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CANCELLATION OF MARRIAGE AND ITS LEGAL CONSEQUENCES IN THE LEGAL SYSTEM IN INDONESIA

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Abstract

The aim of this research is to determine the legal regulations regarding marriage annulment in Indonesia and the legal consequences of marriage annulment. This type of research is normative research, namely a legal research method carried out by examining library materials with the data used being secondary data. Data collection was carried out by studying legal regulations regarding marriage annulment, by identifying regulations regulated in law regarding the causes of marriage annulment, as well as conducting a literature search relating to statutory regulations and problems. The results of the research show that the regulation of marriage annulment in Indonesia is regulated in the Marriage Law, which states that a marriage can be annulled if the parties do not fulfill the requirements for carrying out the marriage. The conditions referred to are material requirements and formal marriage requirements. The material conditions of marriage are conditions that are inherent in the parties who will enter into marriage. Formal requirements for marriage regulate the procedures for marriage. The legal consequence of an annulment of marriage, namely for husband and wife, is the termination of the relationship between husband and wife. With respect to children, the decision to annul a marriage does not apply retroactively as stated in Article 28 paragraph 2 point a of the Marriage Law. Children born from annulled marriages remain as legitimate children. In this way, the child remains the responsibility of both parties. For joint assets in a marriage that has been annulled, the division of joint assets is in accordance with the division of joint assets due to divorce as regulated in Article 37 of the Joint Property Law.

Keywords: Marriage, cancellation, legal consequences, legal system in Indonesia

Abstrak

Tujuan penelitian ini adalah untuk menentukan regulasi hukum mengenai pembatalan perkawinan di Indonesia dan konsekuensi hukum dari pembatalan perkawinan. Jenis penelitian ini adalah penelitian normatif, yaitu metode penelitian hukum yang dilakukan dengan memeriksa bahan pustaka dengan data yang digunakan berupa data sekunder. Pengumpulan data dilakukan dengan mempelajari regulasi hukum mengenai pembatalan perkawinan, dengan mengidentifikasi regulasi yang diatur dalam hukum mengenai penyebab pembatalan perkawinan, serta melakukan penelusuran literatur yang berkaitan dengan regulasi perundang-undangan dan permasalahan. Hasil penelitian menunjukkan bahwa regulasi pembatalan perkawinan di Indonesia diatur dalam Undang-Undang Perkawinan, yang menyatakan bahwa perkawinan dapat

dibatalan jika pihak-pihak tidak memenuhi persyaratan untuk melaksanakan perkawinan. Persyaratan yang dimaksud adalah persyaratan materiil dan persyaratan formal perkawinan. Persyaratan materiil perkawinan adalah persyaratan yang melekat pada pihak-pihak yang akan melakukan perkawinan. Persyaratan formal perkawinan mengatur tata cara perkawinan. Konsekuensi hukum dari pembatalan perkawinan, yaitu bagi suami dan istri, adalah berakhirnya hubungan antara suami dan istri. Terkait dengan anak-anak, keputusan untuk membatalkan perkawinan tidak berlaku surut sebagaimana diatur dalam Pasal 28 ayat 2 huruf a Undang-Undang Perkawinan. Anak yang lahir dari perkawinan yang dibatalan tetap diakui sebagai anak sah. Dengan cara ini, anak tetap menjadi tanggung jawab kedua belah pihak. Untuk harta bersama dalam perkawinan yang telah dibatalan, pembagian harta bersama sesuai dengan pembagian harta bersama akibat perceraian sebagaimana diatur dalam Pasal 37 Undang-Undang Harta Bersama.

Kata kunci: Pernikahan, pembatalan, konsekuensi hukum, sistem hukum di indonesia

INTRODUCTION

Article 1 of the Marriage Law states that marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God. Marriage is one of the important things in human life, both individuals and groups. Marriages that are carried out according to the legal rules that regulate marriage or according to the laws of their respective religions can be said to be valid, so the interaction between men and women occurs in a respectful manner in accordance with the position of humans as honorable creatures. In Article 2 of the Compilation of Islamic Law (KHI) marriage is a marriage, namely a very strong contract or *mitsasga ghalidzan* to obey Allah's commands and carrying them out constitutes worship. When viewed in detail, marriage or matrimony is a noble and sacred contract between a man and a woman which is the cause of the legality of husband and wife with the aim of achieving a family full of love, virtue and mutual support (Diningrat dkk., 2020).

Hernoko dkk., (2017) Said by creating a legal marriage between a man and a woman, it is hoped that it can create a peaceful, peaceful domestic life and create a sense of affection between husband and wife. Marriage is the beginning of the process of realizing a form of human life. Therefore, marriage is not just a matter of fulfilling biological needs, but is more than just that. With marriage, it is hoped that the goals of marriage can be achieved as regulated in the law or legal regulations and also in accordance with the teachings of the religion adhered to.

Humans are legal subjects, all supporting rights and obligations in legal traffic. One of the things that influences a person's position as a legal subject is marriage, which gives rise to rights and obligations in the field of family law. From marriage a legal relationship will arise between husband and wife, and then children will be born, giving rise to a legal relationship between parents and their children, then from marriage they will have assets and a legal relationship will arise between them and those assets. Article 2 of the Marriage Law states that marriage is valid if it is carried out according to the laws of each religion and belief. Therefore, it can be said that the religious or

religious element is one of the very basic requirements in a marriage because whether a marriage is valid or not is determined based on religious law and the beliefs of each party. Based on the provisions of Article 2 paragraph (1) of the Marriage Law, Indonesian citizens who are Muslim who wish to carry out a marriage must comply with the provisions regarding marriage that have been regulated in Islamic marriage law. Likewise, for Indonesian citizens of religions other than Islam who wish to carry out a marriage, the basis for the implementation of the marriage are the provisions regarding marriage which have been regulated according to the laws of their respective religions and beliefs. Therefore, it can be said that basically the provisions regarding marriage contained in the Marriage Law are based on religious teachings. Whether a marriage is valid or not is determined according to the laws of each religion (Lestari & Adiyatma, 2020).

Article 1 of the Marriage Law explains that the purpose of marriage is to form a happy and eternal family (household) based on belief in the Almighty God. that the purpose of marriage as husband and wife is to form a happy and eternal family (household) based on the belief in the Almighty God (Millyuner dkk., 2021). Furthermore, it is explained that for this reason husband and wife need to help and complement each other so that each can develop their personality to help and achieve spiritual and material prosperity. The formation of a happy family is closely related to heredity, where the care and education of children is the right and obligation of parents. Thus, the purpose of marriage according to law is the happiness of husband and wife (Sanusi dkk., 2022).

Marriage law in Indonesia is still regulated in several regulations even though there is a Marriage Law. The dissolution of a marriage due to an annulment is still regulated by several regulations. In customary law, marriages are dissolved only due to death and divorce. In customary law, the term marriage dissolution is not recognized due to marriage annulment. In Islamic law, marriage annulment is regulated in the Compilation of Islamic Law (KHI). KHI is used as a guide in resolving problems in the fields of marriage law, inheritance and endowments. Apart from that, it also provides guidance for religious court judges in Indonesia in examining, adjudicating and deciding cases. Regulations on marriage annulment can also be found in the Civil Code. The annulment of a marriage in the Civil Code can be sued by the husband or wife, by blood relatives in a straight line upwards, by anyone who has an interest in the annulment of the marriage, and by the prosecutor's office. The formation of the Marriage Law as an effort to unify marriage law and everything related to marriage, the provisions regulated in the Civil Code regarding marriage have been regulated in Law no. 1 of 1974 concerning Marriage was declared no longer valid as regulated in Article 66 of the Marriage Law. Even though the Marriage Law is the national law for carrying out marriages, the Marriage Law is still open, we can find this in Article 2 paragraph (1) of the Marriage Law which still requires that a marriage is valid if it is carried out according to the laws of each religion and belief. The existence of the Compilation of Islamic Law (KHI) which regulates marriage for Islamic communities is a form of openness in Law no. 1 of 1974 concerning Marriage. However, although marriage arrangements based on Islamic law have been regulated in the KHI, based on presidential instruction no. 1 of 1991

concerning the Compilation of Islamic Law, KHI is only used as a guide in resolving problems in the fields of marriage law, inheritance and endowments. Apart from that, it also provides guidance for religious court judges in Indonesia in examining, adjudicating and deciding cases. The existence of Law no. 1 of 1974 concerning Marriage remains the main reference as the national law that regulates marriage in Indonesia, including the annulment of marriage. Marriage annulment, which is still regulated in several regulations, raises questions about how marriage annulment is regulated in Indonesia.

METHOD

The research method used by researchers is a case study, which has a qualitative scope and which researchers feel can be a method that can describe problems (AK Warul dkk., 2015). Meanwhile, according to (Iswadi dkk., 2023), the process of compiling a case study takes place in three stages. The first stage is the collection of raw data about individuals, organizations, programs, and places of occurrence, which forms the basis for case study researchers. In this study, the researchers analyzed case studies cancellation of marriage and its legal consequences in the legal system in indonesia.

RESULT AND DISCUSSIONS

Legal Arrangements for Marriage Annulment in Indonesia

Arrangements for marriage annulment before the enactment of Law no. 1 of 1974 concerning Marriage, has been regulated in the Civil Code (Civil Code). After the establishment of the Marriage Law, based on Article 66 of the Marriage Law, for marriage and everything related to marriage, with the enactment of Law no. 1 of 1974 concerning Marriage, the provisions regulated in the Civil Code regarding marriage are regulated in Law no. 1 of 1974 concerning Marriage was declared no longer valid. Dissolution of marriage due to annulment of marriage is not regulated in customary law. Marriages are dissolved in customary law only due to death and divorce. The general view is that divorce is undesirable and must be avoided whenever possible. In principle, every family, relative and association wants the marriage that has been entered into to be maintained throughout their life. If, according to the facts and circumstances, the integrity of the marriage can no longer be maintained, this means that if the divorce is in the interests of both parties, husband and wife, as well as the families of both parties, the divorce can be carried out (Katz & Katz, 1975).

In Article 22 of the Marriage Law, it is said that, a marriage can be annulled, if the parties do not fulfill the requirements for a marriage to take place. This means that the marriage can be void even though it has already been carried out or it may not be void even if someone files for an annulment of the marriage. Article 24 of the Marriage Law also regulates that, "Any person who, because of marriage, is still bound to one of the two parties and on the basis that the marriage still exists can apply for a new annulment of the marriage without prejudice to the provisions of Article 3 paragraph (2) and Article 4 of the Marriage Law. In carrying out a request for marriage annulment, based on Article 25 of the Marriage Law, a request for marriage annulment is submitted to the

Court in the jurisdiction where the marriage took place or at the residence of both husband and wife, husband or wife. Article 26 of the Marriage Law also regulates that,

- a. A marriage solemnized in the presence of an unauthorized marriage registrar, an invalid marriage guardian or which is solemnized without the presence of 2 (two) witnesses may have its annulment requested by the families in the straight upward lineage of the husband or wife, the prosecutor and husband or wife.
- b. The right to annul by a husband or wife based on the reasons in paragraph (1) of this article is void if they have been living 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.

In article 27 it is also regulated that,

- a. A husband or wife may submit a request for marriage annulment if the marriage was solemnized under threat of violating the law.
- b. A husband or wife can apply for an annulment of the marriage if at the time of the marriage there is a misunderstanding about the husband or wife.
- c. If the threat has stopped, or the suspect is aware of the situation, and within a period of 6 (six) months after that they are still living as husband and wife, and do not exercise their right to submit an application for annulment, then their right is terminated.

Regarding the legal power of marriage annulment, based on article 28 of the Marriage Law it is stated that;

- a. The annulment of a marriage begins after the Court's decision has permanent legal force and is valid from the time the marriage takes place.
- b. The decision does not apply retroactively to:

Children born from the marriage;

- a. A husband or wife who acts in good faith, except with respect to joint property, if the annulment of the marriage is based on the existence of another previous marriage;
- b. Other third persons are not included in a and b as long as they obtain their rights in good faith before the decision regarding cancellation has permanent legal force.

Cancellation of marriage in Islamic law has been included in the Compilation of Islamic Law (KHI) as follows:

Based on Article 71 KHI, a marriage is void if.

- a. The husband carries out the marriage, while he does not have the right to carry out 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 person marries his ex-wife whom he has divorced;
- c. A person marries his ex-wife who has been given three divorces by him, except if the ex-wife was married to another man and then divorced again ba'da al dukhul and that man and her iddah period has expired;
- d. Marriage is between two people who are related by blood; sexual intercourse and sexual intercourse to a certain degree which prevents marriage according to Article 8 of Law No. 1 of 1974, namely :
 - 1) Blood related in a straight downward or upward lineage.
 - 2) Blood relations in a deviant lineage, namely between siblings, between a person and their parents' siblings and between a person and their grandmother's siblings.
 - 3) Marital relations, namely in-laws, stepchildren, sons-in-law and mother or stepfather.
 - 4) Breast-feeding relationships, namely breast-feeding parents, breast-feeding children and breast-feeding aunts or uncles.
- e. A wife is a sibling or as an aunt or niece and his wife or wives. Furthermore, a marriage can be annulled based on Article 71 KHI if:
 - 1) a husband commits polygamy without permission from the Religious Court;
 - 2) the woman he marries is later discovered to be the wife of another man who is mafqud.
 - 3) the woman he marries is still in iddah and has another husband;
 - 4) Marriages that violate the age limit for marriage as stipulated in article 7 of Law No. in 1974;
 - 5) The marriage was carried out without a guardian or was carried out by a guardian who had no rights;
 - 6) Marriage conducted under coercion (Adjie & Prasetyo, 2021).

An annulment of marriage can also be canceled as regulated in article 72 KHI if; marriage is carried out under the threat of violating the law, if during the marriage there is fraud or misunderstanding about the husband or wife. However, if the threat has ceased, or the alleged perpetrator is aware of the situation and within a period of 6 (six) months after that, they are still living as husband and wife, and cannot exercise their right to submit a request for annulment, then their right is terminated.

Although marriage arrangements based on Islamic law have been regulated in the KHI, based on presidential instruction no. 1 of 1991 concerning the Compilation of Islamic

Law, KHI is used only as a guide in resolving problems in the fields of marriage law, inheritance and endowments. Apart from that, it also provides guidance for religious court judges in Indonesia in examining, adjudicating and deciding cases (Cammack, 1989).

Conditions for Annulment of Marriage

The conditions for annulment of marriage must meet the reasons that can be submitted for annulment of marriage. In Law no. 1 of 1974 concerning Marriage, in Articles 26 and 27 the reasons for canceling a marriage are;

- a. A marriage solemnized in the presence of an unauthorized marriage registrar,
- b. The guardian of the marriage is invalid or which takes place without the presence of 2 (two) witnesses.
- c. The marriage was solemnized under the threat of violating the law;
- d. When marriage takes place, there are misunderstandings about the husband or wife;

A legally valid marriage is a marriage that can be proven by a marriage certificate made and issued by an authorized marriage registrar, so that the marriage is carried out in accordance with the Marriage Law. If the marriage takes place in the presence of an unauthorized marriage registrar, the marriage becomes a reason for the marriage to be annulled. Based on marriage law in Indonesia, we adhere to the principle that marriage guardians and witnesses are pillars of marriage that must be fulfilled, so every marriage carried out by a person must use a guardian with the correct position in law and be attended by two witnesses. Marriages entered into under unlawful threat may also be annulled. Threats that violate the law are nothing other than the essence of eliminating the free will of one of the prospective bride and groom. When a marriage takes place, there are misunderstandings about the husband or wife, then a husband or wife can apply for an annulment of the marriage (Erlina, 2018).

The conditions for marriage annulment in the Compilation of Islamic Law (KHI) in Article 70 of the marriage are void if:

- a. The husband carries out the marriage, while he does not have the right to carry out 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 person marries his ex-wife whom he has divorced.
- c. A person who marries his ex-wife who has been given three divorces, unless the ex-wife was married to another man and then divorced again after that man's ba'da dukhul and the period of iddah has expired.
- d. Marriage is carried out between two people who are related by blood, marriage, and kinship to a certain degree that prevents marriage.

Furthermore, in Article 71 of the Compilation of Islamic Law, a marriage can be annulled if:

- a. A husband commits polygamy without permission from the Religious Court;

- b. The woman he married was later discovered to be the wife of another man who was mafqud (missing);
- c. The woman he marries turns out to be still in the iddah period of another husband;
- d. Marriage that violates the age limit for marriage as stipulated in Article 7 of the Marriage Law;
 - 1) The marriage was solemnized without a guardian or was carried out by a guardian who had no rights;
 - 2) Marriage carried out by force.

Parties Who Can Cancel a Marriage

The parties who have the right to apply for an annulment of marriage in the Marriage Law are regulated in Articles 23, 24, 25, 26 and 27, namely:

- a. The families are in a straight line upwards from the husband or from the wife;
- b. Husband or wife;
- c. Authorized official;
- d. Appointed officials;
- e. Prosecutor;

Who can apply for marriage annulment in the Compilation of Islamic Law (KHI) is contained in Article 73, namely:

- a. The families in the straight line up and down from the husband or wife;
- b. Husband or wife;
- c. Officials who have the authority to supervise the implementation of marriages according to law;
- d. Interested parties who are aware of any defects in the harmony and conditions of marriage according to Islamic law and statutory regulations as stated in Article 67.

Regarding applications for marriage annulment as regulated in article 73 KHI, those who can apply for marriage annulment are:

Those who can apply for marriage annulment are:

- a. families in the straight line up and down from the husband or wife;
- b. Husband or wife;
- c. Officials who have the authority to supervise the implementation of marriages according to the law.
- d. Interested parties who are aware of any defects in the harmony and conditions of marriage according to Islamic law and statutory regulations as stated in article 67.

As regulated in Article 74 of the KHI, a request for annulment of a marriage can be submitted to the Religious Court in the area where the husband or wife lives or the marriage took place. The annulment of a marriage begins after the decision of the Religious Court has permanent legal force and is valid from the time the marriage takes

place. The annulment of a marriage will not terminate the legal relationship between the child and his parents as regulated in Article 76 KHI (Lindsey & Butt, 2018).

Regulations on Marriage Cancellation in the Indonesian Legal System

After the establishment of the Marriage Law, based on Article 66 of the Marriage Law, for marriage and everything related to marriage, with the enactment of Law no. 1 of 1974 concerning Marriage, the provisions regulated in the Civil Code regarding marriage are regulated in Law no. 1 of 1974 concerning Marriage was declared no longer valid. Dissolution of marriage due to annulment of marriage is not regulated in customary law. Marriages are dissolved in customary law only due to death and divorce. The general view is that divorce is undesirable and must be avoided whenever possible. In principle, every family, relative and association wants the marriage that has been entered into to be maintained throughout their life. If, according to the facts and circumstances, the integrity of the marriage can no longer be maintained, this means that if the divorce is in the interests of both parties, husband and wife, as well as the families of both parties, the divorce can be carried out (Nisa, 2018).

In Article 22 of Law no. 1 of 1974 concerning Marriage, it is said that, a marriage can be annulled, if the parties do not fulfill the requirements for entering into a marriage. This means that the marriage can be annulled even though it has already been carried out or it may not be invalid even if someone files for an annulment of the marriage. Not fulfilling the marriage requirements means not fulfilling a claim or request that must be fulfilled or everything that needs to be present or must be present in carrying out a marriage.

The conditions referred to in article 22 of the Marriage Law are if they do not meet the material and formal requirements of a marriage. The material conditions of marriage are conditions that are inherent in the parties who will enter into marriage. The material requirements for marriage that must be fulfilled are based on the provisions of the Marriage Law as contained in Articles 6 to 12, which basically regulate as follows:

- a. There is consent of both prospective bride and groom as stated in Article 6 paragraph (1); The agreement in this case is that the prospective bride and groom are getting married because they like each other, not because they are forced to, there is no coercion from any party, the marriage is carried out according to the wishes of the prospective bride and groom.
- b. Having permission from both parents or guardians for prospective brides and grooms who are not yet 21 years old;
- c. The prospective groom must be 19 years old and the prospective bride must be 16 years old, unless there is a dispensation from the court;
- d. The prospective groom and the prospective bride are not related by family or blood and cannot marry;
- e. The prospective bride is not in a marital relationship with another party and the prospective groom is also not in a marital relationship with another party, unless permission has been obtained from the court for polygamy;

- f. For husbands and wives who have divorced and then remarried, their religion and beliefs do not prohibit remarriage (for the third time);
- g. There is no waiting time for prospective brides who are widows.

Formal requirements for marriage regulate the procedures for marriage. Formal marriage requirements can be described according to Article 12 of the Marriage Law which is realized in Articles 3 to Article 13 PP No. 9 of 1975, which basically regulates as follows:

- a. There must be notification of marriage intentions to the marriage registration officer. Notification can be made verbally/in writing by the prospective bride or groom or by their parents or representatives.
- b. The notification includes, among other things, the identity of the prospective bride and groom.
- c. If the conditions have been met, the registration officer will make an announcement whether the marriage can take place or whether there are obstacles to the marriage
- d. Marriages take place after the tenth day after the announcement which is made according to the laws of their respective religions.
- e. Shortly after the marriage, the bride and groom sign the marriage certificate which has been prepared and signed by witnesses and the marriage registration officer.

An annulment of a marriage based on the Marriage Law is also requested because the marriage was solemnized in the presence of an unauthorized marriage registrar, an invalid marriage guardian or which was solemnized without the presence of 2 (two) witnesses, the annulment can be requested by the families in the straight line of descent from the husband. or wife, prosecutor and husband or wife as regulated in Article 26 of the Marriage Law. However, the right to annul a husband or wife based on these reasons does not apply if they have been living 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.

Furthermore, a marriage can be annulled based on the Marriage Law if the marriage takes place under threat of violating the law as regulated in Article 27 of the Marriage Law. In Article 6 paragraph (1) of the Marriage Law, it is said that, "marriage must be based on the consent of the prospective bride and groom". This means that the marriage must take place with the consent of both parties entering into the marriage, without any coercion from any party. A person should not be forced by threats or by any means to marry another person. The marriage must be based on the wishes and consent of the parties. If the marriage takes place under threat of violating the law, then based on Article 27 paragraph (1) of the Marriage Law, the husband or wife can apply for an annulment of the marriage. However, the right to file a lawsuit for annulment of a marriage because it was held under threat can be lost if the threat has stopped, or the person at fault is aware of the situation, and within a period of 6 (six) months after that they are still living as husband and

wife, and do not exercise their right to file. request for annulment as regulated in Article 27 paragraph (3) of the Marriage Law (O'Shaughnessy, 2009).

Furthermore, the marriage can be annulled if during the marriage there is a misunderstanding about the husband or wife. This can happen because the husband or wife lies about the truth about themselves. An annulment of a marriage occurs because a party files for an annulment of the marriage in court. Article 23 of the Marriage Law regulates which parties can apply for marriage annulment, namely:

- a. The family in the straight line upwards from the husband or wife;
- b. Husband or wife;
- c. Officials who have authority only as long as the marriage has not been dissolved;
- d. The appointed official is paragraph (2) Article 16 of this Law and every person who has a direct legal interest in the marriage, but only after the marriage has been dissolved.

Cancellation of marriage based on KHI is known as fasakh, namely the release or cancellation of the marriage bond between husband and wife, sometimes due to future events that cause the marriage agreement to not be able to continue. Marriage annulment is the cancellation of the relationship between husband and wife after the marriage contract has taken place. In the Compilation of Islamic Law (KHI), marriage annulment is differentiated into two forms, namely annulled marriages and voidable marriages.

Marriage is void (null and void)

A void marriage is a marriage that does not fulfill the harmony and legal requirements specified in the KHI. In the KHI, a marriage is void as stated in Article 70 of the KHI if the husband carries out the marriage, while he does not have the right to carry out the marriage contract because he already has four wives, even if one of the four wives is in the iddah talak raj'i, a person marries his ex-wife who has been divorced. In other words, a person marries his ex-wife who has been given three divorces, except if the ex-wife was married to another man and then divorced again ba'da al dukhul and that man and her iddah period has expired; Marriage is between two people who are related by blood; marriage and sexual intercourse to a certain degree which prevents marriage according to article 8 of Law Number 1 of 1974, the wife is a sibling or as an aunt or niece and his wife or wives.

Marriages can be annulled

A marriage can be annulled if something new happens after the marriage ceremony takes place and the marriage relationship continues temporarily. For example, in the case of a marriage carried out using fraudulent methods, namely the husband who was originally a non-Muslim religion then converted to Islam only to marry a Muslim woman (formally), and after the marriage occurred the husband returned to his original religion, then such a marriage can be annulled. A marriage can be annulled in KHI based on Article 71 of the Compilation of Islamic Law, it can be annulled if; a husband commits polygamy without permission from the Religious Court, the woman he marries

is later found to be the wife of another man who is mafqud, the woman he marries turns out to be still in iddah and another husband; Marriages that violate the age limit for marriage as stipulated in article 7 of the Marriage Law which stipulates that, "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. A marriage can also be annulled if the marriage was carried out without a guardian or was carried out by an unauthorized guardian, and the marriage was carried out under coercion.

A husband or wife can submit a request for marriage annulment as regulated in Article 72 (KHI) if the marriage takes place under threat and if during the marriage there is fraud or misunderstanding about the husband or wife. However, if the threat has stopped, or the person who is guilty is aware of the situation and within 6 (six) months after that they are still living as husband and wife, and cannot exercise their right to submit an annulment request, then their right is terminated. Those who can apply for an annulment of marriage are based on Article 73 KHI, namely, the family in the straight line up and down from the husband or wife, the husband or wife, the official who has the authority to supervise the implementation of the marriage according to the law, the interested parties who know there are defects in the harmony and conditions of marriage according to Islamic law and statutory regulations as stated in article 67.

In applying for an annulment of marriage, based on article 74 of the KHI, it can be submitted to the Religious Court in the area where the husband or wife lives or where the marriage took place. The annulment of a marriage begins after the decision of the Religious Court has permanent legal force and is valid from the time the marriage takes place.

Legal Consequences of Marriage Annulment

Legal Consequences of Marriage Cancellation Based on the Marriage Law, namely;

a. Regarding husband and wife relationships

The legal consequence of marriage annulment on the husband and wife relationship is the termination of the husband and wife relationship. Once the court decision has permanent legal force, the marriage is annulled from the moment the marriage takes place, thus the marriage is deemed to have never existed. This is in accordance with Article 28 paragraph (1) of the Marriage Law which confirms that the annulment of a marriage begins after a court decision has permanent law and is valid from the time the marriage takes place.

b. Towards children

In Article 28 paragraph (1) of the Marriage Law, it is stated that the annulment of a marriage begins after a court decision has permanent legal force and is valid from the time the marriage takes place. If a marriage is annulled, it means the marriage is deemed to have never existed, but the decision does not apply retroactively to children born from the marriage as stated in article 28 paragraph 2 point a of the Marriage Law.

It can be emphasized that children born from annulled marriages remain as legitimate children. In this way, the child remains the responsibility of both parties. Both parents

are still obliged to educate and care for the child based on the child's interests. Even in Law no. 23 of 2002 concerning Amendments to Law no. 35 of 2014 concerning Child Protection, parents who neglect their children are threatened with criminal penalties. This is as confirmed in Article 13 paragraph (1) letter c that; "Every child while in the care of parents, guardians, or any other party responsible for their care, has the right to receive protection from neglect. Neglect treatment as intended in this law includes the care and maintenance that should be carried out. This is as confirmed in the explanation of article (1) letter c of the Child Protection Law that; "neglect, for example the act or act of deliberately ignoring the obligation to look after, look after or take care of a child properly

The legal responsibility of both parents towards children born in a marriage will never end with the dissolution of the marriage either due to divorce or an annulment of the marriage by the court. An annulment of a marriage only terminates the legal relationship between the two parents as husband/wife, but this does not apply to the legal responsibility for children born from a legal marriage which is then annulled. The legal consequences of annulment of a marriage do not affect the legal status of children born or to be born after the marriage is annulled by the court.

Regarding Joint Assets

Regarding the legal consequences for joint assets after a court decision can annul a marriage, you can find out from Article 28 paragraph (2) letter b of Law Number 16 of 2019 concerning Marriage. From Article 28 paragraph (2) letter b of the Marriage Law, it can be interpreted that for husband and wife who act with good intentions, meaning that between husband and wife there is no previous element of deliberate intention to enter into a marriage in violation of applicable law, so that even though the marriage has been annulled by the court because it was not If the marriage requirements are fulfilled, there will still be a division of joint assets between husband and wife. Because the court decision does not apply retroactively, in the sense that the court decision canceling the marriage takes effect when the court decision has permanent legal force (the same as when the divorce decision comes into force). Thus, even though the marriage is invalid, because the marriage was carried out in good faith, an exception is given in the case of joint property acquired during the marriage, that is, after the marriage is annulled, each ex-husband and ex-wife still receive joint property (Anas & Budianto, 2023).

The division of joint assets is in accordance with the division of joint assets due to divorce. Regarding the arrangement of joint assets resulting from the annulment of a marriage, it is further regulated in Article 37 of the Law on Marriage which states that if a marriage is dissolved due to divorce, joint assets are regulated according to each respective law. Based on the explanation of Article 37 of the Marriage Law, what is meant by "law" respectively are religious law, customary law and other laws.

The legal consequence of canceling a marriage on a husband and wife relationship based on the KHI is that the husband and wife relationship is declared null and void and the marriage is deemed to have never occurred. Article 74 paragraph (2) KHI states: the annulment of a marriage begins after the decision of the Religious Court has permanent legal force and is valid from the time the marriage takes place. Once the court decision

has permanent legal force, the marriage is annulled from the moment the marriage takes place, thus the marriage is deemed to have never existed (Cahyadi & Danardono, 2009).

The legal consequences of canceling a marriage for children in the KHI also stipulate that the decision to annul a marriage does not apply retroactively to children born in the marriage as confirmed in Article 75 of the KHI. Article 76 KHI also emphasizes that the annulment of a marriage will not terminate the legal relationship between the child and his parents. Children born from an annulled marriage remain legitimate children so that the annulment of the marriage will not break the legal relationship between the child and his parents. Both parents are obliged to care for and educate their children as well as possible even though their marriage has been annulled by the court.

The legal consequences of marriage annulment do not cover and affect children born from marriages annulled by the court. Children born from a marriage that is annulled by the court remain the children of the husband and wife whose marriage was annulled. An annulment of a marriage has no legal consequences for the children born, so the responsibilities of the two parents who have been separated remain as they were before the annulment of the marriage. Children have an unbroken legal relationship with both parents, so the legal responsibility of both parents remains even though legally the husband and wife relationship has been terminated by law. This is in accordance with Article 76 of the Compilation of Islamic Law that; "The annulment of a marriage will not terminate the legal relationship between the child and his parents." So looking at the confirmation of Article 76 of the Compilation of Islamic Law above, it is clear that a court decision canceling a marriage does not terminate the legal relationship between the child and his parents whose household was dissolved as a result of the court decision. As Amiur Nuruddin and Azhari Akmal Tarigan view that; "Thus, it is clear that the annulment of marriage has no effect on the status of the children they have given birth to".

Children who are born or will be born after the annulment of a marriage, remain the children of the husband and wife whose marriage was annulled. Therefore, children who are born or will be born from an annulled marriage are still the children of the husband and wife whose marriage was annulled, thus the responsibility of parents (both) is no different from the legal responsibilities of a marriage that is not annulled. Two parents (ex-husband and wife) whose marriage is annulled by the court do not affect the status of children born and who will be born after the annulment of the marriage, so both parents have responsibility for the child born in the marriage until the child is able to live independently or is an adult. This is as confirmed in Article 28 paragraph (2) of the Marriage Law that; "the decision does not apply retroactively to; Children born from the marriage, while in Article 76 of the Compilation of Islamic Law that; "The annulment of a marriage will not terminate the legal relationship between the child and his parents." An annulment of a marriage does not have legal consequences for the legal relationship between the parents and the child who was born or will be born from the annulled marriage, so automatically the responsibilities of the parents do not change as in the case of the marriage before it was annulled.

The legal consequences of marriage annulment on assets as regulated in the KHI do not rule out the possibility of assets belonging to each husband or wife. Based on Article 86 KHI, basically there is no mixing of husband's assets and wife's assets due to marriage. The wife's property remains the wife's property and is fully controlled by her, likewise the husband's property remains the husband's property and is fully controlled by him. Regarding joint assets, husband and wife are entitled to half of the joint assets as long as it is not determined otherwise as regulated in Article 96 KHI. If a dispute occurs, a settlement can be submitted to the religious court.

CONCLUSION

Regulations on marriage annulment in the Indonesian legal system were previously regulated in the Civil Code, however with the enactment of the Marriage Law, based on Article 66 of the Marriage Law, the provisions regulated in the Civil Code regarding marriage law including marriage annulment no longer apply. Dissolution of marriage due to annulment of marriage is not regulated in customary law. There is no such thing as an annulment of marriage in customary law, because the termination of a marriage in customary law is only due to death and divorce. Regulations on Marriage Cancellation in Islamic law are regulated in the KHI, but based on presidential instruction no. 1 of 1991 concerning the Compilation of Islamic Law, KHI is used only as a guide in resolving problems in the fields of marriage law, inheritance, endowments including marriage annulment and as a guide for religious court judges in Indonesia in examining, adjudicating and deciding cases.

The legal consequence of an annulment of marriage, namely for husband and wife, is the termination of the relationship between husband and wife. With respect to children, the decision to annul a marriage does not apply retroactively as stated in article 28 paragraph 2 point a of the Marriage Law. Children born from annulled marriages remain as legitimate children. Regarding joint assets regulated in Article 37 of the Marriage Law, joint assets are regulated according to their respective laws, namely religious law, customary law and other laws. The legal consequence of canceling a marriage on a husband and wife relationship based on the KHI is that the husband and wife relationship is declared null and void and the marriage is deemed to have never occurred. Children have an unbroken legal relationship with both parents, so the legal responsibility of both parents remains even though legally the husband and wife relationship has been terminated by law. This is in accordance with Article 76 of the Compilation of Islamic Law.

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