



# The Implementation of Supreme Court Circular Letter Number 2 of 2023 Regarding Marriages Between Adherents of Different Indigenous Beliefs in Indonesia

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**Abstract.** Marriages between adherents of different indigenous beliefs have become a contentious issue in Indonesia. This is primarily because the identity of these believers, as recorded on their National Identity Cards, is ambiguously labeled as "Belief in the One Almighty God," without distinguishing between the various indigenous beliefs. It's noteworthy that Indonesia recognizes a diverse range of indigenous beliefs, each with its unique marital customs. The legal validity of civil registration for marriages between different indigenous belief adherents is questionable. The introduction of the Supreme Court Circular Letter No. 2 of 2023, addressing the registration of marriages between individuals of different religions and beliefs, warrants a deeper examination. This study employs a normative juridical method, utilizing secondary data and adopting both a statute and conceptual approach. Fundamentally, while the state prohibits interfaith marriages, marriages between different indigenous belief adherents are still legitimized. This is due to the lack of differentiation between one indigenous belief and another. Consequently, the enforcement of the Supreme Court Circular Letter No. 2 of 2023 cannot be applied to marriages between adherents of different indigenous beliefs.

**Keywords:** Indigenous Beliefs, Marriage, Register, Religion.

## 1. Introduction

Indonesia is a nation characterized by its diverse populace, encompassing a myriad of ethnicities, religions, beliefs, and cultures that flourish within its society. This diversity emerges within the heterogeneous Indonesian community. According to the 2010 population census, the Unitary State of the Republic of Indonesia comprises 1,331 ethnic groups, each with its distinct culture and religion. The rich tapestry of ethnicities, cultures, beliefs, and religions in Indonesia represents an invaluable treasure.

Indonesians are often perceived as a religious community, evident from the variety of recognized religions in the country. Article 28E of the 1945 Constitution guarantees every individual the right to freedom of belief.[1] As stipulated by the Presidential Decree No.1/PNPS of 1965 on the Prevention of Misuse and/or Defamation of Religion, the recognized religions in Indonesia include Islam,

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Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. Beyond these recognized religions, the Constitutional Court of the Republic of Indonesia, through its Decision No. 97/PUU/XIV/2016, acknowledges the existence of adherents of indigenous beliefs. Referring to the 2017 data from the Ministry of Education and Culture, there are 187 groups of indigenous belief adherents spread across 13 provinces in Indonesia. [2] Currently, according to a handbook issued by the Directorate of Belief in the One Almighty God and Society under the Ministry of Education, Culture, Research, and Technology, there are 176 registered indigenous belief organizations.

The choice of religion or belief is fundamentally a personal matter for each individual, in the context of religious freedom and interfaith harmony, the state has an imperative to provide legal protection. [3] Humans are inherently social beings, intrinsically bound to interact and integrate with others, transcending ethnic, racial, and religious boundaries.[4] Such is the depiction of Indonesian society, characterized by its diverse ethnicities, cultures, races, and religions. The community's desire for interaction reflects an endeavor to evolve as holistic individuals capable of coexisting harmoniously with others. To forge bonds with their peers, individuals often resort to marriage, establishing a shared familial life. As articulated in Article 1 of Law No. 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law), marriage is defined as a spiritual and physical union between a man and a woman, united as husband and wife, with the objective of creating a harmonious and enduring family based on the belief in the One Almighty God.

Article 28B, paragraph 1 of the Constitution of the Republic of Indonesia 1945 guarantees every individual's right to establish a family and continue their lineage through a legitimate marriage. A marriage is deemed legitimate if it complies with the provisions of Article 2, Paragraph (1) of the Marriage Law, which stipulates that marriages should be conducted according to the respective religious and belief systems of the parties involved. Following the marriage ceremony, it is imperative to register the marriage as outlined in Article 2, Paragraph (2) of the Marriage Law, which mandates registration as a prerequisite for the state's acknowledgment of the marriage. Both these conditions are cumulative, meaning both must be satisfied for a marriage to be considered legally valid under Indonesian law. The registration of a marriage serves as an authentic record, ensuring that the marriage is recognized by the state, thereby providing legal certainty.

Article 2 of the Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 on Marriage (hereinafter referred to as the Regulation on the Implementation of the Marriage Law) specifies that to execute the marriage registration for Muslim couples, it must be conducted in the presence of a Marriage Registration Officer at the Office of Religious Affairs, as stipulated in Law No. 32 of 1954 on the Registration of Marriage, Divorce, and Reconciliation. However, for those who marry according to religions and beliefs other than Islam, namely Christianity, Hinduism, Buddhism, Catholicism, Confucianism, and all adherents of indigenous beliefs, the marriage registration is carried out by the Marriage Registration Officer at the Civil Registry Office.

Marriage among adherents of indigenous beliefs has become a complex issue in Indonesia, especially since the recognition of these beliefs. This has raised questions about the legality and registration of marriages for adherents of indigenous beliefs, particularly in the context of interfaith marriages.

In 2023, the Supreme Court Circular Letter (SEMA) No. 2 of 2023 was introduced, providing Guidelines for Judges in Adjudicating Applications for Marriage Registration between Individuals of Different Religions and Beliefs. The content of this SEMA dictates that judges should adhere to the following provisions: 1) A legitimate marriage is one conducted according to the laws of each individual's religion and belief, in line with Article 2, Paragraph (1) and Article 8, Subsection f of Law No. 1 of 1974 on Marriage. 2) The court should not approve applications for marriage registration between individuals of different religions and beliefs. However, there exists ambiguity in the identification of beliefs on the National Identity Card (KTP). Adherents of indigenous beliefs on the KTP are merely labeled as "Belief in the One Almighty God," without specifying the particular belief adhered to. Given the vast diversity of Indonesia's population, by 2022, there were already 176 distinct indigenous beliefs recorded in the country. The absence of differentiation between one adherent and another has led to a situation where marriages between different indigenous belief adherents are legally recognized through civil registration. This raises questions with the emergence of SEMA No. 2 of 2023, which prohibits courts from approving marriage registration applications between individuals of different religions and beliefs. About how are marriages between different indigenous belief adherents practically conducted, and what role does civil registration play in this context, and how is SEMA No. 2 of 2023, especially concerning indigenous belief adherents to be enforced.

This article will delve deeper into the legality of marriages between different indigenous belief adherents, the role of civil registration in this context, and the implementation of SEMA No. 2 of 2023 concerning adherents of indigenous beliefs in Indonesia.

## **2. Problems**

- a. What is the legal status of marriages between different adherents of indigenous beliefs in Indonesia, and what role does civil registration play in documenting these marriages?
- b. How is the Supreme Court Circular Letter (SEMA) No. 2 of 2023 implemented in the context of marriages between different adherents of indigenous beliefs in Indonesia?

## **3. Method**

The research method employed is a normative juridical approach, which is an academic activity grounded in specific methodologies, systematics, and thought processes. The objective of this research method is to study one or multiple specific

legal phenomena through analysis. The research materials utilized are library resources, also known as secondary data, encompassing primary, secondary, and tertiary legal materials. The approaches adopted in this writing are the Statutory Approach and the Conceptual Approach.

Normative legal research is an implication of legal research aimed at discerning truth based on the logical principles of law from its normative perspective[5]. Normative legal research tends to portray law as a prescriptive discipline, focusing solely on its norms, which are inherently prescriptive in nature[6].

This research will be conducted using various literary sources. In this literature-based study, a review will be undertaken of various books and journals discussing marriage, particularly those related to marriages among adherents of indigenous beliefs. In addition to reviewing relevant books and journals, the research will also examine the Supreme Court Circular Letter and other documents pertinent to marriages among adherents of indigenous beliefs.

The data and information required for this study comprise secondary data, which includes primary legal materials such as Law No. 1 of 1974 on Marriage, SEMA No. 2 of 2023, and Law No. 23 of 2006 on the Population Administration System. Secondary legal materials encompass books, scholarly articles, papers, journals, and research reports. Tertiary legal materials include mass media sources like magazines, newspapers, dictionaries, and encyclopedias, which serve as guidelines in reviewing primary and secondary materials. Consequently, this research is referred to as Normative Juridical Legal Research.

## **4. Discussion**

### **4.1. The Legality of Marriages Between Different Adherents of Indigenous Beliefs and the Role of Civil Registration in Documenting Marriages in Indonesia.**

Subekti defines marriage as a legitimate bond between a man and a woman intended for a prolonged duration[7]. Conversely, Wirjono Prodjodikoro describes marriage as a shared life between a man and a woman, fulfilling the conditions stipulated in the marriage law [8]. According to the Great Dictionary of the Indonesian Language, marriage is the formation of a family between a man and a woman, wherein the man assumes the role of the husband and the woman as the wife. Similarly, the Marriage Law defines marriage as a spiritual and physical union between a man and a woman as husband and wife, aiming to establish a harmonious and enduring family based on the belief in the One Almighty God. Drawing from these definitions, marriage is a spiritual and physical bond between a man and a woman based on mutual agreement, with the objective of creating a happy and lasting family founded on the belief in the One Almighty God. Marriage concerns not only the individuals involved but also extends to familial and societal matters[9].

Marriage law in Indonesia is governed by the Marriage Law, which defines marriage as a spiritual and physical bond between a man and a woman, united as

husband and wife, with the objective of establishing a harmonious and enduring family based on the belief in the One Almighty God. This union is conducted according to the respective religious laws and beliefs of the parties involved. The legal foundation for marriage in Indonesia is also enshrined in Article 28B, paragraph 1 of the 1945 Constitution, which states that the country guarantees every individual's right to form a family and continue their lineage through a legitimate marriage. Marriage, in terms of religious belief, is a private matter for each individual; thus, the state has no authority to interfere with the public's choices regarding marriage or their respective religious or belief affiliations.

The validity of a marriage, based on Article 2 of the Marriage Law, requires it to be conducted according to the laws of each party's religion and belief. A subsequent condition for a valid marriage, as outlined in Article 2, Paragraph (2) of the Marriage Law, mandates that every marriage must be registered in accordance with the prevailing regulations. Beyond these stipulations, there are two criteria for a valid marriage: material requirements and formal requirements[10].

### **Material Requirements**

Material requirements can be described as conditions that apply universally, regardless of whom an individual chooses to marry[11]. These material requirements include:

- a. The minimum age for both men and women to marry is set at 19 years, as stipulated in Article 7, Paragraph 1 of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage;
- b. A marriage must be based on an agreement or mutual consent between the two prospective spouses; and
- c. Individuals under the age of 19 wishing to marry must obtain permission from both parents, as outlined in Article 6, Paragraph 2.

### **Formal Requirements**

Formal Requirements pertain to the procedural steps that must be followed both before and after the execution of a marriage [12]. There are two formal requirements that must be met to proceed with a marriage:

- a. Notification of the intended marriage by the prospective spouses, either verbally or in writing, to the marriage registrar in the area where the marriage will take place. This notification should be given at least 10 working days before the marriage ceremony. This is regulated in Government Regulation No. 9 of 1975, specifically in Articles 3 and 4; and
- b. The Marriage Registrar must publicly announce the intended marriage by posting a notice in a designated area within the Marriage Registration Office. The purpose of this public posting is to provide an opportunity for individuals who have a relationship with either the prospective groom or bride, or other interested parties, to object to the marriage if it violates any legal provisions..

In accordance with Article 2 of the Marriage Law, which elucidates the legitimacy of marriage, a marriage is deemed valid if conducted according to the respective religious beliefs and convictions of the parties involved. Furthermore, paragraph 2 of the same article states that a marriage is recognized as valid if it is officiated in the presence of a marriage registrar and subsequently recorded in the marriage registry by the pertinent registrar, all in compliance with the prevailing laws. The registration of a marriage is an essential component, ensuring legal certainty for the parties involved, for the children born out of the union, and for all related and interested parties. Consequently, the regulations concerning marriage, especially the criteria for its validity, historically and in terms of recognizing the legitimacy of marriages—whether they are conducted under recognized religions, indigenous beliefs, or between different religions and beliefs—still refer to Article 2, paragraph 1 of the Marriage Law. This article emphasizes that a marriage is valid if conducted according to one's religion and belief.

Belief, in this context, is defined as an expression and realization of an individual's personal relationship with the One Almighty God, grounded in faith manifested through devout behavior and worship. This relationship is also characterized by noble experiences whose teachings originate from the local wisdom of the Indonesian nation.[13]

The state does not explicitly regulate provisions concerning marriages where one of the parties has a difference in terms of religion or indigenous belief. However, according to Article 2 of the Marriage Law, a marriage is deemed valid if conducted in line with the respective religious beliefs and convictions of the parties. Article 8(f) of the Marriage Law prohibits marriages between two individuals if their relationship is forbidden by their religion or prevailing regulations. This implies that the prohibition of interfaith or inter-belief marriages applies if the respective religion or belief system forbids such unions. Therefore, the state defers the concept of marriage validity to the respective religions and beliefs adhered to by the couple.

While the Marriage Law clearly outlines the procedures for marriage, it does not mean that this law comprehensively addresses all aspects related to marriage. For instance, it does not provide detailed regulations concerning marriages between adherents of different indigenous beliefs in Indonesia. Based on the general provisions of Article 1, number 19 of Government Regulation No. 37 of 2007 on the Implementation of Law No. 23 of 2006 on Population Administration (later amended by Government Regulation No. 40 of 2019), an adherent of indigenous belief is defined as an individual who believes in the values of devotion to the One Almighty God. This regulation also acknowledges the existence of a Marriage Certificate for Adherents of Indigenous Beliefs, as stipulated in Article 1, number 20. This serves as evidence of the occurrence of a marriage between adherents of indigenous beliefs, which is created, signed, and validated by the leader of the respective indigenous belief.[14]

Essentially, marriages among adherents of indigenous beliefs are monogamous unions between a man and a woman who share mutual affection. A man is permitted to have only one wife, and similarly, a woman is allowed to have only one husband, unless the traditional community of the particular indigenous belief permits

polygamous marriages. For a marriage among adherents of indigenous beliefs to be legally recognized by the state, several conditions must be met: the presence of both the bride and groom, the presence of the parents or guardians of both parties, the attendance of two witnesses, the ceremony being officiated by a leader of the indigenous belief, and the marriage being registered at the civil registry.

Based on research findings, similar to religious beliefs, certain indigenous belief systems also prohibit marriages with individuals from different indigenous belief groups. Exceptions are made only if the particular indigenous belief community allows marriages with individuals from a different indigenous belief group.

Interfaith marriages among adherents of different indigenous beliefs have become a complex issue in Indonesia, especially since the recognition of these indigenous beliefs. This raises questions about the legality and registration of such interfaith marriages. Research findings indicate that when a marriage involves partners from different indigenous belief groups, the ceremony is typically officiated by a leader from one of the belief groups, depending on which group is more amenable to interfaith marriages. Since the marriage is conducted in the presence of a leader from one of the belief groups, it is deemed valid by that particular group. This situation arises because the state registers the marriage based solely on the affirmation from the indigenous belief leader that the marriage was conducted validly according to their beliefs. The state does not further investigate whether the marrying individuals belong to the same indigenous belief organization, as the identification card (KTP) only indicates a generic "Belief in the One Almighty God."

Based on the Supreme Court Circular (SEMA) No. 2 of 2023, the state explicitly prohibits interfaith and inter-belief marriages. The legal consequence of such marriages is that they are not recognized by the state. This means that marriages between different indigenous belief adherents should not be legitimized and cannot be registered by the state through the Civil Registry. However, research findings reveal that, in practice, marriages between adherents of different indigenous beliefs are consistently sanctioned by the state in Indonesia. This inconsistency arises because the identification card (KTP) for those who follow indigenous beliefs only states a generic "Belief in the One Almighty God." This designation does not reflect the diverse indigenous beliefs recognized in Indonesia, each of which has its own stipulations regarding marriage, similar to organized religions. As a result, not all indigenous belief groups endorse marriages with individuals from different belief groups.

The primary role of the state in marriage is to record it through the civil registry. Civil registry officials will only register marriages that are deemed legal and are witnessed by two individuals, based on the available data, namely the Identification Card (KTP). If the belief status on the KTP of both parties in the marriage is the same, the state or civil registry officials will assume that the marriage is between two adherents of the same indigenous belief. Consequently, the marriage can be legitimized by the state since the data indicates as such. Thus, the legality of marriages between different indigenous belief adherents in Indonesia will still be recorded by the state through the Civil Registry Office. In practice, marriages between different indigenous belief adherents are sanctioned by the respective

indigenous belief leaders, and the involved parties are considered to adhere to the belief in which they are wed. Furthermore, there won't be any record of marriages between different indigenous belief adherents, as the civil registry will only register marriages where both the groom and bride's KTPs indicate the same generic "Belief in the One Almighty God." According to researchers, while the state recognizes and accepts the establishment of various indigenous belief organizations, leading to a diversity of indigenous beliefs, in legal reality, the KTP only indicates one generic "Belief in the One Almighty God." This is in contrast to religion, where Indonesia recognizes five religions, and the KTP will specify the adherent's respective religion.

#### **4.2. Implementation of SEMA No. 2 of 2023 Regarding Marriages Between Different Indigenous Belief Adherents in Indonesia.**

The Supreme Court has recently issued a Circular Letter addressing the registration of marriages between individuals of different religions and beliefs. According to this directive, a legitimate marriage is one that is conducted in accordance with the laws of each party's respective religion or belief. The judiciary is also advised not to approve requests for the registration of marriages between individuals of different religions or beliefs. This directive has emerged in response to the increasing prevalence of interfaith and inter-belief marriages in Indonesia, coupled with a legal void concerning the registration of such unions. SEMA No. 2 of 2023 was promulgated to ensure legal certainty and a unified application of the law when adjudicating requests for the registration of marriages between individuals of different religions or beliefs.

The introduction of SEMA No. 2 of 2023 aims to fill the legal void that previously existed, thereby providing legal certainty for all religious and belief communities in Indonesia regarding marital procedures. However, the issuance of SEMA No. 2 of 2023, which provides guidelines for judges in adjudicating cases of marriage registration requests between individuals of different religions and beliefs, does not necessarily resolve the complexities arising from marriages between individuals of different belief systems. This has raised new questions about the application of SEMA No. 2 of 2023 to those who engage in marriages between different belief communities. A central issue remains: when one belief community does not endorse marriages with someone from a different belief system, yet the state still registers their marriage based on the religious status on their Identity Card (KTP) which reads "Belief in the One Almighty God."

Fundamentally, a marriage is deemed legally valid by the state if conducted in accordance with the laws of the respective religion or belief. The challenge faced by the belief community is the state's recognition of inter-belief marriages through civil registration officers. The state or civil registration officers' authority lies in recording marriages that have been sanctioned by the leaders of the belief community and witnessed by two individuals.

In this context, the state is unaware of whether the marriages registered by the civil registry involve individuals from different belief systems. Moreover, the state does not discern if one of the parties prohibits marriage with someone from a different belief system. Such occurrences are frequent, primarily because the religious status on the Identity Card (KTP) for those identifying as followers of a belief system does not



differentiate between various belief systems. Regardless of the specific belief, the KTP only states "Belief in the One Almighty God." However, the diversity of belief systems in Indonesia is vast. According to the 2022 pocketbook on belief in the One Almighty God, issued by the Directorate of Belief in the One Almighty God and Indigenous Communities under the Ministry of Education, Culture, Research, and Technology (Kemendikbudristek), there are 176 registered belief system organizations in Indonesia. Not all of these belief communities in Indonesia permit inter-belief marriages.

Article 2 of the Government Regulation implementing the Marriage Law states that marriage registration is conducted by only two institutions: the Religious Affairs Office (KUA) for Muslim residents, and the Civil Registration Office for residents of religions other than Islam. [15] Marriages involving followers of belief systems are registered at the Civil Registration Office where the marriage takes place.

The role of the civil registrar is limited to recording details as they appear on identity documents, specifically the Identity Card (KTP). Consequently, even if there are disputes regarding the validity of marriages between different belief system followers, as long as the KTP continues to generalize all belief system followers under a single category, such marriages can still be registered and recognized by the state. This is because all belief system followers are treated uniformly based on the religious status indicated on the KTP.

The legitimacy of a marriage serves as the foundational basis for every couple seeking state recognition of their union. Registering the marriage plays a crucial role, as this registration is a condition recognized by the state. A registered marriage provides clarity and legal standing to the union. If a marriage is not registered, it is not recognized by the state, and the couple does not benefit from the legal protections and implications arising from that marriage. Furthermore, the registration of a marriage has implications for the legal status of children born within that union. With a valid marriage, individuals can obtain birth certificates for their offspring, a testament to the legitimacy of the children resulting from the marriage, and it also aids in the creation of a family card.[16]

The issuance of SEMA No. 2 of 2023 raises questions regarding its applicability to the followers of different belief systems in Indonesia. The primary objective of this directive is to provide legal clarity and uniformity in adjudicating marriage registration requests between individuals of different religions and beliefs. However, as long as the religious status on the Identity Card (KTP) of belief system followers does not distinctly specify their particular belief, this directive remains inapplicable to them. This is because the state will consistently register marriages of belief system followers as long as there is a certification from the belief system leader confirming the marriage's validity, without considering the specific beliefs they adhere to. Thus, even if two followers of different belief systems marry and seek to register their marriage, and one of those belief systems prohibits inter-belief marriages, their union remains legally valid in the eyes of the state. This is because, for the state, the religious status of both parties is identical, labeled as "Belief in the Almighty God."

In conclusion, the intent behind SEMA No. 2 of 2023 is to ensure that if a marriage request involving two different belief system followers is presented to the court, it should be denied, preventing the registration of such marriages at the Civil Registration Office. However, research suggests that this scenario is highly unlikely in practice. This is because administrative measures ensure that even if the beliefs differ, the KTP invariably indicates a single category: "Belief in the Almighty God." The Civil Registration Office will only register a marriage if there's a confirmation from the belief system leader endorsing the union and if both parties' KTPs reflect the same religious status, i.e., "Belief in the Almighty God." Therefore, the applicability of SEMA No. 2 of 2023, especially concerning belief systems, is not enforced or relevant.

## 5. Conclusion

The state fundamentally posits that a legitimate marriage is one conducted according to the laws of each individual's religion or belief system. The identity card (KTP) for followers of belief systems merely states "Belief in the Almighty God" without distinguishing between one belief system and another. If a marriage occurs between followers of different belief systems, it will still be registered by the Civil Registrar as long as there is a certification from a belief system leader who witnessed the marriage and attests to its validity. Consequently, the legality of marriages between followers of different belief systems can still be ratified, even if one of the belief systems prohibits inter-belief marriages. This is because the state's role, specifically the Department of Population and Civil Registration, is solely to record marriages based on the available data.

SEMA No. 2 of 2023 is inapplicable to the followers of belief systems in Indonesia. A court application for the registration of a marriage between followers of different belief systems is unlikely to ever occur, given that the religious status on the KTP only indicates "Belief in the Almighty God." This implies that all followers of belief systems are perceived uniformly. Moreover, marriage registrars only record marriages based on the testimony of a belief system leader who witnessed the marriage, without delving into the specific belief system adhered to by the marrying individuals. However, it's crucial to note that Indonesia is home to a diverse range of belief systems, each with its unique stipulations regarding the legitimacy and procedures of marriage.

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