

# State Attorney Law Enforcement in Marriage Annulment and its Contribution to the Development of Family Law in Indonesia

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**Abstract:** This article examines the optimization of law enforcement by prosecutors in annulling marriages and its contribution to the development of Islamic family law in Indonesia. This research is library research, analyzed by descriptive analysis, which is done by describing the existing facts, the method of analysis used is qualitative method, using Gustav Redbruch's theory of legal objectives. The result of this study is that the optimization of law enforcement by prosecutors in annulling marriage is relevant to Gustav Redbruch's theory of purpose, that the purpose of law is to provide justice, legal certainty and legal benefits. With the prosecutor being given regulatory rules that support his role in enforcing the law in the field of marriage annulment for someone who violates the legislation, legal justice, legal certainty and legal benefits will be created in the community. The researcher's contribution to the development of family law in Indonesia is in the form of a proposal to policy holders, so that regulations are legislated that specifically regulate the technical guidelines that prosecutors are allowed to act directly in marriage annulment applications.

**Keyword:** Optimization, Law Enforcement, Prosecutor; Marriage Cancellation

**Abstrak:** Artikel ini mengkaji optimalisasi penegakan hukum oleh Jaksa dalam pembatalan perkawinan dan kontribusinya bagi pengembangan hukum keluarga Islam di Indonesia. Penelitian ini adalah penelitian kepustakaan atau *library research*, dianalisis secara deskriptif analisis yaitu dilakukan dengan cara menggambarkan fakta yang ada, metode analisis yang digunakan adalah metode kualitatif, menggunakan teori tujuan hukum Gustav Redbruch. Hasil penelitian ini bahwa optimalisasi penegakan hukum oleh Jaksa dalam pembatalan perkawinan ini relevan dengan teori tujuan Gustav Redbruch, bahwa tujuan hukum ialah dalam rangka memberikan keadilan, kepastian hukum dan kemanfaatan hukum. Dengan Jaksa diberikan aturan regulasi yang mendukung perannya dalam menegakkan hukum bidang pembatalan perkawinan bagi seseorang yang melanggar ketentuan perundang-undangan maka akan terciptanya keadilan hukum, kepastian hukum dan kemanfaatan hukum di tengah masyarakat. Kontribusi peneliti dalam pengembangan hukum keluarga di Indonesia ialah berupa usulan kepada pemegang kebijakan, agar dilegislasikan regulasi yang mengatur secara khusus mengenai petunjuk teknis bahwa Jaksa diperbolehkan bertindak langsung dalam permohonan pembatalan perkawinan.

**Kata Kunci:** Optimalisasi, Penegakan Hukum, Jaksa; Pembatalan Perkawinan

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## A. Introduction

According to civil law, marriage is a legal relationship between a man and a woman for a long time. (Subekti, 1982, 23) Marriage aims not only to live in perfect association in organizing a household that is filled with affection and mutual love, and most importantly as a very strong relationship in strengthening the kinship between the husband's relatives and the wife's relatives. Marriage as a sacred institution requires the fulfillment of various conditions to be carried out. These conditions are a limitation so that marriage is carried out with a serious purpose so that it is not misused for other purposes that can pollute the essence of the sacred institution of marriage (Habib Shulton Asnawi dan M. Anwar Nawawi 2022). If the conditions of marriage are not fulfilled, a marriage that has occurred can be annulled.

According to Law Number 1 of 1974 in article 38, the causes of marriage breakdown are death, divorce, and court decisions. Divorce is essentially something that is very disliked by Allah SWT (Nawawi 2022). However, if it is no longer possible for husband and wife to maintain a marital relationship, one way is to separate. (Bakry, 2021)

According to the Compilation of Islamic Law (KHI) in article 70, the breakup of the marriage rope can also be due to marriage or 'null and void', this is different from the meaning of nullification of marriage, where the nullification of marriage is due to a violation of the prohibition of marriage, while the prohibition indicates the damage or cancellation of something that is prohibited (Habib Sulthon Asnawi. 2023). Nullification is "the destruction of the law stipulated on a person's practice, because it does not fulfill its conditions and pillars, as stipulated by shara". In addition to not fulfilling the conditions and pillars, the action is also prohibited or forbidden by religion. (Afianto, 2013)

The annulment of marriage is the cancellation of the relationship between husband and wife after the marriage contract is carried out. Marriage annulment is a court decision that states that the marriage bond that has been carried out is invalid, the result is that the marriage is considered never to have existed. Based on Law Number 1 of 1974 concerning Marriage Article 22 states that "Marriage can be canceled, if the parties do not fulfill the conditions for holding a marriage" (Habib Shulton Asnawi 2018). From this article, it can be explained that the pillars of a valid marriage are the husband and wife candidates, guardians, two witnesses, and Ijab Kabul. Thus, it shows that the position of a guardian in a marriage is very important, because it is included in one of the conditions for the validity of a marriage. (Zainuri, 2019)

The annulment of a marriage due to the non-fulfillment of the conditions of marriage may be filed with the court in the jurisdiction where the marriage took place or at the place of residence of the husband and wife, husband or wife. The Court's decision on the annulment of a marriage must be made so as not to harm parties who are in good faith. Such protection is given to children born in the marriage as well as to third parties who have acquired rights from the marriage.

Marriage annulment and divorce are the reasons for the breakdown of marital relations. The similarity is that it can only be done in front of a court session, this is based on Article 28 paragraph (1) of the Marriage Law stipulates that the nullity of marriage begins after the strength of the court's decision has permanent legal

force. Article 39 of the Marriage Law then also emphasizes that divorce can only be carried out in front of a court session after trying and failing to reconcile the two parties. (Labetubun, 2020)

The difference is, firstly, the party entitled to be the petitioner. In divorce, the application is made by one of the parties, husband or wife. Meanwhile, annulment, apart from being carried out by the husband or wife, can also be submitted by other parties such as the parents of the spouse. Second, the legal consequences that arise. In divorce, it is very likely that there will be a dispute over the gono-gini property because the previous marriage is still recognized. Meanwhile, in marriage annulment, the marriage is considered never to have existed in the first place. So it is difficult for one of the parties to claim gono-gini property.

Based on the above description, it is clear that a marriage relationship can be annulled if it does not meet the conditions for entering into marriage and there are reasons that can invalidate the marriage, both according to state law and religious law. The filing is done through a court process. One of the parties authorized to file for annulment is the prosecutor. Observations in practice show that prosecutors can find out about violations in marriage directly or indirectly. Directly means that the prosecutor knows for himself that there is a violation in the marriage. While indirectly, it means that the prosecutor knows about it based on information from other people, either from the husband and wife or from the husband and wife's family or even other people. This information is based on evidence that states that the marriage that has taken place is invalid.

Marriage annulment can be carried out by a prosecutor based on Article 26 of Law No. 1 of 1974 concerning Marriage. The prosecutor referred to in this case is the State Attorney. Regarding the annulment of marriage which is the realm of civil law, the role of prosecutors in this field is further regulated in the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Assistance, Legal Consideration, Other Legal Actions, and Legal Services in the Civil and State Administration Fields. (Darsi, 2017)

However, the performance of state attorney prosecutors in carrying out the mandate of the law in the context of annulling marriage still seems long-winded and there is a need for power of attorney from related agencies or parties, so that state attorney prosecutors cannot be optimal in their performance.

Previous research relevant to this research as written by (Jonni Iswanto, Ulya Atsani, 2021), the results of this study that the implementation of marriage annulment at the mediation stage was eliminated, because the case had been decided previously at the Padang High Court which was a quo (Jonni, 2021). Another study by (Muhammad Akbar Syawal, 2021) The results of the study then concluded that the Prosecutor has the authority to submit a marriage annulment application based on the Prosecutor's Office Law (Muhammad, 2021). Then Tinambunan, W. D., & Siwi, G. R. (2022), the results of the study of the Prosecutor as a State Attorney act through special powers for and on behalf of the state both inside and outside the trial and have the authority to act in all courts located outside and inside Indonesia (Tinambunan, 2022).

Based on the review of previous research above, it can be seen that the novelty of this research is that this research examines the optimization of law enforcement

by prosecutors in marriage annulment and its contribution to the development of family law in Indonesia, by examining Law Number 1 of 1974 concerning Marriage, KHI and the Prosecutor's Office Law. This research will be analyzed using Gustav Redbruch's theory of legal objectives, namely legal justice, legal certainty and legal benefits.

## **B. Research Methods**

The type of research used is literature or library research, the nature of this research is descriptive analysis, which is done by describing existing facts, so that it is easier to understand, then analyzed and concluded. (Syaifuddin, 1998, 6) In this study using secondary data. The data collection technique in this research is a literature study, data collection in this study by collecting the data needed in the research, namely in the form of primary legal materials, secondary legal materials and tertiary legal materials relevant to the research topic. The method of analysis used is a qualitative method, using Gustav Redbruch's theory of legal objectives.

## **C. Results and Discussion**

The definition of marriage listed in Article 1 of the Marriage Law is detailed as follows: 1) Marriage is a physical and mental bond between a man and a woman as husband and wife; 2) the physical and mental bond is intended to form a happy, eternal and prosperous family (household); and 3) the physical bond and the goal of eternal happiness are based on the almighty God. (Fauzi, 2018) Meanwhile, Article 26 of the Civil Code views the matter of marriage only in civil relations. (Mardalena, 2019) The concept of western civil law, marriage is seen in civil relations only, meaning that the law does not interfere in relation to customs or religion, the law only recognizes marriages that are solemnized before civil registry employees. (Habib Shulton Asnawi and Setiawan 2021).

The words *nikah* and *zawaj* cannot be separated, because the *ijab* and *qabul* made by the guardian to the bridegroom must contain both words (Habib Shulton Asnawi 2017). In the Qur'an and Hadith, marriage is called *al-nikah* and *al-zawaj* the word *al-zawaj* comes from the root word *zawwaja*. The word *zawaj* which means mate or pair applies to men and women; *zawaj* woman means her husband while *zawaj* man means his wife. (Yusri, 2020) It can be concluded that the definition of marriage is a contract that legalizes bodily relations between a man and a woman which creates obligations and rights for both of them after the marriage contract with the aim of becoming a family that is *sakinnah*, *mawaddah* and *rahmah* which is blessed by Allah and avoids His wrath. (Diyan, 2020)

Marriage law, which is the law that regulates the relationship between humans and each other concerning the distribution of biological needs between species, and the rights and obligations that are closely related to the consequences of marriage. (Candra, 2022) The Al-Qur'an has signaled that all living things are created in pairs, couples, including humans. Human arrangements in living in couples are through the level of marriage, the provisions of which are formulated in separate rules. (Khoirul, 2020, 47) Judging from the legal basis of marriage, it can be arranged based on the sources of Islamic law, namely the Al-Qur'an and Al-Hadith.

a. Based on the Quran

Allah SWT says in Q.S. An-Nur (24): 32

وَأَنْكِحُوا الْأَيَامَ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنَّ يَكُونُوا فُقَرَاءَ  
يُعْنِيهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ ۙ ۳۲

Meaning: "And marry those who are alone among you, and those who are worthy (of marriage) of your male servants and your female servants. If they are poor, Allah will enable them by His grace. And Allah is vast (in His provision) and All-knowing". (Q.S. An-Nur (24):32)

b. Hadith:

Rasulullah SAW. said:

عَنْ ابْنِ مَسْعُودٍ. قَالَ: يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصَرِ  
وَأَحْسَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ (متفق عليه)

Meaning: "Ibn Mas'ud reported that the Messenger of Allah (SAW) said. said: "O young men, whoever among you is able (to bear) the burden of marriage, then marry for indeed marriage is more able to delay the gaze and more able to guard the private parts: and whoever is not able, then he should fast for indeed fasting is for him (a) restraint of lust". (Muttafaq 'alaihi). (Abu, t.th)

### **Prosecutor According to the Prosecutor's Office Law**

Prosecutor is defined in the Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney of the Republic of Indonesia, (Sari, 2017) Article 1, namely:

1. The Attorney General of the Republic of Indonesia, hereinafter referred to as the Attorney General's Office, is a government institution whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on the Law.
2. Prosecutors are civil servants with functional positions that have specialties and carry out their duties, functions and authorities based on the Law.
3. Public Prosecutor is a prosecutor who is authorized by this Law to conduct prosecutions and execute judicial decisions and other powers under the Law.
4. Prosecution is the action of the Public Prosecutor to submit a case to the authorized District Court in the case and in the manner provided for in the criminal procedure law with a request that it be examined and decided by a judge at a court hearing. (Law of the Republic of Indonesia Number 11 of 2021 Concerning Amendments to Law Number 16 of 2004 Concerning the Prosecutor's Office of the Republic of Indonesia)

Based on the description of the law above, the definition of a prosecutor can be concluded as a civil servant with a functional position that has specificity and carries out its duties, functions and authorities based on the Law.

### **The Prosecutor's Role in Legislation**

The role of prosecutors in Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's

Office of the Republic of Indonesia is found in Chapter III Duties and Authorities: (Ginting, 2023).

Article 30

- a. Paragraph 1, In the criminal field, the Public Prosecutor's Office has the duties and authorities:
- 1) to conduct prosecutions;
  - 2) to implement judicial decisions and court decisions that have obtained permanent legal force;
  - 3) to supervise the implementation of conditional criminal decisions, supervision criminal decisions, and conditional release decisions;
  - 4) to investigate certain criminal offenses based on the law;
  - 5) complete certain case files and for that purpose can conduct additional examinations before being submitted to the court, which in its implementation is coordinated with investigators.
- b. In the field of civil and state administration, the Prosecutor's Office with special authorization may act both inside and outside the court for and on behalf of the state or government.
- c. In the field of public order and tranquility, the Prosecutor's Office also organizes activities:
- 1) increasing public legal awareness;
  - 2) securing law enforcement policies;
  - 3) supervision of the circulation of printed matter;
  - 4) supervision of the flow of beliefs that can endanger society and the state;
  - 5) prevention of abuse and/or blasphemy of religion;
  - 6) legal research and development and criminal statistics.

Article 31

The Public Prosecutor may request the judge to place an accused person in a hospital, mental institution, or other appropriate place due to his/her inability to stand on his/her own feet or due to matters that may endanger other people, the environment, or himself/herself.

Article 32

In addition to the duties and powers mentioned in this Law, the Prosecutor's Office may be assigned other duties and powers by law.

Article 33

In carrying out its duties and powers, the Public Prosecutor's Office shall foster cooperative relations with law and justice enforcement bodies and other state bodies or agencies.

Article 34

The Public Prosecution Service may provide considerations in the field of law to other government agencies.

Article 35

The Attorney General has the following duties and authorities:

- 1) to determine and control the policy of law enforcement and justice within the scope of duties and authority of the Attorney General's Office;
- 2) to streamline the law enforcement process provided by law;
- 3) submitting cassation in the interest of the law to the Supreme Court in criminal, civil, and state administrative cases;

- 4) to submit technical legal considerations to the Supreme Court in the cassation examination of criminal cases;
- 5) prevent or ward off certain persons from entering or leaving the territory of the Unitary State of the Republic of Indonesia due to their involvement in criminal cases in accordance with statutory regulations.

#### Article 36

- 1) The Attorney General shall grant permission to a suspect or defendant to seek treatment or to undergo treatment in a domestic hospital, except in certain circumstances where treatment may be provided abroad.
- 2) Written permission to seek treatment or undergo treatment in the country shall be granted by the head of the local District Attorney's Office on behalf of the Attorney General, while permission to seek treatment or undergo treatment in a hospital abroad shall only be granted by the Attorney General.
- 3) The permission as referred to in paragraph (1) and paragraph (2), shall only be granted on the basis of a doctor's recommendation, and in the event that treatment abroad is required the recommendation shall clearly state the need for it which is attributed to the inadequacy of such treatment facilities in the country.

#### Article 37

- 1) The Attorney General shall be responsible for prosecutions conducted independently for the sake of justice based on law and conscience.
- 2) The accountability as referred to in paragraph (1) shall be submitted to the President and the House of Representatives in accordance with the principle of accountability. (Law of the Republic of Indonesia Number 16 of 2004 Concerning the Attorney General's Office of the Republic of Indonesia).

### **The Role of the Prosecutor in the Annulment of Marriage Under the Law**

Among the parties who are entitled to file an application for annulment of marriage, one of them is the prosecutor. In general, prosecutors play a greater role in criminal law (public law), because prosecutors are authorized to maintain the enactment of all statutory provisions and all decisions of state authorities, which are driven and led by the public interest alone. And if we look carefully at Law No. 1 of 1974 concerning marriage and the implementing regulations, namely, PP No. 9 of 1975 which regulates the issue of marriage annulment, namely Article 23 of the UUP supported by Article 38 paragraph (1) of PP No. 9 of 1975 does not mention the prosecutor as a party entitled to apply for marriage annulment. (Sari, 2020)

The rule that states that the Prosecutor is one of the parties that can file for annulment of marriage is in Article 26 paragraph (1) of the Marriage Law. The mention of the parties in the straight line of descent of both parties is a form of repetition of the wording of Article 23 of the Marriage Law. Article 26 paragraph (1) of the Marriage Law, which is the legal basis for the right and power of the Prosecutor to file for annulment of marriage, reads in full: (1) A marriage which is solemnized before an unauthorized marriage registrar, an invalid marriage guardian, or a marriage which is solemnized without the presence of two witnesses, may be annulled by the families in the straight line of descent upwards from the husband or wife, the prosecutor, and the husband or wife (Article 26 of Law No. 1 of 1974).

If the issue of the authority of the prosecutor in filing a petition for annulment of marriage is confronted with the existence of religious courts in Indonesia, where religious courts are civil courts for Indonesian Muslims who must heed state legislation and Islamic sharia at the same time, then a question will arise regarding the possibility of a prosecutor filing a petition for annulment of marriage to a religious court. Because so far the public also assumes that the duties and authority of the prosecutor are only in the general judicial environment. (Syawal, 2022)

All regulations, both those derived from state legislation and those derived from Islamic law, which regulate how people act before religious courts and which regulate how the religious courts resolve cases that aim to realize Islamic material law which is the power of religious courts, become a source of procedural law in religious courts. (Roihan, 1994, t.h)

The provision regarding the authority of the prosecutor to file a petition for annulment of marriage is not regulated by the Law on Religious Courts, while the UUPerkawinan, which is one of the sources of procedural law in the religious courts, regulates it. In addition to Article 26 paragraph (1) of the Marriage Law, Article 23 letter c of the Marriage Law, especially in the words "authorized official", must expand the meaning of these words and still needs further interpretation of the Article.

The existence of the Religious Courts became more stable after Indonesian Muslims were able to produce the Compilation of Islamic Law which was approved through presidential instruction No. 1 of 1991. KHI became the sole standard book for religious judges in Indonesia. Because before the birth of KHI, the material law of religious courts in Indonesia was still varied or scattered in various fiqh books, causing uncertainty or legal uncertainty.

In KHI, the problem of marriage annulment is regulated in Articles 70-76, which in principle the material formulation of marriage annulment regulated in KHI is almost the same as the formulation in the Marriage Law, it's just that the KHI formulation, more clearly differentiates the reasons for canceling marriage. (Pasaribu, 2019)

Regarding the party who has the right to apply for a marriage annulment is regulated in KHI Article 73. The issue of the authority of the Prosecutor in filing a petition for annulment of marriage will arise again after examining the Article. Because the Article contains the words "officials authorized to supervise the implementation of marriage according to the law". Based on the Marriage Law and KHI regarding the legal basis for the authority of the prosecutor in filing a petition for annulment of marriage that has been described, it can be understood that the possibility of the prosecutor filing a petition for annulment of marriage can occur in the religious court environment.

Article 73 of the Compilation of Islamic Law states that those who can apply for marriage annulment are:

1. The family in a straight line of descent up and down from the husband or wife:
2. Husband or wife
3. Officials authorized to supervise the implementation of marriage according to law;



4. Interested parties who are aware of defects in the pillars and conditions of marriage according to Islamic law and laws and regulations as mentioned in Article 67.

The reason for the annulment of marriage by the husband and wife or by the family in a straight line of descent upwards from the husband or wife, or by the Prosecutor based on Article 26 paragraph (2) of Law Number 1 Year 1974 becomes void if they have lived together as husband and wife and can show a marriage certificate made by an unauthorized marriage registrar and the marriage must be renewed to be valid. (Tami, 2013) And in general, the prosecutor has the duty to indict or accuse someone who violates the law, where law enforcement aims to maintain order and legal certainty so that no violations occur in society.

Regarding the status of the prosecutor and the husband or wife in a marriage annulment case, such as the case above, the prosecutor has the position of plaintiff/applicant, while the husband or wife is the defendant or respondent. However, either the husband or the wife may be the plaintiff/applicant, if it is the husband or the wife who files for the annulment of the marriage. If it is the wife who files the lawsuit, then she is the plaintiff and the husband is the defendant, and vice versa. (Darsi, 2017)

Then regarding the authority of the Prosecutor in the annulment of marriage in the Prosecutor's Law, that the Prosecutor as a functional official, the Prosecutor is given the authority as a public prosecutor and executor of court decisions with permanent legal force and other powers attached to him as the legislation provides such authority. The layman's view that focuses on the authority of the prosecutor only in the field of criminal law is an erroneous opinion because he is also given authority both in the realm of civil law and state administrative law. His position in the field of civil law and state administrative law has been confirmed through the provisions of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 of the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as the "Prosecutor's Law"), especially in Article 30 paragraph (2) which emphasizes that both inside and outside the court the Prosecutor's Office with special powers can act on behalf of the state or government in handling civil cases and cases that fall within the scope of state administration.

In relation to the annulment of marriage, which is a civil law matter, the role of prosecutors in this field is further regulated in Regulation of the Attorney General Number PER025/A/JA/11/2015 on Guidelines for the Implementation of Law Enforcement, Legal Assistance, Legal Consideration, Other Legal Actions and Legal Services in the Civil and State Administration Field (hereinafter referred to as "Perja 25/2015"). (Adiyaksa, 2022) In Chapter II on Law Enforcement of the Annex of Perja 25/2015, it is emphasized that the authority to annul marriages that have been held in disregard of the requirements contained in Indonesian positive law is attached to the State Attorney. The prosecutor as a law enforcer will file a lawsuit for annulment of marriage to the court for marriages that violate the provisions of laws and regulations. The mechanism for requesting a marriage annulment in Perja 25/2015 contains the following points: (Syawal, 2022)

1. Active data collection is carried out by prosecutors through internal prosecutors and external parties involving agencies and the surrounding community.

2. Marriages conducted in the presence of a Marriage Registration Officer, unauthorized marriage guardians, and marriages conducted without the presence of two witnesses are the inherent domain of the Prosecutor to request the annulment of a marriage.
3. Marriage annulment is filed by the Prosecutor through the District Court or Religious Court where the marriage is held or the residence of the bride and groom and the residence of one of the parties if the two parties are in different regions.
4. The application for annulment of marriage filed by the Prosecutor shall be conducted in accordance with the procedures stipulated in the Indonesian procedural law.

The Prosecutor's knowledge of violations of the law on the implementation of marriage is found both directly and indirectly. Direct knowledge means that the Prosecutor himself finds a violation of the marriage that has been entered into by the parties, while information from the party directly concerned or the party who knows the marriage is the knowledge of the Prosecutor which is classified as indirect knowledge. (Syawal, 2022) Information submitted by the public to the prosecutor must be accompanied by sufficient evidence that the implementation of the marriage has clearly violated Indonesian positive law as contained in the Marriage Law and its derivative regulations. Because the case of annulment of marriage is the scope of civil law, the prosecutor in the application for annulment of marriage acts as a petitioner while the married couple whose marriage is annulled plays the role of respondent.

### **Optimizing Law Enforcement of State Attorneys in Marriage Cancellation**

The provision regarding the authority of the prosecutor to file a petition for annulment of marriage is not regulated by the Law on Religious Courts, while the Marriage Law, which is one of the sources of procedural law in the religious courts, regulates it. In addition to Article 26 paragraph (1) of the UUP, Article 23 letter c of the UUP, especially in the words "authorized official" must expand the meaning of these words and still need further interpretation of the Article.

The existence of Religious Courts became more stable after Indonesian Muslims were able to produce the Compilation of Islamic Law which was authorized through presidential instruction No. 1 of 1991. KHI became the sole standard book for religious judges in Indonesia. Because before the birth of KHI, the material law of religious courts in Indonesia was still varied or scattered in various fiqh books, causing uncertainty or legal uncertainty. In KHI the problem of marriage annulment is regulated in Articles 70-76, which in principle the material formulation of marriage annulment regulated in KHI is almost the same as the formulation in the UUP, it's just that the KHI formulation, more clearly differentiating the reasons for marriage annulment. (Yahya, 1993, 87)

Regarding the party who has the right to apply for a marriage annulment, it is regulated in KHI Article 73. The issue of the authority of the Prosecutor in filing a petition for annulment of marriage will arise again after examining the Article. From all the legal bases for the authority of the prosecutor in filing a petition for annulment of marriage that have been presented, it can be temporarily concluded that the possibility of the prosecutor filing a petition for annulment of marriage can occur in the religious court environment.

The position of the Prosecutor in the field of civil law and state administrative law has been emphasized through the provisions of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 of the Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Law, especially in Article 30 paragraph (2) which emphasizes that both inside and outside the court the Prosecutor's Office with special powers can act on behalf of the state or government in handling civil cases and cases that fall within the scope of state administration. (Tinambunan, 2022)

The role of prosecutors in marriage annulment can be optimized through their involvement in the legal process related to marriage annulment. For example, prosecutors have the authority to file an application for annulment of marriage in accordance with the provisions of Law Number 1 Year 1974 on Marriage. In addition, the involvement of prosecutors in the legal process of marriage annulment can also ensure compliance with applicable laws and procedures. Marriage annulment can involve religious courts and legal processes that require the involvement of prosecutors. Thus, optimizing the role of prosecutors in marriage annulment can be done through increasing the understanding and active involvement of prosecutors in legal processes related to marriage annulment. (Yayah, 2011)

At the present time, the prosecutor as one of the parties entitled to annul a marriage is the applicant, (Mahessa, 2016) because the annulment of marriage is included in a civil case. In carrying out the annulment of marriage, the Prosecutor requires a Special Power of Attorney (SKK) from related institutions such as the KUA or other institutions that provide special power of attorney for annulment of marriage, this is a less than optimal role of the Prosecutor in enforcing the law in the field of annulment of marriage. So that it requires derivative rules that give the prosecutor full authority to act without a special power of attorney from certain parties so that the prosecutor's function in canceling marriages is more optimal.

### **The Contribution of the State Attorney in the Development of Family Law in Indonesia**

Prosecutors in Indonesia have an important role in state law. Based on Article 1 number 2 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 of the Prosecutor's Office of the Republic of Indonesia, a prosecutor is a civil servant with a functional position that has specificity and carries out its duties, functions and authorities based on the law. (<https://kejarikabupaten.kejaksaan.go.id/?p=715>)

Regarding prosecutors in the process of annulment of marriage is a group of civil law, so that the provisions of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 of the Prosecutor's Office of the Republic of Indonesia apply, Article 30 paragraph (2) which emphasizes that both inside and outside the court the Prosecutor's Office with special powers can act on behalf of the state or government in handling civil cases and cases that fall within the scope of state administration. (Sari, 2017)

Based on existing regulations, the Prosecutor's Office Law provides that if the prosecutor wants to cancel a marriage, he must obtain a special power of attorney granted by the KUA or a certain institution. It can be understood that the prosecutor cannot necessarily act alone in accordance with his profession in

enforcing the law in the form of canceling marriages that violate laws and regulations without a special power of attorney.

This is the focal point of the researcher's analysis, that the role of the prosecutor in the annulment of marriage is still not optimal, so that in order to provide optimality to the role and authority of the prosecutor, regulations are needed that specifically regulate the technical guidelines that the prosecutor is allowed to act directly in the application for annulment of marriage. This is relevant to the duties and authority of the prosecutor as a law enforcement officer in order to enforce the law, especially in the field of marriage law.

Optimizing law enforcement by prosecutors in annulling marriage is relevant to Gustav Redbrudh's theory of purpose, (Nahak, 2023) that the purpose of law is to provide justice, legal certainty and legal benefits. With the prosecutor being given regulatory rules that support his role in enforcing the law in the field of marriage annulment for someone who violates statutory regulations, legal justice, legal certainty and legal benefits will be created in the community.

Based on the researcher's analysis, the researcher's contribution to the study of optimizing law enforcement by prosecutors in marriage annulment is in the form of a proposal to policy holders, so that regulations are legislated that specifically regulate the technical guidelines that prosecutors are allowed to act directly in marriage annulment applications. This is relevant to the duties and authority of the prosecutor as a law enforcement officer in order to enforce the law, especially in the field of marriage law and solely in the context of realizing legal objectives, namely to create legal justice, legal certainty and legal benefits.

#### **D. Conclusion**

The optimization of law enforcement by prosecutors in annulling marriage is relevant to Gustav Redbrudh's theory of purpose, that the purpose of law is to provide justice, legal certainty and legal benefits. With the prosecutor being given regulatory rules that support his role in enforcing the law in the field of marriage annulment for someone who violates statutory regulations, legal justice, legal certainty and legal benefits will be created in the community. The researcher's contribution to the development of family law in Indonesia is in the form of a proposal to policy holders, so that regulations are legislated that specifically regulate the technical guidelines that prosecutors are allowed to act directly in marriage annulment applications.

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#### **Undang-Undang dan Peraturan Pemerintah**

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