



The Departure of the Guardian (*Wali*) after *Taukil al-Wali* in a Marriage Contract Ceremony in Batusari, Talun, Pekalongan: A Legal Anthropology Study

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Abstract

Taukil al-wali is delegating marriage guardianship rights to the office of Religious Affairs (KUA) officials or community leaders. The local community widely accepts this practice because religious and traditional leaders legitimize it. This study aims to examine the community's view of the departure of the guardian (*wali*) after *taukil al-wali* and review this phenomenon from the perspective of legal anthropology. The research used a qualitative method with a legal anthropology approach. Data were obtained through observation, interviews, and documentation. The findings show that the people of Batusari Village view marriage as a sacred event, so the guardian delegating his marriage guardianship rights to KUA officials or community leaders is considered to have to leave the assembly for the marriage contract ceremony. This view is based on a limited understanding of the law of *taukil al-wali*, the influence of religious leaders, and respect (*tabarukan*) for those given a mandate. The guardian's departure is considered a valid condition for marriage; if not fulfilled, the marriage is deemed invalid and must be repeated. Local cultural values also influence this practice. Unwritten customary law becomes the community's main guideline in *taukil al-wali*. The strong influence of cultural values causes people's compliance with customs more dominant than formal rules. In conclusion, the guardian's departure after *taukil al-wali* reflects religious norms and local cultural integration. The legal anthropology perspective shows the important role of custom in shaping the distinctive marriage practices in the Batusari Village community.

Keywords: Departure of the guardian, *Taukil al-wali*, Marriage contract ceremony, Legal anthropology

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Introduction

Among the fundamental pillars of marriage, the guardian (*wali*) is a crucial element in determining the validity of marriage (Oktaviani & Sugitanata, 2019: 161). It is also mentioned in KHI (Compilation of Islamic Law) article 19, which says, "The guardian in marriage is a pillar that must be fulfilled for the prospective bride who acts to marry her". KHI and UUP (Marriage Law) both emphasize that the guardian is one of the pillars of marriage that must be fulfilled in the marriage contract (Hamzani, et al., 2023: 201). Then it is also explained in KHI articles 20 to 23, which mention two categories of guardians: male relative guardian (*wali nasab*) and marriage guardian (*wali hakim*). First, male relative guardian (*wali nasab*). Four groups fall into this category, including men from the straight line upwards, brothers of the father, sons of uncles of the father, and brothers of the father's grandfather and his descendants (Munthe et al., 2022: 1018).

The second is the marriage guardian (*wali hakim*), who may perform the marriage under certain circumstances, including the absence of a male relative guardian (*wali nasab*), disagreement among the guardians, or the inability to identify the guardian (Abdurrahman, n.d.: 81). There is also the *wali muhakkam*, whose role differs from that of the *wali hakim*. The *wali muhakkam* is an individual chosen by the bride's family to act as the guardian in the marriage. In Batusari Village, Talun District, the practice of a guardian delegating their authority to another person is neither new nor foreign. Delegating the guardianship to a *muhakkam*, referred to as *taukilul wali*, is a common practice (Munthe et al., 2022). Local community leaders have legitimized the practice of *taukilul wali*. The *taukil al-wali* performed by the bride's guardian typically takes place before the marriage contract ceremony is conducted, and the process is generally guided by local community or religious leaders.

In practice, a male relative guardian (*wali nasab*) who has delegated guardianship through *taukil al-wali* is not permitted to attend the marriage contract ceremony. This is due to concerns that if the male relative guardian, who has delegated their guardianship, were to participate in the marriage contract of their daughter, they might inadvertently serve as a witness to the marriage (Harso, 2021). Since the role of a witness is already recorded in the marriage certificate, it is not permissible for one person to serve in both capacities. Once a guardian has transferred their guardianship to another individual, the original guardian is expected to leave the marriage contract ceremony, as they no longer bear responsibility for the bride (Solihin, 2021). From this, it is evident that many people in Batusari Village, Talun District, still have a limited understanding of why a guardian must leave the marriage contract ceremony after *taukil al-wali* (Mahmudi, 2021). In *ushul al-fiqh* terms, the customs practiced by the community are known as '*urf*'. '*Urf*' is an action or word that is continuously practiced by humans because it is acceptable to the intellect, and humans repeat it continuously. '*Urf*' is a community habit that is considered good regarding words or actions, as long as the habit does not conflict with Islamic law

(Sucipto, 2005: 26). In Batusari Village, Talun Sub-district, no one dares to start straightening out the community's views regarding the growing *taukil al-wali*. The activity of *taukil al-wali* is considered part of a marriage that cannot be separated, and this is due to the lack of public knowledge about the legal basis used when conducting *taukil wali*. Due to the lack of knowledge regarding the basis used to carry out *taukil al-wali*, after *taukil al-wali*, the guardian usually leaves the marriage contract ceremony. However, if the guardian does not leave immediately, the present community or religious leaders will ask him to leave the ceremony according to custom."

It is explained in the book *Hasyiyah Al-Bajuri* that a guardian (*wali*) who has delegated their authority to conduct the marriage contract (*taukil al-wali*) cannot simultaneously serve as a witness in the same marriage contract. This restriction arises because the guardian has been specifically assigned to officiate the marriage, making it impermissible for them to assume dual responsibilities as a witness. According to Islamic law, the marriage contract is deemed invalid if the guardian acts as a witness. This provision underscores the importance of clearly delineating roles in the marriage contract process, ensuring that the guardian, representative, and witnesses each fulfil their respective duties correctly to maintain the contract's validity under Islamic principles (Bajuri 2017: 102). The prohibition, as highlighted in the above explanation, applies specifically to a guardian who assumes the dual role of witness. Based on this discussion, this study focuses on community perspectives regarding guardians leaving the marriage contract ceremony after delegating their authority (*taukil al-wali*) in Batusari Village, Talun District, Pekalongan Regency.

Method

A qualitative method was used in this research. The author obtained data and information directly from the marriage contract process in Batusari Village to observe the marriage contract related to the case of the community's view of the guardian leaving the marriage contract assembly after *taukil al-wali*. In this study, data were taken directly in the field located in Batusari Village, Talun District, Pekalongan Regency, for one year to obtain data on *taukil al-wali* through interviews with religious leaders, the head of the Talun District KUA, and related parties. Using a legal anthropology approach to understand the interaction between legal and cultural norms in the practice of *taukil al-wali* in Batusari Village. Data were collected through observation, interviews with religious leaders, the head of the KUA, and related parties for one year. This approach explores the Batusari community's understanding of *taukil al-wali* and the factors that influence it regarding religion, culture, and customary law.

Result and Discussion

Legal Basis of *Taukil*

The legal basis of *taukil* in the Qur'an can be found in two verses that explain the replacement of tasks or roles by someone on behalf of others. Q.S. Al-Kahf verse 19 describes someone entrusted with carrying out tasks on behalf of others, with care and maintaining confidentiality. Meanwhile, Q.S. Al-Maidah verse 2 emphasizes the importance of helping each other in goodness and piety and the prohibition of helping each other in sin or offense. These two verses teach that delegated tasks must be carried out with integrity and responsibility and under religious provisions. Representation (*wakalah*) is one of the contracts permitted in Islamic law. It addresses the practical needs

of individuals in various interactions (*mu'amalah*). In Islamic marriage law, *wakalah* is applicable when one or both prospective spouses cannot attend the marriage ceremony. In such cases, they can delegate their authority to another person to act on their behalf during the marriage contract proceedings.

Fathul Mu'in explains that the marriage is invalid if a father or sole sibling delegates guardianship (*taukil al-wali*) and attends the ceremony alongside others. This is because the delegating guardian is still considered the officiant of the contract, not a witness (Zainudin, 2005:102). Similarly, *Al-Bajuri* also clarifies that a guardian who has delegated authority cannot be a witness in the marriage contract ceremony. The marriage is valid if three individuals are present and one officiates the contract without delegating their authority. However, if all delegate their authority, the contract becomes invalid (Bajuri 2017: 102).

The Practice of *Taukilul Wali*

The *taukil al-wali* (delegation of guardianship) process is conducted before the marriage contract ceremony. The male relative guardian (*wali nasab*), initially seated in the same assembly as the groom, two witnesses, KUA (Office of Religious Affairs) officials, and religious figures, first relinquishes their guardianship to the KUA official or the religious figure. The religious figure typically guides this delegation process. The statement used to delegate guardianship is usually as follows (Ghufron, 2021):

"Pak Penghulu, I hereby entrust my guardianship to you to marry my daughter to (the groom) with a dowry of (specified amount)."

The response to this delegation is generally: "I accept, and I will marry your daughter to the groom with the specified dowry. After officiating the marriage, I will automatically return the guardianship to you."

Following the *taukil al-wali* process, the guardian is asked to leave or change their seat to avoid being in the same assembly as the marriage contract proceedings. If the guardian does not leave the assembly, a religious figure will request them to exit, emphasizing that their continued presence in the assembly after delegating guardianship is inappropriate (Kayoto, 2022).

In Batusari Village, the guardian's departure from the marriage contract ceremony after *taukil al-wali* has become almost obligatory. Should a guardian refuse or hesitate to leave, they may face social sanctions in the form of ridicule from the community. However, once the marriage ceremony is completed, the guardian is allowed to re-enter the assembly, as clarified by Tadjudin Malik, the Head of the KUA in Talun District (Malik, 2022):

"A guardian who has left the marriage assembly is permitted to return, but only after the marriage ceremony is concluded. If the ceremony is still in progress, the guardian is obligated to leave or move away from the assembly".

The guardian's departure from the assembly is rooted in the understanding that it would be inappropriate for someone who has delegated their guardianship to remain in

the assembly. Such behavior would undermine the purpose and significance of the *taukil al-wali* process (Bahrudin, 2022).

The requirement for a guardian to leave the assembly has been affirmed by religious leaders and KUA officials, making it an inviolable norm. In addition to avoiding social sanctions, this practice reflects the community's sense of obedience and respect toward those regarded as leaders within their society (ariyadin, 2022).

Community Perspectives

The departure of the guardian after *taukil al-wali* is generally accepted by the residents of Batarsari Village for various reasons, including adherence to tradition, a lack of understanding regarding its legal basis, and a strong sense of obedience to respected figures. Several residents expressed similar views, aligning with the statements of local religious leaders (Ariyadin, 2022):

"If someone has delegated their guardianship to a KUA official or a religious scholar, they must leave the assembly. Otherwise, the marriage might be considered invalid. That is why, in our village, when a parent delegates guardianship, they always leave the marriage assembly to ensure the validity of the marriage."

A guardian must leave the assembly once they have delegated their guardianship. If they remain, the marriage is perceived as invalid. Based on the views expressed by residents of Batarsari Village, it is customary for guardians to leave the assembly after delegating their authority. This practice was also explained by Kunti Harso Abdunnasir, a counsellor at the Office of Religious Affairs in Talun District, during a personal interview (Abdunnasir, 2021):

"A biological guardian who has delegated guardianship is not permitted to attend the marriage ceremony. This is because their presence might lead to them being inadvertently considered a witness to their daughter's marriage".

One religious leader offered an analogy regarding the practice of guardians leaving the marriage assembly after *taukilul wali* (Aziz, 2022):

"Logically, if I entrust a bicycle to you, would I also stay to guard the bicycle I've already entrusted? Of course not. Similarly, the practice of taukilul wali within the community represents respect for the individual entrusted to officiate the marriage."

In addition to lacking confidence in officiating their daughter's marriage, guardians often delegate their authority to religious figures or KUA officials. This delegation also seeks blessings (*tabarrukan*) from esteemed religious figures, such as scholars, *habibs*, or *kyais*. However, a different practice was noted with a *habib* in the Pekalongan area. When requested to officiate a marriage and assume delegated guardianship, the *habib* instructed the guardian to remain in the marriage assembly even after delegating their authority. Despite this exception, guardians leave the marriage assembly after *taukil al-*

wali prevails in Batusari Village. Local leaders in the village maintain that the guardian's presence in the assembly after delegation invalidates the marriage, requiring it to be repeated. This belief has led the community in Batusari Village to adhere strictly to the guidance of their leaders. Based on interviews, the primary reason guardians leave the marriage assembly after *taukil al-wali* is the fear that the marriage would be deemed invalid if they remain present after delegating their authority. Consequently, guardians prefer to leave the assembly to ensure the validity of the marriage.

Community Perspectives on the Legal Ruling Regarding Guardians Leaving the Marriage Assembly After *Taukilul Wali* from the Perspective of Islamic Law

The practice of guardians leaving the marriage assembly after *taukil al-wali* is widely recognized by the Batusari Village, Talun District community and is adopted by most residents. Moreover, in terms of its form, this practice consists of activities and actions that, when repeatedly carried out, can be classified as a tradition (Subali, 2022).

From the perspective of its categorization, the practice of guardians leaving the marriage assembly after *taukil al-wali* can be classified as follows: In terms of its object, this practice falls under *al-'urf al-amali* (customs or traditions related to actions). *Al-'urf al-amali* refers to the traditions or customs of a community in performing specific actions, in which the meaning of these actions is understood and recognized by the community (Abdullah, 1995:77-78).

From the perspective of its validity, the practice of guardians leaving the marriage assembly after *taukil al-wali* is categorized as *'urf fasid*. *'Urf fasid* refers to a custom that is flawed, incorrect, and even inconsistent with the texts of the Qur'an and Hadith (Khallaf, 1996:13). The residents of Batusari Village, Talun District, believe that if a guardian does not leave the marriage assembly after *taukil al-wali*, the marriage is considered invalid and must be repeated.

***Taukil al-Wali* in Legal Anthropology Perspective**

The practice of *taukil al-wali* carried out by the community of Batusari Village has been a long-standing activity. However, it is unclear exactly when this practice began in the village. As stated by Mr. Tadjudin Malik, the Head of the Religious Affairs Office (KUA) in Talun District (Malik, 2022):

"The practice of taukil al-wali that has developed in our community is something no one knows the exact origin of. It is a tradition passed down from our ancestors. Therefore, when asked about the history of taukilul wali, no one knows, and this is not just the case in Talun District, but also in the areas where I lived before serving in the KUA of Talun District."

In legal anthropology, three methods have been developed to study societies that have not yet known written law, namely ideological, descriptive, and the examination of statements, disputes, disturbances, and complaints (Ihromi, 2001:196). In this case, the author employs the descriptive method, which focuses on studying people's behaviour. What is described by the author are human actions that have been observed and information regarding actions or behaviours in general. The practice of *taukil al-wali*, inherited from ancestors in Batusari Village, represents a societal custom that has become a cultural tradition. This culture has remained unchanged over time and is thus believed by the community to be a truth that must be upheld. The *taukil al-wali* culture

in Batusari Village has become customary law in the community, where abandoning this culture would result in legal consequences in the form of societal sanctions (Malik, 2022). In this context, the guardian of the marriage (*wali nikah*) acts as a legal subject. In contrast, *taukil al-wali* is the legal object, and the role of the community is to enforce the law in cases of violations, such as when a guardian fails to leave the marriage contract ceremony after the practice of *taukil al-wali*.

From a legal anthropology perspective, the practice of *taukil al-wali* in Batusari Village views law as part of culture and influenced by societal values. The cultural values in Batusari Village impact the community's behavior in understanding the position of the guardian after *taukil al-wali*, which tends to follow traditions and unwritten laws passed down through generations. Therefore, the community in this village possesses a legal culture that influences how they comply with or disregard the application of customary law.

Conclusion

The community of Batusari Village, Talun Subdistrict, believes marriage is a sacred event in human life. Therefore, when a guardian (*wali*) delegates their guardianship (*taukil al-wali*) to another person, they are expected to leave the marriage ceremony assembly (*majelis akad nikah*). The rationale behind this practice lies in a limited understanding of the legal basis for *taukil al-wali*, the influence of religious and community leaders, and the sense of reverence (*tabarukan*) toward the individual assuming the guardian's role. A guardian's confidence often diminishes due to a lack of self-assurance in officiating their daughter's marriage, leading them to feel obligated to leave the assembly after delegating guardianship. This practice, deeply rooted in cultural values, reflects that the people of Batusari Village still adhere to unwritten laws, namely customary law, which they perceive as obligatory due to the strong influence of local cultural values. Violating this customary law may result in legal consequences within the community.

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