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Marriage Cancellation due to Force and Threats (Juridical Review of the Decision of the Religious Court of Tanjung Karang Regency Number 0174/Pdt.G/2020/PA.Tnk)

Kasmudin Harahap

Institut Pendidikan Tapanuli Selatan Padangsidimpuan, Indonesia

E-mail: kasmudinhrp@gmail.com

Abstract

Arrangements for the annulment of marriages are regulated in Articles 22 to 28 of the Marriage Law. In the provisions of Article 22 it stipulates that "a marriage can be annulled if the parties do not meet the requirements to enter into a marriage." Article 25 of the Marriage Law stipulates that an annulment of a marriage can be made by submitting an application to the court in the legal area where the marriage is taking place or at the residence of both husband and wife. One of the reasons for the annulment of a marriage is that there is a threat that violates the law against the husband or wife (Article 27 Paragraph (1) of the Marriage Law), or in the implementation of the marriage there is coercion in Article 71 Letter f KHI. The basis for the judge's consideration in granting the Petitioner's request was in the decision of the Tanjung Karang Religious Court Number 0174/Pdt. G/2020.PA. Tnk, that according to Law Number 50 of 2009 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts, the examination of cases of marriage annulments submitted by the Petitioners is the absolute and relative authority (competence) of the Tanjung Karang Religious Court. Furthermore, the arguments for the petitioner's petition are legally grounded, in accordance with the provisions of Article 27 Paragraph (1) of the Marriage Law in conjunction with Article 70 of the KHI.

Keywords: Cancellation, Marriage, Threat.

1. Introduction

According to Soedharyo Saimin, marriage is an agreement made by two people, namely an agreement made between a man and a woman with a material goal, namely to form a happy and eternal household based on the One Godhead.¹ The definition of marriage put forward by Soedharyo Saimin above is almost the same as the definition of marriage formulated in Article 1 of Law Number 1 of 1974 concerning Marriage, which states: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of form a happy and eternal family (household) based on God Almighty.

As a form of inner and outer bond, a marriage is not only realized by the consent of the groom and his guardian as a representative of the bride, but more than that requires sincerity or willingness and approval from both parties. This is what underlies

¹Soedharyo Saimin, 2006, Person and Family Law, Jakarta: Sinar Graphic, p. 2



Ali Afandi's opinion which states that marriage is a family agreement.² The affirmation of the necessity of having the consent of both parties (prospective groom and bride) in carrying out a marriage, can be seen in Article 6 Paragraph (1) of the Marriage Law which states: "Marriage must be based on the approval of the two prospective brides".

The legal implications of the absence of consent from one of the parties or the existence of coercion and threats to one of the parties in carrying out a marriage will result in the cancellation of the marriage. This is as regulated in Article 22 of the Marriage Law, which reads: "A marriage can be annulled, if the parties do not meet the requirements to enter into a marriage".

The phrase "can" means, the marriage can be annulled or vice versa can not be canceled. The annulment of marriage, for those who are Muslim, is submitted to the Religious Court. If the Religious Court based on its considerations considers that the application for annulment of the marriage is appropriate to be granted, then the court may determine the cancellation of the marriage being requested. As an example of the case, the marriage annulment was submitted to the Tanjung Karang Religious Court in the decision Number 0174/Pdt.G/2020/PA.Tnk.

Based on the background of the problem above, the formulation of the problem is determined as follows:

- a. What are the arrangements and procedures for applying for an annulment of marriage?
- b. What is the basis for the judge's legal considerations in granting the cancellation of the marriage application due to coercion and threats in the decision of the Religious Court Decision Number 0174/Pdt.G/2020/PA. tnk?

2. Research Methods

This research is included in normative legal research (normative juridical). Meanwhile, judging from its nature, legal research can be divided into 3 (three) types, namely: 1) exploratory research, 2) descriptive research, and 3) explanative research.³ Judging from its nature, this research is descriptive analytical.⁴

The source of data in this study comes from secondary data, namely data obtained from library research consisting of primary, secondary and tertiary legal materials.⁵

Data collection in this study was carried out through the implementation of library research. Literature research is carried out by reading literature or reading materials in the form of books, magazines, journals and also legal dictionaries related to the problems being studied.

Data analysis in this study used qualitative data analysis. Qualitative data analysis is an effort made by working with data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, discovering what is important and what is learned and deciding what to tell others. The final stage of research analysis is drawing conclusions. Drawing conclusions The method of thinking used is the

²Ali Afandi, 1988, *Inheritance Law, Family Law, and the Law of Evidence According to the Civil Code*, Jakarta: Binar Aksara, p. 94

³Amiruddin & Zainal Asikin, 2014. *Introduction to Legal Research Methods*. Jakarta: Rajawali Pers, p. 25-26.

⁴Peter Mahmud Marzuki. 2014. *Legal Research*. Jakarta: Kencana Pranada Media Group, p. 128.

⁵Soerjono Soekanto & Sri Mamudji. 2013. *Normative Legal Research*. Jakarta: Rajawali Pers, p. 13

method of deductive thinking, namely the way of thinking in drawing conclusions drawn from something general that has been proven to be true and the conclusion is intended for something specific.

3. Results and Discussion

a. Arrangement and Procedures for Application for Marriage Cancellation

Arrangements for the annulment of marriages are regulated in Articles 22 to 28 of the Marriage Law. In the provisions of Article 22 determines that "a marriage can be annulled if the parties do not meet the requirements to enter into a marriage." Thus, it can be understood that an application for annulment of marriage can be submitted if the conditions for carrying out a marriage are not met.

According to the Marriage Law, there are two types of requirements to enter into a marriage, namely: material requirements and formal requirements. The material requirement for a marriage is that there is no prohibition for the parties to carry out a marriage as stated in Article 8 of the Marriage Law. While the formal requirements to enter into a marriage are the conditions as regulated and mentioned in Article 6 and Article 7 of the Marriage Law.

According to Article 25 of the Marriage Law, an annulment of a marriage can be made by submitting an application to the court in the jurisdiction where the marriage took place or at the residence of both husband and wife. Thus, the annulment of marriage is filed according to the absolute competence and relative competence of the court.

In connection with the annulment of marriage in Case Number 0174/Pdt.G/2020.PA.Tnk, it is known that the parties here adhere to or are Muslim, so that the authority to examine and adjudicate applications for annulment of marriages is the absolute competence of the religious court (in this case Tanjung Karang Religious Court) according to the domicile or place of residence of the parties.

The reason for submitting an application for annulment of marriage is that in carrying out the marriage there is a threat that violates the law against the husband or wife as stated in Article 27 Paragraph (1) of the Marriage Law.

Meanwhile, according to the provisions of Article 71 of the Compilation of Islamic Law, a marriage can be annulled or annulled, if:

- 1) A husband practices polygamy without the permission of the religious court;
- 2) The woman who was married was later discovered to be the wife of another man who was *mafqud*;
- 3) The woman who is married turns out to be still in the *iddah* period of another husband;
- 4) Marriage that violates the marriage age limit, as stipulated in Article 7 of Law Number 1 of 1974;
- 5) The marriage is carried out without a guardian or carried out by an unauthorized guardian;
- 6) Forced marriages.

From the two provisions above, there are editorial differences regarding the reasons for the annulment of marriages regulated in the Marriage Law and KHI. In the Marriage Law, marriage uses the word "threat", while in the KHI it uses the word

"coercion". Although there are differences in the use of editorials in the two formulations of articles regulated in the Marriage Law and KHI, the purpose and purpose of the formulation of the articles are the same, namely to show that in carrying out the marriage there is no agreement from one of the prospective brides (husband or wife), which is a formal requirement for marriage. So that it has legal implications for submitting a request for annulment of the marriage by interested parties to the court.

Article 6 Paragraph (1) of the Marriage Law in conjunction with Article 16 Paragraphs (1) and (2) of the KHI, clearly states that a marriage must obtain the approval of both parties of the prospective bride and groom (prospective husband or wife). In the absence of approval from one of the parties, the marriage does not meet the formal requirements for a marriage, so it can be canceled.

The provisions mentioned above are intended so that a marriage is truly based on willingness, which is filled with mutual love and affection for one another, so that the husband and wife after marriage can achieve the goal of marriage, namely to form a happy and eternal household. based on the One Godhead.

The provisions for the annulment of marriages are based on the reason that in carrying out the marriage there has been a threat or coercion, because in reality what happens in society is often coercion, especially by parents against their children to carry out marriages (matchmaking), especially against girls.

Miftah Faridhl, explained that forcing a child to marry someone she doesn't like and loves is a bad start to a household, this is because love cannot be forced, while love is very important in building a household.⁶

b. The Judge's Legal Considerations in Granting the Cancellation of a Marriage Application Due to Coercion and Threats in the Decision of the Religious Court Decision Number 0174/Pdt.G/2020/PA. Mr.

1) Sit down

Application for annulment of marriage in case Number 0174/Pdt. G/2020.PA. Tnk, submitted by the Plaintiff in writing through his attorney to the Tanjung Karang Religious Court, which is registered with the clerk of the Tanjung Karang religious court with case register Number: 0174/Pdt.G/2020/PA. Tnk, dated January 23, 2020.

In the arguments that became the reason for the petition for annulment of marriage by the Petitioner, it basically stated that the marriage between the Petitioner and the Respondent, which was held on October 20, 2019 at the Labuhan Ratu Religious Affairs Office with the marriage guardian of the Petitioner's own parents, was registered at the District KUA Labuhan Ratu, Bandar Lampung City with the Marriage Deed Number: 0235/17/10/2019, dated October 21, 2019, not based on the approval of the Petitioner, but because of coercion from the Petitioner's parents.

The Petitioner's parents always force the Petitioner to get married, considering the age of the Petitioner who has reached 27 years, so that the parents feel ashamed if the Petitioner does not get married. The culmination of the quarrel between the Plaintiff and the Defendant occurred on the wedding day, because the Petitioner had never loved or liked the Respondent. However, because the Petitioner respects the

⁶Miftah Faridhl, *Marriage and Family Problems*, (Jakarta: Gema Insani Press, 1999), p. 30

Petitioner's parents, as soon as the wedding ceremony is over, the Petitioner immediately returns to the Petitioner's parents' house.

2) **Petitum**

Based on the arguments of the petition submitted by the Petitioner, the Petitioner asks the panel of judges who examined and tried this case to render a decision which is as follows:

- a) Granting the Petitioner's Application;
- b) Declaring the cancellation of the marriage between the Plaintiff and the Defendant is null and void;
- c) Charge court fees according to law.

3) **Verdict**

The panel of judges at the Tanjung Karang Religious Court who examined and tried case Number 0174/Pdt.G/2020/PA.Tnk, in their ruling, has decided:

- a) Granting the Petitioner's application;
- b) Canceling the marriage between the Plaintiff and the Defendant which took place on October 20, 2019 in Labuhan Ratu District, Bandar Lampung City;
- c) Declare the Marriage Deed Number 0235/17/10/2019 is not valid and has no legal force;
- d) Ordered the Plaintiff to report the annulment of the marriage to the Head of the Office of Religious Affairs, Labuhan Ratu District, Bandar Lampung City to record the annulment of the marriage in the list provided for that after this decision has permanent legal force;
- e) Charged the Plaintiff to pay court fees in the amount of Rp. 791.000,-(Seven hundred and ninety one thousand rupiah).

4) **Analysis of Decision Number 0174/Pdt. G/2020.PA. Tnk**

Based on the provisions of Article 25 of the Marriage Law in conjunction with Article 72 of the KHI, it clearly states that: "husband or wife can submit an application...". This means that the application for annulment of marriage to the court is in the form of an application, not a lawsuit. However, in the arguments of the petition, the Petitioners are not consistent in their legal position, whether as Petitioners or Plaintiffs, so the words Petitioner and Plaintiff are used interchangeably, both in *posita* and *petitum*.

Analysis of the decision of the Tanjung Karang Religious Court Number 0174/Pdt. G/2020.PA. Tnk, it can be seen from two aspects, namely the material and formal legal aspects (Civil Procedure Law). Judging from the formal legal aspect, because the Petitioner and the Respondent are Muslim and married in an Islamic way, as evidenced by the registration of the marriage between the Petitioner and the Respondent at the Office of Religious Affairs, Labuhan Ratu District, then according to Law Number 50 of 2009 concerning Amendments to Law Law Number 7 of 1989 concerning the Religious Courts, the examination of cases of marriage annulment applications is the absolute authority (competence) of the Religious Courts.

Furthermore, taking into account the position of the Petitioner and the Respondent, as well as the place where the marriage between the Petitioner and the Respondent was held, namely at the Office of Religious Affairs of the Labuhan Ratu District, it is appropriate for the examination of the petition case to be submitted to the

Tanjung Karang Religious Court, because it is the relative competence of the jurisdiction of the Tanjung Karang Religious Court. Coral.

Judging from the material legal aspect, that the Petitioners' arguments to file for annulment of marriage to the Tanjung Karang Religious Court are very legally grounded. The reasons or arguments that form the basis for submitting an application for annulment of marriage by the Petitioner are in accordance with the provisions of Article 27 Paragraph (1) of the Marriage Law in conjunction with Article 70 of the KHI, which stipulates that a husband or wife may apply for an annulment of marriage, if in carrying out the marriage there has been a threat or coercion.

Based on the facts at the trial, namely the evidence and testimony of the witnesses presented by the Petitioner through his attorney, it was found that the appropriate information was found. Corresponding statements between the witnesses and the evidence presented by the Petitioners became the basis for consideration for the judge in granting the Petitioners' application.

In the author's opinion, the decision handed down by the panel of judges at the Tanjung Karang Religious Court in case Number 0174/Pdt.G/2020/PA. Tnk, it is correct, because there is no point in maintaining the marriage between the Petitioner and the Respondent, because the marriage is not based on mutual love and affection. A marriage that is not based on mutual love and affection, it is impossible to realize a happy and eternal household based on God Almighty, which is the purpose of the marriage.

According to the Word of Allah Subhana Wata'ala in the Qur'an Surah Ar'rum verse 21, which means:

"And among the signs of His power is that He created for you wives of your own kind so that you tend to and feel at ease with them, and He created between you love and compassion. Verily, that is a sign for a people who think."

The verse above emphasizes the importance of mutual love and affection in married life, so that there is peace for each (husband and wife). It is impossible for a husband and wife to have peace if the husband and wife do not love and care for each other. Therefore, it is appropriate for the judge to grant the petitioner's request to cancel the marriage that has taken place between the Petitioner and the Respondent, because in fact the marriage between the Petitioner and the Respondent will not or will not be difficult to achieve the purpose of marriage.

4. Conclusion

- a. Arrangements for the annulment of marriages are regulated in Articles 22 to 28 of the Marriage Law. In the provisions of Article 22 determines that "a marriage can be annulled if the parties do not meet the requirements to enter into a marriage." Article 25 of the Marriage Law stipulates that an annulment of a marriage can be made by submitting an application to the court in the legal area where the marriage is taking place or at the residence of both husband and wife. In connection with the annulment of marriage in Case Number 0174/Pdt.G/2020.PA.Tnk, it is known that the parties here are Muslim, so that the authority to examine and adjudicate the application for annulment of marriage becomes the absolute competence of the religious court (in this case the

Tanjung Religious Court). Coral) according to the domicile or place of residence of the parties.

- b. The basis for the judge's consideration in granting the Petitioner's request was in the decision of the Tanjung Karang Religious Court Number 0174/Pdt. G/2020.PA. Tnk, that according to Law Number 50 of 2009 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts, the examination of cases of marriage annulments submitted by the Petitioners is the absolute and relative authority (competence) of the Tanjung Karang Religious Court. Judging from the material legal aspect, that the arguments for the petitioner's petition are legally grounded, namely in accordance with the provisions of Article 27 Paragraph (1) of the Marriage Law in conjunction with Article 70 of the KHI, which stipulates that a husband or wife can apply for an annulment of marriage, if the marriage is held there has been a threat or coercion.

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