

Wali al-Nikāḥ Hierarchies in Theory and Practice: Disputes, Authority, and Social Reality in Indonesian Muslim Communities

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Abstract

This article examines the problematic social practices related to the appointment of *Wali al-Nikāḥ* (marriage guardians) in Kotagajah Subdistrict, Central Lampung Regency, Indonesia. The focus lies on conflicts surrounding the rejection of *Wali al-Nasab* (lineal guardians) by the bride's family, disputes among multiple guardians within the hierarchical structure, and unauthorized delegation of *wali*. This study explores the tension between the normative framework of Islamic law regarding *Wali al-Nikāḥ* and the lived realities of marriage practice at the community level. To address this issue, a qualitative fieldwork approach was employed using a socio-legal lens. Data were collected through interviews with *penghulu* (marriage registrars), religious leaders, and families who have experienced guardianship disputes, supported by administrative documents from the Office of Religious Affairs (KUA) and references from classical fiqh texts and Indonesian marriage law. The findings reveal various forms of conflict in marriage proceedings, including the moral disqualification of biological fathers, internal family disputes over rightful guardianship, and administrative manipulations such as "declaring the guardian deceased" to secure the appointment of a *Wali al-Hākim* (judicial guardian). These phenomena indicate a disjunction between fiqh-based legal norms and social dynamics, often leading to compromise. This study highlights the need to critically reassess the *wali* hierarchy's structure in Islamic law and develop more responsive legal mechanisms that better reflect social realities.

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INTRODUCTION

One of the key elements in the *'aqd nikāḥ* (marriage contract) is the presence of a *wali*, especially for the bride. In classical fiqh, the role of the *wali* is emphasized to the extent that scholars of certain *maḏhab*—particularly the *maḏhab* of Imām al-Syāfi'ī—consider it a condition for the validity of the marriage. Accordingly, the hierarchy of *wali* is organized in a strict and systematic manner, starting from the biological father and extending, in his absence or refusal without legitimate *syar'i* grounds, to the *Wali al-Hākim* (judicial guardian) (Wahbah az-Zuhaili, n.d.).

In the Indonesian context, the legal status of the *Wali al-Nikāḥ* is governed by the *Kompilasi Hukum Islam* (KHI) (Compilation of Islamic Law) which draws on both Islamic legal principles and local customs. Articles 20–23 of the KHI lay out in detail the types of *wali*, their qualifications, and their order of precedence (*Kompilasi Hukum Islam*, 1991). However, in practice, these provisions often encounter tension when they clash with local realities. Disputes arise in cases of forced marriage, refusal by a *wali* based on personal rather than religious reasons, or where the biological *wali* is seen as having failed morally or emotionally to fulfill his paternal responsibilities (Pujiani et al., 2022).

The social problems arising from this phenomenon have grown increasingly complex. It is not uncommon for marriages to be forced in the name of the *wali*'s authority and under the pretext of filial piety toward one's parents (Rezha Rizqy Novitasary, 2023), in one tragic case reported by

Pikiran Rakyat in Madura 2021, a young girl was compelled by her parents to marry and eventually took her own life (Julkifli Sinuhaji, 2021). On the other hand, there were also cases where women refused to be married by their *wali* due to a lifetime of neglect or even psychological abuse. Disputes among family members regarding who has legitimate guardianship often escalate into serious conflicts, ultimately requiring intervention from religious institutions or Pengadilan Agama (religious courts) (Nur Mujib, 2023). These cases reflect a widening gap between normative legal frameworks—both religious and statutory—and the social realities experienced by many Muslim families.

For now, there have not been many studies that have raised the typical problems that occur in the Lampung area, especially in Kotagajah District, Central Lampung Regency, Indonesia related to the practice of marriage guardians that have a serious impact on women. Field data from this region reveal several critical cases that reflect the dissonance between fiqh-based frameworks and social realities. One such case involves the rejection of a biological father as *Wali al-Nasab*, despite his legal right, on the grounds that he had not fulfilled any paternal role in the daughter's upbringing. In DY's case, for instance, the bride's family refused to allow the father to officiate the marriage, citing a complete absence of care or contact since childhood (Agus Andi Marzuqi, 2025). This form of resistance is not merely emotional but reflects a challenge to perceived unjust power structures within *wali* hierarchies. It illustrates how the presence of a *wali* does not always equate to the protection of women; in some cases, it introduces psychological pressure and jeopardizes the principles of justice and equality before the law (Syahanti et al., 2019).

Several previous studies have highlighted the role of *wali* in marriage, such as studies on the validity of guardianship according to Fiqh schools, comparisons between guardians and guardians, and analyses of guardianship practices in specific communities. Relevant research includes the research of Ilham Akbar Perdana Putra which discusses the implications of the hadith of the guardian of marriage on the position of the *Wali al-Mujbir* (Ilham Akbar Perdana Putra et al., 2022). Fathonah K. Daud which analyzes the authorization of the marriage guardian that occurs if the marriage is carried out without a guardian (Daud & Sururuie, 2021). Hasyim Harun who examines minors who become guardians of marriage as a form of importance of guardians in marriage (Harun, 2020). Akhmad Shodikin who examines the settlement of *Wali al-Adhal* from the perspective of Islamic law and Indonesian legislation (Akhmad Shodikin, 2016). Fransisca Ismi Hidayah on guardianship in the case of adopted children (Fransisca Ismi Hidayah, 2014), and several more studies that discuss guardians. Even so, most of these studies tend to focus on normative or formal legal aspects.

This kind of inequality highlights the urgency of re-examining the *wali* concept in Islamic law when fiqh-based principles conflict with women lived experiences as legal subjects. These realities challenge long-standing assumptions of the *wali* as protector and open a necessary discourse on who is morally and socially fit to serve in this capacity (Sarfo et al., 2024). This study contributes a new perspective by spotlighting current issues related to the guardianship hierarchy—especially where *Wali al-Nasab* are deemed unjust or unfit to fulfill their role. The research focuses on social realities in Kotagajah, including reluctant *wali*, familial misunderstandings, and the rejection of *wali* by families due to moral failure. As such, this study not only documents problematic *Wali al-Nikāh* practices but also critically evaluates the structural assumptions underlying the *wali* system. It seeks not just to describe the theoretical framework, but to map out the social tensions and legal negotiations that arise in practice.

METHODS

This research is a qualitative study with a juridical-sociological approach that aims to describe and analyze the tension between Islamic legal norms regarding the hierarchy of marriage guardians and social practices that occur in society (Berger & Luckman, 2012). This approach was chosen to examine normative texts in Islamic law as well as to understand the social dynamics that are developing, especially in the cases of guardians and guardianship conflicts that occur in Kotagajah

District, Central Lampung Regency. This location was chosen because researchers found several relevant cases related to guardian rejection, conflicts between family members, and guardianship transfer practices.

Data was obtained over three months through interviews, observations, and documentation. The primary informants consist of the Head of *KUA*, the *penghulu*, religious leaders, and several families who are directly involved in the guardianship case. Some of the interviews were conducted in person and some were by phone, but there was one informant who refused to be interviewed for personal reasons. Secondary data was collected from legal documents such as *KHI*, Law No. 1 of 1974 concerning Marriage, PMA No. 30 of 2005 concerning *Wali Al-Ḥākim*, *KUA* archives, and literature both classical, contemporary and related journal articles.

Data collection was carried out through semi-structured interviews, observations, and document review (Creswell & Poth, 2016). The validity of the data was tested by triangulating sources, comparing information between informants, documents, and observations. All data were analyzed thematically qualitatively with three stages, namely data reduction, presentation of thematic narratives, and drawing conclusions. The analysis was carried out iteratively, connecting fiqh norms with social realities in the field, to find patterns of tension and compromise in the practice of determining marriage guardians.

RESULTS AND DISCUSSION

The Concept of *Wali al-Nikāḥ* Hierarchy in Fiqh

Wali al-Nikāḥ is a crucial element that determines the validity of a marriage contract in Islamic law. Its existence is not merely a social tradition but a legal requirement in most schools of fiqh. This underscores the function of the *wali* as both protector and legal guardian of the woman in marriage (Wei et al., 2025). According to the majority of scholars Syāfi'iyah, Mālikiyah, and Ḥanbaliyah, the presence of a *wali* is essential for every marriage contract, while the *maḏhab* of Ḥanafī permits a mature and sane woman to marry herself without a *wali* (Fauzi, 2007). The Hadith of Prophet Muhammad, which was Narrated by Abū Dawud, “there is no marriage without a *wali*” (Abu Dawud, n.d.).

The hierarchy of *Wali al-Nikāḥ* is arranged based on kinship ties in a specific order, intended to preserve the rights and responsibilities of those closest to the bride. The *Wali al-Nasab* (guardian by lineage) is considered the most familiar with the woman's needs and condition. According to Sayyid Sābiq, the order of *Wali al-Nasab* in the Syāfi'iyah is: father, grandfather, full brother, paternal half-brother, paternal uncle, and so on (Sayyid Sabiq, 1993). Each level in the hierarchy has priority and cannot be bypassed unless the preceding *wali* is ineligible. Under certain conditions, a *Wali al-Ḥākim* (official Judge) may be assigned when no *Wali al-Nasab* is available or qualified (Siti Nurjanah, 2018). This hierarchical structure reflects a layered protection system prioritizing family involvement.

The *Wali al-Ḥākim* serves as a substitute for the *Wali al-Nasab* in emergency situations or when no qualified *wali* is present. The presence of a *Wali al-Ḥākim* guarantees the legality of the marriage contract and prevents administrative or social delays. According to al-Kasani, the *Wali al-Ḥākim* can be appointed when the *Wali al-Nasab* is absent, unknown, or unjustifiably refuses to act. (Alauddin al-Kasani, 2003). Article 23 of the Compilation of Islamic Law (KHI) also stipulates that the *Wali al-Ḥākim* is an official of the local Office of Religious Affairs (*KUA*) authorized by the state. This demonstrates the state's role in ensuring the legitimacy of marriages and reflects Islam's accommodation for emergency situations based on the principle of public interest (*maṣlahah*).

In practice, differing views among the schools of fiqh regarding the validity of marriage without a *wali* often influence societal perspectives. According to Ibn Qudamah, the *maḏhab* of Ḥanafī allows an adult woman to marry without a *wali*, while Al-Syāfi'ī, Al-Mālikī, and Al-Ḥanbalī reject it absolutely (Ibn Qudamah, 2005). This difference results in confusion in society, especially in communities that do not follow one *maḏhab* consistently. Despite this, the legal system in

Indonesia follows the *maḏhab* of Syāfi‘ī. Differences in views of *maḏhab* need to be understood as the wealth of Fiqh, not the cause of social disintegration.

Indonesia’s Compilation of Islamic Law aligns with the *maḏhab* of Syāfi‘ī, establishing the *wali* as a marriage pillar. This provides legal certainty and procedural uniformity nationwide. Articles 20–23 of the KHI stipulate that the *Wali al-Nikāh* is a male relative from the paternal line, according to a specific order, and that the *Wali al-Ḥākim* may be appointed only when no eligible *Wali al-Nasab* exists. Additionally, one cannot bypass a *wali* in the hierarchy without a valid religious reason (Rohmat, 2017). These provisions aim to prevent manipulation or the circumvention of *wali* rights. Hence, the national legal system upholds the spirit of fiqh while accommodating administrative necessities.

Problems arise when a *wali* refuses to perform the marriage without a valid reason or cannot be located. Such cases are relatively common and lead to legal uncertainty for prospective brides. According to Moh. Abu Muhni Rizkon, in these circumstances, women may request the appointment of a *Wali al-Ḥākim* through the KUA as an alternative (Moh. Abu Muhni Rizkon & Ahmad Badi, 2022). The KUA has established administrative procedures to assess eligibility based on evidence. The role of the *penghulu* (marriage registrar) as a *Wali al-Ḥākim* illustrates state recognition of women’s rights protection. This demonstrates Islam’s adaptive capacity within dynamic socio-legal contexts (Anand et al., 2025).

Overall, the hierarchy of *Wali al-Nikāh* functions as a protective mechanism rooted in justice and public interest. This structure ensures that the marriage contract is carried out according to moral, social, and legal principles. As noted by Is Ashidiqie, the concept of *wali* is intended to safeguard women, not restrict their freedom (Is Ashidiqie, 2021). In modern society, this understanding is vital so that the *wali* is not viewed as an obstacle, but rather as part of the protective family structure (Paul et al., 2023). The adaptation of Islamic law to national contexts like Indonesia reflects a harmonization between fiqh norms and social realities. Therefore, the hierarchical concept of *Wali al-Nikāh* remains relevant, provided it adheres to principles of justice and benefit.

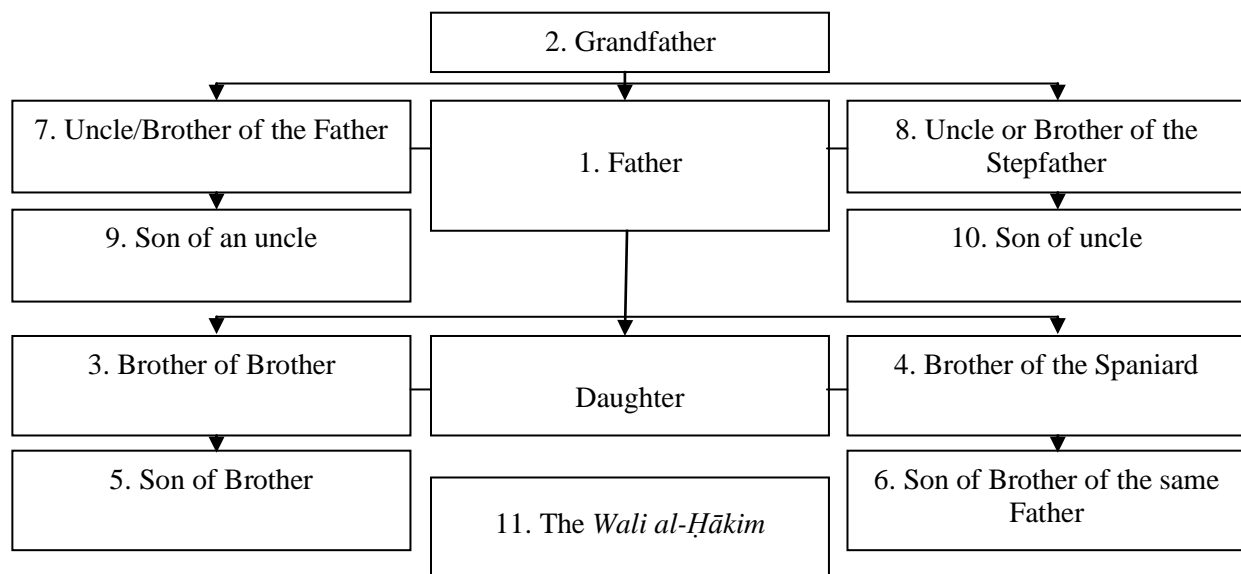


Figure 1: Order of the Position of the *Wali al-Nikāh* in Fiqh

Hierarchy of *Wali al-Nikāh* in Indonesia’s Regulation

Marriage regulations in Indonesia expressly stipulate the hierarchy of *Wali al-Nikāh* according to the Compilation of Islamic Law (KHI). This regulation is intended to maintain the validity of the contract and protect women’s rights through a clear and tiered process. In addition to being formally regulated, the order of guardians also reflects family- and state-based social

protection. Number 20–23 KHI mentioning in detail the order of guardians of the *al-Nasab* father, grandfather, siblings and so on; and appoint a guardian judge when the guardian of the *al-Nasab* is not available (Siti Dwi Nur Qadarwati, 2013). UU of Mariage law No. 1/1974 strengthening this by requiring a marriage guardian in a contract. This shows that Indonesian regulations integrate the principles of classical Fiqh with the formal protection of state law (Najjarnejad & Bromfield, 2022).

The hierarchy of *Wali al-Nasab* in the Compilation of Islamic Law considers the degree of absolute kinship. This order is established to ensure that the closest relative—who holds moral responsibility—officiates the marriage of the bride. This is essential so that the marriage is conducted by someone who understands the woman's condition and family history (Naved et al., 2022). According to the study by Sari and Sasmito, the Office of Religious Affairs (KUA) prioritizes the *Wali al-Nasab* before considering the appointment of a *Wali al-Hākim*, even if the *Wali al-Nasab* is a non-Muslim, *mafqūd* (missing), or *ʿaḍil* (refusing without valid reason) (Adinda Dewi Mutiara Sari & Seno Aris Sasmito, 2022). They emphasize that substitution is only allowed after all options among the *al-Nasab*-based guardians are thoroughly evaluated. This approach reflects both respect for family structure and a commitment to justice and orderly administrative procedures.

The *Wali al-Hākim* in Indonesia is appointed as a substitute for the *Wali al-Nasab* in accordance with positive legal procedures. This mechanism is regulated to ensure that the *ʿaqd al-nikāḥ* (marriage contract) is not obstructed when the *Wali al-Nasab* is absent or unable to fulfill his duty. The government, through the Office of Religious Affairs (KUA) and the Religious Courts, acts as a guarantor to ensure that this process is carried out legally. Minister of Religious Affairs Regulation No. 30 of 2005 is one such regulation used to appoint a *Wali al-Hākim* following legal proceedings in the Religious Court (Muhammad Sirojudin Sidiq, 2015). This confirms that the state facilitates access to marriage while maintaining a clear legal framework.

The role of the *Wali al-Hākim* in practice is fundamental in protecting the rights of the bride-to-be. The absence of a *Wali al-Nasab* or a case of *al-adhal* (a guardian who refuses without syariʿat reason) can pose significant social and legal barriers without the intervention of a *Wali al-Hākim*. The Religious Court and KUA are authorized to ensure the continuation of the *ʿaqd* through established procedures. Rais, Ridwan, and Cahyani, in their study at KUA Suli (Luwu), explain that the *Wali al-Hākim*—in this case, the Head of KUA—assumed the role after a case investigation and formal appointment by the local Religious Court to safeguard the woman's rights in marriage (Rais et al., 2022). Both Islamic law and the KHI provide normative and juridical protections regarding the role of the *Wali al-Hākim* as a substitute for a *Wali al-Nasab* who is absent, *al-adhal*, or whose whereabouts are unknown. The existence of the *Wali al-Hākim* is thus a legitimate and state-sanctioned intervention aimed at upholding justice and ensuring the continuity of individual rights in marriage (A. Nisa & Andriyaldi, 2023). Therefore, the position of *Wali al-Hākim* is not merely an administrative solution but also embodies the principle of protecting women's rights within Indonesia's Islamic family law system. This reflects that both Islamic law and Indonesia's national law are adaptive to complex and evolving social conditions.

Despite the existence of strict regulations, the implementation of *Wali al-Hākim* still faces administrative and cultural obstacles. In some cases, KUA offices have bypassed the order of *Wali al-Nasab* or elevated the status of *Wali al-Hākim* without following proper procedures, often to satisfy social pressures or for the sake of efficiency. This has resulted in legal uncertainty and the potential for abuse. The study by Sari and Sasmito also highlights the practice of “Substitute” *peralihan wali* which is sometimes carried out without prior approval from the Pengadilan Agama (Religious Court), particularly in regions with high mobility or weak supervision (Adinda Dewi Mutiara Sari & Seno Aris Sasmito, 2022). A separate study at the KUA of Blimbing Subdistrict (Wardatussoleha & Haris, 2023) reveals an increasing reliance on *Wali al-Hākim* appointments based on reasons such as *adhal* or administrative convenience, indicating a strong need for stricter oversight. These situations emphasize the necessity of improved public understanding and better supervision in regulatory enforcement (Jiang & Lansford, 2023).

Current regulations on *Wali al-Nikāḥ* have also come under criticism from a gender equality perspective. Some argue that restricting guardianship to males is discriminatory and misaligned with today's evolving social dynamics. There have been proposals to amend the law to allow competent adult women to act as *Wali al-Nikāḥ*. In his study, Is Ashidiqie argues that the male-only *wali* requirement stems from the historical context of the *maḏhab* of Syāfi'ī and calls for reform based on functional capacity rather than gender (Annaa Musyarofah, 2024; Is Ashidiqie, 2021). Similarly, Agus Moh. Najib in his article "The Controversy over Women as *Wali al-Nikāḥ*" in *Musāwa: Jurnal Studi Gender dan Islam* explains that in the *maḏhab* of Ḥanafī, a mature and rational (*kāmil*) woman may serve as *Wali al-Nikāḥ*. Thus, the notion of exclusive male guardianship is more historical than inherently religious (Najib, 2007).

These perspectives are aligned with the thoughts of Musdah Mulia, who advocates for a reformulation of Islamic marriage law, particularly in the context of gender justice and human rights. Her approach stems from the view that current Islamic family law still contains elements of discrimination against women, especially in matters related to *Wali al-Nikāḥ*, polygamy, and divorce rights. Musdah Mulia reinterprets religious texts using a contextual framework grounded in *maqasid al-syari'ah* and egalitarian values. For instance, she rejects the obligatory role of the *wali* in the *'aqd nikāḥ* on the grounds that it undermines female autonomy and instead promotes an egalitarian model of marriage based on mutual consent and relational equality. Musdah proposes a new paradigm for Islamic family law, one that centers on the principle of substantive justice, portraying Islam as an adaptive religion responsive to social transformation and committed to human dignity (Syahanti et al., 2019). Her view underscores the need for continued examination of Islamic legal regulations in Indonesia to align them with contemporary principles of gender justice.

Progressive social realities also support the potential for women to serve as *Wali al-Nikāḥ*. In several communities, women who are legally and socially competent have demanded recognition of their ability to fulfill the role of *wali*. However, implementation remains limited and requires regulatory support. In their research, Abdul Aziz and Ghufron Maksum argue that women may serve as *wali* if they possess the necessary capacity, a view reflected in discussions surrounding the CLD (Conceptual Legal Draft) of the KHI (Abdul Aziz & Ghufron Maksum, 2019). This suggests that social practices on the ground may be more progressive than existing formal regulations. Nevertheless, a wide gap remains between progressive discourse and actual implementation. As Indonesia's positive legal paradigm remains dominated by the *maḏhab* of Syāfi'ī, administrative resistance toward appointing female *wali* or adopting non-*al-Nasab* models persists. In her study of Musdah Mulia's legal thought, Syahanti highlights the proposal to eliminate the *wali* requirement as a means of reforming Islamic family law toward gender equality. However, this idea remains a contentious and contemporary issue (Syahanti et al., 2019). This disparity highlights the urgency of progressive religious education and regulatory reform to bridge the gap between theory and practice.

In conclusion, Indonesia's marriage regulations combine classical *fiqh* principles with the provisions of positive law. The hierarchy and mechanisms of *wali* not only ensure the validity of the *'aqd* but also provide layered protection for women's rights while opening space for social accommodation. Regulation must also remain responsive to social challenges and gender-related demands. While Indonesia's regulatory framework functions effectively, its implementation requires strengthened oversight, public education, and policy harmonization (Nila Safitri & Sukresno, 2023; Rais et al., 2022). Nonetheless, the state has taken significant steps to institutionalize marriage through legislation and other regulatory measures as part of its strategy to reinforce the legitimacy of marriage via formal registration. This is critical, given the frequency of marriage-related disputes stemming from differing interpretations and the prevalence of unregistered marriages, which intensify tensions between state control and religious authority (E. F. Nisa, 2018). Thus, while the regulation of *Wali al-Nikāḥ* in Indonesia remains relevant and adaptive, its implementation and policy aspects demand ongoing improvement.

***Wali al-Nikāh* in Social Reality and Practice in Kotagajah District, Indonesia**

The practice of *Wali al-Nikāh* in Indonesia often faces challenges due to the absence of the *Wali al-Nasab* or rejections without valid sharia reasons. This situation leads to difficulties for prospective brides to perform the *'aqd*, thus requiring formal intervention by the Office of Religious Affairs (KUA) or the Religious Court. This is because both fiqh teachings and state regulations mandate the presence of a *wali* as a requirement for a valid marriage. According to research by Debriana and Firmansjah, marriages conducted without a *wali* according to the established hierarchy may result in the annulment of the *'aqd* and carry legal implications regarding marital status and child rights (Nathania Ratna Debriana & Soraya Firmansjah, 2025). This case illustrates that while formal law is in place, practical implementation often encounters real obstacles that affect the rights of women and children.

The *Wali al-Hākim* becomes a practical solution when the *Wali al-Nasab* is unable or unwilling to be present at the *'aqd*. The appointment of a *Wali al-Hākim* through the Religious Court is intended to ensure that the *'aqd* can be carried out in accordance with regulations, thus avoiding delays in the marriage process for the bride. However, this process sometimes requires administrative and social efforts that are not always culturally simple. A study by Muhammad Hasan (2023) noted that the reason for the *Wali al-Nasab* refusal is often not based on sharia, so the Religious Court issues a decree of the *Wali al-Adhal* (guardian judge) for the benefit of the women (Muhammad Hasan, 2023). This was the case with Fitria Handayani, who filed a request for a *Wali al-Hākim* in the Gunung Sugih Religious Court case number 120/Pdt.P/2025/PA.Gsg on the grounds that her *Wali* is *al-Adhal* (Fitria Handayani, June 21, 2025). This practice reinforces the function of the state as a protector of women's rights through an alternative *wali* system.

A problem that is no less crucial in guardianship (*perwalian*) is the practice of forced marriage by *wali* who ignore the principles of pleasure and justice in marriage. This is due to the understanding of some people of the rights of the *Wali al-Mujbir* who are too textual, so that it provides space for guardians, especially biological fathers, to marry daughters without considering their willingness and psychological readiness. Research by Ilham Akbar Perdana Putra et al. (2022) shows that in some cases, the *Wali al-Mujbir* marries his daughter for economic reasons or family pressure, without the consent of the bride, and the practice is still justified by some local religious leaders under the pretext of sharia reason. This research emphasizes that the right to *ijbar* should not be separated from the principle of justice and protection of women as a whole subject of law (Ilham Akbar Perdana Putra et al., 2022). Therefore, it is important to limit the practice of *ijbar* with a *Maqāṣid al-Syarī'ah* approach that emphasizes pleasure, welfare, and soul protection in the institution of marriage.

Another pressing issue is the misunderstanding among family members regarding the hierarchy of the *wali* in marriage, which frequently results in the postponement of *'aqd al-nikāh*. This often arises from disputes and a lack of understanding about the *Wali al-Nasab* hierarchy, especially when the father as *Wali al-Mujbir* is deceased and only siblings or uncles remain. One such case occurred in Kauman, Kotagajah District, during the marriage of Diani Solihah binti Musholli. Since her father had passed away, the family asked her paternal uncle to officiate the marriage. However, it was later discovered that the bride still had a living elder brother, which prompted a delay in the wedding for clarification of the rightful *wali* (Rifqiyatul Muawanah, 2025). As explained by Agus Andi Marzuqi:

[Initially] the father of the bride had passed away. The mother decided that her late husband's brother should act as the *wali* of the wedding. When the uncle arrived, it turned out the bride still had an elder brother who was studying in Java. The KUA official simply asked, 'Who is the *wali*?' and the family pointed to the uncle. After the ceremony, a respected elder, Yai Anwaruddin, asked, 'Doesn't she have an older brother?' According to the Islamic law of *al-Nasab*, the father is first, then the grandfather, and then the brother or uncle. Eventually, the brother in Java was contacted and delegated his *walāyah* rights to an elder family member (Agus Andi Marzuqi, 2025)

Another social reality concerning the *Wali al-Nasab* hierarchy involves the rejection by the bride's family of a *Wali al-Nasab* who had never fulfilled his paternal role. Such rejection reflects a form of social resistance against the power relations embedded within the hierarchy of the *wali* in marriage. Based on the author's fieldwork in Kotagajah District, one case involved the family of a bride, referred to with the initials DY, who refused to accept her biological father as *wali* in the '*aqd al-nikāḥ*'. Throughout her life, the father had neither provided care nor fulfilled his responsibilities, having abandoned her since childhood. He reappeared only during the wedding reception, expressing his intention to officiate the '*aqd al-nikāḥ*'. DY's family strongly opposed the idea of him acting as *wali*, and instead granted the authority of to her stepfather (H. Djamari, 2025). This is in line with the information obtained from Agus Andi Marzuqi:

There's an interesting case—so here's the story: the parents were divorced, and the father never took care of the child since she was little. Then, when she had grown up and was about to get married, suddenly the father showed up and wanted to act as the *wali*. Islamically, the father has the right to be the *wali*, but the mother refused. She got furious during the wedding event and even brought a machete. To prevent the situation from escalating, the people there told the father to flee. He was told to back off and leave the venue. After he ran off, one of the neighbors, Nasihudin Mustofa, called me and asked, 'Gus, what's the decision here?' I told him, 'Just find the father and ask him to delegate his duty.' Eventually, the neighbor met with the father and asked him to authorize someone else. In the end, the marriage was re-conducted without the bride's family knowing. Administratively, the stepfather became the *wali*, and the KUA didn't say anything because the situation was already tense—they just focused on making sure the marriage was officially recorded. If we refer to Islamic law on the order of *al-Nasab*, it wouldn't have been valid. The father must act as *wali* if he is alive. If he's not around or unwilling to do it, then the solution is either *wali ḥākim* or *taukīl* (Agus Andi Marzuqi, 2025).

This was also confirmed by Mr. H. Tukijo as the Head of KUA Kotagajah District, that in such cases in the community, the KUA always wants to take quick steps so that the problem is resolved administratively and legally based on sharia. Overall, cases like this do not cause problems in the future, because administrative and familial settlement is always the way to go. In the author's interview with him, he talked about other cases whose problems were like the case of the marriage guardianship dispute:

Not long ago, there was a case where a parent refused to officiate the marriage of his daughter. After I investigated, it turned out to be due to a psychological burden—the father had become disabled after a work accident and was abandoned by his wife. Initially, the daughter had asked her father to be her *wali*, but he refused. In fact, he wasn't angry at the daughter, but he still harbored resentment toward the mother. More recently, there was another case involving a dispute between the bride's father and her older brother. Both delegated the duty as the *wali* to me, claiming they each had the rightful authority to be the *wali* in her marriage. The father had delegated responsibility to me, but the rest of the family disagreed and insisted that the older brother must be the one to officiate. In the end, I stepped aside and allowed the older brother to act as the *wali*. I wanted to take a quick and peaceful approach to resolve the matter, and fortunately, the father eventually agreed to delegate the duty to his son. This incident happened recently, but I can't recall the file number (H. Tukijo, 2025).

The results of the interviews show that the dynamics of the determination of marriage guardians at the practice level are often not only influenced by normative provisions in Islamic law or laws and regulations, but also by psychological factors and interpersonal relationships in the family. The practice of delegating the authority of the guardianship to other parties is a compromise solution that is often taken by the headman in order to maintain the smooth marriage procession (Muhammad Sirojudin Sidiq, 2023). However, these pragmatic steps can give rise to legal problems if they are not accompanied by appropriate administrative procedures. This was conveyed by H.

Bayu Dwi Prasetiawan as a Marriage Registrar (PPN)/*Penghulu* by telling the case of other guardians:

In Sumberrejo, in May 2025, there was a case in which none of the bride's paternal uncles or brothers were willing to act as *Wali al-Nikāh*. There was also another case where the biological father—who was supposed to be the *wali*—was declared deceased, even though he was still alive. This was done due to a family conflict, namely because the father had completely abandoned his responsibilities and refused to care for his family. The incident occurred in June. As a result, the daughter was the one who suffered; since childhood, she believed her father had passed away, only to later find out that he was still alive. In the end, the marriage proceeded using *taukīl*, and I didn't care how they managed it—if there was a formal *taukīl wali* from the biological father to one of the bride's male relatives, issued by the KUA from their area of origin. Sometimes, the community even lies, claiming that the *wali* is unavailable and requesting to use *Wali al-Hākim*, when in fact, the biological *wali* is still alive (H. Bayu Dwi Prasetiawan, 2025).

An interview with H. Bayu Dwi Prasetiawan revealed the complex reality related to the practice of marriage guardianship, which is loaded with information manipulation and internal family conflicts. In this context, the author's research findings found a strong correlation between the weak legal literacy of the community and the increase in cases of procedural irregularities in the determination of marital guardians, including the phenomenon of "revoking the guardians" administratively, even though the guardian is still alive. This not only reflects a crisis of trust in the guardian figure in the family but also shows that the KUA institution is often a place for negotiations between legal norms and pragmatic social interests. The existence of guardians of the *al-Nasab* that is hidden or denied, obtaining the legitimacy of the guardian of judges, confirms the existence of a regulatory gap that has not been fully able to accommodate the social dynamics of the contemporary family. Therefore, synergy is needed between legal approaches, public education, and strengthening procedures for verifying the validity of guardians so that women's rights in marriage are not neglected due to conflicts or manipulations carried out by the family (Yount et al., 2023). This phenomenon emphasizes the need for an ethical and contextual approach in socializing and implementing the law of guardians in marriage, so that the implementation of marriage is truly realized in accordance with sharia (Nisak & Nisa', 2021).

Contextual Analysis of The Dynamics of *Wali al-Nikāh* Hierarchy in Kotagajah Subdistrict

In the marriage practices of Indonesian society, the hierarchy of *Wali al-Nikāh* often becomes a source of conflict when the *Wali al-Nasab*, such as the biological father, fails to fulfill his paternal role appropriately. Although legally the *Wali al-Nasab* holds the legitimate right to officiate the marriage, social realities reveal that many are emotionally absent or even authoritarian, thus provoking resistance from the bride's family or the bride herself. A study by Nathania Ratna Debriana and Soraya Firmansjah highlights that the involvement of a *wali* who fails to act as a functional protector creates discomfort, and in some cases, leads to the cancellation of the marriage or prolonged family conflict (Nathania Ratna Debriana & Soraya Firmansjah, 2025). This proves that legal validity of the *wali* does not always align with the social and emotional acceptance of the bride, suggesting that regulation must allow for considerations of justice and informal protection.

Rejection of the *Wali al-Nasab* by the bride is often triggered by past traumatic experiences or the *wali's* absence throughout her life. This creates a conflict between the textual nature of fiqh norms and the psychological and social needs of the bride. In a study conducted in Samalanga Subdistrict, Bireuen Regency, Nuruzahri found that many women rejected their biological *wali* due to experiences of verbal abuse, neglect, or complete absence, and instead preferred a *Wali al-Hākim* whom they considered neutral (Nuruzahri, 2023). Appointing a *Wali al-Hākim* in such situations is a form of protection for women's rights and should not be seen as violating the hierarchy, but rather as a contextual adaptation based on the values of *maqāṣid al-syarī'ah*.

The phenomenon of "declaring the *wali* dead" administratively while the biological *Wali al-Nasab* is alive, as conveyed by H. Bayu Dwi Prasetiawan indicates a gap in understanding the legal requirements and procedures for guardianship. This suggests that law is not only operationalized normatively but is also socially negotiated. Justifications are often rooted in family conflicts or disharmony that do not qualify as *'adhal* under sharia categories. Such cases confirm that the state's legal framework has yet to fully anticipate manipulative social practices within the context of *Wali al-Nikāḥ* (Lukito, 2007). As Ilhamuddin explains, the existence of a *Wali al-Nasab* does not automatically guarantee his authority as a legitimate *wali* if he is socially deemed to have failed his familial duties (Is Ashidiqie, 2021).

Several cases show that *penghulu* (marriage registrars) are often compelled to resolve these issues informally to ensure the continuation of the wedding ceremony, even if the administrative procedures do not align with sharia requirements. These actions are usually driven by situational pressure and the need for expedient solutions, as noted by H. Tukijo who prioritized administrative efficiency and order over absolute adherence to the *al-Nasab* hierarchy (H. Tukijo, 2025). However, failure to conduct proper verification may result in future legal issues. Incorrect designation of a *wali* is not merely an administrative error—it can affect the validity of the marriage contract itself (Fauzi, 2007).

Normatively, Islamic law establishes a strict hierarchy of *Wali al-Nasab*—from father, grandfather, male siblings, to uncles. In practice, however, ignorance, interpersonal dynamics, and sociocultural dominance often influence the selection of the *wali*. In the case of Diani Solihah, Agus Andi reported:

In my view, it wasn't a mistake, but rather a misunderstanding by the bride's family about the correct order of *wali*. They just went ahead and called the late father's younger brother to act as *wali*. It turns out the neighbors were also unaware that she had a male sibling who should've been the *wali* (Agus Andi Marzuqi, 2025).

This highlights the need for legal education and clear administrative procedures to prevent misunderstandings that could infringe upon the bride's marriage rights. In this case, the marriage was officiated by the uncle—ranked below a brother in the *al-Nasab* hierarchy—only for the family to later discover the rightful *wali* was still alive. This caused legal and social unease, further emphasizing the need for a *al-Nasab* clarification before the marriage.

Another case in Kotagajah revealed that the bride's family rejected the *Wali al-Nasab* due to his moral failure to fulfill his paternal duties. This creates a dilemma between sharia authority and relational justice. The family preferred the stepfather as the *wali*, considering his moral suitability for raising the bride since childhood. Though not valid in sharia as he is not part of the *al-Nasab* hierarchy, the appointment functioned solely as an administrative formality. In his work, Khoiruddin Nasution argues that the Ḥanafī view aligns more with Islamic legal reform and egalitarian values, emphasizing mutual responsibility between men and women based on personal merit and piety (Nasution, 2007).

Disagreements between a father and brother, or among uncles, about who should serve as *wali* often arise from differing interpretations and family egos. As noted by H. Tukijo, both the father and brother delegated the authority to the *penghulu*, each claiming the right to officiate the marriage, until an administrative compromise was reached. This illustrates that *'aqd al-nikāḥ* execution is not solely determined by formal law but also shaped by social harmony, which does not always align with fiqh rules. Understanding the hierarchy of *wali* is crucial, as disputes or unjustified refusals by the *wali* can impede the bride's right to marry. While Islamic law—particularly the *maḏhab* of Syāfi'ī—designates a *wali* as a marriage requirement, the state provides a corrective mechanism via the appointment of a *Wali al-Ḥākim* to safeguard women's rights. This demonstrates that Indonesia's legal system, though rooted in religious tradition, incorporates

procedural justice principles that allow state intervention to prevent misuse of *wali* authority (Munir, 2025).

This study underscores that the function of *wali* in marriage must align with principles of justice, *maṣlahah*, and the protection of women's rights. Legal reform must include reconstructing *wali* provisions in the KHI, promoting legal literacy in society, and enhancing the capacity of *penghulu* to conduct *al-Nasab* verification and document validation. This approach supports a more humanistic and socially responsive interpretation of fiqh. Hence, the role of *wali* should not be merely a legal requirement but a moral and social safeguard for the bride (Fauzi, 2007; Is Ashidique, 2021).

In response to these *Wali al-Nikāh* conflicts, the exclusive male right to act as *wali* in Islamic law has been increasingly questioned in gender discourse. Critics argue that the patriarchal *wali* system is more a product of historical culture than fundamental religious doctrine—especially in the Syāfi'ī context dominant in Indonesia (Icep Maulana Zatnika & Muhammad Nurcholis, 2019). Najib asserts that the *maḥab* of Ḥanafī allows adult, sane women to act as *wali*, which aligns with contemporary principles of gender equality and human rights (Najib, 2007). As gender awareness continues to grow, reforming *Wali al-Nikāh* regulations to be more inclusive and socially adaptive must be considered.

Wali al-Nikāh conflicts in Indonesia reflect the tension between rigid Islamic legal texts and dynamic social realities. In a society that increasingly emphasizes individual rights and equality, the *wali* hierarchy must be reinterpreted with greater responsiveness and humanism. In their study on Musdah Mulia's thoughts, Syahanti et al. recommend removing the *wali* requirement for adult women as a progressive reform in Islamic family law that respects women's autonomy (Syahanti et al., 2019). Thus, restructuring the *wali* system through regulatory reform and contextual Islamic legal education is essential to ensuring justice in marital institutions.

Based on practical and theoretical findings, regulatory adjustment and education are key. The state and religious institutions must enhance public understanding of the *wali* role, reinforce the *wali* hierarchy mechanism, and allow room for inclusive *wali* appointment when requirements are met. Emphasizing public education and supervision in KUA practices is crucial to ensure valid and just '*aqd al-nikāh*', for the benefit of both religion and society (Adinda Dewi Mutiara Sari & Seno Aris Sasmito, 2022; Nathania Ratna Debriana & Soraya Firmansjah, 2025). Procedural reform and increased religious-legal education provide tangible means to bridge the gap between theory and practice in Indonesia's *Wali al-Nikāh* hierarchy.

Law can respond to the complex realities of *wali* practices through a normative-procedural approach grounded in protection and formal legitimacy, yet it still requires contextual flexibility. In many cases, the tension between fiqh-based *Wali al-Nasab* hierarchy and family dynamics—such as internal conflict, rejection of biological *wali*, or absence without sharia justification—is resolved through *taukīl* or the appointment of a *Wali al-Ḥākim* by the Religious Court. These mechanisms allow the marriage to proceed lawfully under both Islamic and national law, provided those administrative procedures—such as power of attorney, *taukīl* documents, or *Wali al-Adhal* court rulings—are fulfilled. Thus, the legality of a marriage is determined by procedural compliance with positive law, not merely by emotional ties or intra-family relationships.

CONCLUSION

This study concludes that the hierarchy of the *wali* (marriage guardians) in Islamic law cannot always be applied ideally in the social context of the community in Kotagajah District, Lampung, Indonesia. Although normative Islamic law and the Compilation of Islamic Law establish a clear order of the *wali*, social reality shows that the implementation of these structures often encounters obstacles, both due to the absence of a *wali*, conflicts between family members, and psychological factors that lead to rejection of legal guardians. In some cases, families choose to make the order of the *wali*, whose hierarchy is in the second or lower order, who are considered more morally worthy, even illegitimate guardians, if they carry out their duties as guardians of the marriage, like

stepfathers, or manipulate the status of guardians by turning them off to avoid conflict. These findings confirm that there is a real tension between fiqh norms and the social needs of the community. Practices such as unilateral *taukīl*, abandonment of the order of guardians, and the appointment of guardians without a solid basis become a form of administrative compromise on the dynamics of family relations. The academic contribution of this research lies in the offer of a rediscussion of the structure of the guardian hierarchy in Islamic law to be more contextual and humanistic, especially through the *maqāṣid al-syarī'ah* approach that emphasizes justice, protection, and consent of women as subjects of law.

As a recommendation, there needs to be a strengthening of legal education to the community, an increase in administrative verification in the KUA, and a reformulation of regulations that are more accommodating to the social situation of the community. This research is expected to enrich the discourse on Islamic family law reform that is more adaptive to the complexity of contemporary social relations.

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