

Prohibition for Indonesian Judges to Grant Requests for Registration of Marriages Between People of Different Religions and Beliefs in Indonesia

Haposan Sahala Raja Sinaga
Faculty of Law, Universitas Kristen Indonesia
Jakarta, Indonesia
E-mail: haposan.sinaga@uki.ac.id

Abstract

The Indonesian Supreme Court issued a circular prohibiting judges from granting applications for the registration of marriages between people of different religions and beliefs. This Supreme Court Circular Letter (SEMA) Number 2 of 2023 is considered to have implications for the human rights of citizens to marry, whereas previously courts in Indonesia often granted this request and the last one was petition No. 155/Pdt.P/2023/PN.Jkt.Pst. So the authors formulate the problem to be studied, namely what is the legal consideration of the Central Jakarta District Court judge in granting the application for the registration of interfaith marriages with case number No. 155/Pdt.P/2023/PN.Jkt.Pst dated 12 June 2023? second, what are the legal implications related to SEMA No. 2 of 2023 which prohibits judges in Indonesia from granting any application for the registration of interfaith marriages? This research will be carried out using normative legal research methods and the results are 1) that the judge's legal considerations in Determination Number 155/Pdt.P/2023/PN.Jkt.Pst are very inhuman if the application for good faith marriage is rejected simply because there is no the law governing interfaith marriages, marriage despite being of different religions is a human right and sociologically in Indonesia it is reasonable, there is already a jurisprudence from the Indonesian Supreme Court which has granted a request regarding interfaith marriage permits to protect human rights interfaith marriages must be granted to be registered by the state. 2) SEMA No. 2 of 2023 has implications for the denial and neglect of state institutions in the implementation of constitutional obligations and legal rights of citizens, as well as forms of discrimination by state institutions in the field of marriage. In addition, it has violated the principle of administering judicial power, namely the principle of not discriminating, and the obligation of judges to explore, follow, and understand legal values and a sense of justice that lives in society.

Keywords: marriages, interfaith marriages, prohibition on the registration of interfaith marriages

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1. Introduction

1.1. Background

Indonesia is a country that recognizes marriage as the right of its citizens, so that marriage is an act that is protected by laws and regulations as a basic right owned by every citizen. The 1945 Constitution of the Republic of Indonesia which reads: "Every person has the right to form a family and continue offspring through a legal marriage." Indonesia also followed up on the mandate of the Indonesia Constitution in a law that specifically regulates marriage, namely Law Number 1 of 1974 concerning Marriage ("Marriage Law"). Then a government regulation was also born in the following year, namely Government Regulation Number 9 of 1975 as the implementation of the Marriage Law.

The issuance of the Marriage Law and the Government Regulation on Marriage is the basis for legal arrangements concerning the need for marriage rights for its citizens in Indonesia. Of course there are still many imperfections in the marriage laws and regulations, but what needs to be appreciated is that the Marriage Law is still valid for 49 years. Of course this imperfect note needs to be corrected and this has been done in 2019, namely with the issuance of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

One of the phenomena that cannot be avoided by Indonesia as a plural country consisting of people who differ in terms of race, ethnicity, ethnicity, language, customs and religion is the desire to carry out marriages of different races, ethnicities and even more so is the difference in religion. In cases of interracial, ethnic marriages this is not often accepted by society, it's just that in cases of religious marriages it more often creates polemics as well as pros and cons from various groups in society.

Observing the provisions in Article 2 paragraph (1) of the Marriage Law states: "Marriage is valid if it is carried out according to the laws of each religion and belief." This means that marriage in Indonesia can be carried out as long as it is carried out according to the provisions or procedures for each existing religion and belief and its existence is recognized by the state. So that some are of the view that this provision does not allow

interfaith marriages. However, on the one hand, what cannot be ruled out is the existence of human rights that have been recognized worldwide and Indonesia has stated its commitment as a country that upholds and respects human rights as evidenced by the issuance of Law Number 39 of 1999 concerning Human Rights (“Human Rights Law”).

In the regulations contained in the Human Rights Law, specifically in Article 22, it is explained: “that everyone has their own religion and to worship according to that religion and belief.” In reality, an interfaith marriage often becomes a paradox in the proposal for the right to embrace a religion in marriage. On the other hand, couples who adhere to different religions will have problems uniting them into a legal marriage, so that one party needs to submit to the religion of the partner. In fact, reflecting on the provisions of laws and regulations it is clear that the state has guaranteed the freedom of every citizen to freely make choices including in terms of embracing religion.

The polemic of interfaith marriages that often occurs has now surfaced again since there was a stipulation from the Central Jakarta District Court which granted the request for registration of a marriage carried out by a man named Joshua Evan Anthony who is Christian and a woman named Stefany Wulandari who is Muslim. Couples of interfaith marriages between Christian men and Muslim women were carried out according to Christian religious procedures and with the existence of a court ruling that granted interfaith marriages, a number of Indonesian religious and political figures criticized and asked the Supreme Court of the Republic of Indonesia to reject any application for registration of marriages different religion. The Central Jakarta District Court's determination was granted on June 12, 2023 by a single judge named Bintang Al.

That one month later, after the determination to grant interfaith marriages by the Central Jakarta District Court, the Supreme Court of the Republic of Indonesia on July 17, 2023 issued a Supreme Court Circular Letter Number 2 of 2023 (SEMA No. 3 of 2023) concerning “Instructions for Judges in adjudicating cases on requests for registration of marriages between people of different religions and beliefs” addressed to all judges at the district court and high judges at the high court to: “provide certainty and unity in the application of law in adjudicating applications for the registration of marriages between people of different religions and beliefs, the judges must be guided by the following provisions: first, a legal marriage is a marriage that is carried out according to the laws of each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of the Marriage Law. Second, the court does not grant the request for registration of marriages between people of different religions and beliefs.”

The existence of this SEMA raises many questions from various circles, especially legal and human rights activists as well as legal academics where in fact the Supreme Court has issued jurisprudence supporting the establishment of interfaith marriages in Indonesia, namely the Jurisprudence for Determination Number: 421/Pdt. P/2013/PN.Ska dated 21 August 2013 and Determination Number: 3/Pdt.P/2015/PN.Llg dated 27 February 2015 which essentially states: “Considering that Article 27 of the 1945 Constitution determines that all citizens have the same status as in law, it includes the equality of human rights to marry fellow citizens even if they have different religions, while Article 29 of the Indonesia Constitution stipulates that the state guarantees the freedom of citizens to embrace their respective religions.”

Because of this polemic, the authors are interested in conducting further legal research on the implications of the issuance of SEMA No. 3 of 2023 regarding the marriage rights of citizens, which the author gives the title “Prohibition for Indonesian Judges to Grant Applications for Registration of Marriages Between People of Different Religions and Beliefs.”

1.2. Problem Formulation

Based on the description of the background of the problems above, the authors formulate the first problem, what are the legal considerations of the Central Jakarta District Court judges in granting the application for the registration of interfaith marriages with case number No. 155/Pdt.P/2023/PN.Jkt.Pst dated 12 June 2023? second, what are the legal implications related to SEMA No. 3 of 2023 which prohibits judges in Indonesia from granting any application for the registration of interfaith marriages?

1.3. Purposes and Benefits

This study aims to determine and analyze the legal considerations of Central Jakarta District Court judges in granting the application for the registration of interfaith marriages with case number No. 155/Pdt.P/2023/PN.Jkt.Pst dated 12 June 2023 and legal implications related to SEMA No. 3 of 2023 which prohibits judges in Indonesia from granting any application for the registration of interfaith marriages.

With the achievement of the objectives of this research, at least it can provide benefits for legal students who are primarily interested in issues of marriage law and human rights and can provide benefits for legal and human rights academics to enrich literature and studies on interfaith marriages in Indonesia. It is hoped that this research will not be limited to legal students and academics from Indonesia, but for all people in various parts of the world.

2. Research Methods

A legal research can only be done by knowing what research methods will be applied to discuss a particular legal issue. Because this research focuses on the existence of a court ruling for applications for the registration of interfaith marriages and the existence of a circular letter prohibiting judges from granting requests for the registration of different religions in Indonesia, the authors determine the choice of legal research method is to use the normative legal research method with a case approach and a statutory approach. In various literature on legal research methods, the author likes the definition given by Peter Mahmud Marzuki which defines legal research as: “a process to find a rule of law, legal principles, or legal doctrines to answer the legal issues at hand.”

By using the normative research method with a case approach, the writer will collect legal materials such as the Decree of the Central Jakarta District Court Number 155/Pdt.P/2023 dated 12 June 2023 and legal materials that fit the statutory approach is to collect statutory regulations, promulgation as follows: “The 1945 Constitution of the Republic of Indonesia; Law Number 1 of 1974 concerning Marriage; Law Number 39 of 1999 concerning Human Rights; Law Number 23 of 2006 concerning Population Administration; Other related changing laws, as well as various other related jurisprudence; Apart from that, the writer will also use dictionaries and other books as support.”

3. Results and Discussions

3.1. Judge's Legal Considerations in Determination Number 155/Pdt.P/2023/PN.Jkt.Pst

In the request for a court order by registering petition number 155/Pdt.P.2023/Jkt.Pst., the two Indonesian citizens, namely a man named Joshua Evan Anthony who is Christian and a woman named Stefany Wulandari who is Muslim, submitted their petition in writing before the court that both of them have married according to Christian religious procedures in the jurisdiction of Indonesia. It's just that when he wanted to register his marriage at the Office of the Population and Civil Registry Office of the City of Central Jakarta, he was refused. The Central Jakarta City Population and Civil Registry Office reasoned that both of them had to get a District Court Decree first because even though marriages were carried out in Indonesian territory with religious procedures that were officially recognized by the state, one of the two still had religious differences which was wrong one is Muslim.

Regarding the application for the registration of interfaith marriages, it turned out that on June 12, 2023 it was granted by the Central Jakarta District Court with a ruling which in essence: Stipulates: “First, partially grant the petition of the Petitioners; Second, granting permission to applicants to register interfaith marriages at the Central Jakarta City Population and Civil Registration Sub-agency Office.” There are various legal considerations for judges who are tried by a single judge named Bintang Al, as follows:

1) The judge is of the opinion that it is very inhuman if the application for good faith marriage is rejected simply because there is no law governing interfaith marriages

The judge is of the opinion that Article 2 paragraph (1) and paragraph (2) of the Marriage Law states: “that a marriage is valid if it has been carried out according to the legal procedures of his religion and belief and then recorded by the appointed agency based on the applicable laws and regulations”, while in the Government Regulation on Marriage Article 10 paragraph (2) states “that the marriage law only applies to marriages between 2 people of the same religion.” The judge has considered the evidence and witness statements that there are legal facts that Joshua Evan Antohny and Stefany Wulandari are both of the opposite sex, are adults and work so they can support the household life morally and materially, and both are married without coercion by anyone and voluntarily entering into a marriage of different religions before the Indonesian Bible Fellowship Church Pamulang on 2 April 2023 and taking into account the above legal facts, the Central Jakarta District Court is of the opinion: “that it is very inhumane if the petition of the Petitioners who have been showing good faith to enter into a marriage must be refused only on the grounds that there is no law/law governing interfaith marriages.”

2) The judge is of the opinion that marriage even though different religions is a human right and is sociologically normal

The judge considered the provisions of Article 10 paragraph (1) of the Human Rights Law which states: “that everyone has the right to form a family and continue offspring through legal marriage and of free will;” and argues that: “objectively sociologically, interreligious marriage is reasonable and very likely to occur given Indonesia's geographical location, the heterogeneity of the Indonesian population and the various religions that are legally recognized as existing in Indonesia, it is very ironic that interfaith marriages in Indonesia are not allowed because they are not regulated. in a law.”;

3) The judge considered the Supreme Court Jurisprudence Number 1400 K/Pdt/1986 dated January 20, 1989 which granted the cassation request regarding interfaith marriage permits;

4) The judge considers that for the protection of human rights interfaith marriages must be granted to be registered by the state

The judge in his considerations considered: “that on the basis of protecting human rights to cover up legal

vacuums and to avoid smuggling of social and religious values, the court is of the opinion that it is reasonable to grant Joshua Evan Antohny and Stefany Wulandari and give permission to carry out different marriages Religion at the Central Jakarta Population and Civil Registry Office and simultaneously based on Article 35 letter (a) of Law No. 23 of 2006 concerning Population Administration and its explanation, will instruct the Central Jakarta Population and Civil Registry Office Employees to keep records of The interfaith marriages of the Petitioners were registered in the Register of Marriages used for this purpose.”

3.2. Legal Implications of Issuing Supreme Court Circular Letter (SEMA) Number 2 of 2023

After the determination of the Central Jakarta District Court Number 155/Pdt.P/2023/PN.Jkt.Pst dated 12 June 2023, some time later the Supreme Court of the Republic of Indonesia officially banned the court from granting interfaith and different belief marriages. This determination was stipulated in the Supreme Court Circular Number 2 of 2023 (SEMA No. 2 of 2023) concerning Guidelines for Judges in Trying Cases for Requests for Registration of Marriages between People of Different Religions and Beliefs. SEMA No. 2 of 2023 has been official since July 17, 2023, where the Chief Justice of the Indonesian Supreme Court stated that the aim is to: “provide certainty and equal application of the law among people of different religions through this theme judges are also asked to be guided by the applicable provisions including legal marriages are carried out according to the laws of each religion and belief, so the Supreme Court requests the court not to grant the application for registration of marriages between people of different religions and beliefs.” In line with this decision, interfaith marriages cannot be registered except for a court order, while the population service and civil registry will also not register if the court does not grant the interfaith marriage request.

SEMA No. 3 of 2023 which prohibits the registration of interfaith marriages is being discussed in the public sphere which is extraordinary, there are pros and cons. On the one hand, the government is considered too far into the private sphere of citizens and the government is also considered to be a setback in terms of freedom of religion. Is that right? Then what are the real considerations until the Supreme Court issues this SEMA and what kind of impact it will have in the future for interfaith marriages and also for children of interfaith marriages, the author will discuss.

According to the author, marriage registration is actually a different legal action, so it is true that SEMA refers to the Marriage Law, which states that a marriage or marriage must be based on religion, but actually SEMA has ruled out Article 35 of Law No. 23 of 2006 concerning Population Administration. By setting this aside, actually SEMA Number 2 of 2023 has eliminated the rights of couples who wish to marry legally and then be registered by the state. The author is of the opinion that the registration of marriages is a citizen's right and the government's obligation. Once again, the author conveys that it is the right of citizens to be able to marry and it is the duty of the government to record it legally so that later the rights of children and the rights of their partners can be protected. Thus the state is present in the sense that the state can ensure that there are civil rights such as inheritance for example and if there is a divorce and so on it can be implemented.

Of course it is very wrong from SEMA Number 2 of 2023 which uses the paradigm of Islamic religious law against all citizens. In Indonesia there are six religions that are recognized by the government so this paradigm is used for all religions in Indonesia. The legal implication of the existence of SEMA Number 2 of 2023 is that there are discriminatory actions by the state against its citizens. Why? For example, in practice, there is a Buddhist who wants to marry a Confucian person, which is not prohibited in both religions. Indeed, in other practices, there can be self-submission if one religion allows it and the spouse then submits himself voluntarily, maybe there is no need to convert his religion, so the state should still be obliged to record it, so it is not accommodated by the existence of this SEMA.

In the various phenomena of interfaith marriages and the large number of applications for the registration of interfaith marriages such as interfaith couples Joshua Evan Anthony and Stefany Wulandari, according to the author, this is reasonable and very reasonable considering that “the principle of law that applies in the State of Indonesia states that in principle, differences in religion are not an obstacle to carrying out marriage.” In addition, the same application is often submitted to the court and there is even jurisprudence from the Supreme Court itself, namely Jurisprudence for Determination Number: 421/Pdt.P/2013/PN.Ska dated 21 August 2013 and Determination Number: 3/Pdt.P/ 2015/PN.Llg dated 27 February 2015 which essentially states: “Considering that Article 27 of the Indonesia Constitution stipulates that all citizens have the same legal status, including the same basic rights to marry fellow citizens even if they have different religions, while Article 29 of the Indonesia Constitution stipulates that the state guarantees the freedom of citizens to embrace their respective religions.” Then, based on the Human Rights Law, Article 10 paragraph (1) states: “that everyone has the right to form a family and continue offspring through legal marriage and of free will;” and it is correct if interfaith marriages are not strictly regulated in law, but this situation is a reality that occurs in society and is already a social need that must be sought for a way out according to law so as not to have a negative impact on social and religious life.

The Supreme Court as one of the constitutional institutions formed based on the Indonesia Constitution is a state institution that has the obligation to promote the protection, advancement, enforcement, fulfillment of

human rights and the basic considerations for the formation of the Supreme Court which is aimed at guaranteeing equality of citizens in the law requires efforts to uphold order, justice, truth, and legal certainty should be able to provide protection to the community.

The Indonesian Women's National Commission in a Press Release Responding to this SEMA stated : “This SEMA is a form of denial and neglect of state institutions in the implementation of constitutional obligations and legal rights of citizens, as well as a form of discrimination by state institutions in the field of marriage. Arrangements not to grant requests for registration of marriages of religious people as well as denial of the principle of administering judicial power as stipulated in Article 4 of Law Number 48 of 2009 concerning Judicial Power include the principle of not discriminating against, overcoming all obstacles and obstacles in order to achieve a simple trial, obligations judges explore, follow, and understand legal values and a sense of justice that lives in society.”

The Indonesian Supreme Court as a judicial institution should be able to protect the rights of citizens to form a family and continue offspring through legal marriage as regulated by Indonesian law and the form of realization or from "everyone has the right" and the act of “forming a family” and the act of “forming a family” is the free will of citizens as holders of basic rights which basically fall into the realm of private or civil law. Therefore, the presence of state law in the process of “forming a family” is complementary and in a position to act passively to respect the civil rights of citizenship. In addition, interfaith marriages are also related to the basic right to freedom of religion guaranteed by the Indonesia Constitution.

That the author is of the opinion that the judge's legal considerations in the Determination Number 155/Pdt.P/2023/PN.Jkt.Pst granting the application for the registration of interfaith marriages in Indonesia are very inhuman if the application for good faith marriage is rejected simply on the grounds that there is no law governing interfaith marriage, marriage despite being of different religions is a basic right and sociologically in Indonesia it is normal, there is already the Jurisprudence of the Indonesian Supreme Court which granted an application regarding interfaith marriage permits protection of human rights interfaith marriages must be granted to be registered by the state is a legal consideration that best in fulfilling a sense of justice, certainty and the benefit of the law for citizens.

4. Conclusions

- 1) The judge's legal considerations in the Determination Number 155/Pdt.P/2023/PN.Jkt.Pst which granted the application for the registration of interfaith marriages in Indonesia is very inhuman if the application for good faith marriage is rejected simply because there is no law governing different marriages religion, marriage despite being of different religions is a human right and sociologically in Indonesia it is normal, there is already the Jurisprudence of the Indonesian Supreme Court which granted the application for permission to interfaith marriages to protect human rights interfaith marriages must be granted to be registered by the state.
- 2) "This SEMA No. 2 of 2023 has implications for the denial and neglect of state institutions in the implementation of constitutional obligations and legal rights of citizens, as well as forms of discrimination by state institutions in the field of marriage. In addition, it has violated the principle of administering judicial power, namely the principle of not discriminating, overcoming all obstacles and obstacles to achieve a simple trial, the obligation of judges to explore, follow, and understand legal values and a sense of justice that lives in society.

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