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Status Quo of Interfaith Marriages in Indonesia after Supreme Court Circular Letter Number 2 of 2023

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Abstract: The trend of interfaith marriages is currently gaining interest in Indonesia. Data shows that by 2022, data on interfaith marriages will total 1425 spouses. The presence of the polemic about interfaith marriages in society has resulted in the government, through the Supreme Court, issuing SEMA 2/2023, which prohibits courts from accepting applications for interfaith marriages. Therefore, it is necessary to know the legality of interfaith marriages after SEMA 2/2023, especially regarding the legal ratio of the issuance of SEMA 2/2023. This study aims to determine the basis for the publication of SEMA 2/2023 and the validity of interfaith marriages after the publication of SEMA 2/2023. The study's novelty is demonstrated by the actuality of regulations published related to interfaith marriages in Indonesia, where previous studies analyzed the legality of interfaith marriages before the publication of SEMA 2/2023. The normative legal writing method is used by several approaches, such as the statutory regulations approach -invitation, case approach, and conceptual approach. The collection of legal materials in this study used literature study techniques. At the same time, the legal material analysis method is the descriptive analytical juridical method. The results show that the basis for preparing the circular letter is intended to guide judges in recording religious marriages in Indonesia. Also, since the circular letter came into force, the courts no longer have the authority to register interfaith marriages held in Indonesia.

Keywords : Marriage; Registration; Supreme Court

Abstrak: Tren perkawinan beda agama saat ini mulai diminati di Indonesia. Data menunjukkan hingga tahun 2022 data perkawinan beda agama berjumlah 1425 mempelai. Hadirnya polemik perkawinan beda agama di masyarakat mengakibatkan pemerintah melalui Mahkamah Agung mengeluarkan SEMA 2/2023 yang melarang Pengadilan untuk menerima permohonan perkawinan beda agama. Oleh karena itu perlu dicermati kembali mengenai legalitas perkawinan beda agama pasca hadirnya SEMA 2/2023, terutama berkaitan dengan ratio legis penerbitan SEMA 2/2023. Tujuan penelitian ini yakni untuk mengetahui landasan penerbitan SEMA 2/2023. serta keabsahan perkawinan beda agama pasca diterbitkannya SEMA 2/2023. Kebaruan penelitian ditunjukkan oleh aktualitas peraturan yang diterbitkan terkait dengan perkawinan beda agama yang terjadi di Indonesia, dimana sebelumnya banyak penelitian yang menganalisis keabsahan perkawinan beda agama sebelum penerbitan SEMA 2/2023. Pada penelitian ini menggunakan metode penulisan hukum normatif, dengan beberapa pendekatan seperti, pendekatan peraturan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Pengumpulan bahan hukum dalam penelitian ini menggunakan

teknik studi kepustakaan. Sedangkan metode analisis bahan hukum yang dilakukan adalah dengan metode deskriptif analitis yuridis. Hasil penelitian menunjukkan bahwa landasan penyusunan surat edaran bertujuan sebagai pedoman bagi hakim dalam pencatatan perkawinan beda agama yang terjadi di Indonesia. Selanjutnya sejak surat edaran mulai diberlakukan, maka pengadilan tidak lagi berwenang melaksanakan pencatatan perkawinan beda agama yang dilaksanakan di Indonesia.

Kata Kunci: Mahkamah Agung; Pencatatan; Perkawinan

INTRODUCTION

Indonesia is a pluralistic country that has various ethnic groups and religions. This diversity produces consequences that result in differences in all aspects, starting from views on life and ways of interacting in society. Each region has characteristics and culture that are different from other regions, so later, it will become a habit that continues to be maintained to this day. This cultural diversity must be distinct from the religious elements believed in by the local area. These traditional beliefs and religions are commonly referred to as indigenous religions. According to John A. Grim's writings, traditional religions often do not originate from world religions such as Islam, Catholicism, Christianity, Hinduism, Buddhism, Judaism, etc. However, in other cases, it has been discovered that these indigenous religions are also heavily influenced by the teachings of world religions and have merged with local beliefs.¹ Thus, every other region certainly has different beliefs..

Indonesia currently recognizes the existence of six religions. The existence of these six religions is based on the juridical basis in Article 1 of the PNPS Law No. 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, which states that "The religions adhered to by the population in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. (Confucius).² Based on it, the government recognizes religions, so when religion is believed by the public outside these six religions, it is considered not an official religion. This religious pluralism is a sign that Indonesia is a tolerant country.

The high level of interaction that occurs in society produces bonds and relationships and even results in marriages. Marriage occurs when two people have agreed to bind to each other, and the marriage must be based on the person's beliefs. So, a marriage must take place based on the religion of the bride and groom. In general, people in Indonesia will hold weddings between couples of the same religion as regulated in the teachings of their respective religions. However, some marriages occur in different religions due to differences in the beliefs held by the groom and the bride. This practice is still being debated regarding its validity in state and religious law. The trend of interfaith marriages in Indonesia is increasing.

Based on the data from the Indonesian Conference on Religion and Peace (ICRP)

¹ Muhammad Dahlan and Airin Liemanto, "Perlindungan Hukum Atas Hak Konstitusional Para Penganut Agama-Agama Lokal Di Indonesia," *Arena Hukum* 10, no. 1 (2017): 22, <https://doi.org/10.21776/ub.arenahukum.2017.01001.2>.

² M. Wildan Humaidi, "Kontestasi Politik Kewargaan Indonesia," *Al-Daulah* 9, no. 1 (2020): 60, http://journal.uin-alauddin.ac.id/index.php/al_daulah/article/download/14146/pdf.

released data on interfaith marriages from 2005 to early March 2022, with a total of 1,425 interfaith couples married in Indonesia.³ Different data based on information on decisions regarding the registration of interfaith marriages obtained from the Supreme Court Decision Directory page, you can find some information related to the number of registrations of interfaith marriages in all state districts in Indonesia from 2005 to 2023 as follows:⁴

Table 1. Data on Registration of Interfaith Marriages in Indonesia 2005-2023

No.	Year	Number of Recordings
1.	2005	1
2.	2006	1
3.	2007	2
4.	2008	2
5.	2009	1
6.	2010	2
7.	2011	10
8.	2012	5
9.	2013	16
10.	2014	22
11.	2015	10
12.	2016	15
13.	2017	7
14.	2018	13
15.	2019	23
16.	2020	13
17.	2021	12
18.	2022	15
19.	2023	12

Source: *Database Pencatatan Perkawinan Beda Agama Mahkamah Agung Republik Indonesia*

This high level of data proves that the practice of interfaith marriage often occurs in Indonesia, especially after 2011. Previously, there were only 1 to 2 registrations of interfaith marriages throughout Indonesia, but in 2011, there were ten registrations of interfaith marriages. The peak number of registrations of interfaith marriages occurred in 2019 when there were 23 registrations of interfaith marriages. Although there was no increase in the number from that year, the difference in data before and after 2010 shows an increase in the number of interfaith marriages. Currently, Indonesia does not have a legal regulation that explicitly regulates issues related to interfaith marriages. Thus, these interfaith couples have to struggle extra hard to obtain the legality of their marriage, whether through illegal or legal

³ Indra Utama Tanjung and Dhiauddin Tanjung, "Undang-Undang Perkawinan Dan Nikah Beda Agama Hukum Islam Dan Hukum Positif," *Jurnal Kewarganegaraan* 6, no. 4 (2022): 6792–6801, [https://download.garuda.kemdikbud.go.id/article.php?article=3035354&val=20674&title=Undang-Undang Perkawinan dan Nikah Beda Agama Hukum Islam dan Hukum Positif](https://download.garuda.kemdikbud.go.id/article.php?article=3035354&val=20674&title=Undang-Undang%20Perkawinan%20dan%20Nikah%20Beda%20Agama%20Hukum%20Islam%20dan%20Hukum%20Positif).

⁴ Mahkamah Agung Republik Indonesia, "Data Perkawinan Beda Agama," Direktori Putusan Mahkamah Agung Republik Indonesia, 2024, [https://putusan3.mahkamahagung.go.id/search.html?q=%22Perkawinan beda agama%22](https://putusan3.mahkamahagung.go.id/search.html?q=%22Perkawinan%20beda%20agama%22).

means. Interfaith couples take several steps, such as having two weddings; for example, in the morning, the bride and groom from different religions hold an Islamic wedding, and then in the afternoon, the bride and groom continue to hold a Christian wedding, or otherwise.⁵

Another way is to pretend to change religion, even though every religion strictly prohibits this method. This fact was conveyed by Ismail Hasani, Research Director of the Setara Institute, in an interview with Kompas.com. In essence, he conveyed that this rule in practice made it possible for couples of different religions to cheat, one of the prospective bride and groom pretending to change religions.⁶ Then, the most common way for interfaith couples to have an interfaith marriage is to get married abroad. These methods are very commonly used to obtain legality in the validity of interfaith marriages. However, this has the consequence that there is a need for explicit regulation regarding this issue so that in the future, there will be no more legal gaps or biases that will confuse society. Interfaith marriages very often violate the provisions of Article 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law). Every Marriage is recorded according to the applicable laws and regulations.

Couples who wish to obtain a valid marriage registration will submit a marriage application to the district court; as reported by Detik.com, EA, and SW requested an interfaith marriage, where the Central Jakarta District Court (hereinafter referred to as the Jakpus District Court) granted the application for an interfaith marriage permit at the end of June 2023. JEA is a Christian, and SW is a Muslim woman.⁷ This case attracted public attention, so interfaith marriages were considered legal because of the Central Jakarta District Court's decision. However, since the Central Jakarta District Court's decision, the government, through the Supreme Court, issued Circular Letter Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs (hereinafter referred to as SEMA 2/2023), which prohibits District Courts to grant requests for interfaith marriages from July 17, 2023.

The issuance of SEMA 2/2023, which essentially prohibits courts from registering interfaith marriages taking place in Indonesia, is an urgency in this study. This prohibition causes legal uncertainty for interfaith marriages taking place in Indonesia, especially for couples who entered into interfaith marriages before the issuance of SEMA 2/2023. However, until the circular took effect, they had yet to register their marriages. It causes the marriage that has taken place to be invalid because it is not registered. Therefore, it is important to know

⁵ CNN Indonesia, "Deretan Pernikahan Beda Agama: Warga Semarang Hingga Stafsus Jokowi," CNN Indonesia.com, 2022, <https://www.cnnindonesia.com/nasional/20220318182241-20-773354/deretan-pernikahan-beda-agama-warga-semarang-hingga-stafsus-jokowi>.

⁶ Andri Donnal Putera, "Akhirnya, Pasangan Beda Agama Yang Menikah Berpura-Pura Pindah Agama...," Kompas.com, 2014, <https://nasional.kompas.com/read/2014/09/05/19180821/.Akhirnya.Pasangan.Beda.Agama.yang.Menikah.Berpura-pura.Pindah.Agama>.

⁷ Dwi Andayani, "Viral Pernikahan Beda Agama Di Semarang, Wamenag: Tidak Tercatat Di KUA," Detik.com, 2022, <https://news.detik.com/berita/d-5975172/viral-pernikahan-beda-agama-di-semarang-wamenag-tidak-tercatat-di-kua>.

the legal considerations in formulating these policies from a policy analysis perspective.

Many previous studies have been written about interfaith marriages, such as the article written by Wiwin entitled *Quo Vadis Perkawinan Beda Agama Di Indonesia*. It examines interfaith marriages from the perspective of human rights and Islamic law. This study explains that there are no firm regulations regarding interfaith marriages in Indonesian law, and this creates legal uncertainty because it must be linked to religious norms/laws.⁸ Furthermore, there is also an article entitled *Fraudulent Marriage Laws on Interfaith Marriages*. The study reveals the phenomenon of interfaith marriages carried out by artists in Indonesia abroad, which are then registered at the Population and Civil Registry Office, which is a form of legal fraud. In this way, interfaith marriages become legal according to Indonesian law.⁹ Apart from that, other study related to different religions was also published by Zulfadhli and Muksalmina, who said that interfaith marriages are not permitted based on Article 2 paragraph (1), of the Marriage Law because they conflict with religious norms, especially the Islamic religion based on Articles 40 and 44 of the Compilation of Islamic Law.¹⁰

Those studies presented examine the legality and practice of legalizing religious marriages before the enactment of SEMA 2/2023. In contrast, this research examines the legality of interfaith marriages based on the SEMA 2/2023 regulations. It is a novelty of the study, which can explain the legal certainty regarding the regulation of interfaith marriages based on SEMA 2/2023 with the prohibition on courts from validating the registration of interfaith marriages taking place in Indonesia. Thus, the description of the legality of interfaith marriages and the regulatory basis for SEMA 2/2023 becomes the object of study, which shows the novelty of this study, which is different from previous studies.

METHOD

This normative legal study focused on the existence of law as a rule that is applied to a society in a country. This type of study describes the existence of the law as a codified rule contained in statutory regulations (law in books), or the law is used as a benchmark for behavior in society. This study was chosen to examine the legality of registering interfaith marriages after the publication of SEMA 2/2023.

Furthermore, there are some types of study approaches as follows;

- a. The legislative approach is carried out by reviewing several laws related to the legal issues being handled.¹¹ The laws used are the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 UUDNRI), the Civil Code (hereinafter

⁸ Wiwin Wiwin, "Quo Vadis Perkawinan Beda Agama Di Indonesia," *JURNAL SULTAN: Riset Hukum Tata Negara* 2, no. 1 (2023): 38–46, <https://doi.org/10.35905/sultanhtn.v2i1.5233>.

⁹ Dany Tri Hutama Hutabarat, Komis Simanjuntak, and Syahransyah Syahransyah, "Pengelabuan Hukum Perkawinan Atas Perkawinan Beda Agama," *Jurnal Ius Constituendum* 7, no. 2 (2022): 321–34, <https://doi.org/10.26623/julr.v4i1.3198>.

¹⁰ Zulfadhli Zulfadhli and Muksalmina Muksalmina, "Legalitas Hukum Perkawinan Beda Agama Di Indonesia," *Jurnal Inovasi Pendidikan* 2, no. 6 (2021): 1851–62, <https://doi.org/10.31857/s013116462104007x>.

¹¹ Yudho Taruno Muryanto, Dona Budi Kharisma, and Anjar Sri Ciptorukmi Nugraheni, "Prospects and Challenges of Islamic Fintech in Indonesia: A Legal Viewpoint," *International Journal of Law and Management* 64, no. 2 (January 1, 2022): 239–52, <https://doi.org/10.1108/IJLMA-07-2021-0162>.

referred to as the Civil Code), Presidential Instruction Number 1 of 1991 about dissemination of the compilation of Islamic law books, Republic of Indonesia Law Number 39 of 1999 concerning Human Rights. (hereinafter referred to as the Human Rights Law), the Universal Declaration of Human Rights or the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) was ratified by the UN General Assembly in 1948. Law Number 12 of 2011 concerning the Establishment of Legislative Regulations -Invitation (hereinafter referred to as the PPP Law), Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), Law Number 23 of 2006 concerning Population Administration (hereinafter referred to as the Population Administration Law), Supreme Court Circulars, Court Decisions, Compilation of Islamic Law, and several other religious regulations regarding interfaith marriages.

- b. Case Approach: The case approach can be carried out by conducting a study of cases related to the legal issues faced which have become court decisions that have permanent legal force.¹² The application of this case is to study the application of legal norms or rules carried out in legal practice. , especially regarding cases that have already been decided. The cases studied by the author were that the Central Jakarta District Court granted the request for an interfaith marriage requested by the Christian JEA applicant to marry SW, a Muslim woman. The Central Jakarta District Court granted the request for interfaith marriage in decision number 155/Pdt.P/2023/PN.Jkt.Pst.
- c. Conceptual Approach: This type of research approach is an approach that departs from the views and doctrines that develop in legal science.¹³ Therefore, studying the doctrines and views in legal science helps the author to find ideas. which gives birth to legal understanding, legal concepts, and legal principles that are relevant to the legal issues being faced.

The collection of legal materials in this study used library research techniques in the form of written legal materials, namely using footnotes, both in the form of direct and indirect quotations obtained through books, journals, and statutory regulations that are appropriate to the legal issue being studied. Meanwhile, the legal material analysis method used is the descriptive analytical juridical method.

¹² Andik Prasetyo, "Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana," *Mizan: Jurnal Ilmu Hukum* 9, no. 1 (2020): 53, <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/1054>.

¹³ Khudzaifah Dimiyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7 (2021): 1–8, <https://doi.org/10.1016/j.heliyon.2021.e07865>.

DISCUSSION

A. Marriage as a Human Rights

Marriage is a legal event that binds two people with various legal consequences. Marriage will bind both people until the end of their lives. Everyone always wants a happy marriage. In Indonesia, marriages are carried out with the trust and confidence of each bride and groom and must be based on the principle of belief in one Almighty God.¹⁴ Marriage is a sacred event and part of worship. Therefore, religious values cannot be separated. Marriage is an implementation of the right to have a family that is declared as a part of Civil and Political Rights, classified as non-derogable rights¹⁵ According to Prof. R., The subject of marriage is a legal relationship between a man and a woman for a long period. Meanwhile, according to Paul Scholten, marriage is an eternal relationship between two people of different sexes, which is recognized by the state.¹⁶

The constitution strictly protects marriage in Indonesia. The basis for this marriage is in the 1945 Constitution of the Republic of Indonesia Article 28B (1), which states that every person forms a family and continues their offspring through a legal marriage. Then Auay (2) states that every child has the right to survival, growth, and development and protection from violence and discrimination." Through the provisions of this article, it can be said that every person has the right to form a family and continue marriage to form offspring, where children born to the couple have the right to protection from violence and discriminatory actions.¹⁷

According to Article 1 and Article 2 of the Marriage Law, marriage is a physical and spiritual bond for a man and woman as husband and wife to form a happy and eternal family (household) based on the Almighty God, where marriages must be registered according to legislative regulations. - valid invitation. Thus, it can be said that a valid marriage is a marriage that complies with religious and state law.¹⁸ For example, if a Muslim couple carries out a marriage, a valid marriage is a marriage that is carried out according to the rules of the Islamic religion. Meanwhile, if viewed from the perspective of state law, a marriage is valid if it complies with religious rules and has been registered at the local Religious Affairs Office (KUA).

Then, according to the provisions of Article 26 of the Civil Code, marriage is only considered a civil relationship. In the Western concept of civil law, marriage is seen as a civil relationship only, meaning that the law only requires it to be registered through civil

¹⁴ Tasya Aurilya and Rudy Hartono, "Tinjauan Yuridis Pembagian Harta Gono-Gini Akibat Perceraian Dalam Perspektif Hukum Perdata (Studi Analisa Putusan Nomor 282 K/Pdt/2014)," *Unes Law Review* 4, no. 4 (2022): 539, <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/1054>.

¹⁵ Putu Eva Ditayani Antari and Dewa Ayu Yeni Asmari, "Legitimation of the Surrogate Mother Agreement on Human Rights Perspective," *Yustisia Jurnal Hukum* 9, no. 2 (2020): 235–36, <https://doi.org/10.20961/yustisia.v9i2.43122>.

¹⁶ Mahadi Abdullah et al., "Analisis Perkawinan Beda Agama Di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya Sema Nomor 2 Tahun 2023," *Jurnal Hukum Dan Kewarganegaraan* 1, no. 4 (2023): 2, <https://doi.org/10.3783/causa.v1i1.571>.

¹⁷ Waro Satul Auliyak, Umi Sumbulah, and Suwandi Suwandi, "Perkawinan Transeksual Perspektif Teori Hak Kodrati," *Jurnal Al-Ijtima'iyah* 8, no. 1 (2022): 24, <https://doi.org/10.22373/al-ijtima'iyah.v8i1.11186>.

¹⁸ Anisah Daeng Tarring, "Perkawinan Beda Agama Dalam Perspektif Hukum Positif Di Indonesia Anisah," *Jurnal Litigasi Amsir* 9, no. 4 (2022): 270, <https://doi.org/10.56799/jceki.v2i1.1180>.

registration and does not require it to take place according to each religion.¹⁹ So, if we refer to the provisions of the Civil Code, couples getting married will be legal even if it is not carried out based on religion.

Marriage in Indonesia must be based on the provisions of the Marriage Law. The Marriage Law contains several principles:[1] a). The eternal principle, where marriage has the aim of forming a happy and eternal family and lasts a lifetime; b) The principle of marriage is based on trust and belief, meaning that marriage is carried out based on religion and is faced with the Almighty Godhead; c) The principle of marriage must be registered, which is by the provisions of Article 2 of the Marriage Law which requires the bride and groom to register their marriage; d) The principle of monogamy, in essence, according to the Marriage Law, marriage is only permitted once (Article 3 paragraph (1)). However, the Marriage Law also recognizes the principle of polygamy as an exception (Article 3 paragraph (2), Article 4 and Article 5); e) The principle does not recognize polyandrous marriage. The Marriage Law does not allow polyandrous marriages, where a woman only has one husband at the same time; f) The principle of balancing the rights and obligations of husband and wife; g) the principle makes it difficult for a divorce to occur.

Those principles guarantee protection for the bride and groom when getting married. Marriage in Indonesia must prioritize the rights and obligations of the couple getting married.

Indonesia is a legal country that upholds human rights. Indonesia ratified the UDHR in 2005, where Article 16 of the UDHR states that:²⁰ a) Men and women who are adults, without restrictions based on differences in race, nationality, or religion, have the right to marry and establish a household. They have the same rights in marriage as long as the marriage lasts and also at the time of divorce; b) Marriage is considered to occur only with the proper consent of the two prospective bride and groom who wish (to get married); c) The family is a natural and fundamental group unit of society and is entitled to protection from society and the State.

Based on the provisions of Article 16 of the UDHR, it means that every country that has ratified it is obliged to permit a marriage based on the consent of both prospective bride and groom. To protect the human rights of brides and grooms, Indonesia has set a minimum age limit for brides and grooms who will get married, namely that men and women have reached the age of 19 years by the provisions of Article 7 paragraph (1) of the Marriage Law. The presence of age regulations shows that Indonesia wants to limit the occurrence of marriages among minors so that it does not violate the child's human rights.

Furthermore, based on human rights, marriage is a significant event in society. There

¹⁹ Yuri Sulisty, Antikowati Antikowati, and Rosita Indrayati, "Pengawasan Pemerintah Terhadap Produk Hukum Daerah (Peraturan Daerah) Melalui Mekanisme Pembatalan Peraturan Daerah Berdasarkan Undang-Undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah," *E-Journal Lentera Hukum* 1, no. 1 (2014): 78, <https://www.neliti.com/publications/26613/pengawasan-pemerintah-terhadap-produk-hukum-daerah-peraturan-daerah-melalui-meka>.

²⁰ Muhammad Habiburrahman, Moh Maskur, and Aini Shalihah, "Problematika Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Tentang Pelarangan Pencatatan Nikah Beda Agama Dalam Perspektif Hak Asasi Manusia," *Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial* 3, no. 2 (2023): 236, <https://jurnalpps.uinsby.ac.id/index.php/sosioyustisia/article/view/550/256>.

are regulations regarding marriage where the state is required to play a role in marriage events, meaning that the state will play a role in legalizing the legal relationship between a man and a woman.²¹ Generally, human rights in Indonesia provide the right to life and for someone to have a family. It is also contained in the Human Rights Law in Indonesia, which explains the freedom to marry and continue offspring, as stated in Article 10 paragraph (1).

An understanding of human rights must also be carried out in the context of humans as social creatures,²² where in their lives, humans are always in contact with other humans. Article 10, paragraph (2) of the Human Rights Law clearly states that a legal marriage can only be carried out with the free will of both parties. A valid marriage is the free will of both parties. In the explanation of Article 10 paragraph (2) of the Human Rights Law, what is meant by free will is a will that is born from pure intentions without coercion, fraud, or pressure of any kind and from anyone on the prospective husband and/or prospective wife.

Hence, the principle of marriage in Indonesia should not violate the human rights of the prospective bride and groom; the state, in this case, is the most important forum for marriage to occur. The state will play a role in legalizing the legal relationship between a man and a woman whereby, by legalizing marriage, the state does not violate the human rights principles contained in international and national human rights instruments.

B. Interfaith Marriage in Indonesia

1974 marked the beginning of the unification of marriage regulations in Indonesia. It was marked by the publication of Law Number 1 of 1974 concerning Marriage. Before the enactment of this law, there were various kinds of regulations regarding marriage in Indonesia. The birth of the Marriage Law is a breath of fresh air that creates uniformity regarding marriage in Indonesia. Based on this marriage law, marriage not only binds civil matters but also binds men and women physically and mentally to form a family based on belief in the Almighty God.

The marriage law changed in 2019, resulting in Law Number 16 of 2019, which changed the age at which women were allowed to marry from 16 to 19. Even though it has been in effect until now and there have been changes to the Marriage Law, there are still problems. The problem is related to interfaith marriages.

The Marriage Law does not explicitly regulate interfaith marriages. The Marriage Law also does not prohibit interfaith marriages. Article 2 of the Marriage Law states in paragraph (1). Marriage is valid if it is carried out according to the laws of each religion and belief. Then paragraph (2). Every marriage is recorded according to applicable laws and regulations. Thus, whether a marriage is valid or not is determined by the religious law of each prospective bride and groom. Meanwhile, the registration of each marriage is a formal administrative

²¹ Yunita Syofyan and Didi Nazmi, "Studi Perbandingan Perkawinan Anak Dalam Hukum Adat Di Indonesia Dan India Ditinjau Dari Perspektif Hak Asasi Manusia," *UNES Journal of Swara Justisia* 6, no. 4 (2023): 396, <https://doi.org/10.31933/ujsj.v6i4.288>.

²² Fanny Priscyllia, "Perkawinan Sejenis Dalam Hukum Kodrat Di Indonesia," *Jatiswara* 37, no. 2 (2022): 158, <https://doi.org/10.29303/jtsw.v37i2.400>.

requirement.²³

The absence of regulations regarding interfaith marriages in Indonesia results in legal uncertainty. Thus, when cases of interfaith marriages occur, the legal status of the Marriage becomes unclear. This interfaith Marriage occurs between a man and a woman of different religions and countries, which results in the mixing of two different regulations regarding the terms and procedures for implementation according to the laws of their respective religions to form a happy family based on God Almighty.²⁴

KHI does not recognize the term marriage between different religions. According to Article 4 of the KHI, Marriage is valid if it is carried out according to Islamic law by Article 2 paragraph (1) of Law Number 1 of 1974 on Marriage. Then, Article 40 letter c KHI confirms that it is prohibited to carry out a marriage between a man and a woman who is not Muslim. Likewise, it is stated in Article 44 of the KHI that a Muslim woman is prohibited from marrying a man who is not Muslim. Apart from that, according to Islam, interfaith marriages are restricted and forbidden (*haram*).²⁵

Interfaith marriages have increased rapidly in Indonesia. Several factors cause interfaith marriages, including:²⁶ a) daily life in society; b) lack of religious education; c) parents' background, which has fewer economic factors; d) freedom in choosing a partner; e) The existence of globalization does not limit the social culture that exists in society.

Several cases show that the trend of interfaith marriages has been going on for a long time in Indonesia. The marriage case between Sabria Kono (Islam) and Rio Febrian (Christian) has officially become husband and wife since February 3, 2010.²⁷ They legalized their marriage and also for traveling. The legal process for marriage in Bangkok is also considered difficult.²⁸ So their marriage is valid and can be legalized in Indonesia because it uses the legal basis of Article 56, paragraph (1) of the Marriage Law, which reads:

"A marriage solemnized outside Indonesia between two Indonesian citizens or between two Indonesian citizens and a foreign citizen is valid if it is carried out by the laws in force in the country where the marriage takes place and for Indonesian citizens it does not violate the provisions of the law. -invite this."

Based on this legal basis, many interfaith marriages occur abroad, and legality is requested in Indonesia. However, historically, interfaith marriages could be registered based

²³ Elfirda Ade Putri, "Keabsahan Perkawinan Berdasarkan Perspektif Hukum Positif Di Indonesia," *Krtha Bhayangkara* 15, no. 1 (2021): 153, <https://doi.org/10.31599/krtha.v15i1.541>.

²⁴ Fitrawati, "Diskursus Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Universalisme Ham Dan Relativisme Budaya," *Juris: Jurnal Ilmiah Syariah* 20, no. 1 (2021): 140, <https://doi.org/10.31958/juris.v20i1.2825>.

²⁵ M. Idris and Ahmad Azmi Perkasa Alam, "Interfaith Marriage Perspective of Fiqh Law and Positive Law," *Nusantara: Journal Of Law Studies* 1, no. 1 (2022): 38, <https://juna.nusantarajournal.com/index.php/juna/article/view/3/15>.

²⁶ Jessica Silfanus, "Perkawinan Beda Agama Secara Alkitabiah Dalam Masyarakat Pluralisme," *The Way Jurnal Teologi Dan Kependidikan* 8, no. 1 (2022): 86–87, <https://doi.org/10.54793/teologi-dan-kependidikan.v8i1.78>.

²⁷ Avilia Mitha Sari, Asmuni Asmuni, and Tengku Erwinsyahbana, "Pembagian Harta Peninggalan Bagi Pasangan Berbeda Agama Setelah Putusnya Perkawinan Karena Kematian," *Legalitas: Jurnal Hukum* 14, no. 1 (2022): 62, <https://doi.org/10.33087/legalitas.v14i1.297>.

²⁸ Juliana Juliana, "Akibat Hukum Perubahan Jenis Kelamin Terhadap Sahnya Perkawinan," *Universitas Borneo Tarakan* (2021), 17, <https://doi.org/10.1080/09638288.2019.1595750%0A>

on the jurisprudence of the Supreme Court ("MA"), namely Supreme Court Decision No. 1400K/PDT/1986, which explains that the Civil Registry Office at that time was permitted to perform marriages between different religions.²⁹ This case started with a marriage with a Muslim female applicant who wanted to register with her Protestant Christian partner.

In addition to these cases, there was also a recent application for an interfaith marriage in Indonesia, where EA and SW applied for an interfaith marriage. The Central Jakarta District Court (hereinafter referred to as the Jakpus District Court) granted the application for an interfaith marriage license at the end of June 2023.³⁰ JEA is a Christian, and SW is a Muslim. This case led some legal scholars to argue that interfaith marriage is allowed in Indonesia due to existing jurisprudence.³¹

The applicant for the registration of marriages of different religions uses the basis of Article 35 of the Civil Registration Law, which states that marriage registration as referred to in Article 34 also applies to a) marriages determined by the Court, b) marriages of foreign nationals conducted in Indonesia at the request of the foreign national concerned.

Explanation of Article 35 Letter A of the Civil Registration Law: what is meant by "Marriage determined by the Court" is marriage between people of different religions.³² The bride and groom always use this basis to apply for marriage registration at the local District Court. Thus, marriages of different religions can be registered through an application at the Court.

C. The Affected of Supreme Court Circular Letter Number 2 of 2023 on Interfaith Marriage in Indonesia

Before the enactment of the Supreme Court Circular Letter Number 2 of 2023, interfaith marriages were considered valid because the marriage could be registered after the District Court granted the application submitted. It happened in decision number 155/Pdt.P/2023/PN.Jkt.Pst., which granted the applicants' request to be able to register religious marriages carried out at the Population and Civil Registration Sub-Department Office of Central Jakarta City. Thus, a marriage carried out interfaith has legality from a state legal perspective. The decision was issued before the enactment of the Supreme Court Circular Letter Number 2 of 2023, where the legal basis used was the jurisprudence of Determination Number 421/Pdt.P/2013/PN. Ska dated August 21, 2013, and Determination Number:

²⁹ Arianto and Muhammad Muhajirin, "Arianto & Muhajirin, Pengakuan Negara Terhadap Perkawinan Beda Agama (Studi Kasus Di Dusun Bangkok Desa Klampisan Kecamatan Kandangan)," *JURIH: Jurnal Ilmu Hukum* 2, no. 1 (2023): 11, <http://jurnal.iaih.ac.id/index.php/JURIH>.

³⁰ Suryono Suryono, Ani Yumarni, and Rizal Syamsul Ma'arif, "Kajian Putusan Pengadilan Negeri Jakarta Utara Nomor 423/Pdt./2023/Pn Jkt.Utr Tentang Pelaksanaan Perawinan Beda Agama Pasca Pemberlakuan Sema Nomor 2 Tahun 2023," *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 09 (2024): 3804, <https://doi.org/10.59141/comserva.v3i09.1144>.

³¹ Muhammad Ihab Ramadhan et al., "Human Rights Protection in Interfaith Marriages: Comparative Study of Indonesia and Singapore," *Rechtenstudent* 4, no. 3 (2023): 242, <https://doi.org/10.35719/rch.v4i3.291>.

³² Ayub Mursalin, "Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia," *Undang Jurnal Hukum* 6, no. 1 (2023): 131–32, <https://doi.org/10.22437/ujh.6.1.113-150>.

3/Pdt.P/2015/PN.Llg, dated February 27, 2015, allowed for marriages with religious rights. The ratio decidendi contained in the decision states that there is and is recognized as included in it the equality of human rights to enter into marriage with fellow citizens, even if they embrace different religions. In addition, the absence of regulations in the form of prohibitions in the Marriage Law regarding interfaith marriages is a basis for argument in granting applications for registration of marriages by interfaith couples. This practice is certainly different from the prohibition on registration of interfaith marriages based on the Supreme Court Circular Letter Number 2 of 2023.

Generally, the norms that apply are religious norms, politeness, decency, and legal norms. Legal norms, for the sociological school of law, are a study that cannot be separated from development. Therefore, legal developments in society will always be dynamic and not static. It means that law is not merely a set of static rules but a reflection that is constantly changing according to the social development of society.³³ With the certainty of these changes, the formulation of legal rules functions as social control, which must provide satisfaction or at least be able to answer various marriage problems in society.

The emergence of the problem of interfaith marriages in Indonesia and the high number of requests in the District Courts has resulted in the government, through the Supreme Court, issuing SEMA 2/2023. The SEMA's contents prohibit the PN from granting requests for interfaith marriages. The issuance of SEMA is intended to ensure that there will be no more Judges in the District Court who 'get around' legal loopholes by granting requests for registration of interfaith marriages.

SEMA is a form of regulation issued by the Supreme Court. SEMA was first formed in 1951; at that time, SEMA was created for judicial control. The contents of SEMA relate to warnings and rebuking necessary and valuable guidance to courts under the Supreme Court. SEMA functions as a legal framework for formal functions. However, SEMA's role in law formation in Indonesia is enormous. Especially creating laws that are responsive to society's sense of justice.³⁴

Circular Letters are essentially unknown in the hierarchy of statutory regulations. According to Article 7 paragraph (1) of the Legislation Law, the types and hierarchy of statutory regulations are stated, namely:³⁵ a) The 1945 Constitution of the Republic of Indonesia; b) Decree of the People's Consultative Assembly; c) Law/Government Regulation instead of Law; d) Government regulations; e) Presidential decree; f) Provincial Regional Regulations; g)Regency/City Regional Regulations.

There is no mention of SEMA in the PPP Law in this article. In this case, SEMA is

³³ Faishal Taufiqurrahman, Efendi Ibnususilo, and Monika Melina, "Pergesaran Penegakan Hukum Yang Positivistik Menuju Ke Penegakan Hukum Yang Progresif," *Journal Equitable* 8, no. 1 (2023): 162, <https://doi.org/10.37859/jeq.v8i1.4450>.

³⁴ Cholida Hanum, "Analisi Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia," *Hukum Dan Masyarakat Madani* 10, no. 2 (2020): 147, <https://regional.kompas.com/read/2019/06/25/13071111/polemik-bireuen-edaran-siswa-wajib->.

³⁵ Vincentius Setyawan, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Nusantara: Journal Of Law Studies* 2, no. 1 (2023): 6, <https://doi.org/10.31078/jk1512>.

categorized as a policy regulation (*beleidsregel*).³⁶ This regulation applies internally to an organization where it must be implemented.

The SEMA object itself will be aimed at Judges, Registrars, Chief Justices, and officials within the judiciary so that it follows the nature of the internal policy rules. Another characteristic of policy regulations is that they are not directly legally binding but have legal relevance. Policy regulations provide opportunities for how a state administrative body exercises governmental authority (*best hiking bevoegdheid*).³⁷ Therefore, it can be said that the publication of SEMA 2 / 2023 will affect every organ in the judiciary. This is different from the previous decision number 155/Pdt.P/2023/PN.Jkt.Pst. which stated that interfaith marriages could be registered after being applied for ratification in the district court. The judge decided it was a form of jurisprudence. In addition, the absence of a formulation prohibiting interfaith marriages and respect for human rights regarding the freedom to marry also contributed to the reasons for the decision.

SEMA 2 / 2023 has resulted in the District Court being prohibited and obliged not to accept applications for registering interfaith marriages. This results in prospective brides and grooms needing help obtaining an interfaith marriage certificate. Thus, the legality of SEMA's presence is as follows. Interfaith marriages performed before the publication of SEMA 2 / 2023 but still need to be submitted for validation and registration to the District Court cannot be considered valid marriages. However, interfaith marriages that have been legalized by the Court and have obtained a marriage certificate before the publication of SEMA 2 / 2023 will still be considered valid.

Implementing SEMA 2 / 2023 is a legal certainty regarding interfaith marriages. However, the government should re-examine permits for interfaith marriages. This is based on ensuring that they do not violate the human rights of each prospective bride and groom or the constitution itself.

CONCLUSION

In conclusion, based on the description that has been presented, the existence of Supreme Court Circular Letter Number 2 of 2023 is the basis and guideline for judges to be able to reject applications for registration of marriages conducted by people of different religions in Indonesia. The main basis for the issuance of this circular letter is to ensure legal certainty and uniformity among judges in deciding applications for the registration of interfaith marriages in the future. Therefore, for Indonesian citizens who carry out interfaith marriages or request the registration of interfaith marriages after the Supreme Court Circular Letter Number 2 of 2023 comes into force, their marriages cannot be registered and are considered invalid under state law.

³⁶ Hanum, "Analisi Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia," 92.

³⁷ Ahmad Faris Zamakhsyari et al., "State Authority and Legal Action: How to Prevent the State Misconduct?," *Law Research Review Quarterly* 6, no. 2 (2020): 189, <https://doi.org/10.15294/lrrq.v6i2.37722>.

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