

HOMOSEXUALITY AS A GROUND FOR ANNULMENT OF MARRIAGE: DISPARITY IN RELIGIOUS COURT DECISIONS RESULTING FROM LEGAL INTERPRETATION OF THE MARRIAGE LAW AND THE COMPILATION OF ISLAMIC LAW

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Abstract :

The status of homosexuality as a reason for annulment of marriage is still an unclear area in Indonesia's national legal system. Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) does not explicitly establish it as a basis for annulling marriage. This study aims to examine the position of homosexuality in national marriage law and explore its possible interpretation as a valid reason for annulment of marriage. Using a juridical-normative approach that includes the analysis of laws and regulations, legal concepts, and a systematic approach, this study finds that homosexuality can be considered as a form of defect in subjective conditions in marriage, especially related to the inability to fulfill obligations as husband and wife as stated in Article 27 paragraph (2) of the Marriage Law and Article 72 paragraph (2) of the KHI. However, the recognition of homosexuality as a basis for annulment is highly dependent on the interpretation of judges, so it has the potential to cause differences in verdicts within the Religious Court. These findings make a new contribution through an interpretive approach to the norm vacuum, while remaining grounded in the purpose of marriage and the dominant religious values in Indonesia.

Keywords : *Homosexuality, Marriage Annulment, Disparity, Legal Interpretation*

Abstrak :

Status homoseksualitas sebagai alasan pembatalan perkawinan masih menjadi wilayah yang belum jelas dalam sistem hukum nasional Indonesia. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam (KHI) tidak secara eksplisit menetapkannya sebagai dasar untuk membatalkan perkawinan. Penelitian ini bertujuan untuk mengkaji kedudukan homoseksualitas dalam hukum perkawinan nasional serta mengeksplorasi kemungkinan penafsirannya sebagai alasan sah untuk pembatalan perkawinan. Dengan menggunakan pendekatan yuridis-normatif yang mencakup analisis peraturan perundang-undangan, konsep hukum, dan pendekatan sistematis, penelitian ini menemukan bahwa homoseksualitas dapat dianggap sebagai bentuk cacat pada syarat subjektif dalam perkawinan, khususnya berkaitan dengan ketidakmampuan memenuhi kewajiban sebagai suami istri sebagaimana tercantum dalam Pasal 27 ayat (2) UU Perkawinan dan Pasal 72 ayat (2) KHI. Meski demikian, pengakuan atas homoseksualitas sebagai dasar pembatalan sangat bergantung pada interpretasi hakim, sehingga berpotensi menimbulkan perbedaan putusan di lingkungan Pengadilan Agama. Temuan ini memberikan kontribusi baru melalui pendekatan interpretatif terhadap kekosongan norma, dengan tetap berpijak pada tujuan perkawinan dan nilai-nilai keagamaan yang dominan di Indonesia.

Kata Kunci: *Homoseksual, Pembatalan Perkawinan, Disparitas, Interpretasi Hukum*

INTRODUCTION

In Indonesian law, marriage is seen as a physical and spiritual relationship between a man and a woman as a married couple with the aim of forming a harmonious and lasting family, based on belief in God Almighty as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage. In this context, marriage is not only socially binding, but also contains strong religious and moral dimensions.

In Indonesia, provisions regarding marriage are regulated by Law Number 1 of 1974 concerning Marriage (UUP), and specifically for Muslims, these rules are further elaborated in the Compilation of Islamic Law (KHI). These two regulations serve as the primary legal basis for determining the validity of a marriage, the rights and obligations of husband and wife, and the procedure for annulment.

Marriage annulment is a decision issued by a court declaring a marriage to be legally void and deemed never to have occurred (Nasichin.,2018), The reason for annulment is failure to meet the requirements stipulated in the legislation. In general, an annulment petition is filed under two conditions: when the marriage is legally void or when the marriage is still valid but has the potential to be annulled. (Manan and Fauzan, 2022, hlm 66-67). Marriage annulment is regulated in Articles 22 to 28 of the UUP and Articles 70 to 76 of the Compilation of Islamic Law (KHI). A marriage is considered null and void if it is performed under conditions prohibited by the UUP and KHI, while a voidable marriage means that the marriage can be annulled or remain valid. This gives the parties involved the opportunity to choose whether to maintain or annul the marriage through the annulment application process. (Saebani, 2016, hlm 128). Marriage annulment in Islam is called fasakh, which means broken or interrupted. In other words, fasakh refers to the termination of a marriage through a court decision, which is essentially the right of the husband and wife, due to something that is only discovered after the marriage has taken place.

A marriage cannot be considered null and void automatically without a court decision, as regulated in Article 37 Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law states that "the annulment of a marriage may only be decided by a court." The court's decision in this case aims to provide legal certainty. Therefore, an annulment of a marriage is considered valid if it has received a court decision that has permanent legal force. (Rahmatillah and Khofify, 2017, hlm152-171)

Although provisions regarding marriage annulment are contained in Articles 22 to 28 of the Marriage Law and Articles 70 to 76 of the Compilation of Islamic Law (KHI), neither regulation explicitly addresses homosexuality as grounds for annulment. This gap in norms can create legal uncertainty, particularly if differing sexual orientations are only revealed after the marriage has taken place. (Wajdu, 2019, Vol 1 No 1)

In Islamic law itself, homosexual practices (*liwath*) are expressly prohibited and considered a major sin. Therefore, from an Islamic legal perspective, sexual orientation that deviates from heterosexual norms can be viewed as a personality deficiency that prevents the achievement of the primary goal of marriage, namely, to form a family that is peaceful, loving, and compassionate.

Under Islamic law, sexual orientations other than heterosexuality are considered contrary to Sharia law. Similarly, within the national legal system, moral and religious values are the primary basis for establishing family law. Therefore, it

is necessary to examine the possibility of homosexuality being used as grounds for annulment of marriage based on existing legal interpretations.

Annulment of marriage is clearly regulated in Article 22 of the Marriage Law, which states that "a marriage may be annulled if the parties do not fulfill the requirements for entering into a marriage." Furthermore, Article 27 paragraph (2) of the UUP states that "a husband or wife may submit a request for annulment of marriage if there is a misunderstanding regarding the identity of the husband or wife during the marriage" (Manan and Fauzan, hlm 2022 660-67) Similarly, Article 72 paragraph (2) of the KHI states that "a husband or wife can file a request for annulment of marriage if there is fraud or misunderstanding regarding the identity of the husband or wife during the marriage." The term "misconception" in this case has the same meaning as misconception, misunderstanding, or misperception. Thus, a person who experiences misconception may feel deceived regarding the perceived matter (Ibid.). This rule provides an opportunity for the interpretation that homosexuality, if proven, can be used as a basis for annulling a marriage because it is considered contrary to the purpose and function of marriage according to national law and Islamic law.

Based on this background, this study aims to analyze the legal basis for annulment of marriage, the position of homosexuality as a reason for annulment of marriage in the Marriage Law and the Compilation of Islamic Law, as well as the legal considerations used by judges in accepting or rejecting homosexuality as a reason for annulment of marriage.

RESEARCH METHOD

This research employs a normative-juridical approach. (Soekanto dan Mamudji, 2001, hlm 31). This research is a legal study conducted by examining literature or secondary data as the basis for analyzing positive law related to the annulment of marriage due to homosexuality. A normative approach is employed because the issue discussed concerns written legal norms and their application in legal practice. In addition, this study also includes several decisions from Religious Courts, aiming to clarify whether homosexuality can be used as a ground for the annulment of marriage. This research is a legal study carried out by analyzing literary sources or secondary data to examine positive law concerning the annulment of marriage caused by homosexuality. The normative approach is applied since the topic discussed relates to written legal norms and their implementation in legal practice. Furthermore, this study also incorporates several Religious Court decisions with the purpose of explaining whether homosexuality can serve as a valid reason for annulling a marriage. (Marzuki, 2010, hlm 45)

The method of collecting legal materials is carried out through library research, by accessing legal sources, both from official documents, legal textbooks, and academic journals.

The analytical techniques used in this research are: Statute approach, which analyzes all legal regulations related to marriage and its annulment. (Ibid, hlm 93) Conceptual approach, which examines basic concepts in family law and legal justice. (Ibrahim, 2007, hlm 302). Systematic approach, which interprets legal provisions

not separately, but by looking at the relationship between articles in a complete legal system. (Ibid)

All study results will be presented in a descriptive-analytical manner, namely by first outlining the applicable legal provisions, then conducting an in-depth analysis to find the appropriate legal formulation in positioning homosexuality as a basis for annulling a marriage.

The descriptive-analytical approach is a method commonly used in normative legal research. In this context, researchers not only describe legal provisions textually but also analyze gaps, ambiguities, or the potential for multiple interpretations of legal norms. This approach is expected to provide solutions or legal formulations that are more adaptive and in line with evolving societal needs, including sensitive issues such as homosexuality as grounds for annulment of marriage. This approach is crucial to ensure that legal interpretation is not merely rigid but also considers the values of justice and legal certainty for the parties involved in the dispute.

FINDINGS AND DISCUSSION

A. Legal Basis for Annulment of Marriage

Annulment of marriage is the cancellation of the husband and wife relationship after the marriage contract has been carried out. Annulment of marriage means declaring... that a marriage that has taken place is invalid or is considered never to have occurred. Law Number 1 of 1974 concerning Marriage (UUP) does not contain an explicit definition of marriage annulment, nor does Government Regulation Number 9 of 1975, which is the implementing regulation of the UUP.

Regulations regarding marriage annulment are contained in Chapter IV, Articles 22 to 28 of the Marriage Law, and in Chapter XI, Articles 70 to 76 of the Compilation of Islamic Law (KHI). These articles regulate the requirements, grounds for annulment, the parties authorized to submit an annulment request, and the procedures for its implementation.

1. Annulment of Marriage in Law Number 1 of 1974 concerning Marriage

Article 22

A marriage can be annulled if the parties cannot fulfill the requirements for a marriage to take place.

Article 23

Those who can apply for annulment of marriage are:

1. The families in a straight line upwards from the husband or wife;
2. Husband or wife;
3. The official is only authorized as long as the marriage has not been decided;
4. The appointed official referred to in paragraph (2) of Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage has ended.

Article 24

Anyone who is still bound by marriage to one of the two parties and on the basis of the continued existence of the marriage may apply for annulment of the new marriage, without reducing the provisions of Article 3 paragraph (2) and Article 4 of this Law.

Article 25

An application for annulment of marriage is submitted to the court in the jurisdiction where the marriage took place or at the place of residence of both spouses, husband or wife.

Article 26

1. A marriage that is conducted in the presence of an unauthorized marriage registrar, an invalid marriage guardian or one that is conducted without the presence of 2 (two) witnesses may be requested to be annulled by the families in the direct line of descent from the husband or wife, the prosecutor and the husband or wife.
2. The right to annul by a husband or wife based on the reasons in paragraph (1) of this article is forfeited if they have lived together as husband and wife and can show a marriage certificate made by an unauthorized marriage registrar and the marriage must be renewed to be valid.

Article 27

1. A husband or wife may apply for annulment of marriage if the marriage was carried out under unlawful threats.
2. A husband or wife can submit a request for annulment of marriage if during the marriage there is a misunderstanding regarding the husband or wife.
3. If the threat has stopped, or the person suspected is aware of the situation, and within a period of 6 (six) months after that they are still living as husband and wife, and do not exercise their right to submit a request for annulment, then their right is forfeited.

Article 28

1. The annulment of a marriage begins after the court decision has permanent legal force and is valid from the time the marriage takes place.
2. The decision to annul a marriage does not apply retroactively to:
 - a. Children born from the marriage.
 - b. Husband or wife who acts in good faith, except with regard to joint property, if the annulment of the marriage is based on the existence of another prior marriage.
 - c. Other third persons are not included in letters a and b as long as they obtain their rights in good faith before the decision regarding cancellation has permanent legal force.

2. Annulment of Marriage in the Compilation of Islamic Law (KHI)

Furthermore, the Compilation of Islamic Law (KHI) provides an explanation regarding the annulment of marriage as follows:

Article 70

A marriage is void if:

- a. The husband carries out the marriage, while he does not have the right to carry out the marriage contract because he already has four wives, even if one of the four wives is in the iddah talak raj'i.
- b. A person marries his ex-wife whom he has divorced.
- c. A person marries his ex-wife who has been divorced three times by him, unless the ex-wife has previously married another man. then divorced again *ba'da dukhul* from the man and his iddah period ended.
- d. Marriage is carried out between two people who are related by blood, marriage or breastfeeding to a certain degree which prevents marriage according to Article 8 of Law Number 1 of 1974, namely:

Article 71

A marriage can be annulled if:

- a. A husband practices polygamy without permission from the Religious Court.

- b. The woman he married was later discovered to be the wife of another man who was mafqud.
- c. The woman who was married was still in the iddah period from another husband.
- d. Marriage that violates the age limit for marriage as stipulated in Article 7 of Law Number 1 of 1974.
- e. Marriages are carried out without a guardian or carried out by a guardian who is not entitled.
- f. Marriage carried out by force.

Article 72

- 1. A husband or wife may apply for annulment of marriage if the marriage was carried out under unlawful threats.
- 2. A husband or wife may submit a request for annulment of marriage if during the marriage there was fraud or misunderstanding regarding the husband or wife.
- 3. If the threat has stopped, or the person suspected is aware of their situation and within a period of 6 (six) months after that they are still living as husband and wife, and do not use their right to submit a request for annulment, then their right is forfeited.

Article 73

Those who can submit a request for annulment of marriage are:

- a. The families are in a straight line of descent up and down from the husband or wife.
- b. Husband or wife.
- c. Officials who are authorized to supervise the implementation of marriages according to law.
- d. Interested parties who are aware of any defects in the pillars and conditions of marriage according to Islamic law and statutory regulations as referred to in Article 67.

Article 74

- 1. An application for annulment of a marriage can be submitted to the Religious Court that oversees the residence of the husband or wife or the place where the marriage took place.
- 2. The annulment of a marriage begins after the decision of the Religious Court has permanent legal force and is valid from the time the marriage takes place.

Article 75

The decision to annul a marriage does not apply retroactively to:

- a. A marriage that is annulled because one of the husband or wife apostatizes.
- b. Children born from the marriage.
- c. Third parties as long as they obtain their rights in good faith, before the decision to annul the marriage has permanent legal force.

Article 76

The annulment of a marriage will not sever the legal relationship between the child and his parents.

A marriage cannot be declared null and void unless someone files for annulment through the courts (Saebani and Fala, 2019, hlm 105). Under Indonesian law, cases of annulment of marriage due to failure to meet the requirements and pillars of marriage require a court decision with permanent legal force. This is because annulment of marriage is a civil matter, and a judge will process it if a request is filed by the interested parties.

The legal basis for annulment of marriage in the Indonesian legal system is regulated by Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). Articles 22–27 of the Marriage Law and 71–72 of the KHI explicitly stipulate the terms and conditions that can constitute valid grounds for annulment, such as coercion, fraud, violation of marriage prohibitions, and subjective or objective defects.

However, these provisions are inherently limited, meaning that marriage annulment can only be granted for reasons explicitly stipulated in statutory regulations. However, judges have room to interpret subjective requirements, particularly when certain circumstances are identified that are not explicitly stated in the law—for example, regarding sexual orientation, such as homosexuality. In practice, this can lead to disparities in decisions in religious courts, as each judge may have different legal perspectives and considerations, particularly when dealing with normative gaps or issues that are not clearly regulated.

Thus, although the law provides a mechanism and legal basis for annulment of marriage, social dynamics and evolving societal values require an adaptive legal response. Therefore, legal interpretation by judges, as well as the potential for reform and harmonization of legislation, are crucial for achieving justice, legal certainty, and protecting the rights of all parties in a marriage.

B. Homosexuality as a Ground for Annulment of Marriage

Although homosexuality is not expressly listed in the Marriage Law or the Compilation of Islamic Law as grounds for annulment, it can be legally considered a defect in the subjective requirements. This defect arises when one partner is unable to fulfill the primary function and purpose of marriage, namely, to build a life together physically and spiritually as husband and wife. (Kusumaatmadja, 2002, hlm 112)

The uniqueness of this research lies in the use of an interpretive approach to the issue of homosexuality. Because there are no explicit provisions governing it, legal interpretation is necessary. Through systematic interpretation, it can be understood that the validity of a marriage is not only determined by administrative aspects, but also encompasses the essence of the husband-wife relationship, which is based on religious and moral values, as well as the goal of building a family life together. (Marzuki, 2010, hlm 143). Homosexuality can be considered a subjective legal defect in marriage when viewed from the perspective of the primary purpose of marriage, namely to form a harmonious family, and based on The principle of morality in national family law. Through this approach, homosexuality revealed after marriage can be understood as a violation of the fundamental principles of marriage, thus providing a legitimate basis for annulment. Efforts to fill this legal gap align with the principles of Islamic law and general principles of national law, which emphasize the importance of protecting the purposes of marriage and family honor.

In Islamic law, same-sex relations (liwath) are considered a major sin and

contrary to human nature, as explained in the Qur'an, Surah al-A'raf, verses 80–81. Therefore, if one of the partners in a marriage is known to have a homosexual orientation, it can be concluded that the person concerned does not fulfill the requirements to fulfill the role of husband or wife according to the purpose of marriage. Verses 80–81 of Surah al-A'raf are as follows:

Meaning: *(We also sent) Lut (to his people). (Remember) when he said to his people, "Do you commit such an abomination as no one has ever committed before you in the world?" Indeed, you approach men to satisfy your lust, not women; rather, you are a people who transgress the limits. (QS al-A'raf: 80-81).*

Then Allah destroyed Prophet Lut's people in the same way terrifying. Allah SWT. says in surah al-Syu'ara': 165-166.

Meaning: *"Why do you approach men among mankind (in homosexual acts)? While you leave (the women) whom God created to be your wives? You are indeed a people who exceed the limits." (QS al- Syu'ara: 165-166).*

Normatively, the annulment of marriage due to homosexuality can be linked to the following provisions:

1. Article 27 paragraph (2) of the Marriage Law states that "a husband or wife may file a request for annulment of marriage if during the marriage there is a misunderstanding regarding the identity of the partner." Although this article does not directly mention homosexuality as a form of "misunderstanding," this provision opens up room for further interpretation.
2. Article 72 paragraph (2) of the KHI states that a husband or wife can request an annulment of marriage if there is fraud or misperception regarding the partner during the marriage. Although homosexuality is not explicitly mentioned, the phrase "fraud or misperception" in this article provides a clearer basis. Thus, sexual orientation that deviates from the norm of heterosexual marriage can be considered as part of the category of "fraud or misperception" as referred to in the article.

In Article 72 Paragraph (2), the terms "misconception" and "fraud" have similar meanings, where fraud can be considered as part of misconception.

However, not all forms of misconception can be categorized as fraud. The main difference between the two lies in the element of intent, fraud is carried out consciously and deliberately, while misconception arises due to ignorance or a person's mistaken perception of another party.

According Abdul Manan and M. Fauzan (Manan dan Fauzan, hlm 66-67) Fraud generally occurs in the form of identity falsification, for example, someone claiming to be a virgin when in fact they have been married before. This fraud can be committed by both husbands and wives. Although misconceptions are similar to fraud, the difference lies in the cause; misconceptions often arise from fraud. Therefore, it can be concluded that fraud is a form of misconception, but not all misconceptions can be categorized as fraud.

As an example of a misconception related to fraud, for example a man who claims to be a virgin even though he has been married before, and the marriage is valid according to religion and the state. The consequences of a marriage based on

misconception are that it can be annulled, but not legally void. This misconception is similar to fraud because it often arises from the fraud itself. The difference lies in whether there was any discussion or agreement before the marriage. If there was an agreement that did not correspond to reality, then it could be considered fraud. Conversely, if there was no clear agreement, then it is considered fraud as a mistake. In this context, deception causes misunderstandings on the part of other parties.

Homosexuality as a reason for annulment of marriage is still a controversial issue and has not been expressly regulated in Indonesian legislation, either in Law Number 1 of 1974 concerning Marriage or the Compilation of Islamic Law (KHI). The absence of explicit regulations means that homosexuality cannot directly be used as a formal basis for annulling a marriage.

However, from a material legal perspective, homosexuality can be associated with defects in the subjective requirements of marriage, particularly related to the inability to fulfill obligations as husband and wife. This can be interpreted from Article 27 paragraph (2) of the Marriage Law and Article 72 paragraph (2) of the Compilation of Islamic Law, which in principle regulates the right of one party to file for annulment if their partner is unable to carry out the functions and responsibilities of marriage. In this context, homosexuality is considered to hinder the fulfillment of the purpose of marriage as referred to in Article 1 of the Marriage Law, namely to form a happy and eternal family (household) based on the One Almighty God.

However, in practice, applications for annulment of marriage on grounds of homosexuality are highly dependent on the judge's interpretation. Judges have discretion to assess whether the circumstances are sufficiently compelling to constitute legal grounds for annulling a marriage. Consequently, disparities in rulings within Religious Courts regarding these cases are often found. This demonstrates the need for affirmation of legal norms and harmonization in the enforcement of marriage law to avoid creating legal uncertainty for the parties involved.

Sociologically and theologically, the majority of Indonesian society and religious leaders still view homosexuality as contrary to religious and social norms. Therefore, there is considerable public pressure for marriage laws to protect these values. However, positive law still requires clear and firm formulation in order to provide certainty and fair legal protection for all parties.

C. Judge's Considerations in Deciding on Homosexual Cases as Reasons for Annulment of Marriage

To clarify the discussion regarding homosexuality being used as a reason for annulling a marriage, 4 (four) decisions will be presented Religious Courts, namely:

1. Decision of the Bantul Religious Court Number 981/Pdt.G/2020/PA.Btl

This case began with the filing of a lawsuit by the Plaintiff on September 23, 2020, which was then registered at the Bantul Religious Court Clerk's Office under Number 981/Pdt.G/2020/PA.Btl on the same day. In the lawsuit, it was explained that the Plaintiff and Defendant had married on June 29, 2020, and the marriage had been officially registered by the Marriage Registrar of the Religious Affairs Office (PPN KUA) of Piyungan District, Bantul Regency, as stated in the Marriage Certificate Extract Number XXX dated June 29, 2020.

The Plaintiff stated that before their marriage, she was a virgin and the Defendant was a bachelor. She also revealed that during their marriage, there had never been sexual intercourse (qobla dukhul). Several days after the wedding, the Plaintiff felt something was strange in their marriage, as the Defendant showed no desire to touch or initiate sexual intercourse as a married couple.

In mid-July 2020, the Plaintiff discovered a photo of a naked man on the Defendant's phone, accompanied by text messages containing homosexual sexual conversations between the Defendant and several men. Following up on her findings, the Plaintiff conveyed her suspicions to the Defendant's older sibling. His brother later confirmed that the Defendant did have sexual attraction to the same sex.

After receiving a confession from the Defendant's older brother and finding evidence in the form of photos of naked men and conversations with sexual overtones of the same sex, the Plaintiff felt that he had been deceived in his marriage. On that basis, the Plaintiff filed a request for annulment of the marriage on the grounds that his marriage with the Defendant did not fulfill the requirements for a valid marriage as regulated in Article 22 of Law Number 1 of 1974 concerning Marriage, which states: "A marriage may be annulled if the parties do not fulfill the requirements for carry out the marriage." In addition, since the marriage took place, the Plaintiff and Defendant have never lived as a real husband and wife and it is no longer possible to continue the relationship within the bonds of marriage. Therefore, legally the application for annulment of marriage can be granted.

Judge's Consideration

After the plaintiff submitted written evidence and two witnesses, then The judge's considerations in deciding this case were as follows:

1. The Panel of Judges considers that the documents in the form of a photocopy of the Plaintiff's Resident Identity Card and a copy of the Marriage Certificate Extract have fulfilled the requirements both formally and materially. In addition, evidence in the form of screenshots of WhatsApp conversations between the Defendant and several men indicating a same-sex relationship is considered relevant to the main case that the Plaintiff wants to prove, so it is considered to have fulfilled the requirements for material proof.
2. The judge also considered that the testimony of the two witnesses supported and was consistent with each other. Therefore, the witness statements were deemed legally valid because they complied with the provisions of Articles 171 and 172 of the HIR.
3. Based on the description of the lawsuit and the evidence presented by the Plaintiff, the Panel of Judges found that the marriage between the Plaintiff and Defendant could not be continued. This was due to the Defendant's condition, which was a sexual orientation deviation, namely liking the same sex or being homosexual.
4. The judge considered that in accordance with the provisions of Article 22 of Law Number 1 of 1974, the marriage between the Applicant and the Respondent was worthy of being annulled.
5. The judge also concluded that the reasons submitted by the Applicant in this marriage annulment case fulfilled the element of "mistaken assumption" as regulated in Article 27 Paragraph (2) of Law Number 1 of 1974, so that the

application for annulment of the marriage was worthy of being granted.

6. The judge considered that the Marriage Certificate and its extract with number 0115/035/VI/ 2020 issued by the Office of Religious Affairs must be declared invalid and have lost legal force.
7. Based on the provisions of Article 89 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts, which has been amended through Law Number 30 of 2006 and Law Number 50 of 2009, the judge determined that the costs of the case would be borne by the Applicant.

Decision Result

After considering all the testimony in the trial and assessing the evidence and facts presented, the Bantul Religious Court determined the verdict on this case as follows:

1. Declares that the Respondent, despite having been legally and properly summoned to attend the trial, did not attend;
2. Grant the applicant's request by default (without the presence of the applicant) Respondent;
3. Determines that the marriage between the Applicant (Plaintiff) and the Respondent (Defendant), which took place on June 29 2020 at the Office of Religious Affairs, is annulled;
4. Declare that the Marriage Certificate and the Marriage Certificate Extract Number 0115/035/VI/2020 has no legal force;
5. Charge the Petitioner to pay court costs amounting to Rp. 501,000.00 (five hundred and one thousand rupiah).

1. Decision of the Surabaya Religious Court Number 2380/Pdt.G/2023/PA.Sby

This problem began when the Applicant, through his attorney, filed a lawsuit on May 17, 2023, which was then registered at the Surabaya Religious Court Clerk's Office with Case Number 2380/Pdt.G/2023/PA.Sby on May 22, 2023. In his lawsuit, the Applicant stated that he and the Respondent had married on October 28, 2022, which was officially recorded by the Marriage Registrar at the KUA Bulak District, Surabaya City, with a Marriage Certificate Extract dated the same date.

In her statement, the Applicant explained that after their marriage, they lived together at her aunt's house in Surabaya. However, during their marriage, there had never been any marital relations (qobla dukhul) and they had no children. Initially, the relationship proceeded normally without suspicion, considering that at that time the Applicant was menstruating. However, one month later, the Applicant began to suspect the Respondent because he never showed any physical attraction as a husband and wife. The Respondent acted indifferent and often avoided the Applicant, even spending time at his parents' house until late at night. Every invitation to have sex was always rejected by the Respondent with various reasons, such as needing time to adjust after ta'aruf, not being ready to have children, and having other priorities. in a household, such as building a house. This further strengthened the Petitioner's suspicions that there was something unnatural about the Respondent.

In late February 2023, after the Petitioner persistently questioned the real reason behind the Respondent's cold demeanor, the Respondent finally admitted to having a sexual attraction to the same sex, or homosexuality. This

admission made the Petitioner feel that the Respondent did not meet the criteria for a suitable husband, as her spiritual needs as a wife could not be met due to the Respondent's inappropriate sexual orientation.

In April 2023, the Petitioner then conveyed her marital problems to her parents and family. After a family discussion, the Petitioner decided to file for annulment, which was also not opposed by the Respondent. The Respondent never disclosed this condition before the marriage, leading the Petitioner to assume that the Respondent was a normal man attracted to the opposite sex. Therefore, this situation is considered a form of misconception about the Respondent's identity.

Judge's Consideration

1. The Panel of Judges considers that the essence of the petition filed by the Petitioner is the Respondent's unsuitability to fulfill the role of husband, because the Respondent is homosexual. Therefore, the Petitioner feels that her right as a wife to receive spiritual support cannot be fulfilled because the Respondent's sexual orientation is towards the same sex.
2. The judge assessed that the petition for annulment submitted by the Applicant was legally groundless because it did not fulfill the applicable provisions for annulment of marriage.
3. In its consideration, the Judge stated that even though the Respondent was homosexual, this could not necessarily be categorized as a form of fraud or misunderstanding about the husband's identity as regulated in Article 72 paragraph (2) of the Compilation of Islamic Law. In the panel's view, the phrase "misconception about the husband" in the article refers to a mistake regarding the person's identity, not regarding aspects of his personality—in this case, sexual orientation. If personality is considered a basis for annulment, then almost any incompatibility in the nature or character of the couple discovered after marriage could be used as a reason to annul the marriage, which would certainly open up opportunities for abuse of the law.

Verdict

The panel of judges has decided on the annulment of this marriage case in decision Number 2380/Pdt.G/2023/PA.Sby which states that:

1. Declare that the Petitioner's petition cannot be accepted (*niet ontvankelijke verklarend*);
2. Charge the costs of this case to the Applicant, which to date have been calculated at Rp. 495,000.00 (four hundred and ninety-five thousand rupiah).

2. Decision of the Purwakarta Religious Court Number 1409/Pdt.G/2024/PA.Pwk

The lawsuit application was filed by the Applicant through a power of attorney on September 9, 2024, and was officially registered at the Purwakarta Religious Court Clerk's Office with Number 1409/Pdt.G/2024/PA.Pwk. on September 12, 2024. In the application letter, it was stated that the Applicant and the Respondent

had married on February 24, 2024, which was then recorded by the Marriage Registrar at the XXX District Religious Affairs Office, Purwakarta Regency, with a Marriage Certificate Extract dated The same.

The Petitioner explained that after their marriage, the two lived together in Kampung XXX RT XXX RW XXX, XXX Village, XXX District, Purwakarta Regency. However, since their marriage until now, they have never had intimate relations as husband and wife. Every time the Petitioner invited them to have such relations, the Respondent always avoided them with various excuses, thus raising suspicion and making their household life feel like it was not running as it should.

After being married for more than four months, it was finally revealed that the Defendant, as a husband, had a sexual disorder, namely same-sex orientation or LGBT (Lesbian, Gay, Bisexual, and Transgender). As a result, the Plaintiff as wife was never touched or paid attention to by the Defendant. The Defendant's treatment and attitude caused prolonged suffering for the Plaintiff, as well as hampering the implementation of their rights and obligations in marriage as husband and wife. To avoid greater harm, the Plaintiff felt it necessary to annul the marriage.

The plaintiff filed a lawsuit for annulment of marriage on the main grounds of fraud, because the defendant apparently liked LGBT people of the same sex. which caused the marriage between the Applicant and the Respondent to never run as it should, namely never living together or sleeping together like a normal married couple.

Judge's Consideration

1. The judge considered that the main reason for the Petitioner's request was because the Respondent did not meet the requirements to be a good husband, which was caused by the fact that the Respondent was homosexual. This resulted in the Petitioner's right as a wife to receive spiritual support being unable to be fulfilled, because the Respondent's biological needs were only directed towards the same sex.
2. The judge considered that in accordance with Article 27 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states, "A husband or wife can file a request for annulment of marriage if during the marriage there is a misunderstanding regarding the husband or wife." Paragraph (3) continues, "If the threat has ended, or the party who was mistakenly suspected is aware of the situation, and within 6 months after that they still live as husband and wife and do not file a request for annulment, then their rights are forfeited." Article 72 paragraph (2) of the Compilation of Islamic Law states, "A husband or wife can file a request for annulment of marriage if during the marriage there is fraud or misunderstanding regarding the husband or wife."
3. The judge considered that based on Article 27 paragraph (2) of Law Number 1 of 1974 and Article 72 paragraph (2) of the Compilation of Islamic Law, and referring to the legal facts that the Plaintiff and Defendant were married on February 24, 2024, and when they married the Plaintiff knew that the Defendant was a man, with bachelor status, and the Plaintiff was a woman,

with virgin status. They married without any coercion and not because of an arranged marriage, but on the basis of mutual consent, after having a love relationship for 1.5 years. After that, the Plaintiff and Defendant carried out a marriage contract in accordance with Islamic religious procedures, by fulfilling the requirements and pillars of marriage. This was recorded in the Marriage Certificate Extract Book Number: xxx dated February 24, 2024 issued by the Purwakarta District Religious Affairs Office. After the marriage contract, the Plaintiff and Defendant slept together on the first night, even though sexual relations as husband and wife had not yet taken place.

4. The judge considered that in understanding the term "misconception," it is important to refer to the definition contained in the Big Indonesian Dictionary (KBBI). "Misconception" means untrue or mistaken, while "sangka" means suspicion or doubt. Therefore, "misconception" can be interpreted as a misunderstanding or error in understanding. Fraud itself means an act of deceiving or tricking someone, which is generally aimed at personal gain but is detrimental to other parties.
5. The judge also considered that there was a difference in the use of the words "fraud or misrepresentation" between Article 27 paragraph (2) Marriage Law and Article 72 paragraph (2) of the Compilation of Islamic Law. Article 27 paragraph (2) only mentions "misconception", while Article 72 paragraph (2) includes "fraud or misconception". According to H. Abdul Manan, fraud usually occurs in the form of identity fraud, for example, claiming to be a virgin when in fact, married. This fraud can be perpetrated by both husband and wife. Misconception, while similar to fraud, can also be caused by other factors that don't involve direct deception. Therefore, fraud can be considered a form of misconception, but not the opposite.
6. Based on the existing legal considerations and facts, the Panel of Judges concluded that there was no evidence of fraud or misrepresentation regarding the Defendant's identity, as alleged by the Plaintiff in the marriage annulment lawsuit. No identity falsification occurred during the marriage before the registrar of the Purwakarta District Religious Affairs Office.
7. The judge considered that based on the evidence submitted by the Plaintiff (P.1 and P.2) and the statements of the witnesses, the first witness explained that the marriage between the Plaintiff and the Defendant had fulfilled the requirements and pillars of marriage in accordance with Islamic law and statutory regulations, and was registered at the Purwakarta District Religious Affairs Office. The witness also explained that the Defendant was a normal man and that they knew each other and liked each other before marriage, without any element of fraud or misunderstanding in the marriage. The witness also stated that the Plaintiff admitted to never having sexual intercourse with the Defendant, and although there was an attempt to do so after two weeks of marriage, this was not carried out because the Plaintiff felt pain. Regarding the alleged abnormality in the Defendant, the witness only knew from other people's stories and information that could not be proven in court. The second witness, who claimed to be a victim of the Defendant and claimed that the Defendant was LGBT, could not be used as strong evidence because only one witness was presented, without supporting medical evidence. Thus, the Plaintiff could not prove the main reason for the lawsuit regarding fraud or misunderstanding regarding the Defendant's sexual abnormality, which was the basis for the lawsuit for annulment of the marriage.

Verdict

The panel of judges has decided on the annulment of this marriage case in decision Number 1409/Pdt.G/2024/PA.Pwk. which states that:

1. Reject the Plaintiff's lawsuit;
2. Charge the Plaintiff to pay the costs of this case amounting to Rp. 207,000.00 (two hundred and seven thousand rupiah).

3. Court Decision Religion Tangerang Number 795/Pdt.G/2020/PA.Tng

This case was filed by the Plaintiff, a 32-year-old Muslim woman who works as a private employee and lives in Cibodas District, Tangerang City. The Defendant, the Plaintiff's husband, is 35 years old, Muslim, and lives on Jl. Letkol, Sukaramo District, Bandar Lampung City.

The lawsuit was filed by the Plaintiff on April 21, 2020, and registered at the Registrar's Office with Number 795a/nPgdet.r. An/ 2020/1/iRgjAo.uTsnG on April 23, 2020. The lawsuit stated that the Plaintiff and Defendant had married on January 5, 2020, which was registered at the District Religious Affairs Office with a Marriage Certificate Extract number XXX on that date.

In the lawsuit, the Plaintiff explained that although they lived harmoniously as husband and wife and had not been blessed with children, since March 2020, their relationship had begun to become disharmonious due to disputes caused by the Defendant who had a tendency to like the same sex.

The Plaintiff stated in her lawsuit that her marriage to the Defendant resulted from a ta'aruf (getting to know each other) process. After the marriage contract and reception, specifically on the first night, the Defendant did not have sexual relations with the Plaintiff. Until the fourth day of marriage, the Defendant showed no physical attention to his wife. On the fifth day, the Defendant attempted to have intimate relations in an unusual manner, but this did not last long. The Plaintiff began to sense abnormalities in her husband's behavior.

The plaintiff often saw the defendant acting like a woman, and whenever he wanted to get close to her, the defendant always felt uncomfortable and moved away. On the sixth day of marriage, the defendant tried to have sexual intercourse. Intimate, but always closed his eyes and seemed forced. The plaintiff felt she never received any attention or affection from her husband during their relationship. During the honeymoon period, the defendant showed no interest in his wife, despite his attempts to attract her attention. Based on this behavior, the plaintiff felt that her husband might be homosexual.

To confirm his suspicions, the Plaintiff questioned the Defendant's co-worker, who confirmed that the Defendant was indeed homosexual and a member of the gay community. The co-worker also showed evidence in the form of photographs supporting his statement. That evening, the Plaintiff dared to ask the Defendant directly about his sexual orientation. The Defendant angrily admitted that he was homosexual and had HIV/AIDS due to drug use before marriage. The Plaintiff felt very disappointed and hurt by hearing this confession. The culmination of the rift in their household occurred on March 24, 2020, when the Defendant left the Plaintiff and they no longer lived together as husband and wife.

Judge's Consideration

After the plaintiff submitted written evidence and two witnesses, then The

judge's considerations in deciding this case were as follows:

1. Completeness of Administrative Evidence: The Panel of Judges considers that the photocopy of the Plaintiff's Resident Identity Card and the photocopy of the Marriage Certificate Extract have fulfilled the formal and material requirements as valid documentary evidence.
2. Consistency of Witness Statements: The statements of the two witnesses submitted by the Plaintiff are mutually supportive and consistent, thus fulfilling the provisions of Article 171 and Article 172 HIR regarding evidence.
3. Legal Facts of Domestic Disputes: Based on the Plaintiff's statement, written evidence, and witness statements, the Panel of Judges found that there were frequent disputes and arguments in the Plaintiff and Defendant's household. These disputes were caused by the Defendant's inattentive attitude and his admission of being homosexual, so that they no longer lived together and did not carry out their rights and obligations as husband and wife.
4. Legal Basis for Divorce: According to Article 19 letter f of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter f of the Compilation of Islamic Law, divorce can be carried out if there are continuous disputes and quarrels between husband and wife, and there is no hope for life.
5. Eligibility of the Divorce Suit: The Panel of Judges is of the opinion that the Plaintiff's suit has fulfilled the legitimate grounds for divorce as regulated in Article 39 Paragraph (2) of Law Number 1 of 1974 in conjunction with Article 19 letter f of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter f of the Compilation of Islamic Law, so that the Plaintiff's lawsuit should be granted.
6. Court Costs: Based on Article 89 paragraph (1) and Article 90 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009, the Plaintiff is burdened with paying court costs.

Decision Result

After the judge sees and hears what happened in the trial and considers it based on the existing evidence and facts, then

The Tangerang Religious Court decided this lawsuit as follows:

1. Declaring that the Defendant, who has been officially summoned and is fit to appear in court, is not present;
2. Granting the plaintiff's lawsuit by default;
3. Imposing a divorce of 1 (one) ba'in sughra on the Defendant (DEFENDANT) against Plaintiff (PLAINTIFF);
4. Charge the Plaintiff with paying the court costs which have been calculated to be Rp. 306,000.00 (three hundred and six thousand rupiah).

Religious Court decisions in Indonesia regarding marriage annulment cases on grounds of homosexuality demonstrate the dynamics and variation in the legal reasoning used by judges. Essentially, judges in deciding these cases adhere to the principles and provisions stipulated in the Marriage Law and the Compilation of Islamic Law (KHI), particularly regarding the subjective and objective requirements of marriage.

From several decisions, as mentioned previously, it can be seen that judges tend to focus on two main aspects:

1. Fulfillment of Obligations as Husband/Wife. The judge assesses whether the

homosexual behavior of one of the parties results in an inability to carry out the physical and spiritual obligations as husband or wife as referred to in Article 34 of the Marriage Law and Article 80 of the Compilation of Islamic Law. If it is proven that the party concerned is unable to fulfill these obligations, then this can be considered a form of subjective defect that justifies a request for annulment of marriage.

2. Protection of the Purpose of Marriage. Judges also consider whether homosexual behavior hinders the realization of the primary purpose of marriage, namely to form a family that is peaceful, loving, and compassionate. In several decisions, homosexual behavior is considered contrary to the purposes of marriage as formulated in Article 1 of the Marriage Law.

However, not all judges have a uniform interpretation. Some judges believe that as long as homosexual acts have not been concretely proven or are merely allegations, they are not sufficient grounds for annulment. On the other hand, there are judges who are more progressive in believing that evidence of inappropriate sexual tendencies or orientations can annul a marriage in order to protect the well-being of the household.

The disparity in these decisions confirms that there is no explicit norm. The provisions of the law regarding homosexuality leave wide room for interpretation among judges. This has the potential to lead to legal uncertainty and disparate treatment of substantively similar cases.

Going forward, there is a need for clarification and harmonization of norms in laws and regulations so that law enforcement regarding marriage annulments on grounds of homosexuality becomes clearer, fairer, and can provide legal certainty for the public.

CONCLUSION

Based on the results of research and analysis of homosexuality as a reason for annulment of marriage according to the Marriage Law and the Compilation of Islamic Law, the following conclusions can be drawn:

1. Annulment of marriage according to Law Number 1 of 1974 concerning Marriage (UUP) and the Compilation of Islamic Law (KHI). The legal basis for annulment of marriage in the Indonesian legal system has been expressly and limitedly regulated in the UUP and KHI. Provisions regarding annulment of marriage are regulated in Chapter IV, Articles 22 to 28 of the UUP and are also contained in Chapter XI, Articles 70 to 76 of the KHI. The provisions in these articles govern the requirements, grounds for annulment, the parties who may file for annulment, and the procedures for annulment. However, the limitations of explicit norms leave room for interpretation for judges, particularly in assessing subjective requirements not explicitly stated in the regulations, such as sexual orientation (homosexuality).
2. The Position of Homosexuals in Marriage Annulment. Although neither the UUP nor the Compilation of Islamic Law (KHI) explicitly lists homosexuality as a reason for marriage annulment, homosexuality can be classified as a form of subjective disability. Homosexuality, which violates the primary purpose of marriage (creating a peaceful, loving, and compassionate family), can be interpreted as a physical and mental inability to build a household according to legal and religious norms. Thus, the remaining room for interpretation, particularly regarding subjective requirements such as sexual orientation, has the

potential to lead to disparities in court decisions. This demonstrates the need for an adaptive and progressive legal response, both through judicial interpretation and regulatory reform, to ensure legal certainty, justice, and protection of the rights of all parties in a marriage, in line with evolving societal dynamics and values.

3. Marriage annulment is a civil matter, and the judge will process it if a request is made by the interested parties. The judge's considerations in examining and deciding cases of homosexuality as grounds for annulment are crucial in determining whether homosexuality is accepted as a reason for annulment. The dynamics of Religious Court decisions regarding annulment of marriage on grounds of homosexuality reflect the lack of uniformity in the interpretation and application of the law by judges. The absence of explicit norms regarding homosexuality in the UUP and KHI opens up wide room for interpretation, thus giving rise to disparate decisions and legal uncertainty. Therefore, it is crucial to clarify and harmonize the rules in legislation so that cases of annulment of marriage on grounds of homosexuality can be resolved consistently, fairly, and provide legal certainty for all parties involved.

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