

View of Penghulu on the Implementation of *Taukil Wali* in Peraturan Menteri Agama Nomor 20 Tahun 2019 (Study in Batang Regency)

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Abstract

The rules regarding taukil wali for marriage guardians who cannot be present at the marriage ceremony as stated in Peraturan Menteri Agama (PMA) Nomor 20 Tahun 2019 indirectly close the opportunity for intiqal (transfer) of guardianship from the nasab guardian to the judge's guardian due to the absence of the marriage guardian such as due to the marriage guardian is in far away (masafatul qashri). This study aims to find out the views of penghulu in Batang Regency about the implementation of taukil wali rules and what is the opinion of penghulu in Batang if taukil wali requirements are not implemented. The type of research used is an empirical juridical method that uses the subject of penghulu in Batang, using a qualitative-descriptive approach to produce data in the form of a description of the views of penghulu in Batang regarding the implementation of taukil wali in PMA Nomor 20 Tahun 2019 and policies from penghulu to complete this problem. Principly, penghulu in Batang Regency has implemented this taukil wali rule even though it has not done optimally due to obstacles in the implementation of the taukil wali by marriage guardians who cannot attend the marriage ceremony, so some of penghulu are "forced" to use the old rules to determine marriage guardians by intiqal (transfer) of the nasab guardian to the judge's guardian for reasons of masafatul qashri.

Keywords: PMA Nomor 20 Tahun 2019, *taukil wali*, judge's guardian

A. Introduction

Marriage is valid if carried out in accordance with existing regulations, fulfills the conditions and pillars.¹ In *fiqh munakahat* and PMA number 20 of 2019 it is explained regarding the pillars of marriage which are the determining factors for whether a marriage is valid or not: (1) the presence of a prospective husband, (2) the presence of a prospective wife, (3) the presence of a marriage guardian, (4) the presence of two people witness and (5) consent qabul. Guardians in marriage are pillars that must exist in a marriage. Without a guardian, the marriage is considered invalid.² The guardian referred to here is the nasab guardian or the judge's guardian.

¹ H.S.A. Alhamdani, *Risalah Nikah*, terj. Agus Salim (Jakarta: Pustaka Amani, 1989), h. 30-31.

² Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, (Yogyakarta: Liberty, 1982), hlm. 42

PMA nomor 20 tahun 2019 article 12 paragraph 3 explained regarding the conditions where the intiqal of the nasab guardian is allowed to the judge's guardian, which is still in accordance with *fiqh munakahat*, with the condition if: (1) the nasab guardian does not exist; (2) the guardian is adhal (determined by the Religious Court or the Syari'ah Court); (3) the guardian is unknown (mafqud) as evidenced by a statement from the bride, witnessed by two witnesses and known by the Kepala Desa or Lurah); (4) the guardian is in prison (proven by a statement from the competent authority); (5) none of the guardians are muslims; (6) the guardian is in ihram and (7) the guardian himself is the bride and groom. This provision does not mention masafatul qashri as one of the reasons for the transfer of the nasab guardian to the judge's guardian. If the nasab guardian is far away and cannot attend the marriage contract, he "must" make a *taukil wali bilkitabah* (representative guardian letter) signed by the head of the KUA/ Penghulu/ PPN LN where he is domiciled and witnessed by two witnesses.³

In an article entitled *Implementasi Taukil Wali dalam Peraturan Menteri Agama Nomor 20 Tahun 2019 di Kota Malang*, Nattasya Meliannadya explained that the *taukil wali* rules for marriage guardians who cannot be present at the marriage contract have been carried out by penghulu in Malang City, even though in reality not running optimally.⁴ However, it is not explained about the steps to be taken if the *taukil wali* is not fulfilled. In contrast to this study, which attempts to explain the "way out" that is carried out by the penghulu in Batang Regency if the applicant for marriage cannot show a letter of *taukil wali* as in the PMA.

Almost the same as Nattasya Meliannadya, Haya Zabidi and Siti Khadijah in their writings explaining the implementation of *taukil wali bilkitabah* after the enforcement of PMA nomor 20 tahun 2019 in Banjar Regency. Even though they are from different regions, there are similarities in the results of the research that the penghulu in Banjar Regency has implemented *the taukil wali bilkitabah* rule as a PMA mandate, with several policies, including, *taukil wali* does not have to be carried out at the KUA if the guardian is unable to attend the KUA, but KUA comes to the guardian.⁵ Different research locations, the results will be different. Likewise in this study, the authors found several differences with previous studies.

Some of the research results that the authors describe, there are several points of similarity, among others, they study the problems of nasab guardians who cannot be present at the marriage contract. While the difference in this study is the view of some of the penghulu in Batang Regency, in responding to implementation of *taukil wali* as in PMA nomor 20 tahun 2019 which was not optimally. When find difficulties in the *taukil wali* process or even not being able to do *taukil*, some of the penghulu are "forced" returning to the rules before the

³ Peraturan Menteri Agama nomor 20 tahun 2019 pasal 12 (5)

⁴ Nattasya Meliannadya, "*Implementasi Taukil Wali dalam Peraturan Menteri Agama Nomor 20 Tahun 2019 di Kota Malang*." *Sakina: Journal of Family Studies* 4.1 (2020): 71-80.

⁵ Haya Zabidi, Siti Khadijah. "*Implementasi Peraturan Menteri Agama (PMA) No. 20 Tahun 2019 tentang Taukil Wali Bilkitabah dalam Akad Nikah di Kantor Urusan Agama (KUA) Kabupaten Banjar*." *Syariah Darussalam: Jurnal Ilmiah Kesyarahan dan Sosial Masyarakat* 5.1 (2020).

enforcement of PMA, that is determining the transfer of the guardian of nasab to the judge's guardian because of *masafatul qashri* (the guardian is in a place as far as the *qashar* prayer is allowed).

Although the rules regarding *taukil wali* have been implemented by the *penghulu* in Batang Regency, encountered several obstacles in its implementation. For example, the guardian of nasab who migrate to faraway places, even inland or the guardians are at sea or on islands, that the circumstances make it impossible or difficult to carry out *taukil wali* as the PMA rules. And *penghulu* are "forced" to make a decision as soon as possible in determining the marriage guardian, because it is impossible to postpone the planned marriage just to wait for the presence of the marriage guardian. So the *penghulu* (especially the head of the KUA) makes a decision by *intiqal* (moving/transfer) from guardian of nasab to the judge's guardian. These are some of the problems that arise related to the *taukil wali bilkitabah* policy which made the author interested in discussing it, especially regarding the shift in the terms of requirements the *intiqal* from guardian of nasab to the judge's guardian, the implementation of the *taukil wali bilkitabah* in Batang Regency and the views of the *penghulu* in Batang Regency on the implementation of the *taukil wali bilkitabah* policy and how to resolve the *penghulu* if they encounter obstacles as we have stated above, both from a legal aspect and from an administrative point.

B. METODE

This study uses an empirical juridical research methodology, that is legal research regarding the enactment or implementation of normative legal provisions in action in every particular legal event that occurs in society.⁶ Conducted on actual conditions or real situations that occur in the community with the intention of knowing and finding the facts and data needed, then leading to problem identification which ultimately leads to problem solving.⁷ And by using a socio-legal approach (concentrating on real law, law in action)⁸ and a descriptive qualitative approach (which is a research method that moves to a simple qualitative approach with an inductive flow that begins with an explanatory process or event which can finally be drawn a generalization which is a conclusion from the process or event). The primary data source is in the form of interviews with several *penghulu* in Batang Regency, while the secondary data is obtained from books and articles (journals). The principals who were the object of the interview were: Ali Fatkhur, S.Ag, M.Sy (Penghulu/Head of KUA Kec. Tersono), H. Zahid Lutfi, S.Ag., M.Sy (Penghulu/Plt. Head of KUA Kec. Reban), Muchamad Machmud, S.Ag, M.H (Penghulu of KUA Kec. Batang), Sugeng Irwanto, S.H.I (Penghulu KUA Kec. Bawang) and Musonif, S.Ag (Penghulu

⁶ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004), hlm 134

⁷ Bambang Waluyo, , *Penelitian Hukum Dalam Praktek*, (Jakarta: Sinar Grafika, 2002), hlm. 15

⁸ Muhammad Helmy Hakim, *Pergeseran Orientasi Penelitian Hukum: Dari Doktrinal Ke Sosio-Legal*, Fakultas Syariah dan Ekonomi IAIN Antasari Banjarmasin

KUA Kec. Pecalungan) which we consider to be representative of the views of the penghulu of all Batang Regency.

C. RESULTS

Principally, the penghulu of Batang Regency agree with the enactment of PMA nomor 20 tahun 2019 including the new rules regarding *taukil wali bilkitabah* and they have implemented them. In addition to the obligation to carry out PMA, this is also caused by an element of caution in the regulation, that is minimizing data manipulation (presence) of marriage guardians. As the author experienced himself when officiate at the KUA in Bandar District (before the enforcement of PMA nomor 20 tahun 2019) he received a letter of application for marriage accompanied by a request of the judge's guardian on the reason that the guardian was on Natuna Island, so the Head of KUA at that time decided that the marriage should be carried out by the judge's guardian. However, a few days later a someone came to the KUA and conveyed information that his biological father (the rightful guardian of nasab) was in the vicinity of the marriage contract location in fact. Likewise what was conveyed by Sugeng Irwanto S.H.I,⁹ penghulu of the KUA Kec. Bawang, that while on duty at the KUA Kec. Subah who encountered something similar to what the author experienced.

However, there are several obstacles in the implementation of these policies in practice. Among other as conveyed by Muchamad Machmud, S.Ag., M.H,¹⁰ the penghulu of the KUA Kec. Batang, who received a report on a marriage application with a judge's guardian, was because the marriage guardian was at sea. Even though they can be contacted and know there is a marriage, it is not possible for the marriage guardian to pledge *taukil wali* in front of the Head of KUA, even though the time for the marriage contract has been determined and it is impossible to postpone in waiting for return of the marriage guardian. Also conveyed by Musonif, S.Ag¹¹ (penghulu of KUA Kec. Pecalungan), it could be that the guardian is in an overseas place and far from the KUA so that it is difficult to make the *taukil wali* pledge, or if the guardian can reach the KUA, there is no guarantee of getting service because the person concerned is not local people. In this case the author (while on duty at the KUA Kec. Tulis) once received a report from village officials in the Tulis District that the marriage guardian had migrated to the inland of Kalimantan and happened to be on lockdown so he could not make the *taukil wali* pledge in front of the head of the KUA.

Ali Fatkhur, S.Ag., M.Sy¹² (head of KUA Kec. Tersono) have an opinion that the rule of *taukil wali* is very good, because we believe that the publishing of

⁹ Wawancara dengan Sugeng Irwanto, SHI (Penghulu KUA Kec. Bawang) tanggal 06 November 2021

¹⁰ Wawancara dengan Muchamad Machmud, S.Ag., M.H (Penghulu KUA Kec. Batang) tanggal 05 November 2021

¹¹ Wawancara dengan Musonif, S.Ag (Penghulu KUA Kec. Pecalungan) tanggal 06 November 2021

¹² Wawancara dengan Ali Fatkhur, S.Ag. M.Sy (Kepala KUA Kec. Tersono) tanggal 7 November 2021 melalui sambungan telepon.

a regulation must have the aim of benefiting, such as avoiding data manipulation or something else. However, we cannot deny to the possibility that the *taukil wali* pledge will not be fulfilled, and at the same time a decision must be decided regarding marriage guardians because the marriage must be carried out immediately. This was conveyed by H. Zahid Lutfi, S.Ag., M.Sy¹³ (Plt. Head of KUA Kec. Reban). So that most of the penghulu "suppose" that the *taukil wali* marriage regulations, which some people consider difficult to implement, should be accompanied by alternative regulations if the *taukil wali* are difficult to implement.

D. DISCUSSION

In *fiqh munakahat*, the transfer of the authority of the nasab guardian to the judge's guardian is caused by several factors, including the nasab guardian was ghoib or traveling on a journey of \pm 92.5 km or two days of travel.¹⁴ Whereas PMA nomor 20 tahun 2019 article 12 (5) rules that if the guardian is not present at the marriage ceremony, he makes a letter of *taukil wali* in front of the Head of KUA or Penghulu or PPN LN in accordance with the existence of the guardian and witnessed by 2 (two) witnesses".¹⁵

Most of the penghulu in Batang Regency hope that the provisions regarding the terms of masafatul qashri will still be enforced, because there are obstacles in practice. To face some people who find it difficult to get a *taukil wali* pledge from a guardian who is in faraway, some of the penghulu decide to carry out their marriage to the judge's guardian. The reason used is that *fiqh munakahat* regulates this matter, as well as in the Kompilasi Hukum Islam which does not regulate the provisions of *taukil* marriage guardians and also does not limit the definition of absence of marriage guardians (generally applicable), so they restore to the rules of *fiqh munakahat*. This is done for the creation of benefit in society, because usually the time for carrying out the marriage has been determined and it is impossible to postpone it just to wait for the presence of a marriage guardian who is uncertain when the time will be. Moreover, generally the legal basis for marriage that applies in Indonesia is returned in accordance with the law or religion adhered to by each adherent as stated in Undang-undang nomor 1 tahun 1974 concerning Perkawinan.¹⁶

Based on the explanation above, the penghulu in Batang Regency are trying to implement PMA nomor 20 tahun 2019 including those related to *taukil wali*. Because they are fully aware of their main duties and functions as state civil servants who must obey and guide all regulations issued by the state. In addition, there are indeed many positive sides to the issuance of the *taukil wali* rule,

¹³ Wawancara dengan H. Zahid Lutfi, S.Ag., M.Sy (Plt. Kepala KUA Kecamatan Reban) tanggal 8 November 2021

¹⁴ Slamet Abdidin dan Aminuddin, *Fiqh Munakahat I*, (Bandung: CV Pustaka Setia, 1999), 92.

¹⁵ PMA nomor 20 tahun 2019 pasal 12

¹⁶ K. Bakry, Zulfiah Sam, dan Jihan Vivianti Usman. "Putusnya Perkawinan Dan Akibatnya Dalam Fikih Munakahat (Studi Analisis Undang-Undang Nomor 1 Tahun 1974 Pasal 38-41)". BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam , Vol. 2, no. 3, Dec. 2021, pp. 413-31

including minimizing data falsification and false confessions from the brides regarding the whereabouts of their guardian. Because marriage is not just a marriage ceremony, but there is a relationship between the two extended families of the bride and groom. Do not let problems occur after the marriage contract, such as a lawsuit for *fasakh nikah* from the guardian of *nasab* because they feel they are not involved in the marriage process and consider the marriage was invalid.¹⁷ However, the *taukil wali* as ruled in the PMA has problems in its implementation, forcing the *penghulu* to find a way out of this problem. And one of the solutions offered by the *penghulu* is *Intiqal* to the judge's guardian because of *masafatul qashri*.

Regarding the policy of some *penghulu* (Heads of KUA) who are "forced" not to follow the *taukil wali* provisions as mandated by PMA nomor 20 tahun 2019, the author understands it as an emergency policy for the benefit of the people who need KUA services. The wedding had to be carried out and the people did not want to wait for the guardian's presence. Even in some cases, the guardian allows him to be married to the judge's guardian. And in fact, this rule is not odd, because the decision of the judge's guardian because the guardian was in a distant place was usually done by the *penghulu* before. As stated in the *Fiqh Munakahat* issued by Dirjen Bimas Islam dan Penyelenggara Haji that one of the reasons for the transfer of a *nasab* guardian to a judge's guardian is that the guardian is as far away as *masafatul qashri* (as far as the journey allows *qashar* prayers), that is 92.5 km.¹⁸ This is also based on a well-known opinion among the *Syafi'iyah* scholars as has been going on so far. This is as stated by Imam As-Syairazi in the book *Al-Muhadzdzab*:

وإن غاب الولي إلى مسافة تقصر فيها الصلاة زوجها السلطان ولم يكن لمن بعده من الأولياء أن يزوج لأن ولاية الغائب باقية ولهذا لو زوجها في مكانه صح العقد وإنما تعذر من جهته فقام السلطان مقامه كما لو حضر وامتنع من تزويجها

*Meaning: "If the guardian goes within a distance that allows him to perform qashar prayers, the ruler will marry (become the judge's guardian, writer.) the bride. The guardians who are after the guardian are not entitled to marry off, because the guardianship rights of the departing guardian still remain. Therefore if the guardian marries the bride in his place then the contract is valid. But if he is absent, the ruler occupies his position as if he were present but prevented from getting married off."*¹⁹

The application of a rule issued is strongly influenced by cultural factors which contain values, for example the value of legal assurance and societal values. A rule of law that is issued, of course, must pay attention to legal assurance that is enforced in the community, if a rule is unable to provide legal assurance in the rule, it can be said that the rule of law is unable to provide firmness in its

¹⁷ Kompilasi Hukum Islam pasal 73

¹⁸ Dirjen Bimas Islam dan Urusan Haji, *Pedoman Fiqh Munakahat*, (Jakarta : tp, 2000)

¹⁹ As-Syairazi, *Al-Muhadzdzab*, Beirut: Darul Fikr, 2005, Juz. II, hlm. 52

implementation.²⁰ This seems to have happened in PMA nomor 20 tahun 2019 article 13 (5) concerning *taukil wali* rules which in reality clash with rules of *fiqh munakahat* which have become a culture and are grounded in society. Because as Sayyid Sabiq in *Fiqh Sunnah* explains that the guardian's authority can transfer to the judge's guardian if (1) there is a conflict between the guardians, (2) the guardian is absent, dies or disappears, or because the guardian is absent.²¹

E. CONCLUSION

Based on the results of the research and data as stated above, the authors conclude that in the implementation of *taukil wali*, all penghulu agree and support the rules in PMA nomor 20 tahun 2019, and try to implement it as well as possible because the PMA is a basic rule in their work as civil servants country responsible for marriage administration. Though they are aware of and know that there are obstacles in implementing this *taukil wali bilkitabah* rule. When encountering problems related to *taukil wali*, such as the existence of a wali who is sailing at sea or who is inland where it is not possible to carry out *taukil wali*, the penghulu "make ijihad" by returning to Kompilasi Hukum Islam rules and *fiqh munakahat*, that is establishing guardianship with a judge's guardian. In *fiqh munakahat*, if the distance of a guardian is + 92.5 km away, then the guardianship moves to the judge's guardian. Even though the penghulu realize that such a decision is not in line with the provisions of PMA, such a decision cannot be avoided, because it is also impossible to wait for the presence of a guardian at an uncertain time. From the explanation above, it can be considered as a consideration for regulators to review the rules regarding the "requirement" of *taukil wali* because apparently there are many obstacles encountered in practice. And hopes to rules regarding the permissibility of intiqal from guardian of nasab to judge's guardian of the for the guardian who is in a place as far as masafatul qashri as implemented before the enforcement of this PMA, so that there are no actions that seem "against" official regulations, even though what the penghulu are doing does not run away from the rules origin, that is *fiqh munakahat*.

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