

Reconstructing Good Faith in Marriage Annulment: Civil Protection of Wives in Islamic and Indonesian Law

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Abstract. *Introduction to the Problem: Marriage annulment under Article 28 of Law No. 1 of 1974 on Marriage generates significant legal consequences for wives who enter into marriage in good faith. Although the provision recognizes legal protection for innocent parties, it does not establish clear criteria for determining good faith, creating legal uncertainty and inconsistent judicial protection of wives' civil rights. Purpose/Study Objectives: This article examines the legal construction of good faith in marriage annulment cases and analyses its implications for the civil protection of wives from the perspectives of Islamic law and Indonesian marriage law. Design/Methodology/Approach: This study employs normative legal research using statutory, conceptual, and case approaches. The analysis focuses on Article 28 of the Marriage Law, relevant legal doctrines, and Decision Number 348/Pdt.G/2018/PA.Cbd concerning the annulment of a polygynous marriage. Findings: The study finds that the retroactive effect (ex tunc) of marriage annulment often places good-faith wives in a vulnerable legal position despite their lack of knowledge regarding defects affecting the validity of the marriage. The ambiguity surrounding the concept of good faith weakens the protection of wives' civil rights. Drawing upon the principles of al-'adl, hifz al-haqq, and maqasid al-shari'ah, this article argues that Article 28 should be interpreted through a good-faith-based framework that balances legal certainty, justice, and the protection of vulnerable parties. This study further proposes a reconstruction of the legal meaning of good faith as a basis for strengthening civil protection in marriage annulment cases.*

Keywords: Civil; Marriage; Protection; Wives' Rights.

1. Introduction

Marriage occupies a central position in both Islamic law and Indonesian family law as a legal and social institution intended to establish a stable family structure,

protect individual rights, and ensure social order. In Islamic jurisprudence, marriage (*nikāḥ*) is not merely a contractual relationship but also a moral and religious commitment aimed at realizing justice, welfare, and the protection of human dignity. Similarly, Indonesian marriage law recognizes marriage as a legal bond between a man and a woman intended to establish a happy and enduring family based on belief in God Almighty. As a consequence, legal regulations governing marriage are designed not only to ensure the validity of marital relationships but also to safeguard the rights and obligations arising from them¹

Despite this normative objective, disputes concerning the validity of marriage remain a significant issue in many legal systems. One of the most complex areas concerns marriage annulment, particularly when a marriage is later declared legally defective due to the absence of substantive or procedural requirements prescribed by law. Unlike divorce, which terminates a valid marriage prospectively, marriage annulment challenges the legal validity of the marriage itself and often produces retroactive legal consequences. Such consequences raise difficult questions regarding the legal status of spouses, property rights, and other legal interests acquired during the existence of the marital relationship ²

Recent scholarship demonstrates that marriage annulment involves a persistent tension between legal certainty and legal protection. On the one hand, legal systems must ensure compliance with statutory requirements governing marriage formation. On the other hand, they must also protect parties who entered into marriage without knowledge of legal defects affecting its validity. Studies by Nurunnisa et al. ³ show that the retroactive consequences of annulment frequently generate uncertainty regarding marital property and other civil rights, particularly when one of the spouses acted in good faith. Similarly, contemporary discussions on marriage annulment increasingly emphasize the need to balance formal legality with substantive justice in order to prevent disproportionate harm to innocent parties ⁴.

The issue becomes particularly important in Indonesia because marriage annulment is regulated under Articles 22–28 of Law No. 1 of 1974 concerning Marriage and further elaborated in the Compilation of Islamic Law. Under this framework, a marriage may be annulled when it fails to satisfy legal requirements stipulated by law. More importantly, Article 28 establishes that the legal

¹ Oyo Sunaryo Mukhlas, *Pranata Sosial Hukum Islam*, 1st ed. (Bandung: PT Refika Aditama, 2015), 93-94; Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Kencana, 2014), 31-45.

² Ica Karina and Wandy Banjarnahor, "Cancellation of Marriage and Its Legal Consequences in the Legal System in Indonesia.," *Anayasa: (Journal of Legal Studies)* 1, no. 1 (2023): 41–57; Sandrina Aika Humaira et al., "Civil Law Perspectives Regarding Marriage Annulment According to the Civil Code," *ISNU Nine-Star Multidisciplinary Journal* 2, no. 1 (2025): 8–15, <https://doi.org/https://doi.org/10.70826/ins9mj.v2i1.756>.

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⁴ Karina and Banjarnahor, "Cancellation of Marriage and Its Legal Consequences in the Legal System in Indonesia.," Emirza Nur Wicaksono, "Normative Analysis of the Legal Status of Catholic Church Annulment in the National Legal System: A Comparison of the Concepts of Annulment and Divorce," *Priviet Social Sciences Journal* 6, no. 1 (2026): 390–99, <https://doi.org/10.55942/pssj.v6i1.1329>.

consequences of annulment generally operate retroactively (*ex tunc*), meaning that the marriage is deemed never to have existed from the beginning. Although the provision recognizes exceptions for children and parties acting in good faith, it does not clearly define the legal meaning of good faith nor establish objective criteria for determining its existence ⁵.

The ambiguity surrounding the concept of good faith constitutes a significant legal problem. Contemporary studies on the doctrine of good faith indicate that the concept functions as an important mechanism for balancing legal certainty and fairness within legal systems. However, scholars also acknowledge that good faith lacks a universally accepted definition and often depends upon judicial interpretation and contextual application ⁶. In the context of Indonesian marriage law, the absence of clear criteria for determining good faith creates uncertainty regarding who qualifies as a good-faith spouse and what legal consequences follow from such status. Consequently, wives who enter into marriage without knowledge of legal defects may remain vulnerable to the loss of civil rights despite having acted honestly and reasonably throughout the marital relationship.

These concerns become even more complex in cases involving unauthorized polygynous marriages. In practice, marriage annulment frequently arises when a husband enters a subsequent marriage without obtaining the consent of the first wife or authorization from the Religious Court. In such circumstances, the wife in the subsequent marriage may have no knowledge of the legal irregularity at the time of marriage. Nevertheless, when the marriage is later annulled, she may bear substantial legal and economic consequences despite having no involvement in the underlying violation. This situation raises fundamental questions regarding the relationship between legal certainty, fairness, and the protection of vulnerable parties within Indonesian marriage law ⁷.

From the perspective of legal protection, the vulnerability of wives affected by marriage annulment deserves particular attention. Contemporary scholarship increasingly recognizes that legal rules which appear formally neutral may produce unequal consequences for individuals occupying different social positions. Women involved in family law disputes frequently experience greater exposure to

⁵ Deni Rahmatillah and A.N Khofify, "KONSEP PEMBATALAN PERKAWINAN DALAM UNDANG-UNDANG NOMOR 1 TAHUN 1947 Dan KOMPILASI HUKUM ISLAM," *Hukum Islam* XVII, no. 2 (2017): 152–71; Ali Imron, "Pemberlakuan Asas Berlaku Surut Dalam Perkara Pembatalan Perkawinan Di Undang-Undang Perkawinan," *Jurnal Ilmiah Ilmu Hukum QISTIE* 9, no. 1 (May 2016).

⁶ Muhammad Jibril and Talitha Amanda Ekadhani, "Legal Assurance: A Comparative Study of the Good Faith Doctrine in Australia and Indonesia," *Jurnal Jurisprudence* 11, no. 2 (2022): 129–40, <https://doi.org/10.23917/jurisprudence.v11i2.13718>; Fajar Rachmad Dwi Miarsa et al., "Comparative Study of the Good Faith Concept Between Indonesia and the Netherlands in Civil Law," *Journal of Court and Justice* 3 (2024): 1–17, <https://doi.org/10.56943/jcj.v3i1.481>.

⁷ Dian Septiandani and Dhian Indah Astanti, "Konsekuensi Hukum Bagi Suami Yang Melaksanakan Poligami Yang Melanggar Aturan Hukum Positif Indonesia Dan Hukum Islam," *Jurnal Usm Law Review* 4, no. 2 (2021): 795–817, <https://doi.org/10.26623/julr.v4i2.4314>; Fatahullah Fatahllah et al., "Problematisasi Atas Hak Waris Istri Dan Anak Dalam Pernikahan Poligami Sirri Di Indonesia," *Journal Kompilasi Hukum* 7, no. 1 (2022), <https://doi.org/10.29303/jkh.v7i1.99>.

economic insecurity and legal uncertainty, especially where the legal framework fails to provide adequate protection for rights acquired during marital relationships⁸. This concern is further reinforced by recent reports documenting the continuing vulnerability of women in family and marital disputes in Indonesia⁹.

Islamic legal scholarship offers an important perspective for addressing this issue. Classical doctrines relating to *fasakh* and contemporary approaches based on *maqāṣid al-sharī'ah* emphasize the protection of rights, prevention of harm, and realization of justice as central objectives of family law. Recent studies suggest that the protection of women's rights and legitimate interests should form an integral component of contemporary Islamic family law reform rather than being treated as secondary considerations following the determination of legal validity¹⁰. These developments indicate that the interpretation of marriage annulment should extend beyond procedural legality and engage more directly with the substantive protection of affected parties.

Although previous studies have examined marriage annulment, polygyny, marital property, and the legal consequences of annulment, relatively little attention has been devoted to the reconstruction of good faith as a doctrinal basis for the civil protection of wives. Existing scholarship generally focuses either on the grounds for annulment or on the consequences of annulment without developing a coherent framework that integrates Indonesian marriage law, legal protection theory, and Islamic legal principles. Consequently, the legal meaning of good faith remains conceptually underdeveloped and normatively uncertain.

This article addresses that gap by examining the legal construction of good faith in marriage annulment and its implications for the civil protection of wives under Indonesian marriage law. Using Decision Number 348/Pdt.G/2018/PA.Cbd as a case study, the article analyzes the limitations of the current legal framework and proposes a reconstruction of the concept of good faith through the integration of

⁸ Andi Prastiawan, Marlin Noviardana, and Zahra Nasywa Salsabilla, "Perlindungan Hukum Hak Waris Istri Kedua Dari Pernikahan Siri Berdasarkan Hukum Islam," *Indonesian Journal of Social Sciences and Humanities* 4, no. 2 (2024): 9–13; Putri Mayang Sari, Wirdyaningsih Wirdyaningsih, and Neng Djubaedah, "Pembatalan Perkawinan Poligami Terhadap Hak-Hak Istri Kedua Akibat Pemalsuan Identitas (Studi Putusan Pengadilan Agama Tanjung Karang Nomor 498/Pdt.G/2022/PA.Tnk)," *Indonesian Notary* 6, no. 1 (2024), <https://doi.org/10.21143/notary.vol6.no1.45>.

⁹ Komnas Perempuan, "CATAHU 2024 Refleksi Pendokumentasian Dan Tren Kasus Menata Data, Menajamkan Arah," *Catahu: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan*, 2025, 1–159, [https://komnasperempuan.go.id/file-manager/frontend/CATAHU 2024: MENATA DATA, MENAJAMKAN ARAH: REFLEKSI PENDOKUMENTASIAN DAN TREN KASUS KEKERASAN TERHADAP PEREMPUAN?ref=IkltVjVTakZqTWxa433bb7a9b840b754c02b970989e50fb4be8NVNXcHZhVm96Vm14ak0xRnBURU5LYIdGWGV](https://komnasperempuan.go.id/file-manager/frontend/CATAHU%2024%3A%20MENATA%20DATA%20MENAJAMKAN%20ARAH%3A%20REFLEKSI%20PENDOKUMENTASIAN%20DAN%20TREN%20KASUS%20KEKERASAN%20TERHADAP%20PEREMPUAN?ref=IkltVjVTakZqTWxa433bb7a9b840b754c02b970989e50fb4be8NVNXcHZhVm96Vm14ak0xRnBURU5LYIdGWGV).

¹⁰ Muhammad Thoif Al Ghotsi and Abu Yazid Adnan Quthny, "Analisis Fasakh Nikah Menurut UU Perkawinan Dan Relevansinya Dengan Hukum Islam," *Al-Muqaranah: Jurnal Perbandingan Madzhab* 1, no. 1 (2023): 61–70; Bakti Ritonga et al., "Islamic Family Law Reform in Indonesia: A Review of the Supreme Court's Decision on the Postponement of the Distribution of Joint Property," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 292–311, <https://doi.org/10.32505/qadha.v11i2.9667>.

Indonesian marriage law and *maqāṣid al-sharī'ah*. The study argues that good faith should function not merely as an exception to the retroactive consequences of annulment but as a substantive legal principle capable of strengthening the civil protection of wives affected by marriage annulment.

Accordingly, this article seeks to answer two principal questions: (1) how is good faith currently constructed within the legal framework governing marriage annulment in Indonesia, and (2) how should the concept of good faith be reconstructed to strengthen the civil protection of wives in light of Islamic and Indonesian legal principles?

To address these questions, the study employs a normative legal research design combining statutory, conceptual, and case approaches, with Decision Number 348/Pdt.G/2018/PA.Cbd serving as the primary case study for examining the practical implications of marriage annulment and the protection of good-faith wives.

2. Research Methods

This study employs normative legal research to examine the legal construction of good faith in marriage annulment and its implications for the civil protection of wives under Indonesian marriage law. This method is appropriate because the research focuses on legal norms, doctrines, judicial reasoning, and their coherence with broader principles of justice and legal protection, rather than empirically measuring social behavior, while also evaluating the adequacy of existing regulations governing marriage annulment and their implementation in judicial practice¹¹. The research applies three complementary approaches: statutory, conceptual, and case approaches. The statutory approach examines Articles 22–28 of Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, together with the relevant provisions of the Compilation of Islamic Law governing marriage validity, annulment, and its legal consequences. The conceptual approach analyzes legal doctrines concerning good faith, legal protection, justice, and marriage annulment, particularly the function of good faith in protecting parties who enter into legal relationships without knowledge of underlying legal defects. Islamic legal concepts, including *fasakh*, *al-'adl* (justice), *maslahah*, *hifz al-haqq* (protection of rights), and *maqasid al-sharī'ah*, are also used as analytical frameworks to assess whether the existing legal regime adequately reflects substantive justice¹². The case approach focuses on Decision Number 348/Pdt.G/2018/PA.Cbd concerning the annulment of a polygynous marriage conducted without the consent of the first wife and without authorization from the Religious Court. The decision was selected because it illustrates the tension between enforcing statutory requirements governing polygyny and protecting the

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2024), 22-35.

¹² Al Ghotsi and Adnan Quthny, "Analisis Fasakh Nikah Menurut UU Perkawinan Dan Relevansinya Dengan Hukum Islam."

civil rights of parties affected by annulment, while also providing a basis for assessing the practical application of Article 28 of the Marriage Law to wives acting in good faith. The research materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law No. 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and relevant judicial decisions, particularly Decision Number 348/Pdt.G/2018/PA.Cbd; secondary legal materials include scholarly books, journal articles, legal commentaries, and previous studies concerning marriage law, annulment, polygyny, and Islamic family law; and tertiary legal materials include legal dictionaries and encyclopedias used to clarify relevant concepts and terminology. The materials were collected through documentary research by systematically examining and classifying legislation, judicial decisions, and academic literature relevant to the research problem. The collected materials were analyzed using qualitative legal analysis by identifying applicable legal norms, examining judicial interpretations, comparing statutory provisions with Islamic legal doctrines, and evaluating the adequacy of existing legal protections for wives affected by marriage annulment. Through the integration of statutory interpretation, doctrinal analysis, Islamic legal principles, and judicial practice, the study develops a normative reconstruction of good faith and formulates recommendations aimed at balancing legal certainty, substantive justice, and the protection of vulnerable parties.

3. Results and Discussion

3.1. The Good Faith and Marriage Annulment under Indonesian Marriage Law

Marriage annulment constitutes an important legal mechanism within Indonesian family law for correcting marriages that fail to satisfy statutory requirements. Unlike divorce, which terminates a legally valid marriage, annulment addresses defects affecting the validity of the marriage itself. Consequently, annulment is directed not at dissolving a lawful marital relationship but at declaring that the marriage should not have produced full legal effects due to the existence of legal impediments at the time of its formation¹³.

The legal framework governing marriage annulment in Indonesia is principally contained in Articles 22–28 of Law No. 1 of 1974 concerning Marriage and is further elaborated in the Compilation of Islamic Law. Article 22 provides that a marriage may be annulled when the parties fail to satisfy the legal requirements necessary for marriage. Within the context of polygynous marriages, this provision is closely connected to Articles 3, 4, and 5 of the Marriage Law, which require judicial authorization and, in principle, the consent of the existing wife before a husband may enter into a subsequent marriage. Similar requirements are

¹³ Harahap, *Hukum Perkawinan Nasional Berdasarkan Undang-Undang Nomor 1 Tahun 1974, Peraturan Pemerintah Nomor 9 Tahun 1975*, 184-186; Elvira Diba Fahlevi, "TINJAUAN YURIDIS PEMBATALAN SUATU PERKAWINAN," *Jurnal Indonesia Sosial Sains* 2, no. 5 (2021): 747–755, <http://jiss.publikasiindonesia.id/>.

reflected in Articles 56, 58, and 71 of the Compilation of Islamic Law, which recognize unauthorized polygyny as a ground for annulment.

The doctrinal foundation of marriage annulment differs significantly from that of divorce. According to Harahap, annulment represents a judicial declaration that a marriage lacks legal force because of defects existing at the time the marriage was contracted. Likewise, Prawirohamidjojo and Pohan¹⁴ explain that the phrase “may be annulled” (*dapat dibatalkan*) contained in Article 22 indicates that the marriage is not automatically void but remains legally effective until a court formally declares its invalidity. Accordingly, Indonesian marriage law adopts the concept of *vernietigbaar* rather than automatic nullity, requiring judicial intervention before annulment can take effect.

The most controversial aspect of the annulment regime is found in Article 28 paragraph (1) of the Marriage Law. The provision stipulates that an annulment decision takes effect after obtaining permanent legal force but operates retroactively from the date on which the marriage was celebrated. This doctrine reflects the principle of *ex tunc*, under which the annulled marriage is treated as though it never legally existed. From the perspective of legal certainty, the doctrine seeks to preserve the coherence of the legal system by eliminating the legal consequences of a marriage formed in violation of statutory requirements¹⁵.

However, the retroactive effect of annulment also generates significant legal difficulties. Marriage is not merely a formal legal act but a continuing social and economic relationship that often produces numerous legal consequences before annulment occurs. During the existence of the marital relationship, spouses may acquire property, assume financial obligations, provide mutual support, and establish legitimate expectations regarding their legal status. Consequently, the strict application of the *ex tunc* doctrine risks disregarding the social reality that the marital relationship existed in practice even if it was later declared legally defective.

Recognizing this problem, Article 28 paragraph (2) establishes several exceptions to the retroactive consequences of annulment. The provision protects children born from the marriage, third parties who acquired rights in good faith, and spouses acting in good faith. These exceptions demonstrate that the Marriage Law does not apply the *ex tunc* doctrine in an absolute manner. Instead, the legislature acknowledges that certain interests deserve protection despite the annulment of the marriage. In this regard, good faith functions as an important corrective principle intended to mitigate the potentially harsh consequences of retroactive invalidity.

¹⁴ R. Soetojo Prawirohamidjojo and Marthalena Pohan, *Hukum Orang Dan Keluarga (Personen En Familie-Recht)* (Surabaya: Airlangga University Press, 1991), 112-115

¹⁵ Imron, “Pemberlakuan Asas Berlaku Surut Dalam Perkara Pembatalan Perkawinan Di Undang-Undang Perkawinan.”

Despite its importance, Article 28 provides no explicit definition of good faith. Neither the Marriage Law nor the Compilation of Islamic Law establishes objective criteria for determining whether a spouse acted in good faith. As a result, the concept remains largely dependent upon judicial interpretation. This legislative silence creates uncertainty because courts may adopt different standards when assessing whether a spouse knew, should have known, or reasonably could have discovered the legal defect affecting the marriage. The absence of a clear legal framework therefore weakens the predictability and consistency of legal protection available to affected spouses.

The ambiguity becomes particularly problematic in cases involving unauthorized polygynous marriages. In many instances, the wife in the subsequent marriage enters the relationship believing that all legal requirements have been satisfied. She may rely upon representations made by the husband concerning his marital status or assume that any necessary authorization has been obtained. Yet when the marriage is later annulled, the wife may face substantial disadvantages despite having played no role in the underlying violation. The legal system thus confronts a difficult question: should the consequences of annulment be borne equally by all parties, or should greater protection be afforded to those who acted without fault? ¹⁶.

From a legal protection perspective, the current framework appears incomplete. While Article 28 formally recognizes good faith, it fails to clarify the civil rights that remain protected once a marriage is annulled. The provision does not specify whether good-faith wives retain rights relating to maintenance, compensation, property acquired during the relationship, or other economic interests developed throughout the marriage. Consequently, the legal recognition of good faith risks becoming symbolic rather than substantive. Protection is acknowledged in principle, yet the practical scope of that protection remains uncertain.

This analysis demonstrates that the central weakness of Article 28 is not the recognition of good faith itself, but the absence of a coherent legal construction explaining its meaning and legal consequences. As long as good faith remains undefined, the protection afforded by Article 28 will depend largely upon judicial discretion. This situation undermines legal certainty and may expose vulnerable parties to inconsistent outcomes. Therefore, a more comprehensive understanding of good faith is necessary before assessing how courts have applied the doctrine in concrete annulment cases.

¹⁶ Septiandani and Astanti, "Konsekuensi Hukum Bagi Suami Yang Melaksanakan Poligami Yang Melanggar Aturan Hukum Positif Indonesia Dan Hukum Islam"; Fatahllah et al., "Problematika Atas Hak Waris Istri Dan Anak Dalam Pernikahan Poligami Sirri Di Indonesia."

3.2. The Civil Protection of Good-Faith Wives: Analysis of Decision No. 348/Pdt.G/2018/PA.Cbd

Decision Number 348/Pdt.G/2018/PA.Cbd provides an important illustration of how Indonesian Religious Courts apply the legal framework governing marriage annulment in cases of unauthorized polygyny. The dispute arose when the plaintiff, as the legally recognized first wife, filed a petition seeking the annulment of her husband's subsequent marriage on the grounds that it had been conducted without her consent and without authorization from the Religious Court. The evidence presented before the court established that the husband remained legally married to the plaintiff when he entered into the second marriage and that the statutory requirements governing polygyny had not been fulfilled. Consequently, the court granted the petition and declared the subsequent marriage invalid¹⁷.

From a doctrinal perspective, the judgment is consistent with the legal structure of Indonesian marriage law. The Marriage Law adopts a monogamous orientation while allowing polygyny only under exceptional circumstances and subject to strict judicial supervision. The requirement of court authorization functions as a legal safeguard intended to protect women and prevent arbitrary marital practices. Consequently, the annulment of marriages conducted in violation of these requirements reflects the commitment of the legal system to maintaining legal certainty and enforcing statutory norms¹⁸.

Nevertheless, legal certainty alone cannot fully resolve the consequences arising from marriage annulment. The annulment regime established by Article 28 of the Marriage Law creates a tension between the formal invalidity of marriage and the substantive protection of parties affected by annulment. Although the law recognizes protection for spouses acting in good faith, it provides limited guidance regarding the scope of such protection. As a result, the implementation of the good-faith exception often depends upon judicial interpretation rather than clear statutory standards¹⁹.

This problem may be examined through the theory of legal protection developed by Philipus M. Hadjon. According to Hadjon, the primary function of law is not merely to regulate conduct but also to provide protection against the arbitrary impairment of individual rights. Legal protection requires the state to ensure that

¹⁷ Abdul Manan, "Penerapan Hukum Perkawinan Di Lingkungan Peradilan Agama," *Jurnal Mimbar Hukum* 21, no. 3 (2009): 463; Ahmad Khairul Umam, "Pembatalan Perkawinan Karena Tidak Adanya Izin Poligami Dalam Perspektif Hukum Islam" (UIN Syarif Hidayatullah, 2017); Rahmatillah and Khofify, "KONSEP PEMBATALAN PERKAWINAN DALAM UNDANG-UNDANG NOMOR 1 TAHUN 1947 Dan KOMPILASI HUKUM ISLAM."

¹⁸ Sam'un, "ASAS MONOGAMI TERBUKA DALAM PERUNDANG-UNDANGAN PERKAWINAN ISLAM DI INDONESIA" 05 (2015): 1–17; Aden Rosadi, *Hukum Dan Administrasi Perkawinan* (Bandung: Simbiosis Rekatama Media, 2021), 95.

¹⁹ M Nasichin, "Akibat Hukum Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik* 7, no. 1 (2018): 1–11, <https://doi.org/https://doi.org/10.55129/jph.v7i1.648>.

individuals are not disproportionately burdened by legal processes and decisions, particularly where they have acted in accordance with reasonable expectations of legality²⁰.

Viewed from this perspective, the position of the second wife in Decision Number 348/Pdt.G/2018/PA.Cbd raises important concerns. The legal defect underlying the annulment originated primarily from the husband's failure to comply with statutory requirements governing polygyny. Yet the consequences of annulment may extend beyond the husband and affect the wife who entered the marriage believing that it was legally valid. Where the wife lacks knowledge of the procedural irregularity and does not participate in concealing the defect, treating her as though she shares equal responsibility for the violation undermines the protective function of law.

The inadequacy of protection becomes even clearer when analyzed through Ronald Dworkin's rights-based theory. Dworkin argues that legal systems must treat individual rights as fundamental considerations that cannot be sacrificed merely to achieve administrative efficiency or formal legal consistency²¹. Applied to marriage annulment, this perspective suggests that the retroactive invalidity of marriage should not automatically extinguish the legitimate interests of spouses who relied upon the apparent legality of the marital relationship. A wife who entered into marriage without knowledge of a legal defect possesses a legitimate expectation that her rights and interests will receive legal recognition. Accordingly, the determination of annulment should be accompanied by an assessment of the extent to which those rights require continued protection.

The issue may also be approached through Martha Albertson Fineman's vulnerability theory. Fineman rejects the assumption that all legal subjects occupy equal social positions and argues that law must recognize the unequal distribution of vulnerability within society. Certain groups experience greater exposure to economic, social, and legal risks and therefore require stronger legal protection²².

Within unauthorized polygyny cases, the subsequent wife frequently occupies a vulnerable legal position. She often lacks access to information regarding the husband's compliance with legal requirements and may possess limited bargaining power within the marital relationship. When annulment occurs, she may suffer economic loss, social stigma, and uncertainty regarding her legal status despite having committed no wrongdoing. The retroactive effect of annulment therefore risks transforming a legal remedy intended to correct unlawful conduct into a source of secondary disadvantage for an already vulnerable party.

²⁰ Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gajah Mada University Press, 2011), 38-40.

²¹ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), 190-192.

²² Martha Albertson Fineman, "The Vulnerable Subject," *Yale Journal of Law & Feminism*, 2008, 8-12.

The gender dimension of this problem has been highlighted by scholars of women and law. Sulistyowati Irianto argues that legal rules frequently appear neutral while producing unequal consequences for women in practice ²³. Similarly, Musdah Mulia emphasizes that legal interpretations within family law should be assessed not only according to procedural legality but also according to their impact on gender justice and substantive equality ²⁴.

These observations are particularly relevant to marriage annulment. While the annulment of unauthorized polygyny may be legally justified, the resulting legal framework should not create new forms of injustice for women who were not responsible for the violation. The focus on procedural legality must therefore be balanced by consideration of the practical consequences experienced by affected wives. Such an approach is consistent with contemporary concerns regarding women's access to justice and protection from structural forms of legal disadvantage, as reflected in recent reports issued by Komnas Perempuan ²⁵.

Several contemporary studies further support this conclusion. Research by Dipo ²⁶, Putra, Pricilia, and Putra²⁷ and Sari, Wirdyaningsih, and Djubaedah²⁸ demonstrates that wives affected by annulment frequently encounter uncertainty regarding maintenance, inheritance, property rights, and other civil interests. These studies suggest that existing legal protections remain fragmented and often depend upon judicial discretion rather than clearly articulated legal standards. Accordingly, the principal deficiency revealed by Decision Number 348/Pdt.G/2018/PA.Cbd does not concern the legality of annulment itself. The legal grounds for annulment are well established and were correctly applied by the court. Rather, the case exposes the absence of a coherent rights-based framework capable of protecting good-faith wives from the disproportionate civil consequences of annulment. The current interpretation of Article 28 prioritizes legal certainty while providing insufficient guidance regarding the protection of vulnerable parties whose rights arise from the marital relationship.

This finding demonstrates the need for a more comprehensive understanding of good faith within Indonesian marriage law. Good faith should not be viewed

²³ Sulistyowati Irianto, *Perempuan Dan Hukum: Menuju Hukum Yang Berperspektif Kesenjangan Dan Keadilan* (Jakarta: Yayasan Obor Indonesia, 2006), 25-40.

²⁴ Siti Musdah Mulia, *Islam Dan Inspirasi Kesenjangan Gender* (Jakarta: Kibar Press, 2019), 115-130.

²⁵ Perempuan, "CATAHU 2024 Refleksi Pendokumentasian Dan Tren Kasus Menata Data, Menajamkan Arah", 52-54.

²⁶ Nur Muhammad Pandu Dipo, "Perlindungan Hukum Terhadap Istri Kedua Akibat Pembatalan Perkawinan Ba'da Dukhul Karena Suami Berpoligami Tanpa Ijin," *Jurnal Mahasiswa Fakultas Hukum*, 2017.

²⁷ Merdi Aditya Putra, Iga Pricilia, and Hika Deriya Putra, "PERLINDUNGAN HUKUM AKIBAT PEMBATALAN PERKAWINAN TERHADAP SUAMI YANG BERPOLIGAMI DENGAN PEMALSUAN IDENTITAS," *Indonesian Notary* 3, no. 2 (2021): 231-247, [http://download.garuda.kemdikbud.go.id/article.php?article=2984261&val=26769&title=Perlindungan Hukum Akibat Pembatalan Perkawinan Terhadap Suami Yang Berpoligami Dengan Pemalsuan Identitas](http://download.garuda.kemdikbud.go.id/article.php?article=2984261&val=26769&title=Perlindungan%20Hukum%20Akibat%20Pembatalan%20Perkawinan%20Terhadap%20Suami%20Yang%20Berpiligami%20Dengan%20Pemalsuan%20Identitas).

²⁸ Sari, Wirdyaningsih, and Djubaedah, "Pembatalan Perkawinan Poligami Terhadap Hak-Hak Istri Kedua Akibat Pemalsuan Identitas (Studi Putusan Pengadilan Agama Tanjung Karang Nomor 498/Pdt.G/2022/PA.Tnk)."

merely as an exception to retroactive invalidity but as a substantive legal principle capable of preserving justice, protecting legitimate expectations, and safeguarding civil rights. Such a reconstruction requires engagement not only with positive law but also with the broader principles of justice embedded within Islamic legal thought. It is to this issue that the next section turns.

3.3. The Reconstructing Good Faith through Islamic and Indonesian Marriage Law

The preceding discussion demonstrates that the principal weakness of Article 28 of the Marriage Law lies not in its recognition of good faith but in its failure to provide a coherent legal framework capable of translating that principle into effective civil protection. Although the provision acknowledges the existence of good-faith parties, it neither defines the concept nor specifies the legal consequences that should follow from such status. As a result, the protection afforded to wives affected by marriage annulment remains uncertain and heavily dependent upon judicial discretion.

From the perspective of Islamic law, this uncertainty is difficult to justify. Classical Islamic jurisprudence recognizes *fasakh* as a mechanism for dissolving marriages affected by legal defects. However, *fasakh* is not merely a technical instrument for invalidating defective marriages. Rather, it functions within a broader framework aimed at preserving justice and preventing harm. Classical jurists generally acknowledged that the existence of a defect in marriage does not automatically extinguish all rights arising from the marital relationship, particularly where one of the parties acted without fraud, deception, or bad faith ²⁹.

The protection of innocent parties is closely related to the Islamic legal principle that harm should neither be inflicted nor reciprocated (*lā ḍarar wa lā ḍirār*). This principle requires legal rules to prevent unjust consequences and to ensure that liability is imposed upon those responsible for a violation rather than upon those who merely suffer its effects. Within the context of marriage annulment, the principle suggests that the legal consequences of a husband's failure to comply with statutory requirements should not automatically be transferred to a wife who entered the marriage without knowledge of the defect ³⁰.

This conclusion becomes even stronger when viewed through the framework of *maqasid al-shari'ah*. Al-Shatibi maintains that the ultimate purpose of Islamic law is the realization of human welfare (*maslahah*) through the protection of essential

²⁹ Abdur Rahman Al-Jaziri, *Kitab Al-Fiqh Ala Madzahib Al-Arba'ah* (Beirut: Dar al-Kutub al-Ilmiyah, 2003), 180-195; Ibn Qudāmah, *Al-Mughnī Jilid 7* (Beirut: Dar al-Fikr, 1984), 110-125; Muhammad Abu Zahrah, *Al-Ahwal Al-Syakhshiyyah* (Kairo: Dar al-Fikr al-Arabi, 1957), 310-325.

³⁰ Abdul Wahhab Khallaf, *Kaidah-Kaidah Hukum Islam*, ed. Noer Iskandar al-Barsany and Moh. Tolchah Mansoer (Jakarta: RajaGrafindo Persada, 2002), 85-98; A Djazuli and I Nurol Aen, *Ushul Fiqh; Metodologi Hukum Islam* (Jakarta: RajaGrafindo Persada, 2000), 145.

interests, including religion, life, intellect, lineage, and property³¹. Contemporary scholars such as Jasser Auda further argue that *maqasid al-shari'ah* should be understood as a dynamic and rights-oriented framework capable of responding to contemporary legal challenges³². Within marriage annulment cases, at least three objectives of Islamic law possess particular relevance. First, *hifz al-nasl* (protection of lineage) requires legal certainty regarding family relationships and the status of individuals affected by annulment. Second, *hifz al-mal* (protection of property) requires the preservation of legitimate economic interests acquired during the marital relationship. Third, *hifz al-'ird* or the protection of dignity requires that individuals acting in good faith not be subjected to unjust social and legal consequences. These objectives indicate that marriage annulment should not be interpreted solely as a mechanism for enforcing formal legal requirements but also as a means of preserving justice and preventing disproportionate harm³³.

Against this background, Article 28 may be criticized for adopting an excessively formalistic understanding of annulment. The provision is largely structured around the doctrine of retroactive invalidity (*ex tunc*), under which the annulled marriage is treated as though it never legally existed. While such an approach serves the objective of legal certainty, it insufficiently addresses the reality that marriages often generate social, economic, and legal relationships before annulment occurs. The doctrine therefore risks prioritizing formal legality at the expense of substantive justice³⁴.

This tension between legal certainty and justice has long been recognized within legal theory. Gustav Radbruch argues that legal certainty, justice, and utility constitute the three fundamental values of law and that legal certainty should not be pursued in a manner that produces manifest injustice³⁵. Similarly, Satjipto Rahardjo's theory of progressive law emphasizes that law exists for human beings rather than human beings for law. Consequently, legal interpretation should seek substantive justice rather than merely mechanical compliance with statutory provisions³⁶.

³¹ Ibrahim ibn Musa Abu Ishaq al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Shari'a, The Reconciliation of The Fundamentals of Islamic Law*, vol. II (UK: Garnet Publishing, 2014), 5-25.

³² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 3-25; Jasser Auda, *Reforming Muslim Family Laws* (London: Maqasid Institute, 2018), 45-60.

³³ Fathurrahman Djamil, *Filsafat Hukum Islam*, 1st ed. (Jakarta: Logos Wacana Ilmu, 1997), 115-128; Firdaus, *Ushul Fiqh* (Jakarta: RajaGrafindo Persada, 2017), 165-180; Rachmat Syafe'i, *Ilmu Ushul Fiqih* (Bandung: Pustaka Setia, 2021), 283-295.

³⁴ Imron, "Pemberlakuan Asas Berlaku Surut Dalam Perkara Pembatalan Perkawinan Di Undang-Undang Perkawinan"; Gustav Radbruch, *Legal Philosophy* (New York: Harvard University Press, 1950), 108; Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2006), 45-62.

³⁵ Radbruch, *Legal Philosophy*, 108.

³⁶ Rahardjo, *Membedah Hukum Progresif*, 49-51; M Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo: Riwayat , Urgensi , Dan Relevansi," *Undang: Jurnal Hukum* 1, no. 1 (2018): 159-185, <https://doi.org/10.22437/ujh.1.1.159-185>.

Based on these considerations, this article proposes a reconstruction of the concept of good faith within Indonesian marriage annulment law. Good faith should be interpreted through both subjective and objective dimensions. Subjectively, a spouse acts in good faith when she lacks actual knowledge of the legal defect affecting the marriage. Objectively, good faith exists where the spouse possesses reasonable grounds for believing that the marriage complies with applicable legal requirements and does not participate in concealing or facilitating the violation. This formulation provides a clearer standard for judicial assessment while preserving flexibility for case-specific circumstances.

The reconstruction must also extend to the legal consequences of good faith. Recognition of good faith should not be limited to symbolic acknowledgment but should generate substantive legal protection. Where a wife is determined to have acted in good faith, she should retain protection with respect to civil interests acquired during the marital relationship, including economic contributions, maintenance rights arising before annulment, compensation for demonstrable losses, and access to legal remedies against parties responsible for the legal defect. Such protection does not validate the defective marriage but rather prevents innocent parties from bearing disproportionate consequences resulting from violations committed by others.

This reconstruction remains consistent with both Indonesian marriage law and Islamic legal principles. It preserves the authority of courts to annul marriages conducted in violation of statutory requirements while ensuring that annulment does not become a source of secondary injustice. More importantly, it transforms good faith from a vague exception into an operative legal doctrine capable of balancing legal certainty, justice, and civil protection.

Accordingly, the reinterpretation of Article 28 should move beyond a purely procedural understanding of annulment and adopt a rights-oriented approach grounded in *maqasid al-shari'ah*, legal protection, and substantive justice. Through this framework, marriage annulment can continue to function as a mechanism for maintaining legal order while simultaneously safeguarding the civil rights and human dignity of wives acting in good faith.

4. Conclusion

The protection of wives affected by marriage annulment cannot be achieved solely through a formal application of the doctrine of retroactive invalidity. A legal framework that emphasizes legal certainty without adequately addressing the position of parties acting in good faith risks producing outcomes that are inconsistent with the broader objectives of justice and legal protection. Accordingly, the concept of good faith should be understood as a substantive legal principle capable of balancing the enforcement of marriage law with the protection of legitimate rights arising from marital relationships. The integration of Indonesian marriage law and Islamic legal principles demonstrates that

marriage annulment should not be viewed merely as a mechanism for correcting procedural defects in marriage formation. Rather, it should also function as a means of ensuring that innocent parties are not subjected to disproportionate civil consequences resulting from violations committed by others. In this context, principles of justice, protection of rights, prevention of harm, and *maqasid al-shari'ah* provide a normative foundation for strengthening the legal position of wives who enter into marriage in good faith. The practical implication of this study lies in the need for a more explicit legal framework governing the determination and legal consequences of good faith in marriage annulment cases. Courts should be provided with clearer normative standards for assessing good faith, while legislators should consider refining Article 28 of the Marriage Law to ensure greater consistency in the protection of civil rights following annulment. Such clarification would contribute to a more balanced relationship between legal certainty, justice, and legal protection within Indonesian family law. This study further suggests that future legal development should move toward a rights-oriented approach that recognizes the vulnerability of parties affected by marriage annulment and provides effective remedies for the protection of their civil interests. By adopting a more protection-based interpretation of good faith, Indonesian marriage law can better respond to contemporary demands for fairness, gender justice, and substantive legal protection.

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