



## The disparity of judges' decisions in marriage annulment cases from the perspective of legal certainty

Rizki Mardhatillah Mouna<sup>1</sup>, Iman Jauhari<sup>2</sup>, Teuku Saiful<sup>2</sup>

<sup>1</sup> Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

<sup>2</sup> Associate Professor, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

### Abstract

Article 22 of Law No.1 of 1974 concerning Marriage states that a marriage can be annulled if the parties do not meet the requirements for marriage. The authority to decide on the annulment of marriage lies with the Religious Court. The legal reasoning of the judge is one of the most important aspects in determining the realization of justice and legal certainty, as well as the benefits for the parties involved. Therefore, the judge's reasoning must be thorough, sound, and careful. If the judge's reasoning is not thorough, sound, and careful, the decision may be annulled by the High Court/Supreme Court. However, there are still many cases of marriage annulment that result in a disparity in the judges' decisions at the first-instance and appellate levels, requiring an analysis of the differences between the first-instance and appellate decisions that cause the decisions to differ, leading to the annulment of the first-instance decision by the appellate court. This study is a normative juridical research, using a case approach. This research uses secondary data, which is obtained through literature review by examining regulations, books, and other documents. Data analysis is conducted qualitatively. The research findings indicate that the disparity in the judges' decisions in marriage annulment cases leads to legal uncertainty, as the decision at the first level fails to provide justice and benefits for the petitioner, prompting an appeal, and has legal implications affecting certain parties.

**Keywords:** Disparity, Marriage Annulment, Legal Certainty

### Introduction

The annulment of marriage is a court ruling that must be carried out through a trial, with the reason being that the marriage in question has a legal flaw. This is proven by the failure to meet the requirements for a valid marriage or by the violation of applicable legal provisions. A court decision may occur due to parties who have an interest or are harmed by the marriage, or even by the spouses themselves who dispute the marriage (Martiman Prodjohamidjojo, 2007: 15) <sup>[12]</sup>.

According to Article 22 of Law No. 1 of 1974 on Marriage, it is stated that: "A marriage can be annulled if the parties do not meet the requirements for marriage." Even though marriage or marriage itself is one of the things that can bring oneself closer (taqarrub) to Allah SWT (Darmawan Darmawan, et.al., 2023: 85) <sup>[5]</sup>, but for some reason the marriage has to be cancelled. Article 73 of the Compilation of Islamic Law (KHI) mentions that those who can file for a marriage annulment are family members in the direct upward or downward lineage of either the husband or wife, the husband or wife themselves, officials who are authorized to oversee the marriage under the law, and anyone who has an interest after discovering a flaw in the conditions and pillars of the marriage according to Islamic law and the applicable regulations as mentioned in Article 67.

According to the research results of Muhammad Farid, Teuku Saiful and Suhaimi (2024: 121) <sup>[8]</sup>, one of the causes of marriage annulment is due to fraud or falsification of identity. However, the cancellation of the marriage due to fraud or falsification of identity was carried out by the husband in a polygamous marriage. In this case, the husband's identity was deliberately falsified, because he intended to carry out polygamy.

The authority to decide on the annulment of marriage lies with the Religious Court that has jurisdiction over the place

of residence of the Muslim couple or the place where the marriage took place, to prevent annulment decisions made by other agencies outside the Religious Court. When the party who feels harmed goes to court to resolve the issue, the losing party in the first-instance court is entitled to appeal the case to the High Religious Court, but this can lead to a disparity in decisions between judges. However, even though there may be disparities in a ruling, a case that has been decided by a judge must have legal certainty for the parties involved.

The legal reasoning also includes the articles of the legal provisions that serve as the basis for the decision. In their legal reasoning, the panel of judge's uses different legal consideration. The judge's reasoning is one of the most important aspects in determining the realization of the value of a court decision that embodies justice and legal certainty. In addition, it must also provide benefits for the involved parties, so this reasoning must be approached carefully, thoroughly, and accurately. If the judge's reasoning is not thorough, sound, and careful, the decision based on that reasoning will be annulled by the High Court/Supreme Court (Mukti Arto, 2004: 140) <sup>[13]</sup>. Disparities in judges' decisions often occur, one of which is found in several marriage annulment cases, resulting in disparities between first-instance and appellate decisions. Therefore, further research is needed to understand how judges' reasoning leads to different decisions in marriage annulment cases despite the same legal matter.

### Research Method

The type of research used in this study is normative juridical, namely research whose objects are the principles, norms, rules of laws and regulations, court decisions and doctrines (Fahmi Muhammad Ahmad & Jaenal Aripin, 2010:31) <sup>[7]</sup>. The approach in this study is a case approach

which is carried out by reviewing cases related to the problems faced that have become court decisions and have permanent legal force (Peter Mahmud Marzuki, 2016:158). The data sources used are secondary data, namely library materials that include official documents, library books, laws and regulations, scientific works, articles, and documents related to research materials, with data collection techniques using library study methods and document studies.

## Results and Discussion

### 1. Legal Certainty Regarding Disparities in Judges' Decisions in Marriage Annulment Cases

A judge's decision is a product of the court trial process. The judge's decision should meet the demands of the seekers of justice. Therefore, to meet the demands of the seekers of justice, judges in making decisions must be able to provide justice, legal certainty, and usefulness (Margono, 2012:37)<sup>[11]</sup>. In giving legal considerations, judges must use sound reasoning and be able to make a decision by placing the ruling closer to justice when appropriate, and closer to legal certainty when necessary. Essentially, the principle of usefulness lies between justice and legal certainty. This is where the judge gives more weight to the purpose or utility of the law in the interest of society. The emphasis on the principle of usefulness is more likely to be economically oriented. The underlying thought is that the law exists for the benefit of society or the public. Therefore, the purpose of life must be useful for humans (Amir Ilyas, 2016:91)<sup>[4]</sup>.

To achieve a fair and correct ruling, there are three stages that judges must follow: 1) Constatir, 2) Qualify, 3) Constituir. Judges must also be able to develop legal reasoning. Legal reasoning, or often referred to as legal thought, is the exploration of reasons about the law or the search for the basis on which a judge decides a case.

Legal Reasoning is a thought process used by legal professionals, such as judges, prosecutors, lawyers, and experts or academics, to analyze, interpret, and apply the law in resolving a case or legal problem. It involves the use of legal principles, precedents, rules, and relevant facts to reach a valid decision or conclusion. There are several main components in legal reasoning, including: case analysis (in this case identifying the relevant facts in a case and examining how those facts relate to applicable law. Next is legal interpretation, namely by using relevant previous court decisions (jurisprudence) to help determine how the law should be applied to the current case. Next is developing a logical and coherent argument to support a particular legal position based on evidence and legal principles. While the last is Decision Making, where by analyzing and considering all relevant aspects, the legal reasoning process ends with a clear legal decision or verdict, which is expected to be legally accepted by the parties involved. In other words, legal reasoning helps legal professionals to make fair and rational decisions based on applicable legal principles.

Kenneth J. Vandeveld outlined five steps in legal reasoning: 1) Identifying possible sources of law, usually in the form of laws and judicial or court decisions (identify the applicable sourcer of law). 2) Conducting analyses of legal sources, which can later be used to determine appropriate rules and policy-making related to the rules in question (analyze the sourcer of law). 3) Synthesizing legal rules into a coherent structure, in the sense that specific rules are grouped separately under general rules (synthesize the applicable

rules of law into a coherent structure). 4) Examining the available facts (research the available fact). 5) Applying the rule structure to the facts that occur, so that the rights and obligations arising from these facts can be ascertained. This process uses policies embedded in legal rules when resolving difficult cases (apply the structure of rules to the facts) (Rendra Widyakso, 2023)<sup>[15]</sup>.

When a judge issues a decision on a case he/she is handling, this is a manifestation of the professionalism of the judicial institution and an improvement in the quality of a judge's decision. Judges must not act recklessly when delivering rulings. They must consider three crucial aspects: 1) Justice (gerechtigheit), 2) Certainty (rechtssicherheit), and 3) Usefulness (zweckmässigkeit) (Abdul Manan, 2012:291)<sup>[11]</sup>. Therefore, judges must be more careful in delivering decisions in the cases they handle to ensure that justice, certainty, and usefulness are realized for those seeking justice. In practice, judicial decisions are highly expected to provide satisfaction to the parties involved. Therefore, an ideal judicial decision should be:

1. The judge's decision is the final culmination in resolving disputes.
2. The judge's decision is a depiction of the process of social life in society and as part of social control in society.
3. The judge's decision is the embodiment of the applicable law and is useful for every individual, community group and state.
4. The judge's decision is a balance between legal provisions and the reality in the field.
5. The judge's decision is a depiction of the ideal awareness between law and social change in society.
6. The judge's decision provides benefits for everyone who is in dispute.
7. The judge's decision does not create new conflicts for the disputing parties and the community (I Wayan Yasa & Echwan Iriyanto, 2023:34-62)<sup>[10]</sup>.

When we talk about certainty in relation to the law, our thoughts turn to the clarity and decisiveness of the legal norm-making process in society. This process is crucial in determining the obedience and compliance of the public to legal norms. Therefore, legal certainty is defined as the clear standard that can ultimately serve as a guide for behavior in daily life. If this process is in doubt, the legal norm loses its certainty and meaning. A judicial decision that contains elements of legal certainty will contribute to the development of legal knowledge. This is because a decision that has obtained permanent legal force (inkracht van gewijsde) is no longer merely the opinion of the judge but has become the opinion of the judicial institution, which will serve as a reference for society in seeking justice. Here, the judge is required to be neutral and impartial (I Wayan Yasa & Echwan Iriyanto, 2023:34-62)<sup>[10]</sup>. Legal certainty will be evident once a court decision is made. If there are no further legal remedies and the time limit has passed in accordance with applicable regulations (especially for condemnatory decisions), then the decision becomes final and binding (inkracht van gewijsde). Once a decision is final and binding, it is ready to be executed. This is the ultimate goal of resolving civil disputes in court.

However, the implementation of a court decision is not always as smooth or as expected. There are many obstacles that can arise when trying to implement the content (the

ruling) of the judge's decision. These factors can influence the process of implementing the ruling. Due to these factors, court decisions are often perceived as lacking legal certainty when being enforced. Even the party declared victorious in court may not be able to restore their rights. This becomes a challenge after the judge has delivered a ruling on a dispute. The judge's considerations are one of the most important aspects in determining the realization of the values of a court decision that contains justice and legal certainty, as well as benefiting the parties involved. Therefore, the judge's reasoning must be careful and thorough. The aspect of justice is one of the key goals in law enforcement, helping to build legal certainty (Fikarlia & Jalaluddin, 2023:132-133) <sup>[9]</sup>.

Judges often encounter disparities in cases that are similar or the same. Disparity can be understood as the difference or inconsistency in sentencing or rulings between judges in the first instance and appellate judges. As previously discussed by the author, disparities have occurred in marriage annulment cases. There are differences between the first-instance and appellate rulings. From the explanation earlier, it can be seen that the decision of the first-instance judge did not provide legal certainty, meaning the petitioner was dissatisfied with the decision and appealed it. The first-instance decision was seen as not providing legal certainty to the petitioner, as the petitioner did not feel justice or benefit from the decision made by the first-instance judge.

Here, the author observes that the first-instance judge was not careful enough in interpreting the reasons and the cause-and-effect relationship behind the petition for marriage annulment submitted by the petitioner. As a result, the first-instance judge rejected the petition for annulment. Since the petition was rejected, the petitioner filed an appeal, and in the appellate decision, the petitioner received justice and benefits, thus the appellate court's decision provided legal certainty for the petitioner and all parties involved. In the appellate decision, the author observed that the panel of appellate judges thoroughly examined and interpreted the petitioner's reasons for requesting marriage annulment from various angles, not just based on legal grounds, but also considering the cause-and-effect relationship and the reasons behind the petition. Additionally, the appellate judges considered various legal solutions to resolve the case. In conclusion, the author finds that the disparity in judicial decisions in marriage annulment cases leads to the first-instance ruling failing to provide certainty, justice, or benefit because it only considered the legal aspects and did not take into account the reasons for the petition. This left the petitioner feeling that they had not received justice or benefit. On the other hand, the appellate court's decision provided legal certainty, and the petitioner was able to experience the justice and benefit of the ruling, as shown by the fact that the petitioner did not file a cassation appeal.

## 2. Legal Implications of Judge's Decision in Marriage Annulment Cases

Legal implications arise when a marriage annulment process begins. These implications are the consequences generated by the law from an act or legal event. The annulment of a marriage begins from the moment the court issues a marriage annulment decision, as stipulated in Article 28 (1) of Law No.1 of 1974, which states that: "The annulment of a marriage begins after the court decision becomes final and binding and is effective from the moment the marriage took

place." Based on this provision, the marriage annulled by the Religious Court starts from the court's decision and is retroactive to the time the marriage took place, meaning the marriage is considered as though it never existed. The legal implications of a Religious Court's marriage annulment decision may include several matters, including:

### a. Effect on the Husband and Wife Relationship

The legal consequence of the annulment of a marriage on the relationship between the husband and wife is the termination of their relationship. Once the court's decision becomes final and binding, the marriage is annulled retroactively from the time it took place, or the marriage is considered as though it never existed. This is in accordance with Article 28 (1) of Law No. 1 of 1974, which emphasizes that "The annulment of a marriage begins after the court decision becomes final and binding and is effective from the moment the marriage took place."

The cancellation of marriage can have a significant impact on the relationship between husband and wife. The effects can vary depending on certain factors, such as the reason for the cancellation, the previous emotional relationship, and how the couple handles the process. Here are some key effects that may occur, such as causing one or both partners to feel betrayed or to lose trust. Trust is the main foundation of a marital relationship, and if it is shaken, it can affect the overall stability of the relationship. The cancellation of marriage is often accompanied by feelings of disappointment, anger, or anxiety. This stress can affect the mental and emotional well-being of the partners, as well as their relationships with family, friends, and close ones. As a result, after the cancellation, communication may become more open or more hindered, depending on how the couple deals with the issue. If there is no clear and honest communication, the relationship may worsen.

In many cases, a married couple who experiences the cancellation of marriage may find it difficult to return to a healthy dynamic. This can affect both emotional and physical closeness between the partners. One or both partners may feel guilty or regretful after the cancellation, especially if they feel that the decision was the result of their mistakes. Furthermore, if the couple already has children, the cancellation of marriage could affect the family dynamics, causing confusion or emotional trauma to the children involved.

The healing process after the cancellation of marriage can take a long time. If the couple wishes to continue the relationship, they may need to consult a professional, such as a marriage therapist, to address the issues and rebuild trust.

According to Nurjanah Syaf, a judge at the Central Jakarta Religious Court, whether remarriage is allowed or not is based on several factors, including:

1. From the perspective of the cause of the marriage annulment, if the marriage is annulled due to a violation of the marriage requirements, such as a marriage prohibition, then remarriage cannot occur permanently, even if the intention to remarry exists, for example, due to kinship or milk kinship.
2. The party whose marriage is annulled may remarry if the marriage is annulled for reasons that only temporarily prevent marriage, such as the prohibition due to Ihram (during Hajj or Umrah) or the prohibition due to the waiting period (iddah). If the waiting period has expired, the couple may remarry.

3. Even if they are allowed to remarry due to a temporary prohibition, if either party does not wish to remarry, they cannot do so. For those who do remarry, the annulment of the marriage has no further legal consequences for either party (Desi Rohayati, Liza Priandhini, R. Ismala Dewi, 2020:719).

Regarding the waiting period (*iddah*) for a widow whose marriage is dissolved due to *khulu'* (divorce initiated by the wife with compensation) or *fasakh* (divorce due to a reason such as apostasy or other valid reasons), the waiting period applies as if it were *iddah* due to divorce (Ahmad Rofiq, 2013:24) <sup>[2]</sup>. The waiting period for those who still have menstrual cycles is set at three (3) periods of purity, at least 90 days, and for those who do not menstruate, it is set at 90 days. The waiting period is calculated from the moment the court decision becomes final and binding. For a widow whose marriage is dissolved due to separation without any sexual relations occurring between her and her former husband, there is no waiting period (*iddah*) (Law No.1 of 1974 on Marriage).

#### **b. Effect on the Status of Children**

In addition to the legal consequences on the relationship between the husband and wife, the annulment of a marriage also has legal implications for the status of the children. If a marriage is annulled, it should not cause harm or suffering to the children born from that marriage (Ali Imron, 2015:39). Article 28 (2) of Law No.1 of 1974 states that: "The decision does not apply retroactively to: (a) children born from the marriage; (b) the husband or wife acting in good faith, except regarding joint property, if the annulment is based on a prior existing marriage; (c) other third parties who are not included in (a) and (b) as long as they obtained their rights in good faith before the annulment decision becomes final and binding."

Furthermore, the status of the child as a legal consequence of a marriage annulment is also explained in the Compilation of Islamic Law, Article 76, which states: "The annulment of a marriage does not sever the legal relationship between the child and both parents." Thus, the child remains a legitimate child and is entitled to inherit from their parents if they pass away, and the father is considered the guardian for the child's marriage. Parents are obligated to care for and educate their children, as stated in Article 45 (1) of Law No.1 of 1974 on Marriage: "Both parents are obliged to care for and educate their children in the best possible way." This parental authority applies when the child is under 18 years old or has not yet married, and as long as the child's parental authority has not been revoked. Parental authority over the child covers all legal actions both inside and outside the court, as stipulated in Articles 47 (1) and (2) of Law No.1 of 1974.

#### **c. Regarding Joint Property**

There are also legal consequences regarding joint property after a court decision that can annul a marriage, as can be seen in Article 28 (2), letter b of Law No.1 of 1974, which can be interpreted to mean that if both husband and wife act in good faith—meaning there was no prior intention to marry in violation of applicable laws—even though the marriage is annulled by the court due to failure to meet marriage requirements, there will still be a division of joint property between the husband and wife.

The court's decision is not retroactive, meaning that the annulment of the marriage takes effect once the court's decision becomes final and binding (similar to the effect of a divorce ruling). Therefore, even if the marriage is deemed invalid, because the marriage was entered into in good faith, an exception is made regarding the joint property acquired during the marriage. After the marriage is annulled, both the former husband and former wife are entitled to the joint property.

The division of joint property is regulated in Article 37 of Law No.1 of 1974, which states that if a marriage ends due to divorce, the division of joint property will be regulated according to the respective laws. In this case, "respective laws" refers to legal provisions outside of those in Law No.1 of 1974, such as Islamic law, which may apply to the petitioner and the respondent. Regarding the ownership of property from the annulled marriage, the property returns to the status it was in before the marriage. However, for the joint property from the marriage, the division of property will follow the applicable rules for joint property division. If the marriage was accompanied by a prenuptial agreement, the prenuptial agreement will also be annulled.

#### **d. Regarding Third Parties**

The legal consequences of marriage annulment can be seen in Article 28 (2), letter c of Law No. 1 of 1974, which states: "The decision does not apply retroactively to: Other third parties, provided they acquire rights in good faith before the annulment decision becomes final and binding." Similarly, in Article 75, letter c of the KHI, it states: "The annulment of a marriage does not apply retroactively to third parties as long as they acquire their rights in good faith before the annulment decision becomes final." This can be concluded that for third parties acting in good faith, the annulment of the marriage will not have retroactive legal consequences. Therefore, any civil acts or obligations entered into by the husband and wife before the annulment of the marriage remain valid and must be fulfilled by both parties, ensuring that third parties acting in good faith are not harmed. This includes matters such as debts and other civil obligations (Tim Redaksi Nuansa Aulia, 2011:23-84).

#### **Conclusion**

Disparity in court decisions regarding marriage annulment leads to legal uncertainty, particularly in the case of the first instance court's decision. The first instance court's decision does not provide legal certainty because it fails to deliver justice and benefits to the petitioner, resulting in the petitioner appealing the decision. On the other hand, in the appellate court, the decision rendered by the appellate panel of judges provides legal certainty for the parties involved, as indicated by the acceptance of the decision and the absence of further cassation appeals.

Legal implications arise when the annulment of a marriage begins. These implications affect the status of the husband and wife relationship, which is nullified by the court, the status of the child, where the child remains legitimate but the parents no longer have a marital bond, as well as the impact on joint property and third parties who were involved in the marriage.

#### **Suggestion**

It is hoped that judges in general and judges who hear marriage annulment cases should be very careful, because

the decisions taken will greatly influence the value of legal certainty, the value of justice and the value of benefits for the parties. If a judge's decision does not have the value of legal certainty, the value of justice and the value of usefulness, then the decision is meaningless for the parties, even though the parties submitted the matter to the court in order to obtain legal certainty, justice and usefulness, so that the judicial institution will become an institution that is respected by society and has high authority, and is truly a place for people seeking justice.

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