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| **Reactualization of Marriage Law in Indonesia on the Issue of Marriage Annulment in Achieving Legal Certainty**  **Nur Sa'adah1\*, Junaedi2,** **Sirajuddin Sailellah3**  Universitas Jayabaya Jakarta, Indonesia  Email: [nung327@yahoo.co.id1\*](mailto:nung327@yahoo.co.id1*), [opjunaidi@gmail.com2](mailto:opjunaidi@gmail.com2), [sirajuddin\_sailellah@yahoo.com3](mailto:sirajuddin_sailellah@yahoo.com3) |

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| **Keywords** | **Abstract** |
| Reactualization; Annulment Of Marriage; Legal Certainty. | The annulment of marriage based on Law Number 1 of 1974 has not provided clarity so that it can cause legal uncertainty and injustice. Article 22 of Law Number 1 of 1974 states that a marriage can be annulled if the parties do not meet the conditions for consummating the marriage. This dissertation is to examine and analyse the implementation of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in the problem of marriage annulment and to study, analyse, and find legal certainty in the actualisation of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in the Prevalence of Marriage Annulment. This research uses a normative approach with the type of analytical descriptive research including legal principles, synchronisation of laws and regulations, including efforts to form law (rechtsvorming), the source of legal materials used is primary legal material, secondary legal material (secondary data) which will be obtained through literature sources. The results of the study show that there are still many violations of the Marriage Law, such as marriage registration, underage marriage, wild polygamy and illegal divorce, because they have not explicitly and firmly regulated the annulment of marriage. Implementing the Marriage Law must prioritise the principle of justice, especially regarding marriage annulment. This includes the annulment of marriages involving imperfections of reason, marriages under threat of law, or marriages that violate religious law. In the actualisation of marriage law to overcome the problem of marriage annulment, it is essential to strengthen legal certainty. First, the actualisation of the Marriage Law is a proactive step needed to address the issue of marriage annulment. This includes adequate articles to regulate situations that might lead to marriage annulment. Second, the Protection of Individual Rights.  https://jurnal.syntax-idea.co.id/public/site/images/idea/88x31.png  © 2024 by the authors. Submitted  for possible open-access publication  under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>). |

1. **Introduction**

Marriage (Kholis, 2023) is a contract or agreement where a woman and a man bind themselves through ijab qabul with a predetermined dowry and witnessed by two witnesses (Nurdin, 2020) to form a harmonious, happy, loving and eternal household based on the One True Godhead (Saputri, 2022). This is by the provisions of Article 28 B paragraph (1) of the 1945 Constitution.

Along with global developments, marriage problems in society continue to grow, and there has been a framework or norms that regulate and guide marriage in Law Number 16 of 2019 concerning Marriage (an amendment from Law Number 1 of 1974) so that violations of the marriage ban are very likely. Therefore, the articles on preventing marriage are a surefire strategy to avoid illicit marriages.

The annulment of marriage has been regulated in Articles 26 and 27 of Law Number 16 of 2019 concerning Marriage. However, marriage annulment lawsuits often occur in Indonesia; it is not uncommon for marriage annulment lawsuits to be filed because of violations of polygamy requirements with identity forgery, for example, in Decision Number 2479 / Pdt.G / 2020 / PA. JU, Polygamy Case in Case Number 1446/Pdt.G/2017/PA.Mks. Annulment of marriage due to coercion as in Case Number 1786/Pdt.G/2021/PA.Mks.

This practice of serial marriage led to a violation of the rights of wives in their first marriage. In many cases, settlements are made through civil divorce. However, in the Criminal Code (KUHP), there is a rule that criminalises someone who is still bound in marriage but has sexual relations with another person in this context as someone who practices polygamy and serial marriage without their partner's knowledge. Article 284 of the Penal Code criminalises the offence of serial marriage, in which a person enters into marriage while, in fact, still has a legal husband or wife or has a marital bond (Darsi, 2017). The penalty for violators of Article 284 of the Criminal Code is imprisonment for a maximum of 9 months. In addition, husbands who remarry without the consent of the first wife can be charged with Article 279 of the Criminal Code, which threatens a maximum prison sentence of 5 to 7 years.

In addition, several problems have arisen in Indonesian society. In addition to the issue of polygamy, there are also issues related to the identity of the bride and groom, be it trial or virgin status, as well as cases of gender falsification that have shocked the public in recent years. Cases involving gender forgery and falsification of documents and guardians to enable marriage violate Article 266 and Article 378 of the Criminal Code. The threat of seven years in prison is set for the act.

Some of the case phenomena described above show that although our State has given birth to some rules regarding marriage, many in Society still commit violations; here, it shows the legal uncertainty between Das Sollen and Das Sein. There is a discrepancy. Therefore, the author wants to examine this dissertation to find a definite legal construction so that Indonesian society no longer violates marital problems. In this case, the author will actualise the Marriage Law.

In the actualisation of Law Number 16 of 2019 concerning Marriage, it is necessary to consider harmonisation between the provisions in Law Number 16 of 2019 concerning Marriage. The need for clear understanding and consistent law enforcement in the context of marriage annulment can provide legal certainty, a sense of justice, and practicality for all parties involved in the process.

The regulation regarding marriage will create legal certainty (Zubaidah, 2019), which are divided into three types, namely general, special and aequitas justice, retributive justice and restorative justice. Regarding the actualisation of Law Number 16 of 2019 concerning Marriage, it is essential to consider justice as the primary foundation. Regulations regarding marriage annulment should reflect the values of justice recognised in society. The decision to annul a marriage must be based on the principles of justice that provide protection and legal certainty for all parties involved. In addition, in regulating the annulment of marriage, it is necessary to consider the principle of equality when deciding the fate of marriages that have been established.

1. **Materials and Methods**

This is normative legal research (Ibrahim 2010), which seeks to find legal rules, principles, and doctrines (Nurhayati, Ifrani, & Said, 2021). The type of research used is descriptive-analytical ((PUSHAM), Smith, Asplund, & Marzuki, 2008) with a sui generis approach ((PUSHAM) et al., 2008) in the form of a philosophy approach, sociological approach, conceptual approach, and statute approach (Nafi’ah, 2020) which is relevant in the context of the actualisation of the Marriage Law in Indonesia, especially in the problem of marriage annulment.

The data used is secondary data, so the legal materials used consist of primary, secondary and tertiary legal materials consisting of: (1) the 1945 Constitution; (2) the Criminal Code; (3) the Civil Code, (4) Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage; (5) Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration; (6) Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law; (7) Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage; (8) Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court. Data were collected using library research techniques (Soekanto & Mamudji, 2006) and analysed using qualitative normative methods.

1. **Results and Discussions**

**Implementation of Marriage Law in Indonesia in the Problem of Marriage Annulment**

In this case, the implementation of the annulment of marriage should always take into account the religious aspects of the parties involved. Based on this, the author can find Challenges in the Implementation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage related to Marriage Annulment. Although Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage provides a clear legal basis for marriage annulment, there are still several challenges in its implementation:

* 1. Religious and Legal Provisions: One of the main challenges is managing the balance between legal and religious aspects in the annulment of marriages. Article 2 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage emphasises the importance of complying with the laws of each other's religions and beliefs. The main challenge is determining how cases of annulment of marriages based on different religious laws can be resolved relatively under civil law, including Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. This requires careful interpretation of the law and procedures that can accommodate differences in religious beliefs. Often, the annulment of a marriage requires a deep understanding of the religious teachings that apply to the parties involved. This shows the complexity of the marriage annulment process in Indonesia, where religious aspects often influence the legal steps that must be taken.
  2. Court Proceedings: The litigation involved in the annulment of a marriage is a serious and time-consuming process. When couples decide to annul their marriage, they have to go through a sometimes complicated and costly procedure. This can be challenging for individuals wanting to annul their marriage, especially with limited resources. The marriage annulment process must go through steps such as filing a lawsuit, summoning the parties concerned, trial, peace efforts, and finally, submitting a court decision. This process is time-consuming, costly, and can be emotionally draining, especially if there is a conflict between couples seeking a divorce. Therefore, an effort must be made to simplify this process and ensure easier access for individuals who wish to annul their marriages. This stage must be carried out using the procedures established by law and competent courts. Overall, the annulment of marriage poses several challenges that need to be addressed.
  3. Protection of Individual Rights: Although Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage has provisions that protect individual rights in marriage annulment, challenges may arise if one party feels that his rights are not adequately protected. This can result in complicated legal disputes. Article 37 of Government Regulation Number 9 of 1975 expressly states that the court can only decide on marriage annulment. The court should examine the case closely, considering that the annulment of marriage can have significant consequences for spouses and their families. Therefore, the court must perform its role reasonably and based on applicable law.
  4. Social and Cultural Change: Marriage is a social institution strongly influenced by cultural and social factors. Changes in social values and norms and shifting demands in society can create challenges in the annulment of marriages. For example, social stigma associated with divorce or pressure from family and society can influence a couple's decision to divorce. Therefore, the implementation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage must be able to deal with these cultural and social factors and may require counselling and socialisation efforts to change public perceptions regarding marriage annulment.
  5. Access to Legal Services: Legal services are also challenging. Especially for individuals with limited resources, such as low education or limited finances, access to adequate legal services can be an obstacle. The government must ensure fair and equitable access to legal services for all citizens wishing to annul their marriages.

In facing these challenges, the actualisation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage is essential. Changes in the law could include simplification of procedures, improvements in the protection of individual rights, and a more inclusive approach to different religious beliefs and social changes in society. Thus, the implementation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in the annulment of marriage can be more effective and reflect legal principles that are fair, inclusive, and relevant to the demands of the times.

One crucial aspect of implementing marriage law is the judge's consideration in dealing with marriage annulment cases. To understand the implementation of marriage law in marriage annulment cases, it is necessary to analyse the judge's consideration as a construction of the judge's thinking system in applying the law concretely in marriage cases. According to (Tamami, 2020), the judge's consideration in marriage annulment cases refers to the legal understanding "in abstracto" (in the general sense), which must be applied in cases "in concreto" (in the context of concrete cases).

In practice, some problems arise related to the annulment of marriage. The annulment of marriage is one of the essential aspects of the legal marriage system in Indonesia. The main obstacle that arises is how to implement Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in handling the situation of marriage annulment fairly and effectively. In facing the problem of marriage annulment, it is necessary to actualise Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. This actualisation includes updating the requirements and procedures for marriage annulment and adjusting to social and cultural developments in society. The aim is to ensure that legal protection remains relevant to people's needs and aspirations (Salsabila, Abdurrahman, & Sulistiani, 2021). There is an impression that the annulment of marriage occurs due to a lack of supervision from the family and the competent authority, so the marriage is carried out even though it is later found to violate the Marriage Law.

In such a situation, the Religious Court has the authority to annul the marriage at the request of the parties concerned (Septiyani, 2022). Thus, a marriage can be legally annulled through legal proceedings in court. In general, two main reasons can lead to marriage annulment. First, violation of procedures in the conduct of marriage. Second, violation of marital substance or material. For example, procedural violations may include non-fulfilment of the conditions of marriage by the marriage guardian, absence of witnesses, and other procedural reasons. Meanwhile, examples of material violations may consist of marriages that took place under duress or with misperceptions regarding the prospective husband or wife.

Every marriage is required to be recorded by applicable laws and regulations (Khairunnisa & Fawzi, 2022). This recording has a meaning comparable to recording other significant events in a person's life, such as birth or death, formalised through an official certificate that is also included in the recording list. To maintain administrative regularity, transparency, and legal certainty in the implementation of marriages for Muslims, it is essential to regulate marriage registration.

Legal certainty in the actualisation of marriage law in Indonesia in the problem of marriage annulment. In the context of the actualisation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in Indonesia, ensuring legal certainty regarding the prevalence of marriage annulment is crucial. Gustav Radbruch stated that the purpose of law is to achieve justice, certainty, and expediency. However, he stressed that justice should be a top priority in this hierarchy. Historically, legal certainty once dominated the legal system, but Radbruch insists that justice must be the highest priority.

The annulment of marriage has significant legal consequences. One of them is breaking the marriage bond itself, which means that the relationship between husband and wife is no longer valid. However, it is essential to note that the decision to annul the marriage is not always retroactive. In the author's analysis, Law No. 1 of 1974 and Law No. 16 of 2019 concerning Amendments to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage concerning Marriage in Indonesia have reflected the principle of legal certainty in several significant ways. Article 28, paragraph (1) of the Law confirms that the annulment of a marriage begins after a court decision has permanent legal force and is valid from the moment of marriage. This indicates that legal certainty is established through court proceedings that give apparent legal force to marriage annulment. The annulment of the marriage results in the breaking of the marriage bond, and the marriage that has been performed is considered invalid. The consequences of this law are regulated in Article 28 paragraph (1) of Law No. 1 of 1974 jo Law Number 16 of 2019 concerning Amendments to Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage concerning Marriage. In other words, marriage is considered to have never existed. This provides clarity and legal certainty regarding the annulled marital status.

The annulment of marriage begins after the decision of the Court has obtained inviolable legal force and is effective from the moment of the execution of the marriage. An application for marriage annulment must be filed with the Court in the county where the marriage took place or at the residence of both spouses, both husband and wife. Marriage annulment can occur if one or both parties do not meet the conditions set to consummate the marriage.

In the context of implementing Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, the BW perspective provides clear guidance on the conditions under which a marriage can be declared void. The judge has a central role in this process, and his decision must be based on careful consideration of the facts and related laws. A solid legal foundation in BW provides a clear framework for handling marriage annulment cases fairly and reasonably. In this context, the author needs to analyse these differences and how they affect legal certainty in marriage annulment cases in Indonesia.

* + 1. Article 22 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage vs. Articles 87, 89, 90, and 91 of the Indonesian Civil Code: Article 22 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Articles 87, 89, 90, and 91 of the Indonesian Civil Code in parallel discuss the annulment of marriage if the conditions of marriage are not met. Legal certainty in this case lies in the fact that the conditions of marriage must be obeyed to maintain the legality of marriage.
    2. Article 23 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage vs Article 93 of the Indonesian Civil Code: Both Article 23 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Article 93 of the Indonesian Civil Code regulate parties who can apply for a marriage annulment. This creates legal certainty by determining who is eligible to apply for cancellation.
    3. Article 24 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage vs Article 86 of the Indonesian Civil Code: Article 24 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Article 86 of the Indonesian Civil Code both regulate monogamous marriage. This is a step to ensure that the principle of monogamy is adhered to, which is essential in marriage law.
    4. Article 25 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage vs Article 99 of the Indonesian Civil Code: Article 25 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Article 99 of the Indonesian Civil Code both mention the place of applying for a marriage annulment. This helps to provide legal clarity on where the cancellation application should be filed.
    5. Article 26 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage vs Article 92 of the Indonesian Civil Code: Article 26 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Article 92 of the Indonesian Civil Code discuss the registration of invalid marriages if they are not before the competent authorities and can be submitted for annulment. This is important to ensure invalid marriages are legally registered and can be filed for annulment.
    6. Article 28 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage vs Articles 95, 96, 97, and 98 of the Indonesian Civil Code: These articles in both laws regulate the impact of marriage annulment. This is important in providing legal certainty about the consequences of marriage annulment.

Based on this, the Reactualization of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in the context of marriage annulment brings philosophical questions regarding the difference in the number of articles between Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and the KUHPer. However, this does not eliminate legal certainty.

The actualisation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in Indonesia is necessary to overcome the increasing problem related to the prevalence of marriage annulment. In implementing this actualisation, several aspects require substantial changes in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage to ensure the creation of legal certainty, protection of individual rights, and justice for all parties involved in the context of marriage in Indonesia. Thus, the proposed Substantial Changes from the author are as follows:

First, an article on cancellation due to unauthorised polygamy was added. Currently, Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage has not explicitly regulated marriage annulment due to the act of polygamy without permission. Therefore, it is necessary to add an Article that expressly regulates this, including setting out the conditions that must be met and the procedures that must be followed in cases of unlicensed polygamy. The primary purpose of adding this Article is to provide legal clarity and justice for parties affected by this act and to encourage awareness of the importance of complying with the provisions of legal marriage. The proposed Article in this substance is "Cancellation Due to Polygamy Without Permission."

Second, an article on annulment was added due to marriage with a person still in the Iddah period. The regulation regarding marriage annulment, if one of the parties is still in the Iddah period at the time of the marriage, becomes essential in this context. Adding an Article regulating this will provide the legal clarity needed. This step will also contribute to protecting the rights of parties still in the iddah period, preventing invalid marriages, and strengthening the principle of justice in marriage. The proposed Article in this substance reads "Annulment Due to Marriage with a Person Still in the Iddah Period."

Third, the addition of an article on the annulment of marriage under legal threat; An article regulating the annulment of a marriage if one of the parties enters into marriage under threat of law would provide better legal protection for the parties involved. Adding such an Article is a proactive measure to prevent invalid marriages and ensure that marriages are only performed based on voluntariness and all parties' free consent. The proposed Article in this substance reads "Annulment of Marriage Under Legal Threat."

Fourth, adding the Article on Cancellation Due to Imperfection of Reason; Adding an Article providing for the annulment of a marriage if one or both parties experience imperfections of reason will provide better legal protection for parties affected by this condition. This article ensures that every marriage is conducted with full awareness and explicit consent from all parties involved. The proposed Article in this substance is "Annulment Due to Imperfection of Reason".

Fifth, articles regarding sanctions for parties who violate marriage law are added. One of the many violations of marriage law is the absence of clear sanctions in both the Pekwinan Law and the KHI; there is only sanction for marriage registrars who commit violations; therefore, by using the three theories that the author uses to answer the existing problem formulation, it is necessary to actualise the addition of articles, especially in the Marriage Law regarding sanctions.

The marriage law also recognises the automatic prevention of marriage by marriage registrars even though no party performs marriage prevention (article 20). This automatic prevention can be done if the marriage registrar employee, in carrying out his duties, is aware of violations of the provisions in Article 7, Paragraph 1, article 8, article 9, article 10, and Article 12 of the marriage law.

1. **Conclusion**

This study concludes that implementing marriage law in Indonesia has faced several challenges, especially in the context of marriage annulment. In this regard, some findings can be identified as the annulment of marriage as the central issue, the importance of protecting individual rights, and justice as the primary objective. In the actualisation of marriage law to overcome the problem of marriage annulment, it is essential to strengthen legal certainty. Based on in-depth analysis, several key points can be concluded: First, Reactualization as a Proactive Step: Reactualization of the Marriage Law is a proactive step needed to overcome the problem of marriage annulment. This includes adequate articles to regulate situations that might lead to marriage annulment. Second, Protection of Individual Rights: Reactualization should provide solid legal protection for individuals involved in legal marriages while also paying attention to individual rights in illegitimate marriages. These include protection against unauthorised polygamy, marriage under threat of law, and cases of resourcefulness imperfections. Third, Representation of Pancasila Values: The actualisation of the Marriage Law must reflect the values of Pancasila and the ideals of national legal development. This ensures that marriage law is appropriate to the context of Indonesian diversity and applies to all citizens.

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