

## Problematics of Guardians in Marriage (Case Study of Transfer of Nasab Guardian to Guardian Judge in Nuangan District, East Bolaang Mongondow Regency, North Sulawesi)

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### ABSTRACT

Transfer of nasab guardian to judge guardian if you look at the reasons, namely the guardian of the judge can only act as guardian of the marriage if the guardian of the lineage does not exist or is unable to present him or the place of residence is not known or is unseen or 'is or is not. However, in Nuangan District, East Bolaang Mongondow Regency, North Sulawesi, there is consent and consent in a marriage by the judge's guardian because there is an assumption that if there is a guardian, the marriage is considered valid, in the sense that the one who is marrying is the judge's guardian himself, who has been entrusted with guardianship by lineage guardian. However, the wedding was attended by the guardian of the lineage or the bride's own family. This shows that there are separate reasons for the guardians to give guardianship to the judge's guardian.

This research is a field research using a sociological approach. The theory contained in this is structural-functional theory, which is a concept of sociological theory from Talcott Parsons. The nature of this research is descriptive-qualitative. Data collection techniques using three methods, namely observation, interviews, and documentation.

The results of the study of the authors found that there were four driving factors regarding the transfer of a nasab guardian to a judge's guardian in Nuangan District, Bolaang Mongondo Timur Regency, North Sulawesi, namely (1) The nasab guardian did not exist or was far away, (2) Women who wanted to marry converts, (3) Children out of wedlock and (4) His family guardian is incapacitated.

### 1. Introduction

Jumhur scholars classify guardians in marriage into two groups:

1. Close guardian or intimate guardian (aqrāb) or nasab guardian or mujbir guardian, namely the father and if there is no

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father, it moves to grandfather. Both have absolute power over the daughter they marry.

2. Wali remote or wali ab'ad wali gairu mujbir. The remote guardians sequentially are biological brothers, if there is no transfer to the same father's brother, if there is no transfer to the son of a biological brother, if there is no transfer to the son of a sibling same-father son, if there is no move to biological uncle, if there is no transfer to paternal uncle, if there is no transfer to son of biological uncle, if there is no move to son of paternal uncle Other heirs if any The sultan or guardian of the judge who holds the general area. (Amir Syarifuddin , 2003, p.92)

Seeing from the explanation above, that the order of guardians in marriage has been determined, for example, if the aqrab guardian or biological father is not present, then the guardianship automatically passes to the grandfather. and so on up to the guardian of the judge. If we see from the sequence above that everything is related to the family except the judge's guardian.

However, in reality it still often occurs in Nuangan Subdistrict, East Bolaang Mongondow Regency, North Sulawesi. There is consent and consent in a marriage by the judge's guardian because there is an assumption that if there is a guardian, then the marriage is considered valid, in the sense that the one who is marrying is the judge's guardian himself, who has submitted/entrusted with guardianship by the nasab guardian. However, the wedding was attended by the guardian of the lineage or the bride's own family. This shows that there are separate reasons for the guardians to give guardianship to the guardian of the judge, even though when viewed from the sociology of the people of Nuangan Sub-District, East Bolaang Mongondow Regency, North Sulawesi, the majority are Muslims where if there is a celebration of Islamic holidays they always take part in it such as isra. ' miraj, birthday of the Great Prophet Muh}ammad SAW. of course the community always gets the scientific advice they get at the big event. but in reality these people when they get married to their daughter, there are still those who use a judge's guardian to become a guardian in their daughter's marriage and are attended directly by the daughter's biological father or his family.

Based on this background, the authors want to conduct research on the transfer of a nasab guardian to a judge's guardian in Nuangan sub-district, East Bolaang Mongondow Regency, North Sulawesi. In order to be able to find out the factors of transfer of lineage guardian to judge's guardian to be used as learning material and to get a bright spot in the study of transfer of lineage guardian to judge's guardian. The focus point in this research is the people of Nuangan sub-district, East Bolaang Mongondow Regency, North Sulawesi regarding the transfer of a nasab guardian to a judge's guardian, the Office of Religious Affairs and also the perpetrators who handed over guardianship of their daughter's marriage.

## **2.Literature Review**

Guardianship etymologically in Indonesian is "everything that is the guardian's business". (WJS Poerwadarmantak,1978,p.1147) In Arabic it is called wilāyah (ولاية) Guardianship (Lois Ma'luf, tt,p919) is al-Nas}ratu (النصرة) help, (Ahmad Hudri, 1968, p.1968) Ibn Mandzur, in Lisa>nu al-'Arab said the term guardian comes from the verb: guardian – yawli – region – plural guardian awliya' (ولى ج أولياء) which has 4 (four) meanings, namely: (1) mahabbah (feeling of love), (2) nushrah (help), sultah (power), and (4) qudrah (strength). (Ibn Mandzur, tt, p.405) whereas in the Big Indonesian Dictionary, the word guardian is defined as: The bride's caregiver at the time of marriage (ie the one who makes the marriage vows to the groom). In other words, a wali is a person who helps or someone who has power. Meanwhile, in terminology, guardianship is the power to carry out contracts and transactions, both marriage contracts and other contracts without dependence on other people. The fuqaha (experts in Islamic law) divide the guardianship into guardianship over oneself and over property (wealth). The judge's guardian is a guardian appointed by the government or a community institution commonly called Ahlu al-hilli Wa al-Qadi to become a Qadi and is authorized to act as guardian in a marriage. In practice, the judge's guardian who is appointed by the government for now is the Head of the Office of Religious Affairs or the Marriage Registrar. (A. Zuhdi Muhdor, 1995, p.62)

## **3.Methodology**

The study material that the writer will use is the theory of structural functionalism proposed by Talcott Parson. According to Parsons in the theory of structural functionalism there are four functional imperatives that are necessary (typical for) all systems, namely: Adaptation, Goal Attainment, Integration, and Latency. Taken together, these four functional imperatives are known as the AGIL scheme. In order to be sustainable, a system must carry out these four functions: (Geogre Ritzer, 2012, p.408)

## 1) Adaptation

It is an external instrumental function of a system or situation that comes from outside. Adaptation is external in the sense that it involves the adaptation of the system to the environment and is instrumental in the sense that it involves, not the actual pursuit of specific environmental goals, but the development of common means for pursuing various future goals and to meet various environmental conditions when they are in urgent situations.

## 2) Goal Achievement

A system refinement of external functions in the sense of referring to the attainment of goals in relation to the environment, and refinement in that sense does not involve the building up of common instrumental resources but the organization to effectively pursue the goals of a particular system. In this social system, it is a collective goal, that is, it must be able to achieve its main goal.

## 3) Integration

A system must regulate the relationship between the parts that make up its components. He is also able to manage the relationship between the other three functions (A,G,L).

## 4) Pattern Maintenance

The final functional requirements are internal and instrumental (*latency*), which is the main source for the integration of units in a system that requires consistency in their basic pattern of relationships. Hence, the system must have the means to establish and maintain a stable structure. That way, the maintenance of individual or group patterns will be maintained.

Seeing the theory put forward above, it can be influenced by four action systems, namely Behavioral Organisms, Personality Systems, Social Systems and Cultural Systems. These systems influence each other. The influence will continue to run one and mutually reinforce one another.

*Behavioral Organisms* is a system of actions that handles the function of adaptation by adjusting to and transforming the outside world. Seeing this definition, it can be understood that this behavioral organism is an act of an actor himself. The Personality System carries out the function of achieving goals by defining system goals and mobilizing/moving all resources to achieve goals. This personality is a system of orientation and motivation for individual actor actions that are organized.

*Social System* is to handle the integrity function by controlling its component parts. Furthermore, the Cultural System is to carry out latency functions by providing the actors with Norms and values that motivate them to act. (Geogre Ritzer, 2012, p.409-410) This system is rooted in the mind, the source of various rules, norms, and cultural knowledge. (Esti Ismawati, 2012, p.12)

#### 4. Results and Discussion

The discourse on the transfer of lineage guardians to guardian judges is the author's initiative to analyze the driving factors for the transfer of lineage guardians to guardian judges as well as the understanding of the people of Nuangan sub-district, East Bolaang Mongondow Regency regarding the marriage law that applies in Indonesia in resolving cases of transfer of lineage guardians to guardian judges.

Based on the results of the author's interviews with several religious, community, traditional leaders and actors who transferred their guardianship in Nuangan District, Bolaang Mongondow Timur Regency, it was found that there were four factors that pushed the community to make the transfer of nasab guardians to judge guardians. This is also in line with the results of the writer's interview with the Head of the Office of Religious Affairs who stated that there were several factors that led to the transfer of a nasab guardian to a judge's guardian. The following describes the results of the interview:

"The transfer of a nasab guardian to a judge's guardian in Nuangan District only occurred a number of factors, including because the guardian was absent or far away, the guardian was non-Muslim, the child was out of wedlock,

and the guardian was unable to afford it. However, the four factors were not immediately decided by the Office of Religious Affairs that the guardian of marriage is the guardian of the judge. The Nuangan District Religious Affairs Office will investigate first, for example if the guardian is unable to afford it, we will ask the family guardian directly about this." (Abdul Gafur, Head of the Nuangan District Religious Affairs Office)

Seeing what has been stated by the Head of the Office of Religious Affairs above, the author will describe one by one in detail the transfer of nasab guardians to judge guardians that occurred in Nuangan District as follows:

a. The Guardian Is Absent or Away

The absence of a guardian or because the guardian is far away as happened in Nuangan Barat village as the result of an interview with KR when his daughter got married.

"My son, SS, wanted to marry RH, but at that time I was not there because I was working in Gorontalo and was far from home, seeing that conditions were not possible to come because there were other reasons that I could not come, so I was called at that time and told that my child will marry but because I am far away they ask my consent to be given guardianship and I say yes." (KR, Nuangan Barat Community, Nuangan District)

It is understandable that KR's statement above allows for the transfer of guardians if the guardian is far away and is unable to attend (become guardian for his daughter).

b. Convert

A guardian is very important because it determines the legitimacy of a marriage that will take place in the sense that a marriage without a guardian will not be valid, if women who do not have guardians in a marriage that will take place with a man due to several factors, for example because a woman converts to marriage will be passed on to the guardian of the judge. As the results of interviews with Suhamdi.

"Basically, the person who becomes the guardian of a woman's marriage is the guardian of the lineage itself, namely her biological father, but if the guardian is not there because the woman wants to marry a convert, then the guardian is the guardian of the judge. This has happened to marriages between HT (women) and DT (man) because first of all the woman's parents and family were there but female converts so automatically could not become her marriage guardian so at that time according to the agreement of the family, priests, other religious figures were to be represented by the judge's guardian because it was guardian cannot be guardian. But his father and family were present at the consent and Kabul." (Suhamdi, Community Leader of Bai Village, Nuangan District)

c. Children outside of marriage

Children out of wedlock who become guardians of marriage are judges' guardians because they are pregnant out of wedlock (a child born to a mother is not married to a father who impregnates his mother) as the results of the interview with HY (woman)

"When I wanted to register my child, FT (a woman) wanted to marry (FR) at KUA, Nuangan District, the Office of Religious Affairs asked where the father was, why were there only three of them here? What. Finally, I told him that my child was a child out of wedlock (not married) so the KUA immediately found out about my child's father. Starting from my family, my siblings were questioned by the KUA, when they already knew 100% that a child was out of wedlock then I was given an explanation that the KUA party had the right to be a marriage guardian. (Society of West Nuangan Village, Nuangan District)

d. Inadequate/Low Level of Knowledge of Religion

The next driving factor is the inability of the guardian or the low level of knowledge of religious knowledge, especially the issue of guardianship, as the results of interviews with the author who transferred the guardianship.

"Actually, the first thing I thought was happy, emotional and happy because my child is getting married and thank God there is someone to look after my child. even though I am not the guardian of my child because I am afraid that I will not be able to say the consent later because I am a person who forgets quickly and is nervous, especially in the presence of many people I can't do anything. Not to mention that if the groom is also wrong when qabul this will be a problem for me which makes me even more nervous. I've tried to learn to be a guardian but I still make mistakes and I'm afraid that when the consent and Kabul go wrong, I'm more afraid that new problems will arise and in the end the marriage will be postponed or even invalid. I honestly have never appeared in public, I just talk normally I'm often nervous let alone being the guardian of the first marriage." (KFL)

## 5. Conclusion

Based on the results of the author's research in the field and literature studies related to the Problems of Guardians in Marriage Case Study of Transfer of Nasab Guardians to Guardian Judges in Nuangan District, East Bolaang Mongondow Regency, North Sulawesi, the authors can formulate the following conclusions:

The transfer of a nasab guardian to a judge's guardian in Nuangan Subdistrict, East Bolaang Mongondow Regency was driven by 4 factors, namely (1) The nasab guardian did not exist or was far away (2) Converted (3) Pregnant out of wedlock and (4) Incapacitated/low level of religious knowledge.

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