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Conflict over the Norms of Inter-Religious Marriage: Challenges in Integrating Human Rights

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ABSTRAK

Pernikahan merupakan hak setiap orang di Indonesia. Menurut Pasal 2 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan, suatu perkawinan sah apabila dilaksanakan menurut hukum agama dan kepercayaan masing-masing. Norma ini memberikan pengertian bahwa suatu perkawinan akan diakui negara apabila dilakukan oleh laki-laki dan perempuan yang seagama, kemudian janji itu dicatat sebagaimana dimaksud dalam Pasal 2 ayat (2) UUP. Pencatatan pada kantor catatan sipil menerima pencatatan perkawinan beda agama sebagaimana diatur dalam Pasal 35 huruf a UU No. 23 Tahun 2006 juncto UU No. 24 Tahun 2013 tentang Administrasi Kependudukan melalui izin Pengadilan. Selanjutnya, MA menerbitkan SEMA Nomor 2 Tahun 2023 tentang Petunjuk Bagi Hakim dalam Mengadili Perkara Perkawinan Antara Orang Berbeda Agama dan Keyakinan. Artikel ini membahas tentang konflik norma yang muncul dalam pengaturan perkawinan beda agama di Indonesia, khususnya dalam konteks integrasi hak asasi manusia. Dengan menggunakan analisis yuridis dan sosial. Fokus utama adalah pengaruh SEMA No. 2 Tahun 2023 tentang Kepastian Hukum dan Harmonisasi Perjodohan di Indonesia. Hasil penelitian ini menunjukkan adanya konflik norma antara UU No. 1 Tahun 1974 tentang Perkawinan yang mengatur norma larangan perkawinan beda agama secara implisit dan UU No. 23 Tahun 2006 tentang administrasi kependudukan yang memberikan peluang untuk melegalkan pernikahan beda agama. Tantangan yang dihadapi dalam memadukan peraturan dan hak asasi manusia menunjukkan bahwa hakim mempunyai pandangan yang berbeda dalam menentukan permohonan perkawinan beda agama, yang pada akhirnya dapat menimbulkan dampak hukum dan sosial bagi masyarakat.

ABSTRACT

Marriage is a legal event which is a right for every person in Indonesia. According to Article 2 paragraph (1) of Law Number 1 of 1974 concerning marriage, a marriage is valid if it is carried out according to the laws of each respective religion and belief. This norm provides an understanding that a marriage will be recognized by the state if it is carried out by a man and a woman under the same religion, the promise is recorded afterwards as intended in Article 2 paragraph (2) of the UUP. Registration at the civil registry office accepts registration of inter-religious marriages as regulated in Article 35 letter a of Law no. 23 of 2006 in conjunction with Law no. 24 of 2013 concerning Population Administration through Court permission. Furthermore, the Supreme Court issued SEMA No. 2 of 2023 concerning Instructions for Judges in Adjudicating Marriage Cases between People of Different Religions and Beliefs. This article discusses the conflict of norms that arise in the arrangement of interfaith marriages in Indonesia, especially in the context of the integration of human rights.

By using juridical and social analysis. The main focus is on the influence of SEMA No. 2 of 2023 regarding legal certainty and harmonization in marriage arrangements in Indonesia. The results of this research show a conflict of norms between Law no. 1 of 1974 concerning Marriage which regulates norms prohibiting interfaith marriages implicitly and Law no. 23 of 2006 concerning population administration which provides opportunities for legalizing interfaith marriages. The challenges faced in integrating regulations and human rights show that judges have different views in determining requests for interfaith marriages, which in the end can have legal and social impacts on society.

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1. INTRODUCTION

Interfaith marriage has become a complex and controversial issue in multireligious societies. In this context, norm conflicts arising from differences in law and religious beliefs become very significant. Interfaith marriages not only involve two individuals who have different religious beliefs, but also give rise to various perceptions and responses from the surrounding community. This is often influenced by stereotypes, prejudice and various social supports. In some countries, such as Indonesia, interfaith marriages are clearly regulated regarding the prohibition of interfaith marriages as regulated in Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage, but this article is often given multiple interpretations so that it does not accommodate the issue of interfaith marriages concretely [1]

This has an impact on the dualism of the validity of interfaith marriages. Considering that the Population Administration Law rigidly regulates the registration of interfaith marriages, this results in legal dualism [2]. This conflict of norms not only impacts the human rights of the individuals involved, but also social integration and societal harmony. Interfaith marriages can cause discomfort in married life and serious religious conflicts, as well as affect people's perception of their relationship. Therefore, it is important to understand how this norm conflict can be resolved by paying attention to human rights, justice, humanity, and also supporting other efforts to resolve the legal conflict.

It is hoped that proper legal formulation and harmonization of conflicting norms can resolve the legal dualism of interfaith marriages in Indonesia. Sema No. 2 of 2023 is an alternative for legal certainty in this matter. The existence of Sema No. 2 of 2023 is a form of legal positivism in overcoming norm conflicts. However, this approach has its limitations in considering moral and ethical aspects in resolving legal conflicts. In this research, religious values, human rights, morals and ethics that live in society cannot be ignored.

This article discusses the conflict of norms that arise in the arrangement of interfaith marriages in Indonesia, with a focus on the integration of human rights. In this context, juridical

analysis is used to explore the influence of Supreme Court Circular Letter (SEMA) No. 2 of 2023, which aims to provide legal certainty and harmonization of marriage regulations in Indonesia .

2. METODE

This research was conducted using a normative juridical approach. This research activity aims to identify legal issues related to overlapping regulations regarding marriage between religions or beliefs, as well as finding solutions to these legal problems through legal analysis and reasoning. The main focus of this research includes: a. Interfaith marriage regulations, b. Human rights integration. The method used is a normative juridical approach which is based on statutory regulations and other legal doctrines. The approaches applied include analysis of statutory regulations, contextual approaches, comparative approaches, as well as Rechtsvergelijking or comparative legal studies.

3. RESULTS AND DISCUSSION

3.1 Legal Framework for Interfaith Marriage in Indonesia

3.1.1 Marriage in National Law

Indonesia is a country that adopts legal pluralism, where national, religious and customary laws operate in harmony [3]. Marriage law has experienced legal unity through the ratification of Law Number 1 of 1974 concerning marriage. Thus, marriage law in Indonesia can be said to be unique because it accommodates various types of applicable laws. This starts from religious law, national law, to customary law [4]. Marriage arrangements in Indonesia can be said to be unique because they accommodate various types of applicable laws. This starts from religious law, national law, to customary law. Basically, marriage norms in Indonesia can be understood from cultural and religious aspects. Firstly, marriage from a cultural aspect is part of a culture that continues to live and is preserved by society. [5] This can be observed during the wedding ceremony procession. The trinkets used in each region have their own meanings and symbols [6]. So aspects of customary law should be accommodated and become an important part in the realm of marriage [7] .

The second aspect is Religion. Marriage from a religious perspective is something sacred and is considered a "great sacred promise", the promises of both partners in the form of a marriage contract must be held accountable to God Almighty [8]. Marriage is said to be sacred because through the institution of marriage actions that were previously considered immoral change their essence to become highly moral. So religious law is an important element in the formation of marriage legal norms in Indonesia .

The positive marriage law currently in force in Indonesia is a combination of religious and cultural norms that live in society [9]. The pluralism of marriage law in Indonesia consists of religious, national and customary law. Marriage is based on religious law as regulated in article 2 paragraph 1 of the Marriage Law that the validity of a marriage is determined by the law of each religion and belief [10] and is a legal domain. It is also emphasized that people who are Muslim must refer to the Compilation of Islamic Law [11].

In general, Article 2 paragraph 1 of the 1974 UUP is often subject to multiple interpretations, considering that marriage law in Indonesia, especially interfaith marriages, does

not specifically regulate marriages between couples of different religions, so there is a legal gap in this matter. If viewed from the perspective of the legality of marriage, then marriages carried out in accordance with their respective religions and beliefs are considered valid, as regulated in Article 2 paragraph (1) of the 1974 UUP. Thus, the UUP allows everything to be determined by the teachings of each religion..

Prior to the publication of Circular No. 2 of 2023, the attitude of District Court judges in handling interfaith marriage applications varies. Some judges refused, while others accepted. This is caused by two factors: (1) the freedom of judges in deciding, and (2) the existence of regulations that provide space for interfaith marriages. The judge's freedom in making decisions is related to the absence of strict guidelines on this matter. Because there are no clear rules governing this matter, the judge has the authority to carry out interpretation or richtvinding.

Furthermore, regulations that provide space regarding interfaith marriages include; Supreme Court Decision No. 1400K/pdt/1986, which stipulates that marriages between different religions can be carried out if one party submits himself. concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership, two Articles 35 of the Government Administration Law, and Minister of Home Affairs Regulation No. 9 of 2016, people who marry to unite themselves into one family and record their marital status on their Identity Card.

3.1.2 Supreme Court Circular Letter (SEMA) in the Hierarchy of Legislative Regulations

The Supreme Court Circular Letter (SEMA) was first issued based on the provisions of Article 12 paragraph 3 of Law Number 1 of 1950 concerning the Structure, Authority and Court Procedures of the Indonesian Supreme Court [12]. This SEMA includes several important points, namely: "(a) The Supreme Court supervises the behavior and actions (work) of the courts as well as of the Judges. (b) For this purpose, the Supreme Court has the right to provide warnings, warnings and instructions that are necessary and useful for courts and judges, either in the form of separate letters or circulars."

SEMA's position is under the Supreme Court Regulations (PERMA). In Article 7 paragraph (2) of Law Number 12 of 2022 concerning the third amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UUP3) does not mention SEMA or PERMA, however the existence of PERMA and SEMA is recognized as a legal instrument as explained in Article 8 paragraphs (1) and (2). SEMA is a reference for judges to examine and try a case.

Jimly Asshidiqie, believes that the Circular Letter falls into the category of policy or quasi-legislative regulations. Policy regulations (beleidsregels) are the responsibility of state administration officials to carry out government functions, namely creating autonomous policies. In this context, SEMA is applied specifically to internal courts, including the Chief Justice, Judge, Registrar, and other positions in the judicial environment [13].

"SEMA, if seen from its normative objects, is intended for internal courts, including the Chief Justice, Judges, Registrars, and other officials in the court. This is in accordance with the nature of policy rules which aim to regulate within the organization or internally. Judges, Chief Justice, Registrars, and officials in an understanding environment can be interpreted as administrative bodies or officials. This description explains that SEMA is a policy rule (bleidsregels) [14]. From this explanation, it is clear that SEMA's position is hierarchically under the Law."

3.1.3 Marriage and Human Rights

When discussing marriage as part of human rights, we have mutually agreed. However, a different paradigm arises when human rights refer to Article 16 of the UDHR which states, "Every adult man and woman has the right to marry and form a family without any restrictions based on nationality, nationality or religion." [15]. The above statement emphasizes that the right to marry is a universal right that must be respected by all countries, which reflects the principle that every individual has the freedom to choose their life partner, which is an important part of personal dignity and freedom. The article above seems to conflict with the values held by Indonesian society.

Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "Everyone has the right to form a family and continue their offspring through legal marriage." This is the basis that marriage is part of human rights and it is important to remember that marriage is not just a right but a right to forming a family and continuing the marriage. [16]. Constitutionally, it can be explained that a legal marriage is a prerequisite for every person to be able to realize the right to have a family and continue their offspring. So indirectly this article does not require the right to have a family and continue children without being based on a valid marriage.

There is a difference in value between Human Rights as regulated in article 16 of the UDHR and Article 28 paragraph (1) of the 1945 NRI Constitution. Where marriage is a human right in forming a family, but the 1945 NRI constitution does not provide the greatest freedom because a valid marriage must be based on religion or belief as stated in regulated explicitly in Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage "marriage is valid if it is carried out in accordance with the laws of each religion and belief". The next difference is that marriage is not only to form a family but to preserve offspring. So any marriage that is not oriented towards starting a family and preserving offspring is not permitted to be enforceable in the Indonesian legal system [17].

Marriage regulations in Indonesia are as regulated in article 28 paragraph 1 of the 1945 Constitution of the Republic of Indonesia, Law no. 1 of 1974 concerning Marriage and the Compilation of Islamic Law states firmly that marriage is not just a human right, but marriage must be based on religious norms and beliefs. [18]. So it can be concluded that marriage must comply with certain conditions as regulated in marriage regulations in Indonesia and be based on religion and belief, and it is emphasized that marriage is not justified if it is carried out according to the wishes of the bride and groom without fulfilling the conditions that have been determined.

3.1.4 Harmonisasi Regulasi Pernikahan di Indonesia dan Integrasi Hak Asasi Manusia

Supreme Court Circular (SEMA) No. 2 of 2023 was issued on July 17 2023, as an effort to provide legal certainty in the registration of inter-religious marriages in Indonesia. This decision comes amidst the complexity of the laws governing interfaith marriages, which often give rise to incidents and incidents in society.

Harmonization between the Marriage Law and the Population Administration Law is very necessary to create harmony in existing regulations. Article 35 letter (a) Law no. 23 of 2006 provides a loophole for interfaith marriages, while the Marriage Law explicitly prohibits it.

Therefore, it is important to harmonize norms so that there are no contradictions in the application of the law.

SEMA Publication No. 2 of 2023 has generated various reactions, both support and rejection. Those who reject it argue that this policy is a step backwards for human rights, especially because it contradicts Article 16 of the UDHR which guarantees every individual's right to marry without discrimination based on nationality, nationality or religion. They consider that this policy has the potential to discriminate against couples of different religions. On the other hand, groups fighting for religious freedom emphasize that legal protection for couples who wish to marry from different religious backgrounds must be carried out fairly and without discrimination, and urge transparent law enforcement in the interfaith marriage application process.

On the one hand, this sema was also welcomed positively considering that the publication of this sema is expected to provide legal certainty for judges in deciding cases of interfaith marriages. This next point is in line with the spirit of the first principle of Pancasila, and is strengthened by the Constitutional Court's decision, Decision Number 68/PUU-XII/2014 and Decision Number 24/PUU-XX/2022. Both rejected requests to legalize interfaith marriages.

SEMA No. 2 of 2023 is a crucial step in efforts to harmonize marriage regulations in Indonesia. Even though it provides legal certainty, there are still significant obstacles in its implementation, especially those related to the integration of human rights and recognition of diversity. To achieve effective harmonization, a more comprehensive revision of the law is needed as well as open dialogue between various interested parties, including civil society and legislative institutions

4. CONCLUSION

SEMA No. 2 of 2023 is here as a solution to overlapping regulations regarding inter-religious marriages in Indonesia. This step aims to create uniformity and legal certainty in deciding cases of interfaith marriages. It is important to note that marriage is closely related to Human Rights, where marriage is not only seen as an individual right, but also as a right to build a family and pass on offspring. The 1945 NRI Constitution does not provide complete freedom in this matter, because marriage must be based on the religion and beliefs of each individual.

REFRENSI

[1] M. Abdullah, “Analisis Perkawinan Beda Agama di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya SEMA Nomor 2 Tahun 2023,” *Causa: Jurnal Hukum dan Kewarganegaraan,* vol. 1, no. 4, pp. 71-80, 2023.

[2] A. Hidayati, “Analisis Yuridis Pencatatan Perkawinan Beda Agama (Tinjauan Terhadap Pasal 35 Undang-Undang Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan),” *Jentera Hukum Borneo,* vol. 5, no. 2, pp. 21-47, 2022.

[3] G. F. Panjalu, “Kedudukan Hukum Islam dalam Konsep Pluralisme Hukum di Indonesia,” *Jurnal Mas Mansyur,* vol. 2, no. 1, pp. 15-27, 2024.

[4] S. a. R. N. H. Gautama, An introduction to Indonesian law: Unity in diversity, Penerbit Alumni, 2022.

[5] I. J. Loppies, "Persepsi Masyarakat Terhadap Adat Perkawinan Suku Biak Di Kampung Yendidori Distrik Yendidori Kabupaten Biak Numfor," *Gema Kampus IISIP YAPIS Biak,* vol. 14, no. 1, pp. 1-11, 2019.

[6] S. A. P. a. S. A. Sriyana, "Keserasian Sosial Masyarakat Majemuk Di Kelurahan Beriwit Kecamatan Murungkabupaten Murung Raya: Social Harmony Of Multiple Communities In Beriwit Village, Murung District, Murung Raya Regency," *Anterior Jurnal ,* vol. 22, no. 1, pp. 73-80, 2023.

[7] . L. Kazuaki Nishioka Anselmo Reyes, Choice of Law and Recognition in Asian Family Law, Oxford: Hart Publishing, 2023.

[8] S. Hawa, "Pengaruh Pendidikan Dan Ekonomi Keluarga Terhadap Pernikahan Usia Dini," *Jurnal Ekonomi Syariah ,* vol. 2, no. 2, pp. 367-395, 2019.

[9] T. M. H. R. A. S. S. S. R. Amiruddin Asrul Hamid, "Sociological Analysis of the Concept of Divorce In Marriage Law in Indonesia.," *JRSC: Journal of Religious, Social and Cultural ,* vol. 1, no. 1, pp. 42-51, 2022.

[10] I. Riyani, Islam, Women's Sexuality and Patriarchy in Indonesia: Silent Desire, London: Taylor & Francis, 2020.

[11] W. Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin.," *Samarah: Jurnal hukum Keluarga dan Hukum Islam ,* vol. 6, no. 2, pp. 1046-1064, 2022.

[12] I. A. Cahyadi, "Kedudukan surat edaran mahkamah agung (SEMA) dalam hukum positif di indonesia," Malang, 2018.

[13] J. Asshiddiqie, Perihal Undang-Undang, Jakarta: PT Rajawali Pers, 2014.

[14] G. E. a. A. D. I. Purnomo, "Kedudukan Hukum Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Terhadap Prinsip Kebebasan Hakim dalam Memutus Perkara," *Media of Law and Sharia,* vol. 5, no. 3, pp. 248-263, 2024.

[15] A. Asy'ari, "Paradigma Hak Asasi Manusia Dalam Universal Declaration Of Human Rights Dan Islam," *Maqasidi,* vol. 1, no. 1, pp. 1-23, 2021.

[16] T. a. K. L. K. Michael, "Menyoal Pemahaman Hak Dalam Prinsip-Prinsip Yogyakarta 2007," *DiH: Jurnal Ilmu Hukum,* vol. 14, no. 28, pp. 102-107, 2018.

[17] A. Yunus, Hukum Perkawinan dan Itsbat Nikah: Antara Perlindungan dan Kepastian Hukum, Makasar: Humanities Genius, 2020.

[18] Marwin, "Pencatatan Perkawinan dan Syarat Sah Perkawinan dalam Tatanan Konstitusi.," *ASAS: Jurnal Hukum Ekonomi Syariah,* vol. 6, no. 2, pp. 98-113, 2014.