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Legal Research Against Marriage Cancellation Due to Identity Falsification

A Case Study of Sidoarjo Religious Court Decision No.
1213/Pdt.G/2020/PA. Sda

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ABSTRACT

The marriage cancellation can occur because of the decision from Religious Court or District Court. It is caused lack of requirements in a marriage. Under some circumstances a marriage can also be annulled since the stipulation of a court decision which has permanent legal force and is valid since the marriage begins. This research indicated that marriage cancellation occurred due to violation on the provision of Article 72 Paragraph (2) Islamic Law Compilation adds the phrase 'fraud' or misunderstanding about husband or wife. In addition, it is strengthened by the existence of defendant who did not ask for a polygamy permit application to the Religious Court as regulated in Article 71 Letter A in Islamic Law Compilation. The legal consequences that derives from marriage cancellation which regulated in Article 28 Paragraph (2) of Law No. 1/1974 concerning marriage. The objective of this research is to analyze the factors of identity falsification caused marriage cancellation and to find out the judge's consideration in Religious Court Decision with the case No. 1213/Pdt.G/2020/PA.Sda. The method used in this research is juridical-normative. This research analyzed normatively regarding the case of marriage cancellation due to identity falsification. The legal consequent of this marriage cancellation is the born child is still be considered legal. When the plaintiff filed a lawsuit, other defendant's wife was died. Therefore, the plaintiff and defendant both agreed to cancel their marriage and will legally remarry.

Keywords: Identity Falsification, Marriage Act No. 1/1974, Marriage Cancellation

INTRODUCTION

Marriage is a religious proposal that is compulsory for those who are able to have a family. According to Article (1) of the Marriage Act No. 1/1974 because marriage combines two families, the definition of marriage is deepened which aims to continue the lineage and descent is an important aspect in the marriage process. If a man and a woman agree to marry, it indicates that they have agreed to follow and are bound by the legal rules which regulated about marriage and those rules have to implement during marriage or until the end of marriage.

According to Article 9 of Marriage Act No. 1/1974 stipulates that a person who is bound by marriage to another person, they cannot re-marry except such the case referred to Article 3 Paragraph (2) and Article 4 of this regulation. Therefore, if they conduct to polygamy without court approval, provide false self-identities, and commit fraud intentionally, those of all acts are criminal acts against the law and detrimental to either party of marriage. It caused one of the betrayed parties cannot continue the marriage and wants to end it.

The marriage cancellation can occur because of the decision from Religious Court or District Court. It is caused lack of requirements in a marriage. If there is lack of requirements in marriage life in the future, then one of marital parties have right to repudiate the marriage as regulated in Article 22 of Marriage Act No. 1/1974, and the marriage requirements itself has regulated in Article 6 Paragraph 1-6 of Marriage Act No. 1/1974 (Wijayanti, 2021).

Nowadays, there is a case, that is a man who has been married before and wants to marry another woman. He also falsified his identity, does not fill the marriage requirements that have been determined by Religious Court, does not manage polygamy permit application. Those all things was conducted to smoothen his plan for marriage. There is a case which has same conditions in such in previous explanation, based on Sidoarjo Religious Court Decision No. 1213/Pdt.G/2020/PA.Sda, the husband who had falsified his identity, and his marriage has been legally registered in Religious Affairs Office, Krian, Sidoarjo. During his marriage, he have one child with his wife. The plaintiff is the wife and the defendant is her husband. The plaintiff and defendant have lived together as husband and wife and throughout their married life, they had one child. Unfortunately, when the plaintiff wanted to register their child's birth certificate, the family registers and husband's identity card were not the same. Apparently the husband admitted to falsifying his ID card and family registers data. He stated that he was a dead widower to smooth his marriage with the plaintiff. In addition, when he married the plaintiff, he had one child from other his wife. It means that the defendant has polygamous without the approval of Religious Court. The purpose of plaintiff to cancel her marriage with the defendant because she was having trouble in register their child's birth certificate.

Identity falsification in marriage is an anomaly that committed by someone in falsifying some data, such as status, sign, characteristic, identity or one's particular circumstances, and all of those actions are a crime in deceiving state officials in a marriage. Based on the background of this research, the researcher is able to do a research in titled "Legal Research Against Marriage Cancellation Due to Identity falsification: A Case Study of Sidoarjo Religious Court Decision No. 1213/Pdt.G/2020/PA.Sda. There are two problem statements of this research, these are (1) What are the factors of identity falsification caused marriage cancellation; (2) How is the judge's consideration in Religious Court Decision with the case No. 1213/Pdt.G/2020/PA.Sda. The objective of this research is to analyze the factors of identity falsification caused marriage cancellation and to find out the judge's consideration in Religious Court Decision with the case No. 1213/Pdt.G/2020/PA.Sda.

RESEARCH METHODOLOGY

The method used in this research is juridical-normative. According to Bachtiar statement that juridical-normative is a research that focused on existing norms in Law, court decisions, legal theory, and scholarly opinions (Bachtiar, 2018). This research analyzed normatively regarding the case of marriage cancellation due to identity falsification. The legal issue in this research is a case in Religious Court Decision with the case No. 1213/Pdt.G/2020/PA.Sda. There are two approaches used in this research, such as (1) statute approach, and (2) case approach. According to Bachtiar, statute approach is review all laws and regulations related to the legal issue under discussion (Bachtiar, 2018). The statute approach in this research is Marriage Act No. 1/1974 and Islamic Law Compilation, then the case approach is Sidoarjo Religious Court Decision No. 1213/Pdt.G/2020/PA.Sda. Meanwhile, according to Peter Mahmud Marzuki, case approach is examine cases related to the issues at hand and become court decisions that have permanent legal force (Marzuki, 2017). The data in this research gathered through primary data and secondary data as completing data in this research. This research used Marriage Act No. 1/1974 and Islamic Law Compilation as primary data. Meanwhile, the secondary data in this research is legal resource obtained from various sources, such as books, scientific journals, newspaper, and literature related to its discussed topic.

RESULT AND DISCUSSION

The Factors of Identity Falsification Caused Marriage Cancellation

There are some reasons to cancel a marriage, one of them is identity falsification from the husband or wife. The falsification perpetrators do not discriminate between genders who commit this crime (Chazawi, 2014). There are many criminal cases that occur in society related to identity falsification, these are married men claim that he have never been married in public, committing any falsification to get marriage twice, a women who have physical disability but she is claiming if she does not have it, and other cases.

The factor of the marriage cancellation in case No. 1213/Pdt.G/2020/PA.Sda is identity falsification by the defendant and it was proven that there was a falsification of family registers and his identity card which stated that the defendant's status was a dead widower in which the identity card was issued by Department of Population and Civil Registration Pasuruan. The defendant admitted that he was a widower, which meant that his first wife had died. In addition, when he married the plaintiff, he had one child from other his wife.

The case of marriage cancellation is regulated in Chapter 6 of first book edition from Burgerlijk Wetboek on Civil Law. There are some factors caused marriage cancellation such following below:

1. The occurrence of polygamous marriage
2. No free agreement between the parties
3. One of the parties is unable to commit legal actions
4. One or both parties have not reached the legal age and have not obtained permission to marriage
5. The law forbidding marriage
6. The marriage held after illicit relations
7. Lack of consent from interested parties such as parents or guardians

Identity falsification in marriage is a distorted attempt that conducted by someone in falsifying some data, such as status or sign in any circumstance to smoothen his plan to marriage. This action is crime in deceiving the public (Apriliah, 2017). Here are some important documents that are often falsified for identity falsification in marriage (Fakrulloh, Zudan Arif & Wismulyani, 2018):

1. Birth Certification, a document issued by the civil registry office containing information regarding the identification of born child, such as the child's name, date of birth, parents' names, and the signature of authorized official.
2. Indonesian Identity Card, an identification that is recognized in Indonesia and a must-have item for people who are considered adults

around the age of 17 years or for those who have been married.

3. Family Registers Card, a family identification card containing information about family structure, name and family relationships. In addition, it is also a requirement for marriage.

The recent known identity falsification after marriage, then the person was affected cause this act can file a lawsuit to a local court. The basis for the consideration of Sidoarjo Religious Court in its decision No. 1213/Pdt.G/2020/PA.Sda, there is a couple is already married but one of the parties whose legal status is a false identity, then the perpetrator claimed to be a dead widower, he had one child from other his wife. Therefore, their marriage can be annulled legally. This is regulated in Marriage Act No. 1/1974 Article 9 and Islamic Law Compilation Article 72 Paragraph (2).

The Analysis of Court Decision No. 1213/Pdt.G/2020/PA.Sda Based on Marriage Act 1974

There are two factors in marriage cancellation based on Court Desicion No. 1213/Pdt.G/2020/PA.Sda such following below:

1. The defendant have falsified his identity, such as identity card, family registers card when he married with the plaintiff.
2. The defendant have other wife and child legally, and it is known when he married with the plaintiff.

The court can declare the marriage null and void. According to Marriage Act No. 1/1974, there are two factors of marriage cancellation, these are (1) violating the marriage procedure such as not fulfilling the marriage requirements and polygamy without court approval; (2) there is a misunderstanding of husband which is a violation of marriage (Pelawi, 2015).

There are some articles description in the Marriage Act No. 1/1974 regarding the factors of marriage cancellation such following below (Lestari & Adiyatma, 2020):

1. The marriage requirements is not qualified legally regulated in Article 22 of Marriage Act
2. One of parties still have marriage relationship with others legally regulated in Article 24 of Marriage Act
3. The marriage conducted without parents approval or guardians regulated in Article 26 Paragraph (1) of Marriage Act
4. There is a misunderstanding about the husband or wife regulated in Article 27 Paragraph (2) of Marriage Act

According to Court Desicion No. 1213/Pdt.G/2020/PA.Sda, the plaintiff file a lawsuit to cancel her marriage with the defendant because the defendant

admitted to falsifying his ID card and family registers data. He stated that he was a dead widower to smooth his marriage with the plaintiff. In addition, when he married the plaintiff, he had one child from other his wife. It means that the defendant has polygamous without the approval of Religious Court. Her marriage can be cancelled is based on Marriage Act Article 24 and Article 27 Paragraph (2).

The chairman of the Sidoarjo Religious Court Assembly stipulates the law of marriage cancellation due to identity falsification in a polygamous situation in accordance with Law No. 1 concerning Marriage Article 24 as detailed in previous discussion. The judge's reason is if a husband wants to be polygamous, he must get permission from his first wife and Religious Court approval.

The researcher stated that the judge's consideration in deciding the case of marriage cancellation is very appropriate because its consideration have suitable with Islamic Law Compilation Article 72 Paragraph (2) and Article 71 Letter A. According to Court Desicion No. 1213/Pdt.G/2020/PA.Sda, the plaintiff filed a lawsuit to cancel her marriage because the defendant have falsified his identity, and he admitted that he was a dead widower. Yahya Harahap stated that a marriage can be cancelled if one of marriage parties committed a fraud such as identity falsification.

The Analysis of Court Decision No. 1213/Pdt.G/2020/PA.Sda Based on Indonesian Civil Law

According to Indonesian Civil Law, if someone does not obey the provisions of marriage law then their marriage is illegitimate and it can cancelled by law. There are some factors in marriage cancellation based on Article 86-91 of Civil Code (Mahkamah Agung Republik Indonesia, 2013) such following below:

1. Polygamy,
2. No agreement between two parties,
3. One of parties is not obeying the law,
4. Prohibition on marriages,
5. The marriage held after illicit relations,
6. One or both parties have not reached the legal age and have not obtained permission to marriage,
7. Lack of consent from interested parties such as parents or guardians.

According to Court Desicion No. 1213/Pdt.G/2020/PA.Sda, the plaintiff file a lawsuit to cancel her marriage with the defendant because the defendant admitted to falsifying his ID card and family registers data. He stated that he was a dead widower to smooth his marriage with the plaintiff. In addition, when he married the plaintiff, he had one child from other his wife. It means that the defendant has polygamous without the approval of Religious Court.

Furthermore, in Article 26 of Civil Code regulated about marriage. Marriage is the relationship between two people and it is recognized or even regulated by law. However, when the marriage occurred because coercion, negligence and deception, then it can be cancelled by law and this statement is regulated in Article 1449 of Civil Code. In addition, according that article their marriage can be cancelled because the defendant admitted that he was falsified his identity to smoothen his plans to marriage.

The Analysis of Court Decision No. 1213/Pdt.G/2020/PA.Sda Based on Islamic Law Compilation

According to Islamic Law Compilation in Article 71 Letter A stated that the marriage can be cancelled if a husband conduct to polygamy without the approval of Religious Court (Kementrian Agama RI, 2018). Therefore, the judge decided to accept the marriage cancellation of court decision No. 1213/ Pdt.G/2020/PA.Sda because the defendant had polygamous without getting approval from Religious Court.

The chairman of the Sidoarjo Religious Court Assembly stated that there is a polygamy issue without getting Religious Court approval in court decision No. 1213/ Pdt.G/2020/PA.Sda. This case can be solved with the basis of Islamic Law Compilation in Article 71 Letter A.

On the other hand, this case is also contained about other factor in marriage cancellation, that is the plaintiff filed a lawsuit to cancel her marriage because the defendant had falsified his identity. This case with the basis of Islamic Law Compilation Article 72 Paragraph (2), a husband or wife can apply for marriage cancellation if there is a fraud or misunderstanding about husband or wife in their marriage life.

The other factor that the plaintiff filed a lawsuit to cancel her marriage is when the defendant married the plaintiff, he had one child from other his wife. This case with the basis of Islamic Law Compilation Article 71 Paragraph (2), if a husband does polygamy without the approval Religious Court, the marriage can be annulled. The Islamic Law Compilation Article 72 Paragraph (2) is a refinement of Marriage Act No. 1/1974 Article 27 Paragraph (2). The marriage can be cancelled because of several factors that describe in previous discussion in this research. Those all things was conducted to smoothen their plan to marriage.

According to researcher opini about this case of court decision No. 1213/ Pdt.G/2020/PA.Sda, the judge's decision is appropriate with Islamic Law Compilation Article 72 Paragraph (2) because the plaintiff filed a lawsuit of marriage cancellation regarding the defendant admitted to falsifying his ID card and family registers data. He stated that he was a dead widower to smooth his marriage with the plaintiff. In addition, when he married the plaintiff, he had one child from other his wife. In addition, the plaintiff filed a lawsuit cause she had a

trouble in registering her child's birth certification. Their marriage have to cancel because the defendant had polygamous without get approval from Religious Court and his first wife.

This case is a polygamy case because the defendant did polygamous without getting the approval of Religious Court and its marriage has to cancel. When the plaintiff filed a lawsuit, other defendant's wife was died. Therefore, the plaintiff and defendant both agreed to cancel their marriage and will legally remarry.

CONCLUSION

After analyzing this case based on various background and research statement to comply and fulfil this research, then the researcher can provide a conclusion and suggestion such as, first, the factor of marriage cancellation in court decision No. 1213/ Pdt.G/2020/PA.Sda is identity falsification. The defendant had polygamous without getting the approval from Religious Court and his first wife. This case can be solved by referring to Marriage Act Article 27 Paragraph (2) regarding the law on marriage cancellation because of fraud; and Islamic Law Compilation Article 72 Paragraph (2); and the second is the judge used Islamic Law Compilation Article 71 Letter A to solve the case No. 1213/ Pdt.G/2020/PA.Sda regarding marriage cancellation due to identity falsification in polygamy case. The legal consequent of this marriage cancellation is the born child is still be considered legal. When the plaintiff filed a lawsuit, other defendant's wife was died. Therefore, the plaintiff and defendant both agreed to cancel their marriage and will legally remarry.

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