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Legal Certainty of Application for Marriage Registration of Non-Religious Couples After the Issuance of Supreme Court Circular Letter No. 2 of 2023

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Abstract: This research examines whether the regulation of interfaith marriages following SEMA Number 2 of 2023 fulfills the requirement of legal certainty. Marriage is recognized as both a personal commitment and a form of worship, and its implementation is regulated by the state under Law Number 1 of 1974. However, challenges arise when civil registry records classify certain marriages, such as interfaith marriages, as invalid. Article 35 of the Civil Registration Law mandates the registration of valid marriages, including interfaith marriages recognized by court decision, creating tension between the two laws. This study uses a normative juridical approach, combining statutory and conceptual methods, alongside primary, secondary, and tertiary legal materials with grammatical and systematic interpretation. Issued by the Supreme Court, SEMA Number 2 of 2023 aims to enhance judicial consistency and reliability, highlighting the need to assess legal harmony in interfaith marriage regulations post-SEMA issuance.

Keywords: *Legal Certainty; Marriage Registration; Interfaith Marriage*

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INTRODUCTION

The right to freedom of religion and belief is very important for human beings. This right is considered a very important right and cannot be adjudicated by anyone, including the state itself.¹ One form of religious expression in the forum externum is through marriage. Marriage is not just an agreement between two individuals, but also a form of worship that is recognized by society and the state. Therefore, the rules for the implementation of marriage have been regulated by the state in "Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law)".² In regulating marriage, the State must also safeguard the right to freedom of religion and belief of every person. Therefore, when making laws and policies related to marriage, it is important to consider the principle of freedom of religion and belief and respect the various religions and beliefs in society. By doing so, the state can create an inclusive environment and respect the human rights of every individual.³

Regulations related to marriage have a very important role in the Marriage Law to ensure the validity and recognition of marriage by the state. Article 2 paragraph (1) of the Marriage Law explains that "marriage is considered valid if it is carried out based on the provisions of each religion and belief. In this case, it shows that the principles of religion and belief in conducting marriage are very important".⁴ Furthermore, Article 8 letter f of

¹ Dadan Herdiana and Dian Ekawati, "Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan," *Jurnal Kewarganegaraan* Volume 8, no. 1 (2024): p. 57.

² Al Andang Listya Binawan, "Refleksi Filosofis Hukum Perkawinan Beda Agama di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 7, no. 2 (November 2, 2023): 251, <https://doi.org/10.24246/jrh.2023.v7.i2.p249-266>.

³ Ahmad Faiz Shobir Alfikri, "Determinasi SEMA No. 2 tahun 2023 dalam Hukum Perkawinan beda Agama di Indonesia perspektif asas kepastian Hukum" (undergraduate, Universitas Islam Negeri Maulana Malik Ibrahim, 2023), 5, <http://etheses.uin-malang.ac.id/58771/>.

⁴ Tyara Ayu Syaharani and Nurauliya Syifa Khofiyana, "Implikasi Pemberlakuan SEMA 2/2023 Terhadap Perkawinan Beda Agama Ditinjau Dari Hukum Positif Indonesia Dan



the Marriage Law states that: "*Marriage is prohibited between two people who have a relationship that is prohibited by their religion or other applicable regulations.*" "

In other words, the Marriage Law accommodates religious principles in determining the validity of marriage, thus making religious aspects an integral part of the marriage process. Law No. 23/2006 on Population Administration (hereinafter referred to as the Adminduk Law), regulates provisions specifically in the context of marriage registration. Article 34 paragraph (1) of the Adminduk Law emphasizes that marriage registration is mandatory for every legal marriage." This indicates that marriage registration is a must that must be complied with to ensure that there is an official record of the marriage that has taken place.

However, it will cause problems if the marriage recorded in the civil registry is actually categorized as an invalid marriage according to Article 2 paragraph (1) of the Marriage Law, which states that a valid marriage is conducted based on the provisions of each religion and belief. Article 35 letter a of the Civil Registration Law explains that "the registration of valid marriages, including marriages between people of different religions that have been determined by the Court, is an obligation." In this case, it indirectly authorizes the court to record marriages at the Civil Registry Office (KCS) even though the spouses are from different religions. "Article 8 letter f of the Marriage Law states the consequences of the prohibition of interfaith marriages that have been regulated since the enactment of the Marriage Law in 1974, but the registration of interfaith marriages is still carried out under the provisions of the Civil Registration Law."

With the disharmony between the two laws, there is disharmony that influences judges in adjudicating cases of requests for registration of marriages between people of different religions and beliefs. The Adminduk Law states that a valid marriage according to the laws and regulations is a marriage that is reported and registered. In the explanation of Article 35 of the Civil Registration Law, it is explained that the marriage stipulated by the Court is a

Hukum Keluarga," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 7 (February 11, 2024): 35, <https://doi.org/10.5281/zenodo.10645908>.

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marriage between people of different religions, in contrast to the Marriage Law which regulates the prohibition, which raises doubts about the consistency and harmony between the applicable legal provisions.

The Civil Registration Law allows people to enter into marriages of different religions. In addition, the opportunity to perform marriages of different religions is increasingly open with the enactment of this law. Article 34 paragraph (1) of the Civil Registration Law states that "residents must report a legal marriage to the Implementing Agency at the place of marriage no later than 60 (sixty) days from the date of marriage." Therefore, in order to provide guidelines for judges in handling cases of requests for marriage registration between people of different religions and beliefs, SEMA No. 2 of 2023 was issued. With the following contents:⁵

- (1) "A valid marriage is a marriage conducted according to the laws of each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 Year 1974 concerning Marriage.
- (2) The court did not grant the application for registration of marriage between people of different religions and beliefs."

In this case, there is still a disharmonization of differences in views between the Marriage Law and the Civil Registration Law which causes the judge's decision to still grant the registration of applications for interfaith marriages. This is evident in the Decision of the North Jakarta District Court Case Number 423/Pdt.P/2023/PN Jkt.Utr on August 8, 2023 which still granted the application for registration of an interfaith marriage despite the issuance of SEMA Number 2 of 2023 issued on July 17, 2023 which should be used as guidance by judges. In the decision, that Applicant I (GA) is a male Indonesian citizen of Catholic religion and Applicant II (RYA) is a female Indonesian citizen of Christian religion, on February 1, 2023 the Plaintiffs have held a marriage / marriage blessing according to the law of religion & belief

⁵ JDIH Mahkamah Agung RI, "Surat Edaran Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2023 Tentang Petunjuk Bagi Hakim Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar Umat Yang Berbeda Agama Dan Kepercayaannya," 2023, <https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-2-tahun-2023/detail>.



of the Plaintiffs. That the Plaintiffs have taken care of the completeness of the document files required to register the marriage at the Office of the Population and Civil Registration Office of the City of North Jakarta and have visited and notified the Office of the Population and Civil Registration Office of the City of Jakarta, but because Applicant I is Catholic and Applicant II is Christian, the Office of the Population and Civil Registration Office of the City of North Jakarta refused to register the marriage on the grounds that the marriage of the PARA PEMOHON is a marriage of different religions so that a Stipulation from the Court is required. Based on this, the Plaintiffs requested the Chairman of the North Jakarta District Court to be able to grant permission to the Plaintiffs to carry out a Religious Marriage Registration at the Population and Civil Registration Office of North Jakarta City. In connection with the application, on August 8, 2023 the Judge of the North Jakarta District Court decided to grant the Petition of PARA PEMOHON in its entirety.

Based on these matters, the question arises as to whether the regulation on the regulation of different religions after the issuance of SEMA has fulfilled legal certainty using existing theories, considering that there are still discrepancies between the North Jakarta District Court's decision and the guidelines provided in the SEMA. This is important to evaluate the consistency and harmony in the application of laws related to interfaith marriage after the issuance of the SEMA.

THEORETICAL BASIS

Legislative Theory

Theoretically, there are several terms "legislation" or the word "legislation". Law No. 12/2011 on the Establishment of Legislation (Law No. 12/2011) explains that legislation is also known as "wetegeving", "gesetzgebung" or "legislation". The terms (legislation, wetgeving or Gesetzgebung) have two different meanings, the term "legislation which is also known as legislation can be interpreted as "legislation" and "lawmaking". The term wetgeving can be interpreted in the sense of "forming overall laws rather than state laws" and the term "Gesetzgebung" can be interpreted as



"legislation".⁶ The making of laws and regulations must be in accordance with what happens to life in society so that they can become rules used by the community and become guidelines for the community.

H. Soehino provides two definitions of the term legislation, the first describing how state laws are made, including the lowest laws, which are made by the legislative power, and the second is the overall product of the law.⁷ In Law No. 12/2011, legislation is defined as binding written rules made by authorized officials in accordance with the procedures set out in the legislation.⁸ Legislation is one of the vital elements in the legal system in Indonesia. According to Bagir Manan, who quoted P.J.P's opinion on "wet in materiele zin", legislation in the material sense includes several main essences: first, legislation is a written decision which is a written rule of law (*geschreven recht*, written law); second, legislation is formed by officials or bodies that have the authority to make regulations that apply or bind the public (*algemeen*); third, legislation is generally binding, although it does not necessarily bind everyone, but the regulation does not only apply to concrete events or certain individuals.⁹

H. Soehino also gives the definition of legislation in two aspects: first, the process or procedure for the formation of state laws and regulations from the highest type and level, namely laws, to the lowest, which are produced by attribution or delegation from the legislative power; second, the overall product of these laws and regulations. The content material of laws and regulations must be in accordance with their hierarchical level. The higher the position of a statutory regulation, the more abstract and basic the content material. Conversely, the lower the position, the more detailed and concrete

⁶ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan* (Yogyakarta: Kanisius, 2007), p. 3.

⁷ Mahendra Putra Kurnia, Jazim Hamidi, and Sobirin Malian, *Pedoman naskah akademik Perda partisipatif: urgensi, strategi, dan proses bagi pembentukan Perda yang baik*, Cet. 1 (Yogyakarta: Kreasi Total Media (KTM), 2007), p. 5.

⁸ Republik Indonesia, *Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan*, 2011.

⁹ Kurnia, Hamidi, and Malian, *Pedoman naskah akademik Perda partisipatif*, p. 6.



the content material. Overall, the theory of legislation not only provides an understanding of how a legal regulation is formed and implemented, but also underlines the importance of principles and appropriate content material in the formation of regulations to ensure effectiveness, justice and legal certainty in society.

Legal Certainty Theory

One of the main objectives in the legal system is to create legal certainty, which is essentially an important element in the achievement of justice. Legal certainty represents an effort to ensure that the law is applied and enforced fairly regardless of the identity of the perpetrator. In practice, legal certainty includes the process of implementing and enforcing the law against any violation, without favoring any particular party. With legal certainty, every individual can have an estimate of the consequences that will be faced if they take a legal action. To achieve equality before the law without discrimination, the concept of legal certainty is very important because it is related to the principle of truth and related to the principle of formal law. A person believes that with legal certainty his actions will be in accordance with the applicable legal provisions, and vice versa. People do not have clear standards to regulate how they behave in the absence of legal certainty.

Gustav Radbruch stated that one of the main objectives of the legal system is legal certainty. Gustav Radbruch argued that legal certainty is the result of the legal process as a whole, especially in terms of legislation. Gustav Radbruch defines legal certainty as a state of certainty and the enactment of provisions and decisions, as well as law as a positive entity that aims to regulate the interests of individuals in society and must be obeyed even though it is considered unfair.¹⁰ In contrast to Gustav Radbruch, Sudikno Mertokusumo views legal certainty as a guarantee that the law can be enforced. With legal certainty, individuals who have rights will get appropriate legal decisions.

¹⁰ Rahardjo Satjipto, "Ilmu Hukum," *Citra Aditya Bakti, Bandung*, 2000, p.19.



Essentially, the law must be certain and just. By being certain and fair, the law can be implemented in accordance with its function. Sudikno also said that law and justice are two different things. Legal certainty is the implementation of the law in accordance with its meaning so that people can ensure that the existing and written law applies.¹¹ Internal structure refers to the components that make up legal norms, including clarity, consistency, and stability, this is an explanation from Nusrhasan Ismail.¹² By fulfilling all the requirements of legal certainty in legislation, it can be more effective and adequate to support stability and order in society.

From the understanding of the theory of legal certainty according to experts, it can be concluded that the concept of legal certainty has several meanings. First, legal certainty demands clarity, which means that legal norms must be easy to understand and must not invite various different interpretations. Second, legal certainty emphasizes the importance of consistency between various legal regulations, so that there are no contradictions between them. Third, legal certainty ensures that existing regulations can be implemented effectively. Laws established by the government or authorities must be open and clear to the public. Laws should not contradict each other as that may cause doubts. The principle of legal certainty is to provide a framework that is clear and understandable to all citizens, in accordance with the cultural values of the society.

RESEARCH METHODS

This type of research is Normative Juridical research¹³ which is legal research by examining sources of legal materials such as legal principles, laws and regulations related to this research. Normative legal research is also known as library research which is guided by related legal sources. In this

¹¹ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2008), p. 158.

¹² Nurhasan Ismail, *Perkembangan hukum pertanahan: pendekatan ekonomi-politik: perubahan pilihan kepentingan, nilai sosial, dan kelompok diuntungkan* (Yogyakarta: Kerjasama Huma & Magister Hukum UGM, 2007), p. 1.

¹³ Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2011), p. 24.



research, the research approach used by the author is the Statute Approach and Conceptual Approach. By using legal material search techniques, namely literature studies and legal material analysis techniques, namely systematic and grammatical interpretations. This normative research is used to specifically analyze whether the regulation regarding the regulation of different religions after the issuance of SEMA Number 2 of 2023 has fulfilled legal certainty.

RESULT AND DISCUSSION

Legal Certainty Toward Interfaith Marriage After the Issuance of Supreme Court Circular Letter Number 2 of 2023

The Supreme Court Circular Letter (SEMA) was first issued in accordance with the provisions of Article 12 Paragraph 3 of Law Number 1 Year 1950 concerning the Structure, Powers, and Court Procedures of the Supreme Court of Indonesia, which includes:

- (1) The Supreme Court supervises the conduct and work of the courts as well as the judges.
- (2) For this purpose, the Supreme Court also has the right to give warnings, reprimands and instructions that are deemed necessary and useful for the courts and judges, either in the form of a separate letter or by circular letter.¹⁴

Furthermore, the legal basis used is Article 79 and its Explanation in Law Number 14 of 1985 concerning the Supreme Court. This article and its Explanation were not amended by Law No. 5 of 2004 on the Amendment to Law No. 14 of 1985 on the Supreme Court, as well as Law No. 3 of 2009 on the Second Amendment to Law No. 14 of 1985 on the Supreme Court. The content of Article 79 confirms that the Supreme Court has the authority to regulate matters necessary for the smooth implementation of the judiciary, especially regarding aspects that have not been or are insufficiently regulated in this law. The elucidation of Article 79 states that if in the implementation of the

¹⁴ Republik Indonesia, *Pasal 12 Ayat (3) Undang-Undang Nomor 1 Tahun 1950 Tentang Susunan, Kekuasaan, Dan Jalan Pengadilan Mahkamah Agung Indonesia*, 1950.



judiciary there is a shortage, legal vacuum, or ambiguity, the Supreme Court is authorized to issue regulations that can fill the shortage. Therefore, in accordance with the mandate of this Law, the Supreme Court has the authority to determine regulations on how to resolve issues that have not been or are not regulated in this Law.¹⁵

According to Jimmly Asshidique in his book "About the Law", Circular Letters are categorized as policy rules or quasi legislation. Policy regulations (bleidsregels) are a consequence of the duties of state administrative officials in running the government, which involves discretionary policy making. The Supreme Court Circular Letter (SEMA) is specifically aimed at internal courts, including the Chief Justice, Judges, Clerks, and other court officials.¹⁶ This is in line with the characteristics of policy rules that are designed to govern the internal affairs of the organization. Judges, Chief Justices, Clerks, and other court officials can be considered part of an administrative body or official. This explanation confirms that SEMA is part of policy rules (bleidsregels). Hence, in terms of hierarchy, SEMA is clearly below the law.¹⁷ because it is more specific and limited to the internal scope, in contrast to laws and regulations which have a broader scope and bind the entire society. This explanation also shows that, although SEMA serves as an important guide in the operation of the judiciary, it does not have the same legal force as the Law, but still has an important role in maintaining consistency and efficiency in the execution of court duties.¹⁸

Supreme Court Circular Letter (SEMA) Number 2 Year 2023, signed on July 17, 2023 by the Chief Justice of the Supreme Court, is a policy instrument designed to strengthen legal certainty and uniformity in the

¹⁵ Hotman P. Sibuea; *Asas Negara Hukum, Peraturan Kebijakan, & Asas-Asas Umum Pemerintahan Yang Baik* (Jakarta: Erlangga, 2010), 34.

¹⁶ Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Rajawali Pers, 2010), p. 56.

¹⁷ Victor Imanuel, "Kewenangan Yudikatif Dalam Pengujian Peraturan Kebijakan Kajian Putusan Mahkamah Agung," 34, accessed October 8, 2024, <https://garuda.kemdikbud.go.id/documents/detail/2059534>.

¹⁸ Hans Kelsen, *Teori Umum Tentang Hukum Dan Negara* (Bandung: Nusamedia, 2006), p. 23.



application of the law in all courts in Indonesia. This SEMA has several main objectives, namely to achieve legal certainty and unity in the application of the law. Overall, SEMA No. 2 Year 2023 is a strategic step by the Supreme Court in strengthening the consistent application of the law and ensuring legal certainty in all Indonesian courts. Although it has a significant impact on the freedom of judges in deciding cases, this SEMA is expected to create a more structured and reliable judicial system. Supreme Court Circular Letter (SEMA) Number 2 Year 2023 does not have the position of a directly binding statutory regulation in the hierarchy of Indonesian laws and regulations. SEMA is an internal instrument of the Supreme Court that provides guidance and direction to judges and judicial officers in applying the law. Although it is not equivalent to a law or government regulation, it is important in legal practice because it influences the way courts decide cases, particularly regarding the registration of interfaith marriages. It serves as a guide in the interpretation of the law, but does not have the same legal force as a statute.

Legal Basis and Authority of the Supreme Court as a Rule Making Power in the Issuance of Sema Number 2 Year 2023

The judiciary is part of the concept of the "rule of law" and has a very important role in the legal system. Courts have the authority to resolve legal disputes and are tasked with identifying violations of the law and upholding justice. One of the state institutions that has an important role in the judicial system in Indonesia is the Supreme Court. This institution has the main function of exercising judicial power as the apex of the judicial system at various levels. However, the development of laws is sometimes delayed, and the laws enacted do not always reflect justice for society. Laws can also sometimes be ambiguous or lead to multiple interpretations. In this condition, the Supreme Court as the highest judicial institution in Indonesia must act decisively based on the sense of justice of the community.¹⁹ Article 24A of the

¹⁹ Raihan Andhika Santoso, Elan Jaelani, and Utang Rosidin, "Kedudukan Dan Kekuatan Hukum Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Indonesia," *Depositi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (October 9, 2023): 15, <https://doi.org/10.59581/depositi.v1i4.1392>.



1945 Constitution stipulates that "the Supreme Court has the authority to hear cases at the cassation level, to examine laws and regulations under the law against the law, and has other powers granted by law".²⁰

In exercising its authority, the Supreme Court has the right to give warnings and reprimands deemed necessary to maintain the integrity of the judicial system and improve effective governance within the judiciary, including judges. Such warnings and instructions can be delivered through circulars or other formats. This is in accordance with Article 32 paragraph (4) of Law Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 on the Supreme Court, which reads: "The Supreme Court has the authority to give instructions, reprimands, or warnings to courts in all judicial bodies under it".²¹

With this, the government gives rule making power to the Supreme Court. Therefore, this is contained in Article 79 of Law No. 14 of 1985 concerning the Supreme Court, which states that "the Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in the law".²² In the literature, this authority and duty is known as the regulatory function or *regelende functie* of the Supreme Court. The matters referred to in this article relate to deficiencies or legal lacunae, as explained in the explanation of Article 79 of Law No. 14 of 1985 concerning the Supreme Court, which means that if in the judicial process there is a deficiency or legal vacuum in a matter, the Supreme Court has the authority to make regulations as a complement to fill the vacuum. Through this law, the Supreme Court is authorized to establish rules on how to resolve issues that have not been or are not regulated in law. The regulations issued by the Supreme Court are different from the regulations drafted by the legislators. The administration of justice referred to

²⁰ Republik Indonesia, *Pasal 24A Undang-Undang Dasar (UUD) 1945 Mengatur Kewenangan Mahkamah Agung*, 1945.

²¹ Republik Indonesia, *Pasal 32 Ayat (4) Undang-Undang Nomor 3 Tahun 2009 Tentang Mahkamah Agung*, 2009.

²² Republik Indonesia, *Pasal 79 Undang-Undang Nomor 3 Tahun 2009 Tentang Mahkamah Agung*, 2009.



in this law is only part of the overall procedural law. Therefore, the Supreme Court will not interfere with or exceed the regulation of the rights and obligations of citizens in general, and will not regulate the nature, strength, means of proof, its assessment, or the distribution of the burden of proof.²³

The Supreme Court has the authority to make rules of law, known as rule-making power. This authority includes:

a. Issuance of Supreme Court Circular Letter (SEMA)

1. Definition and Function: SEMA is a legal product issued by the Supreme Court to provide guidelines and instructions to courts throughout Indonesia. SEMA serves as a tool to address legal issues that are not regulated in detail in the law or to provide explanations on the application of existing laws.
2. Issuance Process: The Supreme Court issues SEMA in response to practical needs in law enforcement and to ensure that the judicial process runs in accordance with the principles of justice.

b. Regulating Legal Vacancies

Regulatory Function: When there is a void or ambiguity in the applicable law, the Supreme Court has the authority to make additional regulations to fill the void. This aims to ensure that all aspects of the law are properly accommodated in the judicial process. The issuance of Supreme Court Circular Letter Number 2 Year 2023 shows the continuation of the regulatory function or rule making power owned by the Supreme Court in overcoming the legal vacuum related to interfaith marriage. SEMA Number 2 Year 2023 also provides legal certainty for interfaith marriages through instructions given to all district court judges. With the function given to ensure the smooth resolution of various problems in the law, especially related to marriage, the Supreme Court can take the role and responsibility in resolving the polemics arising from the legal vacuum.

The legal basis for the issuance of Supreme Court Circular Letter (SEMA) Number 2 Year 2023 comes from the authority of the Supreme Court

²³ Asshiddiqie, *Perihal Undang-Undang*, 393.



as the highest judicial institution in Indonesia. This authority is stipulated in Law Number 14 of 1985 concerning the Supreme Court (as amended by Law Number 3 of 2009), which gives the Supreme Court the authority to issue guidelines in the form of circular letters to provide direction to judicial officers. As a rule, making power, the Supreme Court uses SEMA to provide guidance and consistency in the application of the law, especially regarding issues that have not been clearly regulated in the law. SEMA Number 2 Year 2023 is a legal instrument issued by the Supreme Court to answer the legal needs for the registration of interfaith marriages, although it does not have binding force equivalent to higher laws and regulations.

Analysis of the Fulfillment of Legal Certainty Toward Interfaith Marriage After the Issuance of Supreme Court Circular Letter Number 2 of 2023

The concept of legislative theory and legal certainty is closely related to principles of justice, equality, and human rights. In general, legislative theory emphasizes the importance of clear and certain legal formulations to maintain order and stability in society. Legal certainty aims to provide consistent guidelines so that individuals can understand their rights and obligations and anticipate the legal consequences of their actions (Hart, 1961). However, legal certainty cannot stand alone without considering the principle of justice, which demands that law is not only applied rigidly but also considers social and moral contexts, balancing written rules with fair outcomes for all parties.²⁴ Absolute legal certainty, without regard for values of justice, equality, and human rights, can result in injustice. The principle of justice in law requires that everyone be treated equally before the law; however, in practice, the law must also provide treatment appropriate to individual conditions and specific situations. In this context, substantive equality and justice require that the law adapts to reflect the needs and rights of diverse individuals²⁵

²⁴ John Rawls, "A Theory of Justice," Cambridge (Mass.), 1971.

²⁵ Ronald Dworkin, *Taking Rights Seriously* (A&C Black, 2013).



Human rights also play a significant role in the formation and application of law. In modern legal theory, legislation functions not only as a tool for social control but also as an instrument to protect fundamental individual rights and enhance social welfare.²⁶ Human rights emphasize that each legislative product must align with the protection of fundamental rights, such as the right to life, freedom of expression, and the right to fair legal protection. After the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023 instructing court judges to refuse marriage registration applications between people of different religions and beliefs, there were various reactions in the community. Although most people were in favor, there were still those who opposed and asked the Supreme Court to revoke the SEMA. Those who refused argued that there was already a regulation that allowed the registration of marriages between people of different religions, namely Law No. 23/2006 on Population Administration (Adminduk Law).

SEMA Number 2 of 2023 is based on Law Number 1 of 1974 concerning Marriage (Marriage Law), which emphasizes that the validity of a marriage is entirely left to the religion and belief of each. This norm is not only regulated in Article 2 paragraph 1, but also in Article 8 letter f of the Marriage Law. Article 2 paragraph 1 of the Marriage Law states that a marriage is considered valid if it is conducted in accordance with the laws of each religion and belief. In addition, Article 8 letter f states that marriage is prohibited between two people who have a relationship that is prohibited from marriage by religion or other applicable regulations.

This norm is very clear and firm that any marriage that is not in accordance with religion and belief is not permitted in Indonesia. Under the Marriage Law, marriages that are not in accordance with the laws of religion and belief are not only prohibited from being recorded in the state administration, but are also prohibited from being performed. However, following the elucidation of Article 35 letter a of Law No. 23/2006 on Population Administration (Adminduk Law), some district court judges have

²⁶ Robert Alexy, *A Theory of Constitutional Rights* (Oxford university press, 2010).



begun to grant applications for the legalization of interfaith marriages. Worse, these decisions were often based on the administrative needs of the applicants.²⁷

The judges conveniently ignored the Marriage Law, which is supposed to be the Lex specialist in marriage provisions in Indonesia and applies to all citizens. Although the Constitutional Court has twice rejected the judicial review of Article 2 paragraph (1) of the Marriage Law, there are still parties who are not satisfied and try to take refuge behind the district court's decision to grant the application for interfaith marriage based on Article 35 letter a of the Civil Registration Law. Legal Paradigm Shift, Supreme Court Circular Letter (SEMA) No. 2 of 2023 provides new legal certainty regarding the marriage registration of interfaith couples in Indonesia. This SEMA provides guidance to courts to accommodate the requests of interfaith couples who wish to register their marriages. More Open Legal Certainty After the issuance of SEMA 2/2023, interfaith couples can obtain legal certainty through an application mechanism for marriage registration at the District Court. This allows them to legally validate their marriage, even though it may not be recognized by all religions involved.

SEMA Number 2 Year 2023 can be seen as an attempt to bridge the gap between positive law and human rights, particularly the right to freedom of religion and the right to marry, in accordance with the 1945 Constitution and international conventions ratified by Indonesia. With this SEMA, the role of the court becomes more significant in providing legal solutions for interfaith couples who previously often experienced obstacles in registering their marriages at the Civil Registry Office. The issuance of this SEMA is expected to improve the bureaucracy related to population administration, especially in the marriage registration of couples of different religions. It provides a clearer legal basis for civil registry officers in accepting or rejecting marriage registration applications.

²⁷ "Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan," p. 59.



After the issuance of Supreme Court Circular Letter (SEMA) Number 2 Year 2023, the fulfillment of legal certainty for interfaith marriages has increased. This SEMA provides guidelines for courts to process and authorize the registration of interfaith marriages, which previously often experienced obstacles in the Indonesian legal system. The pursuit of legal certainty within the legal system often creates tension with other essential goals, such as justice, flexibility, and the protection of human rights. Legal certainty emphasizes predictability and consistency in the application of laws, which is crucial for creating stability in society. According to Hart (1961), this predictability allows society to understand and comply with applicable legal rules, thereby strengthening social order. On the other hand, an overly rigid approach to legal certainty can result in injustice in certain situations, as it may fail to consider social context or the specific needs of individuals in particular cases. For instance, strictly enforced rules may not provide fair treatment to those with unique circumstances, ultimately undermining the principle of justice.

Moreover, an excessive focus on legal certainty can hinder the law's ability to adapt to rapid social, technological, or economic changes. Fuller (1969) argues that a responsive legal system must be capable of evolving to remain relevant and effective over time. When law is too rigid and lacks flexibility, it may inhibit legal innovation and create regulatory gaps in addressing emerging issues. Here lies the challenge for the legal system: to maintain a balance between legal certainty and the flexibility that allows the law to stay adaptive.

Additionally, legal certainty can conflict with efforts to protect human rights. According to Alexy (2002), legal certainty must still consider the principles of human rights so that the law serves not only as an instrument of control but also as a means of protecting individual freedoms and rights. A legal system overly focused on certainty without regard for human rights may compromise fundamental rights and erode public trust in the law. However, in Decision Number 423/Pdt.P/2023/PN Jkt.Utr, the North Jakarta District Court granted the application for registration of an interfaith marriage by referring to the existing provisions. Although SEMA Number 2 of 2023



stipulates that courts cannot process applications for registration of marriages of different religions, in the decision. The basis of the judge's reasoning in this decision is that the judge is of the opinion that the provisions in Law Number 1 of 1974 concerning Marriage require that marriages be carried out based on their respective religions, and marriages that are not in accordance with these provisions cannot be registered. This decision emphasizes that despite the existence of SEMA, the judge refers to the higher law in the hierarchy of regulations, namely the Marriage Law, which does not explicitly accommodate the registration of marriages of different religions, but in addition to this there are human rights that are upheld higher. And SEMA No. 2 of 2023 provides guidance to judges to consider the registration of interfaith marriages, but is not legally binding. Judges use the interpretation that SEMA does not override the main rules of the existing law.

Therefore, it can be concluded that legal certainty has been fully fulfilled for interfaith couples, because SEMA does not provide a way, SEMA Number 2 Year 2023 seeks to provide clearer guidelines for the registration of interfaith marriages. However, since SEMA is not a law, the promised legal certainty is still vulnerable to different interpretations at the court level. To achieve stronger and more equitable legal certainty, reform of the marriage law is needed so that the recognition of interfaith marriages does not rely solely on temporary policies or directives from SEMA.

CONCLUSION

The legal basis for the issuance of Supreme Court Circular Letter (SEMA) Number 2 Year 2023 comes from the authority of the Supreme Court as the highest judicial institution in Indonesia. This authority is stipulated in Law Number 14 of 1985 concerning the Supreme Court (as amended by Law Number 3 of 2009), which gives the Supreme Court the authority to issue guidelines in the form of circular letters to provide direction to judicial officers. As a rule making power, the Supreme Court uses SEMA to provide guidance and consistency in the application of the law, especially regarding issues that have not been clearly regulated in the law. SEMA Number 2 Year 2023 is a



legal instrument issued by the Supreme Court to answer the legal needs for the registration of interfaith marriages and is a strategic step by the Supreme Court in strengthening the consistent application of the law and ensuring legal certainty in all Indonesian courts. Although it has a significant impact on the freedom of judges in deciding cases, this SEMA is expected to create a more structured and reliable judicial system. It can be concluded that SEMA Number 2 Year 2023 has fulfilled legal certainty because SEMA does not provide a way to grant permission to apply for registration of interfaith marriages. However, in Decision Number 423/Pdt.P/2023/PN Jkt.Utr, the North Jakarta District Court Judge held a different opinion and still granted the application for registration of an interfaith marriage after the issuance of SEMA Number 2 of 2023. SEMA No. 2 of 2023 attempts to provide clearer guidelines for applications for registration of interfaith marriages. However, as SEMA is not a law, the legal certainty it promises is still vulnerable to different interpretations at the court level.

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