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The Application Of The Principle Of Judges Freedom On SEMA Number 2 Of 2023

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Abstract

This study aims to determine the position of the Supreme Court Circular Letter in the judicial system in Indonesia and the binding force of Supreme Court Circular Letter Number 2 of 2023 concerning Guidelines for Judges in Handling Applications for Registration of Marriages of Different Religions (Supreme Court Circular Letter number 2 of 2023) on the freedom of District Court judges in handling applications for registration of marriages of different religions in Indonesia. This research is normative legal research, using statutory and conceptual approaches and analyzed using content analysis techniques. The findings are that the Supreme Court Circular Letter does not have the status of a binding legal norm but has a moral force that binds judges in the judicial environment. Decisions in Supreme Court Circulars often reflect in-depth legal interpretation and the experience of judicial practitioners. Supreme Court Circular Letter No. 2 of 2023 aims to strengthen and direct the principle of judges' independence towards the achievement of better justice. The implementation of Supreme Court Circular Number 2 of 2023 will depend on the awareness and commitment of judges, as well as the full support of the judiciary and other relevant stakeholders.

Keywords: *Freedom of Judges; Supreme Court Circular Letter; Religious Marriage.*

Abstrak

Penelitian ini bertujuan untuk mengetahui kedudukan Surat Edaran Mahkamah Agung (SEMA) dalam sistem peradilan di Indonesia dan kekuatan mengikat SEMA Nomor 2 Tahun 2023 tentang Pedoman Hakim dalam Menangani Permohonan Pencatatan Perkawinan Berbeda Agama (SEMA 2/2023) terhadap kebebasan hakim Pengadilan Negeri dalam menangani permohonan pencatatan perkawinan beda agama di Indonesia. Penelitian ini merupakan penelitian hukum normatif, dengan menggunakan pendekatan perundang-undangan dan konseptual serta dianalisis menggunakan teknik analisis isi. Temuannya, SEMA tidak berstatus sebagai norma hukum yang mengikat namun mempunyai kekuatan moral yang mengikat hakim dalam lingkungan peradilan. Keputusan dalam SEMA sering kali mencerminkan interpretasi hukum yang mendalam dan pengalaman para praktisi peradilan. SEMA 2/2023 bertujuan untuk memperkuat dan mengarahkan prinsip kebebasan hakim menuju tercapainya keadilan yang lebih baik. Keberlakukan SEMA 2/2023 akan bergantung pada kesadaran dan

komitmen para hakim, serta dukungan penuh dari lembaga peradilan dan pemangku kepentingan terkait lainnya.

Kata Kunci: *Kebebasan Hakim; SEMA; Perkawinan Beda Agama.*

INTRODUCTION

Interfaith marriage is always an exciting and controversial legal study in Indonesia.[1] This is due to the unclear prohibition or explicit permissibility in Article 2, paragraph 1 of Law Number 1 of 1974 concerning marriage.[2] This article states that "marriage is valid if it is carried out according to the laws of each religion and belief." Meanwhile, the state must guarantee the population's rights by recording population data, including data on valid marriages. The legal remedy that can be taken to obtain the legality of marriage in cases of different religions is through an application for a court order as a requirement for registration of population at the Civil Registry Office based on Article 35 point a juncto Article 34 of Law Number 24 of 2013 concerning amendments to Law Number 23 of 2006 concerning Population Administration. With this legal ambiguity, some District Court judges determined the validity of interfaith marriages, including the Decree of the Surakarta District Court Number 454/Pdt.P/2018/PNSKt[3] and the Airmadidi District Court Number 41/PDT.P/2012/PN.AMD.[4]

The determination of interfaith marriages is highly dependent on the subjectivity of judges, considering the principle of judicial independence within the court's scope. For this reason, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 2 of 2023, which reviews the application of the principle of freedom of judges in carrying out their duties. Meanwhile, judges play an essential role from the beginning to the end of the examination of cases in court through the judicial powers that have become their authority. Judicial power, according to Article 24 of the 1945 Constitution, is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the

[1] Kadriah Kadriah, Teuku Saiful, and Muhammad Naufal Hidayat, "Interreligous Marriage According to Indonesian Legislation," 2021, doi:10.2991/assehr.k.210506.060; Khairul Hamim, "Marriage in Different Religions: Between Text and Context," *Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyyah Fakultas Syariah IAIN Mataram* 11, no. 1 (June 17, 2019): 23–39, doi:10.20414/alihkam.v11i1.2114.

[2] Syamsul Bahri, 'Dinamika Hukum Perkawinan Beda Agama Dan Campuran Di Dunia Islam Dan Implementasinya Di Indonesia', *Syaksia: Jurnal Hukum Perdata Islam* 23, no. 1 (2022): 101–14; Muhamad Arsy Surya Saputra and Lina Jamilah, 'Perkawinan Beda Agama Menurut Peraturan Perkawinan Di Indonesia Dihubungkan Dengan Putusan Mahkamah Agung', in *Bandung Conference Series: Law Studies*, vol. 2, 2022, 428–35, <https://proceedings.unisba.ac.id/index.php/BCSLS/article/view/872>.

[3] Muhammad Husni Abdulah Pakarti, 'Putusan Hakim Pengadilan Negeri Surakarta Terhadap Perkawinan Beda Agama Yang Legal Secara Hukum Negara', *Mutawasith: Jurnal Hukum Islam* 5, no. 2 (2022): 99–110.

[4] A.C Palandi, "Analisa Yuridis Perkawinan Beda Agama Di Indonesia," *Lex Privatum* 2 (2013).

1945 Constitution for the sake of the establishment of the legal state of the Republic of Indonesia.[5] According to Article 119 Herzien Indonesich Reglement or 143 Rechreglemet Buitengewesten (now abbreviated as HIR or RBG), the judge has the authority to give instructions to the parties who filed a lawsuit with the court. Judges must be independent and not influenced by any party, including the executive, in making decisions because they must be able to objectively resolve the problems they face and follow applicable laws and regulations. Judges are limited in making decisions by facts and relevant legal rules that constitute or become the basis for such decisions. In the trial, the judge must also hear the statements of both parties through the verification process to find the actual truth.[6] The judge's decision must contain three (3) primary considerations: philosophical justice, sociological justice, and juridical justice. Even though they have the right to absolute freedom in adjudicating a case, judges must see their capacity to think and make decisions but remain within the limits of their responsibility. [7]

The issuance of SEMA 2/2023 raises various questions and thoughts regarding the possible impact of this new directive on judges, the judiciary, and the wider community.[8] Changes in legal interpretations, social developments, and the need for consistency in decisions are underlying the issuance of SEMA 2/2023. Therefore, the background surrounding the application of the principle of freedom of judges after SEMA 2/2023 is very relevant to understand and study more deeply.

Studies on the freedom of judges have been carried out by many researchers, including Vivi Ariyanti, who found that the imposition of criminal penalties is influenced by the judge's point of view in understanding the law. Even though judges have diverse intellectual backgrounds, they need a unified view regarding applying the principle of freedom of judges

[5] Bismar Siregar, 'Kebebasan Hakim Dalam Negara Hukum Berdasarkan Undang-Undang Dasar 1945', *Jurnal Hukum & Pembangunan* 14, no. 4 (2017): 328–35; Marina Kurnianingsih, 'Kebebasan Hakim Untuk Menemukan Hukum Dalam Sistem Peradilan Pidana Di Indonesia Dalam Kasus Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Prap. Pid/2015/PN. Jkt' (PhD Thesis, UNS (Sebelas Maret University), 2021), <https://digilib.uns.ac.id/dokumen/detail/100001/>.

[6] Muhammad Akbar, 'Kebebasan Hakim Dalam Melahirkan Putusan Progresif', *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 17, no. 1 (2023): 155–70; Siregar, 'Kebebasan Hakim Dalam Negara Hukum Berdasarkan Undang-Undang Dasar 1945'.

[7] Nimerodi Gulo dan Ade Kurniawan Muharram, "Disparitas Dalam Penjatuhan Pidana," *Masalah-Masalah Hukum*, no. 3 (2018): 215–27.

[8] Saputra and Jamilah, 'Perkawinan Beda Agama Menurut Peraturan Perkawinan Di Indonesia Dihubungkan Dengan Putusan Mahkamah Agung'; Bahri, 'Dinamika Hukum Perkawinan Beda Agama Dan Campuran Di Dunia Islam Dan Implementasinya Di Indonesia'.

in imposing criminal sentences.[9] Second, Firman Floranta Adonara examines the significance, principles, and implementation of judges in applying the principle of freedom in making legal decisions.[10] Adonara concluded that the freedom of judges in carrying out their duties as judges can be interpreted as meaning that judges, in carrying out their judicial functions, are not bound by anything and are not influenced by any party but have the freedom to act according to their beliefs. The meaning of such freedom is often referred to as individual freedom or existential freedom. Applying the principle of freedom of judges in making decisions in cases handled involves a policy of distancing oneself from interference from other powers, whether from the executive, legislative, or other judicial institutions. Thus, the implication is that in general situations and the context of exceptional cases, court leaders are still allowed to provide advice or directions to judges in the form of advice or instructions. However, this must maintain the principle of the judge's freedom.

PROBLEM FORMULATION

This research examines the applicability of the Principle of Freedom of Judges in SEMA 2/2023, which has yet to be studied in several previous studies. This research discusses two problem formulations, namely first, what is the position of SEMA in the justice system in Indonesia?, and how the principle of freedom of judges is implemented in SEMA 2/2023 concerning Guidelines for Judges in Handling Applications for Registration of Marriages of Different Religions?

METODE PENELITIAN

This research is normative legal research, and uses a statutory and regulatory approach and a contextual approach. [11] This research data is secondary, namely sourced from literature consisting of primary legal materials (The 1945 Constitution of Republic of Indonesia, Marriage Law, Judicial Power Law, and Human Rights Law), and secondary legal materials (books and journal articles). Analysis of this research data used content analysis techniques, which is a research technique to produce objective, systematic and qualitative descriptions of

[9] Vivi Ariyanti, "Kebebasan Hakim Dan Kepastian Hukum Dalam Menangani Perkara Pidana Di Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 40 (2019): Hlm.166-167.

[10] Firman Floranta Adonara, 'Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi', *Jurnal Konstitusi* 12, no. 2 (2015): 217–36.

[11] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2009); Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Kencana, 2020); Vijay M. Gawas, 'Doctrinal Legal Research Method a Guiding Principle in Reforming the Law and Legal System towards the Research Development', 2017.

the substance of the research itself. The researcher reads the text to draw out emerging themes, trying to make the themes as specific as possible by analyzing how the text is used, the limits of its use, the context in which it appears and so on. Once these themes solidify, they become "codes" that can then be calculated and considered in settlement with other codes. [12]

DISCUSSION

Position of the Supreme Court Circular Letter in The Judicial System in Indonesia

SEMA was formed based on the provisions of Article 12 Paragraph 3 of Law No. 1 of 1950 concerning the Composition, Powers, and Procedures of the Indonesian Supreme Court, which was amended by Law (UU) Number 56 of 1958 concerning Amendment to Law No. 1 of 1950 concerning the Composition, Powers, and Ways of the Court of the Supreme Court of Indonesia [13]. The Supreme Court, as a judicial institution with the authority to supervise the judicial institutions under it, has the right to give warnings, reprimands, and instructions deemed necessary and valuable to these courts and judges, either in a separate or circular letter. The intended circular letter is often referred to as the Supreme Court Circular Letter, which is then abbreviated as SEMA. However, in its development, because there were still very few laws at that time, SEMA experienced a slight shift in function. SEMA was no longer just a monitoring tool but experienced an expansion of functions, including regulation and administration.[14]

This concept is also in line with the formulation of Article 79 in the Supreme Court Law, which stipulates that "the Supreme Court has the right to regulate all matters necessary further to ensure the smooth running of justice when there are inadequate aspects in this Law." SEMA is placed under the hierarchy of laws and does not have a position equal to or higher than the law. SEMA only has ties in the judicial environment. SEMA itself, if we look at it from the subject of its users, can be classified into policy rules (*bleidsregel*) because

[12] Darmiyati Zuchdi, *Panduan Penelitian Analisis Konten* (Yogyakarta: Lembaga Penelitian IKIP Yogyakarta, 1993), 1; Cane and Kritzer, *The Oxford Handbook of Empirical Legal Research*, 12–13; Klaus Krippendorff, *Content Analysis: An Introduction on Its Methodology* (London: SAGE Publications, 1991); Jumal Ahmad, *Desain Penelitian Analisis Isi (Content Analysis)*, 2018, <https://doi.org/10.13140/RG.2.2.12201.08804>; Or Brook, "Politics of Coding: On Systematic Content Analysis of Legal Text," in *The Politics of European Legal Research* (Edward Elgar Publishing, 2022).

[13] Suwitno Y Imran and Apripari Apripari, "Determination Of The Judges Freedom In Indonesia On The Straf Minimum Rules," *Protection: Journal Of Land And Environmental Law* 1, no. 1 (July 31, 2022): 5–11, doi:10.38142/pjlel.v1i1.281.

[14] Cholida Hanum, 'Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia', *Humani (Hukum Dan Masyarakat Madani)* 10, no. 2 (26 November 2020): 138–153, <https://doi.org/10.26623/humani.v10i2.2401>.

SEMA itself is usually shown to judges, clerks, and other positions in court.[15] The existence of *bleidregels* itself is a consequence of enacting the rule of law concept. Policy regulations are free policy products determined by state administration officials in the context of carrying out government tasks. The policy's regulations are not legally binding directly but have legal relevance. This must be linked to governmental authority based on discretionary use because otherwise, there is no place for policy regulation.

Meanwhile, the law is the leading legal basis under the 1945 Constitution of the Republic of Indonesia and has binding power to all Indonesian citizens.[16] Supreme Court Regulations (PERMA) are a form of regulation that contains procedural provisions in the legal field. On the other hand, SEMA is a direction from the leadership of the Supreme Court given to all parts of the judiciary. It contains guidelines for the implementation of justice, focusing more on administrative aspects. The Supreme Court's fatwa contains the Supreme Court's legal views given at the request of state institutions. Meanwhile, Supreme Court Regulations are a form of written decision issued by the Chief Justice of the Supreme Court regarding a certain matter.[17]

To understand the legal basis of SEMA, we need to refer to the Supreme Court Law as the legal basis that regulates the implementation of SEMA itself. Article 79 of Law Number 14 of 1985 concerning the Supreme Court which has been amended by Law (UU) Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court explains that the Supreme Court has the authority to make regulations. -making power). The purpose of granting this permission is so that the Supreme Court can resolve problems that are not specified in the law. In other words, the Supreme Court can issue complementary regulations to fill legal gaps.[18]

In this case, regulations produced by the Supreme Court are distinguished from rules formulated by legislators. This law regulates the administration of justice as an integrated

[15] Bintang Ulya Kharisma, "Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama?," *Journal of Scientech Research and Development* 5, no. 1 (June 29, 2023): 477–82, doi:10.56670/jsrd.v5i1.164.

[16] Ariyanti, "Kebebasan Hakim Dan Kepastian Hukum Dalam Menangani Perkara Pidana Di Indonesia."

[17] Septiana Anifatus Shalihah, 'Kedudukan Peraturan Mahkamah Agung Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia (Studi Tentang Implementasi Perma Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam Kuhp Di Pengadilan Negeri Kabupaten Gresik)', 2018, <https://dspace.uii.ac.id/handle/123456789/6879>; Mohammad Kamil Ardiansyah, 'Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia', *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 361–84.

[18] Ardiansyah, 'Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia'.

component of the legal system as a whole. In other words, the Supreme Court will not interfere with or exceed general regulations regarding citizens' rights and obligations. It will not regulate aspects such as the nature, strength, means of proof, evaluation of evidence, or distribution of the burden of proof. The decision of the Chief Justice of the Supreme Court Number: 57/KMA/SK/IV/2016 defines a Circular Letter of the Supreme Court (SEMA) as "a form of sending messages from the leadership of the Supreme Court to all judiciary containing guidelines in managing justice, which is more related to administrative aspects, and contains notifications about certain things that are considered important and urgent."

Based on this understanding, the contents of the SEMA involve directives related to the implementation of justice related to the administration of justice (legal procedures) and notification of specific matters that are considered significant and require immediate attention. The administration of justice (legal procedures) includes the management of procedural legal provisions. At the same time, notification sentences regarding certain matters considered important and urgent are more open concepts that can refer to various issues in the context of material law, procedural law, and general administration in the Supreme Court and the judicial institutions under it. As a guide in administering justice, SEMA only impacts the justice system and is not widely applicable. However, the application of SEMA could have implications for society in general.

A Supreme Court Regulation (PERMA) may submit a request for judicial review to the Supreme Court. Article 24 A paragraph (1) of the 1945 Constitution confirms that the Supreme Court has the authority to examine statutory regulations under statutes against statutes. However, SEMA cannot be submitted for judicial review because SEMA is included in the category of policy regulations (SEMA 4/2014 in the Formulation of the State Administrative Chamber). Even so, if there is an SEMA related to the implementation of government functions in the judicial realm by Article 4 paragraph (1) letter b Chapter VI Law 30/2014 concerning Government Administration, then an SEMA with general and concrete substance norms can be filed a lawsuit at the State Administrative Court.

If PERMA has binding legal force for every judge under the Supreme Court, then it is different from the legal product of the Supreme Court in the form of SEMA.[19] When

[19] Shalihah, 'Kedudukan Peraturan Mahkamah Agung Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia (Studi Tentang Implementasi Perma Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam Kuhp Di Pengadilan Negeri Kabupaten Gresik)'; Agus Satory and Hotma Pardomuan Sibuea, 'Problematika Kedudukan Dan Pengujian Peraturan Mahkamah Agung Secara

examined from the perspective of its position and function, it can be concluded that the SEMA does not have binding obligations on judges. This is because the SEMA only functions as a guideline or instruction and does not have the character of a rule that must be followed by judges. Furthermore, this SEMA does not have the power to compel judges to comply with its contents and will not have any legal impact on judges who do not follow it. If there are judges who do not follow the guidelines in the SEMA, the consequences will not be included in the sanctions. The judge will not face any punitive action. This is because SEMA does not have the status of a legal product that can result in criminal penalties, such as laws or regional regulations.

In addition, SEMA is limited to the form of messages taken by the leadership of the Supreme Court and conveyed to all levels of the judiciary. The contents of the SEMA include directions or warnings that serve as a guide in administering justice as well as in efforts to carry out the oversight function. These messages may be in the form of explanations or interpretations of legal rules to prevent mistakes in providing justice during the judicial process. SEMA issued by the Supreme Court is included in the category of policy regulations, while PERMA is included in the category of laws and regulations. Even though SEMA is basically non-binding and only a policy in nature, judges may have judicial norms and a code of ethics that may require them to comply with the orders of their superiors. But still, in its function, SEMA only applies as a regulation that applies within the internal environment of judicial institutions under the jurisdiction of the Supreme Court.

Applicability of Supreme Court Circular Letter Number 2 of 2023 According to The Principle of Judicial Independence

In 2023, the Supreme Court issued a circular letter that regulates Guidelines for Judges in Trying Cases for Requests for Registration of Marriages between People of Different Religions and Beliefs, which was issued on 17 July 2023. The SEMA was enacted to ensure clarity and uniformity of application law in deciding cases of applications for registration of marriages between individuals of different religions and beliefs. In adjudicating this matter, judges are directed to follow the following principles: first, a valid marriage is a marriage that is carried out according to 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; second,

Materiil Sebagai Peraturan Perundang-Undangan', *Jurnal, Program Studi Ilmu Hukum Universitas Pakuan*, 2020, <https://www.academia.edu/download/100860361/387570529.pdf>.

the Court did not grant the request for registration of marriages between people of different religions and beliefs.

Marriage is a religious aspect in which two human individuals, namely an adult man and a woman, desire to unite and promise to be in a bond considered sacred as husband and wife, to form a happy family and continuing offspring. Sayuti Talib in Erwinsyahbana considers marriage to be a sacred agreement between a man and a woman to form a family.[20] For this reason, marriage is a sacred, strong, and firm agreement in which a man and a woman agree to legally live together to form an eternal, mutually respectful, loving, peaceful family and happy. Furthermore, Gardiner & Myers (in Khairunnisa & Nurwati) also stated that marriage provides opportunities for intimacy, commitment, friendship, love and affection, fulfillment of sexual needs, and opportunities for emotional development.[21] Law Number 1 of 1974 (article 1) defines marriage as a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in One Supreme God. The consideration for this is as a country based on Pancasila, where the first precept is Belief in One Almighty God. Therefore, marriage has a close relationship with religion and the spiritual dimension, so it involves physical or physical aspects and has an essential role in the inner or spiritual dimension.[22]

In Indonesia, the issue of marriage is taken seriously because various tribes have different views regarding traditions and methods. Even from a religious perspective, Indonesia has special rules whereby prospective married couples must have a clear religion to obtain a marriage record book. However, marriages between people of different religions and beliefs in Indonesia have become a severe concern in recent years. A heterogeneous Indonesian society with various religious and cultural diversity presents legal and social challenges in overcoming differences in beliefs that exist in marriage. This phenomenon is increasingly complex due to various legal and normative issues arising from religious differences and marriage beliefs. Differences in religion and belief in marriage can cause

[20] Tengku Erwinsyahbana and Tengku Rizq Frisky Syahbana, *Aspek Hukum Perkawinan Di Indonesia* (Medan: UMSU press, 2022), 5.

[21] Salsabila Khairunnisa and Nunung Nurwati, 'Pengaruh Pernikahan Pada Usia Dini Terhadap Peluang Bonus Demografi Tahun 2030: Pengaruh Pernikahan Pada Usia Dini Terhadap Peluang Bonus Demografi Tahun 2030', *Jurnal Ilmu Kesejahteraan Sosial HUMANITAS* 3, no. I (2021): 49.

[22] The Indonesian Ulema Council (MUI) stipulated Fatwa Number: 4/MUNAS VII/MUI/8/2005 concerning Interfaith Marriage, that the MUI tends to forbid the marriage of interfaith couples for the sake of achieving the goals and benefits of marriage. Ayub Mursalin, 'Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia', *Undang: Jurnal Hukum* 6, no. 1 (2023): 126–27.

various problems, such as legal disputes regarding the rights and obligations of spouses,[23] the legal status of children,[24] and the recognition and protection of freedom of religion and belief.[25]

In response to this problem, as the highest judicial institution in Indonesia, the Indonesian Supreme Court issued a Supreme Court Circular Letter (SEMA) Number 2 of 2023, which aims to guide judges in adjudicating applications for the registration of marriages between people of different religions and beliefs. This SEMA is expected to provide consistent and standardized directions and guidelines for judges in deciding cases involving interfaith marriages so that they can make fair and wise decisions in such cases. When someone applies for the registration of marriages between people of different religions in Indonesia, various legal and social problems can arise. Some of the problems generally faced include the legal process, the judge's authority in adjudicating the case, legal protection for couples who marry with different religions, and the social impact on families and society.[26] The judge referred to refers to judges who serve at the Supreme Court and also judges who serve at judicial institutions under their auspices, which include general courts, religious courts, military courts, state administrative courts, as well as judges at special courts within the territory of the Republic of Indonesia. that jurisdiction. The power of this judge is given by law to carry out court duties (according to Article 1, paragraph 8 of the Criminal Procedure Code). Paragraph 9 of these provisions explains that adjudicating is a series of activities by judges, including receiving, examining, and deciding criminal cases based on the principles of freedom, integrity, and neutrality in court proceedings by the regulations stipulated in this law.

[23] Novita Misika Putri, Tantan Hermansah, and Kiky Rizky, 'Problematika Sosial Dan Keagamaan Dalam Keluarga Beda Agama Di Desa Sendangmulyo Kabupaten Kulon Progo Yogyakarta', *Alamtara: Jurnal Komunikasi Dan Penyiaran Islam* 5, no. 2 (2021): 103–26; Muhammad Yusuf, Ani Susilawati, and Aprezo Pardodi Maba, 'Problematika Pendidikan Agama Islam Pada Anak Dalam Keluarga Perkawinan Beda Agama Di Caturtunggal Depok Sleman Yogyakarta', *Indonesian Journal of Islamic Education Studies (IJIES)* 3, no. 1 (2020): 112–26.

[24] Agus Hermanto, Arif Fikri, and Imam Nur Hidayat, 'Menyoal Tentang Perkawinan Beda Agama Dan Akibatnya Terhadap Hak Waris Di Indonesia', *Mutawasith: Jurnal Hukum Islam* 5, no. 1 (2022): 68–83; Fitria Agustin, 'Kedudukan Anak Dari Perkawinan Berbeda Agama Menurut Hukum Perkawinan Indonesia', *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (2018): 43–54.

[25] Rizqon Rizqon, 'Analisis Perkawinan Beda Agama Perspektif KHI, HAM Dan CLD-KHI', *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 13–24; Mutiara Mega Putri Utami and Taun Taun, 'Tinjauan Yuridis-Sosiologis Pada Perkawinan Berbeda Agama Dalam HAM Dan Hukum Di Indonesia Serta Kedudukan Pada Anak Dari Perkawinan Berbeda Agama', *Jurnal Ilmiah Wahana Pendidikan* 9, no. 1 (2023): 290–98.

[26] Junaidi Junaidi and M Martindo Merta, "Asas Hakim Pasif Dalam Reglement Op De Rechtsvordering (R.V) Dan Prinsip Hakim Aktif Dalam Herziene Indonesisch Reglement (Hir) Dalam Penyelesaian Perkara Perdata Di Pengadilan," *Qistie* 13, no. 1 (2020): 60, doi:10.31942/jqi.v13i1.3426.

In carrying out their duties, judges are given special privileges in the form of freedom to decide a problem.[27] The basic principle of freedom of judges or the independence of the judiciary aims to prevent abuse of power and authority by state institutions.[28] In this context, Frans Magnis Suseno emphasizes that by guaranteeing the independence and autonomy of the judiciary from other branches of state power, it is hoped that the judiciary can exercise legal oversight of government actions as well as function as a barrier and reduce the potential for abuse of authority or power.[29] It is not only the independence of judicial power that is important, especially in terms of freeing itself from government influence, but also anticipating the possibility of abuse of power and violations of human rights by those in power. The judiciary, which constitutionally has the authority to supervise government policies, faces difficulties in carrying out its supervisory duties. [30] To decide a case, the judge has independence from interference or interference from any party, which is known as an independent judicial power, or in other words, this judicial power is free from external influences. This free judicial power is a form of independence the judiciary possesses to reach objective decisions without prejudice. Objectivity in a judge's decision refers to integrity in making decisions based on facts by generally accepted objective standards.[31]

On the other hand, a decision without prejudice means that the decision made by a judge is not in favor of one of the parties, so it does not create a sense of injustice among the parties involved in the case or dispute. In addition, the decision also provides legal clarity in society. So, in conclusion, an independent judicial power must ensure an honest and fair trial and provide legal certainty in society based on applicable law. To achieve justice and truth, court decisions must align with a court decision's primary objectives. Thus, even though the judge has been given directions regarding the matters contained in SEMA 2/2023, the judge is still given the right to freedom in resolving cases. For some judges who strictly adhere to and are bound by ethical norms, it is very unethical to disobey their superiors.

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[27] Zubaidah, "Kebebasan Hakim Dalam Sebuah Putusan (Memaknai Dissenting Opinion)," *Pa.Marabahan*, 2021, <https://www.pa-marabahan.go.id/en/artikel-tentang-hukum/644-kebebasan-hakim-dalam-sebuah-putusan-memaknai-dissenting-opinion.html>.

[28] Aidul Fitriciada Azhari, 'Paradigma Kekuasaan Kehakiman Sebelum Dan Sesudah Reformasi', *MeluruskanArah Manajemen Kekuasaan Kehakiman*, 2019, <https://komisiyudisial.go.id/storage/assets/uploads/files/Buku-Bunga-Rampai-2018.pdf#page=33>; Eveline Fifiana, 'Eksistensi Kekuasaan Kehakiman (Judicative Power) Dalam Mewujudkan Independensi Peradilan Dan Peradilan Yang Bersih', *Solusi* 16 (2018): 266–73.

[29] Ipel Gunadi, "Konsep Etika Menurut Franz Magnis Suseno," *Universitas Islam Negeri Ar-Raniry*, 2017, 1–81.

[30] Adonara, "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi."

[31] Hakim Hakim, 'Peran Hakim Dalam Penegakan Etika Dan Profesi Hukum', 2018, <https://osf.io/9gtzv/download>.

CONCLUSION

The conclusion from this discussion is that the Supreme Court Circular Letter (SEMA) has an essential role in the justice system in Indonesia. SEMA functions as a direction and guide for judges in carrying out court duties, especially in the context of marriages between people of different religions. This SEMA is enacted to ensure clarity and uniformity in applying the law in adjudicating such cases. However, it should be remembered that SEMA has limited ties to the judiciary and does not have a position equal to or superior to the law. In applying SEMA, the principle of freedom of justice becomes essential. The freedom and independence of judges in carrying out court duties help prevent abuse of power and ensure objective and fair decisions. An independent judicial power must also ensure that court decisions align with the primary objectives of a court decision, namely, to achieve justice, truth, and legal certainty in society. In the context of interfaith marriages, SEMA creates guidelines for judges in deciding such cases, but still within the legal framework established by law and religious principles. Thus, SEMA helps balance legal aspects and religious values in interfaith marriages. We propose a more explicit affirmation in this SEMA regarding the limits and scope of the principle of freedom of judges in order to avoid ambiguous interpretations and minimize the potential for controversy in its implementation. We also suggest a more detailed and explicit explanation in the SEMA regarding the process and considerations in handling applications for the registration of interfaith marriages to avoid confusion in implementation in the field, given the many multiple interpretations that occur.

BIBLIOGRAPHY

Books

Brook, Or. 'Politics of Coding: On Systematic Content Analysis of Legal Text'. In *The Politics of European Legal Research*. Edward Elgar Publishing, 2022.

Cane, Peter, and Herbert M. Kritzer. *The Oxford Handbook of Empirical Legal Research*. OUP Oxpord, 2012.

Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum: Normatif Dan Empiris*. Jakarta: Kencana, 2020.

Erwinsyahbana, Tengku, and Tengku Rizq Frisky Syahbana. *Aspek Hukum Perkawinan Di Indonesia*. Medan: UMSU press, 2022.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2009.

Legislations

The 1945 Constitution of the Republic of Indonesia

Law Number 1 of 1974 concerning Marriage

Law Number 39 of 1999 concerning Human Right

Law Number 14 of 1985 concerning the Supreme Court which has been amended by Law (UU) Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court

Journals

Adonara, Firman Floranta. 'Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi'. *Jurnal Konstitusi* 12, no. 2 (2015): 217–36.

Agustin, Fitria. 'Kedudukan Anak Dari Perkawinan Berbeda Agama Menurut Hukum Perkawinan Indonesia'. *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (2018): 43–54.

Ahmad, Jumal. *Desain Penelitian Analisis Isi (Content Analysis)*, 2018. <https://doi.org/10.13140/RG.2.2.12201.08804>.

Akbar, Muhammad. 'Kebebasan Hakim Dalam Melahirkan Putusan Progresif'. *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 17, no. 1 (2023): 155–70.

Ardiansyah, Mohammad Kamil. 'Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia'. *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 361–84.

Bahri, Syamsul. 'Dinamika Hukum Perkawinan Beda Agama Dan Campuran Di Dunia Islam Dan Implementasinya Di Indonesia'. *Syaksia: Jurnal Hukum Perdata Islam* 23, no. 1 (2022): 101–14.

Fifiana, Eveline. 'Eksistensi Kekuasaan Kehakiman (Judicative Power) Dalam Mewujudkan Independensi Peradilan Dan Peradilan Yang Bersih'. *Solusi* 16 (2018): 266–73.

Gawas, Vijay M. 'Doctrinal Legal Research Method a Guiding Principle in Reforming the Law and Legal System towards the Research Development', 2017.

Hakim, Hakim. 'Peran Hakim Dalam Penegakan Etika Dan Profesi Hukum', 2018. <https://osf.io/9gtzv/download>.

Hanum, Cholida. 'Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia'. *Humani (Hukum Dan Masyarakat Madani)* 10, no. 2 (26 November 2020): 138–53. <https://doi.org/10.26623/humani.v10i2.2401>.

Hermanto, Agus, Arif Fikri, and Imam Nur Hidayat. 'Menyoal Tentang Perkawinan Beda Agama Dan Akibatnya Terhadap Hak Waris Di Indonesia'. *Mutawasith: Jurnal Hukum Islam* 5, no. 1 (2022): 68–83.

Khairunnisa, Salsabila, and Nunung Nurwati. 'Pengaruh Pernikahan Pada Usia Dini Terhadap Peluang Bonus Demografi Tahun 2030: Pengaruh Pernikahan Pada Usia Dini Terhadap Peluang Bonus Demografi Tahun 2030'. *Jurnal Ilmu Kesejahteraan Sosial HUMANITAS* 3, no. I (2021): 45–69.

Krippendorff, Klaus. *Content Analysis: An Introduction on Its Methodology*. London: SAGE Publications, 1991.

Kurnianingsih, Marina. 'Kebebasan Hakim Untuk Menemukan Hukum Dalam Sistem Peradilan Pidana Di Indonesia Dalam Kasus Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Prap. Pid/2015/PN. Jkt'. PhD Thesis, UNS (Sebelas Maret University), 2021. <https://digilib.uns.ac.id/dokumen/detail/100001/>.

Mursalin, Ayub. 'Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia'. *Undang: Jurnal Hukum* 6, no. 1 (2023): 113–50.

Pakarti, Muhammad Husni Abdulah. 'Putusan Hakim Pengadilan Negeri Surakarta Terhadap Perkawinan Beda Agama Yang Legal Secara Hukum Negara'. *Mutawasith: Jurnal Hukum Islam* 5, no. 2 (2022): 99–110.

Putri, Novita Misika, Tantan Hermansah, and Kiky Rizky. 'Problematika Sosial Dan Keagamaan Dalam Keluarga Beda Agama Di Desa Sendangmulyo Kabupaten Kulon Progo Yogyakarta'. *Alamtara: Jurnal Komunikasi Dan Penyiaran Islam* 5, no. 2 (2021): 103–26.

Rizqon, Rizqon. 'Analisis Perkawinan Beda Agama Perspektif KHI, HAM Dan CLD-KHI'. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 13–24.

Saputra, Muhamad Arsy Surya, and Lina Jamilah. 'Perkawinan Beda Agama Menurut Peraturan Perkawinan Di Indonesia Dihubungkan Dengan Putusan Mahkamah Agung'. In *Bandung Conference Series: Law Studies*, 2:428–35, 2022. <https://proceedings.unisba.ac.id/index.php/BCSLS/article/view/872>.

Satory, Agus, and Hotma Pardomuan Sibuea. 'Problematika Kedudukan Dan Pengujian Peraturan Mahkamah Agung Secara Materiil Sebagai Peraturan Perundang-Undangan'. *Jurnal, Program Studi Ilmu Hukum Universitas Pakuan*, 2020. <https://www.academia.edu/download/100860361/387570529.pdf>.

Shalihah, Septiana Anifatus. 'Kedudukan Peraturan Mahkamah Agung Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia (Studi Tentang Implementasi Perma Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan

Jumlah Denda Dalam Kuhp Di Pengadilan Negeri Kabupaten Gresik)', 2018. <https://dspace.uii.ac.id/handle/123456789/6879>.

Siregar, Bismar. 'Kebebasan Hakim Dalam Negara Hukum Berdasarkan Undang-Undang Dasar 1945'. *Jurnal Hukum & Pembangunan* 14, no. 4 (2017): 328–35.

Utami, Mutiara Mega Putri, and Taun Taun. 'Tinjauan Yuridis-Sosiologis Pada Perkawinan Berbeda Agama Dalam HAM Dan Hukum Di Indonesia Serta Kedudukan Pada Anak Dari Perkawinan Berbeda Agama'. *Jurnal Ilmiah Wahana Pendidikan* 9, no. 1 (2023): 290–98.

Yusuf, Muhammad, Ani Susilawati, and Aprezo Pardodi Maba. 'Problematika Pendidikan Agama Islam Pada Anak Dalam Keluarga Perkawinan Beda Agama Di Caturtunggal Depok Sleman Yogyakarta'. *Indonesian Journal of Islamic Education Studies (IJIES)* 3, no. 1 (2020): 112–26.

Zuchdi, Darmiyati. *Panduan Penelitian Analisis Konten*. Yogyakarta: Lembaga Penelitian IKIP Yogyakarta, 1993.

Internet

Azhari, Aidul Fitriciada. 'Paradigma Kekuasaan Kehakiman Sebelum Dan Sesudah Reformasi'. *MeluruskanArah Manajemen Kekuasaan Kehakiman*, 2019. <https://komisiyudisial.go.id/storage/assets/uploads/files/Buku-Bunga-Rampai-2018.pdf#page=33>.