



Judge's consideration of annulment of marriage

(Case Study at Yogyakarta Religious Court)

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Abstract

Marriage is an outer and inner bond between a man and a woman with the ideal goal, to form a happy eternal family based on God Almighty/Supreme, but in fact not all marriages run well according to the purpose of the law. Marriage annulment is a real phenomenon in society, and it does not distinguish any ethnicity, race, religion, or class. The following is a decision study to find out the process of annulment of marriage, in Law Number 1 of 1974 and the judge's considerations in deciding cases of marriage annulment, in the current era although it is only limited to 3 (three) decisions. It is hoped that it will arrive at a final conclusion regarding the judge's considerations on the decision to annul marriage.

Keywords: *judge's consideration, decision, marriage annulment, petition, lawsuit,*

A. Introduction

The 1945 Constitution of the Republic of Indonesia as the foundation of the state¹ The presence of an Indonesian State is a state which places this noble value as a foundation of the Indonesians whose Constitution is the supreme legal foundation for the people of Indonesia which is the basis for the formation of rules or laws that regulate in a government the right of a regulation as part of the life of the people.² This means that the Constitution provides guarantees of legal protection for every society in particular with regard to the legal regulations of marriage invitations and the order and rules concerning marriage. The importance of the role of the law in Indonesia, then the theory of law also regulates about living together. In this case, it relates to the legal regulations of marriage invitation. The order and the norms about marriage have been regulated in the Law of the Marriage Tree which is contained in the Act No. 1 of 1974 on marriage. According to Act No. 1 of 1974, marriage is the innate bond of birth between a man and a woman with the aim of forming a happy and eternal family based on the one and only Divinity.³

To be able to realize the purpose of the marriage, is that the parties who will be married have prepared the royal soul. While the conditions of a marriage as such have been described in article 6 of Act No. 1 of 1974. The conditions that must be met for marriage to take place, one of which is the minimum age limit. Originally in Law Number 1 of 1974 the age limit was regulated, namely 19

¹ Roni Sulistyanto Luhukay, *Penghapusan Izin Lingkungan Kegiatan Usaha Dalam Undang Undang Omnibus Law Cipta Kerja* Jurnal Meta-Yuridis, No. P-ISSN : 2614-2031 / NO. E-ISSN : 2621-6450, Fakultas Hukum Universitas PGRI Semarang, hlm 101

² Roni Sulistyanto Luhukay *Pemenuhan Jaminan Kesehatan Oleh Perusahaan Dalam Perpektif Peraturan Pemerintah Nomor 86 Tahun 2013*, Jurnal Ilmiah Living Law E-Issn 2550-1208 Volume 13 Nomor 2, Juli 2021, Hlm 112.

³ Pasal 1 Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan



(nineteen) years old for men and 16 (sixteen) years for women, then in its development after revision in Law Number 16 of 2019, that the minimum age limit distance was updated to be the same, between men and women, namely both 19 (nineteen) years old. The purpose of marriage is often constrained by traditional customs that regulate the social norms of community groups.⁴

The annulment of a marriage is a court decision that is enforced by trial. The judge must first investigate objectively about sitting the real thing and not a priori⁵, It must be proven that the marriage which has been entered into has a legal defect. And the form of a judge's judgment is a statement in written form and spoken by the judge in a public hearing, as a product of the court and as a result of an examination of a lawsuit on the basis of the existence of a dispute. In a matter that gives a judgment is the duty of the judge. A judge's judgment is the final judgement of a trial examination in a case. The final judging in a dispute by a judge examining in the trial is generally a punishment against the defeated party in a court trial. In civil procedure law, the punishment is in the form of fulfillment of achievements and/or the provision of compensation to the party who has been harmed or won. As a result of the annulment of the marriage, it will certainly have the consequence that the marriage that originally occurred will be considered to have never existed. In the case of this research is the Decision 17x/pdt.G/2019/PA.YK, 30x/pdt.G/2019 /PA.YK, dan 40x/pdt.G/2018/PA.YK

B. Research Methods

The author uses a normative legal research research method, namely doctrinal legal research, also referred to as library research or document study in the form of court decisions. The type of research is normative juridical, so the approach used is the legal approach that applies in Indonesia (positive law)⁶ This method is expected to give readers ideas to better understand the picture of the trial and the judge's decision related to the marriage annulment case. The purpose of this study is to answer the problem: the process of annulment of marriage in Law Number 1 of 1974 and the consideration of judges in deciding the case of annulment of marriage. The data obtained in this study will be analyzed qualitatively descriptively, because the study is a legal study and is analyzed qualitatively⁷.

⁴ Surmiati Al, Perkawinan Usia Muda Di Indonesia Dalam Perspektif Negara Dan Agama Serta Permasalahannya, *Jurnal Legislasi Indonesia*, Vol 12, No 2 (2015) H. 8

⁵ Ani Yunita, Pertimbangan Hakim Dalam Mengabulkan Permohonan Pembatalan Perkawinan Di Pengadilan Agama Bantul, *Jurnal Repertorium*, Vol 1, No 2 (2014), H. 64

⁶ Hartanto Dan Nidya Tajsgoani, "Dualisme Pengaturan Ojek Online Angkut Penumpang Dalam Pembatasan Sosial Berskala Besar (PSBB) Di Jakarta", *Al'Adl*, Vol. 13 No. 2, Juli 2020 h.257

⁷ Anajeng Esri Edhi Mahanani, "Paradigma Yuridis Kemanfaatan Dan Kepatutan Suatu Produk Hukum Yang Mengalami Kebatalan Mutlak", *Jurnal Widya Pranata Hukum*, Volume 2, Nomor 2, September 2020, h. 65



D. Result and Discussion

1. Implementation of Judge's Consideration of Marriage Annulment Decision

Marriage annulment today is still very taboo among Indonesian people, even though the law has a role as a reference in carrying out an action, so that a process in canceling marriage must be clear about the legal procedure that regulates it, so that after the occurrence of a marriage annulment process no longer causes new problems after the breakup of the case.

At the level of *legal substance*, this study refers to Law Number 1 of 1974, Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, and the Compilation of Islamic Law. Some of these rules state shaya when the harmony and conditions of marriage are met. On the other hand, marriage is invalid when the harmony and conditions of marriage are not met. Harmony is something that must exist in marriage, while conditions are something that exists in the pillars of marriage.

The annulment of marriage is the starting point of Law Number 1 of 1974 concerning marriage, this aims to provide legal guarantees to people who carry out marriage in accordance with applicable legal rules if later defects are found in the marriage process. According to the perspective of Law Number 1 of 1974 concerning marriage, a marriage can be annulled if it does not meet the conditions in Articles 22 to 28 of Law Number 1 of 1974 which basically states that a marriage can be annulled due to the non-fulfillment of the conditions in question, but if the marriage has already been carried out, the marriage is not automatically annulled. Article 22 of Law Number 1 of 1974 states expressly "Marriage can be annulled, if the parties do not meet the conditions for marriage". In his explanation, the word "may" in this article can be interpreted as invalid or invalid, and paying attention to the provisions of the respective religious law does not determine otherwise.

The term "null" can be misunderstood because there are various definitions of null (*nietig*) itself. Null means *nietig zonder kracht* (no strength) *zonder waarde* (no value). Cancelable means *nietig verklaard*, while *absolute nietig* is absolute cancellation.⁸ The term can be canceled in this law as it can be facilitated to be *relative nietig*. Thus, the marriage can be annulled, meaning that the marriage has previously occurred and then canceled due to a violation of certain rules.⁹

A marriage can also be annulled if one of the parties lies or conceals for his own benefit. If the spouse has committed a lie, such as identity, or is secretly found to be polygamous, then the one who feels hurt may apply for annulment of the marriage according to the provisions of the law.:

1. Performing marriage because under threat or coercion that violates the law.
(Article 27 of Law Number 1 of 1974)

⁸ Amir Nuruddin Dan A. Tarigan. *Hukum Perdata Islam Di Indonesia* Jakarta: Kencana h. 107

⁹ *Ibid*



2. One party falsifies his or her identity, such as status, age, or religion. (Article 27 of Law Number 1 of 1974)
3. The husband or wife is still bound by marriage with another person without their knowledge. (Article 24 of Law Number 1 of 1974)
4. A husband commits polygamy without the permission of the Religious Court (Article 71 of the Compilation of Islamic Law (Compilation of Islamic Law))
5. The woman who is married is still in the iddah period of her husband. (Article 71 of the Compilation of Islamic Law)
6. Marriage is performed without a guardian or performed by an unentitled guardian (Article 71 of the Compilation of Islamic Law)
7. Violating the age limit of marriage (Article 7 of Law Number 1 of 1974).

Judge's Considerations in Deciding the Case of Marriage Annulment in the Yogyakarta Court. That in the first case example, namely the case of Number 17x/pdt.G/2019/PA.YK, is: That during the marriage, the Applicant and the Respondent had never had sexual relations with their wives until this application for annulment of marriage was submitted. Around xxx month xxx, suspicion arose between the Applicant and the Respondent, the suspicion began when the Applicant asked the Respondent about the non-marital relationship as a married couple. While waiting for the Respondent's readiness to perform its obligations, the applicant found irregularities such as:

At the time when the applicant lured with various attempts to invite the

1. Respondent to get in touch, the Respondent's attitude showed rejection, even rude refusal;
2. The Respondent chooses not to sleep in the same bed as the Applicant and sleeps under near the bed or on the floor;
3. The respondent when entering the room and changing clothes always chooses to be in the bathroom;
4. The applicant found a photo of a man and a male boarding house on the Respondent's mobile phone;

The Applicant began to be suspicious of the activities carried out by the Respondent outside the home. Then the Applicant told the incident to the two Respondents. After hearing the story, the Respondent's parents, assisted by the Respondent's younger siblings, began to find out the truth and installed a position tracking device or GPS on the motorcycle that the Respondent used daily.

That in early November 2018, the answer to the irregularities felt by the Applicant was finally found. Finally, the Applicant and the Respondent's family (Mr. and Mrs. and the Respondent's younger siblings) held a meeting to ask for clarification on the findings and facts in the field. At that time, the Respondent finally admitted that:

1. The respondent is a man who likes fellow men (sexual deviance/homosexuality) and this deviance has been going on for quite a



long time. Then all this time the Respondent tried to close the meetings of his family;

2. The Respondent has had a relationship with a man named xxx since before marrying the Applicant;
3. The Respondent is willing to marry the Applicant to divert or cover up the Respondent's sexual deviation from his family so that there is no suspicion from his family;
4. That xxx is in the position of a woman and the respondent as a man, so that it is like or like a husband and wife;
5. That the male photo and the photo of the boarding room found in the Respondent's mobile phone are indeed a man named xxx (the Respondent's homosexual partner);

At that time, it was decided to carry out healing or therapy to the Respondent. This is intended so that the Respondent recovers from the pain of his sexual deviance; On November 25, 2018, the Respondent decided to leave the house and never returned to his parents' house. After his departure, the Respondent once contacted the Applicant 1 (one) time to apologize and explain to the Applicant if the Respondent could no longer live with the Applicant, because it was not his world, the Respondent did not want to establish a conjugal relationship with the Applicant and preferred a same-sex couple xxx.

The Applicant decided to apply for annulment of the marriage, because according to the Applicant, such conditions are no longer in accordance with the purpose of marriage as referred to in Article 1 of the Marriage Law No. 1 of 1974 concerning Marriage and Article 3 of the Compilation of Islamic Law, namely to form a happy and eternal family based on the One Godhead.

1. Witness Statement

Witness 1: Age 63 years, that the witness is the biological mother of the Respondent

- a. That the Applicant and the Respondent are husband and wife;
- b. That after marriage, the Applicant and the Respondent live together at the Respondent's parents' house in xxx;
- c. That before the Applicant and the Respondent got married, the witness did not know about the abnormalities in the Respondent;
- d. That the witness knew about the abnormality in the Respondent from the Applicant's story, then in November 2018 the Respondent left the house and the witness did not know where he was;
- e. That after the first hearing of this case, the Applicant can contact the Respondent, then the Respondent goes home to give a statement to the Applicant and does not meet the witnesses; That the witness had read the Respondent's statement letter given to the Applicant, then the witness and the Applicant submitted the letter to the Religious Court;



- Witness 2: Age 28 years, that the witness is the respondent's younger brother
- a. That after the Applicant and the Respondent got married, the Applicant told the witness about the Respondent's personal abnormalities, then the witness was curious and investigated the Respondent's activities by installing GPS, it turned out that the Respondent before going to his workplace, always went to the boarding house of a person named xxx;
 - b. That after the family obtained sufficient evidence, including photos and GPS, and asked the Respondent, the Respondent finally admitted about his condition;
 - c. That in November 2018 the Respondent left the house and the witness did not know where he was;
 - d. That after the first hearing of this case, the Applicant can contact the Respondent, then the Respondent goes home to give a statement to the Applicant and does not meet the witnesses;
 - e. That the witness had read the Respondent's statement letter given to the Applicant, then the Respondent's mother and the Applicant submitted the letter to the Yogyakarta Religious Court.
2. Judge's Considerations

Considering, that the Respondent who is formally and properly summoned but does not appear in appearance must be declared absent, then the application must be examined *verstek*; that the subject matter of the Petitioner's application is to request the annulment of his marriage with the Respondent, because the Applicant before and during the marriage with the Respondent feels that he has been deceived (fraud occurred) by the Respondent; Considering materially from the Petitioner's postulates that it can be concluded that the subject matter in this case is whether the Respondent has committed fraud in the marriage of the Petitioner and the Respondent?

That the Tribunal finds facts based on evidence of the presumption that the Respondent deliberately concealed his identity, and if the Applicant knew the Respondent's condition, the Applicant did not want to marry the Respondent; Based on the considerations mentioned above, the Petitioner's application can **be granted**, therefore the Court declares the annulment of the marriage of the Applicant and the Respondent which has been held on xxx day has carried out the marriage in front of the Marriage Registrar of the Religious Affairs Office (KUA) of xxx District, as recorded in the Quotation of Marriage Certificate Number xxx;

Based on the results of the decision of the Yogyakarta Religious Court Number 17x/Pdt.G/2019/PA.YK. From the decision, it is implied that the subject of the Petitioner's application is that the Applicant feels that before and after the marriage with the Respondent feels that he has been **deceived** by the Respondent.



In this consideration, the applicant submits evidence in the form of a photocopy of the Doctor's Certificate "xxxx", in the name of xxx which is stated at the time of the examination in a virgin state, which is sufficient and has been in accordance with the original as authentic and legally enforceable evidence. Therefore, the court ruled that:

- a. Declare that the Respondent who has been formally summoned and fit to appear at the hearing, is not present;
- b. Granting the Petitioner's application in part with *verstek* for part;
- c. Declare the Marriage of the Applicant and the Respondent invalid which has been held on xxx day in front of the Marriage Registrar of the Religious Affairs Office (KUA) of xxx District, as recorded in the Quotation of Marriage Certificate Number xxx
- d. Declaring unacceptable for other than and remaining.

According to the author, the judge's consideration in this case is that the matters stated in the applicant's *posita* turned out to be after being associated with witness statements and/evidence, the Panel was of the opinion that it was found that the fact that the Respondent deliberately concealed his identity, and if the Applicant knew the Respondent's condition, the Applicant did not want to marry the Respondent. Therefore, the author argues that the Petitioner's application or postulates are very strong and in accordance with what the witness conveyed before the trial, and therefore the marriage can be annulled in accordance with the provisions of Article 72 paragraph (2) of the Compilation of Islamic Law "a husband or wife can apply for annulment of marriage if during the marriage there is fraud or misperception about the husband or wife".

According to Erikson's opinion that self-identity is an identity that concerns the existence of the subject, which means that the subject has a distinctive personal style.¹⁰ Therefore, self-identity means maintaining a style of individuality of oneself. In addition, there is the fact that the Respondent prefers to maintain his existence to prefer to live together with a male partner of the same sex, so this is enough to be the basis for granting the applicant's request.

Legal consequences that arise after the annulment of marriage. that in Article 27 paragraph (2) of the 1974 Marriage Law it is said that: "a husband or wife can apply for annulment of marriage if there is a time when there is a misperception about the husband or wife".

The principles and conditions determine a legal act, especially those related to whether the act is legal or not. Both words have the same meaning in that they are both something that must be celebrated. In a marriage event, for example,

¹⁰ Adon Nasrullah Jamaludin, 2017. *Sosiologi Perkotaan*. Bandung: CV Pustaka Setia, h. 346



harmony and the conditions must not be left behind, in the sense that the marriage is invalid if both do not exist or are incomplete.

The author also argues that this marriage ban is still very taboo among the community, so it is appropriate that this Law should be socialized to the public as a material for education and legal awareness of the community about the rules about marriage, so that later the public can better understand the purpose of the marriage. Then the community better understands what elements make a case worthy of acceptance and examination.

In this case, the author also highly appreciates the performance of the Yogyakarta Religious Court which provides good legal services to the parties so that it is a reflection to the wider community that the Yogyakarta Religious Court is able to become an independent institution that presents justice in accordance with the applicable and dignified legal rules.

Second case with case number 30x/pdt.G/2019 /PA.YK, Applicant: 30 years old of Islam, private employee occupation, Upper level advanced school education, residence of Ngampilan district. Respondent: age 32 years, Islam, private employment, first level advanced school education, residence in Ngampilan sub-district, Yogya City. Chronology: the postulate of the lawsuit The Petitioner states that: The Applicant and the Respondent are married on December 19, 2018 in front of the marriage registration officer of the Religious Affairs Office of Sukorejo District, Ponorogo Regency, East Java. Then it was known by the Applicant in mid-December 2019 that the Respondent had health problems around the spinal cord due to being hit by the earthquake in Yogya in 2006, and the Respondent also admitted that before marriage the Respondent did have problems with not being able to get an erection of his vital organs. And the Respondent's confession made the Applicant disappointed because the Respondent had never been honest from the beginning before the marriage, even though in a state of disappointment the Applicant tried to persuade the Respondent to seek treatment, but the Respondent's attitude was very disappointing. That based on the facts mentioned above as stated in Article 27 paragraph 2 of the Marriage Law j.o Article 72 Paragraph 2 KHI "a husband or wife can apply for annulment of marriage if at the time of the marriage there is fraud or there is a misperception about the husband or wife" that the elements of the misconception mentioned above in casu The Respondent has known the health condition since before the marriage but the applicant has never informed the condition to the Applicant and even seemed to cover up the actual condition to the Applicant. With a period of 6 (six) months, it has been known that there is a misperception of the husband or wife in casu of the Applicant and the Respondent getting married on December 19, 2018, then the period of 6 (six) months is June 19, 2019, therefore this application for annulment of marriage can



still be submitted, based on this description, the Applicant hopes that his marriage can be annulled for the sake of the law.

3. Witness statement

Witness 1: Sumiatun Binti Suro Marto Denun, 51 years old Islamic farming work, residence of Krajen Hamlet, Sukorejo District, Ponorogo Regency, East Java and witness status as the applicant's biological mother, with her oath stating that:

- a. The Applicant and the Respondent are legally married in December 2015, and after getting married then the Petitioner and the Respondent lived together with the witness in Ponorogo for 1 week and then moved to the city of Yogya, during that time between the Applicant and the Respondent according to the witness there was no problem whatsoever.
- b. The witness knew according to the Petitioner's story that the Respondent could not provide mental support because his genitals could not stand, and it was known by the witness after the Petitioner and the Respondent stayed for 2 weeks in Yogyakarta and knew that the Petitioner had tried to help the Respondent in overcoming his problem but the Respondent was angry with the Applicant.
- c. That the Applicant and the Respondent lived together and contracted in front of the witness's house for 3 months, and the witness between the Applicant and the Respondent was fine and did not know that the Applicant and the Respondent had a problem and the Respondent

4. Judge's Considerations

The subject of the Petitioner's application is to request the annulment of his marriage with the Respondent because the Respondent is unable to provide mental support to the Applicant because the Respondent cannot get an erection (his vital organs) cannot stand, and to strengthen the postulate of his application, the Applicant then submits evidence of letters and witness statements.

The evidence of the letter enclosed by the Applicant is in the form of a photocopy that has been stamped sufficiently and matches the original (RSU Muhammadiyah Certificate) which states that the Applicant is still a virgin and that it has met the formal and material requirements as evidence and has perfect and binding evidentiary power as stipulated in Article 1870 of the Civil Code. And it is strengthened by witness testimony which according to the judge is a fact witnessed directly / heard by witnesses and relevant with evidence that is proven by the Convention Applicant and can be accepted as evidence.

Based on the above facts, it is proven that the legal facts include:



- a. The Applicant has known the Respondent's condition since December 2019 and this case was registered on June 17, 2019, which is less than 6 (six) months.
- b. The Respondent's personal condition is suspected to be the same as that of men in general who are able to have marital relations or do not experience premature ejaculation.
- c. During the marriage, the Applicant does not know the Respondent's personal condition and if the Applicant knows the Respondent's personal condition, the Applicant will not want to marry the Respondent.
- d. The goal of marriage and obtaining pleasure in domestic life is not achieved.

If analyzed carefully, based on these legal facts, the Applicant has been able to prove the postulates of his application and has fulfilled the elements in Article 72 Paragraphs 2 and 3 of the Compilation of Islamic Law and Law Number 1 of Tahun 1974 concerning marriage which reads (Paragraph 2) "A husband or wife may apply for annulment of marriage if during the marriage there is fraud or suspicion about the husband or wife" (Verse 3) "If the threat has stopped, the suspect is aware of his situation, and within a period of 6 (six) months after that he still lives as husband and wife and does not use his right to apply for cancellation, then his right is lost". And if it depends on the legal facts found, the Applicant has exercised his rights and in accordance with the provisions of the applicable Law, the Applicant filed a lawsuit less than 6 (six) months after marriage.

Then the confessions of the witnesses presented are also very consistent with the actual circumstances so that it is easier for the judge to resolve this dispute. Then it is also supported by evidence of a letter written by the Respondent whose content admits his inability to get an erection or has disgrace which can be an obstacle to the main purpose of marriage. That with these considerations, the Judge finally granted the Petitioner's Application to annul the marriage of the Petitioner and the Respondent.

The third case is the decision of case Number 40x/pdt.G/2018/PA.YK. Applicant: Place of birth, Yogyakarta November 1999, High School Education, Student occupation, address of Yogyakarta City. Respondent: Place of birth, Yogyakarta July 2001, Junior High School Education, housekeeping, address of Yogyakarta City. Chronology: The Applicant and the Respondent got married on Tuesday, March 27, 2018 which was recorded by the marriage registration officer of the Religious Affairs Office of Mantrijeron District and after the marriage the Applicant and the Respondent immediately separated from the house, the Applicant lived at the Applicant's parents' house, and the Respondent lived at the Respondent's parents' house. And during the 4 months



of marriage, the Applicant and the Respondent have never lived in harmony, and there is no good communication as a husband and wife deserve. Then before the marriage or approximately on September 20, 2017, the Respondent forced the Applicant to have a conjugal relationship when the Applicant was studying together at the Respondent's house and in a quiet house, the Respondent undressed and then forced the Applicant so that intercourse occurred between the Applicant and the Respondent. Then the Applicant and the Respondent had marital relations 1 (one) time, but at that time the Respondent's condition was already pregnant, this was known later from the obstetrician's statement which stated "The Respondent gave birth with a gestational period of 10 (sepulu) months and 5 (days)". Because the Respondent was pregnant, finally the Respondent's family accused the Applicant of being the father of the child conceived by the Respondent and asked the Applicant to marry her if the Applicant refused to marry, then, the Respondent's family would report the Applicant to the police, with the charge of obscene acts against minors. And because under duress and under threat from the Respondent's family who asked for responsibility and to obtain the status of the child in the Respondent's womb, under the force and unable to refuse, the Applicant finally married the Respondent. That because under forced circumstances and under threat, the Applicant finally filed an Application for annulment of the marriage on the grounds based on Article 71 letter F of the Compilation of Islamic Law (KHI) which reads "a marriage can be annulled if the marriage is carried out by force". Which makes the Applicant feel aggrieved, tormented mentally and never feel the slightest happiness in living in a household with the Respondent who married under duress and dishonesty of the Respondent, but the Respondent rejected the Petitioner's postulates.

The Respondent rejected the postulates and responded to the Petitioner's posita who said that the Respondent and the Applicant immediately returned to their respective homes after marriage, but the Petitioner still often came to the Respondent's house without the knowledge of the Applicant's parents. Then responding to the Petitioner's next posita, namely, it is not true that the Petitioner and the Respondent began to have sexual relations approximately on September 20, 2017, but what is true is that before that date, and between the Respondent and the Applicant had often had a relationship like husband and wife which then resulted in the Respondent becoming pregnant. Then stated that it was not true that the Respondent took off his clothes and then forced the Applicant so that there was intercourse between the Applicant and the Respondent but what is true, the Applicant often invited and forced the Respondent to have intercourse and the Applicant always sought a quiet time at the Respondent's house when the Respondent's



parents were traveling. And furthermore, it refutes the Petitioner's posita that it is not true that the Respondent has had a conjugal relationship only 1 (one) time, but it is true that the Respondent and the Applicant have had a relationship like husband and wife many times, especially between the Petitioner and the Respondent who have been dating since 2015. And at that time, the Applicant came to the Respondent's house every day and forced the Respondent to have a conjugal relationship. That if the Respondent's gestational period is 10 (ten) months and 5 (five) days, because the calculation is not September 20, 2017, but indeed previously between the Applicant and the Respondent had done it like husband and wife several times. Then denied that it was not true that the Respondent's family accused the Applicant of being the father of the child conceived by the Respondent, but what was true, the Respondent's family asked for responsibility from the Applicant as the father of the child conceived by the Respondent because indeed the Applicant was the only man who had sex with the Respondent, then again responded to the Petitioner's posita that it was not true that the Applicant was forced and under threat to marry the Respondent, but the truth is that the Applicant has consciously and without coercion, threats and pressure is willing to marry the Respondent and has been stated in the peace treaty. That the Applicant has been willing to take responsibility for what the Applicant has done to the Respondent which resulted in the Respondent's pregnancy, that at the time of the birth of the child, all those who take care of it are the Applicant. That until the application for annulment of marriage is submitted, the child's birth certificate is still carried by the Applicant so that the Respondent is very difficult to make a child certificate. And it is not true that this marriage is forced, but the truth is that this marriage occurred because the Applicant has been dating the Respondent since 2015 and often has relationships like husband and wife so that this act must be accounted for by the Applicant to the Respondent and his family. That at the time of the marriage there was no element of coercion, because the Applicant consciously said his *ijab kabul* to the Respondent and was witnessed by the witnesses and the families of the parties. Therefore, it is not true that there is a postulate of compulsion, especially the existence of a peace treaty between the parents of the Applicant and the Respondent who agreed to marry the two of them. That even after marriage, the Respondent is still forced by the Applicant to serve her as a wife. And continuing his rebuttal related to the fact that it is not true that the Applicant feels tormented because it is precisely the Respondent and his family who feel tormented by the Applicant's irresponsible behavior, on his actions and behaviors which are all imposed on the Respondent and his family. And because the act of obscenity has a criminal threat, it is appropriate for the Respondent's family to report the act of obscenity committed by the Applicant



to the Respondent. In this case, the applicant has played with the sacred institution of marriage in order to escape its criminal element. Then the Applicant to escape his responsibility by stating that he did not want this marriage because the Applicant did not want to admit his act of having sex with the Respondent many times. That the Respondent still insists that the Applicant must be held accountable for his actions for molesting the Applicant which resulted in the Respondent becoming pregnant. Then with his efforts, the Applicant presented witnesses at the trial.

1. Witness statement

The witness knew the Respondent because the Respondent was the witness's son-in-law, and the witness knew the marriage of the Applicant and the Respondent, which was in March 2018. And at the time of the Petitioner and the Respondent's marriage, the Respondent was pregnant. And stated that the Applicant married the Respondent because he was under duress, because before the marriage, namely on March 17, 2017, the Respondent's family came to the witness's house in a state of anger to ask for the Applicant's accountability because according to the Respondent's family, the Applicant had impregnated the Respondent.

Even at that time, the Respondent's family had reported the Applicant to the police on suspicion of a criminal act of obscenity. And a week later the Respondent's family came to the witness's house to ask for an answer, so that at that time the witness had no other choice but to agree to the wishes of the Respondent's family and make an agreement that all marriage processes were taken care of by the Respondent's family and the marriage was carried out after the school exam and the marriage was only a formality.

That the issue of marital relationship, from the Applicant's statement, correctly admitted that he had had a marital relationship with the Respondent, because he was forced by the Respondent and the applicant was not sure that the baby conceived by the Respondent was the Applicant's child, because the Applicant and the Respondent had a conjugal relationship in September, even though the Respondent's gestational age at that time was 3 (three) months.

The witness was not sure that the child conceived by the Respondent was the Applicant's child because from the testimony of the Respondent's friend that there was a man who had sexual relations with the Respondent, and the Applicant felt forced to have a conjugal relationship with the Respondent because at that time the Applicant was seduced and forced by the Respondent where at that time the Respondent was no longer wearing clothes and if the Applicant refused to have marital relations then the Respondent would commit suicide, Finally, the Applicant followed the Respondent's wishes, and the witness did not know how many times the Applicant had a conjugal relationship with the Respondent.



The second witness has the status of a friend of the applicant, stating that the witness only knew his name and person about 4 (four) years ago but the witness did not know more about the Respondent; However, according to the Applicant's story, the Applicant felt that he was not compatible with the Respondent, the witness did not know when he was married, and did not know whether the Respondent was pregnant or not. On the other hand, the witness never saw the Applicant with another woman except with the Respondent. That the Applicant could have a conjugal relationship with the Respondent because when the Respondent was summoned, at that time the house was quiet, empty only the Respondent and at that time the Respondent seduced the Applicant and forced the Applicant to have sexual intercourse. And said that the Petitioner is a good person and diligent in worship.

Witness Respondent I (Respondent's Uncle) stated that the respondent married the applicant in March 2018 while the respondent was pregnant and from the respondent's statement, the child she conceived was the result of a relationship with the Applicant.

Respondent witness II, that according to the Respondent's confession, the child he conceived was the Applicant's child and so far the witness had never seen another man who came to the Respondent's house other than the Applicant. That the witness did not know whether the Petitioner's marriage with the Respondent took place because the Petitioner was forced by the Respondent, which was clear that at the time the marriage took place in the KUA the Respondent's family and the Applicant were also present there.

2. Judge's Considerations

That the reason or postulate of the Applicant in filing the case of annulment of marriage is basically because before the marriage or approximately on September 20, 2017, the Respondent forced the Applicant to have a conjugal relationship when the Applicant was studying together at the Respondent's house and in a state of quiet house and the Respondent undressed and then forced the Applicant and then intercourse occurred between the Applicant and the Respondent.

That the Applicant and the Respondent had marital relations 1 (one) time, but at that time the Respondent's condition was already in a state of pregnancy, this was then known based on the obstetrician's statement which stated "The Respondent gave birth with a gestational period of 10 (ten) months and 5 (five) days". In addition, it is reinforced by the fact that the Respondent once told and confessed to the Petitioner, that the Respondent had also had sexual intercourse with other men other than the Applicant, because the Respondent was pregnant, finally the Respondent's family accused the Applicant of being the father of the child conceived by the Applicant and asked the Applicant to marry her if the Applicant refused to marry then, the Respondent's family



would report the Applicant to the police, with allegations of acts of molestation against minors. And because under the threat of being forced and under threat by the Respondent's family who asked for responsibility and to obtain status for the child in the Respondent's womb, with the forced situation and unable to refuse, the Applicant finally married the Respondent until now.

That from the answer between the Applicant and the Respondent, it can be concluded that the main issue in this case is whether the Applicant was forced to have sexual intercourse by the Respondent and whether the marriage between the Applicant and the Respondent was forced. And to find out, the panel of judges then assessed the evidence submitted at the trial in the form of letter evidence and 2 (two) witnesses, and declared that the evidence was appropriate.

The Judge considered the testimony of Witness I of the Applicant and Witness II of the Applicant and it can be concluded that the Applicant was forced to have physical relations with the Respondent and the Applicant's family married the Applicant and the Respondent because they were forced by the Respondent's family. Based on the testimony of witness II of the Applicant as mentioned above based on information from the Applicant and stating that the house is in a quiet state, it is very natural if the witness statement only hears from the Applicant's information. Thus, based on the provisions of Article 171 Paragraph (1) of the HIR, the testimony of witness II of the Applicant cannot be accepted.

The panel of judges held that the Respondent was a physically weak woman, in the category of abnormal legs, and it was physically impossible for a physically weak person to force a physically healthy man to have sexual intercourse. Then reconsider that in relation to the Applicant's witness testimony I who said, the Applicant's family was forced by the Respondent's family, to marry the Applicant and the Respondent, if it is connected with the existing evidence, then according to the panel of judges with the agreement, there is no coercion in the marriage between the Applicant and the Respondent.

If it is analyzed that the panel of judges in its consideration focuses on 2 (two) things:

- a. In his statement, the Applicant stated that there had been threats by the Respondent's family who asked the Applicant to be responsible for the Respondent's pregnancy and asked the Applicant to marry the Respondent. If the Respondent's family refuses, the Petitioner will report the Petitioner to the police with allegations of obscene acts against minors, but in the facts of the trial that occurred, the panel of judges obtained evidence to the contrary, with the existence of evidence of a letter (photocopy of the joint decree) between the



Applicant and the Respondent so that the panel of judges believed that there was no element of coercion in the marriage carried out by the Petitioner and the Respondent.

- b. That the Applicant's reason/postulates is because before the marriage or approximately on September 20, 2017, the Respondent forced the Applicant to have a conjugal relationship when the Applicant was studying together at the Respondent's house and in a quiet house the Respondent undressed and forced the Applicant to have sexual intercourse between the Applicant and the Respondent. That the Applicant and the Respondent had marital relations 1 (one) time, but at that time the Respondent's condition was already in a pregnant condition, this was known later from the obstetrician's statement which stated "The Respondent gave birth with a gestational period of 10 (ten) months and 5 (five) days.

Case by Number 17x/pdt.G/2019/PA.YK (1); The analysis of the judge's decision is: That the matters stated in the applicant's posita turned out to be after being associated with the witness statements and the opinion of the panel of judges that the facts were found based on evidence of prejudice that the Respondent deliberately concealed his identity, and if the Applicant knew the Respondent's condition, the Applicant did not want to marry the Respondent. Therefore, the author argues that the Petitioner's application or postulates are very strong and in accordance with what the witness conveyed before the trial, and therefore the marriage can be annulled in accordance with the provisions of Article 72 paragraph (2) of the Compilation of Islamic Law "a husband or wife can apply for annulment of marriage if during the marriage there is fraud or misperception about the husband or wife". On this basis, the panel of judges finally decided this case by granting the Applicant's Application.

Case with Number 30x/pdt.G/2019 /PA.YK; Sedangkan putusan hakim dalam kasus ini adalah: Menurut Majelis hakim, pokok Permohonan Pemohon dalam Perkara ini adalah membatalkan Perkawinan Pemohon dan Termohon dikarenakan Termohon tidak dapat menjalankan kewajibannya sebagai suami dalam hal memenuhi kebutuhan batin Pemohon dikarenakan Termohon tidak dapat melakukannya sebab Pemohon mengalami gangguan Kesehatan dalam hal ini tidak bisa berereksi (ejakulasi dini) sehingga Pemohon merasa tidak bahagia hidup dengan Termohon. Kemudian yang selanjutnya menjadi pertimbangan hakim adalah bukti surat Pernyataan Termohon yang diajukan sebagai bukti yang berisi merelakan Pemohon dan memohon untuk dikabulkan dan hakim berpendapat bahwa hal tersebut justru memperkuat benar adanya Permohonan Pemohon.



Case by Number 40x/pdt.G/2018/PA. YK; The judge concluded that the subject matter in this case was whether the Applicant was forced to have sexual intercourse by the Respondent and whether the marriage between the Applicant and the Respondent was in a forced state. And to find out, the panel of judges will then assess the evidence submitted at the trial in the form of letter evidence and 2 (two) witnesses, and declare that the evidence is appropriate. And the evidence presented at the trial is: A copy of the letter of mutual agreement (evidence admitted by both parties) and stated to have binding and perfect evidentiary power. Copy of the copy of the police report revocation letter dated xxx. proving that after the existence of a letter of mutual agreement, the police report on the alleged criminal act of obscenity against minors was revoked by the Respondent.

Annulment of marriage can result in a null and void decision because it violates religious provisions and can be canceled due to several administrative matters.¹¹ The judge's decision, in addition to considering the legal facts, is also based on the principle of propriety and propriety (*billijkheid en redelijkheid*).¹²

E. Conclusion

Annihilation of marriage is actually a legal act in the laws and regulations of the Republic of Indonesia, but there are still individuals who try to seek profit and fulfill their rights in a fraudulent way, or deliberately make a lawsuit for annulment of marriage, indeed not all cases filed in the study are deliberately made up to meet the interests of one party in the lawsuit such as case 1 (one), and case 2 (two) is still classified as normal/common in trials in religious courts. But what is interesting and needs to be given more attention in this case is the third case. Because in the observation of the author of this case, it is very necessary for the Petitioner's interests to deliberately want to cancel his marriage, on the grounds that there is an element of coercion from the Respondent to carry out the marriage. Then the reason that the lawsuit seems to be fabricated is because the postulates of the application are not proven in the trial. Then it was clarified by the judge's opinion in his consideration, it is impossible for a person who has physical weakness to be able to force someone who is physically healthy to have intercourse.

¹¹ Deni Rahmatillah and A.N Khofify, The Concept of Annulment of Marriage in Law Number 1 of 1974 and Compilation of Islamic Law, *Journal of Islamic Law*, Vol XVII No. 2 December 2017, p. 169

¹² Hartanto, Aida Dewi, "Posisi Hukum Korban Perzinahan Yang Dilaporkan Atas Tindak Pidana Kesusilaan Berdasar Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik", *Jurnal Hukum To-Ra*, Volume 6 Nomor 3 Desember 2020, h.. 285



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