

**Implementation of Marriage Pillars According to *Syafi'iyah Fiqh*  
in Bandar Dua District, Pidie Jaya Regency (Study of Marriage  
Witness Justice)**

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**ABSTRACT**

Witnesses in a marriage contract are pillars that affect whether a marriage is valid or not. A just witness is someone who does not commit major sins and also does not perpetuate himself with minor sins. For this age, getting a fair witness is definitely very difficult. However, the phenomenon that occurred in the field was not the case. Witnesses for marriage are often chosen based on their position and closeness to the bride and groom's family, not based on criteria outlined in *fiqh* law. This is very fatal for a marriage because if a marriage contract seems to be neglected, then unknowingly there will be prolonged adultery. For this reason, the author wants to study this problem scientifically. The formulation of the problem in this study is how is the implementation of the pillars of marriage in Bandar Dua, Pidie Jaya Regency according to Islamic law, and what is the urgency of justice for marriage witnesses and their impact on families in Bandar Dua District, Pidie Jaya Regency. Through the form of qualitative research, descriptive analysis techniques and inductive methods are the main techniques in tracing data and facts to be examined and find answers to the formulation of problems that have been defined. The result of the research is that the implementation of the pillars of marriage in the Bandar Dua District in general is in accordance with the *Syafi'iyah fiqh*. But there are a number of things that still need attention, namely related to the justice of marriage witnesses. Of the four elements of the assessment 'adālah witnesses to marriage, there is one that is often missed in the assessment, namely maintaining marwah. Even though someone who doesn't protect his dignity is also considered wicked, and loses his justice. In general, the sources (counselors, young priests, community leaders, religious leaders, village heads, marriage guardians, married couples, and also wedding witnesses) denied that there was a strict selection of marriage witnesses. The urgency of witness justice for a married family is very clear because it is indeed a pillar of marriage. From a moral point of view, the presence of fair witnesses is also able to maintain the integrity and harmony of the family. Spiritually speaking, the presence of two just witnesses can also bring blessings

and kindness to the bride and groom, because generally two people who are considered just are two pious people.

**Keywords :** *Marriage, Pillars, Witnesses, 'Adalah*

## INTRODUCTION

In Islam, everything related to marriage issues has been clearly regulated in fiqh munakahat, including matters relating to the pillars of marriage. Pillars of marriage are something that must exist in marriage, and that something is included in the series of contracts. The pillars of marriage in Islamic law are:

- 1) groom;
- 2) bride;
- 3) marriage guardian;
- 4) two fair witnesses; And
- 5) consent qabul ( Amir Syarifuddin , 2007:61).

Among the pillars mentioned, one of the pillars or conditions that must be considered in a marriage contract is the marriage witness. In order to be a witness to a marriage, there are several conditions that must be met, namely, among others, he meets the requirements to be a witness. The conditions referred to include being free, male and also fair. Just what is meant here is a person who does not commit major sins and does not perpetuate himself in minor sins. According to Ramli, witnesses are also required to know the name of the woman who is getting married and also see her face by uncovering her face (Zakaria al-Anshari, 1994:41).

Al-Suyuthi in his book *al-Asybah Wa al-Nadhair* defines '*adālah*' is a trait that is embedded in the soul that is able to prevent from committing major sins or small sins that show contempt, or prevent being reluctant to do permissible things that can bring down dignity or honor ( Jalaludin al-Syuyuti, 2007:281). In this definition, one can explicitly understand that '*adālah*' is a trait that has become a person's instinct, so that one is prevented from committing major sins, minor sins, or even mubah matters that can bring down one's dignity.

There are also those who do not include self-defence from mubah that lowers marwah as the element '*adālah*'. As long as he does not commit major sins and does not commit minor sins continuously, he can be said to be a just person. However, this is considered a weak opinion in fiqh. Regarding the meaning of '*adālah*' above, by al-Suyuthi also exemplifies the opinion that it is easier to understand '*adālah*', namely: stay away from big sins and stay away from always doing small sins (Jalaludin al-Syuyuti, 2007: 284).

From some of the definitions above, it can be seen that ' the witness is a hard thing to do. It's okay for us to take a weak opinion regarding the notion of fairness, but it's still difficult to find people who really don't commit major sins

and don't continue to commit minor sins. Many who have not committed major sins may be able to do so, but it is often difficult for a person to distance himself from minor sins. Especially if we stand on the opinion that *marwah* is a component that must be maintained to make someone fair, then this is even more difficult.

So, it can be said that the fairness of a witness is one of the pillars of marriage that is the most difficult to fulfill but is often neglected by those who carry out the marriage. But that 's contradictory with what happens in the field between theory and practice. On the one hand, it is difficult to get fair witnesses, but on the other hand, marriage is getting easier and happens almost every day. Moreover, in certain months, such as the month of Shawwal, up to a dozen couples can get married in one day (observations at religious affairs office, Bandar Dua District, Pidie Jaya Regency).

This is similar to what happened in Bandar Dua District, Pidie Jaya Regency, where witnesses seem not to be paid attention to and scrutinized whether they are fit to be witnesses or not, whether they meet the requirements or not. Often, they are chosen easily or based on their position in society, for example religious leaders, or village heads. In fact, a person's position as a religious figure or even as a village head, for example, is not a guarantee that he is eligible to be a marriage witness (Tgk. Muhammad Thaib, 2022). This kind of case has occurred in Bandar Dua District, Pidie Jaya Regency, namely the child marriage of Tgk. Mohammed Amen. As marriage guardian, Mr. Muhammad Amin could not get a truly fair marriage witness for his son's marriage. He only chose the village head, the *menasa* priest and several of his relatives who had more or less knowledge of religion (Tgk. Muhammad Amin, 2022).

It is one of the pillars of marriage whose implementation can be said to have received little attention from the community, and there are many more that need to be discussed and studied in depth. In this regard, it is interesting for the writer to examine the implementation of the pillars of marriage according to *Fiqh Syafi'iyah* . In order to be more specific and directed, the author titled this study " *Implementation of Marriage Pillars According to Syafi'iyah Fiqh in Bandar Dua District, Pidie Jaya Regency (Analytic Study of 'Adalah Marriage Witnesses')* . "

## **RESEARCH METHODS**

This type of research is qualitative with a field *research* approach , which is a data collection technique by which the author goes directly to the object of research. Then the data sources are the Head of religious affairs office, extension workers, chief, and the bridal couple Bandar Dua, Pidie Jaya Regency ( Jalaluddin Rahmad, 2004 : 24 ) . Meanwhile, the data collection process was carried out by

the authors using three data collection methods , namely: (1) observation, (2) interview, (3) documentation study ( Burhan Bungin , 2008 : 115 ).

Data analysis technique, namely the process of data analysis begins by examining all data, in order to obtain valid and suitable data to present. After review, the next steps are analyzed in the form of processes: (a) data analysis and (b) data interpretation (Lexy J. Moleong, 2005: 128). the process of data analysis begins with examining all available data from various sources, both from interviews, questionnaires, and document analysis, after reviewing it, the next steps are: First, data reduction. Data reduction is done by summarizing, choosing the main things, and focusing on important things related to the research objectives. The reduced data provides an overview of the field results obtained after being recorded in the workbook. Both data displays. Because the reduced data is still in the form of a collection and only an overview, this makes it difficult to provide details. This difficulty can be solved by displaying data, namely the results of research in the form of collections and descriptions will be made in the form of models, matrices, graphs, patterns or descriptions that are systematically arranged according to objectives and are details that can be mapped out clearly. Third conclusion and verification. Data that has been patterned, focused, detailed and systematized, then summarized so that the meaning of the data can be understood. In interpreting this data, the authors will report who was involved in this study, starting from marriage guardians, married couples, counselors, marriage witnesses and religious leaders. The author also describes what is happening in the field, namely the implementation of the pillars of marriage in Bandar Dua District, and then provides the author's views which are contrasted with the (authentic) literature review.

## **MARRIAGE LAW**

In the terminology of fiqh, the fuqaha differ in the meaning of the word marriage, the Hanafi school defines marriage as a contract which results in the halal pleasures of a man and a woman as long as there is no obstacle (*mani'*) according to syara' accompanied by the pronunciation of the contract. The Syafi'iyah community defines marriage as a contract that contains the permissibility of *wathak* accompanied by the pronunciation of *inkah*, *tazwij*, or a translation of the word. In the Hambali school, marriage is a marriage contract, that is, a contract for which it is obligatory to mention the pronunciation of *the marriage*, *tazwij* , or its translation (Minister of Waqf, Kuwait, 1983:205).

However, there is a slight difference, in the opinion of Imam Malik and Imam Syafi'i, the law of sunnah marriage for people who need to get married, with the understanding that they cannot be restrained for the distribution of their biological desires, in living conditions they have provisions for marriage starting

from the dowry, place of residence, and able to support the family every day. Imam Ahmad is of the opinion that marriage is obligatory for people who are in dire need of channeling their biological desires to the point where they are worried about committing adultery, according to Imam Abu Hanifah the law of marriage remains sunnah under any circumstances, Imam Daud al-Dhahiry said that the law of the obligation to marry is only once lifetime.

Zakariya al-Anshari in the book *Fath al-Wahab* explains that the law of marriage is as follows: first, it is sunnah for people who need to channel their biological desires and have marriage provisions, such as dowry, living and clothing. The two laws are that it is better not to marry someone who needs to get married and does not have the provisions for marriage and fasting as a solution to controlling his desires. The third is the law of *makruh* marriage for people who do not need and have no preparation for marriage or people who have the provisions for marriage but have diseases such as old age and impotent. The four laws are better for focusing on worship for worshipers who don't need and have preparation for marriage, while those who are not experts on marriage worship are better (Zakariya al-Anshari, tt: 322-323).

#### **'adālah a witness in marriage**

'*Adālah* in Arabic is masdar from the word '*adala*', which is translated as "justice." The three basic letters of the word just, namely ڤ د ع mean a state of not deviating, namely straight or the same and crooked or different. In establishing a law, the word fair means establishing the law correctly. So, it is said that a fair person is someone who walks straight and his attitude always uses the same size, not double. So that the equation that makes the meaning of justice is not taking sides with any party in dispute, in the scope of only taking sides with everything that is right and not arbitrary without justice (M. Quraish Shihab, 2003:44).

In the Indonesian Dictionary, the word "fair" means "not one-sided, impartial, and adhering to the truth". Meanwhile justice is the nature of behavior or actions in acting fairly (KBBI V.4.0 Beta (40)).

Justice which is often meant in Islamic jurisprudence is: "the expression of a matter that is balanced between excess and reduction." (Sharif Ali bin al-Jurjani, 1421:144). This definition is closer in meaning to '*adālahālah* in language which is interpreted in a balanced way. However, an approach can also be made to the meaning of '*adālahālah* in *fiqh* in the sense that judges are fair in deciding cases or resolving disputes.

Imam al-Suyuthi in his book *al-Asybah Wa al-Nadhair* defines '*adālah* as follows: '*adālah* is a trait embedded in the soul that is able to prevent it from committing major sins or small sins that show contempt, or prevent it from being reluctant to do permissible things that can drop marwah or honor (Jalaludin al-Suyuti al-Syafi'I, 2007:281). In this definition, it can be understood explicitly that

'*adālah* is a trait that has become a person's instinct, so that he is prevented from committing major sins, minor sins, or even permissible matters that can bring down his morale. Furthermore, Imam al-Suyuthi also exemplified the opinion that it is easier to understand '*adalah*', namely: avoiding major sins and avoiding continuously committing small sins (Jalaludin al-Syuyuti, 2007:281).

The definition of Imam al-Haramain above is a little stricter than the definition of the majority of scholars ( *jumhūr* ), Imam al-Haramain focuses on sins that make the sinner weak in his religion. Meanwhile, according to the majority of scholars, there is nothing wrong with committing one kind of minor sin as long as obedience dominates.

From some of the definitions above, it can be concluded that there are four provisions for '*isālah* :

- 1) did not commit a grave sin;
- 2) do not drag on in committing small sins;
- 3) obedience dominates immorality; And
- 4) do not do acts that drop honor even if it is permissible.

To determine whether a person is '*adālah* or not', sometimes it is enough to see the birth, this is called '*adālah* at birth. There is also the matter of making sure that '*alah* is not enough with the appearance alone but must be seen when he is in solitude whether he is able to maintain his religion, if he is able to maintain his religion when he is alone and, in a crowd, then it is called '*adālah*' is born and in the heart.

Among the cases that are sufficient with '*adālah* just being born is a marriage witness, this is based on a valid opinion, with the reason that usually the marriage contract is carried out between many people. After all, if it's hard to know someone's inner justice, it's enough to just be outwardly fair. As is the case with justice in marriage guardians, fairness in transmission, fair fathers in respect of their children's assets, people who have legal fatwa ( *mufti* ), and people who educate children ( Ministry of Waqf Kuwait, 1983:142 ).

## RESULTS AND DISCUSSION

Bandar Dua District, Kab. Pidie Jaya is one of the 8 sub-districts in Pidie Jaya, with an area of 174.32 km<sup>2</sup>, most of which is land. Administratively it consists of 45 villages or gampongs. Related to topography, Bandar Dua District is included in the classification of the highest plateau in Pidie Jaya Regency, which is 16 m above sea level. The natural conditions are quite high with rainfall which has a high intensity, so the Bandar Dua District, Kab. In Pidie Jaya, the majority of the people are farmers.

As a sub-district with a majority Muslim population, the procedures for carrying out marriages in Bandar Dua are of course fully Islamic law, more

precisely using the Shafi'i school of thought. Because in the Shafi'i school the presence of witnesses and justice are considered obligatory, the people who live in Bandar Dua naturally consider this to be something important.

#### A. Implementation of Pillars of Marriage

To find out more about how the implementation of the pillars of marriage in Bandar Dua District, Pidie Jaya Regency, especially regarding '*adālah* witnesses', the author has interviewed several sources who play a direct role in the practice of marriage in Bandar Dua District, starting from counselors, marriage witnesses, married couples, community leaders, religious leaders, and also marriage guardians who have already married off their daughters. The author, in obtaining these data, went directly to the field, both to conduct interviews and observations, so that the results can be said to be valid and in accordance with the existing facts and reality.

##### 1. Marriage Contract Process in Bandar Dua District

The essence of a marriage contract usually does not differ much from one region to another. Perhaps the only difference is ceremonial and trinkets that do not lead to terms and pillars of marriage. Likewise, the marriage process that occurred in Bandar Dua District. To find out how the process of marriage in Bandar Dua can be seen from the explanation of Tgk. Asnawi Abdurrahman, SHI, one of the extension officers in Bandar Dua District:

“The marriage process in Bandar Dua District is no different from marriages in other places. First of all, the two families of the bride and groom, after the application and agreement to tie the knot, determine the date, time and place of the marriage ceremony. Then they register with the local religious affairs office to provide guidance to the prospective bride and groom about things that need to be known before getting married. Some families, because they have their own agenda, do not carry out their marriage contract at the religious affairs office, but at their home or at the sub-district mosque. This is commonly done by families who have adequate finances. Meanwhile, families who do not have a specific agenda and do not have sufficient funds usually carry out the marriage contract at the local religious affairs office. There is nothing strange in the process of the marriage contract, the head of the religious affairs office usually represents the bride's guardian to marry the bride and groom. After the witness stated it was valid, then the marriage was legal and they were allowed to go home. Unlike the case with weddings in mosques, there are many ceremonies that must be carried out, such as reciting verses from the Qur'an, sermons and advice from trusted local religious leaders. This is an official marriage, namely through the religious affairs office, while the practice of *sirri* marriage is another practice (Tgk. Asnawi Abdurrahman, 2022).

There are also many unregistered marriages in Bandar Dua District. However, more marriages are carried out officially through the religious affairs

office. *Sirri* marriages are usually carried out by those who already have one wife, or have legal problems with the marriage law, for example not old enough - at least 19 years old for the bride and groom, so they are married *sirri* - not through the RELIGIOUS AFFAIRS OFFICE (Tgk. Asnawi Abdurrahman , 2022).

The *sirri* marriage intended by Mr. Asnawi Abdurrahman, SHI above, according to *syara'* it is valid, as long as all the conditions and pillars are fulfilled, because marriage registration at the religious affairs office is only to obtain legality from the Republic of Indonesia.

#### 1. Selection of Marriage Witnesses in Bandar Dua District

To obtain data on how the marriage witnesses were selected, the authors interviewed two counselors, one partner and one marriage guardian. The author considers that these 3 people can represent views from two sides, namely the family and also those who handle marriages in Bandar Dua.

One of the extension workers who has served for 10 years at the religious affairs office in Bandar Dua District, Tgk. Mukhlisuddin Marzuki, MA stated that there were no definite provisions in the selection of marriage witnesses in the Bandar Dua District, at least as long as he served in the sub-district. According to him, the witness was brought by the bride and groom, it could be from both the bride and groom or from the bride only, because the implementation of the marriage contract was carried out in the area of the bride and groom. (Tgk. Mukhlisuddin Marzuki, 2022).

Mr. Mukhlisuddin Marzuki, MA added that what is meant by justice here is not to commit major sins and not to perpetuate oneself with minor sins, and at least have repented for a year if you have ever committed them. Justice is also assessed outwardly, not specifically or spiritually. That is, how the person is when he is alone and in silence is not the object of judgment (Tgk. Mukhlisuddin Marzuki, 2022).

Description Mr. Mukhlisuddin Marzuki, MA above indicates that the concept of justice held by extension workers at religious affairs office Bandar Dua is in accordance with what is determined by *syara'*. Because it is impossible for someone to monitor others just to prove their justice. This has violated the principle of the Shari'a itself. Shari'a does not order a Muslim to find fault with others. Even someone who commits a sin is recommended to cover it from human sight.

thing was also expressed by Mr. Ishak S. Ag, namely the Leader of the Young Experts in the District. Bandar Dua as follows:

"We, the religious affairs office, received witnesses who were brought and presented by the bride's family to this place. Because in general the witnesses brought by them are witnesses who are considered worthy to be witnesses to marriage. The religious affairs office never or rarely intervened in the selection of these witnesses. After all, that is not the job of the



extension worker or the religious affairs office itself. The religious affairs office is only tasked with facilitating marriages according to the rules in order to obtain legality in the country. And while serving as extension workers, we saw that none of the witnesses presented had any problems. For example, a person whose wickedness is known suddenly comes as a marriage witness, that's never been the case. Maybe even a person like that, if asked to be a marriage witness, will refuse (Tgk. Ishak, 2022)."

From the description of Mr. Ishak S.Ag, it can be seen that the selection of wedding witnesses is entirely the right of the marriage guardian or the bride and groom. However, according to the author, the religious affairs office also needs to participate in the selection of witnesses to this marriage. religious affairs office can make a list of people who are eligible to be marriage witnesses in Bandar Dua District, from each village, so that everyone who wants to get married has a preference for people who deserve to be invited to witness their marriage. To avoid gaps, this *list* can be hidden by the religious affairs office, when the guidance of the prospective bride, the religious affairs office or the counselor tells the bride and groom to contact Pulan and Pulin as marriage witnesses, there is no need to show a list of people who are eligible to be witnesses to the marriage. . Because if this list is uncovered, it will also create gaps in society, it will raise questions about why Pulan and Pulin are not on the list, and other issues. Or it could also be that this *list* was not written down, but the names were already in the extensionist's head which could be notified at any time to the catin (to-be bride and groom).

Mr. Muhammad Thaib, a marriage guardian who is 60 years old and lives in Bandar Dua District, said that when he became a marriage guardian, he was very concerned and serious about selecting marriage witnesses who were fair and met the requirements. Long before the day of the wedding contract arrived, he had already contacted certain people to be witnesses of the marriage. Even though only two witnesses were required, to make it more afdal, he contacted up to five people. Those who were presented were the leaders of Islamic boarding schools and study centers. According to him, someone who has become the leader of a recitation center can certainly protect himself from wickedness, especially the leadership of a pesantren, clearly has a higher position and should be a witness to marriage (Tgk. Muhammad Thaib, 2022).

From the expression of Mr. Muhammad Thaib, S.Pd. it can be concluded that he is from a family that has relations and has sufficient finances to present a qualified marriage witness. The author also strongly agrees with what he did who chose the path of *ihdiyath* in carrying out religious orders, namely by presenting more than two witnesses. Even in this case, Mr. Muhammad Thaib has practiced the sunnah, as mentioned by Ibn Hajar al-Haitami in *Tuhfat Al-Muhtaj* that circumcision presents a group of pious people in a marriage contract,

that is, more than two people. However, what was done by Mr. Muhammad Thaib is different from Mr. Muhammad Amin, a marriage guardian in Bandar Dua District. He mentions:

"I am not from a rich family, or have a position. When I married my child, I informed the village officials, starting from the village head, the meunasah priest and also relatives who had little religious knowledge, then went to the religious affairs office. We got married at the religious affairs office because we didn't have enough money to get married outside the religious affairs office, marriage outside the religious affairs office would cost Rp. 600,000,-" (Tgk. Muhammad Amin, 2022).

From the description of Mr. It can be seen from Muhammad Amin above that he did not select very selective marriage witnesses. This is actually very dangerous to the validity of the marriage contract itself. However, this is not the most fatal thing, there are also things that are worse than that when someone is married *sirri*, or polygamy. Only because he was afraid that his first wife and family would find out, he married with makeshift attributes and conditions. A villager from Gampong Kumba, Hanafi, experienced this kind of marriage. According to Mr. Muhajir who was present as a witness at that time, it was difficult to confirm the validity of the marriage. He who was invited was not sure of the justice of himself as a witness. However, because he had been invited, he was also uncomfortable about refusing because he was afraid of making the person concerned angry and disappointed (Tgk. Muhajir, 2022).

Explanation of Mr. Muhajir above is very worrying, because the author is sure that this kind of case definitely does not only happen once or twice. The author does not mean to blame polygamous people, moreover to blame *sirri* marriages, but the important point is *takhfif* (lightening) the law which is highly criticized by *syara'*. The author also does not intend to blame the religious affairs office or extension workers in the case of selecting marriage witnesses, but rather a form of concern for this phenomenon. Even though marriage is a sacred bond that aims to last a lifetime, and it also contains a contract to allow intercourse. If this is not really paid attention to, won't they fall into prolonged adultery?

## 2. Obstacles Faced in Selecting Fair Witnesses

In one of the interviews, Mr. Mukhlisuddin Marzuki, MA, an extension worker at the religious affairs office in Bandar Dua District, said that the implementation or application of the pillars of marriage in Bandar Dua District was in accordance with Islamic law and there were no obstacles at all, everything went smoothly and as expected. Because according to him, the most basic of the witness requirements is fairness. What is meant by fair is not committing a major sin, or having committed it but having repented, and also not perpetuating oneself with minor sins. Of course, what the religious affairs office saw was external. Because according to him it is impossible to prove someone's justice

until you have to peek at their situation every day (Tgk. Mukhlisuddin Marzuki, 2022).

What was said by Mr. Mukhlisuddin Marzuki, MA above fits perfectly with the principles of Islamic law. fair witnesses are those who have never committed a major sin and have not perpetuated themselves by continuing to commit minor sins. To prove whether someone is fair or not is only seen from the outside. There is no obligation for someone to prove the justice of others in detail and with certainty, or in terms of the mind. Because only Allah SWT knows what someone does when alone, or in silence.

more Mr. Mukhlisuddin Marzuki, MA added that what was written in the marriage book as witnesses were usually people who had positions in a village, such as village heads and religious leaders who had positions, but that was only in administration, while actual witnesses were certain people who has been chosen by the bride and groom. In fact, usually there is an agreement between the two parties that the marriage witness is from the bride's side. But there are also men who bring their own marriage witnesses. Witnesses chosen by the bride and groom consist of religious figures such as leaders of recitation halls, leaders of Islamic boarding schools, or the like who have been prominent by the local community for years. Of course, the community has seen in their interactions with this person that this person is eligible to serve as a marriage witness, meaning that they are fair and meet the requirements (Tgk. Mukhlisuddin Marzuki, 2022).

The author sees those witnesses written in the marriage book do not play an important role in whether a marriage is valid or not, even though those written are people who do not meet the requirements to be witnesses, such as village heads, community leaders, or youth leaders, because that is only for administrative purposes only. Because if you look at Islamic law, what matters is that the witness is present at the contract assembly, while who is written in the marriage book is not a concern more than Islamic law, at least in the 4 schools of thought there is no discussion about this.

Mr. confirmed the witnesses written in the marriage book. Zulkifli, one of the religious leaders in Bandar Dua District. As a religious figure, he often signs the marriage book of his village community. Because apart from the village head, religious figures (*teungku imum*) are the people most often invited to every marriage contract. He signed the testimony not because he was considered fair, it was only for administrative evidence ( Mr. Zulkifli, 2022 ).

Unlike what was mentioned by Mr. Mukhlisuddin Marzuki, MA and Tgk. Ishak S.Ag above, who stated that there were no obstacles encountered in the selection of marriage witnesses, and also that the religious affairs office did not interfere in the matter of selecting wedding witnesses, what happened to Zulfan

Fahmi, a bride who married in Bandar Dua District was different. He said that when he got married a few years ago, the religious affairs office once annulled the marriage because the witnesses presented did not meet the requirements. However, this was not stated openly to the bride and groom, let alone the witness concerned so as not to create a negative impression and offend other people.

Mr. Zulfan Fahmi said:

“This incident happened several years ago. It's been over ten years. At that time the witness who was present was my invitation. Because I didn't really understand the requirements for testimony, the person I presented didn't meet the criteria for a marriage witness. Therefore, the religious affairs office postponed the marriage. But apart from us being a few people's family, no one knows about this. This was indeed intentional by the religious affairs office to protect the feelings of the witnesses who were invited. The religious affairs office chose other administrative reasons to postpone the marriage. Of course, this is very detrimental to me because many things have been prepared, but I can accept it for the benefit and goodness. I also don't really understand on what basis the witness did not meet the criteria of a fair witness. Maybe the religious affairs office knows the witness in question” (Mr. Zulfan Fahmi, 2022).

What Mr. Zulfan Fahmi experienced above is something good from the religious affairs office with a little involvement in selecting marriage witnesses. This should be the case in every marriage. It is possible that the religious affairs office has its own considerations as to why it does not interfere in the matter of witnessing a marriage. Moreover, the status of the religious affairs office is only a third party whose job is to facilitate marriages so that they are legalized by the state, it is truly unethical if they interfere too much.

However, if from the start the marriage contract was handed over to the religious affairs office, it is possible that the religious affairs office will try to select marriage witnesses. This is like what was done by Mrs. Maryati, a resident in Bandar Dua District. He mentions:

“When I got married, I completely surrendered to the religious affairs office to arrange the marriage. Even my own guardian represented the marriage contract to the head of the local religious affairs office. So, when they were about to perform the marriage contract, the religious affairs office asked who was the witness. After being notified, it turned out that the religious affairs office suggested looking for someone else, the existing ones didn't need to be cancelled, they were just told to add a few other people who were appropriate. This incident did not delay the marriage, because it was announced before the contract” (Mrs. Maryati, 2022).

If what Mrs. Maryati did was also done by every couple, it is unlikely that there would be doubtful testimony. Especially for the bride and groom's families

who lack funds and knowledge about marriage and its requirements. This could be a solution.

### 3. Special Guidance for Marriage Witnesses

Mr. Marzuki, one of the counselors in Bandar Dua District, Pidie Jaya Regency, said that there was no special guidance to become a marriage witness. Special guidance carried out by extension workers is only for the bride and groom, or commonly called *catin*. As for being a witness, there is no guidance or training whatsoever ( Tgk. Marzuki, 2022 ).

If we look at the criteria for someone who may become a marriage witness, starting from male, mature, independent, reasonable, and just, only on fair points are it possible to be guided. Because if you look at the fair conditions behind it, it is possible to continue to educate someone to stay away from big sins and not to perpetuate themselves with small sins. This is possible because what must be monitored is only the outward appearance, while how it is behind is not a problem. At least up to a year. However, according to the author, there are a few financial constraints to do this. Need funds for those who guide and those who are guided. If this is done *tathawwu'* (without reward) then it is difficult to realize. But this is not impossible. If it is often heard of clerical cadres, it is possible to cadre marriage witnesses. Although the impression is funny, but it concerns the next generation. What happens to the generation of marriage results is difficult to ascertain its legitimacy.

#### B. The Urgency of Justice for Marriage Witnesses Against Families

Something that is easily understood is that everything that is ordered (mandatory) by *Syara'* must have something important in it. That can be understood dharurily and must be believed in that way. If someone thinks that Allah SWT obliges something just to play games, without any interest, it can make him *kufr* right away. Therefore, the obligation to choose fair witnesses for marriage is definitely urgent and has its own wisdom in it.

Mr. Asnawi Abdurrahman, SHI has his own opinion on this matter, he states:

“As a follower of the Shafi'i sect, I think there is no doubt about the importance of presenting fair witnesses in the marriage contract. As a servant, when we are ordered to do something, we do it convincingly, without needing to think about anything else. If indeed we find the urgency of something, then that is better, more convincing for us to practice it” (Tgk. Asnawi Abdurrahman, 2022).

What was said by Mr. Asnawi Abdurrahman, the above SHI does have a point. Because the position of the witness in the marriage contract is the pillars of marriage, the validity of the marriage is also determined by the presence of

witnesses, in addition, there must be a guardian and prospective husband and wife as well as the *lafa l akad*. The presence of witnesses must be ensured for justice before and when the marriage ceremony takes place. This can be understood explicitly from the hadith narrated by Imam Baihaqi:

(Al-Suyuthi, tt:466) لا نكاح الا بولي وشاهدي عدل (أخرجه البيهقي)

Meaning: Marriage is not valid except with a guardian and two fair witnesses.

(HR Baihaqi)

Not only that, in state law and the Compilation of Islamic Law (KHI), the presence of a witness in the marriage ceremony is absolutely necessary, if the witness is not present at the time the marriage takes place, then the legal consequence is that the marriage is invalid. As written in article 24 of the Compilation of Islamic Law (KHI) and Article 26 paragraph (1) of Law no. 1 of 1974 concerning Marriage. Therefore, presenting a fair marriage witness is clearly an urgency.

However, the fairness of marriage witnesses is something that needs to be considered again for its urgency when it is attributed to schools that do not make witnesses as pillars of marriage, one of whom is Imam Malik. According to Imam Malik, the presence of witnesses at the time of the marriage ceremony is not mandatory. But it is sufficient to notify (announcement) to the public, that the marriage contract has taken place such as holding a wedding reception or in some other way. Malikiyah still considers it necessary to give such notification before the husband performs *dukhul* (intercourse). As mentioned by Sayyid Sabiq in Fiqh Sunnah. Something that is not mandatory can be said to be something that is not important or less important.

Returning to Syafi'iyah Fiqh, Mr. Marzuki, said:

“Actually, in my opinion, regardless of whether we adhere to any sect, whether it is obligatory or not, it is clear that presenting fair witnesses is something important. Because with a fair witness, if unwanted things happen in the future, it is possible that the witness concerned will be able to make peace and differences” (Tgk. Marzuki, 2022).

The explanation above is in accordance with the opinion of the *Syafi'iyah* scholars who stated that marriage is not only related to the pillars of marriage, but the whole of all its elements, without exception the problem of witnesses. Witnesses are required to be present at the marriage contract because of their important function in preventing accusations of adultery against husband and wife relations, achieving open meaning and announcements, and also as a determinant of whether a marriage contract is valid or not. However, according to the author, with the current marriage book, the presence of fair witnesses in the marriage contract seems to reduce the urgency if these witnesses' function to

prevent accusations of adultery in the future. Even the value of the marriage book officially issued by the religious affairs office is more trusted and accurate for the public's point of view. Except for sirri marriages, it is clear that the presence of two fair witnesses is very important to refute negative accusations from society.

Imam Nawawi in the book *Minhaju al-Thalibin* unequivocally states that marriage is not valid unless two witnesses are present. In the syarah of Sheikh Jala l al-Din al-Mahall ī it is written that this law is based on the hadith narrated by Ibn Hibban as written above. Sheikh Jalal added, if there is a marriage without the presence of two witnesses then the marriage is not valid (Qalyubi and Amirah, 2003:220).

In addition to the requirements for two witnesses, such as two men, intelligent, mature, Muslim, hearing and understanding the intent of the marriage contract, Imam Syafi'i requires that witnesses be fair in the marriage contract. Because according to him, honesty is needed for a witness to justify the existence of a marriage, so it is certain that fairness is absolutely necessary for someone to carry out their testimony in a marriage contract. That way the conditions are fair for the witness, so the witness becomes worthy in giving testimony.

Imam Taqiyyudin Abu Bakar in *Kifayatul Akhyar* said: A guardian and two witnesses require six conditions, namely: (1) Islam, (2) puberty, (3) reasonable, (4) independent - not slaves, (5) male, (6) fair. It's just that a dhimmi infidel marriage does not require an Islamic guardian, and a slave-girl marriage does not require the justice of the master who owns it (Imam Taqiyyudin Abu Bakar Al-Husaini, 2001: 424).

Fair becomes important in marriage, because it is used as a benchmark for whether or not the testimony is accepted. Ibn Rushd said that "Imam Syafi'i was of the opinion that the testimony contained two purposes, namely notification and acceptance of the notification (Ibnu Rushd, 1415:35).

Witness justice apart from obligation certainly has an important influence on a married family. This is as stated by Mr. Asnawi Abdurrahman, SHI following:

"I think the presence of two witnesses to a fair marriage will more or less affect the integrity and harmony of the household. This is not without reason, because usually the witnesses invited are those who have become role models and figures in society. When there are, for example, disputes and disputes within a family, at least the husband and wife concerned will consider divorcing because they may be embarrassed by the witnesses of their marriage. I myself as a counselor several times have seen this incident. Every time they want to fight or there has been a fight, even the witness is the one who mediates for them" ( Tgk. Asnawi Abdurrahman, 2022 ).

Everything that is done usually has a positive and negative impact. Likewise in terms of justice witnesses in the marriage contract. To be clearer, the

author distinguishes the impact of marriage witness justice on a family in four parts, namely juridical, theological, psychological, and spiritual.

a. Juridical

A fair witness in a marriage is a pillar that must be implemented. In both the *Syafi'iyah Fiqh* and the laws in the State of Indonesia, the presence of two fair witnesses is obligatory. If not present, then the marriage is invalid. Therefore, the negative impact arising from the injustice of legal marriage witnesses is that the marriage contract is invalid (Tgk. Mukhlisuddin Marzuki, 2022).

b. theological

Talking about theology means talking about religion. In Islam, especially *Syafi'iyah fiqh*, a fair witness is a pillar that must be fulfilled in a marriage contract. Almost the same as juridical, the absence of a fair witness has implications for canceling the marriage contract. However, theology is more about belief and faith, namely a marriage that is sacred but carried out without complete conditions and harmony, seems to ignore instructions from God, lack of obedience as a servant (Tgk. Mukhlisuddin Marzuki, 2022).

c. Psychological

From a psychological point of view, the bride and groom, both women and men, will be calm when there are two just and pious witnesses present in their marriage, even a little proud. For example, a great scholar who witnessed their marriage, psychologically, this will have a positive impact. Conversely, if the witness who is present is an unknown person whose condition is known, the bride and groom will feel pressured (Tgk. Mukhlisuddin Marzuki, 2022).

d. Spiritual

Spiritually, the presence of a just marriage witness is a blessing. A person who is just can be said to be a pious person and can protect himself from sins, and can also protect his dignity. The presence of such a person in a marriage will bless the marriage itself. And vice versa, the presence of two witnesses who are unjust, namely those who are wicked, must bring un blessing and goodness (Tgk. Mukhlisuddin Marzuki, 2022).

## CONCLUSION

The implementation of the pillars of marriage in Bandar Dua District in general is in accordance with *Syafi'iyah fiqh*. But there are a number of things that still need attention, namely related to the justice of marriage witnesses. Of the four elements of the assessment *'adālah witnesses* to marriage, there is one that is often missed in the assessment, namely maintaining *marwah*. Even though someone who doesn't protect his dignity is also considered wicked, and loses his justice. In general, the sources (counselors, young priests, community leaders, religious leaders, village heads, marriage guardians, married couples, and also



wedding witnesses) denied that there was a strict selection of marriage witnesses.

The urgency of justice for marriage witnesses can be seen from several aspects. From a juridical perspective, the justice of marriage witnesses is the pillars and conditions for a valid marriage. From a theological point of view, the presence of a just witness reflects one's obedience to religious orders. From a psychological point of view, the presence of fair witnesses is able to maintain the integrity and harmony of the household because fair witnesses have an influence on the views of the bride and groom. From a spiritual perspective, the presence of two just witnesses can bring blessings to both husband and wife, because generally two people who are considered just are two pious people. The presence of pious people in an assembly certainly brings blessings.

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