

Marriage Guardianship for Adopted Children in Akeguraci Village: A Perspective of Fiqh Munakahat

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ABSTRACT

This study aims to analyze the practice of adoptive siblings acting as marriage guardians for adopted children in Akeguraci Village from the perspective of fiqh munakahat. A marriage guardian (*wali*) is one of the essential pillars of marriage; without a guardian, a marriage is deemed invalid, especially for individuals who have not yet reached the age of accountability (*mukallaf*). There are two types of marriage guardians: guardians by lineage (*wali nasab*) and judicial guardians (*wali hakim*). In Akeguraci Village, there is a case where the marriage guardian did not fulfill the essential requirements for guardianship. The guardian in this marriage was the biological son of the adoptive father. The mistake in the guardianship of the adopted child's marriage, performed by the adoptive sibling, occurred because the biological father refused to act as the guardian. This qualitative research collects field data through observation and interviews to uncover the practice of adoptive siblings acting as marriage guardians in Akeguraci Village. The findings reveal two main points: first, the practice of having the biological son of the adoptive father serve as the marriage guardian occurred because the biological father was unwilling to officiate the marriage, citing the child's adoption at a young age as the reason. Second, from the perspective of fiqh munakahat, the marriage of an adopted child officiated by an adoptive sibling is invalid, as there is no lineage (*nasab*) relationship between the adopted child and the adoptive sibling.

Keywords: Marriage Guardian; Adopted Child; Fiqh Munakahat.

INTRODUCTION

Marriage and building a household are desires of all mature individuals, aiming for a harmonious relationship founded on mutual trust, protection, and support. The Quran describes marriage as *mitsaqan ghalizan* (a solemn covenant), emphasizing that the bond between husband and wife must be a two-way relationship that strengthens both parties. Each partner is expected to support the other, ensuring that neither is harmed nor deprived of their rights. Religion provides guidelines for realizing a family that embodies *mitsaqan ghalizan*, starting from forming the marital bond through the akad nikah (marriage contract).

The obligation of having a guardian (*wali*) acts as a preventive measure to protect both parties, especially the bride, from potential future issues in the marriage. A *wali* in marriage represents the bride during the akad nikah, which involves two parties: the groom, representing himself, and the bride, described by her *wali*. The presence of a *wali* is indispensable in a marriage contract, as its absence renders the marriage invalid, according to most Islamic scholars (*jumhur ulama*). This applies to all women, whether adults or minors, virgins or widows and extends to adopted children. Without a valid *wali*, the marriage is considered invalid.

Islam encourages adopting children by raising, educating, and nurturing someone else's child. However, adoption does not establish a lineage-based relationship akin to blood ties, as the primary principle of guardianship in marriage is rooted in blood relations (Liao, 2016; Rolock et al., 2023). The relationship between an adopted child and the adoptive family is not equivalent to a biological relationship. A biological child is defined as one originating from the backbone, as mentioned in the Quran, Surah An-Nisa (4:23). The importance of clarifying the status of adopted children is particularly significant in the context of marriage law (Ismail et al., 2024). Despite close relationships observed in daily interactions, an adoptive relationship does not equate to a blood relationship (Hosen, 1971).

Several studies have explored the guardianship of adopted children in marriage, including Hidayah (2014), who examined the discourse on Islamic law regarding the custody of adopted children in marriage; Subeitan et al. (2021) who studied the dynamics of adoption in Indonesia; Hafid (2022) who discussed the guardianship of adopted children in cases where their biological parents are unknown, comparing the views of Shafi'i jurisprudence and the Compilation of Islamic Law; and Dahlan & Reza (2022) who analyzed adoption and its relation to guardianship from the perspectives of Islamic law and Indonesian legislation, focusing on a case study at the Palu Class 1A Religious Court.

Despite these studies, unresolved issues persist, particularly regarding the validity of marriages where the guardian is an adoptive sibling, such as cases in Akeguraci Village. This research addresses problems of guardianship by adoptive siblings, the lack of revalidation of such marriages from the perspective of fiqh munakahat, and the failure of religious affairs offices (KUA) to accommodate the guardianship of adopted children. This study examines the practice of marriage guardianship for adopted children in Akeguraci Village, where the biological father is unable to fulfill his duty as a *wali*, and the role is delegated to the adoptive father's biological son. It also explores marriages involving adopted children officiated by adoptive siblings through the lens of fiqh munakahat.

In Akeguraci Village, marriages involving adopted children are officiated by the adoptive father's biological son, who lacks a blood relationship with the bride. Although the adopted daughter has been raised as part of the family, the relationship between her and her adoptive siblings remains non-mahram. Consequently, marriages between adopted children and adoptive siblings are permissible. However, the involvement of a non-mahram sibling as a *wali* violates Islamic law regarding guardianship in marriage. This research contributes to the scholarly understanding of the validity of guardianship in the marriage of adopted children officiated by adoptive siblings in Akeguraci Village from the perspective of fiqh munakahat. It also provides insights for stakeholders, including religious officials (*wali hakim*) and marriage registrars, to ensure adherence to Islamic principles in marital guardianship, particularly concerning the bride's background and guardian.

METHODS

This qualitative study explores the practice of marriage guardianship for adopted children in Akeguraci Village (Yusuf, 2017). It falls under the category of field research, with data collection conducted through field observations and interviews with the residents of Akeguraci Village. Interviews were conducted with the biological son of the adoptive father, who served as the marriage guardian because the biological father refused to act as the guardian for his child's marriage (Zahara & Sukiati, 2024). This study also utilizes secondary data sources, including the concept of marriage guardianship for adopted children in fiqh munakahat, derived from existing resources such as books, legal journals, and scientific papers relevant to this research. The data were analyzed based on fiqh munakahat to assess the practice of marriage guardianship for adopted children in Akeguraci Village.

RESULTS AND DISCUSSION

The Rules of Marriage Guardianship and Adopted Children from the Perspective of Fiqh

According to Prof. Abdullah Kelib, a *wali* (guardian) in marriage is a person responsible for the marriage under their guardianship. A marriage is considered invalid if there is no *wali* to hand the bride to the groom (Kelib, 1990). Based on this principle, the *ijab* (offer) in marriage, according to Islamic law, is exclusively the authority of the *wali*. The significant role of a *wali* is upheld such that if a woman does not have a *wali nasab* (guardian by lineage), a *wali hakim* (judicial guardian) can substitute their role. There are differing opinions regarding the importance of a *wali* as a prerequisite for a valid marriage in Islamic law. This has long been a discussion among Islamic scholars since the Shafi'i and Hanafi schools of thought emerged. The Shafi'i school asserts that a *wali* is essential for a valid marriage, while the Hanafi school considers a *wali* recommended but not obligatory (Ramulyo, 1996). The legal foundation for the necessity of a *wali* in marriage can be found in Surah Al-Baqarah (2:234). The *wali* is one of the mandatory pillars determining a marriage's validity.

The *wali* is a critical pillar of marriage, and their role must be fulfilled. In addition to their mandatory presence, Islamic law also sets specific conditions for a person to qualify as a *wali*. These conditions include being a Muslim, as mandated by Surah Ali-Imran (3:28), being male, mentally sound, mature (*baligh*), just (practicing Islam faithfully), and not in a state of ihram or performing umrah (Djamal, 2000). According to the Hanafi school, a marriage contract executed by a woman without the involvement or permission of a *wali* is valid. Based on their interpretation, women have full rights to make decisions about their marriage without external interference, including from a *wali*. This rational and logical consideration leads Hanafi scholars to conclude that a *wali* is not mandatory for women seeking to marry (Ramulyo, 1996).

However, the majority of Muslims in Indonesia adhere to the Shafi'i school of thought, which emphasizes the indispensable role of a *wali* in marriage. According to the Shafi'i school, a *wali* is crucial because there can be no valid marriage without a *wali*. This view is supported by a hadith reported by Tirmidhi from Aisha: "A woman who marries without the consent of her *wali*, her marriage is invalid" (repeated three times). Furthermore, the *ijab* in a marriage contract is customarily expressed by the *wali* on behalf of the bride, reflecting the woman's modest nature. Thus, she is represented by her father or another appointed *wali*. Another reason for the importance of a *wali* is the inherent differences between men and women. Women generally have less endurance for pain and may experience heightened fear or hesitation, making them more vulnerable in critical decisions. Women are also perceived as more inclined to follow others' guidance and may lack the capacity to comprehend complex global issues fully. Based on these differences, women are considered to need the support and leadership of men, who

are viewed as protectors and decision-makers. This underscores the need for a male guardian to assist women in navigating marital and other life challenges.

In the context of *fiqh*, the term *wilayah* (guardianship) refers to authority and protection. In this sense, *wilayah* in marriage signifies "full authority granted by religion to someone to oversee and protect a person or property." A *wali* *nikah* (marriage guardian) is a man authorized to officiate the marriage of a bride (Soemiyati, 2007; Syahjuan et al., 2022). From a sociological perspective, women are considered equal to men in society and before the law. However, their perceived limitations in action, as dictated by Islamic law, require the involvement of a *wali*. Understanding a woman's position requires studying legal frameworks and societal and familial structures (Harwis et al., 2024; Soekito, 1989). Women are often likened to precious jewels that must be safeguarded, their value surpassing material wealth. Consequently, a father or rightful *wali* is responsible for entrusting their daughter through the marriage contract.

The significance of *wali* in a marriage contract is a religious mandate and a recognition of a woman's elevated status. Women possess rights enshrined in divine law, and the presence of a *wali* upholds their dignity, humanity, and sanctity. The role of a *wali* reflects a father's or family's love and commitment to ensuring a strong foundation for their daughter's future household. Adopted children are categorized into two types: first, those raised and educated as a charitable act, which is highly encouraged in Islam. This form of care does not establish inheritance or guardianship rights. Second, adoption (*tabanni*), where adoptive parents treat the child as an entire family member. According to Islamic law, *tabanni* does not carry legal implications, and the adopted child does not attain the status of a biological child. Consequently, there are no inheritance or guardianship rights between the adopted child and the adoptive parents (Manan, 2006; Sukari, 2020).

Adopted children raised by adoptive parents must not have their lineage (*nasab*) altered. An adopted child must retain their original lineage and be affiliated with their biological parents. Since there is no *nasab* relationship between an adopted child and their adoptive parents, the laws of *nasab* do not apply. Adoption existed in pre-Islamic Arabia and was initially accepted during the first 15 years of Islam's development in Mecca and Medina. The principle of calling someone by their biological father's name is explained in the context of the revelation (*asbabun nuzul*) of Surah Al-Ahzab (33:5):

"Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers, then [regard them] as your religious brothers and those entrusted to you. And there is no blame for what you have erred but only for what your hearts intended. And ever is Allah Forgiving and Merciful." (Ministry of Religious Affairs of Indonesia, 2006)

This verse addresses the case of Zaid bin Harithah, initially referred to as Zaid bin Muhammad, after being adopted by Prophet Muhammad Saw. Following the revelation of this verse, Zaid was once again called by his original name, Zaid

bin Harithah (Ar-Rifai, 2012). Allah provided a clear example through the life of the Prophet Muhammad to illustrate the legal implications of adoption. The Prophet adopted Zaid bin Harithah as a child, and people began referring to Zaid bin Muhammad. This practice continued until Zaid reached adulthood. However, the revelation of Surah Al-Ahzab (33:5) in Medina nullified the adoptive relationship as it had been understood. Zaid reverted to being known as Zaid bin Harithah. To further emphasize the absence of a *nasab* relationship between Zaid and the Prophet, Allah commanded the Prophet to marry Zainab bint Jahsh, the former wife of Zaid bin Harithah.

Had there been a *nasab* relationship akin to blood ties between the Prophet and Zaid, it would have been impermissible for the Prophet to marry Zainab bint Jahsh, as marrying the ex-wife of one's biological son is prohibited in Islam. This prohibition is explicitly stated in Surah An-Nisa (4:23). The Prophet's marriage to Zainab was, therefore, a divine command, as emphasized in Surah Al-Ahzab (33:37):

"And [remember, O Muhammad], when you said to the one on whom Allah bestowed favor, and you bestowed favor, 'Keep your wife and fear Allah,' while you concealed within yourself that which Allah is to disclose. And you feared the people, while Allah has more right that you fear Him. So when Zaid no longer had any need for her, we married her to you so that there would not be any discomfort upon the believers concerning the wives of their adopted sons when they no longer needed them. And ever is the command of Allah accomplished." (Ministry of Religious Affairs of Indonesia, 2006)

This verse permits the marriage to the ex-wife of an adopted child because no *nasab* relationship exists between an adopted child and their adoptive parents. Blood relationships create prohibitions in marriage, while adoptive relationships do not. Thus, the relationship between adopted children and their adoptive parents does not establish mahram (non-marriageable) ties, making marriage between them permissible (Al-Qurthuby, 1993). The marriage of the Prophet Muhammad (peace be upon him) to Zainab bint Jahsh was a direct command from Allah, as stated explicitly in Surah Al-Ahzab (33:37).

The verse establishes the permissibility of marrying the ex-wife of an adopted child because there is no *nasab* (lineage) relationship between the adopted child and the adoptive father. Blood relationships, which create prohibitions in marriage, do not exist in adoptive relationships. Consequently, the adoptive relationship does not establish mahram (non-marriageable) ties, making such marriages permissible. The absence of a biological relationship between adopted children and their adoptive parents means that they are not bound by the prohibitions associated with blood ties. Therefore, the marital relationship between adoptive parents and their adopted children is lawful (Al-Qurthuby, 1993).

The Perspective of Fiqh Munakahat on Marriage Guardianship for Adopted Children by Adoptive Siblings in Akeguraci Village

According to Islamic law, a marriage is valid when it fulfills its requirements and pillars. The conditions for marriage include mutual consent between the parties, the bride and groom being of legal age or maturity (*baligh*), and the absence of any barriers to the marriage. The pillars of marriage consist of the presence of the bride and groom, a marriage guardian (*wali*), two witnesses, and the *ijab qabul* (offer and acceptance). Thus, the *wali* is one of the essential pillars of marriage. Imam Malik and Imam Shafi'i assert that the *wali* is a fundamental element of marriage, and without a *wali*, marriage is invalid (Junus, 1964).

The importance of a *wali* in marriage under Islamic law cannot be overstated. A marriage is considered invalid without the presence of a *wali*. The *ijab* (offer) pronounced by the *wali* plays a central role in solemnizing the marriage, as the *ijab* is only valid when delivered by the bride's *wali*. The role of the *wali* is significant, reflecting the parent's responsibility for their child from birth until adulthood. Raising a child requires sacrifices from the parents, as children are entrusted to them by Allah. Therefore, it is only appropriate that when a child is ready to enter married life, the parent's approval and consent are required. The act of handing over the bride to the groom, expressed by the father in his role as the *wali* during the *ijab qabul* ceremony, symbolizes the culmination of the parent's responsibility for providing material and spiritual care until the daughter reaches maturity and is ready to start her own family. After completing the *ijab qabul*, the parents' responsibilities are transferred to the husband.

Akeguraci Village is part of the administrative area of Tidore Islands City, located in the Oba Tengah District, which comprises 13 villages. As of 2024, according to the village profile, Akeguraci Village has a population of 638, consisting of 346 males and 292 females. Fanaha Village borders the village to the south, Akesai Village to the north, the sea to the west, and local plantations to the east. Historically, the Oba Tengah District is home to various ethnic groups, including the Tobaru, Sanger, Tidore, and Makian tribes. In Akeguraci Village, the majority of residents are from the Makian tribe. The entire population of Akeguraci Village is Muslim, and they practice their religion devoutly. Religious life is a prominent aspect of their daily lives and has become an integral part of their community. Socially, the villagers maintain strong communal bonds, often helping one another during private or public events, enabling them to address social issues collectively.

The adoption practice in Akeguraci Village is similar to that of other communities in North Maluku. Children are often taken from their biological parents without following the legal adoption procedures outlined by Indonesian law. It is customary for adoptive parents to change the adopted child's lineage (*nasab*) to match their own, leading to complications when the child is ready to marry. Adoptive parents often view their adopted child as equivalent to a biological child in terms of guardianship rights. However, the Quran explicitly states that

adopted children are not the same as biological children. Even if adopted as infants, they do not share a *nasab* relationship with their adoptive parents. The lineage of an adopted child remains with their biological father, and the right to act as the *wali* belongs to the biological father or his paternal family. This perspective underscores the importance of adhering to Islamic principles regarding lineage and guardianship in marriage. It highlights the necessity of ensuring that adopted children's lineage is preserved and respected by Islamic law, particularly concerning their rights and responsibilities within the context of marriage.

Adopted children have a different status from biological children. According to Islamic law, adopted children raised by adoptive parents must not have their lineage (*nasab*) altered. This is in line with Allah's words in Surah Al-Ahzab (33:4):

"Allah has not made two hearts for a man in his interior. And He has not made your wives whom you declare unlawful your mothers. And He has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths. But Allah says the truth, and He guides to the [right] way."
(Ministry of Religious Affairs of Indonesia, 2006)

The marriage practice involving adopted children in Akeguraci Village follows similar steps to traditional marriage customs in North Maluku. It begins with preparations, including family meetings to set the wedding date and costs, and culminates in the akad nikah (marriage contract). However, this particular marriage was conducted simply due to the bride's underage status and her pregnancy out of wedlock. The ceremony took place at the adoptive father's house at night, with the marriage guardianship performed by the biological son of the adoptive father. This reflects a societal norm of treating adopted children as biological ones, disregarding the requirement for a valid *wali* (guardian) as per Islamic law, which should come from the adopted child's biological lineage.

Based on the research findings, the biological father, who holds the primary right as the *wali nasab*, declined to perform his duty because the daughter had been adopted since infancy. This decision was influenced by emotional considerations rather than legal or religious obligations (Tamrin, 2024). The biological father, a resident of Akeguraci Village, had divorced his first wife, leading to the child being adopted by another family. He later remarried and started a new family. The adoptive parents, also from Akeguraci Village, raised the adopted daughter from infancy and changed her lineage to reflect their own by adding the adoptive father's surname.

Regarding lineage, there is no blood or close familial relationship between the biological and adoptive fathers. However, the marriage was officiated with the adoptive father's biological son acting as the *wali*, under the belief that the adopted daughter and his biological son were like siblings. According to Islamic law, even if the child has been adopted since infancy, their lineage must not be altered to that of the adoptive family, nor can the adoptive family's biological son act as the *wali*.

This marriage, conducted in 2023, has not been revalidated despite the invalid guardianship arrangement (Usman, 2024). The biological father's refusal to act as *wali* led to the adoptive father delegating the guardianship to his biological son, which is not permissible under Islamic law. This misstep violates the requirements for a valid *wali* in marriage, as the proper sequence of guardianship must be followed, beginning with the biological lineage. Failure to do so renders the marriage invalid, and the couple's cohabitation is considered sinful.

Interviews with residents of Akeguraci Village revealed that the biological father attended the wedding ceremony as a witness but did not act as the *wali* (Sarida, 2024). If a biological father is unable or unwilling to serve as the *wali*, he can delegate this responsibility to another eligible relative within the lineage. However, delegating guardianship to the adoptive father's biological son is invalid and renders the marriage void. The residents of Akeguraci Village, who are predominantly Muslim and devout in their practices, lack a deep understanding of Islamic marital law due to limited religious education. Consequently, errors in the application of Islamic marriage laws, including the guardianship of adopted children, are common. According to a spiritual leader in Akeguraci Village, the practice of altering adopted children's lineage and bypassing the Religious Court for formal adoption procedures is widespread. This leads to misunderstandings, such as assigning guardianship to adoptive parents or their biological children, which is against Islamic law. More extraordinary efforts are needed to educate the community about Islamic marriage laws (Jalal, 2024).

In addition to the issue of incorrect guardianship, the marriage of the adopted child was not attended by the Office of Religious Affairs (KUA) as the *wali hakim* (judicial guardian). This was because the adopted child was underage and required a marriage dispensation from the Religious Court. As a result, the KUA did not permit the marriage to proceed without the dispensation (Rustamil, 2024). A marriage dispensation is a legal solution provided by the law for individuals wishing to marry below the legal age based on the circumstances of the prospective bride and groom (Assagaf, 2023; Insani et al., 2024). Given the situation where the adopted child was pregnant out of wedlock, the marriage was deemed urgent. The adoptive parents should have disclosed the status of the adopted daughter, clarifying that she was not their biological child. Despite being underage, her pregnancy out of wedlock could have been a consideration for the KUA to accommodate the marriage under the guardianship of a *wali hakim*.

Referring to *Al-Fiqh al-Islami wa Adillatuh* by Wahbah Az-Zuhaili, Shafi'i scholars hold that it is permissible to marry a woman who is pregnant as a result of fornication, whether the man marrying her is the one who impregnated her or not. This is because a pregnant woman due to fornication does not fall into the category of women prohibited from marriage (Az-Zuhaili, 2011; Martoredjo, 2021). The biological father, who is the legitimate *wali nasab* for his child's marriage, did not fulfill his duty because another family had adopted the daughter. According to Islamic marital law, if the *wali nasab* cannot perform their duties, the guardianship can be transferred to the *wali hakim*.

Imam Malik and Imam Shafi'i maintain that a marriage is invalid without a guardian (*wali*) who officiates the union by handing over the bride to the groom. The presence of a *wali* in marriage is an essential pillar that cannot be omitted if the marriage is to be considered valid. If a bride no longer has a guardian or if her guardian is unable to fulfill their role, the position of the *wali* in the marriage contract is upheld through the appointment of a *wali hakim*. This ensures that the presence of a guardian protects women from potential harm in their marital lives (Al-Jaziri, 1996; Nur Hadi & Khiyaroh, 2020). For adopted children, the appropriate guardian for marriage is the *wali hakim* when the *wali nasab* is absent or unavailable. A *wali hakim* is a judicial guardian appointed by the Minister of Religious Affairs or an authorized official with the authority to act as the marriage guardian (Anwar, 1990).

The Head of the KUA or a Marriage Registrar Officer acts as the *wali hakim* in marriage ceremonies for individuals without a guardian. According to the hadith of the Prophet Muhammad Saw.: "If the guardians dispute, then the ruler acts as the guardian for the woman who does not have a guardian." (Reported by Ahmad, Abu Dawood, Ibn Majah, and Tirmidhi). This hadith establishes that a *wali hakim* serves as the guardian for a woman who either does not know the whereabouts of her *wali nasab* or whose *wali nasab* refuses to officiate the marriage.

CONCLUSION

Based on the explanation above, it can be concluded that the marriage practice of the adopted child in Akeguraci Village, officiated by the biological son of the adoptive father—despite the absence of a *nasab* (lineage) relationship between them—renders the marriage invalid. This marriage, conducted in 2023, has not been rectified by revalidating the union with a legitimate guardian (*wali*). The *wali nasab* of the adopted daughter should have acted as the marriage guardian. However, due to emotional considerations, namely that the biological father believed the adoptive father had raised his daughter since infancy, he refrained from fulfilling his obligation as the *wali*. In cases where the *wali nasab* cannot perform their duty, a *wali hakim* (judicial guardian) could step in as the guardian. However, in this case, the *wali hakim* (represented by the Office of Religious Affairs, KUA) did not permit the marriage to proceed due to the absence of a marriage dispensation from the Religious Court, as the adopted child was still underage. According to *fiqh munakahat* (Islamic jurisprudence on marriage), the practice of having the biological son of the adoptive father officiate the marriage of the adopted child is deemed invalid, as it does not meet the pillars and conditions required for a legitimate guardian in marriage. The role of the *wali* is a fundamental determinant of the validity of a marriage, alongside other essential pillars of marriage that must also be fulfilled.

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