



The Transfer Process from the Nasab Guardian to the Judge Guardian in the Case of Adhal Guardian through the Decision of 1B Class Religious Court of Batusangkar

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Abstract

Background related to case No. 0081/Pdt.P/2014/PA.Bsk was triggered by a problem where the assembly had tried to advise the applicant to approach and persuade the guardian of the applicant (the applicant's father) to marry the applicant to the applicant's future husband; however, it did not work. Meanwhile, the applicant stated that she still wanted to marry the applicant's future husband. In addition, the assembly also advised the applicant's father so that he would be willing to become the guardian of his daughter but the attempt was also unsuccessful. The reading of the applicant's request stated that the applicant retained its the request contents. This study applies an empirical juridical approach which obtains data by referring to the juridical and empirical aspects as a tool. Based on the results of the study, the *nasab* guardian from the bride candidate did not want to marry his daughter to her future husband because of communication problems that were not built effectively. Thus, the *nasab* guardian assumed to refuse to marry his daughter to him because he did not participate in educating, caring for and raising this daughter. In determining the *adhal* guardian in case No. 0081/Pdt.P/2014/PA.Bsk, the consideration of the judge of the 1B Class Religious Court of Batusangkar was that the applicant's guardian was present at the trial but he objected (reluctant) to become the applicant's marriage guardian. In this case, the objection from the applicant's guardian was groundless. Therefore, the assembly stipulated that the applicant's guardian is *adhal* (reluctant). The marriage process carried out in Religious Court in the case of *adhal* guardian includes: 1) Delivery of files related to marriage data, 2) Marriage Registration Officer summons interested parties such as bride and groom, 3) Marriage Registration Officer records the marriage process, and 4) Implementation marriage contract.

Keywords: Nasab Guardian; Judge Guardian; Adhal Guardian

Introduction

Marriage and household actually occupy a very important position in determining the identity of a nation. Marriage is a way to achieve calm and happiness for a married couple.¹ Because, in a household, the future generation candidates are born at the same time prepared. In fact, a good marriage will continue

¹ Muhammad Abdul Karim Zaidan, *al-Mufasssal*, Volume 6, First Print, (Beirut, Libanon: Muassasah ar-Risalah, 1413 H/ 1993 M), page 11

a good household life too. Thus, it results in the birth of a generation that is physically and mentally healthy and ready to be the next generation.²

“Marriage between the bridegroom and the bride is carried out in the presence of two male witnesses using the sentence of *ijab qabul*. *Ijab* is said by the woman that, according to most Muslim jurists, is carried out by her guardian or her representative. Meanwhile, *qabul* is a statement of acceptance from man. The *ijab qabul* itself has criteria such as the existence of a marriage statement from the guardian, a statement of acceptance from the bridegroom, using the word “*nikah*” which is between *ijab* and *qabul* is continued, between *ijab* and *qabul* has a clear purpose. People related to *ijab qabul* are not on a pilgrimage or *umrah*. In addition, the assembly of *ijab* and *qabul* must be attended by at least 4 people; i.e. the groom or his representative, the guardian of the bride or her representative and two witnesses.”

The guardian in the marriage consists of the *nasab* guardian, judge guardian, *muhakkam* guardian and judge guardian (*adhal*). The *nasab* guardian is a guardian who is associated with a family relationship with a woman who is getting married.³ Meanwhile, the judge guardian is the party appointed by the government to act as guardian in a marriage. In accordance with Minister of Religion Regulation No. 2 of 1981, the party appointed by the Minister of Religion as judge guardian is the Head of the District Religious Affairs Office. *Muhakkam* guardian will be exist if the *nasab* guardian cannot be a guardian for certain reasons and when the judge guardian is not present. Thus, the marriage is held with the *muhakkam* guardian who is appointed by the two brides.⁴

There are also *adhal* guardian term; i.e. a reluctant guardian or guardian who objects. The point is that a guardian who is reluctant or objects not to marry or does not want to be a guardian in the marriage of his daughter to a man who has become her choice.⁵

It turns out that in the matter of the guardian, not all Muslim scholars agreed that the guardian was the legal requirement for a marriage. A woman can get married without the presence of a guardian or she can get married without a guardian who will marry her; in this case, it is enough only obtaining the permission of the guardian.⁶ If a woman does not obtain permission from the guardian to marry, she can get married by herself. However, this opinion interspersed the opinion of the majority of Muslim scholars.

According to documents that the researchers found in the field about *adhal* guardian, in the Decision of the Religious Court No. 215/Pdt.P/2011/PA.JS, the reason the *nasab* guardian was not willing to become a marriage guardian was because the guardian did not like the applicant's future husband and wanted to give some lessons for the applicants and the applicant's future husband who do not follow his advice not to continue their intention to carry out a marriage. It causes legal consequences in the form of a dispute to the Religious Court. Thus, the implementation of marriage must be carried out through a judge guardian by involvement of Marriage Registration Officer intermediary or the Marriage Advisory Board and Sub-District Divorce Settlement stipulation; if the dispute cannot be resolved by mediation and deliberation.

² Ahmad Sarwat, *Marriage Life Jurisprudence Series*, First Print (DU Publishing 2011 M), page 17

³ Syarifuddin Amir, *Op. Cit.*, page 75

⁴ Ahmad Azhar Basyir, *Islamic Marriage Law*, Library of the Faculty of Law, Islamic University of Indonesia, Yogyakarta, 1996, page 42

⁵ Ahrun Haerudin, *Religious Court*, PT Citra Aditya Bakti, Bandung, 1999, page 47

⁶ Muhammad bin Isma'il as-San'ani, *Subul as-Salam Syarh Bulughul al-Maram min Adhillah al-Ahkam*, Third Print (tt: Dar al-Fikr, tt), page 117

Research Method

This study uses an empirical juridical approach which obtains data by referring to the juridical and empirical aspects used as a tool. From a juridical perspective, the law is seen as the norm or *das sollen* because in discussing the problem of this research, it uses legal materials (written and unwritten law or primary legal material or secondary legal material). Meanwhile, from an empirical point of view, law is seen as a social, cultural or *das sein* reality, because in this study, it uses primary data obtained from the field. Therefore, the juridical empirical approach in this study is that problem analysis is carried out by integrating legal materials (secondary data) with primary data obtained in the field.⁷

The population in this study is each decision of the 1B Class Religious Court of Batusangkar relating to the decision of the judge guardian as a marriage guardian due to the *adhal* guardian. In order for the coverage of the research to be more directed and focused, this research determines the sample which includes the Decision of the 1B Class Religious Court of Batusangkar No. 0081/Pdt.P/2014/PA.Bsk in which the applicant is Moren Desril binti Desril Harun. Determination of the sample is carried out using purposive sampling technique; i.e. the researchers try to determine a particular sample to be used as research material with a specific purpose for the sake of convenience for the author in analyzing a problem because of the mastery and understanding of the sample. The author collects the required data using document study methods and interviews.

Research Results And Discussion

1. *The Reason of Nasab Guardian of the Bride Candidate for Not Willing to Marry His Daughter to Her Future Husband*

According to the researcher, the reason of the *nasab* guardian, for not willing to marry his daughter to her future husband, is a communication problem that is not built effectively. Thus, the *nasab* guardian assumed that he did not want to marry his daughter to someone because he felt that he did not participate in educating, nurturing and raising the child. A well-established communication between each family member can encourage a good relationship. Good and bad communication is determined by the attitude and actions taken by the head of the family. Meanwhile, family members who are under the care of the head of the family are tasked with carrying out the procedures that have been taken by a leader in the family order. Communication is not only limited to family members but also relates to every person who has a direct or indirect relationship with the family.

Here are some forms of communication in a family.

- a. Communication within family environment.
 - 1) Communication between husband and wife.
 - 2) Communication between parents and children.
- b. Communication outside the family environment.
 - 1) Communication between husband/wife and parents.
 - 2) Communication with neighbors.
 - 3) Communication with the surrounding environment.
 - 4) Communication with the community.

The reason for the guardian's rejection was that the applicant's guardian was reluctant to marry his daughter because he felt that he did not participate in caring for and educating the daughter.⁸

⁷ Soerjono Soekanto and Sri Mamuji, *Normative Legal Research: A Brief Review*, Raja Grafindo Persada, Jakarta, 2010, page 14

⁸ *Documentation*, 1B Class Religious Court of Batusangkar on November 1, 2018

For a daughter whose guardian is reluctant to marry her to someone, this daughter has the right to obtain a guardian appointed by a ruler. In addition, in Indonesia alone, this power is given to the judge guardian who is appointed directly by Religious Court through the stipulation of the decision of the judge of the Religious Court.

2. *Consideration of Judges of the 1B Class Religious Court of Batusangkar in Determining Adhal Guardian in Case No. 0081/Pdt.P/2014/PA.Bsk*

Based on the documentation that researchers found in the field about decision No. 0081/Pdt.P/2014/PA.Bsk, the case is as follows:

The applicant was 28 years old, Muslim, Bachelor of State Administration, Cosmetic Trader, having her address at Jorong Turawan, Kenagarian III Koto, Rambatan District, Tanah Datar Regency. In this case, the applicant in her application letter dated 17 September 2014 was registered at the Registrar's Office of the Batusangkar Religious Court in the Registrar Case No. 0081/Pdt.P/2014/PA.Bsk on 17 September 2014.

Based on the above documents, the applicant submits an application to the honorable Chairperson of the Batusangkar Religious Court cq. The Panel of Judges examining and adjudicating this case subsequently stipulated the following decision:

- a. Grant the request of the applicant.
- b. Determine that the applicant's marriage guardian is *adhal* and appoint a local Marriage Registration Officer/ Religious Court as the applicant's marriage guardian.
- c. Charges the applicant to pay court fees in accordance with applicable laws and regulations.

According to Kastel Bahri, as a member judge in a case verdict, the assembly had tried to advise the applicant to approach and persuade the guardian of the applicant to marry the applicant to the applicant's future husband; however, it did not work. Meanwhile, the applicant stated that she still wanted to marry the applicant's future husband. In addition, the assembly also advised the applicant's guardian so that he would be willing to become the guardian of his daughter, Moren binti Desril Harun, but the attempt was also unsuccessful.⁹

Since that incident, Desril Harun considered the applicant not his daughter anymore and had told her to eliminate the word Desril behind her name, Moren. There is no obstacle to getting married between Moren binti Desril and Mhd. Fadli bin Nazarudin in *syara'* as well as in applicable regulations.¹⁰

Based on documentation from the Batusangkar Religious Court, the applicant (Moren Binti Desril Harun) had proven her arguments, by submitting the following documents as evidences:¹¹

- a. Copy of Marriage Certificate of the applicant's parent No. 63/19/VII/85 dated 13 July 1985, issued by the Office of Religious Affairs, Lima Kaum District, Tanah Datar Regency (Exhibit P.1).
- b. Copy of Family Card in the name of Desril Harun No. 1304042312080010 dated 14-10-2011, issued by the Population and Civil Registration Service, Tanah Datar Regency (Exhibit P.2).

⁹ *Private Interview*, Member Judge of 1B Class Religious Court of Batusangkar on November 1, 2018

¹⁰ *Documentation*, 1B Class Religious Court of Batusangkar on November 1, 2018

¹¹ *Documentation*, Religious Court of Batusangkar on November 1, 2018

- c. Copy of Birth Certificate in the name of Moren Desril binti Desril Harun No. 02/86/TK/SKB/D-II/Cpl-1999 dated April 6, 1999, issued by the Population and Civil Registration Service, Tanah Datar Regency (Exhibit P.3).
- d. Copy of Birth Certificate in the name of Mhd. Fadli bin Nazarudin No. 375/d-1995 dated March 21, 1995 issued by the Head of the Civil Registration Office of Agam Regency (Exhibit P.4).

H. Bakhtiar Etek bin Lisuf gave the following information:

I am the uncle/ *mamak* of the applicant (Moren binti Desril Harun) and I know my niece's future husband (Mhd. Fadli bin Nazarudin). As far as I know, Mhd. Fadli and my niece have known each other since a year ago. In addition, both of them have loved each other and agreed to continue their relationship to the marriage level, but the guardian of my niece is reluctant to be the guardian of her marriage because of bad relations. Mhd. Fadli himself works as a consultant employee in Bukittinggi. In this case, there is no obstacle between Mhd. Fadli with my niece in a religious or regulatory manner to a marriage.¹²

Considering that the applicant's guardian (Desril Harun) had stated that he was reluctant to marry the applicant with her future husband (Mhd. Fadli bin Nazarudin). In accordance with the provisions of Article 2 and Article 4 of the Minister of Religion Regulation No. 2 of 1987, the Batusangkar Religious Court stated that the guardian of the applicant was *adhal* and then appointed the Head of the Religious Affairs Office of Lima Kaum District, Tanah Datar Regency as the Marriage Registrar Officer to become an authorized judge guardian to marry the applicant (Moren Desril binti Desril Harun) to her future husband (Mhd. Fadli bin Nazarudin).¹³

Guardian is one of the important elements in a marriage contract. As the opinion of the ulema held by the majority of Muslims in Indonesia, a marriage is not valid without a guardian.

However, in reality, for some reason, guardians are sometimes reluctant to marry their daughters to someone, while the daughter has insisted on being married to their future husbands of their choice. So, to continue the marriage, the bride candidate must submit the case to the local Religious Court to determine the *adhal* guardian and appoint a judge guardian to marry them off.

The basis used by the panel of judges to determine the *adhal* guardian is evidence and legal facts relating to the case. This is in accordance with Article 163 of Herzien Inlandsch Reglement which states that:

“Whoever says that he/ she has the right or he/ she mentions an action to strengthen his/ her rights, or to deny the rights of others, then that person must prove the existence of that right or the incident”.

The evidence in this case is in the form of proof of letters and witnesses. The main proof of the letter in the *adhal* guardian case is a family card and birth certificate. In addition, witnesses were people who knew about the problem, and witnesses would be questioned about the guardian's reluctance and also the situation of the two bride and groom candidates.

Since one of the authorities of the Religious Courts is to provide legal services and justice for those who are Muslim, the consideration used to settle a case in determining the *adhal* guardian is Islamic Law.

Based on information from Kastel Bahri, as a judge member of the Batusangkar Religious Court, he added that:

¹² *Private Interview*, H. Bakhtiar on November 1, 2018

¹³ *Documentation*, 1B Class Religious Court of Batusangkar on November 1, 2018

The court needs to see whether or not the reason for the guardian's rejection is justified according to *syara*'. In addition, the religious court also needs to consider the advantages and disadvantages that will arise from the decision.¹⁴

To determine a judge guardian as marriage guardian of a woman whose *nasab* guardian is *adhal*, the Religious Court applies the basis from Regulation of the Minister of Religion of the Republic of Indonesia No. 30 of 2005 concerning judge guardian in Article 2 paragraph (1) and paragraph (2) which states that:

Paragraph (1): "For bride candidates who will get married in the territory of Indonesia or abroad and apparently do not have the *nasab* guardian who is entitled or the guardian does not fulfill the conditions or *mafqud* or is absent or is *adhal*, the marriage can be held with a judge guardian".

Paragraph (2): "To declare the existence of a guardian, as referred to in paragraph (1) of this article, it is stipulated by the decision of the Religious Court which is responsible for the area where the bride candidate lives".¹⁵

The Religious Court granted the request of the applicant to determine the applicant's guardian because of the reason for the rejection of the applicant's guardian who refused to marry his daughter to someone on the grounds that he did not participate in educating, caring for and raising the child. According to the law, the reasons for a guardian who can be justified in refusing to get married if it turns out that the two bride candidates do not meet the requirements for marriage are disagreeing because of religious differences (vide Article 60 and 61 Compilation of Islamic Law), and/ or attitudes and behavior of bride candidates who deviate from religious legal and moral values, such as adulterers, drunks and gamblers. In this case, the facts about the reasons referred to are not found in the trial.¹⁶

Thus, the decision of the Batusangkar Religious Court that has granted the request is deemed in accordance with the applicable law. In fact, if we look at the aspect of *madhorot* and *maslahat*, this must be carried out in order to avoid unwanted *madhorot* based on *syara*'.

In the *adhal* guardian case in Batusangkar Religious Court No. 0081/Pdt.P/2014/PA.Bsk.¹⁷ In this decision, the consideration of the judge of the Batusangkar Religious Court in determining the guardian in the case No. 0081/Pdt.P/2014/PA.Bsk is that the applicant's guardian is present at the hearing but he objected (reluctantly) to become the applicant's marriage guardian. In addition, the objection of the applicant's guardian was unwarranted. Therefore, the assembly stipulated that the applicant's guardian is *adhal* (reluctant). The applicant's guardian has stated that he was reluctant to marry the applicant to her future husband. In accordance with the provisions of Article 2 and Article 4 of the Regulation of the Minister of Religion No. 2 of 1987, the Batusangkar Religious Court stated that the applicant's guardian was *adhal* and appointed the Head of the Religious Affairs Office of Lima Kaum District, Tanah Datar Regency as the Marriage Registrar Officer to become the judge guardian authorized to marry the applicant (Desril bint Desril Harun) to her future husband. The researcher assessed that the judge had made a decision based on the data they obtained. In addition, they have analyzed the information of the witnesses presented and made decisions responsibly, fairly and professionally.¹⁸

According to the analysis of the researcher, in a decision making for a judge in determining the decision to be stipulated, the judge must be able to analyze and process the data obtained during the trial process in this case evidence, witness statements, defendant's defense, and prosecutor's demands and psychological content. The decisions that will be made can be based on a sense of responsibility, justice, wisdom, professionalism and objective nature.

¹⁴ *Private Interview*, Member Judge of 1B Class Religious Court of Batusangkar on November 1, 2018

¹⁵ Regulation of the Minister of Religion of the Republic of Indonesia No. 30 of 2005

¹⁶ *Documentation*, 1B Class Religious Court of Batusangkar on November 1, 2018

¹⁷ *Documentation*, Religious Court of Batusangkar on November 1, 2018

¹⁸ *Documentation*, Religious Court of Batusangkar on November 1, 2018

Discussion

The reason the bride candidate's *nasab* guardian who did not want to marry her daughter to someone is a communication problem that is not built effectively; thus, the *nasab* guardian assumed that he did not want to marry his daughter to someone because he felt that he did not participate in educating, caring for, and raising this daughter.

The Muslim scholars differed on when a guardian is called *adhal* guardian.

As we mentioned above, Ibn Qudamah argued that a guardian is called *adhal* when he rejects those who are in his guardianship to marry someone who has fulfilled his *kafa'ah* standard and they both love each other.¹⁹

His opinion is based on the hadith of the Prophet PBUH narrated by Imam Bukhari in Jami ash-Shahih li al-Bukhari. "Ma'qil bin Yasar told me (al-Hasan): "I have a sister, then a son of my uncle came and wanted to propose to her, then I married her to him. After a long time staying with him, suddenly he said talaq to her and did not refer to her until the iddah period was up. Yet, he still loved her and my sister also loved him. Finally, he came to ask for her hand back. Then, I said to him, "You cursing man! In the past I respected you and married my sister to you, but you said talaq to her and now you come to marry her again. For God's sake, I will not marry her to you again forever." Meanwhile, my uncle's son is a well-off person and my sister still wants to come back with him. Allah knows all the needs of both of them reciprocally. Then, Allah sent down the verse *فلاتعضلوهن* then Mu'qil married his sister to his uncle's son."

Based on these arguments, Ibn Qudamah drawn conclusions on the necessity of marrying a woman with someone she loves even though there are several factors that dispel it. Imam Ash-Safi'i, Abu Yusuf and Muhammad Hasan Ash-Syaibani said that as long as a woman loves and likes him, a guardian must marry her to him using *misli* dowry and others. According to Abu Hanifah, guardians are prohibited from marrying a person to someone who is in guardianship with other than a *misli* dowry because it is a despicable act and can cause harm to the woman; in the form of a lack of dowry for them.²⁰

Shaykh Khomar al-Baqoli stated in his writing "*adhal wali fi bilad al-ghorbi suawari wa ahkamih*" in which dowry is the pure right of a woman and compensation (payment) specifically given to her. So, there is no right for a guardian to refuse this matter. His opinion is based on the opinion of Ibn Qudamah in al-Mughni's book that "if a guardian wants a woman to marry a man who has met his *kafa'ah* standards and prohibits her from marrying someone that she wants, in this case a guardian is considered to be *adhal*. If a woman marries a man who is not in the same *kafa'ah* with her, a guardian has the right to carry out *fasakh* at the marriage and prevent the occurrence of marriage at the beginning of which is more important. This is also the opinion of Imam Malik.

Ibn Abi Zaid al-Qayrowani in the book "an-Nawadir wa az-Ziyadah" in the chapter "*nikahul akhfah*" explains that *adhal* is when a guardian objects to marry a girl who is in his guardianship while she is pleased with him even though he is not in the same level in term of assets and the situation.

Abi Muhammad Ashraf bin Abdul Maqsum in the book "Fatawa al-Mar'ah al-Muslimah Fi al-Aqo'id wal Ibadat wal Mu'amalat wal Adat" explained that *adhal* is if the guardian is reluctant to marry a woman who has reached the *baligh* age to a man who has good religion and morals and in the same *kafa'ah* come to propose to her and the guardian does not get blamed on him because he rarely finds (good) a man like him. If the man has applied for his daughter, the guardian must accept the application and must marry her to him. If the guardian objects this, the rejection of the prohibition needs to be investigated. If the guardian's objection aims to keep his daughter from being married, in this case the guardianship becomes and is transferred to the closest guardian afterwards from the lineage.²¹

¹⁹ Dedi Supriyadi, *Fiqh Munakahah Comparison: Textuality to Legislation*, Bandung: CV Pustaka Setia, 2011, First Print

²⁰ Hamidy, Mu'amal. *Marriage and its Problem: How is the Solution in Islam*. Surabaya: PT Bina Ilmu, 1978

²¹ Ibid

Ibn Rushd in his book “*Bidayatul Mujtahid*” stated that, the Muslim scholars have agreed that it is not permissible for a guardian to prohibit those in his guardianship from marrying people in the same *kafa’ah* as her and with *misli* dowry. And this case must be brought before the sultan which then she is married to someone by her other *nasab* guardian. Moreover, in this matter, Muslim scholars have different opinions.²²

After the Muslim scholars agreed on the ban on *adhal*, then they disagreed with regard to the *kafa’ah* standard which made a guardian not prohibit people who are in their guardianship from marrying someone if the standard has been fulfilled.²³

According to Malikiyah scholars, it would be appropriate for a guardian not to marry his daughter to an ugly man and an elderly person, as based on a history from the friend of Umar bin Khattab, in which he stated, “a man must not marry woman who is in his guardianship to an ugly man and an elderly person.”²⁴

Ibn Abi Zaid said that, Imam Malik argued with regard to a woman who was pleased to marry a man who was not commensurate with her in terms of assets, but in terms of religion he had met the *kafa’ah* standard while the guardian of the woman refused to marry her to him, this case must be brought before the sultan, then the sultan will marry her to him.

Ibn Qasim stated that if a man who has met the *kafa’ah* standard in terms of religion and has not fulfilled *kafa’ah* in terms of assets, it does not matter as long as it does not bring danger. He added as in the book of al-Mawaz, Imam Malik said that a *nasab* guardian is not permitted to object the proposal for his daughter, for it would not obviously bring danger. However, if the objection comes from other than the guardian, in this case, a sultan must consider the prohibition. If the truth of the ban is proven, the reason is accepted. However, if a sultan sees goodness in it, the sultan must marry her to him immediately even though his guardian does not like him.

Ash-Syafi’iyah scholars, including Imam an-Nawawi in the book “*Minhaju at-Thalibin*” suggested that a person is called *adhal* when he objects to marry a woman who is *baligh* and intelligent to a man whose *kafa’ah* standard has been fulfilled despite reasons the prohibition is due to a lack of dowry because it is a pure right for a woman. It is different if she asks to be married to a man who has not fulfilled his *kafa’ah* standards, the prohibition of guardians in this case does not make it an issue because the *kafa’ah* problem is the right of a guardian.²⁵

When a sultan establishes an *adhal* matter for the guardian and is about to marry a woman to someone, he should directly see the event of the ban. The event was also attended by the woman and the applicant or evidence presented as an enforcement. It is different if the guardian comes directly and the guardian wants to marry the two brides to whom the case will be finished. If the guardian object it, he has become *adhal*.

Abdul Karim Zaidan in his book “al-Mufassol” said that if the person who objects the proposal of a man who has a *kafa’ah* standard is a *nasab* guardian or *wasiy* (the person who left the will), he is not included in the *adhal* category. Although the rejection occurred repeatedly until the *adhal* attitude and the danger it caused is clear. It is a form of love from a guardian for his children toward the children’s ignorance of what is beneficial to them. Meanwhile, the guardian may know more about the condition of his children and the condition of the person who proposes to her in the form of not achieving prosperity and tranquility when he must marry her to someone. In this case, his rejection, to men who have met the *kafa’ah* standard until the attitude is clear, is not called *adhal*.²⁶

The consideration of the judge of the Batusangkar Religious Court in determining the *adhal* guardian in the Determination of the Batusangkar Religious Court No. 0081/Pdt.P/2014/PA.Bskis that the

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

applicant's guardian is present at the hearing but he objects (reluctant) to become the applicant's marriage guardian. In this case, the objection of the applicant's guardian is unwarranted. Therefore, the assembly stipulates that the applicant's guardian is *adhal* (reluctant). The applicant's guardian has stated that he is reluctant to marry the applicant with her future husband. In accordance with the provisions of Article 2 and Article 4 of the Minister of Religion Regulation No. 2 of 1987, the Batusangkar Religious Court stated that the guardian of the applicant was *adhal* and then appointed the Head of the Religious Affairs Office of Lima Kaum District, Tanah Datar Regency as the Marriage Registrar Officer to become an authorized judge guardian to marry the applicant (Moren Desril binti Desril Harun) to her future husband (Mhd. Fadli bin Nazarudin).²⁷

Guardian is one of the important elements in a marriage contract. As the opinion of the Muslim scholars held by the majority of Muslims in Indonesia, a marriage is not valid without a guardian. However, in reality there are certain reasons when the guardian is reluctant to marry his daughter to someone. Meanwhile, the daughter has insisted on being married to the husband candidate of her choice. Therefore, to be able to continue the marriage, the bride candidate must submit the case to the local Religious Court in order to establish an *adhal* guardian for her and appoint a judge guardian to marry her to a man.²⁸

The evidence, in this case, is in the form of proof of letters and witnesses. The main proof of the letter in the *adhal* guardian case is a family card and birth certificate. Meanwhile, witnesses are people who are aware of the problem. Later, the witnesses will be questioned about the guardian's reluctance and also the situation of the two brides.

The Judgment Guardian is *adhal*. 30 of 2005 concerning paragraph guardian in Article 2 paragraph (1) and paragraph (2) which states that:

Paragraph (1): "For bride candidates who will get married in the territory of Indonesia or apparently do not have the guardian who is entitled or not does not fulfill the conditions or is absent or is *adhal*, the marriage can be held with a judge guardian".

Paragraph (2): "To declare the existence of a guardian, it is stipulated by the decision of the religious court which is responsible for the area where the bride candidate lives".²⁹

The marriage process carried out in Religious Court in the case of *adhal* guardian includes: 1) Delivery of files related to marriage data, 2) Marriage Registration Officer summons interested parties such as bride and groom, 3) Marriage Registration Officer records the marriage process, and 4) Implementation marriage contract.

Minister of Religion Regulation No. 1 of 1976 appointed the Head of the Regional Office of the Ministry of Religion of the Province or equivalent as an official who has the right to appoint and dismiss the Marriage Registrar Officer or the representative and determine the place of domicile and territory after first receiving proposals from the Head of Islamic Religious Affairs and Hajj Organizers/ Islamic Community Development Section and Hajj Organizers.³⁰

Instruction of Head of Office of Religious Affairs No. 3 of 1960 states that the Head of the District Religious Affairs Office and Marriage Registration Officer in principle must be in one hand. Then, Head of Office Instruction No. 5 of 1961 stated that to be appointed as Marriage Registration Officer, someone must pass the test. Therefore, officials authorized to appoint and dismiss the Marriage Registration Officer must pay close attention to both of these.³¹

²⁷ Documentation, 1B Class Religious Court of Batusangkar on November 1, 2018

²⁸ Hamidy, Mu'amal. *Marriage and its Problem: How is the Solution in Islam*. Surabaya: PT Bina Ilmu, 1978

²⁹ Regulation of the Minister of Religion of the Republic of Indonesia No. 30 of 2005

³⁰ Regulation of the Minister of Religion No. 1 of 1976

³¹ Documentation, Religious Affairs Office of Lima Kaum District on November 12, 2018

Legitimate marriage according to the Law is a marriage that has fulfilled the conditions specified and recorded by the Marriage Registration Officer. This recording is carried out if the provisions and regulations as Minister of Religion Regulation No. 11 of 2007 has been fulfilled.

The formal legality of marriage in the presence of a marriage law that is legal is a marriage recorded by the Marriage Registration Officer or the party that has been appointed. Therefore, even though a marriage is carried out in a religious manner, the marriage is basically illegal according to the law because it is not recorded by the Marriage Registration Officer.

The security of an officially registered marriage will guarantee security from possible manipulation and other fraud. For instance, when a husband or wife wants to fake their names contained in a marriage certificate for deviant purposes. The authenticity of the marriage certificate can be compared to the copy of the marriage certificate contained in the Religious Affairs Office where the two persons are married.³²

Conclusions

1. The reason the bride candidate's *nasab* guardian who did not want to marry her daughter to someone is a communication problem that is not built effectively; thus, the *nasab* guardian assumed that he did not want to marry his daughter to someone because he felt that he did not participate in educating, caring for, and raising this daughter.
2. The consideration of the judge of the 1B Class Religious Court of Batusangkar in determining the guardian in the case No. 0081/Pdt.P/2014/PA.Bsk is that the applicant's guardian is present at the hearing but he objected (reluctantly) to become the applicant's marriage guardian. In addition, the objection of the applicant's guardian was unwarranted. Therefore, the assembly stipulated that the applicant's guardian is *adhal* (reluctant). The applicant's guardian has stated that he was reluctant to marry the applicant to her future husband. In accordance with the provisions of Article 2 and Article 4 Minister of Religion Regulation No. 2 of 1987, Batusangkar Religious Court stated that the applicant's guardian was *adhal* and appointed the Head of the Religious Affairs Office of Lima Kaum District, Tanah Datar Regency as the Marriage Registrar Officer to become the judge guardian authorized to marry the applicant (Desril binti Desril Harun) to her future husband.

The marriage process carried out in Religious Court in the case of *adhal* guardian includes: 1) Delivery of files related to marriage data, 2) Marriage Registration Officer summons interested parties such as bride and groom, 3) Marriage Registration Officer records the marriage process, and 4) Implementation marriage contract.

References

Books

Ahmad Sarwat, *Marriage Life Jurisprudence Series*, First Print (DU Publishing 2011 M), page 17.

Ahmad Azhar Basyir, *Islamic Marriage Law*, Library of the Faculty of Law, Islamic University of Indonesia, Yogyakarta, 1996, page 42.

³² Regulation of the Minister of Religion No. 11 of 2007

Ahrun Haerudin, *Religious Court*, PT Citra Aditya Bakti, Bandung, 1999, page 47.

Muhammad bin Isma'il as-San'ani, *Subul as-Salam Syarh Bulughul al-Maram min Adhillah al-Ahkam*, Third Print (ttp: Dar al-Fikr, tt), page 117.

Soerjono Soekanto and Sri Mamuji, *Normative Legal Research: A Brief Review*, Raja Grafindo Persada, Jakarta, 2010, page 14.

Dedi Supriyadi, *Fiqh Munakahah Comparison: Textuality to Legislation*, Bandung: CV Pustaka Setia, 2011, First Print

Hamidy, Mu'amal. *Marriage and its Problem: How is the Solution in Islam*. Surabaya: PT Bina Ilmu, 1978.

Journal

Muhammad Abdul Karim Zaidan, *al-Mufassal*, Volume 6, First Print, (Beirut, Libanon: Muassasah ar-Risalah, 1413 H/ 1993 M), page 11.

Interview

Private Interview', Member Judge of 1B Class Religious Court of Batusangkar on November 1, 2018.

Private Interview, H. Bakhtiar on November 1, 2018.

Private Interview, Member Judge of 1B Class Religious Court of Batusangkar on November 1, 2018.

Regulation

Regulation of the Minister of Religion of the Republic of Indonesia No. 30 of 2005

Regulation of the Minister of Religion No. 1 of 1976

Regulation of the Minister of Religion No. 11 of 2007

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