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Marriage Status Canceled by Parents After Their Child Passed Away

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Abstract

This research aims to analyze marriage status canceled by parents after their child passed away. This research was carried out using a normative juridical approach. In this type of legal research, law is widely defined as the content of the legislation (law in books) or as a guideline or norm that serves as the foundation for respectful human behavior. The findings reveal that the annulment of a marriage following its dissolution due to death is an issue that can be litigated due to its various goals and legal consequences. In accordance with Article 23 letter 'a' of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1970 Concerning Marriage, families in the direct ascending lineage of the husband or wife may petition the court for the annulment of their marriage. In addition, the legal consequence that occurs on the marital status of the woman after the decision to cancel the marriage by the Court is that she is no longer widow because the husband passed away, but is returned to the status before the annulment of the marriage.

Keywords

Annulment; Marriage; Parents; Passed away

Introduction

Marriage is a form of human behaviour that strives for psychological and biological prosperity in order to preserve the system and guarantee existence (Abror, 2020). Thus, any person who is physically and emotionally fit requires a marriage commitment. In this instance, humans are permitted to perform marriages in accordance with the legal procedures of their individual religions and beliefs, because they are granted religious freedom (Mulida et al., 2009).

Article 1 paragraph 2 of Law No. 1 of 1974 defines marriage as "an inner and outer relationship between a man and a woman as husband and wife for the purpose of building a joyful and eternal family (home) on the basis of the One Godhead."

If the couple marries in accordance with all specified criteria and requirements, their union will be recognized as a valid marriage. The marriage is invalid if it is performed in a manner that is not in compliance with the regulations or laws governing marriage. Articles 6 through 12 of Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage govern the fulfillment of premarital conditions.

Before the marriage takes place, everyone is obliged to inform the marriage registrar of his intentions at the place where the wedding will take place. This must be done at least 10 working days before the wedding (Tagel, 2020). In this case, either the bride, her parents, or her representative can give notice or information orally or in writing. The statement includes the name of the bride, age, religion or belief, occupation, and place of residence of the bride and groom. If one or both have been married previously, the name of the previous wife or husband is also included (Wibowo, 2012).

A marriage that is later proven to have breached the provisions of the contract can be ruled null and void (Asnawi, 2020). If indeed the marriage is annulled, the marriage bond is ended. Therefore, the marriage is declared null and void; the husband and wife are no longer recognized husband and wife, and the marriage is regarded as never having occurred (Zainuri, 2019). Nevertheless, marriage is often seen as a sacred contract that should not be broken or tampered with (Mukri, 2020). All extended families that comprise a marriage are bonded by their love for Allah SWT (*hablu minallah*), making it nearly hard to sever a bond once the marriage has been legally recognized. Consequently, the marriage cannot be simply dissolved (Faisal, 2017).

In Indonesia, both the dissolution of a marriage and the annulment of a marriage require the use of the legal system. In order to provide assistance with the procedure, litigation must be conducted by attorneys who specialize in civil law, family law, or international civil law. Trials can take place in the same courtroom where other family law cases are being heard, but due to the unique nature of this particular case, some individuals may not be familiar with the procedure.

The annulment of the marriage will result in the husband and wife returning to their previous relationship or as if they were never married to begin with (Nasichin, 2018). In this scenario, the court declares a marriage null and void, therefore the union is considered to have never existed from a legal standpoint. In accordance with Article 28(1) of the Marriage Law, the annulment of a marriage is computed from the moment the marriage takes place (Haryati, 2021). According to Article 28 paragraph (2) of the Amendment to Law Number 1 of 1974 Concerning Marriage, the legal implications of the annulment of a marriage are governed by Articles 75 and 76 of the compendium of Islamic Law, each of which contains a different interpretation.

The legal standing of the child is unaffected by the annulment of the marriage. Since they are legitimate children, a legal relationship must exist between them and their father. Even though the marriage was declared null and void, parental rights and responsibilities continue to exist. As regards property, since the marriage has been declared null and void and is thus not legally recognized from the first day, the distribution of assets between husband and wife who are not legally allowed to marry must take place. Especially if the prior marriage is still intact and has not been dissolved.

When a man and a woman officially marry according to their respective religions and the laws of their respective nations, an inheritance connection is formed. Only a marriage certificate issued by a marriage registrar can be used to establish the validity of a marriage. After the marriage contract has been signed, husband and wife are free to separate. The relationship may be deemed null and void if one or both partners do not meet the legal conditions for marriage. As long as there has been a previous marriage, the marriage can be deemed invalid by annulment. Also null is the "relationship," which is formed here physically and remains intact / is not interrupted by the separation (Fajar & Jaelani, 2021).

It is possible to have the practice of annulment of marriage included in the realm of procedural or formal law, allowing the court to make a decision (Sari, 2019). The marriage was terminated as a result of the court's ruling; however, this did not occur as a consequence of the divorce, but rather as a result of legal events that occurred as a result of legal measures made against other people's marriages (Novitasari et al., 2019). The legal action to be done is an application for annulment of marriage filed by the entitled party in accordance with Article 23 of Law No. 16 of 2019 amending Law No. 1 of 1974 respecting Marriage (Septiandini & Wiryawan, 2018). Anyone who feels mistreated can seek legal remedies to get justice, protection, or legal certainty in accordance with the law. The only way for those who have been hurt by the actions of others to seek justice is to file a lawsuit in court. The most common legal challenge to religious court judgements or decisions is an appeal. This article emphasizes that "the husband or wife's family in a direct line of descent; husband or wife; The authorized official only as long as the marriage has not been decided; The appointed official as referred to in paragraph (2) of Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage is terminated" have the right to apply for an annulment of marriage.

Based on the facts, it can be stated that when a marriage annulment is performed on a marriage that is still in the status of husband and wife and the marriage is registered with the authorized official. However, it does not clarify how the status of a divorced husband dies (widow) or how the rights of the deceased husband's parents to annul a divorced marriage are affected.

Formulation of problems

1. What legal options are available to parents who wish to have the marriage

- of a child who has passed away declared null and void?
2. What are the legal implications for the woman if the marriage is annulled by the deceased man's parents?

Methodology

This research was done using a normative juridical approach, which is a type of legal research that examines the implementation of rules or standards in positive law. Normative legal studies are another name for doctrinal legal research (Ali, 2021; Benuf & Azhar, 2020). In this type of legal research, law is widely defined as the content of the legislation (law in books) or as a guideline or norm that serves as the foundation for respectful human behavior (Amiruddin & Asikin, 2004).

Legal Material Analysis

The processing of legal materials consists primarily of a set of operations designed to classify textual legal resources in order to make the analysis of primary legal materials more manageable in the context of this study employing normative juridical research.

The following are some of the activities that are carried out during the analysis of legal materials:

- 1) As a reference, a selection of articles comprising legal provisions from a number of specified laws and regulations are used to outline the problem's scope.
- 2) Create classifications for these laws and regulations that are pertinent to the Author's research question regarding the rules for the annulment of a marriage by parents following the death of their child.
- 3) The analysis of research materials employs normative legal research analysis, specifically how to obtain a brief overview based on the current applicable laws, namely the Civil Code, the Compilation of Islamic Law, Law Number 16 of 2019 regarding amendments to Act Number 1 of 1974 concerning Marriage, and Government Regulation Number 9 of 1975 related to the implementation of Act Number 1 of 1974 concerning Marriage.

Literature review

1. Marriage Cancellation

In Indonesia, either the dissolution of a marriage or the granting of a divorce needs to be processed through the appropriate legal procedures. Litigation is something that must be done, and it is necessary of attorneys that specialize in civil law, family law, or international civil law in order to provide aid with the procedures. Nevertheless, due to the one-of-a-kind nature of this particular case, there is a possibility that some folks will not be familiar with the process because the trials may take place in the same courthouse that is used for other family law matters.

In the legislation, the term "cancellable" indicates that it can be assisted, or that it is relatively "nietig." Consequently, a marriage can be dissolved (null), which means that a marriage that has already taken place has the potential to be annulled if one or both parties do not meet the requirements for marriage (Mubarak et al., 2016).

As detailed in Article 22 (Marriage Law), where it is highlighted that "a marriage can be annulled, if the parties do not meet the requirements to enter into a marriage". Nevertheless, what happens in the event that these prerequisites are not fulfilled at the beginning of the marriage, which, in the end, is recognized by certain parties, but in this case, the marriage has already taken place?

It is stated in Article 23 of the Marriage Law that several parties have the right to seek the annulment of a marriage. Furthermore, according to Article 28 of the Marriage Law, "annulment of marriage by the court is valid from the time the marriage takes place, with the exception that the retroactive impact of the court's decision is not imposed on children born" (Risqiyah, 2019).

Consequently, if it turns out that the marriage does not exceed the legal requirements or is performed in breach of the law and regulations, a request for annulment of the marriage in issue can be made. For instance, where it has been revealed that the husband was bound by a previous marriage, yet he remarried without the agreement of his first wife. It is permissible to ask the court, in this case the district court in the husband's jurisdiction, to declare the second marriage null and void (Rahmatillah & Khofify, 2017).

2. Legal Consequences of Annulment of Marriage

The husband of a couple whose marriage has been annulled by the court through the use of the Faskh or the annulment of marriage cannot refer them to the court for further action. Therefore, in order for both parties to go back to their previous relationships, they will need to go through the process of getting remarried and sign a new marriage contract (Sifah, 2022).

In contrast to a marriage that is declared null and void due to a court ruling, a marriage that is declared invalid and has no legal force after the decision acquires permanent legal force is proclaimed invalid and has no legal force (Rusli, 2013). It was determined that the documents issued by the Office of Religious Affairs were not legally valid since they did not comply with the laws and regulations (Amnawaty, 2018). If a couple agrees to annul their marriage, everything will return to the way it was before the marriage, or as if they had never been married (Kristiani, 2019).

Due to a major ruling made by the court that dissolved the marriage, marriages that have already taken place are treated as if they had never happened. This is one of the legal repercussions that will result from the marriage being declared invalid (Haryanti, 2017). According to the first paragraph of Article 28 of the Marriage Law, the period of time that must elapse before a marriage can be declared invalid and void begins on the day that the marriage takes place.

Article 28 paragraph (2) of Law No. 16 of 2019 amending Law No. 1 of 1974 concerning marriage, as well as Articles 75 and 76 of the Islamic Law collection, each of which has a distinct formulation governing its legal effects. As a result of a marriage that has been pronounced null and void. According to the second paragraph of Article 28 of the Marriage Law, the annulment judgment is not applicable in the following situations:

- a. On the children of such marriages;
- b. Husband or wife in good faith, excluding joint property, if the annulment is based on the existence of a prior marriage;
- c. Against third parties other than parties in a and b, so long as the affected party had rights with permanent legal force when the decision on cancellation was made.

In this case, the court's annulment ruling has no bearing on the couple's children born during their marriage, and the couple's parental relationships will stay intact. For the sake of the children, parents' responsibilities and rights are upheld. As a result, consider the fact that the child's legal relationship with both parents will not be dissolved. Cancellation has no effect on third-party agreements. The husband is still obligated to pay the mortgage installments he received during the marriage, even if the marriage is annulled. A settlement must be achieved before a court ruling can take effect permanently.

Discussion

1. The Rights of Parents in submitting an annulment of marriage against the marriage of their child who has passed away

According to the Marriage Law, it has actually been emphasized that "a marriage can be annulled, if the parties do not meet the requirements to enter into a marriage" (in Article 22), while the party entitled to submit a marriage annulment has been determined in Article 23 of the Marriage Law, namely:

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

According to Article 22 of the Marriage Law, "a marriage may be canceled if the parties do not meet the prerequisites for entering into marriage." However, if the conditions for holding a real marriage do not fulfill the standards but the marriage has already taken place, the marriage is valid. Where the conditions that must be fulfilled are not revealed until after the marriage has taken place. In this instance, the court may receive a petition for the annulment of the marriage (Apriliah, 2017). If the circumstances supporting the annulment request are proven to be accurate, the judge will pronounce the marriage null and void. After

retrospectively annulling their marriage, they are considered to have never been married (Isnaeni, 2016).

When the husband or woman in a marriage passed away, the marriage is considered null and void, and all rights and responsibilities acquired as a result of the marriage automatically end with him. This applies whether the party who passed away is husband or wife. It can be concluded that the bond no longer exists considering the missing bond.

As stated in Article 37 of Government Regulation Number 9 of 1975, which states, "Only the court can annul a marriage," and Article 28 paragraph 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 Concerning Marriage, "The annulment of marriage begins when the court's decision that the marriage has been and is valid since the marriage took place has permanent legal force."

If it is later found that a marriage violates the terms of the contract, then the marriage can be considered invalid and null and void. The separation of the marriage connection occurs when a marriage is annulled. As a result, the marriage is judged to have never taken place, and the husband and wife are no longer recognized husband and wife. On the other side, marriage is sometimes regarded as a holy pact that cannot be broken or interrupted in any way. Due to the fact that the extended families involved in a marriage are tied by their love for Allah SWT (*hablu minallah*), it is very difficult to stop the bond after the marriage has been officially acknowledged. Consequently, the marriage cannot be simply cancelled.

Therefore, the separation of marriage due to death and the dissolution of marriage based on court decisions is the termination of the marital relationship between husband and wife due to death, but the status of the longest-lived husband and wife becomes "widow" because the previous marriage is considered legally valid (Saragih & Yunanto, 2017). Meanwhile, if the marriage that was performed was not lawful under the law or was not desired by certain parties with an interest in the marriage, then the marriage could be annulled despite the fact that the termination of the marriage was based on a court decision. The objective is to eliminate the marital bond and hence it is considered to have never existed. In order for the annulment of a marriage following the dissolution of the marriage due to death to be a matter that can be presented to a court for legal reasons and its consequences, the annulment of the marriage occurs after the dissolution of the marriage due to death (Sifah, 2022).

2. Legal implications for woman parties if the marriage is annulled by the man's parents after their child passed away

Due to the laws and regulations governing a woman's marital status, she is no longer considered divorced simply because the husband has passed away; rather, she has been returned to her original position before the marriage was

declared invalid. According to the terms of Article 28's first paragraph, a court's decision to annul a marriage deems it as if it had never existed.

The cancellation is granted in this case based on Article 28 of Law Number 16 of 2019 concerning Amendments to the Marriage Law Number 1 of 1974 as a result of the court's decision to legally terminate the marriage, where it is stated that:

- "1) The cancellation of a marriage begins after the Court's decision has permanent legal force and is valid from the time the marriage takes place.
- 2) Decisions are not retroactive to:
 - a. Children born of the marriage;
 - b. A husband or wife who acts in good faith, except for joint property, if the annulment of the marriage is based on the existence of another previous marriage;
 - c. Other third persons are not included in a and b as long as they obtained the rights in good faith before the decision on the annulment has permanent legal force."

Nevertheless, the annulment of the marriage has no effect on the child's legal standing. Since they are legitimate children, a legal relationship must exist between them and their father. Even though the marriage was declared null and void, parental rights and responsibilities continue to exist. As regards property, since the marriage has been declared null and void and is thus not legally recognized from the first day, the distribution of assets between husband and wife who are not legally allowed to marry must take place. Especially if the prior marriage is still intact and has not been dissolved.

The children born to the couple during their marriage are indeed unaffected by the court's annulment ruling, and the couple's parental link will stay in place. Parental obligations and rights continue to exist for children. Also, remember that the child's legal relationship with both parents will not be severed by annulment. The cancellation has no impact on third-party agreements. For instance, even if the marriage is dissolved, the husband must repay the mortgage payments he received throughout the marriage. A settlement must be struck prior to a court ruling taking effect permanently.

The court's ruling on the annulment of marriage has no bearing on children born from the couple's marriage, and the parents' relationship will not be dissolved. These children are still legally parents and have full parental responsibilities. Keep in mind that an annulment does not end the child's legal relationship with his parents. The cancellation has no bearing on any agreements with third parties. Even though the marriage was later canceled, the husband is still obligated to pay the mortgage installments collected during the marriage. Before the court's decision has permanent legal effect, a settlement must be reached.

Therefore, based on Article 28 of Law Number 16 of 2019 concerning "Amendments to Law Number 1 of 1974 concerning Marriage, that the annulment of the marriage causes the parties in the marital relationship to return to their

original status before the annulment of the marriage". This is because the marriage is considered never existed or never happened. However, in the event that there are things that arise as a result of the marriage and cannot be returned to its original state, then it remains the responsibility of the parties as stated in Article 28 paragraph 1 (2).

Conclusion

1. The annulment of a marriage following its dissolution due to death is an issue that can be litigated due to its various goals and legal consequences. The rights of the deceased child's father to file a petition for the annulment of his child's marriage. In accordance with Article 23 letter 'a' of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1970 Concerning Marriage, families in the direct ascending lineage of the husband or wife may petition the court for the annulment of their marriage.
2. The legal consequence that occurs on the marital status of the woman after the decision to cancel the marriage by the Court is that she is no longer widow because the husband passed away, but is returned to the status before the annulment of the marriage. As stated in Article 28 paragraph (1) which states that with the court's decision to annul the marriage, the marriage that has occurred is considered to have never existed. This marriage annulment decision also causes the loss of inheritance rights from the woman to the inherited property of the man, except in the case that the joint property of the woman must not be harmed because the woman has good intentions in carrying out the marriage, as regulated in Article 28 paragraph (2) letter b of the Marriage Law.

Sugesstion

1. The future bride and groom must be well-prepared, with a thorough awareness of the identity and history of their prospective partner. Checking not only prioritizes administrative truth, but also analyzes the family's and community's environment for spaciousness, so that they are not easily misled and have no regrets in the future.
2. Before the marriage, the competent authority or the Marriage Registrar in charge of overseeing the marriage should be more comprehensive and diligent in carrying out their duties so that no incidents of fraud involving marriage forgery concerning the identity of the future husband or wife occur. Furthermore, it is suggested that the marriage registration system be improved so that it may be accessible nationally and even worldwide, allowing parties to examine the marital status of their partner more easily.
3. The participation of law enforcement personnel in socialization activities that highlight legal education and counsel, especially in the area of marriage law, must be increased. This is designed to improve public understanding of

marriage regulations, as many individuals are unaware that their acts contravene the applicable marriage laws.

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