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Juridical Analysis of Judges' Considerations in the Annulment of Marriage Due to the Use of an Unauthorized Guardian Judge (A Study of Kraksaan Religious Court Decision Number 1667/Pdt.G/2024/PA.Krs)

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ABSTRACT

Annulment of marriage is a legal effort to declare a marriage is considered to have never existed since the beginning of the decision set by the court. The annulment of this marriage arises as a result of a marriage that from the beginning did not meet the pillars and conditions as prescribed in Islamic law and legislation. One of the reasons for the annulment of marriage is the use of a guardian judge who does not have authority in the execution of the marriage contract. This study aims to analyze the juridical considerations of judges in deciding the case of annulment of marriage due to the use of an unauthorized guardian judge in the decision of the Kraksaan Religious Court Number 1667/Pdt.G/2024 / PA.Krs, as well as reviewing its compliance with the provisions of Law Number 1 of 1974 on marriage as amended by Law Number 16 of 2019 and the compilation of Islamic law. This research uses normative juridical research method with statute approach, case approach, and conceptual approach. The results showed that the panel of judges granted the marriage annulment lawsuit because the use of Guardian judges was carried out without legal authority, so it did not meet the legal provisions governing guardianship in marriage. The judge's consideration is based on the facts of the trial, the evidence presented by the plaintiff parties, as well as the systematic application of the provisions of positive law and Islamic law. The decision provides legal certainty regarding the validity of marriage while affirming the importance of the authority of the Guardian judge as one of the elements that determine the validity or not of a marriage.

ABSTRAK

Pembatalan perkawinan merupakan upaya hukum untuk menyatakan suatu perkawinan dianggap tidak pernah ada sejak awal yang keputusannya

Kata Kunci:
Analisis Yuridis, Pembatalan Perkawinan, Wali Hakim.

ditetapkan oleh Pengadilan. Pembatalan Perkawinan ini muncul akibat perkawinan yang sejak awal tidak memenuhi rukun dan syarat sebagaimana ditentukan dalam hukum Islam maupun peraturan perundang-undangan. Salah satu alasan pembatalan perkawinan adalah penggunaan wali hakim yang tidak memiliki kewenangan dalam pelaksanaan akad nikah. Penelitian ini bertujuan untuk menganalisis pertimbangan yuridis hakim dalam memutus perkara pembatalan perkawinan akibat penggunaan wali hakim yang tidak berwenang pada Putusan Pengadilan Agama Kraksaan Nomor 1667/Pdt.G/2024/PA.Krs, serta mengkaji kesesuaiannya dengan ketentuan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan sebagaimana telah diubah dengan Undang-Undang Nomor 16 Tahun 2019 dan Kompilasi Hukum Islam. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan (statute approach), pendekatan kasus (case approach), dan pendekatan konseptual (conceptual approach). Hasil penelitian menunjukkan bahwa majelis hakim mengabulkan gugatan pembatalan perkawinan karena penggunaan wali hakim dilakukan tanpa kewenangan yang sah, sehingga tidak memenuhi ketentuan hukum yang mengatur perwalian dalam perkawinan. Pertimbangan hakim didasarkan pada fakta persidangan, alat bukti yang diajukan para pihak penggugat, serta penerapan ketentuan hukum positif dan hukum Islam secara sistematis. Putusan tersebut memberikan kepastian hukum mengenai keabsahan perkawinan sekaligus menegaskan pentingnya kewenangan wali hakim sebagai salah satu unsur yang menentukan sah atau tidaknya suatu perkawinan.

INTRODUCTION

Marriage is an inner and outer bond between a man and a woman as husband and wife, with the purpose of forming a happy and everlasting family (household) based on belief in One Supreme God. A marriage is valid if it is performed according to the law of each party's respective religion and belief, and every marriage must be registered according to the applicable legislation.[1] As is well known, Indonesian society is a pluralistic society. Given such societal conditions, cases concerning marriage problems frequently arise, not infrequently ending in the annulment of a marriage. Take, for example, the following case: a Christian youth, aged 18, converts to Islam. He then intends to marry, but his parents wish to prevent it. He then seeks permission from the religious court. How is this to be resolved, given that the youth is not yet 19 years old…?" This is a problem that frequently occurs in society. Sometimes the public does not understand the consequences it may bring for both

[1] Articles 1-2 of Law No. 1 of 1974 on Marriage.

the bride and groom and for each of their families. This is especially true in this era of reform, in which freedom has become a matter of interest lacking direction and a firm foundation. This can become a serious problem in marriage.[2] A case that recently occurred was that of an Indonesian citizen and a Saudi Arabian national in West Jakarta. The West Jakarta Religious Court granted a lawsuit for the annulment of the marriage between an Indonesian woman and a Saudi Arabian man. The lawsuit was filed by the West Jakarta District Prosecutor's Office because the marriage was considered legally defective and did not meet the valid conditions for a marriage contract under the Marriage Law and the Compilation of Islamic Law. The marriage certificate issued by the Cengkareng Religious Affairs Office (KUA) was also annulled.

Another case in which a marriage annulment was granted by a judge is the marriage annulment lawsuit at the Kraksaan Religious Court, Decision Number 1667/Pdt.G/2024/PA.Krs. The Plaintiff in this case is the biological sibling of Defendant I. In that decision, the Plaintiff filed a lawsuit for the annulment of the marriage on the essential grounds that Defendant I (the Plaintiff's biological sister) and Defendant II (Defendant I's husband) had married on 21 March 2024, registered at the Pajarakan Office of Religious Affairs, Probolinggo Regency, according to Marriage Certificate Number 35161032024008 dated 21 March 2024, and that the marriage had been solemnized with a guardian judge (Wali Hakim). This marriage annulment was filed by the Plaintiff because Defendant I still had a *close blood-relation guardian* (Wali Nasab Aqrab), namely Raosiul Abrar (the Plaintiff), as the only living biological brother of Defendant I to date, and the Plaintiff therefore objected and demanded that the marriage be annulled.

Law Number 1 of 1974 states that a marriage is valid if performed according to the law of each party's own religion and belief. Thus, for a person of the Islamic faith, the marriage is valid if performed according to Islamic law. What is equally

[2] Rohmadi, *Prosedur Dan Akibat Hukum Pembatalan Perkawinan Menurut Undang-Undang Perkawinan Nomor 1 Tahun 1974 Dan Hukum Islam* (Solok: Yayasan Pendidikan Cendikia Muslim, 2003)., p. 10.

important, however, is the obligation to register the marriage according to the applicable laws and regulations. Registration of every marriage is equivalent to the registration of a legal event. The function and role of marriage registration is to guarantee public *(legal)* order, serving as an instrument of legal certainty and legal convenience, as well as one form of evidence of the marriage.[3] Based on this explanation, it becomes clear that a marriage must be conducted carefully and procedurally. This is intended to prevent errors in a marriage that could ultimately lead to its annulment.

Ideally, the purpose of marriage is to form a happy, harmonious household full of concord. This purpose is the hope and aspiration of every married couple, but in reality, not a few couples are unable to achieve it. Many factors prevent married couples from realizing an ideal household order, among them being that, at the outset of the marriage, the couple lacks a mature concept of household harmony and fails to direct their full efforts toward achieving peace and concord within the household.[4]

Every couple entering married life certainly desires the formation of an ideal family, full of the values of happiness, peace, and harmony. An ideal marriage begins with a commitment to achieving these values, yet in everyday life, household conflicts frequently occur. Married couples should place openness, honesty, and trust at the forefront, so that potential conflicts can be avoided before eventually growing into a major threat to the household.[5] One phenomenon that occurs in society in connection with marriage is the annulment of marriage. What is meant by the annulment of marriage is one way in which a valid marriage can be terminated. The Marriage Law stipulates that a marriage may be dissolved through a court decision. Marriage, as a legal relationship that certainly carries legal consequences, can end as

[3] Jamaluddin dan Nanda Amalia, *Hukum Perkawinan* (Lhokseumawe: Unimal Press, 2016)., p. 39.

[4] Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogjakarta: Fakultas Hukum UII, 2002)., p. 11.

[5] Jihan Al Litani et al., "Analisis Putusan Hakim Pengadilan Agama Yang Mengabulkan Gugatan Pembatalan Perkawinan," *THE JURIS* VI, no. 1 (2022): 244–250.

a result of a court decision. A court decision may arise because certain parties challenge a marriage entered into by a husband and wife, or even because the husband and wife themselves challenge it.[6]

In Islamic law, the annulment of marriage is called *fasakh*, meaning to damage or annul. Thus, *fasakh*, as one of the causes of the dissolution of marriage, is an act that damages or annuls a marital relationship that has been taking place. In definitive terms, it is difficult to formulate a precise definition of marriage annulment; however, for the purpose of providing a working understanding of what is meant by marriage annulment, it may be defined as an action taken to obtain a court decision declaring that the marriage which has been performed is void. *Fasakh* is caused by two things: first, a marriage that does not meet the pillars and conditions, or in which there is an impediment to the marriage; and second, the occurrence of something within the life of the household that makes it impossible for the household to continue.[7]

RESEARCH METHOD

This study uses a normative legal research method with a statute approach, a case approach, and a conceptual approach. Primary legal materials in the form of court decisions and legislation are analyzed qualitatively through a literature study. This research was conducted by collecting data from various legal literature and legislation, which was then thoroughly analyzed in order to reach conclusions regarding the annulment of marriage due to an unauthorized guardian judge.

RESULTS AND DISCUSSION

Annulment of marriage is a court decision declaring that a marriage which has taken place becomes void because the parties did not meet the requirements for entering into marriage under the applicable law. The annulment of marriage is

[6] Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia* (Jakarta: Indonesia Legal Center Publishing, 2007)., p. 15.

[7] Litani et al., "Analisis Putusan Hakim Pengadilan Agama Yang Mengabulkan Gugatan Pembatalan Perkawinan.", p. 249.

regulated in Chapter IV, Articles 22 through 28, of Law Number 1 of 1974 on Marriage. Bakri A. Rahman and Ahmad Sukardja also provide a definition of marriage annulment in *Hukum menurut Islam, UUP, dan Hukum Perdata/BW*, defining marriage annulment as a marriage that has already taken place but can be annulled if the parties did not meet the requirements for entering into marriage, and that the annulment of a marriage can only be decided by a court.[8]

The grounds for the annulment of marriage include the fact that one of the parties is still bound by marriage to another person; other grounds include the marriage having been solemnized before an unauthorized marriage registrar, an invalid marriage guardian, or without the presence of two witnesses; the marriage having been performed under an unlawful threat; or a mistaken belief regarding the identity of the husband or wife at the time the marriage took place; a husband who requires such a marriage already having four wives; and the woman married being his former wife whom he has divorced by triple talaq and who has not yet married another man.[9] In general, the annulment of marriage occurs because the requirements for marriage were not fulfilled in accordance with the applicable statutory provisions. Marriage is a contract that gives rise to legal consequences for the parties. In Islamic teaching, marriage is not merely an ordinary contract, but a sacred covenant, whereby the two parties are joined together as husband and wife, or mutually pledge to become life partners, invoking the name of Allah.[10]

The presence of witnesses in a marriage is of great importance, in order to safeguard the welfare of both parties. Should something undesired occur for example, if other parties raise allegations concerning the validity of their marriage

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[8] Tim Hukum Online, "Alasan, Tata Cara Dan Tahapan Proses Pembatalan Perkawinan," hukumonline, 2015, https://www.hukumonline.com/berita/a/pembatalan-perkawinan-lt62d0cc4eeffc1/ .

[9] Asmawati, Bukhari, *"Aspek-aspek pertimbangan Hakim Mahkamah Syar'iah Lhokseumawe dalam memutuskan perkara yang berkeadilan,"* in *"Syarah Jurnal Hukum Islam dan Ekonomi,"* (Lhokseumawe: Jurusan Syariah STAIN Malikussaleh Lhokseumawe, 2016), p. 93.

[10] Abdul Rohim, *Kedudukan Hukum Perjanjian Perkawinan Sebagai Alasan Perceraian, Masalah-Masalah Hukum,* (Semarang: Universitas Diponegoro, 2012)., p. 62.

the witnesses can serve as evidence of the marriage's validity. Likewise, with respect to a child born of such a marriage, the husband cannot deny paternity by claiming the child is not his, unless the child was born more than one year after their marriage ended. It may thus be firmly stated that, under Islamic law or, more precisely, in the conventional books of *fiqh* marriage registration is not found among the pillars and conditions of marriage.[11]

Witnesses in Islamic marriage law are a condition for the validity of a marriage. The witnesses that must be present at a marriage are two male witnesses. Ideally, the witnesses presented are one from the bridegroom's side and one from the bride's side. A marriage that is not attended by two witnesses carries the consequence that it may be requested to be annulled. This is stipulated in Article 26 paragraph (1) of Law No. 1 of 1974, which provides that a marriage solemnized before an unauthorized marriage registrar, with an invalid marriage guardian, or without the presence of two witnesses, may have its annulment requested by family members in the direct ascending line of the husband or wife, by the public prosecutor, and by the husband or wife themselves. In Islam, witnesses are a pillar of marriage. This means that without this pillar, a marriage will not be valid and will not give rise to any obligations.[12]

In the marriage annulment case before the Kraksaan Religious Court, Decision Number 1667/Pdt.G/2024/PA.Krs, the party filing the marriage annulment lawsuit was the biological brother of Defendant I. The Plaintiff requested that the marriage entered into by Defendant I and Defendant II be annulled because, at the time, the Plaintiff was still alive and should have been the marriage guardian of Defendant I. The Plaintiff filed the lawsuit with the Kraksaan Religious Court, and it was registered with the Registrar's Office of the Kraksaan Religious Court as Decision Number 1667/Pdt.G/2024/PA.Krs dated 15 August 2024, with the following grounds:

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[11] Jumni Nelli, *Perkawinan Di Bawah Umur Dan Siri; Dalam Hukum Perdata Islam Di Indonesia* (Yogyakarta: Kalimedia, 2022)., p. 76.

[12] Umar Haris Sanjaya dan Faqih Aunur Rahim Rahim, *Hukum Perkawinan Islam Di Indonesia* (Yogyakarta: Gama Media Yogyakarta, 2017)., p. 44-45.

1. Defendant I and Defendant II are husband and wife who married with a guardian judge (Wali Hakim), as recorded by the Marriage Registrar at the Pajarakan Sub-district Office of Religious Affairs, Probolinggo Regency, in accordance with Marriage Certificate Excerpt Number 3513161032024008 dated 21 March 2024;
2. At the time the marriage was performed, Defendant I held the status of a divorced widow (still living), with Divorce Certificate No. 1218/AC/2023/PA.Jbg dated 12 June 2023, and Defendant II was a widower whose previous wife had died;
3. After the marriage contract, Defendant I and Defendant II resided together in a shared home in Probolinggo Regency for 5 (five) months, and during the course of the marriage the Defendants did not yet have any children;
4. On 26 February 2024, Defendant I went to the Village Office of Ngoro Sub-district, Jombang Regency, to arrange the marriage documents, and at that time Defendant I stated that she did not have a legally valid marriage guardian, based on a statement letter and a request for a guardian judge prepared by Ghoniyatul Maghfiroh and acknowledged by the head of Kauman Village, dated 26 February 2024;
5. On 22 July 2024, the Plaintiff and the Plaintiff's sibling only then learned that Defendant I had married Defendant II at the Pajarakan Sub-district Office of Religious Affairs, Probolinggo Regency;
6. The Plaintiff filed a lawsuit for the invalidity (fasid) of the marriage/annulment of the marriage performed on 21 March 2024 at the Pajarakan Sub-district Office of Religious Affairs, Probolinggo Regency, in accordance with Marriage Certificate Excerpt Number 3513161032024008 dated 21 March 2024, because at the time of the marriage contract, Defendant I and Defendant II used a guardian judge (Wali Hakim) while the close blood-relation guardian (Wali Nasab Aqrab) was still living;

7. The marriage between Defendant I and Defendant II does not comply with the conditions and pillars of marriage as stipulated in the Compilation of Islamic Law (KHI), Chapter IV, Article 14;
8. Based on the grounds set out above, the Plaintiff requests that the Chairman of the Kraksaan Religious Court grant the Plaintiff's claim, and rule to annul the marriage between Defendant I and Defendant II, which was solemnized at the Pajarakan Sub-district Office of Religious Affairs, Probolinggo Regency, on 21 March 2024; to declare Marriage Certificate Number 35131610320224008 dated 21 March 2024 to be legally void; and to order the Plaintiff to bear the costs of this case in accordance with the applicable statutory provisions.

In that decision, the judge, in his considerations, held that the Plaintiff filed the marriage annulment lawsuit on the essential grounds that Defendant I and Defendant II had married on 21 March 2024, registered at the Pajarakan Sub-district Office of Religious Affairs, Probolinggo Regency, according to Marriage Certificate Number 3513161032024008 dated 21 March 2024, and that the marriage, having been solemnized with a guardian judge (Wali Hakim), was invalid, because Defendant I still had a close blood-relation guardian, namely Roisul Abror (the Plaintiff), as the only living biological brother of Defendant I to date, such that the Plaintiff objected and demanded that the marriage be annulled.[13] A blood-relation guardian (wali nasab) means that the person holding the right of guardianship is a relative commonly referred to as a family bond. Relatives who may serve as guardian include: the father, the father's brother (paternal uncle), the paternal grandfather, a full biological brother, a paternal half-brother, and the son of a paternal uncle. If this guardian is not a Muslim, has not reached puberty, or is of unsound mind (or is mute or deaf), guardianship passes to the next guardian in line.[14]

The Plaintiff in this case is a party permitted by law to file a lawsuit for the annulment of marriage. As referred to in Article 23 of Law Number 1 of 1974 on Marriage, which regulates who may file for the annulment of a marriage, namely:

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[13] Kraksaan Religious Court Decision Number: 1667/Pdt.G/2024/PA.Krs, p. 7-8.

[14] Tinuk Dwi Cahyani, *Hukum Perkawinan* (Malang: Universitas Muhammadiyah Malang, 2020)., p. 15.

1. Family members in the direct ascending line of the husband or wife;
2. The husband or wife;
3. The authorized official, only for as long as the marriage has not been dissolved;
4. The official designated under paragraph (2) of Article 16 of this Law, and every person who has a direct legal interest in the marriage, but only after the marriage has been dissolved.

A guardian (*wali*) is a condition for the validity of a virgin's marriage; without a guardian, the marriage is invalid, except according to the Hanafi school, which holds that a marriage without a guardian is valid. The majority of scholars hold the opinion that a woman may not marry herself off, nor may she marry off another woman, because the marriage contract is not considered valid without a guardian. This opinion is held by Imam Malik and Imam Shafi'i, that there is no marriage without a guardian, and that a guardian is a condition for the validity of a marriage. According to the Hanafi school, a guardian is not a condition for the validity of a marriage, but is merely recommended (*sunnah*); a guardian may or may not be present, the most important thing being that there must be parental consent at the time of marriage for both the man and the woman (Aminuddin and Abidin 1999).[15] A blood-relation guardian (wali nasab) means that the person holding the right of guardianship is a relative commonly referred to as a family bond. Relatives who may serve as guardian include: the father, the father's brother (paternal uncle), the paternal grandfather, a full biological brother, a paternal half-brother, and the son of a paternal uncle. If this guardian is not a Muslim, has not reached puberty, or is of unsound mind (or is mute or deaf), guardianship passes to the next guardian in line.[16] The order of blood-relation guardians (wali nasab) is as follows:

a. The biological father,

[15] Desminar dkk, *Hukum Keluarga Islam, Membangun Keluarga Bahagia Berdasarkan Tuntunan Alquran Dan Hadis* (Padang: UMSB Press, 2022)., p. 140.

[16] Cahyani, *Hukum Perkawinan*.

b. The grandfather (through the paternal line) and so on upward through the male line,

c. A full biological brother,

d. A paternal half-brother,

e. The son of a full biological brother,

f. The son of a paternal half-brother,

g. The son of the son of a full biological brother,

h. The son of the son of a paternal half-brother,

i. The father's full brother (paternal uncle),

j. The father's paternal half-brother (paternal half-uncle),

k. The son of a full paternal uncle,

l. The son of a paternal half-uncle,

m. The grandfather's full brother,

n. The son of the grandfather's full brother,

o. The son of the grandfather's paternal half-brother.

A guardian judge (*Wali Hakim*) is a person appointed by the government (the Minister of Religious Affairs) to act as guardian in a marriage, namely when a prospective bride is in one of the following conditions:

a. Has no blood-relation guardian (wali nasab) at all, or
b. Her guardian is mafqud (missing, with unknown whereabouts), or
c. The guardian himself is to be the bridegroom, while there is no guardian of equal standing available, or
d. The guardian is located at a distance equivalent to masafat al-qasr (a travel distance permitting the shortening of prayers, i.e., 92.5 km), or
e. The guardian is imprisoned or detained and cannot be visited.
f. The guardian is 'adhal, meaning unwilling or refusing to marry her off.
g. The guardian is performing the pilgrimage (*hajj*) or umrah. If any of these seven conditions applies, then the party entitled to act as guardian in the marriage is the guardian judge (*Wali Hakim*). An exception applies, however, if the blood-relation guardian has delegated his authority to another person

to act as guardian, in which case that delegated person is entitled to act as guardian in the marriage.[17]

The Plaintiff is the biological brother of Defendant I, which accords with Article 23 of Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019 on Marriage. The judge also considered the validity of the guardian, as set out in Article 23 paragraph (1) of the Compilation of Islamic Law, which states that a guardian judge (Wali Hakim) may only act as marriage guardian if the blood-relation guardian does not exist, cannot possibly be present, has an unknown place of residence, is absent (gha'ib), is 'adhal (refusing without valid reason), or is unwilling. Meanwhile, Article 71 letter f of the Compilation of Islamic Law provides that a marriage may be annulled if it was solemnized without a guardian or performed by a guardian who was not entitled to act. Therefore, the judge concluded that the guardian judge who married Defendant I was not entitled and/or not authorized to act as marriage guardian in the marriage between Defendant I and Defendant II. This also violates the conditions and pillars of marriage referred to in Article 14 of the Compilation of Islamic Law, and satisfies the provisions of Article 26 paragraph (1) of Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, and Article 71 letter e of the Compilation of Islamic Law, namely that the marriage was solemnized with a marriage guardian who was not entitled and/or not authorized to act, and the judge therefore granted the Plaintiff's claim.

CONCLUSION

Based on the results of the research above, the author concludes that the legal considerations of the Panel of Judges in Kraksaan Religious Court Decision Number 1667/Pdt.G/2024/PA.Krs are consistent with the provisions of positive law and Islamic law governing the annulment of marriage. The Panel of Judges

[17] Desminar dkk, *Hukum Keluarga Islam, Membangun Keluarga Bahagia Berdasarkan Tuntunan Alquran Dan Hadis*., p. 142-143.

granted the marriage annulment lawsuit because the marriage entered into by Defendant I and Defendant II with a guardian judge was proven invalid, whereas at the time the marriage was performed, a qualified and living close blood-relation guardian existed, namely the biological brother of Defendant I; therefore, having weighed the facts revealed at trial, the evidence submitted by the parties, and the legal standing of the Plaintiff as the blood-relation guardian entitled to file for the annulment of the marriage, the judge ruled that the marriage was void, or deemed as never having existed. Accordingly, the use of the guardian judge in this case contravenes Article 23 paragraph (1) and Article 71 letter e of the Compilation of Islamic Law, Article 26 paragraph (1) of Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, as well as the provisions on the pillars and conditions of marriage under Islamic law. The legal consequence of the annulment of marriage in this case is that, once the decision obtains permanent legal force, the marriage between the Defendants is declared void, and the Marriage Certificate issued by the Office of Religious Affairs is declared to be without legal force. Nevertheless, in accordance with Article 28 of Law Number 1 of 1974 and the provisions of the Compilation of Islamic Law, the annulment of marriage does not apply retroactively to any child born of that marriage, if any, such that the child's civil status continues to receive legal protection. Law Number 1 of 1974 also does not yet regulate in detail whether or not remarriage is permitted following a court decision annulling a marriage; naturally, such a marriage would still have to comply with the marriage requirements set out in Law Number 1 of 1974 and Indonesian law.

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