

KEWENANGAN KEPALA KANTOR URUSAN AGAMA SEBAGAI WALI HAKIM DALAM PELAKSANAAN PERKAWINAN DI KECAMATAN PANTAI LABU KABUPATEN DELI SERDANG

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Abstrak

Wali hakim belum dapat bertindak sebagai wali nikah apabila seluruh kelompok wali masih ada dan diketahui tempat tinggalnya, kecuali dalam hal adhalnya wali. Pelaksanaan perkawinan dengan menggunakan wali hakim harus ada surat keterangan yang diperoleh dari desa dimana mempelai perempuan tersebut tinggal yang menyatakan bahwa memang benar-benar mempelai tersebut memenuhi syarat dengan menggunakan alasan wali hakim. Setelah syarat administrasi selesai proses pelaksanaan dapat dilangsungkan. Pertimbangan hukum yang digunakan oleh Kantor Urusan Agama (KUA) Kecamatan Pantai Labu Kabupaten Deli Serdang adalah wali hakim mempunyai wewenang menikahkan perempuan yang walinya sudah tidak ada garis wali nasab, wali mafqud, wali sendiri yang hendak menikahi terwali, wali dicabut haknya oleh negara, wali sedang melakukan ihram (haji dan umrah), wali tawâro (bersembunyi), dan wali adhal/mogok.

Kata Kunci : Pelaksanaan, Pernikahan, Wali Hakim.

AUTHORITY OF THE HEAD OF THE OFFICE OF RELIGIOUS AFFAIRS AS GUARDIAN JUDGE IN THE IMPLEMENTATION OF MARRIAGES IN PANTAI LABU DISTRICT DELI SERDANG REGENCY

Abstract

The judge guardian cannot act as a marriage guardian if the entire group of guardians still exist and their residence is known, except in the case of an adhalnya guardian. The implementation of a marriage using a judge guardian must have a certificate obtained from the village where the bride lives stating that the bride really meets the requirements by using the reason of the judge guardian. After the administrative requirements are complete, the implementation process can be carried out. The legal considerations used by the Religious Affairs Office (KUA) of Pantai Labu District, Deli Serdang Regency are that the judge guardian has the authority to marry a woman whose guardian no longer has a line of guardians, a mafqud guardian, the guardian himself who wants to marry the guardian, the guardian's rights are revoked by the state, the guardian is performing ihram (hajj and umrah), the guardian is in hiding, and the adhal/strike guardian.

Keywords: Implementation, Marriage, Guardian Judge.

1. INTRODUCTION

A guardian in marriage is someone who acts on behalf of the bride in a marriage contract. As one of the conditions for the validity of marriage is a guardian, therefore the guardian occupies a very important position in marriage. As is known in practice, the one who says "Ijab" is the woman's side and the one who says the pledge "Qobul" is the man's side, this is where the role of the guardian is very decisive as a representative of the bride-to-be. The position of the guardian of marriage in Islamic law is as one of the pillars of marriage, therefore Imam Shafi argues that "marriage is considered invalid or void, if the guardian of the bride-to-be does not exist". This is different from the opinion

of Imam Abu Hanifah who stated that the wali nikah is not one of the pillars of marriage. Therefore, marriage is considered valid even without a guardian. Based on the above, regarding the position of the guardian in marriage, scholars differ on whether the guardian is included in the marital pillars or not because there are differences of opinion in determining the number of marital pillars. However, these differences are not substantial, only due to differences in the meaning of marriage.

Talking about guardians in marriage, there are a lot of problems that are developing in society, especially about the order of guardians and the determination of marriage guardians. The determination of the marriage guardian is the absolute authority of the head of the Office of Religious Affairs (KUA), of course it must go through the procedures that have been mentioned in the law. It is known that the issue of guardianship in marriage is still very much in dispute. On the one hand, there are those who argue that one of the pillars that determines the validity of marriage is the guardian. Then in Article 20 of the Compilation of Islamic Law (hereinafter referred to as KHI) it is stated that the one who acts as a guardian of marriage is a man who must meet the requirements of Islamic law, namely Muslim, aqil and puberty and also the requirement of guardian is the similarity of religion between the person who represents and represents.

In reality, there are many problems regarding guardianship with guardians of judges even though guardians of destiny still exist. Cases that often occur include couples registering at the KUA with complete terms and documents as formal requirements to apply for marriage, but this couple's marriage chooses a guardian judge even though the guardian of the nasab from the woman's side is still there. This is what then becomes a problem in this marriage, because the status of the guardian of the nasab is falsified by the bride-to-be. KUA as an institution that is authorized to record and legalize marriages, both legal according to religion and government, KUA is also obliged to know whether when the marriage process occurs it is valid both according to the terms and principles or not, regarding the documents of the parties and guardians whether they meet the requirements or not, whether the issue of guardians has been included in the conditions that have been determined by the KUA or needs to be reviewed. The importance of the KUA's knowledge of the validity of the prospective bride and guardian is none other than because it will have an impact on the validity or not of the marriage and the annulment of the marriage. If the marriage that is actually invalid takes place, then what happens is adultery.

The problems posed in this thesis research are as follows: How is the procedure for guardian judges in marriage regulated in marriage law and the Compilation of Islamic Law, How are the legal considerations used by the Office of Religious Affairs (KUA) in Pantai Labu District, Deli Serdang Regency, How is the transition from guardian to guardian judge in marriage in the Office Religious Affairs (KUA) in Pantai Labu District, Deli Serdang Regency and its legal consequences. A guardian in marriage is a person who has the right to marry a woman he takes care of (*maula*) if she (*wali*) is able to act as a guardian, and if for some reason he is unable to act as a guardian, then his guardianship rights transfer to someone else. Law No. 1 of 1974 concerning Marriage does not mention guardians as a condition for the validity of marriage, as mentioned in chapter II on the conditions of marriage in Article 6 is as follows:

- (1) The marriage must be based on the consent of both prospective brides.
- (2) To carry out a marriage, a person who has not reached the age of 21 (twenty-one) years must have the permission of both parents.
- (3) In the event that one of the parents has died or is unable to express his or her will,

the permission referred to in paragraph (2) of this article is sufficient to obtain from the surviving parents or parents who are able to express their will.

- (4) In the event that both parents have died or are unable to express their will, permission is obtained from the guardian, the person who maintains them or the family members who have blood relations in the straight line and up as long as they are alive in a state of being able to express their will.
- (5) In the event that there is a difference of opinion between the persons referred to in paragraphs (2), (3), and (4) of this section, or one or more of them does not express his opinion, the court in the jurisdiction of the person who entered into the marriage at the request of the person may grant permission after first hearing the persons referred to in paragraph (2), (3), and (4) this article.
- (6) These provisions paragraph (1) to paragraph (5) of this article apply as long as the law of each religion and the belief of the person concerned does not determine otherwise.

Based on Article 6 of Law Number 1 of 1974 concerning Marriage, it does not mention guardians as a condition for the validity of marriage. It is stated in Law Number 1 of 1974 concerning Marriage that only parents, that is also in the position of a person who must be asked for permission at the time of marriage, which is the same if the prospective bride is under 21 years old. This means that if the bride-to-be has reached the age of 21, the role of parents does not exist at all. The Marriage Law does not mention guardians as a condition for the validity of marriage, but the Marriage Law states that, marriage is said to be valid if the marriage has been carried out according to each religion and belief. As mentioned in the Marriage Law, article 2 paragraph (1) is that marriage is valid if it is carried out according to the law of each religion and its beliefs. In contrast to KHI, regarding the marriage guardian included as a harmony in marriage, as mentioned in Article 14 is that to carry out the marriage there must be:

- a. Husband-to-be
- b. Wife-to-be
- c. Marriage Guardian
- d. Two witnesses, and
- e. Ijab and Kabul.

The existence of a marriage guardian for the bride in a marriage contract is a harmony that must be fulfilled. In KHI article 19, it is stated that the marriage guardian in marriage is a harmony that must be fulfilled for the bride-to-be who acts to marry her. From this article, it is shown that the existence of a guardian for the bride in marriage is a must and invalid marriage that is carried out without a guardian. Although KHI is different from the Marriage Law in determining the conditions or pillars of marriage, the material in the KHI is originally sourced from the Marriage Law, which was compiled with the intention of completing the Marriage Law, and in the KHI other material is added whose principles do not conflict with the Marriage Law. Based on Article 19 of the KHI, then in Islamic civil law in Indonesia regarding marriage, the existence of a guardian in a marriage contract is a harmony that must be fulfilled for the bride who will hold a marriage contract and the marriage contract that is carried out without a guardian is invalid. The guardian is the person who is responsible for the validity or not of the marriage contract, therefore not everyone can become a guardian, but a person can be said to be legally a guardian if he has met the predetermined conditions.

2. IMPLEMENTATION METHOD

The type of research used is normative juridical law and is supported by empirical data. Normative juridical law research is research that refers to legal norms, namely researching literature or secondary materials. The specification of this research is descriptive because it only describes the object that is the subject of the problem. This descriptive research begins with collecting data related to the above discussion, then compiling, and analyzing it, and then interpreting the data, so that a clear picture of the phenomenon being studied is obtained.

3. RESULTS AND DISCUSSION

The practice in marriage is that sometimes the guardian cannot be present for reasons that can be accounted for such as the reason that the guardian of the nasab is exhausted, the guardian of the supernatural, the guardian of bai'd, does not have a guardian of the nasab or even the guardian of adhal. In accordance with the Regulation of the Minister of Religion Number 11 of 2007 Article 18 paragraph (4) which reads "The Head of the Sub-district KUA is appointed as a guardian judge, if the guardian does not meet the requirements, it is impossible *to adhol*." The implementation of the marriage using the guardian judge can be proven by the additional attachment obtained from the village where the bride lives which contains the reason for using the guardian judge as the guardian of the marriage.

In practice, in the implementation of marriage using a guardian judge, there are several reasons including: running out of guardians of nasab, guardians of *mafqud*, guardians who have lost their rights because they are serving punishment, guardians of *adhol*, who are carrying out Hajj or Umrah, and do not have guardians of nasab. Another factor that causes the transfer of guardians from nasab to judges is children resulting from out of wedlock (illegitimate children). According to Article 43 paragraph (1) of Law Number 1 of 1974 stipulates that children born out of wedlock only have a civil relationship with their mother and their mother's family. KHI article 100 further emphasizes that the child does not have a nasab relationship with his biological father, only has a nasab relationship with his mother and his mother's family. Because she does not have a relationship with her biological father, the woman does not have a single guardian, because the line of guardians of the nasab is from the father's line. Therefore, the guardianship is transferred to the guardian of the judge. The legal considerations used by the KUA of Pantai Labu District, Deli Serdang Regency to transfer guardians to guardians of judges in marriage are There is no longer a line of guardians

Based on the cause of the transfer of guardianship rights, it is understood that the guardian judge has the authority to marry a woman whose guardian has the aforementioned things. That authority is for the sake of the law and not as a representative. If he is a representative, he is not authorized to marry a woman whose guardian is performing ihram. Because people are in ihram cannot marry and marry. If as a representative, the position of the representative is the same as that of the representative, of course he is not allowed to marry because the person he represents is ihram.

KUA, Pantai Labu District, Deli Serdang Regency, there are cases of transfer of marriage guardians from guardians to guardians of judges. In 2023, there were 462 marriage events. Of the 462 incidents, 17 of them used guardian judges. In 2024, there will be 514 incidents with 17 incidents using guardian judges. Thus, it can be known that from 2023 to 2024 there were 34 cases of guardian judges out of 976 marriage events. The Head of KUA of Pantai Labu District, Deli Serdang Regency in determining the use of guardian

judges has the consideration that this is in accordance with the views of the majority of scholars, if the baby is born less than 6 months from the time of marriage, the child cannot be related to his father even though he was born in a legal marriage. Thus, fiqh emphasizes that in order for a child to be considered a legitimate child of his or her mother's husband, the child must be born at least 6 months after marriage or within the iddah period for 4 months and 10 days after the termination of the marriage. If the baby is born less than 6 months from the time of marriage, the child cannot be related by his kinship with his father even though the child was born in a legal marriage, he only has a nasab relationship with his mother, therefore the father does not have the right to be the marriage guardian of his daughter so that the marriage guardian is the guardian of the judge. Especially for the implementation of the transfer of the guardian nasab (mother's child) to the guardian of the judge, the KUA of Pantai Labu District, Deli Serdang Regency has several obstacles such as when the guardian decides to use a guardian judge, then the guardian needs to be more careful in conveying this to the parties concerned so that no party is offended, especially the father of the bride-to-be.

4. CONCLUSION

The procedure for the transfer of guardian nasab to guardian judge in marriage as regulated in the marriage law and the Compilation of Islamic Law is as the implementation of marriage using guardian nasab, but in the implementation of marriage using guardian judge there must be a certificate obtained from the village where the bride lives stating that indeed the bride is qualified by using the reason of the guardian judge. After that, the file is made into one in the folder. After the administrative requirements are completed, the implementation process can be carried out. The legal considerations used by the Religious Affairs Office (KUA) of Pantai Labu District, Deli Serdang Regency are that the guardian judge has the authority to marry a woman whose guardian no longer has a line of guardian nasab, wali mafqud, wali himself who wants to marry terwali, wali ba'id far away (masafah qashar, at least 921/2 km), wali who is sick / ayan, wali must not be contacted (imprisoned), The wali is deprived of his rights by the state, the wali is performing ihram (Hajj and Umrah), the wali tawâro (hiding), and the wali adhal/strike. That authority is for the sake of the law and not as a representative.

The transfer of guardian nasab to guardian judge in marriage at the Office of Religious Affairs (KUA) in Deli Serdang Regency is in accordance with the applicable provisions based on the Regulation of the Minister of Religion Number 30 of 2005 Article 3 paragraph (1) it is stated that the Head of the District Religious Affairs Office (KUA) in the relevant sub-district area is appointed as the guardian judge to marry the bride as referred to in article 2 paragraph (1) which reads for prospective brides who will marry in the territory of Indonesia or abroad/outside the territory of Indonesia, does not have a guardian of the nasab who has the right or the guardian of the nasab does not meet the requirements, or mafqud, or obstructed, or adhal, then the marriage is held by the guardian judge. This is in accordance with Law Number 1 of 1974 and the Compilation of Islamic Law on marriage and Regulation of the Minister of Religion Number 30 of 2005 concerning Guardian Judges.

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