

Replacement of Legal Guardianship with Judicial Guardianship Theoretical Perspectives and Practical Implications

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Abstract

Problem statement: The absence of a guardian at a wedding can result in the marriage contract not being executed. One of the causes is *masafatul qashri*, wherein a guardian is unable to attend his daughter's wedding ceremony due to long distance. **Objective:** The purpose of this study is to elucidate the positive legal provisions in Indonesia regarding the replacement of the lineage guardian with a guardian appointed by the court due to *masafatul qashri*, as well as the criteria for *masafatul qashri* that permit the transfer of authority from the lineage guardian to the court-appointed guardian, from the perspective of scholars from the four schools of thought. **Methods:** This research employs a library-based methodology using a comparative approach, with data collection through documentation of texts authored by scholars from the four schools of thought and positive law in Indonesia. **Results:** The results of this study reveal differences in the replacement of the biological guardian with a judicial guardian due to *masafatul qashri* as outlined in the Regulation of the Minister of Religion of the Republic of Indonesia (PMA RI) No. 20 of 2019, the Compilation of Islamic Law (KHI), and the views of madhhab scholars. In the PMA, the issue no longer pertains to the guardian appointed by the court but instead utilises the procedure of delegating guardianship, thereby maintaining the recognition of the biological guardian. Conversely, the KHI does not address the issue of *masafatul qashri*. Prior to 2018, the replacement of the biological guardian with a judicial guardian due to *masafatul qashri* was still applicable based on PMA No. 30 of 2005, which was subsequently revised by PMA No. 11 of 2007 and again by PMA No. 19 of 2018. Scholars from the various schools of thought also express differing opinions; the Shafi'i and Maliki schools assert that in cases of *masafatul qashri*, the one entitled to act as guardian is the ruler (sultan), while according to the Hanafi and Hambali schools, the rightful guardian is the *wali ab'ad*. **Conclusion:** This study illuminates contemporary societal challenges related to marriage guardianship, one of which is the necessity of a guardian as a primary requirement for the validity of a marriage.

Keywords: Guardian of Lineage, Guardian Judge, Marriage.

Abstrak

Ketidakhadiran wali dalam pernikahan dapat mengakibatkan tidak terlaksananya akad nikah. Salah satu penyebabnya adalah *masafatul qashri*, di mana seorang wali tidak dapat menghadiri akad pernikahan putrinya akibat jarak yang jauh. Tujuan penelitian ini adalah untuk mendeskripsikan ketentuan hukum positif di Indonesia terkait penggantian wali nasab kepada wali hakim akibat *masafatul qashri* serta kriteria *masafatul qashri* yang membolehkan peralihan kewenangan wali nasab kepada wali hakim dalam perspektif ulama mazhab. Penelitian ini merupakan penelitian kepustakaan (library research) dengan menggunakan metode pendekatan komparatif dan pengumpulan data melalui dokumentasi terhadap kitab-kitab karya ulama dari empat madzhab serta hukum positif di Indonesia. Hasil penelitian ini menunjukkan perbedaan penggantian wali nasab kepada wali hakim akibat *masafatul qashri* dalam Peraturan Menteri Agama Republik Indonesia (PMA RI) No. 20 Tahun 2019, Kompilasi Hukum Islam (KHI) dan pandangan ulama mazhab. Dalam PMA, permasalahan tersebut tidak lagi merujuk kepada wali hakim, melainkan menggunakan prosedur taukil wali, sehingga wali nasab masih tetap diakui. Sementara dalam KHI tidak mengatur mengenai *masafatul qashri*. Sebelum tahun 2018, penggantian wali nasab kepada wali hakim akibat *masafatul qashri* masih berlaku dengan dasar hukum PMA No. 30 Tahun 2005 yang kemudian direvisi oleh PMA No. 11 Tahun 2007 dan lagi oleh PMA No. 19 Tahun 2018. Adapun menurut ulama mazhab juga terdapat perbedaan pendapat; menurut mazhab Syafi'i dan Maliki, untuk kasus *masafatul qashri*, yang berhak menjadi wali adalah penguasa (sulthon), sedangkan menurut mazhab Hanafi dan Hambali, yang berhak menjadi wali adalah *wali ab'ad*. Studi ini memberikan pencerahan pada masyarakat modern saat ini yang terkadang memiliki kendala dalam permasalahan wali nikah yang disebabkan beberapa factor salah satunya adalah wali nikah yang menjadi rukun Utama syarat sahnya pernikahan.

Kata Kunci: Pernikahan, Wali Nasab, Wali Hakim.



Introduction

The marriage contract is subject to strict regulation to ensure that all necessary requirements are fulfilled. Consequently, the marriage contract is deemed invalid without the presence of a guardian for the bride. (Syekh Wahbah Az-Zuhaili, *Al-Fiqhul Islami Wa Adillatuhu*, Juz 9, (Maktabah Syamilah Versi 4.0.), 6572., n.d.) In addition to compliance with Islamic law, marriages must also be registered with the marriage registry office to facilitate orderly marriages within the Muslim community in Indonesia. (Faishol, 2019) The presence of a marriage guardian is a prerequisite for a valid marriage. According to the majority of scholars, there are four essential components of marriage: the marriage contract (*ijab and kabul*), the bride, the groom, and the guardian. However, the Hanafi school of thought posits that only the marriage contract is necessary. The guardian in this context is the blood guardian, who is a relative within the bride's direct line of descent, such as her father, grandfather, or brother. (Widiyanto, 2020)

The wali nasab is identified as the marriage guardian who possesses a blood or kinship relationship with the bride-to-be, thus granting them full authority to officiate her marriage. (Rahmawati, 2021, p. 61.) Conversely, the wali hakim is the marriage guardian appointed by the Minister of Religion or an authorised official to act in this capacity. (Kompilasi Hukum Islam, 2001, p. 1.)

The substitution of a nasab guardian with a hakim is an alternative option in marriage, even in cases where other guardians related by blood are available and closer to the nasab guardian. (Jabbar, 2022) This substitution typically occurs when the designated marriage guardian is unable to attend or does not fulfil the necessary criteria to serve as a marriage guardian. A common rationale for this transition is *masafatul qashri*, which refers to a significant distance between the nasab guardian and the bride or groom. *Masafatul qashri* denotes a long distance or an insurmountable obstacle that prevents the blood relative from being present at the signing of the marriage contract, as the distance permissible for qasar prayer is 92.5 km. In such instances, Islamic law provides a solution by permitting the appointment of a judge to replace the blood relative. This judge is an official designated by the state, such as the head of the KUA.

In some cases that occurred in the city of Semarang, specifically at the Semarang Selatan Religious Affairs Office (KUA) in 2024, there was an instance in which the blood relative guardian was located at a distance exceeding that permitted for qasar prayer (referred to in Islamic jurisprudence as '*masafatul qashri*'). The head of the KUA decided to appoint a judicial guardian as a substitute. This decision was made in accordance with Article 12(5) of PMA No. 20 of 2019, which states that 'in the event the guardian is absent at the time of the marriage contract, the guardian must issue a letter of delegation in the presence of the Head of the KUA of the sub-district/Imam/PPN LN in accordance with the guardian's domicile/location, witnessed by two (2) witnesses.' Prior to 2018, the substitution of the biological guardian with a judicial guardian due to *masafatul qashri* was permissible; however, after 2018, this practice is no longer applicable. Currently, the *taukil* of the guardian is in effect, in accordance with the provisions of the Ministerial Regulation. Following the implementation of Ministerial Regulation No. 20 of 2019, the *taukil* of the guardian is now the standard procedure.

Previous research regarding the substitution of a biological guardian with a judicial guardian due to *masafatul qashri* was conducted by Ahmad Nurfatoni, entitled "The Implementation of Intiqâl Wali Nasab Ke Wali Hakim Sebab *Masâfatul Qashri* Pasca Terbitnya PMA Nomor 20 Tahun 2019 Di KUA Kec. Batang, Kandeman and Bandar in 2020-2021. This research employed a descriptive method with a qualitative approach. The findings indicated that in 2020, despite PMA No. 20 of 2019 no longer accommodating this provision, the practice of wali replacement continued, deemed valid under Islamic family law, yet administratively flawed due to non-compliance with established marriage registration regulations. Another study conducted by Jalli Sitakar, titled 'Transfer of Nasab Wali to Wali Hakim According to Article 23 of the Compilation of Islamic Law from the Perspective of Fikih (Case Study in Rokan Hulu Regency)' utilised a descriptive method with a qualitative approach. The results indicated that a wali hakim may serve as a wali in marriage when the wali nasab has certain impediments, such as being mute, deaf, or incapacitated, as articulated in Article 23 of the KHI. This aligns with classical fiqh as delineated in the texts of al-Bajuri, Mughni al-Muhtaj, and Qalyubi wa 'Umairah.

Research conducted by Muhammad Amin, entitled 'Pengkajian Masafatul Qoshri dalam Menentukan Wali Hakim: Studi Kasus di Kantor Urusan Agama (KUA) Kecamatan Banyakan, Kabupaten Kediri' (Assessment of Masafatul Qoshri in Determining the Judge's Guardian: A Case Study at the Religious Affairs Office (KUA) of Banyakan Subdistrict, Kediri Regency), employed a qualitative method with an inductive approach. The findings highlighted that *masafatul qashri* plays a crucial role in determining the guardian judge in marriage, particularly at the KUA in Banyakan. The primary considerations in the application of *masafatul qashri* involve justice, balance, and impartiality. The distinction between the three previous studies and the current study lies in the research methodology, where the former utilised qualitative research with descriptive and inductive approaches, while the present study employs literature research with a comparative approach. Additionally, there is a divergence in the scope of study, as the previous studies centred on positive law in Indonesia, whereas the current research integrates the provisions of positive law in Indonesia with Islamic law through the perspectives of four scholars from the four schools of thought, rendering the current research more comprehensive by encompassing various aspects of legal provisions.

This study aims to delineate the provisions of positive law in Indonesia concerning the substitution of a blood guardian with a judge due to *masafatul qashri* and to identify the criteria for *masafatul qashri* that permit the transfer of authority from a blood guardian to a judge, as viewed through the interpretations of scholars from the four schools of thought.

Methods

The research methodology employed by the author is library research utilising a comparative approach. A comparative approach is a methodological framework that facilitates the examination of two or more cases, phenomena, or variables to identify similarities, differences, or patterns among them. In the context of library research, data is derived from the analysis of library materials, including books, manuscripts, magazines, articles, and journals that are closely related to the research topic under discussion. This study primarily draws on texts authored by scholars of the four

madhhabs, namely the Shafi'i, Hanafi, Maliki, and Hanbali madhhabs, as well as relevant positive law in Indonesia, which serves as the primary data source. Additionally, the findings from interviews conducted with the Head of the KUA are employed as secondary data sources, aimed at enhancing Chapter 4 by aligning theoretical frameworks with practical applications in the field, specifically within the KUA context.

Guardian of the Family and Guardian of the Judge in Marriage

A blood relative guardian is a marriage guardian who possesses a familial relationship or kinship with the bride-to-be, thereby conferring upon them full authority to facilitate her marriage by virtue of this blood relationship or kinship. (Rahmawati, 2021) Conversely, a judicial guardian is a marriage guardian appointed by the Minister of Religion or an authorised official to act in the capacity of a marriage guardian. (Kompilasi Hukum Islam, 2001)

The requirements for a wali nasab according to the Shafi'i school of thought are as follows: Islam, baligh (mature), rational, free, male, and just. (Syeikh Muhammad Bin Qasim Al-Ghazi, n.d.) The requirements for a wali nasab according to the Hanbali school of thought are as follows: First, free; second, taklif (legally responsible); third, male; fourth, knowledgeable about marriage; fifth, compatibility of religion; sixth, fairness. (Utsman Bin ahmad bin said Bin Utsman Bin Qaid, n.d.) The requirements for a guardian according to the Maliki school of thought are as follows: male, of sound mind, mature, free, and Muslim. (Al-Lakhmi, n.d.)

The conditions for a blood relative guardian according to the Hanafi school of thought are as follows: legally responsible, free, intelligent, and of religious compatibility, with the stipulation of justice, as previously mentioned. There are two accounts regarding the trait of justice; some scholars assert that justice must be outwardly apparent. According to Imam Ahmad, a sinner may marry only his freed slave, and a ten-year-old child is considered a guardian. (Hamdan, n.d.)

A guardian judge may act as a guardian in marriage under specific conditions, which include: the absence of the blood guardian, the closest blood guardian or the next closest blood guardian not meeting the requirements, the closest blood guardian residing at a considerable distance (approximately 92.5 km away), the aqrab guardian being imprisoned and unreachable, the aqrab 'adlal guardian, the aqrab guardian creating obstacles, the aqrab guardian being in ihram, and the aqrab guardian preparing to marry themselves. (Rahmawati, 2021)

Table 1. Requirements for becoming a marriage guardian based on the madhhab

Scholars (Madzhab)	Requirements for becoming a guardian
Mazhab Syafi'i	Islamic, mature, rational, free, male, and just
Mazhab Hanafi	Mukallaf, independent, intelligent, religiously compatible, except as mentioned above, and fair
Mazhab Hambali	Independent, responsible, male, knowledgeable about marriage, religious compatibility, fair-minded
Mazhab Maliki	Male, rational, mature, free, and Muslim

The provisions for the replacement of a blood guardian with a judicial guardian, as set out in the Compilation of Islamic Law (KHI), are elucidated in Article 23, paragraph 1. This article states that "a new judge may act as a marriage guardian if the blood guardian does not exist, cannot be present, if his place of residence is unknown, or if he is ghaib, adhal, or unwilling.(Direktorat Bina KUA dan Keluarga Sakinah, 2018, p. 15.) " However, Article 23(1) of the KHI does not provide detailed stipulations concerning the substitution of a blood relative guardian with a judicial guardian, particularly regarding the matter of masafatul qashri. Consequently, in accordance with the provisions of the KHI, a judicial guardian is unable to supersede the guardianship rights of a blood relative guardian due to masafatul qashri.

The stipulations regarding the replacement of a blood relative guardian by a judicial guardian are also articulated in the Minister of Religion Regulation (PMA) No. 30 of 2005 on Judicial Guardians. Article 2(1) of PMA No. 30 of 2005 asserts that "for a female bride-to-be who intends to marry within Indonesia or abroad/outside the territorial jurisdiction of Indonesia, who does not have a blood guardian entitled to perform this role, or whose blood guardian does not meet the requisite criteria, or is mafqud, or is unable, or adhal, then the marriage shall be conducted by a guardian appointed by the court."(*Peraturan Menteri Agama Republik Indonesia Nomor 30 Tahun 2005 Tentang Wali Hakim*, 2005)

Article 18(3) of Minister of Religion Regulation (PMA) No. 11 of 2007 clarifies that "to conduct a marriage, a blood guardian may delegate their authority to a PPN, Penghulu, Assistant PPN, or another qualified individual." Furthermore, Article 18(4) specifies that "the Head of the District KUA is appointed as the wali hakim if the prospective bride does not have a wali nasab, the wali nasab is not eligible, is unable to act, or is adhal."(*PMA No 11 Tahun 2007*, n.d.)

Article 11, paragraphs 4 and 5 of the Minister of Religion Regulation (PMA) No. 19 of 2018 detail that "to conduct the marriage ceremony, the blood relative guardian may delegate their authority to the Head of the District Religious Affairs Office (KUA), the marriage officiant, the Assistant Marriage Officer (P4), or another qualified individual." In instances where the guardian is absent at the time of the marriage contract, they must issue a letter of delegation, signed by the guardian, witnessed by two witnesses, and acknowledged by the Head of the District Religious Affairs Office (KUA) of the guardian's residence. Article 12(3) of PMA No. 19 of 2018 states that "a guardian judge may act as a guardian if the blood guardian is absent, the guardian is adhal, the guardian's whereabouts are unknown, the guardian cannot be present due to being in custody, or the blood guardian is not of the Islamic faith." Article 11, paragraphs 4 and 5 further clarify that when performing the marriage contract, the blood relative guardian may delegate authority to the Head of the Religious Affairs Office of the sub-district; should the guardian be absent at the time of the marriage contract, they must prepare a letter of delegation signed by themselves, witnessed by two individuals, and acknowledged by the Head of the Religious Affairs Office of the sub-district where the guardian resides.(*Peraturan Menteri Agama Republik Indonesia Nomor 19 Tahun 2018 Tentang Pencatatan Perkawinan*, 2018, p. 11.)

Article 12, paragraph 5 of the Minister of Religion Regulation (PMA) No. 20 of 2019 articulates that "in the event the guardian is absent at the time of the marriage contract, the guardian must prepare a letter of delegation (taukil) in the

presence of the Head of the District Religious Affairs Office (KUA)/Imam/Foreign Affairs Officer (PPN LN) in accordance with the guardian's domicile/location, witnessed by two witnesses".(*Peraturan Menteri Agama Nomor 20 Tahun 2019 Tentang Pencatatan Pernikahan*, n.d., p. 12.) Article 12(4) of PMA No. 20 of 2019 indicates that "to perform the ijab qabul during the marriage ceremony, the blood guardian may delegate the authority to the Head of the Religious Affairs Office (KUA) of the sub-district/Imam/PPN LN/PPPN, or another person who meets the requirements." This provision delineates the permissibility of delegating guardianship to another individual, subject to certain conditions.(*Peraturan Menteri Agama Nomor 20 Tahun 2019 Tentang Pencatatan Pernikahan*, n.d.)

Article 12(4) of the Minister of Religion Regulation (PMA) No. 22 of 2024 states that "to perform the ijab qabul during the marriage ceremony, the blood relative guardian may delegate the authority to the PPN or another qualified individual as referred to in paragraph (2)." Article 12(5) further explains that "in the event the marriage guardian is absent at the time of the marriage contract, the blood relative guardian may issue a power of attorney or delegation of authority in the presence of the PPN in accordance with the guardian's domicile or place of residence, and witnessed by two persons." Article 13, paragraph 5 specifies that "the judge guardian as referred to in paragraph (1) may act as guardian in the following cases: the blood relative guardian does not exist, the guardian is incompetent, the guardian's whereabouts are unknown, the guardian cannot be present due to incarceration, the blood relative guardian is not Muslim, and the guardian who is to marry the bride or groom is the bride or groom themselves".(*Peraturan Menteri Agama Republik Indonesia Nomor 22 Tahun 2024 Tentang Pencatatan Pernikahan*, 2024, pp. 8-9.)

Table 2. Table of replacement of biological guardians with judicial guardians in positive law in Indonesia

Regulations	Replacement of the biological guardian with a legal guardian
Compilation of Islamic Law (KHI)	Concerning the substitution of the biological guardian with a judicial guardian, it is noteworthy that masafatul qashri is not governed by regulations within the KHI framework.
PMA No 30 Tahun 2005	The replacement of a biological guardian with a judicial guardian due to masafatul qashri is governed by Article 2, paragraph 1 of PMA No. 30 of 2005. This regulation stipulates that masafatul qashri is classified within the category of biological guardians who are deemed unable to fulfil their responsibilities. Consequently, according to this provision, a biological guardian may be replaced by a judicial guardian in instances where the biological guardian is incapable of performing their duties concerning their daughter's marriage.

PMA No 11 Tahun 2007	The substitution of a biological guardian with a judicial guardian resulting from masafatul qashri is governed by Article 18, paragraph 4 of PMA No. 11 of 2007, as masafatul qashri is classified as an impediment to biological guardianship. According to this stipulation, a biological guardian may be replaced by a judicial guardian in instances where the biological guardian is unable to fulfil his responsibilities in relation to his daughter's marriage.
PMA No 19 Tahun 2018	Concerning the substitution of the biological guardian with a judicial guardian in instances where the biological guardian is absent, as outlined in Article 12(3) of PMA No. 19 of 2018, it is important to note that the absence of the biological guardian is classified under the inability of the biological guardian to fulfil their responsibilities. However, the classification of incapacitated blood guardians has been abolished. Consequently, in accordance with Article 11(5) of PMA No. 19 of 2018, should the blood guardian be unavailable at the time of the marriage contract due to masafatul qashri, the guardian is required to issue a letter of appointment as guardian. This letter must be signed by the guardian, witnessed by two individuals, and acknowledged by the Head of the Religious Affairs Office (KUA) in the district in which the guardian resides.
PMA No 20 Tahun 2019	Concerning the substitution of the biological guardian with a judicial guardian in instances where the biological guardian is absent, this is in accordance with Article 13(3) of PMA No. 20 of 2019. The absence of the biological guardian is classified as a failure to fulfil their duties; however, the designation of an incapacitated blood guardian has been discontinued. Consequently, as stipulated in Article 12(5) of PMA No. 20 of 2019, should the blood guardian be unavailable at the time of the marriage ceremony due to masafatul qashri, it is required that the guardian issue a letter of appointment for the guardian in the presence of the Head of the District Religious Affairs Office, Imam, or Foreign Affairs Officer, in accordance with the guardian's domicile or location, and this must be corroborated by two witnesses.
PMA No 22 Tahun 2024	Concerning the substitution of the biological guardian with a judicial guardian in instances where the biological guardian is absent, this is governed by Article 13(5) of PMA No. 22 of 2024. The absence of the biological guardian is classified as a scenario in which

	the guardian is unable to fulfil their responsibilities; however, the classification of an incapacitated blood guardian has been eliminated. Consequently, in accordance with Article 12(5) of PMA No. 22 of 2024, if the blood guardian is absent during the marriage ceremony due to masafatul qashri, it is imperative that the guardian provides a power of attorney in the presence of the Head of the District Religious Affairs Office/Imam/Foreign Affairs Officer, relative to the guardian's domicile or location, and that this is corroborated by two witnesses.
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Analysis of the Replacement of a Legal Guardian by a Judicial Guardian Due to Masafatul Qashri in the Context of Positive Law and Islamic Law in Indonesia

The substitution of a natural guardian with a judicial guardian due to masafatul qashri within the framework of positive law in Indonesia is governed by the Minister of Religious Affairs Regulation (PMA) and the Compilation of Islamic Law (KHI). The PMA in Indonesia has undergone several amendments over the years, with PMA No. 30 of 2005 being the inaugural regulation concerning judicial guardians. The provision regarding the replacement of a biological guardian with a judicial guardian is articulated in Article 2(1) of PMA No. 30 of 2005, which was subsequently revised to PMA No. 11 of 2007, followed by PMA No. 19 of 2018, then PMA No. 20 of 2019, and ultimately revised again to Ministerial Regulation No. 22 of 2024, which is set to come into effect in January 2025.

The stipulations for the replacement of a biological guardian with a judicial guardian according to the Compilation of Islamic Law (KHI) are delineated in Article 23, paragraph 1, which asserts that a judge may serve as a marriage guardian in instances where the biological guardian is absent, cannot be present, resides in an unknown location, or is ghaib, adlal, or unwilling to marry off his daughter.

Nonetheless, the question of substituting a biological guardian with a judicial guardian due to masafatul qashri presents nuanced variations among the interpretations of scholars from different schools of Islamic law, as well as the positive law in Indonesia, as stipulated in the PMA and KHI. Scholars from various Islamic legal traditions provide more detailed provisions concerning scenarios wherein the biological guardian is travelling a distance classified as masafatul qashri. Each school of thought offers its own perspective, leading to divergences in determining the appropriate guardian when the biological guardian is travelling beyond the masafatul qashri, given the differing legal foundations adopted by each school.

According to the Shafi'i school of thought, as elucidated in the book *Al Mahally 'Ala Minhaj At Tholibin*, the provisions concerning a marriage guardian when the nearest guardian is travelling are as follows: If the nearest guardian travels to a location two marhalah away, the sultan or king who officiates the marriage acts as his representative, as the nearest guardian retains his right of guardianship irrespective of the distance. (Al-Mahally, n.d.) Imam Shafi'i also asserts in the book *Mughnil Muhtaj* that if the nearest guardian (whether by blood or through wala'—the emancipator of a slave) is absent or has travelled two marhalah (approximately

80,640 km), and no representative is present in that city, or the distance is less than the required journey (*masafatul qashri*), then the marriage is conducted by the *sulthan* (ruler) of that region or his representative. Here, the *sulthan* refers to the President, who subsequently appoints the Minister of Religion, and the Minister of Religion designates the Head of the KUA to officiate the marriage. (Al-Syarbini, n.d.)

The Hanafi school of thought posits in the book *Bidayah al-Mubtadi* that if the nearest guardian experiences a continuous absence (*ghaybah munqati'*), a more distant individual may proceed with the marriage. (Al-Marghinany, n.d.) Furthermore, the Hanafi school asserts in *Al Lubab Fi Syarh Al Kitab* that should the nearest guardian (*wali aqrab*) be absent for an extended duration, a more distant guardian (*wali ab'ad*) may conduct the marriage, as this represents a theoretical authority that cannot be delegated to an individual who does not benefit from such an opinion. Consequently, this authority is conferred to the more distant guardian (*wali ab'ad*), who takes precedence over the ruler (*sulthan*), similar to the scenario in which the nearer guardian (*wali aqrab*) has deceased. (Hanafi, n.d.) The Hanafi school also maintains that if the nearer guardian (*wali aqrab*) is absent due to prolonged disappearance, the more distant guardian (*wali ab'ad*) is permitted to officiate the marriage. (Al-Hanafi, n.d.)

The Maliki school of thought discusses, in the book *Bidayatul Mujtahid Wa Nihayah al-Muqtashid*, the implications of a guardian (particularly the father) being absent due to a long or interrupted journey. Should the guardian be unreachable, the matter of marriage should be entrusted to the ruler to safeguard the rights of the woman. However, if a man departs for trade with the intention of returning, the ruler cannot proceed with the marriage without the consent of the valid guardian. The Maliki school further elucidates that in cases where the guardian (especially the father) is absent on an extended or interrupted journey, and if he cannot be contacted, the marriage must be referred to the ruler to protect the rights of the woman. However, if the man leaves solely for trade with the intention to return, the ruler is not authorised to marry off the daughter without the valid guardian's consent.

The Hanbali school of thought asserts that the substitution of a biological guardian with a judicial guardian is warranted due to *masafatul qashri*, as elucidated in the book *Syarh Al-Zarkasy 'Ala Mukhtashar Al-Khirqy*, Volume 5. If the nearer guardian is absent or has departed for a valid reason (*ghaybah mu'tabarah*), then the marriage is to be conducted by the more distant guardian. Should there be no such guardian present, the marriage is performed by the sultan. The Hanbali school also states in the book *Hidayah Al Raghib Li Syarh 'Umdah Al Thalib*, Volume 2, that if the nearer guardian (*wali aqrab*) embarks on a journey that is interrupted—meaning a journey that cannot be completed without substantial difficulty and burden—and the distance exceeds the limit of a short journey (*qashar*), or the location remains unknown, then the more distant guardian is entitled to officiate the marriage, as the nearer guardian is considered absent in this context.

Criteria of Masafatul Qashri Permitting the Transfer of Authority from the Guardian of the Child to the Guardian of the Court in the Context of Islamic Law

The criteria for *masafatul qashri* that facilitate the transfer of authority from the biological guardian to the judge, as interpreted by the scholars of the various

madhhabs, are delineated as follows: the Shafi'i school of thought stipulates that the criteria for *masafatul qashri* permitting the transfer of authority from the biological guardian (*aqrab*) to the judicial guardian occur when the biological guardian travels a distance of two marhalah (80,640 km). In such cases, the sultan or king, who is understood to be equivalent to the President, is responsible for appointing the Minister of Religion. Subsequently, the Minister of Religion designates the Head of the Religious Affairs Office to oversee the marriage. Thus, the criterion of travelling a distance of two marhalah is established, based on the rationale that such travel results in the transfer of marriage authority to the sultan or ruler.

The Hanafi school of thought asserts that the criterion of *masafatul qashri* allows for the transfer of authority from the blood guardian to the judge in instances where the closest guardian is permanently absent (*ghaybah munqati'*). In such cases, a more distant guardian is permitted to conduct the marriage. The Maliki school of thought outlines criteria for *masafatul qashri* that enable the transfer of authority from the blood guardian to the judge when the closest guardian is absent due to a prolonged or interrupted journey and cannot be contacted. In these circumstances, the responsibility for the marriage is transferred to the ruler to safeguard the rights of the woman.

The Hanbali school of thought provides criteria for *masafatul qashri* that facilitate the transfer of authority from the biological guardian to a legal guardian. This occurs when the closest guardian is absent or departs in a manner deemed *ghaybah mu'tabarah*. In such situations, the marriage is to be performed by the more distant relative, or, if none are available, by the sultan.

Conclusion

The replacement of a blood guardian with a judicial guardian in positive law in Indonesia is governed by various regulations issued by the Minister of Religious Affairs (PMA) and the Compilation of Islamic Law (KHI). Generally, the PMA stipulates that a judicial guardian may act as a marriage guardian if the blood guardian is absent, incapable of attending, or does not meet certain criteria, such as being *adhal* or having unknown whereabouts. However, PMA No. 20 of 2019 does not address the replacement of a blood relative guardian with a judicial guardian in instances where the blood relative guardian is travelling beyond the distance of 'masafatul qashri.' In such cases, the blood relative guardian remains recognised, and the marriage may proceed through the *taukil* procedure, which involves granting written authority to another individual (such as a marriage officiant) to represent the guardian in the marriage ceremony. Meanwhile, the Compilation of Islamic Law (KHI) regulates the replacement of the blood relative guardian with a judicial guardian in a more general manner, without specifying rules for guardians who travel distances up to *masafatul qashri*. Therefore, in such situations, the blood relative guardian remains recognised, and the appropriate procedure is to utilise a *taukil wali* letter.

The criteria for *masafatul qashri* that permit the transfer of authority from the blood relative guardian to the judicial guardian are associated with the circumstances of the blood relative guardian who has disappeared or has travelled to a distant location for an extended period. Each school of thought adopts a distinct approach: Shafi'i School: If the closest guardian is travelling a distance of two marhalah (approximately 80.64 km), the guardianship rights are transferred to the

sultan/king. Hanafi School: The wali ab'ad may marry the bride if the wali aqrab is continuously absent (ghaybah munqati'). Maliki School: If the wali aqrab disappears on a long journey or becomes unreachable, the right of guardianship for marriage is transferred to the ruler. Hambali School: If the closest guardian disappears or departs under circumstances deemed ghaybah mu'tabarah, the distant guardian has the right to marry the bride; if no distant guardian exists, the right of guardianship is transferred to the sultan. In general, the four schools of thought concur that the transfer of authority from the blood guardian to the judicial guardian occurs in situations where the closest blood guardian is unable to be present and incapable of fulfilling his duties as a marriage guardian.

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