



Beyond Originative Validity: A Durational Approach to Consent in Marital Annulment Cases

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ABSTRACT

This article examines the divergence of judicial reasoning in two Religious Court decisions concerning the annulment of marriage in cases involving administrative irregularities and long-term familial relationships. Drawing on the decisions of the Bekasi Religious Court and the Bandung High Religious Court, it argues that the differing outcomes do not arise from variations in applicable legal norms or factual configurations, but from contrasting assumptions regarding the temporality of consent within the structure of marital validity. Adopting a normative-empirical socio-legal approach through the analysis of judicial reasoning, the article develops the concept of *continuous affirmation of consent* as a socio-legal interpretive framework for understanding how temporality is constructed and operationalized in adjudication. Through this framework, two models of reasoning are conceptualized: an originative model, which fixes validity at the moment of contract formation, and a durational model, which attributes legal relevance to the sustained practice of marital life as an ongoing affirmation of consent. In an anomalous litigation configuration – where the husband, as claimant, denies the existence of the marriage after years of institutionalized family life – temporality emerges as a critical variable for assessing the consistency of claimed consent. The article argues that the durational approach adopted by the first-instance court provides a more context-sensitive reading of marital validity, particularly in accounting for the interaction between legal claims and long-standing relational practices, without displacing the existing normative framework governing annulment.

Keywords: Marital Annulment; Temporality of Consent; Socio-Legal Analysis; Litigation Anomaly

A. INTRODUCTION

The annulment of marriage in Indonesian positive law is positioned as an exceptional legal regime, as its consequences not only terminate the legal relationship between the parties prospectively, but also entail the negation of the validity of the marriage contract (*akad nikah*) from the outset.¹ In contrast to divorce, which acknowledges the existence of a valid marriage that is subsequently declared dissolved, annulment is directed toward examining the validity of consent and the fulfillment of essential conditions at the time the marriage was concluded.² This exceptional character is reflected in its stringent regulation under Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, particularly Articles 22 through 28, and is further reinforced in the Kompilasi Hukum Islam (Compilation of Islamic Law), Articles 70 through 76, which restrict the grounds for annulment to specific circumstances that are normatively deemed to undermine the foundational consensus of marriage.³ However, neither the Marriage Law nor the Compilation of Islamic Law explicitly addresses how prolonged cohabitation affects the legal consequences of defects of consent in annulment cases. This normative silence creates interpretive uncertainty regarding the temporal dimension of marital validity.

Accordingly, the use of annulment as a legal instrument conceptually requires a higher standard of legal reasoning and evidentiary proof compared to ordinary marital dissolution cases. For instance, divorce under Indonesian law may be granted on the basis of an irretrievable breakdown of the marital relationship, as reflected in Article 19 of Government Regulation No. 9 of 1975, whereas annulment requires proof of a defect affecting the validity of consent or the fulfillment of essential conditions at the time the marriage contract is formed. This distinction indicates that annulment operates within a more restrictive evidentiary framework, given its implications for legal certainty, the legitimacy of familial relations, and the protection of parties acting in good faith.⁴

In judicial practice, the factors underlying the annulment of marriage do not always manifest as explicit and readily verifiable violations of legal norms; rather, they often emerge as a complex configuration of defects of will, procedural irregularities,

¹ Mhd. Yadi Harahap, "Dispute Resolution of Marriage Cancellation Through Religious Court Decisions in Indonesia," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 5, no. 2 (2022): 111-29.

² Harvi Muhammad Fathariq and Teguh Dwi Cahyadi, "Analisis Hukum Islam dan Hukum Perdata Atas Putusan Pembatalan Perkawinan: Studi Putusan Nomor 2981/Pdt.G/2024/Pa.Js," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025): 354-71.

³ Siti Nur Intihani, "Pembatalan Perkawinan dan Pelaksanaannya di Indonesia," *Jurnal Hukum Jurisdictie* 6, no. 1 (2024): 84-98.

⁴ Andi Iswandi, "Review Pembatalan Perkawinan yang Disebabkan Penipuan pada Pengadilan Agama: Studi Kasus pada Pengadilan Agama Bandung," *Qonuni: Jurnal Hukum dan Pengkajian Islam* 1, no. 02 (2021): 76-88.

and post-contractual relational dynamics.⁵ The Marriage Law recognizes categories of annulment grounded in coercion and mistake as to personal identity, as formulated in Article 27. At the same time, the *Kompilasi Hukum Islam* (Compilation of Islamic Law) expands these grounds by incorporating elements of fraud, marital status, and the lack of authority of the marriage registrar.⁶

In cases of marital annulment, the corrective function of the law frequently intersects with a tension between administrative and substantive approaches to determining marital validity.⁷ The administrative approach emphasizes compliance with formal procedures, such as the validity of documents, the authority of the marriage registrar, and the consistency of the parties' administrative data.⁸ By contrast, the substantive approach focuses on the quality of consent, the lived reality of the marital relationship, and the socio-legal consequences that emerge after the marriage contract is concluded.⁹ This tension becomes problematic when administrative irregularities are automatically treated as defects of will without examining whether they actually impair the formation of consent. From a doctrinal perspective, defects of will refer to vitiating factors such as mistake, fraud, or coercion, which affect the voluntariness of consent at the moment of contract formation. Equating administrative non-compliance with such defects therefore risks conflating procedural irregularities with substantive deficiencies in consent, thereby expanding the scope of annulment beyond its conceptual foundation. This issue is further complicated in the Indonesian context, where marriage registration primarily serves an administrative function and does not, in itself, determine the validity of a marriage, which remains grounded in religious norms within a plural legal framework.¹⁰

This tension becomes concretely visible in the divergence between the decision of the Bekasi Religious Court (Decision No. 3268/Pdt.G/2024/PA.Bks.) and that of the Bandung High Religious Court (Decision No. 126/Pdt.G/2025/PTA.Bdg.). Both

⁵ Saarah Faadhilah and Setyaningsih, "Pembatalan Perkawinan Akibat Wali Nikah Tidak Sah," *Reformasi Hukum Trisakti* 4, no. 2 (2022): 295-302.

⁶ Catur Widia Astuti Puspita Sari, "Analisis Hukum Terhadap Terjadinya Pembatalan Perkawinan Karena Pemalsuan Identitas," *Kajian Hukum* 6, no. 2 (2021): 25-34.

⁷ Purwadi and Daromi, "Pembatalan Perkawinan Karena Adanya Pemalsuan Identitas Suami dalam Perkawinan Poligami (Studi Kasus pada Desa Wanglu Kecamatan Krucuk Kabupaten Klaten)," *Jurnal Bedah Hukum* 3, no. 2 (2019): 104-12.

⁸ Septiayu Restu Wulandari, Sifa Mulyana Nurani, and Hedy Firdaus, "Tinjauan Yuridis Pembatalan Perkawinan Atas Perkawinan Poligami yang Tidak Memenuhi Syarat di Indonesia," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 7, no. 2 (2023).

⁹ Mochamad Syafiq Sahar and Muriani, "Penolakan Permohonan Pembatalan Perkawinan Karena Suami Pengidap HIV (Analisis Putusan Pengadilan Agama Kota Pariaman Nomor 610/Pdtf.G/2019/Pa.Prm)," *Amicus Curiae* 1, no. 2 (2024): 782-91.

¹⁰ Adriaan Bedner and Stijn Van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea For Pragmatism," *Utrecht Law Review* 6, no. 2 (2010): 175.

decisions were selected through purposive sampling because they share a nearly identical factual configuration (namely, a sixteen-year marriage, the existence of children, administrative irregularities, and the fact that the husband still had a legally valid existing wife at the inception of the relationship) yet produce opposite legal outcomes, enabling a controlled comparison of judicial reasoning. In practice, administrative violations such as the absence of court authorization for polygamy or inconsistencies in registration documents are often treated as sufficient grounds for annulment, as reflected in the reasoning of the Bandung High Religious Court, which places decisive weight on defects present at the moment of contract formation. By contrast, the Bekasi Religious Court emphasizes the continuity of the marital relationship. The divergence between these decisions thus lies not in the factual record, but in the interpretive assumptions regarding the core of marital validity (whether it is fixed at the moment of contract formation or remains open to evaluation through the temporal development of the relationship).

Departing from this tension, the present study does not merely question whether the validity of marriage within the annulment regime is understood in momentary or durational terms, but advances three interrelated analytical inquiries. (1) How is the temporality of will construed in the two decisions? (2) How does the anomalous claimant position affect annulment's function? (3) Does annulment operate as correction or strategic repositioning? By formulating these questions, this study aims to analyze how the temporality of will is articulated in two decisions of the Religious Courts (Peradilan Agama) concerning marital annulment, and to explain how the anomalous configuration of the claimant shapes the institutional function of the annulment mechanism in determining whether it operates as an originative corrective mechanism or as a strategic repositioning of an already institutionalized relationship.

Previous studies on the annulment of marriage within the Religious Courts have predominantly focused on the doctrinal and evidentiary assessment of annulment grounds at the time of contract formation. For example, Khairuddin (2022) examines judges' considerations in annulment cases at the Yogyakarta Religious Court and emphasizes that decisions are grounded in identifying legal defects, such as fraud, misrepresentation, or non-fulfillment of statutory requirements under the Marriage Law and the Compilation of Islamic Law.¹¹ Similarly, Gusti Gema (2019) analyzes judicial reasoning in granting annulment petitions and concludes that judges primarily assess whether the evidentiary threshold for annulment (particularly regarding defects

¹¹ Khairuddin, Djoko Budiarto, and Erizal, "Judge's Consideration of Annulment of Marriage (Case Study at Yogyakarta Religious Court)," *Widya Pranata Hukum : Jurnal Kajian dan Penelitian Hukum* 4, no. 1 (2022): 67-84.

of consent and formal requirements) has been satisfied.¹² In the same vein, Mohammad Fajri (2022) focuses on the legal basis and consequences of annulment decisions, highlighting that annulment is generally treated as a mechanism to invalidate marriages that fail to meet statutory conditions, such as identity falsification or coercion.¹³ While these studies provide important insights into how judges apply legal norms and evaluate evidence, they remain largely confined to an originative perspective of validity, focusing on the moment of contract formation. They do not extend their analysis to the temporal dimension of marital relations, nor do they examine how the continuity of cohabitation, the presence of children, and long-term social institutionalization may function as relevant variables in assessing the persistence or transformation of legally significant consent. It is precisely this analytical limitation that this article seeks to address.

Building on the foregoing studies, it becomes clear that existing scholarship on marital annulment in the Religious Courts remains predominantly anchored in an originative model of validity, focusing on defects of consent and the fulfillment of legal requirements at the time of contract formation (see Khairuddin 2022; Gusti 2019; Mohammad Fajri 2022). While these works offer detailed analyses of judicial reasoning and evidentiary assessment, they do not extend their inquiry to the temporal dimension of marital relations, nor do they examine how the continuity of cohabitation, the presence of children, or long-term social institutionalization may affect the evaluation of legally relevant consent. More significantly, prior studies have not problematized the institutional implications of annulment when initiated by a party who has actively maintained the marital relationship for an extended period. In this respect, the gap in the literature lies not merely in empirical coverage but in the absence of a conceptual framework that explains how temporality functions within judicial reasoning. This article addresses that gap by mapping the divergence between originative and durational models of reasoning and by demonstrating how temporality operates as an institutional variable in testing the consistency of consent. By formulating continuous affirmation of consent as an analytical tool, this study provides a conceptual vocabulary for examining the interaction among time, consent, and the protective function of family law, without displacing the existing normative structure governing annulment.

¹² Gusti Gema Mahardika Brata, "Analisis Pertimbangan Hakim dalam Memutus Perkara Pembatalan Perkawinan," *Notarius* 12, no. 1 (2019): 433-51.

¹³ Mohamad Fajri Mekka Putra, "Analisis Putusan Hakim Pengadilan Agama yang Mengabulkan Gugatan Pembatalan Perkawinan (Studi Putusan Pengadilan Agama Tanjung Karang Nomor: 0174/Pdt.G/2020/Pa.Tnk)," *The Juris* 6, no. 1 (2022): 244-50.

B. RESEARCH METHODS

This study adopts a socio-legal orientation that combines normative legal analysis with an empirical inquiry into judicial reasoning in marital annulment cases. The empirical dimension is limited to textual analysis of judicial decisions as social facts, without interviews or court observation. The research employs a qualitative-analytical design integrating the statute, case, and conceptual approaches. The statute approach establishes the normative baseline through Articles 22–27 of Law No. 1 of 1974 and relevant provisions in the Compilation of Islamic Law. The case approach enables a controlled comparison between two decisions with similar factual configurations but divergent outcomes, namely the Bekasi Religious Court Decision No. 3268/Pdt.G/2024/PA.Bks and the Bandung High Religious Court Decision No. 126/Pdt.G/2025/PTA.Bdg. The conceptual approach allows the abstraction of patterns in judicial reasoning, through which continuous affirmation of consent is employed as an interpretive lens to examine the role of temporality.

The analysis focuses on judicial reasoning as expressed in the “legal considerations” sections of the decisions. Data were collected through document analysis and library research, and analyzed using thematic coding based on three dimensions: (i) legally relevant facts, (ii) the weight assigned to temporal variables, and (iii) the treatment of the claimant’s position. The analytical process proceeds by identifying relevant facts, classifying originative and durational variables, and reconstructing patterns of reasoning, all of which are operationalized through coding. Particular attention is given to the claimant's configuration and its interaction with the continuity of the marital relationship when assessing the institutional function of annulment. Continuous affirmation of consent is used descriptively to explain differences in judicial reasoning, not to determine outcomes. Accordingly, the analysis evaluates the internal coherence of judicial reasoning rather than declaring one decision doctrinally correct or incorrect, with emphasis on how judges construct marital validity within specific temporal and institutional contexts.

C. RESULTS AND DISCUSSION

1. Divergence of Judicial Rationalities in Cases of Marital Annulment

Articles 22 through 27 of Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan establish the annulment regime as a corrective mechanism addressing defects that inhere from the inception of the marriage. The textual formulation stating that a marriage “may be annulled” indicates that the issue at stake is not the continuation of the relationship after the conclusion of the marriage contract (akad

nikah), but rather the foundational validity at the moment the contract is formed¹⁴. These provisions encompass circumstances involving the non-fulfillment of substantive requirements, violations of marital prohibitions, and coercion, mistake, or fraud affecting consent. This systematic structure demonstrates that annulment is designed as an instrument to restore the integrity of the initial consensus and to ensure that the marriage contract is formed under conditions consistent with legal prerequisites.

Article 27(1)–(3) further sharpens this orientation by specifically focusing on defects of will at the time of the marriage contract. The provision states: “(1) A husband or wife may apply for the annulment of a marriage if the marriage was conducted under unlawful threat; (2) A husband or wife may apply for the annulment of a marriage if, at the time of the marriage, there was a mistake concerning the identity of the spouse; (3) If the coercion has ceased, or the mistaken party has become aware of the true circumstances, and within a period of six (6) months thereafter continues to live as husband and wife without exercising the right to petition for annulment, then such right shall lapse.”¹⁵ Within this framework, the law focuses on the purity of consent as an existential condition of validity. This implies that annulment is not a general instrument for rectifying all forms of administrative non-compliance, but rather a corrective measure aimed at addressing disturbances to the parties’ freedom of choice or awareness at the time the contract is concluded. Accordingly, from a conceptual standpoint, there is an underlying assumption that issues arising after the contract, or those external to the formation of consent, do not automatically fall within the category of defects that justify annulment.

In the context of the case under analysis, the Bandung High Religious Court (Decision No. 126/Pdt.G/2025/PTA.Bdg) adopts an approach that is consistent with this orientation by tracing the validity of the marriage back to its point of origin (namely, the *akad siri* concluded in 2006, at a time when the husband was still bound by a legally valid prior marriage, as well as the subsequent registration process in 2008, which was found to involve manipulation and irregularities). This orientation is explicitly reflected in the court’s reasoning, which states that “*The marriage of the Appellant and Respondent II involved data manipulation ... and the marriage was never official it was registered fictitiously in the Marriage Certificate without undergoing marriage confirmation at the Religious Court.*” On this basis, the court characterizes these irregularities as structural defects inherent from the outset, such that the continuity of family life is not regarded as relevant to altering

¹⁴ Muhammad Jazil Rifqi, "Penegakan Hukum Terhadap Pemalsuan Identitas dalam Pembatalan Perkawinan," *De Jure: Jurnal Hukum dan Syar'iah* 11, no. 2 (2019): 100–12.

¹⁵ Siti Nur Intihani, "Pembatalan Perkawinan dan Pelaksanaannya di Indonesia," 84–98.

that original status. By referring to Article 26 of Law No. 1 of 1974 on Marriage, in conjunction with Article 71(a) and Article 72(2) of the Compilation of Islamic Law, the Bandung High Religious Court places initial legality as the central axis of its legal assessment. From this, a provisional synthesis may be formulated of what can be termed an origin-validity model: a mode of reasoning that understands the validity of marriage in historical and formal terms, namely as determined by the conformity of the marriage contract with substantive and procedural requirements at the time of its formation.

Conversely, the evidentiary record indicates that the relationship between the Plaintiff and Defendant II has endured for approximately 16 years. It is from this factual basis that the reasoning of the Bekasi Religious Court (Decision No. 3268/Pdt.G/2024/PA.Bks) emerges, wherein the panel of first-instance judges explicitly stated that *“it is highly improbable that the Plaintiff and Defendant II could have lived together as a household for approximately 16 years without the existence of a valid marital bond.”* This statement is not merely a factual description, but rather a normative assumption underpinning the entirety of its reasoning: the duration of domestic cohabitation is treated as a strong indicator of marital legitimacy. This finding is reinforced by the existence of a child recognized as having been born from the relationship, as well as identity documents (family card, passport, and identity card) demonstrating the social integration of the family unit. Moreover, evidence that the parties had performed the umrah pilgrimage together was considered indicative of the absence of substantial conflict in their relationship, at least for a certain period following the conclusion of the marriage contract. Methodologically, the court did not confine its assessment to the formal validity of documentary records, but instead evaluated the pattern of domestic life that had developed stably. Accordingly, the variable of *“sustained family life”* was accorded greater weight than administrative irregularities.

Furthermore, notwithstanding the foregoing, the panel of first-instance judges of the Bekasi Religious Court explicitly acknowledged several irregularities: photocopies without originals, discrepancies in the data in official deeds, alleged manipulation of status, and problematic registration procedures. However, in light of these irregularities, the panel did not move toward annulment. Even when recognizing inconsistencies between two authentic deeds, the judges maintained that *“what is clear is that a marriage exists between the Plaintiff and Defendant II.”* This statement is pivotal: the existence of the marriage is situated at a factual-substantive level, rather than at an administrative-formal one. From the standpoint of proving the marriage contract (*akad nikah*), the panel further affirmed that the marriage was attended by a marriage registrar (*penghulu*), a guardian (*wali*), and two witnesses;

that a dowry (*mahar*) was given; and that photographic evidence of the ceremony was acknowledged by the parties. This emphasis is not incidental. Under Article 14 of the Compilation of Islamic Law, these elements (bride and groom, guardian, witnesses, and *ijab kabul*) constitute the *rukun* (essential elements) of a valid marriage, whereas registration operates as an administrative requirement. By foregrounding these elements, the court effectively prioritizes the fulfillment of substantive conditions of validity over procedural compliance, thereby situating the assessment of marriage within a framework that privileges the existence of consent and the factual realization of the marital bond. This indicates that the essential elements of marriage under substantive law were considered to have been fulfilled. Accordingly, despite issues in registration and the possibility of administrative manipulation, the core of consent and the factual reality of the marriage were regarded as persisting. Ultimately, the panel concluded that the marriage “cannot be categorized as a marriage subject to annulment” under Article 26(1) of Law No. 1 of 1974 on Marriage. This implies that the judges implicitly positioned administrative irregularities not as originative defects vitiating marital consent, but rather as procedural issues that do not affect the existence of the marriage contract itself.

Analytically, the variables accorded dominant weight in the first-instance reasoning of the Bekasi Religious Court are as follows: (1) the duration of cohabitation (approximately 16 years); (2) the existence of a child; (3) the presence of essential elements of a valid marriage; and (4) the social integration of the family (as evidenced by identity documents and shared activities), while administrative manipulation is treated as a secondary anomaly. It may therefore be concluded that the first-instance panel oriented marital validity toward relational stability and the continuity of consent as realized in domestic life. In other words, validity is not retroactively anchored solely to the formal moment of registration. Still, it is instead verified through the sustained continuity of a relationship that has achieved social recognition.

Turning to the appellate decision of the Bandung High Religious Court (Decision No. 126/Pdt.G/2025/PTA.Bdg), the panel of judges adopts a markedly different reconstruction of the factual narrative from that of the first instance. The appellate judgment reorganizes the sequence of events in a more stringent and problem-oriented manner. The panel finds that the marriage in question, in fact, took place on 11 June 2006 at a mosque in East Jakarta, accompanied by the use of a death certificate for the first wife, even though the appellant’s first wife was still alive. Accordingly, the relationship was already situated in a condition that violated the legal boundaries established by the monogamy regime under Law No. 1 of 1974 on Marriage.

The subsequent registration in January 2008 at the Office of Religious Affairs (KUA) of Jati Sampurna is not regarded as an administrative validation of a valid marriage, but rather as an act marked by significant inconsistencies. The appellate court highlights discrepancies in documents N.1 through N.6, including the marriage recommendation letter, the marriage examination register, and the absence of a duly authorized marriage registrar. These inconsistencies are not treated as mere technical errors, but as strong indications of deliberate data manipulation intended to conceal the prior marital status. Furthermore, there was no authorization from the Religious Court to enter into a polygamous marriage, notwithstanding that the first wife was still alive. This absence of judicial authorization constitutes a fundamental violation of the procedural requirements governing the permissibility of polygamy under national law. Thus, the issue extends beyond administrative irregularities in registration, encompassing the absence of judicial authorization as a legal prerequisite for the validity of polygamy instead.

In formulating the legal consequences, the appellate panel referred to Article 26 of Law No. 1 of 1974 on Marriage, as well as Articles 71 and 72 of the *Kompilasi Hukum Islam* (Compilation of Islamic Law), which allow for annulment where defects exist in the essential requirements of marriage, including violations of prohibitions or procedural requirements governing polygamy. Relying on this normative framework, the appellate court qualified the series of violations as defects present from the outset, rather than as mere administrative deviations that could be tolerated on account of the continuity of the relationship.

Accordingly, an analysis of the weighting of considerations indicates that the Bandung High Religious Court places primary emphasis on the validity of the marriage at the moment of its formation, rather than on the subsequent continuity of domestic life. The duration of cohabitation, the existence of a child, and the social integration of the family are not elaborated as countervailing factors capable of “curing” the initial defects. Instead, the focus is drawn back to the moment in 2006, when the marriage contract (*akad nikah*) was concluded without a legally valid status and without judicial authorization for polygamy. In this sense, the defects are treated as structural.

The interpretation of this pattern points toward a legal-formalist and administrative approach. Legality is understood as compliance with the procedural configuration prescribed by statute, and the subsequent continuity of the social relationship cannot rehabilitate non-compliance at the stage of forming the

marriage contract¹⁶. Within this framework, the appellate court does not treat the existence of the relationship as a basis of legitimacy. Instead, it evaluates formal conformity at the outset as a prerequisite of validity. By contrast, the reasoning of the Bekasi Religious Court at first instance reflects a pattern in which the panel oriented marital validity toward relational stability and the continuity of consent as realized in the practice of domestic life. In other words, validity is not retroactively anchored solely to the formal moment of registration, but is instead verified through the sustained continuity of a socially recognized relationship.

More fundamentally, however, the configuration of this case presents a deeper problem where the claimant is the husband who, after maintaining a marital relationship for sixteen years, asserts that no marriage contract was ever concluded. This claim not only contradicts the body of evidence demonstrating the continuity of domestic relations and broad social recognition, but also reveals a tension between the litigative assertion and the relational practice consistently maintained over an extended period. This inconsistency raises serious questions regarding the rationality of the annulment claim: can the assertion of the absence of a marriage contract be coherently sustained when the same party has acted as a husband within an institutionalized family structure, including through the existence of a child and formal family documentation?

In such a context, the structural anomaly no longer lies merely in the initial administrative violations, but rather in the use of the annulment mechanism by a subject who has, in factual terms, affirmed the very relationship now being contested. A mechanism conceptually designed to correct originative defects is thus deployed in circumstances where the relationship has already become established and socially legitimized. The inquiry consequently shifts from formal validity to the integrity of the claim of consent itself: whether annulment continues to function as a normative correction of defects at inception, or instead becomes a means of retrospectively reconstructing legal status. It is this inconsistency in the claimant's position that may be treated as a factor weakening the logic of annulment as an originative corrective, while simultaneously reinforcing the reasoning adopted by the court of first instance.

In this regard, the approach adopted by the first-instance court may be interpreted as an attempt to assess the validity of marriage within a broader relational context. By assigning weight to the continuity of cohabitation, the existence of children, and the stability of family life practices, the court's reasoning

¹⁶ Trusto Subekti, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Ditinjau dari Hukum Perjanjian," *Jurnal Dinamika Hukum* 10, no. 3 (2010): 329-38.

reflects the assumption that consent in marriage does not cease at the declarative moment, but continues to be manifested through repeated relational conduct. Within this framework, relational stability and continuity of consent function as explanatory variables that account for why administrative defects do not automatically lead to annulment, particularly where the relationship has become firmly established. This argument does not negate the importance of compliance with legal norms, but rather demonstrates that, within the category of defects rendering a marriage “voidable,” the assessment of relational continuity becomes relevant for understanding the function of annulment in a more contextualized manner, especially in testing the consistency between claims of consent and the relational practices undertaken by the parties.

On the other hand, the approach adopted by the appellate court in this case may be understood as an effort to preserve legal certainty and the formal integrity of the marital system. By treating administrative violations (including the absence of judicial authorization for polygamy and alleged data manipulation) as defects inherent from the outset, the court’s reasoning affirms that the validity of marriage must be determined strictly on the basis of compliance with the applicable normative framework. Within this structure, annulment functions as an instrument for upholding the coherence of the legal system and preventing practices that deviate from prescribed procedures. However, a consequence of this approach is the limited scope for considering relational facts that develop after the conclusion of the marriage contract (*akad*). By excluding the relevance of temporality, this reasoning tends to overlook the social dimension of relationships that have become institutionalized, such that the continuity of cohabitation, the existence of children, and the integration of the family do not operate as variables in assessing the consequences of initial defects.

2. Continuous Affirmation of Consent as a Tool of Legal Interpretation

The divergence outlined in the preceding discussion reveals a more fundamental analytical problem within the framework of Indonesian statutory law. The Marriage Law does regulate the grounds for annulment and recognizes defects of will as a basis for correcting the validity of marriage. This ambiguity is most evident in the construction of Article 27 of Law No. 1 of 1974 on Marriage, particularly with regard to the legal consequences of continued cohabitation after the aggrieved party becomes aware of the defect. The provision textually states: “If the coercion has ceased, or the mistaken party has become aware of the true circumstances, and within a period of six (6) months thereafter continues to live as husband and wife without exercising the right to petition for annulment, then such right shall lapse.” This provision suggests that the continuity of the relationship has

a certain relevance to the persistence of the right to annulment, yet it does not conceptually clarify how such relevance should be understood in relation to the validity of the marriage itself¹⁷. In other words, the norm opens space for interpreting the temporal dimension of consent, but does not provide an adequate analytical framework for structuring that interpretation.

Case studies and judicial decisions indicate that courts frequently rely on concrete evidence – such as identity fraud or defects of consent at the time of the marriage contract (akad nikah) – as grounds for annulment, while the continuation of cohabitation may weaken annulment claims if they are not promptly brought¹⁸. Several studies have also highlighted the need for a clearer analytical framework to structure this temporal interpretation in order to ensure legal certainty and fairness for the parties.

It is within this condition of normative ambiguity that the divergence in reasoning between the Bekasi Religious Court and the Bandung High Religious Court becomes both readily intelligible and yet difficult to explain systematically without additional conceptual tools. Accordingly, Continuous affirmation of consent is employed in this study as a descriptive-analytical interpretive lens, not as a normative or prescriptive construct. It does not seek to determine which judicial decision is legally correct, but rather to map the implicit temporal assumptions underlying judicial reasoning in cases of marital annulment. The concept operates at the level of explaining how judges attribute meaning to the continuity of relational practices in assessing the validity of consent, based on patterns observable in the decisions under analysis. Accordingly, it functions as an analytical tool for examining how temporal continuity, relational conduct, and claims of consent are integrated within judicial reasoning, without introducing new normative standards into the legal framework. It is hermeneutic insofar as it functions as an interpretive tool for examining judicial reasoning, particularly in analyzing how social and relational facts are ascribed juridical meaning. It is descriptive because it aims to map patterns of reasoning already operating in judicial practice, rather than to formulate new legal standards. It is non-normative in that it is not intended to create an additional source of legitimacy beyond positive law, but solely to explain how judges assess the relevance of relational continuity in determining the validity of marriage.

¹⁷ Gusdiawan, "Pembatalan Perkawinan yang Daluwarsa Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan: Studi Putusan Nomor 1/Pdt.G/2021/Pa.Pbr," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 2 (2025): 977–86.

¹⁸ Sri Atmadiani and Mhd. Rizal, "Marriage Annulment Application Due To Lies and Fraud: A Case Study of Decree Number 3572/Pdt.G/2023/Pa.Ckr'," *Al-Ishlah: Jurnal Ilmiah Hukum* 27, no. 2 (2024): 374–90.

As an interpretive tool, continuous affirmation of consent is employed to examine two principal aspects of judicial reasoning. First, the weight accorded by judges to relational facts emerging after the conclusion of the marriage contract, particularly in the context of annulment petitions. Second, the relationship between the duration of the relationship and the attribution of validity – namely, whether the continuation of cohabitation is treated as a variable with legal significance, or instead regarded as irrelevant to a validity status determined at the moment of contract formation.

The empirical indicators underpinning the formulation of this concept are not derived from abstract theoretical constructions, but rather abstracted from patterns of reasoning observable in the judicial decisions under analysis. Given the limited scope of the study, these indicators are not intended to represent a generalizable empirical model, but rather to function as analytical constructs grounded in the specific cases examined. These indicators include, inter alia: voluntary cohabitation over an extended period; the birth and upbringing of children as consequences of the relationship; the social integration of the family as reflected in both administrative and societal recognition; joint legal acts demonstrating the organization of life as a single family unit; as well as the absence of active objection to the marital status over a significant period following the conclusion of the marriage contract.

This understanding resonates with broader developments in contract theory, particularly relational approaches to consent, which emphasize that agreement cannot be fully captured at a single moment of formation but is instead shaped and reaffirmed through the ongoing conduct of the parties. Barnett (1986) argues that the legitimacy of contractual obligation rests on genuine consent is understood not merely as an internal subjective state, but as its objective manifestation through voluntary conduct. While Barnett's account remains centered on consent at the point of formation, his insistence on observable manifestation as the normative criterion opens, at least analogically, the question of whether subsequent conduct may illuminate the quality and continuity of original consent¹⁹.

It is in this respect that relational contract theory, as developed by Macneil (1978), becomes analytically relevant. Macneil argues that contractual relations embedded in long-term social interactions cannot be adequately understood through the model of discrete transactions – a model that exhausts the meaning of agreement at its initial moment. Instead, contractual obligations in relational settings are sustained, renegotiated, and reaffirmed through the ongoing conduct

¹⁹ Randy E. Barnett, "A Consent Theory of Contract," *Columbia Law Review* 86, no. 2 (1986): 269–321.

of the parties over time²⁰. This insight provides a theoretical vocabulary for articulating how temporality may function within judicial reasoning: not as an independent normative criterion, but as a dimension through which the quality and orientation of original consent may be assessed in light of subsequent relational practice²¹.

The present study does not transplant these theories into marriage law. Perkawinan within the Indonesian legal framework (governed by Law No. 1 of 1974 and the Compilation of Islamic Law) constitutes a legal institution with religious, statusial, and public dimensions that are not reducible to the commercial contract model from which relational contract theory derives²². Rather, the study draws on these theories in a limited and analogical manner, extracting a single analytical insight (that the conduct of parties over time may serve as evidence of the orientation of their consent) and deploying it to illuminate the structure of judicial reasoning in cases where marital relations have been factually sustained despite administrative irregularities, without altering the normative framework governing marital validity under Indonesian positive law.

a. Application to the Reasoning of the Bekasi Religious Court

When the framework of continuous affirmation of consent is employed as an interpretive lens to examine the reasoning of the Bekasi Religious Court, it becomes evident that the panel of judges consistently accords significant weight to the temporal dimension of the parties' relationship. The duration of cohabitation—approximately sixteen years—is not treated as a peripheral fact, but rather as a primary indicator in assessing the existence and continuity of the marital bond. The panel's explicit statement that it is implausible for the parties to have maintained a household for such a prolonged period without a valid marital bond indicates that time is treated as a substantive evidentiary variable, rather than merely as a chronological sequence of events.

This temporal weighting is further reinforced by the existence of a child as a product of the relationship. The presence of a child is not merely recorded as a biological fact, but is implicitly interpreted as an indicator of the stability and continuity of the family relationship. Within the court's reasoning, the birth

²⁰ Campbell, David, Ed. 2001. *The Relational Theory Of Contract: Selected Works Of Ian Macneil*. London: Sweet & Maxwell.

²¹ Neil Maccormick, *Legal Reasoning And Legal Theory*, With Internet Archive (Oxford [Eng.]: Clarendon Press; New York: Oxford University Press, 1978), [Http://Archive.Org/Details/Legalreasoningle0000macc](http://Archive.Org/Details/Legalreasoningle0000macc).

²² John Witte, *From Sacrament To Contract : Marriage, Religion, And Law In The Western Tradition*, With Internet Archive (Louisville, Ky.: Westminster John Knox Press, 1997), [Http://Archive.Org/Details/Fromsacramenttoc0000witt](http://Archive.Org/Details/Fromsacramenttoc0000witt).

and upbringing of a child represent a form of relational attachment that is difficult to reconcile with a relationship that is legally construed as having never possessed a valid basis of consent. Accordingly, the child is positioned as empirical evidence of the continuity of the parties' relational commitment.

In addition, the panel attributes relevance to various documents demonstrating the social integration of the family, such as the family card, shared administrative identification, and jointly undertaken religious activities. These documents are treated as representations of social recognition of the existence of the family unit. Conversely, administrative irregularities (including discrepancies in official records, issues in registration, and alleged manipulation of status) are not positioned as determinative factors that directly invalidate the marriage. While these facts are acknowledged, they are situated at a level external to the core of the relationship. In other words, administrative violations are understood as procedural deviations that do not automatically negate the relational reality that has been established and maintained over time.

b. Application to the Reasoning of the Bandung High Religious Court

In contrast to the pattern of reasoning at first instance, the Bandung High Religious Court structures its analysis by tracing the validity of the marriage retrospectively to the originative point of its formation. The panel's primary focus is not directed toward the continuation of the relationship after the conclusion of the marriage contract, but rather toward whether, from the outset, all substantive and procedural requirements were lawfully fulfilled.

Within this framework, administrative violations are not understood as external procedural irregularities, but rather as structural defects embedded in the foundation of the marriage's formation. Data manipulation, the absence of judicial authorization for polygamy, and inconsistencies in registration are not treated as technical errors that may be tolerated or remedied over time, but as indicators that the normative configuration required by law was never fulfilled from the outset. In other words, administrative aspects directly related to legal status and institutional authorization are treated as integral components of the existential requirements of a valid marriage. Under this logic, the continuation of cohabitation is not regarded as having the capacity to neutralize or ratify violations that occurred at the moment of the contract's formation. Validity is not verified through the development of the relationship, but is instead determined conclusively at the moment of its inception. Accordingly, time is not treated as a variable that modifies legal status, but merely as a chronological context that does not affect the normative assessment of validity.

3. The Temporality of Consent and Litigation Anomalies: An Institutional Reconstruction of Annulment

From the foregoing discussion, it is noteworthy that the divergence in the case under analysis does not stem from the explicitly cited legal norms. Both courts rely on fundamentally the same normative framework, namely the provisions governing the requirements for and annulment of marriage under positive law. The divergence instead arises at the level of the operationalization of these norms, particularly in the manner in which judges assess the relevance of temporal factors to the validity of consent.

It is in this context that continuous affirmation of consent demonstrates its analytical utility. Nonetheless, as an analytical device, the concept is not intended to derive direct normative legitimacy from positive law. Accordingly, although a reading of the structure of Indonesian marriage law reveals a certain degree of resonance, the concept may still be understood as not being systemically inconsistent with the prevailing normative framework.

Among the points that must be emphasized is that the case analyzed in this study does not concern an absolute prohibition rendering the marriage contract void as a matter of ontological nullity, but rather involves procedural violations and the absence of authorization for polygamy, which under Indonesian positive law are classified as grounds rendering a marriage “voidable.” This classification indicates that the legal consequences of such defects are not determined automatically at the originative moment, but instead fall within the scope of judicial evaluation. It is within this space that the temporality of the relationship acquires analytical relevance: not to legitimize administrative violations, but to explain how the continuity of shared life practices may interact with claims of initial defects in determining the function and limits of the annulment mechanism. Accordingly, continuous affirmation of consent operates within the category of evaluative defects, rather than within the context of absolute nullity, which would preclude any temporal consideration.

The divergence between the appellate and first-instance decisions reflects two distinct models of reasoning – originative and durational – but this difference becomes analytically significant only when situated within the anomalous configuration of the claimant. The appellate decision adopts an originative model, treating validity as conclusively determined at the moment of contract formation and regarding any initial defect as structurally decisive, regardless of subsequent developments. By contrast, the first-instance decision reflects a durational model, in which the continuity of cohabitation, child-rearing, and shared family life is treated as relevant in assessing the persistence of consent. However, the most

significant aspect of the case, namely not merely the divergence between the originative and durational models, but the configuration of the subject who initiates the annulment itself. In the general typology of annulment cases within the Religious Court system, the claimant is typically a party who is objectively disadvantaged by a defect of consent or by a violation of substantive requirements at the time of the marriage contract, particularly in cases involving unauthorized polygamy or the concealment of marital status. The annulment is instead sought by the husband who, at the time of the contract, was allegedly still bound by a legally recognized prior marriage, and who within that relationship had maintained a household for approximately sixteen years and fathered a child.

The denial of the occurrence of *ijab kabul* (advanced after a prolonged period of domestic cohabitation and social institutionalization through the existence of children, family documentation, and shared life practices) transforms the temporality of the relationship from a merely chronological fact into a variable that tests the consistency of the claimant's asserted will. Where a party has continuously conducted a relationship as husband and wife over a significant period, the relevant question is no longer limited to the existence or absence of administrative defects at the time of the contract, but extends to whether the law can rationally sustain a separation between ongoing relational conduct that consistently affirms marital status and a subsequent claim denying the existence of consent, raised only after the relationship has become firmly established.

This configuration indicates that the anomaly of the claimant cannot be treated merely as a factual irregularity, but rather as an institutional issue that shapes how the annulment mechanism operates in practice. Where annulment is sought by a party who has actively formed, maintained, and affirmed the very relationship subsequently contested, the function of annulment shifts from an instrument for correcting originative defects toward a potential means of retrospectively reconstructing legal status. This shift concerns not only the validity of the marriage contract at its point of formation, but also how the law responds to the tension between claims of consent advanced in litigation and relational practices that have persisted over time. In this context, temporality no longer serves merely as a chronological background, but becomes a variable that reveals whether annulment is invoked to remedy defects genuinely present from the outset or to reformulate the legal position of a relationship previously sustained without objection. Accordingly, the anomaly of the claimant demonstrates that the institutional design of annulment does not always operate linearly as a corrective mechanism directed at the past, but may instead function within a more complex

space in which legal claims and social practices interact and negotiate the ultimate consequences of a marriage.

Consequently, annulment in cases of this kind cannot be reductively understood as the mere application of legal norms to administrative defects. Rather, it occupies an intermediate space between originative correction and the stability of relational structures that have developed over time. Where the annulment mechanism is invoked after the institutionalization of family relations, temporality becomes a decisive variable in determining whether the claim reflects the protection of freedom of consent or, instead, constitutes a strategic repositioning of a legal status that had previously been accepted and lived. Accordingly, what is ultimately at stake is not merely the validity of a marriage contract, but also the institutional function of annulment in maintaining coherence between declared consent and the relational conduct through which that consent has been enacted.

Ultimately, the approach adopted by the first-instance court may be read as reflecting an institutional sensitivity to the relational structures that have been formed and voluntarily sustained by the parties. By treating the continuity of cohabitation, the existence of children, and the social integration of the family as variables relevant to assessing the consequences of administrative defects, the decision does not negate the governing norms, but rather contextualizes them within concrete relationships that have developed over an extended period. Within this framework, annulment is not treated merely as a technical mechanism for correcting procedural irregularities, but as an instrument that, in practice, is closely connected to the protection of parties who have in fact become embedded in legal and social relationships. Accordingly, the durational model reflected in the first-instance decision may be interpreted as embodying a protective orientation within family law.

Conversely, an approach that entirely excludes the relevance of temporality risks reducing annulment to a formal corrective detached from relational realities that have already become institutionalized. Where claims of originative defects are advanced by a party who has actively formed and maintained the relationship over many years, disregarding the temporal dimension eliminates a crucial mechanism for testing the consistency of consent and opens the possibility for the retrospective deployment of annulment without due regard to the stability that has been established. In this context, an interpretive approach that takes into account continuous affirmation of consent not only rests on a sound analytical foundation, but also demonstrates the capacity of law to function as a protective mechanism for established family relationships, without disregarding the existing normative framework.

D. CONCLUSION

This article argues that the divergence between the decisions of the Bekasi Religious Court and the Bandung High Religious Court does not arise from differences in legal norms or factual configurations, but from differing assumptions regarding the temporality of consent within the structure of marital validity. The originative model adopted at the appellate level treats validity as conclusively determined at the moment of the marriage contract (*akad*), rendering administrative and procedural violations as structural defects unaffected by subsequent relational continuity. In contrast, the durational model reflected in the first-instance decision recognizes that long-term cohabitation may serve as an indicator of the consistency of consent, particularly where annulment is sought by a party who has actively formed and maintained the relationship. In the anomalous litigation configuration—where the husband, as claimant, denies the existence of the contract after sixteen years of marital life—temporality operates as a variable for assessing the coherence of consent claims. This finding does not legitimize administrative violations nor alter the normative structure of annulment, but clarifies that such cases fall within the category of “voidable” defects rather than absolute nullity, thereby allowing relational continuity to inform the function of annulment. More broadly, the study demonstrates that marital annulment is not solely concerned with compliance at the originative moment, but also with how law interprets temporal dimensions in evolving legal relationships; in this sense, temporality shapes both the evaluation of consent and the institutional function of annulment, including its implications for the protection of established family structures.

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