

PROBLEMS IN REGISTERING INTERFAITH MARRIAGES FOR NON-MUSLIM COUPLES AFTER THE ISSUANCE OF SUPREME COURT CIRCULAR NUMBER 2 OF 2023

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Abstract: The Marriage Law does not expressly regulate the permissibility or prohibition of interfaith marriage, but based on the provisions contained in the Marriage Law, it is understandable that interfaith marriage is not prohibited in its religious teachings, then each couple of different religions can carry it out. Married couples who carry out interfaith marriages must register their marriage with the Civil Registration Office, because marriage registration aims to protect all parties who have an interest in the marriage. Ironically, the Supreme Court has issued Supreme Court Circular Letter Number 2 of 2023, which states that the court did not grant the application for registration of marriages between people of different religions and beliefs. This reality is interesting to analyze through research that is designed qualitatively with a normative juridical type. The research approach used is a philosophical and legislative approach, and the data collected is analyzed qualitatively juridically. Based on the results of the analysis, it is known that legal protection for non-Muslim communities who carry out interfaith marriages because according to their religious teachings is not prohibited, has been neglected due to the issuance of the Supreme Court Circular Letter Number 2 of 2023, even though one of the state's goals as stipulated in the Fourth Paragraph of the Preamble to the 1945 NRI Constitution is to protect the entire Indonesian nation. It can also be said that the Circular Letter is contrary to the principle of equality before the law.

Keywords: Marriage, Recording, Religion, Supreme Court

Introduction

One of the objectives of the State of the Republic of Indonesia, is to protect the entire Indonesian nation, and in Article 27 paragraph (1) of the Constitution of the Republic of Indonesia (Constitution of the Republic of Indonesia of 1945), it is stipulated that: "all citizens have the same position in the law and government and are obliged to uphold the law and government without exception", while in Article 28D paragraph (1), It is determined that: "Everyone has the right to fair legal recognition, guarantees, protection, and certainty, as well as equal treatment before the law". The same position before the law is also affirmed in Law Number 39 of 1999 concerning Human Rights (UU HAM), which in Article 3 paragraph (2), it is stipulated that: "everyone has the right to recognition, guarantee, protection and fair legal treatment and to receive legal certainty and equal treatment before the law", while in Article 5 paragraph (1), It is also determined that: "Everyone is recognized as a personal human being who has the right to demand and obtain the same treatment, as well as protection in accordance with his human dignity before the law". Equal treatment before the law, known as

"equality before the law", is one of the principles of modern law, namely the principle that upholds equality or equality before the law for every individual without exception.¹

The principle of *equality before the law*, was first put forward by Dicey in the tradition of the Anglo-American legal system, according to which *the rule of law* contains 3 (three) important elements, namely: (a) *supremacy of law*; (b) *equality before the law*; and (c) *due process of law*.² These three concepts are closely related to individual freedom, as well as human rights. This principle is a consequence that must be fulfilled by every state of law (both adhering to the concept of *rehtstaats* and *the rule of law*),³ therefore every member of society must receive legal services equally, such as legal services in the field of population administration, among others related to marriage registration.

Services in the field of population administration related to marriage registration at the Population and Civil Registration Office (Disdukcapil), aim to ensure the certainty of marriage law, because with the registration of marriage, a marriage certificate is issued which is one of the proofs of the existence of a marriage bond between a man and a woman. Marriage between a man and a woman of different religions must also be recorded, if according to the religious teachings he adheres to there is no prohibition on interfaith marriage, but through Circular Letter Number 2 of 2023, the Supreme Court provides instructions, one of the contents of which determines that the court does not grant applications for marriage registration between people of different religions and beliefs.

The existence of the Supreme Court Circular Letter Number 2 of 2023 (SEMA No. 2 of 2023), is assumed to cause problems in the future, namely the occurrence of discrimination, injustice and legal uncertainty for married couples who carry out interfaith marriages, even though not all religions expressly prohibit the implementation of interfaith marriages, therefore, the norms contained in SEMA No. 2 of 2023 need to be analyzed by referring to the legal rules that related to marriage provisions and marriage registration.

Literature Review

Article 2 letter b, Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration (Administrative Law), stipulates that: "every resident has the right to obtain the same services in population registration and civil registration. The phrase "equal service" contained in this provision shows that the Administrative Law has fulfilled the principle (principle) of *equality before the law*.

The definition of civil registration is the recording of important events experienced by a person in the civil registration register (Article 1 number 15 of the Administrative Law), while important events are events experienced by a person including birth, death, stillbirth, marriage, divorce, recognition of children, legalization of children, adoption of children, change of name and change of citizenship status (Article 1 number 17 of the Administrative Law). The recording of important events in question must be carried out without discrimination and is an obligation of the government of the state, because based on Article 8 paragraph (1) of the Administrative Law, it is emphasized that: "the implementing agency

¹ Azzahra Meutia Ramadhani and Bagus Ramadi (2023). "The Reality of the Realization of *the Principle of Equality Before the Law* on the Level of Public Trust in Law Enforcement (Application of *Restorative Justice* in the Prosecutor's Institution of the Republic of Indonesia)". *Causa: Journal of Law and Citizenship*. 1 (10), p. 55.

² Jumadi (2019). "Paradigm of State Administration and National Development with a Legal Perspective". *El-Iqtishady: Journal of Sharia Economic Law*. 1 (2), p. 20.

³ The main similarity between the *Rechtsstaat* and *the Rule of law* is the desire to provide protection and respect for human rights. See Hikmah Istiqamah and Siti Zainab Yanlua (2024). "The Concept of the State of Law *Rechtsstaat* and the Rule of Law". *Al-Muqaranah: Journal of Islamic Law and Thought*. 3 (1), p. 14.

carries out population administration affairs with obligations that include: (a) registering population events and recording important events; and (b) provide the same and professional service to every resident for reporting population events and important events".

The recording of marriage events is carried out against a valid marriage, namely: a marriage that is in accordance with the religious teachings of each party who carries out the marriage, and must also comply with the provisions contained in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law). This has been affirmed in Article 2 paragraph (1) of the Marriage Law which stipulates that: "marriage is valid, if it is carried out according to the law of each religion and its beliefs". Marriages must also be recorded, because based on Article 2 paragraph (2) of the Marriage Law, it is determined that: "each marriage is recorded in accordance with the applicable laws and regulations".

Marriage registration is the state's obligation to provide the fulfillment of administrative rights to the community, such as public services and legal protection related to population documents without discriminatory treatment. Recording is carried out by issuing a marriage certificate and this deed has legal force as proof of the validity of marriage according to state law. Therefore, the status of children born from a marriage that has been recorded is as a child who has a legal relationship with both parents, so that the rights that arise for husband and wife couples and children born become clear.⁴ Through the recording of marriage, the marriage event becomes clear and clear that meets the requirements of marriage, because the marriage event can be proven by the issuance of a marriage certificate. The existence of this marriage certificate will also clarify the functions, division of roles, and gender partnerships which are important components of the family structure in order to build a more equitable and sustainable society.⁵

The obligation to register marriages that have been carried out is part of the state's obligation and responsibility to protect every citizen. This marriage registration is important, because it will provide benefits, including: (a) guaranteed legal certainty of the status of husband or wife, as well as children born from marriage; (b) the process of managing the child's birth certificate is guaranteed, by including the names of both parents in full; (c) guaranteed inheritance rights of the longest-living husband or wife, as well as children born from the marriage;⁶ and (d) ensuring efforts to meet the needs and interests that are best for children.⁷

The problems that often occur are related to the registration of marriage for married couples of different religions, because they are hampered by the unilateral actions of marriage registration institutions, on the grounds that interfaith marriage is not valid according to religious teachings, even though not all religions expressly prohibit interfaith marriage, for example Catholicism, Christianity, Buddhism and Confucianism. Based on the results of the Conference of Indonesian Bishops (Catholic) and the Indonesian Church Union (Christian), which was held in Semarang on March 12-14, 1947, it was determined that interfaith marriage

⁴ Sulistyowati, Sugondo (2005) *Points of Thought and New Paradigm of National Civil Records*. Jakarta: Komnas HAM, p. 8.

⁵ Leylia Khairani, Widya Masitah, Siti Hajar, Muklis Ibrahim, and Fitria (2023). "Education on HIV/AIDS Prevention and Control Through the Role of Women in the Family". *Abdi Sabha: Journal of Community Service*. 4 (3), p. 85.

⁶ Virahmawaty Mahera and Arhjayati Rahim (2022). "The Importance of Marriage Registration". *As-Syams: Journal of Islamic Law*. 3 (2), p. 100.

⁷ Harisman and Atikah Rahmi (2021). "Parental Power over Children in the Perspective of Child Protection". *Synthesa: National Seminar on Social Education Technology and Humanities*. 1 (1), p. 923.

was allowed.⁸ According to Buddhist teachings, interfaith marriages are allowed, but the legalization of marriage ceremonies is carried out in the manner that prevails in Buddhism. The bride-to-be who is not a Buddhist, is not required to embrace Buddhism first, it's just that the marriage ritual ceremony, for the bride and groom is required to say the sentence: "in the name of *the Buddha, Dharma and Suspicion*", which are the gods of Buddhism,⁹ while in Confucianism there is no prohibition on interfaith marriage.¹⁰

Research Methods

The design of this research is qualitative and the type is normative juridical research, because the main concern is the legal policy related to the issue of interfaith marriage and its recording in the legal system that applies in Indonesia. The research approach used is a philosophical and legislative approach. The data of this study is in the form of secondary data collected by documentary study techniques, while the collected data is analyzed qualitatively juridically.

Results and Discussion

Interpreting the marriage law as a code of conduct and must be obeyed by everyone, the term valid marriage is not enough only to be carried out in accordance with religious law, but it must be recorded in the authorized institution, but there are 2 (two) different opinions on the provisions of Article 2 of the Marriage Law. The first opinion says that Article 2 paragraph (1) and Article 2 paragraph (2) of the Marriage Law, are different and separate matters, meaning that marriage is valid if it has been carried out according to religion and belief, while marriage registration is only an administrative requirement. The second opinion says that the provisions of Article 2 paragraph (1) and Article 2 paragraph (2) of the Marriage Law, are cumulative provisions and not alternative, meaning that the two provisions apply as an inseparable unit.

Marriage registration is not a valid condition of a marriage, because the legal condition of marriage is in accordance with the terms or conditions contained in religious teachings, but marriage registration must be carried out in order to protect the rights of the parties in one family, consisting of husband, wife and children/children born from the marriage. The registration of marriage is carried out not for the purpose of proving the validity of marriage in the sense of legality according to religion, but solely as a recognition (legalization) from the state that the parties to the marriage are indeed bound in a marriage bond, in other words to prove a person's identity that he is the true husband or wife of a person, and to prove the status of a child as a child of a married couple. This is in accordance with the opinion of the Constitutional Court contained in Decision Number 46/PUU-VIII/2010, stating that the recording of each marriage is the same as the recording of important events in a person's life, such as birth, death stated in certificates, a deed that is also included in the registration list. Marriage registration is not a determining factor for the validity of marriage and is an administrative obligation. The factors that determine the validity of marriage are the conditions specified in the religious teachings of each prospective couple.

Regarding the practice of interfaith marriage, by referring to the Constitutional Court's decision, the Disdukcapil is not authorized to reject the application for registration of

⁸ Pagar (2006). *Interfaith Marriage: Discourse and Thought of Indonesian Islamic Law*. Bandung: Cita Pustaka Media, p. 75.

⁹ O.S. Eoh (2001). *Interfaith Marriage in Theory and Practice*, Jakarta: RajaGrafindo Persada, pp. 125-126.

¹⁰ Mardalena Hanifah and Meidana Pascadinianti (2023). "Legal Consequences of Registering Interfaith Marriages". *UIR Law Review*. 7 (2), p. 110.

interfaith marriage on the grounds that the marriage is invalid according to religion, even though not all religions prohibit interfaith marriage, and if a religious institution (e.g. the Church) has accepted interfaith marriage, then the Disdukcapil is obliged to record the marriage. The Disdukcapil should continue to record interfaith marriages in the marriage registrar register, if the parties can prove that the marriage has indeed been carried out and is religiously valid and if it turns out that there will be a request for annulment of the marriage later, then this is another problem. Even the parties interested in the marriage can only request the annulment of the marriage if there is evidence that the marriage has indeed been carried out, and juridically formally there is evidence that the marriage has been carried out, namely by the issuance of a marriage certificate issued by the Disdukcapil.

Ironically, on July 17, 2023, the Supreme Court has issued Circular Letter Number 2 of 2023, which at point 2 states that the Court did not grant the application for registration of marriages between people of different religions and beliefs. Paying attention to the contents of SEMA No. 2 of 2023, it is understood that all applications for registration of interfaith marriages should not be granted without any exception that the religion of the party concerned does not prohibit interfaith marriage. The Supreme Court through this Circular has caused the unprotection of the rights of people who carry out interfaith marriages, while according to its religious teachings there is no prohibition on interfaith marriage.

The existence of SEMA No. 2 of 2023 raises juridical problems, namely the existence of legal uncertainty for people who carry out interfaith marriages and the potential for human rights violations, namely violations of the right to recognition, guarantee, protection and fair legal treatment and legal certainty and equal treatment before the law, and the right to demand and obtain treatment, and the same protection in accordance with human dignity before the law. SEMA No. 2 of 2023 also has the potential to cause legal uncertainty related to the government's obligation to record important events that occur in society in order to provide legal protection to all levels of society as a mandate of the constitution and laws and regulations, namely marriage events carried out by married couples of different religions, which according to religious teachings do not prohibit interfaith marriage.

Given the enactment of the Marriage Law and therefore each marriage must still be recorded, which in a philosophical view (aspect) aims to protect the juridical interests of the wives and children born from the marriage, and from the juridical aspect that based on Article 3 of the Administrative Law, marriage registration is the obligation of every person who performs marriage in Indonesia, even based on Article 90 paragraph (1) b of the Administrative Law, A person can be sentenced to administrative penalties if he does not report his marriage to the authorized agency (institution). In this regard, there is no longer a need for controversy regarding the validity of marriage according to religion and validity according to the state, so that the provisions contained in Article 2 paragraph (1) and paragraph (2) of the Marriage Law are implemented in a balanced and parallel manner.

Marriage registration is an important legal act to be carried out, because from a philosophical point of view (aspect) it aims to be able to provide guarantees of protection and legal certainty for marriage and provide a guarantee of order in community life. Therefore, the provisions of Article 2 paragraph (2) of the Marriage Law, have the function of regulating and engineering community social interaction. This is in accordance with the opinion of Kusumaatmadja who said that the rule in the sense of rules is expected to be able to direct human activities in the direction desired by development and renewal, so that means in the form of written legal regulations, which of course must also be in accordance with the laws that live in society.¹¹

¹¹ Mochtar Kusumaatmadja (2006). *Legal Concepts in Development: A Collection of Papers*. Editors: R. Otje Salman S. and Edi Damian. Bandung: Alumni, p. 88.

Judging from the approach to the concept (theory) of the state of law, the recording of marriage aims to ensure the creation of legal certainty in marriage, because according to Scheltema as quoted by Sidharta, a view is formulated on the elements and principles of the state of law, one of which is that the state of law aims to ensure the realization of legal certainty in society. The law aims to realize legal certainty and high predictability, so that the dynamics of common life in society are "*predictable*".¹² In addition, it is also mentioned that in general, the concept of the state of law in principle includes four basic demands, namely: (a) legal certainty; (b) the law applies equally to all residents; (c) the existence of democratic legitimacy in lawmaking; and (d) upholding human dignity (Hidayat, 2010). Similarly, in the paradigm of *rule of law* which means law enforcement, then: (a) the law is enforced for the sake of legal certainty; (b) the law is used as the main source for the judge in deciding the case; (c) the law is not based on discretion in its implementation; and (d) the law must be dogmatic.¹³

The refusal to register interfaith marriages (especially for non-Islamic couples) is an act that is contrary to the perspective of justice contained in the Second Precept of Pancasila, because all human beings are recognized and treated according to their dignity and dignity as beings of God Almighty, who are equal in degree, who have the same basic rights and obligations, without discriminating between ethnicity, descent, religion and belief, gender, social standing, skin color, and so on. This statement also has similarities with "*the liberty principle*" according to Rawls' view, which says that everyone has the same right to the broadest basic freedom, the same extent of liberty for all.¹⁴ Similarly, in the view of the theory of justice, justice in the sense of "numerical equality" equates every human being as a unit (the principle of *equality before the law*), which is understood that all citizens are equal before the law.¹⁵

Conclusion

Referring to the state's goal to protect the entire Indonesian nation as stipulated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, the purpose of protecting non-Muslim couples who carry out interfaith marriages has been neglected due to the issuance of SEMA No. 2 of 2023. SEMA No. 2 of 2023 has also ignored the government's obligation to record important events in society (especially related to marriage registration), therefore it needs to be reviewed to provide legal protection for non-Muslim couples who carry out interfaith marriages, which according to the teachings of their religion that interfaith marriage is not prohibited.

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¹² Bernard Arief Sidharta (2004). "Philosophical Studies on the State of Law". *Journal of Mechanism Law*. Edition 3-Year II. Jakarta: Center for Law and Policy Studies (PSHK), p. 124.

¹³ Astim Riyanto (2002). *Philosophy of Law*. Bandung: Yapemdo, p. 377.

¹⁴ John Rawls (1971). *A Theory of Justice*. Massachusetts: The Belknap Press of Harvard University Press Cambridge, p. 60.

¹⁵ Carl Joachim Friedrich (2004). *Philosophy of Law Historical Perspective*. Bandung: Nuansa dan Nusamedia, p. 24.

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