

Legal Certainty of Interfaith Marriage After SEMA No. 02 of 2023 Maqasid Sharia Perspective

*Shabrina^a, Hasnul Arifin Melayu^a, Aulil Amri^a, Claire Lajaunie^b, Fatima Zohra Benali^c

^a Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

^b Researcher, Inserm, LPED (Aix-Marseille Université, IRD), Marseille, France

^c University of Algiers, Algeria

*Korespondensi email: 210101108@student.ar-raniry.ac.id

Received:	Revised:	Accepted:	Available Online:	Published:
07/07/2025	15/12/2025	16/12/2025	17/12/2025	17/12/2025

Abstract

Interfaith marriage in Indonesia has long been a controversial legal issue, particularly following the issuance of Supreme Court Circular Letter (SEMA) No. 02 of 2023, which explicitly prohibits the registration of marriages between individuals of different religions. This policy has raised significant concerns regarding legal certainty and its alignment with substantive justice, especially when examined through the lens of Maqasid al-Sharia. This study aims to analyze the extent of legal certainty governing interfaith marriage under Indonesia's positive law framework and to assess its conformity with the objectives of Islamic law. Employing a normative juridical method, this research utilizes statutory, conceptual, and doctrinal approaches, drawing upon legislation, Islamic legal doctrines, and relevant academic literature. The findings reveal that, under positive law, interfaith marriage lacks formal legal validity as it contravenes Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage, a position further reinforced by SEMA No. 02 of 2023 as a binding judicial guideline. From the perspective of Maqasid al-Sharia, the prohibition is consistent with the protection of the five essential objectives of Islamic law (al-daruriyyat al-khams), particularly the preservation of religion (hifz al-din) and lineage (hifz al-nasl). Nevertheless, this study also identifies inconsistencies in the implementation of SEMA No. 02 of 2023 at the practical level, which may undermine legal certainty and result in unequal legal treatment. Therefore, this research recommends the strengthening of legal harmonization through clearer statutory regulation, enhanced inter-institutional coordination, and improved guidance for law enforcement and civil registration authorities to ensure consistent application in accordance with the principles of legal certainty, justice, and social welfare.

Keywords: *Interfaith Marriage; Legal Certainty; Maqasid al-Sharia.*

Abstrak

Perkawinan beda agama di Indonesia merupakan isu hukum yang terus menimbulkan perdebatan, terutama setelah diterbitkannya Surat Edaran Mahkamah Agung (SEMA) No. 02 Tahun 2023 yang secara tegas melarang pencatatan perkawinan antarumat berbeda agama. Kebijakan tersebut memunculkan pertanyaan terkait kepastian hukum serta kesesuaiannya dengan prinsip keadilan substantif, khususnya dalam perspektif Maqasid Syariah. Penelitian ini bertujuan untuk menganalisis kepastian hukum praktik perkawinan beda agama dalam sistem hukum nasional serta mengkaji relevansinya dengan tujuan-tujuan utama syariat Islam. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan, pendekatan konseptual, serta analisis doktrin hukum Islam dan literatur akademik yang relevan. Hasil penelitian menunjukkan bahwa secara hukum positif, perkawinan beda agama tidak memiliki legalitas formal karena bertentangan dengan Pasal 2 ayat (1) Undang-Undang No. 1 Tahun 1974 tentang Perkawinan, dan diperkuat oleh keberlakuan SEMA No. 02 Tahun 2023



Copyrights © Author(s). This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). All writings published in this journal are personal views of the author and do not represent the views of this journal and the author's affiliated institutions.

sebagai pedoman bagi aparat peradilan dan pencatatan sipil. Dari perspektif Maqasid Syariah, larangan tersebut selaras dengan perlindungan terhadap lima tujuan utama syariat (al-dharuriyyat al-khams), khususnya dalam menjaga agama (hifz al-din) dan keturunan (hifz al-nasl). Namun demikian, penelitian ini juga menemukan adanya ketidakkonsistenan dalam penerapan SEMA di tingkat implementatif, yang berpotensi menimbulkan ketidakpastian hukum dan disparitas perlakuan hukum. Oleh karena itu, penelitian ini merekomendasikan perlunya harmonisasi regulasi yang lebih tegas melalui penguatan norma hukum dalam peraturan perundang-undangan, peningkatan koordinasi antar lembaga terkait, serta pembinaan aparat penegak hukum agar penerapan kebijakan perkawinan sejalan dengan prinsip kepastian hukum, keadilan, dan kemanfaatan sosial.

Kata Kunci: Perkawinan Beda Agama; Kepastian Hukum; Maqasid Syariah.

INTRODUCTION

Indonesia is a maritime country that has 17,001 islands and is divided into 38 provinces. So it is undeniable that Indonesia has a diversity of cultures, ethnicities, religions, races, languages and scripts, of course it must have strong tolerance to achieve the motto of the Indonesian state, namely "Bhineka Tunggal Ika", with the diversity that exists, it is not uncommon for there to be marriages between individuals with different backgrounds.¹

According to the Indonesian Conference on Religion and Peace (ICRP), the number of cases of interfaith marriage from 2016 to July 19, 2023 is 1,655 marriages, and until now the topic of interfaith marriage is still a topic of discussion among legal observers and Indonesian society, this is because the regulation of interfaith marriage in the positive law does not have legal certainty in terms of laws and regulations and often in reality there is legal smuggling. The Central Jakarta District Court in 2023 granted the application for interfaith marriage in case decision 155/Pdt.P/2023/PN.Jkt.Pst. Therefore, the Supreme Court issued the Supreme Court Circular Letter (SEMA) Number 02 of 2023 which contained instructions for judges not to grant applications for interfaith marriage registration. The purpose of the issuance of SEMA Number 02 of 2023 is to mediate the disharmonization between the Marriage Law and the Administrative Law.²

In Indonesia, marriage law is regulated in various regulations, starting from laws and regulations to customary law, After Indonesia's independence, the government passed Law Number 01 of 1974 concerning marriage and also issued presidential instruction Number 01 of 1991 concerning the Compilation of Islamic Law where this rule is specifically for Indonesian citizens who are Muslims. The validity of the status of marriage as a bond of birth is in accordance with what is stated in article 2 paragraph 1 of Law Number 01 of 1974 concerning marriage: "Marriage is valid, if it is carried out according to the laws of each religion and belief".³

Whether or not the marriage is valid is determined by the religious law of each prospective bride. Meanwhile, the registration of each marriage is a formal administrative

¹ Evelyn Fenecia, Shenti Agustini, and Winda Fitri, "The Certainty of Sema Law Number 2 of 2023 on the Registration of Inter-Religious Marriages in the Framework of Indonesian Diversity," *PAMALI: Pattimura Magister Law Review* 4, no. 2 (2024): 129, <https://doi.org/10.47268/pamali.v4i2.2192>.

² Naela Rosita, "The Prohibition of Interfaith Marriage Permits (SEMA Number 2 of 2023) The Perspective of Sharia Maqasid and Human Rights," *Thesis*, 2024, 2.

³ Dadan Herdiana and Dian Ekawati, "Legal Certainty of Interfaith Marriage After the Issuance of Supreme Court Circular Letter Number 2 of 2023 in Adjudicating Marriage Registration Application Cases," *Citizenship Journal* 8, no. 1 (2024): 58.

requirement. The absence of explicit and explicit interfaith marriage regulations in the Marriage Law, including its registration, results in legal uncertainty. If a case like this really happens, then the legal status of the marriage becomes unclear. As a result, from public figures to the unemployed, from celebrities to beggars flock to interfaith marriages. For example, Ahmad Nurcholish, an NGO activist at the Center for Religious and Peace Studies (ICRP), has also married at least 638 interfaith couples throughout Indonesia. So in practice, the procedure that is often carried out is to record it at the Civil Registry Office. The registration is carried out only to meet formal administrative requirements as ordered by Article 2 paragraph (2) of the Marriage Law. However, its validity depends on the legal provisions of each religion and the wishes of the bride-to-be. Therefore, it is not uncommon for them to perform marriage ceremonies twice, namely according to law and religion.⁴

Among the Muslim community in Indonesia, the controversy and polemic of religious marriage has always been heated because of several things, namely: 1) since the issuance of Presidential Instruction NO. 1 Year 1991 concerning the Compilation of Islamic Law, where in book 1 KHI article 40 letter (c) it is emphasized that a woman who is not a Muslim is prohibited from marrying a Muslim man, even though in classical literature (books of tafsir and fiqh) tend to allow the marriage of a Muslim man with a woman who is an expert of the book, 2) the central MUI fatwa in 2005 reaffirmed the haram of interfaith marriage, Both marriages between a Muslim woman and a non-Muslim, as well as marriages between a Muslim and a woman who is a scholar of the book.⁵

Marriage of different religions regulatively in Indonesia does not have legal force because Law Number 1 of 1974 concerning Marriage Chapter 1 Article 2 paragraph (1), Compilation of Islamic Law Article 40 paragraph (c) and Article 44, Fatwa MUI, and the Constitutional Court decision Number: 68/PUU-XII/2014 have prohibited interfaith marriage. Therefore, the Office of Religious Affairs (KUA) and Civil Registration will not carry out administrative records of interfaith marriage events. Performing interfaith marriage means not heeding the laws and regulations that apply in this country. The logical consequence is that they will definitely experience various problems in their household, allowing the realization of a stable family. Based on the perspective of Islamic law and positive law, interfaith marriage is seen as more harmful than its benefits.⁶

ما شرع من حكم إلا وفيه مصالح للناس

"It is not a law that is fixed, but in it there are benefits for mankind".

The Islamic Shari'a revealed by Allah has no other purpose except as a blessing for the universe. In the study of ushul fiqh, the purpose of Islamic sharia is called *maslahah*, that the purpose of establishing sharia is to realize benefits and avoid *mafsadah* or

⁴ Roberto Maldonado Abarca, "Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama," *New Communication and Information Systems*, 2015, 290.

⁵ Aulil Amri, "Interfaith Marriage According to Positive Law and Islamic Law," *Media Sharia* 22, no. 1 (2020): 50, <https://doi.org/10.22373/jms.v22i1.6719>.

⁶ Abdul Jalil, "Interfaith Marriage in the Perspective of Islamic Law and Positive Law in Indonesia," *Andragogi: Journal of Education and Religious Technical Training* 6, no. 2 (2018): 49, <https://doi.org/10.36052/andragogi.v6i2.56>.

damage, because interfaith marriage is not in line with the 5 main goals of Islamic sharia, namely, hifdzu al-din, al-nafs, al-'aql, al-nasl and al-mal.⁷

To avoid duplication, the author also reviews previous research related to this research, an article written by Ahmad Fauzi et al, Uin Sultan Syarif Qasim Riau in 2023, with the title "Analysis of Interfaith Marriage in the perspective of Maqasid Syariah" The conclusion of this study is that interfaith marriage or interfaith marriage is not justified in Islam. Because it has many negative sides compared to the positive side if studied with the Maqashid Sharia approach. Because this concept emphasizes the importance of maintaining religion and belief as one of the main goals of Islamic law. Then also an article written by Yossi Wulandari and Yasman Nazar with the title "*Analysis of Interfaith Marriage After the Issuance of SEMA Number 2 of 2023*" with the birth of SEMA Number 2 of 2023, all judges are obliged to comply with the rules and if they do not comply, judges can be sanctioned by the Supreme Court Supervisory Board with various sanctions ranging from light sanctions to severe sanctions then in from a utilitarian perspective, SEMA number 2 of 2023 rules open the degradation of the rights of citizens who will hold a marriage.

Therefore, in interfaith marriages, it is necessary to consider the potential threats to the couple's religious beliefs and practices, as well as how to maintain domestic harmony. The difference between the previous research and this study is that this study also examines more deeply the legal certainty of interfaith marriage in Indonesia after the issuance of SEMA NO 02 of 2023. The main problems that must be answered in this study are how is the legal certainty of the practice of interfaith marriage in Indonesia after the issuance of SEMA No. 02 of 2023? and has SEMA No. 02 of 2023 created effective legal harmonization in responding to interfaith marriage practices?

RESEARCH METHODS

This study uses normative juridical research methods with a statutory *approach* and a conceptual *approach*. The normative juridical method is used to examine the applicable legal norms as well as legal principles relevant to the object of research. This approach is focused on positive legal analysis and legal doctrine in order to understand the normative construction and rationality of legal regulation that is the focus of the study, without focusing on the collection of empirical data in the field.

The data sources in this study consist of primary legal materials and secondary legal materials. Primary legal materials include the Supreme Court Circular Letter (SEMA) Number 02 of 2023, the Compilation of Islamic Law, as well as Islamic law sources in the form of verses of the Qur'an and hadith relevant to research problems. The secondary legal materials include legal textbooks, scientific journal articles, theses, theses, and dissertations that have a direct relationship with the research topic, which serves to strengthen the analysis and provide theoretical and comparative perspectives.

The data collection technique is carried out through library *research*, by searching, identifying, and studying various relevant legal materials systematically. The data that has been collected is then analyzed using a qualitative analysis method by interpreting legal norms, comparing the provisions of laws and regulations, and examining their conformity with the principles of Islamic law. The results of the analysis are presented in a descriptive-analytical manner to produce conclusions that are logical, systematic, and in accordance with the rules of scientific writing.

⁷ Ahmad Fauzi, Kemas Muhammad Gemilang, and Darmawan Tia Indrajaya, "Analysis of Interfaith Marriage in the Perspective of Maqashid Sharia," *Madania: Journal of Islamic Sciences* 13, no. 1 (2023): 76, <https://doi.org/10.24014/jiik.v13i1.21663>.

RESULTS AND DISCUSSION

Conceptual Framework of Interfaith Marriage

In general, interfaith marriage is defined as a marriage bond carried out by a man and a woman who believe in differences, but on the basis of the love that exists between the two couples, so they agree to establish a household ark together. The implementation of marriage like this often occurs, especially in Indonesia, especially for some public figures who we see a lot in various media. If viewed from the perspective of the marriage law, there is no element of an article that contains the permissibility of interfaith marriage, it can be seen in article 2 of Law Number 1 of 1974 concerning marriage it is stated that a marriage can be said to be a valid marriage, if the marriage is carried out according to the laws of each religion and its beliefs. This meaning clearly gives direction only to each belief. Therefore, as a result of the disagreement with these rules, many have taken other solutions in order to carry out marriage with couples of different religions.⁸

Interfaith marriage is regulated in Surah Al-Baqaroh:221 which explains the prohibition on marrying polytheists until they are believers.

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُوْمِنَ وَلَا مَٰمَةً مُّؤْمِنَةً خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ
يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَا أَعْجَبَكُمْ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ
بِآيَاتِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ ﴿٢٢١﴾

"Do not marry polytheistic women until they believe! Indeed, a faithful female servant is better than a polytheistic woman, even though she attracts your heart. Nor should you marry polytheistic men (to believing women) until they believe. Indeed, a faithful male servant is better than a polytheistic man even if he attracts your heart. They invite to hell, while Allah invites them to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they may learn."

In addition, in Surah Al-Mumtahanah verse 10 there is a prohibition on returning Muslim women who migrate from Makkah to Medina to their husbands in Makkah and continuing domestic relations with infidel women.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ إِنَّ اللَّهَ يَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا
تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَأَتَوْهُنَّ مَا أَنْفَقُوا وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا
أَتَيْتُمُوهُنَّ أَجُورَهُنَّ وَلَا تُمْسِكُوا بِعَصَمِ الْكُوفَرِ وَاسْأَلُوا مَا أَنْفَقْتُمْ وَلْيَسْأَلُوا مَا أَنْفَقُوا ۚ ذَٰلِكُمْ حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ
وَاللَّهُ عَلِيمٌ حَكِيمٌ ﴿١٠﴾

"O you who have believed, when believing women come to you, test them. Allah knows better about their faith. If you had known them that they were believing women, do not return them to the disbelievers. They are not lawful for the disbelievers and the disbelievers are not lawful for them. Give them (husbands) the dowry they have given. There is no sin for you to marry them if you pay them a dowry. Do not hold on to the rope (marriage) with disbelieving women. Ask for back (from the disbelievers) the dowry that you have given (to the wife who returns to the disbeliever). Let them (the disbelievers) ask for back the dowry they have paid (to his believing ex-wife). This is the law of God which He has established among you. Allah is All-Knowing, All-Wise"

⁸ Muhammad Ilham, "Interfaith Marriage in the Study of Islamic Law and the National Legal Order," *TAQNIN: Journal of Sharia and Law* 2, no. 1 (2020): 49, <https://doi.org/10.30821/taqnin.v2i1.7513>.

Although the Qur'an expressly prohibits interfaith marriage in theory, there is a theory that raises the possibility of marriage in one group, namely between Muslims and women of the book, the permissibility of marriage with a bookworm contained in surah Al-Maidah verse 5 which explains that there is a legalization of marriage with a woman of the book for Muslims.⁹

However, in Q.S. Al-Maidah verse 5, it is explained that the Scholars of the Book receive special attention in the laws established by the Qur'an. Where according to the four madhhabs of the Hanafi madhhab, Maliki, Shafi'i and hambali allow a Muslim man to marry a woman of the book. This ability is only intended for men, while good women are not allowed for Muslim women to marry non-Muslims. It is permissible for men to marry scribes on the basis that a man is a strong person and as a leader of the household. Meanwhile, the reason it is not allowed for women is because the general basis is that women are weak people.

According to Imam Shafi'i, this verse was shown to a group of Arab polytheists who were idolaters who then revealed the verse as a form of rukhshah against the halalness of marrying a free woman from the Ahl Al-Kitab just as it is permissible to eat the sacrifice of the Ahl Al-Kitab in Surah Al-Maidah:5 According to Qatadah, Said bin Jabir means those who worship idols While other scholars are of the opinion that The word polytheism includes all polytheistic women, namely idolaters, Jews and Christians or Christians because there is no evidence that specifies this verse. It has been agreed by all scholars that Muslim women should not marry or be married to polytheistic men. Based on Surah Al-Baqarah:7 defines that the disbelievers reject the religion of Allah, the oneness of Allah, the prophethood and the teachings brought by His Messenger, this happens because Allah has closed their eyes and hearts and their ears to acknowledge the religion of Allah. Al-Qurthubi in his book of tafsir allows marrying a woman of the book only who is dzimmi. Because a kharbi book expert will have a mudharat for his family and children and grandchildren. Al-Baghawi in his book of tafsir explains that it is permissible to marry a woman, the scholar of the book is specifically for the law of mubah, who is a member of the book who is a pure descendant of the Children of Israel, while those who do not belong to the Children of Israel are unlawful to marry. Ad-Damasqi in his commentary, the ability to marry a woman of the book was only in ancient times because there were still very few Muslim women. Another reason is because of the clear difference between the disbelievers and the believers. And also this haram is determined by the scholars of madhhab hambali because marrying a woman who is an expert in the book contains harm.¹⁰

The wisdom of prohibiting interfaith marriage is because between Islam and non-Muslims there is a much different philosophy of life. Islam fully believes in Allah Ta'ala, the Prophets, the holy book, the Angels and the Hereafter, while non-Muslims, in general, do not believe in any of them. The basis of aqidah that underlies the prohibition of non-Muslim men from marrying mauslimat women is because non-Muslim men do not

⁹ Ahmadi Hasanuddin Dardiri, Marzha Tweedo, and Muhammad Irham Roihan, "Interfaith Marriage Reviewed from the Perspective of Islam and Human Rights," *Khazanah* 6, no. 1 (2013): 101, <https://doi.org/10.20885/khazanah.vol6.iss1.art8>.

¹⁰ M. Husnul Khulukil Asyrof, Anwar Sa'dullah, and Abdul Wafi, "The Interpretation of Surah Al-Baqarah Verse 221 and Al-Maidah Verse 5 concerning Interfaith Marriage from the Perspective of Four Madzhabs," *Scientific Journal of Islamic Basic Education* 5, no. 2 (2023): 102, <https://jim.unisma.ac.id/index.php/jh/article/view/20998%0Ahttps://jim.unisma.ac.id/index.php/jh/article/viewFile/20998/15624>.

recognize the apostleship of the Prophet Muhammad s.a.w., and Muslim women recognize the prophethood of the Prophet Moses and Prophet Isa. If the husband does not recognize the religious teachings that his wife adheres to, it is feared that there will be religious coercion on his wife; overt or covert.

Hamka, M. Quraish Shihab, Ibn Katsir and Sayyid Quthb are also among the scholars who prohibit Ahl al-Kitab men from marrying Muslim women, based on surah al-Baqarah (2): 221, surah al-Mumtahanah (60): 10 and surah al-Maidah (5): 5, while what is permissible in the last mentioned surah, for them it is conditioned or required for men who are strong in faith. Based on this explanation, it can be seen that a number of scholars, including Hamka M. Quraish Shihab, Ibn Kathir and Sayyid Quthb, forbade non-Muslim men to marry Muslim women, because of different beliefs and philosophies of life. On the other hand, according to Nurcholis Madjid et al. the verse in surah al-Maidah (5): 5, this is the verse of Madaniyah that came down after the verse of Makkiyah, which forbids the marriage of Muslims with polytheists until they believe. In this verse, Allah Ta'ala begins to open the opportunity for Muslim men to marry Jewish and Christian women. In fact, he added that this verse is a "revolution" verse for the permissibility of Muslim women to marry Ahl al-Kitab men, which is better known as interfaith marriage.¹¹

Synchronization of Sema No. 2 of 2023 and Maqashid Syariah

The law and legality of interfaith marriage has always been a complicated polemic among the public, especially in countries that have a diverse population with different religions such as Indonesia. Regarding interfaith marriage, Islam divides into three categories, namely:

- a) Marriage between Muslim women and non-Muslim men, both Ahl al-Kitab and non-Ahl al-Kitab.
- b) Marriage between a Muslim man and a woman of Ahl al-Kitab.
- c) Marriage between a Muslim man and a polytheistic woman.

The three types of interfaith marriage above are generally agreed upon by scholars as forbidden marriages. This refers to Surah Al-Baqarah verse 221 and al-Mumtahanah verse 10. Marriage between a Muslim woman and a non-Muslim man, whether the man is from the Ahl al-Kitab or polytheistic group, is absolutely forbidden because of the fear of being influenced or under the control of her husband. This is because what usually happens as the leader of the household is the husband, so if the husband does not acknowledge his wife's religious teachings, it is feared that there will be religious coercion.¹²

According to the General Explanation "Article 2 letter c of Law No. 14 of 1985, the Supreme Court has the authority to make new regulations to fill the legal gaps or deficiencies necessary to ensure the smooth running of the legal system." Article 79 of the same law states that the Supreme Court's regulations address all areas to address legal gaps in procedural law while ensuring that the rights and responsibilities of citizens are not violated or interfered with, and also regulating evidentiary standards. "Regelende funciona", or regulatory function, is a term used in the literature to describe the powers and duties of the Supreme Court in this way.

¹¹ M.Ag. Dr. H. Syamruddin Nasution, *Interfaith Marriage in the Qur'an* (Yayasan Pusaka Riau, 2011), 299.

¹² Masile Journal and Islamic Studies, "Masile Journal of Islamic Studies Vol.4 N0.1 2023" 4 (2023): 4.

In this scope, the Supreme Court has emerged a legal device that serves as a guideline and guide for judges, courts, and parties involved in the judicial process. One of the products issued by the Supreme Court is the Supreme Court Circular Letter (SEMA). According to Article 7 of Law No. 12 of 2011 it reads as follows:

Article 7

1. The type and hierarchy of Laws and Regulations consist of
 - a. Constitution of the Republic of Indonesia in 1945;
 - b. Decree of the People's Consultative Assembly;
 - c. Government Laws/Regulations in lieu of Laws;
 - d. Government Regulations;
 - e. Presidential Regulation;
 - f. Provincial Regional Regulations; and
 - g. Regency/City Regional Regulations.
2. The legal force of the Laws and Regulations is in accordance with the hierarchy as intended in paragraph (1).

The formulation of laws and regulations needs to refer to guiding principles, such as the concept of practicality in application, which helps the process of making good laws and regulations. This concept states that laws and regulations must be formed by taking into account the effectiveness of the law in society, taking into account juridical, sociological, and philosophical perspectives.¹³

It should be understood that the legal problems faced in the past and present are certainly different. The difference in question can be in the form of legal content material or legal context. This difference is based on changes in social factors and also the development of the times which are increasingly complex from time to time. But certainly, when discussing interfaith marriage from the perspective of maqashid al-shariah, it will certainly produce a relevant common ground. Where this maqashid al-sharia is the study of the goal to be achieved is the essential benefit.

Maqashid al-syariah is the initial gate that must be passed so that Islam as a religion is able to implement its expectations, namely a religion whose jars are always relevant to the times. Imam as-Syathibi said: "the laws are shari'a to realize the benefit of the servants" If we examine the statement of Imam as-Syathibi above, it can be said that the content of maqashid al-sharia is for the benefit of mankind, either by attracting or benefiting (*jalb al-manafi*) or preventing damage (*dar'u al-mafasid*). Broadly speaking, maqashid al-sharia in the view of Imam as-Syathibi is divided into five points. The five main elements, according to asy-Syathibi are religion (*al-din*), soul (*al-nafs*), intellect (*al-aql*), heredity (*an-nasl*), and property (*al-mal*). In order to realize and maintain the five main elements, Imam as-Syathibi divided into three levels, namely: maqashid ad-dharuriyyah, al-hajiyah, and tahsiniyah.

The purpose of SEMA is to provide stability and consistency in the application of the law when handling marriage registration applications from people of different religions and beliefs. It is expressly stated in the SEMA that the provisions of SEMA must be followed by the judge. It is hoped that if SEMA has been issued, it will become a technical guide for judges, and judges will be guided by the SEMA. However, after the issuance of SEMA, there are still judges who are not in accordance with SEMA, namely Determination Number 423/Pdt.P/2023/PN Jkt.Utr. granting the application for

¹³ Ananda Rizki Hidayatullah, "Analysis of the Legal Certainty of Interfaith Marriage After the Issuance of Sema No. 2 Year 2023 In Islamic Perspective," no. 2 (2023): 7–9.

registration of marriages of different faiths. In the determination of the applicant to be a Christian and a Catholic, the application was granted by the judge to be registered at the Civil Registry Office as an interfaith marriage.

Although SEMA has been determined, the fact is that the judge still grants the application to register interfaith marriages. In fact, the purpose of SEMA is certainty and uniformity. Islam as a religion is able to keep up with the times and is able to provide solutions to any problems. One of the important and fundamental concepts discussed in Islam is the theory of maqasid sharia, that Islam exists to create and maintain the welfare of mankind. The concept of maqasid sharia is to avoid or reject evil and produce good. Maqasid sharia can be defined as the main goal. Maqasid sharia is the foundation of eternal law and cannot be separated from the main source of Islamic law. Maqasid sharia can include the universal goal of maintaining the benefit and rejecting misery. In general, scholars describe the theory that Maqasid sharia must focus and rely on five main interests, namely the benefit of religion, the benefit of the soul, the benefit of the intellect, the benefit of posterity and the benefit of property. According to al-Ghazali, it is also explained that the Maqasid sharia is reflected in five main aspects. Every law or rule that contains these five principles, is called *maslahat*. Every legal decision that ignores or denies the five bases above, means *mafsadah*, and rejecting or avoiding it is a blessing, so it can be concluded that interfaith marriage.

Legal Certainty of Interfaith Marriage in the Perspective of SEMA Number 02 of 2023

Before SEMA Number 02 of 2023 was issued, there was a legal vacuum so that there was no legal certainty for interfaith marriage in positive law. Interfaith marriage has increased rapidly in Indonesia. There are several factors that cause interfaith marriages, including.

- a) daily life in society;
- b) lack of religious education;
- c) parental background where there is less economic factor;
- d) freedom in choosing a partner;
- e) The existence of globalization where there is no limit to the socio-culture that exists in society.

The granting of the registration of interfaith marriages in several district courts received attention and opposition from some circles. The leadership of the Supreme Court (MA) was visited by a number of politicians to discuss the decision. As a result, the Supreme Court finally issued SEMA Circular Letter No. 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Marriage Registration Applications Between Religions and Beliefs. However, the issuance of SEMA 02 2023 also drew opposition from human rights activists, the Executive Director of Amnesty International Indonesia, Usman Hamid, emphasized various international norms such as the Universal Declaration of Human Rights (DUHAM). Various international agreements on civil, political, economic, social, cultural, and conventions that eliminate discrimination against women clearly provide the right and freedom for both men and women to marry. As well as forming a family without being limited by religious, ethnic, and other social status barriers.¹⁴

The presence of SEMA Number 02 of 2023 results in the District Court being prohibited and obliged not to accept applications for registration of interfaith marriages.

¹⁴<https://www.hukumonline.com/berita/a/pro-kontra-sema-larangan-pencatatan-perkawinan-beda-agama-lt64bdede71a35e/> Retrieved May 8, 2025, 22:41 WIB.

This results in the bride-to-be unable to obtain the issuance of a marriage certificate of different religions. So that the legality of the SEMA award is as follows. Interfaith marriages that have been carried out before the issuance of SEMA Number 2 of 2023 but have not been requested for ratification and registration to the District Court cannot be considered a valid marriage. However, interfaith marriages that have been ratified by the Court and have obtained a marriage certificate before the issuance of SEMA No. 2 of 2023 will still be considered valid.¹⁵

In order to provide certainty and unity in the application of the law in adjudicating applications for registration of marriages between people of different religions and beliefs, judges must be guided by the following provisions:

- 1) A valid marriage is a marriage that is carried out according to the law of each religion and its beliefs, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage.
- 2) The court did not grant the application to register marriages between people of different religions and beliefs.¹⁶

Based on Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, SEMA is recognized for its existence and has binding legal force even though SEMA is not a legal product in the hierarchy of regulations as mentioned in Article 7 paragraph (1). Yahya Harapan revealed that the content and instructions of SEMA must be followed and enforced by judges and courts. The Supervisory Board of the Supreme Court has the right to give warnings and reprimands, in accordance with the provisions of the Supreme Court of the Republic of Indonesia and/or the Judicial Commission of the Republic of Indonesia. So that although the binding power of SEMA is limited, the implementation of SEMA can indirectly affect the community. As a result, interfaith couples who do not register their marriage cannot obtain marriage certificates and rights related to marriage, such as child custody rights, inheritance rights, and so on. Not registering the marriage can bring legal problems during the marriage, including:

- 1) The woman was not recognized as a legal wife;
- 2) A wife has no right to receive alimony or inheritance from her deceased husband;
- 3) A wife does not have the right to the joint property obtained during the marriage in the event of divorce, because according to the law, the marriage is considered non-existent;
- 4) Children born from the marriage are considered not legit, so the child only has a legal relationship with his mother and his mother's family.

The facts that occurred in the field after the issuance of SEMA Number 2 of 2023 are still judges who gave a verdict to "grant" the application to register their marriages with different religious backgrounds. One of them is the North Jakarta District Court Decision Number 423/Pdt.P/2023/PN Jkt.Utr by single judge Yuli Effendi on August 8, 2023 where the determination date was issued a few weeks after SEMA. 20 Given this reality and Indonesia's diversity that is difficult to control, SEMA alone is not enough to ensure legal certainty and uniformity in law enforcement regarding the registration of

¹⁵ Putu Eva et al., "The Legality Of Recording Interfaith Marriages After Semester 2/2023" 13 (2024): 22–24.

¹⁶ "Tembusan : 1 . Wakil Ketua Mahkamah Agung RI Bidang Yudisial ; 2 . Wakil Ketua Mahkamah Agung RI Bidang Non Yudisial ; 3 . Para Ketua Kamar Mahkamah Agung RI ; 4 . Para Pejabat Eselon I Di Lingkungan Mahkamah Agung RI .," 2023.

marriages between individuals of different religions, but rather the need for legal harmonization related to the registration of interfaith marriages in a number of regulations related to the registration of interfaith marriages.¹⁷

So far, the courts and population registration have not been uniform in responding to interfaith marriages. It is as if there is no legal certainty. SEMA Number 2 of 2023 is the right thing according to the guidelines of the judges. This is also in line with the decision that has twice rejected the lawsuit against Article 2 of the 1974 Constitution. Decision Number 68/PUU-XII/2014 and Decision Number 24/PUU-XX/2022. Both rulings rejected the legalization of interfaith marriage. Of course, pro-interfaith marriage activists will not stop looking for loopholes. To avoid smuggling of laws and socio-religious values, it would be good if the prohibition of interfaith marriage was included in an explicit and straightforward manner in the revision of the UUP. One of the Constitutional Court Judges, Suhartoyo stated the importance of revising the UUP to solve problems comprehensively by accommodating the validity of religious law and the consequences of its recording as a comprehensive solution.¹⁸

CONCLUSION

Based on the results of the research, it can be concluded that interfaith marriage in Indonesia's positive legal system does not have a legal basis. This provision is consistently reflected in Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law, and is strengthened through the Supreme Court Circular Letter Number 02 of 2023 which provides normative guidelines for judges to reject applications for registration of interfaith marriages. In the perspective of Maqasid Sharia, the prohibition is a manifestation of efforts to protect the basic objectives of the Shari'ah, especially the maintenance of religion and heredity, which hierarchically occupy a fundamental position in the structure of benefits.

However, judicial practice shows that there are irregularities in the application of these norms, marked by the fact that applications for the registration of interfaith marriages are still granted by some judges. This condition creates an insynchronization between legal norms and their implementation, thus potentially weakening the principle of legal certainty and uniformity in the application of law. In addition, the non-registration of interfaith marriages has significant juridical implications for the legal status of spouses and children, especially in terms of the protection of civil rights.

This study recommends the need to affirm legal norms related to the prohibition of interfaith marriage through the strengthening of regulations that are imperative and explicitly binding. The Supreme Court needs to improve the supervisory and coaching functions of judges so that the implementation of SEMA No. 02 of 2023 is carried out consistently. In addition, harmonization between laws and regulations and judicial policies needs to be strengthened to ensure legal certainty, uniformity of decisions, and fair protection of civil rights.

¹⁷ Fenecia, Agustini, and Fitri, "Legal Certainty of Sema Number 2 of 2023 on the Registration of Inter-Religious Marriages in the Framework of Indonesian Diversity," 137.

¹⁸ Inmas88, "Towards the Harmonization of Interfaith Marriage Regulations," Regional Office of the Ministry of Religion Prov.Kep.Bangka Belitung, n.d.

ACKNOWLEDGMENTS

The authors would like to express their sincere gratitude to all parties who contributed to the completion of this research. Special appreciation is extended to academic advisors for their valuable guidance, critical feedback, and constructive suggestions throughout the research process. The authors also acknowledge the institutional support provided by Universitas Islam Negeri Ar-Raniry Banda Aceh, which facilitated the conduct of this study. Furthermore, the authors thank colleagues and reviewers who offered insights and assistance during the research and manuscript preparation stages. Any remaining errors are solely the responsibility of the authors.

FUNDING INFORMATION

None.

CONFLICTING INTEREST STATEMENT

The authors state that there is no conflict of interest in the publication of this article.

BIBLIOGRAPHY

- Abarca, Roberto Maldonado. "Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama." *Nuevos Sistemas de Comunicación e Información*, 2015, 2013–15.
- Amri, Aulil. "Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam." *Media Syari'ah* 22, no. 1 (2020): 48. <https://doi.org/10.22373/jms.v22i1.6719>.
- Asyrof, M. Husnul Khulukil, Anwar Sa'dullah, and Abdul Wafi. "Penafsiran Surat Al-Baqarah Ayat 221 Dan Al-Maidah Ayat 5 Tentang Pernikahan Beda Agama Perspektif Empat Madzhab." *Jurnal Ilmiah Pendidikan Dasar Islam* 5, no. 2 (2023): 40–49. <https://jim.unisma.ac.id/index.php/jh/article/viewFile/20998/15624>.
- Benuf, Kornelius, and Muhammad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Jurnal Gema Keadilan* 7, no. 2 (2020): 20–33. <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.
- Dardiri, Ahmadi Hasanuddin, Marzha Tweedo, and Muhammad Irham Roihan. "Pernikahan Beda Agama Ditinjau Dari Perspektif Islam Dan Ham." *Khazanah* 6, no. 1 (2013): 99–117. <https://doi.org/10.20885/khazanah.vol6.iss1.art8>.
- Dr. H. Syamruddin Nasution, M.Ag. *Pernikahan Beda Agam Dalam Al-Qur'an*. Yayasan Pusaka Riau, 2011.
- Eva, Putu, Ditayani Antari, I Kadek, and Budiadinata Satriatama Adnyana. "Legalitas Pencatatan Perkawinan Beda Agama Pasca Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 The Legality Of Recording Interfaith Marriages After Semester 2/2023" 13 (2024): 13–28.
- Fauzi, Ahmad, Kemas Muhammad Gemilang, and Darmawan Tia Indrajaya. "Analisis Nikah Beda Agama Dalam Perspektif Maqashid Syari'ah." *Madania: Jurnal Ilmu-Ilmu Keislaman* 13, no. 1 (2023): 74. <https://doi.org/10.24014/jiik.v13i1.21663>.
- Fenecia, Evelyn, 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. <https://doi.org/10.47268/pamali.v4i2.2192>.
- Herdiana, Dadan, and Dian Ekawati. "Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili

- Perkara Permohonan Pencatatan Perkawinan.” *Jurnal Kewarganegaraan* 8, no. 1 (2024): 57–69.
- Hidayatullah, Ananda Rizki. “Analisis Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Sema No . 2 Tahun 2023 Dalam Perspektif Islam,” no. 2 (2023).
- Ilham, Muhammad. “Nikah Beda Agama Dalam Kajian Hukum Islam Dan Tataan Hukum Nasional.” *TAQNIN: Jurnal Syariah Dan Hukum* 2, no. 1 (2020): 43–58. <https://doi.org/10.30821/taqnin.v2i1.7513>.
- Inmas88. “Menuju Harmonisasi Regulasi Kawin Beda Agama.” Kanwil Kemenag Prov.Kep.Bangka Belitung, n.d.
- Jalil, Abdul. “Pernikahan Beda Agama Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia.” *Andragogi: Jurnal Diklat Teknis Pendidikan Dan Keagamaan* 6, no. 2 (2018): 46–69. <https://doi.org/10.36052/andragogi.v6i2.56>.
- Jurnal, Masile, and Studi Keislaman. “Masile Jurnal Studi Keislaman Vol.4 N0.1 2023” 4 (2023): 1–15.
- Rosita, Naela. “Larangan Izin Perkawinan Beda Agama (Sema Nomor 2 Tahun 2023) Perspektif Maqasid Syariah Dan Hak Asasi Manusia.” *Skripsi*, 2024.
- “Tembusan : 1 . Wakil Ketua Mahkamah Agung RI Bidang Yudisial ; 2 . Wakil Ketua Mahkamah Agung RI Bidang Non Yudisial ; 3 . Para Ketua Kamar Mahkamah Agung RI ; 4 . Para Pejabat Eselon I Di Lingkungan Mahkamah Agung RI .,” 2023.