

The Effectiveness Of The Annulment Of Marriage Due To Impersonation And Its Legal Consequence

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Abstract: The purpose of this research is to know and understand the legal consequences of annulment of marriage due to impersonation. This research type is normative empirical legal research namely legal research that combines normative legal research and empirical social/legal research. This kind of research on the types of researchers doing research with mengkombain both types of research as mentioned above in a study. This research was conducted in the city of Makassar Court Office exactly a religion Class 1A City Makassar of South Sulawesi province. As for the reason for the choice of location because at the Court Office of religion Class 1A City Makassar of South Sulawesi province is a Religious Court that plays on class A, which is the barometer of a religious Court in South Sulawesi province. The results showed that the legal consequences of annulment of marriage due to impersonation, that the decision of the Court is not retroactive. against procreation, the position of children and property together. Factors that influence on the cancellation of the marriage because of Factors including the following strictures impersonation law, legal substance factor and factor status, and other factors.

Keyword: Effectiveness, Annulment Of Marriage, Legal Consequence

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I. INTRODUCTION

Marriage is one of the sunnahtullah that is common to all creatures of God, both in humans, animals and plants. It is also a natural for human beings so it can go on throughout the history of human life. The main purpose of marriage is to foster the eternal and happy life of the household between the husband and wife in order to continue the offspring. Without marriage, human survival is bound to become extinct and the history of human life will cease. Marriage is a way God chooses as a way for humans to give birth, breed for the sake of their survival. From such a marriage has a very important consequence in the society, both the consequences of both parties that carry out the marriage and the descendants.

Such marriages are in Allah favor and are enshrined in Islam forever, while others are abrogated. A regulation is meant for marriage to proceed well and orderly. These rules do not just happen instantly but through a very long struggle because they are full of obstacles both before and after independence. And finally in 1974 newly created in a form of law known by the Law No. 1 of 1974 on Marriage where the law regulates the requirements, procedures and prevention of marriage and matters related to marriage, with the arrangement of matters relating to marriage is expected to realize the purpose of marriage. A marriage may be exercised if it has fulfilled the terms and conditions based on the respective religious law and beliefs, as defined in Article 2 paragraph (1) of Law Number 1 of 1974 concerning marriage, subsequently listed as referred to in Article 2 paragraph (2).

Given that marriage is an instinctive human demand to descent for its survival and gain peace of life and grow and cultivate human affection, in Islam it recommends that everyone marry. In Act No. 1 of 1974 in Article 3 paragraph (2) and Article 4 paragraph (1) and (2), marriage is stipulated that a man may take more than 1 wife. But in reality the society stipulated in the Undang- the law is considered to be difficult, so there is the possibility of a husband who wants to marry again, by falsifying identity.

Identity fraud is a common form of crime. In this case the crime in question is Falsifying identity in marriage. In article 22 of the Marriage Law, it is said that a marriage may be canceled if it is not eligible for marriage. One reason for the cancellation of a marriage is the existence of a marriage done by falsifying an identity for the benefit of the marriage. The cancellation of marriage for that reason may be submitted to the Religious Courts for those who are married to the provisions of Islam and to the District Court for those who register their marriages registered with civilians.

Identification of problems

Based on the background that has been described above, then the issues to be discussed by the author are as follows:

1. What are the legal consequences of marriage dating due to identity falsification?
2. what factors affect the cancellation of marriage due to identity falsification?

Research methods

The type of research is empirical normative legal research that is legal research that combines normative legal research and social / empirical legal research. In this type of research researchers conduct research by combining both types of research as mentioned above in a study.

II. THEORETICAL FRAMEWORK

In the law there are a variety of legal theories put forward by legal experts. Both in Indonesia and abroad. The similarity of the jurists' views on the regulation and enforcement of the law, both material law and formal law, is of paramount importance. Because if a provision is not carried out in accordance with the intent and purpose of the provision, then it will be a rule that is not implemented.

One of the interesting is related to the realization or application of various laws and regulations that need special attention in enforcing it, in order to achieve the purpose and objectives of every law and regulation that is justice of legal certainty and expediency. The term the theory of legal effectiveness comes from the English translation of the effectiveness of legal the theory, in the Dutch language called *effectiviteit van de juridische theorie*, in the Indonesian language effective, meaning there is the effect (consequently, its influence, its impression).

Hans Kelsen was quoted as saying by Salim and Erlies, presenting a definition of legal effectiveness, "Do people in fact act in any way to avoid sanctions imposed by legal norms or not, and whether they are actually enforced when conditions are met or not met"

The concept of effectiveness in the definition of Hans Kelsen focused on subjects and sanctions. Subjects that implement the people or legal entities. Such persons shall exercise law according to the norm of law. For people subject to legal sanctions, legal sanctions are actually implemented or not.

There are basically three focuses on the study of the Theory of Legal Effectiveness, as follows: a. Success in Legal Implementation That the law is made is achieved. The purpose of the legal norm is to regulate human interests. If the legal norm is obeyed and implemented by the public or law enforcers, then the implementation of the law is said to be effective or successful in its implementation b. Failure In Execution That the legal provisions that have been set did not reach its intent or did not succeed in its implementation c and factors Affecting It,

Next described about the theory of law enforcement, according to Soerjono Soekanto, law enforcement is an activity of harmonizing the values of values that are outlined in the rules of steadfast and the attitude of acts as a series of translation of the final stages of value. to create, maintain and maintain peace of life. The definition of law enforcement may also be interpreted by the law enforcement officers and by any person having an interest in accordance with their respective authorities according to the applicable law.

Soerjono Soekanto, (1986: 57) argues that for the law or regulation (written) to be fully functional, it is always returned to at least 5 factors: (1) The law or regulation itself, (2) The officer who enforces it, (3) Facilities expected to support the implementation of law, (4) Communities affected by the scope of the law, (5) Facilities and infrastructure.

In analyzing the problem of law, the problem can not be separated from the operation of the three components of the legal system which Lawrence M Friedman, says consists of components of "structure, substance, and culture". Components of structures are the parts that move in a mechanism, for example the court. The substance component is the actual result published by the legal system and includes the unwritten legal rules. While the cultural component is the value and attitudes that bind the legal system simultaneously and result in a form of law enforcement in the culture of society as a whole, the success or failure of law enforcement depends on:

- a. The substance of Law is referred to as a substantial system that determines whether or not the law is enforced. Substance also means products produced by people in the legal system that include the decisions they make, the new rules they make.;
- b. Legal Structure is called a Structural system that determines whether or not the law is properly implemented. The legal structure based on Law no. 8 Year 1981 includes; ranging from Police, Attorney, Court and Criminal Implementing Agency (prison). The authority of law enforcement agencies is guaranteed by law. So that in carrying out its duties and responsibilities apart from the influence of government power and other influences. There is an adage which states "fiat justitia et pereat mundus" - although the world's collapsing law must be upheld. The law can not walk or stand if there is no law

enforcement officer who is credible, competent and independent. How good is a legislation if it is not supported by good law enforcement officers then justice is just wishful thinking.

- c. The legal culture is the attitude of man to the law and the legal system-his beliefs, values, thoughts, and expectations. A legal culture is an atmosphere of social thought and social force that determines how laws are used, avoided, or abused. The legal culture is closely related to the legal consciousness of society. The higher awareness of community law will create a good legal culture and can change the mindset of the public about the law so far. Simply stated, the level of public compliance with the law is one of the indicators of the functioning of the law.

III. DISCUSSION

Marriage according to Law Number 1 Year 1974, based on Article 1 of Law Number. 1 of 1974 concerning Marriage, that the definition of marriage is the inner 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 divinity of the One Supreme. The consideration is as a state based on Pancasila where the first precepts are Belief in the One Supreme God. So marriage has a very close relationship with religion and spirituality, so marriage not only has the element of birth or body, but the element of spiritual or spiritual also has an important role.

The definition of marriage according to the Compilation of Islamic Law in Article 2 is marriage, which is a very strong contract or *mitsaaqan gholiidhan* to obey God's command and perform it is worship. The word "Nikah" is derived from the Arabic language meaning "nakaahun" which is the masdar or the original word of the verb "Nakaha", its synonym is "Tazawwaja" then translated in Indonesian as a marriage. The word "Nikah" often we use because it has entered in the Indonesian language.

Marriage or marriage in Arabic fiqh literature is called two words of marriage and *zawaj*. These two words are used in the daily life of the Arabs and there are many in the Qur'an and the hadith of the Prophet. Amir Syarifuddin (2006: 35)

The definition of marriage is the Islamic law, is: "Akad" (marriage) between the wali woman candidate wife with the man of her future husband. The contract must be pronounced by the guardian of the woman with a clear form of delivery (consent) and accept (kabul) by the prospective husband held in the presence of two eligible witnesses, Hilman Hadikusuma (1990: 11).

Marriage is a covenant held by two men, in this case the covenant between a man and a woman with a material purpose, namely to form a happy and eternal family (household) must be based on the One Godhead, Soedharyo Soimin (1992:6).

Subject to the provisions of Article 2 paragraph (1) of the Marriage Law, marriage shall be considered valid if it is done according to the law of each religion and its belief. From the formulation of Article 2 paragraph 1 it can be concluded that the validity of marriage is solely determined by the provisions of religion and belief of those who want to carry out the marriage.

That a marriage contrary to the provisions of religious law, according to the law of marriage, is considered invalid and there is no legal effect as a marriage bond. Legal marriage is a marriage which is based on the law of National Marriage, which is a marriage which is carried out according to the rules of law applicable in religion. For the law of each religion means the respective law adopted by the bride. Hilman Hadikusuma (1990: 26).

According to the explanation of Article 2 paragraph (2) it is said that there is no marriage outside the law of each religion and belief, in accordance with the 1945 Constitution. The purpose of each religious law and trust includes the provisions of legislation applicable to the religious group and trust as long as not contradictory or otherwise provided in this Law. So for those who are Muslims then who determines the validity of whether the marriage is the provisions of Islamic law, the same is also found in another religion is the religious law that became the basis of the implementation of a marriage. Article 2 Paragraph (2) states, "Every marriage is recorded according to the prevailing laws and regulations", a marriage may be valid if the marriage is registered at the Office of Religious Affairs (KUA) for those who are Muslim and the Civil Registered Office for who are non-Islamic. The Marriage Law places strict conditions on behalf of those who will marry. Chapter II Articles 6 through 12 contain strict conditions for marriage parties.

1. Legal Effects Of Marriage Cancellation For Identity Fraud

A marriage can be null and void and can be undone by the court. Simply put, there are two reasons for the cancellation of marriage. First, the procedural violation of marriage, both violations of marriage material. The first example is the non-fulfillment of the conditions of the marriage guardian, not attended by the witnesses for other procedural reasons. While the second example is marriage *dilansungkan* under threat, there was a mistake about the prospective husband.

In this chapter IV consists of research results on cases of Marriage Cancellation that occurred in the Religious Courts of Makassar. Then the discussion of the research results presented in accordance with the issues discussed.

With regard to the consequences of the law of marital cancellation, it is necessary to observe the issues concerning the date of the entry into force of the cancellation of marriage contained in Article 28 Paragraph (1) of Marriage Law Number 1 Year 1974, as follows: The cancellation of a marriage begins after the decision of the Court has a permanent and valid legal force since the time of marriage.

Furthermore, the matters pertaining to legal consequences for the cancellation of marriage shall be contained in Article 28 paragraph (2), as follows: Decision shall not apply retroactively to (1) Children born of such marriage; (2) Husbands or wives who act in good faith, except on joint property, if the cancellation of marriage is based on the existence of another marriage first; (3) Other third persons are not included in a and b as long as they obtain the right in good faith before the decision on cancellation has permanent legal force.

With marriage by religion, belief and law, then the marriage will lead to certain legal consequences. The resulting legal consequences of the cancellation of marriage due to falsification of identity are as follows, Children born of marriage In marriage, when giving birth to a child, then the position and how the relationship between parents with children is a problem. In Article 42 of Marriage Law Number 1 Year 1974. Legitimate child is a child born in or as a result of a legitimate marriage.

So between the child and his parents have a legal relationship, namely the rights and obligations as in or in the provisions of Article 45 of Marriage Law Number 1 Year 1974.

- 1) Both parents must maintain and educate their children as well as possible
- 2) The parental obligations referred to in paragraph (1) of this article shall apply until the children are married or able to stand alone. The duty is to continue even if the marriage between the two parents breaks up.

Children born in aborted marriages are not retroactive, so these children are considered legitimate, even if one is either badly elderly or both are in bad faith. When both parents have good intentions, or one of their good-faith parents, the child born in this dissolved marriage is authorized. As for those whose parents are badly committed, then their children are considered outsiders, and are considered to be no marriage. In Act No. 1 of 1974 it is fairer to say that all children born, in whose marriage is annulled, even though both parents are badly committed are still legitimate children.

It is based on the humanity and the interests of innocent children, deserving of legal protection. And it should not be when innocent children have to bear the consequences of having no parent, just because of their parents' fault, thus according to Law No. 1 Year 1974, the born children had a clear legal status as the legal child of both parents whose marriage was canceled.

In relation to the parent's obligation to her child even if the marriage of parents has been canceled, but the obligation to the child must be carried out until the child is mature.

The results indicate that the cancellation of marriage says that, generally children who have mumayyiz (children aged about 7 years, and have been able to do some things independently, such as eating, drinking himself, bathing and various other light activities) of married couple who canceled marriage, may be left to the child to choose to go to his father or mother.

The consequence of marriage cancellation law on the relationship of husband and wife is the breakup of the husband and wife relationship, because after the court decision has permanent legal force then the marriage void since the time of marriage, therefore marriage is considered never existed. This is in accordance with Article 28 paragraph (1) of Law Number 1 Year 1974 concerning Marriage, stating that the cancellation of a marriage begins after a court decision has a permanent and valid legal force from the moment of marriage. Couples who have been abandoned by marriage with a court decision that has permanent legal power, whether or not to be re-married in Law No. 1 of 1974 are not strictly regulated. However, it is certain that marriage must comply with the terms of marriage in Law No. 1 of 1974 which regulates marriage.

It is possible to remarry based on 3 (three) things:

- a. in terms of the cause of the cancellation of marriage, if the marriage is null and void because it violates the terms of marriage in the form of a marriage ban, forever then they can not remarry despite the desire to do remarriage.
- b. Parties whose marriage is declared void, may remarry, must legally meet the terms of marriage either according to Law No. 1 of 1974 on Marriage or according to Islamic Law. If the terms of marriage are violated with regard to temporary marriage restrictions, and both of them will, both of them can remarry.
- c. Though they can remarry because it is only a temporary ban on marriage, but if both or both of them are unwilling, they can not remarry. Against those who remarry the marriage cancellation does not bring any effect.

Against Joint Property, pursuant to Article 35 of Law Number 1 Year 1974 and Article 87 paragraph (1) Compilation of Islamic Law, personal property of each husband and wife is under their respective power as long

as the parties do not specify otherwise. And when the marriage breaks, each of the husband and wife get half of the joint property. Articles 96 and 97 Compilations of Islamic Law. The property gained during marriage either because the business of the husband or wife or husband and wife together is a common treasure. But if the termination of the marriage relationship then the sharing of joint property mngikuti law respective provisions, so for Muslims follow the provisions of Islamic law.

2. Influential Factors Against Marriage Cancellation Due to Identity Fraud

A happiness will not be achieved easily without obeying all the rules outlined by religion, one of the ways to achieve happiness is by marriage, this is what is reflected in a marriage goal of creating a *sakinah* family, *mawaddah* and *warahmah*.

In the implementation of marriage in Indonesia can not be separated from the influence of various religious laws, so in its application may cause new problems that are difficult to find a solution. Thus it is natural that the religious law of each person who carries out marriage affects the implementation of marriage.

In the Marriage Law it is determined that the validity of a marriage if exercised according to the law of each religion and the belief of the person engaging in marriage. Given such provision provides legal consequences, that marriage must meet the requirements under the provisions of the law and on the other hand must also fulfill the requirements as is applicable according to religious law.

In practice these conditions cause problems in marriage, because a condition affirmed by law is not necessarily a legitimate requirement of marriage according to religion, consequently not infrequently marriage without regard to the provisions contained in the Act. What is interesting in this regard is that under the Ordinance, marriage may be annulled by a court if the terms of marriage are not met. The intended terms are not limited only to the requirements under religious law, but also the conditions under the Ordinance.

The cancellation of a marriage can only be severed by the Court, considering that the cancellation of marriage can bring the consequences, both to husband and wife and family. This provision is intended to avoid the cancellation of marriage outside the court institution.

There are several factors that are identified as having an effect on the cancellation of marriage due to falsification of identity, among others, the factor of the Legal Structure It is an Instrument to show linkage with the effectiveness of marital cancellation due to identity falsification. As it is known that the Religious Prophecy as the executor of judicial powers that specifically represent the civil case of Islam authorized by the Law to apply and realize the Law of Islam. Thus the duty and authority of the Religious Courts is very clear that to realize the implementation of the values and laws of the material in society.

Judge as one of the important elements in the legal structure that has a very important influence on the implementation of judicial power. So that judges are required for professional and have high moral integrity. In performing the primary duties of judges in cases of marital cancellation, it is strongly influenced by experience. The judge must be able to formulate the laws applied in trying one case, so that the judge can afford to seek justice seekers.

In the case examination of the cancellation of marriage due to the falsification of identity in the Religious Courts of Class 1A of Makassar, almost no obstacles found in the settlement of the case, all can be overcome by a panel of judges who examine and adjudicate the case. So it can be concluded that the legal structure factor also affects the cancellation of marriage due to falsification of identity, because in the filing of the case, it is the jurisdiction of the court to examine or decide the case through a judge appointed to adjudicate the case.

From the Factor of Legal Substance, that the implementation and implementation of Law No. 1 of 1974 on Marriage does not escape the influence of the substance of the law. The substance of law here, is always associated with the legal norms set forth in Law No. 1 of 1974 as a regulation governing marriage. Whether effective or not, legal substance affects the implementation of marital cancellation due to falsification of identity.

Result Penaltian at Religious Courts Class 1A Makassar, please note that the cancellation of marriage due to fraud identity occurs because of some of them because most people falsify identity, because the husband wanted to do polygamy. Husbands who want to do polygamy because of interest. So the husband harms the first wife, and the rights of his wife is neglected so that the husband does not get permission from his first wife, finally the husband desperate to falsify the identity to smooth the goal to remarry or polygamy.

In addition to falsifying its own identity, also the falsification of the identity of a parent or guardian, generally occurs due to the absence of permission from the parent or guardian, so that my custodian who wants to marry, desperate to falsify her guardian identity. But not only so, as Drs. Syahidal, "Once upon a time, the man raised by his adoptive parents, who he knows that his adoptive parents are his biological parents, and because the adoptive parents who nurtured and cared since childhood, until the trust process, where the guardian legitimate is a birth control or biological parent, so the marriage process should be canceled due to an unauthorized guardian.

In addition to the above factors, there are also other factors such as Negligence, or the occurrence of misuse of such identity fraud. According to Drs. Syahidal, here could be from the Office of Religious Affairs or the village. Where there is usually a game with the office of Affairs Urusanb Religion or kelurahan, lack of check back in the village, and the existence of rogue elements, and others. But KUA or Kelurahan must have Integrity, so if there is any failure or negligence, it means happened by accident.

Less stringent procedures are involved, because of the occurrence of misconduct. As explained in the above discussion, that could have happened by the KUA or the village. Which is due to lack of accuracy when conducting examination of data or identity of the applicant in this case who want to do the maintenance. It could also be because sipemohon take advantage of situations where the blame to melakuka violations, in the form of identity falsification.

IV. CONCLUSION

1. From the formulation of the problem, based on the results of research and discussion that has been described above, the authors can draw the following conclusions: The legal consequences of a marriage due to falsification of identity are to a child being born, in a canceled marriage, even if both parents are badly committed the child is still a legal child. Furthermore, against the husband or wife who acts with good faith, is the breakup of the husband and wife relationship, because after the decision of the Court has permanent legal force then the marriage void since the marriage, therefore marriage is considered never existed. Against Joint Treasure The property acquired during marriage either because the business of the husband or wife or husband and wife together is a common treasure.
2. factors influencing the cancellation of marriage due to falsification of identity, are the factors of Legal Structure, Substance Law factors, status and other factors. The level of legal effectiveness is also determined by how high the level of compliance of citizens to the rule of law that has been made.

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