

Legal Responsibility of the *Penghulu* in Same Sex Marriage Involving Fake Identity in Batam City

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Abstract

Marriage is a physical and emotional bond between a man and a woman that aims to build a happy, lasting family. Such a bond should be seen not only as a way of satisfying biological need, but also as the marriage's purpose to produce offspring. This research aims to analyze the legal responsibility of the Head of the Religious Affairs Office (KUA) and the *Penghulu* in Sei Beduk Sub-district, Batam City, for same-sex marriage involving fake identities. Then, what is the legal status of such marriages, and what legal remedies can be pursued? This research uses a field study method with an empirical juridical approach. Primary data was obtained from the Head of KUA and *Penghulu* in Sei Beduk Sub-district, Batam City. Secondary data were obtained from relevant books, journal articles, theses, and dissertations. The data were collected through interviews and documentation and analyzed using a qualitative-inductive method. The results show that same-sex marriages are invalid in terms of religious norms, and do not fulfill 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. To demonstrate legal responsibility, the Head of KUA/*Penghulu* of Sei Beduk Subdistrict, Batam City, as an interested party, has applied to the Religious Court of Batam City for the annulment of the marriage after realizing that it was defective under Islamic law and national legislation. 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 nonexistent.

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.*

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Introduction

Building a family and having offspring is the right of every individual¹ as part of human rights.² To exercise this right, the state has regulated matters relating to the institution of marriage under Article 28B of the 1945 Constitution of the Republic of Indonesia. Furthermore, marriage is also outlined under Law No. 1 of 1974, as amended by Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning

¹ Digdo Aji Mukti, Mufliha Wijayati, dan Ibnu Akbar Maliki, "Pembentukan Akhlak Mahmudah Perspektif Keluarga Masalah sebagai Upaya Pencegahan Menghadapi Pandemi Covid-19," *SETARA: Jurnal Studi Gender dan Anak* 2, no. 1 (2020): 98, <https://doi.org/10.32332/jsaga.v2i01.2220>.

² Musyaffa Amin Ash Shabah, "Perkawinan Sebagai Hak Asasi Manusia," *Maslahah: Jurnal Hukum Islam dan Perbankan Syariah* 11, no. 2 (2020): 125, <https://doi.org/10.33558/maslahah.v11i2.2623>.

Marriage (Marriage Law).³ Protecting human dignity and sanctity, as well as women's rights, is a state responsibility that fosters the essence of marriage.⁴

Article 1 of the Marriage Law defines marriage as a physical and mental bond between a man and a woman as husband and wife, to build a happy and eternal family (household) based on what is mandated by the Almighty God. The physical bond in marriage indicates a legal relationship between a man and a woman,⁵ while the inner bond is non-formal and invisible. The connection between these physical and mental bonds lies in the foundation for building and fostering a happy, lasting family.⁶ According to Islamic law, marriage involves *mitssaqaan ghalidzan* (a strongly binding contract), instructing the couple to obey Allah's commands. Being married, therefore, represents an act of worship.⁷

Marriage is a legal act with its legal consequences.⁸ In a legal context, marriage is valid if it occurs in accordance with religious laws and beliefs. This indicates that the state recognizes the validity of marriages under each religious law recognized in Indonesia, provided that such law does not conflict with the national Marriage Law.⁹ Every citizen who enters into a marriage must be recorded. Marriage registration is part of the administrative requirements compulsory under the law, thereby providing legal certainty and protection for the parties who tie the knot, the marriage, and matters arising from it.¹⁰

In Islamic law, a marriage is valid unless it fails to fulfill its pillars and conditions. The marriage becomes void when these pillars are not met, rendering it

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, dan Ibnu Akbar Maliki, "Resiliensi Keluarga Sakinah Dalam Pasangan Long Distance Marriage di Kalangan Buruh Bangunan," *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, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2020): 194, <https://doi.org/10.23887/jmpppkn.v2i1.135>.

⁷ Maimun, "Pernikahan Dalam Kompilasi Hukum Islam dan Perdata," *Al-Mizan : Jurnal Hukum Islam dan Ekonomi Syariah* 9, no. 1 (2022): 12, <https://doi.org/10.54621/jiam.v9i1.263>.

⁸ Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," 198.

⁹ Elfirda Ade Putri, "Keabsahan Perkawinan Berdasarkan Perspektif Hukum Positif di Indonesia," *Krtha Bhayangkara* 15, no. 1 (2021): 151, <https://doi.org/10.31599/krtha.v15i1.541>.

¹⁰ Rachmadi Usman, "Makna Pencatatan Perkawinan dalam Peraturan Perundang-undangan Perkawinan di Indonesia," *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 259.

invalid.¹¹ However, the pillars of marriage under the Marriage Law, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), and Jurisprudence differ in phrases, despite the same core material and substance. The pillars of marriage include a prospective husband, a prospective wife, a marriage guardian, two witnesses, and *ijab qabul* (the marriage offer and acceptance between the husband and the wife). That is, the conditions in marriage are attached to each pillar of marriage.¹²

Marriage registration for Muslim citizens is outlined in the marriage certificate and is led by the Head of the subdistrict Religious Affairs Office (Kantor Urusan Agama/KUA) serving as the *Penghulu*.¹³ *Penghulu* is a functional position held by a civil servant working under the Ministry of Religious Affairs. While bearing responsibility for uniting the two souls, *Penghulu* also serves as the marriage registration officer, recording every marriage that has taken place. Specifically, the scope, duties, responsibilities, and authority of the *Penghulu* include providing services and guidance on marriage or referrals, developing *kepenghuluan* (marriage registry affairs), and providing guidance for the Islamic community. Before the marriage takes place, the Head of the KUA/*Penghulu* examines the marriage documents by presenting the prospective husband, prospective wife, and guardian to ensure that there are no obstacles to marriage.¹⁴

While the Marriage Law does not regulate the definition of marriage cancellation, annulment of marriage is always possible if both parties fail to fulfill the marriage terms and conditions. The annulment of a marriage, which can only be declared by the court, is an attempt to stop the two parties from entering into a marriage for specific reasons. The definition of annulment of marriage can be concluded into the following three conditions: First, the annulment of marriage takes place after a marriage has occurred. Second, the marriage fails to fulfill the conditions. Third, only the court

¹¹ Nabiela Naily, *Hukum Perkawinan Islam Indonesia* (Jakarta: Prenadamedia Group, 2019), 99.

¹² Naily, 100.

¹³ Imam Faishol, "Pencatatan Perkawinan dalam Hukum Kekeluargaan di Indonesia," *Jurnal Ulumul Syar'i* 8, no. 2 (2019): 1.

¹⁴ Achmad Murtadho, "Kewenangan Pencatatan Nikah Melalui Penghulu dan Kepala KUA dalam Perspektif Peraturan Menteri Agama dengan Peraturan Pendayagunaan Aparatur Negara," *Jurnal Harmoni* 20, no. 1 (2021): 145, <https://doi.org/10.32488/harmoni.v20i1.468>.

can annul the marriage.¹⁵ An annulled marriage has legal implications: the two parties are deemed never to have entered into a marriage.¹⁶

Recently, some have expressed their views on same-sex marriage. For example, Ade Armando, an activist and communication expert at Universitas Indonesia and Universitas Paramadina Jakarta, supports same-sex marriage. He also questioned the haram status in Islam of lesbian, gay, bisexual, and transgender (LGBT) groups.¹⁷ Same-sex marriage is a concept born in the West in the name of freedom and human rights. However, under Indonesian law, same-sex marriage cannot take place for the following reasons: first, it contradicts the Pancasila, the nation's philosophy and fundamental norm, which serves as the highest source of all laws and regulations in Indonesia. Second, it contradicts the Constitution and prevailing laws and regulations.¹⁸

Several cases of same-sex marriage took place in some Indonesian regions, including same-sex marriage between DS and RE that took place in the KUA area of Rengat District, Indragiri Hulu Regency, Riau Province in 2015,¹⁹ same-sex marriage in the KUA of Kediri District, West Lombok Regency, West Nusa Tenggara Province in 2020,²⁰ and same-sex marriage in South Gane Barat Subdistrict, South Halmahera Regency, North Maluku Province in 2024.²¹ All of these cases involved the use of false identities.

Furthermore, in 2012, a marriage took place at the Religious Affairs Office of Sungai Beduk Subdistrict, Batam City. The marriage was recorded in the Marriage Certificate Excerpt book No. 34/34/I/2012 dated January 13, 2012, before it was revealed that the marriage involved two female spouses who tried to tie the knot. One of

¹⁵ Mukmin Mukri, "Pencegahan dan Pembatalan Perkawinan," *Jurnal Perspektif* 13, no. 2 (2020): 101.

¹⁶ Muhammad Nasichin, "Akibat Hukum Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Pro Hukum Universitas Gresik* 7, no. 1 (2018): 18.

¹⁷ Ikhsan Yulis Wiwanda, "Interpretasi Kontroversial Ade Armando terhadap Al-Quran di Media Sosial" (Skripsi, Banjarmasin, Universitas Islam Negeri Antasari, 2020).

¹⁸ 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>.

¹⁹ Eka Yonavilbia, "Nikah Sejenis Dibatalkan Di Rengat," *Info Publik* (blog), 2016, <https://www.infopublik.id/kategori/nusantara/152194/nikah-sejenis-dibatalkan-di-rengat>.

²⁰ Azizah Wardhatul, "Kewenangan Jaksa Pengacara Negara Dalam Pembatalan Perkawinan Sesama Jenis (Studi Putusan Nomor : 540/Pdt.G/2020/PA.GM Lombok Barat)" (Skripsi, Padang, Universitas Andalas, 2024).

²¹ Bayu D. Sumaila, Abd. Rauf Wajo, dan Riski Willy Dama, "Kontroversi Perkawinan Sesama Jenis di Halmahera Selatan: Tinjauan Hukum Islam dan Dampaknya Terhadap Masyarakat," *Jurnal Al-Maqasid: Jurnal Ilmu Kesyariahan dan Keperdataan* 10, no. 2 (2024): 189, <https://doi.org/10.24952/almaqasid.v10i2.11455>.

them has falsified her identity card used to solemnize the marriage.²² This phenomenon will therefore be discussed further in this research.

Some normative studies on same-sex marriage from the perspectives of law and human rights have been conducted, including those by Permatadani,²³ Dedihasriadi,²⁴ Priscyllia,²⁵ and Novita.²⁶ Meanwhile, Nasution,²⁷ Abdusshomad,²⁸ Putri,²⁹ and Najla observed same-sex marriage from an Islamic law perspective.³⁰ In an empirical context, Syawal³¹ and Nuraeni³² focused more on the legal consequences of same-sex marriage in their studies. This research continues previous studies by focusing more on the responsibility of law enforcers, in this case, the Head of the KUA and *Penghulu*.

This research analyzes the responsibility of the *Penghulu* and the Head of KUA in Sei Beduk Sub-district, Batam City, for accommodating same-sex marriages involving false identities. The Legal Certainty Theory, coined by Gustav Radbruch, was used to help analyze the case. Departing from this research background, this research, therefore, seeks to investigate the following questions: 1) What is the legal status of same-sex marriages taking place in the jurisdiction of the KUA of Sei Beduk Sub-district, Batam City? 2) What efforts can be made as a legal responsibility for the same-sex marriages that occur in Sei Beduk Subdistrict, Batam City? This research is

²² Muhammad Jova Febrianto, "Media Sosial Instrumen Penyajian Identitas Bagi Homoseksual di Batam Kepulauan Riau" (Skripsi, Tanjung Pinang, Universitas Maritim Raja Ali Haji, 2023).

²³ Ega Permatadani dan Achmad Hariri, "Keabsahan Perkawinan Sejenis dalam Hukum Ketatanegaraan," *Media of Law and Sharia* 4, no. 3 (2023), <https://doi.org/10.18196/mls.v4i3.10>.

²⁴ Dedihasriadi, Hsieh, dan Umar, "Same-Sex Marriage as a Human Rights Freedom in Indonesia: The Perspective of Pancasila and the Marriage Law."

²⁵ Fanny Priscyllia, "Perkawinan Sejenis dalam Hukum Kodrat di Indonesia," *Jurnal Jatiswara* 37, no. 2 (2022), <https://doi.org/10.29303/jtsw.v37i2.400>.

²⁶ Olga Novita, "Hak Perkawinan Bagi Kaum LGBT : Legalitas Dalam Hukum Indonesia," *Jurnal Ilmiah Dunia Hukum* 6, no. 1 (2021), <http://dx.doi.org/10.56444/jidh.v6i1.2572>.

²⁷ Ulfa Ramadhani Nasution, "Menerima Pernikahan Sesama Jenis Dalam Islam: Telaah Pemikiran Jahangir dan Abdullatif," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 13, no. 2 (2020), <https://doi.org/10.14421/ahwal.2020.13201>.

²⁸ Alwazir Abdusshomad, Benny Kurnianto, dan Nawang Kalbuana, "LGBT dalam Perspektif Islam, Sosial Kewarganegaraan dan Kemanusiaan," *Jurnal Intelektualita: Keislaman, Sosial, dan Sains* 12, no. 1 (2023), <https://doi.org/10.19109/intelektualita.v12i1.16604>.

²⁹ Rizky Rahajeng Tania Putri dkk., "LGBT dalam Perspektif Hukum, Agama Islam dan HAM," dalam *Proceeding CoLaS*, vol. 1 (Conference of Law and Social Studies, Madiun: Fakultas Hukum Universitas PGRI Madiun, 2022), <https://prosiding.unipma.ac.id/index.php/CoLaS/article/view/3087>.

³⁰ Nadhratun Najla dan Khairunnisa, "LGBT dalam Perspektif Islam: Tinjauan Literatur," *Religion: Jurnal Agama, Sosial, dan Budaya* 2, no. 6 (2023), <https://doi.org/10.55606/religion.v1i6.733>.

³¹ Muhammad Akbar Syawal dan Fully Handayani, "Kewenangan Jaksa dalam Mengajukan Pembatalan Perkawinan Sesama Jenis dan Akibat Hukumnya Terhadap Perkawinan," *PALAR: Pakuan Law Review* 8, no. 1 (2022), <https://doi.org/10.33751/palar.v8i1.4587>.

³² Nuraeni, Siti Muflichah, dan Haedah Faradz, "Pembatalan Perkawinan Karena Penyuka Sesama Jenis (Tinjauan Yuridis Putusan Pengadilan Agama Jakarta Selatan Nomor 2723/Pdt.G/2019/PA.JS)," *Soedirman Law Review* 3, no. 1 (2021), <https://doi.org/10.20884/1.slr.2021.3.1.125>.

expected to provide a scientific reference on legal efforts against same-sex marriage in the community.

Methods

This research is a descriptive-qualitative field research, aiming to describe facts as the basis of analysis.³³ The approach used was empirical-juridical, which examines the actual situation in society by gathering facts related to the problems under study.³⁴ In this case, the research is conducted to describe and analyze same-sex marriages within the jurisdiction of the KUA of Sei Beduk Subdistrict, Batam City, from the perspective of legal certainty theory.

This research used primary data and secondary data. The primary data comprised the main materials³⁵ sourced from the Head of KUA and *Penghulu* in Sei Beduk District, while the secondary data were obtained from written materials,³⁶ such as Law No. 1 of 1974 concerning Marriage, Law concerning 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, the Compilation of Islamic Law, and the Batam City Religious Court Decision No. 60/Pdt.G/2013/PA.Btm. Secondary data were also obtained from the Batam City Religious Court Decision No. 60/Pdt.G/2013/PA.Btm as a supplementary material, journal articles, books, theses, and dissertations relevant to the research topic. Data collection was conducted through semi-structured interviews, guided by questions developed based on the topic.³⁷ The interview participants were the Head of the KUA, the *Penghulu* of the KUA for Sei Beduk Sub-district, officials of the Ministry of Religious Affairs responsible for Islamic community guidance, and judges of the Batam City Religious Court.

The data were analyzed using qualitative inductive techniques, and the research hypothesis was formulated based on the analysis. Following the hypothesis formulated

³³ Nyoman Kutha Ratna, *Teori, Metode, dan Teknik Penelitian Sastra* (Yogyakarta: Pustaka Pelajar, 2014), 49.

³⁴ Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 28, <https://doi.org/10.14710/gk.2020.7504>.

³⁵ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 89.

³⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2006), 11.

³⁷ Sigit Sapto Nugroho, Anik Tri Haryani, dan Farkhani, *Metodologi Riset Hukum* (Surakarta: Oase Pustaka, 2020), 72.

from the data, further data were collected to determine whether the hypothesis was accepted or rejected. The repeatedly collected data using triangulation techniques indicate that the hypothesis was accepted before it was further developed into a theory.³⁸

Results and Discussion

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

A same-sex marriage at the KUA of Sungai Beduk Subdistrict, Batam City, took place in 2012 between Angga Soetjipto and Ninies Ramiluningtyas. Angga Soetjipto, whose real name is Musjalifa, is a woman. She falsified her identity card and changed her gender to male before marrying Ninies Ramiluningtyas. This identity fraud was committed without Ninies Ramiluningtyas and her family's knowledge. Prior to the marriage contract, the Head of the KUA and the *Penghulu* conducted an examination of the prospective couple. However, this has not been able to reach the substantial aspect of confirming the gender of the prospective bride and groom. In other words, face and appearance can deceive and obscure the true gender of the prospective bride and groom. The following is a statement from the *Penghulu* who checked the completeness of the perpetrator's identity.

“As with most marriage registrations made by the community, I checked the completeness of the registration documents. Judging from the KTP, the gender is indeed male. And I saw that the person who came to the KUA (to register for marriage) was male in physique and appearance. He had short hair, wore pants, and a shirt that men wear. So there was no suspicion at all and no further procedure to check the gender of the prospective bride and groom.”³⁹

The head of the KUA in charge has performed the task as authorized to conduct an examination of marriage documents based on the documents submitted by the spouses getting married. In addition to presenting the prospective bride and groom, the guardian of both the bride and the groom was also present at the KUA during identity checks, thereby not arousing suspicion for the *Penghulu*. Following this examination, the documents were then declared complete, and there were no further issues for the marriage. The following is a statement from the Head of the KUA regarding the identity-checking.

“Regarding this matter, it is purely an unintentional mistake. In terms of documents, it is complete, and it appears that the bride and groom are not forced

³⁸ Zuchri Abdussamad, *Metode Penelitian Kualitatif* (Makassar: Syakir Media Press, 2021), 159.

³⁹ Interview with the Head of the Religious Affairs Office in Sei Beduk District, Batam City, October 20, 2024

to get married. Not only did the bride and groom come, but there was also their guardian. Seeing this, we did not have the slightest suspicion of identity forgery. Because the appearance of the prospective husband really looks like a man, even though in reality he is a woman.”⁴⁰

The head of the KUA then executed the marriage contract and registered the marriage of the two bride and groom.⁴¹ Following the marriage, it was discovered that the groom was also female, thereby failing to fulfill the requirements as stipulated in the laws and regulations. In the trial process of marriage annulment led by the Judge of the Batam City Religious Court, it was proven that the groom had falsified her identity card, in which her sex was written as male.

When viewed from a juridical or positive-legalistic perspective, Indonesia, among other countries, does not specifically govern LGBT and same-sex marriage-related matters in terms of whether to legalize or criminalize this conduct.⁴² The same-sex marriage as occurred in Sei Beduk Subdistrict contravenes Article 1 of the Marriage Law, stating, “Marriage is a physical and mental bond between a man and a woman as husband and wife to build a happy and lasting family (household) based on what is mandated by the Almighty God”.⁴³ Indonesian marriage law does not legalize matters related to same-sex marriage, given that it contradicts the legal requirements of marriage and religious norms. Additionally, the Indonesian Constitution establishes Pancasila as a *grundnorm*, with the precepts of God Almighty serving as the foundation and guidance for the Indonesian Marriage Law, the essence of which is that marriage must be between a man and a woman (heterosexual) to build a family (household).⁴⁴

Law No. 16 of 2019 concerning the Amendment to Law No. 1 of 1974 concerning Marriage does not regulate same-sex marriage at all, nor do the Civil Code

⁴⁰ Interview with the Head of the Religious Affairs Office of Sei Beduk District, Batam City, October 20, 2024

⁴¹ A marriage contract can be executed if two conditions are met: First, the registration of the intention to marry in writing by filling out the registration form and attaching the required documents. Second, the marriage documents have been examined in the presence of the prospective husband, prospective wife, and guardian, and the results of the examination of the marriage documents are declared complete. See Articles 4, 5, and 6 of the Minister of Religious Affairs Regulation No. 20 of 2019 concerning Marriage Registration.

⁴² Hamid Chalid dan Arief Ainul Yaqin, “Perdebatan dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, dan Indonesia,” *Jurnal Konstitusi* 18, no. 1 (2021): 157, <https://doi.org/10.31078/jk1817>.

⁴³ Ahmad Ega Putra Dani dan Murry Darmoko, “Ketentuan Perkawinan Sesama Jenis di Indonesia dan Belanda,” *JUDICIARY (Jurnal Hukum dan Keadilan)* 12, no. 1 (2023): 121, <https://doi.org/10.56943/judiciary.v12i1.150>.

⁴⁴ Timbo Mangaranap Sirait, “Menilik Akseptabilitas Perkawinan Sesama Jenis di dalam Konstitusi Indonesia,” *Jurnal Konstitusi* 14, no. 3 (2017): 621, <https://doi.org/10.31078/jk1438>.

(*Kitab Undang-Undang Hukum Perdata/KUHP*) and the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*).⁴⁵ However, when the conditions of marriage are not fulfilled, marriage annulment is considered the most appropriate and legally guaranteed mechanism in dealing with same-sex marriages. Article 22 of the Marriage Law explicitly states that a marriage can be annulled if the parties fail to meet the conditions of marriage.” In such a case, either the wife or the husband can file an annulment petition.⁴⁶

The quote above implies that a marriage, in this case, same-sex marriage, is subject to annulment unless the terms and conditions of marriage are appropriately met. Same-sex marriage cases, therefore, require the interference of both the families of the couple and the government.⁴⁷

Preventive policies that provide legal certainty and protection are vital to prevent the same cases from recurring. Same-sex marriage that occurs causes losses in both legal and material aspects, leaving a psychological impact on the deceived spouses and their families. Preventive policies can take the form of deepening the examination of prospective bride and groom to confirm their gender, making the examination a standard operating procedure (SOP) as outlined in the technical regulations for examining prospective bride and groom, and making it a standard reference for the Head of KUA/*Penghulu*. The examination involves, among others, government health service units.⁴⁸

Although the technical regulation regarding the examination is not in place, the Head of KUA in Sei Beduk Subdistrict is currently collaborating with the Community Health Center (*Pusat Kesehatan Masyarakat/Puskemas*) to conduct health checks and reproductive health coaching for prospective couples.

⁴⁵ Putri Dwi Yulisa, “Perkawinan Sejenis di Indonesia Berdasarkan Perspektif Undang-Undang 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Jurnal Dimensi* 10, no. 3 (2021): 763, <https://doi.org/10.33373/dms.v10i3.5965>.

⁴⁶ Verranda Anggi Saputri dan Bambang Tri Bawono, “Pembatalan Perkawinan Karena Tidak Terpenuhinya Syarat Perkawinan (Studi Kasus Perkawinan Sesama Jenis di Indonesia Dalam Putusan Nomor 5253/Pdt.G/2017/PA.Jr),” *Jurnal Ilmiah Sultan Agung* 1, no. 1 (2022): 55, <https://jurnal.unissula.ac.id/index.php/JIMU/article/view/26827>.

⁴⁷ Aisyah Nurjannah, Amalia Putri Chamila, dan Bintang Aurelia Ardani, “Penentangan Legalisasi Adanya Perkawinan Sesama Jenis dengan Menegakkan Prinsip Hak Asasi Manusia,” *Indigenous Knowledge* 2, no. 2 (2023): 179, <https://jurnal.uns.ac.id/indigenous/article/view/79541>.

⁴⁸ Murry Darmoko Moersidin, “Disrupsi Global Pernikahan Sesama Jenis Solusi Pendekatan Sosio Hukum Agama di Indonesia,” dalam *Prosiding: Resiliensi Indonesia dalam Pusaran Disrupsi Global* (Palembang: Universitas Sriwijaya, 2022), 69, <https://doi.org/10.30589/proceedings.2024>.

“To anticipate the occurrence of similar things (same-sex marriage), we at the KUA impose a policy of health checks at the nearest Puskesmas. This examination also includes the reproductive health of the prospective bride and groom. Through this examination, the sex of the bride and groom can also be identified. Thus, same-sex marriages will not happen again with this examination.”⁴⁹

This anticipatory action taken by the Head of the KUA of Sei Beduk Subdistrict is in line with the mandates stipulated in the Marriage Law to maintain the legality of marriage in the community. Since same-sex marriage contradicts religious norms, the above measure is essential to cancel such marriage registration at the KUA.

Legal Certainty in Same-Sex Marriage in Sei Beduk Subdistrict

The state's presence in conducting marriage registrations aims to provide legal certainty to its citizens.⁵⁰ Legal certainty in this context means providing protection for the rights of husbands, wives, and offspring, as well as guaranteeing certain rights arising from a marriage, such as inheritance rights, birth certificate rights, and others.⁵¹ Marriage registration requires the involvement of two agencies: the Marriage Registration Officer for Muslim citizens and the Civil Registry Office for non-Muslim citizens.⁵²

Although marriage registration is not a determining factor to validate a marriage, it has the capacity to foster social order, while unregistered marriages can be detrimental, particularly for women and children.⁵³ Marriage registration is a formal requirement to determine the validity of a marriage. As in the government's statement during the examination of the Marriage Law at the Constitutional Court, marriage registration controls administrative order, provides legal certainty, and protects the status of husband, wife, and children, as well as the rights arising from wedlock, such as inheritance rights and the right to obtain birth certificates, among others.⁵⁴

⁴⁹ Interview with the Head of the Religious Affairs Office of Sei Beduk District, Batam City, October 20, 2024.

⁵⁰ Virahmawaty Mahera dan Arhjayati Rahim, “Pentingnya Pencatatan Perkawinan,” *As-Syams: Jurnal Hukum Islam* 3, no. 2 (2022): 92.

⁵¹ Liky Faizal, “Akibat Hukum Pencatatan Perkawinan,” *Jurnal Hukum Ekonomi Syariah* 8, no. 2 (2016): 63.

⁵² Ibnu Akbar Maliki dkk., “A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda’s Views),” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 23, no. 1 (2023): 51, <https://doi.org/10.19109/nurani.v23i1.16447>.

⁵³ Agustin Hanapi dan Edi Yuhermansyah, “Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District,” *Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (2020): 542.

⁵⁴ Usman, “Makna Pencatatan Perkawinan dalam Peraturan Perundang-undangan Perkawinan di Indonesia,” 259.

Marriage registration is accommodated by an official appointed under statutory regulations after a legal marriage that takes place in accordance with the rules of each religion or belief. In Islamic teachings, a marriage is valid if it fulfill the matrimonial pillars and conditions. In Article 14 of KHI, these pillars consist of the prospective husband, prospective wife, marriage guardian, two witnesses, and *ijab qabul*, while the conditions of marriage are contained in each of these pillars. In Islam, failing to fulfil the pillars of marriage results in the cancellation of a marriage, while the failure to fulfil the marriage conditions leads to an invalid marriage.⁵⁵ According to Al-Jaziry, a marriage that is devoid of one of its pillars is categorized as *nikah al-batil*, while a marriage that fails to meet one or all of its conditions is included as *nikah al-fasid*. Both *nikah al-batil* and *nikah al-fasid* are invalid.⁵⁶

In the case of a same-sex marriage using a false identity in Sei Beduk Subdistrict, Batam City, the marriage contract was executed in compliance with the Islamic religion, and the Penghulu recorded the marriage. Such a marriage will result in two conflicting legal implications. First, from an Islamic perspective, the status of same-sex marriage as above cannot fulfil the pillars and conditions of marriage, given that it ties two same-sex spouses. Therefore, such a marriage cannot be validated under Islamic law, and it is therefore unlawful under positive law.

Secondly, if the marriage registration is intended as a formal administrative action required by the state, the registration of same-sex marriage facilitated by the Head of KUA, as in Sungai Beduk Sub-district, Batam City, appears to formally validate same-sex marriage, with legal consequences for the two couples. Whereas same-sex marriage contradicts the philosophy of Pancasila and the Constitution of the Republic of Indonesia, and does not reflect Indonesia's cultural values.⁵⁷ Such cases lead to arguments calling for amendments to the Marriage Law and for positioning marriage registration as an institution that validates a marriage.⁵⁸

Gustav Radbruch categorized the objectives of law into three: expediency, certainty, and justice. Implementing these three legal objectives will require the priority

⁵⁵ Naili, *Hukum Perkawinan Islam Indonesia*, 99.

⁵⁶ Muhammad Maisan Abdul Ghani, Mujiyo Nurcholis, dan Imam Sucipto, "Rusak dan Batalnya Nikah," *Jurnal al-Rosyad* 2, no. 2 (2023): 18.

⁵⁷ Dediharsiadi, Hsieh, dan Umar, "Same-Sex Marriage as a Human Rights Freedom in Indonesia: The Perspective of Pancasila and the Marriage Law," 224.

⁵⁸ Usman, "Makna Pencatatan Perkawinan dalam Peraturan Perundang-undangan Perkawinan di Indonesia," 270.

principle.⁵⁹ In this context, refusing to legalize same-sex marriage carries the value of legal objectives, consistent with Radbruch's notion. In terms of expediency, opposing same-sex marriage maintains the purity of religious values in marriage, enabling domestic partners to continue offspring, which same-sex couples cannot produce.⁶⁰ Meanwhile, the value of justice in rejecting same-sex marriage lies in the effort of avoiding legal and material losses caused by the psychological impact on the deceived couple and their families.⁶¹ Furthermore, in terms of legal certainty, the prohibition of same-sex marriage is intended to ensure that every marriage can be legally registered under state law. This is expected to guarantee the people's rights to state services after marriage.⁶²

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

Marriage Law regulates that the annulment mechanism for an unexpected marriage is applicable after a marriage has taken place. In other words, there are not enough grounds for cancelling a marriage when the marriage is in progress. Marriage Law does not specifically govern the definition of marriage annulment. However, under Article 22 of the Marriage Law, a marriage can be annulled only if the spouses fail to meet the conditions for marriage.⁶³

When viewed from the Marriage Law, a marriage cannot instantly cancel itself, since its annulment must begin with the application for marriage annulment filed with the court. That is, only the court has the power to decide and declare a marriage null and void. Only a marriage annulled under a court decision with permanent legal force is

⁵⁹ Mario Julyano dan Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum* 1, no. 1 (2019): 13.

⁶⁰ Muhammad Arif Zuhri, "Perkawinan Sejenis dalam Kajian Islam," *Al-Aḥwāl: Jurnal Hukum Keluarga Islam* 8, no. 1 (2016): 86, <http://dx.doi.org/10.14421/ahwal.2015.08107>.

⁶¹ Laura Langbein, "Pernikahan Sesama Jenis dan Dampak Eksternal Negatif," *Ilmu Sosial Triwulanan* 90, no. 2 (2009): 292, <http://dx.doi.org/10.1111/j.1540-6237.2009.00618.x>.

⁶² Zainuddin dan Nur Jaya, "Jaminan Kepastian Hukum Dalam Perkawinan Melalui Itsbat Nikah (Studi di Pengadilan Agama Makassar Kelas IA)," *Riau Law Journal* 2, no. 2 (2018): 51.

⁶³ Nasichin, "Akibat Hukum Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

valid.⁶⁴ In other words, a marriage annulled under this legally binding court decision is considered nonexistent, even though it once existed.⁶⁵

The following are the parties who can submit an application for annulment of marriage as stipulated in Article 73 of KHI:

1. The family in a direct lineage from the husband or wife;
2. Husband or wife;
3. Officials authorized to supervise the implementation of marriage according to the Law.
4. Interested parties who are aware of defects in the pillars and conditions of marriage according to Islamic law and national laws and regulations.⁶⁶

The authority of the Head of KUA and the *Penghulu* to request the annulment of a marriage before the court is not explicitly regulated in the legislation. The Regulation of the Minister of Religious Affairs No. 16 of 2019 outlines the duties and responsibilities of the *Penghulu* as an employee of the religious affairs office or as a marriage registrar.⁶⁷ However, in the case of same-sex marriage in Sungai Beduk Subdistrict, Batam City, it was the *Penghulu* who applied for the annulment of the marriage to the Batam City Religious Court under case no. 60/Pdt.G/2013/PA.Btm.

The legal basis for the *Penghulu* to submit a request for annulment of same-sex marriage is set out in Article 73, letter d, of KHI, which categorizes the *Penghulu* as an interested party who is aware of defects in the pillars and conditions of marriage under Islamic law and statutory regulations.⁶⁸ In this case, after the marriage took place, the *Penghulu* only found out that there had been identity fraud, in which one of the spouses had impersonated a male. This, therefore, serves as the ground for declaring the marriage defective and to be annulled.

In the context of achieving legal certainty, the *'enghulu's* submission of an application for annulment of a same-sex marriage provides two legal certainties. First,

⁶⁴ Deni Rahmatillah dan A.N Khofify, "Konsep Pembatalan Perkawinan dalam Undang-Undang Nomor 1 Tahun 1947 dan Kompilasi Hukum Islam," *Jurnal Hukum Islam* XVII, no. 2 (2017): 152.

⁶⁵ Sri Turatmiyah, M. Syaifuddin, dan Arfianna Novera, "Akibat Hukum Pembatalan Perkawinan dalam Perspektif Hukum Perlindungan Anak dan Perempuan di Pengadilan Agama Sumatera Selatan," *Jurnal Hukum IUS QUIA IUSTUM* 1, no. 22 (2015): 163.

⁶⁶ Nuzha, "Pembatalan Perkawinan Menurut Hukum Islam dan Hukum Positif di Indonesia," *Qiyas: Jurnal Hukum Islam dan Peradilan* 8, no. 1 (2023): 93.

⁶⁷ Murtadho, "Kewenangan Pencatatan Nikah Melalui Penghulu dan Kepala KUA dalam Perspektif Peraturan Menteri Agama dengan Peraturan Pendayagunaan Aparatur Negara."

⁶⁸ Nuzha, "Pembatalan Perkawinan Menurut Hukum Islam dan Hukum Positif di Indonesia," 94.

the implementation of the marriage law is in accordance with the Constitution and laws and regulations. The applicable marriage law in Indonesia only allows marriage between a man and a woman, thereby making same-sex marriage an unconstitutional act. As a consequence, in the context of legal certainty, such marriages must absolutely be requested for annulment by the court.⁶⁹

Second, from the aspect of legal certainty, the annulment of such a marriage will revoke the rights and obligations arising from the marriage. In a same-sex marriage, no inheritance rights should be involved, given that such a marriage will not produce offspring. However, other rights and obligations, such as providing maintenance, housing, and other similar rights, may emerge.⁷⁰ Upon annulment of the same-sex marriage through the process described above, the marriage is considered nonexistent, thereby restoring the parties' rights to their original state.⁷¹

Conclusion

Same-sex marriage is void from the perspective of Islamic religious law, and according to the applicable laws and regulations, as it fails to meet the requirements stipulated in the Marriage Law. This practice does not reflect the nation's cultural and social values. Such a marriage, involving identity falsification, must be subject to annulment by the court. The Batam City Religious Court annulled a same-sex marriage taking place in Sei Beduk Subdistrict, Batam City, further leading to the revocation of marriage registration and making it as if it never existed. The head of the KUA and the *Penghulu*, as interested parties, may file a petition for annulment of marriage if they are aware of marriage defects under Islamic law and national laws and regulations, including when the marriage pillars and conditions are not met. This annulment must be requested in this case as a matter of legal responsibility and to guarantee legal certainty in the Marriage Law.

⁶⁹ Sirait, "Menilik Akseptabilitas Perkawinan Sesama Jenis di dalam Konstitusi Indonesia," 621.

⁷⁰ 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: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 141, <https://dx.doi.org/10.62870/qanun.v2i2.27087>.

⁷¹ Novita, "Hak Perkawinan Bagi Kaum LGBT : Legalitas Dalam Hukum Indonesia," 54.

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