

[ARTICLE]

**MARRIAGE AGREEMENT:
The Principle of Benefit and Meaning of Article 51 of The Compilation
of Islamic Law as a Basis for Marriage Annulment**

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Abstract: The Compilation of Islamic Law is intended as a written formulation of Islamic law that is adapted to Indonesian society and legal conditions. KHI discusses marriage which includes marriage agreements. The purpose of this research is to explore the meaning of article 51 and the principle of the benefits of a marriage agreement, a wife has the right to request an annulment of the marriage if she violates the marriage agreement. The aim of the KHI to safeguard the implementation of marriage agreements and safeguard rights in accordance with the provisions of this article appears to be contradictory because the annulment of a marriage due to a violation of the marriage agreement has unpleasant legal consequences for husband and wife. and children from that marriage. The method used in this research is normative juridical. One type of violation of a marriage agreement that can be used as a reason to request an annulment of a marriage is the violation of not implementing the contents of the marriage agreement at all. However, even though the level of the violation has not yet reached that stage, the violation has shaken domestic life and will worsen the continuity of the marriage if it continues. Even though it is considered to originate from the *ijtihad* process, this provision does not conflict with Islamic law. Because benefit is the aim of these provisions. However, if it is made in the form of an official provision, it must contain clear meaning and legal certainty; Therefore, the provisions of KHI Article 51 must be clarified.

Keywords: marriage agreement, compilation of islamic law, marriage annulment.

Abstrak: Kompilasi Hukum Islam adalah hukum Islam yang disesuaikan dengan masyarakat Indonesia. KHI membahas pernikahan, termasuk perjanjian kawin. Tujuan dari penelitian ini adalah untuk menggali makna pasal 51 dan prinsip kemaslahatan perjanjian perkawinan, seorang istri dapat berhak untuk meminta pembatalan nikah jika mereka melanggar perjanjian kawin. Tujuan KHI untuk menjaga terlaksananya perjanjian kawin dan menjaga hak dengan ketentuan pasal tersebut terlihat kontradiktif karena pembatalan nikah sebagai konsekuensi dari pelanggaran perjanjian kawin memiliki konsekuensi hukum yang tidak menyenangkan bagi kedua pihak pasangan suami istri dan anak dari pernikahan tersebut. Metode yang digunakan dalam penelitian ini adalah yuridis normatif. Salah satu jenis pelanggaran perjanjian kawin yang dapat digunakan sebagai alasan untuk meminta pembatalan nikah adalah pelanggaran yang sama sekali tidak melaksanakan isi perjanjian kawin. Namun, meskipun tingkat pelanggaran belum mencapai tahap itu, pelanggaran tersebut telah membuat kehidupan rumah tangga menjadi goyah dan akan memperburuk kelangsungan pernikahan jika diteruskan. Meskipun dianggap berasal dari proses *ijtihad*, ketentuan tersebut tidak bertentangan dengan hukum Islam. Karena kemaslahatan adalah tujuan dari ketentuan tersebut. Hanya saja, ketika dibuat dalam bentuk ketentuan resmi, ia harus mengandung makna yang jelas dan kepastian hukum; oleh karena itu, ketentuan KHI Pasal 51 harus diperjelas.

Kata Kunci: perjanjian perkawinan, KHI, pembatalan perkawinan.



A. Introduction

The compilation of Islamic Law was established with the purpose of fulfilling the judicial technical requirements of the Religious Courts, which are recognised by the Supreme Court as the authoritative and specialised source of instruction for religious courts.¹ A legal compendium is necessary to govern the implementation of legislation within the Religious Court, providing judges with a standardised reference to uphold legal consistency and predictability in the execution of their responsibilities. In the past, a considerable amount of perplexity and discord has arisen in relation to judicial rulings within the context of religious matters.

Furthermore, the primary objective behind the establishment of the The Compilation of Islamic Law (KHI) is to provide a comprehensive framework of Islamic jurisprudence that is applicable within the Indonesian legal system and may be adjusted to accommodate the prevailing legal conditions.² Therefore, the production of KHI is linked to the prevailing political entity at its creation. Hence, in order to ensure the continued relevance of The Compilation of Islamic Law (KHI) in contemporary contexts, it is imperative to undertake studies and research. The subject matter of marriage is a topic that is extensively examined within the KHI. Marriage serves as a legally recognised institution that facilitates the union of individuals driven by romantic affection and enables the transmission of progeny.

As per the provisions outlined in Marriage Law No. 1 of 1974, the primary objective of marriage is to establish a harmonious and everlasting family unit, grounded in the belief of a singular divine entity. The marital covenant holds significant importance within the institution of marriage. Currently, the utilisation of marriage agreements in Indonesia remains limited to a relatively small proportion of the population. Many couples experience hesitation while attempting to establish a consensus due to the common perception that marriage entails complete unity. Nevertheless, the matrimonial contract encompasses not only the allocation of property but also the distribution of responsibilities and childcare.

In summary, marriage agreements are deemed to be morally and ethically objectionable, as well as incongruent with Eastern cultural norms. In the context of Indonesia, the regulatory frameworks of UUP (Marriage Act) and The Compilation of Islamic Law serve to govern marriage agreements, so ensuring the protection of the rights of all parties involved, namely the husband and wife.³ Furthermore, the establishment of this agreement holds significant importance as it pertains to the institution commonly referred to as marriage.

Furthermore, the Compilation of Islamic Law governs the permissible forms of marriage contracts that can be entered into by the individuals involved, as outlined in Article 45. These include agreements such as *taklik talaq* and other arrangements that are in accordance with Islamic legal principles. In actuality, even the mutual agreement reached in the marriage contract, there is no assurance that the couple

¹ Khoirul Abrer, *Hukum Perkawinan Dan Perceraian* (Bantul: Ladang, 2020). Page 31-32

² Asman, *Perkawinan & Perjanjian Perkawinan Dalam Islam* (Depok: PT Raja Grafindo Persada, 2020). Page 12

³ Zahroh Aprianti, Antono Shaluhiah, and Ratih Indraswari, "Fenomena Pernikahan Dini Membuat Orang Tua Dan Remaja Tidak Takut Mengalami Kehamilan Tidak Diinginkan," *Jurnal Promosi Kesehatan Indonesia* 12, no. 1 (2018). Page 56

will adhere to its provisions indefinitely.⁴ The potential consequences of breaching the terms of a marital contract may lead to further difficulties. According to a provision within the Compilation of Islamic Law, one of its articles aims to safeguard the integrity of the marriage contract and ensure the protection of the involved parties. It states that in the event of a violation of the marriage agreement, the wife is entitled to seek the annulment of the marriage or utilise it as grounds for initiating a divorce lawsuit in the Religious Court.

Given the woman's elevated status and the extensive safeguards provided by the Compilation of Islamic Law, it is plausible for the wife to invoke the rule pertaining to the breach of the marriage contract as grounds for seeking the dissolution of the marital union. This section significantly safeguards the status of the woman (wife) within the context of the marital contract.⁵ This aligns with the expanding dialogue surrounding the recognition of women's presence, feminist movements, and concentration. Women are often perceived as representations of cultural integrity and the collective identity of nations in numerous countries across the globe.

Furthermore, a notable issue arises with the stipulations outlined in Article 51, which consider the circumstances of the woman (referred to as the wife) who possesses the right to seek nullification of the marriage in the event of the husband's breach of the marital contract. Upon closer examination, the opportunity to seek a marital annulment appears to progressively present itself. Previously, the filing of marriage annulment was subject to certain limitations and could not be done arbitrarily. Marriages can be annulled on the grounds of non-compliance with the fundamental principles and contractual obligations inherent in the institution of marriage. The following are several grounds upon which a spouse may pursue legal action for *fasakh* or annulment of a marriage in a court of law: The husband is severely afflicted by a contagious ailment that exhibits few prospects for recovery. Additionally, he experiences sexual dysfunction or a loss thereof, and undergoes a decline in financial resources, rendering him incapable of fulfilling his role as a provider for his spouse. The husband departed without knowledge of his whereabouts and without any updates, resulting in an absence of information regarding his existence or demise, with a considerable duration of time having elapsed.

Based on the aforementioned rationales, it is noteworthy that the breach of the marital contract is not explicitly enumerated as a basis for seeking the nullification of a marriage. Furthermore, the comprehensive elucidation of the grounds for seeking the annulment of a marriage based on the violation of the marital agreement is inadequately addressed in Article 51 of the Compilation of Islamic Law. Furthermore, it is imperative that the review process adheres to the principles and guidelines set forth by Islamic jurisprudence. It is imperative that the laws or provisions are unambiguous in order to prevent confusion among individuals. The potential for uncertainty and the creation of loopholes in legal proceedings persists.

⁴ Fitriyani, "Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Dan Akibat Hukumnya Ditinjau Dari Kitab Undang-Undang Hukum Perdata," *Premise Law*, 2014.

⁵ Yasin Abdillah, "Perjanjian Perkawinan Sebagai Upaya Untuk Membentuk Keluarga Bahagia (Tinjauan Maqasid Syariah)," *Jurnal Al-Ahwal UIN Sunan Kalijaga* 1, no. 1 (2017).

The aim of this research is analyzing the principle of benefit and the meaning of Article 51 of the Compilation of Islamic Law as a Basis for the Annulment of Marriage.

With the exception of individuals who are underage or in detention, everyone who is a legal subject has the freedom to freely engage into a contract. For those who create them, an agreement has legal standing as long as it is done in compliance with the requirements set forth by applicable laws and regulations. Even while the terms of the marriage are mutually agreed upon, this does not mean that the husband and wife will always follow them. According to engagement law, default and illegal activity are considered to be factors that prevent the engagement's contents from operating as intended. There is no exemption to the marital contract; it is possible for one side to breach the terms of the agreement (break the promise). The marriage agreement has the legal standing to serve as a basis for divorce because it is a legally binding contract signed by the husband and wife in front of the Marriage Registration Officer (PPN). If the agreement is broken, this can serve as grounds for divorce.

Generally speaking, since the agreement is mutual, it cannot be revoked. Nevertheless, when the agreement's period has passed, cancellation of the agreement may take place. This could occur in a marriage agreement if one party decides they no longer want to abide by its terms or if there is a divorce that is brought on by circumstances other than breaking the terms of the marriage agreement, including breaking the taklik talaq agreement. An agreement cannot be canceled arbitrarily; rather, it must be done in accordance with a legally mandated process, which involves first alerting the other party and then bringing a lawsuit against them, explaining why the agreement is being canceled.

Because a marital agreement is binding on both parties, it becomes significant when it is actually executed by the husband and wife. If the agreement is not executed correctly and one of the parties does not accept the violation, the offended party may object by filing a lawsuit application with the court. Islam views marriage as a sacred covenant in which two people who are connected to one another propose to one another in the name of Allah in order to become married or become life partners.

This paper aims to explore what is the meaning of the marriage agreement and the annulment of marriage is seen from the principle of benefit and article 51 of the compilation of Islamic law.

B. Method

This study falls under the domain of literature research, which entails employing diverse literary sources throughout the data collection phase. The present study employs a descriptive-analytical approach, which entails elucidating, interpreting, and scrutinising the gathered data.⁶ The procedure commences with the examination of the problem data, followed by subsequent analysis. The present

⁶ Gunadi, "Perjanjian Perkawinan Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Nomor 1 Tahun 1974," *Jurnal Al-Afkar* 21 (2018).

study employed a normative juridical approach. This approach centres on the fundamental principles of law and the prevailing legal framework in Indonesia pertaining to matters concerning marriage.

C. Discussion

The categorization of a marriage agreement as a legal act involving two parties, namely married couples, is facilitated by the regulation of the Civil Code and Law Number 1 of 1974 regulating Marriage (UUP). This legal act requires the assent of both parties involved.⁷

The term "marriage agreement" is employed because of its association with the institution of marriage.⁸ The prenuptial agreement, also known as the marriage agreement, refers to the legal contract entered into by individuals prior to their marriage. Marriage agreements are regulated by Article 29 of the Law. Agreements are commonly established with the purpose of safeguarding the assets of the spouse. Nevertheless, it should be noted that the current legal framework does not explicitly govern the specific objectives of a marriage agreement or the permissible terms that can be agreed upon. Instead, the discretion is granted to the contracting parties or spouses involved in the agreement. The validity of the marriage agreement commences upon the occurrence of the marriage.⁹

The alteration of the marriage agreement in accordance with the provisions of Civil Law is categorically prohibited, irrespective of any mutual consent reached subsequent to the formation of the marital union. In the context of the UUP, modifications can be implemented, provided that they do not adversely affect external entities.¹⁰ A marital agreement can be characterised as a legally binding contract between two people within a married relationship, wherein they mutually choose to establish an agreement on subjects that do not violate legal, moral, or religious principles.

The UUP does not explicitly address *taklik talaq* as a form of matrimonial contract. However, the KHI governs matrimonial contracts that encompass the division of matrimonial assets and the commingling of personal assets. The significance of the marital contract cannot be overstated, since it holds considerable value for both parties involved. A matrimonial contract is established with the purpose of safeguarding the respective assets of each spouse. However, it should be noted that the UUP does not govern the specific objectives of the marriage contract or the specific terms that can be negotiated within it. These matters are entirely at the discretion of the individuals intending to marry.

The Dissolution of Matrimony: The etymology of the term "void" can be traced

⁷ F Wulandari, *Permasalahan Hukum Dan Solusi Perjanjian Pranikah Melalui Akta Notaris Berdasarkan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, 2016.

⁸ Filma Tamengkel, "Dampak Yuridis Dari Perjanjian Pra Nikah (Prenuptial Agreement) Ditinjau Dari Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," *Jurnal Lex Privatum* 1, no. 1 (2015).

⁹ R F Sari and N Azizah, "Sistem Validasi Keaslian Dokumen Digital Berbasis QR-Code," *Jurnal Teknologi Informasi* 4, no. 2 (2021).

¹⁰ Erdhyan Paramita, "Akibat Hukum Perjanjian Perkawinan Yang Tidak Disahkan Pegawai Pencatat Perkawinan," *Jurnal Reportorium* 1, no. 1 (2017).

back to its Indonesian origins, specifically through the incorporation of the prefix "pe" and the suffix "an". The existence of multiple definitions for the term "void" in the context of marriage can potentially give rise to misinterpretations. The term "void" refers to a state or condition in which anything lacks power or value. In contrast to absolute cancellation, the term "cancellation can be cancelled" refers to the possibility of revoking a formal cancellation. The term "revocable" denotes the capacity for being annulled or rendered comparatively insignificant. Therefore, it is possible for a marriage to be annulled, indicating that the marriage was previously solemnised but subsequently invalidated as a result of non-compliance with specific regulations.

Furthermore, the compilation of Islamic Law, or Islamic Family Law, also functions as a legal framework that provides guidance to judges in the resolution of family conflicts within the context of the Religious Court system.¹¹ The objective is to establish a uniform code of law that is utilised by both the general public and judicial authorities in order to guide their legal decision-making processes. Busthanul Arifin thinks that KHI encompasses two primary purposes. One of the primary objectives is to enhance the clarity and enforceability of Islamic law in Indonesia among both the general population and law enforcement agencies. Another objective is to establish a balance in the implementation of Islamic law within the societal context. The inconsistencies in the decision of Islamic law can be attributed to divergent viewpoints regarding sharia.¹²

Chapter XI of The compilation of Islamic Law encompasses a series of six articles, specifically designated as Articles 70 through 76. When discussing the grounds for annulment of marriage, The compilation of Islamic Law does not differentiate between the violation of conditions and the pillars of marriage. Furthermore, the absence of a section that pertains to both intentional and inadvertent violations is evident. The compilation of Islamic Law does not make a distinction between the annulment of a marriage and the annulment of a marriage. The articles pertaining to marriage annulment within the KHI encompass provisions about the underlying reasons for marriage annulment, the eligible parties who may seek marriage annulment, the jurisdiction of the Religious Court to nullify the marriage, and the legal standing of children resulting from the annulled union. The causes for the annulment of marriage are elucidated in Articles 70, 71, and 72.¹³ Each chapter exhibits distinct characteristics that set it apart from the others. Each article exhibits distinct characteristics associated with three essential terms: void (*nietig*), revocable (*vernietigbaar*), and cancellation. There are variations in the usage of these three terms.

The compilation of Islamic Law also governs the criteria for the nullification of marriage. Additionally, it encompasses factors that may be used as justifications for

¹¹ Erlies Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: Raja Grafindo, 2016).

¹² Hotmartua Nasution, "Pembaharuan Hukum Keluarga Islam Tentang Usia Perkawinan Di Indonesia (Studi Atas Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undnag-Undang Nomor 1 Tahun 1974 Tentang Perkaiwnan).," *Jurnal Hukum UIN Sumatera*, 2019.

¹³ Sulikah Kualaria, "Perjanjian Perkawinan Sebagai Sarana Perlindungan Hukum Bagi Para Pihak Dalam Perkawinan," *Jurnal Hukum Universitas Brawijaya* 2 (2015).

the annulment of a marriage. According to Article 72, individuals who have entered into a marriage contract may seek annulment under certain circumstances. These circumstances include instances where the marriage was coerced through unlawful threats, where there was deception or misunderstanding regarding the spouse's identity or characteristics, where the threats have ceased or the responsible party is aware of the situation, and where the annulment request is made within a specified timeframe.

According to Article 72, the clause pertaining to the grounds for annulment of marriage encompasses two factors: firstly, the occurrence of marriage under unlawful coercion, and secondly, the perpetration of deceit or misrepresentation by either spouse regarding their personal attributes. Based on the explanation provided by the The compilation of Islamic Law, fraudulent activity arises when a husband acknowledges his marital status during the time of marriage, but subsequent investigation reveals that he was already married, resulting in the practise of polygamy without obtaining legal authorization from the Court. Self-identity fraud is another area where this principle is applicable.

The causes of annulment described in Articles 72 and 71 exhibit distinct characteristics, since they serve as legitimate bases for the dissolution of a marriage. In accordance with Article 71, the party possessing the right to initiate a petition for marriage annulment may do so on the grounds specified. Conversely, Article 72 stipulates that only the husband or wife holds the entitlement to initiate a petition for marriage annulment, with both parties enjoying equal and equitable rights in this regard. The chapter pertaining to the annulment of marriage in the KHI examines, with a comprehensive analysis of the underlying factors leading to marriage annulment in three consecutive paragraphs, the jurisdiction of the Religious Court in adjudicating the dissolution of marriage as stipulated in Article 74. The responsibility to seek annulment is limited to the jurisdiction of the Religious Court, which encompasses the geographical location where either spouse resides or where the marriage ceremony was conducted. The final chapter of this study examines the legal implications surrounding the dissolution of marriage with a specific focus on the status of children. According to Article 76 of the International Humanitarian Law (IHL), it is explicitly stated that the dissolution of a marriage does not have any impact on the legal bond between a child and their parents : "The annulment of a marriage shall not sever the legal relationship between the child and his parents."

The violation of the marriage agreement is referenced solely in one instance within the eight Articles of chapter VII of The compilation of Islamic Law pertaining to the marriage agreement. According to Article 51, in the event of a breach of the marital agreement, the wife is entitled to seek the annulment of the marriage or cite it as grounds for divorce in the Religious Court.

The restrictions outlined in the Article lack a clear and comprehensive explanation of the term "violation," including its precise definition and severity. The term "transgression" originates from its etymological root "transgression," and it

denotes the concept of "transgression" inside linguistic discourse.¹⁴ In the realm of legal discourse, the term "default" is employed to denote a violation or failure to fulfil the terms of an agreement. The statement suggests the absence of accomplishment, whereas, in the context of treaty law, achievement refers to an obligation that must be fulfilled as a component of an agreement. The terms "execution of promises" and "absence of performance of promises" can be seen as precise expressions denoting the act of fulfilling and failing to fulfil commitments, respectively.

One prevalent concept in legal discourse is the transgression of talaq. The stipulations or provisions of the talaq agreement are delineated in four distinct points. Furthermore, it transgresses other contractual obligations that are not in conflict with the principles of Islamic jurisprudence. As per the assertions made by the drafters, the violation in question can manifest as a failure to uphold the obligations outlined in the marital contract, as stipulated in Article 47 of the KHI. This encompasses instances such as commingling personal assets and the division of shared livelihood assets, or the execution of an agreement to encumber personal assets with joint or corporate assets. The specifics of the agreement delineate the transgression perpetrated by the husband. The spouse breaches the marital contract by failing to uphold his commitment to achieve excellence.

The individual or entity involved in the agreement bears the responsibility of fulfilling specific obligations in order to ensure the execution of 1304 of the Civil Constitution delineates the aforementioned matter as a potential sanction in an endeavour to satisfy the contractual obligation. As per the provisions outlined in Article 51 of the Indonesian Criminal Code, it is stipulated that a wife possesses the legal entitlement to seek the dissolution of a marriage in the event that the husband breaches the terms and conditions set forth in the marital contract. The act of breaching the terms of a marital contract is regarded as a kind of retribution for the husband, resulting in the wife's entitlement to seek legal dissolution of the marriage as a consequence of this transgression.

In order to evaluate the potential grounds for annulment of a marriage, it is necessary to consider the presence of three essential components inside a marriage agreement. The initial component entails ensuring the effective execution of the agreement. According to Article 51 of the International Humanitarian Law (IHL), in the event of a breach of the marriage agreement by the husband, the wife may be entitled to seek the annulment of the marriage.¹⁵ This particular entitlement may be either exercised or waived, and fundamentally pertains to the prerogative of seeking the dissolution of a marital union on the grounds of a substantiated breach. As per the authors of the document, the purpose of this right is to safeguard the spouse, namely the female spouse. Article 51 of the International Humanitarian Law (IHL) incorporates provisions that aim to safeguard the welfare and well-being of women.

Furthermore, it is possible to interpret the aforementioned rights as an effort to stop the husband (a man) from breaking the terms of the marriage. Extensive

¹⁴ Asep Saepudin Jahar, *Hukum Keluarga, Pidana & Bisnis: Kajian Perundangan- Undang Indonesia, Fikih Dan Hukum Internasional* (Jakarta: Kencana, 2013).

¹⁵ Hadikusuma, *Hukum Perkawinan Indonesia: Menurut Perundangan, Hukum Adat, Hukum Agama* (Bandung: Mandar Maju, 2020).

interpretation in the legal domain enables legal interpretation to go beyond the limitations of grammatical (language) interpretation. Deterrence to the husband may therefore be seen as a threat of punishment. His spouse has the right to dissolve the marriage if he breaks the terms of the contract. Naturally, it's still quite abstract to determine whether threatening to punish a husband who breaks the agreement can provide assurances regarding its contents. Nonetheless, the government has made significant progress in ensuring that the marriage agreement can be performed without danger of violation by either side thanks to the provisions found in Article 51 of The compilation of Islamic Law.

There must be a violation for the penalty to be applied. The husband may seek the annulment of the marriage only in the event of default, or failure to keep the commitment. An element of default or breach of agreement must exist prior to filing for annulment of marriage. Article 51 of the IHL and its interpretation do not specifically address the capacity of the violation in question. The compiler consults the degree of default specified in Chapter III in an attempt to comprehend the infraction.¹⁶ Violations can be classified into three categories: not meeting any achievements at all, satisfying achievements beyond the deadline, and fulfilling subpar achievements. Any level of agreement violation is possible. The likelihood of citing a marital agreement violation as justification for a marriage annulment will rise if all levels of default are available. This runs counter to the goal of marriage, which is to create a stable and happy family, as stated in Article 1 of the Law, to facilitate the dissolution of a marriage due to a lack of rights. The drafters state that in order to file for a marriage annulment, one must complete the first stage of default, which is to completely break one's vow. The spouse's home life may be in jeopardy, nonetheless, if defaults do not progress to the point of breaking vows completely. Taklik talaq and other agreements that do not conflict with Islamic law are the two categories of marriage agreements covered by Article 45 of the IHL. For the marriage to be dissolved, the violation must be related to the IHL's rules.

A talaq breach occurs when the husband disobeys one of the four talaq clauses, as explained in Chapter III. An annulment of the marriage should not be requested since a talaq agreement is talaq that is suspended when an agreed-upon or suspended condition is met. Put differently, the act of violating talaq might just serve as a justification for requesting talaq or a divorce. Article 51 of the KHI is the only particular provision governing any other agreement, and it may be canceled if it does not conflict with the violated Islamic law. The penalty in question needs to be particular or specific for the third reason. According to Article 51 of the KHI, the woman has the right to ask for a divorce or for the marriage to be dissolved. The wife's right to make important claims or other items are not substituted or covered by any other clauses.

The conditions of a marital annulment, however, might not align with the prospect of such punishment. The grounds for annulment or filing for annulment are governed by IHL Articles 71 and 72. The marriage agreement is not listed as one

¹⁶ Djamilah and Reni Kartikawati, "Dampak Perkawinan Anak Di Indonesia," *Jurnal Studi Pemuda* 3, no. 1 (2014).

of the grounds for annulment or filing for annulment in the points and verses of both articles. Article 51 of the IHL refers to a marriage arrangement rather than the annulment of a marriage. Here, breaking the terms of the marriage agreement must result in extra punishment for the offending party; as a result, breaking the terms of the marriage agreement gives spouses the option to dissolve their union.

The utilization of a suitable qâidah can serve as a foundation for permitting the dissolution of a marital union due to the potential infringement upon the rights of the woman, which carries significant ramifications if the marriage were to persist. Hence, Article 51 provides special regulations in this regard. Islamic law was established with the intention of benefiting humanity as a whole, encompassing both the temporal realm and the spiritual realm beyond. To attain this objective, it is imperative to acknowledge and uphold five key aspects: religion, soul, possessions, reason, and heredity. Any activity that is deemed permissible according to the principles of Islamic law (Shari'ah) and is believed to contribute to the realization and preservation of the five essential objectives (maqasid) is considered to be *maslaha*, despite the absence of explicit scriptural evidence acknowledging it.¹⁷ This particular approach is commonly known as *mas.lah.at mursalah* in academic discourse. The concept of *maslahah mursalah* refers to a phenomenon that is observed inside the realm of *maslahah*, where there is no explicit ruling that either affirms or negates it, yet it aligns with the aims of Islamic law (Shari'a).

This statement pertains to the fundamental concepts that underlie various branches of law, including the domain of marital law. It further suggests the need to elaborate on the specific advantages associated with these principles. Busthanul Arifin, as cited by Marzuki Wahid and Rumadi, asserts that the Compilation of Islamic Law (KHI) serves as a legal framework specifically designed for the Muslim population in Indonesia.¹⁸ Consequently, The compilation of Islamic Law was significantly shaped by the principles and doctrines of Islamic fiqh. Nevertheless, KHI also employs the *ijtihad* procedure during its compilation. Regarding the concept of *ijtihad*, the compiler has asserted that Article 51 of the KHI grants the woman the prerogative to seek the dissolution of the marriage in the event of a breach of the marital contract.

Article 51 encompasses two significant subjects, namely marriage agreements and the annulment of marriage. The marriage covenant is not specifically addressed in classical fiqh literature. The sole aspect pertaining to this agreement pertains to the "terms of marriage," signifying that the involved parties mutually consent to adhere to the stipulated criteria. The implementation of the marriage agreement holds significant importance due to its inclusion of all essential prerequisites for marriage.

Nevertheless, the topic of marital annulment has been extensively examined in historical literary texts. The issue of potential breach of the marital contract as grounds for seeking a marriage annulment is not addressed within the International Humanitarian Law (IHL), particularly in the section pertaining to the annulment of

¹⁷ Ru'fah Abdullah, "Perjanjian Dalam Perkawinan Perspektif Hukum Islam Dan Perundang-Undangan," *Jurnal Studi Gender Dan Anak* 1, no. 1 (2016).

¹⁸ Aprianti, Shaluhayah, and Indraswari, "Fenomena Pernikahan Dini Membuat Orang Tua Dan Remaja Tidak Takut Mengalami Kehamilan Tidak Diinginkan."

marriages. This principle is also applicable to certain canonical legal texts. Nevertheless, according to Article 51 of The compilation of Islamic Law, the breach of the marriage agreement may serve as a basis for divorce or the nullification of the marital union.

Nevertheless, it is important to note that the absence of this provision in ancient fiqh literature and the debate of marital annulment in the KHI does not definitively establish its contradiction with Islamic law. One of the primary foundations of the legal doctrine pertaining to the annulment of marriage is predicated upon instances where one or both partners in the marital union experience a sense of grievance due to the perceived failure of the other party to fulfill the rights bestowed upon them by Shara in their respective roles as husband or wife.

The realization of rights within the marital contract constitutes an integral component of the prescribed rights framework as stipulated by shara'. Furthermore, if the marital contract is explicitly linked to the fulfillment of the marital duties and serves as a prerequisite for entering into matrimony. The inclusion of the provision allowing wives to seek annulment of marriage in cases when the marriage covenant has been breached is a notable progression in the realm of legal ijihad.

These rules may be effective in promoting gender equality by ensuring that women are afforded the same legal rights as men and by addressing issues of discrimination and disrespect towards women in household matters. According to the authors, the intention of the provisions outlined in Article 51 is to eradicate this state of unawareness.¹⁹ The provision presents significant challenges, as it fails to provide a clear and comprehensive explanation of the specific nature of the marital agreement that has been breached, as well as the criteria used to find such a violation. The elimination of these negative consequences has the potential to give rise to additional negative consequences.

It is advisable to prioritize the consideration of contentious matters with the utmost caution. In order to determine the superior option, a thorough and thoughtful evaluation is required. The act of rejecting bigger rewards might be understood as a manifestation of profit-seeking behavior. Marriage annulment is permitted as a means of providing assistance to individuals who have had or are presently experiencing a marital union.²⁰ Throughout the course of a marital union, individuals may meet various obstacles that impede their progress towards accomplishing their objectives. This phenomenon may give rise to additional challenges, such as the erosion of domestic harmony and the hindered attainment of marital objectives.²¹

Madarat made the decision to enter into matrimony in an unconventional manner within the framework of this discourse due to the perceived expediency of fulfilling the objective of marriage rather than deferring it. Hence, Article 51 of the Compilation of Islamic Law delineates a legal mechanism that enables individuals to seek the dissolution of a marriage on grounds of breach of the marital contract. This

¹⁹ Asman, *Perkawinan & Perjanjian Perkawinan Dalam Islam*.

²⁰ Abdillah, "Perjanjian Perkawinan Sebagai Upaya Untuk Membentuk Keluarga Bahagia (Tinjauan Maqasid Syariah)."

²¹ Djamilah and Kartikawati, "Dampak Perkawinan Anak Di Indonesia."

clause is not in conflict with Islamic law as it aligns with the objective of mas.lah.at, which seeks to attain the primary objectives of the maqâs.id ash-shari'ah. Nevertheless, it is imperative to take into account the aspect of legal certainty, as these laws are formulated as applied law, serving as a guiding framework for legal professionals and the general public.

Article 51 of the Compilation of Islamic Hukurn declares: "The wife may file for divorce with the Religious Court if there is a violation of the marriage agreement. The article specifically names the "wife" as the party with the right to file for divorce; the word "husband" is not mentioned. It's probable that Article 51 of the Compilation of Islamic Law (KHI) just clarifies the taklik talaq, which is the term for breaking a marital contract, as stated in Article 45 of the Compilation of Islamic Law. A close relationship exists between Article 51 of the Compilation of Islamic Law above and Article 116 Letter (g) of the Compilation of Islamic Law, which states that "the husband violates taklik talaq" because the agreement in the form of taklik talaq is a unilateral act in which case the husband hangs his promise on a condition attributed to himself. The wife then has the right to file a lawsuit if this perception is true.

D. Conclusion

The grounds for seeking an annulment of marriage based on a violation of the marriage agreement are subject to specific conditions. It is important to note that such a violation must entail a complete failure to fulfil the terms of the agreement, rather than mere delays or imperfect fulfilment. The failure to fulfil the marital commitment, coupled with the wife's lack of consent, may serve as legitimate grounds for the annulment of the marriage, despite the initial promise being unfulfilled. The utilisation of Article 51 as a legal foundation for the annulment of a marriage is contingent upon its compliance with Islamic law, provided that the marital covenant has been breached. For instance, divorce is predicated upon the dissolution of a matrimonial union that no longer serves the intended objectives of marriage. The attainment of this advantage is the intended outcome of implementing Islamic law. Nevertheless, it is imperative to prioritise legal certainty and clarity when formulating the articles of the Compilation of Islamic Law.

References

- Abdillah, Yasin. "Perjanjian Perkawinan Sebagai Upaya Untuk Membentuk Keluarga Bahagia (Tinjauan Maqasid Syariah)." *Jurnal Al-Ahwal UIN Sunan Kalijaga* 1, no. 1 (2017).
- Abdullah, Ru'fah. "Perjanjian Dalam Perkawinan Perspektif Hukum Islam Dan Perundang-Undangan." *Jurnal Studi Gender Dan Anak* 1, no. 1 (2016).
- Abrer, Khoirul. *Hukum Perkawinan Dan Perceraian*. Bantul: Ladang, 2020.

- Aprianti, Zahroh, Antono Shaluhiah, and Ratih Indraswari. "Fenomena Pernikahan Dini Membuat Orang Tua Dan Remaja Tidak Takut Mengalami Kehamilan Tidak Diinginkan." *Jurnal Promosi Kesehatan Indonesia* 12, no. 1 (2018).
- Asman. *Perkawinan & Perjanjian Perkawinan Dalam Islam*. Depok: PT Raja Grafindo Persada, 2020.
- Djamilah, and Reni Kartikawati. "Dampak Perkawinan Anak Di Indonesia." *Jurnal Studi Pemuda* 3, no. 1 (2014).
- Fitriyani. "Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Dan Akibat Hukumnya Ditinjau Dari Kitab Undang-Undang Hukum Perdata." *Premise Law*, 2014.
- Gunadi. "Perjanjian Perkawinan Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Nomor 1 Tahun 1974." *Jurnal Al-Afkar* 21 (2018).
- Hadikusuma. *Hukum Perkawinan Indonesia: Menurut Perundangan, Hukum Adat, Hukum Agama*. Bandung: Mandar Maju, 2020.
- Jahar, Asep Saepudin. *Hukum Keluarga, Pidana & Bisnis: Kajian Perundangan- Undangan Indonesia, Fikih Dan Hukum Internasional*. Jakarta: Kencana, 2013.
- Kualaria, Sulikah. "Perjanjian Perkawinan Sebagai Sarana Perlindungan Hukum Bagi Para Pihak Dalam Perkawinan." *Jurnal Hukum Universitas Brawijaya* 2 (2015).
- Nasution, Hotmartua. "Pembaharuan Hukum Keluarga Islam Tentang Usia Perkawinan Di Indonesia (Studi Atas Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undnag-Undang Nomor 1 Tahun 1974 Tentang Perkaiwnan)." *Jurnal Hukum UIN Sumatera*, 2019.
- Nurbani, Erlies. *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: Raja Grafindo, 2016.
- Paramita, Erdhyan. "Akibat Hukum Perjanjian Perkawinan Yang Tidak Disahkan Pegawai Pencatat Perkawinan." *Jurnal Reportorium* 1, no. 1 (2017).
- Sari, R F, and N Azizah. "Sistem Validasi Keaslian Dokumen Digital Berbasis QR-Code." *Jurnal Teknologi Informasi* 4, no. 2 (2021).
- Tamengkel, Filma. "Dampak Yuridis Dari Perjanjian Pra Nikah (Prenuptial Agreement) Ditinjau Dari Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan." *Jurnal Lex Privatum* 1, no. 1 (2015).
- Wulandari, F. *Permasalahan Hukum Dan Solusi Perjanjian Pranikah Melalui Akta Notaris Berdasarkan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, 2016.