



## Discrepancies Between Legal Norms and the Practice of Appointing ‘Wali Hakim’ for Legally Recognized Children at Medan Tembung Religious Affairs Office

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### ABSTRACT

*This study investigates the legal foundations and challenges surrounding the appointment of a judge guardian (wali hakim) in the marriage of children deemed legitimate under the Compilation of Islamic Law (KHI), with a particular focus on cases involving children born from adulterous relationships. Employing a juridical-normative methodology, the research combines literature review and regulatory content analysis with empirical data obtained through interviews to assess implementation at the Office of Religious Affairs (KUA). The findings reveal interpretive ambiguities in Articles 99 and 100 of the KHI, which have led to discretionary practices by KUA officials who appoint judge guardians even when the child fulfills the legal criteria of legitimacy. This inconsistency between normative law and administrative application results in legal uncertainty and underscores the need for regulatory reform concerning guardianship in cases involving children of illicit conception. The study contributes to the scholarly discourse by critically analyzing these legal gaps and proposing measures to reinforce legal certainty and civil protections for children in marriage. It advocates for a reformulation of KHI norms grounded in the principle of maslahah to ensure justice, clarity, and the protection of children’s rights in Islamic family law practices.*

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## 1. Introduction

Marriage, within the framework of Islamic law, is not merely a social contract but a sacred institution encompassing legal, spiritual, and cultural dimensions.<sup>1</sup> Among the essential pillars of a valid marriage according to Islamic jurisprudence is the presence of a *wali nikah* (marriage guardian) from the bride's paternal line.<sup>2</sup> This requirement is adopted into Indonesia's positive legal system through Law No. 1 of 1974 and the Compilation of Islamic Law (Kompilasi Hukum Islam, hereinafter KHI), which stipulates that in the absence of a *wali nasab*, the authority to solemnize the marriage may be delegated to a *wali hakim* (judicial guardian).<sup>3</sup>

In practice, however, tensions often arise between the normative doctrines of Islamic law and administrative realities at the grassroots level. One notable example involves the appointment of a *wali hakim* in cases where a daughter was born within a legally valid marriage, yet was deemed illegitimate by officers at the Religious Affairs Office (Kantor Urusan Agama or KUA) because the birth occurred within six months after the marriage contract. This creates legal uncertainty, particularly regarding the child's civil status and the legitimacy of the biological father acting as a guardian.

Several studies have addressed the administrative aspects of guardianship practices in Indonesia. One notable study is by Saif 'Adli Zamani (2019), entitled "*Penghulu sebagai Wali Hakim dalam Akad Nikah: Studi Terhadap Penghulu Kantor Urusan Agama di Wilayah Kota Yogyakarta*", which examined the delegation of guardianship authority (*taukil wali*) in marriage practices. The research distinguishes between *tawkīl bi al-lisān* (verbal authorization) and *tawkīl bi al-kitābah* (written authorization), illustrating the formal and informal mechanisms through which guardianship responsibilities are transferred.<sup>4</sup> Zamani's findings emphasize the central role of *penghulu* (marriage registrars), who, as state representatives, often assume the role of *wali hakim* in circumstances where the *wali nasab* is absent, untraceable, legally disqualified, or unwilling to fulfill the duty. Furthermore, the study underlines the significant influence of both social expectations and procedural considerations in determining how guardianship norms are operationalized in practice.

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<sup>1</sup> Aidil Aulya dan Ahmad Irfan, "Koeksistensi Hukum Perkawinan Islam di Indonesia: Interpretasi Mahkamah Konstitusi Terhadap Pernikahan Beda Agama di Indonesia," *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 1 (2023): 109–27, <https://doi.org/10.30863/ajmpi.v8i1.4149>; Eko Haryanto et al., "He Yokal Himago: A Sociological Review of Law on Nikah Siri in The Dani Muslim Community, Papua," *Al-Adalah: Jurnal Hukum dan Politik Islam* 9, no. 1 (2024): 40–52, <https://doi.org/10.30863/ajmpi.v9i1.4814>.

<sup>2</sup> Tuba Erkoc Baydar, "A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective," *Religions* 14, no. 4 (2023), <https://doi.org/10.3390/rel14040463>.

<sup>3</sup> Perpustakaan Nasional RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, Mahkamah Agung RI*, 2011, 69.

<sup>4</sup> Saif 'Adli Zamani, "PENGHULU SEBAGAI WALI HAKIM DALAM AKAD NIKAH (Studi Terhadap Penghulu Kantor Urusan Agama di Wilayah Kota Yogyakarta)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 2 (29 Oktober 2020): 173–83, <https://doi.org/10.14421/ahwal.2019.12205>.

Building on this, a study by Seno Aris Sasmito and Adinda Dewi Mutiara Sari (2023), titled “*Penetapan Wali Hakim dalam Perkawinan di Kantor Urusan Agama Kecamatan Karanganyar Kabupaten Karanganyar Tahun 2020*,” revealed that decisions regarding the appointment of *wali hakim* at the Karanganyar District KUA tend to prioritize legal formality over strict adherence to classical *fiqh* principles. Their findings also indicate the existence of administrative flexibility, whereby the *penghulu* may defer to a *wali aqrab* (nearest male relative) instead of directly acting as *wali hakim*, in order to preserve family dignity and avoid social discomfort.<sup>5</sup> This reflects a degree of discretion exercised by religious officials at the local level in interpreting and applying guardianship norms, influenced by both legal considerations and socio-cultural sensitivities.

At a more theoretical level, recent scholarship has adopted the framework of *maqāṣid al-syarī‘ah* to evaluate the evolving roles within Islamic marriage procedures. A study by Ibnu Akbar Maliki et al. (2023), titled “*A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda's Views)*,” highlighted the normative tension between the implicitly male-centered guardian provisions in the Compilation of Islamic Law (KHI) and the legal opportunities introduced by Ministry of Religious Affairs Regulation No. 20 of 2019, which permits women to serve as *penghulu*.<sup>6</sup> Utilizing Jasser Auda’s six-feature *maqāṣid* theory, the study argued that the assignment of guardianship roles should be guided by the principle of *maslahah*, such as ensuring legal certainty, promoting gender justice, and fostering social inclusivity.<sup>7</sup> The research concludes that the reconstruction of guardianship norms within the KHI is both theologically sound and practically necessary to better align Islamic family law with contemporary societal realities.

Despite the substantial body of scholarship on the subject, no existing study has directly examined the legal ambiguity that emerges when children born within a formally valid marriage are nonetheless administratively denied legitimate status by religious authorities. This disjunction between the normative stipulations of the Compilation of Islamic Law, particularly Articles 99 and 100<sup>8</sup> and their implementation at the field level

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<sup>5</sup> Seno Aris Sasmito dan Adinda Dewi Mutiara Sari, “PENETAPAN WALI HAKIM DALAM PERKAWINAN (Studi Di KUA Karanganyar Kabupaten Karanganyar),” *IMTIYAZ: Jurnal Ilmu Keislaman* 7, no. 2 (2023): 71–85, <https://doi.org/10.46773/imtiyaz.v7i2.624>.

<sup>6</sup> Ibnu Akbar Maliki et al., “A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda’s Views),” *Nurani: Jurnal Kajian Syari‘ah dan Masyarakat* 23, no. 1 (14 Juni 2023): 51–68, <https://doi.org/10.19109/nurani.v23i1.16447>.

<sup>7</sup> Maliki et al.

<sup>8</sup> The Compilation of Islamic Law, Article 99, stipulates that “A legitimate child is: a) a child born within or as a result of a lawful marriage; b) the result of a lawful husband and wife’s act outside the womb and delivered by the wife.” Article 100 further affirms that “A child born outside of marriage has lineage only to the mother and her family.” See Ministry of Religious Affairs of the Republic of Indonesia, *Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law* (Jakarta: Directorate General of Islamic Community Guidance, 1991).

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has led to the systematic exclusion of biological fathers from fulfilling their roles as legal guardians. Such administrative denial carries far-reaching implications, including the erosion of the child's civil rights, the delegitimization of lawful marriages, and the diminishing institutional credibility of the Religious Affairs Office (KUA).

This study aims to examine the legal foundations, institutional interpretations, and administrative practices associated with the appointment of *wali hakim* in cases where children are legally recognized but administratively treated as illegitimate. Employing a combined juridical-normative and empirical approach, the research seeks to uncover the interpretative dynamics at the local level, and to contribute meaningfully to the discourse on Islamic legal reform in Indonesia. Ultimately, this study aspires to offer a more contextual, just, and socially responsive understanding of Islamic family law.

## 2. Legal Material and Methods (bold, 12 pt)

This study adopts a qualitative approach with an empirical-juridical orientation. The empirical-juridical method examines legal norms not only through statutory analysis but also by observing how these norms are interpreted and implemented in practice. The primary focus of the research is the institutional discretion involved in the appointment of a *wali hakim* for a child who is legally recognized under existing marriage law, yet born from a relationship suspected of *zina*. The research site is the Religious Affairs Office (Kantor Urusan Agama, KUA) of Medan Tembung Sub-district, Medan City, where a concrete case involving such discretion was documented.

Data collection involved both primary and secondary sources. Primary data were obtained through in-depth interviews with key informants, including the Head of the KUA, marriage registrars (*penghulu*), and the parents of the prospective bride and groom. These informants were selected purposively due to their direct involvement in the marriage registration process. Secondary data were derived from documentary and literature review, encompassing legal statutes, legal commentaries, academic publications, and institutional records. The primary legal materials analyzed include the Compilation of Islamic Law (KHI) and Law No. 1 of 1974 on Marriage.

To analyze the data, this study employed content analysis techniques, focusing on identifying normative patterns, inconsistencies between statutory law and field practices, and interpretive discretion exercised by religious officials. The analysis was further supported by normative legal interpretation and contextualization through the lens of *maqāṣid al-syarī'ah*, to draw conclusions that are both legally grounded and responsive to social realities.

### 3. Results and Discussion (bold, 12 pt)

#### 3.1. Legal Children According to the Compilation of Islamic Law (KHI)

In Islamic legal tradition, marriage is not merely regarded as a social contract, but as a sacred form of worship imbued with spiritual, moral, and legal significance.<sup>9</sup> It functions as a divine institution regulating the lawful union between a man and a woman through a *sharī'ah*-compliant bond aimed at preserving dignity, progeny, and social order. Etymologically, the term *nikāh* derives from the Arabic words *al-nikāh* and *al-zawj*, which denote sexual union.<sup>10</sup> However, in legal terms, marriage is defined as a contractual agreement (*'aqd*) that legitimizes intimate relations between spouses under the framework of mutual rights and responsibilities.<sup>11</sup>

A valid marriage in Islamic and Indonesian legal contexts must fulfill essential conditions,<sup>12</sup> including legal capacity (*bāligh*) of both parties, the absence of prohibitions (*mahram*), the presence of a male guardian (*wali nasab*) for the bride, two competent Muslim male witnesses, and the performance of *ijab* and *qabul* (offer and acceptance). Once these elements are met and the marriage is formally registered, it produces legal consequences, one of the most critical being the legal status of any child born from the union.<sup>13</sup>

According to Article 42 of Law No. 1 of 1974 on Marriage, a legitimate child is one born in or as a direct consequence of a legal marriage. Conversely, Article 43 stipulates that children born outside of a legal marriage have civil relationships only with their biological mother and her family.<sup>14</sup> This clear distinction in Indonesia's positive legal framework underscores the difference in legal standing between legitimate and illegitimate children, particularly in relation to civil rights, lineage (*nasab*), and guardianship.<sup>15</sup>

The Compilation of Islamic Law (KHI), which serves as the primary reference for Islamic family law in Indonesia, reiterates this distinction. Article 99 of the KHI defines legitimate children as those born within or as a result of a legally recognized marriage, including children conceived during a valid marriage and delivered by a legally recognized mother. Article 100 further asserts that children born out of wedlock have legal civil relations only with their mother and her maternal relatives. These provisions firmly

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<sup>9</sup> Aisyah Ayu Musyafah, "Perkawinan Dalam Perspektif Filosofis Hukum Islam," *Crepido* 2, no. 2 (2020): 111–22, <https://doi.org/10.14710/crepido.2.2.111-122>.

<sup>10</sup> Armia dan Iwan Nasution, *Pedoman Lengkap Fikih Munakahat* (Jakarta: Prenada Media Group, 2019).

<sup>11</sup> Akhmad Faroh Hasan et al., "INTERFAITH MARRIAGE IN INDONESIA'S LAW: A COMPARATIVE STUDY OF TAFSIR AL-MISBAH AND AL-MARAGHI," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 10, no. 1 (13 Maret 2025): 2–3, <https://doi.org/10.22373/petita.v10i1.458>.

<sup>12</sup> Rizky Perdana Kiay Demak, "Rukun dan syarat perkawinan menurut hukum Islam di Indonesia," *Lex Privatum* 6, no. 6 (2018): 122–29.

<sup>13</sup> Mukhtaruddin Bahrum, "Problematika Isbat Nikah Poligami Sirri," *Al-Adalah: Jurnal Hukum dan Politik Islam* 4, no. 2 (2019): 194–213, <https://doi.org/10.35673/ajmpi.v4i2.434>.

<sup>14</sup> Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan" (1974).

<sup>15</sup> Adlian Aldita Alif Aisyah Ainur Khoyum, Bertha Amilia, dan Candra Hafidz Ardana, "Granting Inheritance to Extramarital Children in the Perspective of Islamic Law," *Contemporary Issues on Interfaith Law and Society* 2, no. 1 (31 Januari 2023): 103–12, <https://doi.org/10.15294/ciils.v2i1.66343>.

establish the legal principle that the legitimacy of a child is directly linked to the legality of the parents' marital bond.<sup>16</sup>

In classical Islamic legal tradition, the discussion regarding children born out of wedlock includes several categories, such as children born of adultery (offspring resulting from sexual relations before the marriage contract), children of li'an (whose lineage is repudiated by the husband through the oath of li'an directed at his wife), and syubhat children (born from mistaken or doubtful relationships, for example, due to ignorance that the partner is a mahram or otherwise unlawful to marry). Although these children are biologically fathered by a man, the legal status of their lineage (nasab) and guardianship rights from the biological father depend on the category to which the child belongs. In the case of children born of adultery, the legal relationship and guardianship rights from the biological father are not recognized.<sup>17</sup> However, for syubhat children, lineage is attributed to the man who engaged in the relationship due to the element of mistake or ignorance, thus granting the child nasab and guardianship rights.<sup>18</sup> In the case of li'an children, lineage to the husband is legally repudiated through the oath of li'an.<sup>19</sup>

Thus, both Indonesian statutory law and the KHI converge on the principle that the legal status of a child depends entirely on the validity of the parents' marriage. A legitimate child possesses full civil rights and a recognized lineage from both parents, which includes inheritance and eligibility for guardianship in marriage. On the other hand, an illegitimate child is limited to a civil relationship with the mother alone. This legal status becomes especially consequential in determining marriage guardianship, as Islamic law mandates that the *wali* must come from the paternal line. Therefore, a child's legal status under Indonesian Islamic law plays a decisive role in affirming or denying the father's authority as a marriage guardian.

### 3.2. Determination of the Wali Hakim for Legitimate Children According to the KHI: The Case of KUA Medan Tembung

The determination of a marriage guardian in Islamic legal administration is not merely a clerical procedure but a juridical decision that carries substantial theological and civil implications. In contemporary Indonesia, the responsibility to assess guardianship

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<sup>16</sup> Nur Solikin dan Lailatul Saidah, "HAK KEPERDATAAN ANAK LUAR KAWIN: Kajian Terhadap Hukum Perdata dan Kompilasi Hukum Islam Setelah Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Al'Adalah* 24, no. 2 (24 Desember 2021): 129–38, <https://doi.org/10.35719/aladalah.v24i2.79>.

<sup>17</sup> Anas Maulana et al., "Inheritance Rights of Nasabiyah Children Born Out of Wedlock According to Islamic Family Law," *El-Usrah* 7, no. 2 (2024): 444–61, <https://doi.org/10.22373/ujhk.v7i2.25072>.

<sup>18</sup> Amruzi, "Hak dan Status Anak Syubhat dalam Penikahan," *Jurnal Syariah: Jurnal Ilmu Hukum dan Pemikiran* 17, no. 1 (2017): 53–63.

<sup>19</sup> Agustin Hanapi, Imanuddin, dan Khairuddin Hasballah, "Kedudukan Metode al-Qāfah Dalam Penetapan Nasab Anak Menurut Ulama Perspektif Maqashid al-Syariah," *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 1 (2022): 21–37, <https://doi.org/10.18860/j-fsh.v14i1.15875>.

validity lies with local Religious Affairs Offices (Kantor Urusan Agama, or KUA), which must interpret both legal statutes and *fiqh* principles when confronted with ambiguous personal statuses. Particularly contentious are cases where a child is born within a legal marriage but under circumstances that cast doubt upon the legitimacy of paternity.

Within KUA Medan Tembung, marriage verification includes reviewing the time frame between the marriage contract and the birth of the child. If the child was born less than six months after the recorded *'aqd nikāh*, this temporal discrepancy often raises suspicions of *zinā*, even if the marriage was formally recognized by the state. To clarify the situation, KUA officers typically request supporting documentation, including photocopies of parental marriage books, birth certificates, and witness testimonies.<sup>20</sup> These documents serve not only to confirm administrative completeness but also to guide decision-making concerning the eligibility of a father to act as *wali*.<sup>21</sup>

The absence of a clear legal framework in statutory or administrative law addressing the guardianship rights of children conceived under suspicion has led to case-by-case interpretations. Officials acknowledge that while national law (such as Article 42 of Law No. 1 of 1974) recognizes such children as legitimate, doubts remain when examined through classical jurisprudential criteria. These doubts compel the institution to prioritize religious legal safety by designating a *wali hakim*, even when this conflicts with the wishes of the biological father.<sup>22</sup>

This reliance on doctrinal conservatism arises largely from the concern that an invalid appointment of guardian could invalidate the marriage itself.<sup>23</sup> According to the jurisprudence of both Shāfi'ī and Ḥanafī schools, a minimum period of six lunar months must separate the *'aqd* from childbirth for *nasab* to be established paternally.<sup>24</sup> Hence, even within a legal marriage, if the biological timeline suggests otherwise, the child may not be affiliated to the father according to *fiqh*, precluding his role as guardian.<sup>25</sup> The KUA, in such instances, often elects the judicial guardian to preserve the validity of the marital contract.<sup>26</sup>

Family resistance to such decisions is frequent. Many parents, particularly fathers, perceive the refusal to permit them to serve as *wali* as an affront to their honor and social legitimacy. One father in Medan expressed concern that his disqualification would be interpreted as a public acknowledgment of past indiscretion, thereby bringing shame upon

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<sup>20</sup> Interview with Yusraman Kaya Siregar (Head of KUA Medan Tembung), Medan, June 2024

<sup>21</sup> Interview with Yusraman Kaya Siregar (Head of KUA Medan Tembung), Medan, June 2024

<sup>22</sup> Interview with Yusraman Kaya Siregar (Head of KUA Medan Tembung), Medan, June 2024

<sup>23</sup> Revi Inayatillah, "Status Keabsahan Wali Nikah Menurut Hukum Islam," *Acta Diurnal* 8, no. 1 (2024): 82–98.

<sup>24</sup> Indra Halim dan Ikhsan Darwis, "Urgensi Penetapan Wali Nikah Bagi Perempuan Yang Lahir Kurang Dari 6 Bulan Setelah Akad Nikah Dari Perkawinan Hamil Perspektif Hukum Islam," *Jurnal Tana Mana* 1, no. 1 (2020): 1–16, <https://doi.org/10.33648/jtm.v1i1.144>.

<sup>25</sup> Marilang, "Legal relationship between illegitimate children and their biological father the analysis of constitutional court decree no. 46/PUU-VIII/2010 in the perspective of civil and islamic law," *Journal of Indonesian Islam* 10, no. 2 (2016): 335–54, <https://doi.org/10.15642/JIIS.2016.10.2.335-354>.

<sup>26</sup> Interview with Yusraman Kaya Siregar (Head of KUA Medan Tembung), Medan, June 2024

his family.<sup>27</sup> The emotional and reputational stakes involved frequently escalate tensions between families and religious authorities, placing KUA staff in a position of socio-legal negotiation.

To manage these conflicts, KUA Medan Tembung adopted a non-formal mechanism known as the “double contract.” Under this approach, two separate marriage contracts are executed: one within the KUA using a *wali hakim* to fulfill religious legal standards, and a second, symbolic one during the wedding reception, with the biological father acting as guardian. This method provides a conciliatory gesture to uphold familial dignity while formally satisfying religious requirements.<sup>28</sup> Although not officially sanctioned by law, this model has emerged as a pragmatic response to normative ambiguity and community pressure.

However, this practice raises important questions about legal certainty, administrative consistency, and religious legitimacy. The lack of standardization in handling such cases may lead to uneven application of the law across regions. It also places undue burden on local KUA officers, who must individually interpret theological and civil parameters in the absence of regulatory guidance. Moreover, the reliance on compromise mechanisms such as double contracts risks normalizing informal practices that may lack legal clarity in the long term.

The Medan Tembung experience highlights the urgent need for codified legal provisions that address the guardianship rights of children born under circumstances of doubtful conception. Clear guidelines are essential not only to protect institutional integrity but also to ensure that individuals involved—particularly the bride—are not subjected to fluctuating interpretations that can affect the legality of their marriage. Future reforms in Islamic family law in Indonesia must address this normative gap, balancing fidelity to *fiqh* with the evolving realities of social life and legal administration.

### **3.3. Factors Behind the KUA’s Use of a Wali Hakim in the Marriage of a Legally Recognized Child According to the Compilation of Islamic Law (KHI)**

The decision of Religious Affairs Offices (KUA) to appoint a *wali hakim* in the marriage of a child legally categorized as legitimate under the Compilation of Islamic Law (KHI) is driven by a convergence of theological, normative, and procedural considerations. While national law, particularly Law No. 1 of 1974 and the KHI, affirms the legitimacy of children born within a legal marriage, field-level practices reveal that lineage (*nasab*) status continues to be assessed through a lens of Islamic jurisprudence, particularly when suspicions of premarital conception arise.

In Islamic legal doctrine, adultery (*zinā*) is not only a grave moral offense but also a legal act with far-reaching consequences. One of the key implications of *zinā* is the severance of *nasab* between the child and the man involved in the unlawful sexual act,

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<sup>27</sup> Interview with Yahya (Father of the Bride), Medan, June 2024.

<sup>28</sup> Interview with Yusraman Kaya Siregar (Head of KUA Medan Tembung), Medan, June 2024

even if the couple later marries.<sup>29</sup> Jurists from various schools agree that a child conceived through *zinā* cannot be attributed to the man involved, as the act itself violates the sanctity of lineage preservation. Consequently, the biological father loses all rights related to legal guardianship, including the right to act as *wali* in the marriage of the child. The child's legal affiliation is instead limited to the mother, both in terms of inheritance and guardianship.<sup>30</sup>

In the Indonesian context, where the state fulfills the role of *sulṭān* in religious affairs, the head of the KUA acts as the official representative authorized to substitute for a missing or disqualified *wali nasab*.<sup>31</sup> This authority, rooted in classical Islamic jurisprudence, legitimizes the KUA's decision to appoint a *wali hakim* for a bride whose paternal lineage is not recognized due to the circumstances of her conception. The appointment of a judicial guardian in such cases is seen as a necessary legal mechanism to fulfill one of the fundamental requirements of a valid Islamic marriage.

Guardianship (*wilāyah*) occupies a central role in the structure of Islamic marriage law. It functions not merely as a formal requirement but as a substantive pillar (*rukṅ*) of the marriage contract.<sup>32</sup> The guardian acts as the bride's legal representative, ensuring the integrity of the marriage process and the protection of the woman's rights. The Prophet Muhammad (peace be upon him) emphatically prohibited women from marrying without a guardian, as reflected in the ḥadīth narrated by Abū Hurayrah: "A woman may not marry another woman, and she may not marry herself."<sup>33</sup> This prophetic instruction underscores the binding nature of the guardian's role and its theological foundation.

The presence of a guardian in the marriage contract is, therefore, indispensable. When a woman has no legally valid male guardian due to the circumstances of her birth, Islamic law delegates the authority of guardianship to the state or its appointed official.<sup>34</sup> In this case, the KUA, through the office of the *wali hakim*, assumes this role to uphold the religious validity of the marriage.<sup>35</sup> The absence of a legitimate guardian, whether due to the annulment of paternal lineage or the disqualification of the biological father renders it

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<sup>29</sup> Halim dan Darwis, "Urgensi Penetapan Wali Nikah Bagi Perempuan Yang Lahir Kurang Dari 6 Bulan Setelah Akad Nikah Dari Perkawinan Hamil Perspektif Hukum Islam."

<sup>30</sup> Fathurrizky Adam, "Status Nasab Anak Di Luar Nikah Perspektif Madzhab Hanafi Dan Madzhab Syafi'i Serta Implikasinya Terhadap Hak-Hak Anak," *Paper Knowledge . Toward a Media History of Documents*, 2022, 13–60.

<sup>31</sup> "PERATURAN MENTERI AGAMA REPUBLIK INDONESIA NOMOR 30 TAHUN 2005 TENTANG WALI HAKIM" (2005).

<sup>32</sup> Fakhurrazi M. Yunus dan Dewi Arlina Dewi Arlina, "Pembatalan Nikah karena Nikah tanpa Izin Wali (Studi terhadap Putusan Mahkamah Syar'iyah Sigli Nomor 246/Pdt.G/2012/MS-Sgi)," *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 1 (17 Juli 2017): 101, <https://doi.org/10.22373/sjhh.v1i1.1572>.

<sup>33</sup> M. Yunus dan Dewi Arlina.

<sup>34</sup> Fadli Fadli dan Budi Juliandi, "Negosiasi antara Hukum Positif dengan Hukum Islam: Penetapan Wali Nikah di Kantor Urusan Agama Idi Rayeuk, Aceh, Indonesia," *JIL: Journal of Islamic Law* 2, no. 2 (26 Agustus 2021): 268–83, <https://doi.org/10.24260/jil.v2i2.329>.

<sup>35</sup> Fadli dan Juliandi.

impermissible for him to officiate the marriage. Failure to fulfill this requirement could invalidate the marriage under Islamic law.

Although the KHI legally recognizes children born in a registered marriage, local KUA officials must also consider *shar'ī* criteria. If the interval between the marriage contract and the child's birth is less than six lunar months, doubts arise regarding the legitimacy of the conception. In such cases, the father's eligibility as *wali* becomes nullified, not because of administrative failure, but due to the prohibition of attributing *nasab* through *zinā*.<sup>36</sup> As a result, KUA officials cannot automatically apply the provisions of national law without accounting for Islamic legal obligations.

This cautious legal posture taken by the KUA stems from the critical role of guardianship in preserving the sanctity of the marriage and ensuring its religious validity. Moreover, guardianship is intrinsically connected to one of the primary objectives of Islamic law (*maqāṣid al-sharī'ah*), namely the protection of lineage (*ḥifz al-nasl*). The safeguarding of *nasab* is central to the Islamic conception of family law because it secures identity, inheritance rights, and intergenerational continuity. Consequently, the appointment of a *wali hakim* in such sensitive cases is not merely a matter of legal formality, but a proactive measure to fulfill the core values of Islamic family law.

In light of this, the KUA's refusal to automatically follow the literal application of positive law reflects a commitment to ensuring the spiritual and legal soundness of the marriage. The use of a *wali hakim* in these contexts is a strategic intervention that aligns institutional procedure with Islamic jurisprudential tradition. It also signals the limitations of national regulations when applied to morally and legally ambiguous cases. Ultimately, this practice serves not only to preserve the religious validity of marriage but also to reinforce the theological imperative of protecting lineage a value deeply embedded in the legal consciousness of Islamic family law.

### **3.4. Analysis of the Appointment of a Judge's Guardian for the Marriage of a Legal Child According to the KHI**

As a constitutional state (*rechtstaat*), Indonesia is committed to ensuring legal certainty and protecting the rights of every citizen, including the civil rights of children born within legally recognized marriages.<sup>37</sup> The appointment of a *wali hakim* (judge's guardian) by the Office of Religious Affairs (KUA) of Medan Tembung District for a bride legally categorized as a legitimate child under the Compilation of Islamic Law (KHI) raises critical questions regarding the consistency of administrative practice with statutory and Islamic law. Decisions by religious officials must conform to the provisions of Law No. 1 of 1974, the KHI, and Ministerial Regulation No. 20 of 2019, all of which establish the legal framework for determining the legitimacy of children and their guardianship status.

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<sup>36</sup> Fadli dan Juliandi.

<sup>37</sup> Solikin dan Saidah, "HAK KEPERDATAAN ANAK LUAR KAWIN: Kajian Terhadap Hukum Perdata dan Kompilasi Hukum Islam Setelah Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010."

In the case under study, the KUA appointed a judge's guardian on the grounds that the bride was conceived outside of wedlock. However, the child was born after the parents had entered into a legal marriage, thereby fulfilling the requirements stipulated under Indonesian positive law for a child to be classified as legitimate. According to Article 99 of the KHI and Article 42 of Law No. 1 of 1974, a legitimate child is defined as one born within or as a result of a legal marriage. Consequently, the biological father retains legal authority as the *wali nasab* and is entitled to act as the guardian in his daughter's marriage.

Despite this legal clarity, the KUA's decision to appoint a judge's guardian reflects a divergence from both statutory law and the provisions of the KHI. Article 99 of the KHI specifies that legitimacy is not determined by the timing of conception, but by the legal status of the marital relationship at the time of the child's birth. As such, assigning a *wali hakim* in this context lacks a proper legal basis and constitutes a misinterpretation of normative guidelines.

The father of the bride protested the decision, asserting his rightful status as the legitimate guardian.<sup>38</sup> His objection is consistent with the provisions of Article 99 of the KHI and Article 42 of Law No. 1 of 1974. In such circumstances, the appointment of a judge's guardian should not be permissible unless one of the exceptional conditions outlined in Article 23 of the KHI and Article 13 of PMA No. 20 of 2019 is met. These conditions include the absence of the biological guardian, their unknown whereabouts, death, refusal (*'aql*), imprisonment, religious disqualification, or inability to act due to a state of *ihrām*.<sup>39</sup> In this case, none of those circumstances applied, as the father was present, competent, and willing to fulfill his duty.

Given the legal ineligibility for a judge's guardian to be appointed, the family's resistance compelled the KUA to seek a pragmatic resolution. The proposed solution involved conducting two separate marriage contracts: the first, officiated by a *wali hakim* at the KUA for administrative compliance, and the second, conducted during the wedding reception with the biological father acting as the guardian. This dual-contract arrangement was intended to balance the requirements of religious doctrine with the family's desire to preserve social standing and avoid public scrutiny.

The decision to accommodate this request reflects the legal ambiguity surrounding the guardianship of children born under circumstances of *pre-marital* conception but delivered within lawful marriage. The absence of explicit legal provisions governing such cases has led to discretionary practices by local religious officials. This highlights the urgent need for regulatory reform to ensure consistency and fairness in guardianship determinations.

To ground this analysis in Islamic legal theory, the framework of *maqāṣid al-sharī'ah* is employed, particularly the principle of *ḥifẓ al-nasl* (protection of lineage). Ensuring the legitimacy of offspring and the formal validity of marriage is integral to the preservation of family order and social cohesion. While the KUA's discretionary decision

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<sup>38</sup> Interview with Yahya (Father of the Bride), Medan, June 2024

<sup>39</sup> Inayatillah, "Status Keabsahan Wali Nikah Menurut Hukum Islam."

may have been intended to serve public interest (*maṣlahah*), it risks infringing upon the civil rights of a child who, under the law, is entitled to full paternal recognition. Therefore, efforts to balance religious interpretation with statutory rights must be guided by the higher objectives of Islamic law to ensure justice, clarity, and legal integrity.

#### 4. Conclusion

The appointment of a judge guardian (*wali hakim*) by the Office of Religious Affairs (KUA) in Medan Tembung Subdistrict for the marriage of a child who is legally recognized as legitimate contradicts the applicable positive law in Indonesia. According to Article 99 of the Compilation of Islamic Law (KHI) and Article 42 of Law No. 1 of 1974, a child born within a legally recognized marriage is entitled to a civil relationship with both parents, including paternal guardianship in marriage. Consequently, the rejection of the judge guardian by the bride's biological father is legally justifiable, as the father retains the legitimate authority to act as the marriage guardian.

This study highlights a disconnect between legal norms and administrative practice. Although statutory provisions affirm the child's legal legitimacy, KUA officials frequently exercise discretion grounded in moral judgment, *shar'ī* caution, and sociocultural considerations. In certain cases, compromises such as the use of dual marriage contracts are employed to reconcile community expectations with religious formalities. While such efforts aim to maintain social harmony, they reflect a lack of procedural clarity and open the door to inconsistent applications of the law.

The absence of precise legal guidelines regarding the status of children born from adultery and the procedures for appointing a judge guardian has led to legal uncertainty and potential infringement of children's civil rights. It is therefore imperative for the government and religious authorities to revise or clarify existing regulations, particularly the KHI and relevant ministerial decrees. In addition, comprehensive training and technical guidance for KUA officials are necessary to ensure accurate legal interpretation and balanced application of *maqāṣid al-sharī'ah* alongside formal legal certainty in safeguarding the rights of children and family integrity.

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