

THE LAW OF EXCHANGING PULSA INTO MONEY USING THE IBN HAZM FACTORS FOR JUDGES TO CONSIDER IN DECIDING TO CANCEL A MARRIAGE IN THE MEDAN RELIGIOUS COURTS 2018-2022

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Abstract. Fasakh or annulment of marriage is one way to cancel a marriage if the marriage is found to have inconsistencies in terms and conditions, fraud and deception. Fasakh or marriage annulment is actually carried out by the Religious Courts to fulfill the elements of state justice. Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law itself has the same views as the views of the Syafi'i School so that it has the same factors regarding the annulment of the marriage. This research uses a type of normative research with a statutory approach, a case approach and a comparative approach. The research results show that the author found two main factors that caused judges to cancel marriages at the Medan Religious Court in 2018-2022. Firstly because of the falsification of data and secondly the factor of falsification of circumstances (having been pregnant before the contract with another person. Therefore, the judge's considerations are in accordance with Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law and the Syafi'i School of thought. So far the two things above This is a weakness in the administration of marriages. So many marriage annulment cases are found in the city of Medan. Therefore, there is a need to strengthen the legal administration of marriages. Indonesia should construct an independent layer of law, namely the Marriage Administration Law

Keywords: annulment of marriage, Law Number 1 of 1974, Compilation of Islamic Law, Syafi'i School of Thought

I. INTRODUCTION

Fasakh is the severance of a marriage relationship (based on the request of one of the parties) by a religious judge because one party finds fault with the other party or feels cheated about things that were not known before the marriage took place. The marriage is damaged or invalid because it does not fulfill one of the conditions or pillars or for reasons that are prohibited by religion. If there are words fasakh bai', it means cancellation of the sale and purchase contract for some reason. Meanwhile, the fasakh of marriage is breaking or canceling the bond between husband and wife. (Tihami, 2010, p. 196) At the Medan Religious Court, in 2018 there were 12 marriage annulment decisions, while in 2019 there were 9 similar decisions. Then, there were 2 decisions in 2020. In 2021 there were 4 more decisions and in 2022 there were 8 decisions regarding marriage annulment. Regarding the rules for canceling marriages in Indonesia, they are regulated in Law Number 1 of 1974 concerning Marriage. This regulation is contained in article 23, that the annulment of the marriage itself can occur due to factors such as a family request, a lawsuit from the husband or wife, a lawsuit from an authorized official as long as the marriage has not been decided, and the appointed official mentioned in paragraph (2) of Article 16 of the Law. -this law and any person who has a direct legal interest in the marriage, but only after the marriage has been dissolved.

The explanation of Law Number 1 of 1974 concerning Marriage regarding marriage annulment is more about administrative and procedural factors. However, the Compilation of Islamic Law itself determines the factors for annulment of marriage as stipulated in articles 70, 71 and 72 as follows.:

Article 70

The marriage is annulled if:

The husband carries out the marriage, while he does not have the right to carry out the marriage contract because he already has four wives even though one of the four wives is in the iddah talak raj'i;

a person marries his ex-wife whom he has divorced;

a person marries his ex-wife who has been given three divorces by him, except if the ex-wife was married to another man and then divorced again ba'da al dukhul and that man and her iddah period has expired; marriage is between two people who are related by blood; sexual intercourse and sexual intercourse to a certain degree which prevents marriage according to Article 8 of Law No. 1 of 1974, namely:

- 1) related by blood in a straight downward or upward lineage.
- 2) related by blood in a deviant lineage, namely between siblings, between one person and one's parents and siblings
- 3) marital relations, namely parents-in-law, stepson, daughter-in-law and mother or stepfather.

4) related to breast-feeding, namely parents who are breast-feeders, children who are breast-feeders and aunts or uncles who are breast-feeders.

wife is a sibling or as an aunt or niece and his wife or wives.

Article 71

A marriage can be annulled if:

- a. a husband commits polygamy without permission from the Religious Court;
- b. The woman he married was later discovered to be the wife of another man who was *mafqud*.
- c. the woman he marries turns out to be still in *iddah* and has another husband;
- d. marriage that violates the age limit for marriage as stipulated in article 7 of Law No.1. in 1974;
- e. the marriage was carried out without a guardian or was carried out by a guardian who had no rights;
- f. marriages carried out by force.

Article 72

- 1) A husband or wife can apply for an annulment of the marriage if the marriage was solemnized under threat of violating the law.
- 2) a husband or wife can apply for an annulment of the marriage if during the marriage there is fraud or misunderstanding about the husband or wife.
- 3) If the threat has stopped, or the suspect is aware of the situation and within a period of 6 (six) months after that they are still living as husband and wife, and cannot exercise their right to submit an annulment request, then their right is terminated.

According to Imam Syafii, marriage cancellation is called *fasakh*. *Fasakh* comes from Arabic from the root word *fa-sa-kha* which etymologically means to cancel, if this word is connected to marriage it means to cancel a marriage or destroy a marriage. According to Imam Syafii, marriage annulment, also known as *Fasakh*, is the severance of a marriage relationship (at the request of one of the parties) by a religious judge because one party finds fault with the other party or feels cheated by things that were not known before the marriage took place, a marriage that is annulled. is a marriage that is not perfectly harmonious. Meanwhile, a *fasid* (damaged) marriage is a marriage whose conditions are not perfect and there are defects after it is implemented. In general, scholars of the Syafii school of thought consider the two laws to be the same. This means that one of these two types of marriage does not result in the implementation of the consequences of a valid marriage. (Syarifuddin, 2010, hal. 242).

II. RESEARCH METHODS

This type of research is normative legal research. The term normative legal research comes from English, normative legal research, and Dutch, namely normative juridical *onderzoek*. Normative legal research or doctrinal legal research or dogmatic legal research or legislative research

which in Anglo American literature is referred to as legal research is internal research in the legal discipline. (Muhaimin, 2020, p. 45) As with normative legal research, the author will only carry out document studies, namely using legal source materials in the form of statutory regulations, court decisions/decisions, legal theory, and opinions of scholars. Because another name for normative legal research is doctrinal legal research, also known as library research or document study. (Waluyo, 1995, p. 13) The approach that the author uses is a statutory approach; case approach (case approach); and a comparative approach. The processing technique for the collected legal materials is carried out in stages; inventory, identification, classification and systematization. This systematization stage is carried out so that there are no contradictions between one legal material and another.

The legal materials that have been collected and grouped are then reviewed using conceptual approaches, statutory approaches and other approaches. This is intended to obtain an overview or answer to the problem that is the focus of the study in the research. Processing legal materials in normative legal research, by systematizing legal materials by selecting legal materials, then classifying them according to the classification of legal materials and compiling legal materials so as to obtain research results systematically and logically. This activity is to find relationships and connections between one legal material and other legal materials to get a general idea of the answers from the research results. The analysis used in this research uses a qualitative analysis method, namely by interpreting legal materials that have been processed. The use of this method of interpretation (interpretation) aims to interpret the law, whether in the legal materials, especially primary legal materials, there are voids in legal norms, antinomies of legal norms and unclear legal norms.

III. RESULTS AND DISCUSSION

1. Provisions for Annulment of Marriage in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law

Marriage, etymologically (language): *al-jam'u* and *adh-dhammu* which means gathering. (Al-Mufarraj, 2003, p. 5). In essence, the meaning of marriage is sexual intercourse. Then in *majaz* it can be interpreted as *aqdu al-tazwij* which means marriage contract, because it includes the binding of cause and effect. (Mardani, 2016, p. 23) The definition of marriage according to Imam Syafi'i is a contract by which bodily relations between a man and a woman become lawful. (Hosen, 1971, p. 65). Meanwhile, the linguistic meaning of the word marriage or which comes from the word marriage in Indonesian is forming a family with the opposite sex, having sexual relations or having sexual intercourse. The term mating is used generally, for humans, animals and plants and denotes another generative process. In contrast to that, the term marriage is defined as a contract or bond, because in a marriage process there is an *ijab* (a statement of submission

from the woman) and a kabul (a statement of acceptance from the man) and is only used for humans, because it contains validity according to national law, customs, and especially according to religion (Assegaf, 2003, p. 131). From the explanation above, it can be concluded that marriage is a contract that justifies the relationship between husband and wife using the words inkah or tazwij or something similar.

Law Number 1 of 1974 does not regulate the meaning of marriage annulment, nor does Government Regulation Number 9 of 1975 which is the implementer of this Law, so there is not a single regulation that regulates the meaning of marriage annulment (Basyir, 2000, p. 45). Article 22 of Law Number 1 of 1974 only states "a marriage can be annulled if the parties do not fulfill the requirements for carrying out a marriage". Furthermore, in the explanation, it is stated that the meaning of "can" in this article means that it may or may not be void, if the provisions of the respective religious law do not provide otherwise. Thus, according to this article, a marriage that does not meet the marriage requirements may or may not be annulled. Then in Article 37 of Government Regulation Number 9 of 1975 it is explained that "the annulment of a marriage can only be decided by a court". This is due to the fact that marriage annulment can have legal consequences, both for the husband and wife themselves, the children born and for third parties, so marriage annulment is not permitted to occur by agencies outside the court. Even though Law Number 1 of 1974 and other regulations governing marriage do not explain the meaning of marriage annulment, Law Number 1 of 1974 explains in several articles about marriage annulment, namely in the following articles:

Pasal 22

"That a marriage can be annulled if the parties do not fulfill the requirements for carrying out the marriage."

Article 23

Those who can apply for an annulment of marriage are:

- a. The family is in a straight line of descent from the husband or wife.
- b. Husband or wife.
- c. Officials have authority only as long as the marriage has not been finalized.
- d. The appointed official is paragraph (2) Article 16 of this Law and every person has a direct legal interest in the marriage, but only after the marriage is dissolved.

Article 24

"Any person who, because of marriage, is still bound to one of the two parties and on the basis that the marriage still exists can apply for a new annulment of the marriage, without prejudice to the provisions of Article 3 paragraph (2) and Article 4 of this Law."

Article 25

"A request for marriage annulment is submitted to the court in the jurisdiction where the marriage took place at the residence of both husband and wife."

Article 8

Marriage is prohibited between two people:

- a. Blood related in a straight line down or down.

- b. Blood relations in a lateral lineage, namely between siblings, between a person and their parents' siblings and between a person and their grandmother's siblings.
- c. Family relations, namely in-laws, step-daughter-in-law and stepmother/stepfather.
- d. Those related to foster care, namely foster parents, foster children, foster siblings and foster aunts/uncles.
- e. Relative to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife.
- f. Having a relationship that is prohibited by their religion or other applicable regulations from marriage.

Article 10

"If a husband and wife who have been divorced remarry each other and divorce a second time, then they are not permitted to remarry, as long as the laws of the respective religions and beliefs of those concerned do not determine otherwise."

Article 28

- (1). The annulment of a marriage begins after the Court's decision has permanent legal force and is valid from the time the marriage takes place.
- (2). The decision does not apply retroactively to:
 - a. children born from the marriage;
 - b. husband or wife who acts in good faith, except with respect to joint property if the annulment of the marriage is based on the existence of another previous marriage.
 - c. Other third persons are included in a and b as long as they obtain their rights in good faith before the decision regarding cancellation has permanent legal force..

The compilation of Islamic law as a book of law which is used by judges in the Religious Courts, also covers the issue of marriage annulment. This can be seen in chapter, The annulment of a marriage starting after the decision of the Religious Court has provisions that are permanent and apply from the time the marriage takes place, as explained in Article 74 paragraphs (1) and (2). As for which party has the right to submit a request for marriage annulment, it is as stated in Article 73 of the Compilation of Islamic Law, as follows (Tutik, 2008, hal. 123) :

- a. The family lineage goes up and down from the husband or wife
- b. Husband or wife.
- c. Officials who have the authority to supervise the implementation of regulations according to law.
- d. The appointed parties and also anyone who has a direct legal interest in the marriage, but only after the marriage has been dissolved.

The annulment of a marriage can occur either when the marriage contract is executed or after the marriage occurs and the parties then apply for an annulment. As regulated in the Compilation of Islamic Law Article 70 regarding marriage is void if:

1. The husband carries out the marriage, while he does not have the right to carry out the marriage contract because he already has four wives, even though one of the four wives is in the iddah talak raj'i.
2. A person marries his ex-wife whom he has divorced.
3. A person marries his ex-wife who has been given three divorces, unless the ex-wife was married to another man who then divorced again ba'da al dukhul from that man and her iddah period has expired.
4. The wife is the sibling or aunt or niece of the wife or wives.

An application for marriage annulment can be submitted to the Religious Court in the area where the husband or wife lives or where the marriage took place. And the annulment of a marriage starting after the decision of the Religious Court has provisions that are permanent and apply from the time the marriage takes place, as explained in the compilation of Islamic law Article 74 is determined as follows:

- a. An application for marriage annulment can be submitted to the Religious Court in the area where the husband or wife lives or the place of marriage.
- b. The annulment of a marriage begins after the decision of the Religious Court has provisions that are permanent and apply from the time the marriage takes place.

Cancellation of a marriage can be requested from the Religious Court in the jurisdiction where the husband or wife lives or where the marriage took place. The procedures for submitting a marriage annulment application regarding the summons, examination and decision are carried out in accordance with the procedures for filing a divorce lawsuit. Regulated in the provisions of Article 20 to Article 36 of Government Regulation Number 9 of 1975, as long as it can be applied in the annulment of marriages.

Provisions for Annulment of Marriage from the Shafi'i School Perspective

Sheikh Abu Bakar bin Muhammad Syatha in the Book of I'anauth Thalibin, explains,

نما يصح الخيار فوراً في فسخ النكاح إن كان حاصلًا بحضور الحاكم، وذلك لأن الفسخ بالعيوب المذكورة أمر مجتهد فيه كالفسخ بإعسار فتوقف ثبوتها على مزيد نظر واجتهاد، وهو لا يكون إلا من الحاكم فلو تراضيا بالفسخ بها من غير حاكم لم ينفذ (Syatha, 2005, hal. 383)

Artinya : *Khiyar in marriage fasakh is only valid if attended by the ruler (judge). The reason is, fasakh due to the defects mentioned above is a matter of ijthadi. Likewise, fasakh occurs because of difficulties in providing a living. So the determination requires further insight and ijthad. As a result, fasakh is not valid unless the judge decides. So, if husband and wife agree to fasakh due to a disability without a judge, it will still not be implemented.*

This is different from fasakh which is caused by clear causes. This can be done without a judge's decision. For example, fasakh because there is a mahram relationship between the bride and groom. At this point, it can be seen that fasakh may be carried out without a judge when the terms of fasakh are presented during the contract. However, if it is required before the contract, the fasakh must be before a judge.

In more detail, according to the Syafi'I School of thought, the factors that cause a marriage to be annulled are as follows,

والفسخ أنواع سبعة عشر: فرقة إعسار مهر، وإعسار نفقة أو كسوة أو مسكن بعد إمهال الزوج ثلاثة أيام، وفرقة لعان، وفرقة خيار عتيقة، وفرقة بعد رفع الأمر إلى الحاكم، وثبوت العيب، والفسخ به فوري إلا العتة عيوب فتؤجل سنة من يوم ثبوتها، وفرقة غرور، ووطء شبيهة كوطء أم زوجته أو ابنتها، وسبى للزوجين أو أحدهما قبل الدخول أو بعده؛ لأن الرق إذا حدث أزال الملك عن النفس، فيكون عن العصمة أولى، وفرقة إسلام أحد الزوجين، أو رده، وإسلام الزوج على أختين أو أكثر من أربع، أو أمتين، وملك أحد الزوجين الآخر، وعدم الكفاءة بأن أطلقت المرأة الإذن فيان الرجل غير كفاء، وانتقال من دين إلى آخر كالانتقال من اليهودية إلى النصرانية، وفرقة رضاع بشرط كونه خمس رضعات كالانتقال من اليهودية إلى النصرانية، وفرقة رضاع بشرط كونه خمس رضعات حولين متفرقات قبل مضي حولين (Zuhaili, Fiqh Islam Wa Adillatuhu Juz 7, 1985, hal. 353-353)

Fasakh or annulment of marriage, can occur in seventeen circumstances, namely

- a. Due to dowry difficulties,
- b. Due to difficulties in living or clothing or a place to live after the husband was given time off for three days.
- c. Due to li'an.
- d. As a result of the will of a free woman: The will of a free woman is that a female slave who is the wife of a free male slave immediately has the right to choose without complaining about this matter to a judge, unless her freedom occurs before sexual intercourse occurs during a chronic illness, and The share of one third of the husband's assets is not able to cover the balance of his dowry rights along with the wife's value.
- e. As a result of defects after this case was complained to the judge.
- f. It was determined that there was a defect.
- g. Fasakh which is immediate except due to impotence is suspended one year from the day it is stipulated.
- h. Due to deception.
- i. Sexual intercourse with doubts, such as sexual intercourse with one's mother-in-law and daughter.
- j. Captivity of one of the husband and wife before or after sexual intercourse occurs because if slavery occurs then ownership is lost from the person, let alone from the dependents.
- k. As a result of converting to Islam, one of the husband and wife.
 - l. As a result of his apostate actions.
 - m. A husband converts to Islam by having a wife consisting of two sisters, or more than four wives, or two female slaves.
 - n. Ownership of one husband over another.
 - o. There is inequality as a result of the woman giving absolute permission and then finding out that the man is not equal to her.
 - p. Conversion from one religion to another, such as the conversion of Jews to Christianity.
 - q. The consequences of breastfeeding with this breastfeeding condition occur five separate times before the child is more than two years old.

Perspective of Law Number 1

1974 Concerning Marriage, Compilation of Islamic Law and the Syafi'i School of Justice on Judges' Considerations in Deciding Marriage Annulment Cases in Medan Religious Courts 2018-2022. In this case, as a sample, the author will describe cases related to marriage annulment decisions that occurred at the Medan Religious Court, namely: in 2018 there were 12 marriage annulment decisions, while in 2019 there were 9 similar decisions. Then, there were 2 decisions in 2020. In 2021 there were 4 more decisions and in 2022 there were 8 decisions regarding marriage annulment.

a. 2018 Marriage Annulment Decision

The decisions issued by the Medan Religious Court itself throughout 2018 issued 12 decisions relating to marriage annulment. The existing decisions range from dismissing the lawsuit to decisions that are not published. Firstly, the decision with registration number 2295/Pdt.G/2018.PA.Mdn was decided as a lawsuit which was dismissed by the panel of judges because the plaintiff himself did not appear before the court for reasons that were not justified by law. This incident automatically makes the decision invalid and the marriage is still considered to be taking place. Both decisions with registration number 2212/Pdt.G/2018. PA.Mdn what happened was that the plaintiff as the civil registrar felt cheated due to fraud in the data of defendants I and II, it turned out that Defendant I had the status of a widower but the identity displayed was single, and the judge decided to withdraw the case because defendants I and II could not be summoned because the addresses were not in accordance. The decision above is a decision regarding the annulment of the marriage which was caused by falsification of identity by defendant I and defendant II and their addresses could not be found, causing the case to be dismissed by the panel of judges themselves. This means that the annulment of the marriage did not occur because the case was withdrawn by the panel of judges themselves. The three decisions with registration number 2194/Pdt.G/2018.PA.Mdn stated that the lawsuit was granted by the panel of judges because the wife he married committed fraud regarding his condition. It turned out that the defendant as the wife was declared pregnant 3 months before the contract took place.

b. 2019 Marriage Annulment Decision

Firstly, the decision with registration number 2746/Pdt.G/2018/PA..Mdn stated that the lawsuit could not be accepted because defendant I had died. This is what makes the panel of judges not accept it because it is impossible to try a lawsuit while the defendant is declared dead. Both decisions with registration number 2697/Pdt.G/2018/PA. Mdn granted the lawsuit due to data falsification carried out by the defendant. The three decisions are with registration number 2530/Pdt.D/2019/PA. Mdn granted the lawsuit for marriage between different religions and without a legal guardian

c. Decision on Cancellation of Marriage in 2020

Decision with registration number 1961/Pdt.G/ 2020/ PA. MDN with status revoked because the defendant's address is unclear and cannot be found. This caused the

lawsuit to not be able to continue so it had to be withdrawn on the grounds that it would not be possible to find the address. Decision with registration number 2035/Pdt.G/ 2020/ PA. Mdn was granted by the panel of judges because the defendant was proven to have falsified data so the decision declared the marriage annulled because there was falsified data by the defendant in his marriage.

c. 2021 Marriage Cancellation Decision

Decision with registration number 2216/Pdt.G/ 2021/ PA. Mdn granted the lawsuit because the defendant was proven to have committed polygamy without permission by falsifying his identity and status as a virgin. Then the decision with registration number 3006/Pdt.G/ 2021/ PA. Mdn was revoked by the plaintiff himself. Decision with registration number 2257/Pdt.G/ 2021/ PA. Mdn was granted because data falsification was carried out by the defendant. Decision with registration number 523/Pdt.G/ 2021/ PA. Mdn cannot be accepted because it is not clear in the contents of the lawsuit.

d. Marriage Cancellation Decision in 2022

Throughout 2022, 3 lawsuits were withdrawn by the plaintiffs themselves with registration number 908/Pdt.G/ 2022/ PA. Mdn, Register number 809/Pdt.G/ 2022/ PA. Mdn and registration number 213/Pdt.G/ 2022/ PA. Mdn which contains the lawsuit regarding identity fraud committed by the defendant. Then there were 2 decisions that were revoked with registration number 2152/Pdt.G/ 2022/ PA. Mdn because the plaintiff was not present, the contents of the lawsuit stated that the defendant was still someone else's wife and the registration number was 1342/Pdt.G/ 2022/ PA. Mdn was revoked because the plaintiff misjudged the defendant because the defendant did not menstruate and was thought to be pregnant with someone else's child. However, there were 2 decisions that were granted, namely decision number 2986/Pdt.G/2022/PA. Mdn granted the plaintiff's lawsuit because the defendant committed identity falsification as well as Decision Register Number 1807/Pdt.G/ 2022/ PA. Mdn granted the defendant's lawsuit because of the misunderstanding and fraud that the defendant was still someone else's wife. There are many factors that make a judge decide whether to annul a marriage. However, the author found two main factors that caused judges to annul marriages. Firstly due to falsification of data and secondly due to falsification of circumstances (having been pregnant before the contract with someone else).

1. Judge's considerations in canceling a marriage due to data falsification factors

Falsification of data in this case includes falsification of identity, falsification of status and also falsification of marriage guardians. The breakdown of a marriage is not only caused by divorce and death but also includes marriage decisions caused by a judge's decision. Dissolution of a marriage based on a court decision can occur due to an annulment of a marriage. Based on article 22 of UUP Number 1 of 1974, a marriage can be annulled if the parties do not fulfill the requirements for marriage.

A marriage carried out without a guardian can indeed be used as a reason for annulling the marriage as stated in Article 71 of the Compilation of Islamic Law, which states that a marriage can be annulled if:

- a. A person commits polygamy without permission from the Religious Court.
- b. The woman he married was later discovered to be the wife of another man who was *mafqud*.
- c. The woman he married turned out to be still in the *iddah* of another husband.
- d. Marriages that violate the age limit for marriage as stipulated in article 7 of Law no. 1 of 1974.
- e. The marriage was carried out without a guardian or was carried out by an invalid guardian.
- f. Marriage carried out by force.

However, it must also be noted that Article 72 paragraph (3) of the Compilation of Islamic Law and Article 27 paragraph (3) provides a time limit for submitting a request for annulment of a marriage due to threats or misunderstandings regarding the marriage, which reads:

- a. "If the threat has stopped, or the suspect is aware of the situation, and within 6 (six) months after that they are still living as husband and wife, and do not exercise their right to submit an annulment request, then their right is terminated."
- b. In resolving a case, a judge must refer to the underlying principle, namely adjudicating according to the law. According to Bagir Manan, there are several benchmarks for the meaning of adjudicating according to law, namely:
- c. Judging according to law is one of the principles of creating a state based on law. Every judge's decision must have a substantive and procedural legal basis that existed before the unlawful act or legal violation occurred;
- d. The law in adjudicating according to law must be interpreted broadly beyond the meaning of written and unwritten law. The law in certain cases or circumstances includes understandings that bind the parties, good decency and public order (*geode zeden en openbaar orde*);
- e. The law that lives in society is the law that is considered in the judge's decision, but does not always have to be followed, because it is possible that written regulations have to be set aside because they are not in accordance with new social demands;
- f. In accordance with applicable legal traditions, the law must prioritize the application of written law, unless it will cause injustice, conflict with morality or public order. The judge is not the "mouth" or "mouthpiece" of the law but the "mouthpiece" of justice.

The judge also considered the future because if this marriage continues, it will bring more harm than good. Because the marriage is carried out outside the supervision of the marriage registration officer, the person involved in the marriage will not receive a legally binding marriage certificate and their rights will be neglected. Government regulations regarding marriage registration at the KUA are aimed at the benefit of the people. This regulation was made to avoid fraud on the part of the bride and groom. The fact that

has occurred so far is that there is abuse on the part of husbands towards wives who carry out polygamy without the permission of the first wife, by means of unregistered marriages, a husband who abandons his children and wife without the wife's knowledge and so on. Then cancellation due to different identities, being married by a guardian who is not a guardian of the lineage and the guardian of the lineage does not know this is a form of falsification and fraud regarding the data. Marriage *fasakh* in Islamic law is recognized as a form of *farqun* or legal termination of marriage relations. Islamic legal experts justify and allow canceling a marriage if there is a strong reason behind it. *Fasakh* marriage in the view of Imām al-Ghazālī is permissible. Marital relationships can break up through *fasakh*.

This discussion of the *fasakh* of marriage coincides with the discussion of *khiyār*, namely the right to continue or terminate a marriage. Imām al-Ghazālī stated that there are six reasons for marriage *fasakh* which can be carried out through *khiyār*, namely because of *al-'uyūb* (disgrace or disability), *al-ghurūr* (deception), *al-'itqu* (freedom from slavery status), *'unnah* (impotent), poor husbands who are unable to provide a living and the missing spouse factor (*Mafqud*) (al-Ghazali, 1997, p. 158). According to Imām al-Ghazālī, these factors can be a way for someone to choose to celebrate their marriage. The author here only analyzes the fraud factor at this point, *gharar* in the Arabic term is used in a general context. This term is interpreted as something that is uncertain or fraudulent. The general meaning of *ghurūr* can be used for something that is uncertain. The word *gharar* is quite familiar in the Islamic *muamalah* contract system, namely: an element that can damage the *muamalah* contract. It is interpreted as something that is uncertain or vague. *Ghurūr* means everything that contains an element of uncertainty, in the context of marriage, *ghurūr* occurs as uncertainty or fraud, such as fraud regarding the fulfillment of the conditions proposed in the marriage agreement between the two parties or the absence of a marriage certificate made by the marriage registrar as an authentic certificate that someone has entered into a marriage within state law so that the marriage can be annulled.

Imām al-Ghazālī's opinion here tends to be directed towards the conditions of marriage. One of the frauds or *ghurūr* referred to by Imām al-Ghazālī here is the failure to fulfill the conditions put forward by each partner, including in cases where what one of them wants is actually different from the reality. For example, a man wants to marry a Muslim woman, but it turns out the woman is a non-Muslim or vice versa, which also applies to women who marry men who are thought to be Muslim, but in fact the person is a non-Muslim. Because *ghurūr* is something that does not correspond to reality, such as due to deception about Islamic status, lineage, and identity being disguised by one of the parties (Ghazali, 2004, p. 290). The context of *ghurūr* in the study of jurisprudence is directed at the failure to fulfill the requirements for equivalence (*kufu'*). An example of a *kufu'* case is a couple who requires the same religion, or good morals, as well as their lineage status. If the equivalence

requirements are unknown and not fulfilled before the marriage contract takes place, then one of the partners (husband or wife) can *fasakh* the marriage. According to the author's analysis, in cases where harmony is not fulfilled, such as mismatched identities, the wife still having the status of someone else's wife, being married not by her guardian, and marriages without polygamous permission are included in the *gharar* category because there is great harm and there is an element of fraud in it.

As for the law regarding guardians in marriage, scholars differ in their opinions as to whether a guardian is one of the pillars of the requirements for a valid marriage or not. Imam Syafi'i, Malili and Hambali (Jumhur Ulama) are of the opinion that "a marriage is not valid without a guardian" the basis they use is (Q.S. An-Nur: 32). The Imams of the madzhab in Islamic law literature differ in their opinions regarding the legal consequences of marriage annulment. According to Hanafi scholars, the legal consequence of an invalid marriage is that the marriage does not result in any consequences from the effects of a valid marriage. Therefore, the man is not permitted to have sex with the woman, is not obliged to pay the dowry, provide maintenance, obey the woman, and they cannot inherit from each other. It is mandatory that no intimate relations occur between the two of them. If this happens, the judge has the right to separate the two by force and there is no *iddah* period after that. (Az-Zuhaili, 2011, hal. 108-109)

Shafi'iyah scholars assess that the law of a void marriage is that it does not result in the consequences of a valid marriage being carried out. Thus, there is no obligation to have a dowry, maintenance, no mahram relationship because of *mushahahar*, determination of *nasab* and *iddah*. However, if you have intimate relations in marriage without a guardian, the man is obliged to pay the *mitsil* dowry, even if the marriage itself is annulled (Zuhaili, 2012, p. 460). So in this conclusion the author analyzes that the factors that make the judge determine the decision to annul the marriage due to falsification of data, marriage not by the guardian, falsification of marital status, to marriage without permission for polygamy are based on pillars that are not fulfilled, then based on the principle of finding *gharar* and fraud. in the marriage so that it creates the greatest possibility of harm to the marriage so that it must be annulled. Judges take preventive steps based on the law and the compilation of Islamic law and minimize the occurrence of continuous harm which could impact children and property in the future. Not only that, the basis of harmony is the main reason for marriage annulment. This cancellation is also considered to be detrimental to the continuity of the marriage if it continues. The judge in this case has acted correctly and the decision of the panel of judges itself is also based on the opinion of Imam Ghazali, which means the judge also took the results of the thoughts of the Shafi'i school of thought.

1. Cancellation of marriage due to the fact that the bride is pregnant with someone else.

Marriage fraud cases in religious courts are generally not as clear-cut as cases in courts such as inheritance,

endowments, adoption, marriage statutes, divorce and so on. Fraud in marriage will surface with complaints from people who experience it, such as wives/husbands who are misunderstood or deceived by their partner, by filing a request or lawsuit. In the Medan City Religious Court, there was also a case of misunderstanding so that the husband was deceived by the wife's condition, where the wife was pregnant with a child before marriage.

The judge's consideration of the existing facts showed that the Petitioner misunderstood or was deceived by the Respondent about the Respondent's physical condition. This is the reason for filing a request for marriage annulment. Before getting married, the Respondent had admitted that he was still a virgin (*qabla dukhul*). In fact, the Respondent was no longer a virgin (*ba'da dukhul*) before marrying the Petitioner. An annulment of a marriage occurs due to fraud and misunderstanding regarding the wife or husband and the request for annulment of the marriage is submitted within 6 (six) months after the person at fault becomes aware of the situation, in this case knowing that there is a misunderstanding in accordance with the provisions of article 72 paragraph 2 and (3) of the Compilation of Laws. Islam. Islamic legal experts justify and allow canceling a marriage if there is a strong reason behind it. In Imam al-Ghazali's view, marriage *fasakh* is permissible. Marital relationships can break up through *fasakh*. This discussion of the *fasakh* of marriage coincides with the discussion of *khiyar*, namely the right to continue or terminate a marriage. Imam al-Ghazali stated that there are six reasons for marriage *fasakh* which can be carried out through the *khiyar* route, namely because of *al-'uyub* (disgrace or disability), *al-ghurur* (deception), *al-'itqu* (freedom from slavery status), *'unnah* (impotent), poor husbands who are unable to provide a living and the missing spouse factor (*Mafqud*) (al-Ghazali, 1997, p. 158). According to Imam al-Ghazali, these factors can be a way for someone to choose to celebrate their marriage. Based on Islamic law, marriage annulment is also called *fasakh*. *Fasakh* means to revoke or delete. Because based on our observations of the *fiqh* literature, we did not find the term marriage annulment. Islamic law only regulates limited polygamy, does not regulate or recognize the annulment of marriages. If it turns out that the relationship between husband and wife cannot be maintained any longer, then divorce is carried out. In the study of Islamic law, an action whether related to *taklifi* law or *wad'i* law can have legal value and can have the value of *fasid* (defective) or void (*batil*). The *fasid* and *fasakh* of marriage are essentially damaged and the marriage contract is broken due to a court decision. There is quite a subtle difference between the two, because what is called *fasakh* by some is considered a *fasid* by others. The meaning of *fasakh* is to destroy or cancel. This means that the marriage is dissolved or destroyed at the request of one of the parties by a Religious Court judge.

The opinion of the Shafi'i School explains that there are seventeen types of *fasakh*, namely separation due to difficulties in paying the dowry, difficulty in providing living or clothing or a place to live after being given a grace period of three days, separation because of *li'an*, separation due to the independent wife's desire to end the marriage. with her

husband who was still a slave, separated because of a disability.

After a judge's decision, separation due to deception, separation because the wife resembled her mother, separation because one of them was an apostate, separation due to marrying two sisters at the same time, separation due to marrying more than four women at once, separation due to changing religions carried out by one of them. a couple such as converting from Judaism to Christianity, separation due to inequality between men and women, separation due to marrying a half-brother with the condition that this breastfeeding occurs for five breast-feedings before the age of 2 years. (Zuhaili, 1985, pp. 352-353). The judge also considered that misrepresentation includes 2 elements, namely unintentional and deliberate, this case is in accordance with the opinion of the Shafi'i school of thought, including:

- a. Misconception that does not contain an element of intent, for example, the bride and groom have already entered into a marriage, but it turns out that without the knowledge of the bride and groom, it turns out that they were in the same mother's breasts (blood relatives), so that the marriage is null and void, and the Panel of Judges must annul the marriage.
- b. Misjudgments that involve an element of intent, for example the husband fakes his identity as a virgin even though he has already been married and still has the status of someone else's husband so that he can legally marry in front of officers; Another example is if there is an initial discussion or agreement before the marriage between the bride and groom, then what constitutes the agreement is not true (a lie), then it is said to be fraud, so the marriage can be annulled.

So the author concludes that the judge's considerations in the Medan Religious Court's decision regarding the reason for the marriage to be annulled due to pregnancy before the contract decided that they granted the applicant's request in verstek and declared the marriage annulled due to the respondent's fraud on the applicant, and the case was in accordance with Law Number 1, Compilation of Laws Islam and the opinion of the Shafi'i School in its views regarding fraud in marriage. The judge did this because it was considered that there was an element of fraud that could harm the husband. This means that this factor makes it necessary for the judge to decide on the marriage annulment case by granting the applicant's request. This is because it will damage the family lineage in the household because it will affect faraid, family status and children's rights. In the author's opinion, the problem of the high number of marriage annulment cases is due to weaknesses in the administration of marriage registration. In Indonesia, marriage registration refers to Minister of Religion Regulation Number 20 of 2019 concerning Marriage Registration. In this case, it must go through four stages:

- (1) Registration of marriage wishes;
- (2) Examination of marriage will;
- (3) Announcement of marriage wishes; And
- (4) Implementation of marriage registration.

The author found that there were weaknesses in the administration of examining marriage wills and announcing marriage wills. So, these two things are what cause the high

number of marriage annulment cases in Medan City. For more details, it will be explained as follows.

In Minister of Religion Regulation Number 20 of 2019 concerning Marriage Registration, regarding Examination of Marriage Wills,

- a. The Head of the District KUA/Pemhulu/PPN LN checks the marriage documents. The inspection is carried out in the sub-district area/Indonesian representative office abroad where the marriage contract is taking place. Examination of marriage documents is carried out by presenting the prospective husband, prospective wife and guardian to ensure whether or not there are obstacles to marriage.
- b. If the results of the examination show that the documents are complete, they will be stated in a marriage examination sheet signed by the prospective husband, prospective wife, guardian, and the Head of the District KUA/Pemhulu/PPN LN. On the other hand, if the documents do not meet the requirements, the Head of the District KUA/Pemhulu/PPN LN notifies the prospective husband, prospective wife, and/or guardian in writing to complete the required documents no later than 1 (one) working day before the marriage event.
- c. If the examination of marriage documents is not fulfilled or there are obstacles to marriage as intended in the provisions of the laws and regulations in the field of marriage, then the marriage will is rejected. Next, the Head of the District KUA/Pemhulu/PPN LN shall notify the prospective husband, prospective wife, and/or guardian in writing of the rejection along with the reasons for the rejection..

Meanwhile, the announcement of the intention to marry is carried out after the provisions regarding registration and examination of the marriage intention are fulfilled, then the Head of the District KUA/Pemhulu/PPN LN announces the intention to marry. Announcements are made at certain places in the District KUA or Indonesian representative offices abroad or other media that can be easily accessed by the public. So far, the two things above have become weaknesses in administering marriages. So there are many marriage annulment cases found in Medan City. Therefore, there is a need for strengthening the legal administration of marriage. Indonesia should construct an independent layer of law, namely the Marriage Administration Law .

IV. CONCLUSION

After conducting in-depth research and analysis, the author concludes the research as follows: Provisions for marriage annulment in Law Number 1 of 1974 concerning Marriage. Article 22 of Law Number 1 of 1974 only states that "a marriage can be annulled if the parties do not fulfill the requirements for entering into a marriage." Then, in Law Number 1 of 1974 concerning Marriage in Articles 26 to Article 27, a marriage is solemnized in the presence of an unauthorized Marriage Registration employee; The marriage guardian who performs the marriage is invalid; The marriage took place without the presence of 2 (two) witnesses; The

marriage was solemnized under the threat of violating the law; When a marriage takes place, there are misunderstandings about the husband or wife. Meanwhile, in the Compilation of Islamic Law, a marriage can be annulled if the husband commits polygamy without permission, is still someone else's legal wife, is during the iddah period, is underage, without the permission of a guardian or guardian who is not entitled and under forced circumstances. The provisions for marriage annulment from the Shafi'i School perspective can occur in seventeen circumstances, namely due to difficulties in dowry, difficulties in living or clothing or a place to live after the husband is given a period of three days, li'an, the woman's free will, disability after this case was reported to the judge, it was determined that there was a defect, fasakh which was immediate unless it was due to impotence, then it was suspended for a year from the day it was decided, there was deception, sexual intercourse with skepticism, the captivity of one of the husband and wife before sexual intercourse occurred, the conversion of one of the husband and wife, apostasy, the husband converts to Islam by having a wife consisting of two sisters, or more than four wives, or two female slaves, ownership of one husband over another, there is inequality due to the woman giving absolute permission and then it is discovered that the man is not equal to her, converts from one religion to another, is equal. The author found two broad factors that caused judges to cancel marriages at the Medan Religious Court in 2018-2022. First, because of the falsification of data and second, the factor of falsification of circumstances (having been pregnant before the contract with another person. Therefore, the judge's consideration was in accordance with Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law and the Syafi'i School of thought.

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