

**APPLICATION OF ARTICLE 27 PARAGRAPH (2) OF THE
MARRIAGE LAW ON THE MISCONCEPTION OF THE APPLICANT
IN MARRIAGE ANNULMENT**

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Article	Abstract
Article History: Submitted: September 2024 Reviewed: October 2024 Accepted: March 2025 Published: March 2025 Keywords: Annulment; Marriage; Misconception.	<i>This study aims to analyze the application and interpretation of the norms of Article 27 paragraph (2) of the Marriage Law regarding misconception in a petition for annulment of marriage. The problems examined in this study are how the norms of misconception are applied in the application for annulment of marriage and how misconception is interpreted in the application for annulment of marriage. This writing uses normative juridical legal research methods. The approach method used is the statutory approach and case approach. The sources of legal materials used in this research are primary, secondary, and tertiary legal materials. Data collection uses qualitative data analysis methods. The results of this study indicate that the application of the norm of misconception can be used to annul a marriage and must meet the time period set by law. Misconception can be interpreted as a mistake in assessing the identity of the spouse from what is in fact to what is not in accordance with reality and misjudging the spouse's personal condition from normal to abnormal. This study recommends the need for the parties to find out carefully and thoroughly about themselves, including the identity and condition of the partner by utilizing taaruf as a process of getting to know each other before heading to the level of marriage, and the parties also need to find out information about themselves to other parties such as friends and family of the prospective partner.</i>

A. Introduction

Misconception refers to a situation where one party assumes something, but in reality, the assumption is incorrect or wrong. According to *Kamus Besar Bahasa Indonesia* (KBBI), the word "*salah*" means incorrect, mistaken, deviating from what should be, missed, blemish, or mistake, while the word "*sangka*" means guess or doubt. Collectively, "*salah sangka*" is defined as a misunderstanding or misjudgment¹. This misunderstanding occurs when one party forms a belief based on incorrect information, which can lead to legal complications, especially in cases of marriage annulment.

¹ Badan Pengembangan dan Pembinaan Bahasa, "Kamus Besar Bahasa Indonesia (KBBI), <https://kbbi.kemdikbud.go.id/>, accessed 1 September 2024.

One of the circumstances referred to as misconception in the annulment of marriage can occur, for example, when a woman will be married to a man where before the marriage it is known that this man is a virgin, but after the marriage it is discovered that the actual status of the man is still bound by marriage to another woman, so there is a misconception against the man which is carried out by falsifying his identity. Identity falsification falls under the category of marital fraud, and this act is usually carried out with the aim of facilitating the marriage process at the religious affairs office or civil registry office².

The condition of misconception can raise doubts about the validity of the marriage that has occurred, because a marriage must be carried out with the fulfillment of the pillars and conditions of validity that have been determined by law. These pillars and conditions are set to ensure that the marriage is legitimate and recognized under the law. If the marriage fails to meet these requirements or if it is carried out without due regard for the provisions of the law, it may open up the possibility for annulment³.

Annulment of marriage is the dissolution of the marital relationship between husband and wife after the marriage has taken place⁴. Marriage annulment can only be adjudicated by the court as the only institution authorized to decide on a marriage annulment⁵. An application for annulment of marriage is submitted to the court in the area where the marriage takes place or at the place of residence of both husband and wife⁶. A marriage can be said to be annulled when a court decision has been issued which grants the application for annulment of marriage and is *inkracht* or legally binding and applies from the time the marriage takes place⁷. The annulment of a marriage results in the marriage that has occurred being considered never to have occurred, so that the husband and wife whose marriage is annulled are considered to have never married each other⁸.

² Andi Iswandi, "Review Pembatalan Perkawinan yang Disebabkan Penipuan pada Pengadilan Agama", *Qonuni: Jurnal Hukum dan Pengkajian Islam* 1, no. 2 (2021): 76-88, <https://doi.org/10.59833/qonuni.v1i02.303>.

³ Muh. Akbar Fad Syahril, "The Effectiveness of the Annulment of Marriage Due to Impersonation and Its Legal Consequences", *IOSR Journal of Humanities and Social Science* 23, no. 2 (2018): 39-44, DOI: 10.9790/0837-2302023944.

⁴ Dicky Zaharuddin and Mulki Sharmani, "State Attorney Law Enforcement in Marriage Annulment and Its Contribution to the Development of Family Law in Indonesia", *Smart: Journal of Sharia, Tradition and Modernity* 3, No. 2 (2023): 56-70, <http://dx.doi.org/10.24042/smart.v3i2.20510>.

⁵ Bakri A.Rahman and Ahmad Sukardja, *Hukum Perkawinan Menurut Islam, Undang-Undang Perkawinan, dan Hukum Perdata/BW*, (Jakarta: Hidakarya Agung, 1981), 36.

⁶ Ismi Tri Septiyani, "Analisis Hukum Islam terhadap Pembatalan Perkawinan atas Dasar Praktik Pencatatan Perkawinan Ilegal", *Jurnal Riset Hukum Keluarga Islam (JRHKI)* 2, no. 2 (2022): 95-100, <https://doi.org/10.29313/jrhki.vi.1269>.

⁷ *Ibid.*

⁸ Faisal, "Pembatalan Perkawinan dan Pencegahannya", *AL-QADHA: Jurnal Hukum Islam dan Perundang-Undangan* 3, no. 1 (2017): 5, <https://doi.org/10.32505/qadha.v4i1.173>.

The annulment of marriage involving misconception is facilitated in Article 27 paragraph (2) of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) which reads “a husband or wife can submit an application for annulment of marriage if at the time of marriage there is misconception about the husband or wife”⁹. In addition, the meaning of the same article is also regulated in Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (hereinafter referred to as KHI) which regulates the addition of the word fraud as one of the reasons for annulment of marriage, so that the annulment of marriage is not only due to misconception¹⁰, while in KHI it is regulated in Article 72 paragraph (2) which reads “a husband or wife can submit an application for annulment of marriage if at the time of marriage there is fraud or misconception about the husband or wife”¹¹.

The existence of the norm of misconception in the annulment of marriage adopted in Article 27 paragraph (2) and Article 72 paragraph (2) KHI does not directly explain what are the reasons for misconception that can be submitted to annul a marriage. The reasons for annulment of marriage mentioned are quite limited and are not absolute, but they also do not exclude the emergence of other reasons that can be used to apply for annulment of marriage¹¹.

In fact, there are cases of annulment of marriage on the grounds of misconception about the husband or wife that have been recorded several times in court decisions in Indonesia, the cases are contained in the decision:

Table 1.
Misconception Cases in Marriage Annulment

No.	Court Decision	Misconception
1.	Decisions Number 42/Pdt.G/2015/PA.Msb.	Misconception in the form of falsifying identity by claiming to be pregnant.
2.	Decisions Number 780/Pdt.G/2020/PA.Tmk.	Misconception in the form falsification of identity regarding personal status, education status, and employment status.
3.	Decisions Number 483/Pdt.G/2020/PA.Kag.	Misconception about one's own condition in the form of health problems that are only discovered after marriage.

⁹ Article 27 paragraph (1) of Law Number 1 Year 1974 concerning Marriage.

¹⁰ Achmad Rafli, “Pembatalan Perkawinan karena Suami Penyuka Sesama Jenis”, (Thesis, UIN Syarif Hidayatullah Jakarta, 2022).

¹¹ Yahya Harahap, *Hukum Perkawinan Nasional Berdasarkan Undang-Undang Nomor 1 Tahun 1974 dan Peraturan Pemerintah Nomor 9 Tahun 1975* (Medan: CV Zahir Trading Co, 1975), 28.

4.	Decisions Number 981/Pdt.G/2020/PA.Btl.	Misconception of self in the form of different sexual orientation.
5.	Decisions Number 1252/Pdt.G/2020/PA.Tgr	Misconception in the form of falsifying a death certificate as a condition of marriage administration.
6.	Decisions Number 306/Pdt.G/2019/PA.Yk	Misconception about your own health condition in the form of premature ejaculation disorder or disease.

Source: Author Self Analysis

Departing from the overall description above, it can be concluded that the meaning and application of the norm of misconception in the annulment of marriage is not regulated in detail and concretely in the regulatory articles, this is evidenced by the fact that there is a marriage annulment decision related to misconception and involves a wide range of misconception variables. Therefore, the author is interested in examining the issue of misconception in the annulment of marriage because there are interesting aspects that the author can discuss, namely related to how the application of the norm of misconception and how misconception is defined in annulling a marriage.

B. Method

The author of this article uses normative juridical research, in which law is conceptualized as what is contained in laws and regulations (law in books) or law is defined as rules or norms that become a reference for human behavior that is considered appropriate¹². The method applied in this research involves a statutory approach and a case approach by reviewing laws, court decisions, and regulations relevant to the legal issues discussed. The data sources required in this research are found through various legal materials such as primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are juridically binding legal materials, in this research used are: Decision Number 42/Pdt.G/2015/PA.Msb; Decision Number 606/Pdt.G/2017/PA.Msb; Decision Number 0043/Pdt.G/2018/PA.Ntn; Decision Number 1845/Pdt.G/2020/PA.Gsg; Decision Number 1950/Pdt. G/2020/PA.Ckr; Decision Number 130/Pdt.G/2018/PA.Pkj; Decision Number 780/Pdt.G/2020/PA.Tmk; Decision Number 211/Pdt.G/2021/PA.Sry; Decision Number 1252/Pdt.G/2020/PA. Tgr; Decision Number 483/Pdt.G/2020/PA.Kag; Decision Number 306/Pdt.G/2019/PA.Yk; Decision Number 981/Pdt.G/2020/PA.Btl; Law Number 1 of 1974

¹² Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Pasuruan: CV Penerbit Qiara Media, 2021), 43.

concerning Marriage; Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law; Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Secondary legal materials used involve sources such as books, literature, journals, scientific papers, legal research results, interviews with legal experts, and so on. Tertiary legal materials used include sources that provide additional explanations of primary and secondary legal materials, such as legal dictionaries, the Kamus Besar Bahasa Indonesia, and so on. Data collection is carried out through literature studies and uses qualitative data analysis methods by describing legal issues identified through literature studies using legal materials related to the issues studied. The originality of this research is related to the application of the norm of misconception and the meaning of misconception in the application for annulment of marriage.

C. Analysis and Discussion

1. Application of the Norm of Misconception in Marriage Annulment Petitions

The annulment of marriage involving the variable of misconception can be found in Article 27 paragraph (2) of Law Number 1 Year 1974 concerning Marriage which reads “a husband or wife can submit an application for annulment of marriage if at the time of marriage there is misconception about the husband or wife”¹³. Misconception in the annulment of marriage is also formulated in Article 72 paragraph (2) of Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law which reads “a husband or wife can submit an application for annulment of marriage if at the time of marriage there is fraud or misconception about the husband or wife”¹⁴.

Based on interviews conducted by the author with the Judge of the Yogyakarta Religious Court and the Judge of the Jepara Religious Court, it is known that in deciding on a request for annulment of marriage a judge must refer to the provisions in the Marriage Law and KHI, and must assess whether the situation of misconception about the husband or wife is sufficient reason to be able to cancel the marriage by looking for existing facts according to the examination of evidence submitted by the parties to the case¹⁵. The judges are also of the opinion that the occurrence of misconception in a marriage can cause the marriage to be

¹³ Muhammad Haka Rahman Hakim and Anjar Sri Ciptorukmi N, “Salah Sangka dan Penipuan pada Pasal 27 Ayat (2) Undang-Undang Nomor 1 Tahun 1974 Jo. Pasal 72 Ayat (2) Kompilasi Hukum Islam tentang Perkawinan”, *Jurnal Privat Law* 7, no. 1 (2019): 13-17, <https://doi.org/10.20961/privat.v7i1.29962>.

¹⁴ Hasyarania and Endang Heriyani, “Juridical Analysis of Judges’ Considerations in Cancellation of Marriage Because the Husband Likes the Same Sex (Study of Decision Number 176/Pdt.G/2019/PA.Yk)”, *Jurnal Ilmu Sosial dan Pendidikan (JISIP)* 8, no. 1 (2024): 339, <http://dx.doi.org/10.58258/jisip.v8i1.6204>.

¹⁵ Interview with Mrs. Nurhudayah, Judge of the Yogyakarta Religious Court, on March 28, 2024.

annulled, the meaning of “can be annulled” means that one of the parties has the right to submit a marriage annulment application to the court, but whether the marriage can be annulled or not depends on the assessment made by the panel of judges, if the panel of judges considers that the reasons submitted are not strong enough to be able to annul, then the marriage will still be considered valid and binding for both parties involved in the case¹⁶.

Cases of misconception that occur in the community are very varied because they do not only involve a certain object of misconception, but involve many objects that can be said to be a condition of misconception against the husband or wife, this is evidenced by the existence of several cases of marriage annulment applications that have been decided through court decisions that have permanent legal force (*inkracht*), while the author lists the decisions used to answer the problems in this study, among others:

a. Decision Number 42/Pdt.G/2015/PA.Msb;

In this decision, the case involved the petitioner (husband) who in his petition letter dated January 23, 2015 stated that the petitioner and respondent (wife) had entered into marriage on August 28, 2014, which was recorded by the Marriage Registrar of the Masamba Sub-district Religious Affairs Office (KUA). The applicant filed a petition for annulment of the marriage on the grounds that their marriage was forced because the respondent claimed to be six months pregnant. That up to the time this petition was filed, the respondent had not given birth even though she was over 9 months pregnant, and the petitioner realized that the respondent was not actually pregnant. That with the respondent's behavior, the applicant felt that he had been lied to and therefore filed a petition for annulment of the marriage.

The consideration of the panel of judges that the author can get as a study of this research is related to the existence of a misconception about the husband or wife. The panel of judges considered after finding the facts in the trial, that it was true that the respondent had falsified her pregnancy status to ask to be married to the applicant as evidenced by the fact that the respondent had never given birth so that the applicant felt deceived and could not continue his household relationship. Based on this, the panel of judges was of the opinion that if the applicant's household with the respondent continued it would cause harm to both of them so that annulment of the marriage was a better and more beneficial action for both of them. Based on these considerations, the panel of judges concluded that the petitioner had sufficient grounds for annulment of the marriage because there was

¹⁶ Interview with Mr. Ali Sofwan, Judge of the Jepara Religious Court, on May 6, 2024.

misconception or fraud about the husband or wife in accordance with Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) KHI.

b. Decision Number 606/Pdt.G/2017/PA.Msb;

The case in this decision involved the applicant (husband) based on his petition dated November 9, 2017 explaining that on April 23, 2017 the applicant and the respondent (wife) had entered into a marriage which was recorded by the Marriage Registration Officer of the KUA of Masamba Sub-district in accordance with the Marriage Certificate Excerpt number -, dated April 24, 2017. That it was known that after 3 weeks of marriage, problems arose in their household because the respondent was pregnant with a pregnancy of 9 weeks and 5 days according to the results of the doctor's ultrasound even though the marriage between the applicant and the respondent had only been going on for 3 weeks and before marriage the two of them had never had intercourse as husband and wife. Based on this, the applicant felt disappointed and wanted to apply for an annulment of the marriage.

The panel of judges considered after finding the facts in the trial that based on the evidence submitted by the applicant, both letters and witnesses, there was nothing that could confirm that the respondent committed fraud or concealed the condition of her pregnancy because the respondent herself did not know she was pregnant before marrying the applicant. The panel of judges also considered the applicant's replication which stated that after the applicant found out that the respondent was pregnant with a pregnancy of 9 weeks and 5 days, the applicant still had intercourse with the respondent twice. Based on this confession, the panel of judges considered it to be a pure confession that had perfect evidentiary power so that the panel of judges was of the opinion that the reason for annulment of the marriage submitted by the applicant related to the existence of "fraud or misconception" could no longer be used as the basis for the reason for annulment of the marriage because the applicant still had intercourse with the respondent after it was discovered that there was misconception and the petition was filed after more than 6 months, so the reason was invalidated. Based on these considerations, the panel of judges is of the opinion that the petition of the applicant is not sufficient reason to request annulment of the marriage in accordance with Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of the KHI so that the petition of the applicant must be rejected.

c. Decision Number 0043/Pdt.G/2018/PA.Ntn;

This decision is a case of a petition for annulment of marriage filed by the Head of Midai Sub-district KUA as the petitioner. Based on the petition dated April 2, 2018, it is

known that the marriage between respondent 1 (husband) and respondent 2 (wife) which was recorded by the Midai Sub-district KUA Marriage Registrar with Marriage Certificate Excerpt number -, dated February 8, 2018 was a marriage that was conducted with a lie regarding the status of respondent 2 who was presented as a widow who was not pregnant when in fact she was 4 months pregnant with another man. That as a result of the marriage between the 1st respondent and the 2nd respondent it caused unrest in the community, especially in the family of the 1st respondent because they were unsure about the marital status and the status of the unborn child so the family of the 1st respondent complained about the matter to the applicant's office. Based on these reasons, the applicant as the head of the KUA wanted to file a petition for annulment of the marriage between the first respondent and the second respondent to the Natuna Religious Court.

The consideration of the panel of judges in this case was based on the discovery of legal facts that existed in the trial, the known legal facts were that it was true that the implementation of the marriage of respondent 1 and respondent 2 there was a misconception about the status of respondent II who was found to be 4 months pregnant with another man who was not respondent 1. The panel of judges considered that because there had been fraud or misconception about the husband or wife by falsifying the identity of respondent 2 and the petition was filed within 2 months after the marriage and the two were no longer living together as husband and wife, the panel of judges considered that the marriage of respondent 1 and respondent 2 could be annulled based on the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Articles 72 and 73 KHI.

d. Decision Number 1845/Pdt.G/2020/PA.Gsg;

The applicant in her petition dated October 7, 2020 in this case has filed a petition for annulment of marriage on the grounds that after the applicant (wife) and the respondent (husband) entered into marriage in the presence of the Marriage Registration Officer of the KUA of Kota Gajah Sub-district with Marriage Certificate Excerpt number -, dated September 26, 2020, the applicant and the respondent lived together only 1 day after marriage because it was known that the respondent had sexual relations with another woman, which the applicant knew from the respondent's own confession. Based on the respondent's behavior, which the applicant only found out after the marriage, the applicant felt betrayed and cheated because the marriage was not carried out on the basis of honesty from the respondent and his family, so that the applicant did not want to live together with the respondent and wanted to apply for an annulment of the marriage.

The panel of judges found legal facts in the trial which essentially explained that it

was true that the respondent had been in a relationship with another woman and the respondent had lived together with the woman for 7 years, then the applicant and the respondent got married but the marriage was not carried out on the basis of honesty from the respondent regarding the status of the respondent who had previously been in a relationship with another woman so that the applicant felt cheated and betrayed by the respondent. Based on these legal facts, the panel of judges considered that it had been proven that at the time of the marriage between the applicant and the respondent there had been a misconception or even fraud regarding the respondent as a husband so that this was in accordance with the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) KHI so that the marriage could be annulled.

e. Decision Number 1950/Pdt.G/2020/PA.Ckr;

The decision on the case of a petition for annulment of marriage was filed by the Head of the KUA of West Cikarang Subdistrict as the petitioner because the marriage between respondent 1 (wife) and respondent 2 (husband) which was recorded by the Marriage Registration Officer of the KUA of West Cikarang Subdistrict with the Marriage Certificate Excerpt number -, dated June 21, 2020 is a marriage that was carried out by falsifying the identity of the respondent 1 by claiming to be a widower who died supported by the Death Certificate of the previous wife of the respondent 1 which was only discovered after the previous wife came to the applicant claiming to be the legal wife of the respondent 1 and had never been divorced by showing the Marriage Certificate of the respondent 1 with his previous wife issued by the KUA of West Cikarang District with number -, dated November 18, 1993. That after the applicant confirmed that what his former wife had said was true, the applicant wanted to apply for annulment of the marriage between respondent 1 and respondent 2 because the applicant as head of the KUA felt aggrieved and lied to.

The panel of judges considered after the facts were found in the trial that it was true that the marriage between Respondent 1 and Respondent 2 was carried out by falsifying the identity in the form of Respondent 1's status as a dead divorced widower with evidence of a fake death certificate of Respondent 1's previous wife, while the truth was that Respondent 1 still had a legal wife and had never been divorced so that the panel of judges considered that there had been legal smuggling and had fulfilled the category of fraud or misconception in accordance with Article 27 paragraph (2) of the Marriage Law and Article 72 paragraph (2) KHI. Based on this, the marriage between Respondent 1 and Respondent 2 can be annulled.

f. Decision Number 130/Pdt.G/2018/PA.Pkj;

The petition for annulment of marriage was filed by the petitioner (first wife) on the grounds that respondent 1 (husband) had entered into an unauthorized polygamous marriage with respondent 2 (second wife) as stated in the Marriage Certificate Excerpt issued by the KUA of Pangkajene Sub-district with number -, dated 21 February 2018. That the unauthorized polygamous marriage was carried out by falsifying the identity of the 1st respondent who claimed to be a virgin whereas his actual status was that he already had a legal wife, namely the applicant, and had never been divorced as stated in the applicant's Marriage Certificate Excerpt with the 1st respondent issued by the KUA of Pangkajene Sub-district with number -, dated 4 December 2010. The applicant objected to the marriage and wanted to apply for an annulment of the marriage.

The panel of judges considered after finding the facts in the trial based on the examination of evidence that it was true that Respondent 1 and Respondent 2 had entered into a polygamous marriage without the permission of the Religious Court and or without the permission of the applicant as the first wife and had done so by falsifying his identity as a virgin when in fact he was still the legal husband of the applicant, The panel of judges considered that the marriage had been conducted with incorrect data and had violated the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of the KHI, therefore the petition could be granted.

g. Decision Number 780/Pdt.G/2020/PA.Tmk;

The case in this decision involved the applicant (wife) was married to the respondent (husband) before the KUA of Tawang Sub-district which was recorded in the Marriage Certificate Excerpt number -, dated March 8, 2020 and after the age of marriage stepped on approximately 1 month it was discovered by the applicant that the surprising legal facts were that the respondent had actually been married twice and from that marriage the respondent had 3 children, the respondent also worked at a karaoke place and was only a high school graduate. That the applicant previously knew that the respondent had been married once and had 1 child and worked as a hotel general manager and was an S1 graduate. That based on this, the applicant felt that there had been a lie in the implementation of his marriage so that the applicant wanted to apply for an annulment of the marriage.

The panel of judges considered that after the legal facts found in the trial, it was known that it was true that the respondent had lied about his data, namely claiming to have been married once and had 1 child and worked as a hotel general manager and was a

bachelor's degree graduate. That the actual status of the respondent's personal data was that he had been married twice, had 3 children, worked at a karaoke place, and was a high school graduate. Another legal fact was that the respondent had not yet been divorced from his previous wife, so his marriage to the applicant was an unauthorized polygamous marriage. Based on these legal facts, the panel of judges considered that the reason for the petition had fulfilled the provisions of Article 27(2) of the Marriage Law in conjunction with Article 72(2) of the KHI, therefore the petition could be granted.

h. Decision Number 211/Pdt.G/2021/PA.Sry;

The petition for annulment of marriage in this decision was filed by the petitioner (wife) after her marriage with the respondent (husband) which was recorded by the Marriage Registration Officer of the KUA of Sungai Raya Sub-district with the number -, dated January 2, 2021 was found to have falsified identity, namely the respondent claimed to be a widower who was married once without having children, but it was known that the respondent had been married siri 3 times and had 2 children. After the applicant found out about this, the applicant wanted to apply for an annulment of the marriage because she felt that she had been misconception about the respondent.

The panel of judges considered that after the facts were found during the trial, it was true that the marriage between the applicant and the respondent had been carried out with the falsification of identity in the form of the respondent's status, which turned out to have been married three times and had two children, while the applicant knew based on the respondent's confession that he was a widower with one marriage without children. The panel of judges considered that this was categorized as fraud or misconception so that based on Article 72 paragraph (2) KHI, the marriage between the applicant and the respondent could be annulled.

i. Decision Number 1252/Pdt.G/2020/PA.Tgr;

The case in this decision involved the applicant (first wife) who filed a petition for annulment of the marriage between the applicant's husband and the respondent (second wife). That the marriage between the applicant's husband and the respondent was registered at the Loa Janan Sub-District KUA and evidenced by Marriage Certificate Excerpt number -, dated October 16, 2020. That the marriage contained falsification of the administrative requirements of the marriage in the form of a Death Certificate on behalf of the applicant as the first legal wife dated November 11, 2020 to conduct a polygamous marriage without permission. That after the applicant found out that the applicant's husband had married by falsifying the Death Certificate on behalf of the applicant, the applicant wanted to file an

application for annulment of the marriage between the applicant's husband and the respondent at the Tenggara Religious Court.

The consideration of the panel of judges in the decision of this case which the author can take as a study of this research is related to the existence of fraud or misconception in the marriage of the applicant's husband and the respondent. The panel of judges considered that after the facts found in the trial based on the examination of evidence of letters and witnesses that it was true that there had been falsification of information on the administrative requirements for marriage between the applicant's husband and the respondent, namely in the form of a Death Certificate on behalf of the applicant which stated that the applicant had died on January 11, 2018 and the fact that the applicant was still in good health so that the panel of judges considered that the registration was legally flawed so that the marriage of the applicant's husband and the respondent could be canceled as it had violated the provisions of Article 72 paragraph (2) KHI, therefore the applicant's application could be granted.

j. Decision Number 483/Pdt.G/2020/PA.Kag;

The petition for annulment of marriage in this decision was filed by the petitioner (wife) on the grounds that it was known that the respondent (husband) had a history of a dangerous disease, namely positive for HIV (aids) based on the results of a laboratory test from the Tsuraya Clinic which came out 3 days after the marriage was performed and recorded by the Lempuing District KUA as stated in the Marriage Certificate Excerpt number -, dated December 26, 2019. That the applicant became aware of the disease on January 2, 2020 after the respondent showed the test results to the applicant. That knowing this, the applicant and the respondent's family rechecked at the Kayuagung Regional Hospital and showed the same results. That due to these circumstances, the parties including the family held deliberations until it was finally agreed to submit an application for annulment of the marriage because the applicant as the legal wife felt unwilling that the marriage had taken place.

The consideration of the panel of judges in the decision of this case that the author can take as a study of this research is related to the misconception about the applicant's husband. The panel of judges considered that after the facts were established during the trial, it was known that after the applicant and the respondent had entered into a marriage, the applicant learned that the respondent had HIV (aids) based on the respondent's confession and the results of health laboratory examinations at the Tsuraya Clinic and the Kayuagung Regional Hospital which stated that the respondent was positive for HIV (aids),

and that it was true that the applicant was misconception about the respondent and was worried about contracting the dangerous disease suffered by the respondent. The judges considered that the respondent's condition could endanger his self, the applicant, and their future offspring. Considering that it had been proven that the applicant and her family had been misconception about the respondent, in this case the panel of judges considered that the applicant's reasons for applying for annulment of marriage were in accordance with the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) KHI, therefore the applicant's request could be granted.

k. Decision Number 306/Pdt.G/2019/PA.Yk;

The marriage annulment case in this decision involved the applicant (wife) and the respondent (husband) after their marriage which was registered by the KUA of Sukorejo Sub-district as stated in the Marriage Certificate Excerpt number -, dated December 19, 2018 took place, the applicant only found out that the respondent had health problems around the spinal cord and could not “erect” his vital organs. After learning of the respondent's true condition, the applicant tried to persuade the respondent to seek medical treatment but the respondent could not communicate well. Based on this, the applicant felt that she had misconception the respondent's condition and wanted to apply for an annulment of the marriage.

The panel of judges considered that after the facts were found in the trial, it was known that after the marriage, the applicant and the respondent moved to Yogyakarta to live together but in the marriage the applicant and the respondent never had intercourse because the respondent as a husband could not fulfill his obligations in fulfilling biological needs or inner support because the respondent had a disorder or disease in the form of premature ejaculation so that the applicant felt disappointed. Based on the findings of the legal facts, the panel of judges considered that the arguments of the applicant's petition had fulfilled Article 72 paragraph (2) KHI, namely that the applicant felt that she was misconception about the respondent's condition in their marriage, especially that the misconception could make an obstacle to the main purpose of marriage so that the panel of judges could grant the applicant's request to annul his marriage with the respondent.

l. Decision Number 981/Pdt.G/2020/PA.Btl.

In this decision, an application for annulment of marriage was filed by the applicant (wife) on the grounds that after her marriage to the respondent (husband) which was recorded in the Marriage Certificate Excerpt number -, issued by the Marriage Registration Officer of the Piyungan Sub-District KUA on June 29, 2020, the applicant felt strange in

the form of the respondent never trying to touch the respondent and the two of them never having sex like husband and wife. That around the middle of July 2020, the applicant found photos of men without wearing clothes on the applicant's cell phone and text message chats containing same-sex sexual content between the respondent and approximately 7 men, then the applicant discussed the matter with the respondent's older sibling and he acknowledged the truth that the respondent had a sexual disorder. Based on this, the applicant felt that she was misconception about the respondent and intended to file a petition for annulment of the marriage.

The panel of judges considered that after the facts were found in the trial, namely that the applicant and the respondent were a legitimate married couple, that from the beginning their household was not harmonious and they had never had intercourse because the respondent as husband had deviant behavior, namely liking the same sex (homosexual) as evidenced by photographs and Whatsapp conversations of the respondent with many men containing deviant content. That based on these legal facts, the panel of judges considered that the applicant had succeeded in proving the arguments of his petition and that the marriage that had been entered into with the respondent was no longer possible to continue because of the respondent's deviant behavior which the applicant only found out about after marriage so that it could be said that the applicant had misconception the respondent. That the misconception can be used as a reason for annulment of marriage as Article 27 paragraph (2) of the Marriage Law so that the petition can be granted.

The circumstances of misrepresentation based on the 12 decisions above are all used to file a petition for annulment of marriage and can be explained briefly as follows:

Table 2.

Brief Explanation of Court Decisions Regarding Annulment of Marriage Due to Misconception

Court Decision	Applicant	Object	Time Period	Description
1. Decision Number 42/Pdt.G /2015/PA .Msb.	Husband.	Misconception about wife's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of KHI. The verdict is granted.

2. Decision Number 606/Pdt. G/2017/P A.Msb.	Husband.	Misconc eption about wife's self.	More than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law jo Article 72 paragraph (2) of KHI but does not fulfill Article 27 paragraph (3) of the Marriage Law. The verdict is rejected.
3. Decision Number 0043/Pdt. G/2018/P A.Ntn.	Head of KUA.	Misconc eption about wife's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Articles 72 and 73 KHI. the verdict is granted.
4. Decision Number 1845/Pdt. G/2020/P A.Gsg.	Wife.	Misconc eption about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of KHI. The verdict is granted.
5. Decision Number 1950/Pdt. G/2020/P A.Ckr.	Head of KUA.	Misconc eption about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of KHI. The verdict is granted.
6. Decision Number 130/Pdt. G/2018/P A.Pkj.	First wife.	Misconc eption about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of KHI. The verdict is granted.
7. Decision Number 780/Pdt. G/2020/P A.Tmk.	Wife.	Misconc eption about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of KHI. The verdict is granted.

8. Decision Number 211/Pdt. G/2021/P A.Sry.	Wife.	Misconception about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law. The verdict is granted.
9. Decision Number 1252/Pdt. G/2020/P A.Tgr.	First wife.	Misconception about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage La. The verdict is granted.
10. Decision Number 483/Pdt. G/2020/P A.Kag.	Wife.	Misconception about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law in conjunction with Article 72 paragraph (2) of KHI. The verdict is granted.
11. Decision Number 306/Pdt. G/2019/P A.Yk.	Wife.	Misconception about husband's self.	Less than 6 months.	Fulfills the provisions of Article 72 paragraph (2) of KHI. The verdict is granted.
12. Decision Number 981/Pdt. G/2020/P A.Btl.	Wife.	Misconception about husband's self.	Less than 6 months.	Fulfills the provisions of Article 27 paragraph (2) of the Marriage Law. The verdict is granted.

Source: Author Self Analysis

Based on the 12 decisions analyzed, it was found that the context of misconception refers to a misjudgment or misunderstanding about the identity, status, or condition of the husband or wife. This misconception can significantly affect the legitimacy of the marriage and lead to doubts about its validity. An application for annulment of marriage due to misconception can be submitted not only by the husband or wife who is directly involved in the marriage that is being annulled, but also by other parties who have a legal or direct interest in the matter. This may include the Head of the Religious Affairs Office (KUA) or

the first wife of the husband, particularly in cases where the husband's marital status was misrepresented or misunderstood.

The parties who can apply for annulment of marriage itself are regulated in Article 23 of the Marriage Law, as for those who can apply for annulment of marriage are: one of the husband or wife who are directly bound to the marriage; the families in a straight line of descent upwards from the husband or wife (father, mother, grandfather, grandmother); authorized officials (Marriage Registrar, Head of KUA); and any person with a direct legal interest in the marriage (first wife)¹⁷.

The cases in the above decisions can also prove that not all circumstances of misconception can be used to annul a marriage, this is evidenced by the existence of 1 decision whose application was rejected by the panel of judges, namely Decision Number 606/Pdt.G/2017/PA.Msb. The panel of judges rejected the application in the decision because the application was submitted after the time limit specified by law so that the right to apply for a marriage annulment had been lost.

Misconception can be used as a reason to annul a marriage if the misconception occurred without the knowledge of one of the parties before the marriage took place and was only realized after the marriage took place¹⁸. The right to file a misconception as a reason for annulment of marriage can be waived if it is filed within a period of more than 6 months from the time who is misconception realizes his/her condition and they are still living as husband and wife.¹⁹ The regulation regarding the time period is regulated in Article 27 paragraph (3) of the Marriage Law which reads "If the threat has ceased, or the person who misconception realizes his/her situation, and within a period of 6 (six) months after that still living as husband and wife, and does not exercise his right to submit a petition for annulment, then his right is waived"²⁰.

Departing from the overall description above, it is known that the application of the

¹⁷ Nina Diningrat, Yaswirman, and Yoserwan, "Authority of State Lawyers in the Application for Cancellation of a Marriage, Reviewed from Law Number 16 of 2004 Concerning the Attorney General's Office", *International Journal of Multicultural and Multireligious Understanding* 7, no. 6 (2020): 622-623, <http://dx.doi.org/10.18415/ijmmu.v7i6.1959>.

¹⁸ Suprayitno, *et.al.*, "Akibat Hukum Pembatalan Perkawinan karena Penipuan atau Salah Sangka (Studi Kasus Putusan Pengadilan Agama Surakarta Nomor 0340/Pdt.G/2019/PA.Ska)", *Rechstaat Nieuw Jurnal Ilmu Hukum* 5, no. 2 (2021): 112-121, DOI:10.52429/rn.v5i2.71.

¹⁹ Septiayu Restu Wulandari, *et.al.*, "Tinjauan Yuridis Pembatalan Perkawinan atas Perkawinan Poligami yang Tidak Memenuhi Syarat di Indonesia", *Jurnal Ilmu Sosial dan Pendidikan (JISIP)* 7, no. 2 (2023):1638, <http://dx.doi.org/10.58258/jisip.v7i2.4983>.

²⁰ Abdul Hakim, "Annulment of Mariage and Khuluk in Family Law in Muslim Countries: A Comparative Study of Family Law in Syria, Sudan, Turkey, and Indonesia", *ALHURRIYAH: Jurnal Hukum Islam* 7, no. 2 (2022): 199, <https://doi.org/10.30983/alhurriyah.v7i2.5561>.

norm of misconception in Article 27 paragraph (2) of the Marriage Law can be used by the husband or wife, family in a straight line of descent upwards, authorized officials, and any person with a direct legal interest to apply for annulment of marriage. The application of misjudgment must also meet the time period in applying for the right to annul the marriage, which is no more than 6 months from the time the party who is misconception realizes his/her condition and they are still living as husband and wife. The application of the norm of misconception in the context is a misjudgment about the spouse's self that is only realized after the marriage has occurred.

2. Interpretation of the Norm of Misconception in a Petition for Annulment of Marriage

Misconception in the annulment of marriage is a condition in which there is a misjudgment by the husband or wife about their spouse. Marriage annulment due to misconception is found in many decisions in the Religious Courts, where the situation of misconception does not only involve one reason for misconception, but involves many reasons for misconception that can be used to apply for marriage annulment.

In the opinion of the Judge of the Yogyakarta Religious Court, misconception can occur with an element of the respondent's intention and without an element of the respondent's intention, so that misconception is a norm with elements that can be interpreted differently in each marriage annulment case depending on what object of misconception is used as a reason to cancel the marriage²¹. Based on interviews with Judges of the Jepara Religious Court, cases of misconception in marriage annulment often occur because there is a deliberate intention by one of the parties to take action in the form of falsification of identity that can cause their spouse to feel misconception, but there are also cases of misconception that occur without any deliberate intention by one of the parties, both husband and wife²².

The number of reasons for misconception that can be used to file a petition for annulment of marriage can raise the question of how misconception in annulment of marriage is interpreted? Before examining how misconception in annulment of marriage is interpreted, it is necessary to first pay attention to the description of the legal facts of court decisions that have permanent legal force (*inkracht*) which have been analyzed as material

²¹ Interview with Mrs. Nurhudayah, Judge of the Yogyakarta Religious Court, on March 28, 2024.

²² Interview with Mr. Ali Sofwan, Judge of the Jepara Religious Court, on May 6, 2024.

for legal studies in this study. Based on the reasoning of the panel of judges, it can be concluded that the reason for misconception in the annulment of marriage tends to be:

Table 3.

List of Reasons for Misconception in Marriage Annulment Decisions

No.	Reason of Misrepresentation in Marriage Annulment
1.	Falsification of identity from those who are not actually pregnant claiming to be pregnant.
2.	Pregnancy of the wife without the knowledge of both parties.
3.	Falsification of identity data from a pregnant widow claiming to be a non-pregnant widow.
4.	Dishonesty in the form of past relationship status before marriage from those who actually lived together and had sex with other people but claiming never.
5.	Falsification of identity from the fact that he still has a legal wife to being a widower left behind by death and carried out by falsifying the legal wife's death certificate.
6.	Falsification of identity from those who actually still have a legal wife but claim to be a virgin.
7.	Falsification of identity from those who have actually been married twice, have 3 children, work in a karaoke place, and graduated from high school equivalent, but claimed to have been married once, have 1 child, work as a hotel general manager, and graduated from S1.
8.	Falsification of identity from those who have actually been married 3 times and have children but claim to be widowed 1 time married without having children.
9.	Falsification of identity from the fact that he still has a legal wife to being a widower left behind by death and carried out by falsifying the legal wife's death certificate.
10.	Husband's health condition of a dangerous sexually transmitted disease (HIV).
11.	Personal health in the form of abnormalities or diseases that make it impossible to fulfill inner sustenance (premature ejaculation).
12.	Deviant behavior in the form of sexual orientation as a same-sex lover.

Source: Author Self Analysis

Based on the legal facts of the 12 decisions, it was found that the reasons for misconception used as the basis for filing a petition for annulment of marriage include falsification of identity and misconception of the spouse's personal circumstances, while according to Article 27 paragraph (2) of the Marriage Law the misconception regulated is

only about the self, so it can be concluded that the meaning and benchmarks of misconception that can be used to annul a marriage have not been explained in detail in the regulatory article.

The regulation of misconception concerning the self, as outlined in Article 27 paragraph (2) of the Marriage Law, is somewhat limitative but not absolute. This regulation, while specific, allows for the possibility of various reasons for misconception about the self that could be used as grounds to annul a marriage²³. While the law explicitly addresses misconceptions about the person, it can be argued that the scope of this regulation may be broadened to include misconceptions not only about the individual's identity but also regarding their condition or personal circumstances²⁴. For example, a misconception about a spouse's health, mental state, or personal situation could also serve as a valid ground for annulment, thus expanding the potential application of this provision.

Departing from the 12 decisions of marriage annulment that are used as legal material for this research, they can be classified into 2 categories, among others:

- a. Misjudgment in the form of misjudging identity from what is in reality to what is not in reality. Misconception in this category occurs due to an element of intentionality, dishonesty, or the desire of one of the parties to change their identity from real to fake.
- b. Misjudgment in the form of misjudging one's condition from normal to abnormal. Misconception in this category occurs due to the parties' lack of recognizing their partner's self or the partner's lack of openness about themselves.

The first category of misconception is evidenced by the existence of legal facts of misjudging self-identity by changing from non-pregnant claiming to be pregnant, from pregnant widows claiming to be non-pregnant widows, from those who actually have had past relationships and live together with other people but claiming never, from those who actually still have a legal wife but claiming to be widowed by death, from those who actually still have a legal wife but claim to be a virgin, from those who have actually been married more than once but claim to have only been married once, from those who actually have children but claim to have no children or the number of children conveyed is different, from those who actually work in a karaoke place but claim to work as a hotel general manager, and from high school graduates to S1 graduates.

The second category of misconception is evidenced by the legal facts involving the

²³ Gusti Gema Mahardika Brata, "Analisis Pertimbangan Hakim dalam Memutus Perkara Pembatalan Perkawinan", *Notarius* 12, no. 1 (2019): 433-451, <https://doi.org/10.14710/nts.v12i1.28862>.

²⁴ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia* (Jakarta: Prenadamedia Group, 2017), 77.

misjudgment of the spouse's condition, from thinking not pregnant but after marriage known that pregnant (without both parties knowing about the pregnancy), from thinking that his/her spouse is not sick but it turns out that he/she has a dangerous sexually transmitted disease (HIV), from thinking does not have a disorder or disease but it turns out that has a disorder or disease that can prevent the fulfillment of mental sustenance (premature ejaculation), and from thinking that his/her spouse is not deviant but it turns out that he/she has deviant behavior in the form of sexual orientation as a same-sex lover.

Based on all the descriptions above, it can be seen that the meaning of misconception is the misjudgment of the partner's identity from what is real to what is not in reality and the misjudgment of the partner's personal condition from normal to abnormal. The misjudgment from what is real to what is not is caused by intentionality, dishonesty, or the desire of one party to change their identity. The misjudgment of what is normal turns out to be abnormal due to the parties' lack of recognizing their partner's self and their partner's lack of openness about themselves.

D. Conclusion

The application of the norm of misconception in Article 27 paragraph (2) of the Marriage Law can be used by the husband or wife, the family in a straight line of descent upwards, the authorized official, and any person with a direct legal interest to request annulment of marriage. The application of misconception must also meet the time period in applying for the right to annul the marriage, which is no more than 6 months from the time the party who is misconception realizes his/her condition and they are still living as husband and wife. The application of the norm of misconception in the context is a misjudgment about the spouse's self that is only realized after the marriage has occurred.

The meaning of misinterpreted in the annulment of marriage is the misjudgment of the identity of the spouse from what is real to what is not in reality and the misjudgment of the spouse's condition from normal to abnormal. Misjudgment from what is real to what is not in reality refers to cases in the form of identity forgery that occurs due to an element of intentionality, dishonesty, or the desire of one of the parties to change their identity. Misjudgment from normal to abnormal refers to cases in the form of the partner's personal condition, namely the partner's health and deviant behavior, this occurs due to the parties' lack of recognizing their partner's self and the partner's lack of openness about themselves.

Based on the analysis of several court decisions, it can be concluded that the application of the misconception norm has been consistently used in annulment cases, reflecting a growing

understanding of how legal decisions can address issues of identity and personal condition within marriage. These decisions show that jurisprudence has a significant role in shaping a more thorough and informed approach to marriage annulment, ultimately contributing to a better future for legal interpretations of marital issues.

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