



Implementation of Determination of Guardians of Adhal in the Ujung Tanjung Religious Court from the Maslahat Perspective

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ABSTRACT

Wali 'adhal is a guardian who is reluctant to marry a woman who has reached puberty with a man of her choice. If an 'adhal guardian occurs, the judge's guardian can only act as a marriage guardian after a stipulation by the Religious Courts states regarding the adhal guardian. The purpose of this research is to find out; a) How is the Implementation of the Determination of Adhal Guardians in the Ujung Tanjung Religious Court from a Maslahat Perspective? ; b) What is the Nature and Philosophy of Determining Wali 'Adhal according to the Judge of the Ujung Tanjung Religious Court?; c) What is the impact of the appointment of 'Adhal guardians on the marriage procedure? This research, when viewed from the location of the data source, is included in the category of field research. This research was conducted at the Ujung Tanjung Religious Court. The data collection techniques used in this study are Observation, Interview, and Documentation. Data analysis techniques are efforts carried out by way of 1) data reduction (data reduction), 2) data presentation (data displays and 3) drawing conclusions/verification (conclusion drawing/veriffication). The results of this study are; 1) The Nature and Philosophy of Appointing Guardians of 'Adhal according to Religious Court Judges in determining a guardian at 'Adhal must be seen from various perspectives of the opinions of the priests of the madhhab and refer to Law Number 1 of 1974 and KHI; 2) Implementation of the Determination of 'Adhal Guardians in the Ujung Tanjung Religious Court with a Maslahat Perspective, namely referring to the Regulation of the Minister of Religion Number 30 of 2005 with the following steps, namely: First, calling the parties, namely the applicant and guardian, Second, peace efforts, Third, reading application letter, Fourth, trial examination, Fifth, reading the results of the decision of the panel of judges;; 3) The impact of the appointment of 'Adhal guardians on the marriage procedure has the following impacts: Positive impacts (maslahat), namely (a), the applicant can carry out the marriage according to the rules of religious law and state law as contained in the KHI; b) Avoiding immoral acts (adultery), with a decision that has been given by the judge; c) Reaffirm clearly the rights and responsibilities of a guardian in marriage and the consequences given in case of reluctance; the negative impacts of the appointment of 'Adhal guardians are as follows: a) the loss of a guardian's responsibility in raising his child in marriage; b) The loss of harmony in the family.

Keywords: Implementation, Determination, Wali 'Adhal, Religious Courts.



Introduction

A guardian in marriage is someone who acts on behalf of the bride in a marriage contract (akad nikah). So a guardian in the context of marriage is a person who has the power to carry out a marriage contract for those who are under his authority that has been determined by *syara'* (Muhamad Fauzi, 2003). The existence of a marriage guardian in a marriage contract is something that must exist and a marriage contract that is not carried out by a guardian is invalid. The guardian is placed as a pillar in marriage according to the agreement of the clergy. In the marriage contract itself, the marriage guardian can serve as a person who acts on behalf of the bride and can also be a person whose approval is requested for the continuity of the marriage (Amir Syarifudin, 2009).

In the position of marriage guardian to be harmonious in marriage, there are several requirements that must be met in order for someone to become a marriage guardian, namely: male, Muslim, Aqil, and baligh. During the implementation of the marriage contract, the *ijab* (submission) is carried out by the bride's guardian or his representative, and the *qabul* (acceptance) is carried out by the groom. The urgency of marriage guardians in the marriage process encourages the discussion about marriage guardians in *fiqh* to be quite lengthy and there are many differences of opinion which also include discussions regarding changes or transitions in the position of marriage guardians (Amir Syarifuddin, 2010).

In simple terms, changes in marriage guardians are caused by 3 things, first because the guardian does not meet the requirements, second because the guardian is *adhal* (refuses to marry), third is because of the *unseen* (Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rusyd al Qurtubi Al Andalusi, tt). If the guardian does not meet the requirements as a guardian, then his guardianship rights fall to the next guardian or judge (Abdurrahman al Jaziri, 2003). As for the legal guardian, his guardianship rights are returned to the judge (Sayid Abu Bakr bin Sayid Muhammad Syatha, tt). And for an *unseen* guardian, the guardianship rights can be transferred to the next guardian or judge (Wahbah al-Zuhayli, 1989), (Muhammad Nawawi bin Umar al Jawi, tt).

In Indonesian Marriage Law, in addition to being contained in Law Number 1 of 1974, arrangements regarding marriage guardians are also mentioned in the Compilation of Islamic Law. Law No. 1 of 1974 does not clearly regulate marriage guardians. This marriage guardian provision is slightly alluded to in article 26 paragraph (1). Implicitly the wording of the article clearly indicates that a marriage without a guardian means that the marriage is void or can be annulled. However, if it turns out that those who have entered into a marriage have been living together as husband and wife, then the right to annul it becomes void (Abu Yahya Zakaria al Anshari, tt).

Arrangements for marriage guardians in the Compilation of Islamic Law (KHI) are mentioned in Chapter IV Pillars and Terms of Marriage in the third part of Marriage Guardians starting from article 19 to article 23. Broadly speaking there are two types of guardians in marriage, namely *nasab* guardians and judge guardians. The Regulation of the Minister of Religion governing marriage guardians includes PMA number 11 of 2007 concerning Registration of Marriages which was replaced by PMA number 19 of 2018 concerning Registration of Marriages and shortly thereafter replaced with PMA number 20 of 2019 concerning Registration of Marriages. In PMA number 11 of 2007 regarding marriage guardians it is regulated in article 18, PMA number 19 of 2018 regulates more detail in articles 9, 11. PMA number 20 of 2019 concerning Marriage Registration is mentioned in articles 10, 12, 13.10 Even more specifically in arrangements regarding government judge guardians also regulate in PMA number 30 of 2005 (al Imam Taqi al Din Abu Bakr bin Muhammad al Husaini, tt).



The practice of wali adhal is no longer a foreign issue in the context of Islamic law. The practice of adhal guardians is often used as an alternative step by marriage actors because of the condition of their parents who are still considering their beliefs (Irfan, 2015). The phenomenon of the occurrence of wali adhal is not only motivated by something that is syar'i, the reason for the syar'i is the reason for things that are justified by syara' law. For example: the guardian's daughter has been proposed by another person or the guardian already has other candidates for her child, different religions, disabilities, poor, and so on (Alhamdani, 1989). Marriage is a sunatullah that is general and applies to all creatures, this is a way chosen by Allah SWT as a way for his creatures to reproduce, and preserve their lives (Tihami dan Sohari Sahrani, 2010). A marriage can take place if the conditions for marriage are met, whether it concerns the person, the completeness of the administration, the implementation procedure and the mechanism (Aisyah, Nur, 2018).

Article 23 of the Compilation of Islamic Law states: (1) The new judge's guardian can act as marriage guardian if the nasab guardian is not available or is unable to present him or his place of residence is unknown or is occult or adhal or is reluctant. (2) In the event that the guardian is adhal or reluctant, the new judge's guardian can act as marriage guardian after a decision has been made by the religious court regarding said guardian (Abdurrahman, 1995). So the compilation of Islamic law in Indonesia follows the opinion of the majority of scholars who say a guardian is a condition for a valid marriage, which if there is none or under certain circumstances, a judge's guardian can become a marriage guardian (Ridwan, Muhammad Saleh, 2014).

Based on observational data on the problem of the presence of guardians, there are times when people who have the right to become guardians are reluctant to marry off their children for several reasons. In this case, the guardian who refuses to become the marriage guardian is called the Wali Adhal. Only in cases that are deemed unreasonable, parents disapprove of their older sibling's marriage and refuse to become guardians, for example parents refuse on material considerations, rank, and the birth characteristics of the prospective husband, not on religious and moral considerations. Marriage can be requested from the sultan, the head of state who is also called a judge. Or in other cases when the whereabouts of a guardian are unknown, so whether you like it or not, it is the judge's guardian who has the right to become the guardian of the marriage (Papada, Andi Tenriajeng, dkk, 2020).

Metode Penelitian

Penelitian ini termasuk jenis penelitian pustaka (library research), yakni penelitian yang obyek kajiannya menggunakan data pustaka berupa buku-buku sebagai sumber datanya. Penelitian ini dilakukan dengan membaca, menelaah, dan menganalisis berbagai literatur yang ada, berupa Al Qur'an, hadis, kitab, maupun hasil penelitian. Dalam penelitian ini, peneliti menggunakan dua macam data, yaitu data primer dan data sekunder. Data primer adalah data yang diperoleh langsung dari subyek penelitian dengan menggunakan alat pengukuran atau alat pengembalian data langsung pada subyek sebagai sumber informasi yang dicari. Data primer yang digunakan adalah Al-Qur'an, Hadist, dan KHI. Data sekunder adalah data yang diperoleh dari pihak lain, tidak secara diperoleh oleh peneliti dari subjek penelitiannya. Untuk mendapatkan data sekunder dilakukan dengan melalui studi kepustakaan yang berisikan informasi tentang primer, terutama bahan pustaka, melalui literatur-literatur dari buku pustaka, karya ilmiah. Data Sekunder yang digunakan adalah buku, jurnal, kitab-kitab islam dan internet.

Teknik pengumpulan data adalah cara yang dipakai untuk mengumpulkan informasi atau fakta-fakta dilapangan. Teknik pengumpulan data merupakan langkah yang paling strategis dalam penelitian karena tujuan utama penelitian adalah mendapatkan data. Tanpa



mengetahui dan menguasai teknik pengumpulan data, kita tidak akan mendapatkan data yang memenuhi standar data yang ditetapkan. Teknik pengumpulan data yang digunakan peneliti adalah metode library research, yaitu studi kepustakaan. Analisis data adalah proses mengatur urutan data, mengorganisasikannya kedalam suatu pola, kategori, dan satuan urutan dasar. Teknik analisis data yang digunakan dalam penelitian ini adalah metode deskriptif, yaitu penelitian yang berusaha mendeskripsikan dan menginterpretasi apa yang ada, pendapat yang sedang tumbuh, proses yang sedang berlangsung, akibat atau efek yang terjadi atau kecenderungan yang berkembang.

Hasil dan Pembahasan

The Nature and Philosophy of Appointment of Wali 'Adhal According to Judges at the Ujung Tanjung Religious Court.

In Islamic teachings, parents may not force their adult daughters to marry a man they don't like (Ghazali Mukri, 2000). Parents are obliged to ask their daughter's opinion regarding the man who will be matched, whether she wants to accept the man or reject him. If her daughter is a widow, then she must express her consent frankly. But if the daughter is a girl, then her silence is a sign of approval because she admits feeling embarrassed. If she says "no" then her parents are not authorized to force her to marry a man she doesn't like.

Because parents forcing their daughters to marry men they don't like can result in unwanted things, their daughters may run away from their homes and enter into marriages that are not in accordance with legal procedures, and even the children can commit suicide because they will be arranged for an arranged marriage. with a man she doesn't like. Nowadays, there are many disputes between parents and their daughters regarding marriage. Due to the fact that there is a dispute between the parents and their daughter, it is likely that the parents are not willing to marry off their daughter or are reluctant ('Adhal) to become guardians for their daughter.

One of the principles of marriage in Islam is the consent of each party and is based on voluntary feelings. This is as the Prophet said:

حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَخْبَرَنَا سُفْيَانُ أَخْبَرَنَا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَيَّمَا امْرَأَةٍ تَكَحَّتْ بِغَيْرِ إِذْنِ مَوْلَاهَا فَتَكَاحَهَا بِاطِّلَ ثَلَاثَ مَرَّاتٍ فَإِنْ دَخَلَ بِهَا فَالْمَهْرُ لَهَا بِمَا أَصَابَ مِنْهَا فَإِنْ تَشَاجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ حَدَّثَنَا الْقَعْنَبِيُّ حَدَّثَنَا ابْنُ لَهَيْعَةَ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِمَعْنَاهُ قَالَ أَبُو دَاوُدَ جَعْفَرٌ لَمْ يَسْمَعْ مِنَ الزُّهْرِيِّ كَتَبَ إِلَيْهِ (Abu Dawud Sulaiman bin Al-Asy'ats bin Ishaq bin Basyir Al-Azdiy As-Sijistani, tt.)

Meaning: "Has told us Muhammad bin Kathir, has told us Sufyan, has told us Ibn Juraij, from Sulaiman bin Musa from Az Zuhri from Urwah, from Aisha, he said; The Prophet sallallaahu 'alaihi wasallam said: "Every woman who marries without the permission of her guardian, her marriage is void." He said it three times. If he has interfered, then for him the dowry is because of what he got from it, then if they are in dispute then the ruler is the guardian for the person who has no guardian. Has told us Al Qa'nabi, has told us Ibn Luhai'ah, from Ja'far bin Rabi'ah, from Ibn Shihab, from 'Urwah, from Aisha, from the Prophet sallallaahu 'alaihi wasallam, the meaning of it. Abu Dawud said; jal'far did not hear from Az Zuhri, he wrote a letter to him" (Narrated by Abu Daud: 1784)

The issue of marriage guardians is the most important discussion in the Compilation of Islamic Law. In Article 19 KHI emphasizes that the marriage guardian in marriage is a pillar that must be fulfilled for the prospective bride who acts to marry her off. This is a pillar/condition according to the majority of scholars except the Hanafi school of thought, and according to the majority of scholars, marriage will only be valid if there is a guardian, based



on (اوزأولضعت لافن هجهن نأ نحكني). According to Imam al-Shafi'i, this verse is the clearest verse regarding the need for a guardian (Jalâl al-Dîn al-Mahallî,tt). If the guardian is not necessary, then the prohibition on the guardian who prevents marriage as in the verse above will not give any meaning. There is also a hadith of Rasulullah SAW:

لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاهِدَي عَدْلٍ (رواه احمد)

Therefore, KHI explicitly requires a guardian in marriage. Furthermore, KHI stipulates in Article 20 as follows: 1). Acting as marriage guardian is a man who fulfills the requirements of Islamic law, namely Muslim, aqil and baligh, 2). Marriage guardians consist of: (a) nasab guardians, and (b) judge guardians. Article 20 point (1) has been stipulated in fiqh, especially in the Shafi'i school. According to Imam al-Bâjûrî, the conditions that must be met for a guardian are 1). Islam, 2). Adulthood, 3). Reasonable, 4). Freedom, 5). Male, 6). Fair (not wicked). From the description of Imam al-Bâjûrî there are two that are not included in the KHI; that is free and fair. Merdeka is not included because it views that the status of independence is certain to exist and does not need to be qayyidized because now there is no bondage. Meanwhile, the status of justice is not included because it adheres to the second opinion in the Shafi'i school, that the wicked guardian can still be the guardian of the marriage (Kementerian Agama RI, 2020).

Article 20 point (2) also stipulates the division of guardians into two, namely lineage guardians and judge guardians. In this case, basically in line with fiqh books. In the book of Syarqâwî 'alâ al-Tahrîr, guardians are divided into 4, namely fatherhood (father, grandparents, and above), who inherits 'ashabah from lineage, the nature of servitude (الولاء), and the territory of the sultanate or judiciary. If viewed from this statement, it can be concluded into 3, namely in terms of lineage (the first is fatherhood and inheritance of 'ashabah), in terms of servitude (الولاء), and the territory of the sultanate or judiciary. in the Indonesian context, what exists is in terms of lineage and jurisdiction, then it is in accordance with the provisions of Article 20 number (2). To regulate who is the guardian for a woman according to the provisions of Article 20 point (2) letter (a), Article 21 KHI regulates as follows: a) The nasab guardians consist of four groups in order of position, one group takes precedence and the other groups according to whether or not the kinship arrangement is close to the prospective bride.

First, the group of male relatives straight up, i.e. father, paternal grandfather and so on. Second, the group of relatives of biological brothers or paternal brothers, and their male descendants. Third, the uncle's kin group, namely the father's biological brothers, half-fathers and their male descendants. Fourth, the group of grandfather's biological brothers, paternal brothers and their male descendants. b). If in one group of marriage guardians there are several people who are equally entitled to be guardians, then those who are most entitled to become guardians are those who are closer in degree of kinship with the prospective bride. c). If you are in a group with the same degree of kinship, then the person most entitled to become a marriage guardian is the biological relative of a relative who is the same father. d). If within a group, the degree of kinship is the same, namely the same biological degree or the same paternal relatives, they are equally entitled to become marriage guardians, prioritizing those who are older and fulfilling the requirements of a guardian (Kementerian Agama RI, 2020).

Basically, Article 21 is all in accordance with the provisions contained in the Shafi'i school of fiqh. It's just that the KHI systematics uses the division of groups to make it easy to understand. While the systematics commonly used by the classical Shafi'i school of fiqh is to directly give the order of guardians

(ببترت الأوابلء). It is necessary to pay close attention, KHI remains consistent in accordance with the provisions of Syafi'i fiqh here, because in numbers (2), (3), and (4) there are already orderly clauses in the order as in Syafi'i's fiqh itself (Syaikh Abd al-Rahman al-Jazairi, tt).



Furthermore, Article 22 KHI also anticipates the status of marriage guardians which have been mentioned in terms of the abilities they have as follows: If the marriage guardian is the most entitled, the sequence does not meet the requirements as marriage guardian or because the marriage guardian suffers from speech impairment, hearing impairment or is old, then the right to become a guardian shifts to another marriage guardian according to the next degree.

The decision to transfer guardianship if the guardian who is more entitled does not meet the requirements, that is something that is understandable as in the Shafi'i school (Syaiikh Abd al-Rahman al-Jazairi, tt). While the stipulation is that a marriage guardian who is deaf or mute or who is elderly may not become a guardian and his guardianship can be transferred to someone below his rank (Ibrâhîm al-Bâjûrî, tt).

Implementation of the Determination of Wali 'Adhal in the Ujung Tanjung Religious Court from the Maslahat Perspective

Formal law (procedural law) is a series of regulations that contain the manner in which people must act before the court and how the courts must act with each other to carry out the passage of civil law regulations. A decision/determination which is a legal product of the trial of a case must be in accordance with the applicable formal and material laws (Abdul Manan, 2006). If one of these elements is not met, it can be said that a decision/determination is legally flawed

Sulaiman (2023) explained in the Implementation of the Determination of 'Adhal Guardians at the Ujung Tanjung Religious Court referring to the Islamic Law Compilation process of settlement of 'Adhal guardians through a judge, as explained in the Compilation of Islamic Law in Article: (a) The new judge's guardian can act as marriage guardian if the lineage guardian is not available or is unable to present him or his residence is unknown or is unseen or 'Adhal or reluctant. (b) In the event that the guardian 'Adhal or is reluctant, the judge's guardian can only act as marriage guardian after a decision has been made by the Religious Court regarding said guardian (Mahmudin Hasibuan, 2021).

Whereas in the Regulation of the Minister of Religion Regulation of the Minister of Religion Number 30 of 2005 explains that a judge's guardian can replace a nasab guardian as marriage guardian, or because of 'Adhal (refusal/reluctant), then the judge's guardian has the right to become marriage guardian. This was explained by Adam Wahid Pangaji (2023), that the Settlement of 'Adhal guardians in the Regulation of the Minister of Religion is explained in the Regulation of the Minister of Religion Number 30 of 2005 Article 2 paragraph 1 to 2 there are rules regarding the determination of the judge's guardian, namely as follows: a) For prospective brides who are going to get married in Indonesian territory or outside the country/outside the territory of Indonesia, and do not have a legal guardian who is entitled or the family guardian does not meet the requirements, or is mafqud, or is unable to, or 'adhal, then the marriage will take place by the magistrate. b) Especially for declaring 'adhalnya guardian as referred to in paragraph (1) of this article, it is determined by a decision of the Religious Court/Syar'iyah Court which governs the residence of the prospective bride.

Furthermore, Fahyarrozi, the Registrar of the Ujung Tanjung Religious Court, explained that the Implementation of the Determination of Adhal Guardians at the Ujung Tanjung Religious Court refers to Article 3 of the Regulation of the Minister of Religion Number 30 of 2005 which states: a) The head of the Subdistrict Office of Religious Affairs (KUA) within the relevant District is appointed as the guardian of the judge to marry off the bride as referred to in Article 2 paragraph (1) of this Regulation. b) If the sub-district KUA head as referred to in paragraph (1) is absent or absent, then the Section Head in charge of Islamic Religious Affairs on behalf of the Head of the Regency/City Department of Religion Affairs Office is authorized to appoint one of the Penghulu in the District on behalf of the Minister of Religion. or the closest



person temporarily becomes the guardian of the judge in his territory. c) For areas that are remote or difficult to reach by transportation, the Head of the Section in charge of Islamic Religious Affairs on behalf of the Head of the Department of Religion appoints an assistant to the head of the sub-district to temporarily become the guardian of the judge in his area.

In addition, according to Solomon (2023) Determination of 'Adhal guardians is regulated in Minister of Religion Regulation No. 2 of 1987 Article 2 paragraph (2) and (3). As for the reasons for the occurrence of a guardian of judges based on Compilation of Islamic Law Article 23 paragraph (1) is if the bride does not have a guardian at all or it is impossible to present her or her place of residence is not known. Meanwhile, based on the Decree of the Minister of Religion No. 2 of 1987 Article 2 Paragraph (2) states that for prospective brides who are to be married in Indonesian territory or outside the country/extra-territorial territory of Indonesia, it turns out that they do not have legal guardians who are entitled or their guardians do not meet the requirements or mafqud or are unable or Adhal, then the marriage can take place with the Wali Hakim.

In another explanation, Adam Wahid Pangaji (2023) explained that the Petitioner's prospective husband and the Petitioner's husband were not included in the provisions of the articles above, therefore the reluctance of the Petitioner's guardian did not have a valid reason. Because the Petitioner's guardian proved to be reluctant/'Adhal to marry the Petitioner to the Petitioner's Husband Candidate, the second marriage can take place with the judge's guardian as referred to in Article 23 of the Compilation of Islamic Law. In public life, there is a lot of practice of marriage using a judge's guardian, namely an official appointed by the Minister of Religion or an official appointed by him to act as marriage guardian for a prospective bride who does not have a guardian. This happens because the bride who does not have a lineage guardian at all or a guardian does 'Adhal or refuses to become a marriage guardian.

In the context of Fahyarrozi's benefit (2023) explaining must be in accordance with the principle of determining the law or eliminating difficulties. Because a woman will carry out the marriage, but there is no guardian who has the right to marry her, a judge's guardian is used to overcome this difficulty. Likewise according to the principle of taisir (to make it easier) and tahfif (to make it easier). So that rules like this are very suitable and have fulfilled the concept for the benefit of humans. Because a marriage must fulfill the pillars and conditions of marriage, one of the pillars of marriage is the presence of a guardian. Marriage cannot take place without the presence of a guardian, because in a marriage without the presence of a guardian, the marriage can be considered as not fulfilling the pillars of marriage.

Based on the explanation from the results of the interview above, the Implementation of the Determination of 'Adhal Guardians in the Ujung Tanjung Religious Court in the Maslahat Perspective must refer to article 20 of the Compilation of Islamic Law, guardians are divided into two, namely Nasab guardians and Judge guardians. The guardian of the judge can act as guardian in a marriage if the guardian of the lineage is not present, is traveling far away or is not at the place, is in prison the guardian is a prisoner who cannot be found, is in ihram for Hajj or Umrah, refuses or objects to acting as guardian, and the existing nasab guardian does not meet the requirements.

According to Article 1 of the Regulation of the Minister of Religion Number 2 of 1987, a Judge's guardian is an official appointed by the Minister of Religion or an official appointed by him to act as marriage guardian for a prospective bride who does not have a guardian. The position of the guardian of the judge is as important as that of a guardian for a woman. The judge's guardian can act as the marriage guardian in the implementation of the marriage contract if there is a problem that occurs with the guardian who is most entitled to the woman, or for the prospective bride who does not have a guardian. The guardian of the judge acts as a substitute



for the guardian of the lineage when he is hindered in view of Islamic law and statutory regulations, or refuses to carry out the marriage contract ('Adhal) in marriage.

The use of a judge's guardian is valid if the lineage guardian is still there but is reluctant or 'adhal and does not raise objections or cancels the marriage. The guardian of the judge's role is to overcome difficulties in marriage if the prospective bride does not have a marriage guardian. With a judge's guardian who replaces the marriage guardian for the prospective bride, the main purpose of the marriage will be achieved. The guardian of the judge has the function of facilitating and facilitating the implementation of marriages for women who do not have guardians, this is to obtain benefits for the parties that have something to do with the marriage. After the guardian of the judge marries the bride based on a stipulation issued by the judge of the Religious Court that the guardian of the lineage of the bride is declared 'Adhal, then her obligations as guardian of the judge are revoked by the Judge of the Religious Court. While the rights that may arise from the implementation of the marriage contract are the same as the rights possessed by the nasab's guardian. For example, in the case of canceling the marriage if it turns out that there are conditions that have not been completed or in other words, the nasab's guardian also has the right to cancel the marriage.

Regulation of the Minister of Religion Number 2 of 1987 Article 6, states as follows: (1) Before the marriage contract is held, the Wali Judge asks the Wali Nasab to marry the prospective bride, even though there has been a ruling by the Religious Court regarding 'Adhalnya Wali; (2) If the Nasab's guardian remains 'Adhal, then the marriage contract will be held with the Wali Hakim. According to the Regulation of the Minister of Religion No. 2 of 1987 concerning guardian of judges, namely the District Office of Religious Affairs as a marriage registrar can be appointed as guardian of judges in their territory to marry a bride to a man of her choice. This is in accordance with the provisions of Article

Regulation of the Minister of Religion Number 2 of 1987, which states: (1) The Head of the District Office of Religious Affairs as a Marriage Registrar is appointed as the Guardian Judge in his territory to marry off the bride as referred to in Article 2 paragraph (1) of this rule. (2) If in the sub-district area, the head of the sub-district religious affairs office is absent or absent, then the head of the section on Islamic religious affairs on behalf of the head of the regency/municipality department of religion office is authorized to temporarily appoint a representative/assistant for marriage registrars on behalf of the minister of religion. become the Guardian Judge in his territory.

The Implementation Procedures for Determining Adhal Guardians at the Ujung Tanjung Religious Court with a Maslahat Perspective based on applicable law, namely:

First, the summons of the parties, namely the applicant and guardian. Summons or summons according to civil procedural law are conveying officially (officially) and properly (properly) to the parties involved in a case in court, so that they fulfill and carry out the things requested and ordered by the panel of judges or court. According to Article 388 and Article 390 paragraph (1) HIR, the one who functions to make subpoenas is the bailiff. Only those made by the summons bailiff are considered official and valid. The authority of the bailiff based on Article 121 paragraph (1) HIR is obtained through an order from the chairperson (*council of judges*) which is set forth in the determination of the day of the trial or the determination of the notification (Moh. Najib Syaf, (2023).

Second, peace efforts. In the process of civil case trials, prior to carrying out the examination of the main claim by the panel of judges, the judge is first obliged to reconcile the parties to the dispute. According to Article 130 HIR (Herziene Indonesisch Reglement), if both parties are present on the designated trial day, the district court with the help of the chairman tries to reconcile them. If peace is reached then the peace is made in a deed (letter), in which



both parties are punished to comply with the agreement made. The deed has the same legal force as an ordinary court decision. Supreme Court Regulation (PERMA) Number 2 of 2003 as a further implementation of Article 130 HIR expressly integrates the mediation process into the proceedings in court. Article 12 paragraph (2) explains that a new court is allowed to examine cases through ordinary civil procedural law if the mediation process fails to produce an agreement. Mediation is a process of resolving disputes in court which is carried out through negotiations between the litigating parties. The negotiations are assisted by a mediator who is a third party (neutral) and functions to assist the parties in finding the best and mutually beneficial alternative dispute resolution. Mediators can come from court mediators or mediators outside the court who meet the requirements to have a mediator certificate. Such as judges who are not examiners of cases, advocates, professionals who control the main disputes and judges of the panel of examiners of cases (Moh. Najib Syaf, (2023).

Third, read the application letter. If the guardian is not present during the summons and or the efforts to reconcile the two parties by the panel of judges are not successful, then the trial will continue with the reading of the petitioner's request by the judge.

Fourth, trial examination. The petition for guardian 'Adhal is a voluntary case. Voluntary case processes are different from contentious cases, namely: (1) Examination processes are ex-parte or unilateral in nature. The ex-parte process is simple, namely only hearing the statement of the Petitioner or his attorney in connection with the application, examining the documentary evidence or witnesses submitted by the applicant and there are no replicas, duplications and conclusions; (2) The trial examination was only the Petitioner's statement and evidence, not taking place in a contradictory or optegenspraak manner, meaning that during the examination there were no obstacles from other parties; (3) All trial principles are not applied, for example the principle of listening to both parties or the principle of giving equal opportunity. Examination of the guardian's 'adhal in court with a short program and is done openly to the public. Proof of the guardian's 'Adhal is carried out by the guardian giving information and must be considered by the judge by prioritizing the interests of the Petitioner. If the guardian who is reluctant to marry has strong reasons according to marriage law, the application will be rejected. If the marriage continues, then the consent is invalid or void. The judge's duty is to prove whether the events or facts proposed by the parties are true or not with evidence. Proof is a way to show the clarity of a case to the judge by both parties to the case. Proof in civil law is to justify legal relations in civil proceedings, that is, if the judge grants the plaintiff's demands. This means that the judge concludes that what the plaintiff put forward as a legal relationship between the plaintiff and the defendant is true (Sudikno Mertokusumo, 2006).

Proof in a broad sense is to strengthen the judge's conclusion with valid evidence requirements. Article 163 of the Indonesian Regulations stipulates that whoever claims to have rights or promotes events to strengthen the recognition of his rights or to dispute the rights of other people, then that person must prove the existence of said rights or events. In the Indonesian regulation system, when making decisions, judges are bound by the method of arriving at a decision which is only based on valid evidence so that the judge can make a decision. Article 1866 of the Civil Code states that the means of evidence consist of: written evidence, evidence with witnesses, conjectures, confessions, and oaths. The judge qualifies the facts that have been proven by assessing the events that have been proven to then be included in the judge's consideration. The judge then determines the law as outlined in the verdict.

Fifth, reading the results of the determination of the panel of judges. Based on the reasons and the various articles governing the provisions of the trustee 'Adhal, the panel of judges used them as legal considerations and also heard the statements of witnesses from both parties and the available evidence, the panel of judges made the following decision: (1)) Granted the Petitioner's Application; (2) Determine that the guardian of the Petitioner's



marriage is the guardian of 'Adhal; (3) Burdening the Petitioner to pay court costs which until now has been calculated at Rp. 316.000,- (three hundred and sixteen thousand rupiah).

Determination of the charging of court fees to the Petitioner by the Panel of Judges based on the statement of Article 89 paragraph 1 Law No.7 of 1989 jo. Law No. 3 of 2006 that all costs incurred in this case are borne by the Petitioner. In the trial process, the guardian is used as the main witness regarding the case filed by the applicant. To corroborate the matter of 'Adhalnya guardian, the applicant must strengthen it by presenting witnesses. According to the author, this is in accordance with article 164 HIR/RBG which states that what is referred to as evidence is evidence of letters, witnesses, presumptions, confessions and oaths. One of the pieces of evidence that strengthens a case in a trial is a witness. If the Panel of Judges has determined that the applicant's guardian is really 'Adhal and the applicant remains in his petition, then the Panel of Judges will grant the applicant's request by establishing 'Adhalnya guardian in the form of a stipulation. Because the guardian 'Adhal case is included in the application case and the decision is voluntary. Then the Panel of Judges after determining that the applicant's guardian was 'Adhal, appointed the sub-district KUA as the marriage registrar employee, where the applicant resided to act as the judge's guardian. The court will examine the case in a brief manner and will give a decision, whether he will uphold the refusal or order, so that the marriage takes place (Samsinar Hasibuan, Jumni Nelli, Zulfahmi, 2022).

Arrangements regarding 'Adhal guardians in the laws and regulations that apply in Indonesia, especially regulations governing the determination of 'Adhal guardians' have been regulated in Law No. 2 of 1987 concerning judge guardians and other regulations related to marriage. Apart from that, the problem of guardian 'Adhal refers to Islamic law by using the verses of the Qur'an and Hadith as a legal basis. Determination of 'Adhal guardian in chapter II article 2 paragraph (1) (2) and (3) of Law Number 2 of 1987 states that: (1) For a prospective bride who is about to marry in the territory of Indonesia or overseas/extra-territorial territory, it turns out that she does not have a valid Nasab Guardian or her Nasab Guardian does not meet the requirements or mafqud or is unable or 'Adhal, then the marriage can take place with the Wali Hakim. (2) To state that the guardian's existence as referred to in paragraph (1) of this article is determined by the decision of the Religious Court which is in the jurisdiction of the residence of the bride's colonel. (3) The Religious Court examines and decides 'Adhalnya guardian in a short way at the request of the prospective bride by presenting the guardian of the prospective bride. Wali 'Adhal described in the Compilation of Islamic Law (KHI) article 23 that: a) The new guardian of the judge can act as guardian of the marriage if the guardian of the lineage is not available or it is impossible to present him or his place of residence is unknown or unseen or 'Adhal or reluctant. b). In the event that the guardian 'Adhal or is reluctant, the judge's guardian can only act as marriage guardian after the decision of the Religious Court regarding the guardian (Hasanatul Wahida, Hengki Januardi, 2023).

Impact of Determination of Wali 'Adhal on Marriage Procedures.

The impact of determining the guardian of 'Adhal in the Ujung Tanjung Religious Court from the perspective of Maslahat is as follows: a. Positive Impact (benefits). After the researcher observed in the field, the positive impact of the Determination of the Wali 'Adhal in the Ujung Tanjung Religious Court from the Maslahat Perspective is as follows: 1). The applicant can enter into a marriage according to the rules of religious law and state law as contained in the KHI. 2). Avoiding immoral acts (Zina), with a decision that has been given by the judge. 3). Reaffirm clearly the rights and responsibilities of a guardian in marriage and the consequences if there is reluctance. 4). Reaffirming the guardian's position in marriage, so that a child knows the functions and responsibilities of a guardian for children can be seen clearly in sequence. 5). A child may not immediately say that his guardian is 'adhal and enter into a



marriage without going through the procedures for establishing an adhol guardian. b. Negative Impact (mafsadat). The positive impacts above are not without resistance, so if we look at them simply as a result of researchers' observations, the negative impacts of the appointment of 'Adhal guardians at the Ujung Tanjung Religious Court from the perspective of Maslahat are as follows: 1). The loss of the responsibility of a guardian in raising his child in marriage. 2). The loss of harmony in the family. 3). Damage to brotherhood in the community as a result of marriages that are not sanctioned by their parents.

Conclusion

The conclusions of the thesis entitled Implementation of Determination of 'Adhal Guardians in the Ujung Tanjung Religious Court in the Maslahat Perspective are as follows: The Nature and Philosophy of Determining Adhal Guardians according to Judges in the Ujung Tanjung Religious Court in determining a guardian it is said 'adhal must be seen from various perspectives of the opinions of the priests of the schools of thought and refers to Law Number 1 of 1974 and KHI, so that the decisions taken are right according to their benefit and get goodness.

Implementation of Determination of 'Adhal Guardians in the Ujung Tanjung Religious Court Maslahat Perspective, namely referring to formal law (procedural law), namely in Article 23 of the Compilation of Islamic Law the process of settlement of 'Adhal guardians through a judge, and Regulation of the Minister of Religion Number 30 of 2005 explains regarding the judge's guardian being able to replace the nasab guardian as the marriage guardian, or because of 'adhal (refusal/reluctant), then those who are entitled to become marriage guardians are the judge's guardians, with the following steps, namely: First, summoning the parties, namely the applicant and the legal guardian, Second, peace efforts, Third, reading the application letter, Fourth, trial examination, Fifth, reading the results of the decision of the panel of judges.

The impact of the determination of the 'Adhal guardian on the marriage procedure has the following impacts: Positive impacts (maslahat), namely: a) The applicant can carry out the marriage according to the rules of religious law and state laws as contained in the KHI; b) Avoiding immoral acts (adultery), with a decision that has been given by the judge; c) Reaffirm clearly the rights and responsibilities of a guardian in marriage and the consequences given in case of reluctance; d) Reaffirming the position of the guardian in marriage, so that a child knows the functions and responsibilities of a guardian towards the child are clearly visible in sequence; e) A child may not immediately say that his guardian is 'adhal and enter into a marriage without going through the procedure for determining the guardian 'adhal. As for the negative impacts of the appointment of 'Adhal guardians as follows: a) the loss of a guardian's responsibility in raising his child in marriage; b) loss of harmony in the family; c) Damage to brotherhood in the community as a result of marriages that are not sanctioned by their parents.

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