

The Resilience of Ungku Kali Practices as Marriage Guardian in Kurai Taji, Padang Pariaman Regency Maslahah Perspective

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ABSTRACT

This paper focuses on the resilience of Ungku Kali's practice as a marriage guardian or transfer of lineage guardian to Ungku Kali. The Ungku Kali referred to in this study, is someone appointed by both husband-and-wife candidates to carry out the marriage and acts as a marriage guardian. The research questions from this paper are, first, what is the position and practice of Ungku Kali as a marriage guardian in Kurai Taji, Padang Pariaman Regency? Second, why does Ungku Kali's practice as a marriage guardian persist today? The primary data of this study came from interviews with thirteen informants, consisting of six couples getting married, three Ungku Kali people, and four local people. After collecting the data, they were classified according to the existing themes and analyzed with the resilience theory. The study results found that Ungku Kali's position in Kurai Taji is as a trustee in the religious field or a respected Nagari cleric in society. As for the Ungku Kali practice using the facilities of the Surau Korong Lubuk Ipuh as a place of practice assisted by Apak Labai as the *marbot* at the Surau Korong Lubuk Ipuh, all the requirements are conveyed by this Apak Labai. Second, the reason for the resilience of the Ungku Kali practice until now is due to the resilience of culture, the resilience of economic factors, the resilience of the need factor, and the resilience of social factors; both Ungku Kali service users and Ungku Kali itself.

Keywords: Resilience; Ungku Kali; Marriage guardian; *Wali muhakkam*; *Maslahah*.

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INTRODUCTION

In Nagari Kurai Taji, Ungku Kali is a term used to refer to religious scholars or leaders who have been passed down from generation to generation. Duties and functions carry out practices that are *fardhu kifayah* and *sunnah*—for example, organizing the funeral, commemorating the birthday of the Prophet, *batagak gala*, *batagak kudo-kudo* mosque or *surau*, weddings, and other traditional events. Three Ungku Kali find practicing as Muhakam guardians, with 53 cases of Ungku Kali users as marriage guardians. The validity of a marriage depends on fulfilling the principles and conditions of marriage. One of the principles is the marriage guardian (Zubaidi & Kamaruzzaman, 2018). There are two types of lineage (*nasab*) guardians (Matondang, 2002): *wali mujbir*, whose function is to force the prospective bride without prior permission from her, while *wali ghairu mujbir* does not have the authority to marry her by force (Halim & Darwis, 2020). The lineage guardian must be from the male side of the prospective bride who has blood relations with her (Atoilah & Kamal, 2019). According to Imam Syafi'i (Al-Zuhaili, 2011), the order of guardians is father, grandfather, and brother, up to the line-up. Grandfathers and fathers have great power over their daughters. If the grandfather and father have died, the order of the brothers as the lineage guardian is as follows: father, grandfather, paternal and maternal brothers, paternal brothers, sons of biological brothers, father's brother's son, biological uncle (father's brother), uncle of the same father's brother, biological uncle's son, and son of the same father with uncle (Atoilah & Kamal, 2019).

Regarding the magistrate guardian, it explained in PMA Number 30 of 2005 concerning the Magistrate Guardian and PMA Number 11 of 2007 concerning Registration of Marriages Article 18 paragraph (4) that "The sub-district KUA (Kantor Urusan Agama) head is appointed as the magistrate guardian if the prospective wife does not have a lineage guardian, the lineage guardian does not meet the requirements, is unable to attend, or *adhal* (reluctant/refuses)" (Rahmati, 2015; Setiawan, 2018). An explanation of the guardian's *adhal* is in Article 18, paragraph (5): "The guardian's reluctance or rejection as referred to in paragraph (4) determine a court decision." Furthermore, the formal legality that explicitly regulates the magistrate guardian contains in the Regulation of the Minister of Religion of the Republic of Indonesia (PMA) Number 30 of 2005 concerning Magistrate Guardian (Harjanto, 2019). In Article 1, paragraph (2) of the PMA, it is explained that "The magistrate guardian is the head of the sub-district Religious Affairs Office (KUA) appointed by the Minister of Religion to act as marriage guardian for prospective brides who do not have guardians. Article 2, paragraph (1) states: "For the prospective bride who is going to marry in the territory of Indonesia or outside the country/ the territory of Indonesia but does not have a lineage guardian who is entitled or her lineage guardian does not meet the requirements, or is *mafqud*, or is unable, or *adhal*, the marriage carry out by a magistrate guardian" (Matondang, 2002). Also, Article 3 paragraph (1) explains: "The head of the sub-district Office of Religious Affairs (KUA) concerned is appointed as the magistrate

guardian to marry the bride as referred to in Article 2 paragraph (1) of this Regulation."

Furthermore, a *wali muhakkam* is a man not from a woman's family, nor is he from the ruling party of a territory. He has good knowledge of religious laws and is willing and able to become a guardian in marriage (Nisa, 2018). According to its meaning, a *wali muhakkam* is also someone appointed by both husband-and-wife candidates to act as guardians in their marriage contract (Syukur, 2014) if there is no *qadhi* (KUA) magistrate guardian in the local area. However, suppose a *qadhi* (KUA) has a guardian but is not an expert. In that case, the *wali muhakkam* may act as guardian of the marriage on the condition that the *wali muhakkam* must be a *mujtahid* (Eficandra, 2022).

However, the practice of Ungku Kali as a marriage guardian in Lubuk Ipuh, Kurai Taji, Padang Pariaman Regency, has been going on for a long time and is still being used by the local community and people outside the area. It has persisted even though a regulation stipulates that the magistrate guardian is the head of the sub-district KUA or a person with authority to do so whom the government has appointed. According to Abraham Maslow, the resilience of an action that occurs in society influences four factors: cultural resilience, economic factor resilience, need factor resilience, and social factor resilience (Syaifullah, 2016). This paper examines two things explicitly: first, what is the position and practice of Ungku Kali as marriage guardian in Kurai Taji, Padang Pariaman Regency? Second, why does this Ungku Kali practice still exist today?

Resilience, in the general definition according to FAO (food and agriculture), is the ability of a group or society to cope with external stress and disturbance as a result of social, political, and environmental changes. The level of social ability of the community can bring an environment to be sustainable and better (Aliano & Riyanto, 2022; Maurung, 2021; Puastika & Yulastuti, 2012). Understanding the word resilience is a situation in which a person always continues to do it despite facing various obstacles or outside influences that they did not expect beforehand. Ultimately, it is difficult to change circumstances that have long been and have become accustomed to someone doing. So that it reaches the fanatic level with the opinions and understanding of the previous people, a person's ability to survive can respond to an obstacle, obstacle, or pressure healthily and productively (Gillham et al., 2007; Reivich & Shatté, 2002). There are three theories of survival. The first is cultural survival, and the second is economic factor survival. Needs factor survival, social factor survival.

A *wali muhakkam* is a man not from a woman's family, nor is he from the territory's ruling party. He has good knowledge of religious laws and is willing and able to become a guardian in marriage. According to Abdul Kadir (Syukur, 2014) what is meant by *wali muhakkam* is someone whom the two prospective husbands and wife appoint to act as guardian in their marriage contract. Suppose there is no *qadhi* (KUA) guardian of the judge in the local area (Fauzi & Arfa, 2023; Laili &

Santoso, 2021). However, if the *qadhi* (KUA) guardian of the judge exists but is not an expert, then the *muhakkam* guardian may act as marriage guardian on the condition that the *muhakkam* must be a mujtahid (Hafid & Taufik, 2021; Nelli, 2022). Circumstances or conditions that allow marriage to carry out with a *muhakkam* guardian, the scholars argue as follows; *First*, Qurthubi believes that if a woman lives in a place where there is no sultan and neither has a guardian, then the settlement can be handed over to a neighbor she trusts to do the marriage ceremony, in such circumstances the neighbor has become a guardian, because of course everyone is need to get married but in carrying it out one should do the best that can be done (Syukur, 2014). *Second*, Imam Syafi'i believes that if in society there is a woman who does not have a guardian, then she delegates it to a man to marry her (Sheila, 2021). The law is permissible because it is an act that appoints a judge, and the person appointed as a judge has the same position as the judge himself (Sabiq, 2006). *Third*, Al-Imam Taqiyyudin al-Hushaini al-Dimasyqi said, Yunus bin Al-Imam Al-Hushaini narrated from Syafi'i that if in a society there is a woman who has no guardian at all, then she authorizes or represents her case to a man, including in matters of marriage, then the law is permissible, because it includes the delegation of power and the status of the person who is delegated that power is the same as a judge (Syukur, 2014).

When viewed in the concept of Ushul Fiqh, *maslahah* is a method used to resolve cases of Islamic law in the maintenance of religion, soul, mind, lineage, and property. Therefore, what guarantees the five principles (*ushul*) is *maslahah*. Moreover, any negligence in the maintenance of these five things is *mafsada*.

This research found several studies that could use as previous studies, including the following. First, (Mustafa, 2021) examined the pattern of the judge's decision on marriage decisions with *wali wuhakkam*. The study results in the context of Fiqh revealed three types of marriage guardians: lineage (*nasab*) guardians, magistrate guardians, and *wali muhakkam*. The third type of marriage guardian is the *wali muhakkam*, which not regulate in legislation. It is an opportunity and a challenge for judges to make *ijtihad* in deciding a case. Second, based on several court decisions with the undisputed trust that review, it is known that there are similarities based on the judge not granting the applicants the request if their marriage certificate uses a *wali muhakkam*. At the same time, the woman still has a non-Muslim biological father. It is not the same as in cases where the woman's legal guardian dies or the like, which the *wali muhakkam* tends to grant. It can compare with the research of (Bakari & Darwis, 2019) titled Juridical Analysis of the Marriage of Muslim Women and Marriage Guardians of Religious Figures. This study concludes that religious figures include *muhakam* guardians with an expansion of meaning (extensive legal interpretation of the terminology of guardian judges).

Second, (Badri, 2020) investigated the position of the Kiai as Wali Muhakkam from the perspective of *maslahah mursalah* and compilation of Islamic Law perspective. That marriage using a *wali muhakkam* occurred because the

prospective husband and wife were hindered from getting married. After all, the lineage guardian was reluctant and did not receive the blessing of the lineage guardian. However, the prospective wife did not want to deal with the magistrate's guardian and wanted to choose a shortcut in carrying out the marriage. In this opinion, there is still a disparity between the views of scholars regarding marriage using *wali muhakkam*. Some judge this marriage because the government has banned marriage with a *wali muhakkam* and prefers to leave matters to Fiqh experts.

Third, (Rosyadi, 2020) studied changes in lineage guardians viewed from the perspective of Islamic Law and Positive Law in Indonesia. He said, the implementation of marriages that use magistrate guardians, there are seven reasons: (1) Running out of lineage guardians, as many as 35 marriages, based on the Compilation of Islamic Law (KHI) Articles 21-23 and the Hadith of the Prophet Muhammad SAW from Aisyah r.a narrated by At-Tirmidhi; (2) Birth less than six months after marriage to parents, as many as six marriages, based on the agreement of the majority of scholars based on QS. Al-Ahqaff verse 15 and QS. Luqman verse 14, which has implications for the daughter only having a family relationship with the mother; (3) The address of the guardian is unknown, as many as seven marriages based on KHI Article 23 paragraph 1 and PMA No. 30 of 2005 concerning Magistrate Guardian Article 2; (4) Guardians in faraway places as far as *Masafatul Qashri's* distance, as many as eight marriages, as contained in the Marriage Registrar Employee Manual and PMA No. 30 of 2005 concerning Magistrate Guardian Article 2; (5) Guardians having different religions, as many as eight marriages, based on KHI Article 22; (6) Lineage guardians not meeting the requirements, as many as two marriages, based on PMA No. 30 of 2005 concerning Magistrate Guardian Article 2; (7) *Adhol/* striking/reluctant guardians, in two instances, based on a court decision stipulating the guardian *adhal* and ordering the head of the KUA to marry the bride and groom together through a magistrate guardian.

Fourth, a study on the Islamic Law review of the authority of the Mosque Imam as Wali Muhakkam in underhanded marriage by (Hafid & Taufik, 2021). The results uncovered that marriage with *wali muhakkam* occurred because the prospective husband and wife were hindered from marrying by the lineage guardian and were reluctant to deal with the magistrate guardian and wanted to take the easy way in carrying out the marriage. Some views of community leaders in Sungai Lala Sub-district, Indragiri Hulu Regency, state that such marriages are invalid because there is still an authorized magistrate guardian, and such marriages cause many losses, especially for the wife, since there is no legal force or evidence (marriage book), resulting in difficulties in obtaining birth certificates and family cards (KK).

There are still several other studies regarding marriage guardians and the transfer of lineage guardians to magistrate guardians or marriage guardians to *wali muhakkam*. The first is the process of marriage through the magistrate guardian or *wali muhakkam* (Nita & Saputri, 2022; Syaifullah, 2016; Syukur, 2014). with the research title The Role and Position of the Magistrate Judge in Marriage. The

second is the position of guardian in marriage, according to the four Islamic scholars and Imams (Dermawan & Bunyamin, 2020; Hakim, 2017; Jaraba, 2018). The third is regarding marriage guardians according to Islamic and positive law views (Effendi, 2020). This study aims to learn more about Ungku Kali's position as marriage guardian in the guardianship order and further analyze the causes of the persistence of Ungku Kali's practice until now. This research is essential to see the problems arising from the Ungku Kali practice and determine the administration of marriage registration as stipulated in the Marriage Law.

METHODS

This qualitative research described Ungku Kali's resilience as a marriage guardian at Kurai Taji Padang Pariaman. The approach in this study uses empirical sociology (Huda, 2022) with the theory of survival, wali muhakam, and maslahah theory. Maslahah theory is one of the arguments used in establishing Islamic law, which is not contained in the texts but contains maslahah and is related to the maintenance of religion, soul, mind, lineage, and property. The practice of Unku Kali has lived and survived until now to see the causes of the survival of the tradition. It analyzes the theory of survival, which includes economic survival, culture, needs, and social factors—data collection carried out by interviewing thirteen informants. The interview began with the following: How does Ungku Kali practice as a marriage guardian in Kurai Taji, Padang Pariaman Regency? Also, why does the practice of Ungku Kali as marriage guardian persist today? Subsequent questions were developed based on the answers given by the informants.

The collected data were then classified systematically according to the information provided by the informants. Next, they identify information for essential concepts. Conceptually categorized data were then analyzed and presented descriptively to provide an overview of data related to Ungku Kali's resilience as a marriage guardian at Kurai Taji Padang Pariaman. Then, they were analyzed with the relevant theory to answer the questions raised in the problem formulation.

RESULTS AND DISCUSSION

Position and Practice of Ungku Kali as Marriage Guardian in Kurai Taji, Padang Pariaman Regency

Ungku Kali, in this *Nagari*, is a cleric who carries out the *fardu kifayah* mandate. In this *Nagari*, there is a term *ka pai tampek batanyo, pulang ka tampek babarito* (a person to ask for and share information with). According to information, Ungku Kali's task is to carry out a difficult mandate to serve the community, especially in the religious field. His term refers to *fardu kifayah* as in organizing the funeral, commemorating the birthday of the Prophet Muhammad SAW, the *batagak gala* event, the *batagak kudo-kudo* event for mosques and *surau*, and *batagak* houses, which must be attended by Ungku Kali, as well as for weddings and other

traditional events. It turned out that, not only serving in the religious field, Ungku Kali also took part in the social, cultural, and customary fields. For example, before each birthday of the Prophet SAW, the other *Labai-labai urang siak* cannot start and must wait for Ungku Kali to come to sit at the very front or the top among the other *labai-labai urang siak*. In every event of death up to one hundred days of the death, Ungku Kali is also highly respected and waits for his fatwa. He is the sixth generation of Ungku Kali's previous nephew, who started his position or mandate in 1996 until now. In the concept of Fiqh, the position of Ungku Kali is an expansion of the meaning of wali *muhakam* applied during the time of the Prophet SAW and his companions. The expansion of this meaning is understood to this day by some people in Kurai Taji.

As explained by the ulema in Lubuk Ipuh, he has to serve the community regarding obligatory and sunnah worship matters. An explanation from one of the male Muslim scholars from the Kurai Taji area regarding Ungku Kali's position or his essential duties was only limited to helping the community regarding religion in the field of obligatory and sunnah worship, understanding of the sciences of *Shari'at*, *Tariqat*, *Haqiqat*, *Ma'rifat*, and having to understand many studies of the *Syatariyah Tariqat* and the *Na'sabandiyyah Tariqat* (Interview with Tuanku Bandaro, Traditional Figure, Kurai Taji, November 13, 2022).

The process of appointing or moving from the previous Ungku Kali when Ungku Kali died, and his body was not buried. At that time, still in a state of mourning, transferring the mandate had to be completed before sunset or Maghrib if he died in the morning or afternoon. If he died in the night, the deliberation and election of Ungku Kali would be held the next day (Interview with Nuruddin, Traditional Figure, Kurai Taji, November 13, 2022).

Moreover, the Ungku Kali practice uses the Surau Korong Lubuk Ipuh facilities as a place of practice, assisted by Apak Labai as the *marbot* at the Surau Korong Lubuk Ipuh. The first process carried out is that if a couple who is about to get married comes to the location of the Surau Korong Lubuk Ipuh, they must first meet Apak Labai, who lives on the ground floor of the *Surau* under the stairs. To learn more about the terms and conditions that must meet prospective couples who will get married. It means that from the description above, it is clear that Ungku Kali started with the intention of helping the community in terms of marriage, regardless of material, race, and ethnic group from anywhere; he could help as long as the woman party wanted help. However, if a potential partner has more ability or is materially above average, he will be asked to pay more.

There is another slight difference between the usual marriage process carried out by the head of the KUA as the Muslim wedding officiant and the woman's father as the marriage's guardian. When Ungku Kali leads the marriage ceremony as a guide or prayer reader after marriage, it can be seen

from the handshake between the prospective male and Ungku Kali. The handshake must meet the index finger and thumb, hold or both hold the marriage guardian and the prospective husband and follow what Ungku Kali said (Interview with Gazali, Traditional Figure, Kurai Taji, November 17, 2022).

Generally, men who marry using *Ungku Kali* are, on average, people who do not understand religion, but there are also officials, civil servants, or other government officials who practice polygamy. So do the women; some of them are ordinary people. Even so, they seem to lack knowledge of Islamic law, so they look for fast and easy ways to get married without considering the legal and social consequences. Considering that Ungku Kali's practice as *wali muhakkam* is only permissible if there is no magistrate guardian in an area, in fact, in Padang Pariaman Regency, there is a magistrate guardian at every KUA, and KUA extends to all existing sub-districts.

Most of the prospective husband and wife, who are widowers, widows, or in polygamous marriages, have legal or administrative marriage obstacles and have reluctant guardians or other obstacles, choose to marry using Ungku Kali as guardian, even though there are already magistrate guardians in various parts of this area, namely the Head of the Office of Religious Affairs (KUA) or officials appointed by the government. Guardian is a person with the right or authority to carry out a legal action for the person he represents for the benefit and on behalf of the person represented. Meanwhile, a guardian in marriage is a person with the right to marry a woman under his care if he can act as guardian. If he cannot act as a guardian, his guardianship rights transfer to another person.

Reasons for the Resilience of Ungku Kali's Practice as Guardian Until Now in Kurai Taji, Padang Pariaman Regency

The practice of Ungku Kali as a guardian in this study differs from a magistrate guardian (*qadhi*) according to the concept of Fiqh. Meanwhile, Ungku Kali as a guardian here is by appointing a person by the prospective bride, in which he is a local cleric or religious figure whom the community has agreed upon as Ungku Kali. In addition, his position is as a role model scholar for the community in religious matters.

Meanwhile, there are several reasons why Ungku Kali is still providing services for people in need to persist until now. Ungku Kali puts forward reasons as people who receive services, and there are reasons from service users. The reason for Ungku Kali, *first*, is that there is an opportunity for people who need it.

Ungku Kali is only helping people to marry religiously, namely as marriage guardians, with marriages not registered in the state. Ungku Kali must help them without tracing who helped and where is the address of the person

help. The person who helped came to this Nagari to ask for help (Interview with Birman, Ungku Kali, Kurai Taji, November 4, 2022)

Second, Ungku Kali's interesting reasons are helping people not to commit sins, avoid adultery, and others. Suppose someone can prevent evil; why not do it in a way that is right and legal according to religion?

Thus, in practice, I did and went through; I did not necessarily want to help them immediately. First, I asked them the address, why they wanted to get married in this place, where they got the information that it was safe, and nobody was disturbing them, and the primary purpose of getting married using the facilities there. Therefore, to be more precise, I am following religious law, not violating religion so that adultery does not occur. Getting married is better for them (Interview with Mahdi, Ungku Kali, Kurai Taji, December 2, 2022).

Third, Ungku Kali has been acting as marriage guardian for a long time, long before the KUA was appointed marriage guardian for those who do not have guardians.

Ungku Kali's assistance exists not only now but hundreds of years ago. Nowadays, a KUA has already been appointed and recognized by the government because later; it will be related to dealing with important papers. Someone's business will be complete if there is a marriage book. However, in ancient times, people did not consider what a marriage book was for (Interview with Mahdi, Ungku Kali, Kurai Taji, December 2, 2022).

Ungku Kali's actions are standard according to understanding because if he starts by exploring the causes of people getting married there, Ungku Kali has explained from the start that the marriage was not registered under the state, only married religiously. Thus, whatever matters about this marriage, please take care of it: the Population and Civil Registration Office or KUA regarding the marriage certificate. Ungku Kali's tasks like this carry out dozens and even hundreds of years ago (Interview with Turman, Ungku Kali, Kurai Taji, December 2, 2022).

Based on the excerpt from the interview with Ungku Kali above, it can understand that Ungku Kali has been able to survive in practicing until now due to the opportunity to become a marriage guardian, the desire to help others not to make more fatal mistakes, and it is a tradition carried out by the community since long. Another reason for those who have used Ungku Kali's services is related to the need factor.

Several ways and efforts were made, but no one wanted to help us become a guardian in marriage. We have searched several Nagari and sub-districts in Padang Pariaman Regency, but no one wants to help and accompany us

to get married. We already found an official in VII Koto and Ulakan areas, but he did not want to marry us off to help us become marriage guardians. After we got tired of looking around, someone gave us information and told us to come here. It is one of the reasons I got here (Interview with Isnaina, *service user* Ungku Kali, Kurai Taji, December 6, 2022).

Ungku Kali helped me married to my wife now. In my opinion, it is so that it is safe and secure so that there will be no more commotion in my household with my old wives. According to my wife's statement, her old husband, a civil servant, has passed away, and I am the third husband. I do this so that she continues to receive a monthly pension from her first husband (Interview with Yesi, *service user* Ungku Kali, Kurai Taji, December 9, 2022).

The third factor is the economy, making Ungku Kali's service an option. Service users reasoned that there was no money to pay for a lineage guardian from another area, making their reason for using Ungku Kali as a marriage guardian.

Seeing the condition of my brother with economic factors that do not allow him to return to his village to become a marriage guardian, I have communicated with Ungku in the village about delegating a guardian to Ungku Kali and have asked my brother for permission via cell phone, and he allows it. Hopefully, it is one of the best ways for me and my husband and brother (Interview with Cindy, *service user* Ungku Kali, Kurai Taji, December 7, 2022).

I admit that it is already my third time getting married. With the husband in the first marriage, it is according to the lineage guardian with a sibling as guardian. In order of guardianship, my father has died. My father's siblings have also died; none of his children are sons. For the second time, I also used Ungku Kali because my brother could not go home, and for the third time, I also used Ungku Kali. It was for the same reason, i.e., my family's guardian or sibling could not go home due to economic factors (Interview with Elsa, *service user* Ungku Kali, Kurai Taji, December 8, 2022).

Based on the results of the interview above with Ungku Kali service users, the reason for the resilience of Ungku Kali's practice as marriage guardian until now is because there is a factor of need for marriage guardians and is caused by economic factors, where the lineage guardian does not have money as a fee to come to a woman's place who is getting married.

The issue of guardianship in Islamic marriage law is crucial and determines the validity of the marriage itself. Suppose there is no lineage guardian, i.e., the parents or family concerned, or the guardian is reluctant to marry off (*wali adhal*). In that case, he can marry using a magistrate guardian. Article 23, paragraphs (1) and (2) KHI state that the magistrate guardian can only act as marriage guardian if

the lineage guardian is unavailable or unable to present, his residence is unknown, unseen, *adhal*, or reluctant. If the guardian is *adhal*, unseen, or reluctant, the magistrate guardian can only act as marriage guardian after a decision by the Religious Court regarding the guardian.

Regarding the magistrate guardian, in the practice of underhanded marriages in the community, there is also known as an underhand guardian, or informal marriage guardian called a *wali muhakkam* in Islamic law. A *wali muhakkam* is appointed by both husband-and-wife candidates to act as guardians in their marriage contract. If a marriage is supposed to carry out with a magistrate guardian, but there is no magistrate guardian at that place, the marriage is carried out with a *wali muhakkam*, fulfilling the terms and conditions according to Fiqh. A *wali muhakkam* is also a man who is not from a woman's family, nor is he from the ruling party, but has good knowledge of religious laws and is willing and able to become a guardian in marriage. According to Abdul Kadir Syukur, what is meant by a *wali muhakkam* is someone appointed by both husband-and-wife candidates to act as guardians in their marriage contract (Syukur, 2014). It is in case there is no *qadhi* (KUA) magistrate guardian in the local area. However, if the *qadhi* (KUA) magistrate guardian exists but is not an expert, the *wali muhakkam* may act as marriage guardian with the condition that he must be a *mujtahid*.

Furthermore, the scholars argue as follows regarding the circumstances or conditions that allow a marriage to carry out with a *wali muhakkam*. Based on the information in the book of *Fiqh Fathul Mu'in* below, *first*, Qurthubi believes that if a woman lives in a place where there is no sultan and does not have a guardian, she can leave the settlement to a neighbor, she trusts to do marriage. In such circumstances, the neighbor has become a guardian because everyone needs to get married, but carrying it out should be as good as possible (Al-Zuhaili, 2011). *Second*, Imam Syafi'i thinks that if there are women who do not have guardians in society. Then she represents a man to marry him. The law is permissible because it is an act that appoints judges, and the person who appoints a judge is in an equal position with the judge himself (Al-Faifi, 2013). *Third*, Al-Imam Taqiyyudin al-Hushaini al-Dimasyqi said that Yunus bin Al-Imam Al-Hushaini narrated from Shafi'i that if there is a woman who has no guardians at all in society. Then, she authorizes or represents her case to a man, including in matters of marriage; the law is permissible because it includes the delegation of power, and the status of the person delegated that power is the same as a judge (Hidayati, 2014). *Fourth*, Al-Imam An-Nawawi said that according to al-Mawardi, if a woman has no guardian, she has three choices (Adri, 2017); (1), she is not married, (2) she can marry herself for emergency reasons, and (3) she can authorize or hand over her affairs to someone. Then that person will marry her (Syukur, 2014).

From the circumstances above, it can emphasize that Ungku Kali's position as marriage guardian tends to be carried out by outsiders of Kurai Taji or immigrants. In other words, Ungku Kali tends to marry outsiders, not native Kurai Taji residents. It is understandable because, for the Kurai Taji people, it is very

likely that their lineage guardians still exist, both close and distant guardians. This long distance between the wali *muhakkam* and the lineage guardian allows marriage with the wali *muhakkam* to continue to run smoothly and safely, and there are no lawsuits from their family. However, the problem is not the distance. Now, the issue of distance is no longer fundamental since transportation and communication are so smooth and easy. The problem is that the lineage guardian is *adhal*, so couples who want to get married go elsewhere. The wali *muhakkam* should not have married them because even religious leaders in their area of origin are reluctant to marry them off. It would be better to approach beforehand so that an official marriage can be carried out, at least under the hand of the lineage guardian. Many couples with widower or widow status marry using Ungku Kali for practical reasons so that it is quick and easy. The position of *muhakkam* guardian only uses by couples whose marriages are not registered in the state administration.

On the one hand, it can be understood because, for such couples, it is essential for them to get together as husband and wife. On the other hand, it contains many risks. Regardless of their legal status, such marriages seem very loose and easy, and there is no marriage book, which can make it very easy for the husband and wife to divorce later. It is proven that one of the married couples has divorced, even though the marriage has only been a matter of months. Even though there is a marriage with a wali *muhakkam* for whom documents or correspondence were made, these documents have no legal force except for the record that they were once married. The absence of this marriage book does not guarantee the rights of the husband and wife to be reported to court if a problem occurs (Shodikin, 2016). For the practice of marriage carried out by the community using Ungku Kali guardians or other terms, the community considers them as wali *muhakkam*, even though the magistrate guardian and wali *muhakkam* are different; understanding of this wali *muhakkam* is still lacking by the community. Even so, the prospective husband and wife are more likely to seek or take shortcuts and practice in their marriage process without considering the practice's legal implications and social impacts.

Regarding the persistence of the Ungku Kali practice with the theory of resilience, according to Abraham Maslow, there are four factors of resilience: cultural resilience, economic factor resilience, need factor resilience, and social factor resilience. The first is the resilience of cultural factors. When examined from the interviews, it appeared that the resilience of the Ungku Kali practice is due to cultural factors. Based on the literature obtained, it turns out that this practice has been around for tens and even hundreds of years, long before the appointment of the head of the KUA as magistrate guardian. Because this practice has been going on for a long time, Ungku Kali has been practicing it for a long time. Hence, the surrounding community still considers Ungku Kali as a wali *muhakkam* or a person with authority to do so. The Compilation of Islamic Law has appointed the head of the KUA as the magistrate's guardian. It is also reinforced by PMA No. 11 of 2007. Then, the cultural survival factor also influences the community's bigotry towards Ungku Kali.

The second is resilience due to economic factors. The resilience of Ungku Kali's practice as a marriage guardian was also caused by economic factors, both by Ungku Kali and Ungku Kali's service users. Ungku Kali is also an ordinary human who needs food, clothing, medical expenses, and other expenses for himself and his family. For this reason, apart from the meager income from his routine work, it requires Ungku Kali to rack his brains to make money, one of which is to open a service to become a marriage guardian. The reward that Ungku Kali gets is in the form of wages and money.

The third is the resilience of the need factor, both the needs of Ungku Kali and service users. The needs of Ungku Kali service users are in the form of physiological needs, biological needs, needs for love, and needs for comfort, which require the prospective husband or wife to get married. The validity of a marriage depends on fulfilling the principles and conditions, one of which is the marriage guardian. The existence of demands for these needs makes married couples who do not meet specific requirements take shortcuts that make Ungku Kali the guardian of the marriage.

Fourth, the resilience of social factors also influences the persistence of the Ungku Kali practice. There is a belief in the local community that Ungku Kali is a respected religious figure, i.e., a person who needs a fatwa for a specific time, so they have an attitude and understand that what Ungku Kali has done is considered to be in line with the provisions of Islamic law. Ungku Kali has also been deemed a person who carries the mandate of his ancestors.

Based on the description above, it can be understood that the factors causing the persistence of the Ungku Kali practice in Kurai Taji, Padang Pariaman Regency, are due to four factors: the factor of cultural resilience, where the practice of Ungku Kali has existed for hundreds of years; economic resilience factor, especially in Ungku Kali; resilience factor due to necessity, both by Ungku Kali service users and service users; lastly, the resilience of social factors, which has occurred in Nagari Kurai Taji, Padang Pariaman Regency.

Maslahah can use as a consideration in resolving issues of Islamic law as long as no textual argument regulates or prohibits it. Marriage guardians in the concept of Fiqh have a systematic order starting from father, grandfather, biological brother, paternal uncle, biological uncle, paternal uncle, biological uncle's son, paternal uncle's son, and finally, the guardian judge (Kozako, 2019). The guardian of the judge understood as the guardian of the *muhakam*. The *muhakam* guardian is the guardian appointed by the couple who will marry as their guardian. According to the concept of Fiqh, a *muhakam* guardian can only be used when a woman does not have a guardian, then her guardian moves to a *muhakam* guardian. This means that as long as there is a *nasab* guardian, a *muhakam* guardian may not be used as a marriage guardian. The issue of wali *muhakam* provisions explained in the provisions of the concept of Fiqh, but the position of *Ungku Kali* as *muhakam* is a problem when viewed from PP No. 9 of 1975 in conjunction with PMA No. 11 of

2007. From the *maslahah* perspective, *Ungku Kali* services are only felt by couples who use *Ungku Kali* as marriage guardians. When couples married by *angku kali* face problems with the administration of marriage registration, their marriage does not have legal force because it is not registered, and the marriage is valid if it carries out in front of a marriage officer appointed by law.

CONCLUSION

First, the position of *Ungku Kali* is as a duty bearer and mandate to carry out religious duties, such as organizing the funeral, commemorating the birthday of the Prophet Muhammad SAW, the *batagak gala* event, the *batagak kudo-kudo* event for mosques and *Surau*, and *batagak* houses, which must be attended by *Ungku Kali*, as well as for weddings and other traditional events. Meanwhile, the *Ungku Kali* practice uses the *Surau Korong Lubuk Ipuh* facilities as a place of practice, assisted by *Apak Labai* as the *marbot* at the *Surau Korong Lubuk Ipuh*. The first process carried out is that if a couple who is about to get married comes to the location of the *Surau Korong Lubuk Ipuh*, they must first meet *Apak Labai*, who lives on the ground floor of the *Surau* under the stairs. It learns more about the terms and conditions that must meet prospective couples who will get married. Second, the reasons for the resilience of the *Ungku Kali* practice until now are due to the resilience of the culture that has been in effect for a long time, the resilience factor of the economic factor, both for *Ungku Kali* and the users of the services, and the resilience of the need factor, such as physiological needs, biological needs, the need for love, and comfort, which requires that person to marry. On the one hand, they have certain obstacles, such as being a civil servant, so to make it safer, they take shortcuts by making *Ungku Kali* a marriage guardian. Lastly, the resilience of social factors also contributes to the resilience of *Ungku Kali's* practice until this time.

This paper recommends that the relevant KUA narrow the space for movement as marriage guardians to regulate the administration of marriages and protect women and children in the household.

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