



Dispute Resolution of Marriage Cancellation through Religious Court Decisions in Indonesia

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Abstrak

Ketentuan pasal 22 Undang-undang No. 1 Tahun 1974 Tentang Perkawinan bahwa perkawinan dapat dibatalkan apabila para pihak tidak memenuhi syarat untuk melangsungkan perkawinan. Berbeda halnya dengan perkawinan yang tidak terpenuhi rukun dalam perkawinan maka konsekuensi perkawinan tidak sah dan batal dengan sendirinya, artinya perkawinan dianggap tidak pernah ada. Konteks hukum islam ada tipologi jenis perkawinan. *Pertama*, pernikahan dianggap sah jika syarat dan rukun perkawinan terpenuhi. *Kedua*, jika salah satu rukun perkawinan tidak terpenuhi maka perkawinan dianggap tidak sah. *Ketiga*, jika yang tidak terpenuhi salah satu dari syarat perkawinan maka perkawinan fasid, dapat dibatalkan. Bagaimanakah penyelesaian sengketa pembatalan perkawinan dan akibat hukum dari pembatalan perkawinan tersebut. Metodologi penelitian empiris meruapak metode yang dilakukan untuk menjawab pertanyaan di atas, dengan pendekatan peraturan perundang-undangan dan studi kasus. Sedangkan sumber data yang digunakan terdiri dari bahan hukum primer, skunder dan tersier denngan menggunakan analisis deskriptif kualitatif. Setidaknya ada tiga akibat hukum dari penyelesaian sengketa pembatalan perkawinan yaitu: kedudukan anak tetap sebagai anak yang sah, harta bersama dapat di bagi jika perkawinan didasarkan dengan iktikat baik, dan suami tidak berkewajiban memberikan nafkah kepada isteri selama masa iddah.

Kata Kunci: Pembatalan Perkawinan, Penyelesaian Sengketa, Pengadilan Agama

Abstract

The provisions of Article 22 of Law no. 1 of 1974 concerning Marriage that a marriage can be annulled if the parties do not meet the requirements to enter into a marriage. Unlike the case with a marriage that does not fulfill the pillars of marriage, the consequences of the marriage are invalid and null and void, meaning that the marriage is considered to have never existed. In the context of Islamic law there is a typology of types of marriage. *First*, a marriage is considered valid if the conditions and pillars of marriage are met. *Second*, if one of the pillars of marriage is not fulfilled then the marriage is considered invalid. *Third*, if one of the conditions for marriage is not fulfilled, the fasid marriage can be annulled. How is the resolution of the dispute over the annulment of marriage and the legal consequences of the annulment of the marriage. Empirical research methodology is a method used to answer the above questions, using a statutory and case study approach. While the data sources used consist of primary, secondary and tertiary legal materials using qualitative descriptive analysis. There are at least three legal consequences of resolving disputes over marriage cancellations, namely: the position of the child remains as a legitimate child, joint property can be divided if the marriage is based on good faith, and the husband is not obliged to provide a living for his wife during the iddah period.

Keywords: Marriage Annulment, Dispute Resolution, Religious Court

Introduction

There are at least three forms of legislation that regulates marriage annulment in Indonesia, namely the Civil Code (BW), Law no. 1 of 1974 and Presidential Instruction No. 1 of 1991 concerning the Compilation of

Islamic Law, hereinafter abbreviated as KHI. The annulment of marriage from the perspective of the Civil Code of BW is regulated in the second book in chapter two which consists of 15 articles starting from articles 85-99.¹ Law No. 1 of 1974 the annulment of marriage is regulated in Chapter IV consisting of eight articles starting from articles 22-28. The Compilation of Islamic Law which is a reference and source of material law in all Religious Courts. For annulment of marriage is regulated in chapter XI concerning the annulment of marriage, consisting of seven articles starting from articles 71-76. The three forms of legislation explain that the annulment of a marriage can only be done if it is through a judicial institution.²

The concept of marriage annulment is an effort made by interested parties to avoid marriages that are contrary to the law or statutory provisions. The legal provisions are meant if the material requirements are not met for a marriage.³ Article 13 of Law no. 1 of 1974 states that a marriage can be annulled if there are parties who do not meet the requirements to enter into a marriage. The conditions in question are material requirements and formal requirements, where these conditions are fundamental conditions, so that if these conditions are not met, the marriage can be annulled. The intended material requirements are regulated in Article 8 of Law no. 1 of 1974 concerning marriage registration and marriage bans.⁴

When the marriage in question contains material and formal defects, the marriage can be annulled. The material requirements in question are absolute requirements, which are related to a person's personality that must be fulfilled in a marriage, such as the approval of the prospective husband and wife, legal competence to carry out marriage. The legal competence referred to is the minimum age limit for marriage, which is 19 years for women and 19 years for men, but even though the stipulation is part of the material requirements, the two regulations provide opportunities for marriage dispensation for those who have not reached the minimum age.⁵ Prohibition of marriage can also be done because one of the parties is still bound by a legal marriage. But the prohibition is only absolute to the wife who is still bound in marriage. The prohibition of marriage as stated in Article 9 does not absolutely apply to a man who is bound by marriage or a man whose wife is not absolutely prohibited from marrying a second wife provided that the marriage obtains permission from the first wife.⁶

¹ Soebekti, *Kitab Undang-Undang Hukum Perdat BW*, (Jakarta: Raja Gramedia Group), 2008, hlm. 18.

² Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Instruksi Presiden No. 1 Tahun 1999 Tentang Kompilasi Hukum Islam di Indonesia

³ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, (Jakarta Prenada Media Group), 2019, hlm. 23.

⁴ Siska Lis Sulistiani, *Penerapan Hukum Keluarga dan Bisnis Islam di Indonesia*, (Jakarta: Sinar Grafika), 2019, hlm. 54.

⁵ Ali Afandi, *Hukum Keluarga Menurut BW*, (Yogyakarta: Yayasan Badan Penerbit Gajah Mada, 1964), hlm. 12.

⁶ Mardani, *Hukum Keluarga Islam di Indonesia*, (Jakarta: Kencana Prenada Group), 2017, hlm. 27.

The material requirements are conditions related to provisions which are prohibitions for a person to marry certain people such as the prohibition on marrying women during the iddah period, women who are still pregnant, and wives who have been divorced three times, with the exception of the prohibition, because of the relationship of lineage, marriage and breastfeeding.⁷ In addition, what must be fulfilled are formal requirements, namely conditions relating to the provisions of formalities or administrative procedures. For example, a husband's second marriage must obtain a determination from the local court that the prospective husband has permission to marry a second time. Both material requirements and formal requirements in marriage must be met in a series of marriage events, when these conditions are not met, the marriage can be requested for annulment to the court.⁸

The Supreme Court report states that cases of cancellation of marriages received by courts of first instance throughout Indonesia in 2019 totaled 604,997 cases. The remaining cases in 2018 were 72,611 cases, so that the burden of handling cases in 2019 was 677,608 cases. There were 584,506 cases decided in 2019 and 45,168 cases were withdrawn by the parties so that the remaining cases at the end of December 2019 were 47,934 cases.⁹ The circumstances of the case at the first level based on the type of case of annulment of marriage are:

Cancellation of Marriage Through the Decision of the Religious Courts in Indonesia in 2019

No	Types of Cases	Remaining 2018	Entered 2019	Cases Burden	unplug	Cancellation	Remaining 2019
1	Marriage Cancellation	53	204	257	70	169	18

Cancellation of Marriage Through the Decision of the Religious Courts in Indonesia in 2020

No	Types of Cases	Remaining 2018	Entered 2019	Cases Burden	unplug	Cancellation	Remaining 2019
1	Marriage Cancellation	18	226	224	54	162	28

Cancellation of Marriage Through the Decision of the Religious Courts in Indonesia in 2021

No	Types of Cases	Remaining 2018	Entered 2019	Cases Burden	unplug	Cancellation	Remaining 2019
1	Marriage Cancellation	28	253	281	69	191	21

⁷ Beni Ahmad Saebeni, *Hukum Perdata Islam di Indonesia*, (Jakarta: Pustaka Setia,) 2019, hlm. 33.

⁸ Ahud Misbahuddin, *Kewenangan Jaksa Untuk Mengajukan Pembatalan Perkawinan*, dalam *Mimbar Hukum* (Jakarta: Al-Hikmah & Ditbinbapera Islam, 1998), hlm. 50-51.

⁹ Buku Laporan Tahunan Mahkamah Agung Republik Indonesia (laptah) dapat diakses melalui <https://www.mahkamahagung.go.id/id/summary-laporan-tahunan-mahkamah-agung-ri>

Looking at the data on marriage annulments from 2019 to 2020, it is certain that the increase in cases of marriage annulment has fluctuated from year to year, and when viewed from the data presented every year cases of marriage annulment leave the remainder for the following year. For 2019, 204 cases of marriage annulment came in plus the remaining 53 in 2018 bringing the total number of cases of marriage annulment to 257. Of the total 257 cases of marriage annulment, not all of them could be decided, only 169 of which could be decided, 70 of which were revoked and 18 remaining and expenses for 2020. For 2020, cases of marriage annulment decreased by around 5%, which amounted to 244 of the remaining 2019 case

Not different from 2019 from the total number of cases of annulment of marriages, only 162 could be decided, 54 of them were revoked and the remaining 28 were a burden in 2021. In 2021 cases of annulment of marriages increased by around 15%, of all cases of annulment of marriages received by the Religious Courts In Indonesia, there are 281 cases, consisting of 253 cases that were submitted in 2021 plus the remaining 28 cases in 2020. Similar to 2019 and 2020, not all of these cases can be decided, only 191 can be decided, 69 of them are revoked and 21 are the remaining and burdens of the year. 2022.

Considering that for now, although marriage annulment arrangements in Indonesia are regulated through several laws and regulations, it does not mean that there are no problems, especially when cases of annulment are resolved through the Religious Courts in which it is necessary to find a solution. In addition to the problems mentioned, the most crucial issue related to the marriage annulment process is whether every legal subject has the right to cancel a marriage, and who is authorized to make the annulment and how the process and legal consequences of marriage annulment through the judiciary in Indonesia.

Research Methods

a. Types and Approaches of Research

This research uses empirical juridical or *socio-legal research* with qualitative research, in which the law is not only seen as *law in books* but also *law in action*. namely by conducting an analysis of problems based on an analysis of legal principles and norms, both the law contained in the legislation and the law as court decisions, as well as applicable and binding norms,¹⁰ or the law in the meaning of written *law as it is written in the books* and law as court decisions (*law as it is decided by judge through the judicial process*).¹¹

The approach used in this study uses a *statutory approach*. The law in question is Law no. 1 of 1974 and the Compilation of Islamic Law which is used as a material source in all Religious Courts in Indonesia. The statutory approach is used because this research focuses on the study of legal norms that are directly related to the legal issues to be studied. The next approach is through a case

¹⁰ Lawrence M. Friedman, *American Law*, (New York: W.W. Norton and Co, 1984), hlm. 6.

¹¹ Ronald Dworkin, *Legal Research*, (Deadalus: Spring, 1973), hlm. 250.

study approach.¹² The approach in question is through the decisions of the Religious Courts throughout Indonesia, especially the Medan Religious Court Number 246/Pdt.G/2018/PA.Mdn so that it is found how the effectiveness of the positive legal system and Islamic law is related to the annulment of marriages in Indonesia.

b. Data Source

To find answers that are comprehensive, in-depth and measurable, researchers use primary and secondary data. Primary data collection was carried out by tracing various Supreme Court decisions from 2019-2021 regarding marriage annulments. While the secondary data consists of primary legal materials that are binding and coercive, consisting of Law no. 1 of 1974 concerning Marriage. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law and Government Regulation No. 9 of 1975 concerning the Implementation of Law no. 1 of 1974 concerning Marriage. and changes to secondary and tertiary laws. The secondary legal materials used in this study are legal materials that provide an explanation of primary, secondary and tertiary legal materials that can be used as references and references to determine the accuracy of research.¹³This is done to obtain information on everything related to the subject matter which is analyzed comprehensively and in depth.¹⁴

c. Research Objects

The objects of research carried out are the decisions of the Religious Courts related to lawsuits for annulment of marriages in Indonesia from 2019 to 2021. The Religious Courts used as samples are the Bandung Religious Courts, Surabaya Religious Courts, Medan Religious Courts, and the Religious Courts Central Jakarta Religion. The reasons for choosing the four Religious Courts in Indonesia are based on the highest number of divorce cases in Indonesia, which include cases of lawsuits for annulment of marriages. Of the four religious courts, the most widely accepted cases of marriage annulment lawsuits are the Medan Religious Courts, followed by the Bandung Religious Courts, the Surabaya Religious Courts, and the Central Jakarta Religious Courts. The cases received tend to vary, meaning that the increase in the number of lawsuits for annulment of marriages from 2019 to 2021 is volatile.

d. Data Analysis

The process of analyzing the decision to annul marriage is carried out by taking an inventory and identifying secondary data, both primary legal materials, secondary legal materials and relevant tertiary legal materials. Then systematize all legal materials to be analyzed in depth, objectively and logically.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*. (Jakarta: Kencana Prenada Media Group 2010), hlm. 119.

¹³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 1983), hlm. 13. Riantao Adi, *Metode Penelitian Sosial dan Hukum*, (Jakarta: Granit, 2004), hlm.57.

¹⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press, 2014), cet. Ke 3, hlm. 21.

The analysis was carried out using the perspective of Law no. 1 of 1974 concerning Marriage and the Compilation of Islamic Law by using inductive and deductive methods with qualitatively argumentative.¹⁵ So that it is possible to know the philosophical basis, the problem to be studied. Furthermore, an interpretation of the legal regulations that are directly related to the problem under study is carried out, with the aim of building a comprehensive picture of the problem under study. The research results will be analyzed systematically, critically, constructively and argumentatively. The results of the analysis carried out are expected to be able to know the depth of meaning and aspects of marriage annulment in Indonesia.

Legal Construction Concerning Procedural, Reasons and Authorized Parties to Annulment Marriage in Indonesia

Annulment is an action taken by the Court in the form of a decision that declares the marriage carried out is declared invalid (*no legal force or legal force*). *declared void*), so that the marriage is considered to have *never existed* (*never existed*), which results in 1. The marriage is considered invalid (*no legal force*), 2. *The marriage itself* is considered to have *never existed* (*never existed*), 3. Male and a woman whose marriage is annulled is considered to have never been married. What must be understood is that marriage annulment is different from preventing marriage and divorce. Prevention of marriage is an action so that the marriage does not take place (marriage has not occurred). Divorce is the dissolution of a valid and existing marriage (the marriage has already occurred), either by mutual consent or at the request of one of the parties. Meanwhile, in the case of annulment of marriage, that the marriage has occurred, but later it was discovered that there were deficiencies regarding the requirements determined by the laws and regulations, whether material requirements or formal requirements.¹⁶

The term marriage annulment in Islamic law is known by two terms even though there is no difference in terms of legal consequences, namely fasid marriage and vanity marriage. Fasid marriage is a marriage that does not fulfill one of the conditions in marriage, while batil marriage is a marriage that does not fulfill one of the pillars of marriage. Both fasid marriages and batil marriages are not valid. Algeria defines what is meant by a fasid marriage is a marriage that does not meet one of the requirements in marriage which results in an invalid marriage.¹⁷ In addition, in marriage, it is also known as Fasakh Marriage, which means destroying or canceling a marital relationship that has taken place, because Fasakh can be used as one of the

¹⁵ Bergam Evans dan Cornelia Evans, *A Dictionary of Contemporary American Usege*, (New York: Randon House, 1975), hlm. 75.

¹⁶ M. Yahya Harahap, *Hukum Perkawinan Nasional*, (Medan: Zahir Trading Co, 1975), hlm. 71.

¹⁷ Abdurrahman al-Jaziri, *Alfiqhu Ala Madzhibil Arba'ah*, Juz IV, (Darul Fiqri, Beirut, 1982), hlm. 118.

reasons for breaking up a marriage.¹⁸ Fasakh can be caused by two factors. First, the factor of marriage that does not meet the pillars, conditions and obstacles to marriage in it. Second, the factor of the occurrence of something in the household that is impossible to continue. Fasid or void in terms of the cancellation of the marriage if one of the conditions and pillars of marriage is not fulfilled then it is canceled because the pillars are incomplete or because there are obstacles.¹⁹ Perspective of Law no. 1 of 1974 concerning marriage and the Compilation of Islamic Law, fasid marriages and batil marriages can be used as reasons for annulment of marriages, not prevention. Cancellation is intended to end a marriage because one of the pillars and conditions of marriage is not fulfilled, while prevention is in principle carried out before marriage because it is related to the non-fulfillment of the conditions and pillars of marriage.²⁰ If deviations are found against the terms and pillars of marriage, the legal consequences of the marriage can be annulled so that the marriage breaks up and is considered non-existent and there has never been a marriage between husband and wife.²¹

In principle, a marriage can be void (*neitig*) and/or fasid (*vernietigbaar*), a marriage violation that is eternal in nature is related to the terms and pillars of marriage, so the annulment of the marriage is eternal. Meanwhile, temporary marriage violations are related to administration. If in a marriage the elements and conditions of marriage are fulfilled, then the marriage is valid and has legal consequences, one of which will arise rights and obligations between husband and wife. But if the marriage is not fulfilled the conditions and the pillars of the marriage then the consequences of the marriage will be void.²² The term marriage can be canceled because the pillars and conditions of marriage are not fulfilled, meaning *neitig zonder kracht* means that there is no legal force in the marriage or *zonder waarde* or there is no value. The term *nietig* means marriage can be annulled while absolute *neitig* marriage is null and void by itself. The two terms in principle, marriage has occurred but will have an impact on the cancellation by itself and can be canceled, because the conditions and pillars of marriage are not fulfilled.²³

The conditions and pillars of marriage in question are: Marriage is said to be valid if it is carried out using a contract, namely consent and qabul between a man and his guardian. terms of marriage according to 1. That a new marriage is

¹⁸ Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2000), hlm. 85.

¹⁹ Amir Syarifuddin, *Hukum perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-undang Perkawinan*, (Jakarta: Kencana, 2006), hlm. 253.

²⁰ Mukmin Mukri, Pencegahan dan Pembatalan Perkawinan, *Jurnal Perspektif* Vol. 13, No. 2, Desember 2020, hlm. 102.

²¹ Faisal, Pembatalan Perkawinan dan Pencegahannya, *Al-Qadha Jurnal Hukum Islam dan Perundang-undangan.*, hlm. 5.

²² Satria Efendi M zein, *Problematika Hukum Keluarga Islam Kontemporer, Analisis Yurisprudensi Dengan Pendekatan Ushuliah*, (Gip : Jakarta, 2009), hlm. 23.

²³ Abd. Shomad, *Penormaam Prinsip Syariah dalam Hukum Indonesia*, (Jakarta: Kencana Prenada Media Group, 2012), hlm. 75.

considered valid if it is carried out by contract, which includes consent and qabul between the proposed bride and the groom. That the couple is mature and reasonable, unless it is carried out by the guardian of the bride and groom, regardless of the circumstances that prevent them from marrying, either because of family relationships or other relationships, must be certain and certainly the person, and two male witnesses. The minimum number of witnesses is two men.²⁴

A lawsuit for the annulment of a marriage can be submitted to the Religious Court which is in charge of the husband and wife's place of residence or the place where the marriage takes place and or the place of residence of both husband and wife. The procedure for submitting a marriage annulment is carried out in accordance with the procedure for filing a divorce suit. Likewise, the examination of marriage annulments is carried out in accordance with what is stated in article 20 and article 36 of the Government Regulation.²⁵ The perspective of article 22 of Law no. 1 of 1974 concerning Marriage explains that a marriage can be annulled, if the parties do not meet the requirements to enter into a marriage. The conditions referred to are related to the non-fulfillment of the formal and material requirements in Law no. 1 of 1974 concerning marriage. The non-fulfillment of material conditions can be used as a reason to cancel a marriage as regulated in article 6 paragraphs (1, 2) and articles 7, 8, 9, 10, 11, 24, 26, 27. can be done through the courts. Unlike the case if the material conditions mentioned in Article 8 then in principle the marriage is invalidated by itself, meaning that the marriage is considered to have never existed. Regarding the non-fulfillment of material requirements in marriage, there are two consequences to the marriage.

First, it can be canceled through the court if the marriage does not meet the elements in articles 24, 26 and 27. Article 24 states that a marriage that is still bound by one of the two parties to a valid marriage, then the marriage can only be annulled. But if you look at Article 26, according to the researcher, there are two legal consequences. If the marriage is not held in the presence of an authorized marriage registrar, the marriage can be annulled. *Second*, if the marriage is carried out without a valid marriage guardian or without the presence of two witnesses, the marriage is automatically annulled. In addition to these two legal consequences, another legal consequence is the right to annul the marriage according to the provisions of Article 26 paragraph (1) will be invalid if they have lived together as husband and wife and can show a marriage certificate made by an unauthorized marriage registrar and the marriage must be renewed. to be valid. It will be different when referring to article 27 paragraphs (1 and 2).

If the marriage is carried out under threats that violate the law or there is a misunderstanding of the husband and wife at the time of the marriage, the marriage can be annulled. However, if you pay attention to paragraph 3 of article

²⁴ Martiman Prodjohamidjodjo, *Hukum Perkawinan Indonesia*, (Jakarta: Indonesisa Legal Center Publishing, 2002), hlm. 25.

²⁵ Mukmin Mukri, *Pencegahan dan Pembatalan Perkawinan*, (Jurnal Perspektif, 2020) Vol. 13, No. 2 Desember), hlm. 107

27 that a marriage carried out under threat will invalidate the right to apply for an annulment of the marriage if within a period of six months they have lived as a husband and wife. Furthermore, Article 28 explains that the marriage will be void after the court's decision has a permanent law and the decision does not apply retroactively to children born from the marriage. Regarding joint property, if the marriage is based on good faith, then the process of dividing joint property can be carried out.

Looking at the provisions of Article 23 of Law no. 1 of 1974 concerning Marriage, the parties who have the right to cancel a marriage are a. The families in the line of descent straight up from the husband or wife. b. Husband or wife. c. The official who is authorized only as long as the marriage has not been decided. d. The appointed official is paragraph (2) article 16 of this Law and any person who has a direct legal interest in the marriage, in which there is a defect in the pillars and conditions of marriage according to Islamic law and statutory regulations.

In addition to Law no. 1 of 1974 concerning Marriage, the Compilation of Islamic Law which is a material source in the Religious Courts explicitly regulates how marriage annulments should be carried out and what reasons can be justified for annulment of marriages, as well as procedural annulment of marriages. KHI shows that there are two patterns of annulment of marriages, namely null and void automatically and can be annulled.²⁶

First, the marriage is automatically annulled if one of the elements contained in Article 70 is fulfilled, meaning that the marriage is considered to have never existed if the reasons are fulfilled, namely:

- a. The husband performs the marriage, while he is not entitled to the marriage contract because he already has four wives, even though one of the four wives is in the iddah talak raj`i.
- b. a man marries his ex-wife whom he has slain.
- c. a person marries his ex-wife who has been sentenced to three divorces by him, except if the ex-wife was married to another man and then divorced again ba`da al dukhul and the man and her iddah period has expired.
- d. Marriage is carried out between two people who are related by blood, by marriage and by marriage to a certain degree which prevents marriage according to Article 8 of Law No. 1 of 1974, namely: a. Blood related in a straight line of descent or up. b. related by blood in a deviant lineage, namely between siblings, between one and the parent's brother and between one and his grandmother's brother. c. Sexual intercourse, namely in-laws, stepchildren, daughter-in-law and mother or stepfather. d. breastfeeding, namely breastfeeding parents, breastfeeding children and breastfeeding aunts or uncles. e. wife is a sibling or as an aunt or niece and his wife or wives. This is also explained in Article 39 of the KHI

²⁶ Zaeni Asyhadie, *hukum Keperdataan Dalam Perspektif Hukum Nasional KUHPerdara (BW) Hukum Islam dan Hukum Adat*, (Jakarta: Rajawali Press, 2018), hlm. 148.

concerning prohibition of marriage due to kinship ties, marital kinship ties, and due to marital ties.²⁷

Second, a marriage can be annulled, meaning that if one of the elements of articles 71, 72, and 73 is fulfilled, the marriage will not be canceled by itself, but there must first be a lawsuit for the annulment of the marriage through the court which is removed by the parties determined by Law no. 1 of 1974 and KHI. That a marriage can be annulled for the following reasons:

- a. A husband practices polygamy without the permission of the Religious Court.
- b. The woman who was married was later discovered to be the wife of another man who was *mafqud*.
- c. The woman who was married turned out to be still in the *iddah* and had another husband.
- d. Marriage that violates the marriage age limit as stipulated in Article 7 of Law No.1. 1974.
- e. Marriage is carried out without a guardian or carried out by an illegitimate guardian
- f. Forced marriages.²⁸

In addition, the marriage can also be annulled if the marriage is carried out under threats that violate the law, in this case the husband or wife submits an application for the annulment of the marriage. A husband or wife can apply for an annulment of marriage if at the time of the marriage there is fraud or misunderstanding about the husband or wife. If the threat has ceased, or the guilty suspect is aware of his situation and within 6 (six) months after that he is still alive as husband and wife, and is unable to exercise his right to apply for an annulment of the marriage, then his right is void.

The following are four Religious Courts that decide cases of marriage annulment in Indonesia from 2019-2021

No.	Court Name	Types of Cases	Year 2019	Year 2020	Year 2021	Amount	Break	Remainder
1	Bandung Religious Court	Marriage Cancellation	5	5	4	14	11	3
2	Surabaya Religious Court	Marriage Cancellation	2	9	2	13	13	0
3	Medan Religious Court	Marriage Cancellation	9	1	6	16	10	6
4	DKI Jakarta Religious Court	Marriage Cancellation	5	1	5	11	11	0
Number of Marriage Cancellations			21	16	17	54	45	9

²⁷ Pasal 70 Instruksi Presiden Nomor. 1 Tahun 199 Tentang Kompilasi Hukum Islam.

²⁸ Pasal 71 Instruksi Presiden Nomor. 1 Tahun 199 Tentang Kompilasi Hukum Islam.

For 2019, the Bandung Religious Court received four cases of marriage annulment lawsuits plus the remaining one lawsuit for marriage annulment in 2018 so that there were five cases of marriage annulment lawsuits. Of the five cases of marriage annulment lawsuits, only four cases were dropped in 2019 and the remaining one case and became a caseload for 2020. In 2020 the Bandung Religious Court accepted five cases of marriage annulment lawsuits, four of which were entered in 2020 and one is a the remainder of the marriage annulment lawsuits in 2019. Of the total number of marriage annulment lawsuits, only four cases were decided and the remaining one and became the burden of the case for 2021. As for the cases of marriage annulment lawsuits that entered the Bandung Religious Court in 2021 as many as 3 cases plus the remaining one case received in 2020 so that the caseload for marriage annulment lawsuits is five. A total of five of the marriage annulment lawsuits were decided in 2021, with three cases remaining one and a burden for 2022.

The Surabaya Religious Court in 2019 accepted two marriage lawsuits and all of them were decided in 2019. In 2020 the Surabaya Religious Court in 2019 2020 received nine cases of marriage annulment lawsuits and the entire marriage annulment lawsuit was decided in the same year. For 2021 the Surabaya Religious Court received two cases and all cases of marriage annulment lawsuits were decided in the same year.

There were 9 cases of marriage annulment lawsuits received by the Medan Religious Court in 2019, consisting of four cases which were the remainder of 2018 that had not been granted and five cases entered in 2019. Of the total cases of marriage annulment claims that entered 2019 only seven were granted, one of which was rejected. and one of them is the remainder of 2019 and becomes a caseload for 2020. The case received by the Medan Religious Court in 2020 related to a lawsuit for marriage annulment as many as one case which was the remainder of the 2019 case and was decided in 2020. In 2021 the lawsuit was accepted by the Religious Court Medan as many as 6 with details of one remaining lawsuit for marriage annulment in 2020 and five cases for annulment of marriage accepted in 2021. As for the settlement of lawsuits for annulment of marriages in 2021, it can be classified as follows, one of which is revoked, one is rejected, two is granted and the remaining two and is the caseload for 2022.

For the 2019 marriage annulment lawsuit cases, the Central Jakarta Religious Court is five cases, and one is the remainder of 2018. Of the total caseload for the marriage annulment lawsuit, four of them were decided in 2019 and one case is the remainder and burden for 2020. For the lawsuit for annulment of marriage in 2020, the Central Jakarta Religious Court received one case which was the remainder of 2019 and has been granted. In 2021, the marriage annulment lawsuit received by the Central Jakarta Religious Court consisted of five cases and the entire marriage annulment lawsuit was granted in the same year. There are several factors in the lawsuit for the annulment of the marriage that was dismissed through the decision of the Religious Court. These factors are: One of the parties of the husband and wife is still bound by a legal marriage and the permission of the first wife does not exist. There was deception and

falsification of the identity of one of the parties from a husband and wife couple. Marriage is carried out without a legal guardian. The following are the causes of marriage annulment through a Religious Court Decision taken at random.

From the data above shows that the causes of marriage annulment in Indonesia vary from marriage guardians who are not entitled to marry off, no permission from the first wife, fraud and falsification of personal identity to coercion from parents to wrongdoing. one husband and wife are still bound by a legal marriage. Marriage. The reasons for the annulment of the marriage above were taken through the four decisions of the Religious Courts which received the most claims for the annulment of marriages. Of the four decisions of the Religious Courts, data was taken through random fraud and personal identity falsification was the most common cause of marriage annulments, followed by no permission from the first wife, coercion from parents, one husband and wife were still bound by a legal marriage and illegitimate guardian. Fraud and identity falsification are

No	Court Name	Types of Cases	Decision number	Reason
1	Bandung Religious Court	Marriage Cancellation	5919/Pdt.G/2021/PA.Badg	Invalid marriage guardian
			5399/Pdt.G/2019/PA.Badg	No first wife's permission
			0564/Pdt.G/2018/PA.Badg	No first wife's permission
2	Srabaya Religious Court	Marriage Cancellation	2239/Pdt.G/2020/PA.Sby	Fraud and forgery
			3063/Pdt.G/2020/PA.Sby	No first wife's permission
			5927/Pdt.G/2019/PA.Sby	Fraud and forgery
3	Medan Religious Court	Marriage Cancellation	2986/Pdt.G/2021/PA.Mdn	Fraud and forgery
			2216/Pdt.G/2020/PA.Mdn	No first wife's permission
			2508/Pdt.G/2019/PA.Mdn	Fraud and forgery
4	DKI Jakarta Religious Court	Marriage Cancellation	408/Pdt.G/2021/PA.JP	Bound by legal marriage
			281/Pdt.G/2019/PA.JP	Coercion from parents
			1092/Pdt.G/2019/PA.JP	Fraud and forgery

principally carried out by the husband by claiming that he is a man even though he already has a legal wife, because of that the plaintiff's dominance is from the first wife. The entire reasons for the annulment of the marriage mentioned above by the plaintiff are dominated by the wife.

Dispute Resolution of Marriage Cancellation Through the Medan Religious Court Decision Number 246/Pdt.G/2018/PA.Mdn

The act of canceling a marriage is an action taken by the court through a lawsuit by parties who have an interest in it in accordance with the provisions of the legislation with the aim of the marriage being annulled , and negates the legal consequences of a marriage which is held officially on the grounds that the marriage requirements are not fulfilled according to the applicable law. Regarding procedural annulment of marriage, in principle, it can be done if the

parties who will carry out the marriage do not meet the marriage requirements that have been determined by Law no. 1 of 1974. The cancellation can be carried out by one of the parties between the husband or wife, the husband and wife's family in a straight line up and down because it is considered to violate the conditions of marriage according to the marriage regulations or it is found that there are defects in the pillars and conditions of marriage.²⁹

One of the interesting cases to be studied and analyzed related to the annulment of marriage is the decision of the Medan Religious Court in 2018. The plaintiff in this case is the legal wife of the defendant as a husband who has been blessed with four children and so far there has never been a divorce. through talak divorce or divorce lawsuits through the court, and until the defendant files a lawsuit for annulment of marriage between the plaintiff and the defendant is still legally husband and wife status and lives together. The deception of personal data submitted by one defendant or an identity that is not in accordance with the actual situation, therefore the marriage is legally flawed and has no legal force so that the marriage can be annulled. In the case of a marriage between the first defendant and the second defendant, there is a violation of the marriage procedures and procedures in accordance with the provisions of Law no. 1 of 1974 concerning Marriage and KHI.

The plaintiff never knew that defendants one and two had married without the permission of the plaintiff as legal wives. According to the provisions of the legislation, especially Law No. 1 of 1974 when the husband was about to get married for the second time, he had to get permission from the first wife and this never happened. The marriage between Defendant One and Defendant Two is legal under Islamic law and invalid under Indonesian Marriage Law. One thing that is not fulfilled in the marriage is that there is no permission from the first wife and the Religious Courts regarding having more than one wife. In accordance with article 40 of Government Regulation no. 9 of 1975 concerning the implementation of Law no. 1 of 1974 concerning marriage explicitly states that if a husband intends to have more than one marriage, the husband is obliged to submit an application to the court and obtain permission from the first wife both orally and in writing.

This is also regulated in Article 56 paragraph (1) of the Copy of Islamic Law. When viewed from the events above, it is reasonable to suspect that the husband has falsified personal identity data which is not true, this will be a crucial problem, how is it possible that a marriage certificate can be issued even though legally the defendant is still the legal husband of the plaintiff. Based on the provisions of Article 22 of Law no. 1 of 1974 concerning Marriage states that a marriage can be annulled if the parties do not meet the requirements to enter into a marriage. The conditions referred to in article 22 are emphasized in article 24 which states that anyone who because of marriage is still bound by himself to one

²⁹ Pasal 73 dan 74 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan, dan Pasal 37-38 Peraturan Pemerintah No.9 Tahun 1975 Tentang Peraturan Pelaksanaan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan

of the two parties and on the basis of the existence of the marriage can apply for annulment of a new marriage without reducing the provisions of Article 3 paragraph (2) and Article 4 of this Law.

In line with what is stated in Law no. 1 of 1974 concerning Marriage, the Compilation of Islamic Law reaffirms through articles 71 and 73 concerning the annulment of a marriage if the marriage is carried out by the husband without permission from the court. What was done by Defendant One and Defendant Two was clearly contrary to Article 9 of Law no. 1 of 1974 concerning Marriage that a person who is still bound by marriage to another person cannot remarry, except for what has been stated in Article 3 paragraph (2) of the marriage law. Referring to the provisions of Article 3 paragraph (2) of Law no. 1 of 1974 concerning Marriage that in the case of a husband having more than one wife, the cumulative conditions and alternative conditions must be met. The intended cumulative conditions are in accordance with Articles 4 and 5 of Law no. 1 of 1974 concerning Marriage and articles 40-43 of Government Regulation no. 9 of 1975 concerning the Implementation of Law No. 1 of 1975 was then reaffirmed through articles 57 and 58 of the KHI.

Based on the provisions of article 3 paragraph (2) article 9, article 22, article 24 of Law no. 1 of 1974 concerning marriage was reaffirmed through articles 71 and 73 of the KHI that the marriage of Defendant I and Defendant II was carried out contrary to the laws and regulations because they did not meet the legal requirements for marriage as referred to in Article 9 of Law No. 1 of 1974 concerning Marriage, which clearly states : A person who is still bound by marriage to another person cannot remarry, except what has been regulated in Article 3 Paragraph (2) and Article 4 of Law no. 1 of 1974 concerning Marriage.

The provisions of Article 3 Paragraph (2) of Law no. 1 of 1974 states "The court can give permission to a husband to have more than one wife if the parties concerned want, whereas in a marriage between one defendant and two defendants the permission is not obtained and even without the knowledge of the plaintiff. The plaintiff in this case strongly objected and was harmed by the marriage so that the legal act of marriage carried out between defendant one and defendant two did not have legal force as well as the consequences arising from the marriage.

If reviewing the decision of the Medan Religious Court, in principle, it is in accordance with the material civil law applicable in the Religious Courts environment, then based on the provisions of Article 3 paragraph (2), Article 9, Article 22, Article 24 of Law No. 1 of 1974 concerning marriage and articles 71 and 73 of the KHI, the marriage is invalid because it contains material defects related to the terms and validity of the marriage. What the plaintiff wanted has been granted, and the marriage between defendant one, defendant two has been annulled, for that the Marriage Deed Number: 474/208/II/2004 dated February 24, 2004 issued by the Office of Religious Affairs, Hamparan Perak District, Deli Serdang Regency has no power law. Furthermore, the prohibition of marriage is explained in articles 39-44 of the KHI concerning the prohibition of marriage, if it is proven that there is a violation in the article, it will result in the annulment of

the marriage. The active role of the Office of Religious Affairs and the two families who want to get married can be used to anticipate the occurrence of annulment of marriage by manipulating the identity of the prospective bride and groom or lack of care in determining whether the two prospective brides can carry out the marriage or not.³⁰

If the marriage is annulled through a court decision, since the court's decision has permanent legal force, the cancellation is effective from the time the marriage takes place. The legal consequences of the annulment of a marriage are that the marriage is considered to have never occurred and is considered non-existent (retroactive) except for matters regulated by law. This is what distinguishes the divorce due to divorce and the divorce through the court, meaning that the divorce due to the court's decision is understood as a consequence of the marriage annulment lawsuit, while the divorce due to divorce is a consequence of the divorce lawsuit or divorce lawsuit. Juridically, the reasons for the annulment of marriages are related to the facts before the marriage took place, while the reasons for divorce occurred after the marriage took place. Likewise, parties who can cancel marriages other than husbands and wives, third parties can cancel marriages to court, it will be different, except that divorce can only be carried out by one husband or wife.³¹

There are at least three legal consequences related to the annulment of marriage. *First*, it is not retroactive, thus the child is considered a legitimate child regardless of whether the marriage was carried out in good faith or in bad faith with humanitarian considerations and protection of the child.³² Marriage and marriage annulment are legal issues that must be subject to the provisions of the applicable laws and regulations. In civil terms, children born from marriages will provide legal protection guarantees to parties related to the marriage, whether husband, wife, children or even third parties.³³ The annulment of the marriage will not affect the status of the child being born or the child to be born.³⁴

The provisions of article 28 paragraph (2), and articles 75, 76 of the Compilation of Islamic Law that children born from marriages that have been annulled are not retroactive, meaning that the child is considered a legitimate child and the citizenship status of the child will follow the citizenship of both parents as well as Other civil relations will follow the legal position of the parents even if one or both parents have bad

³⁰ Faisal, Pembatalan Perkawinan dan Pencegahannya, (Al-Qadha, Jurnal Hukum Islam dan Perundang-undangan) Vol. 4 Nomor 1, 2017. Hlm. 4-15.

³¹ Munir Fuady, Konsep Hukum Perdata, (Jakarta: Raja Grafindo Persada, 2016) hlm. 17.

³² Muchtar Anshary Hamid Labetuban, Sabri Fataruba, Implikasi hukum Putusan Pengadilan Terhadap Pembatalan Perkawinan, (Batulis Civil Law Rev: Fakultas Hukum Universitas Pattimura), Vol. 1 Nomor.1 November 2020, hlm. 58.

³³ Sri Turatmiyah, M. Syaifuddin, Arfianna Novera, Akibat hukum Pembatalan Perkawinan dalam Perspektif Hukum Perlindungan Anak dan Perempuan di Pengadilan Agama Sumatera Selatan. (Jurnal Hukum: Ius Quia Iustum), Vol.22 No.1 Januari 2015, hlm. 71.

³⁴ Amiur Nuruddin dan Azhari Akmal Tarigan, Hukum Perdata Islam Di Indonesia, Studi Kritis perkembangan Hukum Islam dari Fikih, UU No. 1 Tahun 1974 Sampai KHI, Kencana, Jakarta, 2012, hlm,114

intentions, the child is categorized as a legitimate child based on humanity and interests and legal protection for an innocent child. So that the legal status of the child of both parents whose marriage was annulled is legally valid.³⁵ All children, whether born inside or outside of marriage, must receive the same social protection.³⁶ Likewise, responsibility for children remains the obligation of both parents as before the marriage was annulled. The responsibility of parents to the child until the child is an adult which includes the cost of daily living and education. In principle, the annulment of marriage will not affect the status of the child born or the child to be born from the marriage.³⁷

The child born from the marriage does not break the legal relationship between the child and his parents, meaning that both parents still have full responsibility for the child who is born and is under his authority and guardianship. These responsibilities include nurturing and educating children who are born solely based on the interests of the child.³⁸ In the event of an annulment of the marriage, the child born from the marriage requested for annulment remains the responsibility of both parents as before the marriage was annulled. This responsibility will last until the child is an adult. Responsibilities include daily living expenses and education. This is in line with the provisions of Article 76 of the Compilation of Islamic Law that the cancellation of a marriage will not break the legal relationship between the child and his parents.³⁹

Second, joint property acquired during the marriage is not retroactive if the marriage is based on good faith from both husband and wife partners. This means that the assets obtained during the marriage will be legally recognized because of the joint property whose distribution process can be carried out in accordance with the applicable laws and regulations, provided that the annulment of the marriage is carried out without other marriages being carried out first. The status of husband and wife's innate property in a marriage carried out in good faith should not be harmed, but if a husband and wife's innate property is lost due to bad faith, then the risk is borne by one of the husband and wife who commits bad faith in the marriage.⁴⁰ *Third*, if the marriage is broken up

³⁵ Muchtar Anshary Hamid Labetubun, Sabri Fataruba, Implikasi Hukum Putusan Pengadilan terhadap Pembatalan Perkawinan, *Jurnal Civil Law Review*, Volume 1 Nomor 1, November 2020 hlm. 58.

³⁶ C. S. T. Kansil, *sekitar Hak Asasi Manusia Dewasa ini*, (Jakarta: Djambatan), 2003, hlm. 294.

³⁷ Marwah, *Permohonan Pembatalan Perkawinan yang Dilakukan Istri Pertama Berdasarkan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, (*Jurnal: Ilmu Hukum Legal Opinion*), V ol. 3 Edisi 4 2015, hlm. 6.

³⁸ Neng Yani Nurhayani, *hukum Perdata*, (Bandung: Pustaka Setia, 2015), hlm. 148.

³⁹ Marwah, *Permohonan Pembatalan Perkawinan yang Dilakukan Istri Pertama Berdasarkan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, (*Jurnal: Ilmu Hukum Legal Opinion*), V ol. 3 Edisi 4 2015, hlm. 6.

⁴⁰ Ahmad Supandi Patampari, *Konsekuensi hukum Pembatalan Perkawinan Menurut Hukum Islam*, (*Al-Syakhshiyah: Jurnal Hukum Keluarga Islam dan Kemanusiaan*), Vol. 2 Nomor 2, Desember 2020, hlm. 96.

due to the annulment of the marriage, the husband is not obliged to provide a living for the wife, it will be different from the case when the marriage is broken because the divorcee is obliged to provide a living for the wife. The dissolution of the marriage due to the annulment of the marriage or due to divorce, the obligations of the iddah period remain valid.⁴¹ Third parties related to rights and obligations as long as they get the rights are the obligations of the husband and wife.⁴²

The position of joint property as a result of the annulment of marriage can be divided with the provisions that if the marriage is based on good faith, on the other hand if the marriage is based on bad faith from one of the husband and wife partners, then the party with good intentions must benefit and the party with bad intentions bears all forms. losses incurred. For assets brought by each husband and wife who have good intentions, legal provisions must not be harmed, if there is a loss then the loss is borne by one or both husband and wife couples who have bad intentions. Likewise, marriage agreements that are detrimental to parties with good intentions must be considered as never existed.⁴³ The annulment of marriage does not have legal consequences that apply retroactively to third parties who have good intentions to obtain their rights, meaning that all civil acts or engagements made by husband and wife prior to the annulment of marriage have legal force, remain valid and must be carried out by husband and wife so that third parties do not harmed.⁴⁴

Conclusion

Settlement of lawsuits for annulment of marriages in Indonesia is principally carried out when violations of legal norms are found to the validity of a marriage. The validity of the marriage is meant if the conditions and pillars of marriage are fulfilled in accordance with the provisions of the legislation. These conditions are related to the formal requirements and material requirements. Formal requirements are related to the provisions of formalities and administrative procedures. The material requirements are absolute requirements relating to a person's personality that must be fulfilled in marriage. Both formal requirements and material requirements are not fulfilled in marriage, the legal consequences of the two will be different even though both are legal acts. If one of the formal requirements in marriage is not fulfilled, the marriage can be annulled, but if the material conditions in the marriage are not met, the marriage

⁴¹ Sayuti Thalib, *Hukum Kekeluargaan Indonesia*, (Jakarta: UI Press, 2004), hlm. 83.

⁴² Beni Ahmad Saebani, Dewi Mayaningsih, Ai Wati, *Perbandingan Hukum Perdata*, (Bandung: Pustaka Setia, 2016), hlm. 159.

⁴³ Ahmad Supandi Patampari, *Konsekuensi Hukum Pembatalan Perkawinan Menurut Hukum Islam*. Al- Syakhshiyah: Jurnal Hukum Keluarga Islam dan Kemanusiaan, Vol. 2. No. 2. Desember 2020, hlm. 95.

⁴⁴ Sayiti Thalib, *Hukum Kekeluargaan di Indonesia*, (Jakarta: Uiniversitas Indobesia), 2002, hlm. 83.

is automatically annulled, the marriage is considered to have never existed. There are at least 3 legal consequences of annulment of marriage through a court decision. Marriage does not apply retroactively so that children and children born are legitimate children, the distribution of joint property can be done if the marriage is based on good faith and the husband is not obliged to provide maintenance to his wife during the iddah period.

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