

Negotiating Marriage Guardianship in Banyumas, Indonesia: Religious Authority, Legal Administration, and Contemporary Change

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Abstract: The determination of marriage guardianship constitutes an important issue within Indonesian Islamic family law, particularly in the intersection between religious authority, legal administration, and contemporary social change. This study examines how *penghulu* (marriage registrars) in Banyumas negotiate the validity of marriage guardianship amid evolving administrative regulations and changing social conditions. Employing a socio-legal approach, this research draws on interviews with *penghulu* from several Religious Affairs Offices (KUA) in Banyumas Regency, complemented by legal documents and relevant regulations. The findings demonstrate that the determination of marriage guardianship is not implemented through a single uniform legal framework, but rather through negotiated practices shaped by traditional religious authority, bureaucratic administration, and contemporary developments. In terms of authority preference, *penghulu* tend to exercise traditional authority in assessing the validity of guardianship, particularly in cases involving lineage (*nasab*), administrative documentation, and the status of first-born daughters. From a legal-administrative perspective, *penghulu* rely on documents such as birth certificates and parents' marriage books to evaluate the legal status of guardianship. Furthermore, the implementation of Minister of Religious Affairs Regulation No. 20 of 2019 concerning distant guardians reveals varying interpretations among *penghulu* regarding the necessity of written authorization (*tamkīl walī bil kitābah*). While some continue to emphasize formal delegation, others reinterpret guardianship requirements in light of modern transportation and changing social realities. This study argues that marriage guardianship in contemporary Indonesia reflects an ongoing negotiation between religious legitimacy and state administration within a plural legal system. The article contributes to broader discussions on legal pluralism, Islamic family law, and the transformation of religious authority in contemporary Muslim societies.

Keywords: Guardian Determination; Authority; Legal Administration; Contemporary Challenges.

Introduction

The guardianship (*wilāya*) in Islamic marriage law represents a pivotal topic of scholarly inquiry, drawing attention from religious (Juliansyahzen, 2016), social (Alhabsyi et al., 2023; Möller, 2015), and gender-based perspectives (Nada & Fajriyah, 2023; Sidiq et al., 2021). Within classical Islamic jurisprudence (*fiqh*), the presence of a marriage guardian (*walī nikāḥ*) is considered a fundamental element, particularly for the bride, and is regarded by the majority of jurists (*jumhūr*) as a necessary condition for the validity of the marriage contract. The absence of a legitimate guardian according to *shar'ī* standards could render the marriage invalid (Faizah, 2023, p. 2). However, in the Indonesian context, the regulation of *walī nikāḥ* is not solely based on *fiqh* doctrines but is also governed by positive law, including Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (Kompilasi Hukum Islam, or KHI), and technical regulations issued by the Ministry of Religious Affairs. This duality creates potential conflicts and tensions between religious authority (*fiqh*) and state authority (positive law) regarding the determination of marriage guardianship.

The determination of a marriage guardian constitutes a critical legal aspect in the administration of the marriage contract, involving complex normative and administrative considerations. In practice, Indonesian marriage registrars (*penghulu*) navigate between two normative systems -classical *fiqh* and state law. As civil servants under the Ministry of Religious Affairs, *penghulu* predominantly refer to the Shāfi'ī school of law, which strictly mandates the presence of a *walī nasab* (blood-relative guardian) as a prerequisite for a valid marriage. This perspective is reflected in the KHI, particularly in Articles 19 to 23, which systematically outline the conditions and hierarchical order of guardianship.

Nonetheless, *penghulu* are also legally bound to adhere to state law provisions, such as Law No. 1 of 1974 and Minister of Religious Affairs Regulation No. 20 of 2019. In positive law, the legitimacy of a guardian is assessed not only through lineage but also through administrative factors such as domicile, physical presence, and legal capacity as recognized by the state. When a conflict arises between these two sources of authority, e.g., in cases where the guardian resides outside the region or abroad -*penghulu* often face a legal dilemma: whether to uphold the *fiqh*-based legitimacy or to comply with the state's administrative procedures for efficiency.

The issue becomes even more intricate in cases involving guardians with disabilities. In classical *fiqh*, the capacity of a guardian is closely linked to '*ahliyyah*' (legal competence), which includes sound reasoning, maturity, and moral integrity (Mafaid, 2020; Wahbah Az-Zuhaili, 1986). In contrast, the modern legal framework, particularly Law No. 8 of 2016 concerning Persons with Disabilities, acknowledges the legal capacity of individuals with disabilities (Agung & Pribadi, 2024; Maulana, 2023). This implies that persons with sensory or intellectual impairments are not automatically disqualified from legal responsibility. Therefore, the categorical rejection of a disabled guardian based solely on physical or mental limitations, without thorough assessment, potentially violates the principles of non-discrimination and substantive justice.

Moreover, administrative considerations also significantly influence the legal discretion of *penghulu*, such as the presence of a birth certificate and the parents' marriage certificate. In Indonesia, if a child is born within a lawful marriage, the father's name will be listed on the birth certificate, implicitly recognizing him as the legal guardian. Hence, administrative documentation becomes crucial in determining the legitimacy of a marriage. However, this administrative legitimacy may not always align with *fiqh*-based requirements, particularly when certain *shar'ī* conditions for guardianship are not fulfilled. Similarly, disputes may arise regarding the interpretation of *masāfatul qaṣr* (the distance justifying the shortening of prayer), as opinions among *penghulu* may differ regarding whether such geographical separation invalidates the guardian's authority. These multidimensional challenges reveal that the issue of *walī nikāḥ* cannot be resolved through a purely textual or formalistic approach. Instead, a more integrative framework is necessary, one that incorporates the objectives of Islamic law (*maqāṣid al-sharī'ah*), the principle of public interest (*maṣlaḥah*), and a national legal system that is responsive to evolving social dynamics and scientific advancements (Abdullah, 2020; Auda, 2007).

The significance of studying the dynamics of marriage guardianship in Banyumas lies in the region's rich diversity of cultural expressions, religious practices, and legal responses to marriage-related issues. Empirical studies in other regions show that the determination of marriage guardians in Indonesia often follows a strictly administrative approach. In regions such as Karanganyar (Sari & Sasmito, 2022) and Jombang (Hatta & Masrokhin, 2025), for instance, the hierarchy of guardianship and formal legal requirements are applied in a rigid and procedural manner, leaving limited room for interpretative discretion by *penghulu*. In contrast, other contexts reflect socio-cultural adaptations that may even deviate from classical legal doctrines, such as the practice of *taukil wali* in Bengkalis (Zakiyah et al., 2022) and parts of Yogyakarta (Zamani, 2019). In contrast, Banyumas presents a more dynamic pattern, in which *penghulu* play an interpretative role in negotiating between Islamic legal norms, state regulations, and contemporary social realities. The plurality of views among marriage registrars and the strong influence of local customs and modern legal norms makes Banyumas a strategic social laboratory for examining the interaction between Islamic law, state law, and lived social realities in a comprehensive and context-sensitive manner.

Literature Review

Authority in the Discourse of Family Law

The discourse on authority in the resolution of family law issues has been examined by several scholars, including Rais (2020), Fauzi (2023), and Rosman et al (2025). Rais investigates the dilemmas faced by *Penghulu* in the Yogyakarta region when responding to family law problems such as pregnancy-based marriages, the determination of the *'iddah* period, and cases of apostasy (*riddah*). In such situations, the coexistence of state law and religious law often places *Penghulu* in a position of legal ambiguity. This condition is influenced by their educational backgrounds and the socio-cultural environments surrounding them. In contrast, Fauzi's findings demonstrate that traditional authority, represented by local Ulama, actively seeks to negotiate its position vis-à-vis both religious law and state law (Fauzi, 2019, 2023).

The relationship between legal authorities within Indonesia's legal pluralism has also been examined by Juliansyahzen (2019). His study of two coexisting authorities in East Lampung shows that differing legal authorities tend to function in a complementary manner, mutually reinforcing each other. This finding differs from that of Rosman et al., whose study in the context of West Sumatra positions the relationship between legal authorities as fundamentally contestatory (Rosman et al., 2025).

Other studies have similarly highlighted the contestation of legal authority in the field of family law. Ansori and Juliansyahzen, for instance, examine how Ulama across various media platforms publicly perform struggles among competing authorities (Ansori & Juliansyahzen, 2022). A paradigm that privileges one form of authority over others is further identified by Ahmadi et al., who argue that the validity of marriage is determined primarily by conformity with traditional authority, rather than by religious or state authority (Ahmadi et al., 2024). This conclusion is reinforced by Abubakar et al., whose research on officials within the Offices of Religious Affairs (*Kantor Urusan Agama/KUA*) in Ternate and Tidore reveals a preference for prioritizing traditional authority in marital practices (Abubakar et al., 2024).

While earlier studies tended to conceptualize authority in singular or linear terms, Nasir's research on authority in interreligious marriage demonstrates a relationship that is both contestatory and negotiative. This is largely because interfaith marriage involves complex and arduous processes, in which the role of authority holders becomes particularly decisive (Nasir, 2020). A similar pattern is identified in Nisa's study on interreligious marriage, which highlights how such unions are situated at the intersection of multiple and often competing authorities (Nisa, 2023). Collectively, these studies converge on a broader paradigm that conceptualizes Indonesia as a 'laboratory of legal pluralism' (Merry, 1988; Wahyuni & Kusrin, 2025). This finding is reinforced by Abubakar's analysis of the shifting role of *Penghulu* authority within the Sultanates of Ternate and Tidore amid Indonesia's pluralistic legal order (Abubakar et al., 2025).

The Legal Reasoning of *Penghulu*

Studies on *Penghulu* and their legal reasoning have been conducted by Hadi et al. (Hadi et al., 2023) and Permata (Permata, 2023a). Hadi examines how younger *Penghulu* employ legal reasoning when responding to various family law issues, such as marriage guardianship (*wali al-nikāh*), marriage witnesses, and polygamy. His findings indicate that younger *Penghulu* tend to adopt a conservative-textualist paradigm. This orientation is also evident in cases where *Penghulu* reject testimony from witnesses with disabilities (Hadi, 2021). Permata, by contrast, explores *Penghulu*'s perspectives on marriages contracted during a wife's *'iddah* period. His findings reveal divergent positions: some *Penghulu* adopt a more progressive stance by accepting such marriages, while others adhere to a textualist approach and reject them on the grounds that they contradict classical *fiqh* (Permata, 2023b).

Further research examines *Penghulu*'s views on the regulation of *syibh al-'iddah* (the waiting period imposed on husbands during their wives' *'iddah*). Most *Penghulu* respond positively to this provision, while only a small number express opposition (Setyawan et al., 2025). Studies addressing the relationship between *Penghulu* and technology, particularly concerning the validity of online marriages, show that the majority of *Penghulu* reject such practices, with only a minority permitting them. This debate centers on differing interpretations of *ittihād al-majlis* (unity of the marriage session). These findings further underscore the persistent challenges faced by *Penghulu* when their legal reasoning is confronted with modernity and scientific-technological developments.

However, existing studies have not specifically examined how these tensions manifest in the practical determination of marriage guardians at the local level, particularly in regions with complex socio-legal dynamics such as Banyumas. Therefore, this study is necessary to fill this gap by analyzing how Penghulu negotiate authority, administrative procedures, and contemporary challenges in determining the validity of marriage guardians.

Method

This study adopts a qualitative research design aimed at exploring empirical data derived from field observations, particularly the practices surrounding the determination of marriage guardians and the perspectives of Islamic marriage registrars (*penghulu*) in Banyumas Regency. In the qualitative research tradition, two fundamental inquiry terms often guide the exploration “how” and “why” (Alam, 2023; Tenny et al., 2025). These questions serve as critical entry points for the researcher to elicit in-depth information from both primary informants and secondary sources drawn from relevant literature. The inquiry commenced by delineating the normative frameworks of guardianship in both Islamic jurisprudence and Indonesian state law. These two legal domains constitute the foundational references that shape the decision-making process of *penghulu* in determining the legality and appropriateness of a guardian. As the fieldwork progressed, the researcher observed a noticeable discrepancy between the normative provisions embedded in religious and state regulations and the lived realities of guardianship practices. This disjunction necessitated the further analytical question of “why” such inconsistencies occur and what underlying factors contribute to these divergences.

This research applies a socio-legal approach, integrating legal analysis with sociological perspectives to examine how legal norms are operationalized in social contexts (Hillyard, 2007; Prasetyo & Ja’a, 2019; Schiff, 1976). This methodological framework is particularly valuable for capturing a more comprehensive understanding of legal phenomena. The study systematically examines the normative principles of guardianship as outlined in both Islamic *fiqh* and state legislation. Furthermore, it investigates the real-world practices of guardianship, with a focus on the decision-making preferences of *penghulu* when faced with problematic cases of marriage guardianship. To analyze these preferences, the study employs Max Weber’s typology of authority, which includes: (1) Legal-rational authority, grounded in codified laws and formal regulations; (2) Traditional authority, rooted in longstanding customs and practices, often hereditary in nature and not formally institutionalized; and (3) Charismatic authority, based on personal attributes or perceived exceptional qualities of the individual deemed to hold power (Kalyvas, 2002; Muchtarom, 2000; Spencer, 1970; Weber, 1946).

The empirical research was conducted at three Kantor Urusan Agama (KUA/Offices of Religious Affairs) located in Purwokerto Utara, Purwokerto Timur, and Purwokerto Barat, all of which are administratively part of Banyumas Regency. These sites were purposively selected as they represent the urban administrative areas of Banyumas, where social and legal complexities in marriage practices tend to be more pronounced. In-depth interviews were conducted with *penghulu* at each location. (Atkinson, 2017, pp. 70–76). In addition to the interviews, the researcher collected and cataloged various written documents, including prior empirical studies and regulatory texts related to marriage guardianship. These diverse data sources were utilized not only for analytical purposes but also to strengthen the validity of the findings through a triangulation strategy (Jick, 1979).

Results and Discussion

Authority Preferences in the Determination of Marriage Guardianship

The determination of who holds legitimate authority to act as a *walī al-nikāḥ* (marriage guardian) for a bride frequently generates debate among scholars and practitioners. As discussed earlier, Islamic legal discourse generally recognizes two types of guardians: *walī nasab*, who are blood relatives of the bride, and *walī hakim*, an appointed guardian who assumes the role in the absence of a qualified *walī nasab*, or due to certain disqualifying conditions.

A particularly contested case involves children born out of wedlock. In Islamic jurisprudence (*fiqh*), the principle of *tsubūt nasāb* (legal attribution of lineage) for such children prescribes that the child is affiliated exclusively with the mother. The legitimacy of the child -bearing implications for guardianship-becomes a recurring issue. According to Article 99 of the Compilation of Islamic Law (Kompilasi Hukum Islam), “a legitimate child is one born within a lawful marriage or as a consequence thereof.” Based on this provision, some interpret that regardless of the temporal proximity between the marriage and the child's birth, as long as the marriage legally occurred, the child may be regarded as legitimate and thereby eligible for guardianship through the *wali nasab*. This interpretation is adopted by several *penghulu* (marriage registrars) in regions such as Yogyakarta (Rais, 2020).

However, the dominant opinion among many legal practitioners and *penghulu*, derived from classical *fiqh* interpretations, stipulates a minimum gestational period of six months to establish legitimate paternity. In other words, if a child is born less than six months after the parents' marriage, the child is not recognized as having a *wali nasab* and instead must be assigned a *wali hakim* for the marriage process.

This requirement often triggers conflict, particularly when the bride's biological father contests the decision of the *penghulu* and insists on his perceived right to act as guardian. Fathers in such cases often believe they possess the intrinsic and irrefutable right to act as *wali*. In instances where such disputes arise, the Office of Religious Affairs (Kantor Urusan Agama, KUA) generally recommends that the matter be resolved through a formal determination by the Religious Court (Pengadilan Agama).

This policy is uniformly applied in various urban KUA branches, including those in East, West, and North Purwokerto. Officials in North Purwokerto, for example, exercise particular caution in cases involving children born from extramarital conception or post-ceremonial yet unregistered (i.e., *nikah sirri*) unions. In these cases, if the child is born more than six months after the marriage ceremony, the *wali nasab* may assume the guardianship role. However, if the child is born in under six months, the guardianship is categorically assigned to the *wali hakim*, and no substitution by a *wali nasab* is permissible. This approach is applied with rigid adherence to the classical legal framework (*Interview with the Head of the Purwokerto Barat Office of Religious Affairs (KUA)*, personal communication, April 2024; *Interview with the Head of the Purwokerto Utara Office of Religious Affairs (KUA)*, personal communication, April 2024).

Findings from this study indicate that in the practical determination of *wali al-nikāh*, most *penghulu* in the research area still rely on classical Islamic legal sources, including *Fath al-Qarib*, *Kifayah al-Akhyar*, *al-Mughni*, and *I'alah al-Thalibin*. These texts are perceived by *penghulu* as authoritative and time-tested references within Indonesia's Islamic legal tradition, particularly in *pesantren* (Islamic boarding schools) and traditional religious communities. Their enduring legitimacy underscores the deep-rooted influence of classical *fiqh* in shaping contemporary legal decisions on guardianship (Hadi, 2020, 2021; Hadi et al., 2023, p. 200; Lingga et al., 2025).

This pattern reveals the strong influence of *traditional authority*, as conceptualized by Max Weber, wherein legitimacy derives from inherited norms and practices that are widely accepted within the community. In many cases, even when state legislation such as Law No. 1 of 1974 or the Compilation of Islamic Law (Kompilasi Hukum Islam) offers alternative legal formulations, *penghulu* (Islamic marriage officials) often continue to prioritize classical *fiqh* as their primary reference. This adherence stems from a belief that laws grounded in classical religious authority carry greater spiritual significance and moral legitimacy in the eyes of the local religious community. This observation contrasts with Halili's findings, which highlight that in certain *penghulu* communities, there remains a strong preference for legal-rational authority -also drawn from Weber's typology- wherein biological paternity is considered the primary basis for determining guardianship, even when the time lapse between birth and the parents' marriage falls short of the six-month threshold. Such divergent practices underscore the complex interplay between textual interpretation and the application of legal standards (Rais, 2020).

These findings point to a duality of legal legitimacy in marriage practices: on one hand, legal-rational authority as represented by formal state regulation, and on the other, traditional authority expressed through classical *fiqh* references. While many *penghulu* in the field attempt to reconcile these two domains, the data from this study indicate that *fiqh* remains the dominant normative source, particularly in the determination of guardianship status and hierarchy. This conclusion aligns with Nurlaelawati's earlier

research concerning the judicial reasoning patterns among religious judges in Indonesia (Nurlaelawati, 2009). When confronted with conflicting or ambiguous interpretations between Islamic law and state regulation, both judges and *penghulu* tend to privilege the doctrines found in *fiqh*. Conversely, when both legal systems are in agreement, they affirm the authority of the state regulation. Beneath this dynamic lies the enduring influence of traditional religious references, which ultimately guide the direction of legal preferences among these actors.

Legal Administration and Its Impact on the Determination of Marriage Guardianship

In the context of marriage practices in Indonesia, particularly within the domain of the Kantor Urusan Agama (Office of Religious Affairs, or KUA), the determination of a *wali al-nikāh* (marriage guardian) is influenced not only by religious considerations and classical *fiqh* references, but also by formal legal-administrative procedures established by the state. Legal administration has become an integral part of official marriage procedures, as a marriage deemed valid under state law must comply with population registration documents, civil records, and applicable legal frameworks. These procedures are not merely bureaucratic formalities; rather, they constitute a form of legal administration with direct implications for the legal validity and certainty of a marriage. As such, administrative compliance is regarded as a matter of public interest (*maslahah*) and is aligned with the objectives of Islamic law (*maqāṣid al-sharī'ah*) (Mesra, 2012).

Compliance with legal administration thus serves not only bureaucratic functions but also acts as a bridge between two sources of authority: legal-rational authority derived from statutory regulation and traditional authority rooted in Islamic jurisprudence. In this dual capacity, *penghulu* (marriage registrars) function not only as state officials who formalize marriages but also as religious figures tasked with ensuring that each procedural step conforms to both civil law requirements and Islamic legal norms.

In practice, when the time interval between the parents' marriage and the birth of the child meets the minimum threshold, generally six months, the biological father listed on the official documents may be directly recognized as the legitimate *wali nasab*. However, if the time interval is less than six months, the *penghulu* initiates a more thorough verification process. This process typically includes reviewing not only the child's birth certificate but also the parents' marriage certificate, particularly in cases involving a first-born daughter. Sole reliance on the birth certificate may be misleading, as the biological father's name is commonly recorded based on Constitutional Court Decision. 46/PUU-VII/2010 (Adhyaksa et al., 2023; Anisa, 2022; Aziiz et al., 2013; Basuki, 2014). which grants the right to include the biological father's name on the child's civil records. This legal development exists in the absence of explicit provisions in Law No. 24 of 2013 concerning population administration regarding the inclusion of paternal names on birth certificates or a definitive six-month interval requirement between birth and the parents' marriage. These administrative procedures are taken seriously by *penghulu* to avoid legal irregularities and prevent the appointment of an invalid guardian (*Interview with the Head of the Purwokerto Barat Office of Religious Affairs (KUA)*, personal communication, April 2024; *Interview with the Head of the Purwokerto Barat Office of Religious Affairs (KUA)*, personal communication, April 2024; *Interview with the Head of the Purwokerto Utara Office of Religious Affairs (KUA)*, personal communication, April 2024).

Field data reveals that one of the most critical administrative steps in verifying the legitimacy of a *wali nasab* is the cross-examination of the bride's birth certificate alongside the parents' marriage book (*buku nikah*). This verification is aimed at ensuring that there is at least a six-month gap between the parents' marriage and the child's birth, thereby affirming the legitimacy of the biological father to act as the *wali nasab*.

In cases where a child is born less than six months after the parents' marriage, *penghulu* conduct a legal assessment that may affect the attribution of *nasab* and the validity of a lineage-based guardian. If the biological link is not legally recognized, the guardianship is transferred to a *wali hakim*. This reflects the *penghulu's* dual role as administrative authority and legal interpreter in balancing normative rules and social considerations (observation, 2025). This is in line with Kamaliah's findings, which show that *penghulu* not only function as administrative officials but also act as legal interpreters who employ contextual and flexible reasoning in addressing marital issues within complex social settings (Kamaliah & Yazid, 2025).

Disability and the Legal Validity of Guardianship in Islamic Marriage

In the framework of Islamic marital law as applied in Indonesia, the presence of a legal guardian (*walī al-nikāḥ*) holds a central and strategic role in validating a marriage, particularly for the bride. This requirement is codified in Articles 20 to 23 of the *Kompilasi Hukum Islam* (Compilation of Islamic Law / KHI), which delineates the hierarchy of lineage-based guardians (*walī nasab*) and stipulates the legal criteria for their eligibility. One of the fundamental prerequisites is that the guardian must possess legal capacity (*ahliyyah al-adā'*), understood as the ability to comprehend, intend, and consciously execute legal acts.

A significant debate, both among classical and contemporary Islamic jurists, concerns the legal capacity of guardians who live with disabilities. The central question revolves around the parameters of disability that would invalidate an individual's right to serve as a guardian. Does any form of disability nullify one's legal capacity? In addressing this, it becomes essential to refer to the Islamic legal concept of impediments to legal competence (*'awāriḍ ahliyyah*). These impediments are broadly categorized into two types. First, *'awāriḍ samawiyah* (divinely-induced impediments) include, among others, mental retardation, childhood, intellectual disabilities, forgetfulness, sleep, epilepsy, illness, enslavement, menstruation, postpartum bleeding, and death. Second, obstacles to legal capacity may also arise due to human action, either by the individual or by others, referred to as *'awāriḍ muktasabah* (acquired impediments), such as intoxication, ignorance, travel, or coercion by external forces or third parties (Wahbah Az-Zuhaili, 1986, pp. 177–186).

In addition to classifying the types of impediments to legal capacity, it is also essential to examine them from the perspective of their legal consequences. Certain impediments may result in a complete loss of legal capacity, such as mental retardation, sleep, forgetfulness, or coercion. Others may only partially diminish one's legal capacity—for instance, intellectual disabilities may impair certain legal faculties without nullifying them entirely. Furthermore, some impediments merely alter the legal effect of specific acts due to the contextual conditions surrounding the legal subject, such as insolvency or bankruptcy (Hadi, 2021, p. 174; Mafaid, 2020).

Based on the foregoing, the legal capacity to act as a guardian (*walī*) for a person with disabilities is not inherently impeded, so long as the individual retains sound mental and intellectual faculties. This position is also emphasized in the classical work of Khalīl al-Bangkalānī, which asserts that persons with disabilities, such as visual, auditory, or speech impairments, may still validly serve as guardians, provided that they are assisted by appropriate supportive tools or technologies. Moreover, the legitimacy of a marriage guardian (*walī al-nikāḥ*) is not determined by the level of intellectual sophistication, but rather by the fulfillment of core legal and moral qualifications (Zuhriyah & Muna, 2023).

Nevertheless, there remains a dynamic tension in the practical implementation of guardianship within society, where the presence of disability among potential guardians is still often perceived negatively. This stigma persists even among penghulu (marriage registrars or religious officials), some of whom continue to debate the validity of guardianship exercised by individuals with disabilities. For instance, Hadi's findings reveal that even among younger penghulu, there exists a conservative and textualist view that a person with disabilities is disqualified from serving as a *walī al-nikāḥ* (marriage guardian) (Hadi et al., 2023).

In the context of Banyumas, the practice of guardianship involving persons with disabilities tends to be more moderate compared to the conservative stance reflected in Hadi's findings, which exclude individuals with disabilities from serving as guardians. The three Offices of Religious Affairs (KUA) in the Banyumas region unanimously agree that legal guardianship is not revoked solely due to disability. The legal capacity to act as a *walī* remains intact as long as the individual does not suffer from intellectual retardation, and as long as they are able to write, read, or communicate through gestures. In such cases, the guardian may authorize the marriage registrar (penghulu) through written delegation (*taukīl walī bil-kitābah*) and remain present beside the wali during the marriage contract (*'aqd al-nikāḥ*) ceremony (Interview with the Head of the Purwokerto Barat Office of Religious Affairs (KUA), personal communication, April 2024; Interview with the Head of the Purwokerto Timur Office of Religious Affairs (KUA), personal communication, April 2024; Interview with the Head of the Purwokerto Utara Office of Religious Affairs (KUA), personal communication, April 2024).

From a human rights perspective, the legal position adopted by the penghulu (marriage registrars) reflects an effort to incorporate fundamental human rights principles, particularly the inherent rights of individuals to be respected and granted equal recognition before the law. This approach underscores a commitment to upholding the dignity and agency of persons with disabilities, ensuring that their legal capacity is not unjustly denied based solely on physical or sensory impairments.

Masāfat al-Qaṣr and the Development of Transportation Technology

In Islamic jurisprudence (*fiqh*), *masāfat al-qaṣr* refers to the minimum travel distance that permits a Muslim traveler (*musāfir*) to perform a shortened form of prayer (*ṣalāh al-qaṣr*), in which the obligatory four-unit (*rukḥṣah*) prayers are reduced to two. According to the majority of classical scholars (*jumhūr al-‘ulamā’*), this permissive distance is traditionally measured as approximately two *marḥalahs*, a unit of measurement from the classical Islamic era. When converted into modern units, this distance ranges between 80 to 90 kilometers, depending on the interpretive method and standards applied in measuring the traditional *marḥalah* (Jazīrī, 2003).

However, the dramatic advancements in transportation technology throughout the 20th and 21st centuries have posed significant challenges to the traditional concept of *masāfat al-qaṣr*. In the classical period, traveling 80 kilometers would take several days and involve substantial physical hardship. Today, with modern modes of transport such as automobiles, high-speed trains, and airplanes, that same distance can be covered within minutes or a few hours. This technological shift has prompted contemporary *fiqh* debates regarding the relevance of both distance and travel duration in determining the legal status of a traveler (*musāfir*). Modern scholars have engaged in new forms of *ijtihād*, proposing that the defining criteria for *ṣalāh al-qaṣr* should include not merely the quantitative measure of distance, but also the qualitative factors of hardship, duration, and disruption. As Mohammad Hashim Kamali argues, there is a pressing need to reinterpret the concepts of *saḥar* and *masāfat al-qaṣr* through the lens of *maqāṣid al-sharī‘ah* (the higher objectives of Islamic law), with attention to the evolving circumstances and welfare (*maṣlaḥah*) of the Muslim community (Kamali, 1991). Within the epistemological framework of *uṣūl al-fiqh*, this re-evaluation requires a reassessment of the operative legal cause (*‘illah*), the underlying rationale behind the ruling, which serves as a determinant in aligning legal norms with contemporary realities (Alyūbī, 1998; Ghazali, n.d.; Wahbah Az-Zuhaili, 1986).

This issue not only affects the performance of ritual prayer (*ṣalāh*), but also carries significant legal implications in other areas of Islamic law, including marriage guardianship (*wilāyah al-nikāḥ*). In classical *fiqh*, one of the essential conditions for the validity of marriage is the presence of a legitimate guardian (*walī*). If the primary guardian is unable to be physically present, a *walī ḥākim* (judicial or state-appointed guardian) may be designated, provided that the delegation complies with the requirements of Islamic legal norms. The discussion surrounding *masāfat al-qaṣr* becomes particularly relevant in cases of marriage when the guardian resides at a considerable distance from the bride. According to traditional *fiqh* literature, if the guardian is located at a distance considered *saḥar* i.e., beyond the threshold of *masāfat al-qaṣr*, he is not permitted to officiate the marriage directly unless he delegates his authority (*wakālah*) to another person or to the *walī ḥākim* to solemnize the marriage on his behalf (Jazīrī, 2003).

In the context of guardianship regulations in Banyumas, the determination of a marriage guardian (*walī al-nikāḥ*) is principally guided by the provisions of Indonesia’s Ministerial Regulation of Religious Affairs (PMA) No. 20 of 2019. This regulation implicitly eliminates the classical requirement of *masāfat al-qaṣr* as a determinant in delegating guardianship. However, the responses of penghulu (marriage registrars) in Banyumas vary in practice. In particular, penghulu at the Offices of Religious Affairs (KUA) in East and North Purwokerto have stated that when a guardian is situated at a considerable distance (*ba‘īd*), equivalent to or exceeding the *masāfat al-qaṣr*, he is permitted to delegate his guardianship in writing (*taukīl walī bil-kitābah*) through the KUA nearest to his location. This delegation process is carried out unconditionally, so long as the guardian’s geographical distance reasonably prevents his attendance at the wedding, he is entitled to transfer his authority to another party. (Interview with the Head of the Purwokerto Timur Office of Religious Affairs (KUA), personal communication, April 2024; Interview with the Head of the Purwokerto Utara Office of Religious Affairs (KUA), personal communication, April 2024)

In contrast, the *penghulu* at the Office of Religious Affairs (KUA) in West Purwokerto offer a more substantive interpretation of the *masāfat al-qaṣr* provision. They argue that the evolution of historical context and the advancement of modern transportation technologies should be taken into account when determining the legal status of distance-based guardianship. In their view, easy, sophisticated, and rapid access to transportation should not be used as a justification for a guardian's absence from the marriage ceremony. (Interview with the Head of the Purwokerto Barat Office of Religious Affairs (KUA), personal communication, April 2024)

Masāfat al-qaṣr, as a jurisprudential concept defining the threshold of travel (*safar*), is not only pertinent to the regulation of prayer rituals, but also bears direct implications for the legal norms governing marriage guardianship (*wilāyah al-nikāh*), particularly in cases where the guardian resides in a different city or region. In light of contemporary advancements in transportation and communication technologies, the classical definitions of *safar* and guardian absence require critical reinterpretation to ensure alignment with the *maqāṣid al-sharī'ah*, the higher objectives of Islamic law. This evolving reality necessitates renewed *ijtihād* to preserve the validity and social benefit (*maṣlaḥah*) of marriage practices, while remaining responsive to the lived realities of the modern era.

Conclusion

Based on the discussion and analysis, it can be concluded that the determination of marriage guardianship (*wilāyah al-nikāh*) among *penghulu* (marriage registrars) in Banyumas is characterized by significant internal dynamics. The preference for legal authority used as the source of legitimacy by these *penghulu* tends to lean toward traditional religious authority. Although *penghulu* function as state-sanctioned legal actors, in matters concerning the designation of a guardian, they frequently refer to *sharī'ah* or *fiqh*-based norms when state law is silent or ambiguous. Conversely, when religious norms align with state law, they readily cite national legal provisions as their reference. Administrative considerations also play a critical role in shaping the *penghulu*'s decisions, such as conducting a dual-check of birth certificates and marriage books to confirm the chronological plausibility of a child's birth relative to the parents' marriage date. This practice reflects a traditionalist legal paradigm that emphasizes minimum gestational periods in determining a child's legal status. However, this traditionalist paradigm does not always prevail. In cases involving guardians with disabilities, the *penghulu* unanimously agree that such individuals retain the right to act as guardians, even if assistance, such as written delegation to the *penghulu*, is required. Divergence also emerges in the interpretation of distance-related guardianship. While some *penghulu* uphold classical restrictions based on physical distance, others adopt a more rationalist approach, asserting that modern transportation technologies effectively eliminate distance as a valid impediment to the guardian's presence at the marriage ceremony.

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Conflict of Interest

The author declares that there is no conflict of interest related to the research, authorship, or publication of this article.

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