

## Implikasi SEMA No 2/2023 terhadap Perlindungan Hak Administratif dalam Pernikahan Beda Agama

The Implication of SEMA No 2/2023 on the Protection of Administrative Rights in Interfaith Marriage

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**Abstract:** Interfaith marriage is an inevitable phenomenon in pluralistic societies like Indonesia. Although the Marriage Law does not explicitly prohibit it, the Law on Population Administration provides legal space for interfaith couples to register their marriage through a court ruling. In response to this, the Supreme Court issued SEMA No 2/2023 as a guideline for judges in adjudicating cases related to the registration of marriages between individuals of different religions and beliefs. This study aims to understand the background and objectives of the issuance of this Circular Letter, as well as its implementation regarding the protection of the administrative rights of interfaith couples at the Surakarta District Court. The research employs a field research method with an empirical juridical approach, with data obtained through interviews with three judges. The findings reveal that SEMA No 2/2023 is used as a legal basis by judges in deciding cases related to the registration of interfaith marriages, in order to ensure consistency and legal certainty. The views of the judges at the Surakarta District Court indicate that SEMA No 2/2023 is positioned as a legal guide in assessing applications for the registration of interfaith marriages. Despite receiving criticism, the Circular has been met with a positive response from the judges. In conclusion, SEMA No 2/2023 affirms that the validity of a marriage is recognized solely based on religious law and highlights the

importance of adhering to legal provisions to safeguard the administrative rights of interfaith couples.

**Keywords:** SEMA No 2/2023, Interfaith Marriage, Administrative Rights, Surakarta District Court

**Abstrak:** Perkawinan antaragama merupakan fenomena yang tak terhindarkan dalam masyarakat pluralis seperti Indonesia. Meskipun Undang-Undang Perkawinan tidak secara eksplisit melarangnya, Undang-Undang Administrasi Kependudukan memberikan ruang hukum bagi pasangan beda agama untuk mencatatkan perkawinan melalui penetapan pengadilan. Menanggapi hal ini, Mahkamah Agung menerbitkan Surat Edaran No. 2 Tahun 2023 sebagai pedoman bagi hakim dalam mengadili perkara pencatatan perkawinan antarumat berbeda agama dan kepercayaan. Penelitian ini bertujuan untuk memahami latar belakang dan tujuan penerbitan Surat Edaran tersebut serta implementasinya terhadap perlindungan hak administratif pasangan beda agama di Pengadilan Negeri Surakarta. Penelitian ini menggunakan metode lapangan dengan pendekatan yuridis empiris, dengan data diperoleh melalui wawancara terhadap tiga hakim. Hasil penelitian menunjukkan bahwa SEMA No. 2 Tahun 2023 dijadikan dasar hukum oleh hakim dalam memutus perkara pencatatan perkawinan beda agama, guna menciptakan konsistensi dan kepastian hukum. Pandangan para hakim di Pengadilan Negeri Surakarta menunjukkan bahwa SEMA No. 2 Tahun 2023 diposisikan sebagai pedoman hukum dalam menilai permohonan pencatatan perkawinan beda agama. Meskipun menuai kritik, SEMA ini mendapat respons positif dari para hakim. Kesimpulannya, SEMA No. 2 Tahun 2023 menegaskan bahwa keabsahan perkawinan hanya diakui berdasarkan hukum agama, dan menunjukkan pentingnya kepatuhan terhadap ketentuan perundang-undangan untuk memenuhi hak administratif pasangan perkawinan beda agama.

**Kata kunci:** SEMA No. 2/2023, Perkawinan Antaragama, Hak Administratif, Pengadilan Negeri Surakarta

## Introduction

Interfaith marriage has been a subject of discussion among religious scholars since ancient times and continues to be debated today due to legal ambiguity in Indonesia regarding its permissibility.<sup>1</sup> Among pluralistic societies such as Indonesia, interfaith marriage is an inevitable phenomenon. The advancement of technology has further facilitated interactions between individuals of different religious backgrounds, eliminating geographical and temporal barriers. Consequently, interfaith marriages are becoming more prevalent.<sup>2</sup>

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<sup>1</sup> Gemilang Dkk., "Discussing The Phenomenon Of The Appointment Of Judges In District Courts Regarding Interfaith Marriages From A Legal Logic Perspective."

<sup>2</sup> Saputri, Rodafi, Dan Subekti, "Perkawinan Beda Agama (Perbandingan Undang-Undang Perkawinan Dan Undang-Undang Administrasi Kependudukan)."

Based on data compiled by the Center for the Study of Religion and Peace (Indonesian Conference on Religion and Peace/ICRP) during the period from 2005 to July 2023, there were 1,645 interfaith couples (Koran Tempo).<sup>3</sup> Additionally, Kaltim Post<sup>4</sup> reported that since 2023, ICRP recorded 89 interfaith couples until July 19, 2023, with 24 couples either already married or planning to marry in July of that year. These figures indicate that interfaith marriages continue to occur despite legal uncertainties.

In Article 2 of Law Number 1 of 1974 concerning marriage, it is stated that: (1) Marriage is valid if performed according to the laws of each respective religion and belief. (2) Each marriage is recorded according to the prevailing regulations.<sup>5</sup> Based on this law, a marriage is considered valid only if it adheres to religious laws. If a marriage is not recognized religiously, it is also not legally valid. However, this article does not explicitly prohibit interfaith marriages.<sup>6</sup> The Marriage Law does not accommodate interfaith marriages, yet it does not explicitly declare them invalid. Consequently, the legal framework governing such marriages remains undefined.<sup>7</sup> On the other hand, Article 35 Letter (a) of the Population Administration Law states that "Marriage registration as referred to in Article 34 also applies to: a. marriages determined by the Court." The explanation of this article clarifies that "marriage determined by the court" refers to marriages between people of different religions.<sup>8</sup> This provision provides a legal basis for interfaith couples to apply for marriage registration as part of population administration.

To ensure legal certainty and uniformity in adjudicating applications for civil registration of interfaith marriages, the Supreme Court (Mahkamah Agung) issued Circular Letter Number 2 of 2023 concerning "Guidelines for Judges in Adjudicating Cases of Marriage Registration between People of Different Religions and Beliefs."<sup>9</sup> This circular instructs courts not to grant applications for civil registration of interfaith marriages. However, Article 35 Letter (a) of Law Number 23 of 2006 concerning Population Administration

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<sup>3</sup> Riana, "Makin Sulit Menikah Beda Agama."

<sup>4</sup> "Tren Perkawinan Tidak Seagama Meningkatkan Setiap Tahun, Ma Larang Hakim Catat Nikah Beda Agama."

<sup>5</sup> "Uu Nomor 1 Tahun 1974."

<sup>6</sup> Amri, "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam."

<sup>7</sup> Sonafist Dan Yuningsih, "Islamic Law, The State, And Human Rights."

<sup>8</sup> "Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan."

<sup>9</sup> Bagus Razali, "Mengakhiri Polemik Pencatatan Perkawinan Beda Agama Dan Keyakinan."

(Adminduk Law) has guaranteed administrative rights for citizens without discrimination, including interfaith couples.

This study adopts a field research approach with a qualitative research design, focusing on empirical juridical analysis. The research emphasizes an understanding of how legal regulations are applied in practice, particularly in relation to the role of judges in legal assistance and decision-making. Several previous studies have explored interfaith marriages, including those conducted by Fakhrurrazi M. Yunus and Zahratul Aini<sup>10</sup>, Gina Hanifah and colleagues<sup>11</sup>, and Dany Try Hutama Hutabarat et al.<sup>12</sup> However, this research differs from prior studies as it specifically examines the application of Supreme Court Circular Letter Number 2 of 2023 and its impact on the administrative rights of interfaith couples. The focus is on judicial perspectives at the Surakarta District Court, which was chosen due to its significant number of rulings related to interfaith marriages compared to other courts.

The purpose of this study is to analyze the implementation of the Supreme Court's new regulation in safeguarding administrative rights for interfaith couples. This research aims to provide insights into the legal considerations taken by judges at the Surakarta District Court when adjudicating interfaith marriage cases, thereby contributing to discussions on legal certainty in marriage registration.

## Metode Penelitian

This research uses a qualitative approach with the type of field research and is analysed juridically empirically. This approach was chosen to understand the application of the law not only from the normative aspect, but also from the practice in the field, especially in handling cases of interfaith marriage. The research location was determined purposively at the Surakarta District Court, which was chosen due to the high number of applications for dispensation of interfaith marriages submitted to the court.

Primary data was obtained through in-depth interviews with three judges who directly handled the cases, namely Ninik Hendras Susilowati, S.H., M.H., Dr Dzulkarnain, S.H.,

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<sup>10</sup> M.Yunus Dan Aini, "Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)."

<sup>11</sup> Hanifah, Aulia, Dan Savitri, "Inkonsistensi Peraturan Perundang-Undangan Dalam Memandang Keabsahan Perkawinan Beda Agama."

<sup>12</sup> Hutama Hutabarat, Simanjuntak, Dan Syarunsyah, "Pengelabuan Hukum Perkawinan Atas Perkawinan Beda Agama."

M.H., and Aris Gunawan, S.H. The three judges were selected based on their active involvement in the examination and decision-making process of interfaith marriage cases. The sampling technique was purposive to ensure that the data obtained was relevant and in-depth. Secondary data was obtained from legal documents such as the Marriage Law, Supreme Court Regulations, and Supreme Court Circular Letter (SEMA) No. 2 of 2023. In addition, scientific journals, law books, and court decisions were also used as supporting materials.

Data analysis was conducted in a descriptive-qualitative manner with an empirical juridical approach, namely by examining the application of positive legal provisions in judicial practice and assessing their implications for the administrative rights of interfaith couples. Through this method, the researcher seeks to fully describe the dynamics of law enforcement and the obstacles faced in the implementation of related regulations.

## **Findings and Discussions**

### **A. Interfaith Marriage**

#### **I. Interfaith Marriage according to Law No. 1 Year 1974 about Marriage**

According to Article 1 of the Marriage Law, "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and everlasting family (household) based on the Almighty God."<sup>13</sup> Interfaith marriage is defined as an inner and outer bond between a man and a woman of different religions which causes the union of two different rules regarding the conditions and procedures for implementation according to their respective religious laws, with the aim of forming a happy and eternal family based on God Almighty.<sup>14</sup>

Based on the principles in Article 2 paragraph (1) of the Marriage Law, marriage is only valid if it is carried out according to the laws of each religion and belief. That is, Marriage will be considered valid if the marriage is carried out according to religious law or religious beliefs adhered to by the prospective bride and groom. The two prospective brides must be of the same religion or faith, unless the religious law or belief determines otherwise.<sup>15</sup>

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<sup>13</sup> UU Nomor 1 Tahun 1974

<sup>14</sup> Asiah, "Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan Dan Hukum Islam."

<sup>15</sup> Agustin, "Kedudukan Anak Dari Perkawinan Berbeda Agama Menurut Hukum Perkawinan Indonesia."

In explaining Law No. 1 of 1974, it is conveyed that through the formulation of Article 2 paragraph 1, every marriage must comply with the laws of their respective religions and beliefs. This provision emphasizes that marriage must be conducted in accordance with the religious norms adhered to, and all religious prohibitions are considered as prohibitions in the Marriage Law. In Hazairin's interpretation, Article 2 paragraph 1 and its explanations imply that individuals adhering to Islam, Christianity, Hinduism, and Buddhism cannot marry in violation of the religious norms of their respective beliefs. This prohibition signifies that marriage is a spiritual and physical commitment between a man and a woman as husband and wife, aiming to establish a happy and lasting family, based on the principle of the Almighty. Article 2 paragraph 1 asserts that the validity of marriage depends on adherence to religious norms and beliefs, and the explanation of this article emphasizes that marriages outside the norms of religion are not recognized as valid.<sup>16</sup>

Hilman Hadikusumo clarified that the validity of marriage, as regulated by legislation, is outlined in Article 2, paragraph (1) of Law Number 1 of 1974, which states: "Marriage is valid if conducted according to the laws of each respective religion and belief." Therefore, a legally recognized marriage under national marriage law is one carried out in accordance with the legal regulations within the Islamic, Christian, Catholic, Hindu, or Buddhist faiths. The phrase "laws of each respective religion" implies the legal principles of each individual religion, not "laws of their respective religions," meaning the laws of the religion adopted by both spouses or their families.<sup>17</sup> Besides Article 2, there is Article 8 paragraph f which stipulates that marriage is prohibited if it contradicts the religious prohibitions of each party involved. An example of this is interfaith marriage, which is generally considered to violate religious doctrines. For individuals holding such beliefs, the law prohibits interfaith marriages.<sup>18</sup>

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<sup>16</sup> Azhari Dan Lubis, "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Asasi Manusia."

<sup>17</sup> Setiyanto, "Larangan Perkawinan Beda Agama Dalam Kompilasi Hukum Islam Perspektif Hak Asasi Manusia."

<sup>18</sup> Gemilang Dkk., "Discussing The Phenomenon Of The Appointment Of Judges In District Courts Regarding Interfaith Marriages From A Legal Logic Perspective."

## 2. Interfaith Marriage according to Compilation of Islamic Law (KHI)

The Qur'an and hadith (Prophetic Tradition) are two primary sources in Islamic law that serve as the foundation for handling legal issues deductively. The Quranic perspective on interfaith marriage can be found in several verses, where some explicitly emphasize the prohibition of marriage between Muslims and non-Muslims. In general, verses related to interfaith marriage can be categorized into two groups. Firstly, some verses explicitly discuss interfaith marriage, such as Sura al-Baqara [2]: 221 and Sura al-Mumtahana [60]: 10. Secondly, some verses relate to the People of the Book (ahl al-Kitab), such as Surat al-Mā'ida [5]: 5. These verses are interpreted as a prohibition against marrying the People of the Book because they are considered unbelievers. Surat al-Baqara [2]: 105 and Surat al-Bayyina [96]: 6 fall into this category.<sup>19</sup>

In Indonesia, the five recognized religions each have their own regulations regarding interfaith marriages. Protestant Christianity allows interfaith marriages by deferring to the national laws of their respective followers. Catholicism does not permit interfaith marriages except with permission from the church under certain conditions. Buddhism does not regulate interfaith marriages and leaves it to the customs of each region, while Hinduism strongly prohibits interfaith marriages.<sup>20</sup>

According to Article 2 of the Compilation of Islamic Law known as KHI, marriage in Islamic law is a contract, which is a very strong covenant or *'mitsaqan ghalidzan'* to obey Allah's command and to execute it as an act of worship. Marriage aims to realize a harmonious, loving, and merciful family life.<sup>21</sup> Marriage is not merely about formality; it also involves social and spiritual aspects. Furthermore, religion serves as the foundation for an individual's relationship with God, and the state bears responsibility for the existence of God.<sup>22</sup>

The rules related to interfaith marriages are regulated in Presidential Instruction of the Republic of Indonesia Number I of 1991 regarding the Compilation of Islamic Law<sup>23</sup>, as Article 4 which state "Marriage is valid when conducted according to Islamic

<sup>19</sup> Nasir, "Negotiating Muslim Interfaith Marriage In Indonesia."

<sup>20</sup> Azhari Dan Lubis, "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Azasi Manusia."

<sup>21</sup> Indonesia, Kompilasi Hukum Islam, Instruksi Presiden Ri No I Tahun 1991, Pasal 3.

<sup>22</sup> Farid Dkk., "Interfaith Marriage."

<sup>23</sup> "Kompilasi Hukum Islam."

law in accordance with Article 2, paragraph (I) of Law Number 1 of 1974 concerning Marriage.” Article 40: “Prohibition of Marriage Between a Man and a Woman Under Certain Circumstances: a. When the woman in question is still bound by a marriage to another man; b. A woman who is still in the waiting period (iddah) with another man; c. A woman who does not adhere to the Islamic faith.” Article 44: “An Islamic woman is prohibited from marrying a man who is not of the Islamic faith.” Article 61: “Being non-compatible is not a valid reason to prevent a marriage, except when non-compatibility is due to differences in religion or religious beliefs.”

Therefore, based on the explanation of these rules, marriages conducted within the legal jurisdiction of Indonesia must be performed within the confines of a single religion. Marriages between people of different faiths are not allowed to take place. If such a marriage is conducted, it is considered invalid and violates the law.<sup>24</sup>

### **3. Provisions for Interfaith Marriage in the Population Administration Law**

Law Number 23 of 2006<sup>25</sup>, Article 1, states that Population administration is a series of activities for structuring and organizing documents and population data through population registration, civil registration, population information management, and utilization of the results for public services and other sectors. In this Population Administration Law, there are provisions related to marriage registration in Indonesia, consisting of Articles 34, 35, and 36.

With the existence of Law No. 23 of 2006 concerning Population Administration (Adminduk), it allows couples of different religions to have their marriage recorded as long as it is through a court decision. Article 35 (a) states that the registration of marriage also applies to marriages determined by the court. In the explanation of this article, it is mentioned that a marriage determined by the court is a marriage conducted between individuals of different religions.<sup>26</sup> The registration of this marriage is carried out by the Implementing Agency, namely the Department of Population and Civil Registration

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<sup>24</sup> Azhari Dan Lubis, “Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Azasi Manusia.”

<sup>25</sup> Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan

<sup>26</sup> Halim Dan Ardhani, “Keabsahan Perkawinan Beda Agama Diluar Negeri Dalam Tinjauan Yuridis.”



(DisdukCapil), as with the registration of marriages in general according to Article 34 of the Population Administration Law.<sup>27</sup>

Due to interfaith marriages lacking a marriage certificate, Article 36 of the applicable law is enforced. "In cases where the marriage cannot be proven with a Marriage Certificate, the marriage registration takes place after a court decision." According to this regulation, couples of different religions who wish to record their marriage must first submit a marriage determination request to the District Court, and only then can they register it at the Civil Registry Office. This provision aligns with Articles 20 and 21 of the Marriage Law, which state that the Civil Registry Office can conduct or assist in conducting marriages if ordered by the Court.<sup>28</sup>

The recorded marriage has legal consequences for the husband and wife involved, including legal relations between the spouses, the formation of marital property, the position and status of legitimate children, and inheritance relationships.<sup>29</sup> These legal consequences are substantiated by the registration of marriage by authorized institutions. Marriage registration is crucial for protection and legal certainty.<sup>30</sup> A marriage that is not registered with the appropriate institution will have legal implications for the couple, including:

- a. The marriage status, recognized by religion but not acknowledged by the state, lacks legal certainty due to the absence of authentic evidence in the form of a marriage certificate.
- b. The status of children born lacks clarity, and they may be considered as illegitimate children according to the definitions in Article 42 and Article 43 of the Marriage Law.

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<sup>27</sup> M.Yunus Dan Aini, "Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)."

<sup>28</sup> Azhari Dan Lubis, "Pernikahan Beda Agama Dalam Perspektif Kompilasi Hukum Islam Dan Hak Azasi Manusia."

<sup>29</sup> Basuki Prasetyo, "Akibat Hukum Perkawinan Yang Tidak Dicatatkan Secara Administratif Pada Masyarakat Adat."

<sup>30</sup> Pristiwiyanto, "Fungsi Pencatatan Perkawinan Dan Implikasi Hukumnya," *Fikroh: Jurnal Pemikiran Dan Pendidikan Islam* 11, No. 1 (November 2, 2019): 34–52, Doi:10.37812/Fikroh.VII.1.33.

- c. Regarding wealth, there will be confusion about the status of separate and joint property, making it difficult for both parties to file for the division of joint property in court.<sup>31</sup>
- d. Inheritance: As previously explained, a child born to parents whose marriage is not registered is considered similar to an illegitimate child. Consequently, the inheritance rights of such a child are limited to the mother and her family only.
- e. Educational impact on the child due to difficulties in meeting school administrative data.
- f. Economic impact: Hindrance in obtaining loans from banks due to the lack of proof regarding the marriage certificate.
- g. Psychological impact: Discrimination in administrative matters among Indonesian citizens (WNI), who should have equal rights in administrative fulfillment.<sup>32</sup>

## **B. SEMA No. 2 of 2023 and Its Position in the Law**

Surat Edaran Mahkamah Agung (SEMA) serves as one form of regulation issued by the Supreme Court. It is crafted based on regulatory functions and was initially established in 1951. In 1950, SEMA was created for judicial control, originating from Article 12, paragraph 3 of Law No. 1 of 1950 concerning the Structure, Authority, and Path of the Courts of the Supreme Court of Indonesia. The Supreme Court is a judicial institution authorized to supervise the lower courts beneath it. To fulfill its duties, the Supreme Court has the right to issue warnings, admonitions, and instructions deemed necessary and beneficial to the courts and judges, either through separate letters or circulars. The role of Supreme Court Circulars is primarily focused on the oversight of judges.<sup>33</sup> SEMA serves as guidance for judges under the Supreme Court in carrying out their functions of guidance and supervision, as stipulated in

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<sup>31</sup> Sekarbuana, Widiawati, Dan Arthanaya, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia."

<sup>32</sup> Basuki Prasetyo, "Akibat Hukum Perkawinan Yang Tidak Dicatatkan Secara Administratif Pada Masyarakat Adat."

<sup>33</sup> Cahyadi, "Kedudukan Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Di Indonesia."

Article 32 paragraph (4) of Law No. 14 of 1985, as amended by Law No. 3 of 2009 concerning the Supreme Court.<sup>34</sup>

SEMA, when examined based on its users, falls into the category of policy rules (*bleidsregel*) as it is typically directed towards judges, court clerks, and other positions within the judiciary. However, a deeper analysis of its content reveals that not all SEMAs can be straightforwardly classified as policy rules (*bleidsregel*).<sup>35</sup> However, in its development, there has been a shift in the function of SEMA, from initially serving only as a supervisory tool to now becoming a regulatory and administrative instrument, among other roles.<sup>36</sup>

Seen from its formal structure and content, SEMA is actually positioned below PERMA. This is because PERMA is crafted in a more formal and perfected form as a type of regulation. Based on the data obtained through table inventory, SEMA can be created in accordance with the Regulations of the Supreme Court, and the presence of PERMA can annul a Circular Letter of the Supreme Court, such as SEMA No. 6 of 1967, which was annulled by PERMA No. 1 of 1969.<sup>37</sup>

Position of SEMA in the Hierarchy of Legislation According to Law No. 12 of 2011 on Legislation Formation. SEMA can be categorized as a form of legislation created based on an institution's authority.<sup>38</sup> In the hierarchy of legal regulations, SEMA is not explicitly mentioned. Although the position of SEMA in the hierarchy of legal regulations within the law is not clearly specified, the existence of SEMA is still acknowledged as a legal instrument with binding force, as explained in Article 8, paragraphs (1) and (2).<sup>39</sup> SEMA's position is below laws; it does not hold an equivalent or higher status. SEMA is binding only within the judicial environment. In contrast, laws are the highest legal rules under the 1945 Constitution of the Republic of Indonesia and are binding on all Indonesian citizens.<sup>40</sup>

Judges are required to adhere to SEMA because its content serves to clarify matters that are still unclear or contain differences between theory and practice within the judicial

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<sup>34</sup> Kharisma, "Circular Of The Supreme Court (Sema) Number 2 Of 2023, End Of Interfaith Marriage Polemic?"

<sup>35</sup> Cahyadi, "Kedudukan Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Di Indonesia."

<sup>36</sup> Mahadi Abdullah Et AL., "Analisis Perkawinan Beda Agama Di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya Sema Nomor 2 Tahun 2023" I, No. 4. 2023

<sup>37</sup> Cahyadi, "Kedudukan Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Di Indonesia."

<sup>38</sup> Asmara, "Kedudukan Sema Terhadap Suatu Undang-Undang."

<sup>39</sup> Abdullah Dkk., "Analisis Perkawinan Beda Agama Di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya Sema Nomor 2 Tahun 2023."

<sup>40</sup> Asmara, "Kedudukan Sema Terhadap Suatu Undang-Undang."

system. SEMA provides guidance as an explanation or interpretation of legal regulations, aiming to avoid disparities in the application of justice that can lead to legal uncertainty. The Supreme Court has the authority to create additional regulations if there are inconsistencies in judicial practices, intending to complement imperfections and ensure the realization of justice and legal certainty. This policy is also internal, ensuring that judges comply with SEMA, and violations can result in disciplinary sanctions in accordance with Law Number 1 of 1950 concerning the Organization, Authority, and Operation of the Supreme Court of Indonesia.<sup>41</sup>

The Supreme Court has issued numerous policies through Circulars, including the recent Circular No. 2 of 2023 concerning guidelines for judges in adjudicating cases of marriage registration between individuals of different religions and beliefs. The contents of SEMA No. 2 of 2023 are as follows:

"To provide certainty and uniformity in the application of the law in adjudicating applications for the registration of marriages between people of different religions and beliefs, judges must adhere to the following provisions:

- a. A valid marriage is a marriage conducted according to the laws of each respective religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage.
- b. The court does not grant applications for the registration of marriages between people of different religions and beliefs."<sup>42</sup>

### C. Background and Purpose of the Publication of SEMA No. 2 of 2023

The controversy surrounding the validity and registration of interfaith and interbelief marriages has been long-standing. This is due to the absence of explicit prohibitions regarding interfaith and interbelief marriages, and the existing legal regulations have provided legal loopholes for couples of different faiths and beliefs to seek recognition of the validity of their marriage through court decisions.<sup>43</sup> The court decision on interfaith marriages is regulated in Article 21, paragraph (3) of Law Number 1 of 1974 concerning Marriage: "Parties whose marriage is rejected have the right to submit a petition to the court within the jurisdiction

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<sup>41</sup> Kharisma, "Circular Of The Supreme Court (Sema) Number 2 Of 2023, End Of Interfaith Marriage Polemic?"

<sup>42</sup> Sema Nomor 2 Tahun 2023

<sup>43</sup> Bagus Razali, "Mengakhiri Polemik Pencatatan Perkawinan Bedaa Agama Dan Keyakinan."

where the marriage registrar who rejected the marriage is located, to make a decision, by submitting the letter of rejection.”<sup>44</sup>

Legal loopholes for couples of different faiths and beliefs to obtain validation for the registration of their interfaith and interbelief marriages have become more widely open since the enactment of Law Number 23 of 2006 concerning Population Administration. In Article 35, letter a, of Law Number 23 of 2006 concerning Population Administration, it has been stated: 'Marriage registration as referred to in Article 34 also applies to: a. marriages determined by the court.' The explanation in Article 35, letter a, of Law Number 23 of 2006 concerning Population Administration, confirms that: 'Marriages determined by the Court refer to marriages conducted between individuals of different religions.'<sup>45</sup>

The explanation in Article 35, letter a, of Law Number 23 of 2006 concerning Population Administration mentioned above is in direct contradiction (*contradiction in terminis*) with other legal regulations, such as Article 2, paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states 'marriage is valid if conducted according to the laws of each respective religion and belief.' This is because marriage involves intertwined interests and responsibilities between religion and the state. The relationship between religion and the state in marriage law is that religion determines the validity of the marriage, while the state determines the administrative validity of the marriage within the legal framework.

Efforts to close the legal loopholes for interfaith and interbelief marriages were previously attempted by the Constitutional Court. Through decisions number 68/PUU-XII/2014 and 24/PUU-XX/2022, the Constitutional Court explicitly rejected providing constitutional grounds for interfaith and interbelief marriages. Although these decisions only examined the legal norms found in Article 2, paragraph (1) of Law Number 1 of 1974 concerning Marriage, the issuance of this Supreme Court Regulation (SEMA) complements the previous Constitutional Court decisions to provide legal certainty.<sup>46</sup>

In 2023, interfaith marriage cases once again gained attention, particularly when the Central Jakarta District Court granted the request for an interfaith marriage between JEA, a

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<sup>44</sup> Purwanto, “Penetapan Putusan Pengadilan Negeri Surabaya Tentang Perkawinan Beda Agama Dalam Perspektif Hukum Positif.”

<sup>45</sup> Fidela Dan Martinelli, “Konsep Keabsahan Pasal 2 Ayat (1) Undang-Undang Perkawinan Terhadap Perkawinan Beda Agama Berdasarkan Izin Dari Penetapan Pengadilan.”

<sup>46</sup> Bagus Razali, “Mengakhiri Polemik Pencatatan Perkawinan Bedaa Agama Dan Keyakinan.”

Christian, and SW, a Muslim. This is documented in the verdict with case number 155/Pdt.P/2023/PN.Jkt.Pst.

By the increasing prevalence of interfaith marriages sanctioned by the courts, the Supreme Court, as one of the highest judicial institutions in Indonesia, had to take a stance and provide an answer that aligns with the sense of justice in society. The Supreme Court issued Circular Letter No. 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Applications for the Registration of Marriages between People of Different Religions and Beliefs.<sup>47</sup>

With the issuance of SEMA Number 2 of 2023 which is addressed to the Chairman/Head of the High Court of Appeal and the Chairman/Chairman of the First Court, it is hoped that all Judges will comply with SEMA. As stated by Prof. Dr. Amran Suadi, S.H., M.Hum, MM, chairman of the Supreme Court Religious Chamber in the International Seminar (ICoIFL) that SEMA itself is shown to judges, clerks, or officials in the judiciary as an internally regulating policy.<sup>48</sup>

#### **D. Judges' Perspectives in the Surakarta District Court Regarding the Administrative Rights of Individuals in Interfaith Marriage Based on SEMA No 2 of 2023**

##### **I. The Implementation of Circular Letter No. 2 of 2023 as a Legal Guideline for Judges**

The implementation of Circular Letter No. 2 of 2023 plays a crucial role as a legal foundation in guiding judges in making decisions regarding applications for the registration of interfaith marriages. According to the statement of Mr. Aris Gunawan<sup>49</sup>, the Circular Letter of the Supreme Court (SEMA) No. 2 of 2023 was issued in response to the public debate concerning the court's decision to allow the registration of marriages for couples of different religions, with the aim of creating unity in the application of the law.

Based on an interview with Mr. Dzulkarnain<sup>50</sup>, a legal enforcement officer in Indonesia, it is revealed that this Circular Letter serves as a legal basis for judges in

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<sup>47</sup> Kharisma, "Circular Of The Supreme Court (Sema) Number 2 Of 2023, End Of Interfaith Marriage Polemic?"

<sup>48</sup> *Peran Mahkamah Agung Dalam Pengembangan Hukum Keluarga Islam (Islamic Family Law) Di Era Digital.*

<sup>49</sup> Interview With Aris Gunawan.

<sup>50</sup> Interview With Dzulkarnain.

deciding on applications for the registration of interfaith marriages. Similar sentiments were expressed by Mrs. Ninik Hendras Susilowati<sup>51</sup>, emphasizing the critical role of SEMA as a step to unify and clarify the legal aspects of applications for the registration of interfaith marriages. The goal is to achieve consistency in the judges' perspectives and provide clarity to the public, avoiding social unrest.

Despite the difference in application between SEMA and PERMA, where PERMA has binding authority both internally and externally, while SEMA is a recommendation that binds within the scope of the judiciary<sup>52</sup>, SEMA functions as an official guide that judges must adhere to in detailing their decisions. Its existence is binding on the judiciary, mandated to be followed as a guide in deciding on applications for the registration of interfaith marriages.<sup>53</sup> This indicates that the issuance of SEMA implies an obligation for judges to reject applications for the registration of interfaith marriages.

## **2. Critique of Circular Letter No. 2 of 2023 and the Necessity for Legal Harmonization**

The implementation of the Supreme Court Circular Letter (SEMA) regarding the registration of interfaith marriages faces various challenges and controversial perspectives, especially within the realm of human rights. One challenge in the implementation of SEMA is the objection from applicants who feel that their human rights are violated, asserting that they should have the freedom to choose a partner according to their personal preferences.<sup>54</sup>

In practice, criticism has emerged from some quarters arguing that SEMA is inconsistent with the principles of human rights, which stipulate that the right to marry is an absolute and inherent right for every individual, regardless of religious background, including the choice of a partner of a different faith. Therefore, they argue that SEMA should be repealed. Nevertheless, the Supreme Court (MA) has affirmed through SEMA that a valid marriage is one conducted in accordance with the laws of religion and belief, as stipulated by the applicable laws.<sup>55</sup> Hence, the prohibition on the registration of interfaith marriages is considered in line with the marriage law itself.

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<sup>51</sup> Interview With Ninik Hendras Susilowati.

<sup>52</sup> Interview With Ninik Hendras Susilowati.

<sup>53</sup> Interview With Dzulkarnain.

<sup>54</sup> Interview With Ninik Hendras Susilowati.

<sup>55</sup> Interview With Dzulkarnain.

### 3. Implications of Circular Letter No. 2 of 2023 on Marriage Administration Rights

The legal foundation of this Circular Letter (SEMA) is derived from the interpretation of Article 2 paragraph (1) and Article 8 letter f of Law No. 1 of 1974 concerning marriage, which emphasizes that the validity of marriage in Indonesia is only recognized based on religious law. Therefore, judges are obliged to prioritize the formal legal principles of marriage and reject applications that do not comply with these provisions.<sup>56</sup> This statement is reiterated by Mr. Aris Gunawan<sup>57</sup>, who states that Article 2 paragraph (1) of the Marriage Law asserts, 'Marriage is valid if carried out according to the laws of each religion and belief.' Therefore, the validity of a marriage must be based on religious unity, where marriage is not only considered a form of union but must also have a foundation in spiritual values.

The authority of judges in the court, granting permission to applicants to register interfaith marriages with the Population and Civil Registration Office (DisDukcapil), is a form of administrative order within the legal framework, not to endorse the marriage itself because the validity of marriage is still determined by religious provisions. Although previously, Law No. 23 of 2006 on Population Administration, especially in Article 35, provided explicit leeway for interfaith couples to register their marriages, this Circular Letter emphasizes the formal legal principles of marriage over population administration law.<sup>58</sup>

Therefore, based on these considerations, this Circular Letter does not discriminate against couples of different religions but aims to establish legal order in the administrative realm. The provision in the explanation of Article 35 of the Population Administration Law, stating that the registration of marriages determined by the court, including marriages between different faiths, is part of administrative order. However, the essence of regulating the validity of marriage is still governed by Article 2 paragraph (1) of the Marriage Law. Therefore, to meet administrative requirements, couples in marriage must adhere to the provisions of the Marriage Law.<sup>59</sup>

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<sup>56</sup> Interview With Dzulkarnain.

<sup>57</sup> Interview With Aris Gunawan.

<sup>58</sup> Interview With Dzulkarnain.

<sup>59</sup> Interview With Aris Gunawan.



In agreement with this, Mr. Dzulkarnain<sup>60</sup> also explains that these provisions are not an attempt to limit or discriminate against interfaith couples in choosing partners from different religions and registering their marriages. On the contrary, this is a rule that strengthens the implementation of the Marriage Law and the 1945 Constitution with the aim of creating unity and legal certainty to prevent social upheaval. Article 28 J (2) of the 1945 Constitution is cited as the basis to show that everyone, in exercising their rights and freedoms in choosing a partner, must comply with the provisions of the law. The existence of this Circular Letter will also encourage society to reconsider interfaith marriages. This allows prospective interfaith couples to adhere to one religion so that the marriage complies with the laws and can be registered. If the marriage can be registered, their fulfillment of administrative rights and those of their children, such as Marriage Certificates, Birth Certificates, and Family Cards, can be realized.

Mr. Aris Gunawan<sup>61</sup> also acknowledges that SEMA may potentially clash with the views of human rights activists who perceive partner selection as an inherent right for every individual. However, the freedom of human rights must still adhere to the provisions of the applicable laws. Additionally, according to Mr. Dzulkarnain<sup>62</sup>, there is a need for harmonization among various laws in Indonesia concerning marriage, especially Article 35 letter a of Law No. 23 of 2006 regarding population administration, which has been the foundation for interfaith marriages. Furthermore, revisions to the regulations in the Marriage Law are necessary to clearly state the prohibition of interfaith marriages.

#### **4. The Role of Circular Letter (SEMA) as a Preventive Measure**

Circular Letter No. 2 of 2023 is considered a preventive measure to address internal conflicts in interfaith marriages. Embarking on a marriage as an interfaith couple is not a simple task, especially when both parties adhere to their respective religious beliefs. Such marriages involve the merging of two different mindsets and lifestyles, and religious differences can be a source of various issues, especially when raising children. Challenges faced by interfaith families include differences in beliefs, relationships with extended family, the practice of religious rituals, daily routines, and issues related to parenting.

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<sup>60</sup> Interview With Dzulkarnain.

<sup>61</sup> Interview With Aris Gunawan.

<sup>62</sup> Interview With Dzulkarnain.

These internal constraints can create emotional tension and even increase the risk of divorce, as seen in cases handled by Mr. Dzulkarnain<sup>63</sup>. Therefore, the presence of this Circular Letter is crucial as a preventive measure to address such internal conflicts.

In the reality of life, interfaith couples are known to have a higher potential for divorce, as evidenced by several cases handled by Mrs. Ninik Hendras Susilowati. Hence, the Marriage Law emphasizes that marriages must align with religion and beliefs.<sup>64</sup>

In this context, Circular Letter (SEMA) plays a pivotal role in emphasizing that a valid marriage is one conducted in accordance with the laws of each religion and belief, aligning with the provisions of the applicable law. Despite facing criticism regarding human rights principles related to the right to marry, the Supreme Court continues to assert the implementation of this right in accordance with the prevailing laws.

Circular Letter No. 2 of 2023 aims to address internal conflicts in interfaith marriages, providing binding guidance for the judiciary and strengthening the implementation of the Marriage Law and the 1945 Constitution. To end the debate on the legalization of interfaith marriage registration, harmonization between existing laws is necessary, especially Article 35 letter a of Law No. 23 of 2006 concerning population administration. Amendments to the Marriage Law are also required to provide legal clarity regarding the prohibition of interfaith marriages and to establish a stronger legal basis for judges handling interfaith marriages, not solely relying on SEMA as an internal guide for the judicial institution.

The challenges in interfaith marriages involve complex dynamics that require appropriate legal handling. Circular Letter No. 2 of 2023 is considered an effort to provide legal guidance, address internal conflicts, and clarify issues related to the registration of interfaith marriages, particularly serving as a guide for judges in deciding on applications for the registration of interfaith marriages.

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<sup>63</sup> Interview With Dzulkarnain.

<sup>64</sup> Interview With Ninik Hendras Susilowati.

## **Conclusion**

The increasing number of interfaith marriages in Indonesia and the legal ambiguity surrounding their prohibition in the Marriage Law provide the backdrop for the issuance of Supreme Court Circular Letter No. 2 of 2023 (SEMA No. 2/2023). Gaps in the legal framework, particularly in Law No. 23 of 2006 on Population Administration, offer interfaith couples the opportunity to seek legal recognition of their marriage through court rulings. This situation has triggered both support and opposition within society. In response to the ongoing controversy surrounding interfaith marriages, the Supreme Court issued Circular Letter No. 2 of 2023, providing guidelines for judges in adjudicating marriage registration cases for individuals of different religions and beliefs. Its primary aim is to ensure legal certainty and consistency in processing interfaith marriage registration applications.

Based on interview findings, Supreme Court Circular Letter No. 2 of 2023 serves as a legal foundation for judges in deciding on interfaith marriage registration cases, with the goal of ensuring consistency in judicial decisions and providing clarity for the public. Although the circular has faced opposition from human rights activists—who argue that the right to choose a spouse is an inherent individual right—human rights freedoms must still conform to existing legal provisions. The circular emphasizes that the validity of a marriage in Indonesia is recognized only if it complies with religious law. Therefore, judges are required to uphold formal legal principles of marriage over administrative regulations in population law. Once legal procedures are followed, administrative rights can be fulfilled. Supreme Court Circular Letter No. 2 of 2023 is intended not only as legal guidance but also as an alternative solution for resolving internal conflicts in interfaith marriages, ensuring clarity in marriage registration procedures.

## **Funding Information**

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Anggun Azzahra Thesalonika is a student with a strong interest in Islamic law, particularly in the field of Islamic family law. Her academic focus is centered on exploring the dynamics of family law within Indonesia's social and religious context. In addition to her scholarly pursuits, she is actively engaged in advocacy activities related to the implementation of Islamic law in society. Currently, she continues to deepen her knowledge through study and research, aiming to contribute to the development of a just and contextually relevant understanding of Islamic family law.

Fuat Hasanudin is a lecturer and researcher in the field of Islamic law, with a particular focus on family law and uṣūl al-fiqh (principles of Islamic jurisprudence). His academic journey has been deeply rooted in the exploration of classical and contemporary dimensions of Islamic legal thought, emphasizing the relevance and application of Islamic legal principles in addressing current socio-legal challenges. He has authored several academic articles and books in these fields, contributing to contemporary discourse and legal thought within Islamic jurisprudence. Currently, he remains actively engaged in teaching, conducting research, and writing, with a focus on the development and contextualization of Islamic legal principles in modern society.