



**The Cancellation of The Weddings for Pre-Marriage Pregnancy Women:
An Evaluation of Decision 24/Pdt.G/2020/Ms. Ban**

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Abstract

Marriage annulment is not limited to cases of polygamy without permission, remarriage during the 'iddah period, marriages without a guardian, or coerced marriages could also be annulled. In Decision Number 24/Pdt.G/2020/Ms. Ban, the court annulled the marriage of a minor who was pregnant pre-marriage. This is a normative legal research focusing on statutory regulations and legal concepts to address this issue. Legal sources used include primary, secondary, and tertiary sources, and a qualitative approach was used to analyze the data. The findings of this study indicate that the procedure for requesting an annulment of a marriage involves submitting a request to the Syar'iyah Court along with supporting evidence in the form of documents and the testimony of witnesses who witnessed the marriage event. The panel of judges declared the marriage between the petitioner and the respondent null and void after the trial, rendering the marriage certificate null and void. In addition, the judicial tribunal requested that the Religious Affairs Office (KUA) remove the marriage record from the register book. The reason for annulling a marriage is that it was performed by the sibling of the applicant's father. However, the applicant's father did not have the authority to be a marriage guardian because the applicant was an illegitimate child; therefore, he had only a relationship with his mother and her family. Legally, the annulment of the marriage is justified because the marriage between the petitioner and the respondent does not comply with the statutory requirements and conditions. One of the unfulfilled pillars is the lack of a guardian with the authority to solemnize the marriage. Supposedly, the guardian of children conceived outside of marriage should be a judge.

Keywords: Annulment of Marriage; Marriage Guardian; Illegitimate Children

Abstrak

Pembatalan perkawinan tidak hanya terbatas pada kasus poligami tanpa izin, perkawinan dalam masa iddah, perkawinan tanpa wali, atau perkawinan karena paksaan juga dapat dibatalkan. Dalam Putusan Nomor 24/Pdt.G/2020/PA.Bn, pengadilan membatalkan perkawinan anak di bawah umur yang telah hamil di luar nikah. Penelitian ini merupakan penelitian hukum normatif yang berfokus

pada peraturan perundang-undangan dan konsep-konsep hukum untuk menjawab permasalahan ini. Sumber hukum yang digunakan meliputi sumber hukum primer, sekunder, dan tersier, dan pendekatan kualitatif digunakan untuk menganalisis data. Hasil penelitian ini menunjukkan bahwa prosedur permohonan pembatalan perkawinan adalah dengan mengajukan permohonan ke Mahkamah Syar'iyah disertai dengan bukti-bukti pendukung berupa dokumen dan keterangan saksi-saksi yang menyaksikan peristiwa perkawinan tersebut. Majelis hakim menyatakan bahwa pernikahan antara pemohon dan termohon batal demi hukum pada akhir persidangan, sehingga akta nikah tersebut batal demi hukum. Selain itu, majelis hakim juga meminta Kantor Urusan Agama (KUA) untuk mencoret catatan pernikahan tersebut dari buku register. Alasan pembatalan pernikahan adalah karena pernikahan tersebut dilakukan oleh saudara kandung ayah pemohon. Namun, ayah pemohon tidak memiliki kewenangan untuk menjadi wali nikah karena pemohon adalah anak luar kawin sehingga hanya memiliki hubungan dengan ibu dan keluarganya. Secara hukum, pembatalan perkawinan tersebut dapat dibenarkan karena perkawinan antara pemohon dan termohon tidak memenuhi rukun dan syarat yang ditentukan oleh undang-undang. Salah satu rukun yang tidak terpenuhi adalah tidak adanya wali yang berwenang menikahkan. Seharusnya, wali nikah bagi anak yang dikandung di luar nikah adalah hakim.

Katakunci: Pembatalan Pernikahan; Wali Nikah; Anak Luar Nikah

Introduction

Because it has legal ramifications for the parties concerned, i.e. the husband and wife, the marriage contract occupies a position of utmost importance in a marriage.¹ A marriage contract that is executed without adhering to all the conditions and pillars of marriage may be subject to cancellation by the parties. Therefore, precision and accuracy are crucial in order to avoid legal action in the form of cancellation. In this case, the most influential entity is the internal husband and wife couple, as they are most likely to adhere to the existing rules. Transparency in the required data is a good starting point and prevents the practice of annulling marriages. Aside from the parties, the KUA has a very strategic function as a form of prevention to ensure that future marital violations do not occur. Prior to conducting a wedding, KUA verifies all brought documents to ensure that they can be properly accounted for.

An annulment of a marriage is a legal action taken by parties with an interest in a marriage to terminate the husband-wife relationship after the marriage has taken place.² There is always a situation in which well-established marital relations must

¹ Abdul Manan, *Aneka Maslaah Hukum Perdata Islam di Indonesia*, Jakarta: Kencana, 2008, hlm. 42.

² Syifa Janany Mawaddah, Deny Guntara², Lia Amaliya, Pembatalan Perkawinan Akibat Tidak Sah Nya Wali Nikah Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Studi Putusan Nomor:

be severed for a variety of reasons, necessitating the occurrence of a marriage annulment, such as fraud in the form of a fake identity attached when registering the marriage, guardians who do not comply with the provisions of the law, and a marriage that does not meet the pillars and conditions of a valid marriage are common reasons given by the party submitting the annulment petition.³ Marriage with a false identity, such as a husband who claims he has never been married or is not bound by another marriage, despite the fact that he is still in a relationship with other women after the marriage has been consummated.

The use of annulment is a solution provided by the law through regulations for those who believe their rights are threatened or if the marriage does not comply with applicable regulations. The purpose of annulling a marriage is to safeguard the legal rights of the community and to eliminate doubts and uncertainty regarding the validity of a marriage. As detailed in Article 26 paragraph 1 of the Marriage Law, the Marriage Law specifies several grounds for annulment applications. Among the grounds for requesting the annulment of a marriage are the following: a marriage conducted by an unauthorized marriage registrar, a marriage performed without two witnesses, or a marriage involving an invalid marriage guardian. Family members in the same line of descent as the husband or wife, the husband or wife's attorney, and the husband or wife themselves are eligible to submit a request for a marriage annulment. This action seeks to preserve the sanctity and legality of the institution of marriage, as well as provide assurance that the marriage complies with all applicable laws.

According to Islamic law, children born outside of a valid marriage cannot be married off by the father who impregnated their mothers, as the child is assigned to the mother and her family.⁴ According to Islamic law, children born outside of a valid marriage cannot be married off by the father who impregnated their mothers, as the child is assigned to the mother and her family lineage. According to the Islamic law, children born from valid marriages are related to their father's lineage and masculine lineage. The guardian who arranges the marriage of an adulterous daughter is known as the guardian judge. The marriage is invalid and can be annulled by the Religious Court or Sharia Court if it is performed by a guardian from the lineage of the father who impregnated the bride or a relative of the father. The marriage was annulled because it did not adhere to the four pillars of marriage.

The practice of annulling marriages is not limited to situations involving coerced marriage, polygamy without permission, etc. Children born outside of a legal marriage are also able to annul their parents' marriage, empirical evidence suggests.

1876/PDT.G/2017/PA.KRW), *Jurnal Rehtcientia Hukum*, Vol. 2, No. 2, September 2022, hlm. 42.

³ Moh Firdaus Adi, Suhaimi Suhaimi, and Agustri Purwandi. "Status Anak Yang Dibatalkan Karena Pemalsuan Wali Nikah Perspektif Hukum Islam Dan Hukum Positif." *UNIRA LAW JOURNAL* 1, no. 2 (2023).

⁴ Maria Ulfah, Wanita Hamil Di Luar Nikah (Status Anak), *Jurnal Pembaharuan Hukum*, Volume II No.3 September - Desember 2015, hlm. 329.

This is evident from the applicant's submission of decision number 24/Pdt.G./2020/Ms.Ban, in which he asked the panel of justices to annul his marriage. The applicant's marriage to the younger brother of his biological father forms the foundation of his application. Even though the applicant was born of a legal marriage in which his father wed his mother while she was 5 months expectant. Four months after the wedding, the mother of the applicant gave birth to the Petitioner. This condition differs from the common one in which a mother is expectant for nine months and then gives birth to her child in the womb. Based on the problems described above, it is interesting to study this article for its analysis of two main topics: the mechanism for requesting an annulment of the marriage of a child who is pregnant out of marriage and the juridical review of such an annulment.

Cancellation of Marriage According to Indonesian Law

In Indonesian law, marriage annulment is governed by Articles 22 to Article 28 of the Marriage Law.⁵ This regulation addresses the fundamental concept of annulment, the grounds for annulment, the party authorized to file an annulment petition, and the court with jurisdiction to hear the case. A marriage annulment, in brief, is an endeavor to annul a marriage that has taken place due to a violation of certain conditions.

In accordance with Indonesian law, the function of the guardian in a marriage is crucial. In fact, if a marriage is not performed by a legal guardian, the marriage may be invalid.⁶ KHI governs two categories of marriage guardians: lineage guardians and judge guardians. The guardian of the bride's lineage is an individual who is related to the bride by blood or lineage. In other terms, he is a close relative of the bride who is her blood relative. The *nasab* or lineage guardian has the authority and right to serve as a guardian during the wedding process.

Unlike the lineage guardian, the judge's guardian has no familial connection to the betrothed. A guardian judge is a government-selected individual who has been conferred authority as a marriage guardian by the competent authority. This guardian judge is not related to the bride by blood, but he is delegated legal authority or authority by the authorities to serve as marriage guardian. In other words, if the bride lacks a *nasab* or lineage guardian who meets the requirements, a judge guardian may be appointed to fulfil the duty of guardian during the marriage process. Even if no suitable *nasab* guardian is available, this step is taken to ensure that any marriage remains in compliance with Islamic law.

KHI specifies a number of grounds for filing for annulment of a marriage. In accordance with Article 71 of the KHI, a marriage may be annulled if the spouse engages in polygamy without permission from the Religious Court. Polygamy is the

⁵ Ahmad Rafiq, *Hukum Perdata Islam di Indonesia*, Edisi Revisi, Jakarta: Raja Grafindo Persada, 2015, hlm. 120.

⁶ Sukaynah QA Rizal, Donna Okthalia Setiabudhi, and Susan Lawotjo. "Perbandingan Kedudukan Wali Nikah Bagi Anak di Luar Nikah Menurut Perspektif Hukum Islam Dan Hukum Positif di Indonesia." *Lex Privatum* 11, no. 4 (2023).

practice of concurrently marrying multiple women. However, in Indonesia, polygamy requires the approval of the Religious Court. If the spouse engages in polygamy without legal authorization, the marriage may be dissolved. Second, a legally married woman is still the wife of a non-divorced male (*mafqud*). If a woman who is legally married to one man turns out to be legally wedded to another man (*mafqud*), the marriage can be annulled. Third, married women remain in the *iddah* (waiting) period after their husband's divorce or death before remarrying. *Iddah* is the period of time required before a woman can remarry following a divorce or the death of her spouse.

If a woman marries another male while still in her *iddah* period, the marriage can be annulled. Fourthly, the marriage violates the age restriction outlined in Law No. 1 of 1974. This statute establishes the minimum age for legal marriage. The marriage can be annulled if it entails a person under this age limit and without special permission (dispensation). Fifth, marriages are conducted without a guardian or by a guardian who lacks the required authority. In Islam, a legal guardian is required for marriage. A marriage can be annulled if it is solemnized without a legal guardian or by a guardian who lacks the necessary authority.⁷ Sixth, the marriage was performed under duress or illegal pressure. The marriage can be annulled if it was conducted under coercion or illicit pressure. The legal consequences of a forced marriage are invalid.⁸ Rasulullah SAW said, "The law is removed (from my people) because of three things: mistakes, forgetfulness, and forced people" (Al-Thabrani).⁹

There are two types of marriages that can be annulled, according to Abdul Rahman Al-Juzairy: fasid marriage and false marriage. The law of fasid and false marriages is the same: they are invalid. Fasid marriage is one in which one of the requirements is not met, whereas a fraudulent marriage is one in which none of the pillars are met. The law regarding fasid and invalid marriages is identical. There is a fundamental distinction between fasid marriage and false marriage, despite the fact that both result in an invalid marriage. The difference between fasid and false marriages rests in the incompleteness of the marriage requirements and the failure to fulfill the marriage.¹⁰

Mechanism for Requesting the Cancellation of Pre-Marital Child Marriages in Decision No. 24/Pdt.G/2020/Ms. Ban

The Indonesian government allows parties who believe that the pillars and conditions for a valid marriage have not been met to annul the marriage. The

⁷ Tarantang, Jefry. "Relevansi Hadis Tentang Wali Nikah Di Zaman Modern." *Ahkam Jurnal Hukum Islam* 10, no. 1 (2022).

⁸ Ahmad Rafiq, *Hukum Perdata Islam di Indonesia*, Edisi Revisi, Jakarta: Raja Grafindo Persada, 2015, hlm. 123.

⁹ *Ibid*, hlm. 123.

¹⁰ Abdul Rahman Al-Juzairy, *Kitab Al-Fiqh 'ala Madzahib al-Arba'ah*, Juz IV, (Mesir: Maktabah Al-Tijariyah Al-Kubra, tt), hlm. 118.

necessary step is to file a marriage annulment with the court in accordance with their respective jurisdictions:

1. Submission of the Application

The process of requesting an annulment of a marriage falls under the category of voluntary cases, meaning that there is no dispute involved. Only one party is involved, namely the applicant who submits an application to the panel of judges to annul his marriage. According to the Petitioner, there are inconsistencies in the implementation of the pillars of marriage, particularly with regard to marriage guardians who are invalid under Islamic law. In this marriage, the marriage guardian was the applicant's father's little brother or sister.

Submitting an application for annulment of the marriage of a child born pre marriage involves submitting an application to the *Syar'iyah* Court explaining the basis for the annulment. In the case, the issues raised include the fact that the Petitioner (Wife) and Respondent I (Husband) are legally married according to religious principles and state and have been registered in accordance with applicable laws and regulations. However, because his father had died, the person functioning as marriage guardian was the applicant's father's younger brother. After two months of marriage, the applicant discovered that he was an illegitimate child. Based on the aforementioned issues, the applicant submitted a petition with two main requests: first, to annul the marriage between husband and wife that took place on 11 September 2019; and second, to declare that the Marriage Certificate and Excerpt from Marriage Certificate 210/014/XI/2019 dated 11 September 2019 issued by the Baiturrahman District KUA have no legal force and are declared null and void under the law.

2. Proof

A person who submits a claim in court must be able to prove the actual facts using available evidence, such as written documents and witness testimony. Through written evidence and testimony presented at trial, the judge can decide the outcome of the case and then formulate the law that applies to that particular case.

To bolster his claim, the applicant has submitted written evidence in the form of his ID card, which demonstrates that he has an interest in the annulment of the marriage, as well as the marriage book between himself and the respondent, which serves as proof that the marriage was performed in accordance with the state law because it was recorded by an authorized official.

3. Recitation of the Verdict

The panel of judges granted the request based on the evidence presented at trial and in accordance with applicable statutory and regulatory mechanisms. According to the judge's decision, the marriage between the Petitioner and Respondent I, which took place on 11 September 2019 and was registered at the

Religious Affairs Office, Baiturrahman District, Banda City, Aceh, with a Marriage Certificate Excerpt Number 210/014/IX/2019, was annulled.

Judicial Review of the Annulment of Extramarital Child Marriages in Decision Number 24/Pdt.G/2020/Ms. Ban

The annulment of pre-marriages children's marriage carried out by the judge in decision Number 24/Pdt.G/2020/Ms. Ban is in accordance with statutory regulations. This is because the panel of judges granted the annulment because the guardian who married the applicant was not a guardian permitted by Islamic law. Additionally, the applicant was married to the younger sibling of the person who impregnated his mother prior to the marriage. In other terms, the applicant's mother engaged in adultery prior to his conception. When the applicant's mother was five months expectant, the applicant's father wed her. In its deliberations, the judging council formulated:

At the time of the marriage ceremony of the Petitioner's mother (Mother) and the father who impregnated her (Father), the Petitioner's biological mother was already five months pregnant with the Petitioner, and four months after the marriage, the Petitioner's biological mother with Irfan, the petitioner was born

These considerations indicate that the person who impregnated his mother only legally married after the mother was pregnant. This means that the applicant was born outside of a legal marriage and, according to the Islamic law, is only related by blood to his mother and her family. Therefore, the lineage of the person who impregnated her cannot act as marriage guardian.

The existence of guardians who do not comply with the provisions of Islamic law indicates that the supervision carried out by the KUA in examining guardians who act as people who have the right to marry has not been optimal. The KUA has a very important role in examining the guardian who will marry off a girl in order to prevent the occurrence of unauthorized guardians. In addition to the KUA's role in preventing inappropriate marriage guardians, the active participation of the prospective bride and groom and their families, as well as the provision of accurate information, are essential. The bride and her family are fully aware of the guardian's role in the wedding ceremony.

The family who testified at the trial knew for sure that the guardian who married the woman was the applicant's father's younger brother. Two witnesses testified at the trial that the marriage between the Petitioner and her husband was performed by an invalid witness.

According to the witness, the 11 September 2019 marriage ceremony between the Petitioner and Respondent I was invalid under Islamic Sharia because the Petitioner's biological mother was 5 months pregnant with the

Petitioner when she married the Petitioner's father, and 4 months after the marriage ceremony, both the biological mother of the Petitioner and the father of the Petitioner were born;

At the time of the petitioner and respondent's I wedding, was the petitioner's father's younger sibling because the petitioner's father had perished in the tsunami;

The testimony of the first witness was then bolstered by the testimony of the second witness, who explained that:

That the witness no longer recalls the year the applicant's father married the applicant's mother, but recalls that the applicant's mother was five months expectant at the time of their marriage and that Fannika Maulida was born approximately four months later

As Irfan, Fannika's father, was deceased at the time of the petitioner's marriage to Respondent I, Irfan's younger sibling, Fuadi, acted as the marriage guardian

The panel of judges' decision to grant the petitioner's request for annulment of marriage appears to be consistent with the law and the sect's ulama. Article 26 of the Marriage Law clearly states that a marriage solemnized by an unauthorized marriage registrar, an invalid marriage guardian, or without the presence of two witnesses may be annulled by the family in the direct line of descent. from husband or wife, prosecutor, and husband or wife. This decision is in accordance with decision Number 24/Pdt.G/2020/Ms. Ban because the marriage involved an invalid marriage guardian. The applicant did not learn about this until two months after the wedding. Accordingly, from a legal standpoint, granting a marriage annulment request is consistent with the applicable laws and regulations.

Imam Malik and Imam Syafi'i, for example, argue that the status of children born pre-marriage will depend on the time of birth. If the birth occurs more than six months after the parents' marriage, the child will be entrusted to the father. If the birth occurs less than six months after the parents' marriage, the child will be entrusted to the mother because sexual relations are presumed to have occurred before marriage. The Hanafi school of thought, on the other hand, holds that children are still entrusted to the father who conceived them, regardless of the duration of the mother's pregnancy.

The panel of judges appears to agree with the Malikiyah and Syafi'iah ulama, who believe that children born outside of marriage should be given to their mother and her mother's family. Therefore, the marriage can be annulled because the child is assigned to have lineage to the mother and her mother's family. Therefore, the decision of the panel of judges was consistent with the views of the ulama from the school of thought to which they adhered.

Conclusion

Based on the preceding discussion, it can be concluded that the mechanism for annulling child marriages born pre-marriage is carried out by interested parties to the Syar'iyah Court in their respective jurisdictions. The request for annulment in the decision Number 24/Pdt.G/2020Ms.Ban was filed by the wife because her marriage to the husband was invalid.

The applicant's marriage was performed by the biological sister of his father, despite the fact that the applicant's child was born outside of a legal marriage, as the applicant's father married the applicant's mother for only a few months before she gave birth to the applicant within four months. Legally, the decision is appropriate because the judge's guardian has the authority to marry off the judge's illegitimate child, despite the fact that the father's junior sibling married him.

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