

**THE IMPLEMENTATION OF SUPREME COURT  
CIRCULAR LETTER NUMBER 2 OF 2023 IN THE  
SURAKARTA DISTRICT COURT ON THE  
ADMINISTRATIVE RIGHTS OF INDIVIDUALS IN  
INTERFAITH MARRIAGE**



ACC,

A handwritten signature in black ink, appearing to read 'Fuat Hasanudin', is written over a light blue horizontal line.

Fuat Hasanudin, Lc., MA.

Feb 15, 2024

Written by:

**Anggun Azzahra Thesalonika**

NIM: 20421086

**THESIS**

Submitted to Ahwal Al Syakhsiyyah Department International Program

Faculty of Islamic Studies Universitas Islam Indonesia

To fulfil one of the terms of obtaining a Law Degree

**YOGYAKARTA**

**2023**

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Supervisor:

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**2023**

## STATEMENT LETTER

### STATEMENT LETTER

The undersigned below:

Name : Anggun Azzahra Thesalonika

Student Number : 20421086

Place and Date of Birth : Sukoharjo, 13<sup>rd</sup> of May 2002

Faculty : Islamic Studies

Thesis Title : The Implementation of Supreme Court Circular Letter Number 2 of 2023 in the Surakarta District Court on the Administrative Rights of Individuals in Interfaith Marriage

Hereby declare that this thesis is the result of my work and true originality. Suppose in the future it turns out that the writing of this thesis is the result of plagiarism toward other people's work. In that case, I am willing to take responsibility and, at the same time be willing to accept the sanctions based on the rules of conduct that apply at Universitas Islam Indonesia.

Thus, the statement I made truthfully and without any force.

Yogyakarta, 31<sup>st</sup> of January 2024

Undersigned



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**PENGESAHAN**

Tugas Akhir ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

Hari : Senin  
Tanggal : 4 Maret 2024  
Judul Tugas Akhir : The Implementation of Supreme Court Circular Letter Number 2 of 2023 in the Surakarta District Court on the Administrative Rights of Individuals in Interfaith Marriage  
Disusun oleh : ANGGUN AZZAHRA THESALONIKA  
Nomor Mahasiswa : 20421086

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Syariah pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

**TIM PENGUJI:**

Ketua/Pembimbing : Fuat Hasanudin, Lc., MA   
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Penguji II : Krismono, SHI, MSI 

Yogyakarta, 4 Maret 2024



## INTERNAL MEMO

Yogyakarta, 31 of January 2024 H  
19 Rajab 1445 H

Subject : **Thesis**  
Dear : Honorable **Dean of the Faculty of Islamic Studies**  
Universitas Islam Indonesia  
Di-Yogyakarta

*Assalaamu'alaikum Wr. Wb.*

Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia, with letter number: 1578/Dek/60/DAATI/FIAI/X/2023, on 9<sup>th</sup> of October 2023/ 24<sup>th</sup> of Rabiul Awal 1445 H, for our duties as supervisor of the thesis:

Student Name : Anggun Azzahra Thesalonika

Student Number : 20421086

The student of the Islamic Studies Faculty, Universitas Islam Indonesia

Study Department : *Ahwal Syakhsiyyah* International Program

Academic Year : 2023/2024

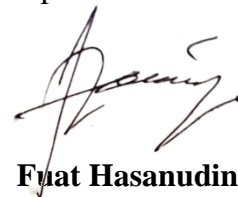
Thesis Title : The Implementation of Supreme Court Circular Letter No 2 of 2023 in the Surakarta District Court on the Administrative Rights of Individuals in Interfaith Marriage

After researching and making necessary improvements, we finally decided that your thesis above fulfils the requirements to be submitted to the Munaqasa Trial of the Islamic Studies Faculty, Universitas Islam Indonesian

Thus, it can be tested soon, and together with us, we will send 4 (four) copies of the thesis in question.

*Wassalaamu'alaikum Wr. Wb.*

Supervisor



**Fuat Hasanudin, Lc., M.A.**

## SUPERVISOR'S APPROVAL

The undersigned is the thesis supervisor, certifying that:

Student Name : Anggun Azzahra Thesalonika  
Student Number : 20421086  
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COURT CIRCULAR LETTER NO 2 OF  
2023 IN THE SURAKARTA DISTRICT  
COURT ON THE ADMINISTRATIVE  
RIGHTS OF INDIVIDUALS IN  
INTERFAITH MARRIAGE

According to the process and the results of supervising over several months and making necessary improvements, then the concerned person can register herself to join the Munaqasah Trial of the *Ahwal Syakhsiyyah* International Program Department, Faculty of Islamic Studies, Universitas Islam Indonesian.

Supervisor

Yogyakarta, 31<sup>st</sup> of January 2024



**Fuat Hasanudin, Lc., M.A.**

## **ACKNOWLEDGEMENT**

I dedicate this research to my beloved parents, Mother Sulastri and Father Riyanto, my elder sister, Dian Putri Hapsari and my little brother, Aljaan Davanas Putra Pratama. Thank you for the prayers and supports throughout the journey of completing this thesis. May this research be a source of pride and appreciation for your dedication in guiding and supporting my steps. This research shows my gratitude and appreciation to all of you.

## MOTTO

وَلَا تُنكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ ۚ وَلَا مَةَ مُؤْمِنَةٍ حَتَّىٰ مِّنْ مُّشْرِكَةٍ وَوَلَوْ أَعْجَبَتْكُمْ ۚ وَلَا تُنكِحُوا  
 الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ وَوَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَوَلَوْ أَعْجَبَكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ  
 وَوَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۚ وَوَيُبَيِّنُ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

“Do not marry polytheistic women until they believe; for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe, for a believing slave-man is better than a free polytheist, even though he may look pleasant to you. They invite ‘you’ to the Fire while Allah invites ‘you’ to Paradise and forgiveness by His grace.<sup>1</sup> He makes His revelations clear to the people so perhaps they will be mindful.”

(Q.S. Al-Baqarah/2:221)<sup>1</sup>

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<sup>1</sup> Tim Penerjemah Al-Quran UII, *Qur'an Karim Dan Terjemahan Artinya* (Yogyakarta: UII Press, 1999) 60-61.



**PEDOMAN TRANSLITERASI ARAB LATIN**  
**KEPUTUSAN BERSAMA**  
**MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN**  
**KEBUDAYAAN REPUBLIK INDONESIA**

Nomor: 158 Tahun 1987

Nomor: 0543b//U/1987

Transliterasi dimaksudkan sebagai pengalih-hurufan dari abjad yang satu ke abjad yang lain. Transliterasi Arab-Latin di sini ialah penyalinan huruf-huruf Arab dengan huruf-huruf Latin beserta perangkatnya.

**A. Konsonan**

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf. Dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dilambangkan dengan huruf dan tanda sekaligus.

Berikut ini daftar huruf Arab yang dimaksud dan transliterasinya dengan huruf latin:

Tabel 0.1: Tabel Transliterasi Konsonan

<b>Huruf Arab</b>	<b>Nama</b>	<b>Huruf Latin</b>	<b>Nama</b>
ا	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba	B	Be
ت	Ta	T	Te

ث	Ṣa	ṣ	es (dengan titik di atas)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (dengan titik di bawah)
خ	Kha	Kh	ka dan ha
د	Dal	D	De
ذ	Ḍal	Ḍ	Zet (dengan titik di atas)
ر	Ra	R	er
ز	Zai	Z	zet
س	Sin	S	es
ش	Syin	Sy	es dan ye
ص	Ṣad	ṣ	es (dengan titik di bawah)
ض	Ḍad	Ḍ	de (dengan titik di bawah)
ط	Ṭa	ṭ	te (dengan titik di bawah)

ظ	Za	z	zet (dengan titik di bawah)
ع	`ain	`	koma terbalik (di atas)
غ	Gain	G	ge
ف	Fa	F	ef
ق	Qaf	Q	ki
ك	Kaf	K	ka
ل	Lam	L	el
م	Mim	M	em
ن	Nun	N	en
و	Wau	W	we
هـ	Ha	H	ha
ء	Hamzah	‘	apostrof
ي	Ya	Y	ye

## B. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokal tunggal atau *monoftong* dan vokal rangkap atau *diftong*.

### 1. Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harakat, transliterasinya sebagai berikut:

Tabel 0.2: Tabel Transliterasi Vokal Tunggal

Huruf Arab	Nama	Huruf Latin	Nama
ـَ	Fathah	A	a
ـِ	Kasrah	I	i
ـُ	Dammah	U	u

### 2. Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harakat dan huruf, transliterasinya berupa gabungan huruf sebagai berikut:

Tabel 0.3: Tabel Transliterasi Vokal Rangkap

Huruf Arab	Nama	Huruf Latin	Nama
ـَـيْ...	Fathah dan ya	Ai	a dan u
ـَـوْ...	Fathah dan wau	Au	a dan u

Contoh:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سَأَلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

### C. Maddah

*Maddah* atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda sebagai berikut:

Tabel 0.4: Tabel Transliterasi *Maddah*

Huruf Arab	Nama	Huruf Latin	Nama
...آ...ى...	Fathah dan alif atau ya	Ā	a dan garis di atas
...ىِ	Kasrah dan ya	Ī	i dan garis di atas
...وُ	Dammah dan wau	Ū	u dan garis di atas

Contoh:

- قَالَ qāla
- رَمَى ramā
- قِيلَ qīla
- يَقُولُ yaqūlu

#### D. Ta' Marbutah

Transliterasi untuk ta' marbutah ada dua, yaitu:

1. Ta' marbutah hidup  
Ta' marbutah hidup atau yang mendapat harakat fathah, kasrah, dan dammah, transliterasinya adalah "t".
2. Ta' marbutah mati  
Ta' marbutah mati atau yang mendapat harakat sukun, transliterasinya adalah "h".
3. Kalau pada kata terakhir dengan ta' marbutah diikuti oleh kata yang menggunakan kata sandang *al* serta bacaan kedua kata itu terpisah, maka ta' marbutah itu ditransliterasikan dengan "h".

Contoh:

- رَوْضَةُ الْأَطْفَالِ    raudah al-atfāl/raudahtul atfāl
- الْمَدِينَةُ الْمُنَوَّرَةُ    al-madīnah al-munawwarah/al-madīnatul munawwarah
- طَلْحَةَ    talhah

#### E. Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, ditransliterasikan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- نَزَّلَ    nazzala
- الْبِرُّ    al-birr

## F. Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ال, namun dalam transliterasi ini kata sandang itu dibedakan atas:

### 1. Kata sandang yang diikuti huruf syamsiyah

Kata sandang yang diikuti oleh huruf syamsiyah ditransliterasikan sesuai dengan bunyinya, yaitu huruf “l” diganti dengan huruf yang langsung mengikuti kata sandang itu.

### 2. Kata sandang yang diikuti huruf qamariyah

Kata sandang yang diikuti oleh huruf qamariyah ditransliterasikan dengan sesuai dengan aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti oleh huruf syamsiyah maupun qamariyah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanpa sempang.

Contoh:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu
- الْجَلَالُ al-jalālu

## G. Hamzah

Hamzah ditransliterasikan sebagai apostrof. Namun hal itu hanya berlaku bagi hamzah yang terletak di tengah dan di akhir kata. Sementara hamzah yang terletak di awal kata dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- تَأْخُذُ ta'khuẓu
- شَيْءٌ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

## H. Penulisan Kata

Pada dasarnya setiap kata, baik fail, isim maupun huruf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan, maka penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

- وَ إِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ / Wa innallāha lahuwa khair ar-rāziqīn/  
Wa innallāha lahuwa khairurrāziqīn
- بِسْمِ اللَّهِ مَجْرَاهَا وَ مُرْسَاهَا / Bismillāhi majrehā wa mursāhā

## I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

- الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ / Alhamdu lillāhi rabbi al-`ālamīn/



Alhamdu lillāhi rabbil `ālamīn

- الرَّحْمَنُ الرَّحِيمُ                      Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata lain sehingga ada huruf atau harakat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- اللَّهُ غَفُورٌ رَحِيمٌ                      Allaāhu gafūrun rahīm
- لِلَّهِ الْأُمُورُ جَمِيعًا                      Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

## J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

## **ABSTRAK**

### **IMPLEMENTASI SURAT EDARAN MAHKAMAH AGUNG NOMOR 2 TAHUN 2023 DI PENGADILAN NEGERI SURAKARTA TENTANG HAK ADMINISTRATIF INDIVIDU DALAM PERKAWINAN ANTAR AGAMA**

ANGGUN AZZAHRA THESALONIKA

20421086

Perkawinan antar-agama adalah fenomena yang tak terhindarkan di tengah masyarakat pluralis seperti Indonesia. Meskipun UU Perkawinan tidak secara tegas melarang perkawinan antaragama, UU Adminduk memberikan celah bagi pasangan beda agama untuk mencatatkan perkawinan melalui penetapan pengadilan. Sebagai respons, Mahkamah Agung mengeluarkan Surat Edaran Nomor 2 Tahun 2023 yang memuat Petunjuk Hakim dalam Mengadili Perkara Perkawinan antarumat berbeda Agama dan Kepercayaan. Penelitian ini bertujuan memahami latar belakang dan tujuan terbitnya Surat Edaran Mahkamah Agung (SEMA) tersebut serta implementasinya terhadap hak administrasi kependudukan bagi pasangan perkawinan antaragama di PN Surakarta. Metode penelitian yang digunakan adalah penelitian lapangan dengan pendekatan yuridis empiris. Hasil penelitian menunjukkan bahwa SEMA ini berperan sebagai dasar hukum bagi hakim dalam membuat keputusan terkait pencatatan perkawinan beda agama, dengan tujuan mencapai konsistensi dan kejelasan bagi masyarakat. Meskipun mendapatkan kritik, Surat Edaran ini tetap mendapat respon positif dari PN Surakarta. SEMA menegaskan bahwa keabsahan perkawinan di Indonesia hanya diakui berdasarkan hukum agama, menekankan asas formal hukum perkawinan daripada hukum administrasi kependudukan. Ini mendorong calon pasangan beda agama untuk mempertimbangkan melakukan perkawinan sesuai dengan aturan undang-undang, sehingga perkawinan tersebut dapat dicatatkan sebagai pemenuhan hak administrasi kependudukan.

Kata Kunci: SEMA No 2/2023, Perkawinan Antar Agama, Hak Administrasi Kependudukan, PN Surakarta

## **ABSTRACT**

### **THE IMPLEMENTATION OF SUPREME COURT CIRCULAR LETTER NUMBER 2 OF 2023 IN THE SURAKARTA DISTRICT COURT ON THE ADMINISTRATIVE RIGHTS OF INDIVIDUALS IN INTERFAITH MARRIAGE**

ANGGUN AZZAHRA THESALONIKA

20421086

Interfaith marriage is an inevitable phenomenon in pluralistic societies like Indonesia. Although the Marriage Law does not explicitly prohibit interfaith marriages, the Population Administration Law allows couples of different faiths to record their marriages through a court decision. In response, the Supreme Court issued Circular Letter No. 2 of 2023, containing guidelines for judges in adjudicating cases of interfaith marriages. This research aims to understand the background and objectives of this Supreme Court Circular Letter (SEMA) issuance and its implementation in fulfilling the administrative rights of interfaith couples in the Surakarta District Court. The research methodology employed is field research with a juridical-empirical approach. The findings indicate that the SEMA serves as a legal basis for judges to make decisions regarding the registration of interfaith marriages to achieve consistency and clarity for the public. Despite criticism, this SEMA continues to receive a positive response from the Surakarta District Court. This SEMA emphasizes that the validity of marriages in Indonesia is only recognized based on religious law, highlighting the formal legal principles of marriage rather than population administration law. This SEMA encourages prospective interfaith couples to consider getting married by legal regulations, allowing the marriage to be recorded and thus fulfilling their administrative rights.

**Keywords:** Supreme Court Circular Letter No. 2 of 2023, Interfaith Marriage, Administrative Rights, Surakarta District Court.

## PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ، وَعَلَى آلِهِ  
وَأَصْحَابِهِ وَمَنْ تَبِعَهُمْ بِإِحْسَانٍ إِلَى يَوْمِ الدِّينِ، أَمَّا بَعْدُ

Praise and gratitude be to the presence of Allah SWT for all His blessings and guidance, allowing the completion of this thesis with His mercy. May blessings and peace be abundantly bestowed upon the Prophet, the exemplary human being for all his followers, the Messenger of Allah, Prophet Muhammad SAW, who guided his people from the age of ignorance to the Islamic era.

The process of composing and completing the thesis entitled "The Implementation of Supreme Court Circular Letter No 2 of 2023 in the Surakarta District Court on the Administrative Rights of Individuals in Interfaith Marriage" would not have been possible without the support, guidance, advice, and supervision of various individuals involved. A sincere and heartfelt expression of gratitude is extended to the esteemed:

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2. Dr. Drs. Asmuni, MA, as the Dean of the Faculty of Islamic Religious Sciences at the Islamic University of Indonesia.
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As the author, I fully acknowledge that this thesis is not perfect. Therefore, constructive criticism, suggestions, and comments are highly anticipated. May this thesis contribute to the academic knowledge for readers in general, and specifically, for the author.

Yogyakarta,

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# CHAPTER I

## INTRODUCTION

### A. Research Background

According to Article 1 of Law No. 1 of 1974 on Marriage (from now on referred to as the Marriage Law), "Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and everlasting family (household) based on the Almighty God."<sup>2</sup> Meanwhile, according to Article 2 of the Compilation of Islamic Law (KHI), "marriage in Islamic law is a solemn contract or *mītsāqon gholīdhan* to obey the commandments of Allah, and fulfilling it is an act of worship."<sup>3</sup>

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 the permissibility of interfaith marriages.<sup>4</sup> Among pluralistic societies such as those in Indonesia, interfaith marriage is an inevitable phenomenon. Particularly, with the advancement of technology, distances and time are no longer barriers to getting to know each other. This condition has become a reason why interfaith marriages are likely to occur frequently.<sup>5</sup>

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<sup>2</sup> "UU Nomor 1 Tahun 1974."

<sup>3</sup> "Kompilasi Hukum Islam."

<sup>4</sup> Kemas Muhammad Gemilang et al., "Discussing the Phenomenon of the Appointment of Judges in District Courts Regarding Interfaith Marriages from a Legal Logic Perspective," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (November 9, 2023): 307, doi:10.29240/jhi.v8i2.8185.

<sup>5</sup> Rani May Saputri, Dzulfikar Rodafi, and Ahmad Subekti, "PERKAWINAN BEDA AGAMA (PERBANDINGAN UNDANG-UNDANG PERKAWINAN DAN UNDANG-UNDANG ADMINISTRASI KEPENDUDUKAN)" 4 (2022).

According to Koran Tempo,<sup>6</sup> based on data compiled by the Center for the Study of Religion and Peace (Indonesian Conference on Religion and Peace/ICRP) from 2005 to July 2023, there were 1,645 interfaith couples. Kaltim Post<sup>7</sup> reported that since 2023, ICPR recorded 89 interfaith couples until July 19, 2023. In July, 24 couples were either already married or planning to marry.

Article 2 of the Marriage Law states 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>8</sup> Based on this law, a marriage is considered valid if performed according to the laws of each respective religion, and if a marriage is not considered valid according to religion, it is also not considered valid legally.<sup>9</sup>

Furthermore, Article 2 Paragraph (2) of the Marriage Law states that "every marriage must be recorded by the prevailing laws and regulations." This recording is intended to maintain the administrative order of marriages, providing certainty and protection for the legal status of the wife, children, and husband. Additionally, this registration also ensures and protects specific rights that may arise as a result of marriage, such as inheritance

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<sup>6</sup> Friski Riana, "Makin Sulit Menikah Beda Agama," *Koran Tempo*, Minggu, Agustus 2023, <https://koran.tempo.co/read/topik/483671/tahapan-menikah-beda-agama>.

<sup>7</sup> "Tren Perkawinan Tidak Seagama Meningkatkan Setiap Tahun, MA Larang Hakim Catat Nikah Beda Agama," *Kaltim Post*, July 20, 2023, <https://kaltimpost.jawapos.com/utama/20/07/2023/tren-perkawinan-tidak-seagama-meningkat-setiap-tahun-ma-larang-hakim-catat-nikah-beda-agama>.

<sup>8</sup> "UU Nomor 1 Tahun 1974."

<sup>9</sup> Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam," *Media Syari'ah* 22, no. 1 (May 6, 2020): 48, doi:10.22373/jms.v22i1.6719.Card

rights, the right to obtain a birth certificate, rights to shared property in marriage, and so forth.<sup>10</sup>

The Marriage Law does not explicitly state the invalidity of interfaith marriages. Therefore, the existence of legal foundations governing such marriages remains undefined.<sup>11</sup> However, Article 35 Letter (a) of the Law Number 23 of 2006 on Population Administration (from now on referred to as the Population Administration Law) states that "Marriage registration as referred to in Article 34 also applies to a. marriages determined by the Court." In the explanation of this article, 'marriage determined by the court' refers to marriages between people of different religions.<sup>12</sup> This rule provides a basis for interfaith couples to apply for interfaith marriage registration as part of population administration.

According to the Supreme Court Decision Number 367/Pdt.P/2019/PN Skt, the lawsuit of BAM and LC was accepted by the judge for legalization at the Surakarta District Court on October 1, 2019, to legalize their interfaith marriage. The judge then granted permission to the applicants to proceed with the interfaith marriage at the Civil Registration Office of Surakarta City and instructed the Civil Registration Office to record the marriage in the Interfaith Marriage Registration Register. This

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<sup>10</sup> Rizky Prameswari, "Tinjauan Hukum Mengenai Penetapan Pengadilan Negeri Yang Mengabulkan Izin Perkawinan Pasangan Beda Agama Dihubungkan Dengan Peraturan Perundang-Undangan Terkait" 1, no. 3 (2023).

<sup>11</sup> Y Sonafist and Henny Yuningsih, "Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 28, 2023): 381, doi:10.31958/juris.v22i2.10934.

<sup>12</sup> "Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan.Pdf," n.d.

incident is one of the examples of cases of the Judicial Institute granting interfaith marriages in Indonesia.

According to *KumparanNews*<sup>13</sup>, based on data obtained from the Directory of Supreme Court Decisions from 2007 to 2022, there were 73 court decisions related to civil registration applications for interfaith marriages. Only 69 applications were granted by the judge, while three were rejected. According to the Directory of Supreme Court Decisions of the Republic of Indonesia, from 2011 to 2023, there were 118 court decisions related to interfaith marriage applications.

The selection of the Surakarta District Court as the research object is because it is one of the courts that receives and issues decisions related to interfaith marriages with the highest number among other courts. The judge issues 39 certified court decisions. The judge granted 27 applications to proceed with interfaith marriage registration, and there were 12 decisions with other outcomes.

To provide certainty and uniformity in the application of the law in adjudicating applications for civil registration of interfaith marriages, the Supreme Court (MA) 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>14</sup> This circular advises

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<sup>13</sup> "94,5% Permohonan Pencatatan Sipil Nikah Beda Agama Dikabulkan, Ini Datanya," *KumparanNews*, September 16, 2022, <https://kumparan.com/kumparannews/94-5-permohonan-pencatatan-sipil-nikah-beda-agamadikabulkan-ini-datanya-1yruFIGN2OQ>.

<sup>14</sup> Ubed Bagus Razali, "Mengakhiri Polemik Pencatatan Perkawinan Bedaa Agama Dan Keyakinan," *Hakim Pengadilan Agama Selatpanjang*, Agustus 2023.

courts to refrain from granting applications for civil registration of interfaith marriages.

However, Article 35 letter (a) of the Population Administration Law has regulated the fulfilment of administrative rights for citizens without discriminatory practices, including for interfaith couples. Moreover, the implementation of marriage registration by state institutions to provide certainty and order in population administration aligns with the spirit of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution), which states: "Every person has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." Marriage registration should apply to all marriages, including interfaith marriages. Therefore, the researcher used this topic as the source of the research regarding **"THE IMPLEMENTATION OF SUPREME COURT CIRCULAR LETTER NUMBER 2 OF 2023 IN THE SURAKARTA DISTRICT COURT ON THE ADMINISTRATIVE RIGHTS OF INDIVIDUALS IN INTERFAITH MARRIAGE."**

## **B. Problem Formulation**

Based on the context of the study, the problem formulation of this research is:

1. Why was SEMA Number 2 of 2023 published?

2. How is the judge's view related to the issuance of SEMA Number 2 of 2023 on the administrative rights of individuals in interfaith marriage?

### **C. Research Objectives**

1. Explaining the reason for the issuance of SEMA Number 2 of 2023.
2. Explaining the judge's view related to the issuance of SEMA Number 2 of 2023 on the administrative rights of individuals in interfaith marriage.

### **D. Benefits of Research**

By conducting this research, the author hopes to provide academic and practical benefits.

1. Academic Benefits
  - a. The results of this study can provide a better understanding of the implementation of this SEMA. This can be useful for legal practitioners, authorities, and the general public to understand how the law is applied in the field.
  - b. The recommendations resulting from this study can help the authorities improve policies or clarify the legal provisions of population administration in interfaith

marriages if there are inconsistencies or problems in their implementation.

- c. The results of this study can be an addition to legal literature related to population administration in the context of interfaith marriage, and this can be used by researchers, students, and academics in further studies.

## 2. Practice Benefits

It can be used as a benchmark for improving the quality of the completion of legalization applications or recording interfaith marriages at the Surakarta District Court.

## **E. Systematic Discussion**

To ensure that this research is more focused, systematic, and understandable, the author employs a structured discussion consisting of 5 (five) chapters, each with its detailed sections. The organizational structure is as follows:

CHAPTER I: Introduction, this chapter provides an overview of the research, including the background, problem formulation, objectives, research benefits, and the discussion structure. It aims to measure the rationality and interconnection of all chapters in this thesis.

CHAPTER II: this chapter presents a description of Previous Research Studies as a form of comparison to test the validity of the research.



Additionally, it outlines the Theoretical Framework to highlight variables or core issues present in the study.

CHAPTER III: Research Methods, this chapter discusses the research methods employed, including the type of research, the location where the research will be conducted, research informants, techniques for selecting informants, data collection techniques, data validity, and the analysis techniques used.

Chapter IV: results and discussions that presents the research findings from observations, interviews, and documentation. The discussion involves the analysis of data and the realities derived from the data.

Chapter V: closing, the final chapter includes conclusions and recommendations. The conclusion summarises the entire research process, followed by recommendations or suggestions for future studies.

## **CHAPTER II**

### **LITERATURE REVIEW AND THEORITICAL FRAMEWORK**

#### **A. Literature Review**

After describing the research problem, the author briefly reviews and briefly describes the previous research or scientific work on resolving civil cases. This is a form of comparison and an effort to avoid repetition or duplication in the preparation of this study. These studies include:

1. Journal from Putri Athaya Fidela and Imelda Martinelli<sup>15</sup>, titled “Konsep Keabsahan Pasal 2 Ayat (1) Undang-Undang Perkawinan Terhadap Perkawinan Beda Agama Berdasarkan Izin Dari Penetapan Pengadilan” discusses the validity of interfaith marriages in Indonesia according to the Marriage Law. It argues that while interfaith marriages are not considered valid according to the law, they can be recognized if there is a court order. The research method used is normative legal research, supported by a literature review. The article concludes that interfaith marriages are not valid according to the Marriage Law, but can be considered valid if there is a court order. Interfaith marriages can be recognized if they are not considered valid according to the law through a court decision. According to Article 35(a) of the Law on Population Administration, interfaith marriages can be recorded if there is a court decision. This means that even though interfaith marriages may not meet

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<sup>15</sup> Putri Athaya Fidela and Imelda Martinelli, “KONSEP KEABSAHAN PASAL 2 AYAT (1) UNDANG-UNDANG PERKAWINAN TERHADAP PERKAWINAN BEDA AGAMA BERDASARKAN IZIN DARI PENETAPAN PENGADILAN,” 2023.

the legal requirements for validity, they can still be recognized and recorded if a court determines that they should be.

The article provides a comprehensive analysis of the validity of interfaith marriages in Indonesia, examining both the legal and religious perspectives and also cites relevant laws and regulations. The article discusses the role of court decisions in recognizing interfaith marriages that are not considered valid according to the law, providing a practical solution for couples in such situations.

2. Journal from Dany Try Hutama Hutabarat, Komis Simanjuntak, and Syahransyah Syahransyah<sup>16</sup>, titled “Pengelabuan Hukum Perkawinan Atas Perkawinan Beda Agama” discusses the issue of legal fraud in interfaith marriages in Indonesia and suggests solutions to address this problem. The research method in this research is a normative research method by examining every applicable marriage law rule and legal theories that will answer and provide a solution in providing a discourse on understanding law and marriage and its relationship with the concept of divinity. This journal highlights the lack of legal protection for interfaith marriages and the strategies used by couples to conform to one religion temporarily. The position of administrative law to interfaith marriages in this journal is that the population administration law in Indonesia does not provide legal protection or

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<sup>16</sup> Dany Try Hutama Hutabarat, Komis Simanjuntak, and Syahransyah Syahransyah, “Pengelabuan Hukum Perkawinan Atas Perkawinan Beda Agama,” *Jurnal Ius Constituendum* 7, no. 2 (October 26, 2022): 322, doi:10.26623/jic.v7i2.5383.

regulations for interfaith marriages. As a result, some couples resort to legal fraud by ignoring the requirements in the national marriage law.

The study emphasizes the need for new strategies and regulations from the government and parliament to meet the needs of society. The conclusion of the research is that there is legal fraud in interfaith marriages in Indonesia. The marriage law does not regulate interfaith marriages, but the population administration law opens up opportunities for legalization through legal fraud. The government and the DPR (People's Consultative Assembly) need to review the legal regulations that allow for interfaith marriages. This study contributes to a better understanding of the complexities surrounding interfaith marriages and provides insights into the legal and societal implications of such unions. It also offers potential solutions to overcome legal fraud and protect the rights of interfaith couples.

3. Journal from Annisa Hidayati<sup>17</sup>, titled “Analisis Yuridis Pencatatan Perkawinan Beda Agama (Tinjauan Terhadap Pasal 35 Undang-Undang Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan)” analyzes the regulation of interfaith marriages and the legal consequences of unregistered interfaith marriages in Indonesia. It highlights that the Marriage Law does not specifically address the registration of interfaith marriages, leading to uncertainty in legal matters. The researcher in this

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<sup>17</sup> Annisa Hidayati, “ANALISIS YURIDIS PENCATATAN PERKAWINAN BEDA AGAMA (Tinjauan Terhadap Pasal 35 Undang-Undang Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan)” 5 (2022).

journal used a normative legal research method. This method involves analyzing legal provisions and regulations relevant to the issue of interfaith marriage registration. The study concludes that unregistered interfaith marriages do not hold legal force under administrative law. According to Article 35 letter a of Law Number 24 of 2013 on Population Administration, interfaith marriages determined by the District Court should be recorded at the Office of the Service Authorized Population and Civil Registration.

The journal offers a clear explanation of the implications and consequences of the lack of clear regulations regarding the registration of interfaith marriages and highlights the importance of clear regulations in ensuring legal certainty for interfaith couples seeking to register their marriages. This journal contributing to the understanding of the legal challenges surrounding interfaith marriage registration in Indonesia.

4. Journal from Novita Lestari<sup>18</sup>, titled “Legalitas Perkawinan Beda Agama Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan” discusses the legality of interfaith marriages in Indonesia, focusing on the conflict between the Marriage Law of 1974 and the Population Administration Law of 2006. It explores the prohibition of interfaith marriages based on religious laws, the legal

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<sup>18</sup> Novia Lestari, “Legalitas Perkawinan Beda Agama Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan,” *Jurnal Hukum Sehasen* Vol.2 No.2 (Desember 2017).

aspects of interfaith marriages, and the sources of Islamic law. These laws conflict with each other in terms of their provisions regarding interfaith marriages. The Marriage Law, specifically Article 2(1), Article 8(f), Article 57, and Article 66, can be interpreted as prohibiting interfaith marriages. On the other hand, the Population Administration Act, specifically Article 34 and Article 35(a), tends to allow interfaith marriages. In this case, the principle of *lex specialis derogat lex generalis* applies, meaning that the Marriage Law takes precedence over the Population Administration Act.

The method used in the journal article is a normative legal research approach. This method involves studying legal literature and secondary data sources. This journal article provides valuable insights into the legal framework governing interfaith marriages in Indonesia and offers a comprehensive analysis of the conflicting provisions in the relevant laws.

5. Journal from Gina Hanifah and friends<sup>19</sup>, titled “Inkonsistensi Peraturan Perundang-Undangan dalam Memandang Keabsahan Perkawinan Beda Agama” discusses the inconsistency in the laws and regulations regarding interfaith marriages in Indonesia. The Marriage Law states that marriages must be conducted according to the laws of each religion, while the Population Administration Law allows interfaith marriages to

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<sup>19</sup> Gina Hanifah, Flavia Faza Aulia, and Tiara Cahya Savitri, “INKONSISTENSI PERATURAN PERUNDANG-UNDANGAN DALAM MEMANDANG KEABSAHAN PERKAWINAN BEDA AGAMA” Vol. 5 No. 2 (July 2022): page 1133-1147.

be registered after obtaining a court decision. This inconsistency creates legal uncertainties and challenges the validity of interfaith marriages and creates legal uncertainties by leaving room for different interpretations, practices, and inconsistent application of the law. The article argues that there is a need for clearer regulations to address this issue. The researcher in this journal used normative legal research (library) as the method for their study to analyze legal rules and regulations related to interfaith marriages and evaluate their consistency and effectiveness.

The journal provides a comprehensive analysis, which is to examine the legal provisions, their implications, and the resulting legal uncertainties and also clearly states its research objective, which is to examine the laws and regulations governing the validity of interfaith marriages and identify any legal defects or weaknesses in these regulations. It provides an in-depth discussion of the implications of the lack of specific rules governing interfaith marriages and use of relevant citations.

6. Journal from Moh. Zeinudin and friends<sup>20</sup>, titled “Rekontruksi Hukum Perkawinan Beda Agama Dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Undang-Undang Nomor 24 Tahun 2013 tentang perubahan atas Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan” discusses the conflicting

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<sup>20</sup> Moh Zeinudin and Arief Santoso, “REKONTRUKSI HUKUM PERKAWINAN BEDA AGAMA DALAM PERSPEKTIF UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN DAN UNDANG-UNDANG NOMOR 24 TAHUN 2013 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2006 TENTANG ADMINISTRASI KEPENDUDUKAN,” *JURNAL JENDELA HUKUM*, n.d.

regulations on interfaith marriage in Indonesia and argues for a legal reconstruction to address the issue. The Marriage Law prohibits interfaith marriage, while the Population Administration Law allows civil registration of interfaith marriages authorized by the court. The article suggests using the theory of dignified justice to find a legal solution. The theory of dignified justice is in line with the principle of *lex specialis derogat legi generalis*, which states that a specific law which is the Marriage Law can deviate from a general law which is the Population Administration Law. The methodology used in this journal includes legal analysis and interpretation of relevant laws and regulations, as well as a comparative study of different legal principles and concepts.

The journal provides a comprehensive analysis of the contradiction between the Marriage Law and the Population Administration Law, taking into account various legal principles, regulations, and court decisions. The journal also adopts a comparative approach by examining different legal principles and concepts, offers legal interpretation of relevant laws and regulations, providing insights into the intent and purpose behind these laws. This helps in understanding the legal framework and finding a resolution to the contradiction. The journal applies the theory of dignified justice to propose a resolution to the contradiction between the Marriage Law and the Population Administration Law.



7. Journal from Fakhurrazi M.Yunus and Zahratul Aini<sup>21</sup>, titled “Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)” discusses the issue of interfaith marriage in Indonesia, focusing on the impact of such marriages as regulated by Law No. 23 of 2006 on the Population Administration. The method used in this journal article is qualitative research. The article argues that the law does not provide clear regulations on interfaith marriage, leading to negative consequences. It also highlights the Islamic perspective on interfaith marriage, stating that it is not valid according to Islamic law. The article concludes by discussing the negative impacts of interfaith marriage, such as disharmony in the household, difficulties in communication, confusion for children, and inheritance issues.
8. The journal by Bintang Ulya Kharisma<sup>22</sup>, titled "Circular Letter of the Supreme Court (SEMA) Number 2 of 2023, the End of the Interfaith Marriage Polemic?" explores the issues surrounding interfaith marriages in Indonesia and the legal implications surrounding them. It is mentioned that interfaith marriages are a hotly debated topic, involving conflicting legal regulations. The Supreme Court has issued a circular letter addressing this issue and providing guidelines for judges. The

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<sup>21</sup> Fakhurrazi M.Yunus and Zahratul Aini, “Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam),” *Media Syari’ah* 20, no. 2 (February 28, 2020): 138, doi:10.22373/jms.v20i2.6512.

<sup>22</sup> Bintang Ulya Kharisma, “CIRCULAR OF THE SUPREME COURT (SEMA) NUMBER 2 OF 2023, END OF INTERFAITH MARRIAGE POLEMIC?” Volume 5, no. Issue 1 (June 2023): 477–82.

journal also emphasizes the importance of law in society and the need for harmony between different legal frameworks. SEMA Number 2 of 2023 is expected to serve as a mediator between the disharmony of the Marriage Law and the Population Administration Law. The methods employed in this journal include literature review and data analysis through deduction.

9. The journal authored by Mardalena Hanifah<sup>23</sup>, titled "Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan," delves into interfaith marriages in Indonesia and the prohibition of such marriages according to the Marriage Law. Interfaith marriage in Indonesia is considered a violation of the Marriage Law, as it is stipulated that marriages must adhere to the regulations of each respective religion and belief. This journal examines the reasons for prohibition in Islam and Christianity and the legal consequences of interfaith marriages, particularly the rights and obligations of spouses and the inheritance rights of children born from such marriages. The methodology employed in this journal is normative juridical research, including the analysis of legal materials and secondary data.

This article provides valuable insights into the issue of interfaith marriage in Indonesia, offering a comprehensive analysis from the legal and Islamic perspectives on interfaith marriage, providing a well-

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<sup>23</sup> Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Soumatara Law Review* 2, no. 2 (November 20, 2019): 297, doi:10.22216/soumlaw.v2i2.4420.

rounded understanding of the topic, clear arguments regarding the negative consequences of interfaith marriage supported by references to relevant laws and Islamic teachings, and a focus on the local context.

10. The journal authored by Patrick Humbertus<sup>24</sup>, titled "Fenomena Perkawinan Beda Agama Ditinjau Dari Uu 1 Tahun 1974 Tentang Perkawinan," discusses the phenomenon of interfaith marriages in Indonesia and the inconsistency between the law and the social reality surrounding these marriages. The methodology employed in this journal is normative legal research with a descriptive approach. This research reveals legal conflicts within the Marriage Law and between the Marriage Law and the Human Rights Law protecting the individual's right to choose a partner without religious coercion. The journal also explores the factors behind interfaith marriages, including the smuggling of laws that allow interfaith marriages abroad and changes in religious affiliation on identification cards. Despite legal limitations, many couples in Indonesia still choose interfaith marriages based on personal desires and needs. The journal also highlights the efforts made by activists and organizations to advocate for and facilitate interfaith marriages, emphasizing the importance of considering religious diversity in Indonesia.

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<sup>24</sup> Patrick Humbertus, "Fenomena Perkawinan Beda Agama Ditinjau Dari Uu 1 Tahun 1974 Tentang Perkawinan," *Law and Justice* 4, no. 2 (November 19, 2019): 101–11, doi:10.23917/laj.v4i2.8910.

In summary, the previous journals that have discussed the related topic addressed the inconsistency of legal regulations governing interfaith marriages, especially in the Marriage Law, which does not explicitly regulate the prohibition of interfaith marriages. At the same time, the Population Administration Law provides legal certainty through marriage registration, including interfaith marriages, through the court order. Therefore, these earlier studies differ significantly from the research conducted by the researcher because the focus of the discussion in this study is to examine the application of the new regulation, Supreme Court Circular Letter Number 2 of 2023 (SEMA), on the administrative rights of interfaith couples from the perspective of judges at the Surakarta District Court.

## **B. Theoretical Framework**

### **1. Interfaith Marriages**

#### **a. Interfaith Marriage according to Law No. 1 of 1974 on 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 to form a happy and everlasting family (household) based on the Almighty God."<sup>25</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

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<sup>25</sup> "UU Nomor 1 Tahun 1974 tentang Perkawinan."

conditions and procedures for implementation according to their respective religious laws, to form a happy and eternal family based on God Almighty.<sup>26</sup>

I Ketut Mandra, SH and I Ketut Artadi SH explained that interfaith marriage is an inner bond between a man and a woman who each have different religions and maintain their religious differences as husband and wife to form a happy and eternal household based on almighty divinity. Meanwhile, according to Abdurrahman, it is stated that a marriage between religions is a marriage carried out by people who embrace different faiths and beliefs from each other.<sup>27</sup>

In Indonesia, Interfaith Marriage, known as 'Perkawinan Beda Agama,' was initially referred to as 'Perkawinan Campur' before the enactment of the Marriage Law. This was first regulated in the 'Regeling op de gemengde Huwelijken,' Staatblad 1898 No. 158, which is the Mixed Marriage Regulation (PPC). Interfaith Marriage, as understood by legal experts and practitioners under the Marriage Law, can generally be viewed from three perspectives:

- 1) Interfaith marriage is not justifiable and is considered a violation of the Marriage Law Article 2 paragraph (1):

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<sup>26</sup> Nur Asiah, "KAJIAN HUKUM TERHADAP PERKAWINAN BEDA AGAMA MENURUT UNDANG-UNDANG PERKAWINAN DAN HUKUM ISLAM" 10, no. 2 (2015).

<sup>27</sup> Ana Laela, Ken Ismi Rozana, and Shilfa Khilwiyatul Mutiah, "FIQH PERKAWINAN BEDA AGAMA SEBAGAI UPAYA HARMONISASI AGAMA (Studi Perkawinan Beda Agama di Kota Jember)," *FIKRAH* 4, no. 1 (June 30, 2016): 117, doi:10.21043/fikrah.v4i1.1627.

Marriage is valid if conducted according to the laws of each respective religion and belief; and Article 8 letter (f): Marriage is prohibited between two individuals who are prohibited from marrying under their respective religions or other applicable regulations.

- 2) Second, interfaith marriage is permitted, valid, and can take place as it is covered by mixed marriages, as stated in Article 57 of the Marriage Law, involving two individuals in Indonesia subject to different laws.
- 3) The Marriage Law does not regulate issues related to interfaith marriages. Therefore, referring to Article 66 of the Marriage Law, which emphasizes that other regulations governing marriages, as far as they have been stipulated in this law, are declared no longer valid. However, because the Marriage Law has not addressed it, old regulations can be reinstated. Consequently, issues concerning interfaith marriages should adhere to the Mixed Marriage Regulation (PPC).<sup>28</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

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<sup>28</sup> Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam."

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>29</sup>

In explaining the Marriage Law, 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>30</sup>

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<sup>29</sup> Fitria Agustin, "Kedudukan Anak dari Perkawinan Berbeda Agama menurut Hukum Perkawinan Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (July 20, 2018): 43, doi:10.30656/ajudikasi.v2i1.574.

<sup>30</sup> Wildan Habib Azhari and Fauziah Lubis, "PERNIKAHAN BEDA AGAMA DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM DAN HAK AZASI MANUSIA," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam* Vol 10, No 02 (2022) (2022), doi:10.30868/am.v10i02.3184.

Hilman Hadikusumo clarified that the validity of Marriage, as regulated by legislation, is outlined in Article 2, paragraph (1) of the Marriage Law, 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 by 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 religion, not "laws of their respective religions," meaning the laws of the religion adopted by both spouses or their families.<sup>31</sup>

Besides Article 2 of the Marriage Law, Article 8 paragraph f 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>32</sup>

b. 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

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<sup>31</sup> Danu Aris Setiyanto, "Larangan Perkawinan Beda Agama Dalam Kompilasi Hukum Islam Perspektif Hak Asasi Manusia," *Al-Daulah: Jurnal Hukum dan Perundangan Islam* 7, no. 1 (September 19, 2017): 87–106, doi:10.15642/ad.2017.7.1.87-106.

<sup>32</sup> Gemilang et al., "Discussing the Phenomenon of the Appointment of Judges in District Courts Regarding Interfaith Marriages from a Legal Logic Perspective."



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 relating 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 falls into this category.<sup>33</sup>

In Indonesia, the five recognized religions have their 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>34</sup>

According to Article 2 of the Compilation of Islamic Law (KHI), marriage in Islamic law is a contract, a very strong covenant

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<sup>33</sup> Mohamad Abdun Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law," *Mazahib* 21, no. 2 (December 27, 2022): 155–86, doi:10.21093/mj.v21i2.5436.

<sup>34</sup> Azhari and Lubis, "PERNIKAHAN BEDA AGAMA DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM DAN HAK AZASI MANUSIA."

or 'mitsaqan ghalidzan' to obey Allah's command and execute it as an act of worship. Marriage aims to realize a harmonious, loving, and merciful family life.<sup>35</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>36</sup>

The rules related to interfaith marriages are regulated in Presidential Instruction of the Republic of Indonesia Number 1 of 1991 regarding the Compilation of Islamic Law<sup>37</sup>, as follows:

Article 4:

"Marriage is valid when conducted according to Islamic law in accordance with Article 2, paragraph (1) 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;

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<sup>35</sup> Indonesia, Kompilasi Hukum Islam, Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991.

<sup>36</sup> Diana Farid et al., "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (December 1, 2022): 355, doi:10.29240/jhi.v7i2.4574.

<sup>37</sup> Indonesia, Kompilasi Hukum Islam, Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991.

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>38</sup>

c. Provisions for Interfaith Marriage in the Population Administration Law

Article 1 of the Population Administration Law<sup>39</sup> 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

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<sup>38</sup> Azhari and Lubis, "PERNIKAHAN BEDA AGAMA DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM DAN HAK AZASI MANUSIA."

<sup>39</sup> Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan

this Population Administration Law, provisions related to marriage registration in Indonesia consist of Articles 34, 35, and 36.

Law Number 23 of 2006 on Population Administration allows couples of different religions to have their marriage recorded as long as it is through a court decision. Article 35 (a) states that marriage registration 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>40</sup> The registration of this marriage is carried out by the Implementing Agency, namely the Department of Population and Civil Registration (DisdukCapil), as with the registration of marriages in general according to Article 34 of the Population Administration Law.<sup>41</sup>

Article 36 of Administration Law states, "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

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<sup>40</sup> Abdul Halim and Carina Rizky Ardhani, "KEABSAHAN PERKAWINAN BEDA AGAMA DILUAR NEGERI DALAM TINJAUAN YURIDIS" 1 (2016).

<sup>41</sup> M.Yunus and Aini, "Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)."

Law, which state that the Civil Registry Office can conduct or assist in conducting marriages if ordered by the Court.<sup>42</sup>

The registration of interfaith marriages regarding court determination is regulated in Article 35 of the Population Administration Law. Court permission is utilized to record marriages with the authorized institution declaring the marriage's validity. The purpose of this registration is to safeguard the rights of the husband, wife, and children. This document is essential as evidence of the marriage's validity and provides legal certainty for all consequences arising from the marriage. If the religious or civil registry office rejects the registration, couples of different faiths can appeal to the Court within its jurisdiction, attaching the rejection letter.<sup>43</sup>

Suppose interfaith couples obtain a court decision and register their marriage with the Population and Civil Registration Office (Disdukcapil). In that case, their marriage is recognized with legal status equivalent to conventional marriages in accordance with the laws of the country.<sup>44</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

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<sup>42</sup> Azhari and Lubis, "PERNIKAHAN BEDA AGAMA DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM DAN HAK AZASI MANUSIA."

<sup>43</sup> Prameswari, "Tinjauan Hukum Mengenai Penetapan Pengadilan Negeri Yang Mengabulkan Izin Perkawinan Pasangan Beda Agama Dihubungkan Dengan Peraturan Perundang-Undangan Terkait."

<sup>44</sup> Ibid.

position and status of legitimate children, and inheritance relationships.<sup>45</sup> These legal consequences are substantiated by the registration of marriage by authorized institutions. Marriage registration is crucial for protection and legal certainty.<sup>46</sup> A marriage that is not registered with the appropriate institution will have legal implications for the couple, including:

- 1) The marriage status, recognized by religion but not acknowledged by the state, needs more legal certainty due to the absence of authentic evidence in the form of a marriage certificate
- 2) The status of children born lacks clarity, and they may be considered illegitimate children according to the definitions in Article 42 and Article 43 of the Marriage Law.
- 3) 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>47</sup>
- 4) Inheritance: As previously explained, a child born to parents whose marriage is not registered is considered similar to an

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<sup>45</sup> Agung Basuki Prasetyo, "Akibat Hukum Perkawinan Yang Tidak Dicatatkan Secara Administratif Pada Masyarakat Adat," *Administrative Law and Governance Journal* 3, no. 1 (March 3, 2020): 23–34, doi:10.14710/alj.v3i1.23-34.

<sup>46</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.v11i1.33.

<sup>47</sup> Made Widya Sekarbuana, Ida Ayu Putu Widiawati, and I Wayan Arthanaya, "Perkawinan Beda Agama dalam Perspektif Hak Asasi Manusia di Indonesia," *Jurnal Preferensi Hukum* 2, no. 1 (March 19, 2021): 16–21, doi:10.22225/jph.2.1.3044.16-21.

illegitimate child. Consequently, the inheritance rights of such a child are limited to the mother and her family only.

- 5) Educational impact on the child due to difficulties in meeting school administrative data.
- 6) Economic impact: Hindrance in obtaining loans from banks due to the need for proof regarding the marriage certificate.
- 7) Psychological impact: Discrimination in administrative matters among Indonesian citizens (WNI), who should have equal rights in administrative fulfilment.<sup>48</sup>

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

Supreme Court Circular Letter (SEMA) is 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, cautions, and instructions deemed necessary and beneficial to the courts and judges through separate letters or circulars. The role of Supreme Court Circulars is primarily focused

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<sup>48</sup> Basuki Prasetyo, "Akibat Hukum Perkawinan Yang Tidak Dicatatkan Secara Administratif Pada Masyarakat Adat."

on the oversight of judges.<sup>49</sup> SEMA serves as guidance for judges under the Supreme Court in carrying out their functions of guidance and supervision, as stipulated in Article 32 paragraph (4) of Law No. 14 of 1985, as amended by Law No. 3 of 2009 concerning the Supreme Court.<sup>50</sup>

When examined based on its users, SEMA 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>51</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>52</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

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<sup>49</sup> Irwan Adi Cahyadi, "KEDUDUKAN SURAT EDARAN MAHKAMAH AGUNG (SEMA) DALAM HUKUM POSITIF DI INDONESIA," *Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*, May 2014.

<sup>50</sup> Kharisma, "CIRCULAR OF THE SUPREME COURT (SEMA) NUMBER 2 OF 2023, END OF INTERFAITH MARRIAGE POLEMIC?"

<sup>51</sup> Cahyadi, "KEDUDUKAN SURAT EDARAN MAHKAMAH AGUNG (SEMA) DALAM HUKUM POSITIF DI INDONESIA."

<sup>52</sup> Mahadi Abdullah et al., "ANALISIS PERKAWINAN BEDA AGAMA DI KOTA SEMARANG: SEBUAH TELAHAH SETELAH DIKELUARKANNYA SEMA NOMOR 2 TAHUN 2023" 1, no. 4. 2023



can annul a Supreme Court Circular Letter, such as SEMA No. 6 of 1967, which was annulled by PERMA No. 1 of 1969.<sup>53</sup>

Position 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>54</sup> In the hierarchy of legal regulations, SEMA is not explicitly mentioned. Although the position of SEMA in the hierarchy of legal rules within the law is not 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>55</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>56</sup>

Judges must adhere to SEMA because its content clarifies matters that are still unclear or contain differences between theory and practice within the judicial system. SEMA guides an explanation or interpretation of legal regulations, aiming to avoid disparities in

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<sup>53</sup> Cahyadi, "KEDUDUKAN SURAT EDARAN MAHKAMAH AGUNG (SEMA) DALAM HUKUM POSITIF DI INDONESIA."

<sup>54</sup> Yuda Asmara, "Kedudukan SEMA Terhadap Suatu Undang-Undang," *Hukum Online.Com*, November 8, 2019, <https://www.hukumonline.com/klinik/a/kedudukan-sema-terhadap-suatu-undang-undang-1t5da3d5db300a9>.

<sup>55</sup> Abdullah et al., "ANALISIS PERKAWINAN BEDA AGAMA DI KOTA SEMARANG: SEBUAH TELAHAH SETELAH DIKELUARKANNYA SEMA NOMOR 2 TAHUN 2023."

<sup>56</sup> Asmara, "Kedudukan SEMA Terhadap Suatu Undang-Undang."

applying justice that can lead to legal uncertainty. The Supreme Court has the authority to create additional rules if there are inconsistencies in judicial practices, intending to complement imperfections and ensure justice and legal certainty. This policy is also internal, ensuring that judges comply with SEMA, and violations can result in disciplinary sanctions by Law Number 1 of 1950 concerning the Organization, Authority, and Operation of the Supreme Court of Indonesia.<sup>57</sup>

The Supreme Court has issued numerous policies through Circulars, including the recent Circular Letter No. 2 of 2023 concerning judges' guidelines in adjudicating marriage registration cases 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 conducted according to the laws of each respective religion and belief, by Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage.

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<sup>57</sup> Kharisma, "CIRCULAR OF THE SUPREME COURT (SEMA) NUMBER 2 OF 2023, END OF INTERFAITH MARRIAGE POLEMIC?"

- b. The court does not grant applications for registering marriages between people of different religions and beliefs.<sup>58</sup>

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<sup>58</sup> SEMA NOMOR 2 TAHUN 2023

## **CHAPTER III**

### **RESEARCH METHOD**

In researching the above issues, the author employed the following research methods:

#### 1. Types of Research and Approaches

This study is a field research, where the author is directly immersed in the location that is the subject of the study to obtain the required data. It is qualitative research that relies on data obtained through the investigation of the subject. The research is conducted on a natural object, and the instrument is the researcher itself.<sup>59</sup>

In this research, the author utilized an empirical juridical approach, as it requires an understanding of the role of the research object's activities in implementing legal regulations.

#### 2. Research Location

The research takes place at Surakarta District Court, Slamet Riyadi St No.290, Sriwedari, Laweyan, Surakarta City, Central Java 57141. The reason for choosing this court as the research subject is that it is a District Court that handles the highest number of interfaith marriage applications compared to other District Courts.

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<sup>59</sup> Sugiyono, *METODE PENELITIAN KUANTITATIF, KUALITATIF, DAN R & D*, 19th ed. (Bandung: ALFABETA, 2013).

### 3. Research Informants

The informants in this study are three judges serving at Surakarta District Court who handle and resolve cases.

- a. Ninik Hendras Susilowati S.H., M.H
- b. Dr. Dzulkarnain S.H., M.H
- c. Aris Gunawan S.H

### 4. Technique of Informant Determination

The informant determination technique involves purpose sampling. This means selecting informants aligned with the specific goals of obtaining information.<sup>60</sup> In this research, the targeted informants are those with a better understanding of the resolution of interfaith marriage applications and complete data at Surakarta District Court.

### 5. Technique of Data Collection

#### a. Observations

Observation is a data collection method involving directly observing the cases under investigation. In this research, the author observed non-participantly resolving cases at the research location (the

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<sup>60</sup> Ibid.

court).<sup>61</sup> Through this observational method, the author obtained data regarding procedures and decisions made by the research object.

#### b. Interview

The second data collection method used is interviewing judges at Surakarta District Court. In qualitative research, data collection is conducted through in-depth interviews.<sup>62</sup>

#### c. Documentation

As a secondary data source, the next method used by the author is the documentation method that is the collection of additional data from related documents to strengthen data in research, such as:

1. Supreme Court decision.
  2. Constitution.
  3. Journals that discuss related topics
6. Data Validity.

The author employed the Triangulation method to ensure the validity of the data by comparing the research results with previous studies. Additional tests were conducted by reviewing the research results and interview findings.

#### 7. Technique of Data Analysis

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<sup>61</sup> H Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis Serta Disertasi* (Bandung Alfabeta, 2020).

<sup>62</sup> *METODE PENELITIAN KUANTITATIF, KUALITATIF, DAN R & D.*

The data analysis in this research refers to a descriptive analysis applied during the data organization phase after data collection to ensure the validity of the results. Once the data is collected, the analysis process involves classification, examination, and conclusion, which is subsequently systematically organized.

## CHAPTER IV

### RESULTS AND DISCUSSION

#### A. 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>63</sup>

The court decision on interfaith marriages is regulated in Article 21, paragraph (3) of the Marriage Law: "Parties whose marriage is rejected have the right to submit a petition to the court within the jurisdiction where the marriage registrar who rejected the marriage is located, to make a decision, by submitting the letter of rejection."<sup>64</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 the Population Administration Law. In Article 35, letter a, of the Population Administration Law, it has been stated: "Marriage registration as

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<sup>63</sup> Helmi Suprianto, "Mengakhiri Polemik Pencatatan Perkawinan Beda Agama," *Bhirawa Online*, January 8, 2023, <https://www.harianbhirawa.co.id/mengakhiri-polemik-pencatatan-perkawinan-beda-agama/>.

<sup>64</sup> Gunawan Hadi Purwanto, "Penetapan Putusan Pengadilan Negeri Surabaya Tentang Perkawinan Beda Agama Dalam Perspektif Hukum Positif" 12 (2023).



referred to in Article 34 also applies to a. marriages determined by the court." The explanation in Article 35, Letter A, of the Population Administration Law confirms that: "Marriages determined by the Court refer to marriages conducted between individuals of different religions."<sup>65</sup>

The explanation in Article 35, letter a, of the Population Administration Law mentioned above is in direct contradiction (a contradiction in terminis) with other legal regulations, such as Article 2, paragraph (1) of the Marriage Law, 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

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<sup>65</sup> Fidela and Martinelli, "KONSEP KEABSAHAN PASAL 2 AYAT (1) UNDANG-UNDANG PERKAWINAN TERHADAP PERKAWINAN BEDA AGAMA BERDASARKAN IZIN DARI PENETAPAN PENGADILAN."

decisions only examined the legal norms found in Article 2, paragraph (1) of Marriage Law, the issuance of this Supreme Court Regulation (SEMA) complements the previous Constitutional Court decisions to provide legal certainty.<sup>66</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 Christian, and SW, a Muslim. This is documented in the verdict with case number 155/Pdt.P/2023/PN.Jkt.Pst.

With the increasing prevalence of interfaith marriages sanctioned by the courts, the Supreme Court, one of Indonesia's highest judicial institutions, 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>67</sup>

With the issuance of SEMA Number 2 of 2023 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,

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<sup>66</sup> Suprianto, "Mengakhiri Polemik Pencatatan Perkawinan Beda Agama."

<sup>67</sup> Kharisma, "CIRCULAR OF THE SUPREME COURT (SEMA) NUMBER 2 OF 2023, END OF INTERFAITH MARRIAGE POLEMIC?"

MM, chairman of the Supreme Court Religious Chamber in the International Seminar (ICoIFL), SEMA itself is shown to judges, clerks, or officials in the judiciary as an internally regulating policy.<sup>68</sup>

## B. Judges' Perspectives in the Surakarta District Court Regarding the Administrative Rights of Individuals in Interfaith Marriage Based on Supreme Court Circular Letter No 2 of 2023

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

The implementation of SEMA 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 Mr. Aris Gunawan,<sup>69</sup> 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 to create unity in the application of the law.

Based on an interview with Mr. Dzulkarnain<sup>70</sup>, a legal enforcement officer in Indonesia, it is revealed that this SEMA serves as a legal basis for judges in deciding on applications for the registration of interfaith marriages. Similar sentiments were expressed by Mrs. Ninik

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<sup>68</sup> *Peran Mahkamah Agung Dalam Pengembangan Hukum Keluarga Islam (Islamic Family Law) Di Era Digital*, The 1st International Conference on Islamic Family Law of ADHKI (ICoIFL) (Yogyakarta, 2023), <https://www.youtube.com/watch?v=jLIxFc5m9y0>.

<sup>69</sup> Interview with Aris Gunawan, December 7, 2023.

<sup>70</sup> Interview with Dzulkarnain, November 23, 2023.

Hendras Susilowati,<sup>71</sup> emphasizing SEMA's critical role in unifying and clarifying the legal aspects of applications for registering 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 internal and external binding authority, while SEMA is a recommendation that binds within the judiciary's scope,<sup>72</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>73</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 Supreme Court Circular Letter No. 2 of 2023 and the Necessity for Legal Harmonization

Implementing the SEMA regarding registering interfaith marriages faces various challenges and controversial perspectives, especially within 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>74</sup>

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<sup>71</sup> Interview with Ninik Hendras Susilowati, November 14, 2023.

<sup>72</sup> Ibid.

<sup>73</sup> Interview with Dzulkarnain.

<sup>74</sup> Interview with Ninik Hendras Susilowati.

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 by the laws of religion and belief, as stipulated by the applicable laws.<sup>75</sup> Hence, the prohibition on the registration of interfaith marriages is considered in line with the marriage law itself.

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

The legal foundation of this SEMA is derived from the interpretation of Article 2 paragraph (1) and Article 8 letter f of the Marriage Law, 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>76</sup> This statement is reiterated by Mr. Aris Gunawan<sup>77</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

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<sup>75</sup> Interview with Dzulkarnain.

<sup>76</sup> Ibid.

<sup>77</sup> Interview with Aris Gunawan.

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, is a form of administrative order within the legal framework not to endorse the marriage itself because religious provisions still determine the validity of marriage. Although previously, Law Number 23 of 2006 on Population Administration, especially in Article 35, provided explicit leeway for interfaith couples to register their marriages, this SEMA emphasizes the formal legal principles of marriage over population administration law.<sup>78</sup>

Therefore, based on these considerations, this SEMA 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 states that the registration of marriages determined by the court, including marriages between different faiths, is part of an 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

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<sup>78</sup> Interview with Dzulkarnain.

requirements, couples in marriage must adhere to the provisions of the Marriage Law.<sup>79</sup>

In agreement with this, Mr. Dzulkarnain<sup>80</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 rule strengthens the implementation of the Marriage Law and the 1945 Constitution to create 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, to protect and guarantee their rights and freedom in choosing a partner, must comply with the provisions of the law. The existence of this SEMA 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>81</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

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<sup>79</sup> Interview with Aris Gunawan.

<sup>80</sup> Interview with Dzulkarnain.

<sup>81</sup> Interview with Aris Gunawan.

applicable laws. Additionally, according to Mr. Dzulkarnain<sup>82</sup>, there is a need for harmonization among various laws in Indonesia concerning marriage, especially Article 35 Letter A of the Population Administration Law, which has been the foundation for interfaith marriages. Furthermore, revisions to the regulations in the Marriage Law are necessary to state the prohibition of interfaith marriages clearly.

#### 4. The Role of Supreme Court Circular Letter as a Preventive Measure

SEMA No. 2 of 2023 is a preventive measure to address internal conflicts in interfaith marriages. Embarking on a marriage as an interfaith couple is a complex 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. These internal constraints can create emotional tension and even increase the risk of divorce, as seen in cases handled by Mr. Dzulkarnain<sup>83</sup>. Therefore, the presence of this SEMA 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.

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<sup>82</sup> Interview with Dzulkarnain.

<sup>83</sup> Ibid.



Ninik Hendras Susilowati. Hence, the Marriage Law emphasizes that marriages must align with religion and beliefs.<sup>84</sup>

### C. Discussion

In this context, SEMA plays a pivotal role in emphasizing that a valid marriage is conducted according to the laws of each religion and belief, aligning with the provisions of the applicable law. SEMA 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 legalizing interfaith marriage registration, harmonization between existing laws is necessary, especially Article 35 Letter A of the Population Administration Law. Amendments to the Marriage Law are also required to clarify the prohibition of interfaith marriages and 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. SEMA 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>84</sup> Interview with Ninik Hendras Susilowati.

This result highlights the contradictions in interfaith marriages in Indonesia, particularly from the perspectives of religion and human rights. Supreme Court Circular Letter No. 2 of 2023, based on the interpretation of Article 2 paragraph (1) and Article 8 letter f of the Marriage Law, asserts that the validity of marriages is recognized solely based on religious law. Judges are mandated to prioritize the formal legal principles of marriage, rejecting applications that do not comply. While this Circular Letter is aimed at the legality of administrative procedures, especially concerning marriage registrations, there is criticism suggesting it may conflict with human rights, particularly the freedom to choose a partner. Despite claims that the Circular Letter is not discriminatory towards couples of different religions, some argue the need for legal harmonization in Indonesia, including revisions to the Marriage Law, to clearly articulate the prohibition of interfaith marriages. This debate illustrates the tension between religious principles, human rights, and the necessity for legal harmonization to achieve justice and legal clarity.

## CHAPTER V

### CLOSING

#### A. Conclusion

1. The increasing number of interfaith marriages in Indonesia and the ambiguity surrounding the prohibition of interfaith marriages in the Marriage Law serves as the background for the issuance of Supreme Court Regulation No. 2 of 2023 (SEMA No. 2/2023). Additionally, loopholes in the legal framework, particularly in the Population Administration Law, allow couples of different faiths to seek recognition of the validity of their marriage through court decisions. This situation has generated both support and opposition within society. SEMA No. 2 of 2023 regarding Guidelines for Judges in Adjudicating Cases of Marriage Registration Between Individuals of Different Religions and Beliefs is issued by the Supreme Court in response to the controversy surrounding interfaith marriages. Its objective is to provide certainty and legal coherence in handling applications for registering marriages between individuals of different faiths in Indonesia.
2. Based on the interview results, SEMA No. 2 of 2023 plays a role as a legal basis in making decisions related to applications for the registration of interfaith marriages, aiming for consistency for judges and clarity for the public. Although this SEMA generates opposition from human rights activists who recognize the right to choose a partner

as an inherent right of every individual, freedom of human rights must still comply with applicable laws. This SEMA emphasizes that the validity of marriages in Indonesia is only recognized based on religious law. Therefore, judges must prioritize the formal legal principles of marriage over population administration law. When the legal rules have been implemented, administrative rights can be fulfilled. SEMA No. 2 of 2023 is considered an effort to provide legal guidance and an alternative solution in resolving internal conflicts in interfaith marriages, giving clarity regarding marriage registration.

B. Suggestion

- Clarifying the prohibition of interfaith marriages in the Marriage Law
- Abolishing provisions in the law that create legal loopholes for the registration of interfaith marriages
- Ensuring consistency among laws to achieve legal certainty and clarity.

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## APPENDIX

### I. Surat Keterangan Pelaksanaan Penelitian



**MAHKAMAH AGUNG REPUBLIK INDONESIA**  
**DIREKTORAT JENDERAL BADAN PERADILAN UMUM**  
**PENGADILAN TINGGI SEMARANG**  
**PENGADILAN NEGERI SURAKARTA**  
 Jalan Slamet Riyadi Nomor 290 Surakarta  
 Telepon 0271 719186, Faksimile 0271 719283  
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#### SURAT KETERANGAN

Nomor : 1/ PAN.04/HK2.11/1/2023

Yang bertanda tangan dibawah ini, Panitera Pengadilan Negeri Surakarta Kelas IA Khusus, dengan ini menerangkan bahwa :

Nama : Anggun Azzahra Thesalonika  
 NIM : 20421086  
 Fakultas : Ilmu Agama Islam  
 Program Studi : S-1 Hukum Keluarga (Ahwal Syakhshiyah)  
 Program Keluarga  
 Perguruan Tinggi : Universitas Islam Indonesia Yogyakarta

Telah melakukan Penelitian di Kantor Pengadilan Negeri Surakarta Kelas IA Khusus dalam rangka penyusunan skripsi dengan judul :

**"The Views of Judges In The Surakarta District Court Regarding The Administrative Rights Of Individuals In Interfaith Marriage Based On SEMA No. 2 Tahun 2023"**

Demikian Surat Keterangan ini dibuat atas permintaan dari Universitas Islam Indonesia Yogyakarta, tanggal 31 Oktober 2023, Nomor : 1627/Dek/60/DAAT/FIAI/X/2023 agar dapat dipergunakan sebagaimana mestinya.

Surakarta, 8 Januari 2024

a.n. Ketua Pengadilan Negeri Surakarta  
 Kelas IA Khusus  
 Panitera

Juhastuti Setyaningsih, S.H., M.H

Picture 1.1. Research Permission Letter

### II. Interviews Question

Lampiran pertanyaan interview terkait penelitian "THE VIEWS OF JUDGES IN THE SURAKARTA DISTRICT COURT REGARDING THE ADMINISTRATIVE RIGHTS OF INDIVIDUALS IN INTERFAITH MARRIAGE BASED ON SEMA NO 2/2023"

#### Deskripsi Singkat:

Guna untuk memberikan kepastian dan kesatuan penerapan hukum dalam mengadili permohonan pencatatan perkawinan antar-umat yang berbeda agama dan kepercayaan, Mahkamah Agung (MA) menerbitkan Surat Edaran Nomor 2 Tahun 2023 tentang Petunjuk Bagi Hakim Dalam Mengadili Permohonan Pencatatan Perkawinan Antar Umat Yang Berbeda Agama dan Kepercayaan. Yang mana salah satu isinya adalah “Pengadilan tidak mengabulkan permohonan pencatatan perkawinan antar-umat yang berbeda agama dan kepercayaan.” Pasal ini tentu memberikan dampak pemenuhan hak administrasi pasangan pernikahan antar umat berbeda agama. Dikarenakan Pasal 35 huruf (a) UU Nomor 23 Tahun 2006 tentang Administrasi Kependudukan (UU Adminduk) telah mengatur tentang pemenuhan hak administrasi warga tanpa praktik diskriminatif tidak terkecuali bagi pasangan perkawinan antar umat beda agama melalui Penetapan Pengadilan.

#### Pertanyaan:

1. Apa pandangan bapak/ibu mengenai SEMA No 2 Tahun 2023?
2. Bagaimana Bapak/ibu menginterpretasikan dan menerapkan SEMA No 2 Tahun 2023 dalam pengadilan ketika menghadapi kasus permohonan pencatatan pernikahan beda agama?
3. Apa pandangan bapak/ibu mengenai peran SEMA No 2 Tahun 2023 dalam mengatur hak administrasi kependudukan dalam kasus pernikahan beda agama?

4. Bagaimana pengalaman Bapak/ibu dalam menghadapi kasus pernikahan beda agama sebelum dan setelah diberlakukannya SEMA No 2 Tahun 2023, dan apakah ada perbedaan signifikan dalam penanganan kasus tersebut?
5. Apa yang menjadi tantangan atau isu utama dalam menerapkan SEMA No 2 Tahun 2023 dalam praktik pengadilan di Kota Surakarta, khususnya dalam hal hak administrasi kependudukan?
6. Bagaimana Bapak/ibu melihat dampak dari kebijakan SEMA No 2 Tahun 2023 terhadap perlindungan hak administrasi kependudukan dalam konteks pernikahan beda agama?
7. Apakah Bapak/ibu memiliki rekomendasi atau saran untuk perbaikan atau penyempurnaan dalam implementasi SEMA No 2 Tahun 2023 terkait dengan pernikahan beda agama di wilayah Kota Surakarta?

### III. Documentation of Research



Picture 1.2 Interview with Ninik Hendras Susilowati, November 14<sup>th</sup> 2023



Picture 1.3 Interview with Dzul Karnain, November 23<sup>rd</sup> 2023



Picture 1.4 Interview with Aris Gunawan, Desember 7<sup>th</sup> 2023

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