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Interreligious Marriages after Sema Number 2 of 2023

Felicia[1], Andika Hatidame[2], Wilda Yuli Anggara[3], Woro Murdiati[4]

[1,2,3] Students of Magister Of Law, Faculty Of Law, Universitas Atma Jaya Yogyakarta, Indonesia,

[4] Lecturer Faculty of Law Universitas Atma Jaya Yogyakarta, Indonesia

ABSTRACT: Indonesia has a plurality of religions adhered to by its population. The issue of marriage in Indonesia has become a polemic because often couples who will enter into a marriage of different religions avoid the existing laws in Indonesia by entering into marriage abroad, or continue to carry out marriage even though they are of different religions, while some convert to the religion of one of the partners so that the marriage can take place. The turmoil that arose to the surface after the birth of SEMA Number 2 of 2023 made the assumption that its contents were incompatible with Indonesia's diversity and Pancasila, a setback in guaranteeing the rights and freedoms of citizens from diverse backgrounds, and curbing the freedom of judges in interpreting and making decisions that were as fair as possible according to the trial. The type of research used is Normative research, which relies on primary legal materials with a statutory approach. The purpose of this research is to find out the syncranization and harmonization of SEMA 2 Year 2023 in the regulation of interfaith marriages in Indonesia. The conclusion of this research is that SEMA No. 2 of 2023 does not contradict the existing laws above it when associated with existing marriage regulations in Indonesia because marriage law in Indonesia submits the validity of marriage based on each religion. Human rights in Indonesia in Law Number 39 of 1999 concerning human rights marriage is carried out in accordance with statutory provisions, SEMA is not a legal product, but only as a guide for judges in deciding cases of interfaith marriages.

KEYWORDS: Marriage, Religious Marriage, Law.

I. INTRODUCTION

A person can be said to be an adult according to the law has several aspects that regulate, for example the Civil Code Article 330 states that a person is considered an adult if he is 21 or has (been) married. Marriage in Indonesia that is valid according to law is marriage according to religion and state in accordance with applicable regulations (Munawar, 2015). According to Prof. Subekti, marriage or marriage is a legal relationship between a man and a woman for a long time (Pratama, 2017). In the inner and outer relationship between a man and a woman who become a couple determined to form a happy family or family in the light of faith in God Almighty. (Putri, Oktarisya, & Atiqah, 2023) The 1945 Constitution of the Republic of Indonesia regulates the choice to have a family, specifically in article 28 which specifically states that every individual has the privilege to form a family and continue their descendants through legal marriage.

Indonesia is a country that has pluralism, one of which is the religion adopted by its population. The government has recognized 6 (six) religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. The diversity of religions in Indonesia does not rule out the implications of marriage between religious believers or what we commonly know as interfaith marriage. Interfaith marriage is not a new thing and has been going on for a long time for multicultural Indonesian society.

Since time immemorial, there have been inter-religious relationships, both between individuals, customs and society. However, this does not mean that the issue of interfaith marriage is not a problem, it often causes polemics in the eyes of the community (Maulana, & Hidayat, 2022),. Often couples who will conduct interfaith marriages avoid Indonesian law by conducting marriages abroad, or continuing to marry even though they are of different religions while some adhere to the religion of one of the partners so that the marriage can take place. (Lestari, 2018)

Marriage is one way to expand the family between a man and a woman's family. In marriage, a household is established between husband and wife, which of course has the aim of living happily in the world and the hereafter. The household is the smallest unit in society consisting of husband and wife, and children. In the household, they begin to recognize laws, regulations, order, security, peace, and responsibilities between the rights and obligations of both parties. Marriage requires a mature preparation both physically and psychologically to understand, understand, and accept each other. (Buhari, 2022)

Marriage is a very important event in society, by living together, then giving birth to offspring which is the main joint for the formation of the state and nation. Given the important role of living together, the regulation of marriage must indeed be carried out

by the state. Here, the state plays a role in legalizing the legal relationship between a man and a woman which is then explained in article 1 of Law No. 1 of 1974 concerning Marriage which reads that "marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty".(Muhamad Irpan, 2016)

Religious marriage is an event that will continue to be a problem, because interfaith marriage is not just a matter of being able to live together in one house, but also concerns the legitimacy of the position in laws and regulations that cannot guarantee it. Interfaith marriage will affect the mixing of different beliefs and will affect civil registration by taking into account the circumstances of the marriage. Law Number 1 Year 1974 on marriage does not specifically regulate interfaith marriages. Meanwhile, according to Law Number 23 of 2006 concerning Population Administration in Article 35 (a), it can be understood that marriages can be registered, including marriages determined by the Court. One of them is a marriage between couples of different religions.

Data taken by the Indonesian Conference on Religion and Peace (ICRP), from 2005 to August 2023 there were 1645 couples of different religions who married (Riana, 2023).

The issuance of SEMA by the Chief Justice of the Supreme Court in July 2023, namely Circular Letter Number 2 of 2023 concerning Judges' Instructions in Adjudicating Cases of Application for Registration of Marriages between People of Different Religions and Beliefs with the aim of overcoming marriages of different religions and beliefs through the courts, turned out to cause legal problems due to efforts without norms and created legal gaps that had an impact on society. Existing regulations in Law 1 of 1974 concerning Marriage jo. Government Regulation No. 9 of 1975, in article 2 paragraph (1) marriage is valid, if it is carried out according to the laws of each religion and belief, as well as article 8 letter f of the Marriage Law only regulates whether a marriage is valid or not. These provisions do not necessarily mean that this Marriage Law prohibits interfaith marriages. However, what happens is that if religious law declares it invalid, so does state law, the marriage is invalid. Since the enactment of Law No. 23/2006 on Population Administration, the regulation related to interfaith marriages in Article 35 letter (a) opens up opportunities for establishing interfaith marriages that are clear, these two laws are contradictory and multi-interpretation so that juridical contradictions arise and open up opportunities for disparities in establishing interfaith marriages, such as the example of Surabaya District Court Determination Number 916/Pdt.P/2022/PN.Sby and Case Decision Number 155/Pdt.P/2023/PN.Jkt.Pst which granted interfaith marriages with various considerations. From here it is quite clear that there are legal problems, and with the issuance of SEMA to overcome this problem, it turns out that it has not been able to overcome the contents of the first statement of a legal interfaith marriage, which is carried out according to the laws of each religion and belief.

In this case, even though SEMA Number 2 of 2023 has been issued as a guide for judges in dealing with this issue, it does not automatically mean that the judge must reject the application or vice versa, because there is also the 1945 Constitution which protects the basic right to marry. In principle, marriage is a human right guaranteed in Article 28B paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia and also Law Number 39 of 1999 concerning Human Rights Article 16 paragraph (1) which states, "Men and women who are adults, without being limited by nationality, citizenship or religion, have the right to marry and to form a family that every inherent and underlying right to be a close certainty for its citizens". This must also be seen as a basis for consideration in making decisions to decide cases. There is a polemic on the position of SEMA number 2 of 2023, there is disharmony with the current rules. In addition, the rules regarding marriages of different religions, in the new regulation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning marriage, have not been able to overcome this marriage of different religions. This results in legal vacuum.

As for the turmoil that arose to the surface after the birth of this SEMA made the assumption that its contents were incompatible with Indonesia's diversity, Pancasila, Constitutional Rights and Human Rights, a setback in guaranteeing the rights and freedoms of citizens, from diverse backgrounds, as well as curbing the freedom of judges in interpreting and making decisions that are as fair as possible in accordance with the law held in court. This SEMA reduces and gives legal implications to interfaith marriages, as well as if interpreted from point two, it will affect legal implications even without norms. The author's purpose in this study is to determine the certainty and unity of the legal application of SEMA 2 Year 2023 in the disharmony of interfaith marriage regulations in Indonesia.

II. RESEARCH PROBLEMS

The formulation of the problems taken from the background above are:

How is the Harmonization and Synchronization between SEMA NUMBER 2 YEAR 2023 with the Legislation in force in Indonesia?

III. RESEARCH METHOD

The approach taken in this research uses normative legal research. According to Soerjono Soekanto and Sri Mamudji, normative legal research is also called library research by examining library materials or secondary data. (Ishaq, 2020). This normative legal research relies on primary and secondary legal materials, especially research that refers to the norms contained in laws and

regulations. Data and Data Sources used are tools of a study that are used to solve an existing problem. Primary data sources used for this writing are: 1945 Constitution, Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2006 concerning Population Administration, Law Number 39 of 1999 concerning Human Rights? Jurisprudence, and SEMA Number 2 of 2023.

IV. RESULTS AND DISCUSSION

1. Definition of Marriage

Article 1 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), which regulates everything related to the implementation of marriage, provides an understanding of marriage, namely: "The inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty". In principle, marriage is considered to have a very close relationship with religion or spirituality, so that marriage not only contains physical or physical elements but also has a very important role. (Hanifah, 2019: 298) The purpose of marriage is regulated in Article 1 of the Marriage Law, stating that the purpose of marriage is to form a happy and eternal family (household) based on the Almighty God. The view of interfaith marriage in the rules of recognized religions in Indonesia:

a) In Islam

Islam strictly prohibits interfaith marriages, stated in the Al-Quran Surah Al Baqarah verse 221 which prohibits a Muslim from marrying a musrik woman before they believe in Allah. In addition to surah Al Baqarah verse 221, Muslims are also bound by the rules in Indonesia which are specifically for followers of Islam, namely Presidential Instruction Number 1 of 1991 concerning KHI, Article 40 KHI states the prohibition of marriage between a man and a woman who is not Muslim. Fuqaha agree that the marriage of a Muslim woman with a non-Muslim man, whether ahlul kitab or musrik, is invalid. The expert view in Islamic law is that there is no room for Muslim men or Muslim women to marry different religions. In the next provision of article 44 KHI states, a Muslim woman is prohibited from marrying a man who is not Muslim. (Hanifah, 2019: 299)

b) In Catholic

In the Catholic religion, interfaith marriage is an impediment in the view of the Catholic Church. However, the impediment is ecclesiastical in nature, so it is the Church authorities who have the authority to grant dispensation for the impediment if the conditions have been met. In addition, interfaith marriages are also valid if processed through the Catholic Church because other religious institutions do not recognize dispensations for interfaith. This is done for the sake of the Catholic party so that they can still practice their Catholic faith so that they are still allowed to receive the sacraments. The conditions for obtaining dispensation include: each party is free, not bound by a previous marriage, the Catholic party promises to be faithful to his or her faith, and make every effort to educate the children who will be born from the marriage in a Catholic manner, and the non-Catholic party is aware of the Catholic party's promise. If these conditions are met, then a dispensation can be sought and the marriage can legally take place after obtaining the dispensation. The dispensation is called a cultus disparity dispensation.(Alip, 2022)

c) In Kristen

In principle, Christian interfaith marriage is also strongly discouraged and requires Christians to marry a partner of the same religion. For Christians, the purpose of marriage is to achieve happiness between husband, wife and children within the scope of an eternal and lasting household. For this reason, if those who marry with different religions then their household will be difficult to achieve happiness. This is also found in the Bible which is listed in 2 Corinthians chapter (6) verse 14 which reads do not be unequally yoked together with unbelievers. For what equality is there between righteousness and lawlessness? Or how can light be united with darkness? The statement is a prohibition against a Christian marrying a non-Christian, as it is clearly an unequal partnership. Christian marriage reflects Christ's relationship with the church. Christ's relationship with the church is an exclusive and holy relationship. The Bible also explains that husbands should love their wives as they love Christ. And the wife must submit to the husband as she submits to Christ. So it is clear that husband and wife must both love Christ (have faith in Christ) and make Christ the leader of their marital ark but, on the other hand, the Bible also does not prohibit interfaith marriages between Christians and non-Christians as long as it is not with pagans who do not believe in God or those who worship idols (Makalew, 2013).

d) In Hindu

When the Constitutional Court held a hearing on Article 2 paragraph (1) of Law Number 1 Year 1974, a Hindu leader stated that interfaith marriage is not allowed in Hinduism. "Marriage must go through a process called Wiwaha Samskara and is a sacred event led by Pandita, so the bride and groom are required to embrace Hinduism (the same religion). In the teachings of Hinduism, the bride and groom must be of the same religion. Affirming that marriages held by two people who have different religious beliefs cannot be legalized and will forever be declared adultery. If the marriage continues, as a consequence, the marriage must be canceled (Winandriyo, 2023).

e) In BudhaBudha

Buddhism has no rules regarding interfaith marriages, but according to Buddhist leader Jimmu, in Buddhist teachings marriage can only be between two people who believe in the truth of Buddhism. Buddhism, he said, cannot have teachings to approve

marriage between two people of different faiths. The advisor to the Indonesian Mahayana Sangha stated that marriage between two people of different faiths cannot be justified. The practice is the same as cohabitation. Marriage, has a legal footing in dharma teachings. Marriage in Buddhism must be subject to Buddhist law. And in Buddhist teachings, Buddhist marriages are only allowed to marry people who share the same faith. If the belief is different, it will cause a lot of conflict (Alamsyah, 2014).

f) In Kongucu

Chandra Setiawan, a member of the Supreme Council of the Indonesian Confucian Religion (Matakin), stated that the marriage confirmation ritual can only be performed for people who believe in Confucianism. Basically (marriage between different religions) is not allowed, because it cannot be confirmed according to Confucian teachings. The Confucian religion cannot give marriage confirmation to couples who do not believe in the truth of Confucian teachings. "If you don't believe in Confucianism, it cannot be confirmed in Confucianism (Alamsyah, 2014).

2. The Development of Religious Marriage Arrangements in Indonesia

Indonesia is a country that has a very thick pluralism, consisting of diversity of ethnicity, culture, race, and religion. One side of pluralism that exists in Indonesia is the diversity of religions that exist. Religious beliefs that live and develop in Indonesia that are legally recognized by the government are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism.

Indonesia is a state of law, this is stated in the 1945 Constitution of the Republic of Indonesia in article 1 paragraph (3). The law requires Indonesian citizens to be subject to laws and regulations relating to the obligations attached to its citizens. Conversely, the law guarantees the rights of citizens as human beings inherent from birth, often referred to as Human Rights. Everything is regulated by law even though it concerns personal affairs, with the aim of ensuring its fulfillment and to prevent anything that might interfere with its rights. The meaning of Indonesia as a state of law is that all actions of citizens are regulated by law to provide legal certainty, both in the public and private spheres, and marriage is no exception. With the pluralism that exists in Indonesia, it can cause friction or conflict in socializing, including interfaith marriages. Interfaith marriages cause quite complicated debates because some religions do not allow interfaith marriages, but the existing laws in Indonesia regarding interfaith marriages are not strictly regulated. Law Number 1 of 1974 concerning Marriage, in Article 2 paragraph (1) explains that marriage is valid if it is in accordance with each religion. The article can have multiple interpretations because it is not explicitly stated whether the marriage is allowed according to positive law or not, so that the judges in deciding cases of interfaith marriages vary, some decide that the case is rejected, and there are judges who decide that interfaith marriages should be recorded at the Civil Registration Office.

a) Undang-Undang Dasar 1945

The Constitution protects the basic thing, namely marriage, in principle marriage is a human right guaranteed in Article 28B paragraph (1) of the 1945 Constitution of the Unitary Republic of Indonesia. In the constitution, Indonesia guarantees the rights of its citizens to be protected so that basic rights in the form of marriage.

Law Number 39 of 1999 concerning Human Rights Article 16 paragraph (1) which says, "Men and women who are adults, without being limited by nationality, citizenship or religion, have the right to marry and to form a family that every inherent and underlying right to be a close certainty for its citizens". As for the results of research by Made Widya and friends, it is stated that interfaith marriages in the Marriage Law are not regulated explicitly and definitively, so it can be said that there is legal vagueness and uncertainty about the practice of interfaith marriages in Indonesia. Law Number 1 of 1974 concerning Marriage, especially Article 2 paragraph (1), refers more to the validity of marriage based on religious law and beliefs, but in its realization there are still couples who still want to marry with different religions through the application for court decisions, temporary submission to one of the religious laws and marriages held abroad, the second rejection of interfaith marriage is classified as discriminatory because it is not in accordance with the basic principles of human rights. There is a conflict of norms between Article 28 of the 1945 Constitution and Article 3 paragraph (3) of the Human Rights Law with Article 2 paragraph (1) of the Marriage Law which results in the consequences received by one of the prospective spouses, namely the submission of their religion to follow the religion of their partner. (Made, et al. 2021)

b) Law Number 1 of 1974 concerning Marriage

The emergence of Law Number 1 of 1974 concerning Marriage caused the GHR to no longer apply, replaced by the Law. Marriage arrangements for Indonesian citizens are regulated in Law Number 1 of 1974 concerning Marriage, and legally valid at the time of promulgation, namely January 2, 1974, then on October 1, 1975 through Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage Law as a derivative rule of the law. (Wahyudi, 2022)

Article 1 of the Marriage Law explains that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. To realize this goal, marriage must be legal according to each religion and belief as referred to in Article 2 of the Marriage Law.

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Interfaith marriage in the Marriage Law is not regulated clearly and concretely. In the law there are no rules that allow interfaith marriages or vice versa there are no rules prohibiting interfaith marriages. In addition, the Marriage Law adheres to the system of norms pointing (verwijzing) to the laws of religion and belief respectively.

The enactment of the Marriage Law means that interfaith marriages should not be allowed by the state. Article 2 paragraph (1) can be interpreted that as long as the respective religious law allows interfaith marriage, then marriage according to Indonesian regulations will not be. However, if on the contrary, if the religion prohibits it, it will become a problem because its validity is returned by the religion it adheres to. Because of the uncertainty in the regulation, there are several different judge decisions, because the law is to return to the religion adhered to by the legal subject..

c) SEMA No. 2 of 2023

The Indonesian Supreme Court has finally prohibited court judges from granting applications for stipulation of interfaith marriages. The prohibition is contained in Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Application for Registration of Interfaith Marriages of Different Religions and Beliefs. SEMA Number 2 of 2023 was issued after pressure from many groups highlighted the frequent granting of applications for stipulation of interfaith marriages by the District Court (PN). The court judge's decision is considered to reduce the applicable marriage law in Indonesia, even though in his consideration the judge in deciding the case used the legal basis, namely Law Number 23 of 2006 concerning Population Administration. SEMA Number 2 Year 2023 explains that in order to provide legal certainty and unity in adjudicating applications for registration of marriages between people of different religions and beliefs, judges must be guided by the following provisions:

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

In the development of marriage arrangements in Indonesia, there are many obstacles ranging from customary issues, age, marriage between 2 (two) people from different countries is very complicated to the existence of interfaith marriages. A pluralistic country like Indonesia allows interfaith marriages, Indonesia with a variety of religions, ethnicities, races, cultures and languages does not rule out the possibility. Therefore, there are dynamics that are very difficult to solve in society (Agustian, 2019), in connection with this, the existence of rules related to Law Number 1 of 1974 concerning Marriage which is the benchmark has not been maximized because since this rule was issued it has not been able to solve existing problems because a pluralistic society with rapid development makes it possible for people with social backgrounds who need each other to marry different religions, and honestly from the religion it prohibits. The formulation in Article 2 Paragraph (1) shows that the Marriage Law is not the only positive law in Indonesia regarding marriage, the words "the law of each religion and belief", which are not made by the state, indicate the existence of other laws. It is this religious law that states whether or not a marriage is valid.

Positive law in Indonesia has provided a legal umbrella regarding marriage which is realized in the existence of Law Number 1 of 1974 concerning Marriage jo. Government Regulation No. 9 of 1975. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage clearly stipulates that:

"Marriage is valid if it is performed according to the laws of each religion and belief."

This means that a marriage can be classified as a substantial marriage with the assumption that the marriage is carried out according to the laws of each religion and belief of the couple who will enter into marriage. Therefore, the determination of whether or not a marriage is permissible is based on a strict regulation, considering that the basis for a strict regulation in conducting marriage is a vital thing in Law Number 1 Year 1974. If religious law declares a marriage invalid, so too according to state law the marriage is also invalid. (Zamroni, 2023)

The enactment of Law No. 23/2006 on Population Administration resulted in the opportunity for interfaith marriages to be performed. Article 35 letter a reads marriage stipulated by the Court. In the explanation of Article 35 letter a, what is meant by a marriage stipulated by the court is a marriage between people of different religions. This loophole is what judges use in deciding cases to legalize interfaith marriages to be registered at the Population and Civil Registration Office.

But we must remember whether the legal politics of our marriage system must stop. The development of the regulation of interfaith marriages has become a problem in the context of countries that are progressive, to the point that several regulations have been issued in ratifying regulations for interfaith marriages, so that there are also regulations governing marriage in the country. Law Number 23 of 2006 concerning Population Administration, not prohibiting it, but There is little opportunity for submissions to court in the process of different religions, and in the judiciary the judge has the authority to make legal discoveries or judge independence, this results in judges agreeing with various considerations to be approved. This also becomes the dynamics of judges in deciding cases.

Since the issuance of Sema Number 2 of 2023, the Indonesian Supreme Court has finally prohibited court judges from granting requests for the determination of interfaith marriages. This prohibition is contained in the Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between Religious People of Different Religions and Beliefs. It turns out that the emergence of a new prombelm or has become dynamic,

namely whether this Sema is a solution in this case. The 2023 Sema only reduces the previous words and gives legal implications to those who carry out this practice, namely prohibiting it, but remember that judges also have independence in examining and deciding cases. which is the same so that there is no other interpretation. This results in the legal state having to ensure that it tends to only look at the status and not at the relevant regulations. If you only look at the status, it is only limited to whether it is registered or not, the risks faced by those who have had an interfaith marriage before, whether it was registered in the state or not. there is a cancellation.

The prohibition on differences in religion is not a violation of the enforcement and protection of human rights in Indonesia. Because it is clear that the implementation of human rights in Indonesia is not liberal, but recognizes the existence of restrictions on human rights practices in order to respect other people's human rights, including the right to marry, one of which takes into account religious values. Human rights are essentially natural rights given by God to humans, so it is irrational if these natural rights deviate from God's rules and regulations. Indonesia as a country based on the belief in One Almighty God makes religious values one of the foundations of state life. (PA Probolinggo, 2022)

SEMA Number 2 of 2023 emphasized that the Court did not grant the request for registration of marriages between people of different religions and beliefs. This means that the court closes the space for anyone who wishes to request an inter-religious marriage so that the judge decides the case on the basis that SEMA rejects all requests for inter-religious marriage.

3. Basic Considerations for Judges in Deciding Cases on Applications for Interfaith Marriages Before Issuance of SEMA Number 2 of 2023

In relation to interfaith marriages, the state must really guarantee legal certainty, whether the state must prohibit or allow the practice of interfaith marriages, do not on the one hand prohibit it, as the regulations made by the government initially rejected because it was not in accordance with religion in Law Number 1 of 1974 concerning Marriage, but opened it again so that the state must provide certainty, in fact the state also opened up opportunities in Law Number 23 of 2006 concerning Population Administration, the development of arrangements for interfaith marriages is very complicated but there must be a solution because of the practice of interfaith marriages. triggering status within the family and for respective religious leaders, what is clear is that religious leaders prohibit the practice of different religions. But in practice, many families have had interfaith marriages and have had several children. If you look at the many families whose interfaith marriages have been legalized in Indonesia itself, by returning it to the judiciary to allow it or not, it actually opens up new opportunities with the existence of a modern society. In the investigation, it was found that there were judges who allowed interfaith marriages to take place or not, if one understands the interpretation of religious judges based on various considerations.

The publication of Sema No. 2 of 2023, this consideration was issued because there were various interpretations of judges which were issued to prohibit judges from granting permits for inter-religious marriages with the basic provisions that must be followed that according to the law, a valid marriage is a marriage carried out according to the laws of each religion. and his beliefs, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage. The basis of these considerations must be a guide for judges, their journey and in the dynamics of moving towards the motto of a golden Indonesia. The Supreme Court tries to resolve the problem with the consideration that judges must follow the guidelines from the Supreme Court as a technical aspect of implementation in their respective courts.

4. SEMA Position Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs

Indonesia is a country of law, where all behavior, both individually and constitutionally, must be based on the laws that apply in Indonesia. According to Hans Kelsen, in essence the state is Zwangsordnung which can be interpreted as a legal order or social order that has a coercive nature, which means that the state has the right to rule and the obligation for citizens to submit and obey the rules. (Sabon, 2019) The national legal system is the law that applies in Indonesia with all its elements which support each other in order to anticipate and overcome problems that arise in the life of society, nation and state based on Pancasila and the Constitution of the Republic of Indonesia. Indonesia in 1945. In order to regulate the formation of statutory regulations, Law Number 12 of 2011 concerning the Formation of Legislative Regulations was formed.

The hierarchy of statutory regulations in the legal order in Indonesia is regulated in a law. This is very important because Indonesia remembers that there are so many existing regulations that if there is no hierarchy of regulations there will be disharmony between regulations. Rules related to hierarchy are regulated in Law Number 12 of 2011 concerning the Establishment of Legislative Regulations. Article 7 paragraph (1) states that "the types and hierarchy of statutory regulations consist of::

a. Undang-undang Dasar 1945
b. Ketetapan Majelis Permusyawaratan Rakyat
c. Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang
d. Peraturan Pemerintah
e. Peraturan Presiden

f. Peraturan Daerah Provinsi
g. Peraturan Daerah Kabupaten/Kota

Article 8 paragraph (1) states that "Types of Legislative Regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Agency , Judicial Commission, Bank Indonesia, Minister, body, institution or commission of the same level established by Law or the Government by order of Law, Provincial Regional People's Representative Council, Governor, Regency/City Regional People's Representative Council, Regent/Mayor , Village Head or equivalent." According to Vestwansan, Dipa Prasetya explained that if you look at the provisions in Article 8 of Law Number 12 of 2011, you think that even though in reality the contents of the Supreme Court Circular Letter mostly function as policy regulations (beleidsregel), the basis for its formation is based on the order of Article 79 of the Law. -Supreme Court Act. So SEMA can be classified as statutory regulations and has binding legal force as specified in article 8 paragraph 2 of Law Number 12 of 2011. In terms of authority, the Supreme Court Circular was formed based on the regulatory authority possessed by the Supreme Court. These regulations are related with other functions, namely administration, advice, supervision and justice. (Prasetya, 2020:14)

If we look at it from a naming perspective, we ignore the legal basis for the validity of each circular letter. So it can be assumed that the Circular is a policy regulation. According to Jimmly Asidikin, Circular Letters are classified as policy rules or quasi legislation. (Pattinasarany, 2022) SEMA itself is a policy regulation for several reasons. First, judging from the form of the Supreme Court Circular, it does not have a formal form similar to statutory regulations in general. Second, seen from the object of norms, the Circular Letter was indeed shown to officials in their environment so that it is in accordance with the nature of the policy rules which regulate internally as defined by administrative bodies or officials. So we can assume that a circular letter is a policy regulation. If a circular letter is a mandate from law, then the circular letter can be categorized as a statutory regulation.

For example, the Supreme Court Circular Letter, in the rule making power function of the Supreme Court, we must also look at the explanation of Article 79 of Law Number 14 of 1985 concerning the Supreme Court itself. "If in the course of justice there is a legal deficiency or vacuum in a matter, the Court Agung has the authority to make regulations as a complement to fill the deficiencies or gaps. With this law, the Supreme Court has the authority to determine regulations regarding how to resolve a matter that has not been or is not regulated in this law. In this case, regulations issued by the Supreme Court are distinguished from regulations prepared by legislators. The administration of justice as intended by this law is only part of the procedural law as a whole. "In this way, the Supreme Court will not interfere with or go beyond the regulation of the rights and obligations of citizens in general and will not regulate the nature, strength, means of evidence and their assessment or the distribution of the burden of proof." (Prasetya, 2020:3) Based on the explanation mentioned, SEMA is aimed at Judges, Registrars and other positions in the court.

Another characteristic of policy regulations is that they are not directly legally binding, but have legal relevance. Policy regulations provide opportunities for how a state administrative agency exercises governmental authority (beschiking bevoegdheid). This itself must be linked to government authority on the basis of the use of discretion because if this is not the case, then there is no place for policy regulations.

SEMA as rule of making can be seen in the explanation of article 79 of Law Number 14 of 1985 concerning the Supreme Court "If in the course of justice there is a legal deficiency or vacuum in a matter, the Supreme Court has the authority to make regulations as a complement to fill the deficiency or vacuum. With this Law, the Supreme Court has the authority to determine regulations regarding how to resolve a matter that has not been or is not regulated in this Law. In this case, regulations issued by the Supreme Court are distinguished from regulations prepared by the legislators. The administration of justice as intended by this Law is only part of the procedural law as a whole. "In this way, the Supreme Court will not interfere with or go beyond the regulation of the rights and obligations of citizens in general, nor will it regulate the nature, strength, means of evidence and their assessment or the distribution of the burden of proof." The article does not explicitly state that the legal products that can be issued are Supreme Court regulations which are regulatory in nature, but can be Supreme Court products which are policy in nature which are binding on internal parties such as judges, clerks and other positions in the Supreme Court.

We can find the legal basis for SEMA's implementation by looking at Article 79 of Law no. 14 of 1985 concerning the Supreme Court. In Article 79 of Law no. 14 of 1985, the Law gives the Supreme Court the authority to form laws or rule making power. This authority is given so that the Supreme Court can resolve issues that are not regulated in detail in statutory regulations. However, not all SEMA can be categorized as carrying out the function of rule making power. Only the Supreme Court's circular regulates procedural law and fills legal gaps. By referring to the provisions of Article 8 of Law no. 12 of 2011 concerning the formation of statutory regulations, SEMA which is based on the provisions of article 79 of Law no. 14 of 1985 concerning the Supreme Court has binding legal force and can be classified as statutory regulations.

As has been mentioned, the existence of Circular Letters is part of policy regulations which contain information or notifications which are in the nature of guidance in carrying out government affairs, so the content of Circular Letters is not the same as Invitational Regulations. At SEMA 2 of 2023, the substance is still internally binding, if we look further, it contains content

material in the form of notifications, explanations and/or implementation instructions, made in important and urgent circumstances. According to Bagir Manan, as regulations that are not statutory regulations, policy regulations are not directly legally binding but contain legal relevance. (Immanuel, 2016)

Thus, the essence of a Circular Letter is part of a policy regulation that contains notifications or explanations or technical instructions for implementing a matter and only applies internally to a government organization, not being regulatory in nature and applies externally and is generally binding like a statutory regulation.

The development of arrangements for inter-religious marriages is so complicated that several parties affected include those who really want to get married but are hampered by problems such as: Interfaith marriages have actually been a problem for quite a long time but have not been resolved properly, the resolution is quite complicated, there are even families who already have offspring from their children who have remarried. It is enough to make us aware that this problem is serious in that the Supreme Court is present by issuing Sema No. 2 of 2023 as a rule to answer, but if you look deeper, this rule is not yet strong enough to answer problems that have not yet reached their roots. If you pay attention, the fluctuations on the surface only give an idea of the reduction of substance.

In point one, "A valid marriage is a marriage carried out according to the laws of each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage." This is clearly illustrated by the fact that considering that the Supreme Court must be more careful regarding statements given by other regulations, such as statements given by Law Number 23 of 2006 concerning Population Administration, so technical matters regarding state and religion must be recorded as different marriages. Religion must pay more attention to the norms that apply at this time, not just on one side.

The second point "The court did not grant the request to register marriages between people of different religions and beliefs." If you look more carefully at it, the Supreme Court is not merely reducing sentences, namely influencing legal implications even without norms.

Looking at the research of philosopher Gustav Radbruch (Santoso, 2021), he stated that three legal values, namely justice (philosophical), legal certainty (juridical) and benefit to society (sociological) must be made the main elements in a legal approach so that there is order in society. Society always desires order and to achieve that order the law must be able to provide justice, benefit and certainty. So the legal objectives that must be achieved according to Radbruch are justice, usefulness and legal certainty.

Gustav Radbruch's thoughts, if we look first at the issue of justice, the 1945 Constitution places the right to enter into a marriage and form a family as a human right, is proven by the existence of CHAPTER 10 A. To be precise, Article 28 B paragraph (1) which contains Human Rights.

Other principles of human rights contained in the 1945 Constitution are the right to freedom of religion and the right to be free from discrimination based on certain backgrounds, from which it can be concluded that the right to marry is a human right that is inherent in everyone and is absolute, absolute, and entitled. Regardless of the religious background they believe in. Including having a partner of a different religion. "It can be seen that in the Marriage Law there is not a single provision that explicitly prohibits interfaith marriages. Even though legally the 'prohibition' must be contained in an explicit rule, otherwise it does not mean it is not a prohibition. In fact, you have to look at the important point of providing justice or not for the wider community because it is a discriminatory policy, considering that Indonesia as a unitary country has a diversity of ethnicities, cultures, traditions, including religion, which is symbolized through Garuda Pancasila with the motto Bhinneka Tunggal Ika. In this diversity, renewal and interaction between citizens and each other in social, national and state life is established, including relationships that end in marriage occurring factually..

The issue of benefit, benefit means that the law must provide benefits for every community that needs it, both for parties who feel disadvantaged and parties who feel they are not disadvantaged, what about those regarding the distribution of inheritance which is no longer registered as a marriage because of this status issue which is the question? detrimental to families who have entered into interfaith marriages.

Legal certainty, if we look at the legal politics of Law Number 1 of 1974, namely Sema No. 2 of 2023, but if you look at it there is no clear certainty about intervening in existing regulations without clear binding norms.

V. CONCLUSIONS

The position of SEMA in Law Number 12 of 2011 is in article 8 paragraph (2) where the Legislative Regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by higher Legislative Regulations or are formed based on authority. In this case, SEMA was issued by the Supreme Court based on Article 79 "The Supreme Court can further regulate matters necessary for the smooth administration of justice if there are matters that are not sufficiently regulated in this Law." This article is a mandate from the Supreme Court to issue SEMA which is binding on judges, clerks and other officials within the scope of the Supreme Court. The position of SEMA Number 2 of 2023 is that in practice Harmonization and Synchronization is not carried out, because SEMA is not a legal product that requires Harmonization and Synchronization. Without harmonization and synchronization, SEMA can be enforced by the Supreme Court because of the mandate of Article 79 of Law Number 14 of 1985. When related to the Marriage Law, SEMA Number 2 of 2023 is not

contradictory, because there are no strict rules regarding whether or not interfaith marriages are permissible. , therefore SEMA Number 2 of 2023 is present as the basis for judges in deciding cases of differences of religion. SEMA Number 2 of 2023 when linked to Law Number 39 of 1999 Article 10 paragraph (2) which states that a valid marriage can only take place with the free will of the prospective husband and prospective wife concerned, in accordance with the provisions of statutory regulations. The Marriage Law in Article 2 paragraph (1) states that marriages are valid if they are based on their respective religions, even though in the information that has been explained regarding interfaith marriages, each religion forbids such marriages. Therefore, the presence of SEMA Number 2 of 2023 is a benchmark for judges in deciding cases of interfaith marriages. As well as the substance of SEMA Number 2 of 2023, marriage between different religions is very complicated so that several parties affected include those who really want to get married but are hampered by problems such as. Interfaith marriages have actually been a problem for quite a long time but have not been resolved properly, the resolution is quite complicated, there are even families who already have offspring from their children who have remarried. It is enough to make us aware that this problem is serious in that the Supreme Court is present by issuing Sema No. 2 of 2023 as a rule to answer, but if you look deeper, this rule is not yet strong enough to answer problems that have not yet reached their roots. If you pay attention, the fluctuations on the surface only give an idea of the reduction of substance.

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