



Analysis of Interfaith Marriage Legality in Indonesia and South East Asia Countries

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Article Info	Abstract
<p>Keywords: Court Decision; Interfaith Marriage; SEMA</p> <p>DOI: 10.25041/fiatjustisia.v18no3.3573</p>	<p><i>Interfaith marriage in Indonesia is still a problem in Indonesia which is supported by multiple interpretations of regulations. The author in this article will discuss the analysis of interfaith marriage in Indonesia after the issuance of SEMA Number 2 of 2023. This article was made with the aim of analyzing and comparing regulations in Indonesia with other countries. The results of the study show that after the issuance of SEMA, the practice of interfaith marriage still occurs in Indonesia, which is also supported by the lack of government firmness in establishing the applicable regulations.</i></p>

A. Introduction

Indonesia as a country with a multiethnic, multicultural, and multireligious population, is faced with complex realities in social life, including in terms of marriage. Interfaith marriage, where two people who want to get married have different religious beliefs, is one of the issues that always triggers public debate and discussion. On the one hand, there is a human right and freedom of individuals to choose a life partner without being bound by religious restrictions. This is based on the principles of democracy and tolerance embraced by the Indonesian nation. On the other hand, there are religious

norms and customs that prohibit interfaith marriage. This is based on the beliefs and moral values embraced by each religion and culture.

As a country that has the rule of law, all forms of activities of the nation and state must be guided by legislation. So to provide legal certainty to its people, the Indonesian state gives every citizen the right to be able to form a family and continue offspring through legal marriage as stipulated in Article 28B paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia. The phrase "through a legal marriage" is not merely not regulated in general but then formulated what is referred to as "legal marriage" through a legal product in the form of Law Number 1 Year 1974 concerning Marriage. However, it cannot be denied that legal products formed by the government must keep up with the times and problems in society, including the Marriage Law.

The problem that is of concern today is the phenomenon of interfaith marriage which is increasingly prevalent in Indonesian society. Interfaith marriage is a marriage between a man and a woman who have different religions or beliefs. This phenomenon can occur either between fellow Indonesian citizens with different religions, or between couples where one of them is a foreign national and has different religions or beliefs. Supported by survey data from the Indonesian Conference on Religion and Peace (ICRP), quoted from Airis Aslami's research, it was recorded that the number of interfaith marriage couples registered in the ICRP in the range of 2005 to 2022 reached 1,566 couples. The highest number occurred in 2021, with 169 couples having interfaith marriages. This phenomenon clearly occurred as a result of the issuance of the Supreme Court Circular Letter, which then encouraged many people to dare to hold interfaith marriages.

Based on the Citizen Administration Law, a person can submit an application to the District Court in order to issue a decision authorizing the marriage of an interfaith marriage and ordering the civil registry office to record the interfaith marriage into the marriage registration register.¹ This has led to a debate in relation to the legality of interfaith marriages in Indonesia, which is caused by the conflict between two different legal rules governing interfaith marriages. The Marriage Law clearly stipulates that marriage is valid if it is conducted according to the laws of each religion and belief, which

¹ Eneng Juandini, "Perspektif hukum positif dan hukum islam di Indonesia terhadap perkawinan beda agama," *Journal on Education* 5, No. 4 (2023): 16405-16413. <https://doi.org/10.31004/joe.v5i4.2795>

means that interfaith marriages are not legal. Meanwhile, in the Citizen Administration Law, interfaith marriages can be carried out.

The debate over the legality of interfaith marriage in Indonesia is heating up after the Supreme Court (MA) issued Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Marriage Registration Applications Between People of Different Religions and Beliefs on July 17, 2023. This SEMA sparked controversy and speculation regarding the legal status of interfaith marriage in Indonesia. Indonesia as a country with a multiethnic, multicultural, and multireligious population, is faced with complex realities in social life, including in terms of marriage.²

On the one hand, there is a human right and freedom of individuals to choose a life partner without being bound by religious restrictions. The Constitution of the Republic of Indonesia, in particular Article 28E paragraph (1) and Article 29 paragraph (2), guarantees human rights and freedom to embrace religion and worship according to one's religion and belief. This is based on the principles of democracy and tolerance embraced by the Indonesian nation. On the other hand, there are religious norms and customs that prohibit interfaith marriage. This is based on the beliefs and moral values embraced by each religion and culture. The debate over the legality of interfaith marriage in Indonesia is heating up after the Supreme Court (MA) issued Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Marriage Registration Applications Between People of Different Religions and Beliefs on July 17, 2023. This SEMA sparked controversy and speculation regarding the legal status of interfaith marriage in Indonesia.

The inconsistencies between the two regulations governing interfaith marriages in Indonesia have led to overlapping conditions and a lack of clear legal certainty. This issue, coupled with the increasing number of interfaith marriages, highlights the need for a comprehensive solution. To address this, a comparative study with neighboring Southeast Asian countries, which share cultural similarities with Indonesia, is essential. Such a comparison could help identify a regulatory framework that resolves the current legal overlap and provides clearer, more coherent procedures. This, in turn, could serve as a

² Evelyn Fenecia, Shenti Agustini, and Winda Fitri, "Kepastian Hukum Sema Nomor 2 Tahun 2023 Terhadap Pencatatan Perkawinan Antar-Agama Dalam Bingkai Kebhinnekaan Indonesia," *PAMALI: Pattimura Magister Law Review* 4, No. 2 (2024): 128-140. <https://doi.org/10.47268/pamali.v4i2.2192>

guideline for the Indonesian government in drafting stricter regulations regarding the legality of interfaith marriages. Clear legal certainty and decisive enforcement by legal authorities are crucial to ensuring that these regulations are effectively upheld in the face of this growing phenomenon.

Based on this background, several problem formulations can be formulated, including; What is the juridical analysis of the legality of interfaith marriage in Indonesia after SEMA Number 2 of 2023? How is the implementation of SEMA Number 2 of 2023 on the practice of interfaith marriage in Indonesia? How is the practice of interfaith marriage regulated in other Southeast Asian countries?

B. Discussion

Prior to the enactment of the Marriage Law in Indonesia, regulations related to interfaith marriage underwent various changes. During the VOC period, interfaith marriages, especially between Christian Europeans and non-Christian natives, were strictly prohibited. However, because the VOC suffered losses, it was finally officially replaced by the Dutch. Since then, the Netherlands has strengthened its colonialism, including in the field of law. The Netherlands implements a segregation system based on origins and customary law. Furthermore, Dutch legal politics seeks to separate Islamic law from society and prioritize the application of customary law. The Dutch government also implements population classification and applies different laws to each group, while reducing the application of Islamic law in society.³ Before the Marriage Law, various regulations had regulated marriage for various groups of society, ranging from customary law to religious law.⁴

The marriage legal system in Indonesia before the enactment of the Marriage Law differed by class, reflecting the diversity of religions, ethnicities, and cultures in Indonesia. The following is an explanation of the marriage rules based on these groups:

³ S. Wahyuni, "Politik Hukum Perkawinan dan Perkawinan Beda Agama di Indonesia", *Jurnal Pusaka* 1. No. 2 (2016): 4-15. <https://doi.org/10.35897/ps.v1i2.7>

⁴ M. Ashsubli, "Undang-Undang Perkawinan dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama", *Jurnal Cita Hukum*, Jakarta: Vol. II No. 2 Desember 2015, p. 290. Pemerintah Kolonial Belanda berdasarkan Pasal 163 IS (Indische Staatsregeling), Stb. 1855 Nomor 2, membedakan penduduk Indonesia dalam 3 golongan, yaitu: Golongan Eropa, Golongan Timur Asing, dan Golongan Bumi putra. Wiratni Ahmadi, "Hak dan Kewajiban Wanita dalam Keluarga Menurut Undang-undang No. 1 Tahun 1974 Tentang Perkawinan", *Jurnal Hukum Pro Justitia*, Bandung: Vol. 26 No. 1, 2008, p. 371

- a) Moslem:
 - 1) Referring to Islamic Law that has been adjusted to local Customary Law.
 - 2) This regulation regulates various aspects of marriage, such as the validity of marriage, the rights and obligations of husband and wife, polygamy, divorce, and inheritance, based on Islamic principles and applicable customary norms.
- b) Native Indonesians:
 - 1) Guided by the Customary Law applicable in their respective regions.
 - 2) These rules vary depending on the customs and traditions embraced by each ethnic group in Indonesia.
- c) Native Indonesians Christian:
 - 1) Followed by *Huwelijks Ordonnantie Cristen Indonesier (HOCl)* (Stb. 1933 No. 74).
 - 2) This regulation regulates the validity of marriage, the rights and obligations of husband and wife, polygamy, divorce, and inheritance under Christian law.
- d) Chinese Foreign Orientals and Indonesian citizens of Chinese descent:
 - 1) Guided by the Civil Code (KUHPerduta).
 - 2) This regulation regulates the validity of marriage, the rights and obligations of husband and wife, joint property, divorce, and inheritance under Dutch civil law.
- e) Other Foreign Orientals and Their Descendants:
 - 1) Applying their respective customary laws.
 - 2) These rules vary depending on the origin of the country and the customs adopted by them.
- f) Europeans and Indonesian citizens of European descent:
 - 1) Referring to the Civil Code (KUHPerduta).⁵
 - 2) This regulation regulates the validity of marriage, the rights and obligations of husband and wife, joint property, divorce, and inheritance under Dutch civil law

The various rules mentioned above cause various problems in marriage, especially in terms of marriage between two people of different groups, regions, or religions. Therefore, the Dutch government at that time issued a regulation in the form of Royal Decree No. 158 dated December 29, 1896 (Stb

⁵ W. Ahmadi, "Hak dan Kewajiban Wanita dalam Keluarga Menurut UU No. 1 Tahun 1974 tentang Perkawinan." *Jurnal Hukum Pro Jusitia* 26, No.4 (2008): 371-390.

1898 No. 158). Such is the Mixed Marriage Regulation or *Regeling op de Gemengde Huwelijken* (GHR). Thistlewadi described the so-called mixed marriage in State Magazine No. 158 of 1896. There are four types of marriage in state universities: 4 international marriages, inter-regional marriages, inter-group marriages, and interreligious marriages.⁶

From the above explanation, it is clear that interfaith marriage was originally also called interfaith marriage, or it is only one type of interfaith marriage, this is regulated in Article 1 of the CHR. Article 1 of the GHR states that mixed marriage is a marriage between human beings and the applicable law is different in Indonesia. The differences mentioned in this article include two legal differences: religion and nationality. Article 7(2) of the GHR emphasizes that differences in religion, nationality or place of origin should not be an obstacle to marriage. This shows that before the existence of the Marriage Law, marriage could be carried out regardless of differences in religion, nation, and place of origin.⁷ Prior to the enactment of the Marriage Law, interfaith marriage was a legal act regulated in the GHR and its practice was recorded in the list.⁸ Some legal experts have different opinions regarding the interpretation of several articles regarding interfaith marriage.⁹

Since the enactment of the Marriage Law, there has been an assumption that the previous regulations regarding interfaith marriage are no longer valid. However, there are also those who argue that the Marriage Law does not provide clear and detailed provisions regarding interfaith marriage. This difference causes differences in the interpretation of the law and the implementation of interfaith marriage in society. The Marriage Law contains several provisions regarding interfaith marriage, namely, Article 2, Article 8(f), Article 57, and Article 66.

The existence of some of the provisions above shows that interfaith marriage is regulated by several provisions of the Marriage Law. However, some legal experts have different opinions about whether or not interfaith marriage is allowed in Indonesia. Article 2 paragraph (1) of the Marriage Law has affirmed that marriage is valid in the eyes of the law, which reads:

⁶ Sisruwadi, *Praktek Perkawinan Beda Agama dalam Masyarakat Indonesia*, slide dipresentasikan dalam seminar sehari yang disampaikan oleh Kepala Dinas Kependudukan dan Pencatatan Sipil Kota Yogyakarta.

⁷ Anshary, *Hukum Perkawinan di Indonesia: Masalah-masalah Krusial*, Pustaka Pelajar: Yogyakarta, (2010), p. 50

⁸ Sri Wahyuni, *Perkawinan Beda Agama di Luar Negeri: Kajian Filosofis, Yuridis, Prosedural, dan Sosiologis*, Yogyakarta: SUKA-Press, (2014), p. 149-150.

⁹ Sri Wahyuni, *Perkawinan Beda Agama di Luar Negeri...*, p. 150.

"Marriage is valid, if it is carried out according to the law of each religion and its belief." Article 2 paragraph (1) of the Marriage Law emphasizes that a valid marriage is a marriage that is carried out according to the laws of their respective religions and beliefs. This article provides the understanding that interfaith marriage is basically not allowed because legal marriages are carried out by people of the same religion and faith.¹⁰ Meanwhile, in Article 8 of the Marriage Law, "*Marriage is prohibited if two people have a relationship that is due to their religion or other applicable regulations*". Although we have determined the parameters of the validity of a marriage, the parameters contained in the Marriage Law still give rise to many interpretations. Various interpretations of the parameters of marriage legitimacy raise various problems, including in interfaith marriages. The criteria for the validity of a marriage according to Article 2 paragraph (1) of the Marriage Law states that a marriage is valid if it is carried out according to religion. Some religions do not prohibit interfaith marriage, therefore they often require judges to give permission for couples of different religions to marry, there is a legal gap regarding interfaith marriage.

M. Ashary gave an example regarding Article 2 paragraph (1) above. He explained that if the marriage is a Christian woman with a Muslim man, then it is impossible to make a contract twice, once using Christianity and once using Islam.¹¹ According to him, legal acts can only be done with a single contract to ensure legal certainty. If the contract is carried out twice, there is no legal certainty. In addition, the marriage is also very complicated in terms of evidence, if the marriage is according to Islam, then the marriage is recorded in the KUA, and if the marriage is carried out in a Christian way, it is recorded in the Civil Registration Office. These two marriage contracts can also be disputed as evidence of legal acts.¹² Wiratni also explained that for people who are Muslims, marriage must be based on Islamic Law, and it is impossible for them to violate Islamic religious law. This also applies to other religions, namely: Christianity, Catholicism, Hinduism, Buddhism and belief.

According to R. Subekti, it is not clear whether what is meant by "according to the law of each religion or belief" whether the two parties are of the same religion, or once according to the religious law (belief) of one

¹⁰ Z.N. Rosidah, "Sinkronisasi Peraturan Perundang-undangan Mengenai Perkawinan Beda Agama", *Al-Ahkam: Jurnal Pemikiran Hukum Islam* 23, No. 1 (2013):1-20. 10.21580/ahkam.2013.23.1.70

¹¹ M. Anshary MK, *Hukum Perkawinan di Indonesia: Masalah-masalah Krusial*, Pustaka Pelajar: Yogyakarta, (2010), p.33

¹² *Ibid.* M. Anshary, p. 56.

candidate, and again according to the religious law (belief) of the other candidate. Although in practice the interpretation of the same religion has been taken, it can cause legal uncertainty.¹³ This occurs because there are a small number of people who think that marriage can be carried out by performing a ceremony twice, namely once according to the religion of the bride-to-be and once again according to the religion of the other candidate (interfaith marriage).

1. Legality of Interfaith Marriage in Indonesia Post-SEMA Number 2 of 2023

The enactment of the Supreme Court Circular Letter (SEMA) was initially based on the provisions of Article 12 paragraph (3) of Law Number 1 of 1950 concerning the Structure, Authority, and Procedures of the Supreme Court of Indonesia which reads: *"The conduct (work) of the courts and the Judges in these courts are closely supervised by the Supreme Court. For the sake of office, the Supreme Court has the right to give such warnings, reprimands and instructions as are deemed necessary and useful to the courts and the Judges, either with a separate letter or by circular."* So in this case, there is a shift in the function of SEMA from initially as a supervisory tool to a regulatory, administrative, and other tool.¹⁴

On January 20, 1951, the Supreme Court issued SEMA Number 1 of 1951 concerning Arrears of District Court Cases. Since SEMA was enacted, the Supreme Court has always enacted SEMA which statistically fluctuates between 5 to 60 times a year. The SEMA issued varies, ranging from SEMA with warnings to SEMA with commands. However, there is SEMA which compiles warnings, orders and instructions in one publication (Icha Satriani, 2015: 41). Although SEMA was passed in 1951, it was never explicitly mentioned in Supreme Court Law No. 14/1985, causing uncertainty regarding its legal status. However, the Supreme Court still routinely issues SEMA to this day, this is proof that SEMA is still valid today. The legal basis that can be used as a guideline in explaining the position of SEMA is the explanation of Article 79 of Law No. 14/1985, which reads: *"The Supreme Court may further regulate matters necessary for the smooth administration of justice if*

¹³ Hazairin, *Reform of Islamic law in Indonesia*, University of Indonesia Publishing Foundation: Jakarta, (1976), p. 25.

¹⁴ Mahadi Abdullah et al., "Analisis Perkawinan Beda Agama di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya SEMA Nomor 2 Tahun 2023," *Jurnal Hukum dan Kewarganegaraan* 1, no. 4 (2023), <https://doi.org/10.3783/causa.v1i1.571>.

there are matters that have not been sufficiently regulated in this Law". (Irwan Adi Cahyadi, 2014:10).

Article 2 Paragraph (1) of the Marriage Law which regulates interfaith marriage shows the progressive role of judges in enforcing the law. This is a manifestation of the progressive legal theory initiated by Satjipto Rahardjo, which emphasizes the goal of law to achieve human happiness and welfare. Progressive legal theory gives judges the freedom to get out of the shackles of legal texts if they feel that they are no longer relevant to the social and humanitarian context. This authority is in line with Article 10 of Law No. 48/2009 concerning Judicial Power which requires judges to examine, adjudicate, and decide cases even though the law does not exist or is unclear.

Judges have the authority to form SEMA (Supreme Court Circular) as a form of rule breaking, which is not possessed by executive power. This is regulated in Article 79 of Law No. 14/1985 which gives the authority to the Supreme Court to make regulations as a complement if there is a deficiency or void in the law. The explanation of Article 79 of Law No. 14/1985 emphasizes that SEMA can be issued to fill legal voids, but must not exceed the authority of the legislators. To understand the authority of rule breaking stated in the form of SEMA, we can see in the Explanation of Article 79 of Law No. 14/1985 which reads: *"If in the course of the judiciary there is a deficiency or legal void in a certain matter, the Supreme Court is authorized to make regulations as a complement to fill the deficiency or void"*. Article 10 of Law Number 48 of 2009 concerning Judicial Power (Law No. 48/2009), which reads: *"The court is prohibited from refusing to examine, adjudicate, and decide a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and adjudicate it"*.¹⁵

With this Law, the Supreme Court has the authority to determine the regulation on how to resolve a matter that has not been or is not regulated in this Law. In this case, the regulations issued by the Supreme Court are distinguished from the regulations drafted by the lawmakers. The administration of justice intended by this Law is only part of the procedural law as a whole. Thus, the Supreme Court will not interfere with and exceed the regulation of the rights and obligations of citizens in general and will not regulate the nature, strength, means of evidentiary and assessment or the

¹⁵ Syahwami, and Anang Al Hidayat, *Hukum Acara Perdata*, PT Raja Grafindo Persada: Jakarta, (2021)

division of the burden of proof."¹⁶ One of the legal products produced based on this explanation is SEMA, such as SEMA Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Marriage Registration Applications Between People of Different Religions and Beliefs.

Laws and regulations generally have uniformity in form with each other. This uniformity can make it easier for legal subjects who want to use laws and regulations. In general, in Indonesia, the state can issue legal products in the form of regulations (*regeling*), decisions (*beschikking*), and verdicts. There are also opinions that distinguish into regulations and policy regulations (*beleidsregel*).¹⁷ However, this reference cannot be seen as absolute, because in practice often these differences become biased. Therefore, differentiation by looking at substance will be more objective in distinguishing the difference in the form of laws and regulations.¹⁸

The Supreme Court Circular Letter (SEMA) is one of the legal products issued by the Supreme Court. Although SEMA is not explicitly mentioned in the P3 Law, its existence is recognized and has binding legal force based on Article 8 paragraph (1) binding force as described in Article 8 paragraphs (1) and (2) which read: (1) "*Types of Laws and Regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of People's Representatives, The Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Board, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level established by law or the Government by order of the Law, the Provincial Regional People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or equivalent.*" and (2) Law P3 which reads 2) "*Laws and Regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by higher Laws and Regulations or are formed based on authority.*" These two articles are the basis of SEMA as binding regulations. Even so, SEMA has a lower position compared to the Supreme Court Regulation (PERMA), this is because the formation of PERMA goes through a more formal and perfect process compared to SEMA.

¹⁶ Lutfil Ansori. *Hukum Tata Negara Indonesia*, PT Raja Grafindo Persada: Jakarta, (2015).

¹⁷ Jimly Asshidiqie, *Hukum Konstitusi Teori dan Praktik*. PT. Citra Aditya Bakti: Jakarta, (2020).

¹⁸ Fernando Situmorang et al, *Hukum Tata Negara Indonesia*. PT Raja Grafindo Persada: Jakarta, (2023).

SEMA can be created based on PERMA, and PERMA can also cancel SEMA.¹⁹

SEMA as a discretionary that is classified as a policy regulation, its substance must be merely guiding, guiding, providing policy direction, and regulating the implementation of tasks that are more administrative in nature. Although they look similar, policy regulations such as SEMA are not laws and regulations. By definition, laws and regulations are written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through procedures stipulated in laws and regulations.

Aspects	Policy Rules	Laws and Regulations
Source	Derived from the function of the state executive in the field of implementing non-binding government policies (vrijbeleid)	Derived from the legislative and executive functions of the state which are necessary for the implementation of bonded government policies (gebonden beleid)
Authority	Derived from discretionary authority	Authority comes from the rules written on it
Content Material	The content of policy regulations is related to the authority to form decisions in the sense of beschikkingen, the authority to act in private law, and the authority to make plans.	Regulating a much more basic system of community life, such as orders and prohibitions to do or not to do, if necessary accompanied by criminal threats or coercion.
Legal Force	It has binding legal force, but can be changed or revoked by the authorized official	Has stronger legal force and is not easily changed or revoked
Example	Presidential Instructions, Ministerial Decrees, Technical Guidelines	Laws, Government Regulations, Regional Regulations

¹⁹ Junaidi Eko Widodo et al, *Hukum Tata Negara Indonesia*, PT Raja Grafindo Persada: Jakarta, (2023).

With this, SEMA can be categorized as a policy regulation, so SEMA only functions as a guideline for judges in interpreting the provisions of the Marriage Law. The judge must not contradict the provisions of the Marriage Act in his decision, although SEMA provides a different interpretation. For example, SEMA Number 4 of 2016 concerning Guidelines for Resolving Polygamy Lawsuits stipulates that the judge may not grant a polygamy lawsuit if the first wife does not give consent. However, in some cases, the judge can still grant a polygamy lawsuit even if the first wife does not agree, considering the best interests of the family. This is done because the judge has the authority to interpret the provisions in the Marriage Law based on the existing context and circumstances.²⁰

In this case, regulations related to interfaith marriage still refer to the Marriage Law. Article 1 paragraph 1 of the Marriage Law regulates the conditions for the validity of marriage, which must be carried out according to the laws of each religion and belief. This is based on the principle of religious freedom guaranteed by the 1945 Constitution. Meanwhile, marriage registration is regulated in Article 2 paragraph (2) of the Marriage Law. This provision aims to provide legal certainty for married couples and their children. Of these two provisions, there are two legal events, namely marriage and marriage registration. These events can occur in two combinations:

1. Valid and registered marriage: This is a common situation in Indonesian society, where couples get married according to religious sharia and then register their marriage with the relevant agencies.
2. Marriage that is legal but not registered: This is known as *nikah siri* or *nikah under hand*, where the marriage is only performed in the presence of religious leaders without being registered with the relevant authorities.

With this, interfaith marriage is still open with the existence of Article 35 letter (a) of Law No. 23 of 2006 concerning Citizen Administration Law which reads Article 35 letter a of the Citizen Administration Law which states "*Marriage registration as referred to in Article 34 also applies to: a. marriage determined by the Court*" which is based on the spirit of fulfilling citizens' administrative rights without discriminatory practices, in addition to the judge's decision (jurisprudence) has become a benchmark in providing guidance and important precedents in handling interfaith marriage cases. If the state really prohibits interfaith marriage, the restriction must be explained

²⁰ Dewi, N. K., Pertimbangan Hakim dalam Mengabulkan Gugatan Poligami Meskipun Istri Pertama Tidak Menyetujui (Studi Kasus di Pengadilan Agama Jakarta Selatan). *Jurnal Hukum Keluarga* 11, No. 2, (2022):113-126.

clearly and in writing with one of the efforts, namely the amendment of Article 35 letter a of Law Number 23 of 2006 concerning Citizen Administration Law which has undergone changes through Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Citizen Administration Law, aiming as a solution to legal clarity in interfaith marriage. The goal is to give the marriage a national legal status, given the lack of firmness in the arrangement of interfaith marriages which creates a vacuum in legal norms.

2. Application of SEMA No. 2 of 2023 in Interfaith Marriage in Indonesia (Decision Number 423/Pdt.P/2023/PN Jkt.Utr)

According to data from the Central Statistics Agency (BPS) as of 2023, the majority of Indonesia's population embraces Islam, which is around 86.9% of the total population. The following are the percentages of the Indonesian population based on religion, namely; Islam: 86.9%, Protestant Christianity: 8.56%, Catholicism: 3.12%, Hinduism: 1.31%, Buddhism: 0.7%, Confucianism: 0.05% and Other Faiths: 0.36%.²¹ This figure shows the plurality of religions in Indonesia which can result in turmoil that arises such as interfaith marriages. Of course, marriage is a private right owned by a person so that they have the right to decide to carry out marriage with other people, including those of different religions as well.²²

After the issuance of SEMA Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Marriage Registration Applications Between People of Different Religions and Beliefs on July 17, 2023, the existence of SEMA No. 2 of 2023 provides clarification regarding the certainty of the provisions in the Marriage Law, especially Article 8 letter (f) of the Marriage Law which explains that "marriage is prohibited between two individuals who have a relationship that is prohibited from marriage based on religion or other regulations that is prohibited." This causes a difference in interpretation which in general, on the one hand explains the prohibition of marriage due to religious differences, especially for followers of Islam in Indonesia, regulated in Article 2 paragraph (1) jo. Article 8 letter (f) of the Marriage Law. With this decree, it also provides certainty that interfaith marriage in Indonesia can no longer be carried out at the Civil Registration

²¹ Badan Pusat Statistik (BPS), "Penduduk Menurut Kelompok Umur dan Agama yang Dianut, Indonesia 2010" can be accessed from: <https://sensus.bps.go.id/topik/tabular/sp2010/11/0/0>

²² Fatahullah, M., et al., Perkawinan Beda Agama dalam Perspektif Hukum dan Agama: Sebuah Kajian Normatif dan Empiris. *Jurnal Hukum Keluarga* 9, No. 2, (2020): 237-256.

Office of each city. But in reality, there are some people who want to marry different religions by falsifying their personal data, especially the religion they follow.²³ This certainly has a negative impact on the regulations that apply in Indonesia.

Based on these problems, the author describes the rampant interfaith marriage by analyzing based on SEMA Number 2 of 2023 and the regulations that applied before the issuance of the regulation, one of which is Decision Number 423/Pdt.P/2023/PN Jkt.Utr which decides related to interfaith marriages carried out by Protestant and Catholic Christians which are contained in 4 points, namely:

- a) Granting the PETITIONERS' Application in its entirety;
- b) Declaring that the Marriage between the PETITIONERS is an Indonesian Citizen who has entered into a Catholic Marriage on February 1, 2023, is valid according to law;
- c) Give permission to the PETITIONERS to record Interfaith Marriages at the North Jakarta City Population and Civil Registration Office and order the Employees of the North Jakarta City Population and Civil Registration Office to record the PETITIONERS Interfaith Marriage in the Marriage Registration Register;
- d) Charging the Petitioners a case fee of Rp.135,000.00 (one hundred and thirty-five thousand rupiah)

In taking the 4 points of the decision, there are at least several considerations that are used as the basis for the Judge in deciding, including:

- a) Considering, that based on the evidence of P-11 in the form of a photocopy of the Marriage Certificate (Testimonium Matrimoni) No. Register III Page 028 Number 1634 issued by the ST. John Bosco of Lake Sunter Parish, Jakarta Diocese dated February 1, 2023 and evidence P-12a to evidence P-12d obtained the fact that the Petitioners had carried out a Catholic marriage on February 1, 2023 at the ST. John Bosco of Sunter Lake Parish, Jakarta Diocese;
- b) Considering, that even though Petitioner I is Catholic and Petitioner II is a Protestant Christian, the marriage between Petitioner I and Petitioner II does not mean an interfaith marriage because in fact Petitioner I who is Catholic and Petitioner II who is a Protestant Christian are still within the scope of one faith and in fact the marriage of the Petitioners has been

²³ Aulia, R, "Dampak Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Terhadap Perkawinan Beda Agama di Indonesia." *Jurnal Hukum Perundang-Undangan* 24 No. 2, (2023): 261-278.

carried out religiously as a Catholic on = February 1, 2023 at ST Church. John Bosco of Sunter Lake Parish, Jakarta Diocese, as based on the Marriage Certificate (Testimonium Matrimoni) No. Register III Page 028 Number 1634 issued by the ST. John Bosco of Sunter Lake Parish of Jakarta Diocese was signed by Father Andre Delimarta, SDB as the Head Priest, and Father Tarsisius Trianto, SDB as the Father who blesses the marriage, so that the request is thus a valid marriage;

- c) Considering, that based on the provisions of Article 35 letter a of the Administrative Law, "What is meant by marriage determined by the Court is a marriage carried out between people of different religions". And Article 50 paragraph (3) of Ministerial Regulation 108 of 2019: "In the event of a marriage between people of different religions and marriages that cannot be proven by a marriage certificate, the registration of marriage is carried out based on the determination of the court". Therefore, according to the Judge, referring to the provisions of the above laws and regulations, the marriage that has been held between the Petitioners can be recorded after receiving a Determination from the North Jakarta District Court;
- d) Considering, that based on all the descriptions of the above considerations, because the Petitioners' Marriage is a valid marriage, the Petitioners can register the Petitioners' marriage at the Civil Registry office after obtaining the determination of the District Court, so that the petitioners' petition is valid to be granted;

Before discussing the compatibility of the decision with SEMA 2 of 2023, it would be wiser if we understood the long journey of legal products that regulate related to marriage and interfaith marriage. For a long time, Regulation op de Gemengdhe Huwelijken stbl. 1898 Number 158 (hereinafter known as GHR) establishes the rules for interfaith marriages. Article 1 of the GHR defines mixed marriage as a marriage between individuals living in Indonesia under different laws and is considered a marriage based on the parties being subject to different laws. Therefore, a mixed marriage can be considered a marriage that disagrees with one's religion. "Differences in religion, nation, or descent are in no way a barrier to marriage," said Article 7 Paragraph 2 of the GHR.

According to Article 6 Paragraph (1) of the GHR, "*Mixed marriages are carried out according to the law applicable to the husband, except for the permission of the prospective marriage partners which is always hinted.*" GHR said that wives in mixed marriages must comply with the law of the husband.

On the condition of obtaining permission from both parties, no matter which group of people they are from, permission must be accepted. After Marriage Law Number 16 of 2019, Amendments to Law Number 1 of 1974, the Mixed Marriage Law (GHR) then no longer applies. According to Article 57 of the Aquo Law, *"what is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen"*. Thus, mixed marriages between nationalities recognized Mixed marriages between religions, also referred to as interfaith marriages, are no longer regulated.

Law Number 1 of 1974 concerning Marriage was made to make Indonesia's Marriage Law more orderly and stable. According to Article 66 of Law Number 1 of 1974: *"For Marriage and everything related to marriage based on this Law, with the enactment of this Law, the provisions regulated in the Civil Code (Burgelijk Wet Book), the Coordination of Indonesian Christian Marriage (Huwelijks Ordonnantie Christen Indosiaers: 1933 No. 74) and the Mixed Marriage Regulation (Reglement op de Gemengdhe Huwelijken. 1898 No. 158), and other regulations regulating marriage insofar as it has been regulated in this Law are declared invalid"*.

From the above, it is clearly stated that the Marriage Law Number 1 of 1974 no longer regulates marriage between different religions. However, even though interfaith marriage is no longer regulated, interfaith marriage is still carried out. This is as shown by the decision of the North Jakarta District Court Number 423/Pdt.P/2023/Pn Jkt.Utr concerning the Implementation of Interfaith Marriage, which was ratified on August 8, 2023. This happened after the Supreme Court had issued SEMA Number 2 of 2023 on July 17, 2023. This means that the existence of SEMA Number 2 of 2023 is not an obstacle for judges in district courts to give permission for couples of different religions to get married.

The North Jakarta District Court's Decision Number 423/Pdt./2023/Pn Jkt.Utr regarding the Implementation of Interfaith Marriage is a reason that allows the application for interfaith marriage to be approved. According to the judge's consideration, legally and religiously valid marriage is in accordance with Article 2 paragraph (1) and paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The article states that: *(1) Marriage is considered valid if it is carried out in accordance with the laws of their respective religions and beliefs; and (2) Each marriage must be recorded in accordance with laws and regulations.*

In addition, Article 68 paragraph (1) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Citizen Administration Law emphasizes that the Population and Civil Registration Service is responsible for the registration of marriages. Civil Registration Deed citations include citations of deeds: *a. birth; b. death; c. marriage; and d. divorce.*

Article 39 paragraph (1) of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning Regulations for the Implementation of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration states the same thing, namely regarding civil registration services consisting of birth, stillbirth, and marriage.

Article 37 paragraph (1) of the Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration states that the registration of marriage of Indonesian Citizens in the Unitary State of the Republic of Indonesia must meet the requirements, namely a certificate of marriage from a religious leader or believer in God Almighty. Article 2 paragraph (2) of Government Regulation No. 9 of 1975 concerning Law No. 1 of 1974 concerning Marriage states that the registration of marriage of those who carry out their marriage according to their religion and beliefs other than Islam, is carried out by the Marriage Registration Officer at the Civil Registration Office as referred to in various laws regarding marriage registration.

In addition, the North Jakarta City Population and Civil Registration Office refused to register the marriage because Applicant I was Catholic and Applicant II was Christian. The party emphasized that the marriage of the two applicants was a marriage of different religions. Therefore, the court must make a decision. As based on the Explanation of Article 35 letter a of Law Number 23 of 2006 concerning Citizen Administration Law and Article 50 paragraph (3) of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning the Implementation Regulation of Presidential Regulation Number 96 of 2019 concerning Requirements and Procedures for Population Registration and Civil Registration (hereinafter referred to as "Ministerial Regulation 108 of 2019") which is described as follows: Explanation of Article 35 letter a of the Citizen Administration Law: *"What is meant by marriage determined by the Court is a marriage carried out between people of different religions".*

The marriage between the Petitioners can be recorded after the North Jakarta District Court issues a decision based on the provisions of the above laws and regulations. The next reference of the judge who became the reason for granting interfaith marriage was according to the North Jakarta District Court Decision Number 423/Pdt./2023/Pn Jkt.Utr, the legal principle applicable in Indonesia states that religious differences should not hinder marriage. As stated in Article 35 letter a of the Administrative Law *"What is meant by marriage determined by the Court is a marriage carried out between people of different religions"*.

Legal Basis	Decision Number 423/Pdt./2023/PN Jkt.Utr
Article 2 Paragraph (1) and Paragraph (2) of Marriage Law No. 16 of 2019: Marriage is valid if it is in accordance with religious law and recorded in accordance with laws and regulations.	In its ruling, it was stated that the marriage between Petitioner I and Petitioner II was not meant to be an interfaith marriage because in fact Petitioner I who is Catholic and Petitioner II who is Protestant Christian are still within the scope of one faith and in fact the marriage of the Petitioners has been carried out Catholicly on date = February 1, 2023 at ST Church. John Bosco of Sunter Lake Parish, Jakarta Diocese, as based on the Marriage Certificate (Testimonium Matrimoni) No. Register III Page 028 Number 1634. In this case, Protestant Christianity and Catholicism do have fundamental similarities in terms of faith, but positively both are different religions, but with the evidence of a marriage certificate from the Catholic Church, it can be said that the bride and groom carry out marriage based on the Catholic religion and of course this religion has been recognized in Indonesia
Article 57 of the Aquo Law, which is meant by mixed marriage in this Law, is a marriage between two people who in Indonesia are subject to different laws, due to	In this case, the two Petitioners are Indonesian citizens, so Article 57 should not be considered.

<i>differences in nationality and one of the parties to Indonesian citizenship</i>	
Article 68 Paragraph (1) of Law No. 24 of 2013: The Population and Civil Registration Office (Disdukcapil) is responsible for the registration of marriages.	<p>In the decision, it is stated that related to the Marriage Certificate, including:</p> <ol style="list-style-type: none">1) KTP Gregorius Agung Beyeng Amoh, with NIK: 3172020109760013;2) Applicant II's KTP in the name of Regina Yasmina Augustine, with NIK: 3172026608760006;3) Citation of the Birth Certificate of Gregorius Agung Beyeng Amoh, No. 634/B/P/JU/1984 issued by the DKI Jakarta Civil Registration Office on April 14, 2023;4) Regina Yasmina Augustine's Birth Certificate, No. 416/JU/1976 issued by the DKI Jakarta Civil Registration Office on September 9, 1976;5) Family Card Number : 31720210051100416) Family Card Number: 3172021401098471; <p>Certificate & Introduction of Marriage of Applicant I Number: 618/XII/1.755.22.e/2022 dated December 13, 2022</p>
Article 39 Paragraph (1) of Permendagri No. 108 of 2019: Civil registration services including marriage.	<p>In this case, the Applicant has the right as a citizen to register his marriage with the Civil Registration Office</p>
Article 37 Paragraph (1) of Presidential Decree No. 96 of 2018: The registration of Indonesian marriages must meet the requirements, including a	<p>Marriage Certificate (Testimonium Matrimoni) No. Register III Page 028 Number 1634 issued by the ST. John Bosco of Sunter Lake Parish, Jakarta Diocese was signed by Father Andre Delimarta, SDB as the Head Priest, and Father Tarsisiu. So it can be said</p>

certificate from religious leaders/believers.	that Article 37 Paragraph (1) has been fulfilled.
Article 50 paragraph (3) of Ministerial Regulation 108 of 2019: <i>"In the event of a marriage between people of different religions and marriages that cannot be proven by a marriage certificate, the registration of marriage is carried out based on the determination of the court"</i>	The applicant has done good faith legally by applying for an interfaith marriage through the legal process and based on a court decision
SEMA 2 of 2023: The Court did not grant the application for registration of marriages between people of different religions and beliefs.	In this case, the Judge's Decision is not in accordance with SEMA 2 of 2023 in the second point because the Judge's jurisprudence stipulates that in order to avoid a legal void in the Applicant's marriage, the judge stipulates that the Applicant's Marriage can be filed at the North Jakarta Civil Registration

The author considers that this is ultimately one of the judges' considerations when the district court grants the application for interfaith marriage. Indonesian jurisprudence and positive law reject the concept of legal vacuum, so that judges can find (legal defense) or make laws (legal defense) to meet the needs of the community when there is a legal vacuum (Legal Whirlwind). The author feels that one of the forms of judges' jurisprudence is the Supreme Court Decision (MA) Number 1400 K/Pdt/1986, this decision is the basis for the legality of interfaith marriage in Indonesia. The Supreme Court states that interfaith marriage can be recognized as valid if it meets several conditions, namely:

- 1) The free will of the bride and groom to marry of different religions.
- 2) The religious beliefs of each bride and groom are not disturbed.
- 3) The bride and groom promise to guide their children according to their respective religions and beliefs.
- 4) Marriages are recorded at the Civil Registry Office.

North Jakarta District Court Number 423/Pdt.P/2023/Pn Jkt.Utr concerning the Implementation of Interfaith Marriages was read on August 8, 2023 after the issuance of SEMA Number 2 of 2023 in July. In this case, the author assumes that there is a problem in SEMA Number 2 of 2023 which is a legal setback. Because, substantively, SEMA is clearly contrary to the Administrative Law.

Law Number 23 of 2006 concerning Citizen Administration facilitates applications for interfaith couples to submit applications for interfaith marriage to local courts. After the judge granted his application, the district court ordered the civil registry office to record the registration of interfaith marriages approved by the judge based on the district court decision. The judge granted the request to declare interfaith marriage, for several reasons, of course, one of which is Law Number 16 of 2019 which amends Law Number 1 of 1974 concerning Marriage, and there has been no clear statement prohibiting interfaith marriage.

Therefore, the application was granted on the basis of avoiding a legal vacuum. This is because the district court has the authority to examine and decide on interfaith marriages. From Article 35 letter a of Law Number 23 of 2006 concerning Population Management, it is clear that the marriage regulated in Article 34 also applies to marriages decided by the court. Furthermore, the Explanation of Article 36 states that if the marriage cannot be proven by a marriage certificate, then the marriage registration is carried out through a court determination.

Although the Indonesian judicial system uses the principle of *Ius Curia Novit*, which requires judges to accept every case or case that enters the court, although in the Marriage Law the legal rules are not clear in regulating interfaith marriage. However, it is hoped that judges should not rush to make a decision that legalizes interfaith marriage just because it is based on the Citizen Administration Law Article 35 letter a. But at the very least, judges must also consider the decision of the Constitutional Court Number 68/PUU-XII/2014 which firmly rejects the existence of judicial review, including also considering SEMA regulation Number 2 of 2023. And not only that, the judge should also understand the meaning of the Marriage Law contained in Article 1 of the Marriage Law Number 1 of 1974 as: "The inner innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".

3. Interfaith Marriage Arrangements in Southeast Asian Countries

The regulation of laws and regulations related to interfaith marriage in Indonesia, as discussed above, is still overlapping. Although several legal products have been issued and legalized, the practice of interfaith marriage is still ongoing. The ambiguity of the arrangement of interfaith marriage as regulated in the Marriage Law can in fact be deviated from the decision of the court judge who decided the case as per the North Jakarta District Court Decision Number 423/Pdt./2023/Pn Jkt.Utr which was discussed earlier. Therefore, the government needs to clarify to prohibit or allow or even allow it with straightforward and firm conditions so that interfaith marriage does not become a problem that continues to take root in Indonesia. In comparison, there are interfaith marriage arrangements in several Southeast Asian countries, including:

a. Malaysia

Malaysia is a country with a multi-religious society and Islam is the official religion. According to the 2000 Population and Housing Census, Muslims (60.59%), besides that there are also adherents of other religions, namely Buddhism (20%), Christianity (9.2%) and Hinduism (6.40%), Confucianism (1.20%), other religions (0.37%), No religion (0.70%), and Unknown (0.39%)²⁴.

Although Malaysia is a multireligious society, Islam is the official religion. The state guarantees that each religious group has the right to take care of its own problems. If non-Muslims are constitutionally and legally protected, then Muslims are under Islamic law, where the Sultan takes care of their interests and the religious courts are used to oversee the religion.²⁵ All forms of regulation in Malaysia are based on the rules of Islam. Therefore, the practice of interfaith marriage in Malaysia is prohibited.²⁶ However, interfaith marriages between Muslim men and non-Muslim women who are

²⁴ stekom.ac.id, "Agama di Malaysia", 29 June 2024, Available online: https://p2k.stekom.ac.id/ensiklopedia/Agama_di_Malaysia

²⁵ Fred R. Von der Mehden, "Kebangkitan Islam di Malaysia", dalam John L. Esposito (Ed), *Kebangkitan Islam pada Perubahan Sosial*, Bulan Bintang: Jakarta, (1980), p.251.

²⁶ Bphn.go.id, "Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)" 29 Juni 2024, Available online : https://bphn.go.id/data/documents/perkawinan_beda_agama.pdf

bookkeepers are legal and can be recorded, but the bookkeepers in question are descendants of the Prophet Ya'qub.²⁷

The rules related to the prohibition of interfaith marriage in Malaysia are normatively stated in writing in Enactment 8 of 2004, Islamic Family Law Enactment 2004, Part II on Marriage, Section (article) 10 paragraph (1) says: *"No man or woman can marry a non-Muslim except a Kitabiyah"*

Although Malaysia has expressly regulated the prohibition of interfaith marriage, in reality there are still some areas where people violate this rule. One of them is in the border area between Kalimantan, Indonesia and Serawak, Malaysia. The area is one of the areas that still often holds interfaith marriages.²⁸

b. Singapore

Singapore is one of the countries that has a population with racial, ethnic, and religious diversity. There are three main ethnicities in Singapore, namely Chinese, Malays, and Indians, the rest are descendants from other countries including Indonesia, white descendants such as Americans or Europeans. Ethnic Chinese are the largest ethnic group inhabiting Singapore with a percentage of (76.84%), Malay Ethnicity (11.87%), Indian Ethnicity (8.25%), and others (3.03%).²⁹ Among adults in Singapore, 26% identify as Buddhist, 18% as Muslim, 17% as Christian, 8% as Hindu, 6% as adherent of traditional Chinese religions such as Taoism or Confucianism, and 4% as adherent of other religions, including Indigenous religions. Another 22% did not identify with any religion.³⁰

The diversity that exists in Singapore then leads to a country that chooses to be neutral in dealing with religious issues, namely by not supporting or prohibiting someone to adhere to religion or not. Therefore, Singapore is one of the countries that allows interfaith marriage. Singapore has two laws and regulations that regulate marriage, namely the regulations are implemented by

²⁷ A. Mursalin, "Legalitas perkawinan beda agama: Mengungkap disparitas putusan pengadilan di Indonesia." *Undang: Jurnal Hukum* 6, No. 1, (2023): 113-150. <https://doi.org/10.22437/ujh.6.1.113-150>

²⁸ I. Azli, "Relasi keluarga pasangan beda agama dalam mewujudkan keluarga sakinah di Sarawak Malaysia: Studi kasus di Pedalaman Tebedu, Bahagian Kuching, Negeri Sarawak." *Disertasi. Universitas Islam Negeri Maulana Malik Ibrahim*, (2019), p. 23.

²⁹ stekom.ac.id, "Ras di Singapura", June 29, 2024, Available online : https://p2k.stekom.ac.id/ensiklopedia/Ras_di_Singapura

³⁰ Pew Research Center, "In Singapore, religious diversity and tolerance go hand in hand" June 29, 2024, can be accessed from: <https://www.pewresearch.org/short-reads/2023/10/06/in-singapore-religious-diversity-and-tolerance-go-hand-in-hand/>

the *Registry of Muslim Marriage* (ROMM) or the Muslim Marriage Registry or *Registry of Marriage* (ROM). The ROMM handles the recording and implementation of marriages between Muslims, while for those of different faiths, the marriage can be recorded and carried out by the ROM.³¹

The main requirement for holding a wedding in Singapore is that the person concerned or the couple who is going to get married must stay in Singapore for at least 20 consecutive days. After meeting these requirements, newlyweds can start taking care of their administration online at the Merried Registration building. The Singapore government provides marriage services with online registration for 100% Singaporean citizens, permanent residents and foreigners. In just 20 minutes register with Singapore's Marriage Laws at a maximum cost of S\$20, regardless of religious differences, a marriage certificate is guaranteed to be valid and acceptable by any law in the world.³² Due to the ease of getting married, both by local citizens and immigrant citizens, many Indonesians hold weddings in Singapore.

c. East Timor

Timor Leste is a new country that was formed after a memorandum was made by the people of East Timor in 1999 so that it broke away from the territory of the Indonesian state. On May 20, 2002, East Timor officially became a country under the name of the Democratic Republic of Timor Leste (RDTL) / Timor Leste after a three-year transition period. The majority of Timor Leste's population is ethnic Austronesian (Malayo-Polynesian) who predominantly adheres to Roman Catholicism, with the spread of Catholicism (90%), Protestantism (5%), Islam (3%), and others (2%).³³

Timor Leste itself does not have a law regulating marriage, but the 2002 RDTL Constitution article 39 paragraph 1 only legalizes or legalizes marriage, so that marriage in Timor Leste still depends on the marriage customs that exist in an area, where almost all communities place the issue of marriage as a family and community affair according to their respective customs in

³¹ Nandapratwi, et al, "A Juridical Analysis of Abroad Interfaith Marriage's Position in Indonesia's Law." *Interdisciplinary Social Studies* 1. No. 10, (2022): 1242-1249. <https://doi.org/10.55324/iss.v1i10.230>

³² Tomi Hidayatullah, Oemar Moechthar, and Dimipta Aprilia. "Inter-Religious Marriage: A Comparison Analysis of Indonesian Law With Other Countries." *Notaire* 6, No. 2, (2023). <https://doi.org/10.20473/ntr.v6i2.45871>

³³ Kemenlu.go.id, "Profil Negara", June 29, 2024, Available online : https://www.kemlu.go.id/dili/id/pages/profil_negara_timor-leste_/1748/etc-menu

addition to containing rules with whom a person can do marriage.³⁴ Therefore, the implementation of marriage in Timor Leste follows the customs and customs of the relevant region.

There are three different ways to get married legally in Timor Leste: civil, Catholic/religious, and customary. Civil marriage is a marriage that is recognized and protected by law. Civil marriages are carried out by the authorized marriage officer in the country and take place at the civil registry office, besides that there are several legal processes that must be followed. Traditional marriages in this country are called monogamous marriages based on dowry. Meanwhile, marriage based on religion, only marriages performed in the Catholic Church are legally recognized. In East Timor, men and women have equal rights in marriage. However, in the case of divorce, this changes. Men and women are not given the same rights after divorce.³⁵

By not being expressly regulated by existing laws and regulations, Timor Leste seems to free all its people to carry out marriage without being restricted by religion. However, it should be noted that religious marriages recorded in Timor Leste are Catholic marriages where polygamy is expressly prohibited. In addition to religious marriage, some Timorese people prefer to get married based on existing customs where the wedding procession based on customs overrides the religious aspect in it. The traditional marriage ceremony of the Timorese tribe is carried out by consisting of the stages of Introduction, Preparation for Proposal, Proposal, and Marriage Party. Marriage based on customs emphasizes more on the cultural values contained in the traditional marriage ceremony of the Timorese tribe such as Religious Values, Deliberation Values, Fraternity, Religious Tolerance, Responsibility, Mutual Cooperation, Togetherness, and Manners.³⁶

From the three comparisons of countries above, it can be classified into three groups of state actions in response to the phenomenon of interfaith marriage. The first group is the group that expressly and clearly prohibits

³⁴ F. Wati. "Pelaksanaan perkawinan di Timor Leste dalam pandangan Islam." *BS thesis. Fakultas Syari'ah dan Hukum UIN Syarif Hidayatullah Jakarta*, (2017), p. 12. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/41239/1/FATIMA%20WATI-FSH.pdf>

³⁵ Marry on chain, "Everything you need to know about marriage in East Timor", 29 June 2024, Available online : <https://marryonchain.com/p/articles/everything-you-need-to-know-about-marriage-in-east-timor>

³⁶ Betty, Delvianty Fr, and Yosaphat Haris Nusarasriya. Tata Cara Perkawinan Adat Suku Timor Dan Nilai Yang Terkandung Di Dalamnya (The Procedures For Traditional Marriage of the Timorese and the Values contained therein)." *Jurnal Ilmu Sosial dan Humaniora* 9, No. 1 (2020): 1-6. <https://doi.org/10.23887/jish-undiksha.v9i1.24290>

interfaith marriage like the Malaysian state. Although, driven by religious factors, Malaysia strictly prohibits and emphasizes by publishing laws and regulations in writing. The second group is the group that allows and exempts interfaith marriage like the state of Singapore while still enforcing this freedom in existing legislation. While the third group is the group that exempts but there are no related laws and regulations that regulate like the state of Timor Leste.

Therefore, the Indonesian government should be firm in responding to the phenomenon of interreligious marriage in Indonesia. If the government wants to prohibit interfaith marriage, it is important to immediately revoke or revise laws and regulations that cause confusion and multiple interpretations by law enforcement officials.

C. Conclusion

1. Although the Supreme Court has issued SEMA Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Marriage Registration Applications Between People of Different Religions and Beliefs, this SEMA is only intended as a guideline for judges in interpreting the provisions of the Marriage Law. Therefore, in practice, interfaith marriage is still possible in Indonesian society. Moreover, if the provisions of Article 35 of Law Number 23 of 2006 concerning Citizen Administration Law have not been revoked, then interfaith marriage is still allowed through a court decision.
2. The North Jakarta District Court Decision Number 423/Pdt./2023/Pn Jkt.Utr is one example of a decision adjudicating interfaith marriages after the issuance of SEMA Number 2 of 2023. Based on the decision, the judge ruled that the interfaith marriage between the defendant and the plaintiff was considered valid and could be recorded at the civil registry office.
3. The firmness of the regulation regarding interfaith marriage in Indonesia can be said to be still quite lagging behind the strictness of interfaith marriage arrangements in Malaysia, Singapore, and Timor Leste. Therefore, this phenomenon is still one of the problems that cause debate among law enforcement.

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