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CRITERIA OF MISTAKE AS GROUNDS FOR ANNULMENT OF MARRIAGE IN INDONESIAN LAW

Aditya Luriza Kanza
Faculty of Law, Airlangga University, Indonesia

Email: aditya.luriza.kanza@gmail.com

Abstract

Marriage is a bond of body and soul between a man and a woman to form a happy and lasting family. Law Number 1 of 1974 concerning Marriage (UUP) and the Compilation of Islamic Law (KHI) stipulate that a marriage can be annulled if the marriage requirements are not met, including "mistake" about one's partner as regulated in Article 27 paragraph (2) of the UUP and Article 72 paragraph (2) of the KHI. However, there is no explicit explanation of the criteria for "mistake," which leads to legal uncertainty and differences in judicial interpretation. This research aims to analyze the criteria for "mistake" and the judges' ratio decidendi in cases of marriage annulment due to mistake. This research uses a normative legal research method with a legislative approach, a case approach, and a conceptual approach. The research findings indicate that "mistake" is a form of defect of will (wilsgebreken) related to an error concerning an essential matter, particularly the personal identity of the partner (error in persona). Analysis of three court decisions (PTA Surabaya No. 434/Pdt.G/2021/PTA.Sby, PN Malang No. 129/Pdt.G/2021/PN.Mlg, and MA No. 1360 K/Pdt/2012) shows that the judges narrowly interpreted "mistake." Reasons such as identity pre-existing marital status are not included in the category of "mistake" as defined in the legislation.

Keywords: Marriage Annulment, Mistake, Law of Obligation, Ratio Decidendi

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I. INTRODUCTION

Marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the One Almighty God as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as UUP). In Article 1 of the Compilation of Islamic Law (hereinafter referred to as KHI), marriage is a very strong miitsaaqan gholidon (very strong contract)[1] to obey Allah's commands and carrying it out is an act of worship. A marriage is declared valid if it is conducted according to the laws of each faith as formulated in Article 2 of the UUP. This article can be understood to mean that a marriage is valid for Muslims if it fulfils the pillars and requirements of marriage in Islamic law as contained in the KHI.[2]

If the stipulated requirements and conditions are not met, it may result in the marriage being deemed to have no legal effect as a valid marriage bond. In such cases, the marriage is

[1] Rachman, H.M. Anwar, Prawitra Thalib, Saepudin Muhtar, *Hukum Perkawinan Indonesia, dalam Perspektif Hukum Perdata, Hukum Islam , Dan Hukum Administrasi* (Jakarta: Prenadamedia Group 2020) [7]
[2] Shomad, Abdul, *Hukum Islam: Pernormaan Prinsip Syariah dalam Hukum Indonesia* (Jakarta: Kencana, 2012) [261]

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null and void (nietig) or voidable (fasid/vernietigbaar) according to the explanation in the KHI.[3] The annulment of a marriage is not merely an act of cancelling the marriage bond, but also results in significant changes in the relationship between the husband, wife, and children born in the marriage because the marriage is considered never to have existed.[4] The annulment of a marriage can occur because the parties were in a state of error or ignorance regarding the formal and material requirements for parties who wish to get married.[5] The requirements for a valid marriage are broadly regulated in Article 2 of the UUP and further regulated in Articles 6 to 11 of the UUP. The UUP states that a marriage may end due to death, divorce, or a court decision. The annulment of marriage as regulated in Article 22 of the UUP states that a marriage may be annulled if the parties do not meet the requirements for marriage. The parties who may file for annulment of a marriage as stipulated in Article 23 of the UUP include:

a. Family members in the direct line of descent from the husband or wife;

b. The husband or wife;

c. The authorised official, but only as long as the marriage has not been dissolved;

d. Officials appointed as referred to in paragraph (2) of Article 16 of the UUP and any person who has a legal interest in the marriage, but only after the marriage has been dissolved.

The officials referred to as parties who may file for annulment of a marriage are specifically regulated in Article 26, namely prosecutors handling marriages conducted before unauthorised marriage registrars, an invalid marriage guardian, or conducted without the presence of two witnesses, may be annulled by the family in the direct line of descent from the husband or wife, the prosecutor, and the husband or wife.

The existence of 'misunderstanding' at the time of the marriage is regulated in Article 27 paragraph (2), namely that a husband or wife may file for annulment of the marriage if at the time of the marriage there was a misunderstanding regarding the husband or wife. Article 72 paragraph (2) of the KHI states that a husband or wife may file for annulment of the marriage if at the time of the marriage there was fraud or a misconception about the husband or wife.

Wrong means incorrect; untrue, mistaken; erroneous, deviating from what should be, missed; not hitting the target; failed, flawed; defective, erroneous. Suspicion means guess; assumption, doubt; uncertainty. The meaning of misunderstanding is to misunderstand; to be mistaken. Fraud means the process, method, or act of deceiving; a matter of deceiving or cheating, meaning to cheat is to outwit someone in an unscrupulous manner; to lie with the intention of deceiving.

Misconception is divided into two types, namely misconception that contains an element of intent and misconception that does not contain an element of intent. One element of intent or deception is identity fraud. Identity fraud can be used as legal grounds for annulment of marriage. There is a similarity or near similarity between misconception and deception, meaning that deception falls under the category of misconception, but misconception does not necessarily fall under deception. The main difference is that fraud involves intentional elements, while mistaken belief does not involve intentional elements, so that the marriage occurs due to the ignorance of the husband and wife.[6] Based on this description, this study will discuss the analysis of marriage annulment due to mistaken belief or falsification of identity documents.

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[3] *Ibid* [266]
[4] Rachman, H.M. Anwar, Prawitra Thalib, Saepudin Muhtar, *Op.Cit*, [249]
[5] *Ibid* [245]
[6] Muhammad Haka Rahman Hakim dan Anjar Sri Ciptorukmi, 'Salah Sangka dan Penipuan Pada Pasal 27 Ayat (2) Undang-Undang Nomor 1 Tahun 1974 Jo. Pasal 72 Ayat (2) Kompilasi Hukum Islam tentang Perkawinan' (2019) 7 *Jurnal Privat Law* [13-17]

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II. METHODOLOGY

This normative legal research aims to identify legal provisions related to mistaken identity in marriage annulment through a statute approach, case approach, and conceptual approach.[7] The statute approach analyses eight main regulations: 1945 Constitution Article 28B(1), BW Book III (wilsgebreken), Law No. 1/1974 jo. No. 16/2019 Article 27(2), Religious Court Law No. 7/1989 jo. No. 3/2006 jo. No. 50/2009, Government Regulation No. 9/1975, and KHI Article 72(2). The case approach examines Surabaya PTA Decision No. 434/Pdt.G/2019/PTA.Sby to identify the ratio decidendi of the application of norms and the protection of injured parties. The conceptual approach examines misapprehension as an error in persona related to free will, contractual honesty, and the rights of spouses. Primary legal sources include nine laws and regulations, while secondary sources include books, journals, theses, court decisions, and expert opinions. The collection procedure uses library research with descriptive-analytical analysis to form a theoretical framework that answers the problem formulation of marriage annulment due to a misconception about the husband or wife.

III. CRITERIA OF MISCONCEPTION CONCERNING THE IDENTITY OF THE HUSBAND OR WIFE UNDER ARTICLE 27 PARAGRAPH (2) OF THE MARRIAGE LAW IN CONJUNCTION WITH ARTICLE 72 PARAGRAPH (2) OF THE COMPILATION OF ISLAMIC LAW

A. The Legal of Annulment of Marriage

Marriage establishes both a legal and spiritual bond between a husband and a wife. In practice, however, not all marriages endure until death, as various legal and factual circumstances may lead to the termination of the marital relationship. Pursuant to Article 38 of the Indonesian Marriage Law (Undang-Undang Perkawinan), a valid marriage may be terminated by death, divorce, or a court decision.[8] Termination of marriage, particularly through judicial intervention, gives rise to legal consequences concerning spousal relations, child custody, the division of joint property, and maintenance obligations.[9]

Termination by court decision may occur through divorce or annulment of marriage. Annulment arises where a marriage fails to satisfy substantive or formal legal requirements, or where its validity is contested by the husband, the wife, or a third party.[10] Although Article 2 paragraph (1) of the Marriage Law determines the validity of marriage based on compliance with religious law, neither the Marriage Law nor its implementing regulation, Government Regulation No. 9 of 1975, provides an explicit definition of annulment of marriage.[11] Consequently, annulment as the judicial invalidation of a marriage that has already been concluded due to non-compliance with statutory requirements.

Annulment of marriage must be resolved through contentious court proceedings and cannot be granted through voluntary applications. Articles 22 to 28 of the Marriage Law affirm that annulment may only be effected by a court judgment. Furthermore, Article 27 paragraph (3) restricts the right to seek annulment to a period of six months following the cessation of coercion or the discovery of a mistake, provided the parties continue to live together as husband and wife.

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[7] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: RajaGrafindo Persada, 2013) [13]
[8] Rachman, H.M. Anwar , Prawitra Thalib, Saepudin Muhtar, *Op.Cit.* [219]
[9] Pratama Septiandi, Setyaningsih, 'Analisis Yuridis Terhadap Putusnya Perkawinan Akibat Perceraian Menurut Kompilasi Hukum Islam (Studi Kasus Putusan Nomor 324/Pdt.G/2017/PA/Tng)', (2019) 1 *Jurnal Trisakti,* [12-13]
[10] *Ibid.* [245]
[11] *Ibid.* [246]

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Applications for annulment must be submitted to the competent court within the jurisdiction where the marriage was celebrated or where the spouses reside, namely the Religious Court for Muslims and the District Court for non-Muslims. The procedural stages include the filing of a claim, the summoning of the parties, court hearings, mandatory reconciliation efforts, and the delivery of a judgment. Although proceedings are conducted in closed sessions, judgments must be pronounced in open court and take retroactive legal effect from the date on which the marriage was concluded.[12]

B. Criteria for Misconceptions The Identity

Misrepresentation is confirmed in Article 27 paragraph (2) of the UUP and Article 72 paragraph (2) of the KHI. Article 27 paragraph (2) reads, 'A husband or wife may file for annulment of marriage if, at the time of the marriage, there was misrepresentation regarding the husband or wife.' Meanwhile, Article 72(2) of the KHI states, 'A husband or wife may file for annulment of marriage if, at the time of the marriage, there was fraud or a misconception about the husband or wife.' A mistake is a misunderstanding of the nature of the subject matter of the contract as referred to in Article 1322(1) of the Burgerlijk Wetboek (hereinafter referred to as BW). According to Subekti, a mistake can occur regarding the person or the object that is the subject of the agreement between the parties. For example, a mistake regarding a person occurs if a famous singer is mentioned, but it later turns out that this is not the person intended.[13] In addition, forgery as described in Article 1328 paragraph (1) of the Civil Code is grounds for cancellation of an agreement if the deception used by one party is such that it is clear that the other party would not have entered into the agreement if the deception had not been used. Furthermore, Article 1328 paragraph (2) of the Civil Code emphasises that forgery is not presumed, but must be proven by the aggrieved party. Therefore, if forgery occurs in the grounds used, the aggrieved party must prove that it has occurred. Misconception as referred to in Article 27 of the UUP and Article 72 of the KHI as grounds for requesting the annulment of a marriage in civil law is found in defects of consent (wilsgebreken)[14] as specified in Article 1321 of the BW. Then, the most well-known types of mistakes (dwaling) are:

1. Error in substantia,[15] where the party making the agreement is mistaken about the essential nature of the object of the agreement.

2. Error in persona,[16] where the fault lies with the person who is the subject of the agreement.

According to Muhammad Haka, mistaken belief is classified into two types:[17]

1. Mistaken belief without intentional elements
2. Mistaken belief with intentional elements/fraud.

Mistaken belief without intentional elements explains that if the marriage has been carried out and is in accordance with the procedures stipulated in the law, but there are reasons that prohibit the marriage without the knowledge of both parties, such as the bride and groom being siblings from the same mother, and there was no discussion between the bride and groom before

[12] Prawirohamidjojo, R. Soetojo. dan Marthalena Pohan, *Hukum Orang dan Keluarga,* (*Airlangga University Press,* Surabaya, 2008) [8]
[13] Subekti, Pokok-Pokok Hukum Perdata, (Jakarta, Intermasa, 1995) [135]
[14] Prawirohamidjojo, R. Soetojo, Marthalena Pohan, *Hukum Perikatan*. (Surabaya: Bina Ilmu. 1979) [132]
[15] *Ibid*. [138]
[16] *Ibid*. [141]
[17] Hakim, Muhammad Haka Rahman, *Op.Cit*. [13-17]

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the marriage, or there was no element of deception before the marriage, it is concluded that the marriage can be annulled by law and the court must annul the marriage. Meanwhile, a false assumption of intent, or what can be called fraud, is when there is an intention to proceed with the marriage officially before an authorised officer so that it can be considered valid. An example of this is when, before the marriage, the husband deliberately falsifies his identity as a bachelor when he has already been married and is still the husband of another person.

In addition, if there is a discussion or preliminary agreement before the marriage takes place and the agreement is not true (a lie), then it can be considered fraud, and the marriage can be annulled by the court.[18] Therefore, deliberately causing misunderstanding cannot be considered fraud (bedrog). The conditions for bedrog or fraud to occur are: the existence of deliberate deception; causing a mistake on the part of the other party to the extent that it becomes the main reason for the agreement.[19] This distinction is important because not all mistakes can be categorised as fraud.

In the context of marriage, misunderstanding focuses more on reasonable ignorance, not on the element of deliberate deception. Based on the criteria outlined above, a marriage can be annulled. The annulment removes the bond between husband and wife as stipulated in Article 1381 of the Civil Code, but does not remove the legal consequences for children and joint property that have arisen during the marriage (Article 28 UUP Jo. Article 75 KHI).

However, in logical reasoning,[20] the criteria for misunderstanding are fulfilled in the sense that the requirements and conditions for marriage as stipulated in Chapter II Articles 6 to 12 in conjunction with Chapter IV Articles 14 to 29 of the KHI are met. In a contract, four conditions must be met for the contract to be valid, where the four conditions are divided into two types of conditions, subjective and objective. The subjective and objective conditions include:[21]

1. Subjective conditions
a. Agreement that creates a contract
b. Competence to create a contract

In marriage, as regulated in the UUP, the subjective requirements are contained in Article 6 of the UUP Jo. Article 16, where marriage is based on the consent of both parties. Regarding capacity, it is regulated in Article 1 paragraph (1) of Law Number 16 of 2019 concerning Amendments to the UUP, whereby formally and materially,[22] if the party proposing the marriage meets the capacity requirements, namely being 19 years of age for both the prospective husband and wife.[23]

2. Objective requirements
a. A specific subject matter
b. A permissible cause

As an objective requirement, a specific subject matter is a legal event, namely, marriage, which is the subject of the agreement. The parties concerned, referred to as the parties to the agreement, are required to behave as husband and wife. A permissible cause is the legal

[18] Supriyatno, Sumarwoto, Arie Purnomosidi, "Akibat Hukum Pembatalan Perkawinan Karena Penipuana atau Salah Sangka (Studi Kasus Putusan Pengadilan Agama Surakarta Nomor: 0340/Pdt.G/2019/Pa.Ska), *Rechstaat Nieuw Jurnal Ilmu Hukum 5* 2021
[19] R. Soetojo Prawirohamidjojo., Marthalena Pohan. *Op.Cit.* [144]
[20] Qodri, Miftahul. ""BENANG MERAH" PENALARAN HUKUM, ARGUMENTASI HUKUM DAN PENEGAKAN HUKUM." (2019) 7 *Jurnal Hukum Progresif*
[21] Abdullah, M. Z. "Kajian Yuridis terhadap Syarat Sah dan Unsur-unsur dalam suatu Perjanjian." (2010) *Lex Specialist*
[22] M.Taufiq, "Konsep dan Sumber Hukum: Analisis Perbandingan Sistem Hukum Islam dan Sistem Hukum Positif", (2021) 5 *Jurnal Ekonomi dan Hukum Islam*.
[23] Subekti, Trusto. "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Ditinjau Dari Hukum Perjanjian." (2010) 10 *Jurnal Dinamika Hukum*

consequence of a legal event, namely, the intention of the parties.[24] Therefore, a marriage can be annulled if it does not formally or materially meet the requirements for marriage. Meanwhile, the application of misapprehension in Article 27 paragraph (2) of the UUP is interpreted as meaning that if the husband or wife does not meet the subjective and objective criteria, then it can be interpreted that the fulfilment of these requirements has not been carried out, so the agreement can be annulled or the marriage is considered never to have existed.

IV. RATIO DECIDENDI OF COURT DECISIONS IN APPLYING THE CRITERIA OF MISCONCEPTION AND ITS IMPLICATIONS FOR LEGAL PROTECTION OF THE AGGRIEVED PARTY

A. Putusan Nomor 434/Pdt.G/2021/PTA.Sby

1. Case

The case that is the subject of analysis in the Surabaya Religious High Court (PTA) decision Number 434/Pdt.G/2019/PTA. Sby originated from a petition for annulment of marriage filed by the Petitioner (hereinafter referred to as the Appellant) against Respondent I (hereinafter referred to as the First Respondent) and Respondent II (the Religious Affairs Office of Ungaran Subdistrict, Semarang Regency, hereinafter referred to as the Second Respondent).

The Appellant argued that the First Respondent had concealed his previous marital status. At the time of the marriage ceremony, the First Respondent presented an electronic identity card (e-KTP) with the status ‘unmarried’, when in fact he had previously been married to a man named Rifki Herman Zulkarnain M. In addition, the Appellant questioned the legitimacy of the child born on 7 January 2018 named Erland Ang Cetta, because according to him the child was conceived before the marriage took place. He requested that the court order a DNA test.

In the Mojokerto Religious Court's decision No. 2891/Pdt.G/2018/PA.Mr, the panel of judges rejected all requests. The petitioner could not accept the panel of judges' decision and subsequently filed an appeal with the Surabaya Religious Court. The appeal was filed 13 days after the first-instance decision, still within the time limit stipulated in Article 7(1) of Law No. 20 of 1947 on Retrial, and was therefore formally accepted for review.

2. Judicial Considerations

The Surabaya PTA panel of judges first conducted a formal and material examination. In terms of formality, the panel of judges assessed that the appeal was filed on time, thus fulfilling the administrative requirements. Therefore, the appeal was declared formally admissible. Meanwhile, in terms of substance, the allegations of misrepresentation and fraud were proven, as the Appellant and Respondent I had been in a relationship for more than one year, accompanied by a proposal process prior to the marriage contract.

Furthermore, the Appellant was aware of Respondent I's background, even though the e-KTP stated the status as ‘unmarried,’ as changes to population data require time, and this was agreed upon. Article 27 paragraph (2) of the UUP and 72 (KHI) concerning the annulment of marriage due to misrepresentation or fraud cannot be applied, because there is no evidence of substantial misrepresentation or deception.

Furthermore, regarding the status of the child and the request for a DNA test under Article

[24] *Ibid.* [7]

42 of the Marriage Law, a child born in or as a result of a valid marriage is recognised as a legitimate child. The Respondent did not pursue the li'an mechanism (oath to reject parentage) as stipulated in Articles 87-88 of the KHI and did not submit DNA test evidence in accordance with Article 1865 of the Civil Code. Furthermore, regarding the Comparator's request for the deletion of the marriage certificate because the request for annulment of the marriage was not granted, there is no legal basis for ordering the deletion of the marriage certificate from the data registered at the Office of Religious Affairs.

The panel of judges emphasised the principle of presumption of validity of marriage, namely that a marriage that has been conducted in accordance with the pillars and requirements remains valid until there is a court decision with permanent legal force stating otherwise. Therefore, the request for a DNA test was rejected and the child born remains the legitimate child of both parents.

3. Analysis

In this case, 'misconception' is interpreted as an error regarding the identity or fundamental circumstances of the married couple that affects the agreement in the marriage contract. Such a mistake constitutes a defect of consent (wilsgebreken) as stipulated in Article 1321 of the Burgerlijk Wetboek (BW), which states that an agreement born of a mistake (dwaling) or fraud (bedrog) may be annulled. Further explanation is provided in Article 1322 BW, which states that dwaling only results in annulment if the mistake concerns the nature of the goods or persons that are the subject of the agreement, and Article 1328 BW, which emphasises that fraud must be proven and cannot be presumed. This is further reinforced in relation to 'misconception' as stated in Article 27 paragraph (2) of the UUP and Article 72 paragraph (2) of the KHI, which states that there is no evidence of misconception regarding the spouse. The fact is that the marriage between the Comparator I and the Respondent I went through a proposal process, and the Comparator was aware of the pregnancy and marital status. Although it was proven that the wife was unmarried based on her identity card (KTP). Based on this, according to the book I'anatuth Tholibin, fasakh can only be carried out if there are defects such as impotence or failure to fulfil the requirements of the marriage contract that were stated. Other than this, there are no specific requirements in the marriage contract that have been violated, so there are no grounds for fasakh.

Regarding the status of the child and the DNA test requested by the respondent, based on Article 42 of the UUP, which explains that a legitimate child is a child born in or as a result of a valid marriage. In other words, the status of the child remains valid as the respondent's child. Thus, the ratio decidendi of this decision is that the annulment of a marriage due to a mistake can only be granted if there is evidence of a fundamental error regarding the identity of the spouse that affects the marriage agreement. When the parties were aware of the disputed condition before the marriage contract, or the error is not essential, the request for annulment cannot be accepted.

B. Putusan Nomor 129/Pdt.G/2021/PN.Mlg

1. Case

The Malang District Court Decision Number 129/Pdt.G/2021/PN Mlg is a civil dispute relating to the filing of a lawsuit for unlawful acts (PMH) by Ursula Carolina against Johan Sugiharto (Defendant I) and Ririn Supriati (Defendant II). The subject of the dispute is the

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submission of a request for itsbat nikah (marriage validation) by Defendant I and Defendant II at the Malang District Religious Court, which was granted by Decree Number 0962/Pdt.P/2019/PA.Kab.Mlg dated 20 August 2019, even though Defendant I was still legally married to the Plaintiff. The Plaintiff and Defendant I were legally married on 25 May 2013 and have two children. However, in 2019, Defendant I and Defendant II filed for itsbat nikah at the Malang Regency Religious Court on the grounds that they had conducted a marriage ceremony on 10 December 2007. The petition was granted. The Plaintiff argued that this action violated Article 27 of the Marriage Law and Articles 284, 279, and 266 of the Criminal Code. The lawsuit was filed to have the Religious Court's decision overturned and declared invalid.

2. Judicial Considerations

The Panel of Judges considered that the subject matter of the lawsuit could not be separated from the Religious Court's decision to validate the marriage of Defendant I and Defendant II. Based on Article 49 of Law No. 3 of 2006 in conjunction with Article 50 of Law No. 49 of 2009, disputes regarding itsbat nikah (confirmation of marriage) are the absolute authority of the Religious Court, not the General Court. Supreme Court Case Law No. 3302.K/Pdt/1996 confirms that a petition for annulment of a court ruling can only be submitted through an appeal to the Supreme Court. The Panel of Judges also rejected the argument of unlawful acts. Although the Plaintiff referred to Article 1365 of the Civil Code, the elements of unlawful acts were not fulfilled. There was no criminal verdict proving violations of Articles 284, 279, and 266 of the Criminal Code, so the principle of presumption of innocence must be prioritised.

3. Analysis

In this decision, the core issue does not concern mistaken identity of the spouse, but rather judicial competence and allegations of unlawful conduct. The Applicant argued that Defendant I (the husband) entered into a second marriage through *itsbat nikah* with Defendant II while still legally bound by a valid marriage with the Applicant. Such conduct was alleged to violate Article 27 of the Marriage Law, as well as Articles 284, 279, and 266 of the Indonesian Criminal Code (KUHP). The judgment affirms the principle of absolute jurisdiction as a fundamental pillar of procedural law. Substantively, matters relating to marriage under Islamic law fall within the exclusive jurisdiction of the Religious Court and cannot be examined by the District Court. This is expressly stipulated in Article 49 of Law Number 7 of 1989 on Religious Courts, which provides that:

1. The Religious Court has the duty and authority to examine, decide, and resolve cases at first instance between persons of the Islamic faith in the fields of:
a. marriage;
b. inheritance, wills, and grants conducted under Islamic law;
c. waqf and almsgiving (*shadaqah*).

2. The field of marriage as referred to in paragraph (1) includes matters regulated in or based on legislation governing marriage.

3. The field of inheritance as referred to in paragraph (1) includes determining the lawful heirs and the distribution of inherited property.

Furthermore, Article 30 of Law Number 14 of 1985 on the Supreme Court also regulates absolute jurisdiction, stipulating that the Supreme Court at the cassation level may annul judgments or determinations of courts from all judicial jurisdictions on the grounds that:

a. the court lacked jurisdiction or exceeded its authority;
b. the court misapplied or violated applicable law;
c. the court failed to fulfil procedural requirements mandated by law, where such failure results in nullification of the judgment concerned.

This decision also reflects the principle of the presumption of innocence, implicitly rejecting the allegations of criminal offences under Articles 279, 284, and 266 of the Criminal Code as premature. This aligns with Article 8 paragraph (1) of the Criminal Procedure Code (KUHAP), which enshrines the presumption of innocence. Although it was factually asserted that Defendant I entered into a marriage while still legally bound to Defendant II under Islamic law, such circumstances were not legally established within the proper legal forum.

Moreover, the allegation of an unlawful act (*onrechtmatige daad*) as regulated under Article 1365 of the Civil Code was also unproven. There was no criminal judgment declaring that Defendant I had violated Articles 279, 284, or 266 of the Criminal Code. Consequently, the presumption of innocence as stipulated in Article 8 paragraph (1) of the Criminal Procedure Code continues to apply.

C. Putusan Mahkamah Agung Kasasi Nomor 1360 K/Pdt/2012

1. Case

This case originated from an application submitted by a wife (the Applicant) who married the Respondent on 15 January 2011 at a Christian Church. The marriage was officially registered on 17 January 2011 at the Civil Registry Office of Bandung City. Following the marriage, the Applicant discovered that the Respondent failed to fulfil his physical and spiritual obligations as a husband and was allegedly of a different sexual orientation. Medical examination indicated that the Applicant remained a virgin.

The Applicant considered that a "mistake concerning the identity of the husband" *(salah sangka mengenai diri suami)* had occurred within the meaning of Article 27 paragraph (2) of the Marriage Law (UUP), and therefore sought annulment of the marriage. The Bandung District Court rejected the application on the grounds that "mistake" *(salah sangka)* is to be interpreted narrowly as limited to mistaken identity of the spouse. The Applicant subsequently filed a cassation appeal to the Supreme Court.

2. Judicial Considerations

The Bandung District Court held that:

- Article 27 paragraph (2) of the Marriage Law must be interpreted restrictively as referring solely to mistaken identity, such as marrying a person other than the one originally intended;
- The husband's inability to engage in marital relations or an alleged different sexual orientation does not constitute a legal ground for annulment of marriage;
- There was no violation of the legal requirements for a valid marriage as stipulated in Article 22 of the Marriage Law.

The Supreme Court rejected the cassation appeal on the grounds that:

- The allegation of mistake advanced by the Applicant did not fall within the scope of Article 22 of the Marriage Law;
- A different sexual orientation and biological incapacity are categorised as personal conditions rather than mistaken identity as intended by the statute;
- No error in the application of law was found on the part of the *judex facti* (the Bandung District Court).

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3. Analysis

In the judgment, the judges interpreted the concept of *"mistake" (salah sangka)* through grammatical and sociological approaches. Linguistically, *salah sangka* as referred to in the judgment denotes a misunderstanding or misapprehension. If interpreted more broadly, it may encompass a misunderstanding not only of the identity but also of the fundamental condition of the spouse. In addition to grammatical and sociological interpretation, the court also considered historical and teleological interpretation, which explains that the objective of marriage under Article 1 of the Marriage Law is to establish a happy and enduring family. This objective may be understood as requiring both physical and emotional relations, such that a total inability to engage in marital relations could be regarded as obstructing the purpose of marriage.

In this case, *salah sangka* was invoked by the Applicant on the grounds that the husband was unable to fulfil his physical and emotional marital obligations and was alleged to have a different sexual orientation. The Applicant argued that such circumstances frustrated the purpose of marriage as stipulated in Article 1 of the Marriage Law, namely the formation of a happy and lasting family, and therefore sought annulment of the marriage pursuant to Article 27 paragraph (2) of the Marriage Law.

At first instance, the Bandung District Court interpreted *salah sangka* narrowly, confining it to an error of identity (*error in persona*), such as confusion regarding the person intended in the marital agreement. Biological incapacity or sexual orientation was not regarded as an error of identity affecting the validity of the marriage. On this basis, the application for annulment was rejected. The Supreme Court, at the cassation level, affirmed this decision on the grounds that:

- there was no error in the application of law by the *judex facti* (the Bandung District Court);
- Article 22 of the Marriage Law provides grounds for annulment only where the legal requirements for a valid marriage are not fulfilled, whereas biological incapacity and sexual orientation do not constitute requirements for the validity of marriage; and
- no *dwaling* or *bedrog* as regulated under Articles 1321 and 1328 of the Civil Code was proven, as the alleged mistake did not concern the identity that formed the essential basis of the marital consent.

V. CONCLUSION

This research clarifies the legal construction of salah sangka as a ground for annulment of marriage within Indonesian marriage law by positioning it firmly within the doctrine of defective consent (wilsgebreken). The analysis confirms that judicial interpretation consistently limits salah sangka to mistakes concerning the essential identity of the spouse (error in persona), rather than extending it to undisclosed personal conditions that affect marital life. By answering the research aims, this study establishes that current judicial reasoning prioritises formal legality and legal certainty over a broader, purposive understanding of marital consent, even where the substantive objectives of marriage may be compromised.

The significance of these findings lies in their implications for legal protection within marriage annulment proceedings. The narrow interpretative approach adopted by courts restricts remedial access for spouses who experience genuine detriment arising from fundamental misunderstandings at the time of marriage. This research therefore contributes to doctrinal clarity while simultaneously revealing a normative gap between the legal concept of consent and lived marital realities. Such findings provide a critical foundation for future doctrinal

development and policy consideration, particularly in refining the balance between marital stability, legal certainty, and the protection of individual autonomy in marital consent.

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