



## Implementation of Marriage Through Wali Hakim (Marriage Guardian) in the Office of Religious Affairs

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### **Abstract**

This study aims to find out the implementation of marriage through Wali Hakim and its factors in the Office of Religious Affairs Malua Subdistrict Enrekang. The type of this research was discrete research with the type of merger between normative research and emperies that related to the implementation of marriage through Wali Hakim in the Office of Religious Affairs Malua Subdistrict Enrekang. The results of this study showed that, the implementation of marriage through Wali Hakim in the Office of Religious Affairs included the activity of notification of the candidate of marriage, announcement of the will of marriage and the implementation of the marriage contract based on the prevailing laws and regulations, among others Law No. 1 of 1974 on Marriage, Government Regulation No.9 of 1975 on the Implementation of Law No. 1 of 1974, Presidential Instruction No. 1 of 1974 on Compilation of Islamic Law, Regulation of the Minister of Religion No. 2 of 1987 concerning Guardians of Judges and Regulation of the Minister of Religion No. 2 of 1990 concerning The Obligation Of Marriage Registrar Employees. The factors included No guardian nasab, Guardian nasab was different religion with prospective bride or non-Muslim, Guardian nasab was not known or unclear and Guardian nasab jahu or mustafatul qorsi.

**Keywords:** *Implementation; Marriage; Guardians*

### **Introduction**

A marriage is a form of fulfilment of human nature in the world that humans are social beings who need each other. Based on Regulation No. 1 of 1974 Article 1, marriage or is defined as a physical and spiritual bond between a woman and a man as husband and wife to form a happy and eternal family (household) based on the Godhead of the Almighty. In Islam marriage is a worship for a Muslim to be a perfect his faith and religion. By marrying someone has assumed the mandate and great responsibility for his/her family to bring them to the way of truth. Marriage has big advantages for social interests.

Man in his nature is as a social being who has a nature of the need for each other, where since birth man has been equipped with the instinct to always live with others. The instinct to live together with others binds a strong desire to live regularly. A man was created by Allah SWT to be His creature in pairs, there are men and there are women. Human beings are given advantages by Allah SWT in the form

of reason and lust that is not possessed by other beings. Allah SWT says in the Qur'an Surah Ar-Rum verse 21 which reads:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ۚ ۲۱

Meaning: *And of His signs is that He created for you wives of your kind, that you may be at rest in them, and he has made for your affection and affection. Surely in that are signs for a people who reflect.*

In channeling lust and to continue the offspring, man conducts through the way of *jima'* or intercourse, it is obligatory to bind himself to his partner in a valid bond that is marriage.

Article 2 paragraph (1) of the Marriage Law, then marriage is valid if it is done according to the law of each religion and its beliefs, this can be used as the legal basis for the enactment of Islamic marriage law in Indonesia as a special regulation in addition to the general regulations stipulated in the Marriage Law for Indonesians who are Muslims, most of whom follow the teachings of *mahzab Syafi'i*. In the marriage relationship between husband and wife, there is a sacred covenant *Miitsaaqan glaliizhaan* or a strong and firm covenant, forming a happy family eternal and eternal, in the Qur'an surah An Nisa verse (21) is explained which reads:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَقْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا ۚ ۲۱

Meaning: How can you take it back when you have been intimating with each other as husbands and wives? And they took from you a firm covenant.

From the verse above, Allah SWT explains that marriage is something he likes, therefore it is instructed to the people of Islam to help and facilitate the course of a marriage. The implementation of marriage means to create a reciprocal relationship between husband and wife, where each party has a responsibility that must be carried out or in other words, both parties have rights and obligations that must be fulfilled as a couple who have tied themselves in a valid marriage.

Indonesia is a country based on law, where everything that has to do with human behavior and behavior must be regulated in such a way so that it is following the prevailing legal methods. In connection with this, marriage in Indonesia must be conducted in front of the Registrar of Marriage (PPN) for Muslims. PPN has the authority as a civil servant appointed by the Minister of Religious Affairs at each Office of Religious Affairs in the Sub-District.

According to Islamic law, one of the pillars of marriage that must be fulfilled by the Guardian of Marriage on the part of women. As for who is considered valid to be the guardian of the bride according to her arrangement, namely:

1. A real father
2. Paternal grandfather and so on
3. Siblings (one father and one mother)
4. Brother of one father
5. Son of a sibling
6. The son of one brother of the father
7. Biological uncle
8. Uncle one father
9. Son of a biological uncle
10. The son of a father's uncle
11. Guard Judge

The position of the guardian of marriage is very important in a marriage where the guardian has the right to a bride-to-be who is entitled to marry him. But in reality, in Indonesia often *ijab kabul* in a marriage carried out by officials' office of Religious Affairs as it happens in the Office of Religious Affairs District Malua Enrekang, which must be done by the guardian of marriage who is entitled to marry. This needs to be further examined as to why all should be done by officials of the Office of Religious Affairs. To respond and know the answer, research should be conducted at the Office of Religious Affairs Malua Subdistrict Enrekang.

From the description above, the author is interested in researching terms of the implementation of marriage with Wali Hakim and its factors in the office of religious affairs.

### **Research Method**

The type of research is empirical normative law research which is legal research that combines normative law research and social/empirical law research. In this type of research, researchers researched by combining both types of research as mentioned above in a study. An empirical approach is an approach that is done by conducting field research or interviews to obtain concrete data and information on the issues studied. The data that has been collected is analyzed using descriptive qualitative, i.e., analysis by describing and reviewing primary and secondary data and then discussed and spelt out based on legal norms.

### **Analysis and Discussion**

#### **Implementation of the Marriage of the Guardian judge and its factors in the Office of Religious Affairs Malua Subdistrict Enrekang**

It is familiar that marriage is a contract made by men and women based on the wishes and preferences of both parties, which is carried out by the marriage guardian following the applicable rules, so that they need each other and become allies as life partners in building a household. Marriage is one of the religious rules for those who can immediately implement it because marriage can prevent and reduce immoral visions, and protect themselves from adultery.

One of the pillars of marriage that must be fulfilled in a marriage according to Islamic law is the existence of a marriage guardian of the prospective bride. However, in a marriage, not all prospective brides have or have a marriage guardian from their relatives or in this case is called *guardian nasab*. Implementation of Marriage with Guardian Judges and Factors at the Office of Religious Affairs, Malua District, Enrekang Regency.

The Marriage Act considers the validity of marriage if it has been considered valid religious law in question. The guardian acts as the person who has the marriage to be valid. The word guardian in the Indonesian dictionary is interpreted as caregiver, parent or guide to a person or item.

Marriage is legal when it meets several conditions, arguing that not all male and female couples can carry out marriage. However, those who can perform marriages are those who have met the conditions specified in the laws and regulations.

Requirements and procedures for conducting marriages with guardian judges at the Office of Religious Affairs, Malua District, Enrekang Regency, namely:

- a. The prospective bride and groom who want to get married must bring a marriage certificate from the village head/sub-district who is the person in charge of her residence, to make a delivery letter for making a marriage certificate from the local RT. This marriage certificate contains the identity of the prospective bride to be married, such as name, gender, place and date of birth, nationality, religion, occupation and residence.
- b. The prospective bride and groom notify or register their marriage to PPN or officers of the Office of Religious Affairs, Malua District, Enrekang Regency. The notification of the intention to marry is carried out in writing by making a notification letter of the N-7 model by the bride or groom or her guardian or representative.
- c. The notification of the intention to marry is conveyed to the Registrar at the place where the wedding will take place, the notification is made by the person concerned for 10 (ten) working days before the marriage with the judge's guardian takes place.
- d. The registrar who receives the notification of the intention to marry checks whether the conditions of marriage have been fulfilled and there are no marital problems, incl:
  - 1) Marriage certificate.
  - 2) Certificate of family origin.
  - 3) The bride's consent.
  - 4) Parent's certificate.
- e. If the guardian *nasab* is not yet known his whereabouts or that causes a marriage must be carried out with Wali Hakim then the officer of the Office of Religious Affairs asks the bride to make a letter of disjointed guardian stamped from *rukun Tetangga* and the local village, while if the guardian *adhal* then there must be a statement of the breakup of the guardian due to the *guardian nasab*.

According to the author of the statement on the dissolution of the guardian in the implementation of a marriage with the judge's guardian, this is not regulated in detail in several regulations governing the terms and procedures for conducting the marriage, but rather a stamped statement. The guardian of the neighbourhood unit or the local village head is evidence that the prospective guardian bride has broken up with the lineage guardian, as a result, the bride and groom do not have a marriage guardian and to avoid falsifying the existence of a guardian. From the lineage, it refers to Law Number 13 of 1985 concerning Pasa 1 paragraph (1) Seal which states that a statement or agreement that is not affixed with a sheet does not mean it is invalid, but if the statement letter is used. As evidence in court, the sheet must be used. Thus, the guardian judge can act as guardian of marriage if the guardian of the bride and groom is *adhal*.

The implementation of the marriage must be based on the agreement of the two prospective brides, as a guarantee of the approval of the two prospective brides, the Marriage Registration Officer (*penghulu*) before the marriage contract takes place, needs to ask the two prospective brides. as stipulated in Article 17 Compilation of Islamic Law:

- a. Before the marriage took place, the Marriage Registration Officer asked the bride's consent in front of two marriage witnesses.
- b. If it turns out that the marriage is not approved by one of the prospective brides, the event cannot take place.
- c. For the bride and groom who is hearing impaired or hearing impaired, consent can be given in writing or an understandable sign.

The prospective bride and groom are married to the guardian of the judge, which is held at the local district office of the Religious Affairs Office because the prospective bride and groom are economically incapable of being charged. This is regulated in Government Regulation Number 19 of 2015 concerning Types of Non-Tax State Revenues that apply to the Ministry of Religion Article 5 paragraph (1) to Paragraph (4).

The implementation of the marriage contract in marriage is preferable to be preceded by a marriage sermon first, the marriage sermon can be useful and increase the solemnity of a contract that is *miitsaaqan glaliizhaan*, besides that it can provide information about the wisdom of marriage.

The purpose of the provision of Article 2 Paragraph (1) of Law No. 1 of 1974 concerning Marriage is to avoid legal conflicts between customary law, religious law, and intergovernmental law. While the purpose of recording marriage is:

- a. Making the event of marriage clear, both by the concerned and other parties.
- b. As a means of evidence, divide the children in the future, if there is a dispute, both between the biological child and stepdaughter.
- c. As the basis for payment of wife or husband's allowance, for Civil Servants.

Thus, the implementation of marriage with Wali Hakim in the Office of Religious Affairs Malua Subdistrict Enrekang is carried out by the Head of the Office of Religious Affairs Malua Subdistrict Enrekang or PPN who can be a substitute guardian if this guardian nasab not, with the title of guardian judge.

According to the authors, the previous statement is following Article 3 of the Regulation of the Minister of Religion Number 3 of 2005 concerning Guardian Judges, where the appointment and position of guardian judges are regulated as follows:

- a. The head of the Religious Affairs Office in the district concerned is appointed as Wali Hakim to marry off the bride if the guardian of the line is absent and unable to attend.
- b. If the head of the District Religious Affairs Office is absent or absent, the Section Head in charge of Islamic Religious Affairs on behalf of the Head of the Regency/City Department of Religion is authorized on behalf of the Minister of Religion to appoint one of the chiefs in the district or the closest to be Wali Hakim in his area.
- c. For areas that are remote or difficult to reach by transportation, the Section Head in charge of Islamic Religious Affairs on behalf of the Head of the Department of Religion appoints the Assistant Penghulu in the District to temporarily become Wali Hakim in his area.

The factors causing the marriage with Wali Hakim at the Office of Religious Affairs, Malua District, Enrekang Regency are as follows:

- a. There is no lineage guardian

The guardian of the lineage is the guardian of marriage because there is a *nasab* relationship with the woman who is getting married. In Al Qur'an guardian *nasab* is regulated in Surah A Nisa verse 22, namely:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا ٢٢

Meaning: And do not marry women whom your father married, except in the past. Surely it is abominations and hates Allah, and an evil way.

And verse 23, that is,

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُ النِّسَاءِ الَّذِينَ آرَضَعْنَكُمْ وَأَخَوَاتُكُمْ مِمَّنْ الرِّضَاعَةَ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبِّبَاتُكُمْ فِي جُورِكُمْ مِمَّنْ نَسَأْتِكُمُ الَّتِي دَخَلْتُمْ بِهِنَّ فإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ٢٣

Meaning: It is forbidden on you (marrying) your mothers; your daughters; your sisters, your father's brothers and sisters; your mother's sisters; the daughters of your brothers; the daughters of your sisters; your mothers who breastfeed you; sister-in-half; the mothers of your wife (in-laws); the children of your wife who are in your care for the wife whom you have interfered with, but if you have not interfered with your wife (and have already divorced), then it is not sinful that you marry her; (and it is forbidden for you) the wives of your biological children (son-in-law); and bringing together (in marriage) two sisters, except what has happened in the past; verily Allah is Forgiving, Most Merciful.

- b. Guardian *nasab* is different religion from the bride or non-Islamic candidate.

One of the conditions of the guardian of marriage is Muslim so it is clear that in Islamic law that can be a guardian in marriage it should not be from someone who is infidel or non-Muslim, according to Islamic law the guardianship of different religions marriage is haraam, then they cannot be guardians in marriage so automatically the guardian switches to the guardian of the judge.

- c. Guardians of *nasab* unknown or unclear.

From the results of the author's interview with one of the staff of the Religious Affairs Office Malua Subdistrict Enrekang known if there is one case where the mother of the bride does not give or refuse to give information and identity of the biological father of the bride so that there is no clarity on the status of the child. From the confession of the bride's mother stated that her son still has a legitimate father but he does not want his son to know it, because of the reason that led to the marriage with the guardian judge in the Office of Religious Affairs Malua Subdistrict Enrekang, it can show that the actions of the Religious Affairs Office Malua Subdistrict Enrekang is not following Article 9 paragraph (1) Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 11 the Year 2007 concerning Marriage Registration.

The above actions are also not following the description of the work objectives of employees of each headmaster in the Office of Religious Affairs Malua Subdistrict Enrekang, where the headmaster should examine the truth of the data of the guardian of marriage in the marriage hall and outside the marriage hall.

- d. Guardian *nasab* far or *masafatul qosri*.

Based on the results of interviews with the Head of the KUA, Malua District, Enrekang Regency, there were couples with marriages through a judge's guardian because the guardian was far away or resided in Malaysia.

From the explanation of the Religious Affairs Office, Malua District, Enrekang Regency, the marriage with Wali Hakim was held on the 22nd of the 7th month of 2019 because the guardian was in a faraway place (Malaysia). Before the marriage with Wali Hakim was carried out, the Marriage Registration Officer had examined the certificate for marriage (model N2), statement of origin (model N2), approval letter for the two brides (model N3), certificate of parent's statement of the judge's

guardian of the wife candidate issued by the Head of Malua Urban Village. And the local PPN reports that the guardian of the bride is not connected because it is far away, so the Head of Religious Affairs Office, Malua District, Enrekang Regency and PPN send lectures by communicating with the guardian of the bride using a cellphone. The reason why the Head of Religious Affairs Office and PPN of Malua District, Enrekang District, sent lectures by communicating was that if the lecture was through letters, the marriage process would take a long time. So that the trustee is assigned to the judge, namely the Head of Religious Affairs Office, Malua District, Enrekang Regency.

The legal basis used in marriage with the guardian of the judge, namely:

- 1) Law No. 1 of 1974 concerning Marriage Article 2 paragraph (1) and paragraph (2) and Article 6 paragraph (1).
  - 2) Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage Article 2 paragraph (2), Article 10 paragraph (1) paragraph (2) and paragraph (3), as well as Article 11 paragraph (1), paragraph (2), and paragraph (3).
  - 3) Regulation of the Minister of Religious Affairs No. 2 of 1987 concerning Guardian Judges Article 2 paragraph (1), and Article 4 paragraph (1).
  - 4) Regulation of the Minister of Religious Affairs No. 2 of 1990 concerning The Obligation of Marriage Registrar Staff Article 3, Article 4 paragraph (1), Article 5, Article 7, and Article 8 paragraph (1).
- e. Guardian *nasab* is in prison.

Marriage is performed with Wali Hakim because the guardian of the bride cannot be found because of a case that causes the guardian of the bride to be imprisoned and does not authorize the closer guardian.

The impossibility of a father to attend his girl marriage, will not hinder the implementation of the marriage contract. All of that can be done by the law of *takwil*, namely the ability of a guardian to represent his authority to others in marrying his daughter. In this case, the only requirement for his ability is the granting of legal authority on the part of the father to the person he appoints as the guardian of the judge.

## Conclusion

The implementation of marriage through the guardian judge in the Office of Religious Affairs Malua Subdistrict Enrekang held in front of the Registrar of Marriage which includes the activity of explanation the advising of marriage, an announcement of the advising of marriage, and the implementation of marriage contracts. This is based on the prevailing laws and regulations, including Law No. 1 of 1974 on Marriage, *Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974*, *Presidential Instruction No. 1 of 1974 on KHI*, *Regulation of the Minister of Religious Affairs No. 2 of 1987 concerning Guardian Judges and Regulation of the Minister of Religion No. 2 of 1990 concerning Obligations of Marriage Registrar Employees*. *The factors are: There is no guardian nasab, Guardian nasab different religion with the prospective bride or non-Muslim, Guardian nasab unknown or unclear and Guardian far nasab or mustafatul qors.*

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