

## Problematics of the Biological Father's Status as Guardian for a Child Born from an Extramarital Relationship : A Study at the Office of Religious Affairs of Palu City

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### ABSTRACT

This study examines the legal status of a biological father as a marriage guardian (*wali nikah*) for a child born out of wedlock and analyzes the practice of the Office of Religious Affairs (KUA) of West Palu in determining marriage guardianship. Using a qualitative field research approach, data were collected through interviews, observation, and documentation and analyzed descriptively. The findings show that under Islamic law and the Compilation of Islamic Law, a child born outside a lawful marriage has a legal lineage only with the mother and the mother's family. Consequently, the biological father is not legally recognized as a valid marriage guardian. In practice, the KUA of West Palu determines that when a child is born less than six months after the marriage of the biological parents, the biological father cannot act as the marriage guardian, and a judicial guardian (*wali hakim*) must be appointed instead. However, from the perspective of child protection, particularly in light of *Maqāṣid al-Sharī'ah* and the decision of the Constitutional Court of Indonesia No. 46/PUU-VIII/2010, there is room for reconsidering the role of biological fathers in protecting the civil rights of children born outside marriage. This study contributes to the discourse on the development of family law and marriage administration in Indonesia.

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### ARTICLE INFORMATION

#### Keywords:

Marriage guardianship;  
Children born out of wedlock; Islamic family law.

### 1. Introduction

The phenomenon of children born out of wedlock in Indonesia, particularly in Palu, has become an increasingly critical social issue that requires serious attention. The rapid development of technology and greater social freedom are among the main factors contributing to the rise of premarital pregnancies among adolescents. Research by Alifah indicates that uncontrolled social interactions may lead adolescents to engage in behaviors that conflict with social norms, including extramarital sexual relationships that often result in unintended pregnancies.

In addition, limited knowledge of reproductive health education among adolescents has become a significant contributing factor. A study conducted by Saputra and Maradesa found that all adolescents involved in their research demonstrated low levels of reproductive health education, which was directly associated with the high incidence of pregnancies outside marriage. (Alifah et al., 2022; Nata Saputra & Maradesa, 2023)

In the Indonesian legal system, recognizing the rights of illegitimate children is not simple. According to

Nadadap, recognizing children born out of wedlock requires legal recognition involving a legal marriage between the parents, which is often difficult in the context faced by many adolescents. (Arifin & Moesa, 2025)

Legal and social issues concerning the status of children born outside of marriage in both Islamic law and Indonesian positive law encompass various interrelated aspects. From the perspective of Islamic law, the status of such children is influenced by sharia principles governing marital relationships as well as the rights and obligations of children. According to the study conducted by Ramelan children born outside of marriage often face legal uncertainty, particularly regarding their civil relationship with their biological father. Consequently, they generally do not possess inheritance rights from the paternal side, except under specific circumstances recognized by statutory regulations and Constitutional Court decisions that allow the acknowledgment of a civil relationship between the child and the biological father. (Saputra & Saputra, 2024)

In Islamic law, a child born outside a legally valid marriage (*walad al-zina*) is, in principle, not attributed by lineage (*nasab*) to the man responsible for the conception, except through a legally recognized acknowledgment process that fulfills specific conditions according to the interpretations of certain Islamic legal schools (*madhhabs*).

## **2. Literature Review**

### **2.1 The Concept of Guardians in Marriage**

A guardian (*wali*) in Islamic marriage is a person vested with the legal authority to contract a marriage on behalf of a woman and constitutes an essential element of Islamic matrimonial law. Etymologically, the term *wali* derives from the Arabic word *al-walī*, which denotes a protector, helper, caretaker, or one who manages the affairs of another person. In Islamic jurisprudence, a *wali* functions not only as a legal

representative but also as a moral and social guardian responsible for safeguarding the welfare and interests of the person under his guardianship. Consequently, the institution of guardianship embodies protection, responsibility, and family support within the framework of marriage. (Rahman, 2024)

The legal basis for guardianship in marriage is derived from both the Qur'an and the Hadith. Although the Qur'an does not explicitly designate a *wali* as a pillar of marriage, several verses, including Q.S. Al-Baqarah (2):221, provide normative indications regarding the guardian's role in matrimonial matters. These indications are reinforced by prophetic traditions, particularly the hadith stating, "There is no valid marriage without a guardian" (Reported by al-Tirmidhi), as well as the hadith declaring that a marriage contracted without the permission of a guardian is invalid. Based on these textual evidences, the majority of Muslim jurists regard the *wali* as a legal requirement for the validity of a marriage contract, serving to preserve dignity, order, and public welfare within the institution of marriage. (Monica & Abidah, 2021; Zulkarnain & Khasanah, 2024)

The position of the *wali* is therefore central to the validity of marriage according to the majority of Islamic legal schools, particularly the Maliki and Shafi'i schools. The guardian acts as the representative of the bride and provides legal legitimacy to the marriage contract. Although some jurists, most notably within the Hanafi school, allow an adult and competent woman greater autonomy in contracting her own marriage, the dominant view in Indonesian Islamic legal practice continues to recognize the *wali* as an indispensable pillar of marriage. This position is further supported by the prophetic tradition stating that a valid marriage requires both a guardian and two trustworthy witnesses. (Suarajana et al., 2023; Tihami & Sahrani, 2009)

To serve as a *wali*, an individual must fulfill several qualifications: being Muslim, male, legally mature (*baligh*), mentally competent, free from legal incapacity, and not in a state of *ihram* during Hajj or Umrah. These conditions ensure that the guardian possesses the legal capacity and responsibility necessary to perform the role effectively. While the majority of jurists maintain that a *wali* must be male, the *Hanafi* school and some *Shi'a* scholars adopt a more flexible position regarding female guardianship. Furthermore, a non-Muslim cannot act as a guardian for a Muslim woman because guardianship in marriage is intrinsically linked to Islamic religious and legal authority. (Hussain, 2019)

Islamic law recognizes three categories of marriage guardians: the guardian by lineage (*wali nasab*), the judicial guardian (*wali hakim*), and the delegated guardian (*wali tahkim*). The *wali nasab* consists of male blood relatives of the bride, ranked according to degrees of kinship, beginning with the father, grandfather, brothers, uncles, and other paternal relatives. When a lineage guardian is absent, ineligible, or unjustifiably refuses to perform his duty, authority may be transferred to a *wali hakim*, who in Indonesia is represented by the Head of the Office of Religious Affairs (KUA). A *wali tahkim* may be appointed by the parties in exceptional circumstances when neither a lineage guardian nor a judicial guardian is available, although this practice is rarely recognized in Indonesia. These provisions are comprehensively regulated in Articles 19–23 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*), which affirms that guardianship constitutes an essential pillar of marriage and a prerequisite for its legal validity. (Meliannadya, 2020; Miftahuzzaman et al., 2022; Ratna Sari, 2023)

## 2.2 The Concept of Lineage in Islam

The word *nasab* comes from the Arabic root word *nasaba*, which literally

means family relationship or connection. (Munawwir, 1997; Rusyadi & Hafifi, 1995) In the Great Dictionary of the Indonesian Language, the term *nasab*, adopted from Arabic, has not undergone a significant shift in meaning; this lexicon still defines it as “descendant (especially from the father’s side)” or “family ties.” (Kemdikbud, 2019)

A child’s lineage (*nasab*) to the mother is established automatically through birth, both under Islamic law and Indonesian law. In contrast, the establishment of paternal lineage is not based solely on birth but depends on specific legal and religious conditions. Islamic jurists generally agree that a child born within a valid marriage is legally affiliated with the husband. This principle is based on the Prophetic tradition stating that “the child belongs to the marital bed, and the adulterer receives nothing” (Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim), which serves as the primary foundation for determining paternal lineage. According to the majority of scholars, lineage may be attributed to the husband when there is a reasonable possibility that marital intercourse occurred after the marriage contract. Although Abū Ḥanīfah maintained that the marriage contract alone is sufficient to establish lineage, most jurists argue that the possibility of conjugal relations must exist as an objective basis for attributing paternity. (Al-Zuhaylī, 2010; Asy-Syirazi, 1083)

The attribution of lineage through marriage is subject to several conditions. First, the husband must possess the biological capacity to father a child. Classical jurists generally require that he has reached an age at which procreation is reasonably possible and is not medically incapable of reproduction. Consequently, lineage cannot be attributed to a husband who is proven to lack reproductive capacity. Second, the child must be born at least six months after the marriage contract. The majority of Islamic jurists recognize six months as the minimum

period of pregnancy for the purpose of establishing lineage. Therefore, a child born at least six months after the marriage may be legally attributed to the husband, whereas a child born less than six months after the marriage cannot be linked to the husband because the pregnancy is presumed to have occurred prior to the marriage. Third, there must be a realistic possibility that the husband and wife had contact after the marriage. While the Ḥanafī school considers a rational possibility of meeting sufficient, the Mālikī, Shāfi'ī, and Ḥanbalī schools require an actual opportunity for cohabitation and marital relations. Accordingly, if the spouses were factually unable to meet after marriage, the child's lineage cannot be attributed to the husband. This latter view is generally regarded as more persuasive because it is more consistent with both legal reasoning and social reality. (Al-Zuhaylī, 2010; Asy-Syirazi, 1083)

### **2.3 The Concept of Maqasid Shariah**

*Maqashid al-Shariah* refers to the objectives and wisdom underlying the establishment of Islamic law. Etymologically, *maqashid* means goals or purposes, while *shariah* refers to the path that guides human beings toward the source of life and divine guidance. In the terminology of Islamic legal theory (*usul al-fiqh*), *maqashid al-shariah* are understood as the objectives intended by Allah in every legal ruling to achieve human welfare and benefit. Therefore, Islamic law functions not only as a set of normative rules but also as a means of attaining prosperity and happiness in both this world and the hereafter. (Hambari & Ayuniyyah, 2022)

According to Imam Al-Shatibi, the essence of *Maqashid al-Shariah* is the realization of human welfare (*maslahah*). He categorized maqashid into two dimensions: the objectives of the law as intended by Allah, the Lawgiver, and the objectives of human beings as the subjects responsible for

implementing those laws. Through this perspective, Islamic law is understood as a system designed to establish justice, ease, and balance in human life. Consequently, every Islamic ruling contains values that promote welfare and protect the well-being of humanity. (Fauzi, 2016; Hambari & Ayuniyyah, 2022)

Al-Shatibi further classified welfare into three levels. First, *dharuriyat* (essential necessities), which are indispensable for human survival. Second, *hajiyyat* (complementary needs), which aim to remove hardship and facilitate ease in life. Third, *tahsiniyyat* (embellishment needs), which enhance the quality of life through the application of ethical, moral, and refined conduct. These three levels demonstrate that Islamic law not only safeguards the fundamental aspects of life but also pays attention to human comfort and moral excellence. (Abu al-Husain Ahmad bin Faris bin Zakaria bin Muhammad bin Habib ar-Razi al-Lughawi, 1999; Asriyana et al., 2025)

Within the framework of *dharuriyat*, Al-Shatibi formulated the five fundamental objectives of Islamic law (*al-kulliyat al-khams*): the protection of religion (*hifzh al-din*), life (*hifzh al-nafs*), intellect (*hifzh al-'aql*), lineage (*hifzh al-nasl*), and property (*hifzh al-mal*). These five principles serve as the foundation of all Islamic legal rulings because they protect the essential interests of human beings. Each principle encompasses the levels of *dharuriyat*, *hajiyyat*, and *tahsiniyyat*, which complement one another to achieve the ultimate goals of Islamic law: comprehensive welfare, justice, and human prosperity.

### **3. Methodology**

This research focuses on a qualitative research type in the form of a case study, which allows for in-depth exploration of the context, dynamics, and meaning behind the phenomenon being studied. This research is descriptive and

exploratory, meaning it aims to describe and understand the complexity of a situation or phenomenon in its natural setting, not to test hypotheses or generalize the results to a wider population. (Margono, 2010)

This research is located at the West Palu KUA, Palu City. In this qualitative study, data were collected in a natural setting, where the phenomenon under investigation occurred, with primary data serving as the main source of information. To obtain comprehensive data, the researcher employed three principal techniques: participant observation, in-depth interviews, and documentation. These methods were integrated to explore information holistically, thoroughly, and contextually, thereby providing an accurate representation of the social realities experienced by the participants within the research context. (Sugiyono, 2017)

#### **4. Results and Discussion**

##### ***4.1 The Status of Biological Fathers as Marriage Guardians under Islamic and Positive Law***

Based on the findings conducted at the Office of Religious Affairs (KUA) of West Palu District, children born outside a lawful marriage are recognized as having a lineage relationship only with their mother and the maternal family. This understanding is based on Article 100 of the Indonesian Compilation of Islamic Law (KHI), which stipulates that a child born outside marriage has no legal lineage relationship with the biological father. Consequently, the biological father does not possess civil rights arising from lineage, including the right to act as a marriage guardian for a daughter born outside marriage.

The study found that the West Palu KUA consistently applies this provision in marriage registration practices. In cases involving daughters born outside marriage, the biological father is not permitted to serve as a marriage guardian because he does not

qualify as a lineage guardian (wali nasab). Therefore, guardianship authority is transferred to a judicial guardian (wali hakim) in accordance with Islamic law and applicable state regulations. This policy aims to ensure the validity of the marriage contract while providing legal certainty for all parties involved.

The position adopted by the West Palu KUA is consistent with the view of the majority of Islamic jurists, particularly the Shafi'i school, which serves as the primary reference for Islamic family law practice in Indonesia. The Shafi'i school regards a guardian as an essential pillar of marriage. Since a child born outside marriage has no legal lineage relationship with the biological father, the latter has no authority to act as the marriage guardian.

Although differences of opinion exist among Islamic jurists, such as the Hanafi school, which does not consider guardianship an absolute requirement for the validity of marriage, the practice observed at the West Palu KUA remains aligned with the prevailing Islamic legal framework in Indonesia. This reflects an effort to balance classical Islamic jurisprudence with legal certainty and administrative order in marriage registration.

The findings indicate that the status of a biological father as a marriage guardian for a daughter born outside marriage is not recognized in the Islamic legal practice implemented at the West Palu KUA. This role is replaced by a judicial guardian as a means of enforcing both Islamic legal principles and positive law. Thus, legal protection for the child is maintained while preserving the principles of lineage and guardianship established in Islamic law.

##### ***4.2 Legal Status of Biological Father as Marriage Guardian for Children from Extramarital Relationships According to Positive Law***

Based on the findings of this study, the legal status of a biological father as a marriage guardian for a daughter born outside marriage at the West Palu Office of Religious Affairs (KUA) is governed by the Indonesian Compilation of Islamic Law (KHI). Article 100 of the KHI stipulates that a child born outside marriage has a lineage relationship only with the mother and the maternal family. Consequently, the biological father is not recognized as a lineage guardian (*wali nasab*). In practice, when a daughter born outside marriage intends to marry, guardianship is assigned to a judicial guardian (*wali hakim*). This provision is consistently implemented to ensure the validity of the marriage contract and to provide legal certainty for all parties involved.

These findings are consistent with the principles of Islamic law, which regard lineage (*nasab*) as the primary basis for determining marriage guardianship. Since no valid lineage relationship exists between the child and the biological father, the latter has no legal authority to act as a marriage guardian, and this role is transferred to a judicial guardian. The appointment of a *wali hakim* is not intended to negate the social or emotional relationship between the biological father and the child; rather, it serves to ensure that the marriage complies with both Islamic legal principles and applicable positive law. Therefore, the use of a judicial guardian represents a form of legal protection aimed at preserving the validity of the marriage and safeguarding the rights of women within the institution of marriage.

#### ***4.3 West Palu Religious Affairs Office's Practice in Determining Marriage Guardians for Daughters Resulting from Extramarital Relations***

Based on the findings of this study, the determination of marriage guardianship for daughters born outside marriage at the West Palu Office of Religious Affairs (KUA) is carried out in accordance with the

Compilation of Islamic Law (KHI) and applicable marriage administration regulations. The Head of the West Palu KUA explained that children born outside marriage have a lineage relationship only with their mother and the maternal family; therefore, the biological father is not legally entitled to act as a marriage guardian. When this status is confirmed through document verification and administrative examination, a judicial guardian (*wali hakim*) is appointed. This policy is consistently implemented to ensure the validity of the marriage contract and to provide legal certainty for all parties involved.

The study also found that administrative staff and Marriage Registration Assistants (P3N) play important roles in the identification and verification process of prospective brides. Administrative staff are responsible for examining civil and marriage-related documents, while P3N personnel provide preliminary information regarding the social and family background of the applicants. Although they do not possess the authority to determine marriage guardianship, both parties support the KUA in ensuring that decisions are made in accordance with existing legal provisions. This collaboration reflects a structured administrative mechanism in handling guardianship cases involving children born outside marriage.

From the perspective of daughters born outside marriage, the findings reveal psychological challenges when they learn that their biological fathers cannot serve as marriage guardians. Feelings of sadness, confusion, and anxiety were initially experienced due to their different legal status compared to most other brides. However, after receiving explanations from KUA officials regarding the legal basis and purpose of appointing a judicial guardian, the informants were able to accept the decision. This finding indicates that a communicative and humane approach by KUA officials plays a significant role in

helping individuals understand legal provisions without experiencing stigma or discrimination.

The study further found that biological parents ultimately accepted the appointment of a judicial guardian as a legal consequence of their child's birth status. They considered the validity of the marriage to be more important than their personal desire for the biological father to act as guardian. These findings are consistent with Islamic legal principles that regard lineage (*nasab*) as the primary basis for determining marriage guardianship. From the perspective of *maqāṣid al-sharī'ah*, the practice implemented by the West Palu KUA reflects efforts to preserve religion (*hifz al-dīn*) and lineage (*hifz al-dīn*), while simultaneously ensuring legal protection for daughters entering into marriage.

### 5. Conclusion

This study concludes that a biological father does not have the legal status to act as a marriage guardian (*wali nikah*) for a daughter born outside a lawful marriage, according to both Islamic law and Indonesian positive law, due to the absence of a legally recognized lineage (*nasab*) between them. Consequently, the authority of guardianship is transferred to a judicial guardian (*wali hakim*) in accordance with the provisions of the Compilation of Islamic Law (KHI) and applicable marriage regulations. The findings further reveal that the West Palu Office of Religious Affairs (KUA) consistently implements this provision through administrative verification and legal examination procedures to ensure the validity of the marriage contract, legal certainty, and the protection of women's rights. In practice, the determination of a judicial guardian reflects not only compliance with legal and religious norms but also efforts to uphold the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the protection of religion, lineage, and human dignity, while

minimizing potential legal and social problems in the future.

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