

# *Child Legal Status After The Court's Decision Against Marriage Cancellation*

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**Abstract** – Marriage annulment is the annulment of a husband and wife relationship after the marriage contract is held. A marriage can be annulled if it does not meet the conditions (Article 22-28 of Law Number: 01 of 1974 concerning Marriage, this means that this marriage is void because the conditions referred to are not fulfilled, but if the marriage has already been implemented then the marriage is can be annulled. The dissolution of a marriage can result in the legal status of the husband and wife and children. For the husband or wife, the legal consequences will be clear, but what is the legal status of the child who has been born due to the dissolution of the marriage. Research on the legal consequences of marriage annulment in terms of the Marriage Law No.1 of 1974 concerning marriage is a normative juridical research. As a research based on the analysis of legal norms, both law in the sense of statutory regulations and court decisions. Thus, the object of research analyzed is legal norms, both in concrete legislation and other laws and regulations. That the legal position of a child born due to an annulment of marriage is still recognized as a legitimate child born from a legal marriage between a man and a woman. Thus, as a consequence of the recognition of a legitimate child, all rights and obligations as a legitimate child also follow.

**Keywords** – cancellation of marriage, legal status of children, Law number 1 of 1974

## I. INTRODUCTION

In general, for a man and woman who have grown up will have a desire to live together because of an impulse from within. Living together between a man and a woman in a bond in a way that meets certain conditions and procedures is called marriage. The terms and procedures for marriage are carried out in accordance with religious norms and applicable rules so that it becomes a legal marriage. Marriage is an instinctive human demand born out of a biological need to continue offspring and obtain peace and happiness in life. Law Number 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to the 1974 Marriage Law is a rule or law that functions to regulate marital problems for the people of Indonesia.

Marriage law has a very important position because marriage law regulates the procedures for family life which is the core of community life. Marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage and Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Meanwhile, for people who are Muslim, Presidential Instruction No. 1/1991 on the Compilation of Islamic Law also applies as a complement.

K. Wantjik Saleh said that the birth bond is a bond that can be seen, revealing the existence of a legal relationship between a man and a woman to live together as husband and wife. In other words, it can be called a formal relationship. On the other hand, the inner bond is a bond that cannot be seen, but it must exist. Because without an inner bond, the outer bond will be fragile<sup>1</sup> This

<sup>1</sup> Saleh Wantjik K, *Hukum Perkawinan Indonesia*, ( Jakarta : Ghalia Indonesia, 1980), Page.14

is as stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely marriage is legal, if it is carried out according to the law of each religion and belief. Marriage is a legal act, whether or not a legal act is legal is determined by the laws and religious norms that exist and apply today.

Marriage to be carried out must meet the pillars and conditions that have been determined. The pillars of marriage are the essence that absolutely must exist in a marriage because if one pillar of marriage is not fulfilled, the marriage cannot be carried out. Likewise, the conditions for marriage must be fulfilled because if these conditions are not met or violate the marriage prohibition, the marriage becomes invalid and can be canceled.

The termination of a marriage is due to a court decision if the parties do not meet the conditions that have been determined to carry out the marriage. This is stated in the formulation of Law Number 1 of 1974 concerning Marriage in Article 22 which states that a marriage can be annulled if the parties do not meet the requirements to enter into a marriage. It is also emphasized in Article 37 of Government Regulation Number 9 of 1975 concerning Implementing Regulations of the Marriage Law Number 1 of 1974 concerning Marriage that the annulment of a marriage can only be decided by the court, so it does not rule out the possibility for someone to cancel a marriage. The dissolution of a marriage can result in the legal status of the husband and wife as well as the child and how the legal status of the child who has been born due to the breakup of the marriage is.

### II. PROBLEM FORMULATION

Based on the description of the background above, the problem can be formulated as follows:

1. What are the legal consequences arising from an annulled marriage?
2. What is the legal status of a child born from an annulled marriage?

### III. RESEARCH PURPOSES

1. To find out the legal consequences arising from an annulled marriage.
2. To obtain clarity on the legal status of the child from an annulled marriage.

### IV. RESEARCH METHOD

Research on the legal consequences of marriage annulment is reviewed from Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Marriage Changes is a normative juridical research. As a research based on the analysis of legal norms, both law in the sense of statutory regulations and court decisions. Thus, the object of research analyzed is legal norms, both in concrete legislation and other laws and regulations.

### V. DISCUSSION

#### Marriage Cancellation

Marriage annulment is the annulment of a husband and wife relationship after the marriage contract is held. A marriage can be annulled if it does not meet the conditions (Article 22-28 of Law Number: 01 of 1974 concerning Marriage, this means that this marriage is void because the conditions referred to are not fulfilled, but if the marriage has already been implemented then the marriage is it can be cancelled.

According to Yahya Harahap, the meaning of annulment of marriage is a court action in the form of a decision declaring the marriage carried out is declared invalid (no legal force or declared void). Something that is declared no legal force; then the situation is considered never existed (never existed), therefore the man and the woman whose marriage is annulled are considered to have never married as husband and wife<sup>2</sup>

The annulment of a marriage is an act of a court decision stating that the marriage bond that has been carried out is invalid, the result is that the marriage is considered to have never existed. According to Soedaryo Soimin, marriage annulment is a marriage that occurs without fulfilling the requirements that apply according to the law. Regarding the annulment of marriage in Law<sup>3</sup> No.

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<sup>2</sup> Harahap, Yahya. *Hukum Perkawinan Indonesia*, (Medan : Cv Zahir Tranding co, 1978), Page.54.

<sup>3</sup> Marwan M & Mangkupranoto T, *Hukum Islam II*, (Surakarta : Buana Cipta, 1986) Page.2.

01/1974, the regulation is contained in chapter VI, in Articles 22-28 which is further regulated in the implementing regulations, Government Regulation No.9/1975 in chapter VI, Articles 37 and 38.

The court that has the power to annul a marriage is the court whose jurisdiction covers the place where the marriage takes place or where the two husbands and wives live. For those who are Muslims, it is done in the Religious Courts, while for those who are non-Muslims, it is done in the District Courts. When the marriage annulment comes into effect, it is regulated in Article 28 paragraph 1 of Law No.1 of 1974 which states 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. There is no further legal remedy for this decision to appeal or cassation. As a result, returning to its original position before the marriage or marriage is considered never existed.

According to Riduan Shahrani in connection with the annulment of marriages that marriages in Islam may be broken by law, meaning that if there is or an event occurs, the incident according to Islamic law results in the loss of the validity of the marriage, for example, the husband or wife apostates from Islam and then embraces another religion, the marriage breaks up. for the sake of Islamic law<sup>4</sup> A marriage that is broken by law means that the marriage is broken by itself but not in the sense of itself because of natural death. In Article 22 of Law Number 01 of 1974 concerning marriage, it is expressly stated that a marriage can be annulled, if the parties do not meet the requirements to enter into a marriage.

In the explanation, the word can in the article can be interpreted as being null or void, if according to the provisions of the law, the religion does not specify otherwise. The term can be annulled in the law means that the marriage has previously occurred and is then annulled due to a violation of certain rules. This means that there is an impression that the annulment of this marriage occurred because of the non-functioning of supervision from both the family or the marriage authority, even though afterward violations of the law were found. marriage or *munakahat* law. If this happens, the Religious Court can cancel the marriage at the request of the parties concerned. A marriage can be null and void and can be annulled by the Court for two reasons, namely:

- a. Violations of procedural marriages, for example, non-fulfillment of the requirements of a marriage guardian, not being attended by witnesses and others.
- b. Violation of the marriage material, for example marriage is carried out under threat, there is a misunderstanding about the prospective husband or wife.

The legal basis for annulment of marriage has a firm legal basis as stated in Article 22 of Law Number 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to the Marriage Law, a marriage can be annulled if the parties do not meet the requirements to enter into a marriage. Anyone who is still married to one of the two parties and on the basis of the existence of a marriage bond can apply for an annulment of a new marriage, without prejudice to the provisions of Article 1 paragraph (2) and Article 4. In addition, the annulment of marriage is also regulated in Article 37 Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974, namely the annulment of a marriage can only be decided by the Court.

The legal consequences due to the annulment of a marriage that occurs between a man and a woman are considered to have never occurred. Likewise, the status of husband and wife whose marriage is annulled will return to its original state before the marriage took place because the marriage that has been held will be considered as never existing. According to the applicable provisions, it is stated that the annulment of a marriage begins after the Court's Decision has permanent legal force and is valid since the marriage took place, which means that the existence of the Court's Decision means that the marriage is considered invalid and by itself the marriage is considered never to have existed, but in Article 28 paragraph (2) Law No.1 of 1974 concerning Marriage states that the Decree is not retroactive to:

- a. Children born of this marriage.
- b. A husband or wife who acts in good faith, except for joint property, if the cancellation is based on the existence of another previous marriage.
- c. Third persons who are not included in a and b as long as they obtain the rights in good faith before the decision on cancellation has permanent legal force.

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<sup>4</sup> **Abdurrahman dan Syahrani, R.** *Masalah-Masalah Hukum Perkawinan Di Indonesia*, (Bandung :Alumni, 1978), Page.42

The third person is not included in points a and b as long as they obtain rights in good faith before the decision on the annulment has permanent legal force, against third parties who have good intentions, the cancellation of marriage does not have retroactive legal consequences, so all civil actions or engagements what the husband and wife did before the annulment of the marriage remains valid, and this must be carried out by the husband and wife so that the third party who does not have good intentions is not harmed

In the marriage legislation in Indonesia, both in Law Number 1 of 1974 concerning Marriage, it does not clearly mention the position of children resulting from incestuous marriages, namely incestuous children or discordant children. The mention of discordant children can be found in the Civil Code which states that discordant children are children born from a relationship between a man and a woman between the two based on the provisions of the law, there is a prohibition on marrying each other<sup>5</sup>.

Law No.1 of 1974 concerning Marriage does not regulate in detail the position of children resulting from incestuous marriages, in article 43 paragraph (2) which states the position of children in relation to paragraph (1) will further be regulated in a Government Regulation. Further details related to the position of children, but until now the Government Regulation that was awaited has not been established by the government. Based on this reality, it is appropriate to need a more in-depth discussion in analyzing the position of children resulting from inbreeding in Indonesian marriage legislation to find out the extent to which the status or position of the child before the law in force in this country, so that the rights of the child can be fought for as which he should have received.

Based on this, it is clear that children born from an annulled marriage will not share in the mistakes made by their parents, and regarding the status of the child born, they will still have official legal status as their biological child. between the child and his parents, this has implications for the position of the child resulting from an incestuous marriage who remains a legal child

It should be underlined that the law on marriage in Indonesia does not mention the element of intentionality or oversight as a condition for the difference in the legal consequences of an annulled marriage, so that either an incestuous marriage is carried out on the basis of an oversight or there is an element of intentional violation of the marriage prohibition, as long as the marriage is carried out as intended. like a legal marriage until it is known that there is a marriage prohibition, then this does not change the position of the child resulting from inbreeding this is in order to maintain and protect the rights of the child in the sense that they still have a legal relationship with the mother and father so that later in the interests of the child right to inherit from both parents.

In connection with this, the obligations of parents to their children must still be carried out even though the marriage between the two parents has broken up but that obligation must still be carried out until the child is an adult, as stated in Law No. and educate their children as well as possible, the obligations of parents as referred to in paragraph (1) of this Article are valid until the children marry or can stand alone, which obligations continue even though the marriage between the two parents is broken<sup>6</sup>. In accordance with the aims and objectives<sup>7</sup> contained in Article 28 paragraph (2) sub (a) of Law No.1 of 1974 this is to protect the benefit and legal interests as well as the future of children born in an annulled marriage, indeed this can sometimes bring an unfavorable impact on the interests of the child, even though psychologically the annulled marriage has become a joint obligation of husband and wife to maintain and care for children.

Husband and wife must treat it well so that the child will still be able to grow and develop to meet his physical and intellectual needs and also educate the child's soul to grow normally like other children, even though the marriage of both parents has broken up. Basically, a child who is still immature or not yet 12 years old for the good of the child, the child will be under the care and care of his mother, because apart from being able to breastfeed and take good care of the mother, the mother is usually more aware and patient in nurturing and following the process of growth and development of the child. son more than his father.

The position as a legitimate child carried by a child resulting from inbreeding has implications for the lineage for the child, the lineage of the child resulting from the marriage is based on both parents, so that this results in everything from the determination as a legitimate child including the lineage relationship of this child is also linked. With both parents, which means that the child is

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<sup>5</sup> <https://pdb-lawfirm.id> diakses 24 Oktober 2022

<sup>6</sup> KUHPerdata Pasal 31

<sup>7</sup> Undang-Undang Nomor 1 Tahun 1974 Pasal 45

entitled to rights and obligations from his father, furthermore has rights and obligations from his father's descendants, including the right to a living, hadanah and inheritance, but to both equally

Likewise in inheriting inheritance that the heir must have blood relations with the heir, for example biological children, heir's parents and so on<sup>8</sup> In Indonesian marriage law, this relationship is emphasized on one of the lineages of the father or mother, but on both equally. Meanwhile, Article 76 of the Compilation of Islamic Law (KHI) states that the cancellation of a marriage does not break the legal relationship between the child and his parents<sup>9</sup>.

Children as the result of a marital relationship must be protected from legal uncertainty about their position. The line of Islamic law regulated by Article 76 of the KHI is to protect the benefit and interests of the law as well as the future of children whose marriages were annulled by the Religious Courts so that parents' mistakes cannot be delegated to their children<sup>10</sup>.

## **VI. CONCLUSION**

1. The legal consequences arising from a marriage are that an annulled marriage is a marriage that has occurred is considered to have never existed so that the husband and wife will each return to their initial status before they were married, but the decision on the cancellation does not apply retroactively to children born from the marriage, husband or wife acting in good faith, marriage canceled because one of the husband or wife apostates, and also third parties as long as they obtain rights in good faith, before the decision to cancel the marriage has permanent legal force. except for joint property, if the annulment is based on the existence of another previous marriage and a third person who is not included in a and b as long as they obtain rights in good faith before the decision on the annulment has permanent legal force. This is as stated in Article 28 of the Marriage Law Number: 01 of 1974 concerning Marriage in conjunction with Article 75 of the Compilation of Islamic Law.

2. The status of the child from a marriage that has been annulled by the Court will have an impact on the status of the husband and wife who carried out the marriage, the marriage is considered to have never existed so that both parties return to their original position, but for other consequences, namely if the marriage is canceled has been blessed with a child, then as explained according to Article 28 of Law Number 1 of 1974 concerning Marriage jo. Article 75 of the Compilation of Islamic Law that the cancellation of the marriage does not apply retroactively to children born from the marriage, the status of the child born from the annulled marriage is that the child is still considered a legitimate child and parents have obligations to the child that are not interrupted even though the marriage they have broken up or canceled. Based on this, the authors obtain the following results: That children born from annulled marriages are still considered legitimate children so that the children born have a clear and official legal status as children of their parents, in other words, marriage annulments cannot be severing the legal relationship between the child and his parents, as in the case that the assets of the children born from the marriage still get a share of the assets as their rights even though the marriage of their parents has been broken or canceled.

## **VII. SUGGESTION**

1. To the authorized official and/or the Marriage Registrar who supervises the implementation of marriages in carrying out their duties to be more thorough and more thorough, to avoid cases of fraud regarding the identity of the prospective bride and groom against the officer by checking the correctness of the status of the bride and groom and documents before the marriage takes place.

2. The government is expected to hold a more in-depth discussion in analyzing the position of children resulting from inbreeding in marriage legislation in Indonesia, this is to find out the extent to which the status or position of the child is before the law in force in this country, so that the rights of the child can be fought for as he deserves. Of course, this discussion does not rule out other laws related to Indonesian marriage law such as: the Child Protection Act and the view of Islamic law as one of the laws that also applies in Indonesian society.

## **REFERENCES**

[1] Abdurrahman dan Syahrani, R. *Masalah-Masalah Hukum Perkawinan Di Indonesia*, Bandung :Alumni, 1978)

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<sup>8</sup> Mardani, *Hukum Keluarga Islam di Indonesia* (Jakarta : PrenadaMedia, 2016) page. 111

<sup>9</sup> -----, *Hukum Kewarisan Islam di Indonesia*, (Jakarta : Rajawali Pers, 2015) page. 27

<sup>10</sup> Zainudin, Ali. *Hukum Perdata Islam di Indonesia*, ( Jakarta : Sinar Grafika, 2012) page. 40

- [2] Hararap, Yahya, Hukum Perkawinan Indonesia, Medan : CV. Zahir Trading Co, 1978.
- [3] Saleh, Wantjik K. Hukum Perkawinan Indonesia, Jakarta : Ghalia Indonesia, 1980
- [4] Mardani, *Hukum Keluarga Islam di Indonesia*, Jakarta : PrenadaMedia, 2016.
- [5] Hukum Kewarisan Islam di Indonesia, Jakarta : Rajawali Pers, 2015.
- [6] Marwan M & Mangkupranoto T, Hukum Islam II, Surakarta : Buana Cipta, 1986
- [7] Zainuddin Ali, Hukum Perdata Islam di Indonesia, Jakarta : Sinar Grafika, 2012.
- [8] Kitab Undang-Undang Hukum Perdata (KUHPerdata)
- [9] Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan
- [10] Indonesia, Kompilasi Hukum Islam
- [11] <https://pdb-lawfirm.id> diakses 24 Oktober 2022