

SEMA BINDING STRENGTH NO. 2/2023 REGARDING THE JUDGE'S DETERMINATION IN APPLICATIONS FOR REGISTRATION OF INTERFAITH MARRIAGES

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Abstract

The state guarantees freedom of religion, as well as forming a marriage. Registration of marriages, especially mixed marriages, is regulated in Article 57 of Law no. 16 of 2019 concerning Marriage. This mixed marriage is also related to interfaith marriage which is also a right for Indonesian citizens. The Supreme Court in this case made SEMA No. 2/2023 dated 17 July 2023 concerning Appointments for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs, at point No. 2 explains that "The court did not grant the request for registration of marriages between people of different religions and beliefs." If this SEMA is analyzed it is in conflict with Article 35 letter (a) of Law no. 23 of 2006 in conjunction with Article 50 of Minister of Home Affairs Regulation no. 108/2019. Therefore, the author analyzes the binding strength of SEMA No. 2/2023 dated 17 July 2023 regarding the failure to grant the request for registration of interfaith marriages. Meanwhile, Minister of Home Affairs Regulation no. 108/2019 states that interfaith marriages must be proven, which automatically results in an application being made to the court. This is also related to Article 35 letter (a) of Law no. 23 of 2006 concerning Population Administration which regulates marriages determined by courts for people of different religions. Therefore, the author analyzes the above problem with the problem, namely the binding force of SEMA No. 2/2023 regarding the judge's decision in the application for registration of interfaith marriages. The method used is normative juridical research, with an analysis of the theory of authority and legal certainty. The approaches used are the conceptual approach, statutory approach and case approach. The conclusion to be reached in this writing has future perspective value and is in accordance with its axiology, namely the aim of law is justice.

Keywords: Interfaith Marriage, Legal Conflict, Normative Juridical Research

INTRODUCTION

Indonesia is known for its diverse cultural traditions that have been embedded from their ancestors, as well as different religions and beliefs. (Legal Consequences of Interfaith Marriages in Indonesia 2013) Even though there is a national marriage law, it cannot be denied that in reality there are still many people who still use the customary rules of their respective religions. (Erleni 2022) Society still prohibits interfaith marriages, but nowadays interfaith marriages are increasingly common. (Laptala 2014) If we look further, there are 2 (two) opinions regarding mixed religion marriages, opinions that prohibit marriages between religions, but there are also those that accept/approve marriages between religions. The birth of Law Number 1 of 1974 concerning Marriage, which has been amended by Law Number 16 of 2019 (hereinafter referred to as the Marriage Law), mixed marriages are regulated in Article 57 which states that marriages between two people in Indonesia are subject to different laws, due to differences in nationality. and one of the parties is an Indonesian citizen.

The state has guaranteed the freedom of every citizen to freely make choices, including regarding embracing religion. (Made Widya Sekarbuana 2021) The phenomenon and problems of mixed marriages between different religions are often debated, there are pros and cons from each perspective from human rights and a sense of justice in various circles. This historically began with the concept of mixed marriages regulated in the King's decree dated 29 December 1896 Number 23 (Stb. 1898 Number 158 concerning Mixed Marriages (Regeling op de gemengde huwelijken", hereinafter abbreviated as GHR) in Article 1 stating that mixed marriages are between people in Indonesia are subject to different laws, (Asmin, 1986) as well as Article 7 paragraph 2 of the Law which stipulates that "Religious differences cannot be used as a prohibition against mixed marriages."

The Supreme Court has issued SEMA No.2/2023 which means that there is no loophole for perpetrators of mixed religious marriages, however, marriage is a human right, so there are still perpetrators who carry out mixed religious marriages. This can be seen in Determination No. 423/Pdt.P/2023/PN Jkt.Utr in which the Petitioners Gregorius Agung Beyeng Amoh (Catholic) and Regina Yasmina Augustine (Christian) had entered into a mixed religious marriage and were approved.

Religious diversity in Indonesia has opened up the possibility of marriage for men and women of different religions, considering that marriage is a universal institution. (Majid 2021) The pros and cons indicate that there is a conflict between contradictory norms, indicating a conflict between norms that allow and norms that prohibit, as well as the regulation of mixed marriages between different religions, there is a legal vacuum because it has not been regulated expressly in statutory regulations which is considered to cause discrimination for perpetrators who want to have different marriages. religion.

The Supreme Court has issued SEMA No. 2/2023 which in number 2 confirms that the court "did not grant" the request for registration of marriages between people of different religions and beliefs, however it turns out that mixed marriages of different religions can still be carried out and legalized by court order.

RESEARCH METHOD

The analytical knife used is the theory of legal certainty and the theory of authority. The approaches used are a statutory approach and a conceptual approach. The desired conclusion in this research is that it has prescriptive value for the future, according to axiology, namely the aim of law is justice. The problem is how the binding force of SEMA No. 2/2023 dated 17 July 2023 regarding the Judge's decision in the application for registration of interfaith marriages.

RESULTS AND DISCUSSION

Binding Strength SEMA No. 2/2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs to Judges

Analyzing the binding power of law, there are many opinions and theories, such as Kelsen's theory of state sovereignty, which justify the binding power of legal rules. Kelsen firmly stated that his unsprungsnorm should not be viewed as a basic rule that has content, a rule that can be looked for to find legal issues. (CST Kansil and Christine ST Kansil 2014)

Thomas von Aquino, based on Stoic teachings, argued that eternal law (lex aeterna) rules the whole world, where all other laws find the basis and reason for their binding force. Eternal punishment comes from natural ratios. (CK Kansil 2014) SEMA Binding Strength Vagueness No. 2/2023 For Judges. Position and Function of the Supreme Court Circular Letter (SEMA).

To understand the position and function of SEMA, especially SEMA No. 2/2023, structural interpretation is used. The structural interpretation links the law to the constitution or basic laws that regulate the constitutional structure, including the judicial structure. (Susanti 2012)

Structural interpretation is used to understand the role and function of SEMA, especially SEMA No. 2/2023. In a structural interpretation, laws are linked to the constitution or basic laws that regulate the constitutional structure, including the judicial system. In the Indonesian constitution, in its adage, "even though the world collapses, the law must be upheld (*fiat justitia et pereat mundus*)" is the basis of the Indonesian rule of law. In other words, law enforcement should influence the feelings and actions of Indonesian society.

Based on the 1945 Constitution of the Republic of Indonesia, this legal state must be developed within the framework of the Indonesian legal state as a system. Judicial power, or judiciary, is in principle an independent branch of power and is not influenced by other power institutions, as stated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. So, General Provisions Article 1 Chapter I of Law Number 48 of 2009 concerning Power Judiciary, as stated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Furthermore, based on Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is also regulated that in the system the judiciary, as the bearer of independent power functions for the judge's authority, is given authority to the supreme court and the judicial bodies below it. The judicial bodies below are the general court, religious court, military court, administrative court, apart from that there is a constitutional court.

The formation of the Supreme Court Circular Letter as the basis for regulation in supervision of the judiciary under it by the Supreme Court, this is in accordance with Article 12 Paragraph 3 of Law Number 1 of 1950 concerning the Composition, Powers and Procedures of the Courts. The Indonesian Supreme Court established the initial basis for the formation of SEMA. The Supreme Court is a judicial institution that has the authority to supervise the judicial institutions below it. (Position and Legal Strength of the Supreme Court Circular Letter (Sema), Indonesian Positive Law 2015)

Hans Kelsen's theory regarding the hierarchy of legal norms, which was inspired by Adolf Merkl using the "das doppelte rech stanilitz" theory, (Maria Farida 1998) Hans Kelsen's theory can be interpreted that the law is a system of authority or policy in the powers above as regulators and acting as supervisors over the authority given to the powers below, but the source of the regulations made is sourced from the values of the powers below, so that according to the theory Hans Kelsen system of regulation of law as a system of binding power.

Based on Law Number 30 of 1950 concerning the Supreme Court of the Republic of Indonesia Article 131, the Supreme Court has the authority to issue (SEMA), which is now known as SEMA No. 1 of 1951. Since then, at least five to six SEMAs have been published every year. Some only contain instructions, while others only contain warnings. There is also SEMA which combines warnings, orders, and instructions into one document. (The Position of the Supreme Court Circular Letter (SEMA) in Positive Law in Indonesia 2014) As a result, SEMA, which was founded in 1950 and has a constitutional basis based on Law no. 30/1950. Judges and courts must comply with the regulations and contents of SEMA. Most of the provisions of SEMA are policy regulations, which are stated in Article 8 of Law no. 12 of 2011 and also includes administrative, consultation, supervision and judicial functions. However, Article 79 of Law no. 14 of 1985 established the basis for its formation. Therefore, SEMA is considered a legally binding regulation.

SEMA. Provisions that remain in effect until Law Number 14 of 1985 concerning the Supreme Court, which are not explicitly stated, make its legal status unclear. The Supreme Court regularly issues SEMA products every year. The Supreme Court can set rules about how cases that are not regulated by law are resolved. Actually, Article 10 of Law no. 48 of 2009 concerning judicial power Article 10 provides the basis for this authority. This article contains the principle that judges may not reject a case just because the law is unclear or does not exist. This is very necessary for the Supreme Court as a judicial institution in a separate power structure in Indonesia to prevent shifts in national law.

The binding principle is the principle of legality, the Supreme Court must follow statutory regulations when handling cases (procedural law). Thus, article 79 of Law no. 14 of 1985 gives the authority to enact laws a very important position. Article 79 Law no. 14 of 1985 concerning the Supreme Court is explained as follows to understand SEMA's position in the function of determining the Supreme Court Law. This is the authentic or official interpretation of the law maker, which is the official interpretation. This interpretation can only be carried out by the legislator himself or by an agency established by law. No other party can do it. This interpretation is purely subjective. An explanation of the law can be attached and added to the State Gazette according to the legislator's

own interpretation.(R. Soeroso 2021) Authentic interpretation based on the above is a way of interpreting rules which is analyzed by conveying the will of the legislator in conveying his wishes in a rule.

The function of SEMA, the law is to indicate an institution that has the authority to make decisions that can be enforced regarding the resolution of disputes between members of the community, as well as establishing the rules and regulations that must be applied to resolve these disputes. Thus, law functions as a mechanism for resolving conflicts.(Dewi Astutty and Dyah Ochterina Susanti 2012) The Supreme Court of the Republic of Indonesia as a judicial institution is responsible for supervising subordinate judicial institutions and carrying out its duties to issue SEMA, which includes advice, supervision, warnings, orders and instructions in documents.

SEMA Goal No. 2/2023 as guidance for judges

Community relations consist of various kinds of relationships created by the interests of community members. For all these relationships to remain orderly, society needs rules to maintain balance.

The law still exists and is accepted by everyone, the law must be in accordance with and not conflict with justice, the principles of social justice. According to Subekti, law functions to achieve the main goal of the state, namely providing prosperity and happiness to its people. Law achieves this goal by maintaining justice and order, which are the main conditions for achieving prosperity and happiness.(CK Kansil 2014) It is very clear that the law must not only balance mutually beneficial interests, but also must balance the demands of justice with the requirements of legal order or security.

Van Apeldoorn states in his book *Inleiding Tot de Studie van Het Nederlandse Recht* that peace is the goal of law to regulate human interaction peacefully. According to Geny in *Science et Technique en Droit Prive Positive*, the aim of law is to achieve justice alone(CK Kansil 2014)

Provisions regarding the legal basis for the issuance of the Supreme Court Circular Letter are regulated in Article 32 Paragraph (4) of Law no. 14 of 1985. which states: "The Supreme Court has the authority to give instructions, warnings or warnings deemed necessary to courts in all judicial environments." This provision is essentially in accordance with the provisions of Article 131 of Law Number 30 of 1950.

Based on Law no. 14 of 1985, Article 79 states more clearly that the Supreme Court can further regulate matters necessary for the smooth administration of justice if there are matters that are not sufficiently regulated in this Law. In terms of legally binding regulations, Law no. 12 of 2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law No. 12/2011) Article 8 Paragraph (2) states that regulations become legally binding if they are made in accordance with the authority granted. Therefore, it can be understood that the Supreme Court of the Republic of Indonesia has permanent authority to issue Supreme Court Circular Letters.

Basic policy rules can be intended to be implemented by policy makers themselves or implemented by bodies and officials under their authority. Therefore, although policy rules stipulate provisions, these mechanisms may have an indirect impact on society in practice. The Supreme Court Circular Letter (SEMA) is a type of notification letter sent to all levels of the judiciary by the Head of the Supreme Court. SEMA contains technical instructions and instructions on how to carry out administrative tasks in administering justice.(Status and Legal Strength of the 2023 Supreme Court Circular (Sema))

SEMA only applies to the Supreme Court, including lower courts. In other words, SEMA helps court judges under the jurisdiction of the Supreme Court carry out their leadership and supervisory functions, in accordance with Article 32 Paragraph (4) of Law no. 14/1985. The aim of SEMA is to prevent errors that can give rise to legal uncertainty by providing clarity and understanding regarding the interpretation of regulations.

This grouping of rules is intended to determine the location of these settings. It is very important to know the location of the arrangements made by a state institution whose existence is determined by law. The Supreme Court in establishing SEMA is another form of statutory regulation in accordance with Article 8 paragraph 1 of Law No. 12 of 2011 concerning the formation of statutory regulations. These rules can be divided into three groups.:(Position and Legal Strength of the Supreme Court Circular Letter (Sema), Indonesian Positive Law 2015)

SEMA can only be used in certain judicial settings. Based on Article 8 paragraphs 1 and 2 of Law Number 12 of 2011, the Supreme Court has the authority to regulate all matters necessary to ensure the justice system operates well. The Supreme Court has the authority to create policies to correct deficiencies or loopholes in the law, such as rules that help judges handle application cases from every applicant who is given permission to register their marriage.

Based on the description above, the aim of creating SEMA No. 23 of 2023 is not only to monitor the working capacity of the lower judiciary, but also to provide a basis for the implementation of the judiciary under the Supreme Court in its implementation under the examination of cases by judges. Therefore, for the sake of expected justice, the SEMA created by the Supreme Court must be truly binding in the substance of its regulations on the lower courts.

Fuzziness of Binding Strength SEMA No. 2/2023 For Judges

The Supreme Court on July 17 2023 issued SEMA No. 2/2023 to the Chairman or Head of the Court of Appeal; Chairmen/Heads of First Instance Courts throughout Indonesia.

SEMA No. 2/2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs is intended not to grant marriages of different religions. In relation to the Population Administration Law No. 24 of 2013 concerning amendments to Law 23 of 2006 concerning population administration, especially in the explanation of Article 35 letter a, it is stated that marriages determined by the court are marriages between people of different religions. However, Minister of Home Affairs Regulation no. 108/2019 regulates marriage registration based on a court decision, which of course must prove the validity of the marriage.

For example, the marriage of two people of different religions was carried out in North Jakarta: Gregorius Agung Beyeng Amoh, a Catholic (according to his KTP), as Petitioner I, and Regina Yasmina Augustine, a Christian (according to his KTP), as Petitioner II. The marriage was carried out in accordance with the religious laws and beliefs of the applicants at St. John Bosco Lake Sunter Parish, Jakarta Diocese, according to the Marriage Certificate. Therefore, the applicants submitted an application after registering the marriage on July 13 2023, which was registered at the Registrar's Office of the North Jakarta District Court on July 14 2023 with Case Register Number 423/Pdt.P/2023/PN Jkt.Utr.

SEMA's position in the statutory structure, SEMA as another arrangement according to article 7 paragraph 2 of Law No. 12 of 2011 is subject to statutory regulations. Lower level rules must not conflict with higher level rules if they are related to the general principle of "Lex Superior Derogat Legi Inferiori", because they conflict with Law no. 23/2006 Elucidation of Article 35 letter a jo Permendagri No. 108/2019 Article 50 paragraph (3), SEMA No. 2/2023 has no binding force.

Point 2 SEMA No. 2/2023 also therefore discusses the principles that SEMA is not binding, so that SEMA can or cannot be used in examining cases regarding the registration of interfaith marriages under civil registration law. The principle of concurrent legal status, the principle of legal certainty, the principle of an active system for the state, and the universal principle are discussed thoroughly. The purpose of the principle of concurrent legal standing is that every Indonesian citizen or citizen can receive civil registration services without exception.

Civil registration services are an equal right for all people. Not only native Indonesian residents (WNI), but also foreign residents living in the territory of the Republic of Indonesia have the same rights under the law.(Rachmadi Usman 2019)

In terms of the principle of legal certainty, this means that the state guarantees that every Indonesian citizen or Indonesian resident has the right and obligation to obtain a civil registration deed.(Usman 2019) In terms of the benefits of the principle of legal certainty for society, the civil registration deed functions as: a) determining a person's legal status, b) is the strongest evidence in the world and in front of a judge, and c) provides certainty about important events.(Salim HS 2003) The Civil Registry Office has implemented this principle, which really helps people to show their identity, which in relation to marriage registration is the resident's identity which determines a person's status.

The active system implemented by the state/government requires the state to record every important event experienced by a person and ensures the right of every Indonesian citizen or Indonesian resident to have a civil registration certificate. This system has provided a sense of justice and legal certainty to applicants for registration of marriages of different religions. This also concerns the essential rights of humans to marry and develop offspring.

According to universal principles, civil registration laws issued by authorized civil registration administrators in one country apply in other countries as well. This means that these laws apply worldwide.(HS 2003) It is important that civil registration laws, including interfaith marriages, apply throughout all countries, not just in one country. This registration is also needed so that the perpetrator gets legal certainty regarding the consequences of a marriage, for example the status of children, status of assets and so on.

The existence of SEMA No. 2/2023 for Instructions for Registration of Marriages between People of Different Religions and Beliefs is very confusing for judges because if the judge follows the

instructions as intended by SEMA No. 2/2023, it would conflict with the principles explained in Law no. 23/2006 in the Elucidation of Article 35 letter a in conjunction with Permendagri No. 108/2019 Article 50 paragraph (3). However, if the judge does not follow the instructions, they will be worried and given sanctions by the Court. The binding power of SEMA No. 2/2023 is not clear here. The ambiguity of this regulation also causes injustice for people seeking justice (*justiabelen*), as citizens who have essential rights in carrying out their marriages.

The descriptions in the analysis above contain ambiguities in the regulations in SEMA No. 23 of 2023 issued by the Supreme Court, making this regulation no longer viable, so that the binding force of SEMA No. 23 of 2023 on the implementation of trial examinations becomes non-existent or can be said to be that SEMA No.23 of 2023 has no binding force in its implementation.

CONCLUSION

The general binding force of the Supreme Court Circular Letter is due to the position, authority and function of the Supreme Court of the Republic of Indonesia as an independent judicial authority institution to administer justice to uphold law and justice.

The binding force of the Supreme Court Circular Letter (SEMA) is generally guidance, instructions, references, warnings and supervision that apply in the judicial environment under the authority of the Supreme Court of the Republic of Indonesia.

Its binding strength is SEMA No. 2/2023 to judges is ambiguous, in the sense that it is followed if it is in accordance with the substance of SEMA No. 2/2023 and/or not followed because it is not in accordance with the substance of SEMA No. 2/2023.

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