



Prevention and Annulment of Marriage According to the Civil Code and Law No. 1 of 1974

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Abstract

This study examines the prevention and annulment of marriages according to the Civil Code (KUHPerdata BW) and Law No. 1 of 1974 concerning Marriage in Indonesia. The background of this study is the importance of understanding the legal basis governing the validity of marriages to maintain social order and protect individual rights. The differences between these two legal systems create complexity in their application in society, particularly regarding the reasons underlying the prevention and annulment of marriages. The study aims to analyze the comparative legal regulations between the Civil Code (KUHPerdata BW), which has colonial nuances, and Law No. 1 of 1974, which is based on national legal principles. This study is useful for the development of legal science, especially in understanding the implementation of marriage law that is relevant to the context of Indonesian society. The method used is library research by reviewing legal literature, laws and regulations, and related documents. Case studies are used to strengthen the analysis, by highlighting legal cases that reflect the challenges of implementing these rules in the field. The results of this study are expected to contribute to the development of marriage law policies that are more inclusive, harmonious, and in accordance with the needs of society and current developments.

I. INTRODUCTION

Marriage is one of the oldest social institutions that plays a crucial role in shaping the structure of society. In various civilizations, marriage serves not only as a legal means to establish a life together between two individuals, but also as a primary foundation for creating social stability, continuing the lineage, and guaranteeing individual rights within the family. The existence of laws governing marriage is crucial to ensure that this institution is carried out in an orderly, fair, and consistent manner with prevailing societal values. In the Indonesian context, legal regulations related to marriage have evolved from the colonial period to the modern era, reflecting the social, cultural, and political dynamics of this nation.

(Friedman, 2022). (Putra & Santoso, 2023).

Historically, the legal regulation of marriage in Indonesia was initially regulated by the Civil Code (BW Civil Code), a secular and individualistic legacy of the Dutch colonial era. The BW Civil Code provided a legal basis for certain communities,

particularly those not subject to customary or religious law. However, after Indonesian independence, the need for a more inclusive marriage legal system rooted in national values became increasingly urgent. This was realized through the enactment of Law No. 1 of 1974 concerning Marriage, which accommodates the principles of Islamic law, customary law, and the values of Pancasila. According to Law No. 1 of 1974, a marriage is considered valid if it is conducted in accordance with the laws of each religion and belief, and is registered with an authorized institution. This differs from the BW Civil Code, which places more emphasis on administrative formalities and contractual validity without questioning religious grounds. Recent literature reviews indicate that these two legal systems have different approaches to the prevention and annulment of marriages. For example, Putra and Santoso (2023) in their research on the relevance of colonial law in the modern Indonesian context stated that the Civil Code (KUHPerdata BW) is often considered less

relevant to the cultural and religious values held by the majority of Indonesian society. In contrast, Law No. 1 of 1974 is considered more responsive to social dynamics, although it still faces challenges in its implementation.

(Susilo & Hartati, 2021). (Ramadhan & Kurniawan, 2024)

Marriage prevention and annulment are two important mechanisms in marriage law that aim to maintain the validity and morality of this institution. Marriage prevention is carried out to prevent marriages that do not meet legal requirements, such as minimum age, permission from the authorities, or the lack of free consent from both parties. On the other hand, marriage annulment is carried out after the marriage has taken place, if significant legal defects are found, such as falsification of identity, duress, or violations of applicable legal provisions. In a study by Susilo and Hartati (2021), the differences in procedures and reasons between the Civil Code BW and Law No. 1 of 1974 in this regard often cause confusion in society, especially when both are still applied parallelly in certain cases. The existence of regulations on marriage prevention and annulment aims not only to protect the rights of the individuals involved, but also to maintain public order. In the view of legal theory, as stated by Friedman (2022), effective marriage law must be able to accommodate the interests of individuals and society in a balanced manner. This is relevant to the situation in Indonesia, where legal pluralism is a major challenge in regulating marriage. In this pluralistic system, national, customary and religious laws often interact, even clash, thus requiring caution in their application.

(Hidayat, 2022). (Azmi & Fauzi, 2023). (Subekti &

From an empirical perspective, research into cases of marriage prevention and annulment in Indonesia shows that many obstacles remain in the implementation of these two mechanisms. For example, a study by Ramadhan and Kurniawan (2024) found that there is still a lack of synchronization between the provisions of Law No. 1 of 1974 and practice on the ground, such as a lack of public understanding of proper legal procedures. This is exacerbated by a lack of resources at marriage registration institutions, which often leads to delays or administrative errors. Meanwhile, cases related to the prevention of underage marriages show that despite stricter regulations, this practice remains common due to social, cultural, and economic factors. Therefore,

this study aims to comprehensively examine the differences and similarities between the Civil Code (KUHPerdata BW) and Law No. 1 of 1974 regarding the prevention and annulment of marriages. This study is expected to contribute to the development of marriage law that is more monious, just, and appropriate to the needs of Indonesian society. Using a library research approach and case studies, this research will analyze the legal basis, principles, and challenges faced in the implementation of these regulations. This research also seeks to provide recommendations for policy makers and legal practitioners in improving the marriage legal system in Indonesia. (Pratama & Wulandari, 2022).

II. RESEARCH METHODS

The research methods used in this study are library research and case studies. Library research was conducted by reviewing various primary, secondary, and tertiary legal sources, such as laws, related regulations, official documents, academic literature, and previous research findings. Through this method, the author was able to analyze in depth the differences and similarities between the Civil Code (KUHPerdata BW) and Law No. 1 of 1974 regarding the prevention and annulment of marriages. In addition, case studies were conducted by analyzing several legal cases related to marriage in Indonesia that illustrate the application of both legal systems. The case study approach allows for a more concrete understanding of the implementation of the law in practice and identifies the various challenges faced by the parties involved in the process of marriage and annulment of marriages. These two methods complement each other to provide a comprehensive overview of the topic studied and to formulate recommendations for the development of the marriage legal system in Indonesia.

III. RESULTS AND DISCUSSION

A. Legal Basis for Marriage in Indonesia

Marriage law in Indonesia has undergone significant developments from the Dutch colonial period to post-independence. The marriage legal system implemented during the colonial period, through the Burgerlijk Wetboek (BW), or Civil Code, was secular and individualistic, defining marriage as a contract between two individuals.

Under this system, marriage is not influenced by religious or customary factors, but rather focuses on administrative formalities and the personal rights of individuals within the marriage. Marriage is viewed as a legally binding agreement between two parties, regulating their rights and obligations, requiring only registration with an authorized institution. This law applies only to Dutch citizens and those not bound by customary or religious law, thus creating injustice for the majority of Indonesians who live their lives based on religious and customary law.

Furthermore, this system placed greater emphasis on the contractual relationship between husband and wife, without considering the cultural, religious, and social values prevailing in Indonesia. After Indonesian independence, there was a growing awareness of the importance of replacing this colonial legal system with one that better reflected Indonesia's diverse national values, encompassing cultural, religious, and social diversity. This aligns with the spirit of establishing a nation based on the principles of Pancasila, which prioritizes diversity and respect for religion and customs.

Therefore, Law No. 1 of 1974 concerning Marriage was passed to replace colonial marriage law with one more appropriate to Indonesia's social and cultural conditions. Law No. 1 of 1974 incorporates the principles of Islamic law, customary law, and Pancasila values into the regulation of marriage in Indonesia. This law states that a valid marriage is one conducted in accordance with the religious laws of each party and must be registered with the authorized institution.

Thus, this law provides space for every individual to conduct marriage in accordance with their religion, which in practice means that marriages for Muslims must be conducted according to Islamic law and registered at the Office of Religious Affairs (KUA), while non-Muslims can follow their religious rules and register their marriages at the relevant institution. The approach in Law No. 1 of 1974 is very different from the approach applied in the Civil Code BW. While in the Civil Code BW marriage is seen as an agreement between two individuals that focuses on contractual rights and obligations of an administrative nature, Law No. 1 of 1974 places religion and belief as the primary factor in determining the validity of a marriage. In this context, Law No. 1 of 1974 provides greater respect for religious diversity in Indonesia, by

making religion the basis for determining the validity of a marriage. In addition, this law also regulates the customary and cultural aspects that apply in Indonesian society, which provides space for each community group to conduct marriages in accordance with their customs and traditions, as long as they do not conflict with the principles of national and religious law. This also shows a shift from a secular and individualistic approach during the colonial period to a more inclusive approach that respects the diversity that exists in Indonesia.

One of the striking differences between the Civil Code and Law No. 1 of 1974 lies in the purpose of marriage law itself. In the colonial system, the primary purpose of marriage law was to regulate the rights and obligations of couples bound by a marriage contract. Meanwhile, in the legal system regulated by Law No. 1 of 1974, the purpose of marriage law is not only to regulate individual rights and obligations, but also to ensure the continuity and well-being of the family as a social unit respected by law, religion, and custom.

This system emphasizes the importance of marriage as an institution that is not only personal but also has deep social, religious, and cultural dimensions. This demonstrates that Indonesian marriage law places greater emphasis on religious and cultural values as an integral part of building a harmonious and just society. Therefore, a comparison between the Civil Code (KUHPerdata BW) and Law No. 1 of 1974 demonstrates the significant changes that have occurred in the regulation of marriage law in Indonesia.

From a secular and individualistic system, Indonesia has shifted to one that prioritizes religious, customary, and cultural values as the legal basis. This reflects Indonesia's efforts to create a legal system that aligns with the diversity and social harmony that characterize this country. Law No. 1 of 1974 accommodates the needs of Indonesia's pluralistic society, while still providing space for religious and cultural freedom in marriage, while ensuring that legal norms remain enforced to safeguard social and family well-being.

B. Comparison of Marriage Law: Civil Code BW vs. Law No. 1 of 1974

A comparison of marriage law between the Civil Code (KUHPerdata BW) and Law No. 1 of 1974 reveals significant differences in the basic principles and regulations of marriage in

Indonesia. The legal system implemented during the Dutch colonial period, through the Burgerlijk Wetboek (BW) or Civil Code, had a secular and individualistic approach, viewing marriage as a legal contract between two individuals without regard for religious or customary background. Within this legal framework, a marriage is considered valid if it meets applicable administrative requirements, such as registration with an authorized institution, but does not take into account whether the marriage is in accordance with the religious teachings or cultural traditions of the couple involved.

In this system, what is important is the agreement of both parties to carry out the marriage, which is marked by a contract or agreement between them, which focuses more on the rights and obligations of individuals in the marriage relationship. Because it is secular, this law applies to those who are not bound by customary or religious law, so that outside of religious community groups and recognizing certain customs, this system provides the freedom to determine whether a marriage is valid or not based solely on the applicable administrative formalities.(Putra & Santoso, 2023).

In contrast, Law No. 1 of 1974 concerning Marriage provides a more inclusive legal framework and reflects Indonesian religious, customary, and cultural values. This law regulates marriage based on the religious law of each party, meaning that a marriage is considered valid only if it is conducted in accordance with the provisions of each partner's respective religion. For example, for Muslims, a valid marriage must comply with Islamic law and be registered with the Office of Religious Affairs (KUA).

Likewise, for people of other religions, their marriages are regulated according to their respective religious laws and registered by the relevant institutions. This law allows for diversity in marriage practices in Indonesia, reflecting the principles of Pancasila, which prioritize respect for pluralism and religious freedom. Therefore, Law No. 1 of 1974 not only regulates the administrative aspects of marriage, but also takes into account the social, religious, and cultural dimensions that exist in Indonesian society.(Ramadhan & Kurniawan, 2024).

If we look at both legal systems, mutual consent is a crucial aspect that forms the basis for a valid marriage. However, in the Civil Code (KUHPerdata BW), this consent is more oriented toward the personal rights and contractual

obligations of the individuals involved, without any need to consider religious or customary aspects of the marriage.

In contrast, Law No. 1 of 1974, in addition to mutual consent, emphasizes the importance of understanding each partner's religion and beliefs. In this system, even though both parties consent to marriage, the law also requires that the marriage be conducted in accordance with the religious principles believed by each individual. This demonstrates that the consent in Law No. 1 of 1974 is not only formal legal but also involves a deep religious dimension, where the validity of a marriage is determined by its conformity to the religious teachings believed by both partners. (Friedman, 2022).

Furthermore, the legality of marriage under these two legal systems also differs. In the Civil Code (KUHPerdata BW), the legality of marriage is viewed solely from an administrative perspective, where a marriage is considered valid if it meets the established administrative requirements, without considering whether the marriage is in accordance with religious or customary teachings. On the other hand, Law No. 1 of 1974 emphasizes not only the administrative registration of marriages but also covers the religious and customary requirements that underlie the validity of a marriage. This law stipulates that every marriage performed in Indonesia must be registered by an authorized institution and also adapted to the religious teachings of each couple. Therefore, Law No. 1 of 1974 not only ensures administrative legality but also provides legal certainty based on the prevailing religion and culture in society.(Susilo & Hartati, 2021).

One important aspect that distinguishes these two legal systems is the influence of religion and custom in regulating marriage. The Civil Code is secular and does not take religious or customary aspects into account in determining the validity of a marriage. Therefore, it can be said that this marriage law is more individualistic and based on the contractual relationship between the couple. On the other hand, Law No. 1 of 1974 respects religious and customary values that play a significant role in Indonesian social life, so that a marriage is considered valid if it complies with applicable religious and customary provisions. This law not only regulates marriage as a contract between two individuals, but also as part of a larger social and cultural life, which is widely recognized by Indonesian society.(Friedman, 2022)

Thus, a comparison between the Civil Code and Law No. 1 of 1974 reveals profound differences in their approaches to the legality of marriage, mutual consent, and the influence of religious and customary values. While the Civil Code places greater emphasis on administrative and contractual aspects, Law No. 1 of 1974 accommodates Indonesia's religious and cultural diversity by providing space for individuals to conduct marriages in accordance with their respective religious laws, while ensuring that marriages are registered with authorized institutions. These changes reflect Indonesia's efforts to build a legal system that better aligns with the social, religious, and cultural diversity of its society.

C. Marriage Prevention from an Indonesian Legal Perspective

From an Indonesian legal perspective, marriage prevention aims to protect individual rights, particularly for those who have not reached adulthood or are trapped in coercive circumstances. In general, Indonesian law sets strict requirements to prevent marriages that do not meet legal requirements, such as minimum age limits, approval from authorities, and freedom from coercion in decision-making. According to Law No. 1 of 1974 concerning Marriage, the minimum age for marriage is 19 years for men and 16 years for women (Article 7), which aims to ensure the physical and mental maturity of the couple in starting a family.

This requirement also serves to reduce child marriage, which often has negative impacts on the psychological and economic well-being of the couples involved. Furthermore, this law also requires approval from authorities, such as the Office of Religious Affairs (KUA) or other relevant institutions, to ensure that the marriage is conducted in accordance with religious and legal provisions. This approval from authorities also serves to protect couples from potential coercion or social pressure, which are often factors that trigger invalid marriages.(Ramadhan & Kurniawan, 2024)

As part of protecting freedom and equality, Indonesian law also requires that marriages be free from any form of coercion or pressure, whether from family, the community, or outsiders. In this regard, the couple must give their consent consciously and without coercion. This is crucial to ensure that the decision to marry is truly personal and not influenced by external

factors that could harm either party. In practice, although the law establishes clear rules regarding minimum age and consent from authorities, challenges in implementing these rules often arise, particularly in regions with strong traditions and more rigid social norms.(Putra & Santoso, 2023).

A comparison of the procedures and challenges faced in implementing marriage prevention between the Indonesian legal system and international law reveals discrepancies in implementation and oversight. Despite clear regulations regarding the minimum age of consent and the authority's consent, Indonesia's legal system still faces numerous cases of child marriage, particularly in rural areas where the practice is not yet fully recognized. According to UNICEF data, Indonesia still faces a serious problem related to child marriage, with child marriage rates in some regions reaching more than 10% of all marriages (UNICEF, 2023).

On the other hand, international law, such as the Convention on the Rights of the Child (CRC), emphasizes the right of children to be protected from early marriage, which can harm their physical, mental, and social development. A major challenge in implementing this marriage prevention is the imbalance between existing laws and prevailing social practices in society, where cultural factors and customary norms often dominate in influencing marriage decisions. Although Indonesian law clearly regulates the requirements for preventing marriages that do not meet legal requirements, such as minimum age requirements, approval from authorities, and freedom from coercion, the implementation of these regulations still faces significant challenges. Existing procedures are sometimes ineffective in addressing the practice of child marriage and forced marriage, which often occurs due to the influence of strong cultural and social norms.(Friedman, 2022).

Therefore, it is important to continue to carry out educational and outreach efforts to the public regarding the dangers of marriage practices that do not comply with legal provisions and to increase supervision of their implementation in the field.(Susilo & Hartati, 2021).

D. Annulment of Marriage: Mechanism and Legal Reasons

Marriage annulment is a legal process that allows a couple to annul or cancel the validity of a marriage based on grounds stipulated in

Indonesian positive law. In both legal systems, the Civil Code and Law No. 1 of 1974, there are certain grounds that can be used as a basis for annulment of a marriage, such as legal defects, identity fraud, and pressure that causes the marriage to be invalid. In the Civil Code, annulment of a marriage can be submitted based on certain reasons related to violations of applicable legal provisions, such as defects in consent or the presence of an element of coercion in the marriage. One of the most common grounds for annulment is if one of the parties married underage or did not reach the minimum age stipulated in the law (for example, 16 years for women and 19 years for men).

In addition, legal defects such as marriage between closely related parties, or marriages conducted without the approval of the authorities, can also be grounds for annulment. Falsification of identity or important information about one of the parties, such as previous marital status or concealed personal identity, can also render the marriage null and void, as it violates the principle of transparency in the marriage contract.(Putra & Santoso, 2023).

On the other hand, Law No. 1 of 1974 concerning Marriage regulates marriage annulment more strictly through provisions that better accommodate religious and customary law. One of the grounds for annulment regulated is if the marriage was carried out under pressure or coercion from another party, whether family, society, or even other parties with specific interests. This law also provides room for annulment if there are legal defects in the implementation of the marriage, such as a marriage that does not comply with applicable religious provisions, which makes the marriage invalid according to the law of the religions adhered to by the couple. In this case, religious law plays a crucial role in determining the validity of a marriage, which may differ from one religion to another. Therefore, differences in views between state law and religious law can present a challenge in the process of annulment of a marriage. (Ramadhan & Kurniawan, 2024).

The annulment process in these two legal systems has different procedures. In the Civil Code (KUHPerdata BW), the annulment process is generally carried out through the courts, involving evidence supporting the grounds for annulment, such as witnesses who can prove identity fraud or duress. The court has the authority to decide whether the marriage is valid or not based on the reasons submitted by the

parties filing the petition. Meanwhile, under Law No. 1 of 1974, annulment of a marriage involving religious elements must go through a procedure involving an authorized religious institution, such as the Office of Religious Affairs (KUA) for Muslims, or other religious institutions for adherents of other faiths. This process often involves religious considerations that can differ between religions, potentially posing challenges in implementing annulment.

The main challenge faced in implementing marriage annulment is the influence of culture and customs, which often do not align with national legal provisions. In some regions, customary norms remain very strong, and communities often prioritize resolving marital issues through customary deliberation or family decisions. This can create obstacles in implementing legal annulment, especially if the parties involved are not fully aware of or accept the applicable legal mechanisms. Furthermore, in many cases, social or cultural pressures can influence a person's decision to maintain a marriage despite compelling reasons for annulment.(Friedman, 2022).

E. Case Study of the Implementation of Marriage Prevention and Annulment in Indonesia

One relevant case study regarding marriage annulment in Indonesia is Decision Number 2530/Pdt.G/2019/PA.Mdn, which addresses the annulment of a marriage due to false statements regarding a previous marital status. In this case, one party concealed the fact that he had a previous wife, which resulted in the second marriage being deemed invalid. The annulment was motivated by allegations that one party had provided false information to their spouse and the court. Dishonesty in disclosing a previous marital status is considered a violation of the basic principles of marriage law, which require transparency and the consent of both parties.

The annulment process for a marriage involves a lengthy legal process. In this case, the aggrieved party must first file a lawsuit for annulment with the Religious Court, alleging the marriage was founded on misinformation and fraud. The annulment process involves examining evidence that could support the claim of falsehood. One of the main challenges in this case is the potential for doubt regarding the evidence, as the party seeking annulment must provide strong evidence that the information provided by their spouse regarding their previous marital status was indeed false.

This often presents a barrier, as witnesses or supporting evidence can be limited, as well as differing interpretations of the law by the parties involved.

Furthermore, the annulment process is hampered by time and cost. This lengthy and protracted legal process often leaves the parties involved exhausted and choosing not to pursue the case, even if they have strong legal grounds. Uncertainty about the timeframe for resolution can also leave the aggrieved party lacking confidence in the court's decision. Cultural factors also play a role.

In some communities, there is concern that the decision to annul a marriage could incur social stigma, especially if the marriage has been going on for a long time and involves multiple parties or children. Therefore, even when there are clear and compelling legal grounds for annulling a marriage, the decision to proceed is often influenced by cultural factors, customs, and social pressures within the community (Putra & Santoso, 2023).

The process of annulling a marriage due to identity fraud or prior marital status also applies in a broader context, where similar cases are frequently encountered. For example, identity fraud leads to a legally valid marriage, but it does not meet the requirements for validity because one of the parties concealed certain facts relevant to the marriage decision. One of the main challenges in this regard is the mismatch between legal practice and prevailing social values. Society may value family peace and harmony more than exposing issues that could damage social reputation (Review-unes, 2023).

Furthermore, local customs and beliefs can also hinder the annulment process, even if the marriage is legally flawed. Some parties, especially those involved in the marriage, often prefer to resolve issues through more pragmatic means or in accordance with customary values rather than through formal legal channels. This creates a mismatch between legal practice and social reality on the ground. Thus, while the law allows for annulment of marriage based on fraud or other legal flaws, its implementation is often hampered by broader social dynamics.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the analysis conducted, it can be concluded that although Law No. 1 of 1974 and the Civil Code (BW) provide a clear legal basis for

the prevention and annulment of marriages, the implementation of these regulations in the field faces various challenges. Real-life cases demonstrate a gap between legal regulations and practice in society, where social, cultural, and customary factors often influence the implementation of the law. The process of annulment of marriage, as seen in Decision No. 2530/Pdt.G/2019/PA.Mdn, shows that although strong legal grounds such as fraud or legal defects can be found, the main challenges lie in insufficient evidence, complicated legal procedures, and the influence of social pressure that can influence the decisions of the parties involved. Therefore, more intensive efforts are needed in legal socialization, consistent law enforcement, and community empowerment so that marriage law can be implemented more effectively and in accordance with prevailing social values.

B. Suggestion

This research has revealed the importance of understanding marriage law in Indonesia, particularly regarding the comparison between Law No. 1 of 1974 concerning Marriage and the Civil Code (BW) in the context of preventing and annulling marriages. However, there is still much room for further exploration regarding the implementation of this law in practice. Future research is recommended to conduct longitudinal studies that examine the long-term impact of the implementation of this regulation on marriage practices in society, particularly in terms of social and cultural changes that may affect law enforcement. Furthermore, more in-depth research is needed into the challenges and obstacles faced by parties involved, such as judges, lawyers, and the community, in implementing marriage law, and how legal policies can be adjusted to support this process. Research could also explore the experiences of individuals involved in the process of preventing or annulling marriages, including the influence of social, cultural, and customary norms that influence their decisions. With a more holistic and multidimensional approach, it is hoped that further research can make a greater contribution to the development of marriage law in Indonesia and produce practical recommendations that can be effectively implemented in law enforcement in the field.

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