

APPOINTMENT OF MARRIAGE GUARDIANS IN MUALLAF MARRIAGES IN KARO REGENCY (COMPARATIVE ANALYSIS OF THE VIEWS OF KUA KABANJAHE AND KUA BERASTAGI)

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Abstract. Marriage is a method developed by Allah as a strategy to preserve the life of the people of the prophet Muhammad, one of the main pillars of marriage is a bride's guardian. This research is analyzed with the legal research method of empiricism, it's empirical analysis of the *ijtihad* method of the Chief of Religious Affairs of Kabanjahe District and Berastagi District, Karo Regency, addressing the case of the appointment of a guardian in the marriage of a female Muslim convert, with a sociological and anthropological approach and Gustav Radbruch's theory of law enforcement, namely legal certainty, justice and expediency. The method of the Head of Religious Affairs of Kabanjahe Subdistrict in determining the marriage guardian of a muallaf is First; paying attention to the religion of the father of the bride, if he is Muslim then he has the right to become a guardian regardless of his previous religious background. Second; if he is not Muslim, then a search for his descendants who are Muslim because the head of the Kabanjahe sub-district religious affairs prioritizes the guardian of the lineage. Third; if a search has been made from the side of relatives and there are none, then the judge's guardian acts as a guardian in the marriage. However, according to the Head of the Kabanjahe Religious Affairs Office, the third point rarely occurs in Kabanjahe, because the Kabanjahe community is majority Karo, identical with Rakut Si Telu culture, which is very moderate in religion. As for the Berastagi religious affairs office, the determination of the marriage guardian is carried out by paying attention to three stages of analysis, namely; First; by paying attention to the context, namely the muallaf whether he is a muallaf from parents who have long been muallaf or only he is a new muallaf and his parents are still non-Muslim. Secondly, by taking into account the marriage system of the parents, whether the marriage of the parents was carried out in a Christian marriage, Islam or just a customary marriage, then if it was not previously Islamic, then, Thirdly, the legal and entitled guardian of the judge.

Keywords: guardian of marriage; muallaf; Karo

I. INTRODUCTION

Marriage is a *sunnatullah* for all of His creation, whether for humans, animals or plants. Marriage is a method developed by Allah as a strategy to multiply, preserve life and multiply the population of the people of the prophet Muhammad. Man as the most beautiful and special being on the side of God, he undoubtedly does not make man like any other being, in the sense that a being who lives freely follows lusts, instincts and anarchist acts with no rules nor guidelines [1]. God devised and prescribed laws for man by elevating his dignity, and all things God glorified man, just as the law of the relationship between woman and man was composed in a respectful, noble and honorable manner. That is, based on mutual support and witnessed by witnesses who were present and paid attention to the 'contract' of the two couples who were bound to each other [2]. Islam compiles the law for humans as a rule in the concept of arranged marriage life through a stage called marriage, as the provisions are also formulated in the form of marriage law regulations. Islamic law is established with the philosophical meaning of a prosperous people, both for life in the hereafter as well as in the world especially. Welfare and prosperity between communities will be achieved by the presence of welfare in the family, because the family is the smallest container in an

element of society, so the welfare of a society is greatly influenced by the welfare of the family [3].

The well-being of life in the family also greatly influences personal well-being. Likewise, Islam compiles a family management system not only limited to an outline, but Islam compiles a family management system in detail and in detail. Likewise, there are several principles of marriage in Islamic religious teachings that are very urgent to pay attention to in order to achieve the meaning of marriage that is and is true in human life in carrying out his role as a servant who is always devoted to Allah Almighty [4]. The marriage code is a major factor in determining whether or not a marriage is valid. Harmony is an element attached to the law as well as the marriage contract, both in terms of legal objects and legal subjects that are part of the legal act while the legal act is ongoing. In another sense, it is stated that harmony is very functional in determining the nullity or validity of legal acts, as well as the marriage. Furthermore, Djubaidah stated that it is considered valid for a legal act if the harmony is fulfilled thoroughly and perfectly, on the contrary, a legal act if one or more of the pillars is not fulfilled will be declared invalid. The validity of a work of worship if the fulfillment of harmony and conditions [5].

Meanwhile, one of the main pillars of the marriage is the presence of a guardian of the bride-to-be. This is because

in general women do not really understand and experience the daily practical life, so without a guardian of the bride-to-be, it will potentially be that the bride and groom are involved in a relationship and activities that are intrigue and even out of line and against their will. Meanwhile, if a marriage is a woman's right totally and completely, then in determining one decision and provision later, she will experience problems such as lack of consideration and lack of attention to the potential impact of the marriage. Thus, the majority of legal scholars' state that women urgently need a guardian who plays a role in protecting and maintaining moral integrity and guiding marriage to the point of success [6]. Guardianship in a marriage activity bestowed on a perfect and sensible person is a teaching of sharia, for the sake of preservation and benefit. According to Islamic religious teachings regarding marriage in the view of the majority of people in Indonesia, stating that the existence of a guardian is very urgent and important, it will even be declared a marriage void or invalid if the marriage is carried out without a guardian [7]. The existence of a guardian in a marriage contract is a necessary and invalid marriage contract that is not performed by the guardian. The guardian was placed as a pillar in marriage according to the agreement of the clergy in principle. For example, the marriage guardian on the part of the bride-to-be cannot become a guardian because she does not meet the requirements in the marriage as described in the fiqh books and the Compilation of Islamic Law, including not being Muslim. It is not permissible for an infidel to be a marriage guardian for his daughter who has become a (muallaf) Muslim woman who wants to marry. On the other hand, a Muslim is also not allowed to be a guardian for an infidel woman, whether she has the status of a father or otherwise. Because the infidel is the guardian of the pagan woman [8].

Meanwhile, a person who gets hidayah from Allah Almighty and has just converted to Islam, either through marriage such as a wife following her husband's religion which is Muslim or vice versa a husband who follows his wife who is Muslim. This happens in the midst of Indonesian society, especially in Karo Regency, there are often cases of marriages of women whose marriage guardians are delegated to judges without having to pay attention to whether there is a Muslim nasab guardian and it is possible to become her guardian, there are also cases that are still trying to find her nasab guardian to be her marriage guardian. This often occurs in marriages between a Muslim man and a muallaf woman. In Karo Regency itself, there are differences in attitudes towards the appointment of marriage guardians for muallaf women, as is the case in Kabanjahe District, the KUA is trying to track and trace nasab guardians who are allowed to be marriage guardians and qualified. Meanwhile, in Berastagi District, the KUA immediately became the guardian of the judge of the muallaf woman without trying to trace the presence or absence of a nasab guardian who had the potential to be the guardian of the muallaf, whether her uncle or her mother.

At first glance, this difference seems to come from the attitude of understanding the hadith text originating from Aisyah, that there is an emphasis on the cancellation of a marriage without the permission of a guardian, but then only

then does the existence of a guardian judge after the original guardian in responding to the textual hadith. And this hadith seems to give rise to two possible attitudes in the appointment of guardians, firstly seeking the permission of the guardian of the nasab then the guardian of the judge acting as the guardian, while the second potential understanding is that it is permissible for the guardian of the judge to act as the guardian of the marriage.

Meanwhile, in the book of Kifâyatul Akhyâr it is stated that if it is clear that the father cannot be the guardian of the marriage due to religious differences, then the list of people who can become marriage guardians is in order, if indeed among them there are Muslims. As for the order of the people who can become marriage guardians as written by Al-Hishni in the book of Kifâyatul Akhyâr are father, grandfather (father), brother of sekandung (seayah seibu), brother of seayah, son of brother of sekandung, son of brother of seayah, uncle (brother of father), and son of uncle of uncle. If any of these people are Muslims and have a closer position, he has the right to be a guardian for the converted woman. However, if from the order list there is absolutely no Muslim, then there is a guardian judge who in the Indonesian law is implemented by the head of the local sub-district kua. Responding to the differences in attitudes between the two KUA Kec. Kabanjahe and Kec. Berastagi, at first glance, the Karo people did not pay much attention. This is because of the fact that people's insights are in religious affairs. Even sometimes the two communities do not know each other that there are differences in the attitudes of the two KUA Heads. Because in the concept, the Karo Muslim community seems to be very rebellious and believes in the solution to the KUA. However, this is of particular concern to some communities, master teachers and scholars and ustadz in Karo District, as maradong Siregar suggests, stating that he is more inclined to the view that prioritizes tracing of relatives of guardians who are Muslim and qualified to be guardians, but if they do not find it, they are then transferred to the guardian of the judge and do not necessarily directly assign the guardian to the guardian of the judge.

From the description of the problem above and because of a difference in the case of the appointment of a marriage guardian for a muallaf woman in Kabanjahe and Berastagi Districts, the author moved to conduct a more in-depth study of the considerations of Islamic law used by the muallaf, with the title "Appointment of Marriage Guardians in Muallaf Marriages in Karo Regency (Comparative Analysis of Opinions of KUA Kabanjahe and KUA Berastagi)"

Legal Provisions for the Implementation of Marriage

Marriage in Indonesian comes from the word "marriage" which according to language means to have intercourse or form a family of different sexes;. In other terms, it is also called "marriage", taken from Arabic, namely entering each other, gathering, and having sex (wathi). The word "marriage" is often referred to by the meaning of marriage or marriage as well as intercourse activities [9].

In the study of Islamic law, marriage is an activity that begins with an agreement according to the provisions of Islamic sharia teachings, with which men and women can do what is fun for both to live together. In human life and human development, the role of marriage is a very important and urgent one. Allah Swt in the Quran even compiles a guide as marriage management in Islamic law [10]. Meanwhile, the law of marriage in Islam is permissible (mubah) based on the various basic legal arguments described. However, legal experts state that the marriage law is based on its illat or in terms of its conditions, thus the marriage law that can (mubah) can be turned into makruh, haram sunah and mandatory. Marriage is the behavior of creatures created by God Almighty in order for life in the natural world to develop well. Mating not only occurs among humans, but also occurs in plant and animal plants. Therefore, humans are intelligent animals, so marriage is one of the regular cultures that follow the development of human culture in people's lives [11].

In a simple society the marital culture is simple, narrow and closed, in a developed (modern) society the marital culture is advanced, broad and open. The rules of marriage order have existed since the simple society maintained by members of the community and leaders of indigenous peoples and or religious leaders. The rule of order continues to develop forward in a society that has governmental power and within a State. In Indonesia, the rules of marriage order have existed since ancient times, since the time of Srivijaya, Majapahit, until the Dutch colonial period and until Indonesia became independent. In fact, the marriage rules not only concern Indonesian citizens, but also concern foreign citizens, because of the increasing number of Indonesian associations [12].

Marriage is one of the most important dimensions of life in human life in any world. So important is marriage, it is not surprising that the religions of the world regulate the issue of marriage and even the traditions or customs of society and also the institution of the State does not miss out on regulating marriage that prevails among its people. It is a common fact that the regulation of marital issues in the world does not indicate the presence of uniformity. The difference is not only between one religion and another, even in one religion there can be differences in marriage arrangements due to different ways of thinking because they adhere to different schools or sects. [13].

Meanwhile, there are 6 principles that are principled in this Marriage Law. The purpose of marriage is to form a happy and eternal family. For this reason, husband and wife need to help and complement each other so that each can develop their personality to help and achieve spiritual and material well-being. In this law it is affirmed that a marriage is valid if it is performed according to the laws of each of its religions and beliefs, and in addition each marriage "must be recorded" according to the applicable laws and regulations. This law adheres to the principle of monogamy. Only if he is desired by the person concerned, because the law and religion of the person concerned allow a husband to be able to marry more than one. This marriage law adheres to the principle that the future husband and wife must have cooked their physical

soul to be able to carry out the marriage, in order to realize the purpose of marriage, well without thinking about divorce and get good and healthy offspring. Since the purpose of marriage is to form an eternally happy family and a prosperous position, this law adheres to the principle of making it difficult for divorce to occur. The right and position of the wife is balanced with the right and position of the husband, both in domestic life and in social society, so that thus everything in the family can be negotiated and decided jointly by the husband and wife.

Pillars of Marriage

A marriage is a sacred covenant between a man and a woman to form a happy family. That definition makes clear the notion that marriage is a covenant. As a treaty, it contains the notion of free will between two parties who promise each other, based on the principle of consensual. So, it is far from anything that can be interpreted as containing a coercion. Therefore, both the male and female parties who make the promise in marriage have complete freedom to state, whether they are willing or not. The treaty is expressed in the form of an ijab and qabul which must be pronounced in one assembly, either directly by those concerned, i.e. the future husband and the future wife, if both are fully entitled to him according to law or by those authorized to do so. If this is not the case, the e.g. is insane or underage, for they may act their lawful guardians [14]. Likewise, prayer services will be carried out and valid with takbiratul ihram. On the contrary, if there is no face washing, then there is no and invalid ablution'. If there is no takbiratul ihram, then there is no and invalid prayer. Similarly, when brought in the realm of marriage. For example, shighat (ijab-qabul) is a pillar in the worship of the marriage contract. If there is a shighat, then a marriage contract is formed and legal. On the other hand, if it is not shighat, it will not be awarded the contract and is certainly invalid. Meanwhile, the pillars of marriage according to the Hanafi school that the pillars of marriage are (1) shighat (contract), (2). Two parties to the agreement, (3). Witness. And according to the Hambali school, dowry and guardians are not a marriage pillar and not a condition. According to the Malikiyah school, there are five pillars of marriage, namely: (1). Guardian of the woman, (2). Shidaq or dowry, (3). The husband is not ihram, (4). The wife is not ihram or not in iddah and (5). Shighat (ijab and qabul). Furthermore, harmony is something for which there will be no essence of syar'iyah (al-mahiyatu al-syar'iyah) except by being. Thus, a marriage contract will not be formed, except in the presence of both parties to the marriage, namely the husband and guardian; and shall not be formed except in the presence of ma'qud 'alaih, i.e. woman and maskawin; and shall not be formed except by the presence of a shighat, i.e. lafaz or words with which affirms marriage according to the syara'. As for not mentioning the dowry in the contract it is not why, because its existence as a pillar is seen from the angle of something that should not exist (ma la budda minhu). Of the aforementioned pillars, there are no witnesses. Thus, witnesses do not get along according to the Malikiyah school.

Fuqahā (jurists) agree that there are 2 (two) guardian conditions: First, legally capable (kamālu al-ahliyyah),

meaning that the person who wants to be the guardian of marriage must be a capable person in carrying out a legal act. The criteria for a legally capable person include being an adult (albulūg), sensible (al-aql) (not crazy), and a free person (alhurriyyah) not a slave or servant of sahaya; Secondly, there are similarities in religion and belief between the guardian and the daughter to whom he is guardian (Ittifāq dīn al-walī wā al-maulā 'alaih) [15].

Likewise with the Shafii school, in the shafi'i school the pillars of marriage consist of five pillars as well, namely: (1). Husband, (2). Wife, (3). Guardian, (4). Two witnesses, and (5). Shighat. The imams of the shafi'iyah sect classify two witnesses into the marriage requirements section. They reasoned because the witness was outside the essence of the contract (mahiyatul aqdi) of marriage. Hikmah establishes two witnesses as one separate pillar, while husband and wife as one pillar for each, that the terms of two witnesses are the same, while the conditions of husband and wife are different. Based on the provisions of the above pillars, it is not a dowry. Thus, the dowry according to the Shafii school is not a marriage pillar [16].

Office of Religious Affairs

The Office of Religious Affairs is the smallest agency of the Ministry of Religious Affairs at the Subdistrict level. KUA is in charge of assisting in carrying out some of the duties of the Office of the Ministry of Religious Affairs in the field of Islamic religious affairs in the sub-district area. 1 During the reign of the Japanese Population, precisely in 1943 the Japanese Government in Indonesia established the Shumubu Office (KUA) in Jakarta. At that time the one appointed as the Head of Shumubu for the Java and Madura regions was KH. Hasim Asy'ari is the founder of Pondok Pesantren Tebuireng Jombang and the founder of jam'iyah Nahdlatul Ulama. As for the implementation of its duties, KH. Hasim Asy'ari ceded to his son K. Wahid Hasyim until the end of the Japanese occupation in August 1945. After independence, Minister of Religious Affairs H. M. Rasjidi issued Proclamation No. 2, dated April 23, 1946, the content of which supported all religious institutions and was placed into the Ministry of Religious Affairs. The Department of Religion is the department of struggle. Its birth is inseparable from the dynamics of the nation's struggle. At a time when the nation was fighting for the newly proclaimed independence, the Ministry of Religious Affairs was born. The establishment of the Ministry of Religious Affairs was not only to carry out its duties as the person responsible for the realization of the Preamble to the 1945 Constitution and the implementation of article 29 of the 1945 Constitution, but also as an inauguration and improvement of the status of Shumubu (Central Level Religious Affairs Office) during the Japanese colonial period.

The establishment of the Ministry of Religious Affairs was ratified based on Government Decree Number: I / SD dated January 3, 1946 to coincide with 2 Muharram 1364 H. The first Minister of Religious Affairs was H.M. Rasyidi, BA. Since then began the structuring of the structure within the Ministry of Religious Affairs. At this stage, Minister of Religious Affairs H.M. Rasyidi took over several tasks to be

included in the environment of the Ministry of Religious Affairs. 2 The main duties of the Ministry of Religious Affairs at that time were determined based on Government Decree Number: 5 / SD dated March 25, 1946 and Government Proclamation Number 2 dated April 24, 1946 which stated that the main duties of the Ministry of Religion were: accommodating the affairs of the High Islamic Court which was previously the authority of the Ministry of Justice and accommodating the duties and rights of appointing Penghulu Landraat, Penghulu Member of the Religious Court, and Penghulu Masjid and its employees who were previously the authority and right of the President and Regent.

In addition to the transfer of the above duties, the Minister of Religious Affairs issued a Proclamation of the Minister of Religious Affairs Number 2 dated April 23, 1946. In subsequent developments with the issuance of the Decree of the Minister of Religious Affairs (KMA) Number 517 of 2001 concerning the organization of the District Religious Affairs Office, the Office of Religious Affairs (KUA) is domiciled in the sub-district area and is responsible to the Head of the Office of the Ministry of Religious Affairs of the Regency/City which is coordinated by the Head of the Section of Islamic Religious Affairs / Bimas and Islamic Religious Institutions and led by a Head, which has the main task of carrying out some of the duties of the Office of the Ministry of Religious Affairs of the Regency / City in the field of Islamic Religious Affairs within the District area. Thus, the existence of the Subdistrict Kua as a Government institution can be recognized for its existence, because it has a strong legal foundation and is part of the government structure at the Subdistrict level. Based on KMA number 517 of 2001 concerning the Organizational Arrangement of the District Religious Affairs Office, the District Religious Affairs Office in addition to having the main duties mentioned above also has the function of carrying out activities with the following organizational potential: a. Organizing statistics and documentation. b. Organizing correspondence, mail management, archival, typing, and household activities of the District Religious Affairs Office. c. Carrying out marriage and referral registration, managing and building mosques, zakat, waqf, baitul maal and social worship, population and development of sakinah families in accordance with the policies set by the Director General of Islamic Community Guidance and Hajj Organizers based on applicable laws and regulations. To support the performance of the KUA and the implementation of the development of the religious life of Muslims, especially in villages, the Minister of Religious Affairs through the Decree of the Minister of Religion Number 298 of 2003 stipulates the existence of local village religious leaders appointed to carry out guidance on Islamic religious life, coordinating with relevant agencies and institutions in the community as Assistant Clerks of the Registrar of Marriages, abbreviated as VAT Helpers [17].

II. RESEARCH METHODS

This research seeks to be analyzed by the legal research method of empiricism. As well as the analysis point of this study, the comparative method of ijihad KUA in Karo

District responds to cases in the field against its decision in the appointment of a guardian in the marriage of a muallaf. Approaches used in empirical legal research, include: sociological approach, anthropological approach, and legal psychology approach [18]. Meanwhile, the source of data used is primary data, namely data derived from empirical legal research is one of the legal researches that can be used by legal activists to find legal solutions to various legal problems that occur in real terms in society. The focal point in empirical legal research is the legal behavior of individuals or societies [19].

In normative-empirical legal research there are two types, namely primary data and secondary data [20]. Secondary data (literature and written documents) through literature study and document study and collection. Meanwhile, primary data (data on the object of study is carried out) through interviews with respondents and informants and resource persons [21]. Instruments in research have their forms and types of variety, among which are observation and interviews. After data collection, the researcher then performs data processing. Data processing in normative-empirical legal research is generally carried out through the stages of data inspection, data marking, classification, data preparation/systematization, data validation and data analysis. To check the validity of the data, it is carried out through two types of approaches, namely data source triangulation and method triangulation [22].

III. RESULTS AND DISCUSSION

The guardian is a very important and interesting thing to analyze in a marriage. Even in determining a guardian for a Muslim bride-to-be, it must be really selective and transparent, especially in determining the guardian of marriage for a muallaf woman. In kabanjahe, there are very often unique cases found in the determination of their guardians, not to hesitate sometimes the bride-to-be to declare that her father has died, even though she is alive and well. The Head of Religious Affairs of Kabanjahe in the method of appointing a marriage guardian for a muallaf woman is, among others, by taking into account the religious situation of his parents 'father', that is, as long as the father has converted to Islam, even though he used to be married to a non-Islamic marriage system, the father has the right and legal to be the guardian of his daughter. The determination and appointment of a marriage guardian for a prospective bride must remain by conducting an analysis of the stages, including; First, pay close attention to the religion of the father of the bride-to-be, whether the bride-to-be is indeed Muslim or a convert, without analyzing in more detail the father's religious status at the wedding, whether he (the father) is married to the Muslim religion and married first with the marriage system of islamic sharia teachings

Second, if the father is not Muslim, then a search for his descendants is carried out, either his father's younger brother or his brother's brother and younger brother of the bride-to-be who is Muslim. In this case we continue to strive

and give priority to the guardian of the offspring or guardian of the nasab in the marriage.

Thirdly, if a search has been carried out from the side of relatives, and it is true that there is no then the guardian of the judge plays the role of guardian in the marriage, (but according to the Head of the Kabanjahe Religious Affairs Office, this is quite rare in Kabanjahe, because the Kabanjahe community is majority Karo identic and strong with the Rakut Si Telu culture, which is very moderate in religion).

Fahmi Sahuddin Tarigan selaku Kepala Kantor Urusan Agama menyatakan bahwa dalam penentuan wali baik bagi calon pengantin muslim maupun muallaf KUA Kabanjahe lebih mengutamakan dan mengupayakan wali nasab, karena nasab itu tampak memiliki emosional yang sangat jauh berbeda dengan sekedar wali hakim. In determining the guardian of marriage in Kabanjahe, Fahmi Sahuddin Tarigan as the Head of KUA stated that trying to continue to make optimal efforts to give decisions to guardians who are indeed entitled and accurate, as according to him, there are three categories of marriage guardians, namely nasab guardians, judge guardians and adhal guardians, with the most important note being nasab guardians. Even the Head of KUA tried not to make mistakes in his appointment, because he was afraid that the mistakes would lead to a continuous source of error and sin. Moreover, according to Fahmi, that the error in determining the guardian of the judge does not appear to violate the conditions of marriage as long as the guardian is Muslim, but for him it is only juridically normative and not valid as the religion of islam determines the actual teaching of the execution of marriage. Even if in essence the bride-to-be still has a guardian of the nasab who is entitled and in the absence of a representative letter she is reluctant to perform her marriage.

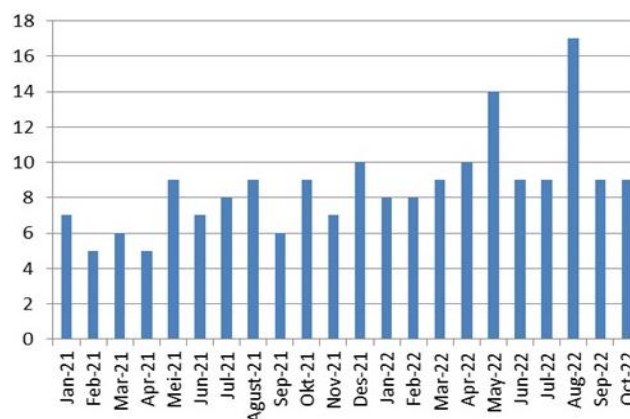


Figure 1. The diagram above is the marriage data in KUA Kabanjahe for 2 years from 2021-2022

Furthermore, the Chairman of the Karo Regency Ulema Council, Drs. H. Fakhri Samadin Tarigan, who was also the Head of the Karo Religious Affairs Department Office, stated that in terms of determining a marriage guardian for a bride-to-be, it is a very concern, because the dynamics of Karo society are different from others in general. In addition, responding to kua Kabanjahe's response, the Chairman of the MUI is in line with the same view, namely

that as long as the father is Muslim, then he has the right to be a marriage guardian for his son, even though it is historically a father's marriage. The diagram above is the marriage data in KUA Kabanjahe for 2 years from 2021-2022. Meanwhile, according to information from the Kabanjahe District Religious Affairs Office, 8 out of 9 brides-to-be will be muallaf in July 2022.

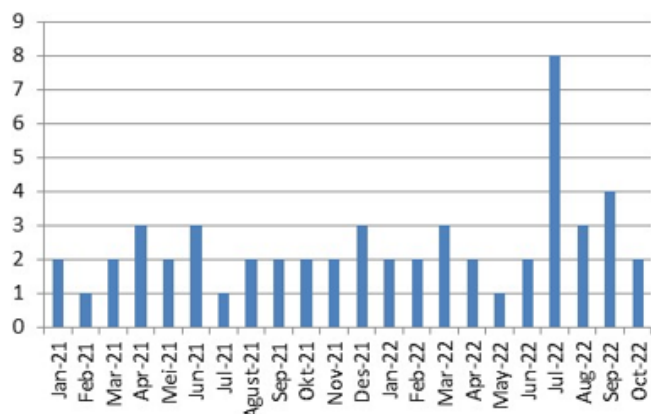


Figure 1. The diagram above is the muallaf marriage data in KUA Kabanjahe for 2 years from 2021-2022

Based on the diagram above, it can be stated that there are frequent marriages. Meanwhile, according to information from the Kabanjahe District Religious Affairs Office, 8 out of 9 prospective muallaf brides in July 2022 were married to nasab guardians and only 1 bride used a magistrate's guardian. Thus it can be stated that in this case the Head of the Religious Affairs Office of Kabanjahe District is really trying to trace the wali sanad for a bride, even if she is a nausealaf, even with extra tracing efforts against her Muslim relatives who have the opportunity to become sanad guardians in her marriage. As with the bride-to-be Chika Br. Sembiring, he became embattled after the age of 21, when Aji Riansyah The son of his self-employed workmate approached him and wanted to marry him. Chika Br. Sembiring attempts to convince herself and her marriage problems. However, from the family side, he did not get insults, but encouragement support. Until he was finally shahed before the contract, his efforts to convey through the old man and kalimbubu were the best tricks in the Karo community, where Rakut si Telu was the local wisdom of the Karo people in a peaceful foster life. When reporting to the KUA, they also appeared to be asked for information so that the efforts to determine their guardian were not arbitrary, namely trying to find a sanad who was entitled to be their marriage guardian.

If analyzed based on Gutav Radbruch's legal theory, as described above, there are three legal theories, then in this case the determination of the guardian of the judge in KUA Kabanjahe seems to be very much trying to apply Legal Certainty but by taking into account the local culture and the Law of Justice in law. The Head of Religious Affairs of Berastagi in the method of appointing a marriage guardian for muallaf women, among others, by paying attention to and

analyzing several things, namely: First, by paying attention to the context, namely the nausealaf whether he is a pure nausealaf 'already from his lineage / his parents and grandfather have also muallaf' or is he just a person who has just become a nausealaf with the record that his parents are still in a non-Muslim state

Second, by paying attention to the marriage mechanism of her parents, namely how the marriage system that used to be carried out by the parents of the muallaf woman, whether she was married to the marriage system in the teachings of Christianity, Islam or just married to the customary system, this was done by communicating with the parents. And third, the determination of the legal and entitled guardian of the judge.

Furthermore, Tuah Aman as the Head of KUA Berastagi stated that as well as according to jurisprudence studies there are several views on the mechanism of marriage and its impact on the guardianship status of their descendants in marriage, namely first; that the marriage of a parent or husband and wife is inconsistent with the teachings and mechanisms of sharia marriage then he should not be the guardian of marriage for the child, the second opinion of jurisprudence ; Although at the time of marriage the husband and wife were married with a non-Islamic doctrinal mechanism, whether it was marriage in Christianity or just custom, but the most important thing is that now he has converted and embraced Islam, then he has the right and can be a guardian for the marriage of his daughter.

Meanwhile, what is applied in Berastagi District, according to the Head of KUA Tuah Aman, is guided by the concept of wahbah Az-Zuhaili jurisprudence, namely if a girl is born out of wedlock, then there are four consequences experienced for the child, including that the father cannot and is not legally a guardian for the child's marriage, so this is the case in Tanah Karo this, Berastagi especially if the marriage of his parents used to be illegitimate islamically, either by custom or pregnant before marriage then the father should not be the marriage guardian for his daughter. People in Karo are accustomed to and accept marriages that are carried out traditionally only and even it is not a disgrace to the community. With this, the Head of the Religious Affairs Office of Berastagi District, Tuah Aman tried his best to analyze the religious situation of the father of the bride-to-be and the mechanism of his marriage when he got married. The validity of his parents' marriage will indicate who is entitled to a guardian for him, whether with a guardian or a guardian of a judge. He further stated that, although now the father is a Christian, he still has to be contacted, because it could be that during marriage his parents used to be Muslims, and then later converted to Christianity when the child grew up. Namely, if in its history the father was Islamic at the time of marriage, and had a son as well, then nasab the right is that the son becomes the marriage guardian for his sister. In addition, in general, the advantage of the Karo people is arih-arih perkade-kadeen or better known as Rakut Si Telu, this makes a difference even though religion is not something that should be disputed, as long as it still upholds karu local culture. In this case, the Chairman of the Indonesian Ulema Council of

Karo Regency, Drs. H. Fakhri Samadin Tarigan, that indeed trying to be careful about determining the marriage guardian of the bride-to-be is very good, but paying attention to the local cultural culture is also very necessary as well as mutual tolerance in responding to differences in attitudes.

Marriages at the Religious Affairs Office of Berastagi District based on the village / kelurahan in 2021 and 2022:

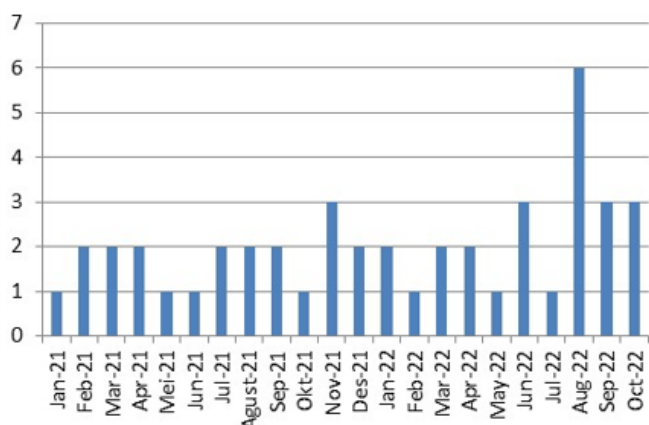


Figure 1. The diagram above is the muallaf marriage data in KUA Berastagi for 2 years from 2021-2022

Based on the diagram above, it can be stated that there are many marriages, and from the data of the last 3 months there are 6 of the male and 6 female sexes. Meanwhile, according to information from the staff of the Religious Affairs Office of Berastagi District, 5 of the 6 prospective brides were married to the judge's guardian and only 1 bride used the nasab guardian. P. Br. Ginting was one of the muallaf brides who got married at the Religious Affairs Office of Berastagi District. In an effort to determine his marriage guardian The head performs three methods of steps described above, namely first ; The context of his hypocrisy, namely whether the father had also converted to Islam, or had mullaf from his grandfather in the past, thus his father had also converted during marriage. In this case, it is stated that the father also converted to Islam at the same time, noting that the father used to be married by the teachings of Christianity, moreover, the father has died and no brother or brother of the father is found to be Muslim, so it is determined that the guardian in his marriage is the guardian of the judge.

Meanwhile, S. Br. Purba in his marriage also used a marriage guardian. This was decided and determined by going through three stages of the analysis method of determining the guardian by the Head of the Religious Affairs Office of Berastagi District, namely by first ascertaining his status of scholarship, in the sense of whether he was the only one who was nasealaf or at the same time as his parents. In this case, basically his father is already Muslim and the bride-to-be S. Br. Purba was also born from an Islamic parental marriage, it's just that when his son got married the father had converted to another religion and when he was noticed and analyzed the father did not have close relatives who were Muslims. Religion seems to be not too important in life in Tanah Karo,

so it is natural that one family lives in different religious circumstances.

In essence, during high school, S. Br. Purba had already experienced a thoughtful phase, namely when the father converted back to Christianity. He, who when he was in junior high school, became indecisive, when his father chose to leave islam again. But not long after, she met her future husband who was Muslim, and then she still converted to Islam, only none of her fathers were also Muslims and had the right to be guardians in her marriage. So when reporting to KUA, KUA tried to trace the background of S.Br. Purba's descendants. In a sense, whether his father is now a Muslim and or is his father also married to the islamic religious system. Because for KUA in Berastagi, the history of parental marriage is also something that must be considered. Among the uniqueness and high tolerance in Karo culture is that in this case he who is still an Islamic religious school also continues to be facilitated by the father, even though he has returned to Christianity. In this case, culture above religion is a local pattern of wisdom of the Karo people, that is, living in one house of different beliefs between children and parents is understandable.

Meanwhile, muallaf bride-to-be Maya Sari Br. Tarigan, who is married to Aldi Irfan, was also married to the judge's guardian. Namely the bride-to-be who died when she was 22 years old after getting hidayah, while the father was still Christian. In this case, there is a pak uda who is also newly muallaf, but based on the determination of the marriage guardian in KUA Berastagi is to consider whether the pak uda's marriage was previously carried out islamically or not, but because the status is the same as muallaf, the marriage guardian who acts is the guardian of the judge. The non-appointment of a newly muallaf marriage guardian also seems to be applied in the Buleleng Regency of Bali Province, because they state that there is another requirement, namely proficiency in Islam. Likewise, others are married to the guardian of the judge, because according to the analysis and method of determining the guardian of the marriage the bride is not fulfilled to be done with the guardian nasab, except for Kristina T. Br. Banurea whose status is muallaf along with her father, but the father still has a younger brother who is known to be a Muslim and has the right to be a guardian of nasab for him. Thus, if analyzed and considered based on Gutav Radbruch's legal theory, as described above, there are three legal theories, then in this case the determination of the guardian of the judge in KUA Berastagi seems to apply the theory of Legal Certainty or what is otherwise called the Positive Law, which is to try to apply one of the opinions of jurisprudence by paying little attention to the state of the psychological side of the bride and groom who is essentially very close to the guardian nasab, so that the majority of muallaf marriages in Berastagi were married to the magistrate's guardian..

IV. CONCLUSION

At the KUA Kabanjahe Office, the determination and appointment of marriage guardians is carried out by taking

into account three stages of analysis, namely; First; pay close attention to the religion of the father of the bride-to-be, if he is a Muslim without regard to his previous religious background, then he has the right to be a guardian. Second; if the father is not Muslim, then the tracing of his descendants, either his father's younger brother or his brother's brother and younger brother of the bride-to-be who is Muslim, is as optimal as possible, in this case the Head of KUA is more very concerned about the role of wali nasab. Third; if a search has been carried out from the side of relatives, and it is true that there is no then the guardian of the judge acting as the guardian in the marriage, (but according to the Head of the Kabanjahe Religious Affairs Office, this is quite rare in Kabanjahe, because the Kabanjahe community is majority Karo identic and strong with the Rakut Si Telu culture, which is very moderate in religion). At the KUA Berastagi Office, the determination and appointment of marriage guardians is carried out by taking into account three stages of analysis, namely; First; By paying attention to the context, namely the nasealaf whether he is a pure nasealaf 'already from his lineage / his parents and grandfather have also been nasealaf' or is he just a new nasealaf with the record that his parents are still in a non-Muslim state. Second; by paying attention to the mechanism of marriage of his parents, whether the marriage of his parents was carried out with the marriage system of Christianity, Islam or just married with the customary system, this was done by efforts of communication with the parents, then if previously it was not Islamic then, Third; determination of the lawful and entitled guardian of the judge.

Among the causes of differences in attitudes and methodologies in determining the guardian of marriage between the two is the background of the Head of KUA, namely the Head of KUA Kabanjahe who is a native Karo community who has a muallaf historical line from his father's side, who is now also the Chairman of MUI Karo Regency, even now the Head of KUA still has relatives of a non-Muslim father, and while KUA Berastagi is present from a Muslim-majority community and from a Muslim family, so that he tried to pay attention to the sanad side and if it was not possible to immediately transfer the guardian to the guardian of the judge, considering that he was very surprised by the Karo culture which still prioritizes the customs of religion.

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