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Application of Progressive Law to Marriage Annulment Cases: Prospects and Development in Indonesia's Religious Court

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Abstract

Progressive law is based on the emergence of a sense of dissatisfaction with the theory that has been developed and used as a guide in legal practice in Indonesia, legal theories that have been developed so far, are unable to respond to problems that occur in the reality of society. This has resulted in a sense of public dissatisfaction with the performance of the law and the courts. The value of justice is the main goal to be achieved in law enforcement efforts. Meanwhile, in the case of marriage annulment, there are parties who are dissatisfied with the decision of the first level judge, so they take legal action to a higher level court to answer their dissatisfaction. This research uses a qualitative method with an empirical juridical approach. Primary data obtained from marriage annulment decisions Number 185/Pdt.G/2023/PTA.Bdg, 84/Pdt.G/2023/PTA.Bdg and 106/Pdt.G/2023/PTA.bdg, secondary data obtained from laws, journals and other legal books that have the same relevance as this research. After the data is collected, data analysis is carried out to get answers to the problems raised. This research resulted in several findings. First, the application of progressive law in polygamy licensing cases uses the hermeneutic method, namely the school of philosophy that studies the nature of something to understand something into a clearer object of interpretation, in the case of forced marriage using the legal interpretation method, namely a conclusion in providing an explanation or understanding of a term that is unclear in meaning. Second, the door for judges to apply progressive law will never be closed, in fact it is a necessity by judges, legal problems will continue to exist and continue to develop.

Keywords: Progressive Law, Marriage Annulment, Judge's Decision

Abstrak

Hukum progresif didasari oleh munculnya rasa ketidakpuasan terhadap teori yang selama ini dikembangkan dan dijadikan pegangan dalam praktik hukum di Indonesia, teori-teori hukum yang selama ini dikembangkan, tidak mampu menjawab permasalahan yang terjadi dalam realitas masyarakat. Hal ini mengakibatkan timbulnya rasa ketidakpuasan

masyarakat terhadap kinerja hukum dan pengadilan. Nilai keadilan merupakan tujuan utama yang ingin dicapai dalam upaya penegakan hukum. Sementara itu, dalam kasus pembatalan perkawinan, terdapat pihak yang merasa tidak puas dengan putusan hakim tingkat pertama, sehingga menempuh upaya hukum ke pengadilan yang lebih tinggi untuk menjawab ketidakpuasannya. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis empiris. Data primer diperoleh dari putusan pembatalan perkawinan Nomor 185/Pdt.G/2023/PTA.Bdg, Putusan 84/Pdt.G/2023/PTA.Bdg dan putusan 106/Pdt.G/2023/PTA.bdg, data sekunder diperoleh dari undang-undang, jurnal-jurnal dan buku-buku hukum lainnya yang memiliki relevansi yang sama dengan penelitian ini. Setelah data terkumpul, dilakukan analisis data untuk mendapatkan jawaban atas permasalahan yang diangkat. Penelitian ini menghasilkan beberapa temuan. Pertama, penerapan hukum progresif dalam perkara perizinan poligami menggunakan metode hermeneutika, yaitu aliran filsafat yang mempelajari hakikat sesuatu untuk memahami sesuatu menjadi objek penafsiran yang lebih jelas, dalam kasus kawin paksa menggunakan metode interpretasi hukum, yaitu sebuah kesimpulan dalam memberikan penjelasan atau pengertian terhadap suatu istilah yang belum jelas maknanya. Kedua, pintu bagi hakim untuk menerapkan hukum progresif tidak akan pernah tertutup, bahkan hal tersebut merupakan sebuah keniscayaan oleh hakim, permasalahan hukum akan terus ada dan terus berkembang.

Kata kunci: Hukum Progresif, Pembatalan Perkawinan, Putusan Hakim

Introduction

The state of Indonesia, which has established itself as a state of law, is obliged to protect its citizens, provide legal certainty, and also justice for all its citizens without exception. The implementation of the state's duty in providing legal certainty to its citizens aims to protect them from the arbitrary attitude carried out by the rulers.[1] These provisions must really be implemented definitely and comprehensively in the life of the state, so that the existence of the law can provide a sense of justice for all its citizens.

The value of justice is the main goal to be achieved in law enforcement efforts. Judging from its characteristics, justice is something that is subjective, individualistic, and unequalized. If justice is emphasized by law enforcers by setting aside the value of utility and legal certainty, it will result in the law not running properly. Even so, if it only focuses on the value of benefits and ignores the certainty of law and justice, then the law will not work. Thus, in law enforcement, the ideal is that the basic values of justice and the basic values of benefits must be implemented in a balanced manner in law enforcement efforts.[2]

Law *enforcement* itself, according to Jimly Asshiddiqie, is interpreted as a process for the enforcement or implementation of the norms of a law in real terms as a source of guidelines in behaving between legal relationships in the social life of the community and the state. The law enforcement process itself can be seen from the perspective of the subject and object. Judging from the subject, law enforcement efforts have a broad and limited meaning. Broadly speaking, it concerns all subjects who have legal relationships, either by implementing or not doing something based on legal provisions. Meanwhile, in a narrow

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1 Putra Astomo, "*Principles of the Indonesian State of Law in the Constitution of the Republic of Indonesia of 1945*," Unsulbar Law Journal 1, no. 1 (2018): p., 1–12, https://doi.org/10.31605/j-law.v1i1.47

2 Hasaziduhu Moho, "*Law Enforcement in Indonesia According to Aspects of Legal Certainty, Justice, and Utility*," Dharmawangsa University 13, No. 1 (2019): p., 138–149.

sense, the subject of law enforcement is the effort of law enforcement officials to enforce the applicable legal rules.[3]

Meanwhile, from the perspective of the object, law enforcement is seen from the legal side. In its broad sense, law enforcement is related to the value of justice both in written rules, as well as the value of justice that lives in society. Meanwhile, the object of the law is narrowly only concerned with the enforcement of written regulations.[4]

A different definition was given by Satjipto Raharjo who defined law enforcement as an effort to carry out what is written in the text of the law *(accorfing to the letter)* and the spirit and deep understanding of what is contained in *it (to veary meaning).* To achieve these efforts, according to Satjipto, it is not only necessary to have intellectual intelligence, but also to be accompanied by spiritual intelligence and the courage to *get out of the box* from legal frameworks to get solutions for the benefit of humanity.[5]

Satjipto's style of understanding and legal views ultimately gave birth to a big idea, namely the birth of progressive law. The emergence of the idea of progressive law is motivated by the emergence of dissatisfaction with theories that have been developing and used as guidelines in legal practice in Indonesia, thus creating a gap between the law contained in traditional theories *(law in books)* and legal reality *(law in action).* In addition, legal theories that have been developing have not been able to respond to problems that occur in the reality of society.[6] This has an impact on the failure of law enforcement in Indonesia and the emergence of public dissatisfaction with the performance of the law and the courts. Meanwhile, the court itself is the end of the community's hope to get justice.

This failure is the impact of law enforcers who tend to have a positivist perspective, tend to be fixated on the text of the law, leading to a reluctance to explore the values of justice in society more deeply. This happens because law enforcers who adhere to positivism often argue that Indonesia as a country that tends to adhere to the concept of *civil law*, the consequence of this tendency is that law enforcers "require" law enforcers to act only as a mouthpiece of the law *(la bouche de la loi).*[7]

In the school of positivism, it is viewed that the law is what is written and stated in the law. With this point of view, in the end, this school assumes that legal norms only exist in written law, so that norms outside of written law are not considered a law.[8] Or in other words, the law that is recognized is the law of the state, outside the law of the state is not the law.

The perspective of law enforcement with the use of postivism causes rigidity, so that substantive justice becomes difficult to seek. This happens because the law creates

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3 Jimly Asshiddiqie, *Towards a Democratic State of Law* (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2008), p., 62.

4 Jimly Asshiddiqie, *Towards a Democratic State of Law* (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2008), p., 62.

5 Satjipto Rahardjo, *The Law of a Sociological Review* (Yogyakarta: Genta Publishing, 2009), xiii.

6 Ahmad Rifai, *Legal Discovery by Judges in the Perspective of Progressive Law*, ed. by Tarmizi (Jakarta: Sinar Grafika, 2010), p., 35.

7 Suteki, "The Track Record of Satjipto Rahardjo's Progressive Legal Thought," in *Satjipto Rahardjo and Progressive Law: Urgency and Criticism*, ed. by Myrna A Safitri; Awaludin Marwan; Yance Arizona (Jakarta, 2011), p., 33.

8 Ahmaf Rifai, *Legal Discovery by Judges in the Perspective of Progressive Law* (Jakarta: Sinar Grafika, 2010), p., 28.

procedural walls that hinder the search for truth and justice itself. Lili Rasjidi, as quoted by Asep Bambang Hermanto, revealed that the use of a positive legal flow approach in reality does not completely solve the problems that occur. The problem-solving orientation that only refers to the law or positive law only touches the symptoms of the problem itself, not to the root of the problem.[9]

This is confirmed by A.M Mujahidin, that the occurrence of the legal downturn in Indonesia is caused by two factors, *first,* corrupt behavior carried out by law enforcers *(professional juris); second,* the tendency of the mindset of law enforcers who are still confined to legalistic-positivistic thinking.[10] In line with that, Ronny Nitibaskara revealed that this condition is the impact of the application of the technical character that leads the law to a position of "ready to be engineered" so as to give birth to pseudo-legal certainty because it is based on subjective interpretations from law enforcers themselves on the rule of law.[11]

Law enforcement in Indonesia will not run optimally if there is no driving force, and the driving force for law enforcement is the police, prosecutor's office, advocates (lawyers), and judges. The importance of the four law enforcement institutions is because, as Satjipto Rahardjo said, law enforcers have an important and decisive role, what the law wants is greatly influenced by the paradigm used by law enforcers.[12]

Of the four law enforcement institutions, judges have a central role in law enforcement, this is because of the authority possessed by judges in enforcing the rule of law through the rulings they issue in determining who is right and who is wrong. More than that, judges are seen as the symbol (personification) of the law itself, so they have an obligation to provide guarantees to justice seekers to get justice through the legal process in court.[13]

The relationship between judges and the law as the central point of law enforcement in providing substantive justice to justice seekers is greatly influenced by the ability of judges to analyze the law properly, with integrity, morals, and ethics. This goal will not be achieved if judges in the process of law enforcement are only based on positivistic-legalistic legal thinking, so that the function of judges is only to apply written rules in the law and legal certainty, regardless of social justice that lives in society. This is in line with Kusnu Goesniadhie's view that the law can be said to be good if it is able to accommodate the socio-cultural values that live in society, this is because the two are closely related to each other.[14]

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[9] Asep Bambang Hermanto, "The Doctrine of Legal Positivism in Indonesia: Criticism and Alternative Solutions," *Journal of Law and Business (Selisik)* 2, no. 4 (2016): 108–21, http://journal.univpancasila.ac.id/index.php/selisik/article/view/650.

[10] M. Yasin Al Arif, "Law Enforcement in the Perspective of Progressive Law," *Undang: Jurnal Hukum* 2, no. 1 (2019): 169–92, https://doi.org/10.22437/ujh.2.1.169-192.

[11] Hwian Christianto, "Interpretation of Progressive Law in Criminal Cases," *Mimbar Hukum* 23, no. 3 (2011): 479–500, https://doi.org/10.20303/jmh.v23i3.260.

[12] Satjipto Rahardjo, *Law Enforcement A Sociological Review* (Yogyakarta: Genta Publishing, 2009), 2.

[13] Bayu Setiawan, "The Application of Progressive Law by Judges to Realize Substantive Justice of Transcendence," *Cosmic Law* 18, no. 1 (2018): 159–79, https://doi.org/10.30595/kosmikhukum.v18i1.2338.

[14] Kusnu Goesniadhie S., "The Moral Perspective of Good Law Enforcement," *Ius Quia Iustum Law Journal* 17, no. 2 (2010): 195–216, https://doi.org/10.20885/iustum.vol17.iss2.art2.

But unfortunately, as Syamsudin said, the positivistic way of thinking still dominates judges in court.[15] This indirectly affects them in deciding a case they are facing. Because as the author has previously described, the law in the conception of positivism tends to be conceived as *a lawyer's law,* so that it is identical to the written regulations (laws), the running of a legal process must be in accordance with the principles of *rules and logic,* and in the understanding of positivism only laws are considered capable of being a tool to order society. Strictly speaking, as Satjpto Rahardjo said, the law is considered an order whose object is a human being, and therefore human beings must submit and obey the law itself.[16]

Therefore, according to Satjpto Rahardjo, legal thought that tends to make humans as objects of law, must be changed and return to the basic philosophy of the law itself, namely law for humans, not the other way around. Because in progressive law, the position of man is above the law itself. The dependence of progressive law on humans makes it required to be creative, both with legal breakthroughs and by breaking *rules*.[17]

But unfortunately, there are still many law enforcers who still place the law as a *center* and goal within themselves, without considering and paying attention to dimensions outside of themselves. The neglect of the values of honesty and wisdom in law enforcement, which implies sensitivity, empathy, and also dedication to upholding justice and truth to be far behind. The issue of truth and justice is only limited to legal-formal. With this mindset, judges prefer legal certainty over the values of justice and utility.[18]

As a long hand of the institution of judicial power, judges have a role as a party that carries out judicial functions. With this function, a judge should be aware that the main task of a judge is to enforce law and justice.[19] Therefore, judges are required to have intellect, have mastery of the laws and regulations, and understand the social *setting* and legal values that exist and live in society. This is in accordance with the provisions in Article 5 (five) paragraph (1) of Law Number 48 of 2009 jo. Article 22 of the Compilation of Islamic Law which emphasizes that judges are obliged to explore, follow, and understand the values of law and justice that live in society.

But unfortunately, the provisions of the law that order judges to explore, follow, and understand the value of law and justice in society have not been fully carried out by law enforcers. The benchmark used by law enforcers in realizing the values of justice is still fully sourced from the text of the law.

In the context of the Religious Court, a judge is required to perform ijtihad and explore unwritten laws if he does not find the legal provisions in the written rules. This is because it is a form of responsibility for the judges of the Religious Court to always develop and update Islamic law in the field of Islamic civil law by applying methods of legal

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[15] M Syamsudin, "Reconstruction of Judges' Mindset in Deciding Corruption Cases Based on Progressive Law," *Journal of Legal Dynamics* 11, no. 1 (2011): 11–21, https://doi.org/10.20884/1.jdh.2011.11.1.11.

[16] M Syamsudin, "Reconstruction of Judges' Mindset in Deciding Progressive Law-Based Corruption Cases,"

[17] Suteki, "*The Track Record of Satjipto Rahardjo's Progressive Legal Thought*.", h., 34

[18] Satjipto Rahardjo, "Law is a Human, Not a Machine," in *Let the Law Flow: A Critical Note on the Struggle of Man and Law* (Jakarta: Kompas, 2007), p., 91.

[19] Abdul Manan, *The Application of Civil Procedure Law in the Religious Court* Environment (Jakarta: Prenada Media, 2005), p., 291.

discovery *(rechtsvinding law),* or by performing ijtihad on cases that do not have legal provisions by considering the legal values that live in society.[20] Aren't the mujtahid scholars themselves in carrying out their ijtihad not only sourced from sacred texts *(an-nushush al-muqaddasah)* both the Qur'an and the Sunnah, but also make the phenomenon that occurs in society as part of the determination of the law obtained through ijtihad. Thus, the legal provisions of a judge through court decisions are not only normative dogmative, but also have an empirical sociological aspect.[21] The judge's decision is the final result of the legal discovery activity by the judge on a case submitted to him to resolve problems between the parties.[22]

According to M. Hatta Ali, the power possessed by a judge in article 24 paragraph (1) of the 1945 Constitution is an independent power to carry out the judiciary to uphold law and justice.[23] Of course, one of the parties to the dispute is dissatisfied with the decision set by the judge and intends to "fight" the judge's decision through legal remedies,[24] in the form of appeal, cassation or review to the Supreme Court.[25] Therefore, it is not uncommon to find cases of annulment of marriage not only at the level of religious courts, however, it is continued to the level of appeal.

In the West Java High Court of Religion, there have been many rulings regarding the annulment of marriage, for example, the annulment of marriage with the decision number: 185 / Pdt.G / 2023 / PTA. Bdg, 84 / Rev. G / 2023 / PTA. Bdg, 106 / Rev. G / 2023 / PTA. Bdg and so on. An appeal legal remedy is a legal remedy carried out if one party is dissatisfied with a court decision of the first instance. According to Article 21 paragraph (1) of Law No. 4 of 2004 concerning judicial power over the decision of the court of first instance, the parties concerned can appeal to a higher court unless the law stipulates otherwise.[26]

Annulment of marriage is the annulment of the marriage relationship because the parties cannot meet the conditions to carry out the marriage and the annulment is decided by the court.[27] while from the perspective of fiqh, different terms are known even though the laws are the same related to the annulment of marriage, namely: *nikah al-Fasid and nikah al-*

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[20] Rinrin Warisni Pribadi, "Reform of Islamic Law through Jurisprudence of Religious Courts," *At-Tatbiq* 04, no. 1 (2019): 41–56.

[21] Edi Rosman, "The Sociological Paradigm of Islamic Family Law in Indonesia (Reconstruction of the Critical Integrative Paradigm)," *Al-Hurriyah* 14, no. 1 (2013): 59–78, https://doi.org/10.24090/mnh.v9i1.511.

[22] Tata Wijayanta and Hery Firmansyah, Differences of Opinion in Court Decisions, (Yogyakarta: Medpress Digital Publishers, 2013), p., 29.

[23] M. Hatta Ali, "*Building an Authoritative Judiciary Through Increasing Public Trust and Independence of the Judiciary*" in Syarif Mappiasse, The Legal Logic of Considering Judges' Decisions, (Jakarta: PRENADAMEDIA GROUP, 2013)

[24] RAS Editorial, *Practical Legal Tips: Efforts to Face Criminal Cases*, (Depok: Raih Asa Sukses, 2010), cet.1, p., 169.

[25] Binsar M. Gultom, *A Judge's Critical View in Law Enforcement in Indonesia*, (Jakarta: PT Gramedia Pustaka Utama, 2015), p., 4

[26] Syahrul Sitorus, "*Legal Remedies in Civil Cases* (Verzet, Appeal, Cassation, Review and Derden Verzet)." Hikmah 15.1 (2018): p., 66-67.

[27] Bakri A. Rahman and Ahmad Sukardja, *Law According to Islam, UUP and Civil Law/BW*, (Jakarta: PT Hidakarya Agung Jakarta, 1981), p. 36. Compare with Riduan Syahrani Abdurrahman, Problems of Marriage Law in Indonesia, (Jakarta: PT Media Sarana Press, 1986), p., 36.

Bathil.[28] Al-Jaziri as quoted by Mardani believes that *nikah al-Fasid* is a marriage that does not meet one of its conditions, so the law is invalid in Islamic law.[29] The *al-Bathil marriage* is a marriage that does not meet the principles of marriage set by Islamic law.[30]

This research uses a qualitative method with an empirical juridical approach. Primary data was obtained from marriage annulment decisions Number 185/Pdt.G/2023/PTA.Bdg, 84/Pdt.G/2023/PTA.Bdg and 106/Pdt.G/2023/PTA.bdg, secondary data was obtained from laws, journals and other law books that have the same relevance as this research. After the data is collected, data analysis is carried out to get answers to the problems raised. this research is directed at studying the implementation of progressive law in the West Java Religious High Court regional institution.

Application of Progressive Law in the West Java Religious High Court Region

Marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.[31] Marriage according to Islamic law is a marriage, which is a very strong contract or *mitsaqan ghalidzan* to obey Allah's commands and carry it out is worship. From these two understandings, it can be concluded that marriage occurs with the existence of a contract, which is an agreement to bind oneself with an innate willingness between a man and a woman. This provision is also strengthened by Article 6 of Law No. 1 of 1974 which states that "*Marriage must be based on the consent of the two prospective* brides".

This means that a person cannot be forced by threats or by any means to marry another person. Marriage must be based on the will and consent of each party. If the marriage is held because of a threat, then based on Article 27 paragraph (1) of the Marriage Law, the husband or wife can apply for the annulment of the marriage if the marriage is held under coercion under unlawful threats.

Coercion from parents or arranged marriage is often unable to be rejected by a child, as a result of which one or both spouses cannot accept the presence of their life partner. Marriage forced by parents or arranged marriage will have an impact on the bride and groom who are married. Because the marriage is not wanted, so the sense of responsibility for marriage will be neglected. Then what happens is the denial of obligations as a married couple, this will result in disappointment for one of the parties who feels played by their partner. Then it worsens the communication between the two so that it will have bad consequences that result in their marriage not being able to be maintained.

Coercion during marriage can indeed be used as a reason for annulment of marriage as contained in Article 71 of the Compilation of Islamic Law, which states that a marriage can be annulled if:

a) A person commits polygamy without the permission of the Religious Court;

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[28] Amiur Nuruddin, *Islamic Civil Law in Indonesia*, (Jakarta: Kencana Prenada Media Group, 2004), p., 98.

[29] Mardani, *Islamic Family Law in Indonesia*, (Jakarta: Kencana, 2016), p. 101.

[30] Syarifuddin Latif, *Marriage Law in Indonesia Book 2*, (Watampone: Berkah Utami, 2010), p., 13.

[31] Haerani, Ruslan. 2024. "The Legal Consequences Of Underage Marriage In The Merariq Culture Of The Sasak Tribe In Merembu Village, Labuapi District, West Lombok Regency". Mawaddah: Jurnal Hukum Keluarga Islam 2 (1):101-24. https://doi.org/10.52496/mjhki.v2i1.33.

b) The woman who was married was later found to be the wife of another man who was mafqud;
c) The woman who is married turns out to be still in iddah from another husband;
d) Marriage that violates the age limit of marriage as stipulated in article 7 of Law No. 1 of 1974;
e) The marriage is carried out without a guardian or is performed by an illegitimate guardian;
f) Marriages that are carried **out by force.**

However, it must also be noted that Article 72 paragraph (3) of the Compilation of Islamic Law and Article 27 paragraph (3) provide a time limit for submitting an application for annulment of marriage caused by coercion or threat to perform marriage, which reads:

> "*If the threat has stopped, or the guilty suspect is aware of his situation, and within a period of 6 (six) months after that he is still alive as husband and wife, and does not use his right to apply for cancellation, then his right is lost.*"

In the decision of the Bandung High Court of Religion annulment of marriage, there seems to be a different interpretation between the word "coercion" in Article 71 letter (f) of the KHI and "unlawful threat" in Article 72 paragraph (3) of the Compilation of Islamic Law jo. Article 27 paragraph (3) of the Marriage Law. Threats are considered different from coercion. Because indeed the application for annulment of the marriage was due to an arranged marriage from the applicant's biological mother so that the applicant could get married, coercion from the biological mother was not accompanied by a threat to hurt the applicant. This interpretation is the reason for the Judge not to grant the applicant's application.

To find out whether coercion and threat that violate the law have the same position in determining the period of annulment of marriage, it is necessary to make an interpretation or interpretation of the two words.

Grammatical Interpretation (Grammar)

In the grammatical interpretation, the provisions in the Laws and Regulations are interpreted based on the meaning of everyday words according to grammar or customs. This interpretation is used in finding the meaning, purpose and purpose of words or terms in a legal rule. In the Great Dictionary of the Indonesian Language, the word forced means to do something that is required even if you don't want to, such as: forced marriage, forced labor, and so on. While coercion in the first sense is to treat, order, ask forcibly, such as:

> *"The hijackers forced the pilot to land his plane at the airport"*

The second meaning is to act with force (urgency, pressure) rape. Then the word threaten or threaten has the meaning of stating an intention (intention, plan) to do something that is harmful, difficult, troublesome, or harmful to other parties, for example:

> *The workers threatened to go on strike;*
> *The hijacker threatened to kill the hostages*.

Coercion or coercion is the practice of forcing another party to behave spontaneously (either through action or inaction) by using threats, rewards, or intimidation or other forms of pressure or force. In law, coercion is codified as the crime of coercion. The action is used as

an influence, forcing the victim to act in the desired way. Coercion may involve actual suffering, physical pain/injury, or psychological damage in order to increase the credibility of the threat. The threat of further damage may lead to cooperation or compliance from the coerced person. Torture is one of the most extreme examples of severe illness is coercion, which is inflicted until the victim provides the desired information. Coercion and threats are indications of the absence of willingness for the parties to the marriage.

From the two definitions above, the author concludes that the meaning of coercion and threat is similar, that is, both coercion and threat are acts or intentions of coercion to require the other party to do something desired by the coercor, even though the coerced party does not want to do it. Coercion and threats will put pressure on the coerced party, so that because of the inability to refuse the coercion, the forced party will inevitably do it, because if he refuses he is afraid that something will happen. The result will be harmful, difficult, or troublesome for the forced party. Both physical and psychological losses.

Scientific Interpretation

Scientific Interpretation is the interpretation obtained in the book of laws, books, articles or the work of experts. As Prof. Dr. H. Ahmad Rofiq, M.A. in his book entitled Islamic Civil Law in Indonesia states that marriages that are held under threat, the legal status is the same as that of a person who is forced, and has no legal consequences. Likewise, people who misjudge their husbands or wives. The legal status is the same as that of a person who is wrong, therefore such a legal action has no legal effect. Unless there are other indications as stipulated in Article 27 of Law Number 1 of 1974 paragraph (3) and Article 72 paragraph (3) of the KHI:

> "*If the threat has stopped, or the guilty suspect is aware of his situation, and within a period of 6 (six) months after that he is still alive as husband and wife, and does not use his right to apply for cancellation, then his right is lost.*"

In addition, the Legal Aid Institute of the Indonesia Women's Association for Justice (LBH-APIK) Jakarta also stated that there is a deadline for submitting marriage annulments. For marriages (e.g. because of falsifying identity or because your marriage occurred due to threats or coercion), the application is limited to only six months after the marriage takes place. If for more than six months they are still living together as husband and wife, then the right to apply for annulment of marriage is considered lost. Meanwhile, there is no time limit for annulment of marriage due to a husband who has remarried without the wife's knowledge (or vice versa). You can apply for cancellation at any time. The opinion refers to Article 27 of the Marriage Law. And in the event that a marriage is carried out not with the consent of the two prospective brides (but on the basis of coercion), then the marriage can be annulled. This includes the case where the marriage is held under an unlawful threat (Article 27 paragraph [1] of the Marriage Law).

Based on the above opinion, it can be concluded that coercion and threats are elements that can destroy marriage. And has the same provisions in the period of submitting an application for annulment of marriage.

Systematic Interpretation

Systematic interpretation is a method that interprets laws as part of the overall legislative system. This interpretation pays attention to the arrangement related to the articles in the law. Thus, systematic interpretation focuses on the fact that the law is not separated, but the legislation as a whole in a country is considered a complete system.

Systematic interpretation can be seen from the nature of the marriage itself first. Marriage according to Law Number 1 of 1974 is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. Meanwhile, in the Compilation of Islamic Law, it is explained that marriage according to Islamic hukun is marriage, which is a very strong contract or *mitssaqan ghalidzan* to obey Allah's commands and carry it out is worship. And this marriage can occur because of *the existence of aqad,* which means an agreement to bind oneself in marriage between a woman and a man. The concept of *aqad* in marriage is certainly different from the concept of agreement in general. Consent or agreement in marriage has three special characters, namely:

a) Marriage cannot be carried out without a voluntary element from both parties.
b) The two parties (male and female) who enter into the marriage agreement have the right to terminate the agreement based on the provisions that already exist in the laws.
c) The marriage agreement regulates the legal boundaries regarding the rights and obligations of each party.

As in general, an agreement, marriage also has the principle of voluntariness from both parties, namely the prospective bride. The principle of voluntariness here implies that both parties, namely husband and wife, do not have an element of coercion in reaching an agreement. This is as contained in the explanation of article 10 paragraph (2) of the Law on Human Rights. In addition to no coercion, there must also be a free will to signify the voluntariness. Then in Law Number 1 of 1974, freedom of will is not explicitly explained. This is contained in the explanation of article 6 paragraph (1) of Law Number 1 of 1974 concerning Marriage.

Not only that, it is further explained in Article 12 of Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law and its explanation that the consent of the two prospective brides referred to here must be contained in the marriage certificate which states in writing that the marriage is on a voluntary basis, free from pressure, threats or coercion.

Threatening acts are also discussed in criminal law, such as the provisions of Article 335 of the Criminal Code (KUHP):

1) Threatened with imprisonment for a maximum of one year or a maximum fine of four thousand five hundred rupiah:
    a. Whoever unlawfully compels another person to do, not do or allow something, by using force, another act or unpleasant treatment, or by using the threat of violence, another act or unpleasant treatment, either against himself or others;

b. Whoever forces another person to do, not do or allow something with the threat of pollution or written pollution.

2) In the case as formulated in point 2, the crime is only prosecuted on the complaint of the person affected. Regarding Article 335 of the Criminal Code, R. Soesilo, explained that what must be proven in this article is:
   a. That there are people who, by opposing their rights, are forced to do something, do not do something, or allow something;
   b. Coercion is carried out by using violence, another act or an unpleasant act, or the threat of violence, either against that person or against another person. Furthermore, R. Soesilo explained that what is meant by "coercion" is to tell a person to do something in such a way, so that the person does something contrary to his own will.

Thus, in the Decision of the Bandung High Court of Religion Case Number: 106/Pdt.G/2023/PTA. Bdg which upheld the decision of the first-instance Religious Court according to case number 124/Pdt.G/2023/PA. CN, because the application fulfills all aspects of the annulment of marriage by looking at the legal certainty that exists in such a marriage is listed in the conditions for the annulment of the marriage of the applicant/appellant, as contained in Article 71 letter (f) of the Compilation of Islamic Law, which states that a marriage can be annulled if the marriage is carried out by force, and is contained in Article 27 of Law Number 1 of 1974 paragraph (3) and Article 72 paragraph (3) of the KHI which said that the duration of time for an application for annulment of marriage is no later than 6 months from the commencement of the marriage according to the marriage certificate, as evidenced by the marriage certificate number: 356/021/XII/2022 dated December 18, 2022, which is when the applicant submits the application for annulment of the marriage has not reached 6 months.

If you look at these articles, the marriage in case number 106Pdt.G/2023/PTA.Bdg. can actually be annulled, but the Panel of Judges of the Appellate Level did not cancel it. The application of Progressive Law by the Judge at the Appellate Level is appropriate because if the marriage is annulled, it requires strong evidence that the appellant's biological mother has committed coercion accompanied by threats. In this case, the judge finds the law by using the method of legal interpretation / legal interpretation, According to Dharma Pratap, interpretation is the explanation of each term of an agreement if there is a double or unclear meaning and the parties give different meanings to the same term or cannot give any meaning to the term. The main purpose of interpretation is to explain the true intention of the parties or it is an obligation to provide an explanation of the intention of the parties as stated in the words used by the parties in view of the circumstances that surround them.[32]

Thus, the meaning of interpretation as a conclusion in an effort to provide an explanation or understanding of a word or term whose meaning is not clear, so that others can understand it, or contains the meaning of solving or unraveling a double meaning, vague norms (*vage norms*), legal antinomies (conflict of legal norms), and uncertainty of a law

[32] Haris, Ahmad, Edy Lisdiyono, and Setiyowati. 2024. "The Reconstruction of Religious Court Decision Execution on the Fulfilment of Children's Rights Post-Divorce in Indonesia". Revista De Gestão Social E Ambiental 18 (7). São Paulo (SP):e5564. https://doi.org/10.24857/rgsa.v18n7-035.

or regulation. The goal is none other than to find and find something that the makers intended.

Prospects for the Development of Progressive Law in Religious Courts in Indonesia

Human life will always be dynamic and developing, no society will stop at a certain point throughout time, from historical evidence it is found that the condition of society is not in a certain condition, but is constantly changing and moving forward, the social construct is not the same as life in the time of the apostles, then the social structure, social institutions and social systems that exist and live in the community begin to have a shift from time to time.[33] It is possible that there will be a new problem, this is a natural and even a necessity in life.

Changes that occur in a society can be observed to take various forms. There are changes that happen slowly (evolution) and there are things that happen quickly (revolutions). Change slowly happens on its own. As a result of the community's adaptation to its environment. [34] Meanwhile, a large-scale change is a change that has been planned. However, rapid change cannot be measured by the tempo of time it occurs, because it often takes a long time.

In such a condition, if the applicable law (*ius constitutum*) cannot provide answers to every problem that occurs, it will then create a legal vacuum (*rechtsvacuum*) which will give rise to anarchic conditions. Therefore, the law is required to adapt to keep up with the development of the existing times, as well as a judge in such conditions is challenged to explore new laws that are relevant to the development of the times to fill the gap, so that the law is felt to be dynamic.

Human progress in the field of science and technology has a very significant impact on various aspects of human life, both positive and negative impacts. The positive impact of the progress of science and technology is that life is getting easier and faster, but on the other hand, it also gives birth to very complex problems and problems. So that to answer and respond to these problems, an accommodating law is needed to change and progress the times.

In such conditions, if the existing and current law (*ius constitutum*) is not able to provide an answer to every new problem, then there will be loopholes in the law (*rechtsvacuum*) which will further give rise to anarchic conditions. Therefore, the law is required to be adaptive and dynamic in keeping up with and responding to the challenges of the times. Judges and practitioners engaged in the field of law are challenged to be able to fill the void either by finding or creating laws.

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[33] Muhammad Maisan Abdul Ghani, Ghina Ulpah, Muhammad Husni Abdulah Pakarti, and Diana Farid. 2024. "The Development Of Islamic Law After The Taqlid Period (Establishment Of Madhhab)". Mawaddah: Journal of Islamic Family Law 1 (1):68-85. https://doi.org/10.52496/mjhki.v1i1.5.

[34] Julisa Sistyawan, Dwanda, Muhammad Husni Abdulah Pakarti, Lexy Fatharany Kurniawan, Loso Judijanto, and Zulkifli Makkawaru. 2024. "The Position of the Van Dading Deed in the Settlement of Joint Property Disputes: Study of Decision 901/Pdt.G/2023/PA. Tmg". Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan 11 (1), 49-67. https://doi.org/10.32505/qadha.v11i1.8811.

Judges, in accordance with their roles and responsibilities, are not only the mouths or mouthpieces of the law (*baouche de lalor*), but a judge is also required to be able to find laws (*rechtsvinding*) and create laws (*rechtschepping*) by exploring the values that live in society, of course in this case without ruling out the certainty of the law itself. For every judge and person who is concerned about legal developments in responding to and accommodating the changes and progress of the times, there has been an instrument of legal discovery called progressive law, Progressive Law has a very large role in legal reform.

Progressive law is known to judges as *contra legem*, which is the authority of judges to deviate from the provisions of written laws that have existed but are outdated or outdated so that they are no longer able to fulfill the sense of justice in society[35]. *Contra legem* is a court judge's decision that overrides existing laws and regulations, so that judges do not use it as a basis for consideration or even contrary to legal articles as long as the article is no longer in accordance with the development and sense of justice of the community[36]. However, the judge should know in advance the conditions for when the progressive law will be applied.

For the sake of creating justice, the judge can act *Contra legem,* this is permissible on the grounds that if in a case there are no clear rules or rules that govern a legal issue, then the judge has the authority to carry out *Contra legem,* that is, the judge is obliged to explore, follow and understand the legal values and sense of justice that lives in society[37]. In progressive legal teachings, it is not allowed to be too positive legalistic in answering legal issues. Progressive efforts are needed where these efforts provide benefits and justice for justice seekers. Judges who are said in procedural law to be the mouthpiece of the law are expected to be able to be progressive by not always assuming that legal certainty will provide adlian.

Since progressive law places the interests and needs of human beings or the people as its orientation point, it must have sensitivity to the problems that arise in human relations. As a consequence of the dynamics that continue to grow, the law must also continue to develop and not be left behind by these dynamics. This is to avoid a gap that is far from the needs and expectations of the community. Based on this need, the legal function, which initially maintained existing patterns of behavior, has shifted to become more active in making changes in society.[38]

Juridical, sociological and philosophical considerations when applying progressive law are considerations that can be used by judges, meaning that when deviating from the law, it does not mean that all considerations must exist, sometimes only sociological considerations are enough, or juridical views alone are enough, or others are sufficient for the sake of the law.[39]

The limit of the judge when applying the progressive law, if it involves the procedural law of the closed judge and is determined in the panel of judges handling the case, but when it comes to material law, there is no limit at all as long as there is a legal

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35 Results of the interview with the Indramayu religious court judge February 27, 2024

36 Results of the interview with the Indramayu religious court judge February 27, 2024

37 Luh Gede Siska Dewi Gelgel and I Made Sarjana, *Implementation of Contra legem by judges elaborating progressive legal values,* (Civil Law Section, Faculty of Law, Udayana University), p. 3.

38 Suwito, *Progressive Judge's Decision in Civil Cases,* (Hasanuddin Law riview. 2015), p. 105.

39 Results of the interview with the Indramayu religious court judge February 27, 2024

reason.[40] Progressive law will continue to advance and develop on the progress of the times as long as the rule does not exist, because we adhere to *legal positivism*.

Progressive law is a necessity for judges in deciding cases, especially when facing a case whose rules are not clear, so it is mandatory for judges to explore and understand legal values and a sense of justice that lives in the community, the assumption of judges that every case must have a law.

The Religious Court as one of the sub-systems of National Law in Indonesia is required to contribute to facing new problems due to the impact of the progress of human civilization, especially in the field of Islamic civil law. The determination of a fair law is the basis of legal theory that has been pioneered by legal experts so that it is very relevant if it is associated with the legal needs in Indonesia in the current era of globalization.

Reconstructing religious justice using a progressive legal method in marriage annulment cases offers an opportunity to enhance fairness, equity, and relevance in the adjudication of such cases. By adapting traditional practices to contemporary contexts and emphasizing individual rights and transparency, progressive approaches can address the shortcomings of existing systems and promote a more just and inclusive process. Thus, the door of judges applying progressive law will never be closed, because life is still going on, especially in the Religious Court, legal problems will continue to exist and continue to develop, legal pressures that have never been prepared by judges that cause various difficulties, and continue to take root until the law boils down to justice for humans.

Conclusion

Application of Progressive Law in the Case of Annulment of Marriage in the Region of the West Java High Court of Religion, in the case of forced marriage, according to the judge's consideration, because if the marriage is annulled, it requires strong evidence that the appellant's parents have committed coercion accompanied by threats. In this case, the application of law by the judge using the method of legal interpretation, which is a conclusion in an effort to provide an explanation or understanding of a word or term whose meaning is not clear, so that others can understand it, or contains the meaning of breaking or elaborating a double meaning, a vague norm (*vage norm*), legal antinomy (conflict of legal norms), and uncertainty of a law and regulation. The goal is none other than to find and find something that the makers intended.

Prospects for the Development of Progressive Law in Religious Courts, Determination of a fair law is the basis of legal theory that has been pioneered by legal experts so that it is very relevant if it is associated with the needs of law in Indonesia in the current era of globalization. Thus, the door of judges applying progressive law will never be closed, because life is still going on, especially in the Religious Court, legal problems will continue to exist and continue to develop, legal pressures that have never been prepared by judges that cause various difficulties, and continue to take root until the law boils down to justice for humans.

[40] Results of the interview with the Indramayu religious court judge February 27, 2024

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