

Annulment of Marriage Due to Identity Forgery in the Perspective of Islamic Law

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Eka Putri Apriyani, M. Ilham Muchtar, Rapung *)

¹⁻³Universitas Muhammadiyah Makassar, Jl. Sultan Alauddin No.259, Makassar, Sulawesi Selatan, Indonesia 90221.

Abstract

Marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One True Godhead. Marriage must be carried out in accordance with the Shari'a and comply with its conditions and harmony. And if it does not meet the conditions and get along well, then the marriage will be void. The formulation of the problem in this study is how the picture of identity forgery in marriage and how the Islamic legal perspective related to marriage annulment due to identity forgery. This research is classified as Library Research research with a qualitative approach, meaning that this research does not go directly into the field in finding data sources. Library research is used to obtain written data relating to the object of research with the intention of being able to analyze identity forgery. The data sources used by researchers are primary data and secondary data then analyzed to obtain conclusions and aim to reveal describing the data obtained. The results of this study are, first: Based on the Law on Marriage No.1 of 1974 Article 2 paragraph 1 where "Marriage is valid, if it is carried out according to the law of each religion and belief", but the marriage will be annulled if it gives false information, false testimony, false letters and other false provisions. Second: In the perspective of Islamic law and in the eyes of the state falsification of identity in marriage is not justified (legalized), because it is not in accordance with the Shari'a and does not fulfill its pillars and conditions. It can be seen in article 22 of the UUP which reads "Marriage can be annulled if the parties do not meet the conditions for consummating the marriage". Likewise with the hadiths and postulates of shahih and the rules of fiqhiyah that indicate the annulment of the marriage.

Keywords: *Annulment; Marriage, Forgery; Identity; Islamic Jurisprudence.*

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*)Corresponding Author:

Ekaputriapryani09@gmail.com

Introduction

Marriage is a physical and inner bond between a man and a woman to fulfill the purpose of married life as husband and wife by fulfilling the conditions and harmony that have been determined by Islamic law. Marriage is a religious call that must be carried out by humans for those who can afford to have a family. Marriage can also make a person's life directional, peaceful, and happy. Marriage as an intermediary to unite two different hearts, providing affection, care and care between men and women.¹

The purpose of marriage is to have a happy and eternal family. For this reason, married couples must help and complement each other so that everyone can develop their character to help and achieve physical and mental well-being.

Marriage or marriage is a contract that legalizes association and limits the rights and obligations between a man and a woman who is not a mahram².

Allah SWT said:

وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ

Translation:

And all things We have created in pairs—that you may remember the greatness of God." (QS. Al-Zariyat: 49)³

Considering that marriage is not just a relationship between individuals but can be an act involving other people which in turn will give rise to rights and obligations, the government tries to accommodate and regulate marriage with the birth of Law No. 1 of 1974 concerning Marriage. In the Law it is stated that "marriage is a bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead."⁴

Allah SWT created human beings with all kinds of nature, as well as the changing times are growing rapidly in everything in human life. This event leads to the complexity of diverse human behavior, including events that affect religious values about whether or not it is legal to do so. This is related to the state of the Marriage Law which must have principles that are considered quite principled, one of which is to accommodate all the beliefs that live in Indonesian society.

One of the things that must be fulfilled in married life is honesty with each other. Honesty in marriage must be purely formed, which means that it must be born from the heart of each party. If a man and a woman have agreed to marry, it means that they have promised to obey the legal rules that apply in the marriage and that the

¹ Badan Penasihatannya Pembinaan dan Pelestarian Perkawinan (BP-4), *Buku Panduan Keluarga Muslim*, (Januari, 2013), 1.

² Beni Ahmad Saebani, *Fiqh Munakahat 1* (Bandung: CV. Pustaka Setia, 2001), h. 9.

³ Kementerian Agama RI., *al-Qur'an dan Terjemahannya*, (Jakarta: Lajnah Pentashihan Mushaf al Qur'an, 2019), h. 522.

⁴ Afnan Chafidh M. Dan A. Ma'ruf Asrori, *"Tradisi Islam, Panduan prosesi kelahiran, perkawinan, kematian"*, (Surabaya: Khalista, 2008), h. 88.

rules apply during the marriage and after the marriage is dissolved.

A marriage is valid when the contract or agreement has been fulfilled. An agreement in marriage that both parties (male and female) are bound by consent. Marriage adorns family life and at the same time is a clean and honorable human survival even though polygamy, but it is not uncommon for dishonest attitudes here to be carried out, including using false identities to marriage registrars. Where they claim to be virgins, even though legally they are still the husbands of other women. Usually the forgery is contained in authentic letters and deeds in the form of the identity of the perpetrator, but it is rarely entangled by the law and is difficult to prove, a well-planned act.⁵

If a man and a woman have agreed to marry, it means that they have promised to obey and obey the laws and regulations that apply in the marriage and that the rules are valid as long as the marriage lasts or the marriage is dissolved.⁶

Marriage is a contract or agreement, but it does not mean that this agreement is the same as an ordinary agreement regulated in Book III of the Civil Code. The difference is that in an ordinary agreement, the parties who promise are free to determine the content and form of the agreement, on the other hand, in marriage, the parties cannot determine the content and form of the

agreement other than that that has been stipulated by the applicable law. Another difference that can be seen is in terms of the expiration of the agreement, that in an ordinary agreement, the expiration of the agreement is determined by both parties, for example because what is the subject of the agreement has been achieved or because the set time limit has expired, so it does not last continuously. On the other hand, marriage does not know time limits, marriage must be permanent, unless due to something beyond the will of the parties, then the marriage can be decided, for example by divorce or annulment of marriage.

The termination of marriage is not as simple as in the termination of ordinary covenants, which are set out earlier in the content of the covenant. The cause of the breakup of the marriage bond, the procedure and the consequences of its termination, is not determined by the parties, but it is the law that determines it. Agreements in marriage have special characteristics, among other things, that the two parties (male and female) who bind the marriage agreement have the right to decide the agreement based on the provisions that already exist in the laws.⁷

Thus, the author is interested in conducting research on **the annulment of marriage due to identity forgery in the perspective of Islamic Law.**

⁵ Direktorat Pembinaan Badan Peradilan Agama Islam, *Himpunan Peraturan perundang-undangan dalam lingkungan peradilan Agama*, 2001, h. 131.

⁶ Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan*, (Yogyakarta: Liberty, 1996), h. 10.

⁷ Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan*, (Liberty, Yogyakarta, 1982), h. 10.

From the background description above, the author finds several problems as follows: What is the picture of identity forgery in marriage? and What is the perspective of Islamic law regarding the annulment of marriage due to identity forgery?

Methods

Type of Research: To discuss the problems that have been presented, the author will use a normative juridical approach and in the perspective of Islamic law as the basic normative concept. What is done with normative juridical research is a legal research method that is carried out by researching library materials or secondary data.⁸

This research is used because the problem is related to theoretical problems in the literature related to the sources of study and discussion that can show facts logically. So this research is a type of quantitative research/library resech (Pustaka). Data Source: First, primary data (main source) is the annulment of marriage due to identity forgery in the perspective of Islamic law in the book *Compilation of Islamic Law in Indonesia*. Second, secondary data in the form of supporting data, namely in the form of several books and journals. Data Collection Method: First, the method used in data collection is the book survey method/satisfaction study (library research). Literature study is a technique used in the entire research process from the beginning to the end of the research by utilizing

various kinds of literature that are relevant to the social phenomenon being observed.⁹

This literature study is to get a foundation of thought in writing. Second, Data Analysis. In analyzing qualitative data, according to moeloeng, in this qualitative research method, there are 3 paths that are passed:

Data reduction: namely the selection process, focusing attention on simplifying, abstracting and transforming coarse data that emerges from written records in the field. This process takes place continuously throughout the research. In this study, the data obtained by the author is simplified and focused on problems related to the annulment of marriage due to identity forgery in the perspective of Islamic law.

Then, Data presentation: which is an activity when a set of information is compiled, providing the possibility of drawing conclusions and taking actions. In the process of presenting this data, the author will explain about the annulment of marriage because of the annulment of marriage from the perspective of Islamic law. Then conduct research using the Islamic law perspective method. Then drawing conclusions: namely efforts made continuously during research, starting from collecting data, looking for the meaning of each discussion, observing explanations.

⁸Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta, Rajawali Pers, 2001 M), h. 13-14.

⁹M. Hariwijaya, *Pedoman Penulisan Ilmiah*, (Yogyakarta: Oryza 2008 M), h. 63.

Result and Discussion

Overview of Identity Forgery in Marriage

In these articles of laws and regulations, the Religious Court is authorized to annul a marriage if the marriage is considered invalid or if a marriage is considered not to meet the conditions of marriage that have been determined or if the marriage that has been carried out is known to have a legal defect as a result of a lie and mistake due to coercion.¹⁰

The validity of marriage based on religious law in Law No. 1 of 1974 concerning Marriage is stated, that a marriage is valid if it is carried out according to the law of each religion and its beliefs and in addition each marriage must be recorded in accordance with the applicable laws and regulations.¹¹

The consequences of the forgery of the marriage do not apply retroactively to the parties contained in Article 28 paragraph (2) of Law No. 1 of 1974 and Article 75 of the Compilation of Islamic Law. It is expressly stated that the marriage can be annulled, if the parties do not meet the conditions to hold the marriage. In the formulation, the word "can" in this article can be interpreted as invalid or invalid, if according to the provisions of each religion do not specify otherwise. Marriage can be annulled due to a violation of certain rules.¹²

However, if the annulment of the marriage is due to identity forgery, where identity forgery is a form of material violation rather than formal, then the consequences are also material. And the material consequence is only a statement in the form of a decision of the Religious Court that the marriage is annulled. However, if the violation occurs due to a formal prohibition, the existing marriage can be null and void by itself or considered to have never existed so that there are consequences that arise, namely not receiving legal protection.

In Article 72 of the Compilation of Islamic Law, it is stated that a husband or wife can apply for annulment of marriage if at the time of the marriage there is fraud or misperception about the husband or wife.¹³

In Islamic law, the annulment of marriage can occur due to two things, namely: first, there are things that can cancel the marriage contract that is carried out. The Imams of the Madhhab, namely, Imam Malik, Shafi'i, Hanafi and Hanbali, agreed that if there is a marriage with a woman (mahram) mentioned in the Qur'an, then the law is haram and the marriage must be fasakh, and show an eternal prohibition for those who are married, then when these things are known, the contract is declared to be

¹⁰ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2008), h. 44.

¹¹ Dany Try Utama Hutabarat, *Pengelabuan Hukum Perkawinan Beda Agama* (Azka Pustaka, 2022), h. 17.

¹² Martiman P., *Hukum perkawinan Indonesia*, (Liberty, Yogyakarta, 2006), h. 25.

¹³ Nuruddin Amir dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia, Perkembangan Hukum Islam dari Fiqh, UU No. 1 tahun 1974 sampai KHI* (Jakarta: Kencana Prenada Media Group, 2006), h. 110.

broken immediately without the need for a court decision.¹⁴

In madhhab Hanafi and Maliki allow the annulment of marriage because: because of the apostasy of the two husband and wife; divorce is caused by the breakdown of the marriage; disbanded because there was no similarity in status (khufu). Likewise, in madhhab Shafi'i and Hanbali it is permissible to annul marriage with the addition of the following reasons: because of the defect of one of the couple; due to various difficulties of the husband (I'sar); and no equality of status or (not sekhuflu).¹⁵

A marriage can be annulled if a person commits polygamy without the permission of the Religious Court, the woman who is married is later found to be still legally the wife of another man, the marriage that is held violates the marriage age limit as specified in Article 78 of Law Number 1 of 1974 concerning marriage, the marriage is held in the presence of an unauthorized marriage registrar, an invalid marriage guardian or a marriage that takes place without the marriage registrar. Attended by two witnesses, the marriage is carried out by force, the marriage is carried out with the threat of breaking the law, the marriage is carried out by fraud, the fraud here is like a man who claims to be a trace, even though he has a wife when the marriage takes place, while he violates because of polygamy

without the permission of the Religious Court or fraud on his identity.¹⁶

According to the compilation of Islamic law in Chapter XI Article 70, a marriage is declared null and void if: the husband performs a marriage, while he is not entitled to perform a marriage contract because he already has four wives, even if one of the four wives is in the iddah talaq raj'i period; A man marries his ex-wife whom he has judged; a person marries an ex-wife who has been sentenced to talaq three times by him, unless the ex-wife has remarried to another man and then divorced Ba'da dukhul from the man again and has expired the iddah period; marriage is carried out between two people who are related by blood; and the same to a certain degree that obstructs marriage according to article 8 of Law No. 1 of 1974.¹⁷

But in fact, in society we often find it difficult to solve polygamy, so that the tendency to solve the polygamy problem is in a secret and dishonest way. The dishonest attitude here is carried out, among others, using false identities to marriage registrars, where they claim to be virgins even though legally they are still the husbands of other women. Usually the forgery is contained in authentic letters and deeds in the form of the identity of the perpetrator, but it is rarely entangled by the law and is difficult to prove, this happens

¹⁴ M.Anwar, *Dasar – dasar Hukum Islam dalam menetapkan keputusan di pengadilan Agama* (Bandung CV.Diponegoro, 1991), h. 73.

¹⁵ M.Anwar, *Dasar – dasar Hukum Islam*, h. 79.

¹⁶ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, h. 48.

¹⁷ Departemen Agama RI., *Kompilasi Hukum Islam Di Indonesia* (Jakarta; Direktur Pembinaan Badan Peradilan Agama Islam, 1999) h. 86.

because of several factors, namely the lack of evidence, carefully planned acts, the witness does not know for himself what the perpetrator has done and the desire to commit polygamy where the perpetrator does not want to inform the first wife.

In relation to the above issues, Law No. 1 of 1974 does not explain in detail about the annulment of marriage due to identity falsification, but the Marriage Law only explains the annulment of marriage due to misperception of the husband or wife (feeling deceived or there is an element of fraud) committed by one of the parties can apply for annulment of marriage to the Religious Court.

Perspectives of Islamic law regarding the annulment of marriage due to identity forgery

According to Islamic law, a marriage contract is a very important legal act and contains its consequences and consequences, of course, as stipulated by Islamic law. Therefore, the implementation of a marriage contract that is not in accordance with the provisions that have been set by Islamic law is a futile act, even seen as an unlawful act and must be prevented by anyone who knows about it, or by means of annulment if the marriage has been carried out.¹⁸

Islamic law recommends that before marriage takes place, in-depth research is conducted to obtain confidence that what is stipulated by Islamic law has been fulfilled. If the

requirements that have been determined are still incomplete or there are still obstacles to marriage, then the implementation of the marriage contract can be prevented first. Islamic law examines whether an act related to *taklifi* or *wad'l* law can have a valid value and can also have a façade value (*fasid*) or null. The façade and façade of the marriage are essentially damaged and the breakup of the marriage contract due to a court decision. The difference between the two is rather slim, for what is called a façade by some is considered a façade by others. In Islamic law, the annulment of marriage is also called *fasakh*. *Fasakh* means to uproot or remove. Because based on observations of *fiqh* literature, we did not find the term annulment of marriage. Islamic law only regulates limited polygamy, does not regulate or recognize the annulment of marriage. If it turns out that in the life of the husband and wife the relationship that has been fostered can no longer be maintained, then divorce is done. The meaning of *fasakh* is to destroy or cancel. This means that the marriage is decided or broken at the request of one of the parties by a judge of the Religious Court.¹⁹

According to the opinion of *Madzhab Shafi'iyah*, among the divorces caused by *fasakh*, namely:

First, because a heavy husband provides marriage, maintenance, shelter and clothing.

¹⁸ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, (Jakarta: Kencana, 2008), h. 42.

¹⁹ Soemiyati. *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan (Undang-Undang No. Tahin 1974)*, (Yogyakarta, Liberty, 2004), h. 113.

Second, A wife has a defect in her genitals.

Third, due to the fasid marriage contract.²⁰

Fourth, because a husband has been deceived by his femininity, such as a woman who claims to be a virgin but in fact is not a virgin, claiming to be free turns out to be a slave.²¹

From the view of Madzhab Shafi'iyah above, it appears that marriage can be canceled if one of the parties of the married couple feels deceived.

Therefore, if it is compared to the case of Identity Forgery, then there is an element of perfection between the two. Because a woman or man will feel deceived if he knows the true nature of his partner's identity which is forged during the marriage contract.

The law regarding marriage has existed since ancient times in line with human culture itself. Because it is the nature of nature, that two human beings of different sexes, a man and a woman, have a mutual attraction to each other to live together to form a family in a marriage bond.²²

According to Yahya Harahap, the meaning of annulment of marriage is a court action in the form of a decision that states that the marriage carried out is declared invalid. Something that is declared invalid is

considered to have never existed so that the man and the woman whose marriage is annulled are considered to have never married as husband and wife.²³

Meanwhile, the word polygamy etymologically comes from the Greek language, namely *polus* which means many and *gomos* which means marriage. When the meaning of this word is combined, then polygamy will mean a marriage of many or more than one person. Or in other words, polygamy is the marriage of two or more women. Thus, the annulment of polygamous marriages is a court action in the form of a decision that states that the polygamous marriage carried out is declared invalid and considered to have never existed. In general, the annulment of marriage in the treasures of Islamic fiqh is called *fasakh*. Linguistically, according to the opinion of Ibn Manzur in *Oral a-Arabic*, it is stated that *fasakh* means void (*naqada*) or dissolve (*faraqa*).²⁴

The pillars of marriage are the essence of marriage itself. Without one of the pillars, marriage is impossible. Meanwhile, what is meant by the conditions of marriage is something that must be in marriage and if there is one of the conditions it

²⁰ Abdurrahman al-Jaziry, *Kitab al-Fiqh 'ala Mazahib al-Arba'ah, Juz IV* (Beirut: Dar al-Fikr), h. 372.

²¹ Wahbah Zuhaily, *Al Fiqh Al Islam Wa Adilatuh*, (Beirut: Daarul Fikr, 1996), Juz VII, Cet Ke-1, h. 525.

²² Sudarsono, *Hukum Perkawinan Nasional* (Jakarta: Rineka Cipta, 2005), h. 32

²³ Yahya Harahap, *Hukum Perkawinan Indonesia* (Medan: CV Zahir Trading Co., 1978), h. 71.

²⁴ Ibnu Manzur, *Lisan al-Arab Juz III*, (Dar Al-Fikr, Qatar), 1994. h. 45

is not fulfilled, the marriage becomes invalid.²⁵

The annulment of marriage in Islamic law is called fasakh which means to destroy or annul. So, fasakh as one of the reasons for the breakup of a marriage is to destroy or cancel the marriage relationship that has taken place. Annulment of marriage is interpreted as an action to obtain a court decision stating that the marriage carried out is null and void.²⁶

Fasakh is caused by two things, namely: (1) a marriage that does not meet the principles and conditions or there is an obstacle to marriage; (2) the occurrence of something in the life of the household that does not allow the household to continue.²⁷

One of the reasons the court decided to annul a marriage because of identity forgery is because one of the goals of marriage is to get happiness, open to each other, but if there is identity forgery, the goal is no longer achieved. The legal considerations used by the Panel of Judges in deciding the case of identity forgery are based on the Plaintiff's lawsuit, the Plaintiff's testimony at the trial, the Defendant's answer and the testimony of witnesses from the Plaintiff and the Defendant at the trial, then the Panel of Judges finds the facts concluded to give a decision on the annulment of the marriage.

Conclusion

After going through the study of several discussions regarding the Annulment of Marriage Due to Identity Falsification in the Perspective of Islamic Law, the author can draw the following conclusions: first, annulment of marriage is an attempt to cancel a marriage after the marriage contract takes place because it is known that there is a prohibition according to the law, or laws and regulations regarding marriage. The annulment of marriage can occur because of two things, namely whether the harmony and conditions of marriage are not met. One of the things that must be fulfilled in married life is honesty with each other. Identity forgery or commonly referred to as identity manipulation consists of two syllables, namely manipulation and identity. Honesty in marriage must be purely formed, which means that it must be born from the heart of each party. Marriage adorns family life and at the same time is a clean and honorable human survival even though polygamy, but it is not uncommon for dishonest attitudes here to be carried out, including using false identities to marriage registrars. Second, in Islamic law, the annulment of marriage can occur due to two things, namely: first, there are things that can cancel the marriage contract that is carried out. The Imams of Madzhab, namely, Imam Malik, Shafi'i, Hanafi and Hanbali, agreed that if there is a marriage with a woman (mahram) mentioned in the Qur'an, So the law is haram and the marriage must

²⁵ Zaeni Asyhadie, *Hukum Keluarga Menurut Hukum positif Di Indonesia* (Cet I, Kota Depok: Rajawali Pers, 2020), h. 78.

²⁶ Zaeni Asyhadie, *Hukum Keluarga Menurut Hukum positif Di Indonesia*, h. 137.

²⁷ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia, Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana 2003), h. 253.

be fasakh, and show an eternal prohibition for those who are married, so when these things are known, the contract is declared to be broken immediately without the need for a court decision. In madhhab Hanafi and Maliki allow the annulment of marriage because: because of the apostasy of the two husband and wife; divorce is caused by the breakdown of the marriage; disbanded because there was no similarity in status (khufu). At the end of the preparation of this thesis, in accordance with the problems that occurred, the author gave a little advice to the reader and especially to the author himself and the community in general: For everyone who wants to carry out marriage, it is better to first deepen the knowledge of marriage in order to create a sakinah mawaddah warohmah family, and not just to meet the needs of sex. Although polygamy is allowed in Islam, if you want to add another wife, you should use your original identity to remarry. The results of this study on the annulment of marriage due to identity forgery cannot be said to be final because it is possible that there are still many shortcomings in it as a result of the limitations of knowledge and analytical acumen that the author has. Therefore, it is hoped that there will be new researchers who review the results of this writing.

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