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## Legal Protection for Wives due The Annulment of A Marriage: A *Maqasid Al-Shari'ah* Perspective A Study of Religious Court Rulings in Indonesian

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### ABSTRACT

The study examines the legal protection afforded to good-faith wives in marriage annulment cases and explores the integration of *maqāṣid al-sharī'ah* principles into judicial reasoning. Although the Indonesian Marriage Law and the Compilation of Islamic Law regulate the grounds for annulment, previous studies have not addressed the normative gap concerning the post-annulment rights of wives. This gap namely, the absence of substantive protection for wives who suffer harm due to identity fraud or deception constitutes the central focus of the research. Using a normative juridical method supported by statutory, doctrinal, and case law analysis, the study finds that judicial practice remains predominantly formalistic. Marriage annulment is treated as nullifying all legal consequences from the outset, which ultimately disadvantages wives acting in good faith. An analysis based on *maqāṣid al-sharī'ah*, particularly the principle of *ḥifz al-naḥs*, indicates that annulment decisions should account for humanitarian considerations, prevention of harm, and the preservation of women's dignity. This research contributes to the development of Islamic family law discourse by proposing a more progressive interpretive framework that incorporates *maqāṣid al-sharī'ah* into judicial decision-making. The findings carry practical implications for religious courts in Indonesia, emphasizing the need to recognize and protect the rights of wives more comprehensively in annulment cases, as well as encouraging the development of regulations that respond more effectively to women's vulnerability.

**Keywords:** *Hifz Al-Nafs; Maqasid Al-Shariah; Marriage Annulment.*

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## **Introduction**

The annulment of marriage in religious court practice in Indonesia often raises serious issues regarding the protection of wives, especially when the marriage is declared null and void and deemed as if it never legally existed. This situation has the potential to deprive wives of their fundamental rights, such as alimony, mut'ah, protection of dignity, and personal safety. From the perspective of *maqasid al-syari'ah*, particularly the principle of *hifz al-nafs* (protection of life), the annulment of marriage should not neglect the safety, honor, and right to life of women as vulnerable parties (Husna & Muhtadin, 2023). *Hifz al-nafs* emphasizes the importance of preserving human existence and dignity so as not to fall into physical or psychological harm, so that protection of the wife remains a priority even if the marriage bond is annulled.

Normatively, Indonesian positive law has provided a basis for protection through Article 28 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states that annulment does not apply retroactively to children born from the marriage (Law, 1974). This provision is reinforced by Article 76 of the Compilation of Islamic Law, which emphasizes that the annulment of a marriage does not sever the legal relationship between children and their parents (KHI, 1991). These regulations demonstrate the spirit of protection in national law, which is in line with *maqasid al-syari'ah*, particularly in protecting human life and dignity. However, protection for wives as parties acting in good faith has not always been optimally realized in judicial practice (Maulanida, 2024; Dewi, 2024).

A number of previous studies have examined the issue of marriage annulment, yet most remain confined to normative and procedural dimensions. Intihani (2024) discusses statutory provisions and procedural mechanisms for annulment within Law No. 1 of 1974 and the KHI. Daharis compare national and Islamic legal perspectives, emphasizing that annulment (*fasakh*) renders the marriage as never having existed, although the child's legal status remains preserved (Daharis, 2025). The other study highlights annulment due to coercion and the centrality of consent in Islamic marriage contracts (Vinabilah, 2024). Other studies, such as Nurjanah (2022), Rahmawati (2021), and Fadillah (2020), similarly focus on administrative defects, procedural requirements, or doctrinal debates regarding the validity of marriage pillars. Although these works contribute to understanding the legal basis of annulment, they predominantly approach the topic from a descriptive and formal-legal standpoint.

However, a clear research gap remains: very few studies critically examine annulment decisions through a substantive justice lens that integrates *maqāṣid al-syarī'ah*, particularly *ḥifẓ al-nafs*, as an evaluative framework. Existing scholarship tends to overlook how annulment decisions may produce harm for wives acting in good faith, especially when the marriage is treated as legally nonexistent. In practice, there are cases where judges adopt a strictly formalistic interpretation that neglects the need to protect wives' rights and dignity. For instance, in Decision Number 925/Pdt.G/2018/PA.Btl, the wife received no compensation or protective measures because the annulment was interpreted rigidly as though the marriage had never occurred (Daharis, 2025). This indicates a judicial tendency to prioritize formal legality over substantive justice despite the centrality of harm prevention in *maqāṣid al-syarī'ah*.

In contrast, the Qur'an emphasizes the preservation of human life and dignity, as stated in QS. Al-Mā'idah/3:32: "Whoever saves a life, it is as if he has saved all of humanity." This moral imperative suggests that annulment decisions should not result in harm or injustice, particularly toward wives who enter marriage in good faith. Therefore, the application of *ḥifẓ al-nafs* becomes essential to ensure that Indonesian positive law especially Law No. 1 of 1974 and the KHI is interpreted and implemented in ways consistent with the overarching objectives of Islamic law in promoting justice and human welfare (Anshary, 2018).

Based on this background, this study aims to analyze the protection of wives due to marriage annulment based on the perspective of *maqāṣid al-syarī'ah* with a focus on the principle of *ḥifẓ al-nafs*. This study seeks to bridge the gap between the positive law approach, which tends to be formalistic, and the need for substantive justice for wives as parties acting in good faith. Thus, this study is expected to contribute to strengthening judicial practices that not only guarantee legal certainty but also protect the dignity and safety of women in a fair and just manner.

## Methods

This study employs normative legal research focused on analyzing marriage annulment and its implications for the protection of wives' rights. The primary legal materials consist of Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and other regulations governing the validity and annulment of marriage. The research also examines several Religious Court decisions as examples of how legal norms are applied in judicial practice. All primary and secondary legal materials were collected through library research

using systematic search techniques involving statutory regulations, court decisions, academic literature, and scientific journal articles, which were then classified to support the analysis process (Marzuki, 2017).

The statute approach is used to examine the conformity, consistency, and synchronization of the regulatory framework on marriage annulment and the protection of wives. A comparative perspective is also applied to assess the alignment between the written legal norms and the judicial reasoning found in the analyzed decisions. The decisions selected for analysis include those containing legal considerations related to the grounds for marriage annulment, its legal consequences for the wife, and the judicial assessment of the position of a wife acting in good faith. These decisions were accessed through the Supreme Court Decision Directory (Fajar, 2017).

The analytical framework of this study covers the identification of norms governing marriage annulment as stipulated in statutory regulations, a comparative analysis between these norms and the judges' legal considerations, and an assessment based on the principles of *maqāṣid al-sharī'ah*, particularly the principle of *ḥifẓ al-nafs*, to evaluate the extent to which the protection of wives' lives, safety, and dignity is reflected both in legal regulations and judicial practice. The analysis is conducted qualitatively through stages of norm identification, examination and coding of judicial reasoning, and final evaluation based on the *ḥifẓ al-nafs* principle. The results are presented descriptively and analytically to provide a structured understanding of the alignment between Indonesian positive law and the principles of *maqāṣid al-sharī'ah* in ensuring the protection of wives in marriage annulment cases.

## **Findings**

This study employs a normative legal research method that focuses on examining the rules governing marriage annulment and how these rules affect the protection of wives, especially those acting in good faith. The research relies on primary legal materials such as the Marriage Law (Law No. 1 of 1974), the Compilation of Islamic Law (KHI), and other regulations related to the validity and annulment of marriage. These sources are collected through library research, using systematic searches of legislation, academic books, journal articles, and other relevant legal documents. All materials are then organized and classified to support a clear and structured analysis.

The research applies a statute approach to explore the consistency and coherence of regulations on marriage annulment and the legal consequences that

arise from it. This approach helps identify whether existing laws provide adequate protection for wives whose marriages are annulled. A comparative approach is also used to examine the alignment between written laws and the legal reasoning used by judges in court decisions. The selected decisions contain considerations related to the grounds for annulment and the status of wives who enter marriage with good intentions. These decisions are accessed through the Supreme Court's decision directory.

The analytical framework consists of several stages. First, the study identifies and explains the legal norms related to marriage annulment within Indonesian law. Second, it compares these norms with judicial reasoning to detect differences, conflicts, or gaps between legal theory and legal practice. Third, the analysis is strengthened by applying the principle of *maqāṣid al-sharī'ah*, particularly the principle of *ḥifẓ al-nafs*, which emphasizes protection of life, safety, and dignity. This principle is used to evaluate whether the law and judicial practice truly reflect protection for wives affected by annulment cases. The overall analysis is carried out qualitatively by reading, interpreting, and categorizing legal materials and judicial considerations.

Finally, the results are presented in a descriptive-analytical manner. This presentation aims to show how marriage annulment regulations work in practice, how judges interpret these rules, and whether these interpretations align with broader ethical and religious principles. Through this method, the study seeks to provide a deeper understanding of the legal position of wives in annulled marriages and to identify areas where the law may need improvement to ensure better protection in the future.

## Discussion

### Legal Analysis of Legal Protection for Wives in Marriage Annulment

Women's marital rights are deeply shaped by the interaction between religious norms, state law, and the broader legal structure governing family relations (Louden-Cooke, 2024). The annulment of marriage within Indonesia's positive legal system functions as a mechanism designed to safeguard the validity and integrity of a marital union from the very moment it is formed. This doctrinal framework rests on the assumption that a marriage must meet the legal conditions prescribed by statutory regulations in order to be recognized as valid by the state. When these conditions are not fulfilled, the state, through its judicial process, grants the authority to annul the marriage. This normative basis is reflected in Law

Number 1 of 1974 on Marriage, particularly Articles 22 through 28, which systematically regulate the grounds, eligible parties, and legal consequences of annulment.

Comparative legal scholarship shows that marriage annulment is often framed primarily in terms of fraud, consent defects, and formal invalidity, rather than the remedial rights of the spouse who suffers the consequences of that invalidity (Brinig & Alexeev, 1995). Article 22 explicitly states that a marriage may be annulled if the parties fail to meet the legal requirements for contracting the marriage. This indicates that the Indonesian legal system places substantial emphasis on formal validity as the determining factor of a marriage's legitimacy. Article 26(1) further clarifies that annulment may occur when procedural defects exist, such as the absence of a valid guardian, witnesses, or an officiant authorized to solemnize the marriage. Additionally, Article 27 recognizes defects of consent, including coercion and fraud related to identity, as legitimate grounds for annulment. These provisions demonstrate that Indonesian positive law acknowledges the essential role of honesty, free consent, and legal capacity in the formation of a marriage.

A similar legal structure is reflected in the Compilation of Islamic Law (KHI), particularly Articles 70 and 72, which reaffirm the grounds for annulment, including fraud or misrepresentation concerning a spouse's identity. Thus, normatively, the Indonesian legal framework provides a sufficient basis for annulling marriages that contain legal defects. However, the core problem does not lie in the annulment mechanism itself, but rather in the legal consequences that follow, especially regarding the protection of the wife as the disadvantaged party.

When a marital relationship is treated as non-marriage or insufficiently recognized, women may lose access to the very family-law protections that should have been available to them (Vora, 2020). In practice, Indonesian positive law treats annulment as an event that erases all legal consequences of the marriage retroactively. The marriage is considered void *ab initio*, as if it never existed. This doctrinal stance becomes problematic when confronted with the social realities in which wives often experience the marriage as a lived relationship, possibly over an extended period. These women may have contributed emotionally, socially, and financially to the marital life, yet such contributions receive no legal recognition once the marriage is annulled. The legal non-recognition of marriage can create serious consequences for women, particularly in relation to legal security, financial claims, and recognition of spousal rights (Leahy & O'Sullivan, 2019). This leads to significant injustice, as the wife may be deprived of basic

entitlements such as financial support, access to joint property, or compensation for emotional and social harm.

Judicial protection is more effective when it does not stop at changing legal status, but also functions to prevent continuing harm and secure practical protection for vulnerable women (Noack-Lundberg et al., 2021). Comparative scholarship suggests that legal responses to invalid or coerced marriages often remain insufficiently victim-centred, even when they appear protective in formal terms (Villacampa, 2025). The absence of explicit legal provisions regarding the protection of wives following annulment reveals a normative gap in Indonesia's legal system. Unlike divorce, which is extensively regulated concerning post-marital rights such as iddah maintenance, *mut'ah*, and property division, annulment remains underdeveloped. As a result, wives who are victims of fraud or deception are often left without adequate legal remedies. Their losses are not only material but also psychological, social, and moral. Women subjected to annulment frequently face social stigma, emotional distress, and diminished self-worth.

Judicial practice reinforces this gap, as courts tend to adopt a formalistic approach. Numerous decisions focus exclusively on establishing whether the statutory elements of annulment are met, without extending judicial reasoning to the broader impacts suffered by the wife. The Decision of the Bantul Religious Court Number 925/Pdt.G/2018/PA.Btl exemplifies this, where the court annulled the marriage on the basis of identity fraud but provided no additional protection for the wife. In contrast, the Decision of the Pekanbaru Religious Court Number 1185/Pdt.G/2010/PA.Pbr demonstrates a more progressive interpretation by granting the wife rights to joint marital property despite the annulment. However, such decisions remain exceptional and do not yet form a consistent judicial pattern.

Judicial limitations are further exacerbated by procedural constraints inherent in civil litigation, particularly the principle of *ultra petita*. Judges generally may not grant relief beyond what is explicitly requested by the plaintiff. Consequently, when wives fail to articulate claims for compensation, maintenance, or other protective measures often due to limited legal literacy the court is unable to grant such relief. This procedural rigidity reveals structural weaknesses that prevent adequate protection for vulnerable parties.

From this analysis, it becomes evident that Indonesian positive law remains insufficient in offering comprehensive protection to wives in annulment cases. Its

overemphasis on procedural validity restricts the ability of the legal system to address substantive injustices suffered by women. Thus, legal reform is necessary, not only to clarify post-annulment rights but also to incorporate broader interpretive frameworks that enable judges to consider the real harms experienced by wives. Only through such reform can annulment function as more than an administrative correction and instead serve as a mechanism that embodies substantive justice.

### **Legal Protection for Wives in Marriage Annulment based on *Maqasid Sharia***

Legal responses to defective or forced marriages may still fail women when they focus more on legal classification than on restoring women's dignity and protection (Razack, 2004). A more adequate legal response requires not only formal invalidation of the marriage but also a broader institutional approach that places women's protection at the center (Villacampa, 2024). Within Islamic jurisprudence, marriage is understood as far more than a legal contract; it is a socio-spiritual institution founded upon harmony, compassion, and mutual responsibility. It is therefore essential that marriages be based on transparency, sincerity, and good faith. When deception occurs particularly in the form of concealing marital status or identity this not only undermines the validity of the contract but also violates ethical principles that form the foundation of Islamic family law.

Legal protection may become merely symbolic when the law formally recognizes women's vulnerability but fails to provide meaningful remedies in practice (Gill & Anitha, 2009). So, the *maqāṣid al-sharī'ah* framework offers a broader lens through which to assess the protection of women in annulment cases. One of its primary objectives is *ḥifẓ al-nafs*, or the protection of life, which encompasses not only physical safety but also emotional well-being, dignity, and psychological integrity. When a wife becomes the victim of fraud in marriage, she suffers multiple harms: emotional shock, social embarrassment, reputational damage, and moral injury. From the *maqāṣid* perspective, these harms cannot be ignored or treated merely as procedural issues because they violate the higher objectives of the law.

The principle of *dar' al-mafāsīd wa jalb al-maṣāliḥ* further underscores that harm must be eliminated and welfare pursued. Annulment, therefore, should not simply nullify an invalid contract, but also function as an instrument to restore justice and compensate for the harm inflicted upon the innocent party. This means that wives who enter marriages in good faith retain a moral and jurisprudential right to protection and compensation, despite the marriage being declared void.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا  
بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبَيِّنَةٍ

The Meaning:

O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality... (QS. an-Nisā' /4:19)

International studies have shown that defective consent in marriage must be understood not only as a legal issue but also as a matter of women's health, rights, and social protection (Sabbe et al., 2013). The Qur'an reinforces this protective ethos. The verse commands believers to treat women honorably and prohibits harming them. Fraud within marriage clearly violates this command, as it deprives women of the right to give informed consent. Hence, an annulled marriage resulting from deception is not merely an invalid act but an ethical breach that necessitates redress in accordance with Islamic justice principles.

Islamic law also recognizes compensatory mechanisms. The concept of *ta'wīd* (compensation) allows the awarding of damages for both material and non-material harm. Scholars across different schools of jurisprudence acknowledge that deception invalidating a marriage requires the offending party to bear responsibility for the resulting harm. From this perspective, the wife does not lose her entitlement to protection simply because the marriage contract is void.

Despite these strong theological and jurisprudential foundations, the application of *maqāṣid* in Indonesian judicial practice remains limited. Decisions such as the Bantul case reveal that judges rarely incorporate *maqāṣid*-oriented reasoning, instead relying on positivistic interpretations of the law. This creates a disconnect between Islamic legal ideals and contemporary adjudication.

For this reason, integrating *maqāṣid*-based reasoning into judicial practice could significantly enhance the protection afforded to wives in annulment cases. Such integration would allow courts to consider the broader social and moral consequences experienced by women, instead of restricting their analysis to procedural validity. Ultimately, applying *maqāṣid al-sharī'ah* would align annulment decisions with the ethical and protective aims of Islamic family law, ensuring that justice is not merely formal but truly substantive.

## **Conclusion**

The findings of this study indicate that although Indonesian positive law provides a normative basis for marriage annulment through Law Number 1 of 1974 and the Compilation of Islamic Law, the protection of wives acting in good faith is not fully guaranteed in judicial practice. The predominantly formalistic legal approach often results in the wife losing her rights because annulment is interpreted as eliminating all legal consequences from the outset. This condition generates injustice, particularly for wives who suffer physical, psychological, social, or economic harm as a result of the marriage. From the perspective of *maqāṣid al-sharī'ah*, especially the principle of *ḥifẓ al-nafs*, marriage annulment should not disregard the human, safety, and dignity aspects of the wife. Islamic law emphasizes the elimination of harm and the protection of those who are wronged, including through compensation for deception or identity fraud in the marital contract. Therefore, substantive protection for the wife remains relevant even when the marriage is declared void.

Accordingly, legal protection for wives needs to be strengthened through a more progressive interpretive approach, the integration of *maqāṣid al-sharī'ah* principles into judicial reasoning, and the development of regulations that explicitly outline the rights of wives following annulment. Such an approach is expected to realize justice that is not merely procedural but also substantive, ensuring the welfare of women as the most vulnerable party in marriage annulment cases.

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