

**MAQASHID SYARIAH SUPREME COURT CIRCULAR
REGULATION NUMBER 2 OF 2023 CONCERNING THE PROHIBITION
OF INTER-RELIGIOUS MARRIAGE**

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ABSTRAK

Purpose Study aiming for discuss marriage different religions seen from perspective maqashid sharia.

Design/methods/approach Research method use study bibliography. Data validation using triangulation researcher with method compare results research that has been conducted by researchers previous . The data analysis method uses analysis interactive.

Findings Based on maqashid Syariah, then Supreme Court Circular (SCC) Number 2 of 2023 is in line with with objective the main principles of Sharia are For guard religion, lineage and wealth . If studied with approach maqashid sharia, then phenomenon marriage different religion more Lots contain side negative than side positive thing This threaten affairs necessities especially in protection of religion, lineage and property.

Research implications/limitations Aspect religion, descent and property need guarded so that life wedding still awake and impactful Good to couple and children his descendants. For that, SCC regulation Number 2 of 2023 does not contradictory with concepts maqashid sharia.

Originality/value SCC Number 2 of 2023 only tie to the judge at the time to cut off case marriage different religions, so Still not enough effective as effort prevent marriage different religions, because in a way SCC hierarchy is under Constitution Number 23 of 2006 concerning Administration Population.

Keywords: *Maqashid Sharia, SCC, Prohibitions Marriage Different Religion*

A. Introduction

The marriage took place from different religions remain become problem warm law debated among observer law and social in Indonesia. Regarding This become please understand considering that Indonesia is a communal country Good religiously, culturally and linguistically .¹ Wedding between different people belief considered illegal in Indonesia. Many people see matter This as sign that Constitution marriage in Indonesia is increasing bad . The judge's decision on application marriage different religions are considered No Can finish problem law , but can to worsen condition law marriage that exists in Indonesia. This is will impact on increasing

¹ Adi Sulistiyono & Isharyanto, "Sistem Peradilan di Indonesia Dalam Teori dan Praktik", (Depok: Prenadamedia Group, 2018): 5.

practice marry series and also wild mating. Views they to administration population , urgency marriage book no Again important because of all form service the can enjoyed without existence marriage book .²

Supreme Court which became institution justice the highest in Indonesia has obligation For determine clear attitude as well as give appropriate answer with a sense of justice public. However , regulations have been established The Supreme Court of course No can equated with regulations that are formed institution legislative . The Supreme Court can to form regulation if Constitution not enough clear or No arrange with Circular Letter Form Supreme Court or SCC which contains about guidance organization justice .³

The birth of SCC Number 2 of 2023 concerning Instructions for Judges in To judge Case Application Recording Interfaith Marriage Different Religions and Beliefs naturally No Can released from the amount case marriage different religions. If you look at from aspect naming is a Circular Letter , in book Regarding Constitution Prof. Jimmly's work Asshidique Circular Letter classified in rule policy or *quasi legislation* . Therefore that , if We Look from aspect naming with ignore base law validity each and every letter circular,. so can assumed that SCC is A regulation policy.⁴

There are two points in SCC Number 2 of 2023, namely, 1) Legal marriage is marriage that was carried out according to the laws of each religion and its beliefs that, according to with article 2 paragraph (1) and article 8 letter f of the Law Invite Number 1 of 1974 Concerning Marriage, 2) Court No grant application recording marriage between people of different religions and beliefs . Based on provisions of SCC Number 2 of 2023 which aims to For to clarify the dispute that has been long lasting about marriage religiously, then all judges are required obey guidelines.

Urgency the promulgation of SCC Number 2 of 2023 in perspective maqāṣ id ash-syar'ah Ibn Assyria be at the level benefit hajiyyat . This is can seen that the ban on interfaith marriages that has set up in Article 2 paragraph (1) and Article 8 letter

² Nofan Nur Khafid Azmi, "Perkawinan Beda Agama Antara 'Illat Dan Maqashid Al-Syariah," *Inklusif: Jurnal Pengkajian Penelitian Ekonomi dan Hukum Islam* 6, No. 2 (Desember 2021): 204

³ Henry P. Penggabean, "Fungsi Mahkamah Agung dalam praktik sehari-hari" (Jakarta: Pustaka Sinar Harapan, 2021): 104.

⁴ Fathul Mu'in , Triono , Rudi Santoso, Relit Nur Edi , Arif Fikri, "SEMA Nomor 2 Tahun 2023 Dalam Pencegahan Perkawinan Beda Agama di Indonesia", *Al-Ahwal Al-Syakhsīyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 5, no. 2 (2024): 149.

(f) of the Law Number 1 of 1974 concerning Marriage and strengthened with Articles 40 and 44 of the KHI considered No in a way explicit forbid practice of interfaith marriage . So that need existence affirmation return through SCC Number 2 of 2023 which prohibits practice of interfaith marriage . However , SCC hierarchy be under Constitution Number 23 of 2006 concerning Administration Population (ADMINDUK). So the effort supremacy law in finish disparity and confusion the law on interfaith marriage will more appropriate If set up in form Law , so that become clear and strong in forbid practice of interfaith marriage . Therefore , the solution on polemic disparity interfaith marriage law through SCC Number 2 of 2023 is assessed will not enough fully succeed give stability and resilience social in society seeker justice . The existence of SCC which is positioned as guidelines , have weakness If compared to with position ADMINDUK Law. In addition , the SCC only own strength law tie in scope court only. The reality is, marriage different religions still still can implemented public without through determination court It means Still there is opportunity smuggling law towards the SCC.⁵

Therefore that , this writing No highlight effectiveness of SCC Number 2 of 2023 in give certainty law about wedding different religions, but focused on perspective maqashid sharia in frame awaken public about importance protect religion, property and offspring through wedding same religion according to directions Invite Invite Number 1 of 1974 Concerning Marriage.

B. Methods

Research methods use study library, with method gather literature and results relevant research. Data collection methods using studies library. Validate data using triangulation data sources, namely with method compare results research that has been conducted by researchers previous . The data analysis method uses analysis interactive from Miles and Huberman consisting of above : data collection, data display and verification and retrieval conclusion.

⁵ Ida RiFatus Sa'adah & Misbahul Huda, "Regulasi Nikah Beda Agama Dalam Sema Nomor 2 Tahun 2023 Perspektif Maqāshid Asy-Syarī'ah Ibn 'Āsyūr", *Al-Syakhsīyyah: Journal of Law & Family Studies* 6. No. 2, December (2024):193-212.

C. Result

Based on results search study previously , there was a number of relevant research with title study now, as presented in the table below.

Table 1. Research Relevant

NO	RESEARCHERS AND YEARS	TITLE	METHOD	RESEARCH RESULT
1	Ali Akbar Masyayih & Moh. Wahyu Al Waris, 2024	Legal Standing Peraturan Sema No. 2 Tahun 2023 Dalam Polemik Aturan Kawin Beda Agama	juridical-normative	SCC No. 2 of 2023 which was initially expected capable overcome polemic regulation marry different religions but Still just become polemic long-standing controversy around marriage different religions.
2	Muhammad Afdhol Kusuma Ningrat, Agung Febiyansyah , Risti 2024	Exploring Supreme Court Circular No. 2 Of 2023's Impact On Interfaith Marriages: A Maqashid Syariah Perspective	juridical-normative	From the perspective maqasid sharia, consideration potential loss more big compared to potential benefits . Therefore that , when concerning partnership interfaith , we need consider possibility possible danger overwrite marriage practice different religions, and ways that can be We use For guard harmony in family
3	Bintang Ulya Kharisma, 2023	Surat Edaran Mahkamah Agung (Sema) Nomor 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama?	study library	SCC Number 2 of 2023 is one of the method For end polemic marriage different religions though marriage different religions will Keep going cause issue Good in a way administration population or seen from Human Rights side Man

NO	RESEARCHERS AND YEARS	TITLE	METHOD	RESEARCH RESULT
4	Evelyn Fenecia , Shenti Augustine , Winda Fitri , 2024	Kepastian Hukum Sema Nomor 2 Tahun 2023 Terhadap Pencatatan Perkawinan Antar-Agama Dalam Bingkai Kebhinnekaan Indonesia	study normative	Still there was a judge who agreed application recording marriage interfaith post issuance of SCC, as in the Decision Number 423/ Rev.P /2023/PN Jkt.Utr dated August 8, 2023. So that the SCC Not yet Enough overcome uncertainty law related marriage inter - religious in Indonesia, although in line with Spirit Bhinneka Tunggal Ika instead necessary harmonization law in a number of regulation For reach certainty the expected law
5	Safira Nafa Khairina & Tri Wahyu Hidayati, 2023	Perkawinan Beda Agama Pasca Keluarnya Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023 Ditinjau dari Perspektif Maqashid Syariah	legal normative	With The issuance of SCC No. 2 of 2023 is expected can answer on uncertainty the law that has been in effect This disturbed public as well as become end from polemic marriage different religions and expected All Judges are subject to the SCC . Prohibition rule marriage different religions go hand in hand with draft necessities maqashid sharia.
6	Ida Rifatus Sa'adah & Misbahul Huda, 2024	Regulasi Nikah Beda Agama Dalam Sema Nomor 2 Tahun 2023 Perspektif Maqāṣid Asy-	study library	solution on polemic disparity interfaith marriage law through SCC Number 2 of 2023 is assessed will not enough fully succeed give stability

NO	RESEARCHERS AND YEARS	TITLE	METHOD	RESEARCH RESULT
		Syarī'ah Ibn 'Āsyūr		and resilience social in society seeker justice . The existence of SCC which is positioned as guidelines , have weakness If compared to with position Constitution Number 23 of 2006 concerning Administration Population ADMINDUK
7	Fitri Hidayat, Aju Putrijanti, 2024	SEMA No. 2 Tahun 2023: antara Kebebasan, Syariat, dan Pluralisme Hukum	studies literature	SCC Number 2 of 2023 concerning marriage different religions are steps that try For finish problem social in Indonesia, which is multicultural and multireligious . From the perspective right basic Islamic human , freedom For choose partner still acknowledged , but limited by the principles sharia which aims For protect religion and lineage
8	Fathul Mu'in, Triono, Rudi Santoso, Relit Nur Edi, Arif Fikri, 2024	SEMA Nomor 2 Tahun 2023 Dalam Pencegahan Perkawinan Beda Agama Di Indonesia	studies library	judge in inspect case marriage moreover formerly use the formal principle is law marriage , not use another law , namely law administration population .

Based on results study previously , can explained that : (1) SCC No. 2 of 2023 has not yet capable overcome polemic regulation marry different religions and give certainty law (Masyayih & Al Waris, 2024; Kharisma, 2023; Fenecia et al , 2024; Sa'adah & Huda, 2024; Mu'in et al. , 2024); (2) marriage different religions seen from perspective maqasid sharia, more Lots cause loss to self themselves and their descendants (Ningrat, et al , 2024; Khairina & Hidayati , 2023; Hidayat & Putrijanti ,

2024). Study This focused For to study maqashid sharia SCC No. 2 of 2023 concerning prohibition wedding different religions.

D. Discussion

Based on perspective *Maqashid Syariah* , SCC Number 2 of 2023 Concerning The prohibition on different religions has objective as following.

1. Legal Marriage According To Invite Invite

In accordance with provisions of Article 2 paragraph (1) and Article 8 letter f of the Law Number 1 of 1974 concerning Marriage , a marriage considered legitimate if in accordance with condition each person's beliefs and trust . The issuance of SCC Number 2 of 2023 is intended For give clarity and unity law in implementation law . Regulation This confirm that court No may allow application recording marriage different religions. Considering Already clear that a legal marriage must implemented in accordance with religious teachings and beliefs of each, then SCC Number 2 of 2023 states that Court No may allow application recording marriage between different religions , can acknowledged as consequence from matter This . In line with that is , section 8(f) of the Act Number 1 of 1974 concerning Marriage forbid marriage between two people who are religious or other applicable rules obstruct marriage . This is happen let go from whether all religions have restrictions wedding between people of different religions or No .⁶

With The issuance of SCC Number 2 of 2023 is expected can end the dispute that still exists happened in Indonesia regarding wedding different religions. This is done with the judge's hope is not Again grant application applicant different religions for married . This is in accordance with provision Constitution Number 23 of 2006 which has changed with Constitution Number 24 of 2013 concerning Administration Population , Article 35 letter a provides authority to District Court for review and determine whether a marriage set or No.

Judges are required based on SCC Number 2 of 2023, because SCC content explained things that are lacking clear or Still there is difference between theory and practice in the world of justice . Guidelines the is interpretation or interpretation to provision law so that in practice justice No happen gap in organization the trial that

⁶ Muhammad Afdhol Kusuma Ningrat , Agung Febiyansyah, Risti Yanti , Eni Suparwati, Agma Ansorian Putra, "Exploring Supreme Court Circular No. 2 of 2023's Impact on Interfaith Marriages: A Maqashid Syariah Perspective", *Alfiqh: Islamic Law* 03, No 01(2024): 36

resulted in No existence certainty law which is one of the idea base about rights . Therefore that , if happen difference opinion in system judiciary , the Supreme Court has authority For apply provision addition For fill in gap and guarantee justice and certainty law .⁷

Gustav Radbruch to mean certainty law as a conditions in which the law can functioning as regulations that must be obeyed . there are 4 (four) things fundamental related with meaning certainty law , namely : First , that law That positive , meaning that law positive That is legislation . Second , that law That based on facts , meaning based on reality . Third , that fact must formulated with clear way so that avoid error in meaning , besides easy implemented . Fourth , the law positive No may easy changed .⁸

Accordance theory certainty law from Gustav who stated that certainty law as a conditions in which the law can functioning as regulations that must be obeyed . Therefore that , SCC Number 2 of 2023 has legal standing or position law for judges as guidelines in to judge case recording marriage different religions that " Court No grant application marriage between people of different religions and beliefs " because contradictory with Law no. 1 of 1974 Article 2 Paragraph 1 which states that " legitimate marriage " is marriage that was carried out in accordance with their respective religions and beliefs."

Indonesia is not a religious state but a religious country as confirmed with existence please The first principle of Pancasila. The first principle of Pancasila emphasizes that every regulation laws in Indonesia, including those related to with marriage , must in harmony with values religious . This means that rules the No can deviate from moral values / principles taught by religions in Indonesia.⁹, so that " they are different" still one ", not means marriage can held as free as possible but values and rules in every religion needs be noticed .

⁷ Ali Akbar Masyayih & Moh. Wahyu AL Waris , "Legal Standing Peraturan Sema No. 2 Tahun 2023 Dalam Polemik Aturan Kawin Beda Agama", *Constitution Journal* 3, N0. 1, (June 2024): 70

⁸ Dadan Herdiana & Dian Ekawati, "Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan", *Jurnal Kewarganegaraan* 8 No. 1 (2024): 67

⁹ Muhammad Daud Ali, "Hukum Islam Dan Peradilan Agama", (Jakarta: Raja Grafindo, 2020): 15.

2. Maintaining Religion

Marriage different religions can cause conflict in connection family especially religious conflict in life daily like as it is difference beliefs , religious practices , and values religious that can cause tension and division in family . Looseness maintenance of religion and identity , differences goals and vision mission in wedding cause difficulty in operate religious practice and maintaining identity the religion of each partner which is then impact on children from marriage the especially in develop their religious identity Alone .¹⁰

In Islam, marriage contracted For fulfil the sunnah of Allah SWT and the sunnah of Allah's Messenger. Wedding No only For look for calm in life For temporary time , but For look for happiness eternal .¹¹In the event or existing events to wedding different religions created in connection interfaith , how interestingly If connection interfaith studies from corner the governing view with enter idea Al Maqasid study As Syariah. Idea Maqasid Syariah is used by ulama for answer various problems that arise along with current trends ; this can also applied For finish debate about wedding different religions. Response judicial which are expected is settlement end to every religious issues that arise in Muslim community . Islamic Law and Maqashid Sharia as objective Finally .¹² Maqasid Syariah has a number of structure , including Maqasid Syariah for maintain religion, and that means religion is choice For embraced and accepted by people is allowed as well as have right special For embrace the religion he believes in without obstacle.¹³

In perspective maqashid sharia, marriage different religions violate principle purpose dharuri , namely hifdz din or keep religion. QS Al-Baqarah 221 states forbid a believer marrying polytheists (with a woman who believes) until they have firm belief to his religion . Indeed Correct a the faithful slave to God more prioritized than a polytheists , even though he succeed to win your heart . This is literal commands

¹⁰ Fauzi, A., Gemilang, K.M. & Indrajaya, D.T., "Analisis Nikah Beda Agama dalam Perspektif Maqashid Syari'ah", *Madania Jurnal Ilmu-Ilmu Keislaman* 13, no.1 (2023): 75

¹¹ Amir Syarifuddin, "Hukum Perkawinan Islam di Indonesia", (Jakarta: Kencana, 2019): 48.

¹² Abdus Sattar Abbasi dan Razaq Raj, "Principles of Islamic Ethics for Contemporary Workplaces", *Advances in Human Resources Management and Organizational Development* (IGI Global, 2021), <https://doi.org/10.4018/978-1-7998-5295-7>.

¹³ Mohamad Ma'mun, "Maqasid Al-Shari'ah Perspektif Abu Ishaq Al-Shatibi", 2020, <https://www.semanticscholar.org/paper/Maqasid-Al-Shari%E2%80%99ah-Perspektif-Abu-Ishaq-Al-Shatibi-Ma%E2%80%99mun/c0b2c19d837e3fa6f57a2911d26bf29508510cc2>.

from the Islamic holy book , which emphasizes importance only marry someone of the same religion .

Islam forbids wedding between a Muslim with non-Muslims . From the perspective maqasid sharia, consideration potential loss more big compared to potential benefits. Therefore that , when concerning partnership interfaith, we need consider possibility possible danger overwrite marriage practice different religions, and ways that can be We use For guard harmony in family. Concerning with connection interfaith , important For focus on how guard qualities and personality of a strict Muslim from public specifically child young people who want to to build House stairs . And with the existence of SCC means regulation wedding Differences in religion are very clear Good from religious law and state Administration .¹⁴

Article 2 paragraph 1 of the Law Invite Marriage Number 1 of 1974 has confirm that two people who are in a relationship connection wedding must own the same belief , and implied matter this has also been taught by the beliefs of each religion. In the context of Islam, a person a Muslim believer required Marry with brother / sister other Muslims in order to achieve the purpose , namely to perfect his worship.

Maintaining religion (*hifdu din*) is guidelines that must be followed always held by the people Muslim in operate his life moreover in take decision important that is marriage . With thus if somebody No can look after his religion Alone so Of course No There is other things that can made into guidelines and will the more Far to objective his life itself . Religion is foundation in alive , if Already Far from maintenance of religion then life will deviate from what is becoming principle Islam.¹⁵

3. Guard Descendants And Property

Marriage is A connection bond legitimate mind between a man and a women , recognized Good in religious realm and law , which makes they as pair husband and wife . ¹⁶Legally law in context This refers to the recording marriage For to obtain

¹⁴ Muhammad Afdhol Kusuma Ningrat , Agung Febiyansyah, Risti Yanti , Eni Suparwati, Agma Ansorian Putra, "Exploring Supreme Court Circular No. 2 of 2023's Impact on Interfaith Marriages: A Maqashid Syariah Perspective", *Alfiqh: Islamic Law* 03, No 01 (2004): 38

¹⁵Safira Nafa Khairina, Tri Wahyuni Hidayati, "Perkawinan Beda Agama Pasca Keluarnya Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023 Ditinjau dari Perspektif Maqashid Syariah", *Isti'dak: Jurnal Studi Hukum Islam* 10, No.2 (2023): 189-204

¹⁶ Winda Fitri and Elviani, "Prenuptial Agreement Terhadap Perkawinan Campuran: Suatu Kajian Perspektif Hukum Di Indonesia," *Jurnal Komunikasi Hukum* 7, no. 2 (2021): 925–26.

certainty law . According to with Article 2 paragraph (2) of the Marriage Law , " every marriage must noted in accordance with regulation applicable legislation by the authorized institution” . Recording the aiming For get confession official state for to obtain deed marriage as well as other related rights , such as right parenting children , rights inheritance later , and so on.

Impact from wedding nothing else is For produce descendants , then child born from two parents who have different religions will be very disadvantaged , children life with to emulate both of his parents if both parents No can give good example , then it is not wrong if marriage different religions still We find in generations next . Then matter This also affects maintenance property , couples of different religions then religiously no can each other inherit , with thus child his descendants also don't can each other inherit . With thus marriage different religions tarnish the five needs necessities especially on the side safeguarding religion, lineage , and property resulting in absence existence welfare , so that matter the absolute No may done , because the harm caused very much Lots.¹⁷

Treasure is matter important in alive , so that treasure including things to do we guard. Allah SWT forbid action stealing , gambling , etc. On the other hand , Allah SWT commands For own and develop treasure with the right way .¹⁸In addition , maintaining descendants is matter important in Islam , children / descendants need educated with values Islam , so that Islam forbid adultery because adultery results in the damage lineage for descendants . On the contrary, Allah SWT . Ordered For carry out wedding in a way valid .¹⁹

Therefore that , for guard soul , peace family will easy achieved If partner husband wife hug the same religious teachings , because a striking difference in family Can trigger quarrels and disharmony . Thus as it is For guard reason , religious equality will give satisfaction reason for partner husband wife . Likewise , religious

¹⁷ Safira Nafa Khairina, Tri Wahyuni Hidayati, “Perkawinan Beda Agama Pasca Keluarnya Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023 Ditinjau dari Perspektif Maqashid Syariah”, *Isti'dal: Jurnal Studi Hukum Islam* 10, No.2 (2023):189-204

¹⁸ Safira Nafa Khairina, Tri Wahyuni Hidayati, “Perkawinan Beda Agama Pasca Keluarnya Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023 Ditinjau dari Perspektif Maqashid Syariah”, *Isti'dal: Jurnal Studi Hukum Islam* 10, No.2 (2023): 189-204

¹⁹ Susilo, E. ‘Penyelesaian Problem Hukum Melalui Pendekatan Maqasid Shari’ah,’ *Nizham* 8, no. 1 (2020): 13

similarity will make it easier in give education to his son later , so that child the own a whole , religious , and uncompromising person split.

E. Conclusion

Based on maqashid Syariah, then can it is said that SCC Number 2 of 2023 is in line with with objective the main principles of Sharia are For guard religion, lineage and wealth . Then no There is Again reason for citizens for insist carry out wedding different religions. Because the country has to emphasize with emit guidelines for judges through SCC Number 2 of 2023, as well as in view Islamic law . If studied with approach maqashid sharia then phenomenon marriage different religion more Lots contain side negative than side positive thing This threaten affairs necessities especially in protection of religion, lineage and property . Aspects the need guarded so that life wedding still awake and impactful Good to couple and children his descendants . So the SCC regulation Number 2 of 2023 does not contradictory with concepts maqashid sharia.

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