Prevention of Registration of Interfaith Marriages Through Sema Number 2 of 2023

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Abstract

Interfaith marriage in Indonesia is still controversial even though Law No. 1/1974 on Marriage explicitly states that marriage must be carried out by the laws of each religion and belief. In practice, cases of interfaith marriage still often occur in the community. Meanwhile, human rights and pluralism activists argue that everyone has the right to form a family, including through interfaith marriage, so the state should not prohibit it. This controversy was reignited when several District Courts granted applications to register interfaith marriages in 2022-2023. In response, the Supreme Court (MA) issued Supreme Court Circular Letter (SEMA) Number 2 of 2023 which essentially prohibits courts throughout Indonesia from granting registration of interfaith marriages. This policy has been appreciated by conservative religious circles, but regretted by human rights activists. They believe that the SEMA has the potential to violate the freedom of religion and family guaranteed by the Constitution. This study aims to analyze SEMA No.2/2023 in managing requests for registration of interfaith marriages The study aims to offer insights into the Supreme Court's policy and the challenges encountered by courts, providing constructive suggestions for future interfaith marriage policies.

Keywords: Interfaith Marriage, SEMA No. 2 of 2023, Supreme Court, Courts, Human Rights

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A. INTRODUCTION

In the development of life today, human rights are one of the important elements adopted by every legal State. Article 1 paragraph (3) of the post-amendment 1945 Constitution states that "Indonesia is a state of law." According to Aristotle, a state of law is a state that stands on laws that guarantee justice to its citizens. An exemplary law is one that emanates from the collective conscience of the community, with the governing authorities embodying impartiality and fairness, while the ruler serves just as the custodian of law and equilibrium.[1]

Human rights are inherent rights bestowed upon individuals from birth by a divine entity. It is important to recognize that these rights do not stem from the government or legal systems, but solely from a higher power who created the universe and everything within it. Therefore, human rights are absolute and cannot be diminished or delegated. Therefore, it is imperative for the state and the law to acknowledge and ensure the safeguarding of human rights.[2]

Constitutional rights refer to the rights that are openly or indirectly protected by the Constitution or fundamental legislation. When certain rights are ensured by the constitution or basic law, they are incorporated into the constitution or basic law, thereby requiring all branches of State power to uphold and honor them. Whether as human rights or citizen rights, the rights set out in the constitution are rights that must not be violated by the government when exercising state power.[3]

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[1] Febri Handayani and Lysa Angrayni, "Implementasi Perlindungan Hak Konstitusional Warga Negara Oleh Mahkamah Konstitusi Menurut Sistem Ketatanegaraan Di Indonesia," *Riau Law Journal* 3, no. 1 (2019): 44.

[2] Rozali Abdullah and Syamsir, *Perkembangan Hak Asasi Manusia Dan Keberadaan Peradilan Hak Asasi Manusia Di Indonesia* (Jambi: Ghalia Indonesia, 2001), p. 10

[3] Herdi Munte and Christo Sumurung Tua Sagala, "Perlindungan Hak Konstitusional Di Indonesia," *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (2021): 183–92.

Human rights in Indonesia's 1945 Constitution are guaranteed as a strong foundation for a just and civilized society, nation, and state. This is reflected in Article 28B paragraph (1) "Everyone has the right to form a family and continue offspring through legal marriage", Article 28E paragraph (1) "Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose a job, choose citizenship, choose a place of residence in the territory of the state and leave it, and has the right to return", and Article 28I paragraph (2) "Everyone has the right to be free from discriminatory treatment on any basis and has the right to protection against discriminatory treatment".

In Indonesia, the safeguarding of Constitutional Rights, such as civil rights, political rights, economic rights, socio-cultural rights, and other guaranteed rights, is accomplished through two mechanisms: the enactment of laws and the pursuit of Constitutional Court challenges at the Constitutional Court.[4]

The fundamental Court, as the exclusive arbiter of the Constitution, has confirmed that the freedom to marry an individual of a different religious affiliation does not infringe upon an individual's fundamental entitlements. The Constitutional Court has at least twice ruled on judicial review applications related to the legality of interfaith marriages and has consistently rejected these applications. In Decision No. 68/PUU-XII/2014, the Constitutional Court expressed its view that citizens in exercising their rights and freedoms, including to marry, must be subject to the limitations imposed by law to fully uphold respect for the rights and freedoms of others based on moral values, religious norms, and the democratic order of community life following the philosophy of Pancasila and the 1945 Constitution of the

[4] *Ibid,* p.188

Republic of Indonesia.[5]

In accordance with Decision Number 24/PUU-XII/2022, the Constitutional Court reaffirmed that the legitimacy of a marriage must be determined by the regulations outlined in Article 2 paragraph (1) of Law Number 1 Year 1974 regarding Marriage, which mandates that marriages be conducted in accordance with religious and belief-based laws. The implementation of this rule does not imply impeding or restricting the right of individuals to practice their own beliefs. Rather, it ensures that all individuals entering into marriage adhere to the guidelines established by their respective religions.[6]

Interfaith marriage is a complicated issue in Indonesia, known for its diverse religious, linguistic, and cultural backgrounds. The complex characteristics of this issue cannot be denied, given the strong intertwining of religion and belief with the lives of Indonesian people. To overcome this problem, Law Number 1 of 1974 concerning Marriage has been implemented and serves as a guideline for the implementation of marriage in Indonesia.

According to Article 2, paragraph 1 of Law Number 1 of 1974 about Marriage, a marriage is considered lawful if it adheres to the religious laws of both parties. This article posits that marriage is a union between individuals who are married and have the same religious convictions. Indonesian marriage law promotes marriages that align with the religious beliefs of the parties.[7]

The issue of interfaith marriage in Indonesia has long generated

[5] M. Beni Kurniawan, Dinora Refiasari, and Sri Ayu Ramadhani, "Disparitas Putusan Pengadilan Terkait Legislasi Nikah Beda Agama," *Jurnal Yudisial* 16, no. 3 (2023): 342–60.

[6] *Ibid.*

[7] Cindy Silvy Foresty, "Problem Perlindungan Hukum Terhadap Perkawinan Beda Agama Di Indonesia: Studi UU No 1 Tahun 1974 Serta UU No 39 Tahun 1999 Dan Hukum Islam," *Yudisia* 7, no. 1 (2016): 17–24.

heated debates involving religious leaders and human rights activists with conflicting views. Most religious leaders, especially in Islam, tend to reject and even prohibit the practice of interfaith marriage. This is associated with conservative religious perspectives that maintain that ethical distinctions between people's ideas pose a threat to the integrity of religion.[8]

Marriage, a type of social contact between Indonesian residents, must be strictly governed by the state through positive legislation because Indonesia is a state of law that bases everything on relevant rules, including written and unwritten laws. In the intricate social and legal structure of marriage, people' constitutional rights are frequently a significant consideration, particularly when it comes to interfaith unions.

Meanwhile, human rights activists and pluralist groups strongly support the freedom of everyone to marry a partner of a different religion. According to them, the prohibition of interfaith marriage has the potential to violate the human rights of every individual to freedom of religion and thought, and to form a family according to their choice.[9]

This controversy shows how sensitive and complex interfaith marriage is in Indonesia, where most people follow religions with conservative views. It is necessary to find a common ground so as not to disturb social cohesion while still respecting the plurality of beliefs.

The implementation of legal regulations on interfaith marriage aims to reduce the polemics and controversies that often arise in Indonesian society. Interfaith marriages often spark heated discussions as they sometimes involve laws and regulations that do not harmonize with each other. In

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[8] Siti Nur Fatoni and Iu Rusliana, "Pernikahan Beda Agama Menurut Tokoh Lintas Agama Di Kota Bandung," *Varia Hukum* 1, no. 1 (2019): 95–114.

[9] Petrus Riski, "Aktivis Keberagaman Sesalkan Keluarnya Surat Edaran MA Tentang Pernikahan Beda Agama," VOA Indonesia, 2023, www.voaindonesia.com/a/aktivis-keberagaman-sesalkan-keluarnya-surat-edaran-ma-tentang-pernikahan-beda-agama/7190583.html.

addition, they challenge the beliefs of religious leaders and followers who closely follow their religion and attract the attention of human rights activists who advocate individual freedom and human rights.

In 2022, the issue of interfaith marriage gained attention when the Surabaya District Court approved one such marriage application. In 2023, another case arose in the Central Jakarta District Court involving a marriage between a Christian and a Muslim. Responding to these developments, the Supreme Court issued Supreme Court Circular Letter No. 2 of 2023 explaining that legal marriages must follow the laws of their respective religions and that courts should not approve the registration of marriages between different religions.

This circular aims to provide clarity and uniformity in the application of the law in such cases. Judges and judicial authorities need to follow Supreme Court Circular No. 2 of 2023 to ensure that their actions are in line with internal policy regulations.

At this point, it can be understood that the issue of interfaith marriage remains a dynamic and evolving legal issue in Indonesia, characterized by the complex interplay between religious beliefs, legal regulations, and social norms. Legal regulations regarding interfaith marriage have been established to address the controversies that often arise in a diverse and complex society such as Indonesia. With the issuance of SEMA No. 2 of 2023, the legal landscape has undergone clarification and standardization, yet remains a subject of active debate and discussion in the country. Indonesia's diverse cultural, linguistic, and especially religious landscape makes the issue of interfaith marriage both legally and socially very complex. However, as the nation continues to develop, so does the legal framework and how such issues are dealt with.

Although there are various ways of registering interfaith marriages, in

2023, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 2 of 2023 which guides judges to hear applications for marriage registration between people of different religions and beliefs. The SEMA explained that judges must be guided by Article 2 paragraph (1) and Article 8 letter f of the Marriage Law. This means that the court will not grant the application for registration of marriage between people of different religions.

The issuance of SEMA 2/2023, raises questions about the effectiveness of this regulation in preventing courts from granting registration of interfaith marriages. One possible argument is that this SEMA reinforces the view that interfaith marriages are invalid and cannot be registered in Indonesia.

Some may view this SEMA as restricting individuals' rights to marry someone from a different religion. Therefore, the effectiveness of SEMA 2/2023 in preventing courts from granting registration of interfaith marriages could be the subject of deeper and more comprehensive research.

Based on the description above, the researcher is interested in conducting research with the title: The Effectiveness of SEMA Number 2 of 2023 in Preventing District Courts from Granting Registration of Interfaith Marriages. The formulation of the problem in the research is what is the background of the Supreme Court issuing SEMA Number 2 of 2023 to prohibit the court from granting applications for registration of marriages of different religions? and how is the effectiveness of SEMA Number 2 of 2023 to prevent the court from granting applications for registration of marriages of different religions?

B. RESEARCH METHOD

This research focuses on examining the impact of Supreme Court Circular Letter Number 2 of 2023 on the registration of interfaith marriages

by district courts. This study employs a normative juridical approach complemented by descriptive-analytical empirical methods to analyze the effectiveness of Supreme Court Circular Letter Number 2 of 2023. The researcher will focus on the application of legal rules in registering different marriages through requests for district court decisions. In this research, researchers used a statutory approach and a problem approach to understand the effectiveness of the Circular Letter. So researchers use a problem approach which includes the following:

1. Legislative Approach (Statue Approach)

   In normative research, the legislative approach is very important because the focus is on various legal rules. This approach is used to examine all regulations relating to the legal issue being studied. In practical terms, this approach allows researchers to check the consistency and conformity between the law and other regulations. The results of this study become an argument for solving the issues studied, such as legal regulations regarding procedures for canceling birth certificates in this research. This approach is expected to answer the problem formulation.

2. Case Approach

   In research using a case approach, the judge's decision is used as a source of legal material. Researchers look at the judge's legal reasons (ratio decidendi) in decisions, which have permanent legal force and are primary legal material. Therefore, researchers need to understand the ratio decidendi.

3. Legal Materials

   Legal materials are used to solve legal issues in scientific work and provide prescriptions. Legal material sources are divided into primary and secondary legal materials. Primary legal materials are

authoritative and consist of legislation, official records of law-making, and relevant judge decisions. Secondary legal materials include legal publications such as textbooks, legal dictionaries, journals, and commentaries on court decisions. Researchers can also use non-legal materials that are relevant to the research topic to strengthen arguments, although they are facultative and should not be dominant.

4. Analysis of Legal Materials

Analysis of legal materials is the process of finding answers to legal problems. The steps include:

a. Identify legal facts and determine legal issues.
b. Collect relevant legal and non-legal materials.
c. Examine legal issues based on the material collected.
d. Conclude to answer legal issues.
e. Provide prescriptions based on conclusions.

This analysis uses primary and secondary legal materials from library and field research. The data analysis technique combines qualitative analysis for normative (juridical) aspects, with descriptive analysis methods. Researchers use secondary data (library and legal documents) and can obtain primary data directly from the community or subjects studied.

C. RESULT AND DISCUSSION

1. Background to the enactment of SEMA No. 2 Year 2023

Marriage between individuals from different ethnic, cultural, or religious backgrounds has been a common occurrence in Indonesia since ancient times. According to Samsudin, such marriage relationships existed

even before the Gregorian era. Despite various challenges, the practice of interfaith marriage is still common in Indonesia today.[10]

For example, in 2022 in Semarang, Central Java, an interfaith marriage between a Muslim and a Catholic couple gained public attention. A photo of the wedding was uploaded by Ahmad Nurcholis on his Facebook account. The picture shows the wedding taking place in a church, with the bride wearing a hijab and a white dress. Ahmad Nurcholis explained that initially, the couple did not have the blessing of the bride's family, but finally managed to hold the wedding. According to Ahmad Nurcholis, this is the 1,424th interfaith wedding he has documented. This post sparked debates among netizens on various platforms such as Facebook, Twitter, and TikTok, with some supporting and others opposing the interfaith union. Many comments and debates arose regarding the couple's decision, giving room for different views and opinions on interfaith marriage.[11]

Marriage regulations have been regulated in Law Number 1 Year 1974 (hereinafter referred to as UUP) as amended in UUP Number 16 Year 2019 which applies to all Indonesian people or residents. Regarding interfaith marriage, no provision expressly prohibits it in the UUP. Article 2 paragraph (1) only states that a marriage is considered valid if it is conducted according to the laws of religion and belief of each partner.

[10] Nurul Mustaqimah, “Fenomena Komunikasi Dalam Pernikahan Beda Agama Di Kota Pekanbaru,” *Jom FISIP* 2 (2015): 1–10.

[11] Muhammad Fahrur Safi’i, “Viral Pernikahan Pasangan Beda Agama, Ini 5 Potretnya Saat Pemberkatan Di Gereja,” Hot Liputan6.com, 2022, https://www.liputan6.com/hot/read/4906691/viral-pernikahan-pasangan-%0Abeda-agama-ini-5-potretnya-saat-pemberkatan-di-gereja.

Article 2 paragraph (2) then stipulates that every marriage must be registered by applicable regulations.[12]

With the implementation of Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, the state indirectly delegates the validation of marriages to the laws of each religion recognized by the state, including Islam, Christianity, Hinduism, Catholicism, Buddhism, and Confucianism. From the perspective of these religious laws in Indonesia, none explicitly permits interfaith marriages. Nevertheless, this does not imply that interfaith marriages do not occur in Indonesia. The practice persists due to varying interpretations of Articles 1 and 2 of the Marriage Law, and such marriages can proceed if specifically sanctioned by a court ruling.[13]

The official interpretation of the Marriage Law (UUP) recognizes a marriage as valid only if it is conducted according to the teachings and beliefs of the same religion for both partners, as stated in Article 2 Paragraph (1), and if the marriage is registered in accordance with applicable regulations, as stipulated in Article 2 Paragraph (2). Both aspects must be fulfilled for a marriage to be legally recognized under the Marriage Law. Consequently, a marriage that is religiously valid but not officially registered by the state lacks legal force according to the provisions of the Marriage Law, and similarly, if a marriage is invalid, it cannot be registered.

Since the enactment of Law No. 23/2006 on Population Administration (hereinafter referred to as Aminduk Law) which was later revised into Law No. 24/2013 Article 35 letter a provides an opportunity

[12] Law Number 1 of 1974 concerning Marriage

[13] Muhammad Romli, Nurul Huda, and Aspandi Aspandi, "Pencatatan Perkawinan Beda Agama Di Indonesia," *Al- 'Adalah Jurnal Syariah Dan Hukum Islam* 7, no. 2 (2022): 377–405.

for interfaith marriages, the article states that marriage registration as stipulated in Article 34 also applies to marriages decided by judicial institutions. Marriage decided by the court in the explanation of the article refers to marriage between people of different religions.

Article 35(a) of the Adminduk Law allows couples of different religions to marry. If the Religious Affairs Office and Civil Registry Office reject the marriage registration, the couple can seek permission from the District Court for an interfaith marriage. If the court grants a decree for an interfaith marriage (PBA), the Civil Registry Office has no further reason for the marriage to be recorded.

In the interpretation of Article 2, Paragraph 1 of the Marriage Law, the legitimacy of a marriage is determined by the legal provisions of the individuals' respective religions or beliefs. However, Article 35 letter (a) of the Adminduk Law opens up the possibility of interfaith marriages. This creates a conflict between the two regulations. Although the Marriage Law does not implicitly prohibit interfaith marriage, the Adminduk Law allows it. This ambiguity occurs because the UUP is not strict in regulating interfaith marriages, on the other hand, since the existence of Article 35 letter a, a legal disparity has emerged in the decision. Judges who grant PBA registration applications take refuge behind the Adminduk Law while judges who refuse take refuge in the UUP.

However, for those opposed to interfaith marriage, judicial decisions that approve or legalize such unions are viewed not as solutions but as detrimental precedents for Indonesian marriage law, as they do not align with Article 2 of the prevailing Marriage Law.[14]

[14] Diah Marla Pitaloka, Benny Djaja, And Maman Sudirman, "Larangan Perkawinan Beda Agama Menurut Mahkamah Agung Dalam Sema Nomor 2 Tahun 2023," *Yustitia* 18, no. 1 (2024): 57–63.

Various district courts in Indonesia have sanctioned numerous interfaith marriages, allowing their registration with the civil registry office. For instance, the Surabaya District Court, in its ruling Number 916/Pdt.P/2022/PN.Sby, authorized the registration of interfaith marriages between Muslim and Christian couples at the civil registry office. Similarly, the South Jakarta District Court, in its ruling Number 131/Pdt.P/2021/PN.Jkt.Sel, permitted the registration of interfaith marriages between Muslim and Catholic couples. Additionally, the Yogyakarta District Court, through its ruling Number 378/PDT.P/2022/PN.YYK, has followed suit, among other courts in various regions.

The number of District Court cases that grant applications for interfaith marriages often sparks debates among the community. The issue of interfaith marriage has also been brought to the Constitutional Court several times..

Most recently in 2022, the Constitutional Court rejected the application of E Ramos Patege who tested the constitutionality of Article 2 Paragraph (1) of the Marriage Law. The Indonesian Conference on Religion and Peace recorded 1,425 couples of different religions marrying in Indonesia between 2005 and early March 2022.[15]

Gustav Radbuch argued that the values in law must contain the values of justice, expediency, and legal certainty. Furthermore, according to Jan M. Otto, legal certainty involves the existence of legal regulations that are clear, consistent, easily accessible, issued by the government, and can be applied consistently by various government agencies. In addition,

[15] Susana Rita Kumalasanti, "MA Larang Pengadilan Lakukan Penetapan Perkawinan Beda Agama," Kompas, 2023, https://www.kompas.id/baca/polhuk/2023/07/19/ma-pengadilan-dilarang-lakukan-penetapan-perkawinan-beda-agama.

the majority of citizens must agree on the content of the applied law and judges must be independent in applying these rules without partiality. Finally, judicial decisions must be concretely enforceable.[16]

The purpose of law is to achieve justice, with legal certainty being a key aspect of this goal. This means that it can be said that legal certainty is an integral part of efforts to achieve justice. Legal certainty is achieved through the consistent application of actions, regardless of the individual involved. The existence of legal certainty allows each individual to know or estimate the impact that will arise when performing certain legal actions.[17]

In response to the controversy surrounding interfaith marriages, the Supreme Court issued Circular Letter No. 2 of 2023, prohibiting District Court judges from approving the registration of interfaith marriages. This decision aimed to standardize practices and maintain legal consistency in such cases. However, the issuance of Circular Letter 2 Year 2023 did not stop the pros and cons of interfaith marriages in the community, it increased the pros and cons that existed in the community.

The Supreme Court issued Circular Letter No. 2 of 2023, instructing judges to consider the validity of marriages according to Article 2 paragraph (1) and to reject requests for registration of interfaith marriages, in alignment with Article 8 letter (f) of the Marriage Act. In the circular, judges are instructed to base their decisions on two main provisions: the validity of marriage according to Article 2(1) and the prohibition of granting registration for interfaith marriages according to Article 8(f) of the Marriage Act, namely:

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[16] A. M. Pohan, "Relevansi Keadilan Dan Kepastian Hukum Dalam Politik Hukum Pidana," *Jurnal Hukum Ius Quia Iustum* 25, no. 1 (2018).

[17] Fernando M. Manullang, *Legisme, Legalitas Dan Kepastian Hukum* (Jakarta: Kencana Prenadamedia, 2016).

a. A marriage that is considered valid is conducted following the legal provisions of that religion and belief, according to Article 2(1) and Article 8(f) of the Marriage Act.
b. The application for PBA registration will not be granted by the court.

SEMA emphasizes the validity of marriage when it aligns with Article 2 paragraph (1) of the UUP. In addition, the Supreme Court Circular Letter refers to Article 8 letter (f) of the UUP, this Circular Letter also mandates judges not to accept requests to grant PBA registration.

SEMA No. 2 of 2023 has sparked controversy as it prohibits judges from granting requests for the registration of interfaith marriages. This has led to controversy and heated debate from various groups who positively accept it and those who oppose it. SEMA No.2 of 2023 only refers to Article 2 paragraph 1 and Article 8 letter f of Law No. 1 of 1974 concerning Marriage by ignoring the provisions of Article 35a of Law No. 23 of 2006 concerning Population Administration (Adminduk Law).[18]

The Aminduk Law was established to protect, recognize, and determine the personal and legal status of Indonesian citizens, including regulating marriages between individuals of different religions. This is a form of implementation of the Human Rights Act contained in the 1945 Constitution of the Republic of Indonesia in the Articles: Article 5 paragraph 1, Article 20 paragraphs 1,2 and 4, Article 26, Article 28 D paragraph 4, Article 28 E paragraphs 1 and 2, Article 28 I, Article 29 paragraph 1 and Article 24 paragraphs 1 and 3.[19]

Judges are required to adhere to the Circular Letter to ensure legal consistency and address discrepancies between legal theory and practice

[18] Aurora Vania Crisdi Gonadi and Gunawan Djajaputra, "Analisis Perspektif Pro Kontra Masyarakat Terhadap Penerapan Sema No. 2 Tahun 2023," *UNES Law Review* 6, no. 1 (2023): 2974–88.

[19] *Ibid.*

within the judicial system. These instructions are an explanation or interpretation of the law so that in court practice there is no disparity in providing justice which results in the non-achievement of legal certainty, as one of the basic ideas of law. So if in the judiciary there is disharmony in a matter, the Supreme Court is authorized to make regulations as a complement to fill the shortcomings and can provide justice and legal certainty.

Judges must comply with SEMA because it is an internal policy and according to its function above is to explain the difference between theory and practice in the community. Judges or members of the judiciary who do not comply with SEMA may be subject to sanctions in the form of disciplinary punishment imposed by the Supreme Court Supervisory Board. This is stated in Article 12 paragraph 3 of Law Number 1 Year 1950 concerning the Structure, Powers, and Judicial Procedures of the Supreme Court of Indonesia which reads:

> "(3) The conduct (work) of these courts and the judges of these courts is carefully supervised by the Supreme Court. In the interests of the ministry, the Supreme Court has the right to give such warnings, admonitions, and instructions as it deems necessary and useful to the courts and judges, either by separate letter or by circular letter."

Law No. 1/1974 on Marriage was made to make marriage law in Indonesia more organized and stable. Article 66 of Law Number 1 Year 1974 states:

> "For marriage and everything related to marriage based on this Law, then with the enactment of this Law the provisions stipulated in the Civil Code (Burgelijk Wet Book), the Christian Indonesian Marriage Ordinance (Huwalijks Ordonnantie Christen

Indosiaers: 1933 No. 74) Mixed Marriage Regulations (Reglement op de Gemengdhe Huwelijken. 1898 No. 158), and other regulations governing marriage to the extent that they have been regulated in this Law are declared invalid".

From the above, it is evident that Marriage Law Number 1 of 1974 no longer governs interfaith marriages. Despite the lack of regulation on inter-religious marriages, such unions are still being conducted. This is exemplified by the North Jakarta District Court's decision Number 423/Pdt.P/2023/Pn Jkt.Utr regarding the Implementation of Interfaith Marriages, approved on August 8, 2023. This decision was made following the issuance of SEMA Number 2 of 2023 by the Supreme Court on July 17, 2023. Therefore, the presence of SEMA Number 2 of 2023 does not hinder district court judges from granting permission for interfaith couples to marry.

2. The Effectiveness of SEMA No. 2 of 2023 in Preventing Courts from Granting Requests for Registration of Non-Religious Marriages

Legal effectiveness emphasizes that every rule of law has, ideals, expectations, and a teleological framework that is expected not **only** to regulate society but also to guide society to achieve a better life within the framework of the social subsystem.[20] Even so, in determining the effectiveness of law in society there are two views that can generally be classified as restrictive legal effectiveness and extensive legal effectiveness.

Restrictive legal effectiveness refers to a concept where the effectiveness of law is judged solely based on the implementation and impact of laws and regulations within society. As articulated by C.G. Howard and R.S. Mumners, the effectiveness of law in a societal context

[20] YP Sibuea Harris, "Penegakan Hukum Pengaturan Minuman Beralkohol," *Negara Hukum* 7, no. 1 (2016): 127–43.

can only be observed and analyzed through positive legal products, specifically laws and regulations. Since this perspective focuses exclusively on the effectiveness of positive law in the form of legislation, Howard and Mumners' ideas can be considered a restrictive examination of legal effectiveness, as they limit the understanding and scope of law to positive law or legislation.

C.G. Howard and R.S. Mumners provide 10 analytical bases for assessing the effectiveness of laws and regulations in society, including:[21]

a. The relevance of law and regulation to the needs of society. A law is deemed effective if it reflects the crystallization of the community's wishes and needs;
b. Firm and clear formulation of laws and regulations so that they can be understood and implemented by the community;
c. Periodic socialization of law and regulation that will apply in the community;
d. Affirmation of the prohibiting nature of the law. This is because the prohibiting nature of the law is easier to implement by the community than the requiring nature of the law;
e. Sanctions of a law and regulation must be firm, clear, and easily understood by the community;
f. The severity of a sanction in laws and regulations must be balanced with the mistake and not contrary to decency in society;
g. Law enforcement institutions are allowed to always enforce and process violations of existing laws and regulations;
h. The existence of moral norms that are obeyed, obeyed, and prevail in society are recognized and applied in laws and regulations;

[21] Muhammad Fadli Fatmawati Rahmat, "Reformulasi Zero Burning Policy Pembukaan Lahan Di Indonesia," *Lesgislasi Indonesia* 13, no. 1 (2016): 85–96.

i. Professionalism of law enforcement officers in processing violations of laws and regulations; and
j. Laws and regulations enacted in the community also need to pay attention to the socio-economic aspects of the local community.

The ten analytical foundations of C.G. Howard and R.S. Mumners for evaluating the effectiveness of legislation can be summarized into four key aspects:

a. Aspects of the institution making laws and regulations. It is necessary to see whether the laws and regulations are under the authority of the institution that makes the laws and regulations and conduct preliminary research and legal socialization of the institution that makes the laws and regulations before the laws and regulations are passed.
b. The substance of laws and regulations, apart from being under the rules of legislation, must not conflict with the decency and morality recognized by the community.
c. Mechanisms or procedures for how the substance of laws and regulations is prepared and passed for the community.
d. The process of formation and preparation of laws and regulations. It is also necessary to see a process of forming and preparing laws and regulations under the mechanisms governing the formation of laws and regulations. If the mechanism for the formation of laws and regulations is deviated from or violated, then there needs to be a suspicion that there are certain parties who are trying to 'smuggle' laws and regulations for the benefit of certain parties.

Supreme Court circulars have become an important pillar in maintaining the effectiveness of the judicial process in the courts. They serve not only as administrative guides but also as instruments that set the

direction and consistency in law enforcement across the country. By setting out the procedures and practical norms to be followed by each court, the circulars ensure that every stage of the judicial process, from the registration of cases to the execution of judgments, is efficient and fair.[22]

Apart from that, circulars also function as a tool to adapt the courts to legal developments and community needs. By issuing periodic revisions and adjustments, the Supreme Court ensures that the courts remain relevant and responsive to changing social, economic, and technological dynamics. More than just guidelines, the Supreme Court's circular reflects a commitment to improving the standards of legal services in Indonesia. By providing clear and standardized guidelines, courts can reduce disparities in law enforcement, minimize controversial decisions, and increase public confidence in the justice system.

SEMA is classified as a policy regulation (beleidsregel). According to Bagir Manan:[23]

> "Policy regulations (*beleidsregel*, *pseudowetgeving*, policy rules) are regulations that are made, both the authority and content of which are not based on statutory regulations, delegations, or mandates but are based on the authority arising from the free ermessen attached to the state administration to realize a certain goal that permitted by law. For example, circulars, operational guidelines, technical guidelines"

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[22] Imam Prabowo S.H, "Paradigma Peraturan Mahkamah Agung: Modern Legal Positivism Theory, Teori Hukum Progresif Dan Urgensi Kodifikasinya," Direktorat Jenderal Badan Peradilan Agama, n.d., https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/paradigma-peraturan-mahkamah-agung-modern-legal-positivism-theory-teori-hukum-progresif-dan-urgensi-kodifikasinya-oleh-imam-prabowo-s-h-19-10.

[23] Ridwan, *Diskresi & Tanggung Jawab Pemerintah* (Yogyakarta: FH UII Press, 2014).

According to Article 7 of Law No.12 of 2011 on the Formation of Legislative Regulations, SEMA (Supreme Court Circular Letter) is not included in the seven types of hierarchical legislative regulations, namely: the 1945 Constitution, MPR Decrees, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations. However, SEMA falls under the other types of statutory regulations mentioned in Article 8 Paragraph (1), which includes regulations stipulated by the Supreme Court. Therefore, SEMA can be classified as a statutory regulation with binding legal force as described in Article 8 Paragraph (2).

In terms of authority, SEMA was formed based on the regulatory authority possessed by the Supreme Court. These regulations are related to other functions, namely administration, advice, supervision, and justice. 15 If you use the Lex Superior Derogat Legi Inferiori principle, SEMA's position in the 7 hierarchy of statutory regulations is below the law, because SEMA was formed by the Supreme Court as a judicial institution and not through the legislative body which has the authority to make laws.[24]

Based on the main points of SEMA, the content of the material is based on articles in the UUP, meaning that marriage issues are returned to the UUP as a rule, especially if it is based on the Lex Specialis Derogat Legi Generalis, then with the inclusion of Article 2 paragraph (1) of the UUP in this SEMA, it reminds to all parties that marriage is a religious domain and the marriage is invalid if it violates religious provisions. Parties who try to practice interfaith marriages have ignored religious teachings in their domestic life and have not fulfilled the ultimate goal of

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[24] Francesca. Bignami et al., "Introduction. A New Field: Comparative Law and Regulation," 2020.

marriage, as the goal of marriage itself is to form a happy and eternal family based on belief in the Almighty God.

The presence of SEMA Number 2 of 2023 has not yet been fully assessed as consistent and aligned with two Constitutional Court (MK) Decisions, namely Decision Number 68/PUU-XII/2014 and Number 24/PUU-XX/2022. In these two decisions, the Constitutional Court judges rejected the material review of Article 2 Paragraph (1) of the Marriage Law. The Constitutional Court maintained its stance that the constitutionality of a valid marriage is conducted according to the respective religion and belief of the couple, and every marriage must be registered according to statutory regulations. The Constitutional Court did not find any changes in circumstances or new developments related to the issue of the constitutionality of the validity and registration of marriages.[25]

The Constitutional Court judges, in their consideration regarding Article 35 of the Population Administration Law (UU Adminduk), stated that marriage registration, including interfaith marriages decided by the court, is an administrative obligation that does not affect the validity of the marriage according to religious law. The Constitutional Court emphasized that the validity of marriage must still refer to Article 2 Paragraph (1) of Law No. 1 of 1974 concerning Marriage, which states that a marriage is considered valid if it is conducted according to the laws of the respective religion and belief of the couple.

On page 630 of Decision Number 24/PUU-XX/2022, the Constitutional Court explained that the state, through the Population Administration Law, only regulates the administrative aspect of marriage registration without assessing the validity of the marriage according to

[25] Asmaa Shehata, *Women's Rights in Islam: A Critique of Nawal El Saadawi's Writing*, *Women's Rights in Islam: A Critique of Nawal El Saadawi's Writing* (De Gruyter, 2023), doi:10.1515/9783111105314.

religion. The Constitutional Court also emphasized that even though the administrative registration of interfaith marriages is recognized, this does not mean the state recognizes the marriage religiously, as the interpretation and recognition of the validity of marriage are left to the competent religious institutions or organizations.

Even though the content of SEMA Number 2 of 2023 contains material content of the law, SEMA itself is located under the law, not equal to or superior to the law. SEMA only applies to the judicial environment. Meanwhile, laws are the highest legal rules under the 1945 Constitution and have binding force on all Indonesian citizens.[26] So SEMA's position with the Administering Law in question is that it is subordinate to it, so it cannot revoke or delete articles in the Administering Law, it can only revoke legal products issued by the Supreme Court, so with the publication of the latest SEMA it automatically revokes Supreme Court Decision Number 1400 K /Pdt/1986.

The binding legal force of SEMA according to Bagir Manan:[27]

> "Not directly legally binding, but contains legal relevance. Policy regulations are aimed at the state administration itself so that the first person to implement these provisions is the state administration body or official. Thus, policy regulations cannot affect society in general".

Therefore, the binding power of SEMA does not apply universally, but internally within the institution. SEMA No.2 of 2023 is directed at the Judicial Bodies under the Supreme Court, which have

[26] Nafiatul Munawaroh, "Apa Itu SEMA Dan Bagaimana Kedudukannya Dalam Hukum?," Hukum Online, 2024.

[27] HR. Ridwan, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2008).

frequently encountered issues with interfaith marriages due to a lack of strict regulation or legal gaps in the Marriage Law. Based on the Population Administration Law as the legal basis for determining marriage permits for different religions, the issuance of SEMA No.2 of 2023 acts as a restriction for judges in handling interfaith marriage cases. Although this SEMA does not automatically nullify articles in the Population Administration Law, judges are bound by this SEMA as state administrative officials who must adhere to and are directly influenced by the policies of the Supreme Court.[28]

The Indonesian judicial system uses the principle of Ius Curia Novit, which requires judges to accept every case or case that enters the court, even though the marriage law is not clear in regulating interfaith marriages. However, it is hoped that judges will not rush to make decisions that legalize interfaith marriages just because they are based on the Population Administration Law Article 35 letter a. But at least, judges must also consider the decision of the Constitutional Court Number 68/PUU-XII/2014 which expressly rejects judicial review, including considering the rules of SEMA Number 2 of 2023. And not only that, but judges should also understand the meaning of the Marriage Law contained in Article 1 of Marriage Law Number 1 of 1974:

> "The inward and outward bond between a man and a woman as husband and wife to form a happy and lasting family (household) based on God Almighty".

A physical bond is a real, formal bond that affects the individual, the family, other people, and society. Marriage, on the other hand, is a

[28] Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (December 2023): 152–72, doi:10.37035/AJH.V19I2.9551.

soul bond formed due to a mutual and sincere desire between a man and a woman to live together as husband and wife. In addition, Pancasila and the 1945 Constitution are the basis of national and national life. Therefore, since marriage is based on the One True God, the family should be established under one God. Marriage should be seen from a spiritual and social point of view, not just from a formal point of view. While the law grants administrative authority to the state to regulate marriage, religion determines the validity of marriage.[29]

From this, the author argues that the judge's decision to legalize interfaith marriage should be annulled for the sake of upholding the constitution of Indonesia. This is because inter-religious marriage is contrary to the Marriage Law, the Compilation of Islamic Law, and even the 1945 Constitution of the Republic of Indonesia. The Indonesian Constitution explicitly opposes marriage between religions. Given that interfaith marriage has unresolved problems.

Thus, SEMA is not only a formal legal rule but also a tool to ensure that justice is maintained in the legal process while minimizing potential conflicts that could arise due to religious differences in a marriage. Equality and fairness in the application of marriage laws is the key to ensuring that all parties involved comply with applicable provisions, while still respecting religious values and religious freedom guaranteed by the constitution.

The Supreme Court as the highest judicial administrator in Indonesia in carrying out its duties has several functions, namely judicial functions, supervisory functions, regulatory functions, administrative

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[29] Ahmad Jamaludin Jambunanda et al., "Marriage Law in Religious Court: Regulation and Decision on Marital Property in Sustainable Legal Development," *Journal of Law and Sustainable Development* 11, no. 10 (October 2023): e1759, doi:10.55908/sdgs.v11i10.1759.

functions, and other functions. This existing function is to overcome the legal vacuum which is often questioned by the Judge and to overcome problems related to the practice of court proceedings.[30]

D. CONCLUSION

The background to the ratification of SEMA Number 2 of 2023 is the controversy regarding interfaith marriages in Indonesia. Even though Law Number 1 of 1974 and the Aminduk Law provide different interpretations, this marriage practice is still common and is often discussed on social media. Supreme Court Circular No. 2 of 2023 regulates that the court may not grant requests for registration of interfaith marriages (PBA) to be registered at the civil registry office. This means that the judge must ensure that the proposed marriage is by the provisions of the religion and beliefs of each couple, as regulated in Article 2 paragraph (1) of the Marriage Law. SEMA is a response to the controversy and debate that has arisen in society regarding interfaith marriages. Even though it does not have a general binding legal force, SEMA aims to guide courts in handling PBA recording applications so that there are no interpretations that conflict with applicable legal principles. This is done to maintain legal certainty and avoid disparities in decisions between different courts. However, this Supreme Court decision does not stop the debate in society regarding the validity of interfaith marriages. Public discussions continue, especially regarding SEMA's implementation of the Population Administration Law which allows the registration of interfaith marriages.

[30] Mohammad Kamil Ardiansyah, "Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 361–84.

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