

Beyond Formal Validity: Substantive Consent and the Annulment of Coerced Marriage in the Indonesian Religious Courts

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Abstract: Free consent is the substantive, not merely formal, foundation of a valid marriage under Indonesian Islamic family law a proposition this article advances through doctrinal analysis of South Jakarta Religious Court Decision Number 100/Pdt.G/2023/PA.JS, in which a marriage contracted under parental coercion was annulled. Using a normative-qualitative case-study approach that combines statutory, KHI, and classical fiqh analysis with close reading of the certified court decision, the study identifies two principal findings. First, the petitioner, a woman who had never met the respondent prior to the akad, sought annulment on the ground that the marriage was orchestrated entirely by the parents of both parties without her genuine consent, and that the respondent left for Surabaya the day after the ceremony without consummation. Second, the panel grounded annulment on Article 6(1) and Article 22 of Law No. 1/1974, Article 71(f) of the Compilation of Islamic Law, and prophetic traditions affirming a woman's right to repudiate a marriage contracted without her permission. The article argues that these sources converge on a four-register theory of marital consent as rukn of contract, statutory condition, codified Islamic law, and treaty-based right and offers an evidentiary template that practitioners may apply to distinguish genuine coercion from post-hoc dissatisfaction.

Keywords: Marriage Annulment, Parental Coercion, Fasakh, Religious Court, Islamic Family Law



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Introduction

Marriage occupies a central position in Islamic theology, social ethics, and family law. In the classical fiqh tradition it is at once an act of worship (*‘ibādah*) and a civil contract (*‘aqd*) that produces enduring legal consequences for the parties, their kin, and the wider community (Esposito, 2001; Jamal J.A. Nasir, 2009). This dual characterization carries doctrinal significance: as *‘ibādah*, a marriage's validity may

theoretically subsist even where consent was imperfect; as *‘aqd*, however, the absence of genuine consent is fatal to the contract’s validity (Ibn Rushd, 1996). This article proceeds on the contractual analysis, which is the basis on which Indonesian courts adjudicate annulment petitions. The Qur’ān situates the marital bond within the vocabulary of *sakīnah* (tranquility), *mawaddah* (affection), and *rahmah* (mercy) (Q. 30:21; see also Q. 2:187; al-Ṭabarī, 1994; Shihab, 2002), and the prophetic tradition underscores that a sound marriage rests on mutual willingness rather than imposed obligation (Ibn Rushd, 1996). Modern Indonesian law has internalized this orientation: Article 1 of Law Number 1 of 1974 on Marriage defines marriage as an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on belief in the One God (UU No. 1 Tahun 1974 Tentang Perkawinan, 1974). The Compilation of Islamic Law (KHI) reinforces this conception by characterizing marriage as a strong covenant (*mīthāqan ghalīẓan*) to obey Allah’s command and an act of worship (KHI, 1991). These normative anchors converge on a single premise: marriage may only fulfill its sacred and social functions when it is entered into through the free, conscious, and informed consent of both prospective spouses (Mulia & Cammack, 2007).

Despite this normative consensus, Indonesian social reality continues to display a tension between the principle of free consent and the persistence of parental matchmaking practices that, in their more coercive forms, override the will of the prospective bride or groom. Empirical studies have documented that arranged marriage and parental pressure remain prevalent across diverse Indonesian communities, particularly in rural areas, within certain religious sub-cultures, and in transnational migrant families (J. R. Bowen, 2003; Nurlaelawati, 2010; Platt, 2017). The Indonesian Supreme Court’s annual reports show that marriage annulment cases at the Religious Courts have fluctuated but never disappeared, with grounds ranging from identity fraud and unlawful polygamy to age violations and coercion (Mahkamah Agung RI, 2023). Coercion-based annulments, although numerically smaller than divorce on the ground of continuous quarrel, carry disproportionate doctrinal significance because they touch the very foundation of the marital contract: the principle of consent. Moreover, coercive matchmaking in Indonesia disproportionately affects women, whose agency is more readily overridden by family networks and social expectations; the petitioner in the case examined here is a woman, and this gendered dimension is integral to understanding the stakes of the decision (Nurlaelawati, 2010; Platt, 2017; van Huis, 2015).

Prior scholarship on marriage annulment in Indonesia a remedy that is legally and procedurally distinct from divorce has advanced along several productive but ultimately limited trajectories. Studies focused on formal defects have addressed unlawful polygamy, identity forgery (Nabiel, 2022), and breaches of statutory conditions (Saputra, 2021), but they treat coercion as one item among catalogued grounds rather than as an independent normative problem. Doctrinal surveys by (Asnawi, 2020) and Yunita, 2014) mapped the legal consequences of annulment at specific courts without theorizing the consent dimension in depth. Institutional analyses by (Cammack & Heaton, 2011) and (Nurlaelawati, 2010) illuminate Religious Court evolution without focusing on coerced marriage, while *maqāṣid al-sharī‘ah*-oriented contributions (Al

Idrusiah et al., 2024; Kurniawan et al., 2020) address family-law adjudication broadly without isolating the coercion-consent nexus. International comparative studies by (Anitha & Gill, 2009) and (Sabbe et al., 2014) analyse forced marriage in European contexts but do not engage Indonesian law. The literature also largely neglects the gendered dimension of coercive matchmaking: the petitioner in such cases is almost invariably a woman whose autonomy is overridden by interlocking familial and social pressures (Platt, 2017). The present article fills this gap by providing the first focused doctrinal analysis of a coercion-based annulment case from the South Jakarta Religious Court, developing a convergent theory of marital consent across multiple normative registers, and constructing an evidentiary template useful for future proceedings (Hosen, 2018).

Decision Number 100/Pdt.G/2023/PA.JS presents a jurisprudentially significant case on three specific grounds. First, the marriage at the heart of the dispute formally satisfied the conditions (*syarat*) and pillars (*rukun*) of an Islamic marriage and was duly recorded by the Office of Religious Affairs (KUA) in Tebet, South Jakarta. The defect, in other words, was substantive rather than formal: it lay in the absence of genuine consent on the part of the petitioner and the respondent (Hooker, 2008). Second, the case exhibits the classic indicia of coerced marriage as theorized in both classical *fiqh* and contemporary socio-legal scholarship: prior unfamiliarity between the parties, parental initiation and orchestration of the union, and the collapse of the marital relationship immediately after the *akad* without consummation - what classical jurists describe as a state *qabla al-dukhūl* (Ibn Qudāmah, 1997; Sabiq, 2013). Third, the panel of judges anchored their reasoning not only in statutory provisions and the KHI but also in prophetic traditions concerning the marriage of a virgin without her permission, thereby modeling a layered mode of judicial reasoning characteristic of Indonesian Religious Court practice (J. R. Bowen, 2003; Cammack, 2007).

Against this background, the present article pursues two interrelated objectives. First, it identifies and analyzes the grounds advanced by the petitioner in seeking annulment of the marriage in Decision Number 100/Pdt.G/2023/PA.JS. Second, it examines the juridical considerations of the South Jakarta Religious Court panel in granting the petition, with particular attention to the interplay between Article 6 paragraph (1) and Article 22 of Law Number 1 of 1974, Article 71 letter (f) of the Compilation of Islamic Law, and the prophetic traditions invoked by the bench. The argument advanced here is that coercion in marriage, even when exercised by parents and even when externally consistent with the formal *rukun* of marriage, constitutes a violation of the principle of free consent that lies at the heart of marital validity under both Indonesian positive law and Islamic family law. The decision under study, accordingly, deserves to be read as a jurisprudential reaffirmation of substantive consent and as a normative reminder that parental authority in matters of marriage is bounded by *sharia* and by the human-rights commitments embedded in the Indonesian constitutional order (Asshiddiqie, 2010). These objectives matter for three reasons. For legal practice, the analysis supplies an evidentiary template and doctrinal framework that practitioners and Religious Court judges can apply in future coercion-based annulment proceedings. For policy, it grounds concrete recommendations for KUA pre-marital counseling and registration reform. For scholarship, it contributes a four-

register theory of marital consent that bridges classical fiqh, Indonesian positive law, and international human-rights commitments in a way that has not previously been articulated in the literature.

The remainder of the article is organized as follows. The next section sets out the doctrinal-empirical method employed, including data sources and analytical procedure. The results section reconstructs the procedural and substantive contours of the case, beginning with a brief institutional profile of the South Jakarta Religious Court and proceeding to the petitioner's grounds and the panel's reasoning. The discussion places the decision in dialogue with positive law, classical and contemporary fiqh, and prior scholarship, before identifying the jurisprudential implications of the ruling for the development of Indonesian Islamic family law. The article closes with a conclusion that summarizes the findings and signals avenues for further research.

Method

This study employs a normative-juridical legal research design with a qualitative orientation (Hutchinson & Duncan, 2012; Marzuki, 2017; Soekanto & Mamudji, 2015), incorporating a document-based case-study component. The normative component analyzes the relevant statutory provisions, the Compilation of Islamic Law, classical fiqh *munākaḥāt* sources, and prior Religious Court jurisprudence concerning marriage annulment on the ground of coercion. The case-study component takes the form of document-based analysis (Yin, 2018) of South Jakarta Religious Court Decision Number 100/Pdt.G/2023/PA.JS, treating the certified copy of the decision as the principal data source. The choice of this normative-case-study design responds to the dual character of the research question, which simultaneously concerns the content of legal norms and their application in a concrete judicial setting (Marzuki, 2017; Soekanto & Mamudji, 2015).

The decision was selected purposively (John W. Creswell, 2014a) for three reasons. First, it has acquired the force of *res judicata* (*inkracht van gewijsde*) and therefore provides a stable analytical object. Second, it issues from the South Jakarta Religious Court, located in the country's capital region, which by its caseload and institutional visibility is an illustrative, if not exhaustive, site for observing the application of Indonesian Islamic family law in an urban setting (Nurlaelawati, 2010). Third, the case engages parental coercion as the primary ground of annulment, a configuration that has received relatively limited focused attention in the recent literature compared with grounds such as identity fraud or unlawful polygamy (Hosen, 2018; van Huis, 2015).

Primary data consist of the certified copy of Decision Number 100/Pdt.G/2023/PA.JS, including the description of the case, the consideration section, and the operative part. Supporting primary materials include Law Number 1 of 1974 on Marriage, Law Number 7 of 1989 jo. Law Number 3 of 2006 jo. Law Number 50 of 2009 on Religious Courts, and the Compilation of Islamic Law promulgated through Presidential Instruction Number 1 of 1991. Secondary data comprise classical fiqh works (Al-Faifi, 2013; Mughniyah, 1996; Sabiq, 2013), contemporary monographs on Indonesian Islamic family law (Amir Syarifuddin, 2006; Basyir, 2013; Ghazaly, 2003; Rofiq, 2013), peer-reviewed journal articles indexed in Scopus, DOAJ, and SINTA (Al

Idrusiah et al., 2024; Asnawi, 2020; Kurniawan et al., 2020), and authoritative legal-research methodology texts (Ali, 2010; John W. Creswell, 2014b; Marzuki, 2017; Moleong, 2014).

Data collection followed two complementary techniques. Documentary study (G. A. Bowen, 2009) was applied to the court decision and supporting case-file materials, focusing on the chain of reasoning by which the panel moved from established facts to the operative judgment. A library-based research strategy (Zed, 2008) was employed to construct the normative and doctrinal framework against which the decision is analyzed; this strategy is distinct from the documentary data-collection technique and operates at the level of research design rather than data gathering. The quality of the legal sources was assessed through three criteria: (i) the authenticity and official status of the court decision and statutory texts, (ii) their position within the Indonesian hierarchy of norms, and (iii) their applicability to the factual matrix of the case. This approach corresponds to what (Denzin, 2017) terms source triangulation, here adapted to legal-documentary analysis: the content of the decision was crosschecked against the statutory text and against the positions of recognized authorities in Indonesian Islamic family law to identify any material inconsistencies, of which none were found.

Analysis followed the six-stage qualitative procedure outlined by (John W. Creswell, 2014): organizing and preparing the data, an initial reading aimed at a general understanding, line-by-line coding, the construction of analytical themes, the narrative presentation of those themes, and interpretive synthesis. The themes generated through iterative coding included: (i) the factual and legal grounds advanced by the petitioner, (ii) the evidentiary basis of the panel's findings, (iii) the statutory provisions invoked, (iv) the prophetic traditions adduced and their chain of authority, (v) the operative legal consequences of annulment, and (vi) the convergence between fiqh, positive law, and human-rights norms. Because the analysis was conducted by the authors in collaborative deliberation, interpretive consistency was maintained through iterative review of each coded theme, with competing readings resolved by direct reference to the primary text of the decision. Throughout, the analysis remained descriptive-analytical (Soekanto & Mamudji, 2015): the aim is to describe the decision faithfully and to interpret it in light of the wider normative landscape, not to evaluate the parties' moral conduct or to second-guess factual findings the court was uniquely placed to make.

The principal limitations of the study should be acknowledged. First, single-case analysis cannot ground generalizations about the practice of Religious Courts as a whole; the findings here are illustrative rather than representative (Yin, 2018). Second, access to the trial record was limited to the publicly available decision and supporting documents; interviews with the panel, the parties, or counsel were not undertaken. Third, while every effort has been made to engage classical fiqh sources in their own terms, the analysis is necessarily filtered through a contemporary Indonesian legal-academic lens (Hallaq, 2009). Fourth, the analysis is based on the publicly available version of the decision; deliberative nuances within the panel's reasoning that are not captured in the written judgment remain inaccessible, a constraint inherent in any decision-based legal research.

Result And Discussion

Institutional Profile of the South Jakarta Religious Court

The South Jakarta Religious Court was established pursuant to Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 69 of 1963. It is a court of first instance vested with absolute competence to examine, adjudicate, and resolve disputes among Muslims in the fields of marriage, inheritance, wills, gifts, *waqf*, *zakāh*, *infāq*, *ṣadaqah*, and sharia economic matters as set out in Article 49 of Law Number 3 of 2006 on the Amendment of Law Number 7 of 1989 on Religious Courts (UU No. 3 Tahun 2006 jo. No. 7 Tahun 1989 Tentang Peradilan Agama, 2006). Following Law Number 50 of 2009, the court operates under the unified judicial authority of the Supreme Court of the Republic of Indonesia, alongside the general courts, the administrative courts, and the military courts (UU No. 3 Tahun 2006 jo. No. 7 Tahun 1989 Tentang Peradilan Agama, 2006). Its institutional vision aspires to a court that combines independence, equitable legal services, systematic supervision, and information-technology-based judicial administration (Pengadilan Agama Jakarta Selatan, 2024).

In the wider architecture of Indonesian Islamic family law, the Religious Court occupies a hybrid position, applying state-promulgated norms while also consulting classical fiqh authorities and prophetic traditions in cases where statutes are silent or open-textured (J. R. Bowen, 2003; Cammack, 2007; Nurlaelawati, 2010). It is precisely this layered repertoire that enables the South Jakarta Religious Court in the decision under study to integrate positive-law, KHI, and prophetic-tradition reasoning in a single annulment judgment.

Grounds for the Marriage Annulment Petition

According to the case description in Decision Number 100/Pdt.G/2023/PA.JS, the petitioner filed her application for marriage annulment on 28 December 2022; the petition was registered with the Clerk of the South Jakarta Religious Court on 5 January 2023. The disputed marriage had been solemnized on 5 November 2022 and recorded by the Marriage Registrar of the Office of Religious Affairs in Tebet District, South Jakarta. The marriage thus stood, on its surface, as a properly registered Islamic marriage under Indonesian law, complete with marriage certificate and citation (Indonesia, 1974, Arts. 2 and 11).

A close reading of the petitioner's submissions reveals a combination of legal grounds cognizable under Article 6(1) of Law No. 1/1974 and Article 71(f) of the KHI, and factual allegations that substantiated those grounds in evidence. First, the marriage occurred at the initiative and through the coercion of the parents on both sides; it did not arise from the free consent of either prospective spouse. The petitioner described the matchmaking as having been agreed upon between the two families without seeking the substantive consent of the bride or groom (South Jakarta Religious Court Pengadilan Agama Jakarta Selatan, 2023). Second, the petitioner and the respondent had never met or come to know one another before the marriage, so that the *akad* was performed under conditions of psychological pressure and informational deficit (Hadikusuma, 2007). Third, the marriage was the product of an inter-family agreement reached without serious attention to the consent of the bride, in contravention of the

principle articulated in Article 6 paragraph (1) of Law Number 1 of 1974 (Indonesia, 1974). Fourth, the geographic distance between the petitioner's family in Jakarta and the respondent's family in Surabaya was identified by the petitioner though not explicitly by the panel as a factor that impeded the customary *ta'aruf* process - through which prospective spouses become acquainted under sharia-compliant supervision - had not meaningfully taken place (Ghazaly, 2003; Rofiq, 2013).

The most decisive fact in the case is what occurred immediately after the akad. According to the petitioner, on the day following the marriage - 6 November 2022 - the respondent left and returned to his parents' home in Surabaya without any clear explanation, and from that day forward the spouses had no marital cohabitation. The petitioner expressly stated that the marriage had not been consummated and that her biological status remained *qabla al-dukhul*. Classical jurists draw significant legal consequences from non-consummation, including effects on the obligation to pay the full *mahr*, on the operation of the *'iddah* period, and on the characterization of the union itself (Ibn Qudamah, 1997; Sabiq, 2013). In the present case, the panel did not rely on non-consummation as an independent ground for annulment; rather, it treated the *qabla al-dukhul* status as corroborating evidence of the absence of marital intent on both sides, thereby reinforcing the petitioner's claim that the marriage was contracted without genuine willingness. This distinction has doctrinal significance: had the panel relied on non-consummation as an independent ground, it would have required separate engagement with the *fiqh* on valid marriages contracted but not yet consummated.

In her petition the petitioner sought three remedies from the panel: first, that the application be granted in its entirety; second, that the marriage solemnized on 5 November 2022 be annulled with all attendant legal consequences; and third, that the Marriage Certificate and its citation issued by the Tebet Office of Religious Affairs be declared without legal force. These prayers broadly correspond to the annulment remedy framework under Article 28 of Law Number 1 of 1974, though it should be noted that the third prayer that the marriage certificate be declared without legal force is doctrinally contested, a tension addressed in the Panel's Reasoning sub-section below, which provides that annulment takes effect from the moment of the court's decision and operates retroactively in the sense that the marriage is treated as never having validly existed for purposes of marital status, with certain protective exceptions for children, third parties acting in good faith, and joint property (Indonesia, Art. 28; Sudarsono, 2010).

Procedural Posture and Evidentiary Basis

At the trial, the respondent failed to appear and did not delegate representation despite having been properly summoned through the Substitute Bailiff of the Surabaya Religious Court. Under Article 125 of the *Het Herziene Indonesisch Reglement* (HIR), the panel was therefore authorized to proceed on the basis of *verstek* (default judgment), provided the formal conditions of summons had been satisfied (Manan, 2008; Sutantio & Oeripkartawinata, 2009). The evidentiary basis assembled by the petitioner combined documentary and witness evidence. The documentary evidence included the petitioner's Identity Card, the Family Card, the citation of the Marriage Certificate, and

the respondent's Identity Card. Each of these documents qualifies as authentic evidence under Article 165 HIR in conjunction with Article 1888 of the Indonesian Civil Code, with full and binding probative value (*Burgerlijk Wetboek Voor Indonesië*, 1847; Mertokusumo, 2010). The witness evidence consisted of two sworn witnesses whose testimony, on the panel's reading, satisfied the conditions of Articles 170, 171, and 172 HIR concerning the qualifications, oath, and consistency of witness statements. Both witnesses confirmed that the marriage had been arranged and coerced by the parents on both sides and that the respondent had not consummated the union before departing to Surabaya (Decision No. 100/Pdt.G/2023/PA.JS). It should be noted that in a *verstek* proceeding, the factual record rests entirely on the petitioner's account and the testimony of witnesses aligned with her interests; the respondent's perspective is structurally absent. This evidentiary asymmetry is an inherent limitation of default proceedings and must be borne in mind when assessing the reliability of the factual findings.

Table 1 below summarizes the principal normative sources invoked by the panel in its decision, together with the analytical function each source played in the reasoning.

Table 1. Normative Sources Invoked in Decision Number 100/Pdt.G/2023/PA.JS

No.	Source	Provision / Reference	Analytical Function
1	Law Number 1 of 1974 on Marriage	Article 6 paragraph (1); Article 22; Article 28	Establishes consent as material condition and the legal basis for annulment
2	Compilation of Islamic Law (KHI)	Article 71 letter (f)	Explicitly permits annulment where marriage is contracted under coercion
3	HIR (Procedure)	Articles 125; 165; 170-172	Authorizes <i>verstek</i> judgment and governs evidentiary standards
4	Prophetic Traditions	Reports of Ahmad, Abu Dawud, Ibn Majah, al-Daraqutni; Muslim	Anchors annulment in sharia: a virgin married without consent may repudiate
5	Supreme Court Decision	No. 393 K/Sip/1971 (3 November 1971)	Distinguishes annulment of legal events from administrative documents

Source: Author's compilation from Decision Number 100/Pdt.G/2023/PA.JS, 2023.

The Panel's Juridical Reasoning

Building on the documentary and witness evidence, the panel of judges constructed a layered argument grounded in three concentric normative orders: Indonesian positive law, the Compilation of Islamic Law, and classical sharia sources. The first layer is Article 6 paragraph (1) of Law Number 1 of 1974, which requires that a marriage be based on the consent of both prospective spouses. The official elucidation of this article emphasizes that marriage aims at the formation of an eternal and happy family in accordance with human rights, so that it must be agreed upon by both parties without any form of coercion (Hadikusuma, 2007; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974). Read together with Article 22, which authorizes annulment where the parties do not satisfy the conditions for marriage, the legal architecture

treats free consent not as a peripheral formality but as a material requirement bearing on validity itself (Syaifuddin et al., 2014).

The second layer is the Compilation of Islamic Law, in particular Article 71 letter (f), which explicitly empowers a husband or wife to seek annulment where the marriage was contracted under coercion. The KHI thus codifies, in twentieth-century Indonesian form, what classical jurists had long recognized in the institution of *khiyār al-fasakh* - the right of a party who has been married without genuine consent to seek the dissolution of the marriage (Al-Zuhaylī, 1985; Ibn Qudāmah, 1997). Within the KHI, this provision sits within a broader framework that recognizes consent as integral to the *rukun* and conditions of marriage (Indonesia, 1991, Arts. 14-29) and that aligns Indonesian Islamic family law with both classical *fiqh* and contemporary human-rights commitments (Cammack & Heaton, 2011; Mulia & Cammack, 2007).

The third layer is provided by prophetic traditions invoked by the panel. The court cited the report transmitted by Aḥmad, Abū Dāwūd, Ibn Mājah, and al-Daraqutnī accessed through (Al-Faifi, 2013) and (Sabiḳ, 2013) as the standard intermediary *fiqh* sources in Indonesian Religious Court practice to the effect that a virgin who has been married by her father without her consent is given by the Prophet the choice either to ratify or to annul the marriage. The panel also adduced the report transmitted by Muslim that a virgin's father must seek her permission before contracting her in marriage. These reports have long anchored juristic discussions of consent in classical *fiqh*, with the four Sunni schools differing on the precise scope of *wilāyat al-ijbār* (the guardian's compelling authority) while broadly converging on the principle that a marriage contracted against the genuine will of the bride is at minimum susceptible to repudiation (Al-Faifi, 2013; Ibn Rushd, 1996; Mughniyah, 1996). The panel's invocation of these reports does not displace the statutory framework but supplements and corroborates it, exemplifying the layered judicial reasoning characteristic of Indonesian Religious Court practice (Bowen, 2003).

On the basis of these considerations, the panel issued an operative judgment composed of five elements: (1) a declaration that the respondent, having been properly summoned, was not present at the hearing; (2) the granting of the petition by way of *verstek*; (3) the annulment of the marriage solemnized on 5 November 2022 at the Tebet District Office of Religious Affairs; (4) a declaration that the Marriage Certificate issued in connection with that marriage is invalid and without legal force; and (5) an order that the petitioner bear the case fees (Decision No. 100/Pdt.G/2023/PA.JS). This fifth element, though procedurally routine, carries potential policy significance: where a petitioner is economically vulnerable, the obligation to bear court costs could constitute a structural barrier to accessing annulment remedies, an issue explored further in the Sociological and Policy Implications section below. With respect to the annulment of the marriage book, the panel adopted the position taken by the Supreme Court in its decision of 3 November 1971 No. 393 K/Sip/1971, which holds that a court does not annul the administrative certificate as such - that authority resting with the administrative organ - but rather annuls the underlying legal event recorded therein, with the result that the certificate is rendered ineffective (Mahkamah Agung RI, 1971; Manan, 2008).

Free Consent as Substantive Foundation of Marriage

The most consequential dimension of the decision lies in its reaffirmation of free consent as the substantive, not merely formal, foundation of marriage. Article 6 paragraph (1) of Law Number 1 of 1974 is sometimes read, in administrative practice, as a procedural box to be ticked at the moment of *akad*; the present decision pushes back against any such reductive reading by treating consent as a condition that must be genuine and that can be impeached on grounds of coercion arising before or at the time of the marriage (Sударsono, 2010; Tutik, 2008). This reading is analytically productive and, within the Indonesian Islamic family law literature, relatively novel. It is congruent with the Indonesian civil-law conception of agreement (*toestemming*) as an essential element of contract validity under Article 1320 of the Civil Code, and with the broader theory of *vrije wil* (free will) in classical European contract doctrine, which treats consent vitiated by mistake, fraud, or coercion as a ground for annulment (Satrio, 1995; Subekti, 2014).

The decision also illustrates how Indonesian Islamic family law, far from standing apart from international human-rights commitments, in fact converges with them on the question of marital consent. Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant on Civil and Political Rights, and Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) each affirm that marriage shall be entered into only with the free and full consent of the intending spouses (United Nations, 1948, 1966, 1979). Indonesia ratified CEDAW through Law Number 7 of 1984 and is a state party to the ICCPR pursuant to Law Number 12 of 2005 (UU No. 12 Tahun 2005 Tentang ICCPR, 2005; UU No. 7 Tahun 1984 Tentang (CEDAW), 1984). Indonesia's ratification of the ICCPR was made without formal reservations pertaining to Article 23 (right to marry), so the treaty-based free-consent argument retains its full normative force in the Indonesian context (United Nations Treaty Collection, 2005). The South Jakarta Religious Court's decision thus operates at the intersection of three normative registers - constitutional, statutory, and treaty-based - that converge on the protection of free consent (Asshiddiqie, 2010).

From a sharia perspective, the priority of consent is not a modern import but a long-established teaching. It should be acknowledged that Siti Musdah Mulia's scholarship, cited repeatedly in this article, represents a reformist current within Indonesian Islamic discourse and is contested by more traditionalist positions; the present article deploys her arguments as one authoritative voice within a broader scholarly spectrum, not as doctrinal consensus (Mulia & Cammack, 2007). (Yūnus, 2014) articulated the principle clearly: among the conditions for a valid marriage is the absence of coercion, the marriage being contracted on the basis of one's own capacity and willingness. (Rofiq, 2013) elaborated that the willingness of the bride and groom is among the conditions that animate the formal *rukun* of marriage. (Syarifuddin, 2006) places the principle of consent at the structural center of Indonesian Islamic family law. (Basyir, 2013) underscored that the purpose of marriage - to realize family well-being in conformity with the teachings of Allah and His Messenger - can only be achieved when the marriage rests on willingness and affection. The reports cited by the panel resonate with these positions and with the wider classical tradition (Al-Zuhayli, 1985; Ibn Rushd, 1996).

The Limits of Parental Authority in Matchmaking

Decision Number 100/Pdt.G/2023/PA.JS arises within an Indonesian socio-cultural setting in which parental matchmaking remains a familiar practice, especially in pesantren-influenced communities, in some adat-based settings, and within certain urban middle-class families with strong inter-family networks (J. R. Bowen, 2003; Maria Platt, 2017; Nurlaelawati, 2010). The decision does not, and need not, take a categorical position against arranged marriage as such. Classical fiqh has long recognized a legitimate role for parental and guardian involvement in the marital process, particularly through the institution of *walī* (Ghazaly, 2003; Sabiq, 2013). What the decision does affirm is the existence of a hard normative limit: when parental involvement crosses from facilitation into compulsion that overrides the genuine will of the prospective spouse, it exceeds the scope of legitimate parental authority and produces a marriage that the law will refuse to enforce (Asnawi, 2020; Syarifuddin, 2006).

This limit can be theorized in several complementary ways. From the perspective of *maqāṣid al-sharīʿah* - the higher objectives of sharia - coerced marriage threatens the protection of progeny (*ḥifẓ al-nasl*). A coerced marriage threatens *ḥifẓ al-nasl* by producing a union in which no genuine family is formed and in which offspring, if any, would be born into a household founded on compulsion rather than mutual commitment. The protection of intellect and dignity (*ḥifẓ al-ʿaql* and *ḥifẓ al-ʿird*): a woman forced into marriage against her will suffers a direct violation of her rational autonomy and her honor, precisely the values these objectives are designed to protect. Finally, coerced marriage undermines the broader well-being of the family unit (Al Idrusiah et al., 2024; Ibn ʿĀshūr, 2019; Kurniawan et al., 2020). From the perspective of human-rights law, it implicates the prohibition of forced marriage as recognized in CEDAW and in regional and national human-rights instruments (Asshiddiqie, 2010). From the perspective of Indonesian constitutional law, Article 28B paragraph (1) of the 1945 Constitution affirms the right of every person to form a family and continue descent through a marriage that is lawful, an entitlement that loses meaning where the underlying consent is absent (Mahfud MD, 2017).

Read against this multi-source backdrop, and by a convergence judgment a decision in which multiple, independent normative registers reach the same conclusion without any one of them being subordinate to the others the panel's reasoning may be characterized in this article's own coinage as a *convergence judgment*: positive law, codified Islamic family law, classical fiqh, and human-rights principles converge on the same conclusion that coerced marriage is invalid in its substance and that the appropriate remedy is annulment (Cammack, 2007). The decision thereby illustrates one of the under-appreciated strengths of Indonesian Religious Court practice - its capacity to draw on multiple normative registers simultaneously rather than rigidly partitioning sharia from positive law or from contemporary human-rights commitments (Hosen, 2018; van Huis, 2015).

Annulment vs. Divorce: A Doctrinal Clarification

A doctrinal clarification deserves emphasis: annulment of marriage is conceptually distinct from divorce. Before turning to the positive-law framework, it is important to

map the classical fiqh categories onto the KHI's pembatalan perkawinan. In classical fiqh, *fasakh* (court-ordered dissolution on grounds of defect) was the mechanism by which a marriage vitiated by coercion, incapacity, or forbidden consanguinity could be terminated by a qadi; it differs from *talaq* (the husband's unilateral right of repudiation) in that it requires judicial initiative and is available to either party on grounds of defect (Al-Zuhaylī, 1985; Ibn Qudāmah, 1997). The KHI's pembatalan perkawinan maps onto classical *fasakh* in its court-initiation requirement and its defect-based grounds (Inpres No. 1 Tahun 1991 Tentang KHI, 1991, Art. 70–76), although the KHI extends standing to both spouses and to certain relatives a departure from some classical formulations. (Arief, 2012) explained that annulment treats the marriage as if it had never validly existed (*ab initio*), while divorce ends a marriage that was valid up to the moment of dissolution. The juridical consequences differ correspondingly. Under Article 28 of Law Number 1 of 1974, annulment takes effect from the moment of the court's decision and does not retroactively prejudice (i) children born of the marriage, (ii) the spouse who acted in good faith, with limited exceptions, or (iii) third parties who in good faith acquired rights from the marriage (Sudarsono, 2010; UU No. 1 Tahun 1974 Tentang Perkawinan, 1974). Where the marriage has not been consummated and no children are involved - as in the case at hand - the practical legal consequences are largely limited to the parties' civil status and to the documentary record (Hadikusuma, 2007; Mertokusumo, 2010). In practical terms, following annulment the petitioner must update her National Identity Card, family registration card, and civil-registry records at the KUA to reflect her restored single status. The court order renders the marriage certificate legally ineffective, but the administrative process of updating civil documents requires separate action by the parties with the relevant governmental offices a step practitioners frequently overlook when advising litigants on the post-judgment process.

This distinction also shapes how the parties' subsequent lives are organized. A party whose marriage is annulled is treated, for purposes of subsequent marriage, as though never previously married, subject to whatever waiting period the panel may impose where consummation has occurred or where the protection of paternity (*ḥifẓ al-nasab*) requires it (Ghazaly, 2003; Sabiq, 2013). In Decision Number 100/Pdt.G/2023/PA.JS, the panel's finding that the petitioner remained *qabla al-dukhūl* obviates the need for an 'iddah period in its full form, although jurists differ on whether a residual waiting period applies as a matter of caution (Al-Zuhaylī, 1985; Ibn Qudāmah, 1997).

Dialogue with Prior Scholarship

The findings of the present analysis stand in productive dialogue with prior scholarship. (Asnawi, 2020) concluded that annulment of marriage is permissible under Indonesian Islamic family law when the household no longer possesses the compatibility necessary to be sustained. The present case adds nuance: compatibility may be absent *ab initio*, not merely as a downstream development, where the marriage itself was contracted without the genuine will of the spouses. (Nabiel, 2022) examined annulment grounded in identity manipulation through al-Ghazālī's *maṣlaḥah* framework, identifying five interlocking considerations; the case at hand suggests that

a parallel *maṣlahah* analysis can be developed for coercion-based annulment, with the protection of free will and dignity occupying the central place (Hosen, 2018; Ibn ‘Āshūr, 2019).

(Saputra, 2021) found that marriages contravening Law Number 1 of 1974 may legitimately be voided; the present case extends this conclusion by demonstrating that defects in substantive consent - and not only defects in formal conditions - are an independent ground for voiding the marriage. (Yunita, 2014) studied judicial reasoning at the Bantul Religious Court and emphasized the consistency with which judges return to the principle of consent; the South Jakarta decision exemplifies precisely this judicial habit. (Cammack & Heaton, 2011) and (Nurlaelawati, 2010) have argued that Indonesian Religious Courts increasingly synthesize statutory and classical sources in their decisions; the layered reasoning in Decision Number 100/Pdt.G/2023/PA.JS provides an additional data point in support of this thesis.

More broadly, the decision aligns with international scholarly attention to the problem of forced marriage and arranged marriage. The international dimension of the case merits more than passing acknowledgment. (Anitha & Gill, 2009), drawing on UK socio-legal experience, argue that the binary between “forced” and “arranged” marriage obscures a continuum of pressure and consent, with many marriages falling into a grey zone where formal consent was given but under conditions of emotional coercion. (Sabbe et al., 2014) similarly found, reviewing European empirical literature, that physical coercion is rare in family-pressure marriages; what predominates is emotional pressure, informational asymmetry, and structural dependency. The South Jakarta case fits this pattern precisely: there is no allegation of physical violence, yet the combination of inter-family agreement without the parties’ input, geographic distance, prior unfamiliarity, and immediate post-akad departure presents what Anitha and Gill would recognize as a clear case of coercion operating through social rather than physical mechanisms. The doctrinal response differs, however: while UK law relies on the Forced Marriage (Civil Protection) Act 2007 and criminal-law provisions, Indonesian law mobilizes the Islamic annulment mechanism of pembatalan perkawinan, reaching the same substantive outcome relief for the coerced party through a distinct legal pathway grounded in both fiqh and national statute (Maria Platt, 2017).

Justice, Legal Certainty, and Utility in the Panel's Decision

Gustav Radbruch's classical triad - *Gerechtigkeit* (justice), *Rechtssicherheit* (legal certainty), and *Zweckmäßigkeit* (utility) - provides a useful lens through which to appraise the panel's decision (Mahfud MD, 2017; Radbruch, 2006). A contextual note is warranted: Radbruch developed this triad in postwar Germany as a response to the experience of positive law in the service of injustice, and his framework primarily addresses the limits of statutory authority when it conflicts with fundamental morality. Transplanting it to Indonesian Islamic family law requires acknowledgment of this different context; the triad is applied here as an analytical heuristic for evaluating whether the decision simultaneously advances normative correctness, predictability, and social utility a purpose for which the triad remains serviceable across legal systems. On the justice register, the decision vindicates the petitioner's autonomous right to choose her spouse and protects her from being bound to a union she did not desire. On

the legal certainty register, the decision applies established statutory provisions and the KHI in a manner consistent with prior jurisprudence on annulment (Manan, 2008; Mertokusumo, 2010). On the utility register, the decision terminates a relationship characterized by forced cohabitation under duress, and thereby prevents the harm that would result from compelling two unwilling parties to sustain a union neither had freely chosen. The utility here does not derive from the mere absence of consummation but from the restoration of the petitioner's freedom to enter a genuine marital bond (Basyir, 2013; Syarifuddin, 2006).

A note on procedural fairness is warranted before addressing evidentiary concerns. The *verstek* procedure structurally excludes the respondent's voice: the record contains no account of why he left Jakarta the day after the *akad*, whether he also experienced the marriage as coerced, or whether there were circumstances known only to him. While the panel's decision was legally sound on the evidence presented, a complete account of justice in this case would acknowledge that the respondent may have had legitimate grievances of his own that the default proceeding precluded him from airing. The outcome was nonetheless correct on the available evidence; the observation is analytical rather than critical of the panel. Critics might also worry that recognizing coercion as a ground for annulment opens the door to opportunistic petitions in which one party regrets the marriage and reframes the absence of post-*akad* affection as coercion. The case at hand offers a useful template for distinguishing genuine from opportunistic claims. The panel required, and the petitioner produced, concrete evidentiary indicia: prior unfamiliarity, parental orchestration of the union, immediate post-*akad* departure of the respondent without explanation, and consistent witness testimony confirming each of these facts. Future panels confronting similar petitions can draw on this evidentiary template to filter genuine coercion from post-hoc dissatisfaction (Marzuki, 2017; Yin, 2018).

Sociological and Policy Implications

Beyond its doctrinal significance, Decision Number 100/Pdt.G/2023/PA.JS carries sociological and policy implications worth surfacing. Sociologically, the decision contributes to a gradual reconfiguration of expectations about parental authority in matters of marriage. As (Bowen, 2003; Nurlaelawati, 2010) have observed, Religious Court decisions, although individually concerned with private disputes, collectively shape the normative environment within which Indonesian families negotiate marital choice. A series of decisions that consistently grants annulment on the ground of parental coercion sends a normative signal to parents, prospective spouses, *wali*, and KUA officials that the state and sharia together insist on substantive consent (Cammack & Heaton, 2011).

From a policy perspective, the decision suggests several avenues for institutional reform. First, the pre-marital counseling provided through KUA programs (*kursus pranikah*) could place stronger emphasis on substantive consent and on the warning signs of coercive matchmaking (Ministry of Religious Affairs, 2018). Second, the marriage registration process could include a private, confidential interview with each prospective spouse, separate from family members, in which the registrar verifies the absence of coercion a practice adopted in several jurisdictions and supported by

CEDAW General Recommendation No. 21 (CEDAW Committee, 1994; UN Women, 2018). This suggestion is properly characterized as *de lege ferenda*: it cannot be implemented within the current KUA regulatory framework, which does not mandate separate spousal interviews or provide interviewers with training in coercion identification. Its implementation would require regulatory amendment by the Ministry of Religious Affairs, the development of standardized interview protocols, and training of KUA registrars in recognizing indicators of emotional and familial pressure all substantial but not insurmountable reforms (Ministry of Religious Affairs, 2018). Third, civil-society organizations and religious leaders may strengthen public awareness that arranged marriage is permissible only where the consent of both parties is genuine and informed (Maria Platt, 2017).

These suggestions are not invitations to displace the institutional role of parents in the marital process, which classical fiqh and Indonesian customary practice both recognize as significant and often constructive (Ghazaly, 2003; Sabiq, 2013). Rather, they aim to ensure that parental involvement remains within the limits set by sharia, by Indonesian positive law, and by international human-rights commitments to which Indonesia is party. The South Jakarta Religious Court's decision provides a juridical anchor for precisely such institutional adjustments.

Toward a Convergent Theory of Marital Consent

Synthesizing the strands developed above, the decision supports a reformulation of the theory of marital consent applicable in Indonesian Islamic family law. This article argues that consent operates simultaneously as (i) a *rukun* - constitutive element - of the marital contract under classical fiqh, (ii) a statutory condition under Article 6 paragraph (1) of Law Number 1 of 1974, (iii) a codified element under the Compilation of Islamic Law, and (iv) a treaty-based right under CEDAW and the ICCPR (*Inpres*, 1991; UU Perkawinan, 1974; United Nations, 1966, 1979). The four registers reinforce one another, and the absence of consent in any substantive sense suffices to ground annulment even where the marriage formally satisfies the registration requirements of Indonesian law.

This convergent theory does not erase the differences among normative registers; classical fiqh and modern human-rights law do not say identical things about marriage. The point is that, on the particular question of free consent, the registers do converge, and the convergence allows Indonesian Religious Courts to render decisions that are simultaneously fidelity to sharia, faithful application of positive law, and compatible with the human-rights commitments to which the state has bound itself (Asshiddiqie, 2010; Hosen, 2018; Mulia & Cammack, 2007). Decision Number 100/Pdt.G/2023/PA.JS exemplifies the practical possibility of such convergence.

Conclusion

This article has examined Decision Number 100/Pdt.G/2023/PA.JS of the South Jakarta Religious Court, which annulled a marriage contracted under parental coercion. Two principal findings emerge. First, the grounds for the petition rested on the absence of genuine willingness on the part of both prospective spouses: the marriage was orchestrated by the parents on both sides, the petitioner and respondent had not

known each other previously, and the respondent left for Surabaya immediately after the akad without consummation. Second, the panel grounded the annulment on a layered juridical reasoning that integrated Article 6 paragraph (1) and Article 22 of Law Number 1 of 1974 on Marriage, Article 71 letter (f) of the Compilation of Islamic Law, the procedural framework of the HIR, and prophetic traditions affirming a woman's right to repudiate a marriage contracted without her consent.

Read against the broader literature on Indonesian Islamic family law, the decision's primary scholarly contribution is theoretical: it supplies empirical support for a four-register theory of marital consent in which consent operates simultaneously as rukn of contract under classical fiqh, statutory condition under Article 6(1) of Law No. 1/1974, codified element under the KHI, and treaty-based right under CEDAW and the ICCPR. The convergence of these four registers in a single decision is not coincidental but reflects the structural architecture of Indonesian Islamic family law, which is designed to harmonize classical sharia with positive law and international human-rights commitments. Building on this theoretical foundation, the decision locates parental authority within sharia and constitutional limits, and offers an evidentiary template that future panels can use to distinguish genuine coercion from post-hoc dissatisfaction. Coercive matchmaking, as the term is used here, refers to parental or family-initiated marital arrangements in which the prospective spouse's formal consent is either not sought or is given under conditions of familial pressure that vitiate genuine willingness a concept broader than physical compulsion but narrower than ordinary arranged marriage in which parties freely acquiesce. The decision thereby strengthens the protection of individuals especially women against coercive matchmaking, while preserving the legitimate facilitative role that parents and wali continue to play in Indonesian marital practice.

It should be noted that the gendered dimension of this decision briefly flagged in the conclusion deserves fuller treatment in future work. The petitioner is a woman; coercive matchmaking in the Indonesian context disproportionately constrains women's agency; and the Religious Court's jurisprudence on annulment, taken cumulatively, functions as a structural resource for women seeking to exit marriages they did not freely choose. Analyzing the decision through a feminist legal lens would examine, *inter alia*, whether the evidentiary threshold for coercion is applied symmetrically to male and female petitioners, and whether the availability of the annulment mechanism is itself gendered by cost, geographic access, and social stigma. Several avenues for further research follow. Comparative analysis of coercion-based annulment decisions across multiple Religious Courts would test whether the reasoning advanced in the South Jakarta case is broadly representative or jurisdictionally distinctive. Ethnographic work with KUA officials, wali, and pre-marital counselors could illuminate the practical mechanisms through which coercion is identified - or missed - at the pre-akad stage. Engagement with the maqāṣid al-sharī'ah framework, particularly as developed by Ibn 'Āshūr and contemporary scholars, promises a deeper theoretical articulation of why coerced marriage threatens the higher objectives of sharia and why annulment is the appropriate sharia-compliant remedy.

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