

Qualification of Marriage Guardians Based on Legal Proficiency (Exploring the Concept of Reformulation of Balig and Fair Requirements for Marriage Guardians based on the Perception of the Chief Executive Officer)

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ABSTRACT

This study aims to examine the qualifications of marriage guardians based on legal capacity with a focus on the requirements of balig and adil, as well as efforts to reformulate these two requirements in the context of positive law in Indonesia. The background of this research is the legal uncertainty and multiple interpretations of the terms balig and adil used in the legal norms of marriage, which lead to differences in interpretation in the field and potentially hamper the achievement of legal certainty and substantive justice. The research was conducted using a qualitative case study approach in Blitar District through in-depth interviews, observations, and documentation studies. The results showed that the requirements of balig and fairness for marriage guardians have not been expressly regulated in positive law, so that the practice in the field is highly dependent on the subjectivity of the headman. This research recommends the need for simplification of legal language by replacing fiqh terms that have multiple interpretations using modern terms based on objective measures, such as certain age limits, in order to strengthen legal certainty and facilitate the application of norms in society. This reformulation is expected to be in line with maqashid sharia to realize benefit and justice

INTRODUCTION

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on God Almighty (Law Number 1 of 1974 concerning Marriage Article 1). In Islamic law, marriage is not just an engagement between two individuals, but is a sacred covenant called *mitsaqan ghalidzan* (a very strong covenant), as mentioned in the Qur'an Surah An-Nisa' verse 21. Marriage is not merely a social contract, but also has the value of worship which is expected to bring *maslahat* for individuals, families and society.

As a contract, marriage has pillars and conditions that must be met in order for it to be valid in the eyes of sharia. One of the pillars agreed upon by the majority of the *madhhab* scholars is the existence of a marriage guardian, as explained in Imam Shafi'i's *al-Umm* and Imam Malik's *al-Muwatha*. The marriage guardian plays an important role in maintaining the dignity and honor of the bride and ensuring that the marriage contract takes place in accordance with the principles of sharia. In the context of positive law in Indonesia, the existence of a guardian is also confirmed in the Compilation of Islamic Law (KHI) Article 19, which states that the guardian is a pillar of marriage that must be fulfilled.

However, the implementation of the requirements for marriage guardians in Indonesia is often faced with problems in the field, especially regarding the two main requirements: *balig* and *adil* (fair). In *fiqh* literature, *balig* is defined as the state of a person who has reached a certain age or signs that indicate readiness to carry the burden of sharia. These signs can include wet dreams for men or menstruation for women, as mentioned in Ibn Qudamah's *al-Mughni*. Scholars differ on the age of puberty: *Syafi'iyah* set 15 years old if biological signs are not visible, *Hanafiyah* set 18 years old for men, and *Malikiyah* tend to be 17-18 years old. On the other hand, the requirement of fairness requires that the guardian is not known as a major sinner, is not constantly committing minor sins, and has moral integrity (*Al-Nawawi, al-Majmu'*).

The facts on the ground show a serious gap between this ideal norm and reality. This research found that there were very young marriage guardians, even under 14 years old, who claimed to have reached puberty because they had experienced wet dreams, such as the case that occurred in Blitar District. In fact, in terms of positive law (for example in the Child Protection Law and the Marriage Law), this age is still a child who is not yet capable of acting legally. Furthermore, the case of a guardian who often leaves the prayer but is still used as a guardian also shows the weak application of the requirement of fairness due to the difficulty of objective proof and the subjectivity of judgment in the field.

From a legal theory perspective, marriage as an engagement (contract) must fulfill the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code: agreement, capacity of the parties, a specific object, and a lawful cause. Meanwhile, legal capacity according to Article 1330 of the Civil Code is closely related to the age of majority and mental health. In Islamic jurisprudence, the capacity of a marriage guardian requires not only maturity and intelligence, but also morality in order to protect the interests of the woman being married. Unfortunately, Indonesian regulations, such as the Regulation of

the Minister of Religious Affairs (PMA) No. 30 of 2024, do not provide detailed objective parameters for proving balig and fairness, so that implementation in the field often leads to differences in interpretation between headmen.

Another problem arises due to the unclear age limit of legal capacity in various regulations in Indonesia. The Marriage Law states that the minimum age of marriage is 19 years old, the Child Protection Law refers to children under 18 years old as children, while the Civil Code sets the age of adulthood at 21 years old. This difference has an impact on the ambiguity of the age limit for marriage guardianship. The legal capacity theory states that a person can only take legal action legally if they meet the age limit of adulthood and are of sound mind (Subekti, 2006).

Furthermore, the theory of Islamic legal reform (tajdid fiqh) as proposed by Qaradawi (2000) emphasizes the importance of contemporary ijihad in responding to social change and the challenges of the times, including in the issue of marriage guardianship. The principle of *maslahah mursalah* can be used as a basis for considering the reformulation of marriage guardian qualifications to be more contextual to the current conditions of Indonesian society.

LITERATURE REVIEW

Therefore, this research seeks to answer important questions: why the requirements of balig and adil for marriage guardians need to be reformulated, how the perception and implementation of these two requirements by the headmen, and how the concept of reformulation based on legal capacity can be formulated to overcome problems in the field. Using a qualitative case study approach in Blitar District, this research is expected to produce relevant recommendations for the government, especially the Ministry of Religious Affairs, in formulating marriage guardian regulations that are more appropriate and responsive to community needs.

METHODOLOGY

This research uses a qualitative approach with a case study design, which was chosen to explore social and legal phenomena related to the qualifications of marriage guardians in Muslim marriages in Indonesia. This case study focuses on the practice of the Chief Executive Officer in Blitar Regency in applying the requirements of balig and adil for marriage guardians. This approach is considered appropriate because the problems studied cannot be measured quantitatively and require in-depth exploration of the experiences, views and practices of the the Chief Executive Officer. With this approach, researchers hope to be able to explore the concept of reformulation of legal capacity-based marriage guardian requirements contextually and in accordance with the social conditions of the community.

The research location was set in Blitar District, East Java. The selection of this location is based on the existence of concrete cases that reflect the problematic requirements of marriage guardians, such as the discovery of marriage guardians who are under the age limit of positive legal capacity but still carry out their role, as well as guardians who are suspected of not meeting the requirements of

fairness but still function in the marriage contract. The subjects of this research are the the Chief Executive Officer and the Nikah Registrar who have the authority to conduct and record Muslim marriages. The the Chief Executive Officer were chosen because they are practitioners who deal directly with the reality of the implementation of regulations and Islamic law in marriage registration.

The data sources in this study consist of primary, secondary, and tertiary data. Primary data was obtained from in-depth interviews with the headmen and Marriage Registration Officers in Blitar Regency, as well as official documents related to the implementation of marriage contracts and registration. Secondary data was obtained from literature reviews, both fiqh books, laws and regulations, as well as the results of previous research relevant to the topic of this research. Tertiary data in the form of information from dictionaries, encyclopedias, and online media were used as a complement to support the study and interpretation of the main data.

Data were collected through three main techniques: in-depth interviews, documentation studies and observation. In-depth interviews were conducted to explore the views, experiences and practices of the headmen in applying the balig and adil requirements for marriage guardians. Documentation studies were conducted on official documents such as marriage certificates, guardian certificates and regulations related to marriage. Meanwhile, observation was carried out by directly observing the process of implementing the marriage contract and recording at the Religious Affairs Office to gain a fuller understanding of the social and cultural context surrounding the practice of marriage guardianship.

Data analysis was conducted simultaneously throughout the research process, starting from data collection to the preparation of final findings. The analysis was conducted through three stages, namely data condensation, data presentation, and conclusion drawing. In the data condensation stage, researchers filtered, focused, and simplified the data to fit the research focus. Data that were considered relevant were classified to facilitate interpretation. The next stage was the presentation of data in the form of descriptive narratives to help understand emerging patterns and themes. Finally, researchers drew conclusions that were continuously verified with field data until valid and consistent findings were obtained.

To maintain data validity, this research uses source and method triangulation techniques. Triangulation was carried out by comparing data from interviews, documents, and observation results. In addition, researchers confirmed the informants (member check) to ensure that the interpretation of the data was in accordance with the facts they conveyed. Discussions with peers were also conducted to obtain input in validating the findings. These steps are important to ensure that the research results have a high level of trust and reliability.

This research is based on a reformative paradigm, which is oriented towards extracting the meaning of the legal practice of marriage guardianship and preparing a new concept that is contextual according to the times. This paradigm was chosen because this research not only aims to describe reality, but

also to offer ideas for reforming the requirements of marriage guardians to make them more relevant, applicable, and fulfill the principle of benefit in Muslim society in Indonesia. With this paradigm, the research is expected to contribute to the development of Islamic law that is adaptive to social dynamics.

RESULTS AND DISCUSSION

Marriage as a Civil Contract

Based on the results of the research, the headmen agree that marriage is a legal act in the form of a civil contract, which must fulfill the pillars and conditions as stipulated in Islamic law and positive law. The pillars of marriage include the prospective husband, prospective wife, guardian, two male witnesses, and Ijab and Kabul. In addition to fulfilling the shar'i requirements, marriage must also be registered with the Marriage Registration Officer to ensure administrative order and legal force. The theory of marriage as a contract is emphasized in the Qur'an, which calls marriage a mitsaqan ghalidzan (QS. An-Nisa: 21), which is a very strong promise, so that marriage is not just a social bond, but a strong legal contract. In fiqh, marriage is referred to as a contract, as explained in the Shafi'i school of thought that marriage is a contract that guarantees ownership to have intercourse using the word inkah or tazwij or the derivative meaning of both. In positive law, Law Number 1 Year 1974 Article 2 paragraph 1 emphasizes that marriage is valid if it is carried out according to the laws of each religion and belief, while Article 2 paragraph 2 emphasizes that every marriage must be registered, where this marriage registration is an implementation of the principle of legality in civil law as stated by Rahardjo (2006), that legal certainty requires every legal action to have a clear written rule basis.

Legal Uncertainty in the Requirements of Balig and Fairness

The results show that the requirements of balig and adil for marriage guardians have not been expressly regulated in positive law, resulting in legal uncertainty in practice. The determination of puberty, for example, is often based solely on personal recognition, such as whether or not a person has had a wet dream, without any other standard of proof that can be used as an objective reference. This condition opens up space for subjective interpretations and has the potential to produce non-uniform decisions among headmen or authorities. The theory of legal certainty emphasizes that legal norms must be formulated clearly and unambiguously in order to be a definite guideline for the community, as stated by Kelsen (2011) within the framework of legal positivism, that the law must be formulated as an explicit command and not open space for different interpretations. In the perspective of Islamic law, the ability to act (ahliyah al-ada') requires a person to have reached the age of puberty, to be of sound mind, and to be free from shar'i impediments in order to be subject to the taklif of sharia, but the differences in scholarly opinion about the age limit of puberty - some mention 15 years, some 18 years, and some others make the sign of ihtilam as an indicator - further strengthen the need for reformulation of positive legal norms with a more objective measure. The age limit of 18 years as stipulated in the Marriage Law and the Child Protection Law can be one of the solutions to realize

legal certainty in determining the requirements of balig and fairness for marriage guardians.

Capacity and Authority to Act

The results of the study show that there is dualism in legal practice related to legal capacity and authority to act, where children who have reached the age of 18 are considered adults and may marry, but on the other hand, in applying for marriage dispensation, they must still be represented by a guardian or parent. In addition, a person who is considered an adult but has a mental disorder is still considered incapable of performing legal acts. This phenomenon shows the lack of legal certainty in the implementation of norms, as it leads to different interpretations in the field. The theory of legal capacity distinguishes between passive legal capacity (the ability to have rights) and active legal capacity (the ability to exercise rights and obligations independently), so that not everyone who has rights is automatically able to exercise them without restrictions. In the Civil Code Articles 1329-1330, it is stated that a person who has reached adulthood (*meerderjarig*) is basically considered legally capable, except for those who are under guardianship. Meanwhile, in Islamic law, *ahliyah al-ada'* *al-kamilah* or full capability requires a person to have reached adulthood, be of sound mind, and *rusyd* (intelligent in managing property), so that the aspect of reason and the ability to manage their interests becomes the main requirement. This dualism of practice reinforces Rahardjo's (2006) view that legal certainty must ensure that rules are understood uniformly and do not cause injustice due to different interpretations or implementation.

The Language of Jurisprudence in Positive Legal Norms

The results show that the use of fiqh language in positive legal norms, such as the terms *balig* and *adil*, is considered multi-interpretive and difficult to understand by ordinary people. They argue that the use of these terms in legislation should be replaced with more modern, simple, and clear terms, for example by setting a certain age limit, so as not to cause confusion in its application. This finding is in line with the concept of *Fiqh al-Taysir* proposed by Qaradhawi (2002), which emphasizes the importance of simplifying the language of fiqh so that legal norms can be understood by all levels of society. Legal language according to Qaradhawi (2002) must be straightforward, simple, and not use technical fiqh terms that are only understood by certain circles, and need to be contextualized with modern reason so that legal norms can be in harmony with the reality of society. In addition, the principle of legality in positive law also requires the use of legal language that is clear and does not open up opportunities for multiple interpretations, as confirmed by Kelsen (2011) that a good law is a law formulated in a firm, clear, and unambiguous language in order to achieve legal certainty.

The Need for Simplification of Jurisprudence

The results show that there is an urgent need to simplify fiqh in the formation of legal norms so as not to confuse the community and be easier to apply in everyday life. The informants considered that the use of legal language should be simple, with objective standards such as age determination, and not be shackled by the fanaticism of certain *madhhabs* which can actually hinder the realization of justice and benefit. This is in line with the ideas of Qaradhawi (2002)

in the concept of *Fiqh al-Taysir*, which emphasizes the importance of simplifying *fiqh* through various means, including by choosing the easiest opinion as long as it does not conflict with the text, so that the application of the law does not burden the community. Qaradhawi (2002) also suggests that the language of *fiqh* that is only understood by certain circles be replaced with modern terms that are more inclusive, as well as linking *fiqh* with contemporary realities to make it more contextual. In addition, the simplification of *fiqh* must pay attention to the *maqashid* of sharia, namely realizing benefit and rejecting harm, and being flexible by not being rigidly bound to one school of thought, but choosing the opinion with the strongest proof and the greatest benefit. This simplification effort is expected to strengthen legal certainty as well as facilitate the public in understanding and implementing applicable legal norms.

CONCLUSION AND RECOMMENDATION

Based on the results of this study, it can be concluded that marriage in the perspective of Islamic law and Indonesian positive law is positioned as a legal act in the form of a civil contract, which not only contains social aspects but also has strong juridical implications. Marriage must fulfill the pillars and conditions as regulated in Islamic law and positive law, and is required to be registered with the Marriage Registrar in order to ensure administrative order, protection of civil rights, and legal certainty for the parties. This is in line with the principle of *mitsaqan ghalidzan* mentioned in the Qur'an (QS. An-Nisa: 21) and the principle of legality in positive law, where every legal action must have a clear written basis.

However, this research found fundamental problems related to the legal uncertainty that still characterizes marriage practices in Indonesia. The requirements of puberty and fairness for marriage guardians, for example, have not been expressly regulated in positive legal norms, leaving room for different subjective interpretations among headmen and marriage registration officials. This has resulted in non-uniform legal decisions or actions, which in turn can threaten legal certainty and substantive justice for the community. In the context of legal capacity and authority to act, there is also dualism in practice, where a child who has reached the age of 18 on the one hand is considered an adult and has the right to marry, but in the process of applying for marriage dispensation is still required to be represented by a guardian or parent. Similarly, a person who is an adult but suffers from mental illness is still qualified as legally incapable. These findings reinforce Satjipto Rahardjo's view that legal certainty must ensure certainty in the understanding and application of legal rules, and prevent the emergence of injustice due to differences in interpretation.

Furthermore, this research highlights the problem of legal language in legislative norms that still use many *fiqh* terms such as *balig* and *adil* which are considered multi-interpretive and difficult for ordinary people to understand. This is considered to be one of the factors that strengthen legal uncertainty. The the Chief Executive Officer even suggested that these terms be replaced with modern terms that are clearer, simpler, and based on objective measures such as setting a certain age limit. This finding is relevant to Qaradhawi's (2002) concept of *Fiqh al-Taysir*, which emphasizes the need to simplify *fiqh* language so that legal norms

can be understood and applied by all levels of society without causing confusion. In the context of the principle of legality, this is also important because clear, straightforward and unambiguous legal language is the main prerequisite for achieving legal certainty as stated by Kelsen (2011) in the theory of legal positivism.

Thus, this research emphasizes the importance of reformulating the legal norms of marriage in Indonesia through concrete steps such as simplifying legal language, replacing multi-interpretive fiqh terms with modern terms based on objective standards (e.g. age limits), and avoiding fanaticism of madhhabs that can hinder the achievement of benefit and justice. This simplification of legal norms must also be aligned with the maqashid of sharia, namely maintaining the benefit and rejecting the harm, so that the norms that are born are truly relevant to the needs of contemporary society. Efforts to simplify fiqh and update legal language in positive norms are a necessity to strengthen legal certainty, reduce disparities in interpretation in the field, and ensure that the law can function as an instrument of justice that is effective, responsive, and in favor of the wider community.

FUTHER STUDY

The results of this study open up wide opportunities for further research that can examine the issue of marriage law, especially related to aspects of legal certainty, capacity to act, and the use of legal language in legislative norms. First, future research can focus on a comparative analysis between national regulations and the practice of marriage law in other countries that adhere to the dualism of religious and state legal systems, in order to obtain a model for the formulation of marriage law norms that is more ideal, simple, and has stronger legal certainty. Such research will contribute to efforts to harmonize national law with the principles of Islamic law and international legal standards.

Second, an in-depth empirically-based study on the direct impact of the use of fiqh terms in legal norms on people's understanding and practice is also important. This study can use quantitative survey methods or legal ethnography to assess the extent to which the legal language used in laws and regulations has been understood by various levels of society, including vulnerable groups such as women, children and rural communities. Thus, the results can be the basis for policy recommendations in the preparation of more inclusive and responsive regulations.

Third, research on maqashid sharia-based legislative design in Indonesian positive law is also worth developing. This is important so that any reform of marriage law does not only focus on legal certainty in a formal sense, but also guarantees the realization of benefit, justice, and protection of human rights in the context of a modern state. This research can expand the discourse on how maqashid sharia is integrated into the national legal system system systematically and operationally.

Fourth, multidisciplinary studies that examine the relationship between the legal norms of marriage and the socio-cultural and psychological dynamics of society are also very relevant. This is because the law does not stand alone, but interacts with the culture, values and perceptions of the community. This kind of research can reveal the sociocultural barriers that affect the implementation of marriage legal norms and find strategies to overcome them.

Finally, future research also needs to explore the use of information technology and artificial intelligence (AI) in supporting legal certainty and marriage administration services, for example in the form of an integrated information system for verification of marriage requirements, validation of the age of the prospective bride and groom, and monitoring the application of marriage legal norms in real time. This is in line with the need to modernize the legal bureaucracy in the digital era, to prevent administrative errors and minimize disparities in interpretation in the field.

With these various research directions, it is hoped that recommendations will be made that are not only academic, but also applicable, so as to strengthen the national marriage law system that is more just, certain, and in line with the times.

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