

Marriage Practices Through Wild Qadhi According to Langsa City Ulama from the Perspective of *Maqasid Syariah*

Muhammad Husni
Langsa State Islamic Institute, Indonesia
Muhammadhusni@gmail.com

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ABSTRACT

This study aims to find out what are the factors that occur in the practice of illegal Qadhi and to find out how the perspective of the Ulama Consultative Council (MPU) on the practice of illegal Qadhi. This study uses empirical juridical research methods. The author uses a legal awareness approach with a qualitative research type, where the author collects research data sources from interviewees, observations, pictures and documents. The results show that what causes the practice of illegal Qadhi in the community are: First, economic factors where in addition to illegal Qadhi actors who need additional income, married couples are also due to their lack of economy or finances. Second, the age factor where the perpetrators of illegal qadhi marry to help underage couples. Third, there is no guardian factor that makes couples who want to get married prefer to be married by illegal Qadhi. Fourth, the pregnancy factor. Fifth, the polygamy factor. Based on the results of the author's interview with MPU Kota Langsa, MPU's own view, says that marriages that occur through illegal Qadhi are not valid. when one performs a marriage through illegal Qadhi this is considered to be a veiled adultery. Based on the results of the interview, MPU is of the opinion that why marriages through illegal Qadhi are considered invalid because what must be understood is that the conditions for a valid marriage must have a guardian.

Keywords: Illegal Qadhi; Ulama Consultative Council; Perspective

ABSTRAK

Penelitian ini bertujuan untuk mengetahui faktor-faktor apa saja yang terjadi pada praktik Qadhi ilegal dan untuk mengetahui bagaimana

pandangan Majelis Permusyawaratan Ulama (MPU) terhadap praktik Qadhi ilegal. Penelitian ini menggunakan metode penelitian yuridis empiris. Penulis menggunakan pendekatan kesadaran hukum dengan jenis penelitian kualitatif, dimana penulis mengumpulkan sumber data penelitian dari narasumber, observasi, gambar dan dokumen. Hasil penelitian menunjukkan bahwa yang menjadi penyebab terjadinya praktek Qadhi haram di masyarakat adalah: Pertama, faktor ekonomi dimana selain pelaku Qadhi haram yang membutuhkan penghasilan tambahan, pasangan suami istri juga disebabkan karena kurangnya perekonomian atau keuangan. Kedua, faktor usia dimana pelaku qadhi haram menikah dengan pasangan di bawah umur. Ketiga, tidak adanya faktor wali yang membuat pasangan yang ingin menikah lebih memilih menikah secara haram Qadhi. Keempat, faktor kehamilan. Kelima, faktor poligami. Berdasarkan hasil wawancara penulis dengan MPU Kota Langsa, pandangan MPU sendiri mengatakan bahwa perkawinan yang terjadi melalui Qadhi haram adalah tidak sah. apabila seseorang melangsungkan perkawinan melalui Qadhi yang haram, maka hal ini termasuk perzinahan terselubung. Berdasarkan hasil wawancara, MPU berpendapat mengapa perkawinan melalui Qadhi haram dianggap tidak sah karena yang harus dipahami adalah syarat perkawinan yang sah harus ada wali.

Kata Kunci: Qadhi Ilegal; Majelis Permusyawaratan Ulama; Perspektif.

A. INTRODUCTION

Marriage is a legal act which for girls requires a so-called guardian as a condition and pillar for the validity of the marriage according to the law. In Islamic Law regulates that when the nasab guardian is absent or unable to marry off a woman who is under his guardianship, either absent because he cannot carry out his duties as a guardian due to his physical condition which is no longer possible such as being a child (shaghir), sick or crazy, or due to his unwillingness / unwillingness (adhal) to carry out his duties as a guardian. A guardian is a person who by law has full control given to a person to control persons or goods (Juliandi et al., 2024).

In sunnah fiqh, it is said that a guardian is a legal provision that can be imposed on others in accordance with the legal field. Guardian is defined as a person who is given the authority or power to perform a legal

act as a representative / guardian for the benefit and on behalf of a child who has no parents or parents (guardians) are still alive but cannot (capable) to perform legal acts (Husna et al., 2024).

But unfortunately there are still practices in the community where there is a marriage to a judge guardian who is not appointed by the Minister of Religion or authorized officials, which in the Acehese community is known as Qadhi liar. The form of marriage to a wild qadhi that occurs in the community is a marriage attended by the nasab guardian of the woman being married. Marriages performed by guardians represented by nasab guardians are considered valid according to religion but are not recognized by the state because they are not included in state administrative records at the KUA. Meanwhile, marriages that occur without the presence of the nasab guardian of the woman, and the qadhi acts as a judge guardian over the married couple are considered invalid according to religion and are also not recognized by the state (Ulfa et al., 2022).

The practice of marriage through a wild Qadhi is an invalid marriage because it is not in accordance with applicable regulations, as is known, a valid marriage is as stated in the Compilation of Islamic Law chapter II article 5 paragraphs 1 and 2 which reads: (Juita et al., 2017)

1. In order to ensure the orderliness of marriage for the Muslim community, marriages must be recorded.
2. The registration of marriage as referred to in paragraph (1) shall be carried out by a marriage registration officer as provided for in Law No. 22 of 1946 in conjunction with Law No. 32 of 1954.

The case where a couple married with the services of a wild Qadhi is like what happened to one of the married couples in the city of Langsa who got married through a wild Qadhi. Of course, this kind of practice is not only focused on the problem of marriage that occurs in couples. On the contrary, why the existence of illegal Qadhi in this issue continues to exist and always occurs. The problem of marriage through a wild Qadhi certainly exists and can occur because of the perpetrators who become the wild Qadhi, including several people, namely:

1. Mr. Abdul Hamid (65 years old) who became a wild Qadhi or was willing to marry off prospective married couples because he wanted to increase his family's income or economy.

2. Mr. Syamsuddin (38 years old) is willing to marry off prospective married couples because he is asked for help rather than doing things that violate religious rules and more or less also to help the family economy even though Mr. Syamsuddin does not set a fee but the couples who come always give money or pay.
3. Mr. Rahmadi (45 years old) is willing to marry couples who come to him to help, while for the fee Mr. Rahmadi does not set the amount of the fee but is always paid.

The fact that there are those who perform marriages by the services of illegal Qadhi is certainly of course will become a polemic/problem in the society as well as bring positive and negative impacts and negative impacts among the community. marriage through illegal Qadhi, if the pillars and also the conditions are fulfilled then the marriage is considered valid and bring positive values, but of course practice of course, this practice also has a negative impact, such as the absence of legal protection from the state's legal protection of women and children who children who are born. Therefore, the author is interested in conducting a deeper research on the practice of marriage through a wild Qadhi in one of the regions in the province one of the regions in the province of Aceh (Wibowo et al., 2022).

The type of research used is field research which is considered a broad approach in qualitative research. This research also uses a case study approach based on the phenomena that occur. This is done because this research examines what happens in society with the intention of knowing and finding the facts and data needed, after the data needed is collected then it leads to problem identification which ultimately leads to problem solving. Field research is conducted because the study is developed through interpretation, namely using data at the research location (Supratman, 2015).

The data source in this study is a mix method of primary data, namely field research information or obtained from the original source which is carried out by going directly to the research location, MPU Langsa City with secondary data such as books, dissertations, papers, scientific magazines, journals, and laws and regulations related to the research (Supratman, 2015).

B. RESULT AND DISCUSSION

Wild Qadhi Practices

Marriage of course has valid conditions, as stated in Article 2 paragraph (1) and (2) of Law No. 1 of 1974 concerning marriage, namely (1) "a marriage is valid if it is carried out according to the laws of each religion and belief". (2) "every marriage is recorded according to applicable laws." (Ruhamah et al., 2022)

According to the Compilation of Islamic Law, the conditions for a valid marriage are regulated in Article 4 which states "a marriage is valid if it is carried out according to Islamic law in accordance with Islam in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning marriage". Article 5 paragraph (1) which states "in order to ensure orderly marriage for the Islamic community, every marriage must be registered". Article 7 paragraph (1) which states "a marriage can only be proven by a marriage certificate made by a marriage registrar" and paragraph (2) which states "in the event that a marriage cannot be proven by a marriage certificate, the marriage confirmation can be submitted to a religious court." (Teuku Islahuddin et al., 2022)

With the applicable rules regarding the obligation to register marriages, of course, society must follow the rules of marriage with the rules that have been set. However, in the midst of society there are still those who do not follow the applicable rules, for example, marrying an illegal qadhi that occurred in Langsa City which was studied. The author has conducted research which was then proven by the results of interviews with illegal qadhi. (Syahnan & Mukhsin, 2020)

In the first illegal qadhi, the author received information that the implementation of the marriage used his services due to economic problems from the bride and groom's family which resulted in them voluntarily coming to him to be married immediately. The cost issue is not set at a rate, but the bride and groom still pay based on their willingness (Abrar Zym, 2020).

From the second illegal qadhi, the author obtained information similar to the problem that occurred in the first illegal qadhi. However, in this case, the second illegal qadhi was more focused on increasing his income, considering that he was already 65 years old and lived far from

being well-off. The amount of the illegal qadhi practice fee that was carried out was not set and the bride paid out of willingness alone.

As for the third wild qadhi, the author received information that the majority of those who came to marry him were still minors. In addition to economic problems, the third wild qadhi's principle was only to help so that sometimes the wild qadhi's practices carried out did not have any fees paid at all .

In addition to interviews with illegal qadhi, the author also dared to interview several couples who had married through illegal qadhi to strengthen the research. In the first couple, the main reason they married through illegal qadhi was because their partner was not a local (came from Padang). With the reason that it was complicated to take care of the marriage administration, they looked for illegal qadhi so that the marriage could be carried out even though it was only a family event. In the second couple, the author obtained information that the main reason they married through illegal qadhi was due to economic limitations. According to them, getting married through the KUA is quite expensive so it will hinder the couple's desire to get married soon. Added to the factor that the couple did not have a permanent job, it further strengthened them to marry through an unofficial route, namely using the services of illegal qadhi who can be paid according to their ability (Fauzan et al., 2022).

In the third couple, the author obtained information that the bride and groom were 62 and 55 years old when they married. The reason they married through an illegal qadhi was because they thought it was cost-effective and felt it was not too important to officially marry through the KUA. The widow and widower status factor also had a big influence on the reason why they married without going through the KUA. In the fourth couple, the author obtained information that the reason they married through an illegal qadhi was because there was no blessing from one of the parents of the bride and groom (husband) so that according to them, rather than committing adultery, it was better to marry through an illegal qadhi. Moreover, the illegal qadhi who married them was seen as a pious and knowledgeable person in the environment.

As for the fifth couple, the author obtained information that the groom was younger than the bride, so when the desire to marry was conveyed to the woman's family, the woman's family did not agree. For the family, it is still possible to find another groom who is older than the

woman, but the woman's love for the man resulted in them having to use the services of an illegal qadhi so that their marriage could take place. From the information, initially the woman was not accepted when visiting her family due to the marriage that had taken place, but later she was accepted by her family.

In the sixth couple, the author received information that the marriage through an illegal qadhi was because both partners had an “accident” first and the condition when they got married (akad), the pregnancy was already 4 months old. After discussing with the families of both parties, while avoiding gossip and shame, the marriage was carried out through an illegal qadhi.

Meanwhile, in the seventh couple, the author obtained information that the bride was the second wife, and the status in the family was an only child who had lost her father. When she was about to get married, the first wife did not agree for various reasons, plus the status of an only child attached to the woman. In the end, after discussing and deliberating, the woman agreed to be married even though it was only through an illegal qadhi. After several years, finally the first wife had no problem with her husband's status as a second wife.

Based on the author's interviews with illegal qadhi and the community, the author concluded that in general illegal qadhi accept to marry because of:

1. Economic factors. In addition to illegal qadhi who need additional income, couples who marry illegal qadhi also marry because of their lack of economy or finances.
2. Age factor (too old or still underage). Illegal qadhi marry to help underage couples because of concerns that the child will commit adultery with their partner, besides that there are also couples who are old and are married because they feel embarrassed to marry officially at the KUA.
3. The status of the bride and groom who are widows or widowers.
4. No guardian. The factor of not having a guardian makes couples who want to get married prefer to be married by illegal qadhi because it is easier.
5. No family approval. In this case, for example, because the status of the couple who comes from out of town so they do not get family approval.

6. Pregnant first, and
7. Having the status of a second wife.

The Perspective of the Ulama Consultative Assembly and the Office of Religious Affairs on the Practice of Illegal Qadhi

To get the perspective of the MPU on the practice of illegal qadhi, the author will describe it as follows. First, the author asked the Deputy Chairperson I of the MPU of Langsa City, Mr. Tengku Abdul Rahman. He said that: "Actually, illegal qadhi is a marriage that occurs outside the authority of the guardian, it is said to be illegal qadhi, because the MPU of Langsa City has conducted a deliberation on illegal qadhi which is rampant in accordance with the provisions of the law that marriages in illegal qadhi are invalid. So when someone gets married to an illegal qadhi, it is included in the category of protected adultery. So then the MPU refers to the MPU fatwa on this issue and it is stated that the marriage is specifically included in the category of illegal marriage (invalid) in the general view (Wulan, 2021).

According to him, using the services of an illegal qadhi is still considered invalid. It must be understood what the requirements for a valid marriage are. The first is a husband, the second is a wife, the third is a guardian, and the fourth is a witness. When talking about guardians, there are two guardians, the first is a lineage guardian, the second is a judge guardian. As far as Islam knows, there is nothing other than the two in marriage. So the question is where is the position of the illegal qadhi? Between lineage guardians or judge guardians, not in both. Then when studying lineage guardians, lineage guardians have several parts, lineage guardians can be due to hereditary factors, blood factors from the male line or the father's line. Counting from the grandfather to the father, uncle and children who are bloodline from the male as stated in fiqh (Fadhliya, 2021).

Then besides the line upwards, bloodline factors that are to the right or left such as siblings of the father of the mother and father of the prospective wife. In several books on judge guardians, it is permissible for a woman to appoint a guardian for herself with special conditions. For example, in one case, a man and one or more women leave for a country and they are stranded on an island where the island has no government (authorized official). In this case, the woman may appoint a guardian for

herself if she wants to marry a man. The question then becomes in Indonesia, is there still an inch of land or territory that has no government? This means that in this case, with the provisions of the terms and conditions, marriage with the services of an illegal qadhi is not valid because the illegal qadhi is not a lineage guardian and is not a government guardian who is entrusted with authority to him. If he is a government guardian according to the law, then he is given authority based on what is regulated in the law, it is called a judge guardian."

Therefore, the solution offered by the Langsa City MPU to the problem of using illegal qadhi services in marriage is: First, provide *istitabah* (repentance) to perpetrators of illegal qadhi. Second, for victims who married using illegal qadhi services, they are expected to carry out a remarriage, because the marriage carried out at an illegal qadhi is an invalid marriage and the conditions and harmony are not sufficient so that the act is considered adultery (Muthhar & Musyafirudin, 2022).

The religious view of wild qadhi is actually a practice that is prohibited in religion. Marriages that occur with wild qadhi are invalid because marriage with wild qadhi is very different from unregistered marriage. Unregistered marriage is carried out with qadhi-qadhi who have legal legitimacy to marry, only not from the government. While wild qadhi is in accordance with the terminology that has been attached to it where usually those who come are already in a hurry to get married or at the will of the prospective husband and wife without the knowledge of the guardian. In principle, wild qadhi also does not have the legality to marry someone, because the one who must marry must be the guardian of the bride. If there is none, then the guardian turns to the guardian judge, whose name is the government with an extension of the government which is under the authority of the KUA. Then marriage through wild qadhi usually does not have clear witnesses. Marriage certainly has conditions and pillars such as the presence of a prospective husband, prospective wife, the presence of a guardian, the presence of witnesses and *ijab qabul* and dowry. Meanwhile, this illegal qadhi has a fake guardian and fake witnesses, so legally it is invalid."

With the fact that there are people who still want to use illegal qadhi, of course the main question is, what actually makes people so easily get married through illegal qadhi other than factors or reasons of

money and age. Talking about understanding Religion, it may be another factor from the community so that without thinking long they want to get married through illegal qadhi where in Islamic teachings it is stated that a guardian is one of the requirements and pillars of a valid marriage. Or it could be that the reason why they are so willing to get married through illegal qadhi is because the understanding of the laws regarding marriage in Indonesia is still minimal. In fact, something like this is urgent to know because the registration of marriage is actually very important. Without being registered, a marriage will not have legal force and will be very detrimental in the future in terms of taking care of documents such as a child's birth certificate, for example, considering that Indonesia is a country of law.

From the results of the author's interview with the head of the KUA of Langsa City, the current situation is truly concerning because the impact is dominant on parties who marry through illegal qadhi alone. In the future, they will not receive legal guarantees and legitimacy in front of the government, state and religion. Of course, in the implementation and implementation of the use of illegal qadhi services, it is prone to legal defects which are actually very worrying, namely that a systematic adultery scheme will occur.

In the process, the information obtained by the author is that the existence of these illegal qadhi cannot be prohibited, let alone sanctioned by the KUA or MPU because the authority of the KUA and MPU does not cover the issue of prohibition, but only limited to appeals and warnings. However, by looking at the marriage process that uses the services of illegal qadhi where they are increasingly rampant and make the marriage process lead to adultery, coordination is needed between the KUA, MPU, Langsa City government with security forces such as the Police to provide advice and warnings as well as sanctions to those involved in marriage through illegal qadhi. Because in addition to disturbing legitimate government affairs, it also violates the norms and values contained in Islamic teachings so far so that it can produce negative assumptions among Muslims themselves if this act is allowed.

The Views of the Four *Mazhab*

1. Some scholars, such as Imam al-Zuhri and Imam Abu Hanifah forbid taking wages for reading the Qur'an. They argue with the

hadith of Ubadah bin Shamit that he taught the Qur'an to a man living in Shuffah, then he was given a bow. Then the Prophet s.a.w said to him: "If you like to be worn with a necklace of fire around your neck, then accept the gift." (Narrated by Abu Dawud)

2. A number of other scholars, such as Imam Hasan Bashri and Imam Sya'bi said that it is permissible to take wages if there is no condition. While others are of the opinion that it is permissible to take wages if there is a correct contract. (al-Jaziri, n.d.)

Salaf scholars have different habits regarding the tempo and time period for reciting the Koran. Ibn Abi Dawud narrated from some Salaf scholars that some of them recited the Qur'an once every two months; there are also once every month; once every ten nights; once every eight nights; many of them chant every seven nights; every six nights; every five nights; every four nights; every three nights or every two nights; even half of them recite it once a day and night.

Some of them recite it twice a day and night and some three times. In fact, half of them recited it eight times, namely four times at night and four times during the day. Among the people who recited the Koran once a day and night were Usman bin Affan ra, Tamim Ad-Daariy, Said bin Jubair, Mujahid, Asy-Shafi'i and others (al-Jaziri, n.d.).

Among the people who chant three times a day and night is Sali bin Umar r.a. an Egyptian Qadi during the reign of Mu'awiyah. It was narrated by Abu Bakar Al-Kindi in his book regarding Egyptian Qadis/Judges that he recited the Koran four times a night. al-Shaykh al-Sahih Abu Abdurahman al-Salami ra said: "I heard Ash-Shaykh Abu Usman al-Maghribi say, 'Ibn Khatib radhiyallahu 'anhu recited the Qur'an four times during the day and four times at night.'" This is the most I know of in a day and night.

Narrated by al-Sayyid, Ahmad al-Dauraqi with his isnad from Manshur bin Zaadzan r.a. a tabi'in expert in worship, that he recited the Koran between Zuhur and Asr, then also recited it between Maghrib and Ishaak twice in the month of Ramadan. They end their Isha' prayers in the month of Ramadan until a quarter of the night has passed.

Narrated from Mansur, he said: "Ali al-Azadi recited the Qur'an between Maghrib and Isyak every night in the month of Ramadan."

Narrated from Ibrahim bin Said, he said: "My father sat with his turban wrapped around his body and legs and did not let go until he had finished reciting the Koran."

C. CONCLUSIONS

Marriage is truly a sacred thing that must be accounted for later before Allah. Of course, anyone who is going to get married must really intend it seriously because marriage seeks the pleasure of Allah SWT so that there is inner peace in the family. Getting married through the services of an illegal qadhi seems to ignore the sanctity of marriage itself. It seems to be done by individuals only to channel their lustful desires, but ignores the continuation of a better life. Marriage that is not in accordance with the requirements and pillars will certainly lead to adultery, and this is what a faithful Muslim should avoid. Marriage certainly prepares for the continuity of a quality next generation. So it is necessary to form a strong, sakinah, mawadah wa rahmah family so that it will also produce a quality generation. Carrying out the commands of Allah and the Messenger according to the Shari'a must also be in synergy with government regulations that have been adjusted to the legal needs of marriage itself. Thus, we become people who are religious, faithful, moral, ethical and law-abiding.

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