



Marriage guardian examination in banjar district: A situational approach and regulatory discretion

Fauziah Hayati

Faculty of Sharia, Antasari State Islamic University, South Kalimantan, Indonesia. Email: fauziahhayatikerjasam@gmail.com

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ABSTRACT

This research explores the practices of examining the completeness of marriage guardian requirements at the Religious Affairs Office (KUA) in Banjar Regency. Despite the examination being carried out in accordance with the existing regulations, it is undeniable that there are challenges in the field, leading to occasional adjustments in the examination process based on the prevailing situations and conditions. The objective of this study is to uncover the reasons behind these practices based on the Minister of Religious Affairs Regulation No. 20 of 2019. This research employs an empirical legal study with a qualitative descriptive approach. The aims are: (1) To understand the practices of examining marriage guardians at the KUA in Banjar Regency, and (2) To identify the reasons underlying the variations in the examination of marriage guardians at the KUA in Banjar Regency. The analysis reveals that at the KUA in Banjar Regency (including Beruntung Raya Sub-District, Gambut Sub-District, and Kertak Hanyar Sub-District), examinations of marriage guardians are conducted in accordance with the applicable regulations but still occur on a situational basis. Recognition from the marriage guardian is not solely verbal but also aligns with the valid documents in Indonesia. Prudence is highly emphasized in these examinations, although some are based on the principle of trust alone.

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Corresponding Author:

Fauziah Hayati,
Faculty of Sharia,
Antasari State Islamic University,
Jalan Ahmad Yani Km. 4.5 Banjarmasin, South Kalimantan, Indonesia
70233
Email: fauziahhayatikerjasam@gmail.com

1. Introduction

The introduction should be clear and provide the issue to be discussed in the manuscript. Before the objective, authors should provide an adequate background, and very short literature survey in order to record the existing solutions (Dewi & Sudaryanto, 2020), to show which is the best of previous researches (Amalia & Sugandi, 2022), to show the main limitation of the previous researches, to show what do you hope to achieve (to solve the limitation) (Schneider et al., 2023), and to show the scientific merit or novelties of the paper (Cheng et al., 2023) (Grünebaum et al., 2023).

Marriage is one of the common sunnatullah that applies to all creatures of God (Habib & Talli, 2022; Hasan, 2023). For humans, marriage is regulated by various ethics and regulations that uphold human values. Marriage is a religious commandment, where every religious commandment is part of worship for every creature to His creator (Hafizh & Armi, 2022). Marriage will only be declared valid if according to God's law and state law it has fulfilled the pillars and conditions that apply in the country, namely recorded according to applicable laws and regulations. In Indonesia, there are two agencies that are assigned to record marriages and divorces (and reconciliations), as for these agencies are: 1) the Office of Religious Affairs (called KUA) for people who are Muslims. And 2) The Civil Registry Office (called KCS) for non-Muslim marriages (Usman, 2021).

Marriage registration is an administrative activity of a marriage carried out by a Marriage Registration Officer who is domiciled at the Office of Religious Affairs in the area where the bride and groom are getting married for Muslims, and at the Civil Registry Office for non-Muslims (Rahmi & Sakdul, 2016). Marriage registration in Indonesia is regulated in several articles of legislation, one of which is Article 2 of Law No. 1 of 1974 concerning Marriage which states (Afifah, n.d.): a) Marriage is valid if it is conducted according to the laws of each religion and belief; b) Every marriage is recorded according to the applicable laws and regulations.

Then in Article 7 paragraph (1) of the Compilation of Islamic Law explained that: "Marriage can only be proven by a marriage certificate made by a Marriage Registration Officer.". This means that marriages conducted outside the supervision of the VAT have no legal force (Fadlyana & Larasaty, 2016). Therefore, although marriage registration is not a valid condition of marriage, it plays a very important role because it determines whether or not the marriage is recognized by the state (Hakim, 2022; Musfiroh, 2016). The registration of marriage as regulated in PMA No. 20 of 2019 includes: a) Registration of the marriage intention; b) Examination of the marriage intention; c) Announcement of the marriage intention; d) Implementation of marriage registration; and e) Delivery of the marriage book. Where in Article 5 paragraph (3) it is explained that: The Head of the Sub-district KUA/Penghulu/PPN LN conducts an examination of the marriage documents in the presence of the prospective husband, prospective wife and guardian to ascertain whether or not there are any impediments to marriage (al-Khalizi, 2020).

In the case of a marriage intention examination, the prospective bride and groom are summoned and required to appear before the VAT at the sub-district KUA, in order to find out who the bride and groom are and who the marriage guardian is, because in this examination process they will be questioned one by one. Furthermore, the examination is considered complete when all three have been properly examined.

In the case of the examination of the will to marry, which is included in one of the marriage registrations, the Head of the KUA/Penghulu/PPN LN conducts an examination of the marriage document by presenting the prospective bridegroom, prospective bride, and guardian to ensure that there are or are no obstacles to marriage as stated in Article 5 paragraph (3) of PMA No. 20/2019 concerning Marriage Registration (Kurniawati, 2021).

The prospective bride and groom who are summoned must appear before the VAT at the Sub-district KUA for an examination of the marriage intention (Sitorus, 2020). It is through this examination process that the correctness of the marriage administration will be known in reality (Nurdin, 2022). Where this examination of the will to marry is carried out in order to provide benefit (goodness) to the Indonesian people in general and Muslims in particular to avoid any kemafsadatan (damage). As contained in the fiqhiiyah rules, namely:

نَزَاءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Rejecting harm takes precedence over gaining benefit (Hasan, 2023).

There are Practical Benefits the results of this study are expected to provide benefits in order to apply and develop knowledge, especially matters relating to the examination of marriage guardians (Syarifuddin, 2018).

2. Method

The research method used in this research is empirical legal research (sociological), or field research, namely legal research whose data is obtained from primary data or data obtained directly from the community. In other words, the author collects data through research conducted by exploring data regarding the practice of examining marriage guardians, in this case the data is obtained through interviews with the Head of the KUA as a Marriage Registration Officer (PPN) (Efendi, & Johnny, 2018; Suryanto, 2023).

The research approach used is a qualitative descriptive approach. Namely an approach that aims to describe (describe) a problem in a certain area or at a certain time in depth by analyzing data or legal materials so as to get an understanding. This research activity includes collecting data in the field which is finally described in an analysis and formulates a conclusion that refers to the analysis so as to get results (Jaya, 2020; Suryanto, 2023).

The location of this research was conducted at several KUAs in Banjar Regency. The location of this research was chosen with the consideration that in the KUAs of Banjar Regency there are differences in the examination of marriage guardians. The KUAs that became the research locations were 3 KUAs in Banjar Regency, namely the Gambut District KUA, the Sungai Tabuk District KUA, and the Kertak Hanyar District KUA.

Data source is about where the data is obtained. The data sources of this research were obtained from 3 informants, namely 3 Heads of KUA in Banjar Regency as Marriage Registration Officers (PPN), namely the Head of the Gambut District KUA, the Head of the Sungai Tabuk District KUA, and the Head of the KUA of Kertak Hanyar District.

3. Analysis and Results

3.1. The Practice of Nikah Guardian Examination at the Banjar Regency KUA

Wali nikah is one of the five other pillars of marriage that must be fulfilled. As regulated in Article 19 KHI which reads: "The marriage guardian in marriage is a pillar that must be fulfilled for the prospective bride who acts to marry her." So that a marriage that is not with its guardian, then the marriage is not valid. Therefore, in this case the Marriage Registration Officer (PPN) as an official who records marriage events must be skilled and careful in terms of examining the will of marriage, especially with regard to the marriage guardian (Sidek et al., 2020; Wijaya, 2017).

In terms of the examination of the marriage intention, the presence of the guardian is a requirement when the VAT conducts the examination of the marriage intention (Siregar et al., 2023). As stated in Article 5 paragraph (3) of PMA No. 20/2019 concerning Marriage Registration. Based on the results of interviews with three Heads of KUA in Banjar Regency as informants in this study, the author can conclude that in the practice of examining marriage guardians, the three Heads of KUA apparently use the same system, namely that the guardian must be present at the time of the marriage guardian examination. However, it is the timing of the guardian examination that makes the difference between the KUAs. For the examination time, the Head of the Gambut Sub-District KUA uses a time specifically designated for the examination. Thus, the examination of the guardian will be more thorough, in order to ensure the truth of the data and statements given by the person concerned. However, in certain cases, if the guardian of the bride-to-be is unable to attend the examination at all, the examination is carried out on the day of the marriage contract, namely before the marriage contract (Agustainah, 2023; Usman, 2021).

This opinion was also supported by the Head of the KUA of Sungai Tabuk Sub-district. However, in practice there is a slight difference in bringing the guardian. Because what happens at the KUA Sungai Tabuk, the examination of the marriage will be usually carried out at the same time as the marriage registration. So that it does not require a re-call again to conduct the examination. Nevertheless, the examination of the marriage guardian is still carried out. Even in certain circumstances, it is the Head of the KUA as the PPN who comes to the place where the guardian of the prospective bride is located if the guardian is unable to attend the KUA Sub-district where the marriage registration is carried out (Nuraeniah, 2021; Nurdin, 2022).

Regarding the timing of the examination, at the KUA of Kertak Hanyar District this is situational. This means that it can be done during the registration of the marriage intention, but it can also be done before the marriage contract takes place. In certain circumstances, for example, the guardian is unable to attend due to illness, the Head of the KUA as the PPN will come to the place where the guardian is to ascertain whether the illness of the marriage guardian has resulted in the loss of the guardian's rights or not, this is similar to what the Head of the KUA of Sungai Tabuk Sub-district did.

Then, with regard to marriage registration and its implementation, the Head of the KUA of Kecamatan Kertak Hanyar is different from the Head of the KUA of Kecamatan Gambut and the Head of the KUA of Kecamatan Sungai Tabuk. In the KUA of Kertak Hanyar Sub-district, if the birth of the bride-to-be is less than six months after the marriage of her parents, then in the implementation of the marriage contract, the guardian is the *wali hakim*, but in the marriage registration, the written guardian is the *nasab* guardian.

3.2. Reasons for Differences in the Examination of Nikah Guardians in Banjar Regency

The Head of the Sub-district KUA/Penghulu/PPN LN conducts an examination of the marriage document in the presence of the prospective husband, prospective wife, and guardian, to ascertain whether or not there are any impediments to marriage.

Based on the provisions of this regulation, the Head of the KUA of Gambut Sub-district said that the presence of the guardian is a must when the VAT conducts an examination of the marriage intention. In addition, there is a level of caution from the Head of the KUA of Gambut Sub-district in the process of examining marriage guardians.

The level of caution by the PPN carried out by the Head of the KUA is a separate policy by the Head of the KUA as a Marriage Registration Officer (Amri & Khalidi, 2021; Eleanora & Sari, 2020). Because the guardian is a pillar of a marriage, that is why in this case the Head of the KUA must be careful in examining the guardian. Therefore, the Head of the KUA requires the presence of the marriage guardian in the examination of the marriage intention to ascertain whether or not there is an obstacle to marriage. In addition, to ascertain whether or not all administrative requirements have been met (Branson, 2016; Izadi Fard et al., 2023).

This is also in line with the Head of the KUA Sungai Tabuk, as the executor of the law, the application of the law is the main thing to do. In addition, to minimize the existence of false confessions by the prospective bride and groom and also the marriage guardian, so that an examination is needed for the prospective husband, prospective wife and also the guardian by the PPN. Therefore, Article 5 paragraph (3) of PMA No. 20 of 2019 concerning Marriage Registration is the main foundation for the Head of the KUA to require the presence of a guardian in a marriage. Because the provisions of the PMA are government products that must be carried out by the KUA in each District as a government agency (KMW & Yunus, 2022).

Both opinions were also reinforced by the Head of the Kertak Hanyar KUA, and the Beruntung Baru KUA. The reason is that the marriage guardian is one of the pillars in determining the validity of a marriage, so that if there is an error in determining the marriage guardian, the marriage will be invalid. The correctness of the civil registration document must be adjusted among various documents with direct testimony by the guardian concerned.

From this, the author can conclude that ideally the examination of the marriage guardian should be carried out before the marriage contract takes place. In order to determine the fulfillment of all the necessary administrative requirements, and to adjust the document with the statement of the guardian concerned. So that the regulation regarding the presence of the guardian as stated in Article 5 paragraph (3) PMA No. 20/2019 is a policy that must be obeyed as a common benefit for everyone involved (Aminah, 2019; Chotban, 2019; Husna, 2016). However, it cannot be denied that what happens in the field is often not in accordance with the existing provisions, so in this case the Head of the KUA as the PPN has his own policy in conducting an examination of the marriage guardian, whether it is necessary to come to the place of existence of the marriage guardian for examination, or it is carried out during registration, during counseling, or even before the marriage contract is carried out (al-Khalizi, 2020; Rasti & Malek Afzali, 2023).

The Head of the KUA of Gambut Sub-district and the Head of the KUA of Sungai Tabuk Sub-district are of the opinion that the registration of marriage must be in accordance with the implementation, on the grounds that the marriage guardian is one of the pillars of marriage. Recording a marriage guardian that is not in accordance with the implementation will result in messy guardianship and inheritance rights. Therefore, the registration and implementation of the marriage must be in accordance in order to avoid harm in the future.

In contrast to the Head of the KUA of Kertak Hanyar District, if the birth of the prospective bride is less than six months of her parents' marriage, then in the implementation of the marriage contract the guardian is the wali hakim. However, the written marriage record is still the nasab guardian. This is motivated because the Head of the KUA believes that if what is written in the marriage book is the judge's guardian, it is feared that the groom's family will assume that the bride is an extramarital child. On the basis of this, the Head of the KUA argues that this is to cover the disgrace of the bride, while according to the Head of the Beruntung Baru KUA, if it is in accordance with the administrative file, and the adoptive parents do not want it to be known that their child is an adopted child by others, then in the marriage book data, the adoptive father becomes the nasab guardian, even though in practice it is Wali Hakim.

Based on this, what the Head of the Kertak Hanyar KUA and the Head of the Beruntung Baru KUA did was a policy to minimize unwanted things. However, if we look further, in the author's opinion, this could have an impact on bigger bad things, namely guardianship and inheritance issues due to the discrepancy between the implementation and recording of the name of the marriage guardian. In accordance with the fiqhyyah rule which reads:

الضَّرَرُ لَا يُزَالُ بِالضَّرَرِ.

The harm cannot be eliminated by another harm.

The results of this study are expected to be reference material in the context of additional knowledge regarding all matters relating to the examination of marriage guardians in marriage registration. It is hoped that it can be a useful means of implementing this research for the community so that they can understand about how important it is to check guardians in marriage, and in administration, because guardians are included in the pillars of a marriage.

Based on observations that the author has made at the KUA in Banjar Regency, namely the Gambut District KUA and the Kertak Hanyar District KUA, there are differences in the process of examining marriage guardians at the two KUAs. In the KUA of Gambut Sub-district, in the process of examining the marriage guardian, most of the time the guardian of the bride-to-be must be brought directly to the PPN. Then in the marriage contract process, if in its implementation the guardian is the judge's guardian, then administratively in the marriage registration the judge's guardian is also written. Whereas in the KUA of Kertak Hanyar Subdistrict and Beruntung Baru Subdistrict, in the process of examining the marriage guardian, there is no need to bring the guardian to the VAT if administratively it is deemed sufficient. Then if in the implementation of the marriage contract the guardian of the prospective bride is the judge's guardian, then administratively in the marriage registration it is written that it is not

the judge's guardian but the nasab guardian in accordance with other documents that are included as administrative requirements. So that there are differences in the process of examining and recording the marriage guardian at the KUA of Beruntung Raya District, Gambut District KUA and KUA of Kertak Hanyar District. therefore, the author took research with the title Nikah Guardian Examination Practices at the KUA of Banjar Regency.

4. Conclusion

The results of this study concluded that The Gambut KUA, Sungai Tabuk KUA, Kertak Hanyar KUA and Beruntung Baru KUA conducted an examination of the marriage intention by inviting the bride-to-be and her guardian, in accordance with the provisions contained in PMA No. 20/2019 concerning Marriage Registration. The arrival of the guardian is required in order to determine the correctness of the document with the guardian's statement. However, in practice, the examination of the guardian can be carried out situationally. Nevertheless, the examination of the marriage guardian is still carried out. The three KUAs, namely the Gambut KUA, the Sungai Tabuk KUA and the Kertak Hanyar KUA all have a fairly high level of caution in accordance with their respective policies. On the grounds of minimizing any untrue statements by the parties concerned, the examination of the marriage will must be carried out as far as possible, although it does not rule out the possibility of the examination being carried out at certain times according to the respective situations and conditions.

The study's implications revolve around the highlighted role of the guardian in validating documents, despite some situational flexibility. Despite varying levels of caution, each KUA maintained a reasonably high standard. Overall, the study emphasizes the minimization of false statements, advocating for thorough examinations while acknowledging occasional deviations due to specific circumstances. This contributes to understanding these KUAs' dedication to legal compliance and accuracy in marriage examinations.

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