



Marriage Annulment Petitions by KUA Officials: An Analysis from Islamic and Positive Law Perspectives

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Abstract

The practice of marriage annulment petitions filed by KUA (Religious Affairs Office) officials, who were previously responsible for issuing the marriage certificate, raises complex legal and ethical issues. These include questions regarding administrative validity and the professional accountability of the marriage registrar (PPN). This study analyzes the submission of marriage annulment petitions by KUA officials from the perspectives of Islamic law and positive law in Indonesia, concerning Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Employing a qualitative normative approach, data were collected through a literature review of statutory regulations, classical and contemporary fiqh sources, court decisions, and expert opinions. The findings reveal discrepancies between administrative practices at KUA and the legal standards, particularly in the verification of documents and the legal status of prospective spouses. Common causes of annulments include identity fraud, unlawful polygamy, and administrative errors. From the standpoint of maqashid shari'ah, such annulment actions may be justified to uphold the rights of spouses and their offspring, and to prevent harm resulting from invalid marriages. This research proposes an integrative approach combining Islamic legal principles and national law, and emphasizes the need to strengthen institutional procedures and legal literacy within KUA to ensure the integrity of the marriage system in Indonesia.

Keywords: Islamic Law, KUA Officials, Marriage Annulment, Positive Law

Abstrak

Praktik pengajuan pembatalan pernikahan oleh pejabat KUA (Kantor Urusan Agama), yang sebelumnya bertanggung jawab menerbitkan akta nikah, menimbulkan persoalan hukum dan etika yang kompleks. Persoalan tersebut mencakup pertanyaan mengenai keabsahan administratif serta akuntabilitas profesional dari Pegawai Pencatat Nikah (PPN). Penelitian ini menganalisis pengajuan permohonan pembatalan pernikahan oleh pejabat KUA dari perspektif hukum Islam dan hukum positif di Indonesia, dengan merujuk pada Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam (KHI). Dengan menggunakan pendekatan normatif kualitatif, data dikumpulkan melalui studi pustaka terhadap peraturan perundang-undangan, sumber-sumber fikih klasik dan kontemporer, putusan pengadilan, serta pendapat para ahli. Temuan penelitian menunjukkan adanya ketidaksesuaian antara praktik administratif di KUA dengan standar hukum yang berlaku, khususnya dalam hal verifikasi dokumen dan status hukum calon



mempelai. Penyebab umum pembatalan nikah meliputi pemalsuan identitas, poligami yang tidak sah, serta kesalahan administratif. Dari sudut pandang maqashid syari'ah, tindakan pembatalan tersebut dapat dibenarkan untuk menjaga hak-hak pasangan dan keturunannya, serta mencegah kerugian akibat pernikahan yang tidak sah. Penelitian ini mengusulkan pendekatan integratif yang menggabungkan prinsip-prinsip hukum Islam dan hukum nasional, serta menekankan perlunya penguatan prosedur kelembagaan dan literasi hukum di lingkungan KUA guna menjamin integritas sistem pernikahan di Indonesia.

Kata Kunci: Hukum Islam, Pejabat KUA, Pembatalan Perkawinan, Hukum Positif

Introduction

Marriage is an important institution in the social and religious life of Indonesian society.¹ In practice, marriage is governed not only by religious standards, but also bound by positive legal provisions. The national legal basis regarding marriage is contained in Law Number 1 of 1974 concerning Marriage, which is further detailed through Government Regulation (PP) Number 9 of 1975. For civil servants, the provisions on marriage and divorce are further regulated in Government Regulation Number 10 of 1983 and Government Regulation Number 45 of 1990. Furthermore, the Compilation of Islamic Law (KHI), as established in Presidential Instruction Number 1 of 1991, is the primary reference in the execution of marriage for Muslims. In addition to these statutes, many other regulations reinforce the legal basis of marriage in Indonesia, such as Minister of Religious Affairs statutes and Circular Letters issued by associated institutions. In the perspective of Islamic law, marriage is comprehensively studied in the discipline of fiqh, especially through the discussion of fiqh munakahat.² Fiqh munakahat goes into detail about the requirements, pillars, rights, and obligations of marriage, as well as other related topics including dowry, maintenance, and divorce. Thus, the regulation of marriage in Indonesia is formed on the basis of relevant positive legislation, while also receiving guidance and a moral foundation from Islamic religious teachings through fiqh munakahat. The scholars' perspectives have been compiled based on the Qur'an and hadith, and they are then used as guidance by the community to create a living law in their midst. Thus, marriage is an institution that binds prospective husbands and wives in a legally bound connection.³

Even though a marriage has been solemnized through an authorized institution,⁴ the legal decision on the marriage may still be annulled if a defect is found later on.⁵ In addition, the development of society's needs in accordance with the times is accommodated through Islamic law and fiqh. There are various reasons that can lead to the annulment of a marriage,

¹ Elvina Jahwa et al., "Konsep Perkawinan Dalam Hukum Islam Dan Hukum Nasional Di Indonesia," *InnoKUA Officialive: Journal of Social Science Research* 4, no. 1 (2024): 1694.

² Saiful Millah and Asep Saepudin Jahar, *Dualisme Hukum Dan Perkawinan Islam Di Indonesia: Fiqh Dan KHI* (Jakarta: Amzah, 2019), 4.

³ Andrean Syah and Ilham Tholatif, "Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan," *Legal Standing: Jurnal Hukum* 6, no. 2 (2022): 116, <http://dx.doi.org/10.24269/lis.v6i1.5017>.

⁴ Muhazir Muhazir, Azwir Azwir, and Zubir Zubir, "Legal Institutions in Resolving Divorce Cases in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 211-230, <https://doi.org/10.29240/jhi.v9i1.8529>.

⁵ Markus Julius Lumbantoruan, "Dasar Pertimbangan Hukum Hakim Dalam Pembatalan Perkawinan Sejenis (Study Putusan Perkara Nomor: 540/Pdt.G/2020/PA.GM)," *Judiciary: Jurnal Hukum Dan Keadilan* 13, no. 1 (2024): 73, <https://doi.org/10.55499/judiciary.v13i1.237>.

including: the practice of polygamy that is not in accordance with legal provisions, such as being carried out without the consent of the wife or not having permission from the Religious Court; the use of incorrect identity or data, and the filing of a marriage annulment by the marriage registrar.⁶ An interesting issue arises regarding the submission of a marriage annulment by a KUA Official to the Religious Court, even though a marriage certificate has previously been issued by the KUA Officials. This raises the question of the factors that motivated the KUA Officials to file a marriage annulment lawsuit. Therefore, an in-depth exploration of the reasons behind the lawsuit, based on preliminary information from the KUA Officials, is important. Based on this background, the focus of the study is on the discussion of the definition of marriage annulment, the factors causing the annulment claim by the KUA officials, as well as the positive law and maqashid sharia reviews related to marriage annulment.

The KUA Official plays an important role in the practice of organizing marriages in Indonesia since he or she ensures the administrative validity of the marriage. These responsibilities include recording, issuing marriage certificate quotations, and ensuring that all legal requirements are met in line with applicable rules. However, in some cases it has been found that the KUA Official actually submits a marriage annulment application to the Religious Court, despite having previously issued an official marriage certificate quotation. This phenomenon raises interesting legal issues, because in terms of administrative logic, the annulment application seems contradictory to the previous action. This opens up a fundamental question, what is the juridical basis and moral consideration for the KUA Official to annul a marriage that has been officially recorded, was there a substantive violation in the previous process that was only revealed later.

This study seeks to provide a full explanation of marital annulment, both in terms of positive law applicable in Indonesia and within the framework of Islamic law. This research, in particular, seeks to explain the definition and legal basis for marital annulment in order to clarify the action's legal and normative position. Furthermore, this research aims to identify the various factors that encourage the Marriage Registration Officer (PPN) to file a lawsuit for annulment of marriage with the Religious Court, including the dynamics that drive it, such as administrative errors, procedural violations, or noncompliance with the legal requirements of marriage. Furthermore, this study will analyze the phenomenon from the perspective of maqashid sharia, in order to explore the basic values that Islamic law seeks to safeguard, such as justice, benefit, and protection of the family institution. With this approach, the research is expected to reveal holistically not only the formal legal aspects, but also the ethical and spiritual dimensions of marriage annulment.

Many studies related to marriage annulment have been conducted, one of which is Anisaturrohman's thesis from Sultan Agung Islamic University Semarang entitled "Maqashid Sharia Review of Marriage Annulment: Case Study of the Decision of Class 1A Semarang Religious Court Number 501/Pdt.G/2019/PA," which was completed in 2020. However, most of these studies have not specifically touched on the views of positive law and maqashid sharia on marriage annulment. Therefore, novelty is offered by this paper through an analysis of marriage annulment with a comparison of positive law and maqashid

⁶ Slamet Arofik and Siti Sholikatin Munawaroh, "Pembatalan Pernikahan (Fasakh Nikah) Dalam Berbagai Legislasi," *Jas Merah: Jurnal Hukum Dan Ahwal Al-Syakhsyiyah* 2, no. 1 (2022): 12.

sharia, including their similarities and differences. Hopefully, this research can examine the understanding of the legal and philosophical foundations of marriage annulment, as well as its implications for the benefit of individuals and society. For example, positive law may emphasize the administrative formality of marriage, while maqashid sharia is more oriented towards the lofty goals of marriage. By comparing these two perspectives, common ground and potential differences can be identified in viewing and resolving marriage annulment cases.

This research uses a qualitative descriptive approach, which aims to obtain an in-depth understanding of the phenomenon of marriage annulment submitted by the Marriage Registration Officer (PPN) to the Religious Court. The method used is library research, in which data is collected through searching and reviewing various written sources relevant to the topic, such as laws and regulations, the Compilation of Islamic Law, classical and contemporary fiqh books, scientific articles, and other legal documents.⁷ This research focuses on literature review as the basis for analysis. The source of data in this research is secondary data, which is obtained from official documents, laws and regulations such as Law Number 1 of 1974, Government Regulation Number 9 of 1975, as well as Government Regulation Number 10 of 1983 and Government Regulation Number 45 of 1990, including Islamic legal instruments such as the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991). In addition, references from fiqh munakahat literature and maqashid sharia theory are used as the basis for Islamic legal analysis.

In this analysis, the study employs a legal approach that examines marriage annulment within the framework of positive law applicable in Indonesia. In addition, an Islamic normative approach is also used, particularly through the study of maqashid sharia, to assess whether the act of marriage annulment carried out is in line with the basic values of Islamic law such as protection of individual rights, justice, and benefit. The data analysis technique used is content analysis, which involves classifying the data that has been collected, identifying relevant key issues, and drawing conclusions from patterns found in the literature. Thus, this methodology is designed to produce an in-depth and comprehensive analysis of the legal issues studied, both from the juridical side and from the moral and spiritual aspects reflected in maqashid sharia.

Marriage Annulment under Positive Law and Compilation of Islamic Law

Nullification, a thing is declared invalid or considered as if it never existed. "The term 'nullification' is derived from the word 'cancel'.⁸ Through this concept nullification has significant legal and social implications. In a legal context, nullification can refer to the invalidation of a contract, agreement, or court decision. A contract can be voided if one of the parties breaches the agreed terms, there is an element of duress, fraud, or mistake.

The legal attempt to make a marriage void is the definition of annulment. Unlike divorce, which ends a valid marriage, annulment of marriage states that the marriage is

⁷ Jonaedi Efendi and Prasetyo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris*, 2nd ed. (Jakarta: Kencana, 2022), 124.

⁸ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa, 2008), 145.

invalid from the start because the valid conditions of marriage are not fulfilled⁹. According to Amir Syarifuddin in his book *Islamic Marriage Law in Indonesia Between Fiqh Munakahat and the Marriage Law*, the term *fasakh* is equivalent to marriage annulment. In *Kamus Besar Bahasa Indonesia*, *fasakh* is described as the Religious Court's decision to annul a marriage bond based on a submission from one of the parties (husband or wife) with reasons justified by the court. An annulment may also be granted if the marriage is shown to have breached the applicable marriage legislation. Thus, annulment of marriage, or *fasakh*, is a legal process that is valid and accepted in Indonesia's legal system.¹⁰

According to Mardani, the regulations governing marriage annulment in Law Number 1 of 1974 Governing Marriage are controlled in Chapter IV, which has seven articles, namely Articles 22 through 28.¹¹ Article 22 states that an annulment of marriage can be carried out if the parties do not fulfill the conditions required to enter into marriage.¹² In the article-by-article explanation of Law Number 1 Year 1974, the word "may" in this article is interpreted as the possibility that a marriage can be annulled or still be considered valid, as long as the provisions of the religious law of each party do not stipulate otherwise.¹³

The Marriage Law does not provide a specific definition of annulment of marriage, but it does specify the conditions under which it is conceivable. Article 24 specifies that an annulment can be filed by a party who is still married to one of the parties to the recent marriage, provided that Article 3 paragraph (2) and Article 4 are observed. Article 26 states that the husband, wife, prosecutor, or blood relations of both parties may file an annulment petition if the marriage was solemnized in the presence of an unlicensed marriage registrar, an invalid marriage guardian, or without witnesses. The husband's or wife's right to annulment is waived if they have been living together as husband and wife and hold a marriage certificate from an unlicensed registrar; in this instance, the marriage must be renewed for it to be lawful. In general, annulment of marriage under Articles 24 and 26 of Law No. 1/1974 can arise because one of the parties is still tied by another marriage, the marriage took place before an unauthorized registrar, an unlicensed guardian was hired, or there were no witnesses.¹⁴

The annulment of marriage is governed by Chapter XI, Articles 70–76, of the Compilation of Islamic Law (KHI). KHI does not provide a specific definition of marriage annulment, but the distinction between the term and the causes for annulment remains. The

⁹ Sandy Alfiar Pattiwael, Syahrudin Nawi, and Sahban, "Perlindungan Hukum Terhadap Istri Yang Mengajukan Pembatalan Perkawinan Berdasarkan Kompilasi Hukum Islam," *Journal of Lex Generalis (JLG)* 3, no. 2 (2022): 107–20, <https://pasca-umi.ac.id/index.php/jlg/article/view/761>.

¹⁰ Amir Syarifuddin, *Hukum Nikah Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2014), 242.

¹¹ Mardani, *Hukum Islam, Kumpulan Peraturan Perundang-Undangan Tentang Hukum Islam DI Indonesia* (Jakarta: Prenada Media, 2017), 74.

¹² Destri Budi Nugraheni, "Urgensi Penggunaan Mediasi Dalam Penyelesaian Perkara Pembatalan Perkawinan Di Pengadilan Agama," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (December 3, 2020): 254, <https://doi.org/10.24090/mnh.v14i2.4177>.

¹³ Asnawi, "Pembatalan Nikah Dan Akibat Hukumnya (Analisis Perspektif Hukum Islam Dan Peraturan Perundang-Undangan)," *Jurnal Al-Fikrah* 9, no. 2 (2020): 112–26, <https://doi.org/10.54621/jiaf.v9i2.39>.

¹⁴ Siti Nur Intihani, "Pembatalan Perkawinan Dan Pelaksanaannya Di Indonesia," *Jurisdictie* 6, no. 1 (84-98): 2024, <https://doi.org/10.34005/jhj.v6i1.168>.

word "nullified marriage" in Article 70 of the KHI refers to a marriage that is deemed invalid due to an Islamic Shari'ah impediment for the prospective husband and wife. The following conditions can result in a void marriage: First, marriage is not authorized for a husband who has had four wives and is still remarrying, even if one of them is in the iddah phase of divorce raj'i. Second, remarriage to a prior wife who was divorced by li'an is regarded invalid. Third, remarriage between a husband who has divorced his wife three times and his ex-wife is permitted only after the ex-wife has married another man, the marriage relationship has been legalized (ba'da al-dukhul), the divorce has occurred, and the iddah period of the divorce has expired. Fourth, a marriage between two people who are related by blood, consanguinity, or consanguinity, which is prohibited by Article 8 of Law Number 1 Year 1974, is also considered invalid. The relationships that prevent marriage include: blood relations in a straight line up or down; blood relations in a sideways line of descent such as between siblings, parents' siblings, or grandparents' siblings; marital relations such as in-laws, stepchildren, sons-in-law, and fathers or stepmothers; consanguineous relations such as parents, children, siblings, and consanguineous aunts or uncles; and marriages involving wives with siblings, aunts, or nieces of other wives¹⁵.

Marriage annulment is permitted under certain conditions under Indonesian Islamic law, as codified in the Compilation of Islamic Law (KHI) and Law Number 1 of 1974. According to Article 71 of the KHI, if a marriage does not meet the standards of both Sharia and national marriage law, it might be annulled.¹⁶ The following are grounds for annulment: unlawful polygamy, the woman being legally married to a missing person, the wife being in her iddah period, underage marriage (violating Article 7 of Law Number 1/1974), marriage without a proper guardian, and forced marriage. Article 72 further allows annulment if the marriage was based on unlawful threats, fraud, or mistaken identity. However, the right to annulment is waived if the couple continues to cohabit for six months after the threat ends or the truth is discovered. The Religious Court handles annulment petitions, which can be filed by either spouse or other authorized parties due to violations of marriage regulations. This process distinguishes between void (nikah bathil) and annulled (nikah fasid) marriages, concepts derived from fiqh literature as explained by Abdul Rahman al-Jaziry. Although the terms differ, both result in an invalid marriage.¹⁷

According to Amir Syarifuddin's explanation, in the realm of fiqh, fasakh is understood as the cancellation or destruction of the marriage bond. It can be defined that fasakh is the end of a marriage decided by a judge after considering the impossibility of the relationship to continue. This impossibility is caused by discrepancies or problems in the implementation of the marriage, for example, the non-fulfillment of agreed conditions, or deficiencies in one of the parties, either husband or wife, which result in the marriage being untenable. In other words, the annulment or breakdown of the marriage relationship is called fasakh in the context of fiqh, as explained by Amir Syarifuddin. By the judge, it is

¹⁵ Abdurahman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: CV Akademika. Pressindo, 2010), 35

¹⁶ Nofan Nurkhafid Azmi et al., "Application of Progressive Law to Marriage Annulment Cases: Prospects and Development in Indonesia's Religious Court," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (August 21, 2024): 133, <https://doi.org/10.32505/qadha.v11i1.9230>.

¹⁷ Abd. Rahman Al Jaziry, *Al-Fiqh 'Ala Mazahib Al-Arba' Ah*, vol. 4 (Mesir: Maktabah Al-Tijariyah Al-Kubra, 2012), 118.

decided to end a marriage through fasakh after considering the impossibility of the relationship to continue. Discrepancies or problems in the conduct of the marriage, such as non-fulfillment of agreed terms, or deficiencies in one of the parties, either husband or wife, are identified as causes of the impossibility of the marriage to be maintained.¹⁸

Authority and Procedure for Filing Marriage Annulment

In an administrative or legal context, authority refers to the legal capacity or right granted to an individual or legal entity to perform certain actions. In this sentence, the focus is on the authority to file an application. Filing an application, as a formal act, cannot be done by just anyone. Only individuals who meet certain criteria, which have been established by applicable laws and regulations or policies, have the authority or right to file a petition.¹⁹ Marriage annulment for Muslims is processed through the Religious Court, whose authority is determined by Government Regulation Number 9 of 1975 as the implementation of Law Number 1 of 1974 concerning Marriage. Based on Article 1 letter b of the regulation, the handling of Muslim marriage matters is entrusted to the Religious Courts, while cases involving non-Muslim individuals are handled by the District Courts.²⁰

The annulment of marriage, as stipulated in Article 27 of Law No. 1/1974 on Marriage and Article 72 of the Compilation of Islamic Law, is a legal remedy that can be taken if the marriage is held under conditions that undermine the validity and principle of voluntariness in marriage. Unlawful threats, for example, can take the form of physical or psychological coercion that deprives one of the parties of their freedom of choice. Fraud, on the other hand, can take the form of identity forgery, concealment of previous marital status, or disclosure of false information on which the decision to marry is based. Meanwhile, misunderstanding may refer to a mistake regarding the identity or other important condition of one of the parties, which, if known in advance, could nullify the intention to marry. This provision is important to protect individual rights and ensure that marriages are based on valid and free consent. Furthermore, annulment of marriage is different from divorce. An annulment results in the marriage being deemed to have never existed, whereas a divorce ends a valid marriage. Therefore, an annulment can only be filed if the conditions stipulated in the law are met.²¹

A marriage annulment can be filed by the husband or wife based on the grounds set out in Article 72 of the Compilation of Islamic Law. The two main grounds for annulment are that the marriage was entered into under an unlawful threat and that there was fraud or misunderstanding regarding the identity of the spouses at the time of the marriage contract.

¹⁸ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana Prenadamedia Group, 2016), 50

¹⁹ Hendra Gunawan, "Sistem Peradilan Islam," *Jurnal El-Qonuniy: Jurnal Ilmu-Ilmu Kesyari'ahan Dan Pranata Sosial Fakultas Syariah Dan Ilmu Hukum IAIN Padangsidempuan* 5, no. 1 (2019): 90-103, <https://doi.org/10.24952/el-qonuniy.v5i1.1766>.

²⁰ Mardani, *Hukum Islam, Kumpulan Peraturan Perundang-Undangan Tentang Hukum Islam DI Indonesia*, 99.

²¹ Marcelino Valentin and Gunawan Djajaputra, "Penafsiran Hakim Terhadap Alasan Salah Sangka Sebagai Penyebab .Pembatalan Suatu Perkawinan Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Studi Kasus Putusan Pengadilan Agama Bantul Nomor 981/Pdt.G/2020/Pa.Btl)," *Jurnal Hukum Adigama* 4, no. 2 (2021): 3953-75, <https://doi.org/10.24912/adigama.v4i2.17976>.

In the KHI, "threats" are described in more detail as unlawful threats, an aspect that is not explicitly outlined in the Marriage Law. Thus, the KHI provides a stronger and more specific legal basis for the annulment of marriage due to duress. A more detailed explanation is also provided by KHI regarding "deception." This includes situations where a person's marital status is concealed, such as a man claiming to be unmarried when he is married, thus practicing polygamy without court permission. This is a violation of marriage law and can be a strong ground for annulment of the marriage. Article 71 of the KHI provides further explanation of identity-related fraud, expanding the scope of grounds for annulment.

Nevertheless, the right to file for an annulment may be lost under certain circumstances. If the threat underlying the marriage has ended, or if the fraud or misunderstanding has been realized by the aggrieved party and the couple has continued married life for six months without applying for an annulment, then the right to apply for an annulment is considered waived. This provision is regulated in Article 27 Paragraph (3) of Law Number 1 Year 1974 concerning Marriage and strengthened in Article 72 letter c of the Compilation of Islamic Law. With this time limit, it is hoped that marital problems can be resolved wisely and not protracted. This also provides legal certainty for both parties.

A petition for annulment of marriage can be filed by several parties in accordance with Articles 23 and 26 of the Marriage Law. Among others, relatives in the straight line of descent upwards from the husband or wife, authorized officials during the marriage, and officials appointed under Article 16 paragraph (2) of the Marriage Law, are given the authority to file such a petition. After the marriage ends, an application can also be filed by any person who has a direct legal interest and by the prosecutor. In the Compilation of Islamic Law Article 73, the authority to apply for annulment of marriage is given to the family in a straight line of descent up and down from the husband or wife, the husband or wife themselves, the official authorized to supervise the implementation of marriage (i.e. the Marriage Registrar based on Minister of Religious Affairs Regulation No. 11/2007), as well as parties who are aware of defects in the pillars and conditions of marriage according to Islamic law and laws and regulations.

Furthermore, Based on Article 37 of Government Regulation No. 9 of 1975, marriage annulment can only be decided by the court. An annulment petition is filed with the court whose jurisdiction covers the place where the marriage took place or the residence of both husband and wife, with the same procedure as filing a divorce suit. The process of marriage annulment cases in court is carried out based on the provisions of Article 20 to Article 36 of the government regulation. The elucidation of Article 37 of Government Regulation No. 9 of 1975 emphasizes that annulment of marriage, due to its significant impact on husband and wife and their families, can only be carried out by the court to prevent intervention from other agencies.²² From this explanation, it is understood that the annulment of a marriage can only be carried out in the Religious Court on the basis of the consideration of a panel of judges. Agencies outside the court cannot annul a marriage.

²² Mustika Elianda Nasution, "Tinjauan Yuridis Terhadap Pembatalan Perkawinan Akibat Tidak Sahnya Wali Nikah Menurut Undang-Undang Nomor 1 Tahun 1974 Dan Hukum Islam (Studi Putusan PA Demak Nomor 1821/Pdt.G/2018/PA.Dmk)," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 2, no. 3 (2021): 569-87, <https://doi.org/10.30743/jhah.v2i3.4362>.

Submission of Marriage Annulment by the KUA Officials

In accordance with Articles 25 and 27 of Law No. 1/1974 on Marriage and Articles 72, 73 and 74 of the Compilation of Islamic Law, the annulment of a marriage is submitted through a petition, not a lawsuit. Based on Article 25 of the Marriage Law, the petition is submitted to the court in the jurisdiction where the marriage was performed or where the parties reside. Article 74 of the Compilation of Islamic Law stipulates that a petition for annulment of marriage can be filed at the Religious Court whose jurisdiction covers the place of residence of the husband and wife or the location of the marriage.²³

There are variations in the form of marriage annulment applications by the KUA Officials in various Religious Courts. This variation is in the form of filing as a petition and as a lawsuit. Allegedly, the difference in the form of submission is influenced by the various motives and factors underlying the submission of marriage annulment by the KUA Officials or the Head of the KUA in various regions. For example, in Medan Petisah Subdistrict (Case Number 1055/Pdt.G/2018), Percut Sei Tuan Subdistrict (Case Number 0801/Pdt.G/20155), Deli Serdang Regency, and Namo Rambe Subdistrict (Case Number 1930/Pdt.G/2017), the marriage annulment application was filed in the form of a lawsuit, which is indicated by the recorded case number. In contrast, applications in the form of petitions were made in Medan Marelan Sub-District in Medan City, Sunggal Sub-District in Deli Serdang Regency, Suko Manunggal Sub-District in Surabaya City, Ponorogo Sub-District in Ponorogo Regency, and Pulung Sub-District in Ponorogo Regency. By the judges in the Religious Courts in Medan City, Lubuk Pakam, Surabaya, and Ponorogo, these different forms of filing resulted in various legal products.²⁴

In legal theory, a case filed as a petition should result in a determination, while a case filed as a lawsuit should result in a decision. However, by practice in the field, inconsistencies in the resulting legal products are demonstrated. This inconsistency raises questions regarding the uniformity of procedures and legal understanding among KUA Officials and judges in handling marriage annulment cases. Further research is needed into the specific factors that lead to these differences, including different interpretations of the law, availability of evidence, and other considerations that may influence judges' decisions. Further study is needed to ensure legal certainty and justice for all parties involved in the annulment process. Unfortunately, in the reality in the field as found by the author, the legal products issued by all of the Religious Courts above produce legal products that are not in accordance with the theory described above. This can be seen in the following data:

Table. 1 Overview of Marriage Annulment Filings by KUA Officials

No.	KUA Sub-district	Regency/City	Case Number	Type of Filing	Result
1a	Medan Marelan	Medan City	678/Pdt/G/2015	Petition	Stipulation
1b	Medan Petisah	Medan City	1055/Pdt.G/2018	Lawsuit	Decision

²³ Mardani, *Hukum Islam, Kumpulan Peraturan Perundang-Undangan Tentang Hukum Islam DI Indonesia*, 149.

²⁴ Mahkamah Agung, "Direktori Putusan Mahkamah Agung Republik Indonesia," n.d., <https://putusan3.mahkamahagung.go.id/>.

No.	KUA Sub-district	Regency/City	Case Number	Type of Filing	Result
2a	Sunggal	Deli Serdang	1397/Pdt/G/2016	Petition	Decision
2b	Percut Sei Tuan	Deli Serdang	0801/Pdt.G/2015	Lawsuit	Decision
3a	Suko Manunggal	Surabaya City	5157/Pdt.G/2012	Petition	Decision
3b	Percut Sei Tuan	Deli Serdang	0306/Pdt.G/2015	Lawsuit	Decision
4a	Ponorogo	Ponorogo Regency	0947/Pdt.G/2016	Petition	Decision
4b	Namo Rambe	Deli Serdang	1930/Pdt.G/2017	Lawsuit	Decision
5	Pulung	Ponorogo Regency	1303/Pdt/G/2014	Petition	Decision

There are variations in the form of marriage annulment applications by the KUA Officials in various Religious Courts. This variation is in the form of filing as a petition and as a lawsuit. Allegedly, the difference in the form of submission is influenced by the various motives and factors underlying the submission of marriage annulment by the KUA Officials or the Head of the KUA in various regions. For example, in Medan Petisah Subdistrict, Medan City, Percut Sei Tuan Subdistrict, Deli Serdang Regency, and Namu Rambe Subdistrict, Deli Serdang Regency, the marriage annulment application was filed in the form of a lawsuit, which is indicated by the recorded case number. In contrast, applications in the form of petitions were made in Medan Marelan Sub-District in Medan City, Sunggal Sub-District in Deli Serdang Regency, Suko Manunggal Sub-District in Surabaya City, Ponorogo Sub-District in Ponorogo Regency, and Pulung Sub-District in Ponorogo Regency. By the judges in the Religious Courts in Medan City, Lubuk Pakam, Surabaya, and Ponorogo, these different forms of submission resulted in various legal products. In legal theory, a case filed as a petition should result in a determination, while a case filed as a lawsuit should result in a decision. However, in practice, inconsistencies in the resulting legal products were demonstrated. This inconsistency raises questions about the uniformity of procedures and legal understanding among KUA Officials and judges in handling marriage annulment cases. It is necessary to further investigate the specific factors that lead to these differences, including different interpretations of the law, availability of evidence, and other considerations that may influence judges' decisions. Further study is needed to ensure legal certainty and justice for all parties involved in the annulment process.

Two main factors cause marriage annulments: violations of substantive marriage provisions (like religiously or legally prohibited marriages, such as disguised same-sex marriages) and non-compliance with administrative/procedural requirements (like issues with the marriage guardian). The Rantau Prapat case highlighted the need for better identity verification to prevent fraudulent marriages, while the Ponorogo case showed how issues with the marriage guardian can lead to annulment and subsequent remarriage according to regulations. Both cases emphasize the importance of understanding and complying with marriage law to avoid future issues. A marriage can remain valid even if the marriage certificate is annulled, especially if the annulment is due to administrative issues (like non-compliance with Law No. 1/1974 or Islamic Law) and the core requirements of an Islamic marriage were met. For example, if a polygamous marriage didn't have proper Religious Court permission or the first wife's consent, the certificate might be annulled. However, if

the marriage itself fulfilled Islamic requirements, the marital bond may still be considered valid. A case in Sibolangit demonstrated this where a marriage was annulled due to falsified marital status, but the KUA later indicated the marriage bond itself remained valid despite the annulled certificate.²⁵ The complexity of marriage annulment in Indonesia stems from the conflict between religious (fiqh) and positive law. While a marriage may be religiously valid, it must also meet state administrative requirements. Discrepancies lead to annulment requests. The integrity of Marriage Registrars (KUA Officials) is crucial, but they face pressures like intimidation and bribery to manipulate marriage legalization or annulment. Forged marriage documents, driven by high processing costs, further complicate the issue. This puts KUA Officials in a difficult position when forgeries are discovered. Therefore, stronger supervision, law enforcement, and public awareness regarding legal marriage documents are needed. Additionally, reducing marriage administration costs could minimize document forgery.

The Lawsuit for Marriage Annulment by the KUA Officials Viewed through the Maqashid Shari'ah Perspective

Legal guarantees for the community in exercising marital rights in accordance with the principles of national law and human rights are provided through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). These provisions emphasize that marriage is a legal and spiritual institution based on the principles of harmony and responsibility between husband and wife. However, in practice, there are a number of conditions that can interfere with the validity of the bond, such as fraud, mistaken identity, coercion, or misunderstanding from one of the parties. This issue becomes relevant in the context of the research question regarding the reasons and legal basis that prompted the KUA official to apply to the Religious Court for the annulment of the marriage, despite having previously issued an extract of the marriage certificate. In this case, Article 22 of Law No. 1/1974 and the provisions in KHI provide legal space for the annulment of a marriage if a fundamental legal defect is found from the outset of the marriage.

Marriage annulment can be done if the marriage does not comply with the provisions of Islamic law and Indonesian marriage regulations, taking into account their integrity and moral responsibility as state officials. Differences in understanding of the interpretation of annulment can be caused by the annulment of marriages due to administrative errors. Falsification of identity, often occurring in polygamy cases, such as husbands who are still registered as single or widowers with fake divorce certificates, is often associated with marriage annulment applications. Permission from the Religious Court, which can only be granted after the consent of the first wife is obtained, is required in polygamous marriages in Indonesia. Challenges in the implementation of existing procedures are posed by this. Hazairin's opinion, quoted in Taufiqurrahman Syahuri's book on marriage law legislation in Indonesia, states that the husband's obligation to obtain permission from the first wife before remarrying is contrary to the principles of public law. The right of any person to apply to a judge is guaranteed by those principles, but with the obligation of the wife's permission, the

²⁵ Al Yasa' Abu Bakar, *Metode Istislahiah Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh* (Banda Aceh: Program PPS IAIN Ar-Raniry Darussalam dan Bandar Publishing, 2012), 81.

judge's consideration of granting the application depends on the consent of a party outside the court, namely the wife's permission.²⁶

In looking at this complexity, an approach through the perspective of *maqashid shari'ah* becomes relevant and important. The concept of *maqashid shari'ah*, as explained by Imam as-Syathibi, contains the objectives of sharia which are divided into two levels, namely *maqashid al-syari'* and *maqashid al-mukallaf*. *Maqashid al-Syari'* refers to the objectives contained in the Shari'a revealed by Allah SWT, as contained in the Qur'an and hadith, while *Maqashid al-Mukallaf* relates to the intentions and intentions of human actions, both in the context of worship and *muamalah*, including in the issue of marriage and its annulment. According to as-Syathibi, every legal action must be based on intentions that are in line with the objectives of the Shari'ah so that it is valid and has the value of worship. In the context of marriage annulment, the KUA Official's action in applying for annulment can be examined as a form of effort to maintain benefit, avoid harm, and uphold the values of justice and honesty as mandated in *maqashid shari'ah*.²⁷ Thus, the discussion of marriage annulment does not only stop at the normative level of positive law, but must also be seen as part of the shari'i efforts to maintain the main objectives of Islamic law, such as *hifzh al-din* (protecting religion), *hifzh al-nafs* (protecting the soul), and *hifzh al-nasl* (protecting offspring). This makes the *maqashid shari'ah* approach an ethical as well as philosophical frame in assessing the validity and urgency of legal actions such as marriage annulment by official authorities. In this context, annulment of a marriage based on identity forgery or fraud is clearly contrary to *maqashid shari'ah*, because it undermines the value of honesty, threatens family stability, and harms the parties involved physically and mentally. Meanwhile, in terms of *Maqashid al-Mukallaf* which highlights the purpose and intention of every human action - the decision to apply for annulment must also be seen in terms of the sincerity of intention in upholding justice and rectifying wrongdoing, not merely for the sake of administrative interests or institutional pressure. As-Syathibi emphasized that every human legal action must be in line with the will and purpose of Allah SWT in order to be considered valid and worthy of worship. In this case, the KUA Official's action in deciding to apply for a marriage annulment because a fundamental violation was found after the issuance of the marriage certificate is actually a form of moral responsibility and an effort to maintain public benefit (*maslahah 'ammah*). Thus, marriage annulment is not just a formal legal instrument, but also a form of effort to maintain sharia values that are oriented towards benefit, justice, and protection of the family institution.

As-Syathibi's view on the purpose of sharia provides a solid foundation for understanding Islamic law. The emphasis on *maqashid sharia* (the purpose of sharia) as the main axis shows that Islamic law is not only oriented to ritual aspects, but also to the achievement of human welfare as a whole. The benefits are divided into three levels- primary, secondary, and tertiary-providing a comprehensive framework. Primary needs (*dharuriyyat*) cover the essentials of human life, such as religion, soul, mind, offspring, and property. Secondary needs (*hajiyyat*) are things that support primary needs so that life runs well. Meanwhile, tertiary needs (*tahsiniyyat*) relate to things that beautify and perfect life.

²⁶ Taufiqurrahman Syahuri, *Legislasi Hukum Perkawinan Di Indonesia Pro Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi* (Jakarta: Kencana Prenada Media Group, 2013), 163.

²⁷ Bakar, *Metode Istislahiah Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*, 82.

The second feature, ease of understanding, demonstrates that the Shari'ah was revealed in a language and manner understandable to the human mind. This demonstrates that Islam is not a complex or difficult religion to learn. The revelation of the Qur'an in Arabic, for example, provides concrete confirmation of this idea. Nonetheless, the interpretation of sharia scriptures still requires *ijtihad* (reasoning efforts) of scholars in order to deeply and contextually understand the meaning and wisdom inherent therein.

The third concept of charging based on capacity reveals Allah SWT's justice and mercy. Islam does not strain His servants beyond their capabilities. This notion is known as the rule "*la yukallifullahu nafsan illa wus'aha*" (Allah does not burden a person unless in proportion to his ability). This allows for relief (*rukhsah*) in the implementation of worship for those who face certain barriers or problems.

The final part, submission to God's law, is a form of protection, not restraint. Humans prevent detrimental behavior toward themselves and society by adhering to Allah's commandment. Adherence to God's instructions will result in serenity and happiness in this life and the next. Thus, As-Syathibi's interpretation of the goal of Sharia provides a holistic and applicable understanding of Islamic law as a kindness to all nature.²⁸

In the context of Maqashid Shari'ah, the main objective of Islamic law is to realize the benefit of mankind, which includes the maintenance of religion (*hifz al-din*), soul (*hifz al-nafs*), intellect (*hifz al-'aql*), offspring (*hifz al-nasl*), and property (*hifz al-mal*). The filing of a marriage annulment lawsuit by the KUA Officials/KaKUA can be reviewed based on the hierarchy of needs in *maqashid shari'ah*, namely *dharuriyyat* (primary), *hajiyyat* (secondary), and *tahsiniyyat* (tertiary). If the marriage is proven to violate basic Shari'ah provisions, such as mahram marriage or marriage without fulfilling the pillars of marriage, then the annulment of marriage is included in the *dharuriyyat* category, because it concerns the preservation of religion and offspring. This is urgent and must be enforced to prevent greater damage.

However, if the annulment is requested because of administrative issues such as the lack of permission from the Religious Court or the wife's permission in polygamy, then this falls into the *tahsiniyyat* category. This relates to the perfection and completeness of procedures, not to the essence of whether or not the marriage is valid according to Shari'ah. In the context of polygamy, although the wife's permission is regulated in Indonesian legislation, from the perspective of *maqashid shari'ah* and classical Islamic law, this permission is not a valid condition for polygamy. The main purpose of polygamy in Islam is for benefits, such as providing solutions for women who do not have husbands or to preserve offspring. Therefore, the emphasis on the wife's permission as an absolute requirement can be considered a restriction that goes beyond the purpose of the Shari'ah itself.

Furthermore, the concept of the husband's leadership in the household (*qawamah*) in Islam gives the husband a great responsibility to provide for and protect his family. This is in line with the principle of justice, where burdens and responsibilities are adjusted according to ability. Therefore, administrative requirements such as the wife's permission, although

²⁸ Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow," *AL-FIKR* 22, no. 1 (2020): 52-70, <https://doi.org/10.24252/jumdpi.v22i1.15534>.

important as part of state administrative procedures, should not be positioned as an obstacle to the validity of a marriage in shar'i terms, let alone to annul a marriage that has fulfilled the religious pillars and conditions. Marriage annulment should only be applied if there is a violation of the basic pillars and conditions of marriage, which makes the marriage *fasid* or *bathil*. With this framework, this research contributes to providing a new understanding of the roles and responsibilities of the KUA Officials in maintaining the integrity of marriage law. This research also confirms that in certain situations, the legal action of annulling a marriage actually reflects the implementation of *maqashid shari'ah*, namely protecting religion, soul, mind, offspring, and property from damage due to an invalid or substantially flawed marriage. The main contribution of this research lies in the interdisciplinary analysis between positive law and *maqashid shari'ah*, which has not been studied specifically in the context of legal actions by state officials such as KUA Officials. Thus, the findings are expected to provide theoretical contributions to the development of marriage law in Indonesia as well as practical benefits for law enforcers and policy makers in establishing fair and *maslahat* policies

Conclusion

A KUA Officials or KaKUA litigation for annulment of marriage is an important method for enforcing marriage rules in Indonesia. This case was filed based on a number of circumstances, which can be classified as internal or external. Internal influences include the KUA Officials or KaKUA's moral motivation and professionalism as state and religious leaders. They are expected to maintain their integrity and guarantee that every marriage recorded meets all statutory standards. External influences include pressure from partners who are dissatisfied with an invalid marriage, as well as requests to comply with laws and regulations. However, it should be highlighted that the use of justifications for administrative formalities, such as identity fraud or inadequate documentation, as a basis for marriage annulment must be assessed in light of *maqashid shari'ah* principles.

The principle of benefit, which serves as the foundation of Islamic law, emphasizes doing good and preventing harm to people. An annulment of a religiously legitimate marriage due to administrative concerns can have a far-reaching negative impact, including the loss of the wife's and children's rights as well as legal uncertainty. As a result, administrative restrictions such as wife's consent should be viewed as a complement that improves the legality of the marriage, rather than an impediment that can invalidate a marriage that has met the religious pillars and requirements. This method is more consistent with the idea of *maqashid shari'ah*, which promotes the welfare of the people.

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