

The Controversy Of Interfaith Marriages (A Review Of The Effectiveness Of Supreme Court Circular Letter Number 2 Of 2023)

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Abstract.

Marriages are often problematic, including for couples of the same religion. The problem becomes increasingly complex for those who enter into interfaith marriages. However, the reality of interfaith marriage is a social reality that cannot be avoided. The social and relational nature of humans and the need to meet other people make the potential for interfaith marriages even higher. Humans will increasingly find differences when relating to others who are diverse both in tradition, culture, thought and religion. Catholic teachings and the Code of Canon Law do not require interfaith marriages because it would bring danger to the faith of Catholics. However, the Catholic religion cannot turn away from the social reality where it is not uncommon to find husbands or wives of different religions. Therefore, the Catholic Religion must still consider pastorally interfaith marriages as regulated in Canon 1125 and 1126. In accordance with the provisions of Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage states that a valid marriage is a marriage that takes place according to the laws of each religion. A valid marriage must be registered according to the applicable laws and regulations (Article 2 paragraph (2) of the Marriage Law). According to SEMA No. 2 of 2023 concerning Instructions for Judges in Hearing Cases of Applications for Registration of Marriages Between People of Different Religions and Beliefs in number 2 it is stated that the court does not grant requests for registration of marriages between people of different religions. So, if according to one of the religions in Indonesia an interfaith marriage is legal according to the relevant religious law, the court should not refuse to register the marriage at the Population and Civil Registry Service. This research will be carried out using sociological juridical methods using quantitative reasoning.

Keywords: Marriage, Validity, Different Religions and Catholicism.

I. INTRODUCTION

The controversy surrounding interfaith marriages in Indonesia has been a longstanding issue, with various legal and religious perspectives at play. The recent issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023, which prohibits judges from granting requests for the registration of marriages between people of different religions and beliefs, has reignited this debate [1]–[3]. The Supreme Court's prohibition on interfaith marriages has sparked debates and protests in society, with some activists arguing that the court's order is a clear violation of people's constitutional rights, such as freedom of religion [1]. The polemic of interfaith marriages is not a new problem at the legal level in Indonesia, especially with the issuance of SEMA Number 2 of 2023 for District Courts to reject requests for registration of interfaith marriages [2], [3]. From a juridical perspective, interfaith marriages can have implications for the validity of the marriage itself and the status of its offspring [4]. Some prior research suggests that interfaith marriages are seen as having greater harm than benefit, as they can lead to various problems in the household and make it difficult to create a *sakinah* (peaceful) family [5]. However, others argue that the laws and regulations in Indonesia do not clearly prohibit interfaith marriages, leading to varied judicial decisions and interpretations [6]. The issuance of SEMA Number 2 of 2023 has also raised concerns about its implications for human rights. Various international agreements on civil, political, economic, social, and cultural rights, as well as the Indonesian Constitution, guarantee the right to freedom of religion and belief [7].

The prohibition on interfaith marriages may be seen as a violation of these fundamental rights. Judges have faced challenges in adjudicating cases of interfaith marriages, as the legal framework in Indonesia is not entirely clear. Some judges have allowed interfaith marriages, even though the Marriage Law does not regulate them and refers to the laws of each religion [8]. This has led to a lack of legal certainty and consistency in judicial decisions. The Supreme Court has played a significant role in shaping the legal landscape surrounding interfaith marriages. In addition to SEMA Number 2 of 2023, the court has issued other circulars and regulations that have influenced the adjudication of these cases [9]–[11].

However, the court's actions have also been criticized for potentially contradicting the Constitution and human rights principles [7], [12]. The controversy over interfaith marriages in Indonesia is a complex issue that involves legal, religious, and human rights perspectives. The issuance of SEMA Number 2 of 2023 has reignited this debate, with various stakeholders voicing their concerns and arguments. The need for a comprehensive and consistent legal framework that respects the fundamental rights of individuals while addressing the concerns of different religious communities remains a significant challenge. Indonesia is a country whose population consists of various religions, ethnicities, cultures and languages, which creates broad implications in social reality, including differences in attitudes, perceptions and actions that often lead to conflict, especially in the issue of marriage.

The issue of marriage is particularly sensitive in the context of Indonesia's diverse population, which makes interfaith marriage possible. Although Catholicism in principle prohibits interfaith marriages, such marriages are still considered valid if the couple fulfill the principles, conditions, nature, and purpose of marriage according to Catholic teachings. However, interfaith marriage is a complex issue in Indonesia's multi-religious society, where its history has been regulated since colonial times until after independence. Law No. 1/1974 [13] on Marriage stipulates that marriage is valid if it is conducted according to the laws of each religion and belief, including interfaith marriages [14]. In practice, interfaith marriages have occurred in Indonesia, indicating that this is an unavoidable consequence of social relations between multi-religious societies. However, Supreme Court Circular Letter No. 2 of 2023 complicates the process of registering marriages between people of different religions, stating that the court will not grant the request for registration. This raises questions about the status of interfaith marriages that are already valid according to their respective religions and have been legally solemnized, such as in Catholicism, whether they will still be refused to be recorded in the state archives. Although religions generally prohibit interfaith marriages, they also allow them under certain conditions, so that in a situation of religious plurality, interfaith marriages are natural and possible in Indonesia. This study aims to provide a juridical sociological analysis of the teachings of Catholicism on interfaith marriage and the effectiveness of SEMA No. 2 of 2023, as well as to contribute to the legal research literature, especially in the faculty of law.

II. METHODS

This research adopts a sociology of law approach that focuses on the study of "*law as it is in society*," with the premise that law is an institutionalized pattern of social behavior and functions as an empirical social variable [15]. Through the sociological juridical approach, this research aims to explore the influence of society on law, and vice versa, by emphasizing the empirical paradigm. In this context, the researcher analyzes the implementation and effectiveness of Supreme Court Circular Letter No. 2 of 2023 on the social phenomenon of interfaith marriage in Indonesia. This research utilizes secondary data as an initial source, which is then supplemented with primary data through field research to directly observe social phenomena related to interfaith marriage.

The research method used is quantitative, which focuses on collecting and analyzing numerical data to gain a deeper understanding of the phenomenon under study. In quantitative research, there are two types of statistical analysis applied: descriptive and inferential. Descriptive analysis is used to describe phenomena through numbers, giving the researcher a picture of the conditions in accordance with the facts that appear for comparison, while inferential analysis is used to reveal facts that are not explicitly reflected in the raw data [16]. Thus, this research not only seeks to understand the dynamics of law and society, but also to provide greater insight into the social implications of interfaith marriage in the context of Indonesian law.

III. RESULT AND DISCUSSION

Result

Supreme Court Circular Letter No. 2 Year 2023 was issued on July 17, 2023 [17]. The purpose of the issuance of SEMA No. 2 of 2023 is to provide certainty and unity of legal application in adjudicating applications for marriage registration between people of different religions and beliefs [18]. Therefore, judges must have guidelines. The guidelines are clearly stipulated in the SEMA, as follows [19]:

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 No. 1 of 1974 concerning Marriage.
2. The court may not grant a request for registration of marriage between people of different religions and beliefs.

The content of SEMA No.2 of 2023 consists of only two points as mentioned above. Namely, emphasizing the basis of the validity of a marriage, namely according to the rules of religion and belief respectively, and from there it is emphasized that the court through the panel of judges may not grant the application for registration of marriage between people of different religions and beliefs. From point (2) of SEMA No. 2 of 2023, it can be understood that the possibility for Indonesians to apply for registration of marriages of different religions is closed because it will be rejected. SEMA is a form of circular from the leadership of the Supreme Court to all levels of the judiciary that contains guidance in the administration of the court which is more administrative in nature. From this explanation, it can be seen that SEMA is classified as a policy regulation (*beleidsregel*). Policy regulations are regulations made, both the authority and the content material are not based on legislation, delegation or mandate, but based on the authority arising from *freies ermessen* attached to the state administration to realize a certain goal justified by law. In essence, this SEMA is internal, which is addressed to the judicial bodies under the Supreme Court to provide guidance and direction to all elements of the judicial administration in carrying out their duties.

Because SEMA is a discretionary regulation classified as a policy regulation, its substance must be merely guiding, guiding, giving policy direction, and regulating the implementation of tasks that are more administrative in nature. Although similar, policy regulations such as SEMA are not laws and regulations. By definition, laws and regulations are written rules that contain legal norms that are binding in general and are formed or stipulated by state institutions or authorized officials through procedures stipulated in laws and regulations. Therefore, policy regulations such as SEMA are not included in the type and hierarchy of laws and regulations as listed in Article 7 paragraph (1) of Law No. 12/2011. The question is whether SEMA can declare an article in a legislative regulation to be invalid? It should be noted that the revocation or declaring invalidity of a norm of a law can only be done in two ways, namely, through legislation of the same or higher level and through a decision of material testing or judicial review of a law by the Constitutional Court. Therefore, SEMA basically does not have the power to change or cancel the validity of a law. Supreme Court Circular Letter or SEMA number 2 of 2023 concerning Religious Marriage needs to be reviewed. Through this SEMA, the highest judicial institution in Indonesia prohibits judges from granting applications for marriage registration between people of different religions and beliefs or interfaith marriages. Before the SEMA was issued, interfaith marriages often reaped pros and cons. The following table shows data on interfaith marriages in Indonesia from year to year as obtained from the Indonesian Conference on Religion and Peace or ICRP:

Table 1. Interfaith Marriages In Indonesia From Year To Year

No.	Years	Quantity/Pair
1.	2005-2014	601
2.	2015	84
3.	2016	76
4.	2017	76
5.	2018	111
6.	2019	137
7.	2020	147
8.	2021	169
9.	2022	177
10.	2023	89 / July 19th

Source: <https://www.melansir.com/news/8499528788/data-fakta-angka-pernikahan-beda-agama-dari-tahun-ke-tahun>

This table shows that there are a total of 1,667 couples, interfaith marriages that occurred in Indonesia from 2005 to 2023 (of course this is the minimum number recorded). In addition, it can also be seen that the number of interfaith marriages is increasing from year to year. This shows that interfaith marriage is a social problem that needs attention from the government.

Discussion

Sociological Juridical Analysis

The issuance of Circular Letter Number 2 Year 2023 itself is none other than to answer and end the polemic about the registration of marriages of different religions and beliefs that has been going on in the midst of society. The controversy about the validity and registration of marriages of different religions and beliefs has actually been going on for a long time. In addition to the absence of an explicit prohibition on marriages of different religions and beliefs, the existing laws and regulations also provide legal loopholes for couples of different religions to be able to obtain recognition of the validity of their marriage registration through a court order. This SEMA was issued based on Article 2 paragraph (1) and Article 8 letter f of Law No. 1 of 1974 concerning Marriage. Which, the Supreme Court assumes that there are no religious provisions in Indonesia that allow interfaith marriages. Meanwhile, marriage in Indonesia is only valid based on religious law. With that, there is also an assumption that interfaith marriages are invalid. This assumption is logically and juridically incorrect [20]. The 1945 Constitution places the right to enter into marriage and form a family as a Human Right as stated in Article 28 B paragraph (1) which contains Human Rights. Other principles that speak of human rights regulated in the 1945 Constitution are the right to freedom of religion and the right to be free from discriminatory treatment on certain backgrounds.

Which can be concluded that the right to enter into marriage is a Human Right inherent in all people and is absolute, absolute, regardless of the religious background they believe in. This includes 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. Whereas legally, the 'prohibition' must be contained in an explicit rule, otherwise it means that it does not become a prohibition [21]. Article 2 paragraph (1) and Article 8 letter f of the Marriage Law only regulate the validity of a marriage. Of course, these provisions cannot necessarily be interpreted that the Marriage Law prohibits interfaith marriages. Therefore, SEMA No. 2 Year 2023 is not in accordance with the 1945 Constitution because it violates human rights related to freedom of religion, and its effectiveness is not in accordance with the legal awareness of the community. SEMA No. 2 of 2023 makes an irrational presumption by generalizing religious law without considering the possibility of official dispensation in accordance with certain religious laws. SEMA No. 2 Year 2023 also fails to take into account social phenomena where the reality of interfaith marriages is already prevalent in Indonesia. In addition, SEMA No. 2 of 2023 does not seem to pay attention to the Constitutional Court Decision No.24/PUU-XX/2022 on Religious Marriage which explains that the validity of marriage is the domain of religion through religious institutions or organizations that are authorized or have the authority to provide religious interpretation, not the domain of the state [22].

Analysis According to Catholicism

As explained above, Catholicism basically prohibits interfaith marriages. The Catholic Church in its development found many challenges, problems, and complexities of marriage. One of the complex problems of marriage is the occurrence of interfaith marriages. Interfaith marriages are not foreign in Indonesia and in Catholicism. This interfaith marriage must follow the rules or laws of each religion of the two partners [23]. To understand the Catholic understanding of interfaith marriage, it is necessary to look at the teachings of the church and its laws.

Interfaith Marriage According to Church Teaching Apostolic Letter Familiaris Consortio

The document that discusses interfaith marriage is the Apostolic Letter Familiaris Consortio (Family). This Apostolic Letter was issued by Pope John Paul II on November 22, 1981. Regarding interfaith marriage, the Apostolic Letter Familiaris Consortio does not explicitly explain whether interfaith marriage is allowed or not. However, what is emphasized here is the need and importance of pastoral care specifically in the case of interfaith marriages. Pastoral care for those who enter into an interfaith marriage appears to be a major concern. The reason is that it is undeniable that there are various difficulties and challenges in interfaith marriages that are difficult to avoid. In the context of interfaith marriages, of course, religious differences bring challenges and difficulties, especially in religious freedom. This freedom can be violated by unreasonable pressure on the other party to convert, or by placing obstacles, so that the other party is no longer free to express their faith by practicing their religion. As such, accompaniment is essential to help

Catholics maintain their faith in Christ. From this document, we find two important points related to interfaith marriage. First, interfaith marriage is a marriage that should be avoided as much as possible. Catholics recognize that there are many difficulties involved in interfaith marriages. Secondly, at a time when encounters with different cultures, ethnicities and religions are very high the potential for interfaith marriages to occur. Therefore, Catholicism sees that there is a need for special assistance, intense assistance for families who enter into interfaith marriages, especially to assist the Catholic side of the marriage [24].

Interfaith Marriage According to the Code of Canon Law

Interreligious marriages can take place with a dispensation from the Ordinary of the Region (Bishop) after fulfilling the conditions listed in KHK Canon 1125 and Canon 1126 as explained above. Such permission can only be granted by the Regional Ordinary (Bishop), and only if there are reasonable and justifiable reasons. In addition, permission will not be granted unless the conditions set out in the KHK have been met. Based on KHK Canon 1125, the first condition that must be met is that there is a promise and strong will on the part of the Catholic to be faithful to the Catholic faith. In addition, all children born are baptized and educated in the Catholic faith. The Catholic party states that those who are Catholic must be willing to avoid various things that can harm the faith and promise to make every effort to educate children and baptize them in the Catholic faith. This is a requirement of divine law from which there can be no departure. As such, it must be observed and applied with all diligence and fidelity [25]. The second condition for obtaining a dispensation is that the Catholic party must inform the non-Catholic party of the vows and responsibilities to be fulfilled at the time of the marriage. These include the baptism and upbringing of the children, and the Catholic's profession of faith. The purpose of this notification is to let the non-Catholic party know that their spouse has promises and responsibilities to fulfill. The non-Catholic should be informed of these statements and promises, so that with awareness of these commitments, the non-Catholic can respect and appreciate the obligations that the Catholic has to perform [26]. The third condition for obtaining a dispensation is adequate instruction for both parties on the purpose of marriage and the essential nature of marriage.

Catholic and non-Catholic couples entering into an interfaith marriage need to be catechized on the purposes and essential characteristics of marriage which neither party should neglect. This teaching is important because in the context of an interfaith marriage, the non-Catholic party has his or her own view of marriage in accordance with the teachings of his or her religion [23]. From the explanation of both the Apostolic Letter *Familiaris Consortio* and the Code of Canon Law, it can be understood that Catholicism opens the door to interfaith marriages with strict conditions as stipulated in Canons 1125 and 1126 of the Code of Canon Law. This openness is born from the social reality of human life which in reality is involved in multi-religious relationships. From that social reality, Catholicism sees that the potential for interfaith marriage is very large. Catholicism sees the need to accommodate such social symptoms, without having to limit and curb religious freedom. Catholicism turns out to be able to answer the problem of interfaith marriage in the midst of ethnic, cultural and religious diversity, in various regions, including Indonesia [27]. Catholicism states that an interfaith marriage is valid after obtaining permission or dispensation from the Regional Ordinary or Local Bishop, so what about the effectiveness of the enactment of SEMA No. 2 of 2023 which does not grant applications for registration of marriages between people of different religions and beliefs, as written in point (2). If analyzed using the law of Catholicism, the provision of point 2 of SEMA automatically directly contradicts the provision of point (1) which says that a valid marriage is a marriage conducted according to the law of each religion, because the inter-religious marriage that is held is already valid according to Catholicism after fulfilling the conditions stipulated in the law of Catholicism itself [17].

IV. CONCLUSION

Interfaith marriage is often a problem, but social reality shows that it is unavoidable. The teachings and laws of Catholicism basically do not support interfaith marriages because they can endanger the faith of each party, but Catholicism must also consider the reality of people who are in relationships with partners of different religions. Through the Apostolic Letter *Familiaris Consortio* and KHK Kan. 1125 and 1126,

Catholicism provides the possibility of interfaith marriage with dispensation from the Bishop, although juridically this is an impediment to marriage. In this context, SEMA No. 2 Year 2023 is considered contrary to Article 29 paragraph (2) of the 1945 Constitution and Catholic Religious law, because the state must respect diversity and not generalize marriage rules for all religions. Therefore, SEMA No. 2 point (2) should include the phrase “*exceptions*” for religions that allow interfaith marriage. Considering that Indonesia has ratified the Human Rights Convention through Law No. 39 of 1999, the Supreme Court should revoke SEMA No. 2 of 2023 for the sake of legal certainty and the fulfillment of the right to marry as a human right, as well as to preserve religious freedom.

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