

Prohibition of Interfaith Marriage: An Analysis of Judicial Guidelines for Adjudicating Marriage Registration Applications Among Different Religions and Belief

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Abstract: Marriage in Indonesia aims to form a happy and lasting family, with its validity based on religious laws as per Article 2 Paragraph (1) of the Marriage Law. Despite this, interfaith marriages present legal ambiguities as some religions do not prohibit such unions, leading to varied judicial decisions and interpretations. The legal gaps in Indonesia's 1974 Marriage Law concerning interfaith marriages necessitate standardization in judicial practice. Supreme Court Circular Letter (SEMA) No. 2 of 2023 was issued to address these inconsistencies and provide clear guidelines for judges. This study utilizes qualitative descriptive analysis, combining literature reviews and interviews with judges at the Lubuk Pakam Religious Court, to assess the impact of SEMA No. 2 of 2023 on interfaith marriage registration cases. Judges possess *ex officio* rights to make decisions based on legal and logical considerations, ensuring justice and utility. The study found that religious institutions primarily handle marriage registration, with the Civil Registry Office recording only same-faith marriages and District Courts occasionally handling interfaith unions. The multi-interpretative nature of the Marriage Law leads to complex judicial and social implications in religiously diverse regions like Lubuk Pakam. SEMA No. 2 of 2023 aims to standardize judicial practices and provide legal certainty regarding interfaith marriages. Although it is primarily an internal directive, its influence extends to public awareness and judicial consistency. The study highlights the necessity for thorough understanding and dissemination of SEMA among judges to ensure lawful and uniform application.

Keywords: *Mixed marriage, Judicial consistency, Legal certainty*

Abstrak: Perkawinan di Indonesia bertujuan membentuk keluarga bahagia dan kekal, dengan keabsahan berdasarkan hukum agama sesuai Pasal 2 Ayat (1) UU Perkawinan. Perkawinan beda agama menimbulkan ambiguitas hukum karena beberapa agama tidak melarangnya, mengakibatkan beragam keputusan yudisial. Kekosongan hukum dalam UU Perkawinan 1974 terkait perkawinan beda agama memerlukan standarisasi. SEMA No. 2 Tahun 2023 diterbitkan untuk mengatasi ketidakkonsistenan ini dan memberikan pedoman bagi hakim. Studi ini menggunakan analisis deskriptif kualitatif, menggabungkan tinjauan pustaka dan wawancara dengan hakim Pengadilan Agama Lubuk Pakam, untuk menilai dampak SEMA No. 2 Tahun 2023 terhadap kasus pencatatan perkawinan beda agama. Hakim memiliki hak *ex officio* untuk membuat keputusan berdasarkan pertimbangan hukum dan logis. Penelitian menemukan bahwa lembaga agama terutama menangani pencatatan perkawinan, dengan Kantor Catatan Sipil mencatat perkawinan seagama dan Pengadilan Negeri sesekali menangani perkawinan beda agama. SEMA No. 2 Tahun 2023 bertujuan menstandarisasi praktik yudisial dan memberikan kepastian hukum terkait perkawinan beda agama. Penelitian ini menyoroti pentingnya pemahaman dan penyebaran SEMA di kalangan hakim untuk memastikan penerapan yang sah dan seragam..

Kata kunci: *Perkawinan beda agama, Konsistensi yudisial, Kepastian hukum*

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Introduction

Marriage is a relationship between a man and a woman with the aim of forming a happy and lasting family. The validity parameters of marriage stipulated in Article 2 Paragraph (1) of the Marriage Law state that marriage is only valid if conducted according to one's religion. However, some religions do not prohibit marriage between partners of different faiths. As a result, judges often decide to grant permission for interfaith couples to marry. Because it does not comply with the regulations and religious teachings followed, interfaith marriages often cannot be performed. Therefore, because Indonesia opposes the tradition of interfaith marriage, the 1974 Marriage Law has a legal vacuum. The issuance of Supreme Court Circular Letter (SEMA) No. 2 of 2023, which is addressed to the Chairmen and Vice-Chairmen of the High Courts as well as the Chairmen and Vice-Chairmen of the First Instance Courts, aims to ensure that all judges adhere to the SEMA. The SEMA itself is intended for judges, court chairmen, clerks, and officials within the judiciary.

Judges have special rights in resolving cases in Religious Courts/Syar'iyah Courts, namely *ex officio* rights, which means rights by virtue of their office. With these rights, judges can deviate from the rules as long as they are supported by logical considerations and comply with the laws and regulations. Judges are expected to resolve cases to achieve legal certainty, justice, and utility. However, as regulated in Article 189 Paragraph (3) R.Bg, judges are prohibited from deciding civil cases on matters not requested by the parties or granting more than what is requested.

Based on the results of interviews conducted by the researchers with judges at the Lubuk Pakam Religious Court, Mr. H. Nur Al Jumat stated that marriages must be of

the same faith according to the law. The Civil Registry Office only records same-faith marriages, but the District Court can record interfaith marriages. This clearly shows that the provisions in Article 2 Paragraph (1) of the Marriage Law are subject to multiple interpretations. Lubuk Pakam is a district in Deli Serdang Regency, North Sumatra Province, Indonesia. The religious diversity in Deli Serdang Regency includes Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. According to data from the Central Statistics Agency of Deli Serdang Regency, the number of religious adherents in 2023 was 1,402,282 Muslims, 324,476 Protestants, 75,173 Catholics, 2,796 Hindus, 44,758 Buddhists, and 11,802 Confucians. Interfaith marriage can become an unavoidable reality in this environment and become part of the life of the Lubuk Pakam community. Of course, this is a complex situation given the various social effects caused by interfaith marriages. The existence of SEMA No. 2 of 2023, a melting pot of religions, has a significant impact on marriage registration. Research on the prohibition of interfaith marriage in the Lubuk Pakam Religious Court based on SEMA No. 2 of 2023 aims to understand the impact of SEMA on the number of interfaith marriage registration applications, to study the responses of the community, religious leaders, and legal experts in Lubuk Pakam to SEMA, and to examine the obstacles and challenges in the implementation of SEMA.

Method

The methods in this study include literature review and interviews involving analysis of secondary data or reference materials. In this research, library research is the data collection technique used by the author, encompassing references from various books, scientific journals, articles, and

other studies utilized by the researcher in analyzing legal regulations related to the subject matter. The data obtained from the literature study will be analyzed using qualitative descriptive analysis, which involves understanding and explaining the meaning and relationships of each piece of data obtained by drawing conclusions presented in the form of statements or writings.

Result and Discussion

Marriage is a lawful and sacred bond between a man and a woman to form a family based on mutual love, respect, and harmony. According to the Compilation of Islamic Law, marriage is considered a strong covenant, or *mitsaqan ghalizan*, to obey God's commands and perform it as worship. Linguistically, marriage means to gather or unite. In Islamic legal terms, it refers to the offer and acceptance (*ijab* and *qabul*) that legalizes sexual relations between a man and a woman, or a contract leading to marriage in accordance with Islamic law. Marriage (*zawaj*) can be defined by the term *wath'u al-zaujah*, which means to have sexual relations with a wife, or *aqdu al-tazwij*, which means the marriage contract. As stated in the Quran, verse 21, which mentions that Allah created humans in pairs, marriage is a natural part of human existence. The law of marriage fundamentally depends on the situation and purpose of the marriage. According to Ibn Rushd, some scholars (*fuqaha'*), or the majority, consider marriage to be Sunnah, while the Zahiriyah group views it as obligatory. The later Malikiyah scholars, on the other hand, believe that marriage is obligatory for some, recommended for others, and permissible for others, based on their own considerations.

Interfaith marriage is not a new phenomenon. In Indonesia, such marriages are common across various social strata,

from public figures and officials to ordinary people. However, what is considered common does not necessarily make it justifiable. Interfaith marriage often becomes controversial, especially within Islam. Many debates have arisen in Islam, visible in various Islamic legal literatures, initially stemming from differing interpretations of Al-Baqarah verse 221 and Al-Maidah verse 5 regarding who is considered a disbeliever and the People of the Book in these verses, and whether the prohibitions mentioned in these verses are still relevant in today's society. There are many reasons for and against interfaith marriage; some arguments in favor include love and freedom. Everyone has the right to love whomever they wish, regardless of religion or background. They also have the right to choose their life partner without being restricted by their religion. Marrying someone of a different religion can enhance their relationship and bring different perspectives and experiences into their lives. It can help couples better understand and respect each other's religious beliefs and practices. Marrying someone of a different religion can also foster tolerance, understanding, cooperation, and learning opportunities about different religious beliefs and practices, thereby increasing mutual understanding and tolerance between couples and different religious groups.

Interfaith marriage is opposed because it can lead to problems due to differing religious beliefs and practices. In this context, couples must decide which religion their children will follow, which can lead to conflicts in the relationship and difficulties in raising children. Interfaith marriage can lead to rejection from family and society due to differing religious values and beliefs. Additionally, couples must adapt to each other's religious beliefs and practices, which

may be difficult or incompatible with their own religious beliefs. These arguments can vary depending on the situation and may not apply to every interfaith marriage.

Historically in Indonesia, the regulation of intergroup marriages was governed during the colonial era. The regulation concerning the intricacies of mixed marriages was the Regulation on Mixed Marriages (GHR), as contained in Staatsblad of 1898 No. 158. Mixed marriage was defined as a marriage between individuals subject to different laws in Indonesia. This provision sparked debate about interfaith marriages within the context of Indonesian law. Subsequently, after the enactment of Law No. 1 of 1974 on Marriage, Article 66 of the Marriage Law invalidated all previous marriage provisions, such as the GHR, HOCl, and BW, and other pre-existing marriage regulations.

Article 2, Paragraph 1 of Law No. 1 of 1974 on Marriage states that a marriage is valid if it is conducted according to the laws of each religion and belief of the individuals concerned. It mentions that marriages are conducted according to each individual's religious beliefs. Thus, Article 2 refers to two people marrying who share the same religious faith. This aligns with the teachings of all religions. A Muslim is required to marry another Muslim to fulfill their worship. Interfaith marriage becomes a contentious legal issue because it involves regulations that are inconsistent with each other, causing unease among religious leaders and adherents of certain religions as it conflicts with their religious teachings, and drawing vocal responses from human rights activists.

According to Catholicism, a valid marriage is one conducted, confirmed, and blessed by a church official with two witnesses and having met the requirements. For Catholics, this principle is similar to Protestant Christianity, where interfaith

marriage is not permitted. It is not allowed because Catholicism views marriage as a sacrament, with individuals pledging to live faithfully to Jesus Christ. One of the prohibitions in Catholicism is that one of the prospective spouses is not a Catholic. Thus, in Catholicism, religious differences can render a marriage invalid. Protestant Christianity also does not allow interfaith marriages, as marriage aims to achieve happiness between husband and wife and their children within an eternal and perpetual household. For Hindus, marriage is a bond between a man and a woman as husband and wife to regulate appropriate sexual relations and procreation, conducted with a ritual ceremony according to Hindu law. If the marriage is not conducted according to Hindu rituals, it is invalid. In Buddhism, marriage is not considered very important. Buddhists do not enforce or prohibit marriage. Marriage for Buddhists should be well thought out and consequential, with the choice aiming to achieve a happy family based on the ultimate Buddha. According to Confucianism, as explained during a Constitutional Court hearing on November 24, 2015, under case No. 68/PUU-XII/2014, marriage between a man and a woman is considered the decree of heaven. Differences in belief, group, nationality, culture, ethnicity, social politics, or religion are not barriers to marriage. Thus, in Confucian tradition, interfaith marriage is allowed, though it is known as *li yuan*, a marriage only conducted for both parties who are Confucian.

In 2022, interfaith marriage became a controversial subject. An application for interfaith marriage was submitted to the Surabaya District Court on April 13, 2022, and decided by a judge with decree number 916/Pdt.P/2022/PN Sby. The judge then requested the local civil registry office to record their marriage according to the judge's decision. Another case of interfaith

marriage arose in 2023 when the Central Jakarta District Court granted an application for interfaith marriage between JEA, a Christian, and SW, a Muslim. In case number 155/Pdt.P/2023/PN.Jkt.Pst. With many interfaith marriages sanctioned by the courts, the Supreme Court, as the highest judicial body in Indonesia, must take a stance and provide an answer that aligns with the sense of justice in society.

The basis for forming a Supreme Court Circular is Article 12, Paragraph 3 of Law No. 1 of 1950 on the Organization, Powers, and Procedures of the Indonesian Supreme Court, which states that "The conduct of the courts and judges in those courts is carefully monitored by the Supreme Court. For the benefit of the service, the Supreme Court has the right to issue warnings." For the sake of its duties, the Supreme Court has the right to issue warnings, reprimands, and directives to the courts and judges in the form of separate letters or circulars. The function of the Supreme Court Circular evolved from merely a supervisory tool to an administrative regulatory tool, etc. Although issued since 1951, the Supreme Court Circular is not explicitly mentioned in Law No. 14 of 1985 on the Supreme Court (Law No. 14/1985), causing ambiguity about its legal status. However, the Supreme Court continues to issue Circulars regularly, indicating that they remain valid. Article 79 of Law No. 14/1985, which states, "The Supreme Court may further regulate matters necessary for the smooth administration of justice if there are issues not sufficiently regulated in this law," can be used as a legal basis to explain the position of the Circular.

Since the content of the Circular aims to clarify ambiguous matters or inconsistencies in judicial practice, judges must comply with it. These recommendations clarify or interpret laws to ensure consistent judicial practice, providing

justice and legal certainty. Thus, if there is disharmony in court regarding a case, the Supreme Court has the authority to make supplementary regulations to address these deficiencies, thereby providing justice and legal certainty. Due to internal policy and its function to distinguish theory from practice, judges must comply with the Circular. Judges or court members who do not comply may face disciplinary action from the Supreme Court Supervisory Board. This is stated in Article 12, Paragraph 3 of Law No. 1 of 1950. Judges, clerks, and secretariat staff can be disciplined for violations, in line with the judicial code of ethics. Supreme Court Circular No. 2 of 2023 is expected to resolve long-standing debates on interfaith marriage. However, it cannot fully address this issue as the Administrative Law on marriage registration under Article 35, letter a, remains in effect, and society or human rights activists may not be influenced by religious teachings.

Supreme Court Circular No. 2 of 2023 provides guidance to judges in handling cases of interfaith marriage registration. The Circular states that to ensure consistency and uniformity in the application of the law when adjudicating interfaith marriage registration requests, judges must adhere to the following provisions:

1. A valid marriage is one conducted according to the laws of each religion and belief, in accordance with Article 2, Paragraph 1, and Article 8, letter f of Law No. 1 of 1974 on Marriage.
2. The court shall not grant requests for the registration of interfaith marriages.
3. In the event of a request for the registration of an interfaith marriage, the court shall deny the application. This circular is enforced from the date of issuance. The significance of this Circular lies in the explicit affirmation of the prohibition against interfaith marriage as

stipulated in the Marriage Law, which states that interfaith marriages cannot be registered and must be denied. Thus, the Circular serves as a directive to judges in handling cases of interfaith marriage registration.

In conclusion, interfaith marriage is a critical issue due to conflicts and the inconsistency of regulations regarding interfaith marriage with religious teachings, especially within Islam. Supreme Court Circular No. 2 of 2023 is expected to resolve debates on interfaith marriage that have persisted for many years. However, it cannot fully address this issue as the Administrative Law on marriage registration remains in effect, and human rights activists may not be influenced by religious teachings.

Conclusion

The Supreme Court Circular (SEMA) Number 2 of 2023, which provides guidelines for judges in adjudicating requests for the registration of interfaith marriages, has brought significant changes to the landscape of interfaith marriages in Indonesia, including at the Lubuk Pakam Religious Court. This study reveals several important findings:

Decline in Interfaith Marriage Registration Requests: There has been a significant decrease in the number of interfaith marriage registration requests at the Lubuk Pakam Religious Court following the implementation of the SEMA.

Diverse Public Responses: Public opinion regarding the SEMA varies, with some supporting and others opposing it. A lack of socialization is one of the factors causing confusion among the public about the new provisions.

Importance of Interfaith Dialogue: Interfaith dialogue is crucial to achieving a common understanding and reducing potential conflicts arising from differences in interpretation and acceptance of the SEMA.

Challenges and Obstacles in Implementing the SEMA: Several challenges and obstacles in implementing the SEMA at the Lubuk Pakam Religious Court include unclear interpretations of the SEMA, limited human resources, and insufficient socialization of the new guidelines.

These conclusions indicate that although SEMA Number 2 of 2023 provides clear guidelines for judges in adjudicating interfaith marriage registration cases, there are still several challenges that need to be addressed to ensure its effective implementation and acceptance by the public..

References

- Abdullah, M., Sarifudin, F., Maulana, M. R., & Latifiani, D. (2023). Analisis Perkawinan Beda Agama Di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya Sema Nomor 2 Tahun 2023. *Jurnal Hukum Dan Kewarganegaraan*, 1(4), 1–16.
- Azhari, W. H., & Lubis, F. (2022). Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam PERNIKAHAN BEDA AGAMA DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM DAN HAK AZASI MANUSIA. *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 1(1), 3-4. <https://doi.org/10.30868/am.v1oi02.3184>
- Bahri, S. A., & Adama. (2020). Akibat Hukum Perkawinan Beda Agama Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan. *AL-SYAKHSHIYYAH: Jurnal Hukum Keluarga Islam Dan Kemanusiaan*, 2(1), 75–85.
- Fuadi, A. S., Saputra, D. E., & Munajah. (2020). Analisis Yuridis Hak Ex Officio Hakim Dalam Putusan Pengadilan Agama Martapura Nomor 318/PDT.G/2020/PA.MTP. *Jurnal Penegakan Hukum Indonesia (JPHI)*, 1(1).
- Hadiati, M. (2024). Analisis Larangan Pencatatan Perkawinan Beda Agama Dalam Sema Nomor 2 Tahun 2023:

- Sebuah Tinjauan Dari Perspektif Hak Asasi Manusia*. 6(3), 9051–9058.
- Kharisma, B. U. (2023). Surat Edaran Mahkamah Agung (Sema) Nomor 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama? *Journal of Scientech Research and Development*, 5(1), 477–482. <https://doi.org/10.56670/jsrd.v5i1.164>
- Rosita, N. (2024). Larangan Izin Perkawinan Beda Agama (Sema Nomor 2 Tahun 2023) Perspektif Maqasid Syariah Dan Hak Asasi Manusia. In *Skripsi*.
- Sarifudin. (2019). Kawin Beda Agama dalam Kajian Hukum Islam dan Peraturan Perundang-Undangan di Indonesia. *Al-Istinbath: Jurnal Hukum Islam*, 4(2), 213–230. <https://doi.org/10.29240/jhi.v4i2.787>
- Tarantang, J., Khosyi'ah, S., & Saepullah, U. (2023). FILOSOFI 'Illat HUKUM DAN MAQASHID SYARIAH DALAM PERKAWINAN BEDA AGAMA. *Jurnal Studi Agama Dan Masyarakat*, 19(1), 44–55. <https://doi.org/10.23971/jsam.v19i1.6318>
- Zahara, R., & Makhfud. (2022). Problematika Pernikahan Beda Agama: Antara Konsep dan Praktek di Masyarakat. *Indonesian Journal of Humanities and Social Sciences*, 3(1), 59–72. <https://doi.org/10.33367/ijhass.v3i1.2839>
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