

Revocation of a Biological Father's Guardianship Rights Over His Child in the Context of Child Protection (Decision Study No. 329/Pdt.G/2020/PA.Bjb.)

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Abstract

Children are not yet able to fulfill their own needs. All of a child's needs must still be provided for by their parents, such as shelter, food, and clothing. In addition, children also need care, guidance, and education from their parents. A child's early education will determine their personality, mental state, and behavior in the future. In reality, many fathers as parents do not take care of their children, so it can be said that they have neglected their obligations. According to Article 49 paragraph (1) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 109 of the Compilation of Islamic Law, the authority of one or both parents over their minor children can be revoked for a certain period of time if the parents seriously neglect their obligations towards their children or behave very badly. This study aims to determine the judge's considerations in revoking the biological father's guardianship rights over his child and appointing the grandfather as the child's guardian in decision number 329/Pdt.G/2020/PA.Bjb. The type of research used is normative legal research, which is research conducted by examining reference materials that constitute secondary data, also known as literature research. The data obtained in the literature research is secondary data, consisting of primary and secondary legal materials. The results of the research are analyzed prescriptively using the deductive method. The conclusions are: (1) The judge's consideration to revoke the biological father's guardianship rights over his child was because the biological father had neglected his obligations as a father and had abandoned his child when the child was 25 days old, and to date his whereabouts are unknown. The family has tried to locate the biological father but has been unsuccessful. (2) The judge's consideration in deciding that the plaintiff (grandfather) be appointed as the child's guardian is because the plaintiff has fulfilled the various requirements and conditions that must be met in the appointment of a guardian as stipulated in Article 4 paragraph (1) of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian. The judge's decision to revoke the biological father's guardianship rights over his child and appoint the grandfather as the child's guardian can provide legal protection for the child, as the child is assured that his rights will be fulfilled.

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1. INTRODUCTION

It is innate in human nature that humans need companionship in their lives. Humans always desire to be loved, possessing the instinct to form a family and raise offspring.

Marriage is a crucial event in social life, as it concerns not only the individuals of the prospective husband and wife, but also the family (Sirman Dahwal, 2017: 3).

One of the consequences of marriage is the birth of children. Having offspring or children is a gift from God Almighty for which we must be grateful. Children hold a very important position within the family. Children are the next generation. Parents will one day face old age, so children will become the family's mainstay. For the nation, children are the next generation who will continue the struggles of their predecessors to build and advance the nation.

Children in their growing years require care and guidance, so families must provide full attention and protection to their children's lives. Children are not yet able to meet their own needs, so they need the help of others, especially their parents.

According to Article 45, paragraph (1) of Law Number 1 of 1974 concerning Marriage, both parents are obliged to care for and educate their children as best as possible. The parental obligations referred to in Article 45 paragraph (1) apply until the child is married or can stand alone, which obligations continue to apply even if the marriage between the two parents ends (Article 45 paragraph (2) of the Marriage Law). The obligations of parents are also emphasized in Article 26 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely that parents are obliged to;

- a. to nurture, care for, educate, and protect children;
- b. develop children according to their abilities, talents, and interests;
- c. prevent child marriage; and
- d. providing character education and instilling moral values in children."

According to Article 31, paragraph (3) of the Marriage Law, the husband is the head of the family. The husband or father, as the head of the family, has the obligation to care for and educate his children. In Islam, the role of a father towards his children can be found in the letter Luqman, paragraph 1,3 which reads:

And when Luqman said to his son, while he was instructing him, "O my son, do not associate anything with Allah. Indeed, associating others with Allah is a great injustice."

Meaning: And (remember) when Luqman said to his son, when he was teaching his son: "O my son, do not associate partners with Allah, indeed associating partners with Allah is indeed a great injustice". In the letter of Luqman is an example of Luqman's advice to his son who forbids associating partners with Allah, because associating partners with Allah is an act that is classified as *shirk*, which is a major sin that is not forgiven by Allah SWT. Thus, the father plays an important role in the family; not only is it obligatory to provide sustenance, but also to provide education, advice to his son through strengthening his faith or belief.

A child is a small human being who is not yet an adult and is considered not yet capable of fulfilling his/her own needs or carrying out legal acts. Article 47, paragraph (1) of Law Number 1 of 1974 stipulates that a child who has not reached the age of 18 (eighteen) years or has never been married is under the authority of his/her parents as long as they are not removed from their authority. The authority of parents over their children includes authority over the child's person and the child's property. The authority of parents over the child's person is related to the obligation to maintain the child. The obligation to maintain is to provide a place to live, food, clothing and care if the child is sick, while the education referred to is to educate the child to become a social being, and to send the child to school so that he/she can live independently in the future (Soetojo Prawirohamidjojo and Marthalena Pohan, 1995: 202). Authority over the child's property is related to the obligation of parents to maintain and manage the child's property while the child is not yet an adult or is not yet capable of managing his/her own property.

However, in reality, we often witness fathers neglecting their responsibilities to their children. They fail to care for or educate their children, let alone support them. Many fathers neglect their own children. This unwittingly violates children's rights, such as the right to care, upbringing, education, and guidance based on love, which are guaranteed by law.

Children, both physically and mentally, require care, nurturing, education, and protection from both parents. This can be achieved if children are raised in a family environment filled with responsibility and affection. The family is a vehicle for continuing the lineage and the starting point for educating the new generation to learn moral values, how to think, believe, speak, behave, be pious, and be qualified to carry out their roles in society (Adib Machrus et al., 2022; 2). The family is the natural environment for a child's physical, personal, and mental growth and development. A child's education within the family will determine their personality, which can determine their future success. The family is the environment in which children grow and develop from an early age until they become adults. It is through family education that a child's character is formed (Cepi Ramdani, et al., 2023: 13).

Children as part of the population, heirs and holders of the fate of the nation, also help determine the pace of the national development process in all fields; therefore, children need to receive protection of their rights, both civil and criminal (Bunadi Hidayat, 2014: 35).

Child protection according to Article 1 number (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, is "all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination." Children are said to receive legal protection if their rights are fulfilled. Children's rights have been granted in various laws and regulations. In Article 28 B paragraph (2) of the 1945 Constitution (second amendment) it is stated that every child has the right to survival, growth, and development and has the right to protection from violence and discrimination. In the Child Protection Law, various children's rights are mentioned, namely, the right to live, grow, and develop, the right to a name, the right to worship, to obtain education, health services, and social security.

According to Article 49 paragraph (1) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 109 of the Compilation of Islamic Law, the authority of one or both parents over their minor children can be revoked for a certain period of time, if the parents seriously neglect their obligations towards their children or behave badly. Even if parents have their authority revoked, they are still obliged to provide for the maintenance and education of their children (Article 49, paragraph (2) of the UUP). So, revocation of parental authority does not eliminate the obligation to finance the maintenance and education of their children. Likewise, according to Article 30 of the Child Protection Law, it is stipulated that if parents neglect their obligations, supervision measures can be taken against them or parental custody can be revoked through a court order.

Regarding the revocation of parental authority, a case has occurred in court practice, as outlined in Court Decision Number 329/Pdt.G/2020/PA.Bjb. The plaintiff, a grandfather, filed a lawsuit to revoke the guardianship rights of a father (the defendant) over his child, due to neglecting his responsibilities as a father since the child was 25 days old. The plaintiff also requested to be appointed guardian of the child, who is his biological grandchild.

Based on the things that have been described, the problems that can be raised are;

1. What was the judge's consideration in revoking the father's guardianship rights over his child in decision Number 329/Pdt.G/2020/PA.Bjb.

2. What was the judge's consideration in appointing the plaintiff (grandfather) as guardian of the child who is his grandson in decision Number 329/Pdt.G/2020/PA.Bjb?

2. RESEARCH METHOD

This research is a normative legal study. Normative legal research is legal research conducted by examining library materials or secondary data (Soerjono Soekanto and Sri Mamudji, 2006: 13-14). This research seeks the principles, doctrines, and legal sources regarding parental obligations towards children, guardianship of children, revocation of parental or guardianship authority, and child protection.

To obtain research materials, this study was conducted through a literature review that examined legal materials. This legal material was drawn from primary and secondary legal materials. Primary legal materials consist of legal regulations and other authoritative sources related to the research object. Secondary legal materials consist of books on Personal Law, Family Law, and Child Protection, as well as journals related to the research material.

Primary and secondary legal materials were obtained through document studies by compiling laws, books, research results, and scientific journals related to the problem. The main definitions or legal principles were then extracted from the laws and regulations, each of the articles relevant to the problem. Meanwhile, theories and related statements were extracted from books and scientific journals. Finally, all of this material was systematically compiled to facilitate the analysis process.

The legal materials obtained in this study were analyzed prescriptively using the deductive method, namely general data on legal concepts in the form of legal principles, postulates, and teachings (doctrines) which were systematically arranged as a composition of legal facts to examine the revocation of a father's guardianship rights over his child in an effort to protect children.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Parental Power Over Children.

The parental authority over the child initially lies in the hands of the absolute father, and no one else may interfere. *Patria potestas* is basically a right of the father that the father has, complete control over the fate of the child, and the child is completely subject to the power of the father (Rachmadi Usman, 2006: 361). In the early days of Rome, the idea of patriarchy was truly taken to a terrible extreme, the head of the family, or *father of the family*, legally has full control over the life and death of his children, a father's rights are not limited to selling his child, a father is legally permitted to kill members of his family (Ade S, 2025: 1).

The absolute power of a father over his child is gradually weakening. Power over children is not only in the hands of the father, but also the mother has the same rights. This can be seen in Article 298 paragraph (2) of the Civil Code, which stipulates that "both fathers and mothers are obliged to care for and educate all their children who are not yet adults." Thus, according to the Civil Code, parental power over children rests with both parents and is not only in the hands of the father, but also in the hands of the mother. The obligation of care is to provide a place to live, food, clothing and care if the child is sick, while the education referred to is to educate children to become social beings, and to send children to school so that they can live independently in the future (Soetojo Prawirohamidjojo and Marthalena Pohan, 1995: 202). This is also stipulated in Article 45, paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that "both parents are obliged to care for and educate their children as best as possible." According to Article 45 paragraph (2) of Law Number 1 of 1974 concerning Marriage, "the parental obligations referred to in Article 45 paragraph (1) apply until

the child is married or can stand alone, which obligations continue to apply even if the marriage between the two parents ends."

Article 49 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that "one or both parents may have their authority over one or more children revoked for a certain period of time at the request of the other parent, the child's family in a direct ascending line and adult siblings or an authorized official, by a court decision in the following cases: (a) He has seriously neglected his obligations towards his child; (b) He has behaved very badly." Even if parents have their authority revoked, they are still obliged to provide for the maintenance and education of their children (Article 49, paragraph (2) of the Marriage Law).

Revocation of parental authority does not eliminate the obligation to finance the maintenance and education of their children. Revocation of parental authority is also regulated in Article 10 of the Child Welfare Law, which stipulates that parents who are proven to have neglected their responsibilities for the realization of the welfare of their children, resulting in obstacles to the growth and development of children, can have their parental authority revoked for their children. Likewise, according to Article 30 of the Child Protection Law, if parents neglect their obligations, supervision measures can be taken against them or parental authority can be revoked through a court order. Children who are not under the authority of their parents are under guardianship.

3.2. Lawsuit for Revocation of the Biological Father's Guardianship Rights over his Child in Decision Number 329/Pdt.G/2020/PA.Bjb.

The Banjarbaru Religious Court has issued a ruling in a case of revocation of parental authority and application for the appointment of a guardian. The plaintiff is the biological grandfather of a child who is his grandson. Previously, there was a marriage between a woman who is the plaintiff's daughter and a man. Then a child was born. The child's biological father was irresponsible and never provided support, and left the child when the child was 25 days old. Subsequently, the father and mother divorced. The child's biological father's address is currently unknown (ghaib). Then the child's biological mother has passed away. The plaintiff, namely the grandfather, intends to become the guardian of the child and all legal actions related to the child will be delegated to the plaintiff and become the plaintiff's responsibility until the child is an adult or 21 years old.

Based on these reasons/arguments, the plaintiff requests that the Banjarbaru Religious Court judge immediately examine and adjudicate the guardianship case, and then issue a verdict which reads as follows:

1. Granting the plaintiff's claim.
2. Revoking the guardianship rights of a 5-year-old child from the defendant (biological father).
3. Determine that a 5-year-old child is under the guardianship of the plaintiff.
4. Charge legal fees.

This case is a lawsuit for the revocation of guardianship rights by the father and the appointment of another person as guardian by the court, so that based on the explanation of Article 49 letter a number 17 and 18 of Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009, the Religious Court has the duty and authority to examine, decide and resolve the case.

To strengthen the arguments of his petition, the plaintiff has submitted written evidence, including; photocopy of the Resident Identity Card and, photocopy of the child's birth certificate. In addition to strengthening his lawsuit, the plaintiff submitted

a photocopy of a statement that the plaintiff has never and will not commit violence, exploitation, neglect, and mistreatment of children or the application of physical punishment for any reason, including the enforcement of discipline against children. The plaintiff in this case has also presented 2 (two) witnesses to the court. Among the testimonies given by the witnesses is that the child's biological mother has now died due to breast cancer, and the child's biological father, since the child was 25 days old, has never taken care of or provided support to the child, and until now, his whereabouts are unknown. The witness knows that the plaintiff and the plaintiff's extended family have tried to find the whereabouts of the defendant as the biological father of the plaintiff's biological grandchild, but to no avail. The witness also knows that the plaintiff behaves well and can be responsible for the child, such as caring for, maintaining, educating, and protecting the child, because since his biological mother died, the child has been cared for and cared for by the plaintiff. The witness also noted that the plaintiff possessed a sound understanding of religion, which would be useful in guiding her child. The plaintiff is currently in good physical and mental health, with no serious illnesses.

Finally, the judge gave a verdict, namely:

1. Granting the plaintiff's claim by default.
2. Revoking the guardianship rights of a 5-year-old child from the defendant as his biological father.
3. Determined that the 5-year-old child is under the guardianship of the plaintiff (his grandfather).
4. Charges the plaintiff to pay court costs in the amount of Rp. 336,000.00 (three hundred and thirty-six thousand rupiah).

From this decision, it can be seen that the judge revoked the father's guardianship rights over his biological child, who was 5 (five) years old, and appointed the grandfather (the child's mother's father) as his guardian.

3.3. Judge's Considerations in Revoking a Father's Guardianship Rights Over His Biological Child.

Law Number 1 of 1975 concerning Marriage in Article 41 letters a and b stipulates: "Parents are obliged to care for and educate their children, solely based on the interests of the child, and the father is responsible for all costs of care and education required by the child, if in reality the father cannot fulfill these obligations, the mother also bears these costs."

Married life is the integration of the relationship between husband and wife, and the integrity of a household can be achieved when the husband and wife know, understand, and implement their respective rights and obligations (Aulia Muthiah, 2017; 89).

In the trial, it was argued by the plaintiff, and also stated by 2 witnesses, that the child's father had abandoned the child since the child was 25 days old. The biological father, since the child was 25 days old, never took care of or provided for the child, and until now his whereabouts are still unknown. The witness knows that the plaintiff and the plaintiff's extended family have tried to find the whereabouts of the defendant as the biological father of the plaintiff's biological grandchild, but to no avail. This can be said that the father has abandoned his child. So, the child's father is a father who does not carry out his obligations, so there is no responsibility at all. A father who does not care for or educate a child will affect the child's mental development. The child does not have a role model, a role model in behavior.

In the Quran, Surah Al-Baqarah, verse 233, Allah says, which means "And it is the father's duty to provide for their maintenance and clothing in a just manner." Based on this verse, the father is obliged to provide for his wife and children.

According to Article 49 paragraph (1) of Law Number 1 of 1975 concerning Marriage in conjunction with Article 109 of the Compilation of Islamic Law, "the authority of one or both parents over their minor children can be revoked for a certain period of time, if the parents are very negligent in their obligations towards their children or behave very badly." Even if parents have their authority revoked, they are still obliged to provide for the maintenance and education of their children (Article 49, paragraph (2) of the UUP). The revocation of parental authority does not eliminate the obligation to pay for the maintenance and education of their children.

The plaintiff in his lawsuit requested the judge to revoke the guardianship rights of the 5-year-old child from the defendant (his father). The judge, before making a decision considered that 2 (two) witnesses presented by the plaintiff before the trial knew that the plaintiff intended to file for the revocation of the guardianship rights of his biological father towards his child, to then ask to be appointed as guardian for the child who is currently 5 (five) years 2 (two) months old. The child is the plaintiff's biological grandson, or the plaintiff is the child's biological grandfather who is the child of the biological mother's marriage with the defendant, who married in 2014. Furthermore, 2 (two) witnesses presented by the plaintiff before the trial knew that the biological mother and the defendant had divorced since 2016, and the defendant had never taken care of the child since the child was 25 days old, moreover at this time his whereabouts were unknown, so that only the biological mother and the plaintiff cared for and took care of the child. However, the biological mother died on May 8, 2020, so the plaintiff wanted to take care of the child since his mother died.

The judge considered that it has been proven that the defendant as the biological father has clearly been unable to carry out his obligations and responsibilities as a father towards the child since the child was 25 days old until now, especially now his whereabouts are unknown, the defendant has never fulfilled his obligations as the father of the child, and the defendant cannot carry out his obligations and responsibilities, so that the plaintiff's lawsuit as *petitum* number 2 to revoke the defendant's guardianship rights over his 5-year-old child can be granted. Furthermore, the judge considered that even though the defendant's guardianship rights have been revoked, the defendant, as the father, is still given access to meet and pour out affection to the child, so that the guardian who will be appointed by this court decision must provide access to the defendant (biological father) to meet with his child without breaking the law.

Based on these considerations, the judge decided to revoke the guardianship rights of his 5-year-old child from the defendant as his biological father. The judge's decision provides legal certainty for the child, because the father is completely irresponsible, so the court will appoint a guardian to take care of the child's personal and property, because the child is not yet able to take care of his own interests. The judge's decision also provides legal protection for the child, because the judge, after revoking the guardianship power from the father who neglects his responsibilities will appoint a new guardian who will fulfill the child's rights.

3.4.Appointment of Grandfather (Plaintiff) as Guardian for Child in Case Number 329/Pdt.G/2020/PA.Bjb.

Article 50 paragraph (1) of Law No. 1 of 1974 stipulates that "children who have not reached the age of 18 years or have never been married who are not under the authority of their parents are under the authority of a guardian." Government Regulation

Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian states in Article 1, paragraph (1) that "a guardian is a person or body who in reality exercises parental custody over a child."

Guardianship concerns the child's personal life and property. This provision ensures that the child's rights are fulfilled. The family is a child's first school. This is precisely what is stipulated in Article 26 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which stipulates that "parents are obliged to provide character education and instill moral values in children." Furthermore, it is also important for children to be given religious education from an early age. Religion needs to be instilled from an early age because it is related to the faith or beliefs that will determine the child's character in the future. Children need to be educated and guided by parents who are able to fulfill their obligations to care for them (Tirsa Kudubun, 2014: 83).

Children who are not under the authority of their parents need to be appointed a guardian to manage their person and property. This is in accordance with the provisions of Article 3 paragraph (1) of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian, which stipulates that "a guardian may be appointed because the parents are absent, the parents' whereabouts are unknown, or for some reason the parents are unable to carry out their obligations and responsibilities."

The appointment of a guardian aims to protect the rights and fulfill the basic needs of the child and manage the child's assets to guarantee the growth and development and best interests of the child (Article 2 of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian).

In his lawsuit, the plaintiff filed a petition for guardianship over his child, who is his biological grandchild. The plaintiff is the child's biological grandfather. Based on Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian, Article 4 paragraph (1) stipulates that the child's family appointed as guardian must meet the following requirements:

- a. Indonesian citizens who are permanently domiciled in Indonesia
- b. Minimum age 30 (thirty) years
- c. Physically and mentally healthy
- d. Behave well
- e. Economically capable
- f. Have the same religion as the child's religion
- g. Get written consent from husband/wife for those who are married
- h. Willing to be a guardian as stated in the statement.
- i. Make a written statement that you have never and will not do:
 1. Violence, exploitation, neglect, and abuse of children or,
 2. The application of physical punishment for any reason, including to enforce discipline on children.
- j. Prioritize the child's closest family and,
- k. Obtain written consent from parents if: (1) They still exist, (2) Their whereabouts are known and (3) They are capable of carrying out legal acts.

Based on Government Regulation on Guardianship, Article 4 paragraph (2), the guardian appointed from the child's family, as referred to in paragraph (1), is prioritized to be close to the child.

During the trial, the panel of judges asked for information from the plaintiff and conducted a verification of the evidence submitted by the plaintiff at the trial. Then the panel of judges found the following facts:

1. The plaintiff intends to become guardian of the child, who is the plaintiff's biological grandchild.
2. The child was born on June 11, 2015, or is currently 5 (five) years and 2 (two) months old.
3. That the child is the biological child of the biological mother (plaintiff's daughter) and the defendant (father), who married on June 15, 2014.
4. The defendant, as the biological father, has neglected his duties as a father and has abandoned the biological mother and child since the child was 25 days old until now.
5. The biological mother passed away on September 15, 2016.
6. After the death of the biological mother, the plaintiff and his wife raised and cared for the child. The child was in good condition while under the plaintiff's care. Furthermore, the plaintiff was well-behaved and a Muslim.
7. That no other party, neither the child's mother's family nor the defendant's family nor any other third party, has any objections regarding guardianship of the plaintiff's biological child or grandchild.
8. The purpose of the plaintiff's application is to be appointed as the guardian of the child for the benefit of the child, both legally and administratively, and for the best interests of the child in the future.

Before making a decision, the judge will provide considerations related to the requirements for appointing a guardian as regulated in Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian, namely:

1. Regarding the first requirement that the plaintiff must fulfill to be appointed as a guardian, he must be an "Indonesian citizen permanently domiciled in Indonesia." Furthermore, in this case, the plaintiff submitted written evidence in the form of an ID card (KTP) proving that the plaintiff is an Indonesian citizen domiciled in Banjarbaru, South Kalimantan, Indonesia. Therefore, the Panel of Judges thinks that the plaintiff has fulfilled the first requirement in this case.
2. Regarding the second requirement that the plaintiff must fulfill to be appointed as a guardian, which is "at least 30 (thirty) years of age," the plaintiff has submitted written evidence in the form of an ID card (KTP) proving that the plaintiff is currently over 30 (thirty) years of age. Therefore, the panel of judges thinks that the plaintiff has also fulfilled the second requirement in the case.
3. Regarding the third, fourth, and fifth conditions that must be met by the plaintiff to be appointed as guardian are "physically and mentally healthy, well-behaved, and economically capable". The plaintiff has presented 2 (two) witnesses, both of whom stated that the plaintiff is currently physically and mentally healthy, there are no signs of illness or disease from the plaintiff, especially in social relations, the plaintiff also has good behavior, and is economically capable because he works as a driver, thus, the panel of judges thinks that the third, fourth and fifth conditions have been met by the plaintiff.
4. Regarding the sixth requirement, which the plaintiff must fulfill to be appointed as guardian, is "having the same religion as the child." In this case, the plaintiff submitted written evidence in the form of an ID card (KTP) proving that the plaintiff is Muslim, the same religion as the child. Therefore, the panel of judges thinks that the plaintiff has fulfilled the sixth requirement in this case.
5. Regarding the seventh requirement that the plaintiff must fulfill to be appointed as a guardian, namely "obtaining written consent from the husband/wife for those who are married." The plaintiff has submitted written evidence with proof proving that the

- plaintiff has received written consent from the plaintiff's wife for the plaintiff to be appointed as guardian of the child. Therefore, the panel of judges thinks that the plaintiff has fulfilled the seventh requirement.
6. Regarding the eighth condition, what the plaintiff must fulfill to be appointed as a guardian is "willing to be a guardian as stated in a written statement." Furthermore, the plaintiff has submitted written evidence with proof stating that the plaintiff is willing to be a guardian for a child named the child, who is the plaintiff's biological grandchild, and the plaintiff is the child's biological grandfather.
 7. Considering that regarding the ninth condition, what the plaintiff must fulfill to be appointed as guardian is "making a written statement that he has never and will not commit (1) violence, exploitation, neglect, and mistreatment of children; or (2) the application of physical punishment for any reason, including for the enforcement of discipline against children." This condition has been fulfilled by the plaintiff.
 8. Considering, that regarding the tenth condition, it is to prioritize the child's closest family, as the plaintiff's argument is supported by the testimony of the plaintiff's witnesses that after the plaintiff's child or the child's mother died, the child in the case lived and was cared for by the plaintiff and his wife as his grandparents so that the plaintiff as the child's closest family is very appropriate. Since the child's mother died until now, the child has never been cared for by anyone other than the plaintiff and his wife.

Based on the provisions of Article 51 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which stipulates that "the guardian shall be taken as far as possible from the child's family or another person who is an adult, of sound mind, just, honest, and of good behavior." Furthermore, the panel of judges also put forward the legal provisions in Article 107 paragraph (4) of the Compilation of Islamic Law, which stipulates that "the guardian shall be taken as far as possible from the child's family or another person who is an adult, of sound mind, just, honest, and of good behavior." The judge also took the legal provisions in Article 33 paragraphs (1), (2), (3), and (4) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, which stipulates as follows:"

- (1) If the child's parents and family are unable to carry out the obligations and responsibilities as referred to in Article 26, a person or legal entity that meets the requirements can be appointed as guardian of the child concerned.
- (2) To become a guardian of a child, as referred to in paragraph (1) is done through a court decision.
- (3) The guardian appointed as referred to in paragraph (2) must have the same religion as the child.
- (4) The guardian as referred to in paragraph (2) is responsible for the child and is obliged to manage the child's assets in the best interests of the child."

Furthermore, the panel of judges also put forward the legal provisions in Article 26 paragraph (2) of Law Number 23 of 2002 concerning Child Protection which stipulates that "if parents are absent, or their whereabouts are unknown, or for some reason are unable to carry out their obligations and responsibilities, the obligations and responsibilities as referred to in paragraph (1) may be transferred to the family, which is carried out in accordance with the provisions of statutory regulations."

Based on the considerations taken by the judge in relation to the facts in the case, the panel of judges thinks that:

1. The child who is the plaintiff's biological grandchild, whose biological mother has died, while the whereabouts of the biological father or defendant are no longer known,

- requires a legal guardian for the best interests of the child for the sake of his well-being and the continuity of his life now and in the future.
2. The plaintiff, as the child's biological grandfather, is the child's closest family member, who has raised the child well.
 3. The plaintiff and child adhere to the same religion, namely Islam.
 4. The plaintiff has fulfilled the requirements as a guardian of the child.

Furthermore, the panel of judges regarding the plaintiff's demands in the case gave consideration, with the revocation of the biological father's guardianship rights over his child, it is necessary to appoint a guardian for the child, the plaintiff has been able to prove the arguments of his request, by proving various terms and conditions that must be met in appointing a guardian, so that the demand for the judge to appoint a 5-year-old child under the plaintiff's guardianship can be granted. The judge granted the plaintiff's demands, so that the plaintiff was declared to be the guardian for the child, who is his biological grandchild.

Once the judge has ruled that a biological grandfather is the guardian of his child, namely his grandchild, he is obligated to responsibly care for, educate, and manage the child's assets. Therefore, guardianship is important because the child will retain their rights, namely, care, affection, maintenance, and education, thereby ensuring legal protection.

4. CONCLUSION

The judge's consideration in revoking the father's guardianship rights over his child in decision Number 329/Pdt.G/2020/PA.Bjb. is that the defendant, as the biological father, has neglected his obligations as a father and has left the child's biological mother and child since the child was 25 days old, and until now, his whereabouts are unknown. The plaintiff's extended family has tried to find the whereabouts of the biological father but has been unsuccessful. The judge's consideration in deciding that the plaintiff be appointed as the child's guardian is because the plaintiff has fulfilled various terms and conditions that must be met in appointing a guardian as regulated in Article 4 paragraph (1) of Government Regulation Number 29 of 2019 concerning the Terms and Procedures for Appointing a Guardian. In addition, the judge also based it on various regulations, namely; (1) Article 51 paragraph (2) of Law Number 1 of 1974 concerning Marriage, (2) Article 107 paragraph (4) of the Compilation of Islamic Law, (3) Article 26 paragraph (2), and Article 33 paragraphs (1), (2), (3) and (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The judge's decision to revoke the biological father's guardianship rights over his child and appoint the grandfather as the child's guardian can provide legal protection for the child, because the child receives certainty that his rights will be fulfilled.

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