

# Cancellation of Marriage due to Negligence and Legal Consequences (Case Study on the Decision of the Pandeglang Religious Court, Banten No. 84/Pdt.G/2013/PA.Pdlg)

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84/Pdt.G/2013/PA.Pdlg)**

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**Abstract:** According to the Marriage Law, a person who will get married must meet the requirements and marriage principles as stipulated in their respective religions and beliefs as well as the administrative requirements. However, sometimes marriage registration process is not fully fulfilled, which then leads to the cancellation of the marriage. Marriage annulment is the cancellation of a husband and wife relationship after the marriage contract is held. The cancellation process may be carried out by the religious court if the parties do not meet the requirements to carry out the marriage, as stated in Article 22 of Law no. 1 of 1974 concerning marriage. This study will analyze the decision to annul the marriage and its legal consequences at the Pandeglang Religious Court. The research used content analysis, which is to analyze descriptively the content of court decisions with a normative approach. The results of this study are that the panel of judges granted the application for annulment of marriage with legal considerations and the existence of obstacles to marriage because it was contrary to the principle of marriage itself, namely the principle of monogamy. The reason was the Petitioner's negligence and the manipulation of Respondent I and Respondent II in attaching the administrative requirements of their marriage, in which the marriage occurred when Respondent I still had a legal wife. The annulment of the marriage leads to legal consequences for the child, and the assets possessed during the marriage, as well as third parties. Thus, the annulment of marriage does not have a retroactive effect on the position of the child and third parties.

**Keywords:** Marriage, marriage cancellation, court decision, legal consequences

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**Abstrak:** Menurut Undang-Undang Perkawinan seseorang yang akan melangsungkan perkawinan haruslah memenuhi syarat-syarat dan rukun-rukun dalam agama dan kepercayaan masing-masing serta syarat administratif yang dibutuhkan. Dalam hal ini, proses pencatatan nikah yang sudah ditentukan terkadang diabaikan, hingga akhirnya tidak tertutup kemungkinan perkawinannya batal atau dibatalkan. Pembatalan perkawinan merupakan pembatalan hubungan suami isteri sesudah dilangsungkannya akad nikah, suatu tindakan pembatalan yang dilakukan oleh peradilan agama mungkin terjadi, apabila para pihak tidak memenuhi syarat-syarat untuk melangsungkan perkawinan, demikian dikatakan dalam pasal 22 Undang Undang No. 1 tahun 1974 tentang perkawinan. Penelitian ini akan menganalisis putusan pembatalan perkawinan dan akibat hukumnya di Pengadilan Agama Pandeglang. adapun metode penelitian yang digunakan dalam penelitian ini adalah content analisis yakni menganalisis secara deskriptif isi putusan pengadilan dengan pendekatan normatif. hasil penelitian ini adalah bahwa majelis hakim mengabulkan permohonan pembatalan perkawinan dengan pertimbangan hukumnya dan adanya halangan perkawinan karena disebabkan bertentangan dengan prinsip perkawinan yaitu asas monogami. Penyebabnya adalah adanya kelalaian Pemohon sebagai PPN dan adanya rekayasa Termohon I dan Termohon II dalam melampirkan syarat-syarat administrasi pernikahannya, sehingga terjadinya pernikahan ketika Termohon I masih memiliki isteri yang sah secara hukum. Dari pembatalan perkawinan tersebut dapat menimbulkan suatu akibat hukum terhadap anak yang dilahirkan, dan harta kekayaan yang ada selama perkawinan itu berlangsung, dan juga pihak ketiga. Secara prinsip, akibat putusan pembatalan perkawinan tidak boleh merugikan pihak manapun juga. Sehingga, pembatalan perkawinan tidak mempunyai akibat hukum yang berlaku surut terhadap kedudukan anak dan pihak ketiga.

**Kata Kunci:** Perkawinan, pembatalan perkawinan, putusan pengadilan, akibat hukum

## Introduction

Before getting married, a person should notify the authorized officer in advance, namely in this case the P3 (marriage registrar) regarding the implementation of the marriage either orally by his parents or representatives or directly by the bride and groom.<sup>1</sup> This marriage registration aims to provide legal certainty for someone who is getting married.<sup>2</sup> In addition, the obligation of a Muslim to register his marriage is aimed at modernizing the legal system for Muslims in order to provide certainty and justice in resolving legal disputes if take

<sup>1</sup> Sosroatmodjo Arso and Wasit Aulawi, *Hukum Perkawinan Di Indonesia* (Jakarta: Bulan Bintang, 1978), 56.

<sup>2</sup> Ahmad Tholabie Kharlie, Fathuddin, and Windy Triana, "Reforming Islamic Marriage Bureaucracy in Indonesia," *Al Jami'ah Journal of Islamic Studies* 59, no. 2 (2021): 261.

<sup>3</sup> <http://jurnal.arraniry.ac.id/index.php/samarah>

place.<sup>3</sup>

When someone plans to get married, he/she should introduce himself/herself, such as providing information regarding names, age, addresses, religion/belief, and occupation. If one or both of them have been married, then they must also mention the names of their ex-husband or ex-wife. In addition, when registering for the marriage ceremony, the prospective bride and groom must attach proof of identity, such as Identity Card and a certificate from the local village head where the marriage takes place will be held in the village. If the marriage will be held outside the sub-district area; outside the home address of the bride and groom, parents from both sides will be asked to provide information to the Office of Religious Affairs and be given a marriage recommendation letter from those who will carry out the marriage.

It is important to note that formal marriage ceremony, which is registered to the Office of Religious Affairs, is important to secure the bond of marriage, and therefore fake documents will annul the marriage contract. The religious principles and the government's regulations have stipulated that formal documents and marriage requirements should be fulfilled. For example, in marriage contract, agreement from both parties should be reached prior to actual marriage is held. However, in practice, some requirements are oftentimes ignored, which then leads to marriage annulment.

One of the examples of marriage annulment takes place at the Religious Courts in Pandeglang. In this particular case, the head of KUA of Kaduhejo, BF bin Y acted as the Petitioner for the marriage of a man named T bin S with a woman named ER binti ES, in which both of them were positioned as the Respondent I and II. The Petitioner submitted a request for annulment of marriage because of the fact that Respondent I who previously claimed to be the widower, turn to be married, and he is the husband of M; while Respondent II claimed to be a virgin, which turn to be not the case.

This complexity and problem were discovered after seven months of the marriage contract. In order to maintain legal certainty and to avoid abuse of the law, the Petitioners, therefore, submitted an application to cancel the marriage. Respondent I and Respondent II had been proven to be cheating. This is an interesting phenomenon to research since, in theory, marriages registered at the Office of Religious Affairs must have gone through a long procedure, by which there is a small possibility that annulment of marriages will take place. To explore this issue further, a retrospective analysis should be conducted to find out the marriage process and reasons triggering the marriage annulment. In addition, the author will also examine more deeply about the decision of the Religious Court Number: 84/Pdt.G/2013/PA.Pdlg. regarding the process of annulment of marriage

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<sup>3</sup> Asep Saepudin Jahar, "Asep Saepudin Jahar, 'Bureocratizing Syaria Ini Modern Indonesia: The Case of Zakat, Waqf and Family Law', *Studia Islamika Indonesian Journal for Islamic Studies* Vol. 2 No. 2 (2019) p. 207," *Studia Islamika*, n.d., 261.

and its legal consequences.

### Discussion

The validity of a marriage is based on the fulfilment of marriage requirements as stipulated by the state law and also by the Islamic sharia. The cancellation of the marriage results in the break down of the marriage ties. The cancellation of marriage in Islamic law is called *Fasakh*, which means to destroy or cancel. Annulment of marriage is defined as an action to obtain a court decision stating that the marriage is void.<sup>4</sup>

*Fasakh is caused by two things:*<sup>5</sup>

1. a marriage that does not meet the pillars and conditions or there are marital obstacles.
2. unresolved problems within domestic life that does not allow the household to continue.

Some of the factors that cause the annulment of the marriage or *Faskh* are:<sup>6</sup>

#### 1. *Shiqaq*

The *Shiqaq* is defined as a constant dispute or conflict between a husband and a wife. The Qur'an *Surah An-Nisa* verse 35, highlights this issue.

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 وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلَيْهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Meaning: If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware.

In addition, *Shiqaq* also means that if there is a dispute between a husband and a wife, which worsens their relationship, such as the use of swear words or insults or hurtful things that produce constant bickering between the husband and the wife, and under these circumstances, according to the Hanafi, Syafei and Hanbali schools of thought, it is permissible to separate between the two.<sup>7</sup> and the Maliki school of thought plays preventive roles, in which disputes should be prevented ahead of time.<sup>8</sup>

<sup>4</sup> Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogyakarta: UII Press, 2000), 85.

<sup>5</sup> Amir Syarifudin, *Hukum Perkawinan Islam Di Indonesia, Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2006), 253.

<sup>6</sup> "Undang-Undang Perkawinan," Pub. L. No. 1 (1974).

<sup>7</sup> Al Hafidz Ibnu Rusyd, *Bidayatul Mujtahid*, vol. 2 (Mesir: Matba'ah al Istiqomah, n.d.), 97.

<sup>8</sup> Ad Dardiri, *Asy Syarhul Kabir Bi Hasyiyati Dasuqi*, vol. 2 (Mesir: Matba'ah al babi ala Halabi, n.d.), 281; Ibnu Juzay, *Al Qawninul Fiqhiyah* (Faas: Matba'ah an Nahdhah, n.d.), 215; Al

### 2. *Physical and non-physical handicap*

It is unknown physical and non-physical handicap in either husbands or wives before or after marriage takes place. In response to this problem, Muslim scholars have dissenting views, in which some believe that physical and non-physical handicap cannot be used as a strong reason for marriage annulment. However, according to *Jumhur*,<sup>9</sup> the agreement of Muslim scholars, marriage can be annulled due to these defects.<sup>10</sup>

### 3. *Inability of the husbands to provide a living*

This refers to husbands' inability to fulfill the needs of their wives; be those mentally and physically needs, since both result in suffering for the woman.

### 4. *Unseen/absent husband (al-mafqud)*

What is meant by the absence of husbands is the fact that the husband leaves his residence and it is unknown where he has been for a long period of time.

### 5. *One of the parties breaches the marriage contract.*

Husbands and wives are permitted to have agreed on marriage contracts prior to marriage. However, if these contracts cannot be fulfilled by either spouse, one of them can ask for marriage annulment.

Articles 70 to 76 of the Compilation of Islamic Law govern the dissolution of marriage. Article 70 states that a marriage is invalid if:

- a. the husband performs the marriage while he is not entitled to the marriage contract because he has four wives, even if the four of them are in the *Raj'i iddah* divorce; or the husband performs the marriage while his four wives are in the *Raj'i iddah* divorce.
- b. a man weds his cherished ex-wife
- c. a person marries his ex-wife who has been sentenced to three divorces by him, unless the ex-wife was previously married to another man who subsequently divorced her *ba'da dukhul* and her *iddah* term had expired.
- d. marriage is performed between two individuals who are connected by blood, by marriage, and by marriage to a degree that prohibits marriage under Article 8 of Law No. 1 of 1974, namely:

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Khatib al Syarbini, *Mughnil Muhtaj*, vol. 2 (Mesir: al Bab al Halabi, n.d.), 207–9; Ibnu Qudamah al Hanbali, *Al Mughni*, vol. 6 (Kairo: Darul Manaroh, n.d.), 524–27; Rusyd, *Bidayatul Mujtahid*, 2:50.

<sup>9</sup> Ibnu Hazm Az Zahiri, *Al Muhalla*, vol. 10 (Mesir: Maktabah al Imam, n.d.), 72.

<sup>10</sup> At Thahawi At Thahawi, *Mukhatsor at Thahawi* (Mesir: Dar al Kitab al Arabi, n.d.), 182; Kamaludin Muhmamad bin Abdul Wahid Ibnu Hammam, *Fathul Qodir Syarh al Hidayah*, vol. 3 (Kairo: Mustofa Muhammad, n.d.), 262–68; Ibnu Nujaim, *Al Bahruru Roiq* (Mesir: al Bab al Halabi, 1334), 135; Syaikh Abdul Ghani al Maydani, *Al Lubab Syarh al Kitab*, vol. 3 (Kairo: Matba'ah as Shobih, n.d.), 24–26; Juzay, *Al Qawninul Fiqhiyah*, 214; Ad Dardiri Ad Dardiri, *Asy Syaah Shagir* (Mesir: Dar al Maarif, Tth) Juz 2, 467-468, vol. 2 (Mesir: Dar al Maarif, n.d.), 467–68.

1. connected by blood in a direct line of descent or ascent;
  2. be linked by blood through a sideways lineage, specifically between brothers, between a person and a parent's brother, and between a person and his or her grandmother's siblings;
  3. sexual relations with in-laws, stepdaughter-in-laws, and the mother/stepfather;
  4. regarding breastfeeding, specifically breastfeeding parents, breastfeeding children, breastfeeding siblings, and breastfeeding aunts/uncles;
- e. The wife's sister, aunt, or niece of the husband's wives.

According to Article 71 of the Compilation of Islamic Law, a marriage may be cancelled if:<sup>11</sup>

1. a husband engages in polygamy without authorization from the Religious Courts;
2. it was later determined that the married woman was the wife of another man who was *mafqud* (missing, unknown);
3. he married woman remains in the *iddah* of another husband;
4. marriage in violation of the marital age restriction specified in Article 7 of Law No. 1 of 1974;
5. the marriage is performed without a legal guardian or by an unlicensed legal guardian;
6. compelled marriages

In accordance with Article 74 of the Compilation of Islamic Law, applications for annulment of marriage may be presented to the Religious Courts in the husband or wife's place of residence or the location of the divorce. Meanwhile, Article 22 of Law Number 1 of 1974 regulating marriage suggests that a marriage can be cancelled if the parties do not meet the qualifications for marriage. The word "can" in this article might be construed as being null or void, if the norms of the particular religious law do not stipulate otherwise. As for Article 27 of the Marriage Law, Article 72 of the Compilation of Islamic Law governs the rights of a husband or wife to seek for an annulment if the marriage was conducted under duress, fraud, or misunderstanding.<sup>12</sup>

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<sup>11</sup> See Fakhurrizi M. Yunus and Dewi Arlina Dewi Arlina, "Pembatalan Nikah karena Nikah tanpa Izin Wali (Studi terhadap Putusan Mahkamah Syar'iyah Sigli Nomor 246/Pdt.G/2012/MS-Sgi)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 1 (July 17, 2017): 106–7, <https://doi.org/10.22373/sjkh.v1i1.1572>.

<sup>12</sup> Ahmad Rofiq, *Hukum Islam Di Indonesia*, IV (Jakarta: Raja Grafindo Persada, 2000), 148.

According to Article 27 of the Marriage Law:

1. A husband or a wife may petition for the annulment of a marriage if the union is placed under illegal threat.
2. A husband or a wife may petition for an annulment of marriage if, at the time of the marriage, there was a misunderstanding regarding the other spouse.
3. If the threat has ceased or the guilty suspect is aware of his predicament and he does not utilize his right to file for annulment within six months, his right is null and worthless.

The term "cancellation" of a marriage might lead to misconceptions because the meaning of the term can be interpreted in numerous ways (*nietig*). Cancel means *nietig zonder kracht* (no terms), *zonder waarde* (no value). Cancellable is *nietig verklaad*, although absolute cancellation is *nietig*.

The term can be cancelled in this Marriage Act suggests that it can be assisted, thus it is relatively negligible. Thus, the marriage can be annulled, which signifies that a marriage previously took place but was afterwards void owing to a violation of certain rules.<sup>13</sup>

There is a perception that the annulment of this marriage occurred due to the lack of supervision from either the family or the competent authorities, so that the marriage was performed despite the fact that it violated Law No. 1 of 1974 or the law of *munakahat* (the marriage law).

If this occurs, the Religious Courts have the authority to annul the marriage at the parties' request. A court may declare a marriage null and void and cancel the union. Simply said, there are two grounds for annulling a marriage. First, the procedural violation of marriage. The second issue is the breach of marriage material.

### **Case Number 84/Pdt.G/2013/PA.Pdlg Marriage Cancellation Decision and Its Legal Consequences at the Pandeglang Religious Court**

Before describing and analyzing the decision on the annulment of marriage at the Pandeglang Religious Court Number 84/Pdt.G/2013 PA. Pdlg, the author must first describe the marriage process between T (Respondent I) and ER (Respondent II). Interviews with multiple respondents give detailed information about the problems.

This marriage was prompted by the introduction of ER Binti ES (henceforth referred to as ER), who will be domiciled as Respondent II, and T Bin S (henceforth referred to as T), who will be Respondent I.

In the beginning of their relationship, T introduces himself as a divorced widower, whereas ER is a widow. The relationship, which first consisted of mere acquaintances and ordinary friends, was subsequently accepted to be elevated to

<sup>13</sup> Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia* (Jakarta: Indonesia Center Publishing, 2002), 25.



a higher level, namely marriage. Both T and ER have the same ambition to form a happy household in accordance with the guidance of Islam as their faith.

ET bin MJ (hence referred to as ET) is ER's remaining uncle and will serve as the marriage's guardian in order for the wedding to take place. In addition, T and ER met and asked ET to serve as the marriage's guardian. In addition, because ET did not comprehend marriage administration, ET sought assistance from the PM, who used to marry in Palurahan Village. When ET inquired about his nephew's intention to wed a widower, PM consented to facilitate the marriage between T and ER.

As an administrative requirement, PM prepares the administrative requirements for T and ER's marriage, which are required by the Office of Religious Affairs of Kaduhejo District to verify their identities and statuses. PM prepares the marriage requirements file in the form of a marriage certificate (Model N.1), certificate of origin (Model N.2), and certificate of parents (Model N.4) on behalf of T issued by on behalf of the Village Head of Palurahan Kaduhejo District, Pandeglang Regency with Number: 27/DS.2006/VI/2012, dated June 13, 2012, which also specifies that T is a resident of Palurahan Village and a widower.<sup>14</sup>

In addition, PM prepares marriage requirements for ER in the form of Certificate of Marriage (Model N.1), Certificate of Origin (Model N.2), and Certificate of Parents (Model N.4) with Number: 27/ DS.2006/VI/2012, issued by the Head of Palurahan Village, Kaduhejo District, Pandeglang Regency, dated 13 June 2012, which also states that ER, a virgin, is a resident of Palurahan Village.

In addition to the above requirements, PM also includes a Wife's Death Certificate (Model N.6) on behalf of H bint A, issued by the Head of Palurahan Village, Kaduhejo District, Pandeglang Regency. According to his statement, H bint A was T's previous wife, and at the time of the incident, she had passed away, leaving T a widower, divorced, and deceased.<sup>15</sup>

BF as the Head of the Office of Religious Affairs/Marriage Registrar Officer, Kaduhejo District, Pandeglang Regency as the party authorized to handle the marriage process of T and ER (who later became the Petitioner in this case) appears to have been negligent in his duties as Marriage Registrar Employee. Because it recorded T and ER's marriage without attending the ceremony and without thoroughly examining administrative data. T and ER were married on June 24, 2012, as evidenced by Marriage Certificate Number: 262/39/VI/2012, issued by the Office of Religious Affairs, Kaduhejo District, Pandeglang Regency.

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<sup>14</sup> Interview with N (Marriage registrar at KUA Kecamatan Kaduhejo N Kabupaten Pandeglang), interviewed with N (one of the registrars KUA) regarding marriage documentations, n.d.

<sup>15</sup> Interview with A S (Judge in the Religious Court of Pandeglang), interviewed regarding marriage requirements, n.d.

Seven months later, the KUA of Kaduhejo District received a public complaint that T was still legally married to another woman named M Binti R. (hereinafter referred to as M). M was questioned regarding T and ER's marriage, which was registered in the KUA Kaduhejo District. M desired to demonstrate that the news of T and ER's marriage was accurate. M was dissatisfied with the confirmation that T and ER had married.<sup>16</sup> Not in M's name, but in H's, the wife's death certificate was cited as evidence that T was a divorced widower. BF did not examine T's status at the time of the marriage registration to determine if he was still married to another lady.

The officer who performs the marriage between T and ER is PM, a P3N (Assistant Marriage Registrar) who resides in the village and is on duty. In the meantime, M was unaware that T and ER were married because he was not informed at the time of the ceremony. Based on the Marriage Certificate Quotation on Behalf of T and M No. 206/39/VI/1994 issued by the Office of Religious Affairs, Serang District, Serang City on June 4, 1994, T and M were married in 1994.<sup>17</sup>

According to M, at the time of T and ER's wedding, T and M had never been formally divorced in the Religious Courts, but it was true that T had never divorced M by physical means. The union between T and M has produced three children who are currently residing with M. T left M in Unyur Village, Serang District, Serang City, after marrying ER.

M, who felt abandoned by T, then complained to the Head of KUA Kaduhejo who had recorded the marriage between T and ER. M asked BF to file a marriage annulment lawsuit at the Pandeglang Religious Court, which was then registered in case Number 84/Pdt.G/2013/PA.Pdlg with the following parties:

BF, S. Ag, M.Pd.I. bin Y, who is the Head of the Office of Religious Affairs / Marriage Registrar Employee, Kaduhejo District, Pandeglang Regency as the Petitioner; T Bin S, as Respondent I, and; ER bint ES, as Respondent II.

### 1. Process of Marriage Cancellation

**1** In the following section, the authors describe the process and decision on the annulment of the marriage case, Number. 84/Pdt.G/2013/PA.Pdlg., submitted at the Pandeglang Religious Court as a reference for the discussion of this paper. The Pandeglang Religious Court, which is authorized to examine and adjudicate certain civil cases at the first level, has rendered the following decisions in the case of an application for annulment of marriage between:

BF, S.Ag., M.Pd.I. bin Y, 46 years old, Muslim, occupation of Head of the Office of Religious Affairs, District Etc. Hereinafter referred to as the Applicant.

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<sup>16</sup> Interview with N (one of the registrar in KUA) regarding marriage administrative requirements.

<sup>17</sup> Interview with M, (the plaintiff of BF to annul marriage), n.d.

### Oppose

T bin S, age 44 years old, a Muslim and is self-employed, residence in ES's house. Hereinafter referred to as Respondent I; ER bint ES, age 33 years old, a Muslim and is self-employed, residence in Etc. Hereinafter referred to as **Respondent II**.

### The Case

The applicant has submitted a letter of application dated February 18, 2013, which has been recorded with the Registrar of the Pandeglang Religious Court and assigned the following register number: 84/Pdt.G/2013/PA.Pdlg.

The marriage process between Respondents I and II were facilitated by the Assistant Head of Marriage (P2N) of the Office of Religious Affairs, Kaduhejo District.

Respondent I and Respondent II submitted the marriage contract at Kampung Kadupandak Pandeglang. In response to this submission, the Petitioner filed a petition for the annulment of this marriage because Respondent I and Respondent II claimed to be a widower and a virgin, although the fact that Respondent I was still married to someone else (the husband of M); 4. The court granted the petition.

To preserve legal certainty and prevent legal abuse, Respondent I and Respondent II must submit a Marriage Certificate Quotation to the Pandeglang Religious Court, and the Head of the KUA Kaduhejo District, Pandeglang Regency must remove the Marriage Certificate Quotation from the Marriage Certificate register.

The Petitioner wants the following ruling from the head of the Pandeglang Banten Religious Court, based on the petition's arguments:

1. Accepting the Petitioner's request;
2. Nullifying the marriage between Respondent I (T bin S) and Respondent II (ER binti ES) issued by the Office of Religious Affairs in the Kaduhejo District of the Pandeglang Regency;
3. Charging court fees in accordance with the legal requirements;

Or, "if the Court has a different opinion, please render the most equitable verdict;

After receiving the Petitioner's petition, the Pandeglang Religious Court properly and appropriately summoned the parties to appear in court in private, namely the Petitioner, Respondent I, and Respondent II.

### The Legal Consideration

In considering this case, the panel of judges considered the following legal factors:

- 1) The motivation behind the applicant's request to annul the marriage.
- 2) On the day of the scheduled trial, the Petitioners, Respondent I, and Respondent II attended the trial in private.
- 3) According to the mandate of PERMA Number 1 of 2008, every contentious case must be mediated. However, because this case is a contentious case in the form of legal legality, according to point (5) of page 83 of the Guidelines for the Implementation of Duties and Administration of Religious Courts, which were issued by Supreme Court Decree Number: KMA/032/SK/IV/2006 dated April 4, 2006, mediation is not required in the process of settling this case.
- 4) The main issue in this case is that the Petitioner, as the Marriage Registrar (PPN) who performed the marriage contract and recorded the marriage between Respondent I and Respondent II, filed a petition for the annulment of Respondent I's marriage to Respondent II because the fact that Respondent I and Respondent II were already married. Respondent II has broken the prevailing laws and regulations since Respondent I, who claimed to be a widower, was obviously still married to another woman named M binti R, and according to the prevailing rules and regulations, Respondent I and M binti R were never formally divorced.
- 5) Legally, the basis for the Petitioner's application corresponds to Articles 23, 24, and 27 of Law No. 1 of 1974 regarding the Marriage of Jo. Article 71 letter (a) Compilation of Islamic Law<sup>18</sup>.
- 6) The Council first concludes that the Pandeglang Religious Court has the obligation and authority to analyze, decide, and resolve the aquo matter in accordance with Law No. 50 of 2009 regarding the second amendment to Law No. 7 of 1989 concerning Religious Courts.
- 7) The Petitioner in his petition number 2 has asked the Panel of Judges to cancel the marriage between T bin S (Respondent I) and ER bint ES (Respondent II) with a Marriage Certificate issued by the Office of Religious Affairs, Kaduhejo District, Pandeglangdan Regency in petitum number 3 in the amendment. The application letter demands that the Marriage Certificate Number... issued by the Office of Religious Affairs, Kaduhejo District, Pandeglang Regency be declared null and void due to the stated grounds.
- 8) Based on evidence P.1 and P.2, the Petitioner is a Marriage Registrar (PPN); therefore, the Petitioner is the authorized party to apply for the annulment of the marriage of Respondent I and Respondent II in accordance with the provisions of Article 23 letter (c) of Law Number 1

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<sup>18</sup> "Kompilasi Hukum Islam" (n.d.), v. 71.

**Article 71:** A marriage can be annulled if: (a) a husband practices polygamy without the permission of the Religious Courts;

- <sup>1</sup> of 1974 Concerning Marriage in Article 73 letter (c) of the Compilation of Islamic Law; therefore, the Petitioner has a legal interest in filing this case.
- 9) The trial continued with the reading of the Petitioners' petition, which was retained in its entirety by the Petitioners;
  - 10) In their response, Respondent I and Respondent II indicated that they opposed to the annulment of their marriage because Respondent I was a widower and had divorced his first wife, M binti R;
  - 11) In light of Respondent I's denial of the reasons cited by the Petitioner in his application, and in accordance with the provisions of Article 163 HIR and Article 1865 BW, the Petitioner, as the party arguing that he has a right or condition/event, must establish the existence of a right or condition. In the meantime, Respondent I, as the denying party, must also substantiate his response.
  - 12) To substantiate his petition's arguments, the Petitioner has provided both written and spoken evidence;
  - 13) Regarding the evidence given by the Petitioner, the panel of judges reaches the following conclusion:<sup>19</sup>

The proof P1 to P.10, which was submitted by the Petitioner, has been denounced and has adequate stamp duty, as required by Article 1867 of the Civil Code and Articles 164 and 165 of the HIR to be accepted as evidence.<sup>20</sup> Similarly, if the Petitioner submits evidence P.11, then, in line with Article 174 of the HIR, evidence P.11 can be admitted as evidence;<sup>21</sup>

As there are no legal restrictions on the Petitioner's proposed witnesses, their testimony can be legally and substantively admitted as evidence in accordance with Articles 171 and 172 of the HIR.

### Judges' Decisions

1. Accepting the Petitioner's request;

<sup>5</sup> <sup>19</sup> Kompilasi Hukum Islam, v. 73. Those who can apply for annulment of marriage are (c) Officials authorized to supervise the implementation of marriages according to the law.

<sup>20</sup> Herziene Inlandsch Reglement (HIR), v. 174.

**Article 174:** Confessions pronounced before the Judge are sufficient evidence to incriminate the person who confesses, whether he has spoken it himself or with the help of another person who is expressly authorized for that purpose.

<sup>21</sup> Herziene Inlandsch Reglement (HIR), vv. 171, 172.

**Article 171:**

- (1) Every testimony must contain all the causes of knowledge.
- (2) Opinions or assumptions that are special, which are made up for a reason, are not testimonies.

**Article 172:** In considering the value of testimony, the judge must pay full attention to the consensus of the witnesses: the compatibility of the testimonies with what is known from other places about the dispute case; regarding the reasons which may be available to the witness to explain the case in this way or that way; regarding the customary behavior and position of the witness, and in general everything that can cause the witness to be believed to be true or not.

2. Cancelling the marriage between Respondent I (T bin S) and Respondent II (ER binti ES) that took place on June 24, 2012 within the jurisdiction of the Office of Religious Affairs, Kaduhejo District, Pandeglang Regency;
3. Declaring that the Marriage Certificate Number, etc. issued by the Head of the Office of Religious Affairs, Kaduhejo District, Pandeglang Regency, is invalid and void,
4. Requesting the Registrar of the Pandeglang Religious Court to send a copy of this decision to the Office of Religious Affairs, Kaduhejo District, Pandeglang Regency, and the Office of Religious Affairs, Pandeglang District, Pandeglang Regency, to be recorded in the list provided for that purpose, after the decision has become legally binding;
5. Charging the Petitioner court fees totalling Rp.241,000 (two hundred and forty-one thousand rupiah).

It was decided on Thursday, etc., by the Panel of Judges of the Pandeglang Religious Court consisting of Drs. H.H. as Chairman of the Assembly and Drs. J. and A.D., SH., S.HI., MSI., as member judges, the decision which on that same day was also pronounced in the trial that was declared open to the public by the chairman of the panel, in the presence of each Judge members, and assisted by DRS. M.S.

### **Legal Consequences Regarding Children, Assets Acquired During Marriage, and Third-Party Relationships**

If observed comprehensively, the legal considerations of the Panel of Judges' decision to annul the marriage make no reference of children, shared assets belonging to Respondent I and Respondent II, or their relationships with other parties. The third is not safeguarded. This will be one of the topics analyzed by the author in this study.

The marriage process between T and ER does not appear to be in conformity with the applicable rules and regulations, as evidenced by the preceding description. Several facts are highlighted by the author, including:

#### *The Case of T and ER:*

T and ER provided inaccurate information about their marital status. This breached Law No. 24 of 2013 regarding the Administration of the Population. Article 77 specifies that it is illegal for anybody to order, facilitate, or manipulate Population Data. In this instance, both the PM as Assistant Marriage Registrar (P3N) and the Village Head of Palurahan might face up to six years in prison and/or a Rp. 75,000,000 penalty (seventy-five million rupiah). According to Article 94 of Law 24 of 2013.

T is married to ER despite the fact that T has not properly divorced M in the Religious Courts, therefore their marriage can be dissolved. This is specified

in Article 4 of Law no. 1 of 1974 concerning Marriage, which states: "Anyone who, because of marriage, is still bound by one of the two parties and on the basis of the marriage itself may apply for the annulment of a new marriage, subject to the provisions of Article 3 paragraph (2) and Article 4 of the Law. -This law." It is also reinforced by Article 71 of the Compilation of Islamic Law (KHI), which states, "A marriage may be terminated if: (a) a husband engages in polygamy without the Religious Court's approval."

*From BF's side:*

BF as the PPN and the Head of KUA have neglected their responsibilities to oversee T and ER's marriage. Article 9 PMA (Ministry of Religious Affairs Regulation) No. 11 of 2007 concerning Marriage Registration states: Marriage inspection is carried out by the PPN or the officer referred to in Article 3 paragraph (1) of the prospective husband, prospective wife, and marriage guardian regarding the presence or absence of obstacles to marriage under Islamic law and the completeness of the requirements referred to in Article 5 paragraph (2). In this case, BF did not carry out its duties as required.

In order for weddings to be registered with the District KUA, five stages must be passed and implemented. One of the goals of this phase of the process is to prevent the annulment of marriages resulting from the falsification of marital status. The following procedures must be followed:

The first phase is registration in compliance with Minister of Religious Affairs (PMA) Regulation No. 11 of 2007, Chapter II Article 5. There is currently involvement in data from a variety of sources, including village offices, courts, and other organizations. Accepting the marriage registration therefore requires the foresight of the Marriage Registrar.

Phase II is the examination, in accordance with PMA No. 11-2007, Chapter V, Article 9. It is necessary to examine the prospective husband, prospective wife, and marriage guardian to establish whether or not there are obstacles to marriage in Islamic law and whether or not all conditions have been met.

Phase III Announcement, per PMA 11 of 2007 Chapter VII Article 13. At least ten (ten) days before to the wedding, the aforementioned announcement will be made. Announcement of marriage will take place at a certain location in the subdistrict KUA or another easily identifiable location in the village of the prospective bride and groom.

Phase IV According to PMA 11 of 2007 Chapter IX Articles 16-25, Stage IV is the implementation of the marriage contract. After the notification of the marriage will is satisfied, the marriage contract can be executed. In accordance with Islamic religious law and marriage legislation, the Marriage Registrar / Penghulu is required to be present at the marriage contract.

Phase V involves the recording and distribution of Marriage Certificate Quotations in accordance with PMA No. 11 of 2007 Chapter X Articles 26-27. The Marriage Book is presented to the husband and wife immediately following the completion of the marriage contract process.

BF observed that the marriage between T and ER was not in accordance with the SOP (Standard Operating Procedure) for recording the marriage, namely not attending the wedding ceremony and not checking the administrative data carefully, which resulted in the improper issuance of a marriage certificate between T and ER.

### Marriage Cancellation Process

From the description of the process and decision on the annulment of the marriage, it is clear that in making a decision, the Panel of Judges adhered to the statements of the witnesses, the Petitioner and the Respondent which mutually corroborate the facts.

The Panel of Judges has made a decision to grant the Petitioners an annulment of the marriage between Respondent I and Respondent II due to the following considerations and legal facts:

- a. The Petitioner, as the Head of KUA, has been negligent in his marital supervision obligations, so that he has agreed to issue a marriage contract to (Respondent I) who is married to another woman, even though his wife is still alive, he has not been divorced, and his prior marriage was unlicensed. Contrary to the stipulations of Article 20 and Article 21 paragraph (1) of Law No. 1 of 1974<sup>22</sup> in conjunction with Article 6 paragraph (1) and Article 10 paragraph (1) of Government Regulation No. 9 of 1975, this conduct violates the Marriage Law's principle of monogamy<sup>23</sup>
- b. Respondent I and Respondent II have manipulated the administrative requirements of their marriage, particularly with regard to their marital status, so that Respondent I and Respondent II's marriage is invalid and has violated the applicable laws.

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<sup>22</sup> The Marriage Law, vv. 20, 21.

**Article 20:** Even if marriage is not prohibited, a marriage registrar is not permitted to perform or assist in the performance of a marriage if he is aware of a breach of the provisions of Article 7 paragraph (1), Article 8, Article 9, Article 10, and Article 12 of this Law.

**Article 21:** If the marriage registrar believes that there is a ban against the marriage under this law, he will refuse to perform the ceremony.

<sup>23</sup> "Government Regulation No. 9/1975 on the implementation of Law no. 1 of 1974," Pub. L. No. 9 (1975), v. 6 paragraph (1), 10 paragraph (1).

**Article 6: (1)** The Registrar, who receives notification of the intention to marry, examines whether the conditions for marriage have been fulfilled and whether there are no obstacles to marriage according to the law.

**Article 10: (1)** The marriage takes place after the tenth day after the announcement of the marriage intention by the Registrar as referred to in Article 8 of this Government Regulation.



The Panel of Judges' judgment appears to be intimately tied to the process of executing the marriage between Respondent I and Respondent II, which is contrary to the applicable rules and regulations. Therefore, granting Petitioner's request to annul Respondent I and Respondent II's marriage. Article 71 of the Compilation of Islamic Law stipulates that a marriage may be annulled if: (a) the husband engages in polygamy without the permission of the Religious Court. In this instance, the author believes that the Panel of Judges' decision is well-grounded and based on the correct legal basis.

### Legal Consequences of Marriage Annulment

If observed, there is no mention of children, joint property belonging to Respondent I and Respondent II, or their relationship with third parties in the legal considerations and dictum of the Panel of Judges' decision to annul the marriage. The third is not safeguarded. In this section, the author will conduct a discussion based on the field study data collected.

Based on conversations with ER, it was determined that T and ER did not generate progeny or children following their seven-month marriage. Nevertheless, even if they have children, additional child-related issues are returned to Law No. 1 of 1974 in Article 28 paragraph (2) as follows: (2) The decision does not apply retroactively to (a) children born of the marriage; (b) children born outside the marriage.

Wibowo Reksopradoto presents the following analysis of Article 28 paragraph 2:<sup>24</sup> The ruling does not apply retrospectively to the marriage's offspring. Children born of annulled marriages are not regarded invalid retroactively, even if one or both of their parents had wrong intentions.

In BW, if both parents or one parent have good intentions, the child born of a dissolved marriage is legalized. While regarding individuals whose parents have evil intentions, their children are regarded as non-married children, and there is no marriage. In Law Number 1 of 1974, it would be more equitable for all children born of an annulled marriage to be considered legitimate, even if both parents have poor intentions.

This is founded on humanism and the need for legal protection for the interests of innocent children. And it should not be the case that innocent children endure the repercussions of not having parents due to the fault of their parents; therefore, according to Law No. 1 of 1974, the children born to parents whose marriage was annulled have a clear legal standing as legitimate children of both parents.

Based on an interview with ER, it was determined that both parties brought multiple assets to the marriage. The truth is that ER brought more assets

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<sup>24</sup> Wibowo Reksopradoto, *Hukum Perkawinan Nasional Jilid II*, Batal Dan Putusnya Perkawinan (Semarang: Itikad Baik, 1978), 25–28.

into the union

The assets provided by ER include a parcel of land on which a permanent house stands, a plot of rice fields, and a number of pieces of jewelry acquired from their parents.<sup>25</sup> In contrast, T brought only a small quantity of money, which represented about a quarter of ER's assets.<sup>26</sup>

During their seven-month of marriage, the couple have acquired various domestic furnishings, including living rooms' furniture, chairs, a motorcycle, and a number of technological devices, including radios and televisions. Specifically, the purchase of motorbikes is made on bank loan in the name of ER, and the transaction's down payment is also funded by ER's assets.<sup>27</sup>

Thus, the aforesaid instance of annulment of the marriage may affect the allocation of shared property or joint property acquired by T and ER during their marriage. Nonetheless, it should be noted that the choice to annul the marriage must not affect the party who have good intentions, i.e., the party with good intentions must gain benefits and profits, while the party with ill intentions should bear some negative consequences

In T and ER case, both of them have good intentions to get married, they both intend to build a happy, sakinah, mawaddah, warohmah family in line with Islamic guidance and existing legal regulations even though the fact that T and ER married using fake documentation.<sup>28</sup> For this reason, no party's property should be nullified by the existence of the annulment case; **in this instance, the original property or property brought into the marriage by the parties must be returned to the original owner.** The assets that were originally ER's must be restored to ER, and the assets that were originally T's will also be returned to T.

The origin of T and ER's property indicates the division of their property. Their assets can be divided into three categories;<sup>29</sup>

1. Innate property refers to the assets owned by each spouse prior to their marriage, whether through inheritance, gifts, or their own business. Both T and ER's property was reverted to their pre-marriage ownership status.<sup>3</sup>
2. **The assets of each husband and wife that are acquired** after they are married, but not via their individual or joint work, but rather through a gift, will, or inheritance. Also returned to the T and ER in accordance with their respective ownership was this type of property.
3. Assets acquired after entering a marriage via the efforts of both parties

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<sup>25</sup> Sayuti Thalib, *Hukum Kekeluargaan Indonesia* (Jakarta: Universitas Indonesia, 1986), 83. Class of natural assets, namely the property of each husband and wife before they married, came from an inheritance, grants, or their efforts.

<sup>26</sup> Interview with ER, Responden II, in the Religious Court of Pandeglang.

<sup>27</sup> Thalib, *Hukum Kekeluargaan Indonesia*, 86.

<sup>28</sup> Interview with ER, Responden II, in the Religious Court of Pandeglang.

<sup>29</sup> Thalib, *Hukum Kekeluargaan Indonesia*, 83–84.

or a single party are referred to as search assets. This sort of property is sometimes referred to as shared property or joint property. This form of property can be divided in half in the event that T and ER's marriage is annulled.

In the meanwhile, neither legal considerations nor judgment dictums discuss the legal ramifications for third parties. However, this does not imply that third-party interests are not protected.

<sup>1</sup> This suggests that the third party with good intentions are not damaged, the annulment of a marriage does not have retroactive legal implications; therefore, all civil acts or obligations entered into by the husband and wife prior to the annulment remain lawful and must be carried out by the husband and wife. According to Article 75 of the Compilation of Islamic Law, the legal effects of annulment do not apply retrospectively to: (c). As long as they acquire rights in good faith prior to the decision to annul the marriage, third parties have a permanent legal position.<sup>30</sup>

In this instance, there is a case where one of the parties purchased a motorcycle through loan in one the Pandeglang business. As previously indicated, ER purchased a motorcycle on loan, with ER cash used for the down payment and monthly payments. According to the agreement, ER must continue fulfilling the previous agreement in accordance with the signed agreement. The ER is required to pay the credit instalment within the due date.

Likewise, the third party who have selling contract for particular goods with T and ER household goods, such as electronic equipment while they were still married should be disadvantage because of the marriage annulment. T and ER cannot terminate their sale and buy agreement since doing so would be detrimental to a Third Party acting in good faith.

Article 75 of the Compilation of Islamic Law stipulates that the legal effects of annulment of marriage do not apply retrospectively to the following:

- a. annulled marriage because one spouse has renounced their faith
- b. The offspring of the marriage <sup>1</sup>
- c. Third parties have a permanent legal position so long as they obtain rights in good faith prior to the decision to annul the marriage.

## Conclusion

<sup>6</sup> In a marriage whose cancellation application is filed with the Pandeglang Religious Court, which is then registered in case number 84/Pdt.G/2013/PA.Pdlg, there are obstacles and contrary to the principle of marriage, namely the principle of monogamy, which states that if a husband wishes to remarry, he must meet the statutory requirements. This would not have occurred if Respondent I and Respondent II had not manipulated the administrative conditions for their

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<sup>30</sup> Kompilasi Hukum Islam, v. 75 ayat (c).

marriage, notably in regards to their marital status, and if the Petitioner, as PPN, had fulfilled his responsibilities in overseeing the marriage. The Panel of Judges ultimately allowed the Petitioner's plea to annul the marriage between Respondents I and II. Children, shared assets belonging to Respondent I and Respondent II, and their relationships with third parties are not mentioned in the Panel of Judges' decision to annul the marriage in the legal considerations section or in the judgment's dicta. This does not, however, imply that the rights of children, co-owners, and third parties are not safeguarded.

The Panel of Judges reaches a judgement after reviewing the legal facts presented at trial and observing the marriage procedure that does not comply with applicable laws and regulations. according to the law, his prior marriage was likewise unlicensed. In principle, the decision to annul this marriage is not retrospectively applicable to the couple's children. Regardless of whether his parents had good or bad intentions when he got married. It becomes a joint right to the property acquired during the marriage (joint property). In this situation, the original property or property brought into the marriage by the parties must be returned to the original owner, so that each party's property returns to them in the same position as before the marriage. In the meantime, the annulment of a marriage does not have retroactive legal consequences against third parties with good intentions, so all civil actions or engagements made by the husband and wife prior to the annulment remain valid and must be carried out by the husband and wife so that third parties with good intentions are not harmed. Existence of an agreement requires that the agreement be carried out in accordance with the signed agreement. The basis for this legal protection is Article 75 of the Compilation of Islamic Law.

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### **Interviews**

Interview with N, Marriage registrar at KUA Kecamatan Kaduhejo N Kabupaten Pandeglang.

Interviewed with N, one of the registrars KUA, regarding marriage documentation.

Interview with A, Judge in the Religious Court of Pandeglang.

Interview with M, the plaintiff of BF to annul the marriage.

Interview with S, Judge in Religious Court of Pandeglang.

Interview with ER, Respondent II, in the Religious Court of Pandeglang.

# Cancellation of Marriage due to Negligence and Legal Consequences (Case Study on the Decision of the Pandeglang Religious Court, Banten No. 84/Pdt.G/2013/PA.Pdlg)

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