



## Political-Legal Strategies in Regulating Interfaith Marriage: An Analysis of Supreme Court Circular Letter in Indonesia

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### ABSTRACT

This article examines the political and legal dimensions underlying the issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023, which addresses the issue of interfaith marriages in Indonesia. Through a qualitative approach employing doctrinal and socio-legal analysis, this study explores this policy's legislative intent, judicial implications, and broader societal impacts. The findings reveal that SEMA No. 2 of 2023 represents a strategic political-legal maneuver by the Indonesian judiciary to navigate the tension between religious norms, constitutional rights, and societal pluralism. While the circular aims to harmonize Islamic family law with Indonesia's pluralistic legal framework, it has also sparked debates regarding its alignment with fundamental human rights principles and practical implications for legal certainty. This study contributes to the discourse on interfaith marriage regulation by offering a critical perspective on how judicial policies reflect and shape the broader political-legal landscape. The article concludes that SEMA No. 2 of 2023 is pivotal in balancing legal pluralism and social harmony and protecting religious and individual rights in Indonesia's dynamic legal system.

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## 1. INTRODUCTION

Interfaith marriage has become a controversial issue involving legal, religious, and social dimensions in the Muslim world, including Indonesia (Salam et al., 2024). In many Muslim societies, interfaith marriage is often considered contrary to the principles of sharia, which explicitly regulates marital relations between religious communities. On the other hand, globalization and cross-cultural interactions have increased cases of interfaith marriage, posing new challenges for the Islamic family law system in responding to social needs without neglecting religious principles (Faizullina et al., 2024). This phenomenon has also been debated in the context of legal politics in Muslim countries, including Indonesia, which has a pluralistic legal framework (Aditya et al., 2023).

Interfaith marriage in Indonesia is a complex issue, especially for the Muslim community, as it intersects with legal, religious, and cultural norms. Legally, Article 2 Paragraph 1 of Law Number 1 Year 1974 on Marriage states that a marriage is considered valid if it is conducted according to the religious laws of each party (Salahuddin et al., 2023). This is a challenge, given that marriages of different religions are not recognized as valid in Islam, as confirmed by various fatwas of scholars and references to Qur'anic verses such as QS. Al-Baqarah: 221. However, couples use multiple means to marry, such as temporarily converting, marrying abroad, or applying to the courts for permission (Peshkova, 2024). Ambiguous administrative policies contribute to this complexity, as civil law provides a loophole for some couples to register an interfaith marriage through a district court judgment.

Socio-cultural dynamics also play a significant role in this issue. Interfaith couples often face rejection from their families or stigmatization by society as a violation of religious and cultural norms. In addition, children from interfaith marriages often face legal issues related to religious status, citizenship, and inheritance rights. This situation suggests the need for a comprehensive approach, ranging from increasing legal literacy in the community and interfaith dialogue to build mutual understanding to possible revisions to related legal policies. This approach is expected to provide solutions that are not only legally fair but also respect the diversity and religious values that exist in Indonesia (Huda & Muhsin, 2022; Maula & Muhsin, 2024; Rifayanti et al., 2024; Maloko et al., 2024).

Previous research on interfaith marriage has produced various typologies of arguments (Tezcan, 2024). Most scholars view the phenomenon from a normative sharia perspective that rejects the practice, citing the incompatibility of religious values. Others offer a contextual approach, emphasizing the need to adapt Islamic law to the needs of modern society (Setiyanto et al., 2024). On the other hand, some political law studies highlight the institutional dilemma faced by the state in regulating interfaith marriages amid legal pluralism. This article fills the gap by analyzing SEMA Number 2 of the Year 2023 as a legal instrument that reflects an attempt to compromise between Sharia principles and the need for positive law in Indonesia.

The distinction between the article above and the author's article is that what the author discusses leads to the prohibition of interfaith marriage in the Supreme Court circular letter number 2 of 2023, then the appreciation of Muslim scholars in the field of Islamic law and the search from the aspects of Islamic law and Positive law in Indonesia that have the same understanding in the author's view, thus forming the findings of the new order era state fiqh

mazhab by examining positive law in Indonesia and post-reform fiqh mazhab as evidenced by the Supreme Court circular letter number 2 of 2023 (Jamo et al., 2024). This article also uses political analysis of Islamic family law by referring to universal and operational aspects, including equality, justice, deliberation, freedom, public responsibility, and existence theory. The rules contained in Marriage Law Number 1 year 1974 and Compilation of Islamic Law (KHI), which are strengthened in SEMA 2/2023, are the politics of Indonesian Islamic family law, which is the direction of legal development based on national law to achieve the goals and ideals of the Indonesian state (Setiawan et al., 2024; Güzelderen et al., 2023; Sanjaya, 2023). This article aims to analyze the political dynamics of Islamic family law in the context of interfaith marriage based on SEMA Number 2 Year 2023. The discussion begins with a discussion of the normative framework and related legal politics, followed by a critical analysis of the content of the SEMA and its impact on legal practice in the courts. The article concludes with a reflection on SEMA's normative and practical implications in harmonizing Islamic law and positive law in Indonesia.

## **2. METHODS**

This research uses a library approach, mainly analyzing legal documents as primary sources (Creswell, 1999). The main source analyzed is the Supreme Court Circular Letter (SEMA) Number 2, the Year 2023, which is the material object of the research. In addition, other relevant documents were also analyzed, such as Marriage Law Number 1 Year 1974, and its amendment in Law Number 16 the Year 2019, Constitutional Court decisions related to interfaith marriage, as well as rules and technical guidelines of the Supreme Court. To understand the political and legal context behind the SEMA, the research also examined documents that reflected the involvement of various actors in its drafting, such as official Supreme Court news, views of religious organizations, academic input, and media reports on public debates. Combining these sources allows the research to comprehensively analyze the dynamics behind drafting the SEMA. This research uses legal pluralism theory and legal hegemony theory to explore the legal politics behind the SEMA. Legal pluralism theory is used to understand the interaction between the norms of Islamic law, state law, and customary law in forming this policy. Meanwhile, legal hegemony theory, which emphasizes how certain powers and interests dominate the legislative process, helps identify the actors who support or oppose the issuance of SEMA No. 2 Year 2023. With this approach, the research explored the political and ideological motives behind the policy, including the extent to which Sharia interests, social needs, and legal and political dynamics influenced the final policy outcome. This provides deep insight into the relationship between legal norms and socio-political forces in Indonesia.

## **3. RESULTS AND DISCUSSION**

### **Interfaith Marriage in the Perspective of Islamic Law**

Some scholars allow interfaith marriage between a Muslim man and a woman of the Book (Jew or Christian) under certain conditions. This opinion is held by most Hanafi, Maliki, and Shafi'i scholars (Rusyd, 1990), who base their argument on QS. Al-Maidah: 5 'It is permissible for you to marry women who guard their honor against among the People of the Book' Al-Zuhaili (1989). However, this permissibility is conditional, such as the woman not being hostile to Islam and the marriage not causing fitnah or damaging the Muslim religion and society (Al-Jaziri, 2003; Mas'ud, 2022; Jamshed et al., 2023).

Some scholars, especially early literalists, allowed interfaith marriage without requiring specific criteria for women of the People of the Book. They argued that Al-Maidah: 5 provides absolute permissibility without further restrictions. However, this view is relatively rarely held and is not the majority view as it is considered risky to preserve Islamic identity in the household (Nasir, 2022). In contrast, most contemporary scholars and some classical scholars, such as some Hanbali scholars, prohibit interfaith marriage. They refer to the principle of *sadd al-dzāra'i* (preventing harm), arguing that such marriages can weaken children's religious identity and potentially lead to family conflict. In addition, they highlight verses such as QS. Al-Baqarah: 221 prohibits marriage with polytheists and interprets the People of the Book as a group that is not entirely free from polytheism (Sonafist & Yuningsih, 2023).

Scholars who allow marriage to women of the Book argue that the People of the Book have a special religious status in Islam. They cite Ibn Qayyim's view that the People of the Book do not fall under the category of polytheists because they have holy books. In addition, this permissibility is considered a form of Islamic tolerance towards other religions (Farid et al., 2022). The dissenting scholars emphasize that the context of the verse Al-Maidah: 5 is specific to Muslim societies with dominant power in politics and culture. In the modern context, where Muslims are often a minority or in a weaker position, this permissibility is considered irrelevant. They also refer to other verses that warn about the dangers of associating too closely with non-Muslims (Rajafi et al., 2024).

This difference of opinion is also influenced by the interpretative methodology used by the scholars. Scholars who allow tend to use a textual (literal) approach to Qur'anic verses. In contrast, those who prohibit often use a contextual approach and *maqashid sharia* (the purpose of Islamic law) to assess the relevance of such permissibility in the modern era (Jauhari & Ghoni, 2020). In addition to legal arguments, this difference of opinion is also influenced by social and political conditions. In the classical era, where Muslims held the dominant power, the permissibility of marrying a People of the Book may not have posed a threat to the Muslim community. However, in the modern context, it is often criticized for weakening Muslim identity and causing cultural assimilation (Asy'ari & Fisa, 2022).

The debate between scholars is intense, especially when dealing with cases of interfaith marriage in society. Conservative scholars argue that this permissibility will only open the door to corruption. In contrast, progressive scholars say such marriages can strengthen interreligious dialogue based on mutual respect (Giammetti, 2024). In the view of the majority of scholars, the opinion prohibiting interfaith marriage has a stronger position because it is based on the principle of prudence and protection of religious values. This approach is also more in line with the *maqashid sharia*, which aims to protect religion (*hifz al-din*) and offspring (*hifz al-nasl*) (Sunaryo & Fahmi, 2024).

The typology of differences of opinion regarding the permissibility or prohibition of interfaith marriage reflects the flexibility of Islamic law in dealing with diverse social realities, which is relevant in the political theory of Islamic family law. The political theory of Islamic family law views that family law, including marriage regulations, is part of social regulation influenced by society's political context, culture, and needs. In the political theory of law, policies related to interfaith marriage can be understood as the result of *ijtihad*, which considers socio-historical conditions and local values. For example, scholars' views that prohibit interfaith marriage are often

based on concerns about its impact on the integrity of religious identity in Muslim families. Conversely, the permissibility under certain conditions by some scholars indicates an attempt to accommodate social needs without ignoring sharia principles. Therefore, the political theory of Islamic family law emphasizes the importance of dynamics between normative texts and social contexts in producing legal rules that are fair, relevant, and contextual to contemporary challenges such as the issue of interfaith marriage (Thahir, 2024).

### **Interfaith Marriage Based on the State's Jurisprudence**

Supreme Court Circular Letter (SEMA) No. 2 Year 2023 contains technical guidelines provided by the Supreme Court (MA) to all levels of courts in Indonesia regarding procedures and policies for handling cases involving interfaith marriages. This SEMA emphasizes that judges must refer to the principles of national law while still considering the religious rules adopted by the parties. This SEMA emphasizes the need to balance respect for human rights, especially freedom of religion, and compliance with the favorable laws applicable in Indonesia, including the Marriage Law (Muchimah et al., 2024; Rabinovich, 2023).

The issuance of this SEMA was prompted by the rise of interfaith marriage cases filed with the courts. Courts often face legal confusion due to different interpretations of related regulations. Law No. 1/1974 on Marriage does not explicitly regulate the procedure for interfaith marriages, so judges' decisions often lack uniformity. The issuance of this SEMA aims to provide clear, uniform, and accountable guidance to overcome these problems (Islam, 2014).

The formulation process of the Supreme Court Circular Letter (SEMA) 2023 on Interfaith Marriage involved collaborating with various competent parties to ensure that the guidelines align with the constitution and national legal values. The Supreme Court, as the primary initiator, engaged the Supreme Court Justices in in-depth discussions on the legality and social implications of the regulation. In addition, legal academics from various universities contributed by providing scientific analyses and academic perspectives on the issue of interfaith marriage. The formulation also engaged relevant government agencies, such as the Ministry of Religious Affairs, to ensure policy alignment with existing laws and regulations, particularly those relating to the administration of marriage registration. The public consultation process was conducted through intensive workshops and discussion forums to accommodate a range of views (Van Niekerk & Verkuyten, 2018).

Civil society organizations were involved in providing input based on their experiences in the field, including issues often faced by interfaith couples. Also, religious organizations such as the Indonesian Ulema Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah provided views based on their respective religious principles. Their views emphasized the importance of maintaining religious values in marriage without ignoring the constitutional rights of every citizen. The results of these in-depth discussions demonstrate a serious effort to create guidelines that are responsive to the needs of society while respecting the plurality of laws and religions in Indonesia. The process was orientated towards drafting technical guidelines and reflected an inclusive and collaborative approach that considered various legal, religious, and social aspects. Thus, this SEMA is expected to provide fair legal certainty, maintain harmonization between religious norms, and reduce the potential for societal conflict (Hedi et al., 2017; Lewis, 2024).

Judges stated that the SEMA helped them perform their duties more accurately and directly. Before the issuance of the SEMA, judges often faced moral and legal dilemmas in handling interfaith marriage cases. However, some legal practitioners noted that the SEMA still requires revision to perfect procedural aspects that are considered ambiguous (Aris Setiyanto et al., 2024). Some have criticized the SEMA for not considering a deeper philosophical foundation regarding the position of interfaith marriage in the Indonesian legal system. Critics suggested that the Supreme Court should strengthen this philosophical basis by involving Islamic and constitutional law experts more thoroughly (Widyawati, 2024).

This SEMA has the potential for significant social impact, especially in encouraging interfaith dialogue and increasing societal tolerance. However, there are concerns that it may also spark controversy in specific religious communities, which feel their religious norms are being compromised by state policy (Indrayanti et al., 2024). The SEMA attempts to balance Islamic law principles with the prevailing positive law. However, debate continues how it truly reflects the *maqashid sharia* or sharia's goal of protecting religion, family, and society. SEMA No. 2 Year 2023 is essential in addressing the dynamics of religious plurality in Indonesia. The Supreme Court seeks to create harmony between spiritual values and human rights by providing clear guidelines. In the future, this SEMA can continue to be refined through open dialogue between the government, academics, and the community to maintain the sustainability of social harmony and legal justice in Indonesia.

### **Political and Legal Analysis of Supreme Court Circular Letter Number 2 of 2023**

Supreme Court Circular Letter (SEMA) Number 2, the Year 2023, reflects the dynamics of legal politics in Indonesia in harmonizing the Islamic legal system and national law, especially regarding implementing Islamic family law. This SEMA is a concrete step by the Supreme Court in responding to contemporary challenges, such as social, cultural, and economic dynamics that affect the implementation of family law in society. By providing technical guidelines and clear legal interpretations, this SEMA is a tool to resolve issues at the judicial level. It serves as a framework to maintain the consistency of judges' decisions within the religious courts (Mursyid et al., 2024; Zaman, 2024).

Politically, the issuance of SEMA No. 2 Year 2023 can be seen as an effort by the Supreme Court to strengthen the position of Islamic family law in the national legal system. This is in line with the principle of legal pluralism in Indonesia, which recognizes the existence of religious law, customary law, and positive law. In this context, the SEMA acts as a legal and political tool that integrates Islamic values with the principles of universal justice without ignoring the diversity of Indonesian society. Establishing the SEMA involved an in-depth study that considered juridical, sociological, and philosophical aspects to ensure its relevance and acceptability in society.

Furthermore, this SEMA can also reflect the state's commitment to ensuring access to justice for Muslim communities, especially in protecting family rights (Priyanta & Zulkarnain, 2024). The Supreme Court, through this SEMA, shows its alignment with the principle of dynamic and adaptive law by the demands of the times. Thus, SEMA Number 2 Year 2023 is not only a legal instrument but also a manifestation of legal politics oriented towards substantive justice and the benefit of the people.

The political theory of Islamic family law offers a relevant analytical framework for understanding and formulating policies related to interfaith marriage, especially in a plural society like Indonesia. In this theory, Islamic family law is seen as the result of the interaction between fundamental sharia norms and a dynamic socio-political context. The prohibition of interfaith marriage in Islam, for example, is based on the principle of maintaining the purity of faith and family stability, which is part of *maqashid sharia*. However, implementing such a prohibition in modern societies requires an approach that considers religious diversity, human rights, and social needs (Maryani et al., 2022; Lev, 1972).

In the context of interfaith marriage, the political theory of Islamic family law also reflects the flexibility of Islamic law in responding to social change and community needs. On the one hand, normative texts such as the Qur'an and Hadith affirm the prohibition of interfaith marriage for Muslim women. Still, on the other hand, some scholars, through *ijtihad*, recognize the limited permissibility for male Muslims to marry women of the Book (Suntana, 2013). This difference shows that Islamic family law is not entirely rigid but can be adjusted by considering the socio-historical context and the benefit principle. In legislative practice, states like Indonesia can use this approach to formulate policies that honor Islamic values while addressing the challenges of modern society (Liddle, 1996).

In addition, this theory emphasizes the state's role as a regulator that integrates Islamic law into the national legal system by considering the principles of justice and social harmony. In this case, policies related to interfaith marriage need to be by Sharia norms and respect the constitution that guarantees freedom of religion. Thus, the political theory of Islamic family law provides a conceptual framework that enables the development of family law that is relevant and contextualized in dealing with issues such as interfaith marriage (Halim, 2016; Robinson, 2008).

Interfaith marriage has become a complex issue in Indonesia, involving various social, cultural, and religious interests. In the context of national law, the regulation of this marriage is regulated in Law Number 1 Year 1974 on Marriage, which states that a marriage is considered valid if each party's laws of religion and belief conduct it. This clause is often a point of contention because it does not provide a precise mechanism for regulating interfaith marriages, resulting in legal uncertainty in the community (Shoaf et al., 2022; Gunawan et al., 2023).

Article 2, paragraph (1) of the Marriage Law emphasizes conformity with religious law but does not explicitly prohibit or allow interfaith marriages. This lack of clarity encourages various interpretations from legal practitioners and the wider community. In some cases, interfaith couples seek alternative legal avenues, such as temporary conversion or applying for a court order, to legalize their marriage. This has created non-uniform legal practices across Indonesia (Edi Gunawan et al., 2024).

In 2015, the Constitutional Court (MK) accepted a judicial review of the Marriage Law regarding interfaith marriages (Crespin-Boucaud, 2020). The petitioner asked the Court to interpret Article 2 paragraph (1) to legally allow interfaith couples to marry. In Constitutional Court Decision Number 68/PUU-XII/2014, the Court rejected the request because marriage is a private matter related to religion, and further regulation is the legislator's authority, not the Constitutional Court. This decision reinforced the conservative position of Indonesian law on interfaith marriage, although it did not resolve the community-level debate (Cyriac et al., 2024).

The Supreme Court often faces cases of interfaith couples applying for a marriage decree in court. In several judgments, the Supreme Court has granted stipulations on the grounds of legal and administrative interests, such as inheritance rights and the legal status of children. These rulings often serve as a reference for interfaith couples to legalize their marriages through the courts despite not being formally recognized by their religion (Nasir, 2020; Buisson, 2016; Sidqi & Rasidin, 2023).

Over time, several legal documents began to influence the discourse on interfaith marriage, including the fatwa of the Indonesian Ulema Council (MUI), which strictly prohibits interfaith marriage for Muslims. On the other hand, the influence of international principles, such as the Universal Declaration of Human Rights, which guarantees the freedom to choose one's life partner, is also provided (Elmali-Karakaya, 2022; Layosh et al., 2024). SEMA No. 2 of 2023 directly responds to the increasing number of interfaith marriage cases before the courts. This SEMA guides judges in deciding such cases, considering the balance between religious and positive law. The SEMA aims to reduce the disparity of court decisions in different regions, create uniformity, and maintain legal stability (Tarigan et al., 2024; Jatmiko et al., 2022; Akbar, 2024).

The issuance of this SEMA involved various legal and political actors, including the Supreme Court, the Ministry of Religious Affairs, religious organizations, and civil society groups. The drafting process was marked by heated debates between conservative groups, which prioritize adherence to religious law, and progressive groups, which promote the protection of human rights. This dynamic reflects the tug-of-war between the interests of religion, the state, and society (Jawad & Elmali-Karakaya, 2020). SEMA No. 2 Year 2023 reflects the Supreme Court's strategic step in responding to the political dynamics of law in Indonesia. The Supreme Court establishes technical guidelines to maintain national legal authority while mitigating international pressure on religious freedom issues. It also reflects the tendency of Indonesian law to seek a middle ground in dealing with sensitive issues involving religion.

Academics have given mixed responses to the SEMA. Some have praised the Supreme Court's efforts to provide legal certainty in cases of interfaith marriage. However, criticism has also emerged, especially from conservative circles who see this SEMA as a form of compromise to certain religious principles. On the other hand, the general public showed mixed responses, depending on their religious background and legal understanding. SEMA No. 2 Year 2023 is essential in creating legal certainty regarding interfaith marriage in Indonesia. However, challenges remain, especially in aligning the regulation with the needs of a plural society. More comprehensive legal reform is needed to create fair, inclusive, and sustainable regulations involving broad participation from political, legal actors, and civil society.

#### **4. CONCLUSION**

The political and legal analysis of SEMA No. 2 Year 2023 shows how Islamic family law interacts with socio-political dynamics in a plural society like Indonesia. In this case, the SEMA reflects the Supreme Court's attempt to bridge Sharia principles with the reality of religious diversity in Indonesia. On the one hand, the SEMA seeks to provide technical guidance to judges handling interfaith marriage cases, thereby preventing inconsistent decisions. However, this policy also raises debates regarding the limits of integration between religious and positive law, especially in sensitive issues such as interfaith marriage. The politics of Islamic family law, in this case, also



reflects the complex tug-of-war between state and civil society actors. State institutions, such as the Supreme Court, try to formulate policies that comply with the Constitution while respecting Islamic law principles. Meanwhile, civil society, including religious organizations and academics, showed diverse responses - ranging from supporting to criticizing the policy. This reflects that the politics of Islamic family law is not merely a normative issue but also involves a process of negotiation influenced by social, political, and ideological contexts. The implication of this analysis is the need for more comprehensive and inclusive legal reform involving the participation of various stakeholders. These reforms should aim to create a legal framework that is fair, relevant, and sensitive to the plurality of Indonesian society. By accommodating religious views, positive law, and the needs of modern society, Islamic family law can continue to be relevant and applicable in responding to the challenges of the times. In addition, the involvement of non-state actors and global perspectives need to be considered to broaden the scope of analysis and enrich legal discourse in Indonesia.

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