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LEGALITY OF REGISTERING INTERRELIGIOUS MARRIAGES IN INDONESIA POST SEMA NUMBER 2 YEAR 2023

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ABSTRACT

After SEMA No. 2 Year 2023, the opportunity to register interfaith marriages in Indonesia becomes difficult to do. This research aims to find out the extent of the implications of SEMA Law Number 2 Year 2023 on legal certainty regarding the legality of recording interfaith marriages in Indonesia. This research uses normative juridical research methods and is analyzed with philosophical, juridical, and sociological approaches. In conclusion, even though SEMA Number 2 of 2023 has been born, the question of legal certainty of the legality of registering interfaith marriages has not ended because there is still the issue of conflicting norms between the Law and its implementation.

Keywords: *legality, marriage registration, interfaith marriages*

INTRODUCTION

The discourse on the issue of interfaith marriage in Indonesia has yet to find an end and has long been a polemic, not only among the public but also among legal experts and law enforcement officials. The polemic regarding this issue has not yet subsided after the publication of Supreme Court Circular Letter Number 2 of 2023 (SEMA No. 2 of 2023) which gave instructions to judges not to grant permission to register interfaith marriages. The polemic does not only touch the material aspects of the legality of the marriage, but also concerns the formal aspects regarding the registration which is legitimized by the court.

Debates regarding the legality of interfaith marriages occur, one of which is due to unclear norms or vague norms regarding the regulation of the validity of interfaith marriages according to positive law in Indonesia. The legal provisions of Article 7 paragraph (2) Regeling op de Gemengde Huwelijken (GHR), Staatblad 1898 Number 158 which first introduced and confirmed the validity of interfaith marriages as part of mixed marriages are considered to have been abolished since the ratification of Law Number 1 of 1974 concerning Marriage (UUP). The debate arose because the UUP which was the result of the unification of marriage law did not explicitly regulate interfaith marriages but left the validity of marriage entirely to the provisions of religious legal norms.

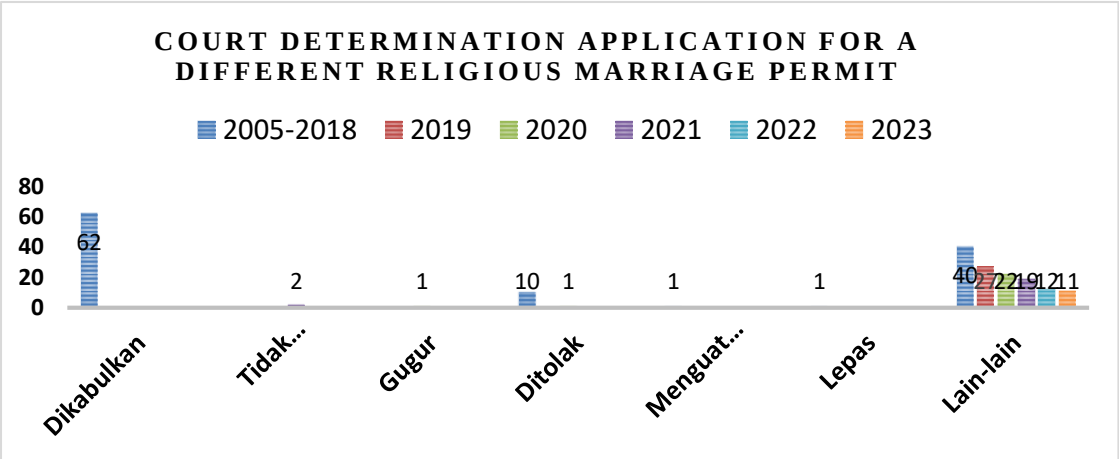
There are three main currents of legal interpretation related to the legality of interfaith marriages. The first opinion states that interfaith marriages are invalid because they conflict with the provisions of Article 2 paragraph (1) of the UUP which states that marriages are only valid if they are carried out in accordance with the laws of each religion. The second opinion states that interfaith marriages are legally valid based on the provisions of Article 66 of the UUP because the UUP is deemed not to regulate the legality of interfaith marriages so it returns to the provisions of the GHR which legitimizes interfaith marriages. Meanwhile, the third opinion states that interfaith marriages carried out in Indonesia remain legal based on the provisions of Article 57 in conjunction with Article 61 of the UUP concerning mixed marriages

which strengthen the legality of marriages through registration of marriages by Marriage Registrar Employees.

The polemic regarding the registration of interfaith marriages intensified after the passing of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 (UU Adminduk). Article 35 letter (a) of the Administering Law regulates that couples of different religions can obtain the legality of their marriage after obtaining a decision from the court. The provisions of the Adminduk Law conflict with the Marriage Law which should not be intended to provide legitimacy to marriages that are invalid based on religious law. The Adminduk Law actually creates legal uncertainty regarding the legality of registering interfaith marriages.

Long Before the Adminduk Law came into existence, the Supreme Court had actually issued Decision No. 1400 K/Pdt/1986 which granted the request for registration of interfaith marriages. Although not all subsequent court decisions refer to the Supreme Court's decision, de facto this decision has been used as a reference basis by subsequent court judges in granting registration of interfaith marriages and has become jurisprudence in Indonesia.

Based on legal facts from data on judges' decisions in District Courts released by the Supreme Court of the Republic of Indonesia on the official website, the Decision Directory page up to October 1 2023 shows the following data:



Source: Directory of Decisions of the Supreme Court of the Republic of Indonesia

Based on these statistical data, it shows that the practice of permitting interfaith marriages through requests for court orders often occurs in Indonesia. The court has decided at least 209 cases regarding this matter. The court has granted applications for permits for interfaith marriages in 62 cases, rejected 2 cases, rejected 11 cases, upheld 1 case, dismissed 1 case and other 131 cases. If classified into 2 categories, those granted and those rejected and others, then there were 193 cases that received court permission to carry out interfaith marriages, the remaining 16 cases were rejected and so on. Thus, approximately 99% of court judges granted requests for permission to register interfaith marriages and some refused, etc.

Even though there were disparities in decisions, the majority of Supreme Court judges legitimized the District Court's decision which granted marriages between different religions. Disparities in decisions regarding the legality and registration of different marriages do not

only occur within one judicial institution or court level, but between judicial institutions. In contrast to the District Court's decision and some of the Supreme Court's decisions which granted requests for permits for interfaith marriages, The Constitutional Court in several of its decisions rejected the material review of Article 2 paragraph (1) of the UUP against the 1945 Constitution which the applicant considered to be blocking their right to carry out interfaith marriages.

Starting from a sense of concern regarding the polemics regarding the registration of marriages between different religions that often occur and the desire to eliminate legal uncertainty, the Supreme Court finally issued Circular Letter of the Supreme Court Number 2 of 2023 which gives instructions to judges not to grant requests for registration of marriages between people of different religions or trust. It is considered that SEMA's position, which is not aligned with the law, has not been able to eliminate the polemic regarding juridical issues regarding the legality of registering interfaith marriages. The horizontal conflict of norms between the legal provisions regulated in Article 2 paragraph (1) of the UUP and Article 35 letter a of the Administering Law still leaves problems.

The problem of the legality of registering interfaith marriages does not only touch on issues of legal substance, but is also related to the function and authority of institutions directly involved in the marriage registration process itself. Marriage Registrar Officials at the KUA, Civil Registry Office or Disdukcapil as well as judges are the legal structures in implementing legal regulations. This situation is also sharpened by differences in views among society which are divided into two views. The first view requires that the practice of interfaith marriages be legally recognized because marriage is considered a human right that cannot be restricted. Meanwhile, the second view considers that this practice is a disgrace for the perpetrators and is contrary to the religious, social and cultural norms of Indonesian society.

Some of the literature search results contain previous research that has been carried out regarding the issue of the legality of registering interfaith marriages from different points of view, including normative juridical perspectives, jurisprudence, human rights, comparative studies, and case studies in court decisions. The normative juridical approach describes legal problems using a statutory regulatory approach. The fiqh perspective examines problems by examining the opinions of fiqh scholars. The human rights perspective seeks to examine problems by considering the rights and protections of each individual that must be protected. Then a comparative study examines the problem by comparing the Islamic legal system with the positive legal system. Meanwhile, there are also studies looking at the practice of applying existing laws in court decisions.

In an effort to resolve the problem of the legality of interfaith marriages and their registration, this study uses three aspects of the approach, namely; philosophical, juridical and sociological. These three approaches are very important to study this problem comprehensively. The philosophical approach attempts to explain the problem from the perspective of the Indonesian nation's philosophy of Pancasila and the 1945 Constitution as the ideal and constitutional foundation. The juridical approach examines legal issues from the statutory regulatory framework. Meanwhile, a sociological approach is needed to examine the thoughts, behavior patterns or legal awareness of the pluralistic and religious Indonesian society.

METHOD

This research is normative legal research which seeks to find the truth based on dogmatic legal logic. Research on the legal issue of the legality of interfaith marriages and the registration of these marriages after SEMA Number 2 of 2023 analyzes secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Meanwhile, the approaches used in this research are: historical approach and statutory approach. A historical approach is needed to study the history of Law No. 1 of 1974 concerning Marriage and Law no. 23 of 2006 concerning Population Administration. A legislative approach is taken by examining the extent to which legislation regulates marriage and the registration of interfaith marriages in Indonesia. The results of the research were then analyzed descriptively qualitatively to obtain conclusions regarding the problems studied.

RESULTS AND DISCUSSION

The problem of the legality of registering interfaith marriages needs to be studied from three aspects of approach, namely philosophical, juridical and sociological approaches. The philosophical basis of a statutory regulation is the touchstone for the effectiveness of its application in society. It is important to carry out this basis to examine the regulations that were formed by taking into account legal philosophy and ideals which include the spiritual atmosphere that originates from Pancasila and the preamble to the 1945 Constitution. Apart from being the philosophy of the Indonesian nation, Pancasila is an ideal foundation in national and state life. The first principle in Pancasila states "Belief in One Almighty God", containing recognition of the existence of religion as the embodiment of God's will.

This statement was legitimized in the 1945 Constitution as a constitutional basis which in the opening third paragraph emphasized that Indonesia's independence was thanks to the grace of Allah Almighty. This statement explicitly emphasizes that religious values are one of the constitutional foundations in establishing the State and administering government. This also confirms that Indonesia is not a secular country (separation of state and religion), but also not a religious state. The relationship between state and religion in Indonesia is symbiotic, having a close relationship in national and state life. Article 29 paragraphs (1) and (2) emphasize that the state is based on the belief in One Almighty God and guarantees that every citizen carries out the teachings of his religion. On this basis, in a broader spectrum, all legal provisions made by the state or government must not conflict with religious law. Any policy that is contrary to religious values is contrary to the constitution.

Marriage is part of human rights (HAM) that are universally recognized as stated in the Universal Declaration of Human Rights (UDHR) as a convention agreed upon by countries in the world and the Indonesian constitution. However, human rights that apply in Indonesia must still refer to Pancasila as the ideology and philosophy that constitutes the identity of the Indonesian nation. The provisions and application of human rights in each country can be adapted to the ideology, religion, social and cultural traditions of the people in each country.

In the context of interfaith marriage which is a legal issue, there are differences in the construction of guaranteed rights protection between the provisions regulated in the Universal Declaration of Human Rights (UDHR) and the 1945 Constitution. Article 16 paragraph (1) of the UDHR states explicitly "Men and women of full age , without any limitation due to race, nationality or religion, have the right to marry and to found a family". The provisions in the

UDHR regarding guaranteed protection of the right to marry and form a family are more general in nature. Meanwhile, the 1945 Constitution has a different conceptual construction as stated in Article 28B paragraph (1) which states, “Everyone has the right to form a family and continue their offspring through a legal marriage.”

Based on the formulation of Article 28B paragraph (1) of the 1945 Constitution, there are 2 (two) rights which are expressly guaranteed in this provision, namely "the right to form a family" and "the right to continue offspring". The next phrase, namely "legal marriage" is a prerequisite in order to obtain protection for both rights to form a family and continue offspring. Marriage is not positioned as a right but rather as a prerequisite for protecting the right to form a family and the right to continue offspring. A person cannot form a family and continue their offspring if this is not done through a legal marriage.

All statutory regulations regarding the validity of marriage must be in accordance with the religious law they adhere to and are solely regulated in order to guarantee and protect the rights of every citizen so that it is carried out in accordance with the religious law they adhere to. This is in line with Article 29 paragraph (2) of the 1945 Constitution which confirms that the state guarantees every citizen the practice of their religion and beliefs. Furthermore, Article 28J also regulates that in exercising the rights guaranteed by the 1945 Constitution, every citizen is obliged to comply with the restrictions stipulated by the Law in order to guarantee recognition and respect for the rights and freedoms of other people in accordance with moral considerations, religious values, security and public order based on law.

On this philosophical basis, the legal problems regarding the legality of registering interfaith marriages related to the freedom to practice religious teachings can be explained in two ways. First, religion in the sense of believing in a particular religion which is the domain of the internal forum which cannot be limited by and cannot be judged. Meanwhile, the second is related to religion in the sense of religious expression through statements and attitudes according to conscience in public, which is the domain of external forums. It can be understood that marriage is a form of worship as a religious expression so that the implementation of marriage and its registration can be categorized as an external forum. At this level, the state is given the authority to regulate marriage registration obligations.

The role of the state is not intended to interfere with the legal conditions for religious marriages, but rather to facilitate, supervise and guarantee the implementation of marriages so that they are in line with the teachings of the religion they adhere to. Therefore, facilities, means and infrastructure in carrying out marriages, including the issue of registering marriages, are part of the realm of external forums which require state involvement. At the implementation level, the state intervenes not as an interpreter of the conditions for the validity of a marriage, but rather involves religious institutions or organizations to ensure that marriages are carried out in accordance with the teachings of their respective religions and beliefs.

Apart from the philosophical aspect, it is also important to examine the legal issue of the legality of registering interfaith marriages from a juridical aspect. In this section it is necessary to inventory all statutory regulations related to legal issues regarding the legality of registering interfaith marriages as well as analyze legal arguments which are often used as the basis for legal considerations. Based on the results of an inventory of the provisions of laws and regulations governing the legality and registration of interfaith marriages, there are several regulations related hierarchically to this issue, starting from the 1945 Constitution, the

Marriage Law, the Civil Admin Law, PP, PMA, and others. An investigation of these various regulations shows that there is a blurring of norms regarding the issue of regulating interfaith marriages.

The legal view that states the validity of interfaith marriages based on Article 28B of the 1945 Constitution and Article 10 of the Human Rights Law as a legal and philosophical basis is incorrect. The legal provisions regulated basically concern human rights in freedom of religion and practicing religious teachings as well as forming a family through a legal marriage process. These articles in the 1945 Constitution actually become the main basis which confirms that legal marriages are carried out as manifested in the articles in the UUP.

Article 28B of the 1945 Constitution in conjunction with Article 10 paragraph (1) of the Human Rights Law is the main basis for everyone's right to have a family and have children through a legal marriage. Fulfillment of the protection of these rights can be guaranteed if the marriage carried out is legally valid. This formulation can be referred to as lex generalis from the provisions regulated in the Marriage Law as lex specialis. In Article 2 paragraph (1) and Article 8 of the UUP it is emphasized that a valid marriage is a marriage carried out in accordance with the norms of religious law adopted. So in the application of the law, it is known as the principle of Lex Specialis Derogate Legi Generali, which means that the formulation in the 1945 Constitution regarding "valid marriage" can be overridden by special regulations in the UUP which regulate legal conditions and prohibitions on marriage in accordance with religious legal norms. . In this context, the UUP actually has a solid juridical foundation whose formation is based on higher rules (stufen theory).

Article 2 paragraph (1) in conjunction with Article 8 letter f of the Marriage Law does not explicitly state the legal requirements and prohibitions on marriage according to religious law but rather leaves it entirely up to the validity of marriage according to the religious law adopted. Doctrinally, according to the provisions of officially recognized religious law in Indonesia, Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism emphasize that marriage between religious communities is contrary to religious legal norms. Therefore, a contrario, a marriage that is not carried out in accordance with the provisions of religious law is declared invalid.

There is a view which states that there is a legal vacuum regarding the legality of interfaith marriages based on the provisions of Article 66 of the Marriage Law in conjunction with Article 7 Paragraph (2) GHR which confirms interfaith marriages are not included in the prohibition on marriage. This rationale is clearly incorrect. Since the enactment of the UUP, all previous regulations governing marriage no longer apply except those that have not been regulated in the Law. Article 2 paragraph (1) of the Marriage Law confirms that marriage is declared valid if it is carried out in accordance with the laws of each respective religion. This means that the validity of a marriage is left entirely to the legal norms of the religion one adheres to. Meanwhile, marriage registration is an administrative requirement required by the state in accordance with the provisions of Article 2 paragraph (2) of the UUP. There is a separation of authority regarding the conditions for the validity of a marriage. Provisions for the legality of material marriages, including interfaith marriages, are the domain of religion, while the requirement to register marriages as a formal requirement is the domain of the state and does not affect the validity of marriages.

Thus, the validity of a marriage, including an interfaith marriage, must follow the legal provisions of the religion adhered to by both bride and groom and not just one of them. In this case, the role of the state is only to facilitate and follow up on the results of interpretations agreed upon by religious institutions or organizations, such as the MUI , the Nahdlatul Ulama Executive Board (PBNU) , the Muhammadiyah Central Board (PP) , the Fellowship of Churches in Indonesia (PGI), the Catholic Bishops' Conference Indonesia (KWI), Representatives of Indonesian Buddhists (Walubi), Parisada Hindu Dharma Indonesia (PHDI), and the High Council of Confucianism in Indonesia (Matakin). Dogmatically, all religions state that religious marriages are invalid because they conflict with recognized religious legal norms in Indonesia.

Some views that agree with the legality of interfaith marriages abroad use the legal basis in Article 56 paragraph (1) of the UUP concerning mixed marriages to legitimize interfaith marriages. This is clearly unacceptable because what is meant by "subject to different laws" in mixed marriages cannot be interpreted to include "differences in religious law". The mixed marriage in question is a marriage between people of different nationalities, one is an Indonesian citizen and the other is a foreigner who is subject to different laws because they are from different countries. This article also emphasizes that marriages carried out abroad must not only comply with the legal provisions in force in the country where the marriage is carried out, but also the marriage must not be in conflict with the UUP as regulated in Article 2 paragraph (1) of the UUP.

In accordance with the principle of lex loci celebrationis, the implementation of a marriage abroad must comply with the legal provisions in the legal system in force where the marriage takes place (locus celebration). Apart from that, there is the principle of vested rights, which means that every country should recognize or respect the rights that a person has obtained according to the legal rules of a foreign or other country. This means that interfaith marriages carried out abroad as long as they meet the requirements and do not violate the legal provisions of the country where the marriage takes place, the marriage can be registered by the Marriage Registry Agency. However, these principles cannot ignore the provisions in Article 56 paragraph (1) which also stipulates that marriages carried out abroad must not be in conflict with this Marriage Law.

Interfaith marriages performed at home or abroad which are registered by the Disdukcapil are normatively contrary to the provisions of Article 2 paragraph (2) of the UUP and Article 10 paragraph (2) of Minister of Home Affairs Regulation Number 12 of 2010 concerning Marriage Registration and Deed Reporting. Even if the certificate has been issued by another country and has received a court order after fulfilling the requirements of attaching proof of a marriage certificate that was executed abroad, the certificate actually has no legal force.

Since the enactment of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 (UU Population Administration), the debate regarding the legality of registering interfaith marriages has become increasingly open. There was a "norm conflict" between the Administering Law and the Marriage Law. Elucidation to Article 35 letter a regulates that civil registration officials are obliged to register marriages that have received a court order, including marriages between people of different religions. This provision clearly contradicts the provisions of Article 2 paragraph (1) of the Marriage Law. The provisions of Article 35 letter a also conflict with the same law in Article 34 paragraph (1)

of the Law which explicitly qualifies only valid marriages that can be registered. Apart from valid marriages, marriage registration officials may not register marriage certificates or issue marriage certificate extracts.

Apart from that, the provisions in the explanation of Article 35 letter a of the Adminduk Law are horizontally contradictory to the provisions regulated in Article 2 paragraphs (1) and (2) of the UUP regarding the legality of marriage and its registration. In fact, the explanation in the statutory regulations as regulated in the attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations number 178, states that the explanation in the Law may not use a formulation whose contents contain hidden changes to the provisions of statutory regulations.

In fact, the validity of a marriage must refer to the Marriage Law as the main legal basis that regulates the conditions for the validity of a marriage. Meanwhile, the Adminduk Law is another regulation that regulates the issue of registering ansich marriages. However, ironically, at the practical level, under the pretext of protecting citizens' rights, marriage registration is still carried out by the KUA or Disdukcapil. Practices like this actually contradict the religious doctrines adhered to and carried out by interfaith couples which should be guaranteed in accordance with the mandate of Article 29 paragraph (2) of the 1945 Constitution.

There are disparities in court decisions in determining applications for registering interfaith marriages. This disparity occurs not only between judicial institutions, but also between the same judicial institutions and at the same level. The Constitutional Court in the case of a request for judicial review of Article 2 paragraphs (1) and (2) decided to reject the applicant's application by stating that Article 2 paragraph (1) of the UUP does not conflict with the 1945 Constitution. The validity of marriages, including interfaith marriages, is an internal forum and is the religious domain determines it.

The Supreme Court in several of its decisions granted requests for registration of interfaith marriages on the pretext of protecting the rights of interfaith couples and children born from these marriages. Meanwhile, at the District Court (PN), there are differences in court decisions, some granting requests for marriage registration and others refusing. Meanwhile, the Religious Courts (PA) have been so firm in their principle of rejecting interfaith marriages that they have opened up space for interfaith couples to register their marriages through court decisions.

Seeing the phenomenon of the increasingly widespread practice of interfaith marriages and uncontrolled marriage registration, the Supreme Court finally issued SEMA Number 2 of 2023 in order to provide certainty and unity in the application of the law in adjudicating applications for the registration of interfaith marriages. The SEMA is based on the provisions of Article 2 paragraph (1) and Article 8 letter f of the UUP which regulate the validity and prohibition of marriage. On that basis, every marriage that is not carried out in accordance with the laws of the religion one adheres to is declared invalid. Interfaith marriages cannot be carried out because they are invalid and contrary to the prohibition on marriage in religious law prohibiting marriage. Therefore, marriages cannot be registered by Civil Registration Officials at the KUA or Disdukcapil. This is in line with the provisions of Article 34 paragraph (1) of the Population Administration Law.

The aim of SEMA Number 2 of 2023 is to ensure unity in the application of the law which contains instructions for judges, especially judges who are in the judicial institutions under the Supreme Court, namely the Religious Courts and District Courts so as not to grant requests for

registration of marriages between different communities. religion or belief. This SEMA, in addition to closing the possibility of disparities in judge's decisions, which have so far granted many marriages between different religions, also closes the gap between interfaith couples, both at home and abroad. Even though SEMA only applies to judges, it also indirectly has implications for the duties of marriage registration officials at the KUA and Disdukcapil who have received many applications for marriage registration based on court orders.

Even though SEMA Number 2 of 2023 has had a positive impact in upholding the supremacy of the Marriage Law, it has not been able to completely end the practice of interfaith marriages in Indonesia. This is because there is still disharmony between the Administering Law and the Marriage Law, namely between the norms regulated by Article 35 letter (a) of the Administering Law and Article 2 paragraphs (1) and (2) of the Marriage Law. The Population Administration Law was born based on the spirit of fulfilling citizens' administrative rights without discriminatory practices. Meanwhile, the Marriage Law aims to strengthen the religious norms that must underlie marriage.

The position of SEMA created by the Supreme Court is under the law established by the legislative body. However, in accordance with the provisions of Article 7 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, SEMA can be categorized as a form of statutory regulation made based on the authority of an institution. The Supreme Court can only form regulations if the law is unclear or does not regulate it. SEMA is classified under policy rules or quasi legislation. In accordance with policy regulations, SEMA is shown to judges, court chiefs, clerks, or officials within the judiciary.

SEMA's position is under the law, so any provisions contained in SEMA cannot cancel the validity of a law. This means that SEMA, based on statutory knowledge, does not have the power to change or cancel the law. So it can be understood that SEMA Number 2 of 2023 which prohibits judges from granting requests for registration of interfaith marriages cannot eliminate the ambiguity of the provisions of the norms in the explanation of Article 35 letter a of the Administering Law.

Furthermore, viewed from a sociological perspective, UUP must have an empirical basis that is in accordance with the values, norms and legal rules that grow and develop in society. Since its founding, the Indonesian nation was born as a result of the struggle of the founding fathers, the majority of whom came from religious figures, so that religious values are firmly included in the philosophy and constitution of this nation. It cannot be denied that the religious Indonesian people have a high awareness of religious law. Interfaith marriages are considered a violation of religious norms. Violations like this are considered a disgrace and often receive negative stereotypes among society.

Interfaith marriages that are declared invalid have legal consequences not only for the position of the marriage, but also for the position of children born, and other legal consequences in the event of divorce and inheritance problems in the event of death. Children born as a result of marriage are considered children outside of marriage or in other terminology are called children resulting from adultery. Even after the birth of Constitutional Court decision No. 46/PUU-VIII/2010 which changed the legal norms contained in article 43 paragraph (1) by repositioning the position of children outside of marriage, apart from having a civil relationship with the mother and family, they also have a civil relationship with the father (biological).)

and his family, but this decision still leaves legal problems that still need to be studied, including those related to the child's inheritance rights towards his biological father.

At the practical level, many interfaith couples commit lies by smuggling the law to obtain marriage registration administration services from the state through marriage registration agencies at the KUA or Disdukcapil. (1) temporarily submit to one of the religious laws of the bride and groom and perform the marriage in accordance with the religion of the couple. But after they got married, he returned to his original religion, (2) carried out a marriage according to each religion of the bride and groom in turn, (3) applied for permission for an interfaith marriage through a court order, and (4) carried out a marriage abroad which legitimize interfaith marriages.

Interfaith couples often pretend to administratively change religions according to their partner's religion so that they can register their marriage at the KUA or Disdukcapil. Some other interfaith couples carry out marriages abroad and then register them in Indonesia as a constitutional "solution". Legal uncertainty occurs because in the end, the judge's decision will also depend on the judge's level of religiosity in upholding the teachings of the religion he adheres to. As a result, there are often differences in interpretation in deciding these cases. The existence of a Supreme Court Fatwa is at least a temporary solution to provide legal certainty that interfaith marriages, whether performed within the country or abroad, can be registered.

In this part of the analysis, it is also important to examine legal issues regarding the legality of registering interfaith marriages from the perspective of Lawrence M Friedman's thoughts on the three basic elements that influence the effectiveness of law in society. According to him, there are three basic elements in the legal system, namely legal structure, legal substance and legal culture. These three basic elements have influenced legal uncertainty regarding the legality of registering interfaith marriages.

First, the legal structure that supports the upholding of marriage legal regulations. This legal structure manifests as a legal institution which includes the legal order, legal institutions, law enforcers and their authority, legal instruments, and their processes and performance in implementing and enforcing marriage law in Indonesia. Several related institutions include the legislative and executive institutions which are directly involved in the marriage law legislative process. The Marriage Law which became effective in 1975 was born from the spirit of the Indonesian people to move away from the legacy of secular colonial law. The Dutch inheritance law which provided justification for interfaith marriages was abolished because it was deemed to be contrary to the legal norms of religions recognized in Indonesia because it was not in line with Pancasila and the 1945 Constitution as the nation's philosophy and state constitution.

Other institutions that play a direct role in enforcing marriage law, namely the Marriage Registration Institution at the KUA and KCS/Disdukcapil are given the authority to register marriage administration and the courts are given the power to issue decisions regarding marriage registration. In fact, even though law enforcers are aware that interfaith marriages are certainly contrary to the UUP and religious norms, they still carry out registration of these marriages under the pretext of protecting the rights of every citizen. The rights of those whose marriages are not registered do not receive public services, such as not receiving a marriage certificate or birth certificate for their children, which has legal consequences for their rights to support, inheritance, and so on.

Second, legal substance, namely all written regulations resulting from the legislative process and court decision products. The results of an inventory of the provisions of laws and regulations governing the legality of registering interfaith marriages show that there is a lack of clarity and/or vagueness of norms. There are conflicting norms between the Marriage Law and the Administering Law and there are disparities in court decisions regarding permits for interfaith marriage applications. Therefore, there needs to be legal reform by synchronizing various laws and regulations governing marriage issues with other regulations.

Third, legal culture factors, namely ideas, values, thoughts, opinions and behavior of community members in implementing the law. As a pluralistic nation and supported by patterns of interaction between religious communities in a pluralistic society, especially big cities, the barriers in the pattern of relationships between people of different religions are increasingly thinning. This is related to people's awareness, understanding and acceptance of the laws imposed on them. Prohibition of interfaith marriages and their registration in order to ensure that every citizen can practice the teachings of their religion. Therefore, there is a need for public understanding and legal awareness regarding the legal consequences and social impacts that will arise from the practice of interfaith marriage. Legal culture as part of the legal system requires that law should not only be seen as a formulation of rules on paper, but should be values, attitudes and views that are implemented in the reality of people's lives.

CONCLUSION

The birth of SEMA Number 2 of 2023 has not been able to resolve the issue of unclear or unclear norms regarding the legality of marriage registration in Indonesia. This is because SEMA's position is only as a policy rule or quasi legislation aimed at court judges. SEMA only wants to confirm the Marriage Law, but has not been able to eliminate the conflicting norms between the Marriage Law and the Population Administration Law regarding the legality of registering interfaith marriages. This juridical problem is exacerbated by the disparity in decisions and views of judges as well as the role of civil registration officials who have been directly involved in the process of registering interfaith marriages. Efforts to overcome the problem of the legality of registering interfaith marriages must be taken through reformulating the legal substance of the Marriage Law and other related laws and regulations through a philosophical approach, a juridical approach and a sociological approach in order to create legal certainty, justice and legal benefits.

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