



Legal Position of Muhakkam Guardians in the Practice of Sirri Marriage in Aceh

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Abstract

The position of the guardian in marriage is the most important thing in marriage. Because its existence is the reason for the validity of a marriage. The guardians consist of the nasab guardian, the judge guardian (sultan), the muhakkam guardian, and the maula guardian. This research examines the dynamics of unregistered marriages in East Aceh Regency, which are related to who is the guardian in the marriage. How does the muhakkam guardian handle unregistered marriages? What is the legal position of muhakkam guardians as guardians of unregistered marriages? This research aims to answer the problems of muhakkam guardians. This research uses empirical legal methods with a field study approach. Data was obtained by collecting information from primary sources through interviews. The results of the research explain that: *first*, siri marriage through muhakkam guardians using a cultural approach and Islamic legal studies. *Second*, the legal position of muhakkam guardians is not regulated in Indonesian legislation, so it cannot be used as a legal basis for carrying out unregistered marriages. Muhakkam guardians tend to be used to legalize sirri marriages, which are very common among the people of East Aceh. Even though it is not recognized by the state, in practice, muhakkam guardians have religious legal power. Sociologically, the presence of muhakkam guardians increases the number of unregistered marriages among the people of East Aceh.

Keywords: Sirri Marriage, Muhakkam Guardian, Marriage Law, Marriage Registration

Abstrak

Kedudukan wali dalam perkawinan merupakan hal yang paling penting dalam perkawinan. Sebab keberadaannya menjadi alasan sahnya suatu perkawinan. Wali terdiri dari wali nasab, wali hakim (sultan), wali muhakkam, dan wali maula. Penelitian ini mengkaji dinamika perkawinan siri di Kabupaten Aceh Timur, yang terkait dengan siapa yang menjadi wali dalam perkawinan tersebut. Bagaimana wali muhakkam menangani perkawinan siri? Bagaimana kedudukan hukum wali muhakkam sebagai wali perkawinan siri? Penelitian ini



bertujuan untuk menjawab permasalahan wali muhakkam. Penelitian ini menggunakan metode hukum empiris dengan pendekatan studi lapangan. Data diperoleh dengan cara mengumpulkan informasi melalui sumber-sumber primer dengan cara wawancara. Hasil penelitian menjelaskan bahwa: Pertama, perkawinan siri melalui wali muhakkam dengan menggunakan pendekatan kultural dan kajian hukum Islam. Kedua, kedudukan hukum wali muhakkam tidak diatur dalam peraturan perundang-undangan di Indonesia, sehingga tidak dapat dijadikan dasar hukum untuk melaksanakan perkawinan siri. Wali muhakkam cenderung digunakan untuk melegalkan perkawinan sirri yang marak sekali dilakukan oleh masyarakat Aceh Timur. Meskipun secara negara tidak diakui namun secara praktik wali muhakkam memiliki kekuatan hukum secara agama, sedara sosiologis kehadiran wali muhakkam semakin memperbanyak pernikahan sirri dikalangan masyarakat Aceh Timur.

Kata Kunci: Nikah Sirri, Wali Muhakkam, Hukum Pernikahan, Pencatatan Pernikahan

Introduction

Marriage is a sacred promise (*mitsāqan ghalīdzan*) made to build a household to create a family that is *sakinah*, *mawaddah*, and *warahmah*.¹ From the principle of this agreement to live together, there needs to be formal regulation in the form of a record of the implementation of the marriage by the marriage registration officer (PPN) from the religious affairs office. To obtain administrative recognition as a new family, the couple must register at the civil registry office to obtain legal registration and be registered on the family card. This regulation is intended to minimize unfair behavior in Sirri or underhand marriages carried out secretly or secretly.²

Sirri marriage is said to be correct according to custom but not accurate from a legal perspective because this marriage is not registered at the Office of Religious Affairs (KUA) Indonesia. In Islamic jurisprudence, Sirri marriage only has one meaning: a marriage that is not according to Islamic rules; because it is kept secret, the conditions and pillars of marriage are not perfectly fulfilled. In Indonesia, Sirri marriage is known in two meanings. First, a marriage that does not follow the pillars of marriage ideally. Second, a marriage that is not registered is commonly called an underhand marriage or an unrecorded marriage.³

Sirri marriage is an act that is not by Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning marriage.⁴ The laws and regulations explain that a marriage is considered valid if it is carried out based on the rules of each belief and religion, and each marriage is recorded based on applicable laws and regulations. Secret marriage is considered

¹ Syahrul Mubarak Subeitan, 'Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia', *Jurnal Ilmiah Syari'ah*, 21.1 (2022): 77-87, doi:10.31958/juris.v21i1.5581.

² Dwi Arini Zubaidah, 'Status Anak Di Luar Nikah Dalam Perspektif Hukum Positif Dan Hukum Islam (Telaah Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010)', *Familia: Jurnal Hukum Keluarga*, 4.2 (2023): 91-106, doi:10.24239/familia.v4i2.87.

³ Abi Hasan, Achmad Musyahid, and Asman Asman, 'Dualism and Unworthy Legal Practice: The Marginalization of Women's Rights in Sirri and Early Marriages', *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, 55.2 (2022): 149, doi:10.14421/ajish.v56i1.1006.

⁴ Sonny Dewi Judiasih and Hazar Kusmayanti, 'Legal Protection Against Domestic Violence In Child Marriage', *Jurnal Poros Hukum Padjadjaran*, 5.2 (2024): 203-218, doi:10.23920/jphp.v 5i2.1628.

valid according to religion, but in the eyes of the law, the act cannot be recorded.⁵ Marriage registration is an administrative provision for the convenience of the state in carrying out supervision and protection for every citizen. So, whether a marriage is valid is not determined by registration but must be carried out according to the laws of each religion.⁶

In Aceh society, there are still many who carry out secret marriages without the knowledge and consent of the first wife, so this is contrary to state law and Islamic law. The number of secret marriages and divorce rates in Aceh in recent years has been higher than the national figure.⁷ The causal factors behind secret marriages in the Aceh region are due to inadequate understanding of the aspects of the rules or validity according to underhanded marriages, assuming that the rules of trust are relative, as an option for perpetrators of more than one wife or on conditions that should not be known to the public, for example in cases of pregnancy outside of marriage, without parental consent, economic factors, not yet appropriate to marry, free association of today's children, for example, pregnancy outside of marriage, couples who want to have a secret marriage, do not understand the rules about secret marriage, the administrative process of marriage is felt to be too tricky, aborting an extramarital pregnancy, for men who want to remarry (more than one wife) but do not ask for the consent of the first wife, so as not to be influenced in committing adultery so that in general they carry out secret marriages.⁸

In the research "Online Siri Marriage Viewed from the Perspective of Islamic Marriage Law Applicable in Indonesia", written by Faiz Rahman and Rizka Nur Faiza, they said that there is no clear definition of siri marriage.⁹ Then brother Diauddin Tanjung and his team wrote in the journal *Al-Qadha: Journal of Islamic Law and Legislation*, entitled the efforts of the North Aceh Lhoksukon KUA in minimizing the problem of illegal marriages, in this research using a phenomenological study of the North Aceh Lhoksukon KUA's actions.¹⁰ Then M. Yusufa wrote in the *At-Taujih* journal entitled "The impact of unregistered

⁵ Maloko M. Tahir, 'M. Tahir Maloko Unregistered Marriage in Islamic Law Perspective a Critical Study of Islamic Law Compilation', *Mawarid Journal of Islamic Law*, XV.1 (2015): 49-68 <<https://journal.uui.ac.id/JHI/article/view/6146>>.

⁶ Winda Hayati Galuh Pratiwi, Yoyo Hambali, and Agus Supriyanto, 'Sosialisasi Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia', *Journal of Community Development in Islamic Studies*, 01.02 (2022): 61-71, doi:10.33558/alihsan.v1i2.5732.

⁷ Muhammad Sholeh, 'Peningkatan Angka Perceraian Di Indonesia: Faktor Penyebab Khulu' Dan Akibatnya', *Qonuni: Jurnal Hukum Dan Pengkajian Islam*, 1.01 (2021): 29-40, doi:10.59833/qonuni.v1i01.182.

⁸ Misbahul Munir Makka and Tuti Fajriati Ratundelang, 'Poligami Tanpa Izin Istri Pertama Dan Dampaknya Terhadap Keluarga', *Al-Mujtahid: Journal of Islamic Family Law*, 2.1 (2022): 34, doi:10.30984/ajifl.v2i1.1937.

⁹ Rahaman Dkk Faiz, "Perkawinan Siri Online Ditinjau Dari Prespektif Hukum Perkawinan Islam Yang Berlaku Di Indonesia," *Jurnal Penelitian Hukum* 1, no. 1 (2014): 36-52.

¹⁰ Dhiauddin Tanjung, Ramadhan Syahmedi Siregar, and Teuku Islahuddin, "Upaya KUA Lhoksukon Aceh Utara Dalam Meminimalisir Problema Nikah Liar," *Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 2 (2022): 341-361.

marriages on family behavior" in 2019. The object studied in this research was the attitude of the people of Aceh towards people who marry unregistered.¹¹

After the author has carefully reviewed several literatures, it can be said that no previous research has specifically discussed sirri marriage which was researched using an empirical and socio-legal approach in East Aceh Regency and no author has found any writing that discusses sirri marriage. Therefore, the author needs to conduct this research using the qualitative research method Phenomenology In-depth Interview with a socio-legal study approach, which is actually not a completely new study. This interdisciplinary study is a "hybrid" approach to the study of socio-legal analysis in this research, so in the absence of research that uses a socio-legal approach, the researcher wrote a dissertation entitled The Practice of Sirri Marriage in East Aceh (Implementation of Sirri Marriage by Wali Muhakkam).

Muhakkam guardians are guardians appointed by the bride to carry out the marriage procession between herself and a man as her life partner.¹² They are considered able to know the implementation of the marriage and its pillars as entrusted as guardians in the implementation of their marriage. The appointment of Muhakkam guardians also shows that some Acehnese people are still subject to the provisions of fiqh rather than the laws and regulations in force, for example, Law No. 1 of 1974 in conjunction with law no. 16 of 2019 concerning marriage and presidential instruction No.1 of 1991 concerning the Compilation of Islamic Law (KHI).¹³ This is evident from the phenomenon that Muhakkam guardians are not recognized in the laws and regulations in force in Indonesia; for example, in KHI article 20 in paragraph (2), it is stated that "marriage guardians consist of lineage guardians and judge guardians. So, with the problems described above, it is necessary to study and analyze the issues in this study, namely, how the Sirri marriage through Muhakkam guardians in East Aceh Regency is. Second, what is the legal position of the Muhakkam guardian as the guardian of the Sirri marriage?

This study uses a normative legal research method by examining written law from various aspects, namely theoretical, historical, philosophical, comparative, structural, and compositional elements.¹⁴ Normative legal research, also called study, focuses on analyzing legal norms and places legal norms as an object of research. The approach in this study is the statute approach. This method prioritizes analysis of existing legal texts, such as laws,

¹¹ M Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga," *At-Taujih: Bimbingan dan Konseling Islam* 2, no. 2 (2019): 96–108.

¹² Eva F. Nisa, 'The Bureaucratization of Muslim Marriage In Indonesia', *Journal of Law and Religion*, 33.2 (2018), pp. 291–309, doi:10.1017/jlr.2018.28.

¹³ Hasan Munthe, Nurul Huda Prasetya, and Arifuddin Muda Harahap, 'Keabsahan Wali Muhakkam Sebagai Wali Nikah Di Indonesia Analisis Terhadap Putusan No. 197/Pdt.P/2020/Pa.Ppg Mahkamah Agung Menurut Perspektif Syad Al Zariyah', *Jurnal Hukum Islam Dan Pranata Sosial*, 10.02 (2022), pp. 1017–28, doi:10.30868/am.v10i02.3184.

¹⁴ Ervina Dwi Indriati, Sary Ana, and Nunung Nugroho, 'Philosophy Of Law And The Development Of Law As A Normative Legal Science', *International Journal of Educational Research & Social Sciences*, 3.1 (2022), pp. 425–32, doi:10.51601/ijersc.v3i1.293.

regulations, court decisions, and other legal documents.¹⁵ It is supported by a case approach that looks at the Sirri marriages carried out by the guardian of Muhakkam in East Aceh Regency. This approach focuses on the interpretation and application of legal texts to understand and describe applicable laws by analyzing criminal liability by the guardian of Muhakkam due to the Sirri marriage that he has carried out. The sources of legal materials used are primary legal materials in the form of laws and regulations, secondary legal materials such as books, legal articles, information sourced from the internet, and tertiary legal materials in the form of legal dictionaries and encyclopedias.¹⁶ The data collection technique was carried out by document study (library research), which was then analyzed qualitatively and presented with descriptive analysis.¹⁷

Sirri Marriage Through Muhakkam Guardians in East Aceh Regency

Initially, this Sirri marriage needed to meet the requirements and pillars.¹⁸ Shaykhul Islam Ibn Taimiyah was once asked about a person who married in a *mushafahah* manner, namely a Sirri marriage or marriage without a guardian and witnesses with a dowry of 5 dinars, and he had lived with her and mixed with her. Was the marriage valid? Then, Ibn Taimiyah said that the marriage was invalid.¹⁹

The definition of a Sirri marriage is intended or interpreted as a marriage that does not meet the pillars and requirements of marriage.²⁰ As stated by Umar bin Khattab, when he received a complaint about a marriage that was witnessed only by a male witness and a female witness, currently, the definition of a Sirri marriage has been expanded, namely a marriage that meets the pillars and requirements of marriage but has not been/is not registered at the District Religious Affairs Office (KUA) Indonesia for those who are Muslim. In such an effort, a marriage that meets the requirements and pillars of marriage according to Islamic law but has not/is not registered is called a Sirri marriage.²¹

Sirri marriage is divided into two groups. First, a man and a woman carry out the marriage contract without the presence of the woman's parents/guardian. The marriage is

¹⁵ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), pp. 201–7, doi:10.1016/j.sbspro.2016.05.006.

¹⁶ Pujiyono Suwadi and others, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, 17.3 (2024), pp. 315–29, doi:10.1108/IJHRH-04-2022-0032.

¹⁷ Sanne Taekema, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice', *Law and Method*, February 1 (2018), pp. 1–17, doi:10.5553/rem/.000031; Munthe, Prasetya, and Harahap.

¹⁸ Hazar Kusmayanti and Nindya Tien Ramadhanty, 'Legitimacy of a Sirri Marriages (Second and So on) By the Pair of Civil Servants', *DiH: Jurnal Ilmu Hukum*, 17.1 (2021), pp. 84–93, doi:10.30996/dih.v17i1.4512.

¹⁹ Nurwahidah, 'Nikah Sirri Dalam Perspektif Yuridis Dan Sosiologis', *Syariah Jurnal Hukum Dan Pemikiran*, 16.1 (2017), p. 33, doi:10.18592/sy.v16i1.1434.

²⁰ Fadilah Syafitra and Sia Khosyi'ah, 'The Validity of The Marriage Guardian in The Case of Elopement in The Perspective of Islamic Law', *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 10.1 (2023), pp. 105–23.

²¹ Arsyad Said, 'Nikah Di Bawah Tangan Dalam Perspektif Islam', *Maleo Law Journal*, 2.1 (2018), pp. 1–16, doi:10.56338/mlj.v2i1.251.

only attended by the man and woman carrying out the marriage contract, two witnesses, and the teacher or cleric who is marrying, without obtaining delegation from the authorized marriage guardian. Second, according to Islamic law, the marriage contract meets the requirements and pillars of a legal marriage. Still, it needs to be registered according to the wishes of the marriage law in Indonesia.²²

The phenomenon of secret marriage, both in the first and second groups, occurs a lot in society. This can be explained as follows:

First Group

The first set of spouses wed in secret after meeting all the legal conditions for a marriage, including having a guardian with the legal right to marry, being wedded one to one, having witnesses who can attest to the marriage, and finally, having a marriage contract (ijab-qabul). This kind of behavior is typical of many people. For instance, Moerdiono's marriage to artist Machica Muchtar is an example of a marriage among figures/officials. The marriages of artists such as Rhoma Irama to many women, Ahmad Dhani to Mulan Jameelah, Farhat Abbas to Regina, and many more can be noted. Ustadz Aswan's marriage to Rima Idris is one among several legendary unions.²³

For those who have carried out the above Sirri marriages until this article was written, some of their households could last. Still, some had problems because they were questioned by their first wife, a second wife, or the husband himself. Most of the above models of secret marriages are carried out in the context of polygamy, and this happens a lot in society. Or because of the status of one of the partners, the prospective wife or prospective husband divorced underhand so that there is no written evidence of the divorce, which resulted in them being forced to marry in secret. Sirri marriages are carried out because they deliberately want to legalize the marriage only according to religion, where the father or guardian acts as a legal guardian so that both partners legally associate as husband and wife. This couple needs to register their marriage while waiting for the right time.

Second group

Sirri marriage, in practice, occurs in the community mostly in the second form, not using the guardian-judge procedure. In this case, the husband and wife or the parties involved in the marriage use a Muhakkam guardian, not a lineage guardian (father, grandfather, sibling, half-sibling, and so on), and a judge guardian (appointed government official) as regulated in religion and applicable regulations.

The community in East Aceh Regency practices Sirri marriage by stating several reasons, which are then supported by several community leaders with various considerations, hereinafter referred to as Religious Figures/Ulama. The practice of Sirri marriage in East Aceh Regency is caused by several factors, including economic factors, not getting blessings from parents, low level of education, lack of understanding and awareness

²² Nasaiy Aziz, 'The Great Phenomenon of Online Sirri Marriage for Male and Female', *Budapest International Research and Critics Institute (BIRCI-Journal)*, 1.3 (2018), pp. 445-50, doi:10.33258/birci.v1i3.70.

²³ Nurwahidah.

of the importance of marriage registration, no sanctions for those who have secret marriages, and obstacles to polygamy permits.

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In addition to the above factors, the occurrence of the practice of Sirri marriage in East Aceh Regency cannot be separated from the role of the person who marries. There are several reasons that underlie someone so that they marry their partner by way of Sirri marriage, namely: Maintaining the welfare of the community, pregnancy outside of marriage, and underage children.

Based on the explanation above, the rampant marriage through the services of Muhakkam guardians has become a new problem in society, giving rise to positive and negative impacts on the order of people's lives. On the one hand, marriage through Muhakkam guardians if the requirements and pillars of marriage are met is considered valid and answers the problem of sin in the form of adultery. However, on the other hand, it has a negative impact in the form of not getting legal protection from the state for the rights of women and children who are born.

The Position of the Muhakkam Guardian as a Guardian for Sirri Marriage

Muhakkam in terminology is based on the Arabic language *hakama-yahkumu-hukman-wahukuman*, which means holding the command of the law, the bride, punishing according to the rules of the science of shoraf, *fa* following the *wazan*, alakata changed as *hakamah hakkama-yuhakkimu-tahkīman*.²⁴ Muhakkam is an *isim maf'ul*, which can be interpreted as appointing someone as a judge and handing over full rights to the guardian of Muhakkam.²⁵ Another term, Muhakkam means someone who is appointed as a judge. The guardian of Muhakkam in marriage is not an official or official judge the woman appoints as her marriage guardian. In terms of marriage, the guardian of Muhakkam is an ordinary person, not an official judge, who a woman appoints to be her guardian and marries her to a man who has proposed to her. The discussion of the guardian of Muhakkam is only found in the Marriage Registrar's Guidelines. Briefly explained that the two prospective husbands and wives appoint the guardian of Muhakkam to act as guardians in the marriage contract. If the marriage must be carried out with a judge guardian, but there is no judge guardian, then the marriage is carried out with a Muhakkam guardian. The method is that the prospective

²⁴ Rahmad Fauzi and Faisar Ananda Arfa, 'Praktik Wali Muhakkam Di Desa Lhok Medang Ara Kecamatan Manyak Payed Kabupaten Aceh Tamiang Menurut Fiqh Munakahat', *Journal on Education*, 05.04 (2023), pp. 12108-16.

²⁵ Lili Hidayati, 'Fenomena Tingginya Angka Perceraian Di Indonesia Antara Pandemi Dan Solusi', *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, 3.1 (2021), pp. 71-87, doi:10.56593/khuluqiyya.v3i1.56.

husband and wife appoint someone who understands the law as a guardian in their marriage.

A Muhakkam guardian is a guardian appointed by the bride to be a guardian in carrying out the marriage procession between herself and a man as her life partner and is considered able to know the implementation of the marriage and its pillars as entrusted as a guardian in the implementation of their marriage. The appointment of this Muhakkam guardian also shows that some Acehese people are still subject to the provisions of fiqh rather than the laws and regulations that are still in effect, for example, Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage (UUP) and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI).

This phenomenon appears to show that the guardians of marriage are not recognized in the laws and regulations in Indonesia; for example, in KHI article 20 in paragraph (2), it is stated that "marriage guardians consist of lineage guardians and judge guardians. Therefore, this study attempts to critically examine the validity of the Practice of Guardian Muhakkam in East Aceh Society, referring to the understanding of the Tengku and ulama circles as religious figures of the people of East Aceh. The people with the right to be a marriage guardian for a prospective bride must be a man who meets the requirements of Religious Law. In this case, it is divided into two types:

First, lineage guardians come from the prospective bride and have the right to be guardians. In the Compilation of Islamic Law. In the Compilation of Islamic Law, article 21, paragraph 1 states that lineage guardians consist of four groups in order of position; one group is prioritized over the other groups according to their kinship structure with the prospective bride.

Second, a guardian judge is a person appointed by the government or a community institution who is usually called *Ahlul Halli wal Aqdi* to be a Muhakkam guardian and is given the authority to act as a guardian in marriage. The guardian judge can replace the guardian of the lineage if:

- a. The prospective bride has no guardian at all.
- b. The guardian is *mafqud*, meaning his whereabouts are uncertain.
- c. The guardian will be the groom, while no guardian is equal to him.
- d. The guardian is in a place as far as *Masafatul Qasri* (as far as the journey that allows Qasr prayers), which is 92.5 km.
- e. The guardian is in prison or a prisoner who cannot be found.
- f. The guardian is performing the Hajj or Umrah.
- g. Zina's child (she is only related to her mother).
- h. The guardian is crazy or wicked.²⁶

Islamic law allows the implementation of marriage using Tengku as a guardian Muhakkam; The fuqaha allows guardianship by way of tahkim or Wali Muhakkam for

²⁶ Nur Asia, Abu Yazid Adnan Quthny, and Vita Firdausiyah, 'Perpindahan Wali Nasab Kepada Wali Hakim Menurut Kompilasi Hukum Islam Dan Peraturan Undang Undang Dasar Di Indonesia (Studi Kasus Di KUA Pajajaran)', *MOTEKAR: Jurnal Multidisiplin Teknologi Dan Arsitektur*, 2.1 (2024), pp. 383-88, doi:10.57235/motekar.v2i1.2330.

prospective brides and grooms,²⁷ namely: First. The situation of two prospective brides and grooms are in a group situation (very long distance), afraid of committing adultery that was not planned, while their situation is on a trip outside the reach of the area where the prospective bride lives. In contrast, the group has no guardian lineage, or the guardian is challenging to contact. Second PPN or Wali Hakim and Penghulu, there are none, either actual or formal; the two conditions above are the limits of the provisions that must be applied in the implementation of marriage; if forced by way of tahkim then the contract is invalid, some fuqaha say it is doubtful. Suppose there is still a guardian judge from among the employees of the Religious Affairs Office appointed by the government. In that case, the bride may not nominate a guardian Muhakam from a local community leader or cleric. If it is allowed, it will open the door to unregistered underhand marriages, resulting in difficulties in legal protection for the bride and groom and their descendants.

Meanwhile, a valid Sirri marriage according to Sharia but not registered with the civil registration agency has two laws that must be studied differently, namely, (1) the law of marriage and (2) the law of not registering marriages with the state registration agency.

The role of religious figures in this context is manifested as a Muhakkam guardian who is believed to be allowed (legally) to marry people around him. In Indonesian marriage law, the substitute for a guardian in marriage is a judge guardian appointed by the state and has received a determination from the Religious Court. The use of Tengku as a Muhakkam guardian is considered invalid according to the law in force in Indonesia. However, this often happens due to certain things, such as the guardian working abroad, and some are caused by the distance between districts being very far.

The relationship between Tengku and the community is bound by religious emotions, making his legitimate power increasingly influential. The charisma accompanying the Tengku's actions also made the relationship full of emotion.²⁸ Because the Tengku had been a helper to the people in solving spiritual problems and encompassing broader aspects of life, the people also regarded the Tengku as their leader and representative in the national system. His success in demonstrating this important role almost inevitably led to his placement as a mediator of Islamic law and doctrine and as a sacred force itself.

Conclusion

The practice of secret marriage in East Aceh Regency. The occurrence of the practice of secret marriage in East Aceh Regency cannot be separated from the role of the person who marries. Several reasons underlie someone so that they marry their partner using Sirri marriage, namely maintaining public welfare, getting pregnant outside of marriage, and having underage children. In conclusion, and the concept of “unregistered marriage” in

²⁷ Said Rizal, Pagar -, and Zainul Fuad, 'The Validity Of Wali Muhakkam In The Practice Of Unregister Marriages And Legal Consequences At East Aceh Regency', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 22.2 (2023), pp. 49-57, doi:10.31941/pj.v22i2.3008.

²⁸ Khoirul Bariyah, Zulheddi Zulheddi, and Eka Susanti, 'Tenku Leadership Role in Planting the Character of Students in Manarul Border Dayah Islam, Aceh Tamiang District', *International Journal Of Humanities Education and Social Sciences (IJHESS)*, 3.2 (2023), pp. 707-18, doi:10.55227/ijhess.v3i2.621.

Islam refers to a marriage that does not meet important requirements and conditions. Although some scholars argue that it may be permissible under certain circumstances, the practice raises concerns regarding the transparency, legalization, and enforcement of marriage laws. Despite differences of opinion among scholars, the practice persists in various communities, driven by factors such as economic considerations, lack of parental consent, low levels of education, and limited understanding of the importance of formal marriage registration.

Wali Muhakkam is a person appointed as a judge in the context of marriage, especially in Aceh, Indonesia. The concept of guardian muhakkam, although not recognized by Indonesian law, is still practiced for various reasons such as the absence of guardian judges or geographical distance between the parties involved. This phenomenon highlights the important role of religious figures, such as tengku, who act as guardian muhakkam despite legal restrictions. , which emphasizes their authority and influence in spiritual and societal matters.

References

- Asia, Nur, Abu Yazid Adnan Quthny, and Vita Firdausiyah, 'Perpindahan Wali Nasab Kepada Wali Hakim Menurut Kompilasi Hukum Islam Dan Peraturan Undang Undang Dasar Di Indonesia (Studi Kasus Di KUA Pajarakan)', *MOTEKAR: Jurnal Multidisiplin Teknologi Dan Arsitektur*, 2.1 (2024): 383-388, doi:10.57235/motekar.v2i1.2330
- Aziz, Nasaiy, 'The Great Phenomenon of Online Sirri Marriage for Male and Female', *Budapest International Research and Critics Institute (BIRCI-Journal)*, 1.3 (2018): 445-450, doi:10.33258/birci.v1i3.70
- Bariyah, Khoirul, Zulheddi Zulheddi, and Eka Susanti, 'Tenku Leadership Role in Planting the Character of Students in Manarul Border Dayah Islam, Aceh Tamiang District', *International Journal Of Humanities Education and Social Sciences (IJHESS)*, 3.2 (2023): 707-718, doi:10.55227/ijhess.v3i2.621
- Christiani, Theresia Anita, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016): 201-207, doi:10.1016/j.sbspro.2016.05.006
- Dwi Indriati, Ervina, Sary Ana, and Nunung Nugroho, 'Philosophy Of Law And The Development Of Law As A Normative Legal Science', *International Journal of Educational Research & Social Sciences*, 3.1 (2022): 425-432, doi:10.51601/ijersc.v3i1.293
- Fauzi, Rahmad, and Faisar Ananda Arfa, 'Praktik Wali Muhakkam Di Desa Lhok Medang Ara Kecamatan Banyak Payed Kabupaten Aceh Tamiang Menurut Fiqh Munakahat', *Journal on Education*, 05.04 (2023): 12108-12116
- Faiz, Rahaman Dkk. "Perkawinan Siri Online Ditinjau Dari Prespektif Hukum Perkawinan Islam Yang Berlaku Di Indonesia." *Jurnal Penelitian Hukum* 1, no. 1 (2014): 36-52.
- Hasan, Abi, Achmad Musyahid, and Asman Asman, 'Dualism and Unworthy Legal Practice: The Marginalization of Women's Rights in Sirri and Early Marriages', *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, 55.2 (2022): 149, doi:10.14421/ajish.v56i1.1006

- Hayati Galuh Pratiwi, Winda, Yoyo Hambali, and Agus Supriyanto, 'Sosialisasi Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia', *Journal of Community Development in Islamic Studies*, 01.02 (2022): 61-71, doi:10.33558/alihsan.v1i2.5732
- Hidayati, Lili, 'Fenomena Tingginya Angka Perceraian Di Indonesia Antara Pandemi Dan Solusi', *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, 3.1 (2021): 71-87, doi:10.56593/khuluqiyya.v3i1.56
- Judiasih, Sonny Dewi, and Hazar Kusmayanti, 'Legal Protection Against Domestic Violence In Child Marriage', *Jurnal Poros Hukum Padjadjaran*, 5.2 (2024): 203-218, doi:10.23920/jp.php.v5i2.1628
- Kusmayanti, Hazar, and Nindya Tien Ramadhanty, 'Legitimacy of a Sirri Marriages (Second and So on) By the Pair of Civil Servants', *DiH: Jurnal Ilmu Hukum*, 17.1 (2021): 84-93, doi:10.30996/dih.v17i1.4512
- Makka, Misbahul Munir, and Tuti Fajriati Ratundelang, 'Poligami Tanpa Izin Istri Pertama Dan Dampaknya Terhadap Keluarga', *Al-Mujtahid: Journal of Islamic Family Law*, 2.1 (2022): 34, doi:10.30984/ajifl.v2i1.1937
- Maloko M. Tahir, 'M. Tahir Maloko Unregistered Marriage in Islamic Law Perspective a Critical Study of Islamic Law Compilation', *Mawarid Journal of Islamic Law*, XV.1 (2015): 49-68
- Munthe, Hasan, Nurul Huda Prasetya, and Arifuddin Muda Harahap, 'Keabsahan Wali Muhakkam Sebagai Wali Nikah Di Indonesia Analisis Terhadap Putusan No. 197/Pdt.P/2020/Pa.Ppg Mahkamah Agung Menurut Perspektif Syad Al Zariyah', *Jurnal Hukum Islam Dan Pranata Sosial*, 10.02 (2022): 1017-1028, doi:10.30868/am.v10i02.3184
- Nisa, Eva F., 'The Bureaucratization of Muslim Marriage In Indonesia', *Journal of Law and Religion*, 33.2 (2018): 291-309, doi:10.1017/jlr.2018.28
- Rizal, Said, Pagar -, and Zainul Fuad, 'The Validity Of Wali Muhakkam In The Practice Of Unregister Marriages And Legal Consequences At East Aceh Regency', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 22.2 (2023): 49-57, doi:10.31941/pj.v22i2.3008
- Said, Arsyad, 'Nikah Di Bawah Tangan Dalam Perspektif Islam', *Maleo Law Journal*, 2.1 (2018): 1-16, doi:10.56338/mlj.v2i1.251
- Sholeh, Muhammad, 'Peningkatan Angka Perceraian Di Indonesia: Faktor Penyebab Khulu' Dan Akibatnya', *Qonuni: Jurnal Hukum Dan Pengkajian Islam*, 1.01 (2021): 29-40, doi:10.59833/qonuni.v1i01.182
- Subeitan, Syahrul Mubarak, 'Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia', *Jurnal Ilmiah Syari'ah*, 21.1 (2022): 77-87, doi:10.31958/juris.v21i1.5581
- Suwadi, Pujiyono, Priscilla Wresty Ayuningtyas, Shintya Yulfa Septiningrum, and Reda Manthovani, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, 17.3 (2024): 315-329, doi:10.1108/IJHRH-04-2022-0032

- Syafitra, Fadilah, and Sia Khosyi'ah, 'The Validity of The Marriage Guardian in The Case of Elopement in The Perspective of Islamic Law', *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 10.1 (2023):105-123
- Taekema, Sanne, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice', *Law and Method*, February 1 (2018): 1-17, doi:10.5553/rem/.000031
- Tanjung, Dhiauddin, Ramadhan Syahmedi Siregar, and Teuku Islahuddin. "Upaya KUA Lhoksukon Aceh Utara Dalam Meminimalisir Problema Nikah Liar." *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 2 (2022): 341-361.
- Nurwahidah, 'Nikah Sirri Dalam Perspektif Yuridis Dan Sosiologis', *Syariah Jurnal Hukum Dan Pemikiran*, 16.1 (2017): 33, doi:10.18592/sy.v16i1.1434
- Yusuf, M. "Dampak Nikah Siri Terhadap Perilaku Keluarga." *At-Taujih: Bimbingan dan Konseling Islam* 2, no. 2 (2019): 96-108
- Zubaidah, Dwi Arini, 'Status Anak Di Luar Nikah Dalam Perspektif Hukum Positif Dan Hukum Islam (Telaah Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010)', *Familia: Jurnal Hukum Keluarga*, 4.2 (2023): 91-106, doi:10.24239/familia.v4i2.87