



Dynamics Of Determining Guardian Judges In Marriage Analysis: Islamic Law, Positive Law And Social Practice

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Received: 2025-11-18; Accepted: 2025-12-29; Published: 2025-12-31

ABSTRACT

This study examines the dynamics of the determination of a wali hakim (guardian appointed by the state) in marriage from the perspectives of Islamic law, positive law, and social practices at the Office of Religious Affairs (KUA) in Sungai Gelam District, Jambi. In Islamic marriage law, the presence of a guardian (wali) is an essential requirement for the validity of a marriage contract. However, in certain circumstances where the nasab guardian is absent, unknown, unwilling, or legally unable to perform the role, the authority to act as guardian may be transferred to a wali hakim. The implementation of this provision often encounters various legal and social dynamics in society. This research aims to analyze the procedures for determining a wali hakim in marriage, identify the factors that lead to the appointment of a wali hakim, and examine the role of religious officials in resolving related issues within the community. The study employs a qualitative research method with a juridical–sociological approach. Data were obtained through literature review, legal document analysis, and field observations related to the practices of determining a wali hakim at the KUA of Sungai Gelam District. The findings indicate that the determination of a wali hakim is generally conducted in accordance with Islamic legal principles and Indonesian positive law, particularly the Compilation of Islamic Law and relevant administrative regulations. Nevertheless, social factors such as family conflicts, lack of legal awareness, cultural influences, and administrative constraints often affect the implementation process. Therefore, the role of KUA officials, especially the penghulu, is crucial in mediating between legal norms and social realities to ensure that marriages are conducted lawfully and fairly.

Keywords: Guardian Judges, Islamic marriage law, positive law, social practice
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INTRODUCTION

Marriage in Islam is a sacred institution that encompasses not only religious obligations but also legal and social ones. One of the fundamental pillars of marriage is the presence of a guardian for the bride. In classical Islamic jurisprudence, the guardian serves as a protector, guarantor of welfare, and representative of family responsibilities in the marriage contract. Therefore, the validity of a marriage is largely determined by the validity of the guardian.

In practice, not all social conditions allow for a guardian of lineage to carry out this guardianship function. Islam then recognized the concept of a guardian-judge as a sharia solution when a guardian-judge is absent, unknown, does not meet the requirements, or acts as an *adhal* (indifferent). In Indonesia, the concept of a guardian-judge is institutionalized through positive law, specifically Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and various Ministerial Regulations of the Minister of Religious Affairs.

However, the practice of appointing and using guardian-judge at the grassroots level demonstrates complex dynamics. In several regions, including Sungai Gelam District, Muaro Jambi Regency, the use of guardians is observed not only due to the lack of a guardian according to Islamic law, but also due to social, cultural, family conflict, and even pragmatic administrative considerations. This situation raises serious questions about the relationship between normative Islamic law, positive state law, and the social realities of society.

Academically, this phenomenon indicates a tension between legal norms (*das sollen*) and social practices (*das sein*). If not studied in depth, the practice of guardians has the potential to raise issues regarding the legal validity of marriage, the protection of women's rights, and the legitimacy of the state's role in religious affairs. Therefore, doctoral research is needed that can critically analyze the dynamics of guardianship using a multidisciplinary approach that integrates Islamic law, positive law, and the sociology of law.

Marriage is a social and religious institution that holds a crucial position in Islamic society. From an Islamic legal perspective, marriage is understood not only as a physical bond between a man and a woman, but also as a sacred contract (*mitsaqan ghalizhan*) encompassing religious, moral, and social dimensions. Therefore, the validity of a marriage is determined not only by fulfilling administrative requirements but also by fulfilling the pillars and requirements stipulated by sharia. One such pillar that plays a crucial role in marriage is the presence of a guardian for the bride. The guardian serves as a representative of family responsibility and safeguards the woman's well-being during the marriage contract.

In Islamic jurisprudence, the guardianship of a marriage is positioned as an integral element of the validity of a marriage, particularly according to the majority of scholars. The guardianship is intended to ensure that the marriage is conducted with careful consideration, in accordance with the principles of honor, protection,

and the well-being of the woman. However, in practice, not all prospective brides are able to provide a guardian of lineage as stipulated in Islamic jurisprudence. This condition then gave birth to the concept of a guardian judge as a legitimate alternative according to Islamic law if the lineal guardian is absent, does not meet the requirements, or is reluctant to carry out his guardianship.

In Islamic legal tradition, a guardian-judge is understood as a ruler or party authorized by the state to act as a guardian in certain circumstances. The presence of a guardian-judge is a manifestation of the state's role in guaranteeing the implementation of citizens' civil rights, particularly the right to legally enter into marriage. In the context of a modern state like Indonesia, the authority of a guardian-judge is institutionalized through an official state institution, the Office of Religious Affairs (KUA), which is tasked with implementing and overseeing marriage registration for Muslims.

In Indonesia, regulations regarding guardian-judge duties are not only derived from classical Islamic law but are also explicitly stipulated in positive law. Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and technical regulations of the Ministry of Religious Affairs serve as the legal basis for the appointment and implementation of guardian-judge duties. These regulations aim to provide legal certainty, uniform procedures, and protect the rights of the parties involved in a marriage. However, in social reality, the implementation of these regulations often faces various dynamics and challenges.

The dynamics of the appointment of a guardian are not only related to the normative aspects of Islamic law and positive law, but are also strongly influenced by the social, cultural, and psychological conditions of the community. Factors such as poor public understanding of marriage law, strong local customs, family conflict, and economic and migration issues are often the underlying causes of guardianship cases. In many cases, the appointment of a guardian is not solely a matter of the absence of a guardian by lineage, but also related to the refusal of the guardian, the absence of the guardian due to distance, or disharmonious family relationships.

These conditions demonstrate that the appointment of a guardian is a multidimensional issue that cannot be understood from a single legal perspective. A comprehensive analysis requires an integrative approach that combines Islamic law as a normative-religious source, positive law as a formal legal framework, and social practices as empirical realities on the ground. Without such an approach, the policy and practice of appointing a guardian have the potential to create tension between legal norms and community needs.

In the local context, Sungai Gelam District, as part of Muaro Jambi Regency, has its own social and cultural characteristics that influence marriage practices. The majority of people in this region are Muslim and still uphold strong family values and customs. However, modernization, population mobility, and changes in social structures have significantly impacted family relationship patterns and

marriage practices. This has resulted in an increase in marriage cases requiring the appointment of a guardian by a judge at the Sungai Gelam District Office of Religious Affairs (KUA).

The practice of appointing guardians at the Sungai Gelam District Office of Religious Affairs (KUA) is interesting to study because it reflects the intersection of legal norms and social reality. On the one hand, the KUA, as an extension of the state, is required to consistently and accountably implement laws and regulations. On the other hand, KUA officers also deal directly with communities with diverse religious backgrounds, customs, and interests. This often requires discretion (practical *ijtihad*) in implementing regulations, without ignoring applicable legal principles.

Previous studies have shown that the practice of guardianship across Indonesia is not always uniform. Differences in interpretation of legal provisions, variations in internal KUA policies, and subjectivity among officials often influence the process of appointing guardians. This has the potential to create legal uncertainty and injustice for the community. Therefore, a study specifically examining the practice of appointing guardians at the sub-district level is crucial to provide a more accurate empirical picture. Furthermore, the appointment of guardians also has broad legal and social implications. The validity of a marriage, the legal status of children, the rights and obligations of husband and wife, and social acceptance within society are highly dependent on the validity of the marriage. Mistakes or negligence in appointing a guardian can lead to future legal disputes, both in Religious Courts and in the social sphere. Therefore, the mechanism for appointing a guardian must be implemented carefully, professionally, and in accordance with applicable regulations.

From an Islamic legal perspective, the discourse on guardianship continues to evolve with the times. Contemporary scholars strive to reinterpret the concept of guardianship to maintain its relevance to the context of the modern state and the national legal system. Debates regarding the limits of guardianship authority, the criteria for rejecting guardianship by lineage, and the role of the state in marriage are important issues that require in-depth study. This demonstrates that guardianship is not merely an administrative technicality but also involves the theological and philosophical aspects of Islamic law.

Meanwhile, from a positive legal perspective, the existence of guardianship reflects the state's function as a protector of citizens' rights. The state has an interest in ensuring that every marriage is conducted legally, orderly, and registered. However, the effectiveness of the state's role depends heavily on the quality of policy implementation at the grassroots level, such as at the sub-district KUA. Therefore, an analysis of the practice of appointing guardians and judges at the Sungai Gelam Sub-district KUA is relevant for assessing the extent to which positive law is implemented in accordance with its stated objectives.

METHODOLOGY

This research is a qualitative library research study with an empirical, juridical approach. Therefore, the data sources come from various sources, including books, journals, newspapers, personal documents, and so on. In other words, the researcher collected data by visiting the central library of the study, the archives center, or reading books related to the research being conducted.

Research Approach

a. Normative Approach

This research uses a normative approach to examine the legal provisions governing the appointment of a guardian in marriage from the perspective of Islamic law and positive law in Indonesia. This approach emphasizes the analysis of binding and ideal legal norms, namely provisions regarding who is entitled to be a guardian, the requirements and grounds for appointing a guardian, and the procedures for appointing a guardian in marriage.

Within the framework of Islamic law, the normative approach is conducted by examining sources of Islamic law, such as the Quran, Hadith, *ijma'* (consensus), *qiyas* (reasoning), and the opinions of scholars in classical and contemporary *fiqh* books, particularly those discussing the concept of guardianship (*wilāyah*) in marriage. This analysis aims to determine the sharia basis, basic principles, and objectives of appointing a guardian from an Islamic sharia perspective.

Meanwhile, in the context of positive law, a normative approach is used to analyze applicable laws and regulations in Indonesia, including Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, the Compilation of Islamic Law (KHI), and the Regulation of the Minister of Religious Affairs, which regulates the authority and procedures for appointing guardians at the Office of Religious Affairs (KUA). Through this analysis, the suitability, consistency, and legal standing of guardians within the national legal system can be determined.

Using a normative approach, this study aims to gain a comprehensive understanding of the ideal legal framework for appointing guardians as a basis for analyzing the dynamics of guardianship practices at the KUA (Religious Affairs Office) in Sungai Gelam District. This approach serves as the primary basis for assessing whether the current practice complies with Islamic law and applicable positive law.

b. Sociological Approach

This study uses a sociological approach to examine the practice of appointing guardians in marriages as it occurs in the social reality of the community, particularly within the jurisdiction of the KUA in Sungai Gelam District. This approach focuses on analyzing social interactions, community customs, and the social and cultural factors that influence the appointment of a guardian in marriage practices.

Through a sociological approach, this research seeks to understand the understanding of the community, prospective brides and grooms, families, and KUA officials regarding the concept of a guardian, including the social reasons behind the request for a guardian, such as the absence of a guardian due to lineage, the absence of a guardian, family conflict, differences in religious views, or administrative factors. This approach also examines the relationship between legal norms and social reality, namely how the provisions of Islamic law and positive law are implemented in society.

Furthermore, a sociological approach allows researchers to uncover the social dynamics that occur in the process of appointing a guardian, such as the role of the registrar and KUA officials in deliberation, communication with families, and persuasive problem-solving efforts before the appointment of a guardian. Values, local traditions, and social structures are also important considerations in this approach, as they can influence the acceptance and implementation of the appointment of a guardian.

Thus, the sociological approach in this study serves to provide a contextual and empirical overview of the appointment of a guardian in marriage practice. This approach complements the normative approach by explaining the gaps or inconsistencies between legal norms and social practices, thus producing a more complete and comprehensive understanding of the dynamics of appointing a guardian in marriage at the KUA (Office of Religious Affairs) in Sungai Gelam District.

c. Historical Approach

The historical approach in this study is used to examine the development of the concept and practice of appointing a guardian in marriage from a historical perspective, both within the Islamic legal tradition and within the positive legal system in Indonesia. This approach aims to trace the background to the emergence of the guardian, the historical basis for its formation, and changes in its regulations over time.

In the context of Islamic law, the historical approach is carried out by examining the practice of guardianship during the time of the Prophet Muhammad (peace be upon him), the era of the Caliphs (Khalaf al-Rasyidin), and the development of Islamic jurisprudence (fiqh) thought among scholars of various schools of thought regarding the appointment of a guardian. This analysis is used to understand the social and legal context behind the emergence of the concept of a guardian as a solution to the absence or inability of a guardian in lineage to carry out his guardianship.

Meanwhile, within the framework of positive law in Indonesia, a historical approach is used to trace the history of the regulation of guardianship of judges, starting from the colonial period, the formation of the Marriage Law, to the birth of the Compilation of Islamic Law (KHI) and technical regulations of the Ministry of

Religious Affairs. Religious law governing the authority of KUA officials as guardians. This study aims to understand the dynamics of policy changes and socio-legal considerations that influence the regulation of guardianship in Indonesia.

Furthermore, a historical approach is used to examine the development of the practice of appointing guardians at the KUA in Sungai Gelam District over time. This allows for insight into policy shifts, implementation patterns, and community responses to the appointment of guardians. Thus, the historical approach provides a contextual and sustainable understanding and serves as an important basis for analyzing the dynamics of appointing guardians from the perspectives of Islamic law, positive law, and social practice.

RESULT AND DISCUSSION

Legal Perspective Analysis of the Dynamics of Guardianship

1. The Position of Guardianship in Islamic Law

In Islamic law, the presence of a guardian is one of the pillars of marriage that determines the validity of a marriage. The majority of Islamic scholars agree that a woman's marriage is invalid without a guardian, as affirmed in the hadith of the Prophet Muhammad (peace be upon him), which states that "no marriage is valid without a guardian." Therefore, the concept of guardianship in marriage occupies a fundamental position in the Islamic marital law system.

The following Hadith concerns the position of the guardian judge in Islam:

- a) Hadith concerning the guardian judge as a substitute for the guardian of lineage

The Prophet Muhammad (peace be upon him) said:

"The ruler is the guardian of one who has no guardian."

This Hadith is the primary basis for the concept of the guardian judge in Islamic marriage law. The term *al-sultān* (ruler) is understood by scholars to mean a state authority or judge with legal authority. This hadith emphasizes that if a woman does not have a guardian, or if her guardian is unqualified, unseen, or refuses without a shari'a (Islamic) reason, then guardianship is transferred to a guardian-judge to ensure the validity of the marriage contract and the woman's well-being.

- b) Hadith on the Validity of Marriage Through a Guardian-Judicial

The Prophet Muhammad (peace be upon him) said:

"There is no marriage valid except with a guardian."

This hadith emphasizes that the presence of a guardian is a prerequisite for a valid marriage contract according to the majority of scholars. In the context of a guardian-judge, this hadith is understood to mean that the state, through the judge, has the authority to act as guardian if the guardian-judge is absent or unable to perform his/her duties. Thus, the guardian-judge has a legitimate and legal standing in the Islamic marriage system.

In principle, the guardian authorized to marry a woman is a lineal guardian, that is, a guardian who is related by blood to the prospective bride according to the order established in Islamic jurisprudence. However, under certain circumstances, a

lineal guardian cannot exercise his guardianship, either because he is absent, does not meet the requirements, is prevented from doing so, is unknown, or refuses without a justifiable reason (adhal guardian). In these situations, Islam provides a solution through a legal guardian.

A guardian in Islamic law is a ruler or judge authorized to act as a marriage guardian for a woman who does not have a guardian by lineage or when a guardian by lineage is unable to fulfill his role. The position of a guardian by lineage has a strong basis in Islamic jurisprudence, as stated in the principle that "as-sulthān waliyyu man lā waliyya lah" (the ruler is the guardian of the one who does not have a guardian). This principle demonstrates that a guardian by lineage is not merely a secondary substitute, but rather an integral part of the guardianship system in Islam.

From the perspective of Islamic scholars, a guardian by lineage holds legal standing and is equivalent in function to a guardian by lineage when the requirements for a guardian are met. The Shafi'i school of thought, the primary reference for Islamic legal practice in Indonesia, affirms that a judge has the right to marry a woman if a guardian by lineage is absent or reluctant to do so without a shar'i reason. This view aligns with the Maliki and Hanbali schools of thought, which position guardianship as a solution to safeguard the public interest and prevent marriage from being hampered.

The position of guardianship in Islamic law is also closely related to the objectives of sharia (maqāṣid al-syarī'ah), particularly in safeguarding offspring (ḥifẓ al-nasl) and upholding honor (ḥifẓ al-'ird). With the presence of guardianship, Islam prevents harm to women due to negligence, irresponsibility, or arbitrary actions of guardians. In this regard, guardianship serves as an instrument for protecting women's rights and guaranteeing justice in marriage.

Furthermore, the existence of guardianship reflects the flexibility of Islamic law in responding to social realities. Islam does not allow the provisions of guardianship to become an obstacle to the implementation of a valid and beneficial marriage. Therefore, guardianship plays a strategic role as a bridge between the ideal norms of sharia and the actual conditions of society, ensuring that Islamic law remains relevant and applicable in various situations.

2. Regulation of Guardianship by Judges in Indonesian Positive Law

The regulation of guardianship by judges in Indonesian positive law represents a concrete form of state recognition of the concept of guardianship in Islamic marriage. This regulation aims to provide legal certainty, administrative order, and protect the rights of prospective brides and grooms, especially women, so that marriages can be conducted legally according to religion and recognized by the state.

The primary legal basis is found in Law Number 1 of 1974 concerning Marriage, which stipulates that the validity of a marriage is based on the law of each individual's religion and must be registered by the state. This provision serves as the basis for the implementation of Muslim marriages, including the use of guardianship by judges,

to be guided by Islamic law and conducted through an official state institution, the Office of Religious Affairs (KUA).

Regulations on guardianship by judges are more specifically regulated in the Compilation of Islamic Law (KHI). Article 19 of the KHI emphasizes that guardianship is a mandatory pillar of marriage. Article 20 of the KHI regulates the requirements for guardianship, including being Muslim, having reached puberty, being sane, and being just. Meanwhile, Article 23 of the Compilation of Islamic Law explicitly regulates the role of a guardian-judge, stating that a guardian-judge can only act if the lineal guardian is absent, whose whereabouts are unknown, does not meet the requirements, is prevented from performing the marriage, or refuses to perform the marriage without a justifiable reason (*wali adhal*).

This provision in Article 23 of the Compilation of Islamic Law demonstrates that Indonesian positive law explicitly adopts the concept of a guardian-judge from Islamic jurisprudence, while also providing clear limitations to prevent its arbitrary use. Thus, the guardian-judge role is positioned as a legitimate legal solution, not a free-will option without legal basis.

3. Aspects of Certainty and Legal Protection in the Appointment of a Guardian

The aspects of certainty and legal protection are fundamental principles in the Indonesian marriage legal system, including the appointment of a guardian. Legal certainty is necessary to ensure that every marriage has a clear legal basis, is religiously valid, and is recognized by the state. Meanwhile, legal protection serves to safeguard the rights and interests of the parties, particularly the prospective bride, so that they are not disadvantaged due to the absence or refusal of the guardian.

In the context of Islamic law, the presence of a guardian provides legal certainty regarding the validity of the marriage contract. The guardian acts as a substitute for the guardian who is unable to attend, so that the marriage can still be performed without violating sharia provisions. This principle aligns with the objectives of sharia (*maqāṣid al-syarīʿah*), particularly in safeguarding offspring (*ḥifẓ al-nasl*) and upholding honor (*ḥifẓ al-ʿird*). Thus, a guardian-judge serves as a crucial instrument to ensure that marriages proceed within legal and orderly boundaries.

From the perspective of Indonesian positive law, legal certainty in the appointment of a guardian-judge is achieved through clear regulations in the Compilation of Islamic Law (KHI) and related laws and regulations. Article 23 of the KHI provides clear limitations on the conditions under which the use of a guardian-judge may be permitted, thus preventing arbitrary appointments. This written regulation provides clear guidelines for the marriage registrar in exercising his authority and serves as the legal basis for the marriage.

Beyond legal certainty, the appointment of a guardian-judge also encompasses significant legal protection. In the case of a guardian-judge, for example, the guardian-judge serves as a protective mechanism for the prospective bride, ensuring

that her right to marry is not hindered by the unscrupulous actions of a lineage guardian. With the presence of a guardian-judge, the state takes an active role in ensuring justice and preventing discriminatory practices or abuse of power by lineage guardians.

In practice at the Sungai Gelam District Office of Religious Affairs (KUA), the aspects of legal certainty and protection are reflected in the procedure for appointing a guardian, which prioritizes clear verification and documentation. The registrar examines the reasons for using a guardian, including clarification from the prospective bride and groom, their families, and witnesses. He also ensures that the entire process is administratively recorded. This procedure aims not only to comply with formal requirements but also to protect all parties from potential future legal disputes.

4. Legal Implications of the Appointment of a Guardian Judge for the Validity of a Marriage

The appointment of a guardian judge in a marriage has significant legal implications for the validity of a marriage, both from the perspective of Islamic law and Indonesian positive law. A guardian is one of the pillars of marriage that determines the validity of the marriage contract. Therefore, the use of a guardian judge as a substitute for a lineal guardian must be carried out appropriately and in accordance with legal provisions to avoid future legal consequences.

From an Islamic legal perspective, the presence of a guardian judge serves to ensure the fulfillment of the pillars of marriage when the lineal guardian is unable to perform his/her guardianship. If a guardian judge is appointed for valid reasons according to sharia, such as the absence of a lineal guardian, their whereabouts are unclear, their inability to fulfill the requirements, or an act of *adhal* without justifiable reason, then the marriage contract is valid according to religious law. Therefore, the appointment of a guardian judge in accordance with sharia has direct implications for the validity of the marriage and the legitimacy of the marital relationship.

Conversely, if the appointment of a guardian is made without a strong legal basis or without proper procedures, the validity of the marriage can be questioned. In the context of Islamic law, the use of an unqualified guardian can result in the marriage contract being invalid or even nullified, as one of the pillars of marriage has not been legally fulfilled. This demonstrates that the accuracy of the appointment of a guardian is a key factor in maintaining the validity of a marriage.

Analysis of the Dynamics of Guardianship from a Sociological Perspective

1. The Social Reality of Appointing a Guardianship in Society

The appointment of a guardianship in marriage is not only a normative and legal issue, but also reflects the social realities that develop within society. In practice, the use of guardianship is often influenced by social conditions, culture, and the complex dynamics of family relationships. Therefore, understanding the social reality

of appointing a guardianship is important to understand how legal provisions are implemented in everyday life.

In society, understandings of guardianship vary. Some view guardianship as a legitimate legal solution when the guardian of the lineage is unable to fulfill his role, while others view guardianship as merely an administrative shortcut to marriage. These differing understandings influence people's attitudes and behaviors when submitting guardianship applications to the Office of Religious Affairs (KUA), including in Sungai Gelam District.

One frequently encountered social reality is internal family conflict that causes guardianship to be reluctant or refuse to marry off their daughters. This refusal is not always based on Islamic law, but rather is influenced by economic factors, differences in partner preferences, or personal conflicts. In such circumstances, a guardian becomes the preferred alternative to ensure the marriage can proceed. This phenomenon demonstrates that guardians often emerge as a response to family social dynamics, not solely due to the absence of a guardian.

2. Public Understanding and Attitudes Towards Guardians

Public understanding and attitudes towards guardians are important factors influencing the practice of appointing guardians in marriages. How people understand the concept of guardians not only determines how they comply with legal provisions but also influences the effectiveness of the implementation of Islamic marriage law at the social level. Therefore, analyzing public understanding and attitudes is an integral part of sociological studies on the dynamics of guardian appointments.

In general, public understanding of guardians still shows significant variation. Some people understand guardians as legal institutions legitimate under Islamic law and positive law, which function as substitutes for guardians of lineages in certain circumstances. However, many also view guardians as merely an administrative solution to conduct marriages when the guardian of lineages is unable to attend or refuses to give consent. This difference in understanding has direct implications for public attitudes toward applying for guardians of lineages.

Field interviews at the Office of Religious Affairs (KUA) in Sungai Gelam District indicate that some prospective brides and grooms and their families do not fully understand the requirements for using guardians of lineages. An informant from the Office of Religious Affairs (KUA) stated:

"Many people still come to the KUA assuming that a legal guardian can be used immediately without considering the legal basis. They think that as long as there is a registrar, the marriage can be performed."

This quote reflects the low level of public legal knowledge regarding legal guardians. From the perspective of Soerjono Soekanto's legal awareness theory, this situation indicates that the public's legal knowledge and understanding have not yet fully developed, resulting in pragmatic legal attitudes and behaviors.

3. The Influence of Cultural and Customary Factors on the Appointment of a Guardian

Culture and customs play a significant role in shaping societal behavior and perspectives on the law, including the appointment of a guardian in marriage. Although Islamic law and Indonesian positive law clearly regulate the position and requirements of a guardian, in practice, these provisions cannot be separated from the influence of prevailing cultural and customary values. Therefore, an analysis of cultural and customary factors is crucial for understanding the social dynamics involved in the appointment of a guardian.

In society, custom often positions the guardian of the lineage as an authoritative figure with full control over decisions regarding a daughter's marriage. This authority is understood not only as a religious mandate but also as a symbol of the family's honor and social status. In such a cultural context, the guardian's refusal to accept a marriage is often considered normal and must be respected, even though such refusal is not always based on Islamic law.

The influence of patriarchal culture is also evident in the practice of appointing a guardian. In some cases, the voice and wishes of the prospective bride receive less attention than the guardian's authority. When a conflict arises between a woman's desire to marry and the guardian's refusal, a guardian judge acts as a legal mechanism to balance this cultural dominance. However, the use of a guardian judge is often viewed as contrary to tradition, leading to resistance from the family or social environment.

4. Dynamics of the Relationship between the Religious Affairs Office (KUA), Family, and Community

The dynamics of the relationship between the Religious Affairs Office (KUA), family, and community are crucial in understanding the practice of appointing a guardian in marriage. The KUA, as the official state institution, functions as the implementer of Islamic marriage law, while the family and community constitute the social environment within which this law is implemented. The interaction of these three forms a complex and mutually influencing dynamic in the process of appointing a guardian.

In practice, the KUA occupies a strategic position as a liaison between legal norms and social realities. The marriage registrar not only performs administrative and legal functions but also acts as a mediator between the legal and social interests of the family. When issues arise regarding guardianship, the KUA is often the first point of contact for prospective brides and grooms and their families to seek solutions. This demonstrates that the KUA is viewed as an institution with both legal and social legitimacy.

The relationship between the KUA and the family in appointing a guardian is often marked by differing perspectives. Families, particularly guardianship, tend to view marriage as a private matter steeped in customary values, honor, and family

authority. Meanwhile, the KUA views marriage as a legal event that must comply with normative and administrative requirements. This difference in perspective often leads to negotiations and dialogue between the KUA and the family before a decision is made on the appointment of a legal guardian.

5. The Gap Between Legal Norms and Social Practice

The gap between legal norms and social practice is a common phenomenon in the application of law in society, including in the appointment of a guardian in marriage. Written and ideal legal norms often do not fully align with the social realities faced by society. In the context of appointing a guardian, this gap arises from the difference between the normative provisions of Islamic law and positive law and the social, cultural, and power relations that develop within society.

Normatively, Islamic law and the Compilation of Islamic Law (KHI) clearly regulate the position and requirements for appointing a guardian. A guardian can only be used under certain circumstances, such as the absence of a guardian of lineage, unclear whereabouts, inability to meet the requirements, or an act of *adhal* that is not permissible according to sharia. This provision aims to maintain the validity of the marriage and protect the rights of the prospective bride. However, in social practice, this provision often encounters more complex and less ideal situations.

Field findings at the Office of Religious Affairs (KUA) in Sungai Gelam District indicate that the application for a guardian is often influenced by social factors that do not fully align with legal norms. One marriage registrar stated:

"Sometimes the reasons given by families aren't purely legal, but rather stem from family conflict or social pressure. We have to assess them carefully."

This quote illustrates the gap between the normative reasons for using a legal guardian and the social reasons that have developed in society. From a legal sociology perspective, this situation reflects what is known as the gap between law on the books and law in action, namely the difference between the law as written and the law as practiced.

CONCLUSION

Based on the results of research and analysis related to the dynamics of appointing a guardian in marriages at the KUA (Office of Religious Affairs) in Sungai Gelam District, several key conclusions can be drawn: 1. Dynamics of Appointing a Guardian: Appointing a guardian occurs due to the absence of a guardian by lineage, the guardian's inadequacy, or the guardian's refusal to perform the marriage without a sharia-compliant reason. The process of appointing a guardian is not merely administrative but is also influenced by social interactions between the KUA, the prospective bride and groom, their families, and the community. Social practices and cultural norms influence the acceptance of a guardian, making mediation and education from the KUA crucial for the success of the marriage contract. 2. From a Legal Perspective: Appointing a

guardian is carried out in accordance with Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and the Regulation of the Minister of Religious Affairs (PMA), ensuring that the marriage contract is legally valid. Although formal procedures are followed, flexibility is needed in practice, for example regarding the completeness of documents and the availability of witnesses. The appointment of a guardian serves as legal protection for women, ensuring their right to marry remains protected. 3. Sociological Perspective: Social factors, such as cultural norms, religious understanding, family social status, and support from community leaders, are crucial for the success of the appointment of a guardian. Family resistance to the guardian can occur, especially when there are differences in cultural perceptions or a lack of legal understanding, but this can be overcome through mediation and education at the Office of Religious Affairs (KUA). 4. Juridical and Sociological Integration: The success of the appointment of a guardian depends on the harmonious interaction between positive law and social practices. A legally valid and socially acceptable process demonstrates the relevance of a legal pluralism approach to the practice of guardianship. The dynamics of the appointment of a guardian at the KUA in Sungai Gelam District demonstrate that the success of the guardianship is determined not only by positive law but also by social practices, cultural norms, and community understanding. Therefore, a holistic approach, integrating legal and sociological aspects, is key to ensuring that the marriage contract is legally valid, accepted by the family, and benefits the woman and society at large.

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