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Petition for Annulment of Marriage Filed After The Expiration of The Statutory Time Limit in Relation to The Relevant Laws and Regulations

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ABSTRACT

A marriage can be annulled if the parties do not meet the legal requirements for the validity of the marriage. There are several conditions that must be met in submitting a marriage annulment application, one of which is regarding the period of application which is canceled after the lapse of 6 (six) months as stipulated in Article 27 of the Marriage Law in conjunction with Article 72 KHI. The purpose of this study is to analyze and determine the validity and legal certainty of marriage annulment applications filed after the expiration of the time period along with the application of the reasons based on the Marriage Law and the Compilation of Islamic Law. This research uses a normative juridical approach with descriptive analytical research specifications, reviewed through secondary data obtained from literature studies and field studies in the form of interviews. The data analysis method used is a qualitative normative. Based on the results of the study, it shows that, first, the provision of a period of 6 (six) months in Article 27 of the Marriage Law in conjunction with Article 72 KHI applies only to the reasons for annulment of marriage contained in the article which are calculated from the time the marriage is validly carried out. The granting of marriage annulment filed after the expiration of the time period is valid because, there is an alternative for the Panel of Judges to consider the reasons for violating the terms and conditions of marriage. Second, differences in interpretation of regulations related to the implementation of the expiration period cause disparities in marriage annulment decisions, resulting in inconsistencies that are felt to provide less legal certainty.

Keywords: marriage annulment; time period; legal certainty.

INTRODUCTION

Human beings, as social creatures (*homo socius*), are endowed with intellect and the capacity to sustain and continue life. Fundamentally, Allah the Almighty created all living beings, including humans, in pairs. In order to continue life, individuals inherently depend on one another for mutual assistance and to fulfill their respective needs. This interdependence gives rise to interactions among individuals within a society. One form of such

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interpersonal relationships is marriage, which is established between a man and a woman¹.

Every marriage entered into by a man and a woman is not merely based on the fulfillment of psychological and/or biological needs, but rather constitutes a process that reflects the realization of their natural human disposition. Marriage thus forms both a physical and emotional bond between a man and a woman as husband and wife. Furthermore, this physical and emotional bond in marriage signifies an agreement rooted in both outward (material) and inward (spiritual) dimensions, which cannot be equated with conventional civil agreements in general².

Marriage holds profound significance as it is regarded as a sacred and solemn institution for human beings. There are specific requirements that must be fulfilled in order for a marriage to be deemed valid and properly conducted, with the aim of establishing a harmonious, loving, and compassionate family (*sakinah, mawaddah, wa rahmah*) in accordance with religious principles and governing regulations. Consequently, the institution of marriage has generally been regulated across societies worldwide—whether through customary traditions, religious or spiritual beliefs, or statutory laws enacted by the state.

Indonesia, as a state governed by the rule of law, has specifically regulated the implementation of marriage. As a country with a Muslim-majority population (without disregarding other religions or beliefs), Islamic marriage is governed primarily by the highest source of law, namely the Qur'an, complemented by the Sunnah of the Prophet. In addition, the legal framework is further supported by Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (hereinafter referred to as the *Kompilasi Hukum Islam* or KHI).

Article 2 of the *Kompilasi Hukum Islam* (KHI) stipulates that marriage under Islamic law is defined as a *nikah*, which is a solemn and strong covenant (*mitsaqan ghalidzan*) undertaken in obedience to the command of Allah, and its fulfillment is considered an act of worship. The meaning of a "strong covenant" in this context refers to an agreement imbued with spiritual significance, thereby making it impermissible to dissolve the marriage arbitrarily or without valid and substantial grounds, in accordance with the provisions established by Islamic law³.

Shifting to the applicable positive law in Indonesia, the substantive legal provisions governing marriage are codified in Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage (hereinafter referred to as the

¹ Judiasih, S. D. (2019). *Harta Benda Perkawinan*. Bandung: PT Refika Aditama, p. 1.

² Sanjaya, U. H., & Faqih, A. R. (2017). *Hukum Perkawinan Islam*. Yogyakarta: Gama Media, p. 10.

³ Ria, W. R. (2017). *Hukum Keluarga Islam*. Bandar Lampung: UNISA Press, p. 2.

Marriage Law). The definition of marriage according to the Marriage Law is set forth in Article 1, which states that marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of forming a happy and everlasting family (household) based on the belief in the One and Almighty God.

In essence, the primary objective of marriage is to establish a happy and enduring family or household. Therefore, marriage should not be entered into with the intention of obtaining temporary pleasure or material gain; rather, it must be founded upon sincerity and genuine commitment to building a harmonious family⁴. When prospective spouses adhere to the prescribed conditions and requirements of marriage, it is expected that the goals of marriage can be realized. However, in practice, there are numerous instances in which married couples are unable to fulfill each other's psychological and/or biological needs. As a result, happiness and well-being within the marital union may fail to materialize.

The aspiration to build a happy and lasting family is a shared hope among all couples who enter into marriage. However, it is a natural law of this temporal world that nothing is truly eternal – including marriage itself⁵. In certain cases, marital relationships may come to an end. The legal termination of a marriage results in the dissolution of the husband-and-wife relationship. One form of such termination is the annulment of marriage.

In Islamic terminology, the concept of marriage annulment is known as *fasakh*, derived from the Arabic root word *fa-sa-kha*, which means "to annul" or "to dissolve." When applied to the context of marriage, *fasakh* refers to the act of nullifying or dissolving a marital union⁶. In general terms, the annulment of marriage refers to the nullification of the marital relationship after the marriage contract (*akad nikah*) has been performed. This annulment may occur for two main reasons: first, the existence of factors that invalidate the marriage contract itself; and second, the emergence of new circumstances following the marriage contract while the marital relationship is ongoing⁷.

The regulation of marriage annulment as stipulated in the *Kompilasi Hukum Islam* (KHI) is essentially in line with the provisions set forth in the Marriage Law, as the KHI serves as a legal framework for Muslims that aligns with Islamic principles and complements the Marriage Law. According to Article 22 of the Marriage Law, a marriage may be annulled if the parties fail to meet the legal requirements for entering into

⁴ Nugroho, B. D. (2020). *Hukum Perdata Indonesia*. Bandung: PT Refika Aditama, p. 43.

⁵ Isnaeni, M. (2016). *Hukum Perkawinan Indonesia*. Bandung: PT Refika Aditama, p. 97.

⁶ Syarifuddin, A. (2019). *Hukum Perkawinan Islam di Indonesia*. Jakarta: Kencana, p. 241.

⁷ Patampari, A. S. (2020). "Konsekuensi Hukum Pembatalan Perkawinan Menurut Hukum Islam". *Jurnal Hukum Keluarga Islam dan Kemanusiaan*, 2(2), p. 91.

marriage. In addition, annulment may also be pursued on the grounds of violations of the legal prohibitions against marriage.

The annulment of a marriage may only be determined by a court decision, as stipulated in Article 37 of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 on Marriage (hereinafter referred to as Government Regulation No. 9 of 1975). This provision aims to prevent marriage annulments from being carried out outside the judicial system, considering the complex legal consequences that may arise from such annulments⁸. The annulment of a marriage has implications not only for the spouses involved but also for other parties connected to the marriage⁹.

The provisions concerning the annulment of marriage in the *Compilation of Islamic Law* (KHI) are outlined in Article 72 paragraphs (1) and (2), which are generally consistent with those in the Marriage Law. However, paragraph (2) of the KHI adds the phrase "fraud" as a specific ground for annulment. The explanatory note clarifies that fraud refers to situations in which, for example, a husband claims to be unmarried at the time of marriage, but is later found to already have a wife, resulting in polygamy without the court's authorization. This also includes deception regarding one's personal identity.

In reality, within society, marriages are often conducted under coercion or may occur due to mistaken assumptions. In such circumstances, the legal framework is provided in Article 27 paragraphs (1) and (2) of the Marriage Law in conjunction with Article 72 paragraphs (1) and (2) of the *Compilation of Islamic Law* (KHI), which stipulate that a husband or wife may file a petition for the annulment of marriage if¹⁰

1. The marriage was conducted under unlawful coercion;
2. At the time the marriage was concluded, fraud or a mistaken belief occurred regarding the identity of the husband or wife.

A petition for the annulment of marriage must be submitted to the court within the time frame stipulated in Article 27 paragraph (3) of the Marriage Law in conjunction with Article 72 paragraph (3) of the *Compilation of Islamic Law* (KHI). These provisions state that if the coercion has ceased, or if the party who was mistaken becomes aware of the situation, and both spouses continue to live together as husband and wife for a period of six (6) months without exercising the right to file for annulment, then that right shall be forfeited.

⁸ See the Elucidation of Pasal 37 Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁹ Daromi, & Purwadi. (2019). Pembatalan Perkawinan Karena Adanya Pemalsuan Identitas Suami Dalam Perkawinan Poligami". *Jurnal Bedah Hukum*. 3(2), p. 107.

¹⁰ See Pasal 27 ayat (1) dan (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan jo. Pasal 72 ayat (1) and (2) Kompilasi Hukum Islam.

One of the cases concerning marriage annulment is found in the decision of the Religious Court of Purwokerto, Decision Number 182/Pdt.G/2024/PA.Pwt. This decision pertains to an annulment case filed by the Plaintiff (wife) against the Defendant (husband). In brief, the Plaintiff and Defendant were legally married on April 21, 2008, and their marriage was blessed with one daughter. However, several years later, the Plaintiff discovered that at the time of their marriage, the Defendant was still legally married to another woman, identified by the initials SS, since September 8, 1996. In other words, the Defendant committed fraud by falsifying his identity as a bachelor and entered into a polygamous marriage without obtaining the consent of either his first wife or the Plaintiff as his second wife. On these grounds, the Plaintiff filed a petition for the annulment of her marriage to the Defendant in the *a quo* case.

In its decision, the judge granted the Plaintiff's claim *verstek* (in absentia). However, what deserves particular attention is the issue of the time frame between the solemnization of the marriage and the filing of the annulment petition, when referring to the applicable legal provisions. As stipulated in Article 27 paragraph (3) of the Marriage Law in conjunction with Article 72 paragraph (3) of the *Compilation of Islamic Law* (KHI), the permitted period for filing a petition for annulment is six (6) months after the coercion in the marriage ceases, or after the party who was mistaken becomes aware of the true circumstances.

Another similar case can be found in the decision of the Religious Court of Bantul, Decision Number 1577/Pdt.G/2023/PA.Btl. This case involved a petition for the annulment of marriage filed by the Plaintiff (husband) against the Defendant (wife). In essence, the Plaintiff and Defendant were legally married on May 17, 2022, and their marriage was officially registered at the Office of Religious Affairs (KUA). However, during the course of the marriage, it was revealed that the Plaintiff had been mistaken about the identity of the Defendant, who, at the time of the marriage, had used a different name and identity, and claimed to be unmarried. Upon further investigation, the Plaintiff discovered that the Defendant was, in fact, still legally married to another person and had four (4) children from that marriage.

In its legal considerations, the panel of judges in the *a quo* case took into account, among other things, the objection (exception) raised by the Respondent concerning the expiration of the statutory time limit for the Petitioner's claim. The court found that the petition had indeed exceeded the six (6) month period stipulated by law. Accordingly, the panel of judges concurred that the Petitioner's claim was time-barred and had been filed beyond the permissible period. As a result, the court granted the Respondent's exception, and in the main case declared the Petitioner's claim inadmissible (*niet ontvankelijk verklaard*/NO).

Based on the aforementioned background, several issues arise that warrant further attention and serve as the basis for this legal research. These issues can be formulated as follows: 1). How valid is the annulment of marriage decision when the petition is filed after the expiration of the statutory time limit, and how is it applied in relation to the grounds for annulment under the Marriage Law and the Compilation of Islamic Law? 2). How is legal certainty ensured in annulment of marriage petitions submitted beyond the expiration of the statutory time limit as decided by the Religious Court, in view of the Marriage Law and the Compilation of Islamic Law?

RESEARCH METHOD

This study employs a normative juridical approach, which refers to legal norms contained in statutory regulations, court decisions, and the prevailing legal norms in society. The research emphasizes the synchronization and consistency of one legal provision with others within the hierarchical structure of the legal system¹¹. The research specification employed in this study is descriptive-analytical, which is examined through secondary data obtained from literature review and field research, including interviews with relevant parties from the West Java Indonesian Ulema Council (*Majelis Ulama Indonesia Jawa Barat*) and the Religious Court of Bandung (*Pengadilan Agama Bandung*). The data analysis technique used is a normative qualitative method, which involves examining the data based on legal aspects and is grounded in the applicable statutory regulations.

DISCUSSION

The Legal Validity of Marriage Annulment Decisions Filed After the Statutory Time Limit and the Applicability of Grounds for Annulment Based on the Marriage Law and the Compilation of Islamic Law

Marriage, according to the Marriage Law, is a physical and spiritual bond between a man and a woman established with the aim of forming a happy and everlasting household based on the belief in One Almighty God. This bond is considered sacred, as it is conducted in accordance with specific pillars and requirements. Marriage must be conducted in accordance with Article 2 of the Marriage Law, which serves as the primary legal basis for the validity of a marriage, both in terms of religious tenets and state law.

The formation of a happy and enduring family within a *sakinah, mawaddah, and rahmah* marriage is the ideal and aspiration of every couple intending to enter into

¹¹ Supranto. (2003). *Metode Penelitian Hukum dan Statistik*. Jakarta: Rineka Cipta, p. 105.

matrimony¹². Dalam praktiknya tidak sedikit perkawinan yang putus karena beberapa hal salah satunya yaitu dengan pembatalan perkawinan. Dimana, perkawinan yang pada pelaksanaannya tidak memenuhi rukun dan syarat sahnya perkawinan dapat diajukan pembatalan perkawinan sebagaimana telah diatur dalam UU Perkawinan dan KHI.

The annulment of a marriage may be carried out based on several grounds, which are generally divided into two categories: first, due to violations of the essential elements (*rukun*) and legal requirements of marriage, as stipulated in Article 26 of the Marriage Law¹³. Second, due to the occurrence of unlawful coercion and/or a mistaken belief concerning the identity of the husband or wife at the time the marriage was performed.

Furthermore, with regard to the second ground for annulment of marriage, there is a time limitation for submitting an application for annulment, as stipulated in Article 27 of the Marriage Law in conjunction with Article 72 of the Compilation of Islamic Law, which states that:

- “(1) A husband or wife may file a petition for annulment of marriage if the marriage was conducted under unlawful duress.
- (2) A husband or wife may file a petition for annulment of marriage if, at the time of the marriage, a mistaken assumption was made concerning the identity of the husband or wife.
- (3) If the duress ceases or the party under mistaken assumption becomes aware of the true circumstances, and continues to live as husband and wife for a period of six (6) months thereafter without exercising the right to petition for annulment, such right shall be deemed forfeited.”

Based on the chronology of the marriage annulment case in the Purwokerto Religious Court Decision Number 182/Pdt.G/2024/PA.Pwt, the Plaintiff (Wife) submitted a petition for annulment of marriage on January 16, 2024, concerning her marriage to the Defendant (Husband), which had been lawfully solemnized on April 21, 2008, and officially registered with the Office of Religious Affairs (KUA).

In the case at hand, it was revealed that the Plaintiff filed the petition on the grounds that the marriage violated the provisions of the Marriage Law, as the Defendant was still legally married to another woman, SS, at the time of his marriage to the Plaintiff. Prior to the marriage, the Defendant had declared himself to be unmarried. Such a misrepresentation not only harmed the Plaintiff but also SS, his first wife.

¹² Iswandi, A. (2021). Review Pembatalan Perkawinan yang Disebabkan Penipuan pada Pengadilan Agama”. *Jurnal Ilmu Hukum dan Pengkajian Islam*. 1(2), 76.

¹³ "See Pasal 26 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan."

The Defendant's concealment of his marital status constitutes an act of fraud, which led the Plaintiff to a mistaken belief regarding the true identity and status of the Defendant. The Panel of Judges concluded that the Plaintiff's claim was well-founded and thus granted the petition for annulment *verstek* (in absentia) in the *a quo* case.

The grounds for the petition for annulment of marriage as argued by the Plaintiff in the *a quo* case can essentially be categorized as a violation of the marital requirements, specifically a violation of the **relative material requirements** as regulated under **Article 9 of the Marriage Law**, which stipulates:

"A person who is still bound by a marriage bond with another person shall not be permitted to marry again, except in the circumstances stipulated in Article 3 paragraph (2) and Article 4 of this Law."

It was discovered after the marriage between the Plaintiff and the Defendant that, at the time of their marriage, the Defendant was still legally bound in marriage to another woman identified as SS. Thus, the Defendant committed polygamy without obtaining permission from the Court, which constitutes a violation of the applicable laws and regulations. Furthermore, neither the first wife nor the second wife was aware of this dual marital status, resulting in deception regarding the Defendant's identity towards the Plaintiff.

Furthermore, referring to the date of the marriage, there is a time span of approximately sixteen (16) years before the petition for annulment of the marriage was filed. The annulment in the case at hand should not have been submitted because it exceeded the period stipulated by the Marriage Law, which is six (6) months. The grounds for annulment due to threats, fraud, and/or mistake must not exceed six (6) months counted from the date the marriage occurred. Any petition for annulment filed after this prescribed time is no longer admissible as the right to file has lapsed.

The application of the time limit for filing a petition for annulment of marriage in various legal literatures reveals differing opinions. Based on an interview with a judge at the Bandung Religious Court, the regulation regarding the time frame for submitting a petition for annulment of marriage as stipulated in the Marriage Law and the Compilation of Islamic Law (KHI) is essentially applied only to the grounds for annulment stated in Article 27 of the Marriage Law in conjunction with Article 72 of the KHI, namely due to unlawful threat, fraud, and/or mistaken identity. Therefore, a petition for annulment of marriage on these grounds cannot be submitted if more than six (6) months have passed since the marriage took place, and not six months from the time the threat or mistaken identity was discovered.

This is essentially in line with the explanation found in the Guidelines for the Implementation of Duties and Administration of Religious Courts, which emphasizes

that a petition for annulment of marriage by a husband or wife on the grounds that the marriage was conducted under an unlawful threat can only be submitted within six (6) months from the date the marriage was held. The petition must be submitted to the Religious Court or the Mahkamah Syar'iyah within the jurisdiction where the marriage took place or where both spouses, the husband, or the wife reside¹⁴.

The second case is contained in the Decision of the Bantul Religious Court Number 1577/Pdt.G/2023/PA.Btl, with a case chronology stating that the Petitioner (Husband) submitted a petition for annulment of marriage on December 11, 2023, concerning his marriage to the Respondent (Wife), which was initially conducted unofficially (*siri*) on January 30, 2022, and later officially registered at the Office of Religious Affairs (KUA) on May 17, 2022. At the time of the marriage, the Petitioner had previously been married, while the Respondent had not. The argument presented by the Petitioner in his claim for annulment was that, during the course of their marriage – which had lasted approximately 1 year and 8 months – he discovered a mistaken assumption and deception regarding the Respondent's marital status, as she had allegedly been previously married.

In the second case, the Respondent submitted an exception (*eksepsi*) containing several points of argument, one of which concerned the statute of limitations regarding the annulment petition filed by the Petitioner. In its legal considerations, the Panel of Judges upheld only this particular exception. The Panel reasoned that the Petitioner had, in fact, been aware of his mistaken assumption regarding the Respondent's marital status since December 2022. However, the annulment petition was only filed on December 11, 2023, thereby exceeding the six-month statutory period. Consequently, the Panel of Judges held that the Petitioner's application in the *a quo* case had expired and thus was time-barred (*kadaluwarsa*). As a result, the petition was declared inadmissible (*niet ontvankelijk verklaard / NO*).

The Panel of Judges considered the petition to be time-barred, as the statutory period was deemed to have lapsed, calculated from the moment the Petitioner became aware of the mistaken belief regarding the Respondent's marital status. Essentially, this reflects a difference in determining the commencement of the time limit – whether it begins from the time the marriage took place or from the moment the Petitioner became aware of the mistake. However, even if the Judges had calculated the time period from the date the marriage was legally performed, the petition would still have exceeded the six (6) month limit by the time it was filed.

¹⁴ Ibrahim Ahmad Harun, *Loc.Cit.*

Upon examining both cases – which fundamentally share similar grounds for the petition to annul the marriage – there exists a striking difference in the final rulings, which stand in contrast to one another based on their respective legal considerations. In the case of the marriage annulment decided in the Purwokerto Religious Court Decision Number 182/Pdt.G/2024/PA.Pwt, the petition was granted without any consideration of the expiration of the statutory time limit for filing. In contrast, in the Bantul Religious Court Decision Number 1577/Pdt.G/2023/PA.Btl, the petition was rejected on the grounds that the statutory time period had lapsed.

In practice, the basis of a judge's consideration in deciding a case does not solely refer to juridical aspects, namely written law, but also takes into account sociological aspects reflected in the values of justice for the parties involved. In line with this, Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power stipulates:

"Judges and constitutional judges shall be obliged to explore, follow, and understand the legal values and sense of justice that live within society."

Furthermore, the explanation states that this provision is intended to ensure that every judicial decision aligns with both the law and the sense of justice within society. In this regard, judges in annulment of marriage cases based on fraud or misrepresentation are obligated to consider the values of justice for the party who has been harmed.

The regulation regarding the 6 (six) month time limit for filing a petition for annulment of marriage, as stipulated in Article 27 of the Marriage Law in conjunction with Article 72 of the Compilation of Islamic Law (KHI), is absolute and cannot be waived. It applies specifically to the grounds for annulment set out in these provisions. Therefore, a significant disparity can be observed between the two court decisions. Considering that the grounds for annulment claimed by the Plaintiff in the first case fall under the category of fraud and/or misrepresentation, the petition in the Decision of the Purwokerto Religious Court Number 182/Pdt.G/2024/PA.Pwt should have been deemed inadmissible, as it was filed beyond the time limit, and the right had automatically lapsed.

In adjudicating this case, the judge essentially had the alternative to grant the petition by considering the grounds for annulment presented in the *posita*. If the first ground concerns a violation of the legal requirements for marriage, and the second involves fraud or misrepresentation, then, generally, priority is given to the first ground – namely, the violation of marital requirements – since it is more concrete and easier to prove compared to fraud, which is inherently abstract in nature.

Referring back to the first case, the Plaintiff's argument for annulment was based on having been harmed by the Defendant's deceit regarding marital status, as well as

the non-fulfillment of the essential requirements and elements of a valid marriage, given that the Defendant was still bound by a prior marriage. Fundamentally, a husband is allowed to have more than one wife if he so desires and obtains permission from the Religious Court based on stipulated grounds. In brief discussion on polygamy, Article 71 of the Compilation of Islamic Law (KHI), point (a), states that a marriage may be annulled if a husband enters into a polygamous marriage without the permission of the Religious Court. Furthermore, the elucidation of Article 72 of the KHI clarifies the meaning of the term "fraud," specifically when a husband claims to be single at the time of marriage but is later found to already have a wife, thus resulting in a polygamous marriage conducted without court approval. The same applies to deception concerning one's personal identity¹⁵.

According to the opinion of the Chairman of the Fatwa Commission of the Indonesian Ulema Council (MUI) in West Java, it was stated that in this case, the Defendant clearly committed identity falsification in order to enter into a polygamous marriage without obtaining permission from the Religious Court. This was evidenced by the issuance of a marriage certificate by the Office of Religious Affairs (KUA), which can be interpreted as proof that the Defendant falsely claimed to be single. Such actions then fall under the realm of criminal law, as the Defendant committed fraud against the KUA official.

As previously explained, a judge deciding on a petition for annulment of marriage has the alternative to grant the petition based on grounds that are easier to prove, even if, in practice, it is submitted after the statutory time limit has passed. Since the grounds for annulment of marriage – whether due to unlawful coercion, fraud, and/or mistaken identity of either spouse – are generally difficult to prove, in the first case it can be interpreted that the Panel of Judges granted the annulment based on the consideration that the marriage between the Plaintiff and the Defendant violated the legal requirements and pillars of marriage, namely that one party was still bound by a previous marriage. This violation can be substantiated, for instance, by comparing the Marriage Certificate Extracts of the first and second marriages.

Furthermore, referring to the decision in the second case, the Panel of Judges rejected the petition for annulment of marriage on the grounds of mistaken identity regarding the Defendant, as the petition had exceeded the time limit stipulated in Article 27 paragraph (3) of the Marriage Law in conjunction with Article 72 paragraph (3) of the Compilation of Islamic Law (KHI). Although, in the *a quo* case, the Panel of Judges interpreted the six-month time limit as beginning from the moment the Petitioner

¹⁵ See the Elucidation of Pasal 72 Kompilasi Hukum Islam.

became aware of the mistaken identity regarding the Respondent, this interpretation differs from that provided in the Guidelines for the Implementation of Duties and Administration of Religious Courts.

The differing interpretations regarding the calculation of the time limit for filing a petition for annulment of marriage clearly warrant thorough examination. This is due to the fact that neither the Marriage Law, the Compilation of Islamic Law (KHI), nor government regulations provide further clarification on this matter. However, if, for instance, the six-month period is calculated from the moment the threat of unlawful coercion, fraud, or mistaken identity is discovered, it may lead to inconsistency and difficulty in determining the exact point in time such knowledge was obtained. This differs from calculating the time limit from the date the marriage was legally solemnized, as such a date can be definitively identified through the marriage certificate as official evidence.

In principle, the Panel of Judges examining, adjudicating, and resolving a case is expected to be oriented toward delivering justice for the parties involved. However, referring to the judicial considerations in the Decision of the Purwokerto Religious Court Number 182/Pdt.G/2024/PA.Pwt, the court did not take into account the time limit for filing a petition for annulment of marriage by the Plaintiff, despite the fact that more than a decade had passed since the marriage was legally solemnized.

Focusing on the Decision of the Purwokerto Religious Court Number 182/Pdt.G/2024/PA.Pwt, which granted the petition for annulment of marriage after the six (6) month time limit had passed, it is necessary to elaborate on this more thoroughly. This can be observed from the arguments presented by the Plaintiff, supported by the proven facts. In the *a quo* case, the Plaintiff submitted several grounds for the annulment of the marriage, asserting that the marriage between the Plaintiff and the Defendant violated the provisions of the Marriage Law because:

1. The Defendant was still bound by a prior marriage;
2. The Defendant therefore entered into a second marriage without obtaining permission for polygamy from the Religious Court; and
3. The Defendant committed fraud by falsifying his identity, namely by claiming to be unmarried (a bachelor).

The Respondent's actions—namely entering into a marriage while still being legally bound to a previous marriage, failing to obtain a polygamy permit from the Religious Court, and committing fraud by falsifying his marital status as a bachelor—have caused significant harm to the Petitioner, her children, and the Respondent's first wife. In this context, it is understandable that the Petitioner feels deceived and materially as well as morally aggrieved.

However, within the framework of the prevailing legal provisions – particularly referring to Article 27 paragraph (3) of the Marriage Law in conjunction with Article 72 paragraph (3) of the Compilation of Islamic Law (KHI) – a petition for annulment of marriage is subject to a statutory limitation period of six (6) months from the time the grounds for annulment become known. If this time limit has been exceeded, the petition for annulment should, in principle, be declared inadmissible.

Although the marriage between the Petitioner and the Respondent in the *a quo* case was legally valid according to their respective religious laws, the court should have rejected the petition for annulment on the grounds that it was submitted beyond the time limit stipulated by the applicable legal provisions. Upholding this limitation is essential to ensuring legal certainty and consistency in the application of fundamental legal principles in annulment proceedings.

Although the six-month time limit for filing a petition for annulment of marriage is absolute and cannot be disregarded, the Panel of Judges in the Purwokerto Court Decision Number 182/Pdt.G/2024/PA.Pwt acted in accordance with the regulations governing the procedure for marriage annulment, as stipulated both in the Marriage Law and in the Compilation of Islamic Law (KHI). This is because the petition was filed on the grounds of a violation of the essential requirements of marriage and due to error or fraud. In this context, the judges prioritized the fundamental breach of the essential elements (*rukun*) and conditions (*syarat*) of the marriage itself – grounds that are not subject to a statutory time limitation for the filing of an annulment petition. Such an approach underscores the importance of substantive justice over procedural formalism, particularly when the validity of a marriage is fundamentally compromised.

Although the petition for annulment of marriage was submitted after the expiration of the statutory time limit, it is essential to examine whether the marriage in question fulfilled the legal requirements and essential elements (*rukun*) necessary for its validity. If, in fact, the marriage is proven to be invalid, the Panel of Judges has a strong legal basis to grant the petition for annulment. Accordingly, the provision contained in Article 2 of the Marriage Law serves as the fundamental benchmark for determining the legal validity of a marriage. This article functions as the cornerstone in assessing whether a marriage is legally recognized under the governing legal framework.

In this context, the Panel of Judges duly considered several aspects, striving to ensure both legal justice and public benefit (*maslahah*) for all parties involved, including the Defendant's first wife, whose situation was among the reasons invoked by the Plaintiff. The Judges also took into account the complex legal implications resulting from the annulment of the marriage. Given that violations of the essential requirements (*rukun*) and conditions of marriage are generally easier to prove compared to other

grounds, and considering that the Defendant failed to appear throughout the court proceedings to provide any testimony, the Panel found it difficult to ascertain the facts directly. Consequently, the case was decided *verstek* (in absentia).

Legal Certainty of Marriage Annulment Petitions Filed After the Expiration of the Statutory Time Limit in Religious Court Decisions: A Review Based on the Marriage Law and the Compilation of Islamic Law

Fundamentally, the law must be understandable and ensure both the enforcement of the law itself and the protection of individual rights, as well as the continuity of legal decisions. Therefore, in order to realize legal certainty, the law must be enforced consistently to prevent misinterpretation. Pursuant to Article 37 of Government Regulation No. 9 of 1975, a marriage annulment may only be granted by a court. Thus, judicial considerations play a critical role in examining, adjudicating, and resolving a case concerning the annulment of marriage, with the aim of producing judicial decisions that reflect fairness (*ex aequo et bono*) and ensure legal certainty.

As previously described, a marriage may be annulled if, at the time the marriage was conducted, the parties failed to meet the legally prescribed requirements. The time limitation for submitting a petition for annulment on the grounds of fraud and/or mistaken identity is governed by Article 27 paragraph (3) in conjunction with Article 72 of the Compilation of Islamic Law (KHI), which stipulates that:

"If the threat has ceased, or the mistaken party becomes aware of the actual situation, and within a period of six (6) months thereafter continues to live as husband and wife without exercising the right to file for annulment, such right shall be forfeited."

When associated with the case in the Purwokerto Religious Court Decision Number 182/Pdt.G/2024/PA.Pwt, which granted the petition for marriage annulment, it can be observed—when reviewed in light of Article 27 of the Marriage Law in conjunction with Article 72 of the Compilation of Islamic Law (KHI)—that the petition had legally exceeded the allowable time limit. In contrast, the Decision of the Bantul Religious Court Number 1577/Pdt.G/2023/PA.Btl. explicitly rejected the petition submitted by the Petitioner on the grounds that it was time-barred under the same provisions. The disparity between these two judicial decisions is clearly evident and raises critical questions regarding legal certainty. In practice, judges, in deciding a case, must endeavor to fulfill three essential aspects: justice (*gerechtigheit*), expediency or utility (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*)¹⁶.

¹⁶ Hamami, T. (2003). *Kedudukan dan Eksistensi Peradilan Agama Dalam Sistem Tata Hukum di Indonesia*. Bandung: Alumni. p. 170.

Considering the divergent judicial decisions in similar cases as reflected in the two aforementioned rulings, it is imperative to conduct an in-depth analysis of these aspects – particularly the aspect of legal certainty in relation to the implementation of law through judicial decisions. Legal certainty is not solely concerned with the provisions enshrined in statutory regulations, but also encompasses the consistency of judicial decisions in handling similar cases¹⁷.

The provision concerning the time limit for a husband or wife to file for annulment of marriage as stipulated in Article 27 of the Indonesian Marriage Law does not, in essence, provide further clarification regarding its applicability to all grounds for annulment. In practice, this issue has often been the subject of debate in various legal literatures, as not all reasons for annulment are explicitly regulated under the said article. However, based on interviews conducted with qualified informants, it is interpreted that the time limitation applies solely to the grounds for annulment mentioned in the article – namely, coercion involving unlawful threats, fraud, and/or mistaken identity. This time limit is calculated from the date the marriage was legally solemnized.

Considering the complex legal consequences of marriage annulment, these are regulated under Article 28 paragraph (2) of the Indonesian Marriage Law. According to this provision, the annulment of a marriage does not retroactively affect the legal status of a child born from the marriage; such a child remains legitimate, and both parents remain obligated to care for the child, with the father bearing financial responsibility. Therefore, any decision regarding the annulment of a marriage must be rendered in accordance with the applicable legal provisions in order to ensure legal certainty and protection for all parties involved.

Upon revisiting the case in Decision Number 182/Pdt.G/2024/PA.Pwt of the Purwokerto Religious Court, the Panel of Judges granted the Plaintiff's petition for annulment of marriage, despite the fact that the marriage had lasted for approximately sixteen (16) years prior to the filing of the petition. Fundamentally, the court should not accept a petition for annulment that is submitted beyond the prescribed time limit. Even if it is proven that the marriage involved coercion or misrepresentation, should the petition be filed after the expiration of the time limit, the legal effect of such coercion or misrepresentation is nullified by default.

Secondly, in Decision Number 1577/Pdt.G/2023/PA.Btl of the Bantul Religious Court, the court rejected the Petitioner's request for annulment on the grounds that the petition had expired, as regulated in Article 27 of the Marriage Law in conjunction with

¹⁷ Marzuki, P. (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana, p. 158.

Article 72 of the Compilation of Islamic Law (KHI). In this second decision, the issue arises from the judge's consideration, which calculated the time limit starting from when the Plaintiff discovered the fraud or misrepresentation committed by the Defendant. This case reflects a legal uncertainty regarding the commencement of the time limit – whether it should be counted from the moment the fraud or misrepresentation is discovered or from the date the marriage is deemed legally valid.

The inconsistency in this matter arises from the lack of detailed explanation in the relevant legal provisions, which has led to divergent legal interpretations among different judges. Referring to the Purwokerto Religious Court Decision Number 182/Pdt.G/2024/PA.Pwt, the Panel of Judges granted the petition for annulment. In the *a quo* case, the Panel of Judges essentially had the discretion to consider which legal ground for annulment would be most appropriate to apply in adjudicating the case, as previously elaborated. Therefore, in this case, the Panel of Judges sought to uphold the principle of justice by granting the Plaintiff's petition, taking into account the interests of both parties as well as other parties involved.

If, in practice, the Panel of Judges may exercise discretion in deciding cases of marriage annulment that have exceeded the statutory time limit, then such time limitations should not be regarded as an absolute requirement for a husband or wife to file a petition for annulment. The occurrence of varying legal interpretations, as seen in such cases, has consequently led to divergent rulings among Religious Courts in similar matters, thereby undermining legal certainty.

The granting of the Purwokerto Religious Court Decision Number 182/Pdt.G/2024/PA.Pwt. by the panel of judges was not only based on legal perspectives as regulated in statutory provisions, namely the Marriage Law and the Compilation of Islamic Law (KHI), but also prioritized moral and social values that serve as the foundation of justice itself. In this case, the petition for annulment of marriage was submitted by the Plaintiff in good faith, motivated by the fact that the Defendant had entered into a polygamous marriage without obtaining the required permission. This act constitutes a violation not only of national legal norms but also of Islamic law.

Moreover, the decision rendered by the Panel of Judges in the Bantul Religious Court Decision Number 1577/Pdt.G/2023/PA.Btl. is considered appropriate and in accordance with Article 27 of the Marriage Law in conjunction with Article 72 of the Compilation of Islamic Law (KHI), wherein the petition was rejected on the grounds that the statutory time limit had lapsed. In the *a quo* case, the petition was filed beyond the six (6) month deadline, and thus the court was obliged to issue a decision of *niet ontoankelijk verklaard* (N.O), indicating that the petition was inadmissible. Nevertheless, it is important to note that there remain varying interpretations concerning the

commencement of the time limitation period, which ultimately has implications for legal certainty.

In practice, the examination process for marriage annulment cases is contentious in nature. Furthermore, a legal remedy in the form of an appeal may be filed against the decision of marriage annulment¹⁸. As for the petition for marriage annulment that is rejected, and in the event that the dispute cannot be resolved at all, the appropriate legal remedy to be pursued is divorce rather than annulment.

Although, as previously elaborated, the Panel of Judges may exercise discretion in granting a petition for marriage annulment based on the grounds asserted by the Petitioner, such discretion may potentially result in a disparity of rulings in similar cases. Therefore, a more comprehensive clarification is required concerning the time limitation for submitting a petition for marriage annulment, as stipulated in Article 27 of the Marriage Law in conjunction with Article 72 of the Compilation of Islamic Law, in order to prevent multiple interpretations. This clarification is essential to ensure legal certainty and consistency in the decisions rendered in marriage annulment cases.

CONCLUSION

The validity of a petition for marriage annulment filed by either the wife or the husband on the grounds of misconception or fraud, even if submitted after the stipulated time limit, may still be granted as long as there is a violation of the essential conditions and requirements of marriage. Although the six-month time limit as stipulated in Article 27 of the Marriage Law in conjunction with Article 72 of the Compilation of Islamic Law is generally absolute and non-negotiable—applying specifically to the grounds for annulment mentioned therein and calculated from the date the marriage was legally conducted—the Panel of Judges may exercise discretion. They may consider alternative grounds such as violations of marriage requirements, which are not bound by a specific time limit and are more easily proven than abstract claims of unlawful coercion, misconception, or fraud.

Legal certainty is one of the fundamental principles that must be realized by the Panel of Judges in rendering a verdict, alongside justice and expediency. However, the limited provisions regarding the time limitation (statute of limitation) for filing a petition for marriage annulment in both the Marriage Law and the Compilation of Islamic Law have given rise to particular legal challenges. Divergent interpretations, especially concerning the time limit as regulated in Article 27 paragraph (3) of the Marriage Law in conjunction with Article 72 paragraph (3) of the Compilation of Islamic Law, have

¹⁸ Ibrahim Ahmad Harun, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama* (Jakarta: Mahkamah Agung RI Direktorat Jenderal Badan Peradilan Agama, 2013), 146.

resulted in inconsistent rulings among different Religious Courts in similar cases. This disparity in decisions illustrates that legal certainty in such matters has yet to be fully achieved.

As a preventive measure to reduce the number of marriage annulment cases based on mistaken identity or fraud, it is necessary to enhance the verification process of the documents and personal data of prospective spouses at the Office of Religious Affairs (KUA). This verification must prioritize accuracy and due diligence to ensure the authenticity of the submitted information. Moreover, harmonization is required between the regulatory provisions concerning the time limit for filing a marriage annulment and their implementation in practice to avoid legal discrepancies.

A more comprehensive and explicit regulation is needed within the Marriage Law regarding the statute of limitations for filing a marriage annulment petition. This aims to prevent multiple interpretations that may result in inconsistent court decisions in similar cases. With clear normative guidelines, it is expected that the principles of legal certainty, justice, and uniformity in judicial practice can be upheld appropriately.

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