

Juridical Review of *Taukil Wali* Among Students of Al-Hikmah Islamic Boarding School Purwoasri Kediri

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Abstract

The research examines a juridical review of the *Taukil Wali* among students at the Al-Hikmah Islamic Boarding School, Purwoasri, Kediri. The purpose of this study is to know and understand by analyzing the position of *Taukil Wali* from the point of view of Islamic law and the factors that make students prefer *Taukil Wali*. The research method used is a combination (normative and empirical). The results of this study explain that the position of *Taukil Wali* in the perspective of Islamic law is permissible, but with the condition that the representatives and their representatives fulfill the pillars and requirements of Syar'i. Likewise, the Muwakil is seriously ill and difficult to heal or the long distance makes it impossible to become a guardian. Factors for students who prefer *Taukil Wali* include a lack of knowledge about the pronouncement of the marriage contract, feelings of inferiority, and respect for Kyai.

Keywords:

Taukil guardian of marriage, Islamic family law

Introduction

In the era of society 5.0, of course, Islamic law has also experienced developments and changes in facing ongoing challenges. The spirit and basic values of Islamic law remain relevant and valid both in the past and in the future. Ukhuwah Basyariyah is a manifestation of interaction with the Khaliq. If there is good interaction with God's other creatures, it can be said that there is also good interaction with His creator. Therefore, Islamic law prioritizes humanity.

Marriage is a general sunnatullah and applies to all living creatures in the world. Allah SWT, chose this method so that living creatures can reproduce and preserve life. Moreover, as a human being who has been assigned a life partner since

the beginning of his creation. According to Islamic Sharia, the relationship between men and women has been arranged very beautifully and is united in a bond in the form of marriage. The Koran has mentioned that marriage is called *mithaqān ghalīza*, namely a strong bond, meaning a bond that is sacred and valuable and contains *ubudiyah* values and noble goals.

Apart from being human nature, the purpose of marriage is the first step to forming a harmonious family, loving each other, and creating happiness (*sakinah, mawadah* and *wa rohmah*) in a household and as a form of worship that contains sacred values. Marriage is one of the foundations of life, the main basis for social communication. A marriage is considered valid if it is carried out according to the law and religious beliefs that fulfill the existing pillars and requirements. This means that the law allows each religion to determine the validity or legality of a marriage.

Marriage is an important component of Islamic law which is regulated according to sharia law. The implementation of the marriage must comply with the specified requirements and pay attention to legal values. Every person who wants to get married must comply with the applicable Islamic sharia law so that when carrying out the marriage contract it can be considered legal by the religion. The main elements in a wedding are the 2 prospective bride and groom (male and female) who will get married as well as the consent and consent of both parties. In Islam, *Ijab* (a statement from the guardian when handing over the bride to the groom) and *Kabul* (the groom's expression in accepting approval) are proof of the agreement between the two parties concerned. Consent is the most important factor in marriage, especially between the party signing the contract, namely the guardian, and the party receiving the contract, namely the future husband or successor. So a marriage will not be valid without a guardian because he is the person who determines whether a marriage is valid or not.

Guardianship is discussed in the area of *tazwij* which includes its implementation, the order of guardianship, who is the guardian, the type and role of guardians in carrying out marriage affairs, and whether or not women are allowed to be guardians. A marriage guardian and the need to have a guardian are a requirement to know whether the marriage is valid or not. The presence of a guardian is absolutely necessary in a marriage because the marriage contract takes place between the

guardian and the groom, not the bride. As Allah Subhanahu wa Ta'ala said:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ

“And marry those who are still single among you, and also those who are worthy (to marry) of your male and female servants”.

The words of the Prophet sallallahu'alaihi wa sallam:

أَيُّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ إِذْنٍ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، وَإِنْ اسْتَجْرُوا فَالسلطانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهَا

“Any woman who marries without the permission of her guardian, her marriage is false, her marriage is false, her marriage is false. If someone has sex with her, then the woman has the right to receive a dowry, so that it is legal for her to have sex with her. If they are abandoned (don't have a guardian), then the ruler is the guardian for anyone (women) who doesn't have a guardian.”

The words of Allah Subhanahu wa Ta'ala and the words of the Prophet Sallallahu 'alaihi wa sallam state emphatically that a woman's marriage is not valid if it does not have the blessing of a guardian. In other words, a guardian is very important to support the implementation of the marriage process. Due to the importance of the guardian of the marriage, under no circumstances should he or she be absent, even through the representative of the guardian. However, there are also those who think that the deputy marriage guardian is unusual (strange) because they consider the marriage guardian to have full rights to marry off their child. According to Islamic law, there is a real possibility that a person will not be able to be a guardian for his daughter due to his or her Shari'a age, such as serious illness, incurable poverty, and long-distance making it impossible to become a guardian. This raises academic concerns about whether this reason could be the reason for *Taukil Wali*.

A guardian in marriage is a person who has the right to act on behalf of the prospective bride in a contract. The function of a guardian here is to contract marriage agreements for women under their guardianship directly as a line guardian, or by being represented by a guardian judge. This is what we often know as *Taukil Wali*. Because guardianship rights can be transferred to a judge's guardian, it is not uncommon for people to do this. Many people choose to represent their marriage to someone they

consider more appropriate, even though that person is not from their family.

As happened in Purwoasri Village, Kediri, specifically at the Al-Hikmah Islamic Boarding School. It is not uncommon for students in this boarding school to prefer to be married by their Kyai rather than their own father. However, is the reason used by the students here just as a form of ta'dzim towards their Kyai or is there another reason? Seeing the problems above, the author wants to conduct further research regarding the position of the *Taukil Wali* in marriage in terms of Islamic law, so that this research can clarify further the position of the *Taukil Wali* in marriage. Apart from that, the author also wants to know more about the reasons why students choose taukil guardians.

Method

This type of research uses combined research between normative law and empirical (sociological), which uses secondary data as supporting data. Empirical data is obtained from human behavior, both verbal (interviews) and actual (direct observation). The data used is primary and secondary data. Primary data are legal documents obtained from literature studies including primary legal, secondary legal, and non-legal materials. Meanwhile, secondary data includes empirical facts related to human behavior, both verbal and actual, and behavior recorded in findings or other behavioral records together.

Primary data are legal documents obtained through literature study including primary legal materials (1945 Constitution, Law No. 1 of 1974 concerning Marriage, PP No. 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage, Instruction of the President of the Republic of Indonesia Number 1 of 1999 concerning the Dissemination of the Compilation of Islamic Law, Compilation of Islamic Law, Regulation of the Minister of Religion Number 20 of 2019 concerning Marriage Registration), secondary legal materials (interpretations related to primary legal materials include several literatures and a number of publications from websites that are relevant to the research discussion, and non-legal materials obtained from several literature and internet sites related to research discussions.

The research was conducted at the Al-Hikmah Islamic Boarding School which

is located on Jl. Raya Number 86 Purwoasri, Kediri, East Java. This research was conducted for approximately 2 (two) weeks to collect the data needed by researchers. As for collecting data through interviews with informants who have been previously identified, they are considered to have extensive knowledge about the problem. Researchers conducted interviews with boarding school administrators and students at the Al-Hikmah Purwoasri Islamic Boarding School, Kediri, East Java. The types of interviews used are formal interviews using interview guidelines (structured interviews) and informal interviews (by asking questions spontaneously to the respondent or informant who will be interviewed).

Data analysis was carried out systematically by classifying primary and secondary data. This research combines normative law and empirical law (sociology) which is then analyzed descriptively and qualitatively, including explanations and interpretations related to events that have occurred and trying to find the meaning contained in normative law in detail and in-depth. This research will then draw conclusions about the position of the *Taukil Wali* in marriage in terms of Islamic law and the reasons why the students choose him.

Research Results and Discussion

We often hear the word *Taukil Wali* (deputy guardian) in marriages for sharia reasons, the guardian lacks self-confidence so he entrusts his child to someone else. This gives rise to many interpretations, so the question arises as to why the marriage guardian did this. Because the guardian is one of the pillars of marriage which has an important role. Therefore, we will discuss the meaning of the word *Taukil Wali* in terms of etymology and terminology.

Etymologically, *taukil* is the masdar form of the words *wakkala-yuwakkilu-taukilan*, meaning to transfer or bestow. In the KBBI (big Indonesian dictionary), *taukil* means the process, method, or act of handing over (transferring) power. The term *taukil* is often equated with *wakalah*. The words *al-wakalah* or *al-wikalah* are representative which means submission, delegation, and delivery of tasks. Therefore, there is no difference between *taukil* and *wakalah* in terms of language. Because both

come from the same form, namely wakkala. Meanwhile, in terms of terminology, taukil or wakalah in Sharia terms is viewed from various schools of thought, including:

1. Hanafiyah scholars say that a wakalah is a person who takes another person's position administratively.
2. Malikiyah scholars are of the opinion that a wakalah is a person who replaces another person's position in terms of rights and obligations and is able to manage it.
3. Hambali scholars say that al-wakalah is a request for someone's replacement so that the other party gets balance, which includes replacing the rights of Allah SWT and humans.
4. Shafi'i scholars, stated that a wakalah is a person who entrusts or delegates his work to another person while the carrier is still alive.

Based on the definitions of different scholars, it can be concluded that al-wakalah is entrusting work to another person (one's representative) to carry out the task, and then the representative takes the position of representative (muwakkil) with rights and obligations that apply as long as the muwakkil is alive.

Taukil Wali pillars and requirements, there are several pillars and conditions that must be met by stakeholders. The pillars and requirements for taukil are as follows: a) Muwakkil, the representative must be legal or authorized to carry out the actions he represents. Thus, in carrying out their work the person is prohibited from acting like crazy people and small children who are still in the care of their parents. b) Representative, the general requirement to become a representative is to have the ability to carry out the tasks given by the muwakkil and the person is appointed by the muwakkil. The requirements include being Muslim, mature, male, and having good integrity (only applies to deputy guardians and not to representatives of the groom). c) Muwakkil fih, it is implied that you will receive a replacement. This means that if the representative cannot carry it out, he is allowed to give authority to another person to fulfill the request, work, or goods owned by the muwakkil, the actions described are actions that are not prohibited, it is clearly known. d) Shigat, in the form of speech that

expresses his desires, such as: "I entrust this action to you, or this or that." The representative does not have to accept but cannot refuse.

Taukil Wali in the perspective of Islamic law, as explained above, *taukil* or deputy is the transfer of authority by someone to another person in matters that can be represented. There are things that can only be realized in the form of *mu'amalah*, such as buying and selling, grants, alms, and marriage contracts. This is part of mutual support based on kindness and piety. As Allah SWT says in Q.S Al-Maidah (5) verse 2:

وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

Meaning: "And help you in (doing) righteousness and piety, and do not help you in committing sins and transgressions."

The rules of *Fiqhiyyah* are conveyed:

كُلُّ مَا جَازَا لِلْإِنْسَانِ أَنْ يَأْتِيَهُ مِنَ التَّصَرُّفَاتِ بِنَفْسِهِ جَازَ لَهُ أَنْ يُوَكَّلَ غَيْرَهُ فِيهِ إِذَا كَانَ التَّصَرُّفُ يَقْبَلُ التَّيَابَةَ

Meaning: "Any management that a person can carry out personally, he can delegate to someone else, if that management can be replaced."

Based on the Al-Quran and the rules of *fiqhiyyah*, it can be concluded that in the case of representing or authorizing another person in any matter that is not prohibited by the Shari'a, including marriage contracts, permission is permitted, but this must be confirmed in the rules: the *muwakkil* has the right to achieve something. who are in his power? In other words, if the representation is related to marital guardianship, the *muwakkil* must maintain a good relationship with the *muwakhil* fih so that the guardianship (*Taukil Wali*) can be delegated to the representing party. When carrying out the guardianship function in marriage, the guardian can personally carry out the marriage contract for the person under his guardianship or provide power of attorney for the person representing him. The conditions that must be met to become a guardian include: being Muslim, male, sane, mature, and fair.

A person who is obliged to represent a marriage contract is not permitted to carry out this obligation for another person. The granting of authority is valid if the representative carries out his/her representative functions in accordance with what has been determined by the representative. If it is inconsistent or misleading, then the representation is considered invalid or invalid.

In the case of guardian guardians regarding the marriage of children out of wedlock in communities that are not yet familiar with Islamic law, it is permissible to use a guardian judge for deputy representatives who do not have obstacles, but if they are unable to do so, they may be represented by the headman. In accordance with the book of fiqh, the author is of the opinion regarding the concept of taukil that the muwakkil (representative) is obliged to be the owner of the goods being represented. If this concerns the case the author explains, then the guardian's taukil is invalidated and the marriage is automatically annulled. This is because the prospective bride and groom have no blood relationship with their representative. However, if the celebrant acts as the bride's guardian before a judge then the marriage is valid.

According to the regulations, if an object is not legally owned by the representative, then the object does not have the power to be given to the representative, because one of the conditions for the object to be transferred to the representative is that the object must be legally transferred. Likewise in the concept of *Taukil Wali*. In the Marriage Law Article 1 of 1974 does not specifically explain the rules regarding guardians, however in the Compendium of Islamic Law Article 23 paragraph 1 provides another alternative if there is a vacancy between guardians during a divorce. However, during the marriage ceremony, in particular: "The guardian judge can only act as marriage guardian if the guardian of the lineage is not available or it is impossible to present him or his place of residence is unknown or he is unseen or 'adhal (reluctant). Hadith of the Prophet sallallaahu 'alaihi Wa Sallam:

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ ابْنُ عُيَيْنَةَ عَنِ ابْنِ جَرِيرٍ عَنِ سُلَيْمَانَ، عَنِ زُهَيْرِيٍّ، عَنِ عُرْوَةَ،
عَنْ عَائِشَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ ((أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا،
فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ
فَرْجِهَا، فَإِنْ اسْتَحْرَمُوا، فَالْسلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ))

Meaning: "A woman who marries without her guardian's permission will have her marriage annulled. If he has had sexual intercourse, then the woman is entitled to his dowry. And if there is a dispute with the guardian, then the sultan becomes the guardian for the woman who does not have a guardian"

Based on the explanation above, if a woman wants to get married but does not have a guardian in her marriage because of the separation of the guardian, unseen guardian, adhal guardian, and on the basis of guardianship during the Hajj or Umrah, it is not through a representative guardian, but with a judge guardian.

Factors that cause *Taukil Wali*, include someone who cannot handle his work at the same time because he is busy, the distance is far and cannot be reached, someone does not understand the procedures or requirements for behavior in representative activities, someone who has these interests is in a state of syar'i old age. , like sick.

There are rules. There are fihiyyah rules which mean that an action that is easy to carry out cannot be canceled by an action that is difficult to carry out. With this provision, it can be understood that every implementation of Sharia law must be carried out in accordance with the capacity of themukallaf. Something that is easy to achieve will not be accompanied by something that is difficult to achieve. In other words, what is done within the maximum limits of one's abilities is considered a valid legal act. As in the implementation of a marriage contract, a guardian who cannot attend the marriage ceremony due to the reasons above may give power of attorney to another person whose requirements are met to become a guardian so that the marriage can take place.

According to Islamic law, through 'Urf, the implementation of *Taukil Wali* among the students of Al-Hikmah Islamic Boarding School Purwoasri Kediri, is legal to do. Judging from the original law, representing is permissible (permissible), and also seen from the habits carried out, it is included in 'Urf Sahih (right) and not in the realm of 'Urf Fasid (damaged narrowness). Generally applicable in the sense that it is not only done by a few people. There are conditions for 'Urf to be permitted as Islamic law, namely: 1. There are no specific arguments regarding this issue either in the Qur'an or Sunnah; 2. Condemnation does not result in the invalidation of the Sharia text. It

also does not cause problems, or difficulties or is related to the division of 'Urf in Islamic law, which consists of 2 (two) types, namely:

- a) 'Urf shahih, is behavior that is not contrary to the Shari'ah, and does not justify what is haram or cancel what is obligatory. For example, buying and selling by indenting or pre-ordering, paying the dowry in cash or in debt, the groom's habit of giving gifts to the bride outside the dowry, etc.;
- b) 'Urf fasid, is a habit that is contrary to sharia law'. For example, drinking alcohol at an event, practicing usury, gambling, lottery, and so on.

Based on the explanation above, the scholars stated regarding the validity of 'Urf that 'Sahih Urf can be used as consideration by mujtahids and judges in determining the law based on actions that occur in society. This means considering that what exists in society can be used as a source of law as long as it does not conflict with Islamic law.

Conclusion

Based on the explanation above, we can conclude that from the perspective of Islamic law, *Taukil Wali* is permitted, but on condition that the deputy and representative fulfill the requirements of Sharia law. It seems to symbolize a serious illness that cannot be cured and the distance that prevents someone from becoming a guardian. Representatives who meet the requirements include: Muslim, male, mature, healthy, and righteous (practicing their religion well). However, unlike guardian judges, there are Sharia requirements such as no guardians, unseen guardians, other religions, guardians at a distance, and guardians during the Hajj and Umrah. And female students who prefer to be married by their Kyai rather than their father. For them, this is done as a form of ta'dzim towards their Kyai. Initially, they felt a dilemma in determining who would later become their marriage guardian. After various considerations, in the end, they chose to be married by their clerics, but there were still students who chose to be married only by their fathers.

Through this research, it can be suggested that female students consult first with their boarding school and their families before determining who will be their guardians.

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