



CONTRADICTIONS ON AGE OF GUARDIANSHIP PROVISIONS IN MARRIAGE LAW AND THE COMPILATION OF ISLAMIC LAW AND ITS APPLICATION IN RELIGIOUS COURTS

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Abstract

A child in general is someone who is not yet an adult or not married, and it is not possible for a child who is under this age to carry out legal actions by himself. For all legal actions, a child is under the authority of a guardian. The legal practice for the determination of legal guardianship for people who are Muslims according to the rules of law legislation is carried out in the Religious Court. The legal source of legal regulations regarding guardianship is regulated by Law No. 01 of 1974 concerning Marriage Chapter XI Guardianship Article 50 paragraph (1), namely the proposed child who has not reached the age of 18 years and is also regulated in Presidential Instruction No. 01 of 1991 Compilation of Islamic Law, namely in Chapter XV Guardianship Article 107 paragraph (1), namely the proposed child guardianship who has not reached the age of 21 years. The differences in legal regulations like this, create problems and do not implement the objectives of the law, namely the emergence of legal uncertainty (Contra Legal Certainty). This research uses Normative research (Normative Juridical). Namely using a statutory approach this approach is carried out by examining legislation and also an approach by examining cases or decisions of the Religious Court relating to Guardianship.

Keywords: Age of Guardianship, Marriage Law, Religious Court

INTRODUCTION

There are two reasons for guardianship: First, a Will (*testamentaire voogdij*) Guardianship is because one parent appoints another person to be guardian for their children (Hamid, 2016, p. 35). This appointment is stated in a will and can only be carried out if the surviving parent, for some reason, cannot become the guardian (Simatupang, 2020, p. 20). Second, a statutory order (*wettelijk voogdij*). This kind of guardianship occurs if: (a) one of the parents dies so that the surviving parent automatically becomes the guardian for his children; (b) children born out of wedlock will be under the guardianship of the biological parents who acknowledge them; (c) a child who does not have a guardian, then at the request of one of the interested parties or by order of his office, the judge can appoint a guardian. In every case of guardianship law, in conditions where a child does not have a guardian, then at the request of one of the interested parties or by order of his office, the judge can appoint a guardian.

The purpose of guardianship is for the child's interests, especially regarding the child's rights and the rights of the guardian. The guardianship proposed by the parties varies. This diversity can be seen from the purpose of the applicant's application and the application can be submitted to the District Court and the Religious Court. In the Religious Court itself, the purpose of submitting a guardianship application by the applicant is for the civil interests of the child or the majority to take care of the child's assets, both movable and immovable assets. And this is very important to submit when guardianship requires validation in the Religious Court, because if the management of the assets of a minor or immature child and there is no determination by the Religious Court then it may not be legally valid.

If the judge appoints and appoints a guardian through a court order (Simatupang, 2020, p. 21). In terms of legal regulations in Indonesia, the law regarding guardianship is regulated in Law No. 01 of 1974 concerning Marriage Chapter in Presidential Instruction No. 01 of 1991, Compilation of Islamic Law, namely in Chapter and in this research, what is being studied is Law No. 01 of 1974 and Presidential Instruction No. 01 of 1991 concerning the Compilation of Islamic Law because the Religious Courts use these legal sources in deciding decisions or determinations in the Religious Courts.

The existence of differences in legal regulations like this creates problems and non-fulfillment of legal objectives, namely the emergence of legal uncertainty (*Contra Legal*

Certainty). The legal impact that arises from the problem of legal uncertainty is that when a child who needs a guardian, namely submitting an Application for Determining Guardianship in the Religious Court, requires definite provisions, even though in the provisions of Law No. 01 of 1974 concerning Marriage Chapter XI Guardianship Article 50 paragraph (1), namely the child submitted who have not reached the age of 18 years, and is also regulated in Presidential Instruction No. 01 of 1991 Compilation of Islamic Law, namely in Chapter this year creates ambiguity because if you follow Law No. 01 of 1974 concerning Marriage Chapter paragraph (1) then it is necessary to submit a Guardianship determination to the Court.

This is proven in the Application for Guardianship Case No. 0595/Pdt.P/2023.PA. Jr. that the application for guardianship submitted by the older sibling of an 18-year-old child still requires guardianship, even though if you follow the rules in the Marriage Law Article 50 Paragraph 1) the child no longer requires a guardianship determination in the Religious Court. Meanwhile, in Case Determination No. 0826/Pdt.p/2022, 20-year-old children do not need guardianship, and this has been proven to be an inconsistency and this has become a legal fact that the inconsistency of regulations regarding application in the field is a problem for society.

The impact of this law is a real legal event. It is the obligation of an academic to provide enlightenment through research. This is also an interesting thing to research considering that legal uncertainty is a problem in society, especially when society is faced directly with legal events regarding Guardianship. Apart from that, many people have researched this problem regarding guardianship, including scientific work, namely a thesis written by Zaki Fathullah entitled Guardianship of Children Resulting from Mixed Marriages after the Enactment of Government Regulation Number 29 of 2019 concerning the Conditions and Procedures for Appointing guardians in Maqashid Sharia perspective (Fathullah, 2020). Then, in Nurhatia Harahap's scientific work on child guardianship in a review of the Compilation of Islamic Law (Harahap, 2018), the two studies both discuss guardianship about related legal regulations.

However, although there have been several studies on Guardianship about related regulations, the discussion explains that Guardianship is regulated by several different legal provisions, even the most recent one is Government Regulation Number 29 of 2019

concerning the conditions and procedures for appointing guardians, but the rules are different. This difference has not yet been changed, so this has become something urgent which is the obligation of an academic to be responsible for providing a solution by researching this problem, that is, the author is trying to research guardianship to the inconsistency of the age of guardianship provisions in Law No. 01 of 1974 and the Legal Compilation of Islam.

REVIEW OF LITERATURE

Every work can be guaranteed to have previous studies, this is a procedural study in the academic world. No work is disconnected from the efforts of its predecessors. In this case, scientifically based scientific cadre formation will always exist and will always be sustainable. The following is a search by related researchers to previous study issues related to the main problem in this research

First, the thesis written by Masita Harumawarti, entitled *Child Custody Rights in the Event of a Divorce Case Study in the Religious Court and Semarang District Court*. The results of the scientific work in this thesis are that as a result of the divorce of parents who have minor children, the children still need a guardian. The guardianship referred to in this case is not only the custody of the child but also the other rights of the child are the responsibility of the guardian, for example regarding the child's assets. And guardianship falls to one of the parents and what is legally recommended is the marriage of underage children whose guardianship is given to the mother, but if the mother is absent for concrete reasons that it is not good for the child, then the guardianship can be handed over to the father (Harumawartim, 2007).

Second, scientific work, namely a thesis written by Zaki Fathullah entitled *Guardianship of Children Resulting from Mixed Marriages after the enactment of Government Regulation Number 29 of 2019 concerning the requirements and procedures for appointing guardians from a Maqashid Sharia perspective*. The results of this research explain that mixed marriages are not a legal consequence that is detrimental to the perpetrator himself and are linked to Government Regulation so that when a child is born, even from a mixed marriage, their rights are equal as children of citizens who have the same rights to be protected and when connected with the aim of Islamic law (Maqashid Syariah), the child's

guardianship is given priority to Muslim parents to protect the child's future and also protect their religion (Fathullah, 2020).

Third, the thesis is written by Nasution Dwi Shafira Chairunnisa' with the title Analysis of Legal Consideration to Child Custody Lawsuit by Grandparents After Parents' Divorce (Surabaya District Court Decision Study No: 703/Pdt.g/2015/PN. Sby). The results of this research are that children who are the result of divorced parents which results in abandoned of the child because the parents have both remarried and have their own families so the child is not cared for enough, the child who is proven to be abandoned has the right to receive his rights as a child and The right to safeguard the child's future so that even though the parents are still alive but are not responsible for the child, the guardianship of the child can be transferred to those who are better able to look after the child, namely the grandparents (Chairunisa, 2019).

RESEARCH METHOD

Type of research in this paper, normative law is used, which is a scientific research procedure to find the truth based on scientific logic from the normative side. Scientific logic in normative legal research is built based on scientific discipline and the workings of legal science whose object is the law itself (Ibrahim, 2013, p. 57).

Research with a normative juridical type essentially shows a provision, the research approach is carried out so that researchers obtain information from various aspects to find the issues to which answers will be sought, the approaches in this research are the Statutory approach or juridical approach namely research on legal products. This legislative approach is carried out to examine all laws and regulations relating to the research to be studied. This legislative approach will open up opportunities for researchers to study whether there is consistency and suitability (Marzuki, 2021, p. 93).

The legal materials obtained in the literature study research, statutory regulations, and articles referred to by the author are described and related in such a way that they are presented in more systematic writing to answer the problems that have been formulated. That the method of processing legal materials is carried out deductively, namely concluding a general problem regarding the concrete problem being faced (Ibrahim, 2013, p. 393).

RESULTS AND DISCUSSION

Contradictions of Guardianship Age Regulations in Law No. 01 of 1974 and the Compilation of Islamic Law

Law No. 01 of 1974

Article 50 (1) Children who have not reached the age of 18 (eighteen) years or have never been married, who are not under the authority of parents, are under the authority of a guardian. Paragraph (2) Guardianship concerns the child's personality and property (Law No. 48 of 2009 concerning Judicial Power).

Article 51 Paragraph (1) A guardian can be appointed by one parent who exercises parental authority, before he dies, using a will or verbally in front of 2 (two) witnesses. (2) As far as possible, the guardian is taken from the child's family or another person who is an adult, of sound mind, fair, honest, and of good behavior. Paragraph (3) Guardians are obliged to take care of children under their control and their assets as well as possible, by respecting the child's religion and beliefs. Paragraph (4) The guardian is obliged to make a list of the child's assets under his or her control at the time he or she starts office and record all changes in the child's or children's assets. Paragraph (5) The guardian is responsible for the child's property under his or her guardianship as well as losses incurred due to his or her errors or negligence.

Article 53 Paragraph (1) The guardian may have his powers revoked in the cases mentioned in Article 49 of this Law. Paragraph (2) If a guardian's powers are revoked, as intended in Paragraph (1) of this Article, another person is appointed by the Court as guardian. Then in Article 54, a guardian who has caused damage to the child's property under his control, at the request of the child or the child's family with the relevant court, may be obliged to compensate for the loss.

From the explanation of several articles above, namely guardianship in marriage law is regulated in Article 50, Article 51, and Article 53. In this Law, children are submitted for guardianship in the Religious Court when the child has not reached the age of 18 years and this guardianship is about looking after and being responsible. responsible for the child's personal (life) and property. When there is a legal violation against a child in guardianship, it is regulated to protect the child, namely by compensating for property losses if it is detrimental to the child's property and this can be prosecuted in court.

Compilation Islamic Law (Presidential Instruction No. 01 of 1991)

Di in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, the cause of guardianship is because the child does not have both parents, both parents are incompetent to take legal action, and the parents are deprived of their authority. Further information regarding guardianship is regulated in Chapter XV concerning Guardianship, starting from Article 107 to Article 112, namely as follows:

Article 107 Paragraph (1) Guardianship is only for children who have not reached the age of 21 years and/or have never been married. Paragraph (2) Guardianship includes guardianship of oneself and one's assets. Paragraph (3) If the guardian is unable to act or fails to carry out his guardianship duties, the Religious Court can appoint a relative to act as guardian at the request of the relative. Paragraph (4) As far as possible, the guardian is taken from the child's family or another person who is an adult, of sound mind, fair, honest, and of good character, or a legal entity.

Article 108 Parents can make a will to a person or legal entity to carry out guardianship over the person and assets of their child or children after they die. And Article 109 The Religious Court can revoke the guardianship rights of a person or legal entity and hand them over to another party at the request of a relative if the guardian is a drunkard, gambler, spendthrift, crazy, and/or neglects or abuses his rights and authority as guardian for the benefit of the person under his guardianship.

Article 110 Paragraph (1) Guardians are obliged to take care of themselves and the assets of the people under their guardianship as well as possible and are obliged to provide religious guidance, education, and other skills for the future of the people under their guardianship. Paragraph (2) Guardians are prohibited from tying up, encumbering, and alienating the assets of people under their guardianship unless these actions are unavoidable for the benefit of the person under their guardianship. Paragraph (3) The guardian is responsible for the assets of the person under his or her guardianship and compensates for losses arising as a result of his or her errors or negligence. Paragraph (4) Without prejudice to the provisions stipulated in Law No. 1 of 1974 Article 51 Paragraph (4), the responsibility of the guardian in Paragraph (3) must be proven by the books being closed once every year.

Article 111 Paragraph (1) The guardian is obliged to hand over all the assets of the person under his guardianship if the person concerned has reached the age of 21 years or is married. Paragraph (2) If the guardianship has ended, the Religious Court has the authority to adjudicate disputes between the guardian and the person under his guardianship regarding the assets handed over to him.

Differences in Guardianship Determinations in determining the age of guardianship in the Religious Courts

In theory, the law states that a petition is also called a voluntary petition, a petition or voluntary case is a civil matter submitted in the form of a petition signed by the applicant or his attorney and submitted to the court. The legal product of the Application is a determination. In general, the characteristics of a request or voluntary case are as follows: a) It is a unilateral lawsuit or claim or the party only consists of one applicant; b) Not intended to resolve a dispute. The purpose of applying is only to determine a certain condition or status for an applicant; c) The Petition and the Petitioner's ruling are called declaratory judgments, namely decisions that only confirm or state a legal situation.

Following several decisions in several Religious Courts in Indonesia which have different decisions in determining the age of guardianship the Religious Courts:

Jember Religious Court Determination Case No: 0826/Pdt.P/2022/PA.Jr

This decision was submitted by one applicant, namely the mother of a child whose father died. The Petitioner in this Determination uses legal counsel, namely Taufik, SHI. In his legally valid marriage with proof of marriage certificate which was also attached by the Petitioner, as a result of marriage he was blessed with three children: the first child was named Rida Aini Zafirah Asis, born on July 07th, 1997 (age 25 years), Raafi Raihan Ramadhan Asis, born on 24th May 2002 (aged 20 years), and Rifqi Ahmad Fajri Asis, born in Jember, 08th January 2010 (aged 12 years).

Of the three children, the Petitioner applied for guardianship to sell land in the name of his late father. Because the child is also the heir of his father, when the child's rights are sold, to have rights to the land, a guardian is needed to represent the child, which is the legal reason for the Petitioner as his mother through a legal representative to submit a guardianship application to the Religious Court.

What is interesting about this decision is that in its petitum the Petitioner requested that only the last child be the last child who is 12 years old, even though the second child is also still a minor, namely 20 years old. why is 20 years old still a minor? This is following the legal regulations in Presidential Instruction No. 01 of 1991, Compilation of Islamic Law in Article 107 paragraph (1), namely children who are proposed for guardianship who have not yet reached the age of 21 years. Legally, if there is a formal defect in an application in court, this can be in *Niet Ontvankelijke Verklaard* (NO) or means it cannot be accepted.

However, according to judicial power, all requests or lawsuits that have the right to decide and determine a decision or decision are only judges following independent judicial power to administer justice, to uphold law and justice (Law No. 48 of 2009 concerning Judicial Power). Also, article 53 (2) of Law no. 48 of 2009 concerning Judicial Power explains that determinations and decisions as intended in paragraph (1) must contain the judge's legal considerations which are based on appropriate and correct legal reasons and foundations.

In the Jember Religious Court's decision on Determination Case No: 0826/Pdt.P/2022/PA. Jr the judge gave legal considerations using article 47 (1) of Law no. 01 of 1974 which reads: children who are not yet 18 years old or have not yet been married are under the authority of their parents as long as their authority is not revoked (Determination No: 0826/Pdt.P/2022/PA. Jr, 8), so the decision granted the Petitioner's Petition completely. Here it can be seen that the second child, who is still 20 years old, is still not married, but the judge has deemed him to be an adult and legally competent so there is no need to request that he be included as a minor in the guardianship application above. So, the conclusion is that the judge in this decision is of the legal opinion that a minor is a child who has not yet reached the age of 18 and has never been married.

Sengkang Religious Court Determination No: 551/pdt.P/2022/PA.Skg

This Determination consists of one Petitioner and the child being petitioned for is not his biological child, namely the child's aunt because from childhood when the child was 3 years old the child was in the care of that aunt, and the proposed guardianship of the child is still 18 years old, while the need This application is for the administrative purposes of the child who is applying to become a member of the Army National Army

(TNI AD). Because the child from the age of three until he was 18 years old was accompanied and cared for by his aunt, the TNI AD office needs legal certainty if the child is truly legally cared for by his aunt, not his parents.

In submitting this Guardianship in his Petition, the Petitioner stated in the posita that the Petitioner, as his aunt, had informed and asked permission from the child's biological parents to allow the child to enlist in the Indonesian Army and his parents permitted the child to register as a member of the Indonesian Army and entrusted the child to the Petitioner, namely his aunt.

As authentic evidence that is attached to the court, the applicant as the child's aunt attaches the child's birth certificate which states that the child is truly the child of his parents and to prove that the child is being cared for and lives with his aunt. The applicant as his aunt attaches evidence in the form of a clear family card. explained that the child was included in the Petitioner's family card (Determination of the Sengkang Religious Court No: 551/pdt.P/2022/PA.Skg, 5).

Based on the results of the panel of judges' considerations in the Application for Determination of Guardianship, the judge gave legal considerations using Article 107 of the Compilation of Islamic Law which explains guardianship only for children who have not reached the age of 21 years and/or have never been married and the guardian should be taken from the child's family or someone as far as possible. others who are adults, have healthy thinking, are fair, honest, and have good behavior. Furthermore, the judge explained that the Petitioner could be appointed as guardian following the provisions of Articles 107 to Article 112 of the Compilation of Islamic Law (Determination of the Sengkang Religious Court No: 551/pdt.P/2022/PA.Skg, 7)

So by reading and analyzing the considerations of the panel of judges in the Application for Determination of guardianship in the Sengkang Religious Court Determination No: 551/pdt.P/2022/PA.Skg the panel of judges believes that children who are not yet legally competent are 21 years old based on the regulations in Article 107 Compilation of Islamic Law which is a source of reference for judges in deciding a case in the Religious Court.

Malang Regency Religious Court Determination No: 1139/Pdt.P/2019.PA.Kab.Mlg

The application for a guardianship determination in this determination was submitted by the mother as the Petitioner by submitting her child who was 13 years old and the second child aged 3 years was submitted by the mother alone as the Petitioner because the father of the children had died and when the father of the two children died in the world the child is cared for and lives with his mother. And what is interesting in this decision is that the Petitioner in his *posita* and *petitum* did not provide any special needs as to why the child was proposed for guardianship at the Religious Court.

During the examination of the case, the panel of judges asked something outside the *petitum* requested by the applicant but which was still related to the discussion of guardianship, namely that the witness was asked whether he could also be a supervisor regarding the child's interests, namely supervising the child's care and also the assets that are the child's property because the witness is the younger sibling of the child. father of the two children whose guardianship is requested (Determination No: 1139/Pdt.P/2019.PA.Kab.Mlg, 4).

Then, in determining the guardianship applicant's case, the panel of judges argued first, that in Article 47 paragraph (1) of Law number 01 of 1974 concerning marriage, children who are not yet 18 years old or have never been married are under the authority of their parents as long as they are not revoked. its powers (Article 47 paragraph (1) Law No. 01 of 1974 Jo. Law No. 16 of 2019 concerning Marriage) Second, according to Article 52 of Law number 01 of 1974 concerning marriage Jo. Article 112 of the Compilation of Islamic Law means that the Petitioner is prohibited from transferring rights or pawning goods owned by the child except for the child if the child's interests require it (Determination No: 1139/Pdt.P/2019.PA.Kab.Mlg, 8-9).

So, in the Determination of this Application for Guardianship, the Panel of Judges explained in determining that children who are underage need guardianship are 18 years old following Article 47 paragraph (1) of Law Number 01 of 1974 concerning Marriage, that children who are not yet 18 years old or have entered into a marriage under the authority of their parents as long as their authority is not revoked.

Sleman Religious Court Determination No: 245/Pdt.P/2023/PA.Smn

The Application for Determination of Guardianship in this Determination was made by the biological mother of the three children born from the marriage with the

Petitioner's husband, because the Petitioner's husband had died, the Petitioner submitted an Application for Guardianship for her children (Determination No: 245/Pdt.P/2023/PA.Smn, 2). The first child is 28 years old, the second child is 23 years old and the last child is 11 years old, so the child who is being applied for guardianship is the last child who is still 11 years old.

The need for this application for guardianship is that the applicant as the biological mother is following the legal facts proven at trial that the applicant as the biological mother with the three children owns the land in the names of the mother and the three children. And I want to break up the certificate to divide the heirs. Considering that the last child is still 11 years old, the mother as the Petitioner applied for permission to be appointed as guardian in the process of managing the assets.

In its considerations, the panel of judges examining the case explained that by using Article 47 paragraph (1) of Law No. 01 of 1974 concerning Marriage which reads: children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents as long as their powers are not revoked (Determination No: 245/Pdt.P/2023/PA.Smn, 12). So, the judge uses the basic age limit for minors who are not yet legally competent, namely 18 years of age.

Banyuwangi Religious Court Determination No: 0804/Pdt.p/2023/PA.Bwi

The guardianship application submitted by the Petitioner at the Banyuwangi Religious Court in this determination was carried out by the biological mother as the applicant because the father of her children had died. The applicant and her husband have 2 children, the first child is 15 years old and the second child is 10 years old (Determination No: 0804/Pdt.p/2023/PA.Bwi, 2). The Guardianship Application submitted by the Petitioner as her biological mother in this determination was due to the need to sell assets in the form of land certificates which were in the name of her deceased husband.

Because apart from the biological mother, the two children are also heirs of the father who left behind an heir, so the process of selling the land requires administration of the rights of the two children to sign the sale of the inherited land. And because the children being applied for are all still minors, there is a need for a guardian, namely the

biological mother, who is the representative guardian of the two children to be able to process the inheritance of their deceased father.

In this decision, the panel of judges, after examining the case to the end, gave a decision based on legal considerations using the Compilation of Islamic Law article 107 (1), paragraph (4), that guardianship is only for children who have not reached the age of 21 years and or have never been married. The guardian is taken from the child's family or another person who is an adult, of sound mind, fair, honest, and of good behavior (Determination No: 0804/Pdt.p/2023/PA.Bwi, 11). So, the conclusion in this determination is that the panel of judges is of the legal opinion that children who are still underage or not yet capable of carrying out legal actions are children who have not reached the age of 21 years.

Implications of Contradictions in the Implementation of Property Guardianship on Child Protection

Legal contradiction has the same meaning as legal disharmony. Legal Harmonization Theory is the science of law first appeared in Germany in 1902. And then it was developed in Indonesia where it became a hierarchy of statutory regulations which applied to the formation of Law No. 12 of 2011 concerning regulations for the formation of statutory regulations.

Before the existence of this regulation, the initial form of legal harmonization was known in Presidential Decree N0 188 of 1998, Article 2 which read "In the context of harmonization "To finalize and consolidate the conception that will be outlined in the draft law, it is mandatory to consult first with the Minister of Justice and the heads of the relevant institutions."

The aim of preventive legal harmonization aims to prevent legal disharmony from occurring, likewise with a repressive aim it aims to justify regulations where contradictions, overlaps, or disharmony have occurred. Here are the steps for legal harmonization efforts: a) Identify legal disharmony/contradiction in the application of laws and regulations; b) Identify the causes of legal contradictions; c) Efforts to discover law using legal construction methods to change legal situations where there are contradictions; d) Legal reasoning efforts so that the results of legal interpretation and construction make sense and fulfill the elements of legal

logic. d) Preparing arguments using an understanding of good governance (valid legal corridors) (Goesniadhema, 2010, p. 11-12).

It should also be noted that in legal interpretation, legal construction, legal reasoning, and argumentation the rational is used for Legal ideals, the will of society, namely justice, and the moral will, namely truth.

Gustav Radbruch argued that three legal values, namely justice (philosophical), legal certainty (juridical), and benefit to society (sociological) must be made the main elements in a legal approach so that there is order in society. In the process of achieving these legal objectives, the priorities of these three basic values must be determined. This is understandable because sometimes, the law to achieve justice will clash with the benefits and legal certainty, and vice versa, legal certainty can sometimes ignore justice and benefits.

The order of priorities taught by Radbruch is: first Legal Justice; second, legal benefits; and third, Legal Certainty. By establishing the priority order as above, it is hoped that the legal system can resolve conflicts between the three legal values above. Justice is the treatment that is fair, and impartial, takes the right side, is not biased, does not harm anyone, and provides equal treatment to each party following the rights they have. Benefit means that the law must provide benefits for every community that needs it, both for parties who feel disadvantaged and parties who feel they have not been disadvantaged. Both parties must be able to make every legal decision. Meanwhile, legal certainty means that the provisions and decisions of judges must be based on rules that are clear, consistent, orderly consequential, and free from influence by subjectivity. According to Radbruch, this is what law must be able to combine three legal objectives, namely justice, expediency, and legal certainty. Where the main priority is legal justice, then followed by legal benefits and finally legal certainty (Santoso, 2021, p, 329).

The realization of Gustav Radbruch's concept of three basic legal values which include aspects of justice, benefit, and legal certainty certainly has the potential to cause tension between each aspect. There are times when justice conflicts with benefits, or other times when justice conflicts with legal certainty, it is also possible that there is tension between benefits and justice. To anticipate this condition, Gustav Radbruch provides a solution through the teaching of standard priorities, by providing a benchmark in deciding a case, where the priority is justice, the second is benefits and the third is legal certainty.

Standard priority teachings are relatively wiser and wiser, compared to extreme teachings such as the ethical legal school which only focuses on justice, the Utilitarian school which only focuses on the usefulness of the law and the Legalistic Dogmatic School (legal positivism) which only focuses on legal certainty.

As interests in daily life become more complex, it is felt that standard priority teachings no longer meet the expected ideals. For this reason, the doctrine of casuistic priority has emerged again, which allows the three basic values above to alternately, according to the context of the problem, become dominant elements, so that each basic legal value can alternately become the dominant element in a particular case. The concept of casuistic priority teachings is what the world of legal practice considers to be the most relevant teaching to answer today's increasingly complex legal problems (Muslih, 2013, p. 149).

Thus, the applicability of the judge's considerations in deciding cases. Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically legislation, but apart from that, it also includes legal products, decisions, or court decisions. If the court products, namely the determinations, are different because the consequences of the legal regulations are different, then legal certainty will not be achieved so the form of guardianship as a form of protection for children will not work optimally.

CONCLUSION

In Marriage Law No. 01 of 1974 Article 50 (1) Children who have not yet reached the age of 18 (eighteen) years or have never been married, who are not under the authority of parents, are under the authority of a guardian. Paragraph (2) Guardianship concerns the person of the child concerned and his or her property. Meanwhile, in the Compilation of Islamic Law Article 107 Paragraph (1) Guardianship is only for children who have not reached the age of 21 years and/or have never been married. Paragraph (2) Guardianship includes guardianship of oneself and one's assets.

Then, in its application to the determination of guardianship in the Religious Courts in Indonesia, as an example that has been presented in this article, the Jember Religious Court, Sengkang Religious Court, Malang Religious Court, Sleman Religious Court, and also the Banyuwangi Court resulted in the determination of different age requirements. Some

judges use the age of 18 years following the Marriage Law and some judges use the age of 21 years using the Compilation of Islamic Law.

Certainty of Law is a product of law or more specifically legislation, but apart from that, legal products also include decisions or court decisions. If the court products, namely the decisions, are different because the legal rules are different, legal certainty will not be achieved so the form of guardianship as a form of protection for children will not work optimally.

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