

Interfaith Marriages Abroad: Civil Registration, Article 56 and the Limits of Fraus Legis

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Abstrak

Perkawinan beda agama yang dilangsungkan di luar negeri menimbulkan persoalan pada pertemuan antara hukum perkawinan, administrasi kependudukan, dan hukum perdata internasional. Penelitian ini mengkaji kewenangan Dinas Kependudukan dan Pencatatan Sipil (Disdukcapil) untuk menerima laporan perkawinan luar negeri, menilai penggunaan Pasal 56 Undang-Undang Perkawinan sebagai dasar pengakuan administratif, serta mengidentifikasi keadaan ketika pemilihan yurisdiksi asing secara sengaja dapat merupakan penyelundupan hukum atau *fraus legis*. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, konseptual, dan kasus. Pencatatan sipil pada dasarnya bersifat administratif dan deklaratif sehingga tidak dengan sendirinya mengesahkan perkawinan secara materiil menurut hukum agama. Meski demikian, keabsahan perkawinan luar negeri yang melibatkan warga negara Indonesia tetap dibatasi syarat bahwa perkawinan tersebut tidak boleh melanggar Undang-Undang Perkawinan Indonesia. Pemindahan faktor penghubung secara sengaja ke yurisdiksi asing dapat menunjukkan *fraus legis* apabila bertujuan menghindari aturan nasional yang bersifat memaksa dan tidak memiliki hubungan nyata dengan yurisdiksi pilihan. Hubungan yang belum tuntas antara pencatatan administratif dan keabsahan substantif menimbulkan risiko pembatalan serta ketidakpastian hukum bagi pasangan, anak, dan pihak ketiga yang beriktikad baik. Artikel ini merekomendasikan harmonisasi peraturan, indikator penyelundupan hukum yang lebih jelas, verifikasi dokumen yang konsisten, dan perlindungan lebih kuat atas hak sipil anak.

Kata Kunci: perkawinan beda agama; pencatatan sipil; penyelundupan hukum; *fraus legis*; hukum perdata internasional

Abstract

Interfaith marriages solemnized abroad raise legal problems at the intersection of marriage law, population administration, and private international law. This study examines the authority of the Population and Civil Registration Office (Disdukcapil) to receive reports of overseas marriages, assesses the use of Article 56 of the Marriage Law as a basis for administrative recognition, and identifies circumstances in which the deliberate choice of a foreign jurisdiction may amount to legal evasion or *fraus legis*. The study uses normative legal research with statutory, conceptual, and case approaches. It finds that civil registration is principally administrative and declaratory and therefore does not itself validate the marriage materially under religious law. Nevertheless, the validity of an overseas marriage involving Indonesian citizens remains limited by the statutory requirement that it must not violate the Indonesian Marriage Law. The deliberate transfer of a connecting factor to a foreign

jurisdiction may indicate *fraus legis* when it is intended to avoid mandatory national rules and lacks a genuine connection with the chosen jurisdiction. The unresolved relationship between administrative registration and substantive validity creates potential cancellation risks and legal uncertainty for spouses, children, and good-faith third parties. The article recommends statutory harmonization, clearer indicators of legal evasion, consistent document verification, and stronger protection of children's civil rights.

Keywords: interfaith marriage; civil registration; legal evasion; *fraus legis*; private international law

INTRODUCTION

The Constitution guarantees the right to establish a family and continue one's lineage through a lawful marriage, but that right is exercised within limitations prescribed by law. In the context of marriage, the state regulates not only the private relationship between two individuals but also civil status, family relations, property, descent, and proof vis-à-vis third parties.¹

The Marriage Law places religious law at the foundation of marital validity through Article 2 paragraph (1), while registration is regulated in Article 2 paragraph (2). For marriages solemnized outside Indonesia, Article 56 introduces a private international law dimension: the marriage must be valid under the law of the country where it is celebrated and, for Indonesian citizens, must not violate the provisions of the Indonesian Marriage Law.²

Marriage registration performs an essential evidentiary and protective function. An undocumented marriage may create difficulties in proving the status of spouses, marital property, descent, and various administrative rights. Nevertheless, the administrative function of registration is not always identical to an assessment of the marriage's substantive validity.³

For marriages occurring abroad, the population administration regime requires reporting to an Indonesian diplomatic or consular mission and registration after the parties return to Indonesia. It is at this point that the authority of the Population and Civil Registration Office (Disdukcapil) encounters foreign marriage documents that are formally valid under the law of the country where the marriage was solemnized.⁴

In 2023, the Supreme Court issued Circular Letter No. 2 of 2023 directing judges to rely on Article 2 paragraph (1) and Article 8 letter f of the Marriage Law and not to grant applications for the registration of marriages between persons of different religions and beliefs. This policy narrowed the domestic judicial route for such registrations, but it did not automatically eliminate the legal questions surrounding marriages already solemnized abroad.⁵

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, arts. 28B(1) and 28J.

² Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, as amended by Undang-Undang Nomor 16 Tahun 2019, arts. 2 and 56.

³ Rachmadi Usman, "Makna pencatatan perkawinan dalam peraturan perundang-undangan perkawinan di Indonesia," *Jurnal Legislasi Indonesia* 14, no. 3 (2018): 255–273, <https://doi.org/10.54629/jli.v14i3.80>.

⁴ Indonesia, Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan, as amended by Undang-Undang Nomor 24 Tahun 2013, especially art. 37.

⁵ Mahkamah Agung Republik Indonesia, Surat Edaran Nomor 2 Tahun 2023 tentang Petunjuk Bagi Hakim Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar-Umat yang Berbeda Agama dan Kepercayaan, July 17, 2023.

The Constitutional Court had previously rejected a challenge to Article 2 paragraph (1) of the Marriage Law in Decision No. 68/PUU-XII/2014. The decision reaffirmed that marital validity under Indonesian law remains connected to religion and belief, meaning that the issue of interfaith marriage cannot be resolved merely by treating registration as an administrative act.⁶

Decision No. 24/PUU-XX/2022 again rejected a constitutional challenge concerning interfaith marriage under the Marriage Law. These decisions show that the central debate concerns not only an administrative entitlement to registration but also the relationship among substantive validity, state recognition, and civil-law consequences.⁷

An overseas ceremony places these questions within a transnational setting. A foreign certificate may provide reliable evidence that a ceremony occurred, while Indonesian law continues to impose requirements on Indonesian citizens. The analytical problem is how the registrar's documentary examination, the court's assessment of substantive validity and the allegation of legal evasion relate to one another. Neither the place of the ceremony nor an administrative entry resolves all three questions.

The literature does not approach this dispute as a single administrative problem. Scholarship on marriage recording focuses on the evidentiary function of public documentation. Studies of overseas interfaith marriage ask whether foreign solemnization satisfies the domestic requirements preserved by Article 56. Work on legal evasion examines the parties' use of a foreign jurisdiction. The different objects of those inquiries help explain why a statement that registration is 'administrative' cannot answer a substantive validity challenge, and why a restrictive interpretation of validity does not itself specify the registrar's powers.

A concrete difficulty arises when a spouse presents a foreign certificate that is authentic and complete, while an official questions the marriage's compatibility with Indonesian law. Authenticity concerns the document. Compatibility concerns the underlying status and the applicable rules. Alleged legal evasion introduces a further question about conduct and intent. Collapsing these issues can either give the document effects it does not establish or deprive the spouses of a recorded explanation and a competent forum for resolving the substantive dispute.

The contribution of this article is an account of those legal stages and their distinct consequences. It connects the cumulative requirements of Article 56 to the administrative reporting framework, separates public policy from legal evasion, and identifies why protection of children and third parties requires its own analysis. The focus is the justification and legal effect of a decision, rather than a general endorsement or rejection of every overseas interfaith marriage.

This article addresses three issues: the legal basis and limits of Disdukcapil's authority to register interfaith marriages solemnized abroad; the circumstances in which the choice of a foreign jurisdiction may amount to legal evasion; and the implications for legal certainty affecting spouses, children, and third parties.

⁶ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 68/PUU-XII/2014, June 18, 2015.

⁷ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 24/PUU-XX/2022, January 31, 2023.

RESEARCH METHOD

This study uses normative legal research with statutory, conceptual and case approaches. Its primary materials are the Marriage Law, population-administration legislation and implementing rules, Supreme Court circulars, and the constitutional and judicial decisions cited in the references. The analysis distinguishes the legal force and institutional addressee of each material. Earlier decisions are considered in their historical setting and are not treated as controlling every question arising under later legislation or guidance.

The conceptual approach is used to analyze *lex loci celebrationis*, *lex patriae*, vested rights, public policy, and *fraus legis*. The legal materials are analyzed qualitatively through grammatical and systematic interpretation and then formulated prescriptively to explain the limits of administrative recognition and substantive marital validity.⁸

The statutory inquiry compares Article 56 of the Marriage Law with Article 37 of the Population Administration Law and the documentary requirements governing overseas events. The conceptual inquiry uses private-international-law scholarship to distinguish formal validity, personal-law requirements, public policy and legal evasion. Judicial materials are selected for the legal questions they illuminate rather than as a representative sample of all registration disputes. The study does not measure registry practice or the frequency of overseas interfaith marriages.

Analysis proceeds by identifying the legal act requested, its documentary requirements and the institution competent to decide it. The article then separates any substantive objection from an allegation of manipulation of connecting factors and examines the effects on spouses, children and third parties. The proposed procedural model follows from that distinction; it is not presented as an existing official test.

RESULTS AND DISCUSSION

Civil Registration and the Cumulative Requirements of Article 56

The population administration regime authorizes Disdukcapil to record vital events on the basis of the documents required by law. For marriages solemnized abroad, the applicable technical rules treat proof of marriage issued by the foreign state and reporting through an Indonesian diplomatic or consular mission as important components of administrative verification.⁹

Disdukcapil's authority must be distinguished from authority to determine theological validity. Registration administratively records a reported event and produces evidence of civil status. It is therefore declaratory in the sense that it does not, by itself, create religious validity that did not previously exist.¹⁰

Nevertheless, the administrative character of registration does not mean that Disdukcapil may disregard all legal requirements. Article 56 of the Marriage Law contains two cumulative conditions: the marriage must be valid under the law of the

⁸ Purnadi Purbacaraka and Agus Brotosusilo, *Sendi-Sendi Hukum Perdata Internasional* (Jakarta: Rajawali Pers, 1989), 44–45.

⁹ Indonesia, Peraturan Presiden Nomor 96 Tahun 2018 tentang Persyaratan dan Tata Cara Pendaftaran Penduduk dan Pencatatan Sipil.

¹⁰ Muhammad Romli, Nurul Huda, and Aspandi, "Pencatatan Perkawinan Beda Agama di Indonesia," *Al-Adalah : Jurnal Syariah dan Hukum Islam* 7, no. 2 (2022): 377–405, <https://doi.org/10.31538/adlh.v7i2.2877>.

place where it was solemnized and, for Indonesian citizens, it must not violate the provisions of the Indonesian Marriage Law. The legal difficulty arises when a foreign certificate satisfies the formal requirements of the *lex loci* but the marriage is disputed under Indonesian law.¹¹

The principle of *lex loci celebrationis* generally subjects the formalities of marriage to the law of the place where the marriage is solemnized. Article 56 adopts part of this principle but does not stop at foreign law. The phrase “and for Indonesian citizens, does not violate the provisions of this Law” preserves the relevance of Indonesian national law to Indonesian citizens.¹²

From the perspective of private international law, the issue brings together the law of the place where the act occurs, the personal law of the parties, and the public policy of the forum. Recognition of a status acquired abroad is not necessarily automatic when its consequences conflict with fundamental norms that national law seeks to preserve.¹³

Halim and Ardhani examine overseas interfaith marriage through the relationship between foreign solemnization and national requirements.¹⁴ Kamilah also addresses its validity under Indonesian marriage law.¹⁵ Masriani, Suryoutomo and Pakina place the same problem within Indonesian private regulation, including concerns about circumvention.¹⁶ Soebandi and Haryono adopt a restrictive reading grounded in positive marriage law.¹⁷ Supriadi connects the foreign-marriage question to Article 2 and Article 56.¹⁸ These works expose the substantive issue, but their doctrinal conclusions must still be distinguished from a registrar's legally assigned administrative powers.

The legal effects must be distinguished in sequence. First, the occurrence of a foreign civil event may be reported to Indonesian population-administration authorities. Second, an administrative entry or extract can evidence what was reported and recorded. Third, the entry can assist the management of identity and family-status documentation. Fourth, none of these functions necessarily amounts to

¹¹ Ely Baharini and Vernanda Salam, “Penentuan Keabsahan Perkawinan Antar Warga Negara Indonesia Berbeda Agama yang Dilangsungkan di Luar Negeri,” *Notary Journal* 5, no. 1 (2025): 62–78, <https://doi.org/10.19166/nj.v5i1.10007>.

¹² Fatahullah, Israfil, and Sri Hariati, “Problematika Keabsahan Perkawinan Beda Agama Yang Dilakukan Di Luar Wilayah Hukum Indonesia,” *Journal Kompilasi Hukum* 5, no. 1 (2020): 41–55, <https://doi.org/10.29303/jkh.v5i1.36>.

¹³ Sudargo Gautama, *Hukum Perdata Internasional Indonesia*, Jilid III Bagian I, Buku ke-7 (Bandung: Alumni, 1995).

¹⁴ Abdul Halim and Carina Rizky Ardhani, “Keabsahan perkawinan beda agama diluar negeri dalam tinjauan yuridis,” *Jurnal Moral Kemasyarakatan* 1, no. 1 (2016): 67–75, <https://doi.org/10.21067/jmk.v1i1.1187>.

¹⁵ Anita Kamilah, “Keabsahan perkawinan beda agama yang dilaksanakan di luar negeri,” *Tahkim (Jurnal Peradaban dan Hukum Islam)* 1, no. 1 (2018): 116–127, <https://doi.org/10.29313/tahkim.v1i1.3325>.

¹⁶ Yulies Tiena Masriani, Maskus Suryoutomo, and Ridho Pakina, “Validitas Perkawinan Beda Agama Di Luar Negeri Dalam Regulasi Hukum Privat Indonesia,” *Notary Law Research* 5, no. 2 (2024): 1–12, <https://doi.org/10.56444/nlr.v5i2.1639>.

¹⁷ Soebandi and Benny Haryono, “Perkawinan Beda Agama Yang Dilakukan Di Luar Negeri Berdasarkan Hukum Positif Di Indonesia,” *Jurnal Ilmiah Raad Kertha* 3, no. 1 (2020): 69–87, <https://doi.org/10.47532/jirk.v3i1.169>.

¹⁸ Supriadi, “Tinjauan hukum terhadap perkawinan beda agama yang dilaksanakan di luar indonesia,” *AL-SYAKHSHIYYAH Jurnal Hukum Keluarga Islam dan Kemanusiaan* 2, no. 1 (2020): 40–52, <https://doi.org/10.35673/as-hki.v2i1.691>.

an independent judicial declaration that all substantive requirements of Indonesian marital law have been satisfied. Recording is therefore administrative and evidentiary, not invariably constitutive of marriage validity.

Article 56 of the Marriage Law contains distinct cumulative conditions: the marriage must comply with the law of the place of solemnization; and, for Indonesian citizens, it must not contravene the Marriage Law. The first condition is a foreign-form and legality inquiry; the second preserves mandatory elements of Indonesian personal marriage law and can intersect with a public-policy restriction. Neither condition authorizes a registrar to pronounce a complex private-international-law judgment without a defined legal basis or procedure. Article 37 of the Population Administration Law and relevant presidential implementing rules establish the foreign-marriage reporting framework and the administratively checkable documents.

The cumulative structure of Article 56 is decisive. Compliance with the foreign state's law answers one condition. The clause preserving the Indonesian Marriage Law for Indonesian citizens supplies another. A certificate may be evidence relevant to the first inquiry without settling the second. Equally, invoking the second condition does not identify who may adjudicate a disputed substantive fact. The substantive requirement and the competence to determine its satisfaction must be addressed together.¹⁹

Administrative examination should begin with the act requested and the documents prescribed for it. A report of an overseas event, an entry in a register and an application for a judicial order are not interchangeable requests. The applicant needs to know whether a problem concerns missing documents, inconsistent personal details or a substantive legal objection. Where the deficiency is documentary, a request for correction should identify what is missing. Where the dispute is substantive, the authority must identify its legal basis for making or deferring a determination.²⁰

Document legalization or an apostille, where applicable, addresses authenticity within the relevant documentary regime. It does not establish that the underlying marriage satisfies all mandatory Indonesian requirements. Conversely, an authentic foreign record should not be described as false merely because its domestic legal effects are disputed. This distinction prevents documentary verification from becoming an indirect judgment on validity without the legally prescribed procedure.

Table 1. Legal Layers Governing Marriages of Indonesian Citizens Solemnized Abroad

Legal Layer	Function	Legal Question
Law of the country of celebration	Determines formalities and validity under the <i>lex loci</i>	Is the marriage valid and evidenced by official local documents?
Indonesian Marriage Law	Restricts Indonesian citizens from violating national requirements	Does the marriage conflict with substantive requirements applicable to Indonesian citizens?

¹⁹ Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, as amended by Undang-Undang Nomor 16 Tahun 2019, arts. 2 and 56.

²⁰ Indonesia, Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan, as amended by Undang-Undang Nomor 24 Tahun 2013, especially art. 37.

Legal Layer	Function	Legal Question
Population administration law	Regulates reporting and registration	Are the required documents and reporting procedures complete?
Private international law	Determines recognition, connecting factors, and public policy	Is there a genuine link or instead an attempt to evade the law?
Judicial review	Resolves disputes concerning validity or annulment	Can the registered status be maintained when challenged?

Source: Authors' normative synthesis of the Marriage Law, population-administration rules, selected decisions and private-international-law scholarship; not an official statutory test.

Table 1 sets out the legal layers so that each inquiry can be connected to its function. The comparative consequence is that an administrative record may facilitate family documentation without operating as a comprehensive judicial declaration. The same record can be relevant evidence in a later dispute. Its weight and legal effect must be determined in that dispute, with attention to the particular question before the competent institution.

Fraus Legis and the Evidentiary Limits of Public Policy

At the same time, the label of legal evasion should not be applied too readily. Not every marriage of Indonesian citizens abroad constitutes an attempt to avoid Indonesian law. A person may have domicile, employment, a spouse of foreign nationality, or genuine family connections with the country where the marriage takes place. The analysis must therefore assess motive and connecting factors concretely.²¹

Fraus legis describes the use of a legal arrangement that appears formally valid but is deliberately designed to avoid the law that should otherwise apply. In the context of marriage, the inquiry is not limited to the place of the ceremony; it asks whether the relocation of the ceremony or the connecting factor was undertaken solely to obtain a legal consequence that could not be achieved under national law.²²

The indicators in Table 2 are evidentiary questions rather than statutory requirements for a valid marriage. A short stay, an immediate return and a limited connection with the place of celebration can justify examination of the circumstances, but do not individually establish intent to circumvent the law. Pratiwi's analysis of legal evasion helps locate that inquiry within the continuing requirements of Indonesian marriage law.²³ The decision-maker must still identify the mandatory rule allegedly avoided and explain the connection between the spouses' conduct and the claimed legal result.

Public policy (*ordre public*) and legal evasion (*fraus legis*) answer different questions. A public-policy reservation asks whether giving effect to a foreign legal

²¹ Prasetyo Ade Witoko and Ambar Budhisulistiyawati, "Penyelundupan hukum perkawinan beda agama di Indonesia," *Jurnal Hukum dan Pembangunan Ekonomi* 7, no. 2 (2019): 251–257, <https://doi.org/10.20961/hpe.v7i2.43015>.

²² Lutfiana Dwi Mayasari, "Tinjauan Yuridis Terhadap Penyelundupan Hukum dalam Perkawinan Campuran," *The Indonesian Journal of Islamic Law and Civil Law* 1, no. 1 (2020): 37–58, <https://doi.org/10.51675/jaksya.v1i1.140>.

²³ Dian Khoreanita Pratiwi, "Tinjauan yuridis penyelundupan hukum perkawinan beda agama berdasarkan undang-undang nomor 1 tahun 1974 tentang perkawinan," *Jurnal Hukum Media Bhakti* 2, no. 1 (2020), <https://doi.org/10.32501/jhmb.v2i1.15>.

status would conflict with a sufficiently fundamental rule of the forum. *Fraus legis* asks whether a person deliberately manipulated an otherwise relevant connecting factor to avoid a mandatory domestic rule. A marriage may implicate the former without proof of manipulation; conversely, travel abroad alone cannot prove the latter. The analysis uses these doctrines as interpretive concepts grounded in Indonesian private-international-law scholarship, not as self-executing administrative grounds for invalidating civil status.

A defensible *fraus-legis* inquiry requires evidence of a pre-existing mandatory rule, an objectively identifiable alteration of the connecting situation, a purpose of circumventing that rule, and a causal link between the alteration and the claimed foreign-law result. A genuine connection may arise from ordinary residence, nationality of one spouse, sustained work or family ties, or other independently verifiable links; no fixed number of days or purely numerical score is supported by the examined law. The stronger and more ordinary the foreign connection, the less persuasive a bare allegation of evasion. Mere differences of faith or the holding of a foreign certificate are not proof of fraudulent intent.

Atmoko examines the status and legal consequences of an overseas interfaith marriage, directing attention to the effects of recognition.²⁴ Hutabarat and colleagues focus on avoidance of national marriage requirements.²⁵ The distinction matters because uncertainty about legal status is an effect requiring resolution, while deliberate evasion is an allegation requiring evidence. The former cannot be treated as proof of the latter.

An indicator-based approach is more proportionate than assuming that every interfaith couple who marries abroad necessarily engages in legal evasion. The analysis must respect the fact that transnational mobility, residence abroad, and mixed-nationality marriages may create genuine legal connections.²⁶

Pasyah's study locates legal evasion within the interaction between marriage law and the religious-law perspective.²⁷ This helps identify the mandatory rule whose avoidance is alleged. The present model adds a distinct evidentiary requirement: the analysis should specify which connecting circumstance was manipulated and how that manipulation produced the foreign-law advantage. A doctrinal concern about incompatibility cannot dispense with that explanation in a case involving particular spouses.

Public policy and *fraus legis* can therefore lead to different forms of reasoning. An authority may raise a public-policy objection because the effect sought conflicts with a fundamental domestic rule, even without proving deceit. A *fraus-legis* conclusion attributes a purposeful circumvention to the persons concerned. Using

²⁴ Dwi Atmoko, "Status dan akibat hukum terhadap perkawinan beda agama yang dilangsungkan di luar negeri dalam perspektif hukum positif," *Jurnal Ilmiah Publika* 10, no. 2 (2022): 342–350, <https://doi.org/10.33603/publika.v10i2.7793>.

²⁵ Dany Try Utama Hutabarat, Komis Simanjuntak, and Syahransyah, "Pengelabuan Hukum Perkawinan Atas Perkawinan Beda Agama," *Jurnal Ius Constituendum* 7, no. 2 (2022): 322–334, <https://doi.org/10.26623/jic.v7i2.5383>.

²⁶ Taroman Pasyah, "Penyelundupan Hukum Dalam Hukum Perkawinan Beda Agama di Indonesia; Kajian Dalam Perspektif Fiqh Islam dan Undang-Undang Perkawinan," *Simbur Cahaya* (2021): 146–164, <https://doi.org/10.28946/sc.v28i2.867>.

²⁷ Taroman Pasyah, "Penyelundupan Hukum Dalam Hukum Perkawinan Beda Agama di Indonesia; Kajian Dalam Perspektif Fiqh Islam dan Undang-Undang Perkawinan," *Simbur Cahaya* (2021): 146–164, <https://doi.org/10.28946/sc.v28i2.867>.

the second label where only the first concern has been established unfairly converts a dispute about legal effects into a finding about the parties' conduct.

Two hypothetical situations illustrate the distinction. A couple who have long resided and worked abroad may possess a substantial connection with the country of celebration, yet still face a domestic question under Article 56. Another couple may travel only for a ceremony and return immediately. The latter facts justify closer inquiry into the choice of jurisdiction, but do not by themselves prove that the legal elements of evasion are satisfied. Neither example changes the cumulative statutory conditions, and neither supplies a numerical residence threshold absent from the law.

Table 2. Indicators of Fraus Legis in Marriages Solemnized Abroad

Indicator	Analytical Meaning	Note
Genuine link	Existence of domicile, employment, nationality, family, or another genuine connection	Absence of a real connection strengthens the inference of avoidance
Duration of stay	Length and purpose of presence in the foreign state	A very short visit solely to marry requires closer scrutiny
Purpose of choosing the jurisdiction	Legal and factual reasons for selecting the country	A sole motive to avoid national requirements is relevant to <i>fraus legis</i>
Timing of reporting in Indonesia	Speed of return and registration after obtaining the certificate	An immediate return pattern may be an additional indicator
Consistency of personal status	Religion, domicile, nationality, and other relevant connections	No change is not conclusive evidence, but may be contextually relevant
Foreign documents	Authenticity, legalization, and procedural compliance	Formal requirements must be proven separately from motive

Source: Authors' normative synthesis of the Marriage Law, population-administration rules, selected decisions and private-international-law scholarship; not an official statutory test.

An adequate decision should identify the alleged mandatory rule, record the relevant connection, address the spouses' explanation and state why the requested legal effect follows or is refused. If the evidence shows only that the marriage is disputed under Indonesian personal law, the decision should say so. It should not embellish the reasoning with a finding of fraudulent intent unsupported by the circumstances. This separation makes review possible and keeps the doctrine from becoming an undefined administrative discretion.

Judicial Guidance and Protection of Family Status

Supreme Court Circular Letter No. 2 of 2023 is directed to judges adjudicating applications for the registration of interfaith marriages. Because it is a judicial guideline, the Circular does not directly amend the entire population administration regime. This helps explain why the registration of overseas marriages remains contested, particularly when the couple already possesses a marriage certificate valid under foreign law.²⁸

²⁸ Teguh Kharisma Putra, "Penerapan Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Terhadap Perkawinan Beda Agama di Luar Negeri," *Jurnal Studi Islam Indonesia (JSII)* 2, no. 1 (2024):

Post-Circular scholarship shows a more restrictive judicial approach toward applications to register interfaith marriages. However, the separation between the judicial route and the administrative reporting of events that have already occurred abroad creates a need for harmonization so that civil-status documents do not diverge sharply from assessments of substantive legal validity.²⁹

Supreme Court Circular Letter No. 2 of 2023 guides judges examining applications for registration of marriages between adherents of different religions or beliefs. Its direct institutional audience is the judiciary. It may shape the prospects of obtaining a judicial order, but does not by itself amend Article 37 of the Population Administration Law or automatically confer new investigative power on Disdukcapil.

This uncertainty has practical consequences. Marital status affects marital property, inheritance, maintenance, proof of family relationships, and numerous administrative services. When a marriage is registered administratively but its substantive validity is later challenged, the parties may face two layers of legal status that are difficult to reconcile.³⁰

Children should not bear the full consequences of disputes over the validity of their parents' marriage. Constitutional Court Decision No. 46/PUU-VIII/2010 expanded the civil relationship of a child born outside marriage with the biological father where the blood relationship can be proven through science and technology or other lawful evidence.³¹

If an overseas marriage is subsequently annulled, the Marriage Law also preserves certain protections for children and good-faith parties. This principle is important because the doctrine of *fraus legis* is intended to prevent misuse of law by those who engage in avoidance, not to extinguish the rights of parties who did not participate in the intention to evade the law.

Supreme Court Decision No. 1400 K/Pdt/1986 forms part of the earlier judicial materials discussed in the interfaith-marriage debate.³² Its historical setting must be distinguished from the population-administration regime and judicial guidance now applicable. Reliance on an older decision requires comparison of the legal question, facts and statutory framework rather than the assumption that a case number alone authorizes the requested registration.

Supreme Court Decision No. 805 K/Pdt/2013 is also included among the materials concerning overseas marital status.³³ The present analysis does not generalize an automatic recognition rule from that individual dispute. Foreign documentary integrity, reporting obligations and substantive marital requirements remain separate questions to be addressed under the applicable legal framework.

Supreme Court chamber guidance concerning overseas marriages reinforces the importance of registration for proving status in Indonesia. Registration, however,

39–56, <https://doi.org/10.61930/jsii.v2i1.581>.

²⁹ Muhammad Assegaf, Dominikus Rato, and Moh. Ali, “Keabsahan Perkawinan Beda Agama Pasca Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023: Studi Kasus Penetapan Nomor 423/Pdt.P/2023/PN.Jkt.Utr,” *Acten Journal Law Review* 1, no. 2 (2024): 159–172, <https://doi.org/10.71087/ajlr.v1i2.6>.

³⁰ Putu Eka Trisna Dewi, “Akibat hukum perkawinan beda agama yang dilangsungkan di luar negeri,” *Jurnal Yustitia* 14, no. 2 (2020): 28–34, <https://doi.org/10.62279/yustitia.v14i2.491>.

³¹ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 46/PUU-VIII/2010, February 13, 2012.

³² Mahkamah Agung Republik Indonesia, Putusan Nomor 1400 K/Pdt/1986.

³³ Mahkamah Agung Republik Indonesia, Putusan Nomor 805 K/Pdt/2013.

must not be understood as a mechanism that forecloses all subsequent review of substantive defects in the marriage.³⁴

Judicial annulment, foreign-status non-recognition and refusal to complete an administrative record are legally different acts. Annulment requires the legally prescribed grounds, standing and competence of a court under the Marriage Law; an administrative officer cannot exercise the annulment power. Non-recognition is a substantive legal conclusion requiring its own authority. An administrative refusal concerns whether the formal requirements for a specific registry act were met and must be reasoned and reviewable. Each produces different consequences for legal certainty and must not be used interchangeably.

Yonathin and Gunadi's discussion of conflicting registration norms after SEMA No. 2 of 2023 addresses the problem of judicial consistency.³⁵ Murniwati examines the consequences for children and directs attention to interests that remain distinct from the adults' choice of forum.³⁶ These inquiries support a procedure that gives reasons for a status decision and separately determines the legal interests of persons affected by it.

A sound procedure must protect children and good-faith third parties separately from disputes over the parents' marital status. A registration or recognition conflict can affect birth documentation, parental affiliation, child support, inheritance claims, matrimonial assets and reliance by third parties on public registers. Those interests require timely access to administrative records, individualized legal analysis and judicial review where necessary, without treating children as responsible for adults' choice of forum.

The institutional addressee of SEMA No. 2 of 2023 matters to the procedure. It directs judges examining applications for registration of marriages between adherents of different religions and beliefs not to grant the applications. It does not transform a civil-registration officer into a court or replace the statutory provisions governing the reporting of an event abroad. This statement of scope does not exempt an overseas marriage from Article 56; it requires the appropriate legal basis to be identified at each stage.³⁷

Protection of a child requires determination of the particular right asserted. Birth documentation, establishment of a biological relationship, maintenance and inheritance do not necessarily rest on an identical legal basis. Constitutional Court Decision No. 46/PUU-VIII/2010 is relevant to the civil relationship where biological parentage can be proved, but should not be expanded into a finding that every consequence of a disputed marriage is automatically settled. The institution dealing

³⁴ Mahkamah Agung Republik Indonesia, Surat Edaran Nomor 3 Tahun 2015 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 sebagai Pedoman Pelaksanaan Tugas bagi Pengadilan.

³⁵ Lina Kristie Yonathin and Ariawan Gunadi, "Konflik Norma SEMA Nomor 2 Tahun 2023 Dengan Putusan Pengadilan Pencatatan Perkawinan Beda Agama," *Jurnal USM Law Review* 8, no. 3 (2025): 1485–1497, <https://doi.org/10.26623/julr.v8i3.12299>.

³⁶ Rahmi Murniwati, "Akibat Hukum Bagi Anak yang Lahir dari Perkawinan Beda Agama Setelah Berlakunya Sema No. 2 Tahun 2023," *Unes Journal of Swara Justisia* 7, no. 4 (2024): 1383–1392, <https://doi.org/10.31933/ujsj.v7i4.468>.

³⁷ Mahkamah Agung Republik Indonesia, Surat Edaran Nomor 2 Tahun 2023 tentang Petunjuk Bagi Hakim Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar-Umat yang Berbeda Agama dan Kepercayaan, July 17, 2023.

with the child's claim must connect the applicable rule to the evidence needed for that claim.³⁸

The Marriage Law's protection concerning children and good-faith interests in the event of annulment reinforces this differentiated approach. A spouse's disputed choice of jurisdiction does not establish that a child participated in evasion. Nor does an administrative entry justify disregarding the position of a third party who relied on legally relevant documentation. The grounds for annulment, the competent court and the protected consequences must be addressed separately.³⁹

The primary need is to separate three legal questions. First, is the marriage formally valid under the law of the country where it was solemnized? Second, for Indonesian citizens, does the marriage comply with the substantive limitations of the Indonesian Marriage Law? Third, have the administrative reporting and registration requirements been fulfilled? These questions should not be collapsed into a single administrative determination.

Strengthening verification at the Disdukcapil level should not transform an administrative body into a religious or civil court. What can be strengthened is document verification, legalization or apostille requirements as applicable, evidence of reporting to an Indonesian mission, the identities of the parties, and the recording of legal reasons when a genuine doubt directly concerns the requirements of Article 56.

At the statutory level, the relationship between Article 56 of the Marriage Law and the Population Administration Law should be clarified. The law should specify whether, and to what extent, the phrase "does not violate the provisions of this Law" constitutes a substantive requirement that must be verified before registration, which authority is competent to assess it, and what dispute-resolution mechanism applies when assessments differ.

Fraus legis should also be formulated more operationally within Indonesian private international law. A genuine link, the duration of presence abroad, the motive for selecting the jurisdiction, and the parties' actual relationship with the foreign state may be used as indicators, but any conclusion should be reached through a process that gives the parties an opportunity to explain their concrete circumstances.

Finally, the protection of children and third parties must operate as a safeguarding norm. A dispute over the validity of the parents' marriage should not automatically extinguish a child's identity, civil relationship, maintenance rights, or other rights recognized by law. Clearer regulation would reduce the tension between enforcing marriage norms and protecting civil rights.

Because adverse civil-status decisions affect fundamental family interests, the person affected should receive notice of the documentary deficiency, an opportunity to correct or explain it, written reasons identifying the enabling rule, and a route to administrative or judicial review. A registrar should verify the documentary requirements within statutory competence and should not unilaterally nullify a foreign marriage on the basis of an untested doctrinal suspicion. Genuine disputes of substantive validity require an appropriate judicial forum or other lawful determination; the precise treatment of registration pending such a ruling must

³⁸ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 46/PUU-VIII/2010, February 13, 2012.

³⁹ Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, as amended by Undang-Undang Nomor 16 Tahun 2019, arts. 2 and 56.

follow applicable administrative procedure rather than an invented discretion to withhold indefinitely.

The proposed framework accordingly requires a written classification of the problem and an identified route to resolution. A documentary deficiency should be capable of correction under the relevant administrative procedure. A substantive dispute should reach the legally competent institution. An allegation of evasion should receive its own evidentiary analysis. This division of functions does not predetermine the outcome; it makes the reasons and consequences of that outcome legally assessable.

CONCLUSION

Overseas marriage reporting, the evidentiary effect of a civil-status record and substantive marital validity are related but distinct. Article 56 requires compliance with the law of the place of solemnization and, for Indonesian citizens, the relevant provisions of the Indonesian Marriage Law. Disdukcapil must act within its documentary and administrative competence. A foreign certificate cannot be assumed to cure every substantive defect, and an allegation of such a defect cannot be converted into an unreasoned administrative annulment.

Fraus legis requires a reasoned connection between a mandatory rule, manipulation of the relevant connecting situation and the legal result sought. Religious difference, foreign travel and a short stay do not independently prove evasive intent. SEMA No. 2 of 2023 guides the relevant judicial applications; its institutional scope must be distinguished from administrative reporting. A coherent framework should specify the competent authority and review procedure for each dispute, while protecting the legally recognized interests of children and good-faith third parties.

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