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REGARDING PERSONS WITH DISABILITIES**

(Case Study In Selapajang Village, Cisoka District, Tangerang District)

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Abstract

Marriage is a sacred union between a man and a woman, recognized internationally as the bond of husband and wife, aimed at establishing a harmonious and enduring family unit under the belief in a singular Almighty God. In upholding the institution of marriage, both spouses are mandated to fulfill their respective roles and responsibilities as outlined in Article 34 of Law Number 16 of 2019 concerning Marriage. In practical scenarios, instances arise where one spouse, typically the wife, may face challenges due to disability. When a wife is disabled, she may encounter difficulties in fulfilling her obligations as stipulated in Article 34 paragraph (2), which mandates the management of the household to the best of her ability. Therefore, it becomes imperative to examine the rights and responsibilities within marriages involving individuals with mental disabilities, as exemplified in Selapajang Village, Cisoka, Tangerang. This study employs a qualitative research methodology, specifically employing empirical legal research as the primary approach, complemented by normative legal research. Secondary data serves as the primary source, with document analysis and library research being the primary data collection methods. The findings indicate that the marriage in question aligns with the provisions outlined in Article 34 paragraph (1), with the husband fulfilling his duties and obligations as prescribed. However, it is evident that the marriage deviates from the expectations set forth in Article 34 paragraph (2), as the wife's mental disability impedes her ability to fulfill her obligations as a spouse. This misalignment raises pertinent questions regarding the compatibility of such marriages with the legal frameworks established by Law Number 16 of 2019 concerning Marriage and Law Number 8 of 2016 concerning Persons with Disabilities.

Keywords: *Responsibility, Marriage, People with Mental Disabilities.*

INTRODUCTION

Every human being both male and female, of course, each other has an attraction to be able to live together (Sainul, 2018). Living together is of course based on a marriage that begins with physical and spiritual bonds with the aim of creating a harmonious, prosperous, happy and eternal family/household (Muchtart et al., 2019). Marriage creates an inner and outer bond between a man and a

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woman as husband and wife (Musyafah, 2020). After the occurrence of a legal marriage bond, both parties, both men and women become a unit, they live together, support each other, carry out their respective responsibilities to fulfill rights and obligations (Amri & Tulab, 2018). A husband or wife each has rights and obligations towards their partner. These rights and obligations aim to formulate a happy family, without any disputes over the rights and obligations of one of the parties between husband and wife (Isnaini, 2022).

When viewed from human nature, every human being has the desire to channel his biological desires according to needs, not only people who are normal physically and mentally, but people who have deficiencies, both lacking in physique or lack of mind also have the desire to channel their biological desires (Deki, 2021). People who have physical or mental disorders can be called disabled. Disabilities are divided into 4 (four) types, namely physical disabilities, intellectual disabilities, mental disabilities and sensory disabilities. In this thesis, the author will focus on the discussion of mental disabilities (Octavia Ismianti Putri Nurrochman, 2023).

Mental disability is a condition in which a person experiences disturbances in the functioning of thought, emotion and behavior. People with mental disabilities have the same rights as normal people in general, so they can marry according to their beliefs. This is as contained in Article 8 letter a of Law Number 8 of 2016 concerning Persons with Disabilities, which states "persons with disabilities have the right to privacy to form a family and continue offspring through a legal marriage" (Huda, 2017). In addition, the rights of persons with disabilities are also contained in Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "everyone has the right to receive special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice" (Purnomosidi, 2017).

Seeing the provisions contained in Article 8 letter a above, there is no prohibition for people who experience mental problems or disabilities, both physically and mentally, to marry (Rasyid & Azis, 2023; Zahra, 2022). Even so, a

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question arises whether people who experience mental problems or suffer from mental disabilities have the ability to carry out their rights and obligations in running a household. In addition, when running a household, people with disabilities experience many problems, such as lack of self-confidence, not having good enough communication skills, not being able to present themselves properly, and inadequate mastery of general knowledge (Hia et al., 2021; Makasenda et al., 2019).

Persons with disabilities who run a household will of course depend more on their partners who are not disabled, where a husband with a disability will depend a lot on a wife who is not disabled, or conversely a wife with a disability will depend a lot on a husband who is not disabled (Hasmiyati, 2017). This of course will lead to inequality of rights and obligations of husband and wife in households with disabilities. When inequality occurs, where rights are emphasized more than obligations, injustice will occur and this will affect the continuity and harmony in the family (Lestari, 2021).

In practice, the author found cases regarding the implementation of marriages carried out by people with mental disabilities, which were in Selapajang Village, Cisoka District, Tangerang Regency. In this case, a man with the initials R, aged 40, married a woman with the initials E, aged 38. The two married on November 2 2019 and until now they have not been blessed with children. At the time of marriage, R was a widower and had 1 (one) daughter aged 9 years, while E was a widow and had 1 (one) daughter aged 6 years. At first, before E married R, E had married a man with the initial S in 2014 and then he was divorced since December 2016.

E has had mental problems since around February 2017. As for the cause of E's disability disorder, E was depressed because she divorced her previous husband, namely W. As a result of E's psychiatric problems, E was unable to carry out her obligations as a wife. as contained in article 34 paragraph (2) of Law Number 16 of 2019 concerning Marriage which states that the wife is obliged to manage the household as well as possible. In addition, the author also sees that the

purpose of marriage as contained in Article 1 of Law Number 16 of 2019 concerning Marriage has not been achieved.

The author sees these limitations in speaking as happened to families with disabilities in Selapajang Village, Cisoka District, Tangerang Regency. This determines whether the obligations of wives with disabilities can be fulfilled or not. Meanwhile, in a marriage, there must be interaction and communication with each other which creates social roles for husband and wife, father, mother, sons, daughters who pay attention to each other, and give each other affection, because the family is the smallest unit in society that functions to realize a peaceful, secure, and peaceful life. Responsibilities in the marriage of a family of persons with disabilities will certainly be neglected if neither party gives in.

RESEARCH METHOD

The research method that the author uses in writing this thesis is qualitative, namely a method that prioritizes materials or observations that are difficult to measure with numbers, even though the incident is real in society. This method provides descriptions in words of the findings and prioritizes the quality of the data, and not quantity.(Purwati, 2020)

The typology of research conducted in writing this thesis is normative and empirical legal research. Empirical legal research is here as the main research type, while normative legal research is a supporting research type. The source of data used in this study is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection technique used is the study of documents or library materials, namely through examining and reviewing various sources of reading materials or literature that are closely related to the issues discussed in this thesis proposal to complement the results of the literature. From the data that has been successfully collected in the study, the data was analyzed using qualitative data analysis methods. Qualitative data analysis in the form of a thorough description and description of

the problem under study to be further outlined in the form of a description.(Qamar & Rezah, 2020)

RESULTS, DISCUSSION AND ANALYSIS

A. Marriage Position of Persons with Mental Disabilities according to Law Number 16 of 2019 concerning Marriage and Law Number 8 of 2016 concerning Persons with Disabilities

1. Marriage Status of Persons with Mental Disabilities According to Law Number 16 of 2019 concerning Marriage

Every marriage carried out by anyone, both Muslim and non-Muslim, both with disabilities and non-disabilities, must be registered and follow the provisions contained in Law Number 16 of 2019 concerning Marriage and follow the provisions regarding marriage contained in the Compilation of Islamic Law. This is intended so that the results of the marriage carried out can cause all legal consequences for the parties. In addition, registration of marriages is also required so that the position of the marriage that is carried out can be recognized in society and before the law because it has followed the provisions of laws and regulations.

Article 2 paragraph (1) of Law Number 16 of 2019 concerning Marriage states that marriage is valid if it is carried out according to the laws of each religion and belief. Furthermore, paragraph (2) states that each marriage is recorded according to the applicable laws and regulations. If you look at the provisions of Article 2 paragraph (1), a marriage is legal if it is carried out according to the provisions of Islamic law by fulfilling the conditions and pillars perfectly, while the registration of marriage is not a condition for a valid marriage, but only an administrative obligation. The provisions of paragraph (1) are emphasized by paragraph (2) so that the meaning of Article 2 is that every marriage is carried out in accordance with religious law and is properly registered at the Office of Religious Affairs for those who are Muslim and registered at the Civil Registry Office for those

who are non-Muslim. then it is legal and in accordance with Law Number 16 of 2019.

As a result of marriage, a position arises in marriage, namely the rights and position of the wife are equal to the rights and position of the husband in domestic life and social life together in society. This position is contained in Article 31 paragraph (1) of Law Number 16 of 2019 concerning Marriage. Article 31 states (1) The rights and position of the wife are in balance with the rights and position of the husband in domestic life and social life together in society. (2) Each party has the right to take legal action. (3) The husband is the head of the family and the wife is the housewife.

Seeing the contents of Article 31 above, it is clear that the position of husband and wife is recognized in Law Number 16 of 2019 concerning Marriage. With this recognized position, each husband and wife are required to mutually fulfill their respective obligations in accordance with Law Number 16 of 2019 concerning Marriage. According to the author, Law Number 16 of 2019 concerning Marriage does not specify marriages carried out by people with mental disabilities, but the author considers that Law Number 16 of 2019 concerning Marriage has provided the widest possible rights to anyone. to get married regardless of who it is. This is in accordance with Article 1 of the marriage law which states "marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (household)".

Seeing the contents of the article it is clear that marriage is permissible for every man and woman who wants to form a household. In addition, the General Explanation of Law Number 16 of 2019 also states that marriage is permitted for anyone, namely from various citizens and various regions, including for Indonesians who are Muslims who follow the provisions of Islamic law, and follow the provisions of customary law. Thus, according to the author, the position of marriage for people with mental disabilities according to Law Number 16 of 2019 concerning Marriage is legal, because

the Marriage Law has given freedom to anyone to marry and build a household. The position of marriage is legal and has permanent legal force if it is carried out in compliance with the requirements and harmony as contained in Law Number 16 of 2019 concerning Marriage.

2. Marriage Status of Persons with Mental Disabilities According to Law Number 8 of 2016 concerning Persons with Disabilities

Persons with disabilities have been given the freedom to obtain their rights in accordance with Law Number 8 of 2016 concerning Persons with Disabilities. The rights of persons with disabilities are regulated in Article 5 paragraph (1), Chapter III Rights of Persons with Disabilities, Law Number 8 of 2016 concerning Persons with Disabilities which states “Persons with Disabilities have the right to life; free from stigma; privacy; justice and legal protection; education; employment, entrepreneurship, and cooperatives; health; political; religious; sports; culture and tourism; social welfare; Accessibility; Public service; Disaster protection; habilitation and rehabilitation; Concession; data collection; live independently and be involved in society; express, communicate, and obtain information; change of place and citizenship; and free from acts of discrimination, neglect, torture and exploitation.

According to the contents of the Article above, every person with disabilities, both men and women, has the right to take legal action in terms of justice, politics, public services and other legal-related actions. Persons with disabilities have the right to get services in society as normal people in general who always get services. The rights contained in Article 5 paragraph (1) above relate to public rights. As for privacy rights, they are contained in Article 8 of Law Number 8 of 2016 concerning Persons with Disabilities.

Article 8 of Law Number 8 of 2016 concerning Persons with Disabilities states “Privacy rights for Persons with Disabilities include the

right a. be recognized as a private human being who can demand and obtain the same treatment and protection in accordance with human dignity in public; b. form a family and continue offspring through legal marriage; c. Respect for home and family; d. get protection for personal and family life; and e. confidentiality is protected for personal data, correspondence, and other forms of personal communication, including health data and information.”

With the existence of Law Number 8 of 2016 concerning Persons with Disabilities, according to the Author, the marital status for families of persons with disabilities is increasingly guaranteed because the right of persons with disabilities to form a household has been protected by this law. It is understood that the marriage status of persons with disabilities according to Law Number 8 of 2016 concerning Persons with Disabilities is legal because persons with disabilities have the right to form a household through legal marriage in accordance with Article 8 letter b of Law Number 8 of 2016 concerning Persons with Disabilities. disability.

B. Responsibilities in Marriage for Persons with Mental Disabilities in Selapajang Village, Cisoka District, Tangerang Regency Reviewed based on Law Number 16 of 2019 concerning Marriage and Law Number 8 of 2016 concerning Persons with Disabilities

A happy and eternal household as stated in Article 1 of Law Number 16 of 2019 concerning Marriage, shows that the purpose of marriage has been achieved. The achievement of the goal of marriage in a household cannot be separated from each party, between husband and wife who can understand their partners, and fulfill each other's rights and obligations. With the fulfillment of the responsibilities between the husband and the wife, as well as the responsibilities of the wife towards the husband, each other will feel happiness and a *sakinah, mawaddah wa rahmah* household.

The fulfillment of a wife's responsibilities towards her husband has been determined in Law Number 16 of 2019 concerning Marriage, and is completed in the Compilation of Islamic Law. The responsibilities of a wife to her husband are also the responsibilities of a husband to his wife contained in CHAPTER VI, Rights and Obligations of Husband and Wife, Articles 30 to Article 34 of Law Number 16 of 2019 concerning Marriage. Whereas in the Compilation of Islamic Law, the responsibilities of husband and wife are mentioned in CHAPTER XII concerning Rights and Obligations of Husband and Wife, Articles 77 to Article 84 of the Compilation of Islamic Law.

In marriages carried out by persons with disabilities, it has been stated in Article 8 letter b of Law Number 8 of 2016 concerning Persons with Disabilities which states that the privacy rights of persons with disabilities include the right to form a family and continue offspring through legal marriage. Seeing the contents of the article, persons with disabilities are allowed to form a household through legal marriage. Legal marriage here means marriage that is legal according to religious law and positive law and is carried out according to the provisions of Law Number 16 of 2019 concerning Marriage and Compilation of Islamic Law. As a result of a legal marriage, persons with disabilities in carrying out their household must follow the responsibilities of fulfilling the rights and obligations contained in Law Number 16 of 2019 concerning Marriage and Compilation of Islamic Law.

Marriage between E and R, where E as a wife who has a mental disability, the author sees E as having an unhealthy mind due to several factors. Disability disorders experienced by E have started since he was not married to R, and until now E is still having difficulty experiencing these disorders. The disturbances experienced by E caused E to experience difficulties in adjusting to her husband. It is from these things that sometimes R feels sad and likes to reflect on E's condition and think about his household. According to the author, if you look at E's condition as a person with a mental disability, whose disorder still recurs to

this day, the goal of marriage according to Law Number 16 of 2019 concerning Marriage is difficult to achieve.

Maturity of body and soul for both husband and wife greatly influences the fulfillment of the responsibilities of husband and wife's rights and obligations in their household. Regarding the responsibilities of the rights and obligations of husband and wife, there is a regulation in Article 34 which states (1) the position of the husband as the head of the family must carry out his obligations as the head of the family, namely protecting his wife and providing everything necessary for household life according to his ability. (2) the wife as a housewife is obliged to manage household affairs as well as possible. (3) If one of the parties, whether husband or wife, cannot fulfill their obligations, and there are continuous disputes and there is no hope of living in harmony, then one of the parties can apply for a divorce to the Religious Court.

When it is related to the marriage of persons with mental disabilities, which occurred between E and R, the author sees R as a husband having carried out his obligations as contained in Article 34 paragraph (1). R as a husband has tried to protect his wife and provide the necessities of household life. This can be seen from R's attitude, which always routinely takes E for treatment at the Puskesmas, always takes care of E from people who bother him, besides that R has also tried to make a living by working as a construction worker, and all of his work was given to E for household needs. . Besides that, E as a wife cannot fully carry out her obligations. E could not take care of the household as well as possible so R as her husband did more of the household management matters. This is where the author sees that there is inequality in carrying out the responsibilities of husband and wife in households with disabilities. The author considers that in this case, households E and R are not in line with the provisions of Article 34 paragraph (2) of Law Number 16 of 2019 concerning Marriage.

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Basically, even though E has a mental disability, E has tried to carry out his obligations starting from small things, such as washing clothes and cooking, but these are only done when he is not having a relapse. Even though in practice E's obligations as a wife were more carried out by R than E, R did not make too many demands on E because he was worried that it would affect E's health condition. to the health center. R always routinely takes E for treatment every month. Apart from that, carrying out self-medication, E also took part in a treatment program held by the Selapajang Village Government.

Regarding the contents of Article 34 paragraph (3) that the author has mentioned above, it states that if one party, whether husband or wife, cannot fulfill their obligations, and there are continuous disputes and there is no hope of living in harmony, then one party can file for divorce. to the Religious Court. Here the author sees that in practice, even though E did not carry out her obligations as a wife to take care of the household as well as possible, R as the head of the family who felt aggrieved by E's attitude, R did not apply for divorce to the Religious Courts. This is due to R's great affection for E, R has accepted E voluntarily and has the goal of making E return to normal, so he is always patient with E. Thus, R has absolutely no desire to divorce R, even though his household still not yet a great sense of happiness felt by R.

At this writing, the author uses the theory of responsibility according to Hans Kelsen's view and the theory of convenience formulated by the Shafi'i school of thought, namely Abu Thohir, as an analytical knife to study and analyze this research. The theory of responsibility according to Hans Kelsen is where a person is legally responsible for a certain action or that he bears legal responsibility. Whereas the theory of convenience according to the Shafi'i school of thought which was formulated by Abu Thohir, namely that convenience is permissible if it does not conflict with the texts; ease level must be more than normal limits (ability); this ease is not a normal situation; and ease does not apply to syara' sanctions such as stoning for adultery, painful hudud, suffering in jihad and so on.

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If the responsibility for the rights and obligations in marriage for people with mental disabilities in Selapajang Village, Cisoka District, Tangerang Regency is related to the theory of responsibility according to Hans Kelsen, the author sees that this case has led to the theory of responsibility according to Hans Kelsen. In the marriage between E and R, where E is a person with a mental disability, E has tried to carry out her obligations as a wife as contained in Article 34 paragraph (2). However, this obligation can only be carried out by E when his mental disorder is not recurring. While his mental disability was recurring, E could not carry out his obligations and R, as her husband, could accept this.

In the theory of responsibility according to Hans Kelsen, there is a statement that a person is legally responsible for a certain action. Here the author sees that the sentence is in accordance with the contents of Article 34 paragraph (2) which mentions the obligations of a wife. Therefore, the connection with the marriage of persons with mental disabilities between E and R is that legally a wife has the responsibility to take care of the household as well as possible. In this case E as a wife has tried to carry out her obligations in the household, even though E cannot carry out her obligations optimally.

As the author has mentioned above, in writing this thesis the author also uses the convenience theory formulated by the Shafi'i school of thought, namely Abu Thohir. Basically Islamic law in Indonesia is able to realize social justice for all religious people. In addition, Islamic law can also create an egalitarian society without human exploitation based on ethnicity, race, language, religion, and class. In realizing and creating this, it is not by applying Islamic law as a whole, but in an optimal and efficient way (Tahir, 2020).

If the marriage of people with mental disabilities is associated with the convenience theory according to Abu Thohir, the author sees that this marriage is in line with the convenience theory according to Abu Thohir. The convenience theory states that convenience is permissible if it does not contradict the text. In this case, marriage is permitted by the texts, even the texts recommend every Muslim to form a household through a legal marriage. By carrying out legal

marriages for people with disabilities, it has made it easier for people with disabilities who want to form a household. According to the author, this is better than later adultery or other unwanted things.

Based on this explanation, using the convenience theory according to Abu Thohir, it can be seen that Islam does not burden the condition of every human being. This is intended to achieve the objectives of Islamic law. In general it is formulated that the purpose of Islamic law is for the happiness of human life in the world and in the hereafter by taking (everything) that is beneficial and preventing what is harmful, namely that which is not useful for life and life. In other words, the goal of Islamic law is the benefit of human life, both physically and spiritually, individually and socially. Benefit is not only for happiness in this world but also for happiness in the hereafter (Tahir & Handayani, 2018).

CONCLUSION

Based on the description that has been stated above, the following conclusions can be made:

1. The position of marriage for people with mental disabilities according to Law Number 16 of 2019 concerning Marriage is legal, as contained in the General Elucidation of Law Number 16 of 2019 concerning Marriage which states that marriage is permissible for anyone, namely from various nationalities and various regions, including for people -Indonesian people who are Muslims who follow the provisions of Islamic law, and follow the provisions of customary law. Whereas marriage according to Law Number 8 of 2016 concerning Persons with Disabilities is legal, as contained in Article 8 letter b of Law Number 8 of 2016 concerning Persons with Disabilities which states the right to form a family and continue offspring through legal marriage.
2. Responsibility for the rights and obligations in marriage for persons with mental disabilities in Selapajang Village, Cisoka District, Tangerang Regency according to Law Number 16 of 2019 concerning Marriage is in

line with Article 34 paragraph (1), where R as a husband has carried out his duties and obligations which is mentioned in Article 34 paragraph (1) which states "The husband is obliged to protect his wife and provide everything necessary for household life according to his ability". The marriage is also not in line with Article 34 paragraph (2) which states "(2) The wife is obliged to manage household affairs as well as possible", where E as a wife cannot manage household affairs as well as possible, because E is experiencing disturbances disability. Meanwhile, the responsibilities for the rights and obligations in marriage for people with mental disabilities in Selapajang Village, Cisoka District, Tangerang Regency according to Law Number 8 of 2016 concerning Persons with Disabilities are in line, in accordance with Article 8 letter b which states "form a family and continue offspring through legal marriage.

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