

Accumulation of Lawsuits and Applications in the Case of Revocation of Custody and Determination of Guardianship of Adult Children: Study of Decision No. 376/Pdt.G/2021/PA. Klk

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Abstract

Regulations in Indonesia state that a child under the age of 18 is under the authority of their parents, who are obligated to care for, educate, and meet the child's needs, as stipulated in Article 47 paragraph (1) of Law No. 1 of 1974 on Marriage. Based on this provision, this study examines the legal issues in Decision Number 376/Pdt.G/2021/PA.Klk of the Religious Court of Kolaka, which granted a claim for the revocation of parental authority and simultaneously appointed a guardian for an individual who was already 20 years and 4 months old. The research addresses two main issues: the inappropriateness of the legal subject who, according to positive law, is already an adult; and a procedural defect in the form of the combination of two different types of cases in a single proceeding—namely, a contentious claim (contentiosa) and a non-contentious petition (voluntair). This study adopts a normative legal approach with two methods of analysis: statutory approach and case study approach. The sources of data include primary, secondary, and tertiary legal materials. The analysis reveals that the court's decision is inconsistent with the principles of civil procedural law, which clearly distinguishes between claims and petitions. Furthermore, the appointment of a guardian for a legal subject who has reached adulthood without proving legal incapacity contradicts the provisions of Islamic law, the Indonesian Civil Code, and the Compilation of Islamic Law. Thus, the ruling contains both formal and material errors. This study highlights the importance of consistent application of the legal age of adulthood and formal clarity in the submission of cases in religious courts.

Keywords: Parental Authority, Guardianship, Civil Procedural Law, Adult Child, Religious Court.

A. Introduction

Parental power is a form of legal responsibility inherent in every individual who legally has a parental relationship with a child.¹ In Indonesia's positive law, parental power is explicitly regulated in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, and strengthened by Law Number 35 of 2014 concerning Child Protection. Based on Article 47 paragraph (1) of the Marriage Law, "children who have not reached the age of 18 (eighteen) years or have never been married are under the power of their parents as long as they are not deprived of their power."

¹ Abraham Agung Poputra, Ronny A Maramis, and Sarah D L Roeroe, "Legal Protection Related to the Inheritance Rights of Minors Due to the Death of Their Parents," *Lex Administratum* Vol.12, no. No.5 (2024): pp.1-13, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/57828/47514>.

The power includes aspects of child maintenance, education, and protection, as well as the management of assets belonging to minors as regulated in the Civil Code (KUHPerdata). Then Law No. 1 of 1974 concerning Marriage explains the Rights and Obligations between Parents and Children in CHAPTER X starting from Articles 45 to 49. The obligation in question is the obligation to take care of the child until the child marries or can stand on his own, while the obligation of the child to the parents is the obligation to respect and obey the good orders of the parents. For children who have not reached the age of 18 or are not married, their parents have the right to represent the child in all legal actions. Children have the right to their belongings so parents are not allowed to transfer the rights and ownership of children's belongings.²

Evelyn Ruth Millis Duvall, an expert on family development in the United States in her book entitled *Marriage and Family Development*, defines a family as a collection of people in a marriage bond that aims to improve the physical, mental, emotional and social development of each family member. Therefore, the family plays an important role in the mental and personality development of children.³

One of the interesting cases to be analyzed in terms of material law and procedural law is Decision Number 376/Pdt.G/2021/PA. Klk which was decided by the Kolaka Religious Court. In this case, the panel of judges granted the lawsuit to revoke parental power while at the same time designating the Plaintiff as the guardian of a child who at the time of the case was examined and was 20 years and 4 months old. Normatively, the age has exceeded the age limit of the child as stipulated in the laws and regulations, so that the application for the revocation of parental power is no longer juridically relevant.

Furthermore, in the context of civil procedure law, there is a clear distinction between *contentious* (disputed) cases such as lawsuits for the revocation of parental power, and *voluntary* (non-disputed) cases such as applications for the appointment of guardians. The merger of the two legal actions in one case is considered contrary to the formal principle of civil procedure law which requires the separation of lawsuits and applications. According to M. Yahya Harahap in his book *Civil Procedure Law*, it is explained that an application (*voluntair*) is a civil matter submitted in the form of an application signed by the applicant or his attorney addressed to the chairman of the District Court, while a lawsuit (*contentiosa*) contains a dispute between two or more parties. The problems that are raised and asked to be resolved in the lawsuit are disputes or disputes between the parties.⁴

The legal facts in this case show that the child has been cared for by the Plaintiff since the age of 15 due to the economic inability of the biological parents to meet the needs of the child, including education. The handover of the child to the Plaintiff is evidenced by a handover letter dated August 23, 2021. The day after, the lawsuit was filed with the court with the aim of obtaining a legal basis for the care and management of the children that had been carried out.

A lot of studies have been conducted on guardianship and child custody cases in Indonesia, especially those related to the judge's consideration in deciding cases. Several previous studies have outlined analyses of religious court rulings related to the revocation

² Lusi Aryani Raqat, "A Legal Review of the Obligation of Maintenance Between Biological Children and Parents According to Islamic Law," *Scientific Journal of Law Students [JIMHUM]* Vol.2, no. No.3 (2022): p.5, <https://jurnalmahasiswa.umsu.ac.id/index.php/jimhum/article/view/1617>.

³ Evelyn Ruth Millis Duvall and Brent C Miller, *Marriage and Family Development* (Lippincott, 1985), hlm.2.

⁴ M Yahya Harahap, *Civil Procedure Law: About Lawsuits, Trials, Confiscation, Proof, and Court Decisions* (Sinar Grafika, 2017), pp.46-47.

of guardianship and child custody.

The research conducted by Saifuddin Sa'dan, Nahara Eriyanti, and Nurma Novi Safira discusses "the revocation of child custody rights in the perspective of Islamic law with a case study of the Nagan Raya Syar'iyah Court Decision".⁵ The main focus of the study is to examine the basis of judges' considerations in granting child custody rights, especially in cases where the guardian is accused of abusing power. This research focuses on the conformity of judges' decisions with Islamic law, without highlighting in depth the formal aspects of procedural law in combining types of cases.

Furthermore, Rokiah Binti Mustaring's research analyzes the judge's considerations in child custody cases at the Manado Religious Court from the perspective of protecting children's rights.⁶ This research emphasizes how judges' considerations remain oriented to the best interests of the child, as well as illustrates the flexibility of judges in considering children's opinions even though they have not reached the age of mumayyiz. However, this study does not discuss legal issues related to the mixing or accumulation of lawsuits and applications in one case.

Meanwhile, research conducted by Lianti Diarafena Pasi focuses on the phenomenon of accumulation of divorce lawsuits filed simultaneously by husbands and wives at the Medan Religious Court.⁷ This study provides an overview of judges' views on the accumulation of divorce lawsuits from the perspective of simple, fast, and low-cost principles. Although it touches on the accumulation of lawsuits, this study is only limited to divorce cases, does not touch on guardianship or child custody cases, and does not discuss the aspect of mixing between lawsuits (*contentiosa*) and applications (*voluntair*).

Departing from these studies, it appears that there is a gap in previous research, especially related to legal problems in the merger or accumulation of lawsuits and applications in a religious court case, especially in the case of the revocation of parental power accompanied by the determination of guardianship of an adult child. None of the previous studies examined in depth the formal *defective aspects* of merging two different types of cases that are actually subject to different procedural law mechanisms, as well as the issue of determining guardianship of adult children without evidence of legal incompetence.

Thus, this research is important to fill this void, because it not only examines the substance of the decision, but also comprehensively examines the formal issue of civil procedure law in religious courts and its implications for legal certainty. In addition, this research also strengthens the urgency of consistently enforcing procedural law principles, especially in the context of legal protection for children who have reached legal age according to the law. Then the research is also to analyze the basis of the legal considerations of the panel of judges in granting the application for the revocation of parental power and the determination of guardians cumulatively, as well as assessing its

⁵ Saifuddin Sa, Nahara Eriyanti, and Nurma Novi Safira, "Revocation of Child Custody Rights According to Islamic Law (Study of the Decision of the Nagan Raya Syar'iyah Court)," *El-Usrah: Journal of Family Law* Vol.5, no. No.2 (2022): 256-66, <https://doi.org/https://doi.org/10.22373/ujhk.v5i2.10251>.

⁶ Rokiah binti Mustaring, "Analysis of the Judge's Decision on the Child Custody Lawsuit at the Manado Religious Court from the Perspective of Child Rights Protection," *I'tisham: Journal of Islamic Law and Economics* Vol.2, no. No.2 (2023), <https://journal.iain-manado.ac.id/index.php/itisham/article/view/2598>.

⁷ Lianti Diarafena Pasi, "Accumulation of Divorce Lawsuits by Judges at the Medan Religious Court Class IA," *As-Salam: Journal of Islamic Social Sciences and Humanities* Vol.2, no. No.3 (2024): pp.31-41, <https://ejournal.as-salam.org/index.php/assalam/article/view/64>.

conformity with the principles of positive law in Indonesia and Islamic law.

B. Research Method

This research uses a normative juridical approach method, which is an approach that relies on analysis of relevant legal principles and laws and regulations.⁸ The focus of the analysis is directed to the judge's legal considerations in granting the application for the revocation of parental power cumulatively with a guardianship application, as contained in the decision of the Kolaka Religious Court Number 376/Pdt.G/2021/PA.Klk.

In this study, the researcher examined legal issues related to the status of parental power over children who are over 18 years old, as well as the juridical basis used by judges in deciding the case. The research also explores the legal implications of child protection, especially in the context when biological parents are no longer able to fulfill their economic and childcare obligations.

The data sources used consist of:

1. The primary legal materials are the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHP), Law Number 1 of 1974 concerning Marriage and its amendments in Law No. 16 of 2019, the Compilation of Islamic Law (KHI), and Law Number 35 of 2014 concerning Child Protection.
2. Secondary legal materials include legal journals, books that discuss fiqh munakahat, as well as relevant literature on the concept of parental power and child guardianship.
3. Tertiary legal materials, in the form of legal dictionaries and legal encyclopedias that are used to strengthen the understanding of juridical terms and concepts.

The researcher also uses the approach of laws and regulations and case studies as analytical instruments. Through this approach, the researcher examines legal policies and judges' considerations, and develops theoretical foundations regarding parental power and children's rights, especially when children are still considered not legally or economically independent. This approach is also used to understand how positive Indonesian law and Islamic law view the age limit of children, parental power, and guardianship (hadhanah).

C. Results and Discussion

1. Age Limit and Parental Power and Guardianship of Children According to Laws and Regulations

a. Adult Age Limit

In Islamic fiqh, the age limit (*puberty*) for a child is not determined singularly in the Qur'an or in the hadith explicitly in the form of a number of years.⁹ However, there are several indicators and provisions of fiqh that are benchmarks, including:

Qur'an: Surah An-Nur (24): 59 Allah Subhanahu wa Ta'ala said:

وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

"When the children among you have reached the age of adulthood, let them ask permission just as those who came of age before them (also) ask permission. Thus Allah explains His

⁸ Peter Mahmud Marzuki, "Legal Research," *Jakarta: Kencana Prenada Media* 55 (2005): p.17.

⁹ Ahmad Sulthon, "UNDERAGE MARRIAGE IN LAW NO. 1 OF 1974 CONCERNING MARRIAGE FROM THE PERSPECTIVE OF FIQH OF MADHAB SYAF'I," *El-Qisth Islamic Family Law Journal* Vol.3, no. No.2 (2020): pp.56-71, <https://ejournal.uhuwiyah.ac.id/index.php/qisth/article/view/49/41>.

verses to you. Allah is All-Knowing and All-Wise".

This verse associates maturity with *al-hulm* (wet dreams) which is one of the biological signs of puberty. Hadith:

وَعَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: { رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّغِيرِ حَتَّى يَكْبُرَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ، أَوْ يَقِفَ } رَوَاهُ أَحْمَدُ، وَالْأَرْبَعَةُ إِلَّا التِّرْمِذِيَّ وَصَحَّحَهُ الْحَاكِمُ

"From 'Aisha (may Allah be pleased with him) from the Prophet ﷺ He said: "The pen (charity record) is lifted from three persons: from the sleeping man until he wakes up, from the child to the adult, and from the madman until he is conscious or trance." (HR. Ahmad, Abu Dawud, Nasa'i, and Ibn Majah; except for Tirmidhi. This hadith is saheeh by Al-Hakim.)

Kitab al-Fiqh Ala Madzahib al-Arba'ah explains that the limit of puberty of a child is usually marked by years, but sometimes it is marked by a sign, namely a dream for a man and menstruation for a woman.¹⁰ According to madhhab:¹¹

1. Hanafi: 18 years old (male), 17 years old (female);
2. Maliki: wet dreams, hair growth on the genitals;
3. Shafi'i: 15 years old (male), 9 years old (female);
4. Hanbali: dream or age 15 years old (male), menstruation (female).

Meanwhile, in Indonesian laws and regulations, the age limit is regulated in:

1. Law Number 1 of 1974 concerning Marriage, especially Article 47 paragraph (1), children who have not reached the age of 18 years or have never been married are under the power of their parents as long as they are not revoked.
2. Article 330 of the Civil Code (Civil Code) explains that a person is considered an adult if he has reached the age of 21 or is married. In other words, people who have not reached the age of 21 and have never been married are considered immature.
3. Compilation of Islamic Law, article 98 paragraph 1: "The age limit for a child who is able to stand alone or adult is 21 years old as long as the child is not physically or mentally disabled or has never been married"

This difference causes inconsistencies in determining the age limit for adults who are still under parental control.

b. The Concept of Parental Power

Custody is the power of parents to nurture, educate, maintain, foster, protect and develop children in accordance with the religion they adhere to and in accordance with their abilities, talents and interests.¹² This power is valid as long as the parents are still in marriage, and will end if the marriage is dissolved. Soetojo Prawirohamidjojo and Marthalena Pohan argue that parental power over children is related to the balance between parental rights and obligations in terms of fulfilling the interests of children while still being able to discipline children through the

¹⁰ Abd al-Rahman Al-Jaziri, *Kitab Al-Fiqh Ala Madzahib al-Arba'ah* Ah (Dar al-Kutub al-Ilmiyyah, 2003).

¹¹ Nur Ihdatul Musyarrafa and Subehan Khalik, "The Age Limit of Marriage in Islam; Analysis of Madhhab Scholars on the Age of Marriage," *Shautuna: Scientific Journal of Comparative Students of Madhhab and Law* Vol.1, no. No.3 (2020): pp.702-722, <https://doi.org/10.24252/shautuna.v1i3.15465>.

¹² ABDUL WAID, "THE CONCEPT OF CUSTODY ACCORDING TO ISLAMIC LAW AND LAW OF THE REPUBLIC OF INDONESIA NUMBER 23 OF 2002 CONCERNING CHILD PROTECTION" (STATE ISLAMIC UNIVERSITY OF SUNAN KALIJAGA YOGYAKARTA, 2008).

power they have when they are dissatisfied with their children's actions.¹³

The concept of child care and maintenance in Islam is known as hadhanah.¹⁴ Child care or hadhanah is an activity of nurturing, nurturing, and educating children until they are adults or able to stand on their own.¹⁵ In the language hadhanah puts something under the lap near the ribs or under the armpits, because when the mother is a baby, breastfeeding the child in her lap so that it means that the parents take care of and protect the child from the baby until the child grows up and is able to take care of himself.¹⁶ The legality of parental custody in Islam lies in the Word of Allah Q.S Al-Baqarah verse 233 which explains that parents are obliged to take care of, care and maintain their children from birth in the breastfeeding phase, providing clothes and food. Childcare is an effort to meet the needs for affection, attachment, safety, and sustainable well-being for the best interests of the child.¹⁷ Another definition describes that childcare is an effort to meet the needs for affection, attachment, safety, and welfare that is permanent and sustainable for the best interests of the child, which is carried out by both parents or families up to the third degree as well as foster parents, adoptive parents, guardians and residential-based parenting as the last alternative.¹⁸

- 1) Parental power according to the Civil Code (Burgelijk Wetboek) covers several parts, namely:
 - a) Parental power over the child, article 299: the child is under the parent's power as long as it is immature.
 - b) Parental control over the child's property
 - (1) Management of children's property, article 307 of the Civil Code (KUHPercivil) which reads: "A person who exercises parental power over a minor child, must take care of the property of a minor child". Article 309 of the Criminal Code Parents may not transfer the property of their minor children, except by heeding the regulations stipulated in Chapter XV of the First Book regarding the transfer of property belonging to minors.
 - (2) Enjoying the proceeds of children's property, article 311 of the Criminal Code states that parents have the right to enjoy the proceeds and belongings of their minor children.
- 2) The power of parents according to Law No. 1 of 1974 is:
 - a) The power of the parent includes to represent the minor child in carrying out legal acts in and out of court (article 47).
 - b) Parents have a limit, namely they are not allowed to transfer rights or pawn permanent belongings belonging to their children who are not yet 18 years old

¹³ Krisna Angela, "Juridical Review of the Revocation of Parental Power Over Children Due to Neglect of Obligations and Bad Behavior," *Jurist-Diction* Vol.5, no. No.6 (2022): p.2275.

¹⁴ Dicky Patadjenu, Marzuki Marzuki, and Nasaruddin Nasaruddin, "Hadhanah and Guardianship/Adopted Children and Legal Solutions," *Proceedings of Islamic Studies and Integration of Knowledge in the Era Society (KIIIES)* 5.0 vol.3, no. no.1 (2024): pp.510-516.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Loc., cit.*

¹⁸ Muhammad Zamroji, Robi'ul Afif Nurul'Aini, and Tsuwaibatul Aslamiah, "Single Parent Family Parenting in Improving Children's Achievement at the Age of 7-12 Years in Jemparing Hamlet, Pakel Village, Bareng District, Jombang Regency," *Awwaliyah: Journal of Madrasah Ibtidaiyah Teacher Education* Vol.5, no. No.1 (2022): pp.51-72, <https://doi.org/https://doi.org/10.58518/awwaliyah.v5i1.924>.

or have never been married. Unless the interests of the child require it (article 48).

- c) The power of one or both parents over their child can be revoked for a certain time, if they are seriously negligent in their obligations to the child or behave badly. The power of the parents who are revoked does not include the power as a marriage guardian. Even though the parents are deprived of their power, they are still obliged to pay for the maintenance of their children (article 49). On the other hand, children not only have rights to their parents, but also have obligations.
- d) The main obligation of children to their parents is to respect and obey the good will of their parents. And when the child is an adult, he is obliged to take care of his parents. Children are also obliged to take care of the family in a straight line upwards, if they need his help (article 46).

Basically, guardianship according to the Compilation of Islamic Law is the power given to a person to represent an immature child in carrying out legal actions for the benefit and good of the child, which includes guardianship of oneself and his property. Although the age of 20 years the child in this case is considered an adult and capable of acting in many ways, but in the context of marriage, a guardian is still needed.¹⁹

- 3) Custody in accordance with Law No. 23 of 2002 as amended by Law No. 35 of 2014 concerning Child Protection

Custody in this law focuses more on the rights of children and the protection of children who are still under the authority of their parents. Parents' obligations to children are responsible for nurturing, nurturing, educating and protecting children. Each child has their own abilities and talents according to their growth and development that must be supported by parents. Well, if the parents are negligent in carrying out their obligations, then at any time the parent's power over the child can be revoked through a court determination.²⁰

In case No.376/Pdt.G/2021/PA. Klk, it was stated that when the lawsuit was registered, the child was already 20 years old. According to Law Number 1 of 1974 concerning Marriage, especially Article 47 paragraph (1), children who have not reached the age of 18 years or have never been married are under the power of their parents as long as they are not revoked. Thus, after reaching the age of 18 or after marriage, the child is considered to have grown up and is no longer under the authority of the parents. In addition, the Civil Code (KUHPerduta) Article 330 states that a person is considered an adult if he is 21 years old or married. However, in the context of marriage law and parental power, the provisions in the Marriage Law are more relevant.

c. The Concept of Guardianship

Guardianship (*wilāyah*) in Islamic law is the responsibility and power given to a person to take care of the interests of others who are not legally competent or in need

¹⁹ Kaliandra Saputra Pulungan, "A Comparative Study of the Concept of Guardianship in the Perspective of Western Civil Law and Islamic Civil Law," *Hukumah: Journal of Islamic Law* Vol.3, no. No.1 (2020): pp.44-64, <https://ojs.staituankutambusai.ac.id/index.php/HUKUMAH/article/viewFile/200/116>.

²⁰ Nurma Novi Safira, "Strengthening the Panel of Judges on Child Guardianship Rights" (UPT. Library, 2021).

of legal protection, such as children, women in marriage (according to some madhhabs), insane people, or people who are unable to take care of themselves.²¹

1) Guardianship of children (*wilāyah 'ala al-nafs*)

It is related to parenting, education, health, and child protection. The guardian is responsible for the physical and mental well-being of the child. Generally held by the biological father, and if there is none, by other male relatives according to the order of the fate.²²

2) Perwalian atas harta (*wilāyah 'ala al-māl*)

Related to the management and maintenance of the property of children or people who are not legally competent. The guardian is responsible for ensuring that the property is not misused and used for the benefit of the Guardian.²³

3) Perwalian dalam pernikahan (*wilāyah fi al-nikāh*)

The guardian acts as the party who marries a woman. According to the majority of scholars (different Hanafiyah), a woman is not legally married without a guardian. A marriage guardian can be a father, grandfather, brother, and so on based on the order of the nasab.²⁴

Guardianship is an important institution in Islamic law that aims to protect the rights of minors who are not legally capable.²⁵ In this context, the guardian is responsible for the upbringing, education, and management of the child's assets until he or she reaches puberty and is capable. Children in Islamic law belong to the group whose intellect is imperfect (*ghayru rāsyid*), so they do not have full authority to act on the law.²⁶ Therefore, Islamic law stipulates the existence of a guardian who is responsible for the life and property of a child. This determination is a manifestation of the principle of protection (*ḥimāyah*) for weak individuals in society.²⁷ The legal basis of guardianship is:

Surah An-Nisā' verse 5

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

"Do not leave to those who are imperfect in their understanding your wealth which Allah has made the basis of your life. Give them shopping and clothing from the (proceeds) and speak to them good words."

This verse shows that a child, as a party with an imperfect intellect, should not receive direct management of property, and it is the guardian who is responsible for protecting it.

Surah An-Nisā' verse 6

وَابْتَغُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبَرُوا ۚ وَمَنْ كَانَ غَنِيًّا فَلْيَسْعِفْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۚ وَكَفَىٰ بِاللَّهِ حَسِيبًا

²¹ Soraya Devy, *The Guardianship System in Aceh The Struggle Between Islamic Law, Positive Law, and Community Practice* (Faculty of Sharia and Law UIN Ar-Raniry Banda Aceh, 2018), p.14.

²² *Idem.*, p. 53.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Reiza Rozalia and Gunawan Djajaputra, "The Legal Consequences of Child Custody When Both Parents Have Passed Away," *UNES Law Review* Vol.6, no. No.4 (2024): pp.9957-9967, <https://doi.org/https://doi.org/10.31933/unesrev.v6i4.1966>.

²⁶ Rosnani Hussain, Md Yazid Ahmad, and Noorsafuan Che Noh, "Child Property Management According to Islamic Perspective," *BITARA International Journal of Civilizational Studies and Human Sciences* (e-ISSN: 2600-9080) Vol.3, no. No.1 (2020): pp.145-156, <https://www.bitarajournal.com/index.php/bitarajournal/article/view/115>.

²⁷ *Ibid.*

"Test the orphans (in terms of managing property) until they are old enough to marry. Then, if according to your judgment they are clever, give them their wealth. Do not eat them (orphans' property) beyond the limits of propriety and (do not haste (spend them) before they are mature. Whoever is able, then let him refrain from eating the orphan's property, and whoever is poor, let him eat it in a good way. Then, when you hand over the property to them, you shall have witnesses. Allah is sufficient as a watchman."

This verse gives a time limit for guardianship, which is until the child reaches *bulūgh* and shows signs of *rushd* (the intelligence of managing wealth).

"The sultan (ruler) is the guardian of the one who does not have a guardian." (HR. Abu Dawud, No. 2083; At-Tirmidhi, No. 1102) This hadith confirms that the state has the authority as a guardian for children who do not have guardians. The majority of scholars from the Shafi'i, Maliki, and Hanbali schools agree that young children must be in the responsibility of guardians, both in terms of *wilāyah 'ala al-nafs* (guardianship of oneself) and *wilāyah 'ala al-māl* (guardianship of property).²⁸

Imam An-Nawawi said: *"A child who has not reached puberty is not entitled to his actions over property, and his guardian is obliged to take care of it until he reaches a suitable age."* (Al-Majmū', Syarḥ al-Muhadzdzab)

Therefore, in this case, a child who has reached the age of 20 years is considered to have *grown up* according to Islamic law and is no longer under the authority of his parents and is capable of law and is not in a mental disorder or syndrome. This means that in principle the parents no longer have the right to file a lawsuit related to custody or power over the child. However, the court accepted the lawsuit and granted the Plaintiffs' lawsuit to revoke the power of the biological parents and establish the Plaintiff as the guardian of the child.

2. Causes of Parental Custody Transfer of Children According to Laws and Regulations

a. Menurut Kitab Undang-undang Hukum Perdata (Burgerlijk Wetboek)

According to Article 319a of the Civil Code, the Discussion and Power of Parents which reads: *"If it turns out, that a father or mother who holds parental power is incapable or unable to fulfill his obligation to maintain and educate his child and the interests of the children because other matters do not oppose him, then at the request of the House of Representatives or at the request of the office of prosecutor, It is permissible to be freed from the power of his parents both over all children, and over one or more of the children"* So, as long as the child is still *mindarjerig* (immature), the parents are obliged to provide sustenance and livelihood to the child.²⁹ However, in addition to that parents who are unable to fulfill their obligations to care for and educate their children, then power over the child can be released or revoked, as well as between other blood families in a straight line up and down, there is a reciprocal obligation for the provision of child support and livelihood.

²⁸ *Loc., cit.*

²⁹ Waspiah Waspiah et al., "Improving the Understanding of Maintenance Rights for the Elderly Through Legal Counseling Approach," *Indonesian Journal of Legal Community Engagement* Vol.4, no. No.1 (2021): pp.112-122, <https://journal.unnes.ac.id/sju/JPHI/article/view/47827>.

b. According to Law Number 1 of 1974 concerning Marriage

According to Article 49, it is affirmed that;

- 1) One or both parents may be revoked of their authority over one or more children for a specified period of time at the request of the other parent, the child's family in a straight line up and the adult sibling or authorized official, by order of the Court in the following cases:

- (a) He was very neglectful of his obligations to his son

- (b) he behaved very badly.

Even if the parents are deprived of their power, they are still obliged to pay for the child's maintenance. The provisions of Article 49 Paragraph (1) of Law Number 1 of 1974 concerning Marriage which stipulate that an immature child is obliged to be under the power of the parents, but there is a time when the power of the parent is revoked by the Religious Court because he is very negligent in his obligations to his child and he behaves very badly.

c. According to the Compilation of Islamic Law

Regarding the right of children to obtain property ownership from parents, it is affirmed in Article 106:

- 1) Parents are obliged to care for and develop the property of their minor or under guardianship, and are not allowed to move or control it except for urgent needs if the interests and interests of the child require it or an unavoidable reality.
- 2) Parents are responsible for losses incurred due to mistakes and negligence.

d. According to Law Number 35 of 2014 concerning Child Protection

Article 45 of Law Number 35 of 2014 concerning Child Protection is as follows; Article 45 ;

- 1) Parents and families are responsible for maintaining children's health and caring for children in the womb
- 2) In the event that parents or families are unable to carry out their responsibilities as referred to in paragraph (1), the government is obliged to fulfill them
- 3) The obligation as referred to in paragraph (2) is carried out in accordance with the provisions of the applicable laws and regulations.

That in Article 45 of Law Number 23 of 2002 concerning Child Protection, it is explained that if parents are incapable of caring for their children, then the power over their children will be revoked by the Government, and the Government will meet all the needs of the child.

According to H.R. Sardjono, maintaining means providing a living for the child, both in the form of clothing and food, and it is the responsibility of both parents.³⁰ Educating means giving one's own education to the child, or sending the child to school to be educated, which means that for this purpose funds must be provided to finance the child's school and it is the responsibility of both parents, this lasts until the child marries or can stand on his own.³¹ The end of parental power under the

³⁰ Hanni Ananda Endria, "Juridical Study on the Practice of Transferring Child Custody to Foster Parents in Pati Central Java," *Journal of Law, Politics and Power* Vol.3, No. No.1 (2023): pp.93-146.

³¹ H Rusdi Malik, *Understanding the Marriage Law* (Trisakti University, 2010), pp.78-79.

following conditions:

- 1) The death of the parent
- 2) The breakup of the marriage of both parents
- 3) At the dismissal of the parents and the power of the parents
- 4) Letting go of parents and parental authority
- 5) Until the child reaches adulthood
- 6) Married to the Son

Based on the above provisions, in case Number 376/Pdt.G/2021/PA. Klk, the reason the Plaintiff filed a lawsuit to revoke the power of the biological parents over the child is because the biological parents are declared incapable and unable to fulfill their obligations in maintaining and educating the child. Therefore, for the sake of the continuity of children's education at the high school level, the child must live with the Plaintiff who is proven to be able to finance and meet the educational needs of the child who at that time is 15 years old. For the sake of legal certainty over the care/custody of the Child, the Plaintiff requires the appointment of the Plaintiff as the guardian of the Child.

3. Legal Policy and Argumentation The judge granted the Lawsuit for the Revocation of Parental Power of Accumulation of Guardianship Determination Case 376/Pdt.G/2021/PA. Klk

a. Analisis Perkara

The case is that the Plaintiff with his lawsuit letter dated August 24, 2021 was registered at the Kolaka Religious Court Clerk which on that day with case registration Number 376/Pdt.G/2021/PA. Klk, stated the following;

- 1) Defendant I and Defendant II were married on December 29, 1997 registered at the Soppeng Regency Religious Affairs Office, then gave birth to a child who was the second child on April 28, 2001.
- 2) The child's biological parents are no longer able to finance all the needs of the child in the future, therefore the Plaintiff wants to revoke the parental rights of power.
- 3) Since the age of 15 to pursue high school education, the child has been attending SMA Negeri 1 Kolaka and has been paid for by the Plaintiff until now.
- 4) Before the lawsuit letter was registered with the Court, the defendant had handed over his child to the Plaintiff with a letter of surrender made by the Defendant dated August 23, 2021.
- 5) For the sake of legal certainty over the management/custody of the child, the Plaintiff as one of the Defendant's close relatives requires the determination of a guardian for the child.

Based on the above reasons, the Plaintiffs request the Panel of Judges who heard this case to be willing to grant the Plaintiff's lawsuit to revoke the power of attorney over the Child from the Defendants, designate the Plaintiff as the guardian of the Child and be able to act legally for all actions for and on behalf of the Child.

The facts of the trial were obtained based on the words of the witnesses who were neighbors of the Plaintiff, namely:

- 1) Since 2017 ANAK has been living together with the Plaintiffs in Kolaka until now
- 2) Since 2017 ANAK has also attended school in Kolaka, ANAK is in the second grade of high school

- 3) The witness knows that the Plaintiffs filed this case for the revocation of parental power and guardianship of the CHILD
- 4) As far as the witness knows, the reason the Defendants want to be revoked of their power over ANAK is because the Defendants are no longer able to finance ANAK
- 5) Defendant I works as a farmer/odd farmer
- 6) The plaintiff works as a batik clothes trader in the Kolaka market
- 7) The Plaintiffs' income from selling around Rp20,000,000.00 (twenty million) every month and the Plaintiffs own a clove plantation

Based on the description above, the analysis of case Number 376/Pdt.G/2021/PA. The KLK regarding the lawsuit for the revocation of parental power accumulation with the determination of guardianship is:

1) Confusion in the Use of the Litigation Path for Determination Cases (*Voluntair*)

In the civil procedure law within the Religious Court, the case of revocation of parental power is a *contentiosa* case (lawsuit), while the determination of the child's guardian is a *voluntary case* (application).³² However, in this case, the two were combined (cumulative) in one lawsuit and used the usual lawsuit route.

By procedural law, the revocation of parental power should be filed with a lawsuit against the parents (because there is a dispute). Meanwhile, the determination of the guardian was submitted through *an application (voluntair)* because there was no disputed party in the determination. In principle, lawsuits and applications cannot be accumulated in one case in court because they have different legal characters, both in terms of procedures, legal objects, and the form of decisions.³³

Aspects	Lawsuit	Request
Quality	Contentious (there is a dispute between two parties)	Non-contentious (no dispute, only asking for determination) is of one-sided interest only
Party	There are plaintiffs and defendants	There is no other person or third party as an opponent, but it is pure and absolute free of one party (<i>ex parte</i>), sometimes there is a respondent but not a dispute
Process	Through the process of proof and dispute trial	Only determination, no proof of dispute
Putusan	In the form of a verdict (judge's verdict)	In the form of a determination (beschikking)

2) Revocation of Parental Power is a lawsuit (*contentiosa*)

This involves disputes between certain parties, for example between the biological mother or father and the party filing the lawsuit (family, relatives, or other

³² Sudirman L Sudirman L, *Procedural Law of Religious Justice* (IAIN Parepare Nusantara Press, 2021), p.61.

³³ Harahap, *Civil Procedure Law: On Lawsuits, Trials, Confiscation, Proof, and Court Decisions*, pp.29, 47 and 797.

interested parties).³⁴ In this case, the parties involved in the dispute over the revocation of parental power are Plaintiff I, Islam, 44 years old, junior high school education working as self-employed. Plaintiff II, Islam, age 39 years, junior high school education works as a self-employed person. The plaintiff resides in Kolaka Regency, Southeast Sulawesi. Defendant I, Islam, 48 years old, education, no school, no job. Defendant II, Islam, 46 years old Education, no school, no job. The two defendants reside in Soppeng Regency, South Sulawesi.

3) Determination of Guardianship is a request (*voluntary*)

The application is a voluntary (non-dispute) case filed in the event that an adult child does not have legal parents or his or her parents have been deprived of their guardianship rights, so that the appointment of a guardian by the court is required based on the provisions of Article 50 of the Civil Code and relevant laws and regulations.³⁵ However, in a *quo case*, the child has reached the age of 20 years and 4 months, which juridically has passed the age limit of the child as stipulated in Article 1 number 1 of Law Number 35 of 2014 concerning Child Protection, which is 18 years old. Thus, the person concerned is legally competent and is no longer in the category of children who require the determination of guardians by the court.

a) Legal Subjects in a Lawsuit

The lawsuit was filed by a third party (close relative), namely the Plaintiff, against the biological parents (Defendants I and II), to revoke parental power, and at the same time appoint themselves as guardians. Legally, the revocation of parental power is allowed on the basis of gross inability or negligence in raising children, as stipulated in Article 49 of Law No. 1 of 1974 jo. Compilation of Islamic Law (KHI). However, the appointment of guardians must be carried out by the court through determination, not by a *contentiosa lawsuit mechanism*.³⁶

b) Evidence and Witness Position The facts of the trial show:

- (1) The witnesses are neighbors, not neutral or expert witnesses.
- (2) They provided corroborating evidence that the child had indeed lived with the Plaintiff for a long time, and that the parents could no longer afford to pay for it.

In substance, this witness statement is quite helpful in describing the objective situation. However, the judge still needs to carefully assess the qualifications of the witnesses and the balance of the evidence, as they are neighbors who are likely to be close to one of the parties. As Witness I is a 31-year-old trader, S1 education who lives in Kolaka Regency, Witness II is 49 years old, High School Education who does not have a job and lives in Kolaka Regency. The two witnesses lived in the same place as the Plaintiff, namely in Kolaka Regency.

D. Conclusion and Recommendation

The age limit in Indonesia's positive law is not uniform: The Marriage Law and the Compilation of Islamic Law sets the age of majority at 21 years or after marriage. The Civil Code also states that adults are 21 years old. However, in some contexts, such as child protection, the age limit for children is set to 18 years.

³⁴ *Loc., cit.*

³⁵ Eka Susylawati, "The Application of Islamic Personality Principles in Child Adoption Applications in Pamekasan Regency," *Al-Ihkam: Journal of Law & Social Institutions* Vol.11, no. No.2 (2016): pp.409-427, <https://doi.org/https://doi.org/10.19105/al-lhkam.v11i2.1042>.

³⁶ *Loc., cit.*

Meanwhile, in Islamic fiqh, maturity (puberty) is determined not solely based on age, but physical signs such as menstruation or ihtilam, and if these signs are not found, then age is used as a measure (between 9–18 years old depending on the madhhab). Parental power over children (both in the form of hadhanah in Islam and in the concept of parental power in positive law) is the responsibility to care, educate, and protect children. The power can be revoked by the court if the parents are proven to be negligent or commit violence against the child, as stipulated in the Civil Code, the Marriage Law, KHI, and the Child Protection Law.

Based on the analysis of Decision Number 376/Pdt.G/2021/PA. Klk, it can be concluded that: the judge's consideration of absolute and relative authority is appropriate, where the Kolaka Religious Court is authorized to examine the case based on the Plaintiff's domicile as evidenced through the marriage certificate (P.1). This is in accordance with the provisions of Article 49 of Law Number 7 of 1989 concerning Religious Courts jo. Law Number 3 of 2006 and Law Number 50 of 2009.

The evidence submitted by the Plaintiff has met the formal and material requirements, and is considered valid and relevant by the panel of judges. These evidences include marriage certificates, birth certificates, statements, and income statements, which support the postulates of the application.

The judge's consideration in the aspect of child protection has paid attention to the principle of the best interest of the child, considering that the child has lived with the Plaintiff since 2017, received good care, and the biological parents are no longer able to afford the child.

However, there is a juridical error in the substance of the judge's considerations. The child who was the object of the application was born on April 28, 2001, so that at the time the lawsuit was filed on August 24, 2021, he was 20 years and 4 months old. According to Article 50 paragraph (1) of Law No. 1 of 1974 jo. Law No. 16 of 2019, Article 330 of the Civil Code, and Article 107 of the Compilation of Islamic Law (KHI), the child has legally reached adulthood and is no longer under the power of the parents.

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