

Legal Reform and Fiqh Authorities: The Determination of Marriage Guardianship for Child of a Pregnant Married in Regency of Religious Affairs Office (KUA) Kediri

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Abstract. This paper will discuss the rules on the status of women in Islamic family law and practice in the Office of Religious Affairs (KUA). This paper focused on the rules for determining marriage guardians for women born in the practice of pregnant marriage and their application in the KUA, Kediri. This paper examined the attitudes of law enforcers in determining marriage guardianship for women and their legal tendencies by referring to the compilation as State law and fiqh as the legal basis for making State law. Using the approach of the sociology of law, this paper found that in the practice of determining marriage guardians of children as a result of pregnant marriage, KUA had an understanding of the tendency to refer to the existing rules in KHI. However, KUA considered that the status of a child obtained from a child as a result of a pregnant marriage is children administratively, while in the case of other civil relations such as guardianship and inheritance, it must be adjusted to the fiqh and opinion of the ulama. This paper confirmed that sociological factors have motivated the understanding of the KUA, where they have a tendency to continue to maintain fiqh in determining marriage guardians and the strength of the fiqh doctrine in KUA which is characterized by the dominance of culture and environment pesantren, kyai's charisma and the education of KUA employees who are engaged in fiqh for a long time and made it a solution to answer everyday problems.

Keywords : marriage guardianship; pregnant marriage; KUA

1 Introduction

In marriage, Islamic law makes guardianship one of the conditions that must be fulfilled in marriage. The marriage contract will be considered valid if a guardian or representative will marry him off. The existence of a guardian in the marriage or contract process aims to preserve the benefit and protect the rights of the person under guardianship. The Office of Religious Affairs (KUA) is the most important institution in determining the guardian of marriage for a bride who wants to get married. Apart from that, KUA is also an institution that is given the authority in matters of marriage guided by Law No. 1 of 1974 and the

Compilation of Islamic Law in determining the terms and implementation of marriage. In practice, during the marriage registration procession, the KUA will double-check the status of girls who are about to marry. This will determine who has the right to be a guardian when the marriage takes place.

Among the requirements, the bride needs in the process of registering a marriage at KUA are photocopies of the parents or guardian marriage certificates and photocopies of birth certificates. This is intended to determine the distance between the birth of a child and the marriage of the parents. If the child is born out of marriage, the legal guardian in the marriage is the judge's guardian.[4] The legal basis used is article 100 KHI which explains the relationship between the *nasab* of adultery children only with their biological mother.[5] Likewise, children born in a pregnant marriage, their biological father can become the guardian of the marriage in the marriage because the child born in a legal marriage is legal.

Different things that happened in KUA Kediri, they require the marriage certificate of the child's parent and the birth certificate of the daughter (bride) to find out whether this child is considered a child of adultery or a legal child. In contrast to Law No. 1 of 1974 and the Compilation of Islamic Law, the KUA in Kediri District[6] observes that a parent who has the right to become a guardian of marriage for his daughter is a girl whose distance between the birth and wedding day of the parents is not less than six months. Then if there is a case of a child who was born less than six months after the parent's marriage, the one who has the right to become a guardian is the judge's guardian.[4]

Looking at the articles mentioned in the KHI, there are two possibilities regarding the definition of a legal child[7]. First, children are born in legal marriages. The words "in" as contained in the sentence above suggest that the legal measure whether or not a child is seen at birth, regardless of when conception occurs. Second, children are born as a result of legal marriage. From the above understanding, it makes a difference for the KUA in determining the right of the guardian of marriage for the bride who is born from a pregnant marriage. Some of the KUA does not make a problem with the father being the guardian of the marriage, some others question and do not allow the father to become the guardian of marriage if the child is born less than six months.

The status of children born from marriage during pregnancy women is still ambiguous. The child is not explicitly stated as a legal child nor is it an illegitimate child or an adulterous child. In this sense, a legal child is a child born as a result of a legal marriage and a child outside of marriage is a child born from a sexual relationship between a man and a woman without a legal marriage bond. As for children born from the marriage of a pregnant woman from adultery, when viewed from the marriage process that has fulfilled the provisions of the Shari'ah and the law, the child is considered a legal child. However, when viewed from the conception carried out before the existence of a marriage bond, the child is considered a child out of wedlock.

Based on these problems, shows that there are differences in the rules implemented by several Religious Affairs Offices in Kediri Regency with existing laws and regulations in Indonesia. This research will focus on the practice and sociological factors that influence the implementation determination of the legal guardianship of children result from pregnant married by the Office of Religious Affairs in Kediri.

2 Research methodology

To further understand the problem and start looking for a solution, I researched this case. Qualitative interviews were managed in person with law enforcement officials, i.e KUA, and the Ministry of Religion in Kediri. The samples used in this study were 5 (five) Religious Affairs Offices in Kediri, specifically KUA District of Kras, KUA District of Kepung, KUA District of Pare, KUA District of Ngasem, and KUA District of Wates which had the highest marriage data in Kediri. Next, build a methodology to capture sociological factors in the practice of guardianship determination that has been carried out by the Office of Religious Affairs in Kediri, a sociological juridical approach is used through law enforcement theory by Lawrence M. Friedman. This is used to explore statutory factors, personal factors, and community culture that affect the practice of this case in Kediri.

3 Results and Discussions

3.1 Nasab and Marriage Guardianship: Islamic Jurisprudence Concept and Legislation

As previously mentioned, there are other problems that arise about the lineage or *nasab* status of the child as a result of marriage during pregnancy women. Even though the marriage has been held, another problem that arises from this marriage because the child born is the result of sexual intercourse outside of marriage or before the marriage contract is carried out. There are three categories of legitimate children according to Islamic law, first, children born from legal marriages. If a man is married to a woman who has fulfilled the requirements and is harmonious and then gives birth to a child, whether the household is intact or has been divorced, then the child is legal and is given service to the mother and father without requiring acknowledgment from both parents. Second, children are born from *fasid* marriages. Just as a man who marries a woman who is not known that the woman is a sister, then has mingled and gave birth to a child, then the child is legitimate and can be served by the mother and father. Third, children born from *wathi syubhat*. This marriage occurs when there is a marriage between a man and a woman who, after completing the contract, is immediately replaced by their twins until there are association and pregnancy, or a husband who has been mentally mentored by three wives then has a relationship because of ignorance, then the child born is legitimate and is given service to his parents.

Wahbah Zuhaili explained that a legal child is a child who is born between the minimum age of the womb and the maximum limit. Islamic jurists agree that the minimum age for gestation is 6 months or 180 days from the time of sexual intercourse. Abu Hanifah counted it from the time the contract took place, not since sexual intercourse, while *jumhur ulama* gave meaning from sleeping together or sexual relations. The basis for the minimum age limit for pregnancy as agreed by the legal expert above is the result of a combination of the message of the letter Al-Ahqaf verse 15 which explains the time of pregnancy to weaning for 30 months with the message of the letter Luqman verse 14 which explains the time of breastfeeding a child to weaning it is 2 years or 24 months. It is taken from these two verses that the time to contain is at least 6 months or 180 days. [9]

Regarding the maximum limit of gestational age, Islamic jurists disagree. Abu Hanifah, Syafi'i and Hanbali, and Maliki. Meanwhile, Muhammad bin Abdul Hakam, a follower of the al-Dhahiri school of thought and Umar bin Khattab, argues that 9 months of the Qamariyah.[11] When the discussion of the text is related to pregnant marriage, the status of the child born to Maliki believes that 1 year or 12 months of Qamariyah. Meanwhile, according to Ibn Hazm, the marriage would be questioned because in essence the child was

the result of a relationship outside of marriage. As for the status of children from out-of-wedlock pregnant marriages, it turns out that the scholars of the Imam School have a different opinion.

a) The Opinion of the Adultery Child is Given to His Mother

The majority of scholars agree that the child who is the result of adultery cannot go to the sharia, namely to his father, but can only serve his mother. In fact, it is said that the child does not have the right of lineage and the right to inherit from his biological father because there is no lineage relationship according to the Shari'a.[12] The scholars of Jumhur agree that a child born from adultery cannot be served by his father, it is only done in the era of jahiliyyah.[13] This is based on a hadith,[14]

الولد للفراش وللعاهر الحجر

There was a clash between the scholars regarding the interpretation of lafadz al-firasy. The majority of scholar state that al-firasy is the name for the woman who sleeps with. Therefore a woman who commits adultery is the owner of the lineage of a child born as a result of adultery committed.[15] This opinion was supported by Imam Syafi'i, who stated that the child who resulted from adultery can only be sent to his biological mother. The father, namely a man who marries his mother, can marry the child.[16]

However, in one of the determinations of *nasab* rights, the period of pregnancy can be one of the things that can cause the birthright of the child to the man who marries his mother. Children who are born after exceeding the minimum pregnancy limit, which is six months, counted after the marriage contract occurs, the child can be sent to the man who married his biological mother. In this case, the scholars argue that the minimum pregnancy threshold is one of the references that the fetus can only grow within 6 months.[17] Births that occur in less than six months indicate sexual relations outside of legal marriage so that the child cannot be served by the father or the man who married his biological mother.

If we pay attention to the above meaning, this opinion emphasizes the understanding of original marriage (*istislahi*) according to Imam Syafi'i, which means a contract that makes sex relations between men and women lawful and not the meaning of *majazi* (metaphor) which means sexual intercourse.[11] As a consequence, a woman who becomes pregnant before the marriage contract, her pregnancy is not respected, as is the case with pregnancy which is preceded by a legal marriage contract. The seeds of pregnancy due to adultery cannot be known directly, so if the child is born the child has no *nasab* relationship with the man who married his mother or biological father. The child only has a *nasab* relationship with the biological mother. This will also have implications for the status of guardianship rights if the child born is a girl. The biological father is not entitled to become a guardian in marriage when the girl is married and the guardianship of the judge. This is the understanding of jumhur scholars in interpreting word *al-firasy* with the meaning of woman. Then, a woman who commits adultery is the owner of the lineage of children born as a result of adultery committed.

b) The Opinion of the Child Resulting From Adultery is Given to the Biological Father

The group in this opinion states that a child born to a pregnant woman as a result of adultery is service to her biological father. This opinion was expressed by Imam Abu Hanifah and the Hanafiyyah scholars. Imam Abu Hanifah based this on lafadz al-Firasy which means a

man who intercourse (husband).[15] Then, the relationship between children born as a result of adultery before marriage will have a lineage with their father or mother's husband. Also, Imam Abu Hanifah's reason for expressing his opinion is based on the original meaning of marriage (istislahi) which means sexual intercourse and not according to the meaning of majazi (metaphor) which means a contract which makes sexual relations between men and women lawful.[11] This is also mentioned in the book Nailul Authar which states that:

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From Imam Abu Hanifah's understanding, it can be concluded that a child born to a pregnant woman as a result of adultery will always be linked to a man who married his mother before the child was born. Another opinion states that a child born 6 months of pregnancy after the marriage contract is carried out is a child who can be assigned to the man who marries the birth mother of the child. Apart from the lineage, these children also have the right to inherit and inherit and are not called children out of wedlock (walad zina).[18]

Regarding children who are born as legal or out-of-wedlock children, both have rights over their parents. Wahbah Zuhaili stated that there are five types of rights for children who are born, namely the right to get the status of *nasab* (al-*Nasab*), the right to breastfeed (al-*radha*'), the right to care (al-*hadhanah*), the right to protect (al-*wilayah*) and the right to get a fee. life (al-*nafaqah*). Also, they will obtain the right to be an heir if their parents die.

c) KHI and Undang-undang

As for the practical level, the case of pregnant marriage raises problems regarding the birth status of the child, whether it can be served by the father or not. In this case, KHI has different rules regarding the *nasab* (lineage) of children born in pregnant marriages. The KHI legalizes the connection of the child born in a pregnant marriage with the father if the mother and father who impregnated him were married in accordance with the provisions of Article 53 as mentioned above. The child is considered the legal child of the father who impregnated the mother and then married her, the father also has the right to become a guardian, can inherit and be inherited.

A marriage that is carried out also has no time limit regardless of when conception occurs. Whenever a child is born to a woman who is pregnant with the man who made her pregnant, the child is related to the father. For example, there has been a pregnant marriage between a pregnant woman and a man who impregnates her, and then two months or one month later the woman gives birth, the child born has a *nasab* relationship with the father because the child is born in a legal marriage bond. This is in line with the rules contained in article 99 KHI and article 42 of the Marriage Law that a legal child is a child born in a legal marriage bond and as a result of a legal marriage.

This rule differs from the view of classical scholars who classify the minimum and maximum limits of pregnancy. This has also sparked criticism from several groups, both organizations, and individual Islamic legal experts. Regarding the rules for pregnant marriage and the status of legal children, some circles want to remove them from the law of marriage. The rules regarding pregnant marriage and legal children are considered to have contributed to the spread of adultery, moreover, young people feel that what they have done can be resolved by the two rules. Perpetrators of adultery can get married while pregnant and the status of the child who is born becomes legal even though born from an illegal relationship.[19]

The draft adds one article after explaining the definition of a legal child in articles 94 and 95. The article, namely article 96, explains that children born in a marriage bond whose

legality is recognized are only children born after 180 days (6 months) of marriage. Article 96 in the draft is as follows: “*In the case of a pregnant woman's marriage as referred to in Article 47 and Article 48, then the child born in less than 180 (one hundred and eighty) days as of the marriage contract, only has a nasab relationship with the mother and the mother's family.*”

This rule again accommodates *fiqh* provisions related to the minimum age of the pregnancy, which means that the article in the draft has revised the previous rules regarding pregnant marriage. The legality of a child is determined by his birth in a marriage bond that has been carried out by the mother and father.

3.2 Determination of Guardianship for Children from Pregnant Married in KUA Kediri

Guardianship in marriage is one of the provisions of marriage. Consequently, if these conditions are fulfilled, it will create obligations and rights in the marriage. The examination carried out by the KUA on the prospective bride has an important role in examining the guardian who has the right to become a guardian when the marriage contract is carried out. Considering that a guardian is one of the pillars of the marriage contract, the KUA is very careful in determining who has the right to become a guardian.

Before filling out the form, PPN or PPN Assistants (outside Java and Madura) carefully examine the guardian, the bride, and the groom. The examination is carried out through inquiries with the parties concerned and rechecking or rechecking existing certificates that are submitted to the local Office of Religious Affairs. Like the examination of the bride and groom, the examination of guardians can be carried out jointly or specifically for a specific reason. However, the procedure carried out by PPN or PPN Assistant should get convincing data. This examination can be done by asking about the lineage (*nasab*), the complete number of children and their identities, and the position of the guardian if the guardian is not the real father of the bride. Then the results of the data obtained are matched with the information obtained from the bride and groom, if there are differences, it is necessary to double-check.

a) Determination of the Marriage Guardian of Children Born More Than 6 Months

Previously stated, every bride who will hold a marriage will carry out administrative checks and *syari* requirements from PPN or PPN Assistant. One thing is related to the birth of the first child of the prospective bride and the marriage contract of both parents. Files submitted by bride and groom who are submitted to KUA directly or through the PPN Assistant will be checked by KUA employees. Apart from checking the suitability of the identity of the projected candidate with the submitted files, another important thing is to check whether the birth of the bride-to-be who is the first child or even the child, with the parents' marriage contract. If it is found that there is a distance of more than nine months from the marriage contract of the parents, the marriage can be carried out normally, namely by using the guardian of the lineage. This condition does not become a problem about the legality of the child and the status of the *nasab* between the child and the parents.

The possibility that can occur, the birth of the bride and groom who is born more than six months but not more than nine months. In this condition, KUA does not seek the legality or lineage of the daughter and her biological father. As a bride born 7 (seven) or 8 (eight) months from the marriage contract of her parents, her marriage will be carried out using a *nasab* guardian, namely her biological father or a relative to be the order of guardian after father.

Regarding the status of the child and lineage (*nasab*), KUA did not seek when the sexual intercourse was carried out. The guideline that becomes the reference is the minimum

pregnancy limit that has been approved by the scholars is 6 (six) months of pregnancy. This is also included in the 2003 edition of the Guidelines for Islamic Religious Officials who died by the Ministry of Religion as a reference for KUA employees in Indonesia. Guardianship in the marriage of the prospective bride, as in the above case, is delegated to the father as long as there is no other obstacle either legally or in jurisprudence.

KUA does not pay attention to whether the child born more than 6 months is the result of a pregnant marriage or not. The reference used by the KUA is that children born more than 6 months after the marriage contract are children who can be assigned to their biological father. The KUA sometimes gets information that the prospective bride registering for marriage is the result of a pregnant marriage, but because after the child is born for more than 6 months, the child is still being asked for service. Marriages that are carried out still use the guardian of the father.

This has implications for the administrative files on the marriage examination form (NB). In this form, the guardian of marriage listed is the guardian of the family, namely the father or other relative of the father who has the right to become a guardian. There is no difference for children born as a result of legal marriage or children born more than 6 months due to a pregnant or other marriage. Both have the status of *manshub* or have a family status with their biological father and the party entitled to become a guardian of marriage is the father of another father's relative who has the right to become a guardian.

This also applies to guardianship carried out by the brother who is the first child. When a guardian is delegated to the first son, an examination will be made about the distance between the birth and the marriage contract between the two parents. The guardian of marriage will remain the right of the older brother with a distance of more than 6 months between the family and the marriage contract. If the distance is less than 6 months, the guardian of marriage will be transferred to the judge's guardian.

b) Determination of the Marriage Guardian for Children Born Less Than 6 Months

A marriage that is carried out by the bride who is born more than six months after the marriage contract is considered a marriage in general. Her biological father has the right to be the guardian of marriage in this marriage. KUA considers children born more than six months to have a family relationship with their father so that the father has the right to become a guardian in the marriage contract.

Unlike the bride who was born for more than six months, KUA who finds that the distance between the birth of the bride is fewer than six months from the marriage contract of both parents, then the marriage contract is carried out in a *tahkim*, namely using a judge's guardian. This is done in accordance with the reference used by the KUA, namely the guidelines circulated by the Ministry of Religion which is corroborated by the opinion of *fiqh* scholars regarding the minimum pregnancy limit.

The same examination has also been carried out at the time of submitting a marriage application in the Kelurahan / Desa. The bride who is the first child is examined according to the examination at KUA regarding the distance between the birth and the contract between the two parents. If the bride does not meet the requirements as adopted by KUA, namely born fewer than 6 months, then Kesra (*Modin*) will make a guardianship application letter addressed to KUA and signed by the bride who is declared to have no lineage or *ghairu manshub* relationship with her biological father.

This application letter is in the form of a letter submitted by the bride to KUA asking the head of the KUA to become the guardian of the judge when the marriage contract is

performed. The guardian who has right in the marriage contract is the judge's guardian because the bride is considered not to have a relationship with her biological father. This letter is supported by the testimony of 2 (two) witnesses and signed on a 6000 stamp by the individual who submitted the application, the bride who was born fewer than 6 months.

For example, a guardianship practice of children who were born fewer than 6 (six) months after the marriage contract took place occurred in KUA, Gurah District. When the KUA examined the registration documents of the prospective bride (X), it was found that the distance between the birth of the prospective bride and the marriage contract of both parents was fewer than 5 months, 18 days. The bride and groom were born on April 7, 1993, while the marriage contract of both parents was carried out on October 22, 1992. With a distance of fewer than 6 months, KUA determined that the prospective bride must use a judge's guardian in her marriage contract.

The bride who were born fewer than six months after the marriage contract are considered *ghoiru mansub* or do not have *nasab* relationship with the man who married their biological mother. The prospective bride only has *nasab* relationship with her biological mother and relatives. When the marriage contract is performed, the right to become a guardian is the judge's guardian because they have the same status as children born out of the marriage and they do not have a family relationship with the father. KUA also considers that children born fewer than six months have no other civil relations such as inheritance. However, in terms of interest, the father still has the charge to care for children born as a result of adultery.

As previously explained, there are examinations and advice that must be carried out by brides who will take out the marriage contract. During the examination and counseling of bride who was born fewer than six months, she is given an understanding and explanation about the status of the bride and groom's child. The lineage relationship that cannot be connected to a father who has married his biological mother because the birth spacing is fewer than 6 (six) months.

This also has implications for the rights of the guardian of marriage when the marriage contract is performed. In this condition, the father cannot become the guardian of marriage, and the right of guardianship is transferred to the judge represented by KUA. Sometimes, there are brides or brides' fathers who cannot accept this situation. KUA provides another procedure, namely by providing a marriage registration refusal letter (N9) and the individual concerned can submit an application to the Religious Court which is in charge of his residence. Religious Courts examine refusal cases with a short procedure, uphold the refusal or order the marriage to take place. If the Religious Court grants the applicant's request, namely the individual that receives the rejection letter, and KUA will access into a marriage.

In general, the rejection from the society regarding the right of guardianship of marriage that has been transferred to the guardian of the judge, KUA will provide an explanation to the community using *fiqh* approach. The status of a child who can be served as service to the parents if the distance between the birth and the marriage contract is more than 6 (six) months. This information was also strengthened by the existence of other explanations from religious leaders in the local community. The majority of the community accepted the explanation from the KUA because they thought the KUA understood the law of marriage.

On the administrative file on the marriage examination form (NB). The legal guardian listed is the judge's guardian, which is represented by the local Penghulu or the head of KUA. The reasons listed on the form vary widely. In general, KUA uses the term *ghairu manshub*, but there are those who use *qabla sittah*, *ibn sulthan* and so on. KUA's opinion that breaking the lineage relationship between father and daughter born fewer than 6 (six) months is a form of learning for the community not to commit *zina*. The child who is born is still a pure and

innocent, but learning from a father who is not a guardian when his daughter is married is a consequence of the actions he did before.

This is reinforced by jurisprudence that children born fewer than 6 months are children who cannot go to their father for service. The texts that are owned are those of the mother and relatives only. The position of children born less than 6 (six) months is the same as those born out of wedlock even though they are born under a legal marriage bond. The child does not have the right of lineage and an inherited relationship with his father and relatives, but the child is still a pure child and is innocent due to adultery committed by his parents.

3.3 Deciding Between Law and *Fiqh*, Public Awareness and the Challenges of Modernity

Islamic law is the most dominant teaching in society compared to other traditional understandings. Since Islam entered the archipelago, Islamic law has become a living law recognized by the community. The marriage law that was used before the law was *fiqh*, especially *fiqh* Syafi'iyah. This has been going on for quite a long time since Islam came to Indonesia so that people think that the ideal marriage law to be implemented is the law of marriage which comes from *fiqh*, especially Syafi'iyah.

Likewise, the rules used by KUA Marriage Registration Officer in Kediri are the Marriage Law No.1 of 1974, KHI, the Guidelines for Islamic Religious Officials issued by the Ministry of Religion and *Fiqh*. The KUA still involves *fiqh* as one of the legal guidelines used in examining or carrying out marriage procedures for the bride and groom. This can be seen by the substantial administrative requirements and syar'i requirements that must be fulfilled by the prospective bride and groom who is going to marry. The jurisprudence rules used are *fiqh* which tends to the Syafi'i school of law as a school of law that is believed by the community and has also been studied in depth by KUA employees through Islamic boarding schools.

The explanation of the status of a child who is married to a pregnant woman is still trapped in jurisprudence. KUA prefers to follow the opinion of the ulama which provides a minimum pregnancy limit to connect the child's lineage (*nasab*) status to their biological father. KUA explained that a child born from a pregnant marriage is a legal child and can be served by his father if he was born more than 6 months after the marriage contract was carried out. On the other hand, if the child was born fewer than six months after the marriage contract, the child only has a family relationship with the biological mother only.

The lineage relationship between the child and the father will have implications for the child's rights, one of which is the right to the law of marriage. KUA does not allow a biological father to become a guardian for a prospective bride who is born less than six months. Guardianship of the bride must be taken by the *tahkīm* (guardian judge) because the child does not have a relation to his biological father. KUA also argues that this *nasab* relationship also results in the child not having an inherited relationship with his biological father. This is different from the provisions of Article 99 of the KHI which states that pregnant women who have been married to the man who conceived them before birth, then the child is legal. KHI does not mention the minimum pregnancy in months or other means that the child born in a marriage will become a legal child.

KUA will sort and select the laws and regulations used in carrying out its duties as a marriage registrar and examiner of marriage files and procedures. The rules to be used are adjusted to the existing rules in *fiqh*, if they are not contradictory, they will be followed but if there are differences, the KUA will choose to use the existing rules in *fiqh*.

The background that affects this is that KUA employees are students who have studied *fiqh* for a long time. KUA employees still glorify the book of *fiqh* that has been studied for a long

time as a reference in answering problems in marriage law. Jurisprudence is considered as a religious identity that must be used in every action that is carried out. Also, the profession carried out as a KUA employee is considered a process that has world and afterlife values so that everything that is decided without using religious law will have religious consequences. The pesantren environment that still promotes *fiqh* in answering various problems, provides a strong doctrine for KUA employees to keep *fiqh* as the first foothold in carrying out their duties. The strong influence of kyai in pesantren institutions has made KUA employees view a phenomenon that exists in society, especially in the field of marriage from a *fiqh* point of view.

the majority of people do not know and do not care about the rules in marriage law. In the marriage registration procedure, the community prefers to leave all matters to the PPN assistant or modin. An "instant" society culture makes people not want to be bothered by the conditions and all the procedures that must be followed. The bride and groom only need to come at the time of the marriage examination and wait for the day of the marriage ceremony procession to be held. When the community still doubts the explanation of the argument, the KUA will ask the community to verify the argument with religious leaders in the area where they live. Religious figures who also still hold firm on the doctrine of *fiqh*, especially *fiqh* Syafi'i, will give answers similar to what was conveyed by the KUA. People who do not really understand the law and still respect religious leaders, then the public will feel confident if this opinion is justified by the religious leaders who are asked for an explanation.

The community still considers the KUA as a community figure who understands and is an expert in the field of family law, especially in the field of marriage law. Usually, the society fully entrusts the matters of the conditions up to the marriage procession to the KUA. In addition, religious figures or kyai also play a strong role in providing *fiqh* domination. When the KUA gets legal doubts about the conditions and pillars that the prospective bride and groom must fulfill, the KUA will look for other explanations in the jurisprudence book of the madzhab scholars. If in this way KUA has not received a convincing answer, the KUA will ask for additional explanations from religious figures or kyai who are deemed capable of answering the problem. Another solution is through the results of a legal istinbath at the Bahsul Masail institution, both those followed by the KUA or those that have been documented.

In practice, Islamic law, which has been transformed into legislation, is not fully implemented. Society is still ambivalent about the laws that have been passed by state institutions. Sometimes people are still trapped in taking other Islamic laws, namely *fiqh* which is not written in legislation. The provisions in the law will be implemented if they do not conflict with the provisions of *fiqh*. Likewise, vice versa, if there are different provisions, the community will adopt other laws that are believed to be in accordance with the provisions of *fiqh*.

The community acknowledges that laws are formal laws in state administration, but religiously people are not willing to leave the *fiqh* which has become an identity for Muslims. There is a turmoil experienced by society when it does not involve jurisprudence in implementing legal rules, especially in the field of marriage. In the practice of kawil and determining the guardian of marriage for pregnant marriage as explained earlier, the KUA provides an explanation for people who want to marry using two points of view, namely law as an administrative requirement and *fiqh* as a syar'i requirement that the prospective bride and groom must fulfill. So, the reform of marriage law in Indonesia aims to form a modern law. But in practice, the *fiqh* law that was established earlier left a shadow that was difficult to leave for both law enforcers and society.

4 Conclusion

The society and law enforcers (in this case the KUA) admit that laws are formal laws in the state administration, but religiously people are not willing to leave the *fiqh* which has become an identity for Muslims. There is a confusion encountered by society when it does not involve *fiqh* in implementing legal regulations, especially in the field of marriage.

Fiqh, which has the status of law that was first applied before the existence of law in the modern system, is the reason that *fiqh* law has an important position in the hearts of the people, giving rise to ambiguous attitudes towards laws that are officially recognized by the state. *Fiqh* quiet dominates in people's daily lives, especially in the implementation of marriage law. *Fiqh* is no longer just a law for society but a religious value that must be enforced and not to be abandoned. The law is considered a formality that must be carried out as a citizen. So that in reality, if there is a conflict between the two, *fiqh* and the laws, it will be more burdensome for the rules that are part of the religious identity, *fiqh*.

References

- [1] HSA Alhamdani, A Salim, *Risalah nikah: hukum perkahwinan Islam*. Pustaka Amani, 1989.
- [2] N. Faizah, "Wali Nikah dalam Pembacaan Ulama dan Perundang-Undangan (Menelusuri Nilai-Nilai Filosofis Dari Peran Wali Nikah)," *Proc. Annu. Conf. Muslim Sch.*, no. Seri 1, Art. no. Seri 1, May 2017.
- [3] "Keputusan Menteri Agama Republik Agama No. 477 Tahun 2004 tentang Pencatatan Nikah."
https://www.google.co.id/search?q=Keputusan+Menteri+Agama+Republik+Agama+No.+477+Tahun+2004+tentang+Pencatatan+Nikah.&hl=id&sxsrf=ALeKk00b2CjhYTXPGXBCT150fUUqjxd4Yw:1598104246828&source=lnms&sa=X&ved=0ahUKEwiyjMif-q7rAhUZb30KHZlcApAQ_AUICSgA&biw=1280&bih=610&dpr=1.5 (accessed Aug. 22, 2020).
- [4] Penghulu KUA Ngasem, "Penentuan Wali Nikah."
- [5] "Instruksi Presiden Nomor 1 Tahun 1991," *hukumonline.com/pusatdata*.
<https://www.hukumonline.com/pusatdata/detail/13200/instruksi-presiden-nomor-1-tahun-1991> (accessed Aug. 22, 2020).
- [6] "Authors take six (6) samples are KUA District of Ngasem, KUA District of Gurah, KUA District of Pare, KUA District of Kr." .
- [7] "According article 99 of KHI." .
- [8] A. W. Munawwir, *al-Munawwir: kamus Arab-Indonesia terlengkap*. Pustaka Progressif, 1997.
- [9] دار الفكر المعاصر للطباعة والنشر والتوزيع, *Al Fiqh Al Islamiy Wa Adillatuh*, 1997.
- [10] A.-R. al Jaziri, *Kitab al-fiqh `ala mazahib al-arba`ah / Abdur-Rahman al- Jaziri*. Dar al-kutub al-Ilmiyyah, 1990.
- [11] M. J. Maghnīyah and م. م. جواد, *Al Ahwal Al Shakhsiyyah : `ala Al Madhahib Al Khamsah Al Ja`fari, Al Hanafi, Al Maliki, Al Shafi`i, Al Hanbali*. Mu`assasat Dār al-Kitāb al-Islāmī, 2008.
- [12] *Bidayatul Mujtahid wa Nihayatul Muqtashid*. Trigenda Karya, 1996.

- [13] دار الكتب العلمية, النيسابوري, *Shahih Muslim Jilid I*. Dar Al Kotob Al Ilmiyah, 2018.
- [14] الشوكاني, *Naylu Al Awtar Min Ahadith Sayyid Al Akhyar Sharh Muntaqal Akhbar*. ktab INC.
- [15] A. Syarifuddin, *Meretas kebekuan ijtihad: isu-isu penting hukum Islam kontemporer di Indonesia*. Ciputat Press, 2002.
- [16] B. A. al-'Aynayn Badran, *Huquq al-awlad fi al-shari'at al-Islamiyah /*. Mu'assasat Shabbab al-Jami'ah, 1981.
- [17] Y. A. al-Khatib, *Fikih Wanita Hamil*. Qisthi Press, 2016.
- [18] Mukhlisin Muzarie, "Kontroversi perkawinan wanita hamil." <https://onsearch.id/Record/IOS3680.28803> (accessed Aug. 22, 2020).
- [19] A. S. Jahar, *Hukum Keluarga, Pidana & Bisnis*. Prenada Media, 2013.