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Interfaith Marriage After the Issuance of Supreme Court Circular Letter No. 2 of 2023

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ABSTRACT

Religious intermarriage in Indonesia has been a complex issue for a long time, due to the absence of explicit provisions regulating it under Law No. 1 of 1974 on Marriage. This research aims to analyze the legal implications of marriage across faith boundaries before and after the enactment of the Supreme Court Circular Letter (SEMA) No. 2 of 2023, which provides guidelines for judges in handling petitions for cross-religious and interbelief marriage registration. Employing a doctrinal (normative juridical) research method, this study examines relevant legal norms contained in statutory regulations, judicial decisions, and scholarly works. The findings reveal that prior to SEMA No. 2 of 2023, district court judges demonstrated inconsistency in granting or rejecting interfaith marriage applications, resulting in legal uncertainty. The issuance of SEMA No. 2 of 2023 clarifies the judicial stance by directing courts to reject such applications, thereby reinforcing that interfaith marriages are not legally valid under Indonesian law. Consequently, interfaith marriages are not registerable in the civil registry system, leading to significant legal consequences, including the absence of legal recognition for the marriage, uncertainty in marital property rights, and the limitation of a child's civil relationship to the mother. In conclusion, the circular seeks to harmonize legal practice and strengthen the principle of legal certainty in marriage law, although it simultaneously raises debates regarding human rights and religious freedom.

Keywords: *Civil Registration, Interfaith Marriage, Legal Certainty, Marriage Law, Supreme Court Circular Letter*

INTRODUCTION

According to Great Dictionary of the Indonesian Language (KBBI), the term *perkawinan* (marriage) derives from *kawin*, meaning the act of forming a family between two people of opposite sexes through sexual relations.¹ Marriage is thus a formal and sacred bond between a man and a woman who become partners, with the goal of creating a joyful and lasting family based on faith in a Higher Power.² The regulatory law that regulates marriage in Indonesia is primarily stipulated in Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, which specifically regulates the marriages of Indonesian citizens who adhere to Islam.³ According to these regulations, marriage is not just a legal agreement between a man and a woman but also a sacred establishment. Consequently, The legitimacy of a marriage is decided by the religious rules and convictions of the individuals participating. This is clearly articulated in Article 2 of Law No. 1 of 1974 on Marriage, which states:

1. A marriage shall be deemed acceptable if it is performed in accordance with the rules of the particular religion and beliefs of those involved.
2. All marriages must be recorded according to the current laws

Indonesia, as a constitutional state that upholds the national motto *Bhinneka Tunggal Ika* (Unity in Diversity), comprises a population with diverse ethnicities, races, and religions. This sociocultural diversity inevitably leads to the possibility of interfaith, interethnic, and interracial marriages. Interfaith marriage, in particular, has become a recurrent legal and moral issue in Indonesia because it involves complex intersections of law, religion, culture, and social values. The issue often provokes anxiety among religious leaders and adherents, as it may be perceived to contradict theological doctrines and religious norms.

The implementation of interfaith marriage remains legally contentious because Law No. 1 of 1974 on Marriage does not clearly specify rules or prohibit such unions, giving rise to multiple interpretations. Since the law recognizes religious doctrines as the foundation for marital validity, it provides no explicit legal framework addressing marriages between adherents of different faiths.⁴ This legal

¹ Siti Halilah and Fakhrurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *Jurnal Hukum Tata Negara* 4, no. 2 (2021): 56–65, <https://ejournal.an-nadwah.ac.id/index.php/siyasah/article/view/334>.

² Republik Indonesia, *Pasal 1 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, 1974.

³ Moch. Muhibbin and Dr. Irwan Triadi, "The Constitutional Court's Decision on the Amendment of Law No. 1/1974 on Marriage," *Journal of Court and Justice* 2, no. 3 (September 15, 2023): 28–40, <https://journal.jfpublisher.com/index.php/jcj/article/view/377>.

⁴ Elia Juan Markus, Rr Ani Wijayati, and L Elly AM Pandiangan, "Analisis Pelaksanaan Perkawinan Beda Agama Di Indonesia," *Jurnal Hukum to-ra : Hukum Untuk Mengatur dan Melindungi Masyarakat* 9, no. 1 (April 18, 2023): 24–37, <https://ejournal.fhuki.id/index.php/tora/article/view/194>.

vacuum has encouraged diverse interpretations, further complicated by the enactment of Article 35(a) of Law No. 24 of 2013 on Population Administration, which stipulates that legal marriages approved by a judge can consist of those taking place between people of varying religions and beliefs. Consequently, this provision has been used by judges as a legal basis to grant applications for the interfaith registration of marriage.⁵

Given the increasing number of interfaith marriages legalized by District Courts, the Supreme Court of Indonesia, as the highest judicial authority, deemed it necessary to clarify its stance to ensure legal certainty and fairness. In July 2023, the Supreme Court issued Circular Letter No. 2 of 2023 concerning Guidelines for Judges in Adjudicating Applications for the Registration of Marriages Between Individuals of Different Religions and Beliefs. The circular explicitly states that:

1. A legitimate marriage is one that follows the rules of the religions and beliefs of both individuals involved, as provided in Article 2(1) and Article 8(f) of Law No. 1 of 1974 on Marriage; and
2. Courts shall not approve requests to officially record marriages between people of different faiths and beliefs.

The issuance of SEMA No. 2 of 2023 has significant legal and social implications. Legally, it raises questions concerning human rights, freedom of religion, and legal protection for interfaith couples. Socially, it may influence interreligious relations, tolerance, and social harmony within Indonesian society. Since the circular is an internal directive of the Supreme Court, binding only within the judiciary, it raises an important legal question: whether district court decisions denying interfaith marriage applications are final and binding on the public, considering that circular letters do not possess the same normative authority as statutes or regulations under the hierarchy established by Law No. 12 of 2011 on the Formation of Laws and Regulations.

The legal ambiguity surrounding interfaith marriage in Indonesia therefore raises two central research problems. First, how is the legal framework governing interfaith marriage defined within Indonesia's current legal system? This question is crucial to understanding the extent to which existing laws, particularly Law No. 1 of 1974 on Marriage and Law No. 24 of 2013 on Population Administration, provide clear or conflicting guidance on the validity of marriages between adherents of different religions. Second, what are the legal and social implications of the Supreme Court Circular Letter (SEMA) No. 2 of 2023, both prior to and following its enactment? This inquiry seeks to examine how the circular has affected judicial

⁵ Bintang Ulya Kharisma, "Surat Edaran Mahkamah Agung (SEMA) No. 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama?," *Journal of Sciencetech Research and Development* 5, no. 1 (June 29, 2023): 477–482, <https://idm.or.id/JSCR/index.php/JSCR/article/view/164>.

practices, legal certainty, and the protection of individual rights, as well as its broader impact on religious tolerance and social cohesion in Indonesia.

RESEARCH METHODOLOGY

This study adopts a doctrinal legal research approach, also known as normative juridical research. The method focuses on examining and analyzing legal norms contained in statutory regulations (*laws in books*) and relating them to the legal issues arising from the enactment of the Supreme Court Circular Letter (SEMA) No. 2 of 2023. The analysis centers on how this circular offers legal advice for judges in when dealing with requests to register different religion marriages in Indonesia

The legal documents involved in this study fall into three groups. The primary legal materials include binding legal instruments such as Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage. The secondary legal materials consist of scholarly sources that clarify and interpret the primary laws, including academic writings, books, research findings, articles, and journal publications regarding marriages between individuals of different religions in Indonesia. The tertiary legal materials serve as supporting references that provide definitions and explanations of legal terminology, such as the *Kamus Hukum* (Law Dictionary) and the Great Dictionary of the Indonesian Language (KBBI).

RESULT AND DISCUSSION

Theory of Human Rights Protection in Lawful and Free Marriage

Philipus M. Hadjon defines legal protection as an act or measure undertaken through legal mechanisms to safeguard legal subjects, including people or organizations.⁶ Within every system that aspires to uphold justice and order, civil rights are recognized as intrinsic to citizenship. These civil rights are closely linked to the principle of individual freedom.

The state often assumes a regulatory role in controlling, restricting, or even prohibiting certain aspects of civil freedom through governmental authority. Civil liberties associated with religious values and governed by religious laws are frequently intertwined with the state's power to regulate social life. For instance, the right to choose one's spouse should be recognized as a form of personal liberty guaranteed by the state. In practice, however, the state imposes limitations on this right, particularly regarding marriage between individuals of the same sex or between adherents of different religions and beliefs.⁷

⁶ Philipus M Hadjon, *Perlindungan Hukum* (Yogyakarta: Gadjah Mada University Press, 2012).

⁷ A.V. Chizhikova and I.S. Kulikovskaya, "Problems of Ensuring and Effective Legal Regulation in the Field of Human Rights Protection in the International Law," ed. E.Yu.

In principle, the state should not prohibit its citizens from marrying individuals of different religions or beliefs, as such marriages fall within the sphere of personal freedom to choose a life partner. Interfaith marriage also reflects the reality of Indonesia's pluralism in religion, ethnicity, and race. Therefore, prohibiting such unions contradicts the nation's pluralistic identity. As previously discussed, the realization of human rights cannot be achieved without the existence of positive laws that recognize and protect those rights.⁸⁹

Although interfaith marriage is acknowledged under the principles of human rights, these rights lose their substantive meaning when the government refuses to recognize or register such marriages administratively. While the state does not explicitly prohibit interfaith marriage, it indirectly restricts it for the sake of legal unification and administrative efficiency. This approach indicates that administrative considerations have been prioritized over the protection of individual freedoms guaranteed by human rights law.¹⁰

Consequently, the rejection of marriage across faith boundaries, both in practice and in administrative registration, constitutes a violation of fundamental human rights, particularly the rights to religion and to family life, which are civil entitlements inherent to every individual. This principle is enshrined in Article 22(1) of Law No. 39 of 1999 on Human Rights, which states that *"every person is free to embrace his or her religion and to worship according to that religion and belief."* Moreover, Article 10(1) further emphasizes that *"every person has the right to form a family and to continue his or her lineage through a lawful marriage."*

As a country dedicated to promoting human rights for the welfare of its people, Indonesia is obliged to respect and protect these freedoms, as mandated by Articles 10(1) and 22(1) of the Law No. 39 of 1999 on Human Rights, as well as by the Constitution of the Republic of Indonesia of 1945. Thus, the decision to marry represents an expression of individual autonomy and free will between prospective spouses. The responsibility for maintaining religious beliefs within the marriage lies with the couple themselves. Such arrangements do not conflict with the provisions of the Human Rights Law or the 1945 Constitution.

Human rights, as inherent and inalienable attributes of every human being, must be respected and protected to realize the fundamental values of humanity

Malushko, L.N. Rebrina, and S. Cindori, *SHS Web of Conferences* 164 (May 11, 2023): 00088, <https://www.shs-conferences.org/10.1051/shsconf/202316400088>.

⁸ Fransiska Widyawati, "Menilik Pembatasan Kebebasan Beragama Dan Berkeyakinan Dalam Perkawinan Beda Agama Di Indonesia," *Jurnal Ledalero* 22, no. 2 (December 23, 2023): 186, <http://ejurnal.iftkledalero.ac.id/index.php/JLe/article/view/378>.

⁹ Khalifa Priseliya and Siti Ngaisah, "The Age Dispensation for Marriage in Sidoarjo Religious Court: Research on 2022," *Journal of Court and Justice* 2, no. 2 (August 16, 2023): 52–62, <https://journal.jfpublisher.com/index.php/jcj/article/view/365>.

¹⁰ Muhammad Faisal Hamdani et al., "The Legal and Human Rights Challenges of Interfaith Marriage in Indonesia," *Journal of Law and Sustainable Development* 11, no. 12 (December 14, 2023): e1020, <https://ojs.journalsdg.org/jlss/article/view/1020>.

endowed by God. Therefore, no individual, institution, or governmental authority has the legitimate power to disregard or infringe upon these rights.

Interfaith Marriage under Law No. 1 of 1974 on Marriage

Historically, the enactment of Law No. 1 of 1974 on Marriage was influenced by significant political dynamics. This law represents one of Indonesia's major national legal reforms in the area of family and marriage law. As a legal guideline for judges in examining and deciding marital cases in judicial institutions, It was anticipated to offer a solid legal structure and contribute to the regulation of marriage for Indonesian society.

The law, however, does not provide a detailed or explicit regulation regarding interfaith marriage in Indonesia. Article 1 of Law No. 1 of 1974 on Marriage allows for several interpretations, as outlined below:

1. In the Republic of Indonesia, no "Marriage Law" shall exist or be applied if it contradicts Islamic principles for Muslims, Christian principles for Christians, Hindu principles for Hindus, Buddhist moral values for Buddhists, or the teachings of Confucianism for followers of Confucianism.
2. The Indonesian state is obliged to implement Islamic marriage law for Muslims, Christian marriage law for Christians, Hindu marriage law for Hindus, Buddhist marriage law for Buddhists, and Confucian marriage law for followers of Confucianism, insofar as the implementation of such marriage laws requires the assistance or mediation of state authority.

To establish a clear legal position on interfaith marriage, the Supreme Court of Indonesia, in its decision dated January 20, 1989, Decision No. 1400 K/Pdt/1986, ruled that Law No. 1 of 1974 does not explicitly prohibit interfaith marriages. The panel of judges reasoned that under Article 27 of the 1945 Constitution of the Republic of Indonesia, all citizens are equal before the law, including the fundamental right to marry fellow citizens regardless of religious or belief differences.

Applying the legal principle *lex superior derogat legi inferiori*, the Supreme Court affirmed that Article 27 of the 1945 Constitution holds greater authority than Article 8(f) of Law No. 1 of 1974 on Marriage, in light of the petitioner's rational justification for wishing to marry before the civil registry officer and to conduct the marriage outside the framework of Islamic law.

In other words, the Supreme Court's decision emphasized that the petitioner no longer regarded religious affiliation as a determinant of the validity of marriage. Thus, religion was not considered a legal requirement for the legitimacy of interfaith marriages. In this case, Article 8(f) of Law No. 1 of 1974 was no longer deemed an obstacle to the celebration of such marriages, and the court granted the petition for interfaith marriage. This cassation decision has since become a

jurisprudential precedent, serving as a legal reference for similar interfaith marriage cases adjudicated by Indonesian district courts, alongside the provisions contained in Law No. 23 of 2006 on Population Administration.

In relation to this, Law No. 1 of 1974 on Marriage does not contain any explicit prohibition of cross-religious marriages in Indonesia. The absence of such specific regulation has led to complex legal and social problems that are difficult to resolve. Nonetheless, an implicit restriction can be inferred from Article 2(1) of the same law, which stipulates that a marriage is considered valid only if it is performed following the rules of each faith and belief system. This article reflects the principle of belief in the Higher Power, forming the foundation of marriage in Indonesia. Accordingly, a marriage conducted outside the framework of religious law and belief is considered invalid, as such unions are prohibited by the respective religions or belief systems.

The Implications Prior to the Enactment of Supreme Court Circular (SEMA) No. 2 of 2023

Before the issuance of the Supreme Court Circular No. 2 of 2023, the determination of applications for religiously mixed and interbelief marriages in Indonesia lacked consistency and legal certainty. Judges in the District Courts demonstrated differing interpretations and approaches when deciding on such cases. Some courts granted permission for interfaith marriages, while others rejected similar applications. This inconsistency reflected the absence of uniform legal interpretation among the judiciary and created uncertainty for citizens seeking to formalize their marriages under different faiths.

Judges who granted approval for interfaith marriages often did so to prevent potential social deviations, such as couples cohabiting without legal marital status due to religious barriers. In such situations, the judiciary acted pragmatically to safeguard public morality and provide legal recognition for marital unions that could not otherwise be conducted due to differing religious affiliations.

From a legal perspective, the law must provide solutions to socially significant phenomena, particularly regarding the protection and recognition of individual rights in cases of religiously mixed marriages. This position aligns with Article 10(1) of Law No. 39 of 1999 on Human Rights, which stipulates that every person has the right to form a family and continue their lineage through a lawful marriage conducted freely and voluntarily. Consequently, court decisions that approved applications for interfaith marriage registration effectively legitimized such unions both legally and administratively, enabling them to be recorded in the Civil Registry Office.

The legal recognition of interfaith marriages prior to SEMA No. 2 of 2023 produced several legal implications, including:¹¹

1. Legality of Marriage

Indonesia's existing legal framework did not explicitly and unequivocally regulate interfaith marriages. Article 2 of Law No. 1 of 1974 on Marriage states that a marriage is valid only if it is performed according to the religious laws and beliefs of the parties involved. This provision has generated multiple interpretations within society because it neither expressly prohibits nor permits interfaith marriages. Consequently, judicial discretion played a crucial role in determining the legality of such unions.

2. Marital Status

Prior to the enactment of SEMA No. 2 of 2023, several district courts accepted and approved the registration of interfaith marriages. As a result, such marriages were legally recognized by the state and could be officially recorded in the Civil Registry. Once registered, these marriages were deemed valid under state law, thereby granting legal certainty to the spouses. A legally recognized marriage entails defined rights and obligations between husband and wife, as provided under Articles 30 and 31 of Law No. 1 of 1974, including mutual support and equality within the marital relationship.

3. Marital Property

The official acknowledgment of marriages between people of different faiths also had an impact on how marital property is governed. The provisions concerning property acquired during a legally valid marriage are stipulated in Articles 35 to 37 of Law No. 1 of 1974, which govern the ownership, management, and division of assets between spouses. Thus, interfaith couples whose marriages were recognized by the state were subject to the same legal framework regarding communal and individual property as other married couples.

4. Legal Status of Children

Children born from court-approved interfaith marriages are legally classified as legitimate children under state law. Article 42 of Law No. 1 of 1974 on Marriage defines legitimate children as those born within, or as a result of, a lawful marriage. Therefore, children born from legally recognized interfaith marriages are entitled to the same legal protection, rights, and obligations as other legitimate children. These include the rights and responsibilities of parents and children as stipulated in Articles

¹¹ Kharisma, "Surat Edaran Mahkamah Agung (SEMA) No. 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama?"

45 to 49 of the Marriage Law, encompassing care, education, and inheritance rights.

The Implications Following the Enactment of Supreme Court Circular (SEMA) No. 2 of 2023

The issuance of Supreme Court Circular (SEMA) No. 2 of 2023 established a firm directive to all Indonesian courts, ordering them not to grant registration requests for inter-religious marriages.. This policy effectively reinforced the interpretation of Law No. 1 of 1974 on Marriage, which prohibits the practice of interfaith marriage in Indonesia. Consequently, such marriages are now regarded as invalid under both national and civil law, and therefore cannot be officially registered with the Civil Registry Office (Dinas Kependudukan dan Catatan Sipil). Nevertheless, these unions may still be considered valid from the standpoint of religious law if they conform to the respective doctrines of the faiths involved.

However, marriages that are not validly recorded by the government can lead to important consequences, particularly concerning their recognition, protection, and legal enforceability. These implications can be outlined as follows:¹²

1. According to Article 2(1) of Law No. 1 of 1974 on Marriage, the validity of marriage is determined by the laws of each spouse's religion and belief. This provision indicates that the state defers the determination of marital validity to religious authorities. Thus, an interfaith marriage would only be recognized under national law if it is valid following the religious rule. In practice, all major religions in Indonesia prohibit interfaith marriage, except when one party converts and adopts the religion of the other. Therefore, the legal impossibility of interfaith marriages stems from the religious foundations upon which the Marriage Law itself is based.
2. From a juridical standpoint, interfaith couples whose marriages are not registered do not receive legal protection as husband and wife under Indonesian law. In cases such as domestic violence (KDRT), complaints made by either spouse may not be legally recognized, as they are unable to provide authentic documentary proof, namely, a state-issued marriage certificate, as evidence of a legally valid marriage. This lack of documentation significantly undermines the legal standing of either party in seeking justice or protection under family law.
3. Marriages unregistered by the state leave couples vulnerable to numerous legal uncertainties. They lack protection in cases involving fraud, identity falsification, inheritance disputes, or abandonment. For example, if one spouse were to engage in legal acts contrary to marital obligations—such

¹² Amum Mahbub Ali, "Perkawinan Beda Agama Dalam Perspektif Kepastian Hukum Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023," *Ta'dibiya* 3, no. 2 (October 1, 2023): 44–58, <https://pppm.staisman.com/index.php/japi/article/view/57>.

as remarrying or deserting the home without due process—the unregistered marriage would not be recognized before the law, rendering any related legal claims unenforceable. In essence, couples in unregistered interfaith marriages operate outside the protection of Indonesia's civil and family law system.

4. Unregistered interfaith marriages also result in the absence of legal certainty regarding marital rights and obligations. Such couples are excluded from the rights and duties prescribed in Articles 30 and 31 of Law No. 1 of 1974, which outline mutual responsibilities between husband and wife, including equality, fidelity, and cooperation in building the household. Without legal recognition, the couple cannot claim these statutory rights or responsibilities, leading to vulnerabilities in areas such as property ownership, inheritance, and custody.

CONCLUSION

The rising number of religiously mixed marriages in Indonesia can be linked to the lack of explicit legal requirements in Law No. 1 of 1974 on Marriage, which neither expressly prohibits nor permits such unions. This normative ambiguity has long created inconsistencies in legal interpretation and judicial practice. Prior to the issuance of Supreme Court Circular (SEMA) No. 2 of 2023, court decisions related applications for religiously mixed marriage registration were inconsistent, some district courts granted approval, while others denied similar petitions. This inconsistency reflected a lack of legal certainty in the implementation of marriage law in Indonesia. In 2023, the Supreme Court of the Republic of Indonesia sought to address this legal ambiguity by issuing SEMA No. 2 of 2023 on Guidelines for Judges in Adjudicating Applications for Interfaith and Interbelief Marriages. The circular was intended to establish uniformity, legal certainty, and consistency in the judicial handling of interfaith marriage cases. Through this directive, judges are instructed to base their legal considerations primarily on Law No. 1 of 1974 on Marriage, emphasizing substantive legal principles rather than merely administrative or population-based regulations.

Following the enactment of SEMA No. 2 of 2023, district courts are now required to refuse all requests for registration of union between partners of different faiths. Consequently, under Indonesian law, religiously mixed marriages are deemed legally invalid and cannot be officially recorded by the Civil Registry Office. The invalidity of such marriages produces several significant legal consequences. Among these are the inability to register the marriage administratively, the uncertain legal status of children born from such unions, who under civil law, are affiliated only with their mothers, and the absence of joint marital property and inheritance rights between spouses. In essence, while SEMA No. 2 of 2023 resolves long-standing judicial inconsistencies by providing a unified

legal standard, it simultaneously underscores the tension between religious orthodoxy, human rights, and individual freedom of choice in Indonesia's legal framework. The implications of this regulation extend beyond formal legality; they touch upon fundamental issues of civil rights, gender equality, and religious pluralism. Without further legislative reform or judicial flexibility, interfaith couples in Indonesia will continue to face systemic exclusion from legal recognition and protection, leaving unresolved challenges in the intersection of law, faith, and human rights.

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