

**JUDGES' PERSPECTIVE ON THE IMPLEMENTATION OF SEMA NO. 2 OF 2023
CONCERNING THE REGISTRATION OF INTERFAITH MARRIAGES****Syaifuddin Zuhdi**

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c100210004@student.ums.ac.id**ABSTRACT**

This study aims to explore judges' perspectives on the Supreme Court Circular Letter (SEMA) No. 2 of 2023. It uses an empirical or non-doctrinal method, with primary data obtained through interviews with five judges selected via snowball sampling. The findings show that there are both pro and contra views among judges regarding SEMA No. 2 of 2023. Those opposed view it merely as guidance for judges, affirming their freedom to decide cases as it is not a binding rule. Meanwhile, supporters regard it as a breakthrough that provides legal certainty in the implementation of interfaith marriages. The novelty of this study lies in revealing that not all judges share the same opinion regarding a SEMA, indicating the need for more outreach among law enforcers, especially concerning interfaith marriage.

Keywords: SEMA No. 2 of 2023, Judges' Perspectives, Interfaith Marriage

INTRODUCTION

The concept of marriage in Indonesia is formed from societal views, norms, legal foundations, and social values regarding the bond between two individuals in a husband-and-wife relationship recognized officially and legally. The definition provided in the Marriage Law clearly states that the purpose of marriage is to establish a happy and lasting household[1]. Meanwhile, the Compilation of Islamic Law describes marriage as a strong contract (*mitsaqan ghalidzan*) carried out in obedience to Allah's command and considered an act of worship aimed at forming a family that is *Sakinah Mawaddah wa Rahmah*[2].

Social values in society and religious beliefs related to lawful marriage generally aim to provide appropriate protection for everyone. Besides fulfilling religious obligations to Allah, the purposes of marriage include[3]: (a) Avoiding adultery, (b) Meeting lawful biological needs, (c) Bearing offspring, (d) Gaining peace and happiness in life with a lawful partner.

In Islamic law in Indonesia, marriage is also an act of worship intended to draw closer to Allah. The Qur'an and Sunnah provide guidance on marriage for Muslims, including its conditions, pillars, and the formation of marriage itself. Marriage creates a husband-wife relationship, establishes family ties with hopes of *sakinah*, *mawaddah*, and *rahmah*, and gives rise to mutual rights and obligations[4].

As social beings, humans naturally seek relationships with others, including romantic and marital ones. In the process of marriage, religion and belief systems play a vital role and cannot be separated from the legality of the marriage[5].

This is related to the legal conditions for marriage. According to Law No. 1 of 1974, a marriage is valid if conducted according to each party's religion or belief system[1]. The laws of each religion and belief mentioned include the legal regulations applicable to that religious group, as long as they do not conflict with or are not otherwise specified by law. In addition to this article, it is supported by Article 2 paragraph (2) of the Marriage Law which reads: "Registration of marriages of those who enter into marriage according to their religion and beliefs other than Islam, is carried out by a Marriage Registrar at the civil registry office as referred to in various laws regarding marriage registration"[1].

These provisions clearly indicate that since the enactment of the Marriage Law, all Indonesian citizens must comply and consider it the legal basis for marriage across all religious, ethnic, and cultural groups. For those marrying according to Islam, registration is carried out at the Office of Religious Affairs (KUA), while Catholics, Christians, Buddhists, and Hindus must register their marriage at the Civil Registry Office.

However, interfaith marriages are still frequently found in society. This is often due to differing views among legal experts about the legitimacy of such unions. In Indonesia, interfaith marriages have sparked public controversy—particularly in Surakarta, which is among the top five cities with the highest number of interfaith marriage registration requests, even surpassing South Jakarta. Since 2007, courts have recorded applications for interfaith marriages, with Surakarta leading in numbers since then.

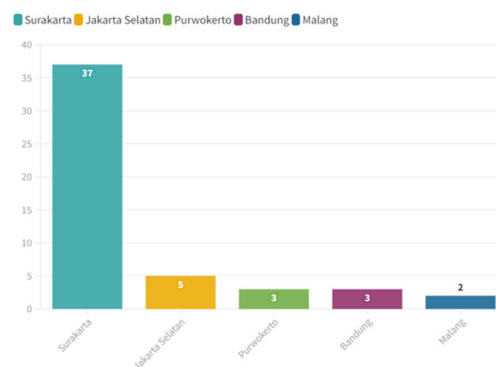


Figure 1.1 Interfaith marriage application table[6]

Based on the data, 37 out of 73 court decisions on interfaith marriages in Indonesia—50.7%—were submitted to the Surakarta District Court to obtain legal certainty both religiously and nationally.

On July 17, 2023, the Supreme Court of the Republic of Indonesia issued Supreme Court Circular Letter (SEMA) No. 2 of 2023, concerning Guidelines for Judges in Adjudicating Applications for the Registration of Interfaith and Interbelief Marriages. This was intended to provide legal certainty and justice for those wishing to marry but facing obstacles due to differing religions—a matter that was previously difficult to determine in terms of legal validity .

Before the enactment of SEMA No. 2 of 2023, there was precedent from Supreme Court Decision No. 1400K/Pdt/1986 dated January 20, 1989, which was the first court ruling acknowledging the legality of interfaith marriages. Additionally, Minister of Home Affairs Regulation No. 108 of 2019 Article 50(3) states that interfaith marriage registration may be conducted as long as there is a court ruling .

However, a procedural discrepancy exists in obtaining marriage registration documents. With the requirement for a court ruling, applicants must file a petition with the court. SEMA No. 2 of 2023 provides guidance for judges when ruling on interfaith marriage registration requests, and with its issuance, it is possible that no judges would grant such petitions anymore, due to the presence of clear legal guidance.

This raises the question: Is SEMA No. 2 of 2023 merely a guideline and not binding regulation? The contents are addressed specifically to judges, not formulated as statutory law. Even though the Supreme Court bases it on the Marriage Law, the enactment of this SEMA appears to override Article 5(a) of Law No. 23 of 2006 on Population Administration (Adminduk Law), which clearly states “marriage determined by the court is a marriage carried out between people of different religions”, the article explicitly means that interfaith marriages cannot be registered unless there is a court order.

So it will be very influential when SEMA number 2 of 2023 is ratified. Interfaith marriages are valid, but not valid in marriage registration. This raises new implications for interfaith marriages in Indonesia. Because of the above, researchers are interested in examining the views of judges as implementers of the Supreme Court Circular (SEMA) No. 2 of 2023.

METHODOLOGY

This study uses an empirical or non-doctrinal legal research method to examine how legal norms are implemented in practice based on actual conditions, conducted directly by the researcher with selected informants. The reason for choosing this method is to present factual occurrences without altering data, by observing how judges at district courts apply regulations—whether in ongoing cases or ones they have already ruled on[9]. This study also employs a phenomenological approach, focusing on individuals who have experienced the issue directly, to explore and describe judges’ detailed views on SEMA No. 2 of 2023, with the judges serving as the key informants or research subjects. The data collected from

interviews were refined and narrowed to align with the studied phenomenon, then elaborated through descriptive analysis[10]. The primary data for this research came from five judges from various courts, selected using a snowball sampling technique. The data collection method used was interviews. To ensure the validity of the data, the source triangulation technique was employed. The collected data were then analyzed qualitatively to gain a comprehensive understanding of judges' perspectives on the implementation of SEMA No. 2 of 2023.

FINDING AND DISCUSSIONS

SEMA No. 2 of 2023 has had a domino effect on society, especially regarding whether it brings legal certainty and benefits, or the opposite. According to Bambang Ariyanto, S.H., M.H., a judge, when adjudicating applications for interfaith marriage registration, not allowing such marriages to be registered will cause inconsistencies in civil registry data. For instance, society may develop a negative perception—thinking that those who are married (although interfaith) are not considered so, due to the inability to register the marriage. In general, the legality of marriage is divided into two aspects: (a) Validity under religious law, and (b) Validity under state law.[11]

This means a marriage may be religiously valid but not recognized by the state, and vice versa. Bambang expressed his disagreement with SEMA, stating that it is only a guideline, not a regulation. Therefore, he still approves interfaith marriage registration petitions, exercising judicial independence and autonomy.

It is also stated in Article 3 paragraph (1) of the Judiciary Law that "in realizing an independent judicial power, judges are required to always maintain judicial independence in carrying out their duties and functions". This principle is one of the objectives in the category of law enforcement of judicial power. A judge is defined as "a person who decides the law". The principle of judicial independence means that the court institution is free from interference from other institutions.[12]

He criticized this SEMA, do not let there be legal dualism. If indeed interfaith marriages are to be carried out according to their respective religions, every human being also has the right to have a religion. To carry out a legal and registered marriage, it is stated in Article 28B paragraph (1) which states "the right to form a family and continue the lineage through a legal marriage". So if later the Population and Civil Registry Office does not record it because there is no decision from the court, the interfaith marriage that has been carried out still has the status of being invalid according to the state.[11]

The thing that is feared is the existence of legal smuggling with an example of a case where a Muslim and Christian couple have entered into a marriage that is legally Christian. So those who were originally Muslim but have converted to Christianity in order to achieve a legal marriage do not violate this SEMA and in order to get a decision from the court and then registered at the Population and Civil Registry Office.

However, what if after a legal decision from the court, the marriage that was carried out according to the Christian religion has been registered by the state which means it is also valid by the state but the bride and groom who were originally Muslim and became Christian converted again to Islam according to their original religion from birth. Is the marriage still valid as recorded and legalized even though they have converted to their original religion or do they have to remarry? or what is the law? If this is the case, it has the effect that Indonesian citizens (WNI) will do anything to achieve an interfaith marriage and the Supreme Court should pay more attention to effects like this that are likely to occur in society.

In this case, the Population and Civil Registry Office should dare to take a stand, just recording the state, what's so difficult about it? In fact, it is also for the justice of Indonesian Citizens (WNI) as in the 5th (five) Pancasila "social justice for all Indonesian people". However, in this case, it feels unfair for prospective brides and grooms who want to get married but have different religious statuses. While in the teachings of Islam, it has simplified its people so that they do not complicate life by making it difficult to understand and accept the rules in society, but the existence of this SEMA is inefficient.

The Supreme Court Circular Letter (SEMA) No. 2 of 2023, which bans the registration of interfaith marriages, has been considered a significant legal breakthrough in Indonesia. According to Fatarony, in his interview[13], the issuance of this SEMA was an initiative by the Supreme Court to reduce reliance on executive regulations, which tend to be slow. The SEMA serves as a guide for judges, court clerks, and bailiffs when handling interfaith marriage cases, offering a clearer legal framework amid ongoing debates. However, Fatarony also acknowledged dilemmas in implementing the SEMA, particularly concerning the principle of judicial independence. Although judges have the authority to rule independently, this freedom cannot be applied absolutely. SEMA acts as a limiting tool, compelling judicial officers to stay aligned with existing laws. This perspective is supported by Habiburrahman's research, which highlights how the new rules have reduced the discretion available to judges[¹⁴].

Fatarony also raised a critical issue regarding "legal smuggling", which has arisen in response to the SEMA. Interfaith couples may seek legal loopholes by marrying abroad, then registering the marriage back in Indonesia or temporarily converting religions to meet administrative requirements. This phenomenon is supported by Dulhaq's 2024 research, which notes that interfaith couples frequently exploit more permissive jurisdictions to bypass Indonesia's strict laws[15]. In addition, Fatarony criticized the lack of specific training provided to judges to help them understand and implement SEMA. Judges are often left to interpret the rules based on personal understanding and historical references to the Marriage Law, leading to inconsistencies in rulings. Hanapi (2023) supported this concern, emphasizing that unprepared judicial apparatus may result in legal uncertainty[16].

Fatarony concluded by urging the Supreme Court to provide clearer guidelines, especially regarding the post-enactment application of the SEMA. Without such clarification, the rule could lead to confusion and abuse. This aligns with Nauval (2024), who stressed the importance of socialization and revision of such regulations to ensure effective and fair implementation.[17]

Santos believes that the Marriage Law clearly requires that marriages must be conducted according to each party's religion or belief. This implies a form of religious compatibility—either both are Muslim or both are non-Muslim. In his view, the validity of a marriage is grounded in two aspects, first, religious validity, second is state recognition. A marriage may be valid religiously but not acknowledged by the state if it is not registered. He emphasized that SEMA is not a binding rule, but rather an internal directive for the judiciary. Therefore, following it is optional—judges will not face specific sanctions, such as dismissal, for not adhering to it[18].

Meanwhile, Eka Yektiningsih, S.H., a judge at the Bogor District Court, explained that the background for the issuance of SEMA No. 2 of 2023 was a court decision from the Surabaya District Court (Case No. 916/Pdt.P/2022/PN. Sby), which approved a petition for the registration of an interfaith marriage. This ruling went viral, prompting the Supreme Court to respond with SEMA as a firm stance to urge judges not to approve such petitions. She stressed that while the Marriage Law states marriages must follow each religion's rituals, every religion has its own criteria for what constitutes a valid marriage[19].

According to Eka, marriage registration is a form of state recognition, which must be recorded administratively. However, interfaith marriages involve two different religious procedures, and no clear religious guidance exists on how to perform such a ceremony. If a marriage is not valid according to religious law, how can it be valid according to the state? The state only recognizes a marriage that is already valid according to each religion. She acknowledged that although judges are protected under the Judicial Law to rule based on their conscience, in practice, judges not following SEMA may be questioned in regular evaluations or annual meetings. While there is no legal penalty, they could be transferred to another court.

In reality, since he served at the Bogor District Court, along with the issuance of this SEMA, there has been no socialization. Not all SEMA are socialized, it's just that this SEMA is shared via WhatsApp group and given directions so that each person studies it by also considering other rules, not focusing on this rule alone because above the SEMA there are still other highest rules to be studied in order to provide fair decisions for the community strengthened by a clear and multi-interpretable legal basis. However, when holding a monthly or annual meeting, the Chairman of the Bogor District Court usually checks whether the new rules have been implemented or not. If there are those who do not and/or have not followed this SEMA, it is likely that they will only be transferred to serve as judges outside the Bogor District Court. [19] There was criticism as a form of evaluation of the rules that had been ratified, he conveyed criticism that one of the highest powers of the judicial institution, namely the Supreme Court, on the other hand, issuing this SEMA should also create solutions for those who are going to get married but have obstacles of different religions in order to create a sense of justice, not discriminating regarding ethnicity, race, religion and beliefs.

Muhammad Zaki Attirmidzi, S.H., stated that the issuance of SEMA has been helpful for judges in ruling on interfaith marriage cases and has provided a degree of legal certainty that was previously lacking. He referenced Article 79 of Law No. 14 of 1985 on the Supreme Court, which authorizes the

Supreme Court to issue directives it deems necessary for ensuring just rulings. Given the long-standing ambiguity around interfaith marriage, SEMA is seen as an important step that deserved more attention[20].

In the MUI FATWA Number: 4/Munas VII/MUI/I/8/2005 concerning Interfaith Marriage, interfaith marriage is prohibited and is considered invalid. Strengthened by the Hadith of the Prophet narrated by Imam Bukhari and Imam Muslim, it is necessary to pay attention to and prioritize the quality of the prospective wife's religion in order to get the blessing of Allah SWT for the good fortune and safety of her family. The SEMA is not a binding rule for judges, it is only a recommendation, a direction to implement so that the decision is in harmony or does not become a disparity in the decision. [21] The SEMA is casuistic (seeing the case), in this case seeing that the religion is still of the same kind, it can be said to be permissible and ratified, if not, it is not permissible (see the comparison of the judge's decision in case number 916/Pdt.P/2022/PN. Sby which granted it seen from the religion that is still of the same kind).

The thing that is feared in response to this SEMA is that Indonesian citizens will continue to carry out marriages by justifying all means, seeing the case of artists Mahalini and Rizky Febian. Their marriage was declared invalid because one of the pillars of marriage regarding their marriage guardian did not meet the requirements for a valid marriage. In Islamic Law, a marriage guardian comes from a lineage guardian or a judge guardian appointed by the Office of Religious Affairs. However, in their marriage they used a guardian who was not entitled or could be said to be invalid from a religious perspective, as proven during the evidentiary hearing at the isbat hearing, the guardian was only a cleric who claimed to be a judge guardian. Mahalini did not have a guardian because when they got married Mahalini had converted (changed from Hinduism to Islam) but her father's religious status was still Hindu, meaning that if her father was present, the marriage guardian would not be valid according to the requirements for a valid marriage. We focus on the method they took by using a cleric claiming to be a judge guardian, in my opinion this has been a case of legal smuggling.

According to him, this incident is a new thing for judges when giving decisions based on legal grounds. Judging from the judge's decision from previous cases among the interfaith marriage applications that have been submitted, until now there has been no implementation from judges that proves that they have complied with this SEMA. As with the discussion at the beginning which is actually a solution, but based on the implementation of the rules in society and in the judiciary, it has not been implemented. Therefore, there must be a follow-up from the Supreme Court to improve the rules to make them clearer and make it easier for judges to provide legal considerations that are stated in the decision so that it is clear, fair, and not open to multiple interpretations.

CONCLUSION

Supreme Court Circular Letter (SEMA) No. 2 of 2023 on the prohibition of registering interfaith marriages has sparked controversy and legal uncertainty within society, particularly regarding the validity

of such marriages both religiously and legally under state law. Although it was issued as a guide for judges, many—especially district court judges—believe that SEMA actually complicates the registration of interfaith marriages and leads to potential disharmony in the legal system. Judges who oppose the SEMA argue that it is not absolutely binding, as judges are protected by the principle of independence and freedom in adjudication, as guaranteed under the Judicial Law. Therefore, some judges still grant applications for the registration of interfaith marriages. The phenomenon of "legal smuggling"—such as temporary religious conversion to legalize a marriage—is one of the main concerns raised in this discussion. Criticisms of SEMA also include the lack of socialization and training for judicial personnel and the ambiguity in its implementation, which may lead people to seek alternative ways to have their interfaith marriages recognized. Moreover, the perception that marriage registration is only an administrative procedure adds complexity, as religious requirements and state legal frameworks remain unaligned. This entire discussion underscores the need for the Supreme Court to provide further clarification on the rule, improve oversight, and create fair, inclusive solutions for interfaith couples—without compromising the core principles of law and social justice in Indonesia.

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