



Juridical Review of the Validity of Marriage with Adhal Guardians According to Islamic Law

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<http://dx.doi.org/10.18415/ijmmu.v12i2.6659>

Abstract

The validity of marriage with an adhal guardian according to Islamic law. In this discussion, it was stated that in situations where both parents have died or are unable to express their wishes, permission can be obtained from the guardian of the person taking care of them or family members who are related by blood in a straight upward lineage. The prohibition on marriage in Islam is called mahram, divided into eternal prohibition and prohibition for a certain time. The Koran also recommends that humans always pray to be blessed with the desired offspring. What is the validity of a marriage with an adhal guardian according to Islamic law and what are the legal consequences of marriage with an adhal guardian according to Islamic law. To find out the validity of marriage with an adhal guardian according to Islamic law and to find out the legal consequences of marriage with an adhal guardian according to Islamic law. The method used is analytical and descriptive using the juridical analysis method which aims to describe facts, conditions or symptoms systematically and accurately, describing normative research supported by empirical research so that through empirical facts in the field they have meaning and connection with the problem being studied. The results of this research are suggestions for the need for corrections and improvements in regulations related to marriage with an adhal guardian and provide an in-depth understanding of the concept of marriage in Islam, including the conditions, prohibitions and purposes of marriage. To what extent the eternity and immortality of a marriage's household will depend on the strength of the physical and spiritual bond between husband and wife. Apart from that, this research also highlights the importance of prayer in obtaining the desired offspring, as mentioned in the Koran.

Keywords: *Validity of Marriage; Wali Adhal; Islamic Law; Indonesia*

A. Introduction

In Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, it is stated that the marriage guardian in marriage is a pillar that must be fulfilled by the prospective bride who acts to marry her.

According to a number of ulama, the presence of a guardian in a marriage contract is mandatory and a marriage contract that is not executed by the guardian is invalid. This applies to all women who are adults or children, still virgins or widows. If it is not fulfilled then the marital status is invalid. This assertion is not based on social facts, because marriages like this do occur. Therefore, the disclaimer (negation) here is a denial of the validity of the marriage, except by the guardian. This interpretation is different from that put forward by Abu Hanifah, he said that this disclaimer is a disclaimer of perfection. This means that a marriage without or without a guardian remains valid, even though it is not perfect. Meanwhile, according to the Syafi'i School of thought, a guardian is one of the conditions for a marriage to be valid.

Even though the marriage guardian is designated as the pillar of a marriage, in reality the marriage guardian often becomes a problem or obstacle in the implementation of the marriage, because the marriage guardian is unwilling or refuses to be the guardian for the prospective bride, whether for reasons justified by the *syara'* or reasons that are contrary to the *syara'*. A woman has the right to refuse or accept anyone who comes to propose to her, and her guardian has no right to force her to accept someone she doesn't like. A guardian also does not have the right to refuse to marry his daughter to a man who is a religious expert and has good morals who has been chosen by his son. Guardians who are unwilling or refuse to become marriage guardians are called guardian *adhhal* (reluctant guardians). In the event that the guardian is illegitimate or reluctant, the guardian judge can act as marriage guardian after a religious court decision has been made regarding the guardian.

B. Research methods

This type of research in legal writing is normative juridical, namely research that emphasizes the use of written legal norms with emphasis on secondary data. The focus of the research is the systematicity of legal instruments and rules that relate to the validity of marriage with an *adhhal* guardian according to Islamic law.

C. Discussion

1. Understanding Marriage

Marriage is the behavior of creatures created by God Almighty so that life in the natural world can reproduce. Marriage is a regular culture that follows the development of human culture in social life. In society, the marriage culture is simple, narrow and closed, whereas in advanced (modern) society the marriage culture is advanced, broad and open. Marriage rules have existed for a long time and have been maintained by community members and traditional community leaders or religious leaders. These rules and regulations continue to develop in a society that has government power and within a country.

Indonesian society is heterogeneous in all its aspects. In the religious aspect, it is clear that there are recognized religions in Indonesia consisting of six religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. All religions have their own rules, including marriage procedures. The marriage laws that apply to each religion are different from each other, but do not conflict with each other. Meanwhile, in Indonesia there is a marriage law which is authentically regulated in Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

2. Conditions of Marriage

Marriage law in Indonesia is closely related to religion, where the provisions are regulated in Article 2 paragraph (1) of the Marriage Law which states that marriage is valid if it is carried out according to the laws of each religion and belief. For a marriage to be valid, the Marriage Law

determines certain requirements. The marriage conditions can be divided into material requirements and formal requirements.

a. Material requirements

Material requirements are requirements regarding or relating to the person who is about to enter into a marriage which must be fulfilled in order for the marriage to take place.

Requirements regarding the personality of the prospective husband and wife who will enter into marriage, which are material requirements, can be divided into:

1) General material requirements

General material requirements are requirements regarding the person who is going to get married which must be fulfilled by someone to be able to get married. These general material requirements are also commonly referred to as absolute material requirements for the continuation of a marriage, because failure to fulfill these requirements means that the prospective husband and wife cannot consummate the marriage.

2) Special Material Requirements

Special material requirements are requirements regarding a person's personality to be able to enter into a marriage and apply to certain marriages. Special material requirements, also commonly referred to as relative requirements for marriage.

b. Formal Requirements

Formal requirements are requirements related to the procedures for carrying out a marriage, both conditions that precede and conditions that accompany the marriage. The procedures for carrying out a marriage are regulated in Article 12 of the Marriage Law, which is further regulated in Articles 3 to Article 9 of Government Regulation Number 9 of 1975.

3. Consequences of Marriage

With a valid marriage according to religion, belief and law, the marriage will have certain legal consequences. The legal consequence is that certain legal rights and obligations arise for both the husband and the wife in the following cases:

a. About the relationship between husband and wife

In the Marriage Law there are provisions that regulate the relationship between husband and wife within a marriage bond, which are regulated in Articles 30 to Article 34 of the Marriage Law. Husband and wife bear a noble obligation to uphold the household which is the basic pillar of the structure of society (Article 30 of the Marriage Law). This means that husband and wife must try to maintain the integrity of their marital and domestic life as much as possible. To maintain the continuity of marriage, husband and wife are obliged to love each other, respect each other, be loyal and provide each other with physical and spiritual assistance. Apart from that, husband and wife must also live together in a residence that is determined jointly.

The position of husband and wife is balanced in domestic life and social life (Article 31 of the Marriage Law). With this provision, there is no more dominance from one party in married life. Each party has the right to do legal acts. Husband and wife have the same opportunity to file a lawsuit in court, if one of the parties neglects its obligations.

The rights and obligations of the husband and wife in the domestic relationship as husband and wife when connected with Article 33 and Article 34 of the Marriage Law, the family relationship of the husband and wife in married life can be separated in 3 (three) separations even though the separation of rights and obligations between one and the other are interrelated in relation to the life of the husband and wife in the necessary unity of meaning. Every obligation of the husband and wife also brings reciprocity on the wife, and the obligation of the wife will also in itself give rights to the husband. Based on Article 33 and Article 34 of the Marriage Law, the rights and obligations of husband and wife (marital relationship) can be separated in:

- a) Obligations of husband and wife to each other in a general sense
- b) Must respect each other
- c) Mandatory loyalty between husband and wife

b. About property in marriage

Apart from the issue of rights and obligations, the issue of property is also a fundamental issue that can give rise to various disputes or tensions in marriage, which may result in the loss of harmony in married life. Therefore, Articles 35 to 37 of the Marriage Law provide provisions regarding marital assets. According to the Marriage Law, property can be divided into 2 (two) types, namely joint property and inherited property.

c. Children's descendants (parental authority)

In a marriage, a child will be born, so the position of the child and the relationship between parent and child become issues. Children born as a result of a valid marriage bond are legitimate children of their parents, so the children and their parents have a legal relationship, namely regarding rights and obligations as regulated in the provisions of Article 45 to Article 49 of the Marriage Law. In the Marriage Law, parental authority rests with each parent. If a divorce occurs between the parents, the parental authority is not abolished, it remains in the authority of each parent.

4. Definition of Marriage Guardian

Based on Article 1 letter h KHI, guardianship is the authority given to a person to carry out legal acts as a representative for the interests and on behalf of a child who does not have both parents, whose parents are still alive, who are not capable of carrying out legal acts. Meanwhile, in Islamic fiqh literature it is called *al-walayah*, like the word *ad-dalalah*. Etymologically, it has several meanings. Among them are love and help as in verse 71 of Surah At-Tawbat; also means power/authority as in the expression *al-wali*, namely someone who has power.

As for what is meant by guardianship in the terminology of the jurists (Islamic legal experts) as formulated by Wahbah Al-Zuhayli is the ability to act directly without depending on someone's permission. In line with that, according to Amir Syarifuddin, what is meant by guardian in general is someone who due to his position is authorized to act against and on behalf of others.

The person who manages/controls something (a contract/transaction) is called a guardian as in the verse *fal-yumlil waliyyuhu bil-adli*. The word *alwaliya*, *muannas*, *al-waliyyah* and its plural, *al-waliya*, comes from the words *wala-yali-walyan-wa-walayatan*, literally meaning one who loves, is a close friend, a friend, one who helps, an ally, a follower, a caretaker and one who takes care of someone's affairs.

Based on the semantic understanding of the word guardian above, it can be easily understood why Islamic law stipulates that the person who has the most right to be a guardian for the interests of his child is the father. The reason is because the father is of course the closest person, ready to help, even the one who cares for and pays for his children. If the father is not there, then the guardianship rights are replaced by other close relatives from the father's side as discussed at length in fiqh books.

5. The Concept of Marriage According to Islamic Law

Article 1 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which states that:

"Marriage is an outward and inward bond between a man and a woman as husband and wife with the aim of forming a happy family or household based on the One and Only God."

Marriage is also called *nikah*, which comes from the word *نكاح* which according to the language means gathering, entering into each other and is used to mean sexual intercourse, and is also used to mean a marriage contract. In Article 2 of the KHI, it is explained that marriage according to Islamic law is a very strong contract or *mitsaqan ghalizhan* to obey Allah's commands and carrying it out is an act of worship.

Marriage (*az-zawaj*) according to hadith experts and fiqh experts is a marriage in the sense of a relationship between a husband and wife with the bond of Islamic law, by fulfilling the conditions and pillars of marriage, such as a guardian, dowry, two fair witnesses and confirmed by *ijab* and *qabul*.

6. Legal Basis for Marriage According to Islamic Law

Marriage according to Islamic teachings is the implementation of sunatullah. Marriage, which is meant by sunatullah, is a necessity that is desired by every human instinct and is considered by Islam to be a very strong bond or mitsaqon ghalizon. Therefore, marriage should be considered sacred and intended to build an eternal home forever. Marriage should be considered as something sacred, nuanced with worship and most importantly as a direct order from Allah SWT. As stated in the Koran (An-Nur: 32), which means:

"On the authority of Abdullah bin Mas'ud, the Messenger of Allah said: O young men, whoever among you is willing to marry, then let him marry, indeed marriage blocks the view (against what is forbidden by religion) and preserves the vagina, and whoever is not willing should fast, because that is a shield for him." (HR. Bukhari and Muslim).

Marriage is one of the religious orders for those who are established to carry it out immediately, because marriage can reduce immorality and protect oneself from committing adultery. Established means being ready from a financial and psychological perspective as a bulwark to withstand problems that arise in the future, so that a harmonious relationship will be established between the couple. If we look at it from the perspective of the condition of the person carrying it out and the purpose of carrying it out, then carrying out a marriage can be subject to mandatory, sunnat, haram, makruh or permissible laws.

7. Pillars and Terms of Marriage

The Koran describes marriage as an agreement between God and humans, as well as between the humans involved in it, of course so that the agreement can be strong and mutually satisfying to each other. Marriage is a means of channeling human biological needs in a reasonable and respectful manner, and in the teachings of the Prophet Muhammad SAW, marriage was traditionally made into his sunnah. For this reason, a marriage that is full of values and aims to create a household life that is sakinah, mawaddah and rahmah, needs to be regulated with certain conditions and harmony, so that the goal of making marriage legal is achieved.

Before discussing the terms and conditions of marriage, it would be good to first know the terms of terms and conditions of marriage itself. Pillar is something that must exist to determine whether a job (worship) is valid or not, and that something is included in the series of jobs. Rukun as part of something, that something will not be excepted by the existence of that part. Meanwhile, requirements are something that must be present and are not included in the series of work.

The pillar of marriage is something that becomes a means for the marriage to take place or something that makes it possible for the marriage to take place if that something exists, if that something is not there, then the marriage will not be able to take place. However, it does not mean that if one of the elements is already present, the marriage can be performed, and vice versa if one of the elements is not present, then the marriage cannot be performed either.

8. The Validity of Marriage with an Adhal Guardian According to Islamic Law

Marriage in general is the process of binding between a prospective bride and groom who love each other, so that it becomes a legal act giving rise to legal consequences, namely rights and obligations to achieve the goals of marriage. Indonesian citizens who wish to enter into a marriage use the legal basis of the Marriage Law. Article 2 paragraphs (1) and (2) of the Marriage Law means that even though this law serves as the legal basis for marriage in Indonesia, it prioritizes religious law as a special law in the conduct of marriage. The basis and source of Muslim marriage is found in Islamic law, contained in the Al-Qur'an and Hadith, special provisions in Indonesia including to complement marriage issues in law.

Marriage in Islamic law is known as nikah which contains the meaning of entering into a marriage as the Prophet said, that whoever marries means he has implemented half (the teachings) of his religion, and the other half, he should be devoted to Allah. It can be said that marriage according to the Prophet if connected with Q.S At-Tahrim (66): 6, that marriage is a worship for people who are

devout and believe in Allah SWT to protect the family from the torment of hellfire. Muhammad Bagir Al Habsyi stated that the laws of marriage in Islam are obligatory, sunnah, haram, makruh and permissible.

Prospective brides and grooms who have fulfilled the marriage requirements, so that they are able to carry out the roles of husband and wife, are obliged by law to enter into a valid marriage. It can be said that the meaning of marriage is very complex, so that the term marriage is not mentioned which only talks about the contract, namely the consent and qabul from a man to the marriage guardian to marry him. Legal marriages for Muslims are registered at the Office of Religious Affairs (hereinafter referred to as KUA), so that the validity of the marriage is recognized.

The KHI which regulates the pillars of marriage that have been agreed upon by the majority of ulama is stated in Article 14, the entire pillar of which follows Shafi'i jurisprudence, namely that the dowry is not included. The Syafi'i Madzhab says that a marriage guardian is a necessity because marriage without a guardian is not justified and is not legal. Marriage guardians are based on blood or lineage relationships which are divided into aqrab, meaning closest, and ab'ad, meaning furthest. The ab'ad guardian in this determination is the judge's guardian, namely the person in charge of guardianship appointed by the government. The reason for this is that the position of the marriage guardian is changed because the guardian who is supposed to be far away or the guardian of his mother's lineage is the substitute judge, but if the guardian is reluctant to refuse to become the marriage guardian on the grounds that it is not in accordance with Islamic law, then he becomes the adhal guardian.

One of the requirements for marriage according to the Marriage Law is that there is permission to carry out the marriage from parents or authorized guardians. Islamic law and KHI use the Shafi'i school of thought that there is a requirement to present a marriage guardian, it will be invalid if the marriage is without the marriage guardian present so the marriage cannot be registered. Article 19 of the KHI provides that the marriage guardian is a pillar that must be fulfilled for the prospective bride to marry her.

When there is a problem with an adhal guardian being able to carry out a marriage, you must submit an application for the appointment of an adhal guardian to the local Religious Court. Regarding marriage guardians in the Marriage Law, it is implicitly stated in Article 26 that marriage guardians can apply for an annulment of the marriage if their position is replaced by an illegitimate person. In the KHI, it is stated in Article 20 paragraph (1) regarding the requirements for a marriage guardian to consist of a man who meets the requirements of Islamic law, namely Muslim, aqil and puberty. In connection with the requirement for a guardian to be present at a marriage, what is meant by a marriage guardian in this law is a nasab guardian. When certain obstacles occur to the marriage guardian (nasab), then based on Article 22 KHI his position can be replaced by the guardian judge.

The majority of Muslims in Indonesia use the opinions of the Syafi'i school of thought, which are finally expressed in regulations that discuss Islamic legal issues, namely KHI. According to the Shafi'i school of thought, there is no marriage without a guardian, and a guardian is a requirement for its validity, namely one of the pillars of marriage, so a marriage without the presence of a legal guardian is invalid. The guiding principle for why a marriage guardian is required in this school of thought is QS. Al-Baqarah (2): 232 and QS. An-Nisa' (4): 25, while the hadith that explains it is the hadith of the Prophet Riwayat Turmuzi from Aisyah which states that a woman who marries without her guardian's permission will have her marriage annulled (up to three times the Prophet said her marriage was invalid).

The position of the marriage guardian who is the adhal guardian is based on the judge's determination, so the marriage takes place using the adhal guardian so that legally valid marriage registration can be carried out. Marriage is a form of worship to leave harm behind, so it is obligatory if the bride and groom are mentally, physically and financially capable of being responsible for carrying out their obligations as husband and wife.

The Al-Qur'an states that law enforcers are obliged to act fairly in deciding cases as stated in Q.S An-Nisa (4): 58 and Q.S Al-Maidah (5): 52, namely that Allah reminds them that if they do not

determine the law based on what has been revealed by Allah SWT, it means they are considered infidels and are being persecuted and wicked. Judges have the authority to provide justice for justice seekers, so judges must understand what justice means in Islam. Being fair is binding on the rights and obligations that are entrusted to be carried out by everyone.

The determination of an adhal guardian granted by the judge is aimed at justice and the benefit of the applicant and the applicant's future husband when they are unable to fulfill the marriage obligations to present a marriage guardian who has the right, but if they are reluctant to be called an adhal guardian. The purpose of this determination is that the marriage that will take place will be valid according to Islamic law and Indonesian law. It can be said that the appointment of an adhal guardian can make it clear that not agreeing to a marriage that does not violate Islamic law will cause harm. The decision granted by the judge is the right step if you want to carry out a marriage with benefits. The status of women, whether single or widowed, still has the right to determine their guardianship position, status and widowhood are not an issue because religion takes precedence besides other things, remembering that if the guardian of adhal is not based on Islamic law, then it cannot be used as a reason for refusing to marry, so it will change the position of the guardian of marriage to guardian of adhal.

The marital status in determining the adhal guardian is valid even if the marriage uses a judge's guardian because it meets the requirements where the reason for the adhal guardian is subjective, so it is not in accordance with Islamic law, that is, it is not for sharia reasons, so the marriage guardian becomes adhal. The appointment of an adhal guardian will bring benefits to avoid harm and it must be known that it will be a sin for an adhal guardian to prevent a marriage that does not violate Islamic law.

There are two hadiths regarding the obligations of marriage guardians, the first is from HR. Thabrani means that a marriage is not valid unless the marriage contract is carried out by the guardian witnessed by two fair witnesses. Second, there is HR. Tirmidhi which means any woman who marries without the permission of her guardian, then her marriage is invalid, then her marriage is invalid, then her marriage is invalid. The meaning of these two hadiths is that the presence of a marriage guardian must be if the guardian is adhal, then the position of the marriage guardian is replaced by the sultan, namely guardian judge based on the decree of the religious court. After the decision is granted, the prospective bride and groom must provide the legal guardian determination file which has legal force (inkracht) by re-registering with the KUA to carry out the marriage.

9. Legal Consequences of Marriage with an Adhal Guardian According to Islamic Law

According to the majority of ulama, the presence of a guardian in a marriage contract is something that is mandatory and is not valid in a marriage contract without a guardian. In a marriage contract, the guardian can act as a person who acts on behalf of the bride and can also be a person whose consent is sought for the continuation of the marriage. This applies to all women, whether they are adults or children, still virgins or widows. This opinion is supported by Imam Syafi'i, Imam Maliki and Imam Hambali. Based on this basis, a guardian in marriage is mandatory. Marriage without a guardian is invalid, both for minors and adults. However, if the woman is a widow, then both of them have this right, meaning that the guardian cannot marry a widowed woman without her consent, and conversely, a widowed woman cannot marry herself without the guardian's permission.

The position of the guardian in a marriage is very important, but for a marriage to take place that has received the consent of both parties and there are no further obstacles, then the marriage needs to be carried out. So if there is no reason that can be justified according to the Shari'a, or there is something that prevents the guardian from acting as guardian, or the woman does not have a guardian at all, then the person acting as guardian is the ruler or what is called guardian judge.

Conclusion

The validity of a marriage with an adhal guardian according to Islamic law is valid. When there is a problem with an adhal guardian being able to carry out a marriage, you must submit an application for the appointment of an adhal guardian to the local Religious Court. The position of the marriage guardian who is the adhal guardian is based on the judge's determination, so the marriage is carried out using the adhal guardian, so that a legally valid marriage can be carried out. The determination of an adhal guardian granted by the judge is aimed at justice and the benefit of the applicant and the applicant's future husband when they are unable to fulfill the marriage obligations to present an eligible marriage guardian, but if they are reluctant (adhal guardian). The purpose of this determination is that the marriage that will take place will be valid according to Islamic law and Indonesian law.

The legal consequences of marriage with an adhal guardian according to Islamic law are that the marriage is valid. Apart from that, the five general principles of maqashid sharia are achieved, namely hifzu addin (guarding religion), hifzu an-nafs (protecting the soul), hifzu annasl (protecting offspring), hifzu al-maal (guarding wealth), and hifduz al-'aql (guarding reason).

Suggestion

The Marriage Law should include an article regarding the requirements for a marriage guardian, where a marriage using a judge's guardian on the basis of the appointment of an adhal guardian is valid in the eyes of the law.

It is hoped that the Office of Religious Affairs can play a role in increasing education that marriage guardians who refuse to marry (adhal) not based on Islamic law, their position can be replaced with guardian judge.

Parents who are marriage guardians are expected to reconsider refusing to become marriage guardians for their child's marriage, as long as the child and her future husband have good intentions for marriage. Apart from that, they prioritize the benefits and welfare of their children rather than the interests of their own parents.

It is hoped that the appointment of an adhal guardian which is granted by a judge at the Religious Court based on justice and benefit can educate the adhal guardian not to complicate marriage without reason based on Islamic law because it will cause harm.

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