

Implications of Supreme Court Circular Letter No. 2 of 2023 on Interfaith Marriage Registration and Constitutional Marriage Framework in Indonesia

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ABSTRACT *Interfaith marriage and its registration remain unresolved issues in Indonesia. One attempt to address this problem is the issuance of Supreme Court Circular Letter (SEMA) No. 2 of 2023. However, SEMA 2/2023 serves as an imperfect solution to resolving the issue of interfaith marriage registration. The Supreme Court's effort to reject the registration of interfaith marriages undermines the constitutional principles of marriage in Indonesia. This article examines the significant future implications of SEMA 2/2023 for the constitutional framework governing interfaith marriages in Indonesia. The research employs a qualitative method with a normative-juridical analysis approach. The findings indicate that interfaith marriage is a practice that the state must address, as their respective religions no longer acknowledge individuals entering such unions. Consequently, the state attempts to dematerialize the law by incorporating religious elements as a determinant of a marriage's validity. SEMA 2/2023 is legally flawed as a binding regulation, given that it does not fall within the hierarchy of laws and regulations outlined in Law No. 12 of 2011. Nevertheless, SEMA 2/2023 substantially impacts the future of interfaith marriages and related civil issues, including matters of joint property, guardianship, and child custody.*

KEYWORDS *Interfaith Marriage; Marriage Registration; Marriage Constitution; Supreme Court.*

INTRODUCTIONS

Interfaith marriage represents a practice born from the effort to nurture Indonesia's diversity. The state guarantees this marriage by elucidating Article 35 (a) of Law No. 23 of 2006 on Population Administration (Law 23/2006). Interfaith marriage embodies a progressive shift, transitioning from the certainty of religious law to the certainty of state law. However, the state has recently negated this guarantee by issuing Supreme Court Circular Letter No. 2 of 2023 on Guidelines for Judges in Adjudicating Applications for Registration of Interfaith Marriages (SEMA 2/2023). This circular reflects the state's response to retract constitutional guarantees outlined in Article 28B of the 1945 Constitution (UUD 1945), particularly regarding

the right to marry and form a family. As a result, the state has left individuals unrecognized by their respective religions without legal certainty for the registration of interfaith marriages, despite such marriages being a reality within Indonesian society. As of 2022, interfaith marriages have been documented in 210 judicial decisions, including 198 first-instance court rulings, five appellate decisions, five cassation rulings, and one judicial review decision (Mahkamah Agung, 2022).

Interfaith marriage involves individuals who, in practice, navigate beyond their religious affiliations. Such marriages predate the first marriage regulation, Law No. 1 of 1974 on Marriage (Law 1/1974), and have occurred since the Dutch colonial period (Nasir 2020). Even before its independence, The long history of

interfaith marriage in Indonesia reflects its rootedness in societal pluralism. This form of marriage, however, also generates social conflicts, particularly among non-state organizations (ormas), which play a significant role in shaping Indonesia's diversity. Interfaith marriage brings about religious confrontations between the two parties' beliefs. At the same time, it fosters social cohesion through diverse interpretations of religion, traditions, family backgrounds, and ethnicities (Nasir 2020). Such marriages are critical to preserving Indonesia's pluralism, forming an essential pillar of the nation.

Interfaith marriage in Indonesia is not only a religious or legal matter but also a cultural and ethnic issue. Indonesia's diverse ethnic groups, each with their customs and traditions, shape how interfaith marriages are perceived. For instance, interfaith marriages may be more readily accepted in communities such as the Javanese or Balinese, where cultural traditions prioritize familial harmony and consensus. In contrast, more conservative regions like Aceh, where Islamic orthodoxy plays a central role in social life, often present resistance to such unions. This intersection of religion, culture, and ethnicity significantly influences the experiences of interfaith couples, affecting their legal challenges, social acceptance, and the potential for either community cohesion or division. Understanding how different ethnic communities navigate the tension between religious doctrine and cultural traditions offers valuable insights into the dynamics of interfaith marriages and their broader impact on societal cohesion in Indonesia.

Prior to the issuance of SEMA 2/2023, several studies discussed the administrative challenges of registering interfaith marriages in Indonesia. These articles highlight how interfaith marriages are registered with the civil registry office, unlike same-religion Islamic marriages registered at the Religious Affairs Office (KUA). The registration process for interfaith marriages mirrors that of marriages from non-Islamic religions. Human rights (HAM) have been consistently emphasized as the primary justification for continuing interfaith marriages (Indrayanti 2016). This argument is further supported by the Supreme Court's jurisprudence in Decision No. 1400/K/Pdt/1986, which allowed the registration of interfaith marriages through judicial approval (Andriani, Sahrudin, dan Fathoni 2023). Moreover, the Presidential Regulation No. 12 of 1983 (Perpres 12/1983)

mandates the registration of marriages for both Muslim and non-Muslim citizens (Yuni Juniarti, Shindu Irwansyah, dan Muhamad Yunus 2022; Romli, Huda, dan Aspandi 2022). Another proposed solution, as discussed by Halim and Ardhani (Halim dan Ardhani 2016), is for couples to marry abroad to simplify the registration of interfaith marriages.

While human rights remain a central justification for the continued recognition of interfaith marriages, it is essential to consider the gendered implications of this issue. Women in interfaith marriages, particularly within conservative religious communities, may face unique legal and social challenges. For example, religious and societal norms often impose stricter expectations on women, particularly in their roles as wives and mothers. In the context of interfaith marriages, these norms become more complex as women navigate the intersection of different religious laws, family expectations, and state regulations.

Moreover, marginalized groups, such as women from non-Muslim or minority religions, may encounter additional barriers in obtaining legal recognition for their marriages. The complexities of negotiating interfaith marriages are often heightened for women, who may face pressure from both their religious community and the broader society. The legal recognition of these marriages—through registration and the affirmation of rights—is a matter of upholding individual freedoms and ensuring that women's rights are equally protected in the face of legal and religious conflicts.

This article examines how SEMA 2/2023 is a contemporary guideline for Supreme Court judges. The circular introduces challenges from both religious and constitutional perspectives. These aspects are critical rights that the state must uphold for its citizens, including the right to apply for interfaith marriage registration. Since the issuance of SEMA 2/2023, the conception of interfaith marriage has significantly shifted within Indonesia's legal and societal contexts. Research on interfaith marriage registration must now be revisited to reflect the progressive legal measures and state responses to this issue. Furthermore, the interpretation of state-recognized religions will significantly influence the future implications of SEMA 2/2023. This analysis will also evaluate how far the state upholds religious guarantees as a human right and its attention to interfaith marriage registration following the adoption of SEMA 2/2023 as a judicial guideline.

METHODS

The research method employed in this article is qualitative. The article narrates efforts to prohibit the registration of interfaith marriages, supported by the relevant data collected. One of the primary data sources analyzed is Supreme Court Circular No. 2 of 2023 on Guidelines for Judges in Adjudicating Applications for the Registration of Marriages Between Followers of Different Religions and Beliefs (SEMA 2/2023). Other data related to the registration of interfaith marriages and its regulations are presented as secondary data in this article. The analysis adopts a normative-juridical approach, examining the extent to which the state guarantees marriage rights under Article 28B of the 1945 Constitution (UUD 1945).

RESULTS AND DISCUSSIONS

A. Interfaith Marriage

Blaming individuals for being born into a particular religion cannot be justified as a reason to fault the religion itself. Fundamentally, every individual has the right to choose their religion and mode of worship. The state guarantees the right to choose and practice a religion. Indonesia explicitly upholds this right in its 1945 Constitution (UUD 1945): *"The State guarantees every individual the freedom to adhere to their religion and to worship according to their religion and beliefs"* (Article 29 of the UUD 1945). This guarantee also extends to religious practices, including marriage.

Marriage is considered a collective act of worship with its own temporal and spatial dimensions. Religious doctrines emphasize marriage as a form of worship and establish boundaries and guidelines known as marital provisions. Among these provisions is the examination of religious similarities or differences between the spouses. Religion serves as a medium or instrument for solemnizing marriage, seeking recognition from others, and securing religious and legal legitimacy.

Marriage is a lifelong act of worship, making it a central religious ritual. All religions encourage marriage as a pathway to building an ideal household. To initiate marriage, individuals must fulfill specific requirements for the ritual. For instance, in Islam, the conditions for marriage are comprehensively outlined in *fiqh* (Islamic jurisprudence). This example is particularly relevant in Indonesia, where most

people practice Islam. However, the legal framework for marriage is universally codified in Article 6 of Law No. 1 of 1974, which reflects the assimilation of diverse religious laws in Indonesia.

Marriage assimilation involves integrating individuals from different ethnic, religious, or cultural groups into a shared marital framework (Lichter, Carmalt, dan Qian 2011). This process aligns individuals with dominant societal norms, including values, practices, and norms that merge into a shared understanding of cultural, customary, and religious diversity (Qian, Lichter, dan Tumin 2018).

The assimilation of marriage law in Indonesia is rooted in the religious rules governing marriage. The enactment of Law No. 1 of 1974 transformed societal perceptions of marital regulations implemented by the state. These regulations became standardized for Indonesia's pluralistic society, constituting diverse marital norms. The historical development of this law established it as an authentic legal framework. Law No. 1 of 1974 serves as a unified legal foundation, ensuring that the state governs marriage without contradicting religious principles. The state and religion are not adversaries but options available to the people. Ultimately, decisions about marriage and its execution rest with society.

The assimilation of marriage law in Indonesia requires understanding and applying legal provisions related to spousal rights and obligations while maintaining cultural and social values (Yeung dan Mu 2020).

Interfaith marriage remains a complex issue situated within the interplay of religion and its adherents. While the state guarantees religious freedom under Article 29 of the UUD 1945, interfaith marriage often relies on the discretion of religious communities. The state facilitates the administrative registration of religious marriages, as outlined in Article 35(a) of Law No. 23 of 2006 on Population Administration (*UU 23/2006*). It states that interfaith marriages can be registered if authorized by the court. Specifically, it is clarified that such marriages require a court decision, referring to the District Court at the first level, the High Court at the appellate level, and the Supreme Court (MA) at the cassation level.

Supreme Court Decision No. 1400K/Pdt/1986 is one landmark precedent addressing interfaith marriage in Indonesia. This ruling serves as jurisprudence, guiding judges in

resolving interfaith marriage cases (Saputra dan Jamilah 2022). It provides a legal umbrella for interfaith couples, ensuring their marriage can proceed if it meets the legal requirements. Due to the absence of specific provisions governing interfaith marriage in Law No. 1 of 1974, this decision has become a critical reference for judges in granting marriage registration petitions (Ridho, Qodri, dan Sayuti 2023).

As a democratic nation, Indonesia's constitution guarantees individual freedoms, including marriage. However, constitutional principles also influence social realities, encompassing values, norms, religious paradigms, and interethnic relations, extending to marriage and family institutions (Wardle 2010). The state's constitution emphasizes synergy between religion and the state to uphold freedom of worship. Law No. 1 of 1974 regulates marriage in alignment with Article 29 of the UUD 1945, ensuring freedom of religion while requiring marriage registration under Article 2(2) of the law. This registration ensures citizens' civil rights, such as child custody, inheritance, and other civil matters.

As an institution, marriage is vital for preserving cultural infrastructure and is a constitutional right rooted in human history. Marriage predates religion and the state and serves as the foundation of constitutive institutions, shaping identity across ethnicity, religion, and culture. It is also the basis for establishing equality between spouses and protecting the family unit as the minor social structure (Wardle 2010).

While certain religions prohibit interfaith marriage, these restrictions often only result in the non-recognition of such marriages within their religious framework. However, individuals who enter interfaith marriages often seek state recognition to secure their rights. This is done by petitioning the courts for registration under the state's civil administration system. This does not generate significant internal or external conflicts between religion and the state. Instead, it reflects a harmonious coexistence within Indonesia's pluralistic and multicultural context.

B. The Constitutionality of Marriage: Between Religion and the State

The prohibition of interfaith marriages has emerged as a sensitive social issue in public and governmental spheres. One notable case brought forward was a judicial review petition by E. Ramos Potege to the Constitutional Court (Mahkamah Konstitusi, MK). Ramos, a Catholic,

sought to marry a Muslim woman, challenging Law No. 1 of 1974 on Marriage (UU 1/1974), specifically Articles 2(1) and (2), as well as Article 8(f), claiming they conflict with the 1945 Constitution (Padmawati et al. 2022). Experts were invited to testify regarding interfaith marriage's prohibition in this judicial review. The Constitutional Court sought input from Islamic organizations, including the Indonesian Ulama Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah (Pujianti 2022).

A notable imbalance arises from the dominance of these Islamic organizations in providing testimony, which heavily reflects the majority religion's perspective. The interpretation of Islamic jurisprudence (fiqh) and scholars' opinions opposing interfaith marriages overshadowed arguments made by the petitioner. This approach neglected a constitutional interpretation of the case. The discourse surrounding interfaith marriage in Indonesia pertains to religious doctrines and the state's administrative aspects of marriage registration. Consequently, relying on Islamic organizations for legal interpretation rendered the Constitutional Court's handling of the matter incompatible with the principle of preserving pluralism (Hasan 2023).

Using Rafael Domingo's concept of dematerialization, the incompatibility in the Constitutional Court's review reflects a legal system's tendency to define laws without incorporating substantive legal materials (Domingo 2019). This dematerialization is evident in the interpretation of UU 1/1974 by Islamic organizations (MUI, NU, and Muhammadiyah) despite Indonesia recognizing six religions and indigenous beliefs. Each religious group should have an equal right to contribute to interpreting Articles 2 and 8(f) of UU 1/1974. As regulated by the state, marriage is a fundamental human right enshrined in Article 28B(1) of the 1945 Constitution: "Everyone has the right to form a family and continue their lineage through a legal marriage." Interfaith marriage, therefore, also falls under the purview of human rights and requires the state's comprehensive resolution.

Notably, no explicit legal provision in existing regulations prohibits interfaith marriage. The absence of explicit prohibitions has allowed spiritual interpretations, dominated by religious institutions, to fill the void. Majority religions, such as Islam, focus primarily on safeguarding their followers from interfaith marriages, often disregarding the legal and

religious norms of minority groups. Although the state strives to balance the dominance of religion with the legal framework, the interplay between religion and state law remains contentious. This dynamic often elevates the spiritual stature of the majority religion within society, reinforcing its socio-political influence (Domingo 2019).

The enactment of Supreme Court Circular (SEMA) 2/2023 exemplifies these dynamics. This circular serves as a guideline for judges to reject requests for registering interfaith marriages, reflecting the efforts of dominant religious elites, particularly from Islamic organizations, to influence legal outcomes. Proponents of the circular argue that the predominantly Muslim population in Indonesia justifies the prohibition of interfaith marriage, highlighting the elevated role of religion in state affairs (Najamudin 2023). The Ministry of Religious Affairs also supported SEMA 2/2023, stating that it prioritizes formal marriage principles over administrative considerations outlined in Law No. 23 of 2006 on Population Administration (El-Saha 2023). This position underscores the reliance on religion as the foundation for validating marriages, effectively shifting the responsibility for marriage registration away from the state (Triono 2023).

The ongoing tensions between religious and state perspectives on marriage reflect a historical dichotomy, particularly in a democratic and pluralistic society like Indonesia. According to Domingo, an ideal relationship between religion and the state involves mutual respect and synergy to foster societal well-being. Religions must align with constitutional principles as a prerequisite for coexistence with the state. The persistent judicial reviews concerning interfaith marriage, whether under UU 1/1974 or UU 23/2006, reveal the societal struggle to reconcile religious doctrines with constitutional and administrative laws.

While religion provides a moral and spiritual framework for society, the state's role extends beyond these dimensions, incorporating broader sociopolitical considerations. Thus, religious input should serve as one of many perspectives in shaping legal and administrative frameworks rather than dominating the discourse. In Indonesia, the state's essence transcends religion, embodying a pluralistic foundation that seeks to accommodate diverse societal needs.

The legal and religious tensions surrounding interfaith marriages in Indonesia have profound implications for couples and

communities, particularly for those caught between conflicting legal and religious requirements. For many interfaith couples, the inability to marry legally or register their marriage can lead to a range of personal and social challenges, including issues related to inheritance rights, child custody, and social recognition. Despite its legal recognition in other contexts, the state often refuses to validate their union.

Communities, particularly those from minority religious groups, frequently feel marginalized, as their rights to marry freely and without religious interference are restricted. In some cases, interfaith couples face pressure from both their families and religious institutions, leading to emotional distress and, in extreme cases, family disintegration. The weight of religious norms can also prevent individuals from fully embracing their human rights, as they are forced to navigate bureaucratic and social hurdles imposed by the state's reliance on religious doctrines.

For example, couples who wish to marry across faith lines often find themselves unable to register their marriages, leaving them with the option to either live without legal recognition of their union or seek alternative, sometimes clandestine, methods to formalize their relationship. This legal limbo contributes to frustration and alienation, mainly when state institutions prioritize religious interpretations over personal freedoms.

In this context, the state's failure to accommodate the diversity of religious practices and beliefs within the legal framework exacerbates the sense of exclusion, especially for those who live at the intersection of multiple cultural and religious identities.

C. SEMA 2/2023: Intervention Efforts in Marriage Rites

SEMA 2/2023 is a directive issued to provide technical explanations to the Supreme Court personnel, particularly judges in District Courts. According to the hierarchy of laws as stipulated in Law No. 12 of 2011 on the Formation of Laws and Regulations (UU 12/2011), there are specific levels of regulations. Article 7 of UU 12/2011 outlines these levels: the 1945 Constitution of the Republic of Indonesia (UUD 1945), Decrees of the People's Consultative Assembly (TAP MPR), Laws or Government Regulations instead of Laws (Perppu), Government Regulations (PP), Presidential Regulations (Perpres), Provincial

Regional Regulations (Perda Provinsi), and Regency/Municipality Regional Regulations (Perda Kab/Kota).

These regulations typically include a title, preamble (comprising considerations, legal basis, and decrees), main content (general provisions, substantive matters, penal provisions, transitional provisions, and closing provisions), and other normative elements.

A circular letter (SE) does not possess the components specified in Article 7 of UU 12/2011 and, therefore, lacks the binding legal authority to resolve substantive issues. SE is an administrative document that provides guidelines for handling significant issues within the administrative framework. It does not establish behavioral norms, such as prohibitions or directives (Lubis 1983). However, SEMA 2/2023 deviates from this definition. Its preamble (resembling considerations) aims to ensure legal certainty and uniform application of the law regarding the registration of interfaith marriages. This directive prohibits the granting of applications for interfaith marriage registrations. By instructing court officials, specifically Supreme Court judges, to reject such applications, SEMA 2/2023 imposes behavioral norms (prohibitions), effectively overstepping its administrative nature. Consequently, SEMA 2/2023 serves as a misguided attempt to direct Supreme Court personnel.

The recommendation of SEMA 2/2023 should remain internal and administrative within the judicial scope (Hasan, 2023). However, it attempts to interfere with judicial independence by restricting judges' ability to examine evidence, interpret laws, and deliver fair verdicts. Furthermore, SEMA 2/2023 intrudes on the sacred domain of marriage rites. The state should respect, protect, and fulfill citizens' rights to marriage rites, including interfaith marriages. Such rites are fundamental rights guaranteed under Article 28B(1) of the 1945 Constitution. Before SEMA 2/2023, interfaith marriages and their registrations were allowed based on the 1945 Constitution and Law No. 23 of 2006. However, SEMA 2/2023 disrupts the harmony established by these previous regulations. This discord reflects broader systemic imbalances in the state's treatment of religion, social realities, and regulatory coherence regarding marriage in Indonesia. The state risks undermining its commitment to pluralism and diversity.

Administratively, the state no longer recognizes interfaith marriages due to the

rejection of their registration under SEMA 2/2023. This rejection has significant long-term consequences. Marriage registration is essential to protect the legal rights of both spouses. Without registration, the state does not acknowledge the marriage, leaving couples without legal safeguards. Previously, Article 35 of Law No. 23 of 2006 ensured the registration of interfaith marriages to protect their rights. However, SEMA 2/2023 jeopardizes these guarantees. The state must address such social issues proactively. By failing to provide alternatives for interfaith marriage registration, the state neglects its responsibility to facilitate these cases, violating human rights enshrined in Article 28B of the 1945 Constitution. Ignoring these obligations equates to abandoning interfaith couples in Indonesia.

The rejection of interfaith marriages by SEMA 2/2023 can be analyzed within the broader context of Indonesia's challenge to uphold its multicultural identity. Indonesia has long prided itself on its pluralism, with its diverse ethnic groups and religious beliefs contributing to a rich social fabric. The state's commitment to pluralism is embodied in the national motto, "Bhinneka Tunggal Ika" (Unity in Diversity). This signifies that Indonesia's diversity should be celebrated and protected within its legal and social systems. However, by restricting the legal recognition of interfaith marriages, SEMA 2/2023 raises significant concerns regarding the country's future of religious and cultural pluralism. This directive suggests that interfaith unions are less legitimate or acceptable within the framework of state-sanctioned marriage, signaling a potential erosion of the nation's commitment to inclusivity. The state's stance, as reflected in SEMA 2/2023, could reinforce social divisions, thereby undermining the core principle of unity in diversity that has historically defined Indonesia's national identity.

Unregistered interfaith marriages are akin to unregistered customary or religious marriages. Such couples face exclusion from administrative recognition, having only undergone religious rituals. The rejection of interfaith marriage registrations has far-reaching implications, affecting property rights, spousal rights and obligations, inheritance, guardianship, and custody. Courts across Indonesia will likely reject claims arising from unregistered marriages. This situation exacerbates civil law challenges, tarnishing Indonesia's civil law reputation. Unless SEMA

2/2023 is repealed, these issues will persist, with the circular becoming a scapegoat for administrative shortcomings. The state's silence will only exacerbate these unresolved civil law matters.

At its core, the issue of interfaith marriage still needs to be addressed by the state. Article 8(f) of Law No. 1 of 1974 does not explicitly prohibit interfaith marriages. Instead, it introduces ambiguity, leaving readers questioning the relationship between religious and state regulations. When religious laws become abstract due to their divine nature, the state must take decisive, progressive action. However, Article 8(f) reveals a need for more state integrity, deferring to religious tenets instead of adopting a more humanistic approach. By shifting the responsibility to religious institutions, the state demonstrates regression in fulfilling its obligation to safeguard religious communities in Indonesia. The phrase in Article 8(f), "prohibited by religion or other applicable laws," is open to multiple interpretations. Relying on religious rules, subject to change due to their inherent flexibility, is insufficient for a pluralistic state.

Interfaith marriage is a progressive practice that transcends religious norms to seek recognition beyond religion. Couples choosing state recognition over religious acknowledgment embody the dual considerations of religion and state inherent in Indonesian identity. For interfaith couples, this decision reflects an integrative acceptance of their Indonesian citizenship. The state must address this crucial perspective, ensuring equal legal treatment for interfaith and same-faith marriages. The first step is to facilitate the registration of interfaith marriages and reevaluate SEMA 2/2023, which has intervened in matters of religion and its adherents. SEMA 2/2023 offers no solutions and cannot compel interfaith couples to divorce under marriage regulations. The state must protect and uphold the rights of interfaith couples as part of its fundamental responsibility to guarantee citizenship rights.

SEMA 2/2023, intended as a circular for Supreme Court personnel, specifically judges, mandates a counteractive stance by rejecting applications for interfaith marriage registrations. This directive attempts to shape social realities, implying the state's disapproval of interfaith marriages through judicial rejection. This judicial stance aims to construct interfaith marriage as impermissible in Indonesia socially. Judges' rejections are framed as legal actions

based on systematic observation and evaluation, reinforcing the state's role in crafting a social reality that excludes interfaith marriages. Ultimately, through SEMA 2/2023, the state manipulates societal structures, undermining multiculturalism by denying the existence of interfaith marriages in Indonesia.

CONCLUSIONS

Interfaith marriage in Indonesia exists within three contexts: religion, law, and the constitution. Indonesians have the right to choose their religion and practice their faith, as Article 29 of the 1945 Constitution guarantees. In the context of religious practices, marriage is a collective act involving two individuals. The state has provided a legal framework through Law No. 1/1974 to facilitate marriage. Regarding interfaith marriage, the state has also referenced jurisprudence, particularly Supreme Court Decision No. 1400K/Pdt/1986, to address such matters. The Indonesian constitution ensures cooperation between religion and the state in safeguarding religious freedom and worship while regulating marriage as a vital aspect of the nation's culture and constitution. The practice of interfaith marriage in Indonesia does not inherently cause internal or external conflicts, as religion and the state are seen as individual choices that may coexist harmoniously.

The judicial review of Law No. 1/1974 and the predominance of Islamic religious interpretations can be viewed as an effort toward the dematerialization of law, as this issue tends to overlook the substantive nature of interfaith marriage in Indonesia. The constitutional basis for marriage is enshrined in Article 28(1) of the 1945 Constitution. The challenge arises in how the state resolves the constitutional issues surrounding interfaith marriage. This question has been controversially addressed through Supreme Court Circular Letter (SEMA) No. 2/2023, which rejects the registration of interfaith marriages. However, this regulation raises questions about how the state upholds its legal sovereignty when the debated rule is merely an administrative circular. The state should reassess the future implications of interfaith marriage registration, as SEMA No. 2/2023 fails to resolve the issue comprehensively.

Ideally, SEMA No. 2/2023 should serve only as a technical guideline rather than a procedural directive for courts under the

Supreme Court. SEMA No. 2/2023 does not hold a position within the hierarchy of legal instruments as defined by Article 7 of Law No. 12/2011. Thus, this circular lacks binding legal force. Nevertheless, SEMA No. 2/2023 attempts to influence judges to reject applications for interfaith marriage registration. Such rejections could lead to human rights violations, particularly regarding the right to marry and form a family, as guaranteed under Article 28B(1) of the 1945 Constitution. Following the implementation of SEMA No. 2/2023, additional civil issues may arise in the future, including matters of joint property, spousal rights and obligations, inheritance distribution, guardianship, child custody, and other civil matters.

The state should provide more comprehensive solutions than those offered by SEMA No. 2/2023 to address interfaith marriage. While the circular attempts to reshape the social reality surrounding interfaith marriage, its potential impacts on the rights of affected couples must be carefully considered. SEMA No. 2/2023 has generated controversy and uncertainty regarding interfaith marriage in Indonesia, raising critical questions about human rights, the need for a holistic legal solution, and the social consequences of this directive.

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