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The position of religious marriage guardians (*wali muhakkam*) in Islamic law and Indonesian positive law: Analysis of decision number 935/pdt.p/2024/pa.gm

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ABSTRACT

The existence of a marriage guardian (*wali nikah*) constitutes an essential pillar of marriage that must be fulfilled for a prospective bride under Islamic law and Indonesian positive law. However, in practice, there are marriages conducted without a lineage guardian (*wali nasab*) or a judicial guardian (*wali hakim*), instead utilizing a guardian from among religious figures or Islamic scholars (*ustadz*), commonly referred to as *wali muhakkam*. This practice is not regulated by the Compilation of Islamic Law (*Kompilasi Hukum Islam*), resulting in legal uncertainty. This article analyzes the legal standing of religious figure guardians and their *shari'ah* and juridical foundations through a case study of the Decision of the Giri Menang Religious Court Number 935/Pdt. P/2024/PA.GM, which validated a marriage officiated by an *ustadz* acting as *wali muhakkam*. This study employs a normative legal research method using statutory, conceptual, and case approaches. The findings indicate that, from a *fiqh* perspective, the appointment of a *wali muhakkam* may be justified under emergency conditions, whereas under positive law, its existence only attains legal legitimacy through the mechanism of marriage legalization (*nikah isbat*). The analyzed decision demonstrates a degree of legal adaptability in accommodating social realities based on the principle of *maslahah*. Therefore, reconstructing the regulation concerning marriage guardians in national law is necessary to ensure that the practice of *wali muhakkam* no longer remains within a legal gray area.

Keywords: marriage guardian; judge guardian; guardian muhakkam; marriage legalization.

1. INTRODUCTION

Marriage under both Islamic law and the Indonesian national legal system constitutes a legal institution that requires the fulfillment of specific pillars and conditions to be valid and possess legal force. One of the most decisive pillars is the existence of a marriage guardian (*wali nikah*) for the prospective bride. Where a lineage guardian (*wali nasab*) is absent, does not meet the legal requirements, or refuses to perform the marriage, the legal framework provides a mechanism for substitution through the appointment of a judicial guardian (*wali hakim*). However, various social practices in Indonesia indicate that this normative mechanism is not consistently followed (Nasrullah et al., 2024).

In several regions, particularly those with strong religious and communal social structures, a phenomenon has emerged involving the use of marriage guardians who are neither lineage guardians nor judicial guardians, but rather *ustadz*, *kiai*, or local religious figures (Zamani, 2020). These religious figures are perceived as possessing the moral authority and spiritual competence necessary to solemnize a marriage, leading to societal acceptance of their role despite the absence of formal juridical legitimacy. This phenomenon reflects the gap between prevailing legal norms and the lived religious practices of society (Hadi, 2021).

The practice of appointing non-lineage and non-judicial guardians manifests in various forms, including: (1) circumstances in which the lineage guardian has passed away or his whereabouts are unknown; (2) situations in which the lineage guardian adheres to a non-Muslim faith; (3) underage marriages or elopements undertaken to avoid administrative procedures; and (4) unregistered marriages (*nikah siri*) conducted outside the state registration system (Zuhrah et al., 2020).

Each of these practices is generally driven by situational factors and limited legal awareness within the community, resulting in religious figures being relied upon as expedient solutions for marriage contracts. However, the use of guardians who lack validity under state law and Islamic legal principles may give rise to serious legal implications, including issues concerning the validity of the marriage, the legal status of children, population administration records, and potential civil disputes. Consequently, legalizing marriages through the Religious Court (*isbat nikah*) is crucial to provide legal certainty for marriages conducted with a *wali muhakkam*, particularly in cases where the lineage guardian is unavailable or legally impeded (Rustum, 2020).

One case that illustrates this issue is Case Number 935/Pdt. P/2024/PA.GM, in which an *ustadz* acts as a *wali muhakkam* to solemnize a marriage where the lineage guardian is non-Muslim. The Giri Menang Religious Court subsequently granted the application for marriage legalization after considering the legitimacy of the *wali muhakkam* based on the views of scholars from the Shafi'i school of Islamic jurisprudence. This decision demonstrates the existence of interpretative space within Islamic law that has not been fully accommodated within the framework of Indonesian positive legislation.

This case highlights the legal vacuum between social practices, classical *fiqh* doctrines, and national regulations governing marriage guardianship. While *fiqh* recognizes the institution of *wali muhakkam*, Indonesian national law—both within the Compilation of Islamic Law (*Kompilasi Hukum Islam*) and the Marriage Law—does not regulate this institution (Lahaji & Ibrahim, 2019). This phenomenon raises critical questions regarding the legal validity of marriages conducted with a *wali muhakkam*, the implications for the civil rights of women and children, and the role of the judiciary in granting legal recognition to such marriages (Laili & Santoso, 2020; Bakari & Darwis, 2019). Accordingly, this study aims to analyze the legal status of religious figure marriage guardians under Islamic law and Indonesian positive law, examine their *shari'ah* and juridical foundations, and assess their implications for judicial decisions concerning marriage legalization (*isbat nikah*) (Laili & Santoso, 2020).

Therefore, this research is significant in providing a comprehensive analysis of the legal position of religious figure marriage guardians from the perspectives of both Islamic law and Indonesian positive law, as well as examining how Religious Courts respond to this practice through decisions on marriage legalization. This analysis is expected to contribute to regulatory strengthening and enhance public legal literacy regarding lawful and legally enforceable marriage guardianship procedures.

2. METHOD

This study employs normative legal research and several approaches. The statutory approach is applied to examine the provisions on marriage guardianship as regulated in the Marriage Law and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). A conceptual approach is used to analyze *fiqh* concepts concerning marriage guardians (*wali*), *wali muhakkam*, and the principle of necessity (*darurah*). The case approach is conducted through an analysis of Decision No. 935/Pdt. P/2024/PA.GM, while the sociological approach is used to understand the social practice of appointing religious figures as marriage guardians within the community. Primary legal materials include the Marriage Law, Compilation of Islamic Law, and relevant court decisions, while secondary legal materials include classical *fiqh* texts, academic journals, and related scholarly studies. All legal materials are analyzed using a descriptive–qualitative method to produce a comprehensive understanding of the legal position of religious-figure marriage guardians from the perspectives of Islamic law and Indonesian positive law

3. RESULT AND DISCUSSION

3.1. Marriage Guardianship (*Wali Nikah*) in *Fiqh* and the Compilation of Islamic Law

Both *fiqh* and the Compilation of Islamic Law (*Kompilasi Hukum Islam*—KHI) recognize the marriage guardian (*wali nikah*) as a fundamental pillar of the marriage contract that determines its validity. Article 21 of the KHI explicitly establishes a hierarchical order of guardianship that reflects the structure adopted in the Shāfi‘ī school of Islamic jurisprudence, beginning with the father as the closest lineage guardian (*wali nasab*), followed by the paternal grandfather, full brothers, paternal half-brothers, and other male relatives according to the paternal lineage sequence (Atoilah & Kamal, 2019). This provision affirms that guardianship rights cannot be freely transferred but must adhere to the genealogical order prescribed by *fiqh*. Where no eligible lineage guardian exists, or where the lineage guardian is unable to perform his role—for example, due to unjustified refusal to conduct the marriage (*wali adbal*)—guardianship is transferred to a judicial guardian (*wali hakim*) (Nurdiansari & Kusuma, 2022).

Beyond the hierarchical arrangement, an equally important aspect of guardianship in Islamic law is the personal qualifications required of a marriage guardian. Both *fiqh* and the KHI emphasize that guardianship authority is not determined solely by blood relations but also by the guardian’s moral integrity and legal capacity (Nisa et al., 2020). Accordingly, a guardian must satisfy several fundamental requirements: he must be Muslim, male, have attained legal maturity (*baligh*), possess sound العقل (*‘aql*), be known for just conduct (*‘adl*), and not be in a state of *ihram* at the time the marriage contract is concluded (Holden & Nurlaelawati, 2019). These requirements function to ensure that the guardian is capable of exercising guardianship responsibly and in accordance with *shari‘ah* principles. The absence or incapacity of a lineage guardian to meet these criteria opens the possibility for alternative guardianship arrangements, most notably the appointment of a judicial guardian, whose authority is explicitly regulated under Indonesian positive law (Lahaji & Ibrahim, 2019; Rustam, 2020).

Where any of these requirements are not fulfilled, the lineage guardian is legally precluded from exercising guardianship. Such circumstances may arise where the guardian adheres to a different religion from the prospective bride, is underage, suffers from mental incapacity, deliberately obstructs the marriage (*adbal*), or where his whereabouts are unknown (*majhul*). In such cases, the law provides a mechanism for transferring guardianship authority to the judicial guardian as a representative of the state. This transfer is not merely an administrative formality but serves as a legal safeguard to ensure that the marriage contract remains valid, orderly, and protective of the bride’s rights. Thus, regulation of the qualifications of a marriage guardian is essential to maintaining the integrity of guardianship and ensuring that marriages are conducted in accordance with both Islamic law and national law.

These principles are reflected in Case Number 935/Pdt.P/2024/PA.GM, in which the biological father of the bride adhered to Hinduism and therefore failed to meet the requirement of being Muslim to act as a marriage guardian. Pursuant to Article 20 of the KHI, which mandates that a guardian must be Muslim, the father’s guardianship status was legally invalidated. Under such circumstances, the appropriate

legal mechanism would have been an application for the appointment of a judicial guardian through the Religious Court (Hafas, 2022). In practice, however, the couple instead appointed a religious figure to act as a *wali muhakkam*, thereby giving rise to juridical issues concerning the validity of such guardianship under positive law. This case underscores the importance of the guardianship hierarchy in *fiqh* and the KHI, while simultaneously revealing a gap between normative legal provisions and evolving social practices (Wahyudi, 2020).

3.2. The Legal Status of Religious-Figure Marriage Guardians within the Indonesian Legal System

The practice of appointing religious figures as marriage guardians—known in *fiqh* as *wali muhakkam*—is a recurrent phenomenon in Indonesian society, particularly in cases of elopement, unregistered marriages (*nikah siri*), marriages conducted without a lineage guardian, or situations where the lineage guardian does not meet religious requirements (Wahidah, 2017). From a *fiqh* perspective, a *wali muhakkam* is established through direct appointment by the prospective bride when the lineage guardian is absent or unable to perform his function, or in circumstances of pressing necessity (*shiddat al-hajah*) (Hanapi et al., 2021). Religious figures are perceived as possessing sufficient scholarly authority and spiritual capacity to perform guardianship functions. The *fiqh* basis for the validity of a *wali muhakkam* is articulated by classical scholars, including al-Asnawī in *al-Muhimmāt*, who states that “if neither a guardian nor a judge is present, and a woman requests a man to marry her off, the marriage is valid, and the *wali muhakkam* occupies a position equivalent to that of a judge.” Accordingly, from a *shari‘ah* perspective, guardianship exercised by an *ustadz* may be deemed valid insofar as it fulfills conditions of necessity, the absence of a legitimate lineage guardian, and compliance with all pillars and conditions of marriage (Bakari & Darwis, 2019). However, within the context of Indonesian positive law—particularly following the enactment of Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law—the status of a *wali muhakkam* independently appointed by the bride becomes problematic, as it is not recognized within the formal guardianship structure (Daud & Sururui, 2021). Indonesian marriage law explicitly recognizes only two types of guardians: lineage guardians and judicial guardians, as stipulated in Article 20 of the KHI (Bakari & Darwis, 2019).

Consequently, the position of the *wali muhakkam* within the Indonesian legal system occupies a legal gray area due to the absence of formal recognition in statutory regulations. The positive legal framework, through both the Marriage Law and the KHI, assigns guardianship authority in specific circumstances exclusively to the judicial guardian as a representative of the state (Candra et al., 2023). By omitting explicit recognition of the *wali muhakkam*, national law implicitly excludes non-state guardianship, notwithstanding its strong doctrinal foundation within the Shāfi‘ī *fiqh* tradition. This lack of normative basis deprives religious figures of juridical authority to validate marriages, rendering marriage contracts conducted through a *wali muhakkam* devoid of administrative legal effect unless subsequently legalized through *isbat nikah* proceedings before the Religious Court (Zamani, 2020). As a result, a sharp distinction arises between *shari‘ah* validity and administrative legality, which do not automatically coincide.

From a theoretical standpoint, this condition reflects a tension between a state-centered paradigm of legal authority and a community-centered paradigm of religious authority. The state, through positive law, monopolizes guardianship authority in the interest of legal certainty and administrative order, while society continues to rely on traditional authority vested in religious figures. In social practice, *ustadz* or *kiai* are often perceived as more accessible and responsive than state officials, prompting couples facing non-Muslim guardians, *wali adhal*, or age restrictions to opt for a *wali muhakkam* as an expedient solution. This choice reflects not merely pragmatism but also a deficit of trust in formal state institutions.

This phenomenon demonstrates that formal legal norms have not fully accommodated the needs of communities strongly influenced by religious authority. Theoretically, it may be understood as a form of unmanaged normative pluralism, in which state law is not fully aligned with the living Islamic law (*living law*) practiced within society. The lack of synchronization between *fiqh* norms and positive law creates a problematic space that ultimately necessitates judicial resolution rather than administrative settlement. Accordingly, the issue of *wali muhakkam* reveals an urgent need for legal harmonization between *shari‘ah*,

the structural legal system, and social realities, so that guardianship practices no longer operate within a legal gray area that generates uncertainty for the public (Karimullah, 2022).

As a consequence, reliance on a *wali muhakkam* entails significant legal risks. Such marriages cannot be registered with the Office of Religious Affairs (KUA) without a court decision granting *isbat nikah*, leaving the marital status administratively invalid. Children born of such marriages risk being legally classified as born out of wedlock, with corresponding limitations on civil rights, including inheritance rights. Moreover, couples may be unable to obtain essential civil documents, such as family registration cards, birth certificates, and other administrative entitlements. In short, while the institution of *wali muhakkam* may be valid from a *shari'ah* perspective, it poses substantial administrative risks and legal uncertainty for married couples under Indonesian positive law.

3.3. Analysis of Decision Number 935/Pdt.P/2024/PA.GM

3.3.1. Facts Established at Trial

Based on the examination conducted during the court proceedings, the panel of judges identified several legal facts revealed through the statements of the applicants, documentary evidence, and witness testimonies. First, it was established that Applicant I (Muhamad Hapipi) and Applicant II (Ni Ketut Hari Handayani) solemnized their marriage on 5 September 2022 in Perigi Neighborhood, Gerung Selatan Village, Gerung District, West Lombok Regency. The marriage contract (*akad nikah*) was officiated by an *ustadz* named Ahsan Udin, who acted as the marriage guardian on the ground that the biological father of Applicant II adhered to Hinduism and therefore did not meet the requirements to serve as a marriage guardian under Islamic law. The incapacity of the lineage guardian was affirmed by both applicants and corroborated by witnesses present at the time of the marriage.

During the hearing, the witnesses, Agus Suherman and Nurhadi, provided consistent testimony that the marriage contract was conducted in accordance with *shari'ah*, witnessed by two legally qualified witnesses—namely themselves—and accompanied by a dowry (*mahar*) consisting of IDR 500,000 in cash and a set of prayer equipment. The witnesses further testified that the marriage ceremony was attended by family members and neighbors and was followed by a *walimah* as an expression of gratitude. They also confirmed that at the time of marriage Applicant I was a divorced widower, while Applicant II was unmarried, and that there were no *shari'ah*-based impediments or objections from any party to the marriage. No indications were found of consanguinity, affinity, or milk kinship that could invalidate the marriage.

Another fact revealed during the proceedings was that since the conclusion of the marriage contract, the applicants have lived together harmoniously as husband and wife and have been blessed with a child named Aditya Saputra, born on 29 March 2023. However, their marriage was not registered with the Office of Religious Affairs (*Kantor Urusan Agama*—KUA) of Gerung District, resulting in the absence of an official Marriage Certificate. This lack of registration caused administrative difficulties related to personal identification and the legal registration of their child, prompting the applicants to submit an application for marriage legalization (*isbat nikah*).

The panel of judges also examined the documentary evidence submitted, including the identity cards of both applicants and the divorce certificate of Applicant I, all of which were verified against the originals and declared valid. Based on the entirety of the evidence and witness testimony, the judges concluded that all pillars and conditions of marriage under Islamic law had been fulfilled and that there were no legal grounds to deny the application for *isbat nikah*. These established facts formed the basis for the court's determination of the validity of the applicants' marriage and for recognizing the *ustadz* as a *wali muhakkam* who was valid from a *shari'ah* perspective.

3.3.2. Analysis of the Judges' Legal Reasoning

The legal reasoning adopted by the panel of judges in Decision Number 935/Pdt.P/2024/PA.GM demonstrates an interaction between *fiqh* norms, Indonesian positive law, and evolving social realities. In determining the validity of the applicants' marriage, the judges employed a multi-layered analysis,

beginning with the examination of evidence, verification of facts, assessment of *shari'ah* requirements, and application of statutory provisions. This reasoning can be elaborated as follows: First, Capacity of the Lineage Guardian and the Legal Basis for Substitution. The judges first assessed the legal status of Applicant II's father, who adhered to Hinduism. Pursuant to Article 20 of the Compilation of Islamic Law, a marriage guardian must be Muslim. Accordingly, the judges held that the father had lost his guardianship authority due to non-compliance with *shari'ah* requirements. This fact was substantiated by witness testimony and the applicants' statements before the court. The incapacity of the lineage guardian constituted the legal basis for recognizing the applicant's need to appoint an alternative guardian. At this stage, the judges did not immediately direct the matter toward the authority of the judicial guardian within the structure of positive law, but instead examined the guardianship practice chosen by the applicants through the appointment of a *wali muhakkam*.

Second, Sharī'ah Legitimacy of the *Wali Muhakkam*. To assess the validity of the *wali muhakkam*, the panel of judges referred to the opinions of Shāfi'i jurists, particularly Imam al-Asnawī and al-Khatīb al-Shirbīnī. The decision directly cited the following doctrinal view: "If neither a guardian nor a judge is present, and a woman requests a man to marry her off, then the marriage is valid, because that man is a *muhakkam*, and the *muhakkam* occupies a position similar to that of a judge due to necessity. Jamāl al-Dīn al-Asnawī in *al-Muhimmat* stated that such permissibility is not limited to the absence of a judge, but is also allowed even when a judge exists, whether during travel or at home."

This *fiqh* doctrine was employed to support the argument that a *wali muhakkam* may be positioned as a substitute for a judicial guardian in situations of *shiddat al-hajah* (pressing necessity). The judges further cited the opinion of Zakariyyā al-Anṣārī, who asserted that a *wali muhakkam* need not be a *mujtahid*. Accordingly, *ustadz* Ahsan Udin was deemed to satisfy the *shari'ah*-based qualifications to act as a *wali muhakkam*.

This reasoning indicates that although Indonesian positive law does not formally recognize the institution of *wali muhakkam*, *fiqh* provides an alternative mechanism under specific conditions. Therefore, from a religious law perspective, the judges concluded that the applicants' marriage contract complied with the pillars and conditions prescribed by *shari'ah*.

Third, Fulfillment of the Pillars and Conditions of Marriage. The judges subsequently examined whether all essential elements (*rukun*) of marriage had been fulfilled. Based on the facts established at trial, the court found that: a valid offer and acceptance (*ijab qabul*) took place; the dowry was paid in cash; two just witnesses were present; and there were no *shari'ah*-based impediments or objections raised by any party. Accordingly, the marriage was deemed valid under Islamic law, in accordance with Article 2 paragraph (1) of the Marriage Law and Article 14 of the KHI.

Fourth, Application of Article 7 Paragraph (3) Letter (e) of the KHI. In addressing the reality that the marriage had not been registered with state authorities, the judges referred to Article 7 paragraph (3) letter (e) of the KHI, which grants the Religious Court authority to legalize marriages that cannot be proven by a marriage certificate. This provision constituted a strong juridical basis for issuing a decision granting *isbat nikah*.

Accordingly, although the guardian used was not a judicial guardian, state registration could still be affected through the *isbat nikah* mechanism, as the religious requirements were deemed to have been satisfied.

Fifth, Integration of Religious Norms and State Law. The judges emphasized that the validity of a marriage under religious law forms the basis for its recognition by the state, as stipulated in Article 2 paragraph (1) of the Marriage Law. Consequently, a marriage that is valid under *fiqh* may acquire administrative legal force through a court decision.

At this juncture, the Religious Court functions as a mediator between *fiqh* and national law. The decision reflects the application of the principle of *maslahah* (public benefit), aimed at providing legal certainty for couples who have lived together as husband and wife and have children.

Sixth, Assessment of *Maslahah* and Justice. The panel of judges considered that the applicants had lived harmoniously as husband and wife for more than one year and had been blessed with a child, and that no party objected to or disputed the marriage. These considerations demonstrate that the judges took

into account sociological factors and considerations of utility, rather than relying solely on formal legal norms, in line with principles of protection for the family, children, and women.

Applying the principle of *maslahah*, the judges determined that granting *isbat nikah* was the most just course of action in order to prevent administrative harm, confer legal status upon the child, ensure legal certainty for the couple, and fulfill the objectives of Islamic law (*maqāṣid al-shari‘ah*), particularly the protection of lineage (*hifz al-nasab*).

4. CONCLUSION

Based on the foregoing discussion, it can be concluded that a marriage guardian (*wali nikah*) constitutes an essential element of marriage under both *fiqh* and Indonesian positive law, rendering its existence a mandatory requirement for the validity of a marriage contract. In certain circumstances where the lineage guardian (*wali nasab*) does not meet *shari‘ah* requirements, a religious figure may act as a *wali muhakkam*; however, such guardianship is valid only from a religious perspective and does not carry formal legal force in the absence of judicial validation. Decision Number 935/Pdt.P/2024/PA.GM demonstrates that the practice of appointing an *ustadz* as a marriage guardian may be accepted insofar as it satisfies the conditions prescribed by *fiqh* and can be verified through the mechanism of marriage legalization (*isbat nikah*). Accordingly, this case affirms the existence of flexibility within Islamic law while simultaneously underscoring the necessity of legal certainty through judicial decisions to ensure state recognition of marriage.

Based on the findings of this study, several recommendations may be advanced. First, the government should consider codifying regulations concerning *wali muhakkam* within the Compilation of Islamic Law or relevant ministerial regulations in order to eliminate legal uncertainty and provide clearer guidance for both the public and law enforcement authorities. Second, public education regarding the procedural transfer of guardianship authority to the judicial guardian (*wali hakim*) should be enhanced, so that communities no longer resort to informal shortcuts by appointing religious figures who lack formal legal authority. Third, Religious Courts are encouraged to maintain consistency in adjudicating cases involving *wali muhakkam*, while continuing to prioritize the principle of *maslahah* as a central consideration, so that judicial decisions are not only normatively valid but also provide optimal legal protection for the parties involved.

Ethical Approval

Not Applicable

Informed Consent Statement

Not Applicable.

Authors' Contributions

EAA contributed to research conceptualization, normative legal analysis, case study examination, interpretation of *fiqh* and positive law perspectives, and manuscript drafting. MRS contributed to statutory and conceptual analysis, data interpretation, critical discussion of court decisions, and revision of the manuscript.

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No potential conflict of interest was reported by the author(s).

Data Availability Statement

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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