations are not directly legally binding, but contain legal relevance. Policy regulations are aimed at the state administration itself, so those that usually implement them are state agencies or officials. Thus, policy regulations cannot affect society in general.

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agung-nomor-2-tahun-2023-tentang-petunjuk-bagi-hakim-dalam-mengadili-perkara-permohonan-pencatatan-perkawinan-antar-umat-yang-berbeda-agama-dan-kepercayaan.

45 "The Law of the Republic Indonesia Number 12 Year 2011 on the Establishment of Legislations" (n.d.).

46 "Law of the Republic of Indonesia Number 3 Year 2009 on Supreme Court" (n.d.).

47 Supreme Court of Republic of Indonesia, "The Decree of the Chief Justice of the Republic of Indonesia Number 271/KMA/SK/X/2013 Concerning Guidelines for Policy Formulation of the Supreme Court of the Republic of Indonesia," accessed December 16, 2023, https://jdih.mahkamahagung.go.id/legal-product/57kmaskiv2016/detailm.

48 Ridwan, *Diskresi & Tanggung Jawab Pemerintah* (Yogyakarta, Indonesia: FH UII Press, 2014).

49 HR Ridwan, *Hukum Administrasi Negara* (Jakarta: Rajawali Press, 2011).

Regarding its supervisory function, even though the Supreme Court has the authority to give instructions and warnings to all courts under it, such legal product must not reduce the freedom of judges in examining and deciding cases.[50] This means that SEMA should be used for the internal processes of the justice system.[51] However, in practice, SEMA often has the effect of creating new legal norms, which should be outside the scope of the Supreme Court as a judicial body,[52] for example SEMA Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages between People of Different Religious Beliefs, which is explained as follows.

SEMA Number 2 of 2023, which is aimed at uniformity in court decisions, is certainly not consistent with the functional independence of judges in issuing decisions. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia gives judges the constitutional right to freely adjudicate on cases, including requests for registration of interfaith marriages. The SEMA above can be seen as a form of intervention from within the judicial system itself. This is because the regulatory authority given to the Supreme Court relates to procedural law, not substantive law. The SEMA which is the object of discussion in this article is related to substantive law, which the Supreme Court should not be able to alter, whether the alteration is in the form of a circular or a regulation. From the following statements of SEMA No. 2 of 2023, it is clear that the SEMA is related to substance of the issue: (a) "A valid marriage is one carried out according to the laws of each religious belief, in accordance with Article 2 paragraph 1 and Article 8 letter f of Law Number 1 of 1974 concerning Marriage." (b) "The Court should not grant requests for registration of marriages between people of different religious beliefs". This means that SEMA, which is usually only related to technical matters of court processes, has targeted the substance of citizens' rights, by asking judges to decide cases in a particular way.

This circular letter instructing judges not to grant requests for registration of interfaith marriages is contrary to the principles of administering

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[50] Article 32 paragraph (5) of "Law of the Republic of Indonesia Number 48 of 2009 Concerning Judicial Power and Law Number 14 of 1985 Concerning Supreme Court as Last Amended by Law Number 3 of 2009 Concerning the Second Amendment to Law Number 14 of 1985" (n.d.).

[51] Ady Thea Dian Achmad, "8 Catatan Setara Institute Terhadap SEMA Perkawinan Beda Agama," July 2023, https://www.hukumonline.com/berita/a/8-catatan-setara-institute-terhadap-sema-perkawinan-beda-agama-lt64b91fd23ec6c/.

[52] Maqdir Ismail & Partners, "Mahkamah Agung – Badan Legislatif Ke-Empat Di Indonesia?," accessed December 17, 2023, https://mip-law.com/mahkamah-agung-badan-legislatif-ke-empat-di-indonesia/.

judicial power, as stipulated in Article 4 of Law Number 48 of 2009 concerning Judicial Power. The circular letter also goes against the principle of non-discrimination and the concept of overcoming all obstacles to achieve simple justice. Further, the letter prevents judges from fulfilling their obligations to explore, follow and understand the legal values and sense of justice that exist in society. Prof. Satjipto Rahardjo, in his progressive legal theory, stated that the law was made for humans, not humans for the law.[53] This means that progressive law requires the courage of legal officials to interpret the provisions of the law in a way that civilizes the nation. The law should be able to keep up with the times, respond to changes in the times and serve society by relying on the moral aspects of the human resources of law enforcement itself.[54] Law enforcers are at the forefront of change.[55] Human interests (their welfare and happiness) are the point of orientation and goal of law. And what we want to look for in interpreting the law is not justice based on the text but a deeper meaning, namely social justice or substantive justice.[56] Regarding the SEMA issue above, judges must have progressive insights and the ability and activeness to discover the law (Recht vinding),[57] since the legal basis used by judges in their work is Law Number 48 of 2009 concerning Judicial Power.

Based on the explanation above, the Supreme Court went beyond its authority of regulatory matters in the following ways: First, by providing an interpretation regarding the invalidity of inter-religious marriages even though, at present, there are no firm regulations regarding the prohibition of inter-religious marriages, and they are even permitted according to the Population Administration Law. Second, by ordering the lower courts not to grant requests for registration of inter-religious marriages. Based on this, the SEMA in question is nonbinding, both legally and morally, on judges under the Supreme Court. This is because, based on the law on judicial power,[58] judges are obliged to explore, follow, and understand the legal values and sense of justice that exist

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[53] Satjipto Rahardjo, *Biarkan Hukum Mengalir* (Jakarta: Kompas, 2007).

[54] Rahardjo.

[55] Sudijono Sastroatmojo, "Konfigurasi Hukum Porgresif," *Jurnal Ilmu Hukum* 8, no. 2 (2005): 185–201.

[56] Anthon Freddy Susanto, *Semiotika Hukum Dari Dekonstruksi Teks Menuju Progresivitas Makna* (Bandung: Refika Aditama, 2005).

[57] The Ministry of Law and Human Rights of the Republic of Indonesia, "Penemuan Hukum Oleh Hakim (Rechtvinding)," accessed December 17, 2023, https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=849:penemuan-hukum-oleh-hakim-rechtvinding&catid=108&Itemid=161&lang=en.

[58] Article 5 paragraph (1) of "Law of the Republic of Indonesia Number 48 of Year 2009 on Judicial Authority" (2009).

in society. The obligation to explore the values of law and justice implies that judges must mobilize the power of their minds to formulate justice, especially in cases where there is no or unclear legal basis.

The SEMA in question creates new legal norms that have a direct impact on the rights and obligations of citizens, so it is no longer within the scope of the Supreme Court's authority to give instructions and warning that are necessary for the smooth administration of justice. Moreover, regulations issued by the Supreme Court must be distinguished from regulations drafted by legislators. The aspect of administration of justice that is within the purview of the Supreme Court is procedural law, and the Supreme Court should not interfere with regulations regarding the rights and obligations of citizens in general, neither should they regulate the nature, strength, means of evidence and the assessment or distribution of the burden of proof. It is clear from the explanation of Article 79 of the Supreme Court Law that the authority given to the Supreme Court is to take decisions regarding matters that are necessary for the smooth administration of justice. This authority should only be administrative or related to the implementation of procedural law; it should apply only internally to the judicial institution.

The authority to decide whether to accept or reject a case should be left entirely to the judge who hears it. On that basis, judges are not bound by the SEMA in question because, in principle, SEMA is not a regulation but a guideline or direction. Although judges can disregard SEMA, as there are no strict written sanctions for those who do not follow it, some experts say it will give judges who do not follow it a bad record. Apart from that, the existence of SEMA is a challenge to judges in carrying out their duties in accordance with the principles regulated in Law Number 48 of 2009 concerning Judicial Power, which obliges judges to handle, decide, and even discover the law. On this basis, quite a number of parties have asked the Supreme Court to revoke SEMA Number 2 of 2023,[59] because its decision to prohibit interfaith marriages clearly overstepped the law that was used as the basis for the SEMA. Moreover, the

[59] Dewi Yugi Arti, "Pusat Studi Pluralisme Hukum FH UNAIR Keluarkan Rilis Tentang Perkawinan Beda Agama," *Center for Legal Pluralism Studies, Faculty of Law, Airlangga University*, October 6, 2023, https://fh.unair.ac.id/pusat-studi-pluralisme-hukum-fh-unair-keluarkan-rilis-tentang-perkawinan-beda-agama/; National Commission on Violance Against Woman, "Siaran Pers Komnas Perempuan Perempuan Merespon Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Tentang Petunjuk Bagi Hakim Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar-Umat Yang Berbeda Agama Dan Kepercayaan, Mahkamah Agung Menerbitkan Kebijakan Diskriminatif"; Achmad, "8 Catatan Setara Institute Terhadap SEMA Perkawinan Beda Agama."

SEMA is contrary to the decision made by the Supreme Court itself in 1986,[60] which stated that interfaith marriages were legal in Indonesia by way of validation by the court. In its decision, the panel of judges acknowledged that there was a legal vacuum in the Marriage Law regarding interfaith marriages. The Supreme Court decision is often used as a jurisprudential reference for determining the status and permitting interfaith marriages to this day.

The Impact of SEMA on the Practice of Interfaith Marriage in Indonesia

A strict interpretation of Article 2 paragraph 1 of the Marriage Law would likely conclude that marriage between two parties with different religious beliefs is not permitted. However, some scholars are of the opinion that because the law itself does not address this issue, if the religions of the parties do not prohibit such marriage, then it may be carried out.[61] These differences in interpretation gave rise to the first article of SEMA Number 2 of 2023, whose basis is Law Number 1 of 1974. However, the second article of SEMA Number 2 of 2023 causes a big problem because the marriages of people of different religious beliefs that are valid according to their respective beliefs cannot be registered officially. Marriage registration is basically carried out to protect the parties involved in the marriage. Apart from ensuring smooth administrative processes, the protection of women and children is the main objective of marriage registration.

In practice, the uncertainty regarding the application of the Marriage Law to interfaith marriage has not discouraged such marriage.[62] Marriages between people of different religions are still commonplace, although the legal complexities arising from these marriages are not easy to resolve. Conflicting interpretations of the Marriage Law have caused people involved in interfaith marriages to seek ways to circumvent the law. The methods used to circumvent the law vary, depending on the motivations and intentions of the parties

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[60] Supreme Court of the Republic of Indonesia Decision Nomor 1400K/PDT/1986 (January 20, 1989).

[61] Ratno Lukito, "Trapped Between Legal Unification and Pluralism: The Indonesian Supreme Court's Decision on Interfaith Marriages," in *Muslim-Non-Muslim Marriage: Political And Cultural Contestations In Southeast Asia*, ed. Gavin W. Jones, Chee Heng Leng, and Maznah Mohamad (Singapore: ISEAS, 2009).

[62] Ratno Lukito, "The Enigma of Legal Pluralism in Indonesian Islam: The Case of Interfaith Marriage," *Journal of Islamic Law and Culture* 10, no. 2 (July 2008): 179–91, https://doi.org/10.1080/15288170802236457.

involved in the marriage. Prof. Wahyono Darmabrata, Professor of Civil Law, University of Indonesia, explained that there are some popular methods employed by couples of different religions to ensure that their marriages are recognized by the state and society, namely seeking validation from the court, temporary submission to one religious' law, and marrying abroad.[63] However, with the existence of SEMA No. 2 of 2023, the option of validating an interfaith marriage in Indonesia is no longer viable. The methods that may be used to legalize interfaith marriages after the existence of SEMA are complex, both legally and practically; they are described as follows:

1. The most common way is for a person to change their religion to that of their partner before marriage.[64] For example, for a Muslim-Christian couple who wish to get married according to Islamic law and register the marriage at the religious affairs office, the non-Muslim party would first convert to Islam, with a vow. Likewise, in a situation where one of the couple is a Catholic and the other practices another religion, if they want to marry based on the laws of the Catholic religion, the non-Catholic party has to submit to Catholic religious law to obtain a dispensation from the regional parish. The non-Catholic party registers with the church to receive Catholic religious training for approximately one year, until they receive the marriage dispensation. This method of submitting to religion is usually accompanied by administrative requirements before registration, namely the need to change the religious identity on the Identity Card (KTP). Likewise, adherents of other religions, such as Christians, Hindus, and Buddhists, also use the above method to validate their marriages. For a Buddhist who want to marry a Muslim, one of the parties also changes their religion to their partner's religions. For example, the Buddhist converts to Islam, followed by a change in the religious identity on their KTP; or the Muslim converts to Buddhism, followed by a change in the religious identity on their KTP.[65] Even though this practice occurred before the existence of SEMA No. 2 of 2023, it is bound to become more widespread, since SEMA No. 2 of 2023 has made it very difficult to validate a marriage through a court order.

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[63] Sugeng SP, *Memahami Hukum Perdata Internasional Indonesia, Teori Penyelundupan Hukum* (Jakarta,: Kencana, 2021).

[64] Simon Butt, "Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts," in *Indonesia: Law And Society*, ed. Tim Lindsey, 2nd ed. (Sydney: Federation Press, 2008), 277.

[65] Sri Wahyuni, "Perkawinan Beda Agama Di Indonesia Dan Hak Asasi Manusia," *In Right: Jurnal Agama Dan Hak Azasi Manusia* 1, no. 1 (2011): 131–51, https://doi.org/10.14421/inright.v1i1.1215.

Therefore, for couples of different religious beliefs who want to get married, one of them may be constrained to change their religion to that of their partner, in order to register their marriage. This is contrary to the human rights of citizens (especially religious rights) if the conversion is forced on them by circumstances and not because of their own desire.

In addition, the change of religion is often temporary, and the party involved usually returns to their previous religion after the marriage is legally carried out and registered. The practice of religious conversion is growing again because no harsh punishments are imposed on those who change religion. Although Islamic law punishes apostasy with the death penalty, no former Muslim has ever been executed in Indonesia's modern history. Furthermore, Muslims who have converted to a different religion can enjoy their individual lives freely in legal, social, and political matters.

2. The second way is to marry abroad and then register it in Indonesia.[66] In some countries, such as Singapore[67], government regulations relating to marriage are more legal in nature without any religious elements, while religious matters are personal matters that are not questioned or related to the legality of citizens. From the perspective of Indonesian law, according to Article 56 of the Marriage Law: (1) A marriage solemnized outside Indonesia between two Indonesian citizens, or an Indonesian citizen and a foreign citizen, is valid if it is carried out according to the law in force in the country where the marriage took place and does not violate the provisions of applicable laws in Indonesia. (2) Within 1 (one) year after the husband and wife return to Indonesian territory, proof of their marriage must be registered at the marriage registration office where they live. This means that Indonesian citizens who had an interfaith marriage abroad can register their marriage through the Department of Population and Civil Registry if they fulfill two conditions. First, the marriage must be officially registered and proof of marriage obtained from the competent authority of the country. Second, married couples of different religions should report to the Indonesian representative office in the country where the marriage took place. The Indonesian representative office will then create a document as proof of "reporting of important events abroad". If these two conditions are

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[66] U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report 2009: Indonesia," October 26, 2009, https://2009-2017.state.gov/j/drl/rls/hrrpt/2009/eap/135992.htm.

[67] Abd. Rozak A. Sastra, *Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)* (Jakarta: Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM, 2011), https://www.bphn.go.id/data/documents/pkj-2011-2.pdf.

met, married couples of different religions are required to report to the Department of Population and Civil Registry according to their domicile. After that, the department will issue a certificate reporting that an Indonesian citizen's marriage occurred abroad. Next, the department will change the relevant data on the family cards (KK) and electronic KTPs belonging to the married couple of different religions. Even though it is often done successfully, this option is not ideal because it is unfair and discriminatory. This is because the costs involved are relatively high. In Singapore, for example, the main requirement for marriage is that the persons concerned must stay in Singapore for at least 20 consecutive days, before they can start taking care of administrative issues. This means that not all citizens can afford it.

Considering these issues, KWI and PGI submitted objections to SEMA Number 2 of 2023, especially the second article. They also submitted a request to the Supreme Court to have this SEMA withdrawn and allow the district courts to decide on each application. Alternatively, they requested that the Supreme Court corrects SEMA Number 2 of 2023, especially the second article, according to the considerations above.[68] Their view was that the second article of SEMA Number 2 of 2023 removed the freedom of judges to decide on requests to register marriages between people of different religious beliefs. Further, a marriage between people of different religious beliefs is a reality that is often found in Indonesian society, which has various ethnicities, cultures, races, and religions. Article 2 paragraph 1 of Law Number 1 of 1974 really respects and accepts this difference.

It should be noted that after the publication of SEMA No. 2 of 2023, some courts have validated interfaith marriages, such as the North Jakarta District Court. According to the judge who examined and adjudicated on the case, the interfaith marriage of the prospective couple was still within the scope of one faith. Even though applicant I is a Catholic and applicant II is a Protestant Christian, the marriage between them is not considered an interfaith marriage because they were within the scope of the same faith. Regarding this new decision, the Supreme Court again issued a reminder that Indonesia is not

[68] Paskalis Bruno Syukur and Jacklevyn F. Manuputty, "Tanggapan KWI-PGI Terkait Surat Edaran Mahkamah Agung Tentang Petunjuk Bagi Hakim Dalam Mengadili Permohonan Pencatatan Perkawinan Antar-Umat Berbeda Agama," Agust 2023, https://kabardamai.id/tanggapan-kwi-pgi-terkait-surat-edaran-mahkamah-agung-tentang-petunjuk-bagi-hakim-dalam-mengadili-permohonan-pencatatan-perkawinan-antar-umat-berbeda-agama/.

a secular country, and that the implementation of human rights in Indonesia is different from its implementation in secular countries; in Indonesia, human rights still refer to Pancasila, which is the basic norm for the formation of laws. The first principle of Pancasila is belief in God Almighty.[69]

Conclusion

Supreme Court Circular Letter (SEMA) No. 2 of 2023 concerning Instructions for Judges in Adjudicating Applications for Marriage Registration between People of Different Religious Beliefs is considered as a setback, and it limits the ability of the judiciary to guarantee the rights of citizens from diverse backgrounds. In practice, in carrying out its regulatory function, the Supreme Court is considered to have exceeded the limits of its power as a judicial body and has entered into the implementation of legislative function with the issuance of SEMA No. 2 of 2023. Supporters of the Supreme Court's policy argue that the Supreme Court has been given legal authority by Law No. 12/2011. However, by applying the principle of *lex specialis derogat legi generali*, Law No. 12/2011, which is a general law regarding statutory regulations, has been limited by the Supreme Court Law, which specifically applies to the Supreme Court. The authority given to the Supreme Court in Law no. 12/2011 to form statutory regulations must be read and interpreted by referring to the contents of the Supreme Court Law, which explains more specifically what falls within the scope of the Supreme Court's authority in forming statutory regulations. Some of the legal products of the Supreme Court, especially SEMA, are no longer administrative in nature. In other words, they no longer simply regulate procedural law with the aim of expediting the judicial process. However, as explained above, they already have an impact on the substance of citizens' rights and obligations. Such power should not be exercised by the judicial body.

Therefore, human rights activists and even several judges are of the opinion that inter-religious marriages are sociologically reasonable considering Indonesia's geographical location, the heterogeneity of the Indonesian population and the various religions that are legally recognized as existing in Indonesia. Apart from that, freedom of religion and the right to marry are constitutional rights. Therefore, it would be tragic if interfaith marriage in

[69] Andi Saputra, "PN Jakut Izinkan Nikah Beda Agama Pasca-SEMA, Ini Sikap MA," August 29, 2023, https://news.detik.com/berita/d-6902148/pn-jakut-izinkan-nikah-beda-agama-pasca-sema-ini-sikap-ma.

Indonesia, despite the attempts to neatly structure it through various legal products, such as court decisions, Supreme Court decisions and legal administration, is ultimately harmed by the birth of SEMA No. 2 of 2023. Despite the emergence of this SEMA, there are still several ways for couples of different religions to get married; however, these methods violate the human rights of citizens, are not ideal but discriminatory.

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