

Legal Construction of Consanguineous Marriages (Analysis of Article 8 of Law Number 1 of 1974 concerning Marriage)

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Abstract

Inbreeding is an act that violates the law, both marriage law in Indonesia and religious law. As Article 8 of Law Number 1 of 1974 regulates that marriage is prohibited. The main problem to be discussed is related to the legal construction of inbreeding and the analysis of inbreeding based on Legislation of Marriage. This research is normative research using statutory, case and concept approaches. This research shows that there are people who want to end consanguineous marriages through divorce. Meanwhile, consanguineous marriages are marriages that do not meet the requirements for a marriage to be valid, so they must be annulled. The advice from this research is that if someone knows that there is a sibling relationship with the person they are going to marry, then they should not proceed with the marriage. However, if you have already entered into a marriage, the marriage must be annulled. Apart from that, if you are going to get married, you have to do more research regarding the relationship of each couple. This includes registering marriages to prevent marriages between people who are related by blood.

Abstrak

Perkawinan sedarah merupakan suatu Tindakan yang melanggar hukum baik hukum perkawinan di Indonesia maupun hukum agama. Sebagaimana Pasal 8 Undang-Undang Nomor 1 Tahun 1974 mengatur suatu perkawinan yang dilarang. Permasalahan utama yang ingin dibahas terkait dengan konstruksi hukum terhadap perkawinan sedarah dan analisis perkawinan sedarah berdasarkan Undang-Undang Perkawinan. Penelitian ini merupakan penelitian normatif dengan menggunakan pendekatan perundang-undangan, kasus dan konsep. Penelitian ini menunjukkan bawasannya terdapat Masyarakat yang ingin memutus perkawinan sedarah melalui perceraian. Sedangkan perkawinan sedarah merupakan perkawinan yang tidak memenuhi syarat untuk melangsungkan perkawinannya sehingga haruslah dibatalkan. Saran dari penelitian ini, apabila seseorang mengetahui adanya hubungan saudara dengan orang yang akan dinikahinya, maka jangan dilanjutkan untuk dilangsungkan perkawinannya. Namun apabila sudah terlanjur melangsungkan perkawinan, maka perkawinan tersebut haruslah dibatalkan. Selain itu harus lebih diteliti terkait dengan hubungan nasab dari masing-masing pasangan tersebut. Termasuk dalam hal pencatatan perkawinannya.

INTRODUCTION

Marriage has been mentioned in positive law in Indonesia which is regulated in Article 1 of Law Number 1 of 1974 concerning Marriage which states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (household) that is happy and eternal based on the Almighty Godhead. This definition was provided by the legislators with the aim of standardizing the understanding of marriage so that society would better understand the core meaning of marriage.¹ A legal marriage in Indonesia is a marriage that is carried out by fulfilling the requirements determined by the laws of each religion and belief and is recorded according to the applicable laws and regulations. This has been regulated in Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1) and paragraph (2) which states that: (1) Marriage is valid if it is carried out according to the laws of each religion and belief." Then paragraph (2) explains: (2) Every marriage is recorded according to the applicable laws and regulations."

Conditions in marriage will give rise to prohibitions in marriage. Not everyone can marry each other because marriage must be free from marriage prohibitions. Marriage between a man and a woman is prohibited if the prospective husband and wife partners have offspring, consanguinity or breastfeeding.² Article 8 of Law Number 1 of 1974 concerning Marriage expressly states prohibitions because the marriage involves a prohibited relationship. That marriage is prohibited between two people who are related in a straight upward and downward line of descent, are related by blood in a lateral line of descent, are related by marriage, are related to one another, are related to one's wife, and have a relationship where marriage is prohibited by their religion or other applicable regulations.

¹ Budi Satria Wijaya, "Kajian Yuridis Pembatalan Perkawinan Sedarah Dikaitkan dengan Upaya Perlindungan Hukum Terhadap Anak", *Skripsi*, Fakultas Hukum Universitas Muhammadiyah Sumatera Utara Medan, 2020, hlm. 14

² Nurul Qomari Afifah, "Perkawinan Sedarah Suku Polahi Ditinjau dari Undang-Undang Nomor 16 Tahun 2019", *Jurnal of Law Society and Civilization*, Edisi No. 1 Vol. 10, Fakultas Hukum Universitas Negeri Sebelas Maret, 2022, hlm. 64

There are restrictions, namely that marriage is prohibited between all people who are related in a straight line up or down, whether because they were born in a valid marriage or one that is not valid according to the law.³ This is because it concerns family relationships due to marriage or family relationships due to breast-feeding, and regarding the prohibition on marriage, one of the things that often occurs is violations by carrying out consanguineous marriages.⁴ A consanguineous marriage is a marriage between a man and a woman who have a very close blood relationship, such as brother and sister, half-brother or parent and child. Allah SWT forbids marrying women who are in a mahram relationship, whether because of lineage, marriage, or marriage. This haram thing is permanent, at any time and in any situation.⁵

If there is a prohibition on marriage, then the marriage is carried out in violation of the provisions regarding conditions and prohibitions in marriage as regulated in Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (hereinafter referred to as the Compilation of Law Islam) and other rules then the marriage is invalid and must be annulled. This is in accordance with Article 22 of the Marriage Law which states that a marriage can be annulled if the parties do not fulfill the requirements for carrying out a marriage. However, to prevent deviations from the harmony and conditions of marriage, Law Number 1 of 1974 concerning Marriage regulates the prevention of marriage. In accordance with Article 13 of Law Number 1 of 1974 concerning Marriage, "Marriage can be prevented if there are parties who do not fulfill the marriage requirements."

However, in reality, marriages that occur in Indonesia still reap many problems and cases of marriages between blood relatives are still found in Indonesia. One example of a case of inbreeding in Indonesia is in Banyumas Regency. A husband and wife couple who married on November 10 1989 before

³ Elise T. dan Rudy T., *Petunjuk Praktis Menyelesaikan Perkara-Perkara Perdata*, Jakarta: Bina Aksara, 1987, hlm. 84

⁴ Nabilah Falah, "Analisis Yuridis Normatif Pembatalan Perkawinan *Incest* (Studi putusan Pengadilan Agama Banyumas Nomor 1160/Pdt.G/2018/PA.Bms)", *Skripsi*, Fakultas Syariah Institut Negeri Agama Islam Purwokerto, 2021, hlm. 5

⁵ Anis Khafizoh, "Perkawinan Sedarah Dalam Perspektif Hukum Islam Dan Genetika", *Jurnal Hukum*, Edisi No. 01 Vol 3, Pasca Sarjana Universitas Sains Al-Qur'an, 2017 hlm. 63

the Marriage Registrar of the Religious Affairs Office, Wanadadi District, Banjarnegara Regency, have been proven to have committed consanguineous marriage. The husband and wife lived together in their uncle's house in Banjarnegara for approximately 1 (one) month then moved to their parents' house in Banjarsari Kidul Village, Sokaraja District, Banyumas Regency for approximately 5 (five) years, after which they lived in a jointly owned house in Banjarsari Village, Sokaraja District, Banyumas Regency⁶.

In this marriage, they had husband and wife relations (*ba'da dukhul*) and were blessed with 3 (three) children. When the husband and wife were about to marry off their child, Fita Cahyani, it turned out that the father or the husband of the couple could not be the child's marriage guardian because the husband and wife were apparently related by blood, namely one father but another mother. That the wife's biological father is named Suradi and the husband's biological father is also named Suradi, but what is written on the marriage certificate is that the husband's biological father is Yawireja. Yawireja is the husband's stepfather or second father, because since childhood his parents have divorced.

It is known that the husband's identity is inconsistent because he uses the name of his stepfather and not his biological father. Based on this, the wife submitted a request for divorce in court, but the request was rejected by the panel of judges examining the case and recommended filing a request for annulment of the marriage. Therefore, the marriage between the husband and wife is a consanguineous marriage and the marriage must be annulled because it violates the laws and regulations and Islamic law. Therefore, the wife filed a request for annulment of the marriage at the local court.

Inbreeding is something that is inappropriate both from a moral and social perspective because it is related to whether a marriage is valid or not. Consanguineous marriages occur where the husband and wife are still related to each other by blood, which usually occurs between father and daughter, mother and son, between siblings, uncles or aunts and their nephews.⁷ Inbreeding is a social tradition that is not uncommon in various societies. Some opinions consider that

⁶ Putusan Pengadilan Agama Nomor 1160/Pdt.G/2018/PA.Bms. hlm. 2-3

⁷ Silky Yolanda, "Akibat Hukum Perkawinan Sedarah atau *Incest* dalam Perspektif Hukum Positif Indonesia", *Skripsi*, Fakultas Hukum Universitas Sriwijaya, 2019. hlm. 8

consanguineous marriage is the most guaranteed method for the success of a husband and wife's life, considering that since before marriage the couple has been bound by ties of kinship which, if continued with marriage, will make the ties of kinship even closer.⁸ Therefore, the annulment of consanguineous marriages is closely related to Article 8 of Law Number 1 of 1974 concerning Marriage, which is a permanent prohibition on marriages due to consanguineous or breast-feeding relationships.⁹

Based on the background description above, because there are two options for terminating a marriage relationship, namely by divorce and annulment of marriage, the author wants to conduct further research on the legal construction of consanguineous marriage by analyzing related cases and related regulations to obtain the right legal construction. In some aspects, this research is different from research on consanguineous marriage that has been studied by many other researchers. Because this research focuses more on the legal construction of consanguineous marriage.

RESEARCH METHOD

This research is normative research. The approach method used is a legislative approach, cases and concepts related to the legal construction of consanguineous marriages. The primary legal materials used are Law Number 1 of 1974 concerning Marriage, Presidential Instruction Number 1 of 1991, Civil Code, Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage and Court Decisions Religion with Case Number 1160/Pdt.G/2018/PA.Bms. secondary legal materials in the form of books, legal journals, scientific articles, scientific papers, internet sites that can be accounted for relating to research on the legal construction of incestuous marriage. Tertiary legal materials are in the form of the Big Indonesian Dictionary. Data collection techniques by means of literature study. The data analysis method used is qualitative data analysis.

⁸ Humairah, "Perkawinan Sedarah dalam Al-Qur'an", *Jurnal of Qur'anic Studies*, edisi no. 2 Vol. 2, Universitas Islam Negeri Ar-Raniry Banda Aceh, 2017, hlm. 143

⁹ H. Zaeni, et.al., *Hukum Keluarga Menurut Hukum Positif di Indonesia*, Depok: RajaGrafindo Persada, 2020, hlm. 133

RESULT AND DISCUSSION

A. Legal Construction of Consanguineous Marriages

Marriage according to Article 1 of Law Number 1 of 1974 concerning 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 eternal family based on the belief in the Almighty God. The definition of marriage according to the Compilation of Islamic Law, according to Islamic law, is marriage, namely a very strong contract or mitsaqan ghalidzan to obey Allah's commands and carrying them out constitutes worship.¹⁰

A marriage must of course have a goal for the future because marriage is not just an agreement, but marriage must have a goal. The purpose of marriage contained in Law Number 1 of 1974 concerning marriage states that the purpose of marriage is to form a happy and eternal family (household) based on the one and only God. The Compilation of Islamic Law also states the purpose of marriage in Article 3, namely that marriage has the aim of creating a *sakinah*, *mawaddah* and *rahmah* domestic life.¹¹

Marriage law in Indonesia currently still refers to Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 as its implementing regulations. This law is the *lex specialis* of the *lex generalis* rules regulated by the Civil Code. Before the promulgation of Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 as its implementing regulations, marriage regulations in Indonesia were regulated in the Civil Code as a legal product during the Dutch Colonial era. However, based on the principle of *lex specialist derogate legi generalis*, Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 override the marriage regulations contained in the Civil Code.¹²

¹⁰ Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law

¹¹ Umar Haris, Aunur Rahim, *Hukum Perkawinan Islam*, Yogyakarta: GAMA MEDIA, 2017, hlm. 16

¹² Moh Ali Wafa, *Hukum Perkawinan Di Indonesia Sebuah Kajian Dalam Hukum Islam Dan Hukum Materiil*, Tangerang Selatan: Yasmi (Yayasan Asy-Syari'ah Modern Indonesia), 2018, hlm. 44

With these marriage rules, a marriage cannot be separated from certain conditions and prohibitions in marriage. A marriage will be considered valid if it meets the requirements stipulated in the law. According to Law Number 1 of 1974 concerning Marriage, marriage in Indonesia does not only cover civil aspects but also includes religious aspects.¹³ This is in accordance with Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that basically a valid marriage is if the marriage is carried out according to the laws of each respective religion and belief.

However, a marriage that has met the requirements and pillars of marriage does not necessarily mean it is free from marriage prohibitions or not. A marriage prohibition is a rule for marriages that must not occur or must be prevented because of something that is clearly prohibited and will have negative impacts later.¹⁴

The prohibition on marriage according to Law Number 1 of 1974 concerning Marriage is regulated in Article 8 which states that marriage is prohibited between two people who:

- a. Blood related in a straight downward or upward lineage;
- b. Blood relations in a lateral lineage, namely between siblings, between a person and their parents' siblings and between a person and their grandmother's siblings;
- c. Marital relations, namely parents-in-law, step-daughter-in-law and stepmother/stepfather;
- d. Relatives in foster care, namely foster parents, foster children, foster siblings and foster aunts/uncles;
- e. Relative to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife;
- f. Having a relationship that is prohibited by their religion or other applicable regulations from marriage.

Based on the Compilation of Islamic Law as stated in Chapter IV, Article 39 states that it is prohibited to carry out a marriage between a man and a woman if the

¹³ Mega Yuliva, "Perkawinan Sedarah Ditinjau Dari Hukum Perkawinan Di Indonesia", *Undergraduate Theses*, Fakultas Hukum Universitas Esa Unggul, 2013, hlm. 5

¹⁴ Silky Yolanda Villincy, "Akibat Hukum Perkawinan Sedarah Atau *Incest* Dalam Perspektif Hukum Positif Indonesia", *Skripsi*, Fakultas Hukum Universitas Sriwijaya, 2019, hlm. 15

two candidates have a family relationship or are related by marriage. Meanwhile, Article 30 of the Civil Code states that marriage is prohibited, that is, marriage is prohibited between those who are related to each other by blood in an upward or downward line, either because of legitimate birth or illegitimate birth, or because of marriage; in a line to the side, between brothers and sisters, legitimate or illegitimate. So, based on these provisions, it is clearly stated that marriage between a man and a woman who is still related by blood, such as a marriage between brothers, a marriage between a father and his child, and also a marriage between a mother and her child, is not permitted or is a marriage that is prohibited according to religion or according to applicable law.

Nowadays there are many deviations related to the importance of a marriage that meets the requirements of marriage. This is illustrated by the fact that the phenomenon or cases of inbreeding are often found in society, especially in Indonesia.¹⁵ Inbreeding is the practice of having marital relations with someone who is related by blood when this is expressly prohibited by law.¹⁶ Usually occurs between mother and son, father and daughter, and can also occur between siblings and half-siblings.

Because consanguineous marriage is a marriage that violates the provisions of the conditions and prohibitions in marriage as regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law and other marriage regulations, consanguineous marriages can be declared legally invalid and religion so that the marriage can be annulled.¹⁷ This is stated in Article 22 of Law Number 1 of 1974 concerning Marriage which states that "A marriage can be annulled if the parties do not fulfill the requirements for carrying out the marriage."

In fact, the prohibition of consanguineous marriage is not only regulated in Indonesia, several countries also consider consanguineous marriage to be a prohibited act. One of them is the country of India. However, in India there is no

¹⁵ Silky Yolanda Villincy, "Akibat Hukum Perkawinan Sedarah Atau *Incest* Dalam Perspektif Hukum Positif Indonesia", *Skripsi*, Fakultas Hukum Universitas Sriwijaya, 2019, hlm.7

¹⁶ Dwi Emira Mela Nurlayli, "Status Hukum Anak Hasil Dari Perkawinan Sedarah Dalam Tinjauan Hukum Islam", *Skripsi*, Fakultas Syariah Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2023, hlm. 42

¹⁷ Silky Yolanda Villincy, "Akibat Hukum Perkawinan Sedarah Atau *Incest* Dalam Perspektif Hukum Positif Indonesia", *Skripsi*, Fakultas Hukum Universitas Sriwijaya, 2019, hlm.7

specific law governing consanguineous marriage. The offense of consanguineous marriage in India is enforced as the offense of rape.¹⁸ However, no civil law in India accepts consanguineous marriage as a valid marriage.¹⁹

The inbreeding that occurred in Banyumas Regency involving siblings from the same father is one of the facts that proves that inbreeding still occurs in Indonesia. In case number 1160/Pdt.G/2018/PA.Bms, it was explained that in this case, the husband and wife were married on November 10 1989 before the Marriage Registrar of the Wanadadi District Religious Affairs Office, Banjarnegara Regency and the marriage had been blessed. three children. However, it turns out that the husband and wife are still tied in a blood relationship, namely one father but another mother.

This marriage can be carried out in the presence of a Marriage Registrar of the Banjarnegara Subdistrict Religious Affairs Office, Banjarnegara Regency because at the time of the marriage the husband of the couple wrote down the name of his adoptive father using his adoptive father's Identity Card because the biological father and biological mother were divorced. The fact that the marriage that the husband and wife had been carrying out was an incest marriage was revealed when the husband and wife were about to marry their child, but a husband, meaning the father of the child, could not be the guardian of the child and still insisted on being the guardian of the marriage. of the child because it turned out that the marriage between the husband and wife was a consanguineous marriage. Based on this problem, a wife from the couple filed for divorce from her husband at the Banyumas Religious Court. However, the divorce application was rejected by the Panel of Case Examining Judges.

In the facts of the case above, it is clear that the marriage violated the terms of marriage. The marriage that was held violated the terms of marriage because it contained a violation in the form of a lineage relationship or a mahram relationship. Because the marriage is a marriage in which there is a lineage relationship or a

¹⁸ Dr. Mahendrasinh P.Chauhan, The Incest Offences Bill, No. 14, 2012, hlm. 4

¹⁹ Swaroopa Royadu, The Legality Of Incest In India, 2022, ,
<https://legalupanishad.com/legality-of-incest-in-india/> yang diakses pada 2 Agustus pada pukul 23.29 WIB.

mahram relationship, the marriage must be terminated or dissolved.²⁰ After it was revealed that the marriage was an incest marriage, which meant violating the terms of the marriage, a wife of the couple initially filed a divorce petition at the Banyumas Religious Court, but the divorce petition was rejected by the Panel of Case Examining Judges.

Article 38 paragraph (1) of Law Number 1 of 1974 concerning Marriage explains that divorce is one of the reasons for the dissolution of a marriage. Furthermore, Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage states that "To carry out a divorce there must be sufficient reasons, that the husband and wife will not be able to live in harmony as husband and wife". Even though marriage is intended to last forever, there are times when certain things happen that cause disputes to arise in the marriage so that the marriage cannot continue.²¹

Divorce in a marital relationship is possible, but there must be certain reasons and must be carried out in front of a court hearing.²² According to Subekti, "Divorce is an event that can occur in a marriage, divorce is the termination of a marriage by a judge's decision or the demands of one of the parties to the marriage."²³ Divorce is an effort or last resort after all efforts to reconcile a husband and wife have been made but have been unsuccessful.²⁴

Article 209 of the Civil Code explains that the grounds that can result in marriage dissolution are only as follows:

1. Adultery;
2. Leaving a shared residence in bad faith;
3. Due to a prison sentence of five years or a more severe punishment, after the marriage takes place;

²⁰ Julliuus Mulyadi, "Status Anak yang Dilahirkan Akibat Pembatalan Perkawinan Sedarah Menurut Hukum Islam dan Undang-Undang Perkawinan No. 1 Tahun 1974", *Jurnal Hukum Adigama*, No. 1 Vol.5, 2022, hlm. 1531

²¹ Nunung Rodliyah, "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Jurnal Keadilan Progresif*, No. 1 Vol 5, 2014, hlm.124

²² *Ibid*

²³ Subekti, *Pokok-Pokok Hukum Perdata*, PT. Intermasa, Jakarta, 2001, hlm. 42

²⁴ Nunung Rodliyah, "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Jurnal Keadilan Progresif*, No. 1 Vol 5, 2014, hlm.125

4. Serious injury or abuse, committed by one husband and wife against the other in such a way as to endanger the safety of life, or cause dangerous injuries.

It is also explained in Article 116 of the Compilation of Islamic Law regarding the reasons for divorce which reads "Divorce can occur for a reason or reasons:

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler and so on which is difficult to cure;
- b. One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his or her ability;
- c. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place;
- d. One party commits serious cruelty or abuse that endangers the other party;
- e. One of the parties suffers from a physical disability or illness as a result of being unable to carry out his or her obligations as husband or wife;
- f. Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony again in the household;
- g. Husband violates divorce agreement;
- h. Changing religions or apostasy which causes disharmony in the household.

Based on the descriptions above, it can be said that divorce occurs because of the desire or will of a married couple accompanied by certain reasons in accordance with the problems within the married couple's household. Divorce does not occur because a marriage violates a law or does not fulfill certain conditions in marriage. After all efforts to reconcile the husband and wife have been made but have been unsuccessful, the final solution to this problem is divorce.

Inbreeding is not a problem in the household that causes disputes to arise, so that these disputes also cause the marriage to not be able to continue. Therefore, it is not appropriate if, based on the facts of the case of incestuous marriage above, they still file a divorce petition to end the marriage. Submitting a petition for divorce based on the facts of the above incest marriage case is not appropriate because incest

marriage is a marriage that violates or does not meet the requirements of marriage, so consanguineous marriages cannot be terminated by divorce.

Regarding the dissolution or dissolution of a consanguineous marriage, Article 22 of Law Number 1 of 1974 concerning Marriage explains that "A marriage can be annulled if the parties do not fulfill the requirements for carrying out the marriage." Then it was strengthened in Article 37 of Government Regulation Number 9 of 1975 which states that the Court can decide to annul a marriage where the annulment takes effect from the time the court decision has permanent legal force.

Marriage annulment is the cancellation of the relationship between a husband and wife after a marriage takes place because the marriage contains conditions that are not fulfilled and can only be terminated by the Court.²⁵ That any violations or mistakes regarding non-fulfillment of marriage conditions can be a cause for annulment of marriage.²⁶ Law Number 1 of 1974 concerning Marriage states the reasons for annulling a marriage in Article 26 paragraph (1), namely "A marriage solemnized in the presence of an unauthorized marriage registrar, an invalid marriage guardian or one solemnized without the presence of 2 (two) witnesses can request their annulment by the families in the straight line of descent from the husband or wife, the prosecutor and the husband or wife. Then in Article 27 paragraph (1) and paragraph (2), namely (1) "A husband or wife can apply for an annulment of a marriage if the marriage was carried out under threat of violating the law (2) "A husband or wife can submit a request for an annulment of a marriage if at the time of marriage, there are misunderstandings about the husband or wife."

Regarding marriage annulment, consanguineous marriages are not directly regulated in Law Number 1 of 1974 concerning Marriage. The reasons stated in Law Number 1 of 1974 concerning Marriage do not mention marriage annulment due to consanguineous marriage. However, based on Article 22 of Law Number 1 of 1974 concerning Marriage, it is stated that a marriage can be annulled if the

²⁵ Tami Rusli, "Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Jurnal Pranata Hukum*, No. 2 Vol 8, Fakultas Hukum Universitas Bandar Lampung, 2013, hlm. 159

²⁶ Deny Rahmatillah, A.N Khofify, "Konsep Pembatalan Perkawinan Dalam Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam", *Jurnal Hukum Islam*, No. 2 Vol XVIII, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2017, hlm. 167

parties do not fulfill the requirements for carrying out the marriage. Therefore, consanguineous marriages must still be annulled.

In contrast to Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law states the reasons for marriage annulment caused by incest as stated in Article 70 letter (d), namely that a marriage is void if the marriage is between two people who are related by blood; cement; and to a certain degree that prevents marriage according to Article 8 of Law Number 1 of 1974 concerning Marriage. As in the case of incest marriage above, the marriage carried out by the husband and wife is a marriage that violates or does not fulfill the requirements for marriage both according to Indonesian law and religious law because the marriage is an incest marriage.

Article 8 emphasizes that marriage is prohibited between two people who are related by blood in a straight downward or upward lineage; related by blood in a lateral lineage, namely between siblings, between a person and their parents' siblings and between a person and their grandmother's siblings. So even though consanguineous marriages are not included in the reasons for canceling marriages in Law Number 1 of 1974 concerning Marriage, consanguineous marriages must still be annulled because consanguineous marriages have violated or do not fulfill a requirement for marriage as regulated in Law Number 1 1974 concerning Marriage and other regulations relating to marriage.

The validity of a marriage must fulfill the requirements and pillars of marriage and must also pay attention to the provisions in religious law. If in the future there are any deviations from the terms of the marriage, the marriage is annulled. The annulment of a marriage will result in the marriage bond being broken and the marriage being deemed non-existent, and the husband and wife whose marriage is annulled will be deemed to have never married as husband and wife.²⁷

However, the annulment of a marriage will not terminate the legal relationship between the child and his parents. The legal status of a child born from intentional inbreeding is illegitimate, because the child's birth was based on an

²⁷ Faisal, "Pembatalan Perkawinan dan Pencegahannya", *Jurnal Hukum Islam dan Perundang-Undangan*, No. 1 Vol. 4, 2017, hlm. 5

illegal and prohibited marriage.²⁸ However, this is different from unintentional inbreeding as in the case above. According to Article 28 paragraph (2) letter a of Law Number 1 of 1974 concerning Marriage, marriage annulment does not apply retroactively to children born from the marriage. So that the position of children born due to unintentional inbreeding so that the marriage takes place legally remains as a legitimate child because they were born from a valid marriage.²⁹

Article 76 of the Compilation of Islamic Law states "The annulment of a marriage will not terminate the legal relationship between the child and his parents." Children born from a marriage that must be annulled are still considered children born from a valid marriage. Therefore, children born from this marriage have a clear legal status from their parents whose marriage was annulled.³⁰ An annulment of a marriage takes effect after a court decision which has permanent law is in accordance with Article 28 of Law Number 1 of 1974 concerning Marriage.³¹

Referring to the descriptions and facts of the case of incest marriage above, incest marriage is a marriage that violates the conditions for carrying out a marriage, so the appropriate construction is to annul the marriage because inbreeding is an act that violates the law because it does not fulfill the requirements. which is determined by law or statutory regulations in marriage and there are legal consequences. Meanwhile, divorce is due to a desire or own will of the husband and wife accompanied by certain reasons that cause problems in the household, not because there is something that violates marriage conditions that give rise to legal consequences.

In addition, if someone is going to get married, they must be more careful regarding the blood relationship of each person who will enter into a marriage. As well as registering marriages in accordance with applicable legislation. This aims

²⁸ Suriah Pebriyani Jasmin, "Kajian Hukum Terhadap Kedudukan Anak Dari Perkawinan Sedarah Dan Sesusuan", *Jurnal Hukum Keluarga Islam dan Kemanusiaan*, No. 1 Vol 3 Fakultas Syariah dan Hukum Islam Institut Agama Islam Negeri Bone, 2021, hlm. 27

²⁹ Delvia Fatma, et.al, "Kedudukan Anak Yang Lahir Dari Perkawinan Sedarah Serta Pembatalan Perkawinannya (Studi putusan Nomor: 24/Pdt.sus/2021/PA pyh)", *Law Jurnal*, No. 1. Vol 1 Fakultas Hukum Universitas Muhammadiyah Sumatera Barat, 2023, hlm. 205

³⁰ Nabilah Falah, "Analisis Yuridis Normatif Pembatalan Perkawinan Incest (Sedarah) (Studi putusan Pengadilan Agama Banyumas Nomor 1160/Pdt.G/2018/PA.Bms)", *Skripsi*, Fakultas Syariah Institut Agama Islam Negeri Purwokerto, 2021, hlm. 51

³¹ Hervin Yoki, "Problematika dan Peran Keluarga dalam Mencegah Perkawinan Sedarah", *Indonesian Journal Of Civil and Islamic Family Law*, No 1 Vol 1, Fakultas Syari'ah Universitas Islam Negeri Raden Intan Lampung, 2020, hlm. 100

as a preventive effort in terms of stopping the occurrence of consanguineous marriages.

B. Analysis of the Consequences of Marriages that Violate Article 8 Letters a, b, and f of Law Number 1 of 1974 concerning Marriage

Marriage is the right of every human being living on earth which is protected by the 1945 Constitution. Article 28B paragraph (1) states that "Every person has the right to form a family and continue their offspring through a valid marriage." However, regarding these rights there are restrictions on doing things that have the potential to violate human rights and are contrary to the 1945 Constitution in Article 28J paragraph (2), namely "In exercising his rights and freedoms, everyone is obliged to submit to restrictions determined by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society."³²

Even though marriage is a right for every human being, there are still marriages that are prohibited to avoid deviations from the implementation of a marriage as regulated in the Marriage Law in Indonesia. Law Number 1 of 1974 concerning Marriage which contains marriage regulations which in outline contain (1) the basis of marriage; (2) marriage conditions; (3) prevention of marriage; (4) cancellation of marriage; (5) marriage agreement; (6) rights and obligations of husband and wife; (7) marital property; (8) dissolution of marriage and its consequences; (9) the position of the child; (10) rights and obligations between parents and children; (11) guardianship; (12) proving the origin of the child; (13) marriage outside Indonesia; and (14) mixed marriages.³³

However, along with the rapid development of society, many irregularities in marriage have been discovered. The emergence of irregularities in marriage (intentional or unintentional), one of which is related to the phenomenon of inbreeding. The existence of problems within the scope of marriage certainly causes

³² I Komang Adi Putra, "Pengaturan Sanksi Terhadap Terjadinya Perkawinan Sedarah (*Incest*) Dalam Undang-Undang Nomor 16 Tahun 2019 Atas Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Thesis*, Universitas Mahasaraswati Denpasar, 2023, hlm. 1

³³ Tengku Erwinsyahbana, "Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila", *Jurnal Hukum*, No. 1 Vol 3, 2012, hlm. 10

a marriage to be invalid.³⁴ Consanguineous marriage is a relationship of mutual love of a sexual nature carried out by couples who have very close kinship ties both horizontally and vertically, such as fathers and daughters, mothers and sons, or between siblings.³⁵

An example of a case of inbreeding in Indonesia is as described above, namely, an incestuous marriage carried out by a husband and wife in Banyumas Regency. Not only in Banyumas Regency, in the Polahi Tribe who live in the forests of Mount Boliyohuto, Gorontalo, there is also a tradition of inbreeding. According to Yowan Guest, an anthropologist from Gorontalo State University, he revealed that the tradition of inbreeding in the Polahi tribe was formed because the Polahi tribe people were very closed and did not receive any education, including religion.³⁶ The Polahi tribe does not consider inbreeding to be a taboo act. People in the Polahi tribe are accustomed to marrying nuclear family members, such as fathers and their children, brothers and sisters, mothers and their children, even grandparents and their grandchildren.³⁷

Apart from that, in Krebet Village and Sidoharjo Village, Jambon District, Ponorogo Regency, there are also cases of inbreeding. Previously there were many families who practiced inbreeding. As a result, it is not uncommon for village communities to give birth to offspring with disabilities and stunting.³⁸ This is due to

³⁴ Yozevina Samperura, "Hak Waris Anak Yang Lahir Dari Perkawinan Sedarah Berdasarkan Undang-Undang Nomor 16 Tahun 2019 Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan JO Kompilasi Hukum Islam", *Skripsi*, Fakultas Hukum Universitas Pasundan Bandung, 2021, hlm. 14

³⁵ Suryaningsih, Ketut Sinta, "Perkawinan Sedarah Ditinjau Dari Perspektif Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan (Studi Kasus Pada Desa Adat Banjar Kecamatan Banjar, Kabupaten Buleleng)", *Undergraduate Thesis*, Universitas Pendidikan Ganesha, hlm. 7

³⁶ Rizky Kusumo, "Cerita Suku Polahi dengan Tradisi Kawin Sedarah sejak Zaman Penjajahan", 2023, <https://www.goodnewsfromindonesia.id/2023/07/04/cerita-suku-polahi-dengan-tradisi-kawin-sedarah-sejak-zaman-penjajahan>, yang diakses pada 2 Oktober 2023 Pukul 22.07 WIB

³⁷ Gabrilia M Meteng, et al, "Perkawinan Sedarah Suku Polahi Gorontalo Ditinjau Dari Pasal 8 Undang-Undang Nomor 1 Tahun 1974", *Jurnal Lex Crimen*, No 13 Vol 10, 2021, hlm. 27

³⁸ "Tradisi Pernikahan Sedarah Harus Distop", 2022, [Tradisi Pernikahan Sedarah Harus Distop | Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan \(kemenkopmk.go.id\)](https://kemenkopmk.go.id/tradisi-pernikahan-sedarah-harus-distop), yang diakses pada 3 Oktober 2023 Pukul 00.10 WIB

the poverty factor, which causes residents to psychologically choose to marry their own siblings due to economic limitations.³⁹

Based on the cases above, even though the law regulates prohibitions on marriage, there are still cases that conflict with the implementation of a marriage, especially consanguineous marriages. These prohibitions have been included, one of which is in Article 8 of Law Number 1 of 1974 concerning Marriage. The prohibition on marriage in this Article concerns several prohibitions, namely, the prohibition on marriage if the marriage is carried out by people who are related by blood either in the upward or downward line of descent or in the lateral line, sexual relations, child-breeding relations, relations between siblings and the wife, and prohibitions that According to their religion and other regulations, marriage is prohibited.⁴⁰

Article 8 of Law Number 1 of 1974 concerning Marriage regulates the prohibition against consanguineous marriages as stated in letter (a) blood relations in a straight downward or upward line of descent, (b) blood relations in a lateral line of descent, namely between siblings, between one person. with one's parents' siblings and between one and one's grandmother's siblings, and (f) having a relationship where marriage is prohibited by their religion or other applicable regulations.

1. Blood related in a straight downward or upward lineage

Referring to Article 292 of the Civil Code which states that, "In a straight line, a straight line down and a straight line up are distinguished. The former is the relationship between the original father and his descendants and the latter is the relationship between a person and those who descend from him." If detailed, a straight line down is the relationship between the original father and his descendants, while a straight line up means a person's relationship with those who brought him down to the next levels.

³⁹ I Komang Adi Putra, "Pengaturan Sanksi Terhadap Terjadinya Perkawinan Sedarah (*Incest*) Dalam Undang-Undang Nomor 16 Tahun 2019 Atas Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Thesis*, Universitas Mahasaraswati Denpasar, hlm. 2

⁴⁰ Ritna Makdalena M. Arunde, "Tinjauan Yuridis Tentang Perkawinan Sedarah Menurut UU Nomor 1 Tahun 1974", *Jurnal Lex Privatum*, No. 2 Vol. VI, 2018, hlm. 103

2. Blood related in a lateral lineage

In terms of lateral lineage, it is mentioned in Article 8, namely between siblings such as brothers and sisters, between a person and their parents' siblings, and between a person and their grandmother's siblings.

3. Having a relationship that is prohibited by their religion or other applicable regulations from marriage

Basically, religion does not allow inbreeding. Like the Islamic religion which strongly opposes inbreeding. The rules in Islam which function as guidelines for the Islamic ummah as stated in the Al-Quran, up to the Compilation of Islamic Law as the Islamic law that applies in Indonesia, do not allow consanguineous marriages to be carried out.

Referring to Article 290 of the Civil Code, blood kinship is a family relationship between people where one is a descendant of the other, or between people who have the same father of origin.⁴¹ So a marriage between people who are related by blood, whether downward or upward, and also in a lateral line, is a prohibited marriage, and the marriage violates Article 8 of Law Number 1 of 1974 concerning Marriage.

A marriage basically aims to form a happy and eternal family based on belief in the Almighty God, as stated in Article 1 of Law Number 1 of 1974 concerning Marriage. According to Article 3 of the Compilation of Islamic Law, "Marriage aims to create a household life that is *sakinah, mawaddah and rahmah*". However, if a marriage is a marriage that does not fulfill the requirements of marriage, then the marriage must be annulled. This is in accordance with Article 22 of Law Number 1 of 1974 concerning Marriage, namely "A marriage can be annulled if the parties do not fulfill the requirements for carrying out a marriage."

Based on the descriptions above, a consanguineous marriage or a marriage carried out by someone who is still related to their blood relationship, whether downward or upward blood relationship and sideways relationship, can be declared invalid legally and also religiously because it has violated the terms and conditions of the marriage. marriage requirements as stated in Article 8 of Law Number 1 of

⁴¹ Sinta Karina Raaph, "Perlindungan Hukum Terhadap Status Anak Dari Hasil Perkawinan Sedarah Di Daerah Kalimantan Timur Balikpapan", *Skripsi*, Fakultas Hukum Universitas Islam Indonesia, 2020, hlm. 41

1974 concerning Marriage. So, marriages that are carried out while someone is still tied to their blood relationship should be annulled. Therefore, it is very important to comply with the conditions in carrying out a marriage so that the marriage becomes a valid marriage both legally and religiously as a belief and belief of mankind.

CONCLUSION

Based on the results and discussion of the research above, the following conclusions are obtained: (1) An incestuous marriage is a marriage that does not meet the requirements of marriage and violates marriage law, so the marriage must be dissolved. It is not appropriate if the marriage is terminated through divorce. The appropriate legal construction for the occurrence of an incestuous marriage is to have the marriage annulled because based on Article 22 of Law Number 1 of 1974 concerning Marriage, it is stated that "A marriage can be annulled if the parties do not fulfill the requirements for entering into a marriage." (2) Based on Article 290 of the Civil Code "Blood kinship is a family relationship between people where one is a descendant of the other, or between people who have the same father of origin." When linked to Article 8 of Law Number 1 of 1974, a marriage involving a husband and wife who are still consanguineous violates this article. Prohibitions containing elements of consanguineous marriage are listed in Article 8 letters a, b and f, which in this article prohibits the carrying out of blood-related marriages in a straight line downwards or upwards, and in sideways lines, as well as prohibitions against marriage can take place if they have a relationship where marriage is prohibited by religion or other applicable regulations.

SUGGESTION

Based on the conclusions of this research, the following suggestions need to be made: (1) If someone knows that there is a sibling relationship with the person they are going to marry, then they should not proceed with the marriage because this is a prohibited marriage. However, if you have already entered into a marriage, the marriage must be annulled. (2) If you are going to get married, you need to do more research regarding the relationship between the lineages of each couple. This

includes registering marriages to prevent marriages carried out by someone who is related by lineage.

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