

Legal Responsibilities of Penghulu in Same-Sex Marriage Using False Identities in Batam City

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Abstract

Marriage is a physical and mental bond between a man and a woman that aims to form a happy and lasting family. The bond of marriage is not merely to fulfill biological desires and lust but serves to continue offspring. This research aims to analyze the legal responsibility of the Head of Religious Affairs Office (KUA) and Penghulu in Sei Beduk Sub-district, Batam City towards same-sex marriage using fake identities. What is the legal status of such marriages and what legal efforts can be made as a solution. This research uses field study method with empirical juridical approach. Primary data is obtained from the Head of KUA and Penghulu in Sei Beduk Sub-district, Batam City. Secondary data were obtained from books, journal articles, theses, theses, and dissertations related to the research theme. The data were collected through interviews and documentation and analyzed using qualitative-inductive method. The results show that same-sex marriages are invalid when tested based on religious norms, and do not meet the requirements of the applicable laws and regulations. In terms of culture and noble values that live in the soul of the Indonesian nation, similar marriages are also seen as contradictory. As an effort of legal responsibility, the Head of KUA/Penghulu of Sei Beduk Subdistrict, Batam City as an interested party has made an application for annulment of marriage to the Religious Court of Batam City because he knows that there are defects in the pillars and conditions of marriage according to Islamic law and laws and regulations. In the decision of the Batam City Religious Court No. 60/Pdt.G/2013/PA. Btm, the same-sex marriage that took place at the KUA of Sei Beduk Subdistrict, Batam City was finally annulled, resulting in the status of the marriage being deemed never to have existed.

Keywords: *Penghulu; Same-Sex Marriage; Legal Responsibility.*

Abstrak

Perkawinan merupakan ikatan lahir dan batin antara seorang pria dan wanita yang bertujuan untuk membentuk keluarga yang bahagia dan kekal. Ikatan perkawinan bukan semata-mata untuk memenuhi hasrat biologis dan hawa nafsu tetapi berfungsi untuk melanjutkan keturunan. Penelitian ini bertujuan

untuk menganalisis tanggung jawab Kepala KUA/ Penghulu di Kecamatan Sungai Beduk Kota Batam dalam pernikahan sejenis dengan menggunakan identitas palsu. Bagaimana status hukum pernikahan sejenis tersebut serta bagaimana upaya hukum yang bisa dilakukan sebagai solusinya. Penelitian ini menggunakan penelitian hukum empiris. Fakta-fakta yang terjadi dijadikan sebagai data primer kemudian dianalisis secara kualitatif dengan menggunakan data sekunder dengan menggunakan bahan hukum primer dan sekunder, kemudian disajikan secara deskriptif. Penelitian ini menemukan dan menyimpulkan bahwa perkawinan sejenis tidak sah bila diuji berdasarkan norma agama, serta tidak memenuhi persyaratan peraturan perundang-undangan yang berlaku. Dari sisi budaya dan nilai-nilai luhur yang hidup di dalam jiwa bangsa Indonesia perkawinan sejenis juga dipandang bertentangan. Kepala KUA/ Penghulu Kecamatan Sungai Beduk Kota Batam sebagai pihak yang berkepentingan telah melakukan permohonan pembatalan perkawinan kepada Pengadilan Agama Kota Batam karena mengetahui adanya cacat dalam rukun dan syarat perkawinan menurut hukum Islam dan Peraturan Perundang-undangan. Dalam putusan Pengadilan Agama Kota Batam Nomor 60/Pdt.G/2013/PA.Btm, perkawinan sejenis yang terjadi di KUA Kecamatan Sungai Beduk Kota Batam tersebut akhirnya telah dibatalkan sehingga mengakibatkan status perkawinan tersebut dianggap tidak pernah ada.

Kata kunci: *Penghulu; Perkawinan Sesama Jenis; Tanggung Jawab Hukum.*

Istinbath: Jurnal Hukum

Website : <http://e-journal.metrouniv.ac.id/index.php/istinbath/index>

Received : 2025-02-16 | Published : 2025-05-17.



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Introduction

Forming a family and having descendants with noble character is the right of every individual¹ and part of human rights.² In order for every individual to receive this right, the state has regulated it through the institution of marriage as stated in Article 28B of the

¹ Digdo Aji Mukti, Muflaha Wijayati, and Ibnu Akbar Maliki, "The Formation of Mahmudah Morals from the Maslahah Family Perspective as a Preventive Effort to Face the Covid-19 Pandemic," *SEEQUVALENT: Journal of Gender and Child Studies* 2, no. 1 (2020): 98, <https://doi.org/10.32332/jsga.v2i01.2220>.

² Musyaffa Amin Ash Shabah, "Marriage as a Human Right," *Maslahah: Journal of Islamic Law and Sharia Banking* 11, no. 2 (2020): 125, <https://doi.org/10.33558/maslahah.v11i2.2623>.

Constitution of the Republic of Indonesia of 1945 (Constitution of the Republic of Indonesia of 1945). In more detail, marriage is regulated through Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law).³ In essence, the regulation on marriage is a form of state responsibility to provide protection for human dignity and purity, including providing protection for women's rights.⁴

Marriage according to Article 1 of the Marriage Law is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. A bond born in marriage indicates the existence of a legal relationship between a man and a woman.⁵ Whereas the inner bond is an informal and invisible relationship. This bond of birth and mind is the foundation in forming and nurturing a happy and eternal family.⁶ According to Islamic law, marriage is a marriage, which is a very strong contract or *mitssaqan ghalidzan* to obey Allah's commands and carry them out is worship.⁷

Marriage is a legal act that has legal consequences.⁸ Legally, marriage is considered valid if it is carried out according to the laws of each religion and belief. This shows that the state recognizes the validity of marriages carried out in accordance with each religious law recognized in Indonesia as long as the religious law is not contradictory or not otherwise determined by the Marriage Law.⁹ Every citizen who performs a marriage must be recorded. Marriage registration is not only intended as one of the administrative requirements ordered by law, but also aims to provide legal certainty and

³ Ahmad Tholabi Kharlie, Fathudin, dan Windy Triana, "Reforming Islamic Marriage Bureaucracy in Indonesia: Approaches and Impacts, Vol 59, No 2 (2021), Al-Jamiah," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (2021): 261, <https://doi.org/10.14421/ajis.2021.592.255-286>.

⁴ Sukron Ma'mun dan Ibnu Akbar Maliki, "A Socio-Historical Study of Women's Rights Advocacy in Islamic Legal Construction," *Journal of Southeast Asian Human Rights* 7, no. 1 (2023): 2, <https://doi.org/10.19184/jseahr.v7i1.39156>.

⁵ Saidatul Chumayro, Nugraha Adi Saputra, and Ibnu Akbar Maliki, "Sakinah Family Resilience in Long Distance Marriage Couples Among Building Workers," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 1 (2024): 33, <https://dx.doi.org/10.24042/el-izdiwaj.v5i1.21745>.

⁶ Bing Waluyo, "The Legality of Marriage According to Law Number 1 of 1974 concerning Marriage," *Journal of Communication Media for Pancasila Education and Citizenship* 2, no. 1 (2020): 194, <https://doi.org/10.23887/jmppkn.v2i1.135>.

⁷ Maimun, "Marriage in the Compilation of Islamic and Civil Law," *Al-Mizan : Journal of Islamic Law and Sharia Economics* 9, no. 1 (2022): 12, <https://doi.org/10.54621/jiam.v9i1.263>.

⁸ Waluyo, "The Legality of Marriage According to Law Number 1 of 1974 concerning Marriage," 198.

⁹ Elfirda Ade Putri, "The Validity of Marriage Based on a Positive Legal Perspective in Indonesia," *Krtha Bhayangkara* 15, no. 1 (2021): 151, <https://doi.org/10.31599/krtha.v15i1.541>.

legal protection to the parties who carry out the marriage and the matters caused by the marriage.¹⁰

In Islamic law, marriage is valid if it has fulfilled the pillars and conditions. If the pillars are not fulfilled, the marriage becomes void. And if the conditions are not met, then the marriage becomes invalid.¹¹ When comparing the marriage pillar between the Marriage Law, the Compilation of Islamic Law (KHI), and Fiqh, there are differences in editorial, but all three have the same core material and substance. The pillars of marriage consist of a prospective husband, a future wife, a marriage guardian, two witnesses, and ijab kabul. The conditions in marriage are attached to each pillar of marriage.¹²

Marriage registration for Muslim citizens is stated in the marriage certificate and carried out by the Head of the sub-district Religious Affairs Office (KUA).¹³ The head of KUA is held by a Penghulu. Penghulu is a functional position occupied by Civil Servants of the Ministry of Religion who carry out their duties as marriage or marriage registrars. The scope, duties, responsibilities, and authority of the Penghulu are to provide services and guidance for marriage or referral, development of the headship, and guidance of the Islamic community. Before the wedding, the Head of KUA/Penghulu checks the marriage documents by presenting the prospective husband, wife-to-be, and guardian to ensure that there is or is no obstacle to getting married.¹⁴

The Marriage Law does not regulate the definition of annulment of marriage.¹⁵ However, the marriage can be annulled if the parties do not meet the requirements to carry out the marriage. The annulment of a marriage can only be decided by the court. Annulment of marriage is an attempt to exclude the marriage for certain reasons. Regarding the meaning of annulment of marriage, it can be concluded that three things can be concluded, first, that in the annulment of marriage, a marriage has occurred. Second, marriage is carried out without meeting the conditions. Third, the annulment of

¹⁰ Rachmadi Usman, "The Meaning of Marriage Registration in Marriage Laws and Regulations in Indonesia," *Indonesian Legislation Journal* 14, no. 3 (2017): 259.

¹¹ Nabila Naili, *Indonesian Islamic Marriage Law* (Jakarta: Prenadamedia Group, 2019), 99.

¹² Naili, 100.

¹³ Imam Faishol, "Marriage Registration in Family Law in Indonesia," *Ulumul Syar'i Journal* 8, no. 2 (2019): 1.

¹⁴ Achmad Murtadho, "The Authority of Marriage Registration Through the Head and Head of KUA in the Perspective of the Regulation of the Minister of Religion with the Regulation on the Utilization of State Apparatus," *Harmony Journal* 20, no. 1 (2021): 145, <https://doi.org/10.32488/harmoni.v20i1.468>.

¹⁵ Tami Rusli, "Annulment of Marriage Based on Law Number 1 of 1974 concerning Marriage," *Journal of Legal Institutions* 8, no. 2 (2013): 158.

marriage can only be done by the court.¹⁶ Marriages that have been annulled by the court carry legal implications, namely that both parties remarry as if they had never been married.¹⁷

Recently, several views have emerged regarding same-sex marriage. In Indonesia, for example, Ade Armando, who is an activist and communication expert at the University of Indonesia and Paramadina University of Jakarta, supports same-sex marriage. He also questioned the haram status in Islam related to *lesbian, gay, bisexual, and transgender* (LGBT) groups.¹⁸ Same-sex marriage on the basis of human rights freedom is a concept born in the west. In the legal context in Indonesia, same-sex marriage cannot be actualized for two reasons, first, it is contrary to Pancasila as the nation's philosophy and as a basic norm, which is the source of all legal sources in Indonesia. Second, it is contrary to the constitution and applicable laws and regulations.¹⁹

In 2015, a case of same-sex marriage between DS and RE occurred in the KUA area, Rengat District, Indragiri Hulu Regency, Riau Province.²⁰ Then a similar case occurred again in 2020 at KUA, Kediri District, West Lombok Regency, West Nusa Tenggara Province.²¹ In 2024, same-sex marriage cases will be repeated in South West Gane District, South Halmahera Regency, North Maluku Province.²² All cases of same-sex marriage were carried out using false identities.

Meanwhile, in 2012 there was a marriage incident at the Religious Affairs Office of Sungai Beduk District, Batam City. The marriage event has been recorded in the Marriage Certificate Citation Book Number 34/34/I/2012 dated January 13, 2012. But later it was revealed that the marriage was a same-sex marriage. Both are female. One of

¹⁶ Mukmin Mukri, "Prevention and Annulment of Marriage," *Perspective Journal* 13, no. 2 (2020): 101.

¹⁷ Muhammad Nasichin, "The Legal Consequences of Marriage Annulment Based on Law Number 1 of 1974 concerning Marriage," *Journal of Pro-Law University of Gresik* 7, no. 1 (2018): 18.

¹⁸ Ikhsan Yulis Wiwanda, "Ade Armando's Controversial Interpretation of the Quran on Social Media" (Thesis, Banjarmasin, Antasari State Islamic University, 2020).

¹⁹ La ode Dedihasriadi, Ju-Lan Hsieh, dan Wahyudi Umar, "Same-Sex Marriage as a Human Rights Freedom in Indonesia: The Perspective of Pancasila and the Marriage Law," *Jambura Law Review* 4, no. 2 (2022): 224, <https://doi.org/10.33756/jlr.v4i2.14067>.

²⁰ Eka Yonavilbia, "Same-sex marriage canceled in Rengat," *Public Info* (blog), 2016, <https://www.infopublik.id/kategori/nusantara/152194/nikah-sejenis-dibatalkan-di-rengat>.

²¹ Azizah Wardhatul, "The Authority of the State Attorney in the Annulment of Same-Sex Marriage (Study Decision Number: 540/Pdt.G/2020/PA. GM West Lombok)" (Thesis, Padang, Andalas University, 2024).

²² Bayu D. Sumaila, Abd. Rauf Wajo, and Riski Willy Dama, "The Same-Sex Marriage Controversy in South Halmahera: A Review of Islamic Law and Its Impact on Society," *Al-Maqasid Journal: Journal of Sharia and Civil Sciences* 10, no. 2 (2024): 189, <https://doi.org/10.24952/almaqasid.v10i2.11455>.

them had forged his identity in the form of an Identity Card (KTP) used to carry out the marriage.²³ The phenomenon of same-sex marriage will be the object of this study.

Studies on same-sex marriage have been conducted by several previous researchers. In a normative study using a legal and human rights perspective, same-sex marriage has been carried out by Permatadani²⁴, Dedihasriadi²⁵, Priscyllia²⁶, and Novita.²⁷ Meanwhile, studies using the perspective of Islamic law were also conducted by Nasution²⁸, Abdusshomad²⁹, Putri³⁰, and Najla.³¹ In the empirical realm, the legal consequences of same-sex marriage are also studied by Shawwal³² and Nuraeni.³³ Based on the literature review, this study tries to continue previous studies by examining them from the perspective of the responsibility of law enforcement, which in this case is the Head of KUA and Penghulu. This study was conducted in Sungai Beduk District, Batam City.

This study aims to analyze the responsibilities of the Head and Head of KUA in Sei Beduk District, Batam City who organize marriage for same-sex couples with false identities. As an analysis tool, this study uses the Theory of Legal Certainty initiated by Gustav Radbruch. The questions that will be answered in this study are: 1) How is the

²³ Muhammad Jova Febrianto, "Social Media as an Instrument for Presenting Identity for Homosexuals in Batam, Riau Islands" (Thesis, Tanjung Pinang, Raja Ali Haji Maritime University, 2023).

²⁴ Ega Permatadani and Achmad Hariri, "The Validity of Same-Sex Marriage in Constitutional Law," *Media of Law and Sharia* 4, no. 3 (2023), <https://doi.org/10.18196/mls.v4i3.10>.

²⁵ Dedihasriadi, Hsieh, dan Umar, "Same-Sex Marriage as a Human Rights Freedom in Indonesia: The Perspective of Pancasila and the Marriage Law."

²⁶ Fanny Priscyllia, "Same-Sex Marriage in the Law of Nature in Indonesia," *Jatiswara Journal* 37, no. 2 (2022), <https://doi.org/10.29303/jtsw.v37i2.400>.

²⁷ Olga Novita, "Marriage Rights for LGBT People: Legality in Indonesian Law," *Scientific Journal of the World of Law* 6, no. 1 (2021), <http://dx.doi.org/10.56444/jidh.v6i1.2572>.

²⁸ Ulfa Ramadhani Nasution, "Accepting Same-Sex Marriage in Islam: A Study of Jahangir and Abdullatif's Thoughts," *Al-Ahwal: Journal of Islamic Family Law* 13, no. 2 (2020), <https://doi.org/10.14421/ahwal.2020.13201>.

²⁹ Alwazir Abdusshomad, Benny Kurnianto, and Nawang Kalbuana, "LGBT in the Perspective of Islam, Social Citizenship and Humanity," *Journal of Intellectualita: Islam, Social, and Science* 12, no. 1 (2023), <https://doi.org/10.19109/intelektualita.v12i1.16604>.

³⁰ Rizky Rahajeng Tania Putri et al., "LGBT in the Perspective of Law, Islam and Human Rights," in *Proceeding CoLaS*, vol. 1 (Conference of Law and Social Studies, Madiun: Faculty of Law, University of PGRI Madiun, 2022), <https://prosiding.unipma.ac.id/index.php/CoLaS/article/view/3087>.

³¹ Nadhratun Najla and Khairunnisa, "LGBT in an Islamic Perspective: A Literature Review," *Religion: Jurnal Agama Social, and Cultural* 2, no. 6 (2023), <https://doi.org/10.55606/religion.v1i6.733>.

³² Muhammad Akbar Syawal and Fully Handayani, "The Authority of the Prosecutor in Proposing the Annulment of Same-Sex Marriage and Its Legal Consequences on Marriage," *PALAR: Pakuan Law Review* 8, no. 1 (2022), <https://doi.org/10.33751/palar.v8i1.4587>.

³³ Nuraeni, Siti Muflichah, and Haedah Faradz, "Annulment of Marriage Due to Same-Sex Attraction (Juridical Review of the Decision of the South Jakarta Religious Court Number 2723/Pdt.G/2019/PA.JS)," *Soedirman Law Review* 3, no. 1 (2021), <https://doi.org/10.20884/1.slr.2021.3.1.125>.

legal status of same-sex marriage carried out in the jurisdiction of KUA, Sei Beduk District, Batam City? 2) What efforts can be made as legal responsibility for same-sex marriage that occurs in Sei Beduk District, Batam City? This research is expected to contribute as a scientific reference regarding legal remedies against same-sex marriage that occurs in society.

Methodology

This research is included in the type of field research that is descriptive-qualitative, which is a method that is carried out by describing the facts, then followed by analysis.³⁴ The approach used is empirical juridical, a method of legal research that is carried out by examining the actual situation that occurs in society, namely looking for facts related to the problems in the research.³⁵ In this case, the research was conducted to describe and analyze legal events in the form of same-sex marriage that occurred in the jurisdiction of KUA Sei Beduk District, Batam City from the perspective of legal certainty theory.

The data used in this study is in the form of primary data and secondary data. Primary data is data obtained from the main source³⁶, where in this study the primary data is in the form of the Head of KUA and the Head of Village in Sei Beduk District. While secondary data is data obtained from written materials³⁷, where in this study secondary data is obtained from laws and regulations, including Law No. 1 of 1974 concerning Marriage, Law on Human Rights, Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage, Regulation of the Minister of Religion of the Republic of Indonesia No. 20 of 2019 concerning Marriage Registration, Compilation of Islamic Law, and the decision of the Batam City Religious Court Number 60/Pdt.G/2013/PA.Btm. As a complement, secondary data is also taken from journal articles, books, theses, theses, and dissertations related to the research theme. Data collection was carried out using a semi-structured interview technique, which is an

³⁴ To the city of Ratna, *Literary Research Theory, Methods, and Techniques* (Yogyakarta: Pustaka Siswa, 2014), 49.

³⁵ Kornelius Benuf and Muhamad Azhar, "Legal Research Methodology as an Instrument for Unraveling Contemporary Legal Problems," *Journal of Gema Keadilan* 7, no. 1 (2020): 28, <https://doi.org/10.14710/gk.2020.7504>.

³⁶ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 89.

³⁷ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: University of Indonesia, 2006), 11.

interview process that uses interview guidance derived from topic development and asks questions and uses more flexibly than interviews.³⁸ The resource persons in the interview process consisted of the Head of KUA and the Head of the KUA of Sei Beduk District, officials of the Ministry of Religion who have duties and functions in the field of Islamic community guidance.

Each data obtained is analyzed using qualitative-inductive techniques. Qualitative data analysis is inductive, namely an analysis based on the data obtained, then developed into a hypothesis. Based on the hypothesis formulated based on the data, data is then searched again repeatedly so that it can be concluded whether the hypothesis is accepted or rejected based on the data collected. If based on data that can be collected repeatedly with triangulation techniques, it turns out that the hypothesis is accepted, then the hypothesis develops into a theory.³⁹

Discussion

Legality of Same-Sex Marriage in Batam City According to the Marriage Law

A similar marriage incident at KUA, Sungai Beduk District, Batam City, occurred in 2012 between Angga Soetjipto and Ninies Ramiluningtyas. Angga Soetjipto, whose real name is Musjalifa, is actually a woman, but he forged his ID card identity and changed his gender to a man before marrying Ninies Ramiluningtyas. The identity forgery was carried out without the knowledge of Ninies Ramiluningtyas and her family. Before the marriage contract occurred, the Head of KUA and the Head of the Headman had conducted an examination by presenting the bride-to-be. However, this has not been able to reach the substantial aspect to confirm the gender of the bride-to-be. In other words, face and appearance can deceive and obscure the true gender of the bride-to-be. The following is a statement from the head who checked the completeness of the identity of the perpetrator.

"As is generally the case with marriage registration carried out by the community, I check the completeness of the registration documents. Judging from his ID card, the gender is indeed male. And I see that the people who come to KUA (to register for marriage) are physical and their appearance is male. His hair was short,

³⁸ Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Legal Research Methodology* (Surakarta: Oase Pustaka, 2020), 72.

³⁹ Zuchri Abdussamad, *Qualitative Research Methods* (Makassar: Syakir Media Press, 2021), 159.

wearing pants and a shirt that was like a man. So there is no suspicion at all and there is no further procedure to check the gender of the bride-to-be".⁴⁰

The head of KUA who is on duty has carried out his duties according to the authority he has to check marriage documents based on documents submitted by prospective brides-to-be. In addition to presenting the bride-to-be, the guardian of the bride-to-be was also present at the KUA in the identity check process. So that it does not raise suspicion by the Penghulu who conducted the examination. The results of the examination at that time were declared complete and there were no obstacles to getting married. The following is a statement from the Head of KUA regarding the identity check.

"In this regard, it was purely an accidental mistake. In terms of complete documents, it can be seen that the bride and groom are not forced to get married. Not only the bride and groom come, but there are also guardians. Seeing this, we do not have the slightest suspicion of identity forgery. Because indeed the appearance of the future husband really looks like a man, even though he is actually a woman".⁴¹

On this basis, the headman then carries out the marriage contract and registers the marriage to the two brides-to-be.⁴² However, after the wedding was held in the background, it was found that the groom did not meet the requirements as stipulated in the laws and regulations because of his gender in essence. So that the marriage that has been held by the head is a same-sex marriage between a woman and a woman. In the marriage annulment trial by the Batam City Religious Court Judge, it was proven that the groom had forged his identity card by changing his gender from a woman to a man.

From a juridical or positive-legalistic point of view, it will appear that Indonesia is included in the group of countries that do not specifically regulate laws on LGBT and same-sex marriage, whether legalizing or criminalizing them.⁴³ Meanwhile, same-sex marriage as it occurs in Sei Beduk District outwardly contradicts Article 1 of the Marriage Law which reads: "Marriage is a bond of birth between a man and a woman as husband

⁴⁰ Interview with Penghulu at KUA, Sei Beduk District, Batam City, October 20, 2024

⁴¹ Interview with the Head of KUA KUA Sei Beduk District, Batam City, October 20, 2024

⁴² A marriage contract can be carried out if two things have been fulfilled: First, there is a registration of the marriage will in writing by filling out the registration form by attaching the required documents. Second, a marriage document examination has been carried out by presenting a prospective husband, wife-to-be, and guardian and the results of the marriage document examination have been declared complete. See Articles 4, 5 and 6 of the Regulation of the Minister of Religion Number 20 of 2019 concerning Marriage Registration.

⁴³ Hamid Chalid and Arief Ainul Yaqin, "The Global Debate and Phenomenon of the Legalization of Same-Sex Marriage: A Case Study of the United States, Singapore, and Indonesia," *Constitution Journal* 18, no. 1 (2021): 157, <https://doi.org/10.31078/jk1817>.

and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".⁴⁴ Marriage law in Indonesia does not legalize same-sex marriage because it is contrary to the legal requirements of marriage and religious norms. In addition, the Indonesian constitution places Pancasila as a *grundnorm* with the precepts of the One God as the foundation and guiding star of the Indonesian Marriage Law, the essence of which is that marriage must be between a man and a woman (heterosexual) with the aim of forming a family (household).⁴⁵

Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage does not regulate same-sex marriage at all. It is the same with the Civil Code (KUHPer) and the Compilation of Islamic Law (KHI) which also do not regulate same-sex marriage issues.⁴⁶ However, when viewed from the non-fulfillment of the marriage requirements in same-sex marriage, efforts to annul marriage are the most appropriate and legally guaranteed mechanism in dealing with the marriage. Article 22 of the Marriage Law states that a marriage can be annulled if the parties do not meet the conditions for the marriage. An application for cancellation can be submitted by the wife or husband.⁴⁷

The quote above says that in marriage there can be a marriage annulment if the conditions of a marriage are not suitable. "Marriage can be annulled, if the parties do not meet the conditions for the marriage to take place". A marriage that does not meet the legal requirements of marriage such as same-sex marriage between a man and a man can be annulled based on the information above. The solution to handle it when someone has fallen into being a same-sex lover is the need for handling from the family and the government.⁴⁸

⁴⁴ Ahmad Ega Putra Dani and Murry Darmoko, "Provisions for Same-Sex Marriage in Indonesia and the Netherlands," *JUDICIARY (Journal of Law and Justice)* 12, no. 1 (2023): 121, <https://doi.org/10.56943/judiciary.v12i1.150>.

⁴⁵ Timbo Mangaranap Sirait, "Examining the Acceptability of Same-Sex Marriage in the Indonesian Constitution," *Constitution Journal* 14, no. 3 (2017): 621, <https://doi.org/10.31078/jk1438>.

⁴⁶ Putri Dwi Yulisa, "Same-Sex Marriage in Indonesia Based on the Perspective of Law 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage," *Dimension Journal* 10, no. 3 (2021): 763, <https://doi.org/10.33373/dms.v10i3.5965>.

⁴⁷ Verranda Anggi Saputri and Bambang Tri Bawono, "Marriage Annulment Due to Unfulfilled Marriage Conditions (Case Study of Same-Sex Marriage in Indonesia in Decision Number 5253/Pdt.G/2017/PA. Jr)," *Sultan Agung Scientific Journal* 1, no. 1 (2022): 55, <https://jurnal.unissula.ac.id/index.php/JIMU/article/view/26827>.

⁴⁸ Aisyah Nurjannah, Amalia Putri Chamila, and Bintang Aurelia Ardani, "Opposition to the Legalization of Same-Sex Marriage by Upholding Human Rights Principles," *Indigenous Knowledge* 2, no. 2 (2023): 179, <https://jurnal.uns.ac.id/indigenous/article/view/79541>.

Preventive policies to provide legal certainty and legal protection are absolutely needed by policy makers to avoid the occurrence of similar same-sex marriage events. Cases of same-sex marriage that occur not only cause losses in the legal aspect, but also losses occur in the material aspect and have a psychological effect on the deceived couple and their families. Preventive policies can be in the form of deepening examinations of prospective bride and groom couples which aim to ascertain their gender and make the examination a standard operating procedure (SOP) outlined in the technical regulations for the examination of prospective brides and grooms and become a standard reference for the Head of KUA/Penghulu. The examination can be carried out, among others, by involving government health service units.⁴⁹

Although the technical regulations regarding examinations have not yet been regulated, currently the Head of KUA in Sei Beduk District has taken a policy to cooperate with the Public Health Center (Puskemas) in conducting health checks and reproductive health coaching for prospective brides.

"To anticipate similar things (same-sex marriage), we at KUA enforce a health check-up policy at the nearest health center. This examination also includes the reproductive health of the two brides-to-be. Through this examination, the gender of the bride and groom can also be identified. So, same-sex marriage will not be repeated with this examination".⁵⁰

The anticipatory action taken by the Head of KUA Sei Beduk District is one of the mandates of the Marriage Law, namely to maintain the legality of marriage in the community. This is because same-sex marriage is very contrary to religious norms so it must be avoided. One of the efforts is to prevent it from being registered at KUA.

Legal Certainty in Same-Sex Marriage in Sei Beduk District

⁴⁹ Murry Darmoko Moersidin, "Global Disruption of Same-Sex Marriage Solutions to Socio-Legal Approaches to Religion in Indonesia," in *Proceedings: Indonesia's Resilience in the Vortex of Global Disruption* (Palembang: Sriwijaya University, 2022), 69, <https://doi.org/10.30589/proceedings.2024>.

⁵⁰ Interview with the Head of KUA of Sei Beduk District, Batam City, October 20, 2024.

The presence of the state in registering marriages aims to provide legal certainty to its citizens.⁵¹ Legal certainty here is intended to provide protection for the rights of husbands, wives, and offspring. As well as providing protection and guarantees for certain rights arising from a marriage such as inheritance rights, birth certificate rights, and others.⁵² Marriage registration is carried out by two agencies, namely the Marriage Registrar for Muslim citizens and the Civil Registry Office for citizens of religions other than Islam.⁵³

Although it is not a determining factor for the validity of a marriage, marriage registration aims to create order in society and unrecorded marriages can be detrimental especially to women and children.⁵⁴ Marriage registration is a formal requirement to determine the validity of a marriage. The purpose of marriage registration as conveyed in the government's statement during the examination of the Marriage Law at the Constitutional Court is in the context of administrative order, providing certainty and legal protection of the status of husbands, wives, and children, as well as rights arising from marriage such as inheritance rights, the right to obtain birth certificates, and others.⁵⁵

Marriage registration is an act carried out by an official appointed by laws and regulations after the occurrence of a marriage that is legally carried out according to each religion or belief. In the teachings of Islam, a marriage is valid if it has fulfilled its pillars and conditions. In Article 14 of the KHI Rukun Nikah consists of, prospective husband, future wife, guardian of the marriage, two witnesses, and *ijab and kabul*. Meanwhile, the conditions of marriage are found in each of the pillars of marriage. In Islam, the non-fulfillment of the marriage pillar results in the annulment of a marriage, while the non-fulfillment of the conditions of marriage results in the invalidity of a marriage.⁵⁶ According to Al-Jaziry, a marriage that does not fulfill its pillars is called *nikah al-batil*,

⁵¹ Virahmawaty Mahera and Arhjayati Rahim, "The Importance of Marriage Registration," *As-Shams: Journal of Islamic Law* 3, no. 2 (2022): 92.

⁵² Liky Faizal, "The Legal Consequences of Marriage Registration," *Journal of Sharia Economic Law* 8, no. 2 (2016): 63.

⁵³ Ibnu Akbar Maliki dkk., "A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda's Views)," *Conscience: Journal of Sharia and Society Studies* 23, no. 1 (2023): 51, <https://doi.org/10.19109/nurani.v23i1.16447>.

⁵⁴ Agustin Hanapi dan Edi Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Journal of Family Law and Islamic Law* 4, no. 2 (2020): 542.

⁵⁵ Usman, "The Meaning of Marriage Registration in Marriage Laws and Regulations in Indonesia," 259.

⁵⁶ Naili, *Indonesian Islamic Marriage Law*, 99.

while a marriage that does not meet one of its conditions is called nikah *al-fasid*. Both nikah *al-batil* and nikah *al-fasid* are invalid.⁵⁷

In the case of same-sex marriages that use false identities that occurred in Sei Beduk District, Batam City, the marriage contract has been held in accordance with Islam and the marriage has been recorded by the Head, it will give rise to two conflicting legal implications. First, from the point of view of Islam, the status of same-sex marriage that has been carried out does not meet the harmony and requirements of marriage because the "husband" is female. So that the marriage is not valid according to Islamic religious law. Thus, legally positive the marriage was declared invalid.

Second, if the registration of marriage is intended as a formal administrative action required by the state, then the registration of same-sex marriages carried out by the Head of KUA in Sungai Beduk District, Batam City, on the other hand, formally seems to provide the validity of the same-sex marriage, which will then have certain legal consequences for the two couples. In fact, same-sex marriage is contrary to the philosophy of Pancasila, the Constitution of the Republic of Indonesia, and is not in line with the culture and values that live in the Indonesian nation.⁵⁸ The occurrence of cases of same-sex marriage can hopefully strengthen the argument that raises the idea of the need to amend the Marriage Law and make marriage registration interpreted as a condition for the validity of a marriage.⁵⁹ So that between the celebration of marriage and the registration of marriage is a complete legal event regarding the validity of a marriage, it does not give rise to an ambiguity.

Gustav Radbruch, said that there are three legal goals, namely utility, certainty, and justice. In implementing these three legal objectives, priority must be used.⁶⁰ The rejection of the legalization of same-sex marriage is an effort that contains the value of legal objectives as stated by Radbruch. In terms of benefits, opposing same-sex marriage will maintain the purity of religious values in marriage. It is also a means for domestic

⁵⁷ Muhammad Maisan Abdul Ghani, Mujiyo Nurcholis, and Imam Sucipto, "Damage and Annulment of Marriage," *Al-Rosyad Journal* 2, no. 2 (2023): 18.

⁵⁸ Dedihasriadi, Hsieh, dan Umar, "Same-Sex Marriage as a Human Rights Freedom in Indonesia: The Perspective of Pancasila and the Marriage Law," 224.

⁵⁹ Usman, "The Meaning of Marriage Registration in Marriage Laws and Regulations in Indonesia," 270.

⁶⁰ Mario Julyano and Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning," *Crepido Journal: A Journal of the Basics of Legal Thought* 1, no. 1 (2019): 13.

couples to continue their offspring, which cannot be done by same-sex couples.⁶¹ Meanwhile, the value of justice in efforts to reject same-sex marriage is aimed at avoiding losses in legal and material aspects due to the psychological impact on the deceived couple and their families.⁶² Furthermore, in the aspect of legal certainty, the prevention of same-sex marriage is aimed at ensuring that every marriage can be legally registered according to state law. This marriage registration is an effort to guarantee the right for people with families to get services from the state.⁶³

Annulment of Marriage as the Legal Responsibility of the Head in Same-Sex Marriage

Based on the Marriage Law, the mechanism for annulment of marriage is carried out after a marriage is carried out. Where a cause that is used as a reason for the annulment of the marriage is not visible when the marriage is held. In contrast to the marriage prevention mechanism that can be pursued by certain parties before the marriage event occurs. The definition of annulment of marriage is not expressly stated in the Marriage Law, but in Article 22 of the Marriage Law it is stated that marriage can be annulled, if the parties do not meet the conditions for the marriage to take place.⁶⁴

When viewed from the Marriage Law, a marriage cannot be annulled by itself. The mechanism for annulment of marriage is carried out through the process of applying for annulment of marriage to the court. So that the annulment of a marriage can only be decided by the court. A marriage that has been annulled based on a court decision that has legal force that remains valid from the time of the marriage.⁶⁵ Thus, marriages that have been annulled based on a court decision are considered to have never existed.⁶⁶

⁶¹ Muhammad Arif Zuhri, "Same-Sex Marriage in Islamic Studies," *Al-Aḥwāl: Journal of Islamic Family Law* 8, no. 1 (2016): 86, <http://dx.doi.org/10.14421/ahwal.2015.08107>.

⁶² Laura Langbein, "Same-Sex Marriage and Negative External Impacts," *Social Sciences Quarterly* 90, no. 2 (2009): 292, <http://dx.doi.org/10.1111/j.1540-6237.2009.00618.x>.

⁶³ Zainuddin and Nur Jaya, "Guarantee of Legal Certainty in Marriage Through Itsbat Nikah (Study at the Makassar Religious Court Class IA)," *Riau Law Journal* 2, no. 2 (2018): 51.

⁶⁴ Nasichin, "The Legal Consequences of Marriage Annulment Based on Law Number 1 of 1974 concerning Marriage."

⁶⁵ Deni Rahmatillah and A.N Khofify, "The Concept of Annulment of Marriage in Law Number 1 of 1947 and the Compilation of Islamic Law," *Journal of Islamic Law* XVII, no. 2 (2017): 152.

⁶⁶ Sri Turatmiyah, M. Syaifuddin, and Arfianna Novera, "The Legal Consequences of Annulment of Marriage in the Legal Perspective of Child and Women Protection in the South Sumatra Religious Court," *IUS QUIA IUSTUM Legal Journal* 1, no. 22 (2015): 163.

The parties who can apply for annulment of marriage as stipulated in Article 73 of the KHI are:

1. The families in the lineage are straight up and down from the husband or wife;
2. Husband or wife;
3. Authorized officials supervise the implementation of marriages according to the Law.
4. Interested parties who know of defects in the marriage principles and conditions according to Islamic law and Laws and Regulations.⁶⁷

Explicitly, the authority of the Head of KUA and Penghulu to apply for annulment of marriage to the court is not expressly regulated in the laws and regulations. In the Regulation of the Minister of Religion Number 16 of 2019, it is stated that the duties and responsibilities of the Head are as a marriage registrant employee.⁶⁸ However, in the case of same-sex marriage that occurred in Sungai Beduk District, Batam City, Penghulu submitted an application for annulment of marriage to the Batam City Religious Court with case number: 60/Pdt.G/2013/PA.Btm.

The legal basis for the Head to submit an application for the annulment of same-sex marriage can be explored from Article 73 letter d of the KHI, which is categorized as an interested party who knows of defects in the harmony and conditions of marriage according to Islamic law and laws and regulations.⁶⁹ Where in the case of same-sex marriages, after the marriage was carried out, the Penghulu only found out that there had been identity forgery by changing the gender from a woman to a man. So that this results in marriages that have been held with defective requirements.

In the context of realizing legal certainty, the action of the Head who submitted an application for the annulment of same-sex marriage provides two legal certainties, first, the implementation of marriage laws in accordance with the constitution and laws and regulations. That the marriage law that applies in Indonesia is marriage between a man and a woman. Marriage law in Indonesia does not regulate same-sex marriage. So

⁶⁷ Nuzha, "Annulment of Marriage According to Islamic Law and Positive Law in Indonesia," *Qiyas: Journal of Islamic Law and Judiciary* 8, no. 1 (2023): 93.

⁶⁸ Murtadho, "The Authority of Marriage Registration Through the Head and Head of KUA in the Perspective of the Regulation of the Minister of Religion with the Regulation on the Utilization of the State Apparatus."

⁶⁹ Nuzha, "Annulment of Marriage According to Islamic Law and Positive Law in Indonesia," 94.

same-sex marriage is an unconstitutional act. And therefore, in the context of the certainty of the law of same-sex marriage, it must be applied for cancellation to the court.⁷⁰

Second, from the aspect of legal certainty, the annulment of same-sex marriage will end the rights and obligations that arise as a result of the marriage. In same-sex marriages there must be no inheritance rights because there can be no offspring in such a marriage. However, other rights and obligations such as providing support, residence and others may occur.⁷¹ With the end of the same-sex marriage through the process of annulment of marriage, the marriage is considered to have never existed and the individual rights of the couple are restored as they were before the marriage took place.⁷²

Conclusion

Same-sex marriage is invalid both in the view of Islamic religious law and the applicable laws and regulations because it does not meet the requirements as stipulated in the Marriage Law, and is contrary to the culture and values that live in society. The occurrence of same-sex marriage due to identity forgery must be filed for annulment of marriage through the court. The annulment of same-sex marriages that occurred in Sei Beduk District, Batam City, has been decided by the Batam City Religious Court which revoked the registration of the marriage, and as a result the marriage law that has been recorded is considered to never exist. The Head of KUA and the head as interested parties can submit an application for annulment of marriage if they know that there are defects in the marriage principles and conditions according to Islamic law and laws and regulations. This needs to be done as a legal responsibility and in order to realize legal certainty in the field of marriage law.

⁷⁰ Sirait, "Examining the Acceptability of Same-Sex Marriage in the Indonesian Constitution," 621.

⁷¹ Amrina Rosyada, Lisna Mualifah, dan Ibnu Akbar Maliki, "Gender Justice in Husband and Wife Relations According to Shaykh Nawawi Al-Bantani: A Study of the Kitab Syarah 'Uqūd al-Lujain," *Qanun: Journal of Islamic Family Law* 2, no. 2 (2024): 141, <https://dx.doi.org/10.62870/qanun.v2i2.27087>.

⁷² Novita, "Marriage Rights for LGBT People: Legality in Indonesian Law," 54.

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