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## The polyandry marriage itsbat cancellation in Aceh Singkil

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### Abstract

Itsbat marriage is the ratification of marriages that have been carried out according to Islamic religious law, but are not recorded by the state agency for religious affairs or the authorized Marriage Registrar (KUA). Marriage *isbat* is used to legalize polyandry marriages which are basically prohibited in Islamic law and also the provisions of Pasal 3 of Law no. 1 of 1974 and Pasal 40 of the Compilation of Islamic Law. The Singkil Sharia Court then canceled itsbat marriage against polyandry marriages with the decision No. 61/Pdt.G/2021/Ms.Skl. However, basically there is no statutory regulation that regulates the cancellation of itsbat marriage. This study aims to examine and analyze the ratio decidendi of judges in examining, deciding and resolving the cancellation of itsbat marriage in polyandry marriages. This type of research is a normative juridical research, using a statutory approach, a conceptual approach, and a case approach. Data were collected through previous research and according to the cases happened there, then analyzed to qualitative data. The results of this study indicate that the ratio decidendi of the Judges to the itsbat marriage cancellation in polyandry marriages in Decision No. 61/Pdt.G/2021/Ms.Skl is very limited. However, based on the results of the interview and the provisions of the legislation, it can be concluded that the ratio decidendi of the Judge to the cancellation of itsbat marriage in polyandry marriages is the provision in Pasal 2, Pasal 3 of Law no. 1 of 1974 and Pasal 73 of the Compilation of Islamic Law and Surah Al-Nisa verse 24 which explains that it is forbidden for men to marry women who have husbands. It is recommended to the judges of the Religious Courts/Sharia Courts in making decisions, especially regarding the cancellation of the marriage itsbat in polyandry marriages, giving more ratio decidendi or legal reasons in their decisions to bring order or adjust to the rules of the government.

**Keywords:** itsbat, marriage, polyandry

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### Introduction

Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage (hereinafter referred to as the Marriage Law) stipulates that marriage is a marriage between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the God's provisions. The outer bond is a visible bond or formal bond in accordance with existing regulations, while the inner bond is a bond that does not appear directly, and is a psychological bond. A marriage is based on physical and spiritual bonds between husband and wife. The outer bond is reflected in the existence of a marriage contract, while the inner bond is a feeling of mutual love from both parties.

In Islami, marriage is a worship and commandment of Allah SWT and the Sunnah of the Prophet Muhammad SAW. Allah's commandments meant commands contained in the Qur'an while the Sunnah of the Prophet means following the traditions carried out by the Prophet Muhammad SAW which have been carried out by himself and for his ummat. In the Qur'an, Annisa ayat (1): "*O mankind, fear your Lord, who created you from a single person, and from him Allah created his wife, and from both of them Allah gave birth to many males and females. And fear Allah who by (using) His name you ask one another, and (maintain) the relations. Verily, Allah is always care of you and watching over you.*"

In order to ensure the orderliness of marriage institutions in society, the Marriage Law in conjunction with Government Regulation No. 9 of 1975 about the Implementation of the Marriage Law (hereinafter referred to as PP No. 9 of 1975) which stipulates that every marriage must be recorded by an authorized officer.

The purpose of legal registration of marriages is to provide certainty and protection for the parties to the marriage who have authentic evidence in the form of a marriage book that can defend their marriage to anyone before the law. On the other hand, if a marriage is not registered, then the marriage has no power before the law. In reality, there is a different phenomenon, which can be seen from the number of people who carry out unregistered marriages. However, nowadays many people who have carried out unregistered marriages have realized how important it is to register marriages in accordance with the provisions of the law (UU). Therefore, for those who have already carried out unregistered marriages, they can obtain a marriage certificate to apply for a marriage certificate (stipulation/ratification of marriage) to the Religious Courts or Sharia Courts (specifically for the Aceh region) as regulated in Pasal 7 of the Presidential Instruction of the Republic of Indonesia No. 1 of 1991 concerning Compilation of Islamic Law (hereinafter referred to as KHI).

Marriage Itsbat is the ratification of marriages that have been carried out according to Islamic law, but are not recorded by the Office of Religious Affairs or the authorized Marriage Registrar. However, the Isbat of marriage began to cause problems when many people used the Isbat of marriage to commit legal smuggling or legal irregularities, one of which was a woman who committed identity fraud or her marital status by claiming to be unmarried or still a girl to have more than one husband or referred to as polyandry.

The Polyandry itself is prohibited both under Islamic law and state law and is categorized as an act of adultery. This prohibition against polyandry can be seen in the provisions of Pasal 40 letter "a" of the KHI which stipulates that it is prohibited to carry out marriages between a man and a woman due to certain circumstances, one of which is because the woman in question is still bound by a marriage with another man.

One example of this polyandry can be seen in the case contained in the decision regarding the isbat of polyandry marriages which was granted by the Singkil Sharia Court with decision No. 1/Pdt.G/2021/Ms.Skl. However, several months after the application for itsbat marriage was granted, the husband found the fact that his wife was still bound by a legal marriage bond with another man. Based on these facts, the husband then filed a lawsuit for the cancellation of the marriage certificate to the Singkil Sharia Court and it was also granted by the Singkil Sharia Court Judge with Decision No. 61/Pdt.G/2021/MS.Skl.

Based on this case, we can see that the marriage certificate is used by certain elements as a way to legalize marriages that are prohibited by laws and regulations. Whereas in this case the Shariah Court as a judicial institution should have a system that is connected to the KUA which can see a person's marital status. This is in order to prevent mistakes in legalizing polyandry marriages as in the case above.

### Research Methods

This research is a normative juridical research using a statutory approach, a conceptual approach, and a case approach. Data were collected through research before and as the fact, then analyzed qualitatively. This research is descriptive analytical, the data that has been obtained from the results of this study are compiled and analyzed qualitatively, then the data then describ to obtain the result how that can be understood clearly and directed to answer the problems.

### Results and Discussion

Ratio decidendi are the legal reasons used by the judge to arrive at a decision. Kusumadi Pudjosewojo defines ratio decidendi as material facts, essential factors that lead to decisions. Essential factors can be called as juridically relevant factors but there are also those which are juridically irrelevant. Furthermore, Goodheart mentions that ratio decidendi is a descriptive jurisprudence, while court decision is descriptive.

The Ratio decidendi has the same meaning as the legal reasiong and the ground of reason the decision which is used in the elaboration of the next definition is an essential factor that must be fulfilled because it becomes the spirit of the judge's decision. It means that the formulation of the ratio decidendi is very important because it determines the quality of the judge's decision.

Associated with the decision of the Singkil Sharia Court Number. 61/Pdt.G/2021/MS.Skl which cancels the marriage certificate for polyandry marriages, in its decision the Judges does not use many basic considerations in examining and deciding the application for cancellation of marriage certificates in polyandry marriages. As for the Ratio Decidendi, the judges in examining, deciding and finalizing the cancellation of itsbat marriage against polyandry marriages in Decision No. 61/Pdt.G/2021/MS.Skl is the opinion of Judges that the Petitioner has been deceived by the Respondent by claiming to be a girl even though it turns out that the respondent is someone's wife, then according to the intent of Pasal 72 paragraph (2) KHI a husband or wife can apply for annulment of marriage if at the time of marriage there is fraud or misunderstanding about the husband or wife.

The Decidendi Ratio used by the judges at the Singkil Sharia Court in examining, deciding and resolving cases of cancellation of itsbat marriage against polyandry marriages above is still very limited. There are many provisions that can be used as Ratio Decidendi in examining, deciding and resolving cases of the cancellation of the marriage itsbat against this polyandry marriage. Therefore, to get a different point of view on the ratio decidendi of judges in examining, deciding and resolving the cancellation of the marriage itsbat in polyandry marriages, can be obtained by interviewing the Sharia Makamah Judges.

Choirutun Nisa' Judge of the Singkil Sharia Court stated that there are several basic considerations for judges in canceling marriage isbat in polyandry, that the court in this case the judge cannot refuse a case to be tried. If you look at the request for the cancellation of the marriage itsbat, it can be seen that the husband filed for the cancellation of the marriage isbat because later he found out that the wife he married had united as someone else's legal wife, in other words the husband felt cheated by his wife's actions, where in identity a wife such as a KTP is still a girl/virgin status, while it is found that her wife is still married to another man, as evidenced by the existence of a marriage certificate of the wife's marriage to another man. Based on Surah Al-Nisa Ayat 24 explains that it is forbidden for men to marry women who have husbands. In addition, there is fraud in the marriage as stated in the Compilation of Islamic Law Pasal 72 paragraph (2).

Furthermore, interviews were also conducted with other Sharia Court judges, Mr. Raja Asrul Aziz who stated that the basis for the judge's consideration was that the Respondent was still bound to her husband considering that Pasal 3 of the Marriage Law prohibits the marriage of women who are still related to marriage with other men. In this case that there is still a marital relationship with another man then there must be prevention, whereas in this case already married then the legal solution is annulment, but I do not see how this isbat is tried and

ratified when submitting an isbat application, later researchers can see the judge's consideration in granting his isbat and the evidence that was considered at the time the marriage was valid. The Plaintiff and the Defendant had a divorce certificate, whether the status was a girl, and if the Defendant claimed to be a girl then identity falsification occurred. Legally, the marriage isbat has been announced on the board. court announcement for 2 weeks if there are still legal objections, but the plaintiff in this case, does not know the status of the married wife.

Based on the ratio decidendi of the panel of judges in the decision No. 61/Pdt.G/2021/MS.Skl, it can be seen that the cancellation of the determination of itsbat marriage is basically the same as the annulment of marriage. The cancellation of the determination of itsbat marriage means that a marriage that has previously been declared valid by the Religious Court/Sharia Court, is then canceled again based on a court decision because it is proven that in the marriage there is a violation of the provisions of Islamic law and/or statutory regulations. Pasal 22 of the Marriage Law which stipulates that a marriage can be annulled, if the parties do not meet the requirements to enter into a marriage. The conditions referred to in Pasal 22 of this Marriage Law are formal requirements and material requirements. The provisions contained in Pasal 22 of the Marriage Law can also be used as a reason for the cancellation of the marriage certificate.

In connection with the lawsuit for the cancellation of itsbat marriage, Decision No. 61/Pdt.G/2021/MS.Skl. which is proven that the marriage between the Petitioner and the Respondent does not meet the requirements to enter into a marriage as stipulated in the provisions of Pasal 2 of the Marriage Law, that a marriage is valid if it is carried out according to the laws of their respective religions and beliefs. The marriage between the Petitioner and the Respondent is prohibited in Islamic law, that the prohibition of polyandry marriages.

Furthermore, the legal principle of marriage in the Marriage Law is the principle of monogamy, this can be seen in the provisions of Pasal 3 of the Marriage Law which stipulates that in principle in a marriage a man can only have a wife and a woman can only have a husband. The marriage between the Petitioner and the Respondent has also violated the provisions of Pasal 3 of this Marriage Law, where the Respondent married while still have a legal marriage with another man.

The marriage between the Petitioner and the Respondent, which had previously been ratified by the Singkil Sharia Court through its marriage certificate, has clearly violated the legal requirements of marriage contained in Pasal 2 and Pasal 3 of the Marriage Law relating to a woman only being allowed to have a husband or in other words, women are prohibited from doing so. polyandry marriage. Basically, the Marriage Law and the Compilation of Islamic Law do not regulate the cancellation of itsbat marriage, the Marriage Law only recognizes the annulment of marriage. The annulment of this marriage itself is regulated in Pasal 22 of the Marriage Law which explains that "A marriage can be annulled if the parties do not meet the requirements to enter into a marriage". This means that a marriage is prohibited if it does not meet the requirements and pillars of marriage, if such a marriage has already been carried out, it can be annulled.

Marriage annulment is a court action in the form of a decision stating that the marriage carried out is declared invalid (no legal force or declared void), so that the marriage is considered to have never existed. From this understanding, several elements of marriage annulment can be described with point:

1. Marriage is considered invalid (no legal force)
2. Never existed
3. Men and women whose marriages are annulled are considered never married

Then in Pasal 24 of this Law it is explained that: "Whoever because of marriage is still bound by himself to one of the two parties and on the basis of the existence of the marriage can apply for the annulment of a new marriage, without prejudice to the provisions of Pasal 3 paragraph (2) and Pasal 4 this law.

The application for annulment of this marriage is submitted to the Court in the jurisdiction where the marriage takes place at the residence of both husband and wife, husband or wife. The provisions in the Marriage Law mentioned above are reaffirmed in Article 71 of the Compilation of Islamic Law which stipulates that a marriage can be annulled if:

1. A husband practices polygamy without the permission of the Court.
2. The woman who was married was later found to be legally the wife of another man
3. Women who are married are still in the *iddah* period.
4. Marriages carried out by fraud, or mistaking the husband or wife

The marriage between the Petitioner and the Respondent violates the provisions of Article 71 paragraphs (1) and (4) in which the Respondent is still legally the wife of another man and this marriage also contains elements of fraud. The Respondent stated that he was not married to another man as evidenced by his Resident Identity Card which was written "unmarried". Whereas in reality the Respondent is married and is still legally the wife of another man.

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