LEX JOURNAL : KAJIAN HUKUM DAN KEADILAN, 2026
Vol. 10, No. 2, 255-270
E-ISSN: 2580-9113 | P-ISSN: 2581-2033
Open access at: https://ejournal.unitomo.ac.id/index.php/hukum

Check for updates

Type: Research Article

Prohibition of Interfaith Marriage Registration: A Critique Towards Judicial Policy

Darryl Evan Brouwer
Faculty of Law, Universitas Airlangga, Indonesia
E-mail: darryl.evan.brouwer-2025@fh.unair.ac.id

Muhammad Akrom Ramadhan
Faculty of Law, Universitas Airlangga, Indonesia
E-mail: m.akrom.ramadhan006@gmail.com

Ananda Lestari
Faculty of Law, Universitas Airlangga, Indonesia
E-mail: lestariananda817@gmail.com

ABSTRACT

In 2023, The Supreme Court has enacted the Supreme Court Circular Letter Number 2 of 2023 on Guidelines for Judges in Adjudicating Cases of Marriage Registration Requests between People of Different Religions and Beliefs (SEMA 2/2023). The SEMA 2/2023 prohibits judge to grant applications for the registration of interfaith marriages between individuals of different religions and beliefs This judicial policy does not cohere with the reality that some religions in Indonesia does not strictly prohibit interfaith marriage. Thus, such judicial policy unjustifiably infringes the human right of the citizens. This research is conducted to to analyze the inconsistency of the SEMA 2/2023 with the Marriage Law, the reality of religion diversity in Indonesia, and the human right principle. This research is conducted as normative legal research using the statutory and conceptual approach. The finding of this research is that the SEMA 2/2023 is with the Marriage Law, the reality of religion diversity in Indonesia, and the human right principle. Thus the judge shall not enforce the SEMA 2/2023.

KEYWORDS

Human Rights; Interfaith Marriage; Religion Diversity

INTRODUCTION

Indonesia is a pluralistic country consisting of thousands of islands and different ethnic groups. This pluralism is due to Indonesia's geographical location between two oceans, which has allowed foreign cultures to easily enter Indonesia. Pluralism can be argued as recognition of diversity or diversity within a society. Pluralism takes many forms, one of which is religious pluralism.[1] Based on data from the Central Statistics Agency in 2024, the majority of Indonesians adhere to Islam with a percentage of 8.7%, while the rest adhere to several other religions, namely: Protestant Christianity at 6.9%, Catholic Christianity at 2.9%, Hinduism at 1.7%, Buddhism at 0.7%, and Confucianism at 0.05%.[2] This religious pluralism can form social relationships between communities, one of which is interfaith marriage.

The phenomenon of interfaith marriage has been common in Indonesia since the 1980s, occurring among both ordinary people and public figures, one example being the interfaith marriage between Jamal Mirdad, who is Muslim, and Lydia Kandou, who is Christian. They were married in 1986. However, they eventually divorced in 2013 after decades of marriage.[3] A similar situation occurred with the interfaith marriage between Dimas Anggara, who is Muslim, and Nadine Chandrawinata, who is Catholic. The two were married in 2018 abroad, more precisely in Bhutan.[4] Based on data from 2015 to July 19, 2023, the number of interfaith marriages in Indonesia has reached 1,655.[5]

The rise of interfaith marriages in Indonesia is a polemic that has become a discourse from various perspectives, especially from religious, legal, and human rights perspectives.[6] Legally, regulations regarding marriage in Indonesia are governed by Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage. This Marriage Law, hereinafter referred to as the Marriage Law, serves as a legal guideline and basis for marriage applicable to all Indonesian citizens. In addition, Indonesia also recognizes that marriage is a human right as stated in Article 28 B paragraph (1) of the Constitution of the Republic of Indonesia. Meanwhile, the guidelines for registering interfaith marriages in Indonesia are regulated in Supreme Court Circular Letter Number. 2 of 2023 on Guidelines for Judges in Adjudicating Cases of Marriage Registration Requests between People of Different Religions and Beliefs, hereinafter referred to as SEMA 2/2023.

Therefore, this scientific article is used to examine issues regarding interfaith marriage from various perspectives, including: interfaith marriage in the perspective of the Indonesian legal system, interfaith marriage in the perspective of

---

1 Julita Lestari, "PLURALISME AGAMA DI INDONESIA Tantangan dan Peluang Bagi Keutuhan Bangsa" (2010) 6:1 Wahana Akad J Stud Islam dan Sos 29–38, online: <https://www.neliti.com/publications/337371/pluralisme-agama-di-indonesia-tantangan-dan-peluang-bagi-keutuhan-bangsa>.

2 Central Statistics Agency of Samarinda City, "Agama di Indonesia", (2024).

3 Windari Subangkit, "Beda Agama, 10 Bukti Hangatnya Keluarga Jamal Mirdad dan Lydia Kandou", (2020), online: *Popbela*.

4 Nurrohman Sidiq Silvia Estefina Subitmele, "Tak Terhalang Beda Keyakinan, 6 Pasangan Artis Ini Gelar Pernikahan di Luar Negeri", (2025), online: *Liputan6*.

5 Windi Regina Anggia Putri Winda Fitri, Shelvi Rusdiana, "Legal Issues Of Interfaith Marriages In Indonesia: A Comparative Study" (2024) 14:1 J Huk Media Justitia Nusant 53–70.

6 Fathul Hamdani & Ana Fauzia, "Tradisi Merariq dalam Kacamata Hukum Adat dan Hukum Islam" (2022) 3:6 J Huk Lex Gen 433–447.

religions in Indonesia, the relationship between interfaith marriage and human rights, and provisions regarding interfaith marriage in SEMA 2/2023.

METHOD

This article is part of doctrinal (normative) research to examine aspects of Indonesian positive law and describe the phenomenon of interfaith marriage from a legal, religious, and human rights perspective. Simply put, this article is used to examine one legal rule in relation to another or to a particular legal phenomenon. In addition, this article also uses several approaches, namely the statute approach and the conceptual approach. The research sources used in this article include primary legal sources, secondary legal sources, and non-legal sources.[7] The primary legal sources in this article consist of legislation, including Law Number 1 of 1994 concerning Marriage, Supreme Court Circular Letter (SEMA) 2 of 2023, and the 1945 Constitution of the Republic of Indonesia. Secondary legal sources in this article include scientific literature in the field of law. Meanwhile, non-legal sources in this article consist of non-legal social articles. All of these sources use literature studies.

RESULT & DISCUSSION

I. Religion and Indonesian Legal System

Indonesia is a home for religion diversity. Indonesia was established by its founding fathers form different religion background. Religion even has been positioned as a central role in Indonesian community life. The value of Godliness is one of the values contained in Pancasila as the philosophical basis of the state.[8] Since Pancasila is the source of all laws, the value of Godliness is also reflected in the Indonesian legal system. The Preamble to the 1945 Constitution of the Republic of Indonesia for instance, recognizes that the independence of the Indonesian nation is a gift from God which is stated as follows: “By the grace of Almighty God and driven by a noble desire to live a free national life, the Indonesian people hereby declare their independence.”

Furthermore, in the body of the 1945 Constitution of the Republic of Indonesia, Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia explicitly stipulates that: "The state is based on belief in One God". This confirms that the Indonesian legal system cannot be separated from the influence of religion. Another example is the phrase found in court decisions that reads "In the name of justice based on the One Almighty God." The nature of Indonesian law is in line with the social structure of Indonesian society, which is multi-religious. The diversity that exists in Indonesia has led to the emergence of legal pluralism in Indonesia. Legal pluralism refers to the phenomenon of more than one legal system being in force in society. Brian Z. Tamanaha, in his book entitled *Legal Pluralism Explained: History, Theory, Consequences,* explains that positive law often does not stand alone in the

[7] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2015).
[8] Ferry Irawan Febriansyah, “Keadilan Berdasarkan Pancasila sebagai Dasar Filosofis dan Ideologis Bangsa” (2017) 13 DiH J Ilmu Huk.

flow of social activities. There are at least three separate systems of norms that apply in society, namely *positive law, custom/consent,* and *moral/reason*.[9]

Positive law rarely operates in isolation from the social context in which it functions. Customs or consent refer to practices and habits that are repeatedly performed within a community and ultimately recognized as binding law. Tamanaha equates custom with consent because customs arise through the collective acceptance of certain patterns of behavior that structure ongoing social relations. As these practices are continuously observed, they acquire normative force and are regarded as obligatory. Satjipto Rahardjo characterizes this process as the formation of "expectations" that crystallize into norms or prescriptions governing conduct. It is precisely this shared societal acceptance and recognition of binding authority that Tamanaha conceptualizes as consent.

Morality concerns judgments about whether particular actions are right or wrong. Moral principles derive from human rationality and therefore it is universally recognized among human being community. However, in moral study discussion, moral thought is divided into two principal perspectives: objectivism and relativism. Objectivism maintains that objective moral values exist, grounded in natural law and inherent in human reason. Consequently, these values are recognized across all contexts and historical periods. In contrast, relativism views moral values as socially and culturally constructed, such that standards of morality vary among different communities. This even extends to individual moral relativism.[10] Regardless of the discourse on morality, customs, and positive law, all three are systems of norms that are accepted and applied in society. Customs and morals can also be referred to as law. This status is attributed to the acceptance of customary norms and moral norms as binding patterns of relationships by society.[11]

In the Indonesian context, legal pluralism encompasses modern law, customary law, and natural law. Modern law refers to national law, which in Indonesia is rooted in the European continental legal tradition. Consequently, the evolution of Indonesian national law has been closely influenced by developments within the continental European legal system and has also incorporated elements from the common law tradition. This dynamic is largely driven by globalization, which has prompted legal scholars and practitioners to engage in comparative legal analysis in shaping the development of national law. In addition to positive law—laws established by the formal authority of the state—there are also *living law* and *natural law*.[12] *Living law* refers to unwritten legal norms that have been accepted by society as law. This gives rise to mutual "expectations" in interactions between individuals to perform certain actions.[13] Meanwhile, *natural law* refers to moral norms that evaluate human behavior. Moral norms are, in principle, based on certain philosophies. The *natural law* accepted by Indonesian society is *natural law* based on religious teachings.[14]

---

9 Brian Z Tamanaha, *A General Jurisprudence of Law and Society* (New York: Oxford University Press, 2001).

10 Belén Pueyo-Ibáñez, "Moral Inquiry Beyond Objectivism and Subjectivism" (2021) 35:2 J Specul Philos 165–175.

11 Suteki, *Hukum dan Masyarakat* (Yogyakarta: Thafa Media, 2021).

12 *Ibid*.

13 Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung: Angkasa, 1986).

14 Suteki, *supra* note 11.

Customary law grows and develops within indigenous communities. This law is preserved from generation to generation by the ancestors of these communities. Customary law is recognized as part of the Indonesian legal system. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates:

> "The state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated in the law."

Furthermore, several laws, such as Law No. 5 of 1960 concerning Basic Agrarian Principles, the National Criminal Code, and several other laws explicitly regulate customary law as part of the Indonesian legal system. However, it should not be understood that the existence of customary law is dependent on national legal recognition. This is because customary law is a law that existed and was practiced in the activities of the Indonesian people before modern law came into effect.

Natural law refers to moral principles that are recognized and observed within society. Indonesian society is characterized as a religious society. Given this reality, religious values are embedded and substantively operate as guiding principles for social relations. Article 29 of the 1945 Constitution of the Republic of Indonesia explicitly affirms that Indonesia is a state founded upon belief in the One Almighty God, reflecting the central role of religion in societal life. Accordingly, natural law with a religious and spiritual dimension is acknowledged as a sourc of norms guiding daily interactions in the community. However, natural law is not derived solely from religion; it may also be derived from human reason. Human rationality naturally possess an inherent capacity for moral judgment, giving rise to a conception of natural law grounded in reason.

Given the pluralistic nature of the Indonesian legal system, national law, customary law, and natural law do not operate in isolation but instead intersect and influence one another. These legal orders coexist within the same social space and continuously interact in shaping legal norms and practices. As previously noted, Tamanaha emphasizes that state or national law is not an autonomous system; rather, it is a reflection of the normative values found in both customary law and natural law. In this sense, national law is derived from the lived practices, traditions, and moral principles that exist within society. Customary law contributes socially recognized patterns of behavior and social norms, while natural law provides moral and rational foundations in the sense of justice. Consequently, the state legal system functions as a formal articulation of these underlying normative sources, integrating customary and natural law values into positive legal rules. Therefore, the moral standards that apply in society become pluralistic. In principle, there is no universal morality.[15]

This is important because, from a sociological perspective, society's compliance with the law is not solely based on the formal aspects of legislation. More than that, society's compliance with national law is based on whether the community accepts the validity of the legislation. This is known as the concept of

[15] Tamler Sommers, *Relative Justice: Cultural Diversity, Free Will, and Moral Responsibility* (Princeton University Press, 2012).

sociological validity. This sociological validity depends on whether national law reflects unwritten laws (customs, traditions, and/or religion) that exist within society. With such a legal and philosophical basis, the religious character inherent in the Indonesian legal system becomes a logical reason for the criminalization of acts against religion in the Criminal Code.

II. Interfaith Marriage in the Indonesian Legal System

In general, marriage in the Indonesian legal system is regulated by the Marriage Law. Article 2 paragraph (1) regulates the requirements for a valid marriage, namely: "A marriage is valid if it is conducted in accordance with the laws of each religion and belief." Further provisions are contained in Article 2 paragraph (2), which stipulates that: "Every marriage shall be registered in accordance with the applicable laws and regulations." With such legal provisions, it can be understood that the policy of the legislators is that the validity of a marriage according to the law is based on the validity of the marriage according to the respective religions.

The above provision is often used as the basis for legal arguments that interfaith marriages cannot be conducted and legalized under the Indonesian legal system. This is often linked to the legal provision of Article 8 letter f of the Marriage Law, which states: "Marriage is prohibited between two people who: f. have a relationship that is prohibited by their religion or other applicable regulations."

This provision of the Marriage Law reflects the social basis of Indonesian society. Suteki argues that what is meant by social basis is the characteristic of the social basis of Indonesian society is that it is a religious society.[16] All aspects of society are influenced by religion. In the context of law, it can be said that the Indonesian legal system accommodates natural law as an integral part of society's legal life. Natural law refers to the theory that states the existence of natural law that is superior to man-made law. One source of natural law is religious law.[17]

In Indonesia's formal legal system, it has also been emphasized that religion is the foundation of the state. This is stated in Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely: "The state is based on belief in One God." As the highest source of law in the Indonesian legal system, Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is the basis for every legal provision that is part of the Indonesian legal system. Therefore, it is understandable that the majority of Indonesian society—including the Supreme Court—believes that interfaith marriages cannot be conducted and legalized under Indonesian law.

Interfaith marriage is not prohibited from being conducted as referred to in Article 8 letter (f) of the Marriage Law as stipulated in Article 35 letter (a) of Law - Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. Issues related to interfaith marriage are under the authority of the District Court to examine and decide on such matters. This is

---

16 Suteki, *supra* note 11.

17 Dian Istimeisyah, "Natural Law as a Normative-Ethical Framework for the Protection of Human Rights" (2025) 3:4 Media Huk Indones Publ by Yayasan Daarul Huda Krueng Mane 514–520, online: <https://ojs.daarulhuda.or.id/index.php/MHI/index>.

regulated in the explanation of Article 35 letter (a), which states that "What is meant by 'marriage determined by the court' is a marriage between people of different religions." The explanation of Article 35 letter (a) provides facilities for people who enter into interfaith marriages.

III. Perspectives of Some Religions in Indonesia

A. Protestant Church

According to the Protestant Christian view, at leaste based on the Indonesian Christian Church (GKI) Order, specifically Article 33 on Ecumenical Church Marriage with the Catholic Church, which explains that:

> "The Church Council is permitted to conduct ecumenical church marriages with the Catholic Church, namely church marriages for members of GKI and members of the Catholic Church, which are conducted by the Church Council together with the Catholic Church and officiated by pastors and priests jointly."[18]

There are two mechanisms used in conducting ecumenical church marriages, namely those conducted by the GKI or those conducted in the Catholic Church.

1. Ecumenical Church Weddings conducted at GKI

   "The implementation of ecumenical church weddings conducted at the GKI begins when the bride and groom submit a written request to the Congregation Council no later than three (3) months before the ecumenical church wedding service with the Catholic Church is held. Then, the prospective bride and groom from the Catholic Church submit a photocopy of the written request submitted to their church in accordance with canon law. The Congregation Council writes a notification letter to the Catholic Church regarding the request for ecumenical church wedding services. The procedure as outlined in Article 32:1-8 is through Liturgy, which refers to the Liturgy of Confirmation and Marriage Blessing of the GKI."
2. Ecumenical Church Wedding held in the Catholic Church

   The implementation of an ecumenical church wedding held in a Catholic church begins when the bride and groom submit a written request to the Congregation Council no later than three (3) months before the ecumenical church wedding service with the Catholic Church is held. The procedure at the Catholic Church continues to use the procedure applicable at the Catholic Church. The Congregation Council receives notification from the Catholic Church that the ecumenical church wedding service has been approved. The next procedure is in accordance with Article 32:3-7 of the Rules of Procedure with the necessary adjustments. The liturgy used refers to the Catholic Church wedding liturgy.

   Simply put, Article 33 of the GKI Church Regulations discusses the definition and procedures for marriage between Protestants and Catholics. Article 30 directly approves church wedding services as stated in the article. The meaning of "non-member partner" in this article is that at the time of the

[18] Congregation Development Materials, "Tata Gereja dan Tata Laksana Gereja Kristen Indonesia", (2023), online: <https://s.id/bahanbinajemaatgkisoka>.

marriage, one of the spouses is not a member of the GKI or, in other words, is not a Protestant Christian.

B. Catholic Church

According to the Catholic Christian view as stated in the canonical book, namely Canon 1124, which states that:

"Marriage between two baptized persons, one of whom was baptized in the Catholic Church or accepted into it after baptism and has not formally left it, while the other is a member of a Church or ecclesial community that does not have full communion with the Catholic Church, **without the express permission of the competent authority,** is prohibited" (bolded by the author).[19]

Moreover, Canon 1125 stipulates:
"The local Ordinary can grant this permission if there is a just and reasonable cause. He is not to grant it unless the following conditions are fulfilled:

1. The Catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power in order that all the children be baptised and brought up in the Catholic Church;
2. The other party is to be informed in good time of these promises to be made by the Catholic party, so that it is certain that he or she is truly aware of the promise and of the obligation of the Catholic party;
3. Both parties are to be instructed about the purposes and essential properties of marriage, which are not to be excluded by either contractant".

Furthermore, the Code of Canon Law stipulates that such permission may be obtained by applying to the local Ordinary or Bishop. Therefore, based on the Code of Canon Law, the Catholic Church permits marriage between Catholics and baptized non-Catholics. Simply put, the Catholic Church by its Canon Law does not strictly prohibit interfaith marriage. The Catholic Church stipulates an exceptional rule in its Canon Law on interfaith marriage with a member of a Church or ecclesial community that does not have full communion with the Catholic Church. This rule refers to non-Catholic Christian, such as Orthodox Christian and Protestant Christian.

IV. The Nature of Marriage

In general, marriage is a human right that involves a sacred covenant to form a legal relationship.[20] This has also been affirmed in international legal instruments, namely *the Universal Declaration of Human Rights* (UDHR) and *the International*

[19] Diocese of Surabaya, "Kitab Hukum Kanonik", (1983), online: <https://www.keuskupansurabaya.org/document/kitab-hukum-kanonik-1983/>.

[20] Nerisma Eka Putri, Khaidir Ali Junid & Muhammad Azkia Fahmi, "Marriage Between Religions Based on Human Rights Perspectives" (2024) 9:1 SAPIENTIA ET VIRTUS 372–384.

Convention on Civil and Political Rights (ICCPR). In the UDHR, *Article 16 paragraph 1* stipulates:

> "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

Meanwhile, *Article* 23 *paragraphs* 1 and 2 of the ICCPR stipulate:

> "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

> "The right of men and women of marriageable age to marry and to found a family shall be recognized."

The above legal provisions show that marriage is regarded by the international community as a human right that must be respected, protected, and fulfilled by states for their citizens. In the Indonesian legal system, the right to marriage is regulated as one of the human rights in the 1945 Constitution of the Republic of Indonesia. Article 28B of the 1945 Constitution of the Republic of Indonesia stipulates: "Everyone has the right to form a family and continue their lineage through a valid marriage."

Furthermore, based on Article 22 of Law Number 39 of 1999 concerning Human Rights, it is stated that every person who embraces a religion has the right to worship according to their beliefs, which in this case includes getting married.[21] These provisions, both in international and national legal instruments, indicate the state's obligation to respect, protect, and fulfill the right to marriage. This idea is in line with John Locke's social contract theory, quoted in a journal entitled "Politico-Philosophical and Normative Traditions of Justice," which states that the social contract is a natural right that every human being naturally possesses, meaning that every human being has these rights equally.[22]

However, because some communities have more resources than others, this results in some communities or individuals being unable to fulfill their rights, as their rights have been taken away by those who have more resources. To balance the fulfillment of these rights, the state has obligations, including *to respect, to protect*, and *to fulfill* in order to ensure the equal fulfillment of these rights, including in the context of marriage. The state is obliged to fulfill the right to form a family, including marriage, as a right that is recognized as a basic human right and a social and political right that must be fulfilled absolutely. The seven laws that are to be achieved are to maintain a balance between certainty, benefit, and solely as a respect for human rights through legal instruments that legitimize the implementation of rights and obligations based on human rights.[23] However, the implementation of the Marriage Law has caused a conflict between international human rights,

---

[21] *Ibid*.

[22] Stephen Przybylinski, *Politico- Philosophical and Normative Traditions of Justice* (Bristol University Press, 2023).

[23] Achmad Kholiq, Abdul Aziz & Ahmad Yani, "RECONSTRUCTION INTERFAITH MARRIAGE LAW IN INDONESIA: Relevance of Sociology Knowledge and Maqasid Sharia" (2025) 25:1 Al-Risalah 70–86.

constitutional guarantees, and the provisions of the Marriage Law, resulting in human rights violations that limit the marriage options for interfaith couples.[24]

The practice of interfaith marriage, which should be an effort to guarantee the right to freedom of religion to form a family, often violates the rights of every human being. The reason is that the practice of interfaith marriage, which limits the validity of marriage based on religion, encourages one of the partners to convert to legitimize the marriage. The goal is limited to the administrative registration of a valid marriage.[25] It is clear that the state must view society as having fundamental rights, so that the exercise of power is based on respect for the principles of justice.[26] Countries that refuse to register interfaith marriages reflect that the state limits human rights under the pretext of cultural relativism or culture. Based on the principle of cultural relativism, moral and ethical standards depend on the surrounding cultural traditions in the fields of religion, politics, economics, and law itself to determine the limitations of civil and political rights.[27] The problem is that the Indonesian state has not explicitly prohibited or permitted interfaith marriages, resulting in a legal vacuum.[28]

On the other hand, the judicial power, through several of its decisions, has shown recognition and fulfillment of the individual's right to marry, including interfaith marriage. For example, Decision Number 1139/Pdt.P/2018/PN.Jkt.Sel, which states in its *ratio* decidendi:

> "Considering that, in addition, Article 28 B paragraph (1) of the 1945 Constitution affirms that every person has the right to form a family and continue their lineage through a valid marriage, which is in line with Article 29 of the 1945 Constitution regarding the State's guarantee of freedom for every citizen to embrace their respective religions."[29]

The ratio decidendi shows that the judge is well aware of the constitutional right of citizens—a human right—to marry. Furthermore, *the ratio decidendi* of Decision Number 12/Pdt.P/2022/PN Ptk can also be seen:

> "Considering that based on the provisions of Article 35 of Law Number 23 of 2006 concerning Population Administration, it is stated that the registration of marriage as referred to in Article 34 also applies to: Marriages determined by the Court, which in the explanation of the article is stated that what is meant by "Marriages determined by the Court" are marriages between people of different religions, therefore, marriages between people of different religions must be reported by the residents to the implementing agency where the

---

[24] Candra Andreansah Harahap, Agung Syarifudin & Universitas Batam, "Legal Construction of Interfaith Marriage in Indonesian Pluralism Context: Analysis of Regulation and Practice" (2025) 1:4 Int J Soc Sci Humanit 53–64, online: <https://international.appisi.or.id/index.php/IJSS/article/view/158>.

[25] Putri, Junid & Fahmi, *supra* note 20.

[26] Muhammad Ihsan Firdaus, "Legalization of Interfaith Marriage in Indonesia (Between Universalism and Cultural Relativism)" (2023) 1:2 Easta J Law Hum Rights 64–72, online: <https://esj.eastasouth-institute.com/index.php/eslhr/article/view/52>.

[27] *Ibid*.

[28] *Ibid*.

[29] Harahap, Syarifudin & Batam, *supra* note 24.

marriage took place and based on this report, the Civil Registry Officer shall record it in the Marriage Register and issue a Marriage Certificate."

In his ratio decidendi, the judge showed that he was aware of the law that accommodates the constitutional rights of citizens. In this case, the government has a role to prioritize the protection of human rights through strong law enforcement.[30]

V. Restrictions on State Power from a Constitutionalism Perspective

In essence, every citizen has constitutional rights, which are defined as rights that every citizen must obtain as stipulated in the constitution. Concerns about unlimited authority to regulate the rights of citizens so as not to conflict with the rights of other citizens or the state itself are necessary to guard against the emergence of an authoritarian state.[31] Constitutionalism serves as a check on executive and legislative authority to prevent injustice.[32] According to C. Schwobel in Piotr UHMA's work, constitutionalism can be divided into four global categories in international law. First, social constitutionalism emphasizes the limitation of power, government, restriction of rights, social idealism, and individual rights. Second, institutional constitutionalism, which emphasizes the limitation of power and institutional power. Third, normative constitutionalism, which emphasizes a combination of all the main focuses of social and institutional constitutionalism with the addition of standard regulations and the protection of individual human rights. Fourth, analogical constitutionalism, which emphasizes the idea of law as a unified system. In conclusion, constitutionalism serves as the basis for limiting power to prevent the abuse of power by state institutions.[33]

Referring to the conclusions made by the National Commission on Violence Against Women, there are 40 constitutional rights divided into 14 groups to be fulfilled by the state as basic citizenship rights, one of which is the right to have a family.[34] Furthermore, according to Addhiddiqie as quoted by Didik Suhariyanto, constitutional rights are different from legal rights. Constitutional rights are defined as the rights of citizens that arise from the constitution of a country, while legal rights are rights that arise from guarantees under the constitution.[35]

Modern constitutionalism currently emphasizes the principle of *limited government* or the restriction of power in a country. According to William G Andrews, as quoted in a journal entitled "An Insight into the Concept of Constitutionalism: A Safeguard against Arbitrary Power," the doctrine of constitutionalism contains two types of restrictions, namely government prohibition, "Limited Government," and specified procedures, "rule of law." This

---

30 Irman Putra & Arief Fahmi Lubis, "Constitutionalism and the Rule of Law in Indonesia: Historical Development and Contemporary Issues" (2023) 1:2 West Sci Law Hum Rights 89–96.

31 Maitreyee Jaiswal, "Constitutionalism Through the Lens of Doctrine and Precedents" (2024) 4:1 Indian J Integr Res Law 617–629.

32 *Ibid*.

33 Djawed Sangdel & Damla Mesulam, "Abusive Constitutionalism: Comparative Analysis" (2024) 16:2 Geopolit Hist Int Relations 62–81.

34 Wahidah Zein Br Siregar & Ella Syafputri Prihatini, "Passing the Sexual Violence Crime Law in Indonesia: Reflection of a Gender-Sensitive Parliament?" (2024) 12 Polit Gov 1–17.

35 Didik Suhariyanto, "Protection of Citizens' Constitutional Rights from the Authority of the President in Indonesia" (2022) 2:12 Eduvest - J Univers Stud 2684–2690.

means that there is a relationship between the government and its citizens and a relationship between government institutions and other government institutions to control arbitrary governments to comply with the "rule of law."[36]

The essence of constitutionalism is not limited to efforts to defend the rights of individuals over the rights of others, but also the need to limit the arbitrariness of the state. This means that the role of the state in defending individual rights is through limiting the rights of other individuals when there are other parties who are harmed. For this reason, the basis of the state in regulating a matter has two consequences, namely a form of state protection or a form of arbitrariness. According to Locke, as quoted in the journal "Political Configuration of Law in Law Enforcement in Indonesia," the constitution is a very important element for regulating not only the rights of citizens, but also the limitation of power. Reducing political interference in the legal system aims to strengthen the separation of powers, especially limiting the influence of the executive and legislative branches.[37]

In the context of interfaith marriage rights, marriage is a constitutional right as a human right enshrined in the state constitution, Article 28 B paragraph (1) of the 1945 Constitution.[38] In this case, the state has the obligation and responsibility to uphold the constitutional rights of its citizens, including the right to marry, as reinforced in the International Covenant on Civil and Political Rights, which Indonesia ratified through Law-Law No. 12 of 2005 on the ratification of the International Covenant on Civil and Political Rights, specifically in Article 23 paragraphs (2) and (3) concerning the freedom to recognize marriage. In this regard, the state should act passively, that is, it only needs to respect the privacy rights of the people to fulfill its responsibilities.[39] Therefore, it is important to reduce government interference, especially from the legislative and executive branches, in the legal process through the separation of powers to promote the autonomy of legal institutions as an effort to uphold the rule of law.[40]

VI. The Issue of Supreme Court Circular Letter (SEMA) 2/2023

Basically, SEMA 2/2023 regulates the prohibition for judges to approve requests for the registration of marriages between people of different religions and beliefs. Based on SEMA 2/2023, judges must adhere to the following two provisions:

> "A valid marriage is a marriage conducted in accordance with the laws of each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 of 1974 concerning Marriage."
>
> "The court shall not grant applications for the registration of interfaith marriages between individuals of different religions and beliefs."

---

36 SK Bose, "An Insight into the Concept of Constitutionalism: A Safeguard against Arbitrary Power" (2025) 5:3 SSRN 727–735, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5318809>.

37 Khoirunnisa & Didi Jubaidi, "Political Configuration of Law in Law Enforcement in Indonesia" (2023) 4:4 Ilomata Int J Soc Sci 560–576.

38 Firdaus, *supra* note 26.

39 *Ibid*.

40 Putra & Lubis, *supra* note 30.

Essentially, SEMA 2/2023 is used to fill a legal void and provide certainty to applicants for the registration of interfaith marriages in Indonesia. The Marriage Law has provided a solution to the issue of marriage, but it does not explicitly prohibit interfaith marriages. In addition, there are opinions that allow interfaith marriages in Indonesia. Interfaith marriage is philosophically regarded as a human right.

Furthermore, marriage is included in civil and political rights, which are in principle *non-derogable rights*, the fulfillment of which constitutes a Human Right that cannot be reduced under any circumstances.[41] This is as stated in Article 23 paragraphs (2) and (3) of the International Covenant on Civil and Political Rights, or ICCPR, which has been ratified in Law No. 12 of 2005 concerning the Ratification of the ICCPR, which states that:

> "The right of men and women of marriageable age to marry and found a family shall be recognized."
>
> "No marriage shall be entered into without the free and full consent of the intending spouses."

Article 23 paragraphs (2) and (3) explicitly recognize that marriage is a human right that must be fulfilled and that the state has no right to restrict individual freedom as stated in the article. This is in accordance with the state's obligations as a full duty bearer of human rights. These obligations include: *to respect, protect,* and *fulfill,* as stated in Article 28 I of the 1945 Constitution of the Republic of Indonesia, which explicitly states that: "the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government."

In the case of marriage, the state has an obligation to respect the choices of its citizens, including in matters of interfaith marriage, and to protect the civil and political rights of its citizens by not doing anything to its citizens that would prevent them from enjoying their rights, or in other words, by not restricting the rights of its citizens. Therefore, the state should accommodate the social reality of interfaith marriages as a manifestation of the state's obligation to fulfill its responsibilities.

CONCLUSION

Philosophically, interfaith marriage is a form of human rights that must be fulfilled absolutely. Given the reality of religion diversity among the Indonesian citizen, interfaith marriage is a recognized social institution. Even there are some religions that does not strictly prohibit interfaith marriage. Such limitation of interfaith marriage right in SEMA 2/2023 is not justifiable. Such judicial policy does not cohere the constitutionalism doctrine of state power limitation over the freedom of the citizens. From the positive law perspective, if the religion law allows the interfaith marriage, the marriage shall be recognized by the state as a legitimate marriage. Furthermore, from the theoretical perspective, marriage is a private matter that falls in the scope of human rights. Thus, SEMA 2/2023should not be enforced by the Supreme Court since it does not cohere the Marriage Law itself, the reality of religion diversity in Indonesia, and the human rights principle.

---

[41] Muhammad Ilham Purnama & Septiayu Restu Wulandari, "Legal Review of Interfaith Marriage from a Human Rights Perspective" (2024) 3:4 J-CEKI J Cendekia Ilm 1621–1632.

DECLARATION OF CONFLICTING INTERESTS

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

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

REFERENCES

BOOK

Marzuki, Peter Mahmud, *Penelitian Hukum* (jakarta: Prenadamedia Group, 2015).

Przybylinski, Stephen, *Politico- Philosophical and Normative Traditions of Justice* (Bristol University Press, 2023).

Rahardjo, Satjipto, *Hukum dan Masyarakat* (Bandung: Angkasa, 1986).

Sommers, Tamler, *Relative Justice: Cultural Diversity, Free Will, and Moral Responsibility* (Princeton University Press, 2012).

Suteki, *Hukum dan Masyarakat* (Yogyakarta: Thafa Media, 2021).

Tamanaha, Brian Z, *A General Jurisprudence of Law and Society* (New York: Oxford University Press, 2001).

JOURNAL

Bose, SK, "An Insight into the Concept of Constitutionalism: A Safeguard against Arbitrary Power" (2025) 5:3 SSRN 727–735, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5318809>.

Febriansyah, Ferry Irawan, "Keadilan Berdasarkan Pancasila sebagai Dasar Filosofis dan Ideologis Bangsa" (2017) 13 DiH J Ilmu Huk.

Firdaus, Muhammad Ihsan, "Legalization of Interfaith Marriage in Indonesia (Between Universalism and Cultural Relativism)" (2023) 1:2 Easta J Law Hum Rights 64–72, online: <https://esj.eastasouth-institute.com/index.php/eslhr/article/view/52>.

Hamdani, Fathul & Ana Fauzia, "Tradisi Merariq dalam Kacamata Hukum Adat dan Hukum Islam" (2022) 3:6 J Huk Lex Gen 433–447.

Harahap, Candra Andreansah, Agung Syarifudin & Universitas Batam, "Legal Construction of Interfaith Marriage in Indonesian Pluralism Context: Analysis of Regulation and Practice" (2025) 1:4 Int J Soc Sci Humanit 53–64, online: <https://international.appisi.or.id/index.php/IJSS/article/view/158>.

Istimeisyah, Dian, "Natural Law as a Normative-Ethical Framework for the Protection of Human Rights" (2025) 3:4 Media Huk Indones Publ by Yayasan Daarul Huda Krueng Mane 514–520, online: <https://ojs.daarulhuda.or.id/index.php/MHI/index>.

Jaiswal, Maitreyee, "Constitutionalism Through the Lens of Doctrine and Precedents" (2024) 4:1 Indian J Integr Res Law 617–629.

Khoirunnisa & Didi Jubaidi, "Political Configuration of Law in Law Enforcement in Indonesia" (2023) 4:4 Ilomata Int J Soc Sci 560–576.

Kholiq, Achmad, Abdul Aziz & Ahmad Yani, "RECONSTRUCTION INTERFAITH MARRIAGE LAW IN INDONESIA: Relevance of Sociology Knowledge and Maqasid Sharia" (2025) 25:1 Al-Risalah 70–86.

Lestari, Julita, "PLURALISME AGAMA DI INDONESIA Tantangan dan Peluang Bagi Keutuhan Bangsa" (2010) 6:1 Wahana Akad J Stud Islam dan Sos 29–38, online: <https://www.neliti.com/publications/337371/pluralisme-agama-di-indonesia-tantangan-dan-peluang-bagi-keutuhan-bangsa>.

Pueyo-Ibáñez, Belén, "Moral Inquiry Beyond Objectivism and Subjectivism" (2021) 35:2 J Specul Philos 165–175.

Purnama, Muhammad Ilham & Septiayu Restu Wulandari, "Legal Review of Interfaith Marriage from a Human Rights Perspective" (2024) 3:4 J-CEKI J Cendekia Ilm 1621–1632.

Putra, Irman & Arief Fahmi Lubis, "Constitutionalism and the Rule of Law in Indonesia: Historical Development and Contemporary Issues" (2023) 1:2 West Sci Law Hum Rights 89–96.

Putri, Nerisma Eka, Khaidir Ali Junid & Muhammad Azkia Fahmi, "Marriage Between Religions Based on Human Rights Perspectives" (2024) 9:1 SAPIENTIA ET VIRTUS 372–384.

Sangdel, Djawed & Damla Mesulam, "Abusive Constitutionalism: Comparative Analysis" (2024) 16:2 Geopolit Hist Int Relations 62–81.

Siregar, Wahidah Zein Br & Ella Syafputri Prihatini, "Passing the Sexual Violence Crime Law in Indonesia: Reflection of a Gender-Sensitive Parliament?" (2024) 12 Polit Gov 1–17.

Suhariyanto, Didik, "Protection of Citizens' Constitutional Rights from the Authority of the President in Indonesia" (2022) 2:12 Eduvest - J Univers Stud 2684–2690.

Winda Fitri, Shelvi Rusdiana, Windi Regina Anggia Putri, "Legal Issues Of Interfaith Marriages In Indonesia: A Comparative Study" (2024) 14:1 J Huk Media Justitia Nusant 53–70.

WEBSITE

Central Statistics Agency of Samarinda City, "Agama di Indonesia", (2024).

Congregation Development Materials, "Tata Gereja dan Tata Laksana Gereja Kristen Indonesia", (2023), online: <https://s.id/bahanbinajemaatgkisoka>.

Diocese of Surabaya, "Kitab Hukum Kanonik", (1983), online: <https://www.keuskupansurabaya.org/document/kitab-hukum-kanonik-1983/>.

Silvia Estefina Subitmele, Nurrohman Sidiq, "Tak Terhalang Beda Keyakinan, 6 Pasangan Artis Ini Gelar Pernikahan di Luar Negeri", (2025), online: *Liputan6*.

Subangkit, Windari, "Beda Agama, 10 Bukti Hangatnya Keluarga Jamal Mirdad dan Lydia Kandou", (2020), online: *Popbela*.

AUTHOR(S) BIOGRAPHY

Darryl Evan Brouwer, S.H., M.H.

Born in Makassar, October 28, 2002. He obtained a Bachelor of Laws degree in 2024 and a Master of Laws degree in 2025 from the Faculty of Law, Airlangga University. He is a Doctor of Law candidate from the Faculty of Law, Airlangga University. In his academic activities, he has conducted research in the field of criminal law and criminal procedural law. He is currently a legal practitioner in Kantor Hukum & Mediasi Dr. Tonic Tangkau, S.H., M.H., dan Rekan (TAN Law Office), a reputable law firm in Surabaya. The author can be contacted via email: darryl.evan.brouwer-2025@fh.unair.ac.id.

Muhammad Akrom Ramadhan, S.H.

Akrom holds a Bachelor of Law degree from Faculty of Law, Airlangga University. He has a deep interest in child protection issues in criminal and civil law in Indonesia. Currently, the author is actively conducting critical research on interfaith marriage and the synchronization of regulations between the Child Protection Law, the SPPA Law, and the Criminal Code, particularly regarding the phenomenon of normative ambiguity in judicial practice. Through this publication, the author seeks to contribute ideas for strengthening legal certainty and protection regarding the rights of citizens to choose their partners regardless of their religion. The author can be contacted at m.akrom.ramadhan006@gmail.com.

Ananda Lestari

Born in Ponorogo on September 6, 2003. She is a final-year undergraduate law student in Faculty of Law at Airlangga University. She is interested in and actively conducts research on legal issues related to pornography, child protection, and interfaith marriage, which remains a popular phenomenon in Indonesia. The author can be contacted via email: lestariananda817@gmail.com.