

The Impact of Marriage Without a Guardian in the Perspective of Islamic Family Law and Indonesian Positive Law

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Abstract

Marriage without a legitimate guardian (wali) is a violation of both Islamic law and Indonesian positive law, which leads to various legal and social consequences. This study aims to analyze the case of a marriage without a wali that occurred in Gampong Simpang Peut, Kuala District, Nagan Raya Regency, and the impacts caused by such a marriage in the context of both Islamic law and Indonesian positive law. Using an empirical legal method and a qualitative approach, data was collected through observation, interviews, and literature study. The informants of the research included the Head of KUA (Office of Religious Affairs) in Kuala District, the Geuchik (village head) of Gampong Simpang Peut, Tuha Peut (village elders), and Tgk. Imum Meunasah Gampong Simpang Peut. The research findings indicate that the marriage without a legitimate wali that occurred in Gampong Simpang Peut is considered invalid according to Indonesian positive law, particularly based on Article 22 of Law No. 1 of 1974 on Marriage, which states that a marriage may be annulled if it does not fulfill the stipulated requirements, including the presence of a legitimate wali. Additionally, Article 71 (e) of the Compilation of Islamic Law (KHI) stipulates that a marriage conducted without a wali or with an unqualified wali is legally void. Social impacts arising from this include negative stigma toward the involved couple, conflicts between families, and legal uncertainties concerning the status of children born from the marriage. From an Islamic law perspective, marriage without a legitimate wali contradicts the principles of Islamic law, which requires the wali as an essential element of the marriage contract. According to the Shafi'i school of thought, marriage without a valid wali is considered fasid (defective) and invalid. This is further supported by Articles 14 and 19 of the KHI, which state that a marriage conducted without a legitimate wali can be annulled by the Religious Court. Furthermore, the Hadith of Prophet Muhammad SAW, which states, "There is no marriage except with a wali" (HR. Abu Dawood), emphasizes that the presence of a wali is a necessary condition for a valid marriage under Islam.

Keywords: Marriage without a legitimate wali, Islamic law, KUA, Village apparatus.

Abstrak

Pernikahan tanpa wali yang sah merupakan persoalan serius dalam hukum keluarga Islam dan hukum positif Indonesia, karena melanggar ketentuan syariat dan peraturan perundang-undangan. Masalah utama dalam penelitian ini adalah adanya praktik pernikahan tanpa wali yang sah di Gampong Simpang Peut, Kecamatan Kuala, Kabupaten Nagan Raya, yang menimbulkan berbagai dampak hukum dan sosial. Penelitian ini bertujuan untuk menganalisis validitas hukum pernikahan tersebut serta implikasinya berdasarkan perspektif hukum Islam dan hukum positif Indonesia. Dengan menggunakan metode hukum empiris dan pendekatan kualitatif, data dikumpulkan melalui wawancara, dan studi pustaka. Informan penelitian terdiri dari pihak Kepala KUA Kecamatan Kuala, Keuchik Gampong Simpang Peut, Tuha Peut, Tgk Imum Meunasah Gampong Simpang Peut, dan tokoh masyarakat Simpang Peut. Hasil penelitian menunjukkan bahwa

pernikahan tanpa wali yang terjadi di Gampong Simpang Peut tidak sah menurut hukum positif Indonesia, khususnya berdasarkan Pasal 22 Undang-Undang No. 1 Tahun 1974 tentang Perkawinan, yang menyatakan bahwa perkawinan dapat dibatalkan jika tidak memenuhi syarat-syarat yang ditetapkan, termasuk kewajiban adanya wali. Selain itu, Pasal 71 huruf (e) Kompilasi Hukum Islam (KHI) juga mengatur bahwa pernikahan yang dilangsungkan tanpa wali atau oleh wali yang tidak berhak adalah batal demi hukum. Dampak sosial yang timbul antara lain stigma negatif terhadap pasangan yang terlibat, konflik antar keluarga, dan ketidakpastian status hukum bagi anak-anak yang lahir dari pernikahan tersebut. Dalam hukum Islam, pernikahan tanpa wali bertentangan dengan prinsip syariat, karena wali merupakan rukun nikah yang wajib dipenuhi. Menurut Mazhab Syafi'i, pernikahan tanpa wali yang sah dianggap *fasid* (cacat hukum) dan tidak sah. Hal ini diperkuat oleh Pasal 14 dan 19 Kompilasi Hukum Islam (KHI) yang menyatakan bahwa pernikahan tanpa wali dapat dibatalkan oleh Pengadilan Agama. Hadis Rasulullah SAW juga menegaskan, "Tidak ada pernikahan kecuali dengan wali" (HR. Abu Dawood). Berdasarkan hasil wawancara dengan aparat gampong dan tokoh masyarakat, ditemukan dua kasus pernikahan tanpa wali sah di Gampong Simpang Peut pada tahun 2022. Kedua pasangan menikah secara diam-diam tanpa restu keluarga dan tanpa kehadiran wali nasab, serta hanya melibatkan tokoh adat sebagai wali. Kasus ini menunjukkan lemahnya pemahaman masyarakat terhadap prosedur hukum Islam dan mekanisme sah seperti wali hakim.

Kata Kunci : Pernikahan tanpa wali, Hukum Islam, KUA, Aparatur Gampong.

Introduction

Allah SWT created humans with sexual instincts as part of their desires. For this reason, Allah also created all things in pairs, such as day and night, great and small, earth and sky, heaven and hell, and man and woman. This allows them to interact with each other, love, produce offspring, and live in peace.¹ In a broad sense, marriage is an innate bond between two people, namely a man and a woman to live together in a household and offspring that is carried out according to the provisions of Islamic law.²

The provisions regarding marriage are explained in the Qur'an and hadith. However, the technical details of how a marriage is declared valid according to the sharia are more elaborated in the hadith. From the perspective of Islamic law, marriage is declared valid if it meets the conditions and principles that have been set. The pillars of marriage that must be fulfilled include:

1. The presence of the bride-to-be and bride;
2. The existence of a legal guardian, and;
3. The presence of two qualified witnesses.³

The issue of the guardian of the marriage in a marriage contract has been discussed for a long time by previous scholars, especially about the status or function of the guardian in the

¹ Abdul Rahman., *Marriage in Islamic Sharia*, (Jakarta: PT Rineka Cipta, 1996), hlm. 1.

² Moh. Rifai, *Complete Islamic Fiqh*, (Semarang: CV Toha Putra, 1978), hlm. 453.

³ Sulaiman Rasjid, *Complete Islamic Fiqh*, (Bandung: Sinar Baru Algesindo, 2005), hlm. 3.

marriage contract. As is known in practice, the one who pronounces Ijab is the woman's side and the one who pronounces the Qobul pledge is the man's side, this is where the role of the guardian is very decisive as a representative of the bride-to-be.⁴

The position of the marriage guardian in Islamic law is as one of the pillars of marriage, therefore Imam Shafii argues that marriage is considered invalid or void, if the guardian of the bride-to-be does not exist. This is different from the opinion expressed by Imam Abu Hanifah who stated that the wali nikah is not one of the pillars of marriage. Therefore, marriage is considered valid even without a guardian. Imam Abu Hanifah refers to surah al-Baqarah verse 230, which is:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُفِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

Meaning: If he divorces her again (after the second talaq), the woman is no longer lawful for him until she marries another man. If (the other husband) has divorced her, there is no sin for both of them (the first husband and the ex-wife) to remarry if both of them think they will be able to keep God's laws. These are the provisions of Allah that He has explained to those who know. (Q.S. Al-Baqarah: 230).

In marriage, a wali is someone who acts on behalf of the bride in a marriage contract. Regarding the position of the wali in marriage, scholars differ on whether the wali is included in the marital pillar or not because there are differences of opinion in determining the number of marital pillars, and in the Qur'an it is not found clearly that the wali is the pillar of marriage.⁵ However, this difference is not in a substantial way, only because of differences in the interpretation of the verses of the Qur'an and hadith related to the problem of guardians in marriage.⁶

The role of the marriage guardian in Islamic family law related to the marriage process is an important prerequisite and it is exemplified by the presence of the guardian. The existence of a guardian in the marriage process or contract, basically aims to maintain the benefits and maintain the rights owned by the person under the guardianship. Regarding the extent of women's active role in the marriage process, scholars differ in their opinions.⁷

⁴ Selamet Aminuddin, *Fiqh Munakahat*, (Bandung: CV, Pustaka Setia, 1999), p. 28.

⁵ Muhammad Habibi Siregar et al., "Digital Fiqh and Ethical Governance: Negotiating Islamic Normativity and Online Narcissism in Contemporary Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 181–91. <http://dx.doi.org/10.31958/juris.v24i1.13218>

⁶ Amir Syarifudin, *Islamic Marriage Law in Indonesia Between Fiqh Munakahat and Marriage Law*, (Jakarta: Kencana Prenada Media Group, 2009), p. 69.

⁷ Moh Idris Ramulyo, *Marriage Law, Inheritance Law, Religious Court Procedural Law, and Zakat According to Islamic Law*, (Jakarta: Sinar Grafika, 1995), p. 1.

Marriage law in Indonesia through Law No. 1 of 1974 and KHI requires the existence of a marriage guardian, but does not specifically regulate the position of guardian for widows. In fiqh, the Shafi'i madhhab still requires wali, while the Hanafi madhhab gives widows the freedom to marry themselves.⁸ The choice of Indonesian law that follows the Shafi'i school tends to be rigid and unfair, because mature and independent widows are still considered not to have full authority over her. This reflects patriarchal bias in family law, so legal reform is needed to be more contextual, progressive, and respect women's constitutional rights.⁹

According to research conducted by the previous author, there was one case that occurred in Gampong Simpang Peut, Kuala District, Nagan Raya Regency. There is a woman who has been married at the local KUA but there is a defect in the marriage requirements, the guardian used in her marriage is a fake guardian (guardian who is not related by blood).¹⁰ The case of marriage using a fake guardian is a guardian who does not have the right to marry. Therefore, the marriage using the fake guardian must be annulled. The marriage is fasid because the wali is part of the marriage pillar that is not fulfilled.

In the above case, namely a marriage using a fake guardian, the marriage can be canceled. Furthermore, regarding the above case, namely the relationship between husband and wife carried out during the marriage period, it means that their relationship is not a category of adultery. In this case, the nature of the law contained here is the legal certainty that what the husband or wife has done in good faith before their marriage is annulled is still protected by law.

If you examine the provisions for annulment of marriage, it turns out that there are no provisions regarding the rights or positions and obligations of husband and wife towards children born from marriages that have been annulled. Thus, it can be concluded that the consequences that arise after the annulment of marriage, the lawmaker gives the authority to the judge to determine in his decision what is the right and obligation of the husband and wife whose marriage is annulled.

The falsification of the identity of the guardian in the marriage led to the annulment of the marriage, even though both parties had agreed to marry without a guardian. In this case, the marriage is considered invalid because it does not meet the substantive requirements, namely the presence of a legal guardian. Both according to Islamic law and positive Indonesian law, the

⁸ Supani Supani et al., "From Classical Shafi'i Jurisprudence to Diverse Madhhab Perspectives: Shifting Literatures and Practices of Sharia Economic Law in Islamic Pesantren," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 63–72. <http://dx.doi.org/10.31958/juris.v24i1.13419>

⁹ Jumni Nelli, Widow Marriage Without a Guardian, *Moderation Journal of Islamic Studies Review*, Volume 1, No 2, 2021, hlm. 45.

¹⁰ Interview with Nurlaila's mother as a resident who knew about the case on January 4, 2025.

marriage guardian is the pillar that determines whether marriage is valid or not. If the legal guardian is not present and replaced by an unauthorized party, the marriage contract is considered null and void (*faskh*) from the beginning. Socially, the forgery of guardians causes a negative stigma against women's families, because it is considered to violate religious and customary norms. Legally, the annulment of this marriage has implications for the status of children, inheritance rights, and the division of joint property arising from the marriage.¹¹

Previous research has also corroborated this finding. Setiawan (2020) explained that marriages carried out with invalid guardians, such as fake guardians, have legal consequences in the form of annulment through religious courts and require legal determination of the status of children.¹² Meanwhile, Nelli (2021) in her research on widow marriage without a guardian, emphasized that the practice of marriage without a legal guardian increases the risk of inheritance disputes, violations of inheritance rights, and legal legitimacy crises in the family.¹³ These two studies confirm that guardian forgery is not just an administrative violation, but has a wide legal and social impact, as also reflected in the case that occurred in Gampong Simpang Peut. Based on the background that has been described, it can move the author to research 3 things, namely how the case of marriage without a guardian occurred in Gampong Simpang Peut Kec. Kuala, Nagan Raya Regency, how the impact of marriage without a guardian in Gampong Simpang Peut Kec.

Research Methods

This study uses a qualitative research method¹⁴ with a sociological approach, which is an approach to investigation by looking at social phenomena or social, political, and cultural events to understand the laws that apply in society, in this case to find out how the views of Islamic law and posistis law affect the impact of marriage without a guardian.¹⁵ The data collection technique is carried out using sources, namely primary and secondary data sources.¹⁶ Primary data is data sourced directly from the results of interviews with Geuchik of Simpang Peut Village, Tuha Peut, Tgk Meunasah, Head of KUA Kuala District, and interviews with Simpang Peut community

¹¹ O. S. Eoh MS, *Interreligious Marriage in Theory and Practice*, (Jakarta: Raja Grafindo Persada, 2001), p. 93.

¹² F. R. Setiawan. (2020). *Annulment of Marriage due to the Invalidity of the Guardian: Legal Implications for Spouses and Children*. Journal of Marriage and Family Law.

¹³ Jumni Nelli. (2021). *Widow Marriage Without a Guardian*. Moderation: Journal of Islamic Studies Review, Vol. 1 No. 2. <https://doi.org/10.63195/moderation.v1i2.25>

¹⁴ Abdul Halim and Erian Putri Pratiwi, "Online Ta'aruf as a Medium for Islamic Matchmaking: A Socio-Religious Construction of Muslim Young People in the Digital Era," *QIJIS (Qudus International Journal of Islamic Studies)* 13, no. 1 (2025): 117–58. <http://dx.doi.org/10.21043/qijis.v13i1.14333>

¹⁵ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI-Press, 1986), p. 51.

¹⁶ M Faiz Nashrullah et al., "Judicial Invalidation of Ithbāt Nikāḥ Underage in the View of Religious Court Judges in Madura," *Al-Ahkam* 35, no. 2 (2025): 235–60. <https://doi.org/10.21580/ahkam.2025.35.2.27358>

leaders. Meanwhile, secondary data is obtained from various literature such as books, articles, theses, theses, and dissertations that have been researched by previous authors.¹⁷

Results and Discussion

The case of a marriage without a guardian that occurred in Gampong Simpang Peut Kec.

The case of marriage without a guardian that occurred in Gampong Simpang Peut, Kuala District, Nagan Raya Regency is a clear example of the deviation of the marriage principle in Islamic law and positive Indonesian law. In this case, a woman performs a marriage using a fake guardian, which according to sharia or state law does not have the authority to marry. In fact, according to the Shafi'i School which is the basis of marriage law in Indonesia, the existence of a marriage guardian is a harmony that must be fulfilled. Without a guardian, the marriage is classified as *fasid* (legally defective) and can be annulled by the Religious Court.¹⁸

The chronology of this event shows that there are irregularities in the marriage process. The wedding is not held at the Office of Religious Affairs (KUA), but takes place simply in the gampong where the future husband lives. At the time the marriage contract was carried out, the guardian of the nasab from the woman's side was not present and did not give permission. The marriage was still carried out only by involving a local community leader and several witnesses from local residents. Thus, the marriage contract takes place without a legal guardian, so the marriage is not in accordance with the applicable religious and customary provisions. Legally positive, the basis for annulment of marriage is strengthened in Article 71 letter (e) of the KHI which explicitly states that "a marriage can be annulled if it is carried out without a guardian or by a guardian who is not entitled to". Thus, the marriage is not legally valid by religious or state law, even though it has been administratively registered in the KUA.¹⁹

In terms of juridical implications, the annulment of marriage is also retroactive. According to Article 28 paragraph (1) of the Marriage Law and Article 74 of the Criminal Code, the annulment of the marriage takes effect from the time the contract is held. However, the law still provides protection to children born from the marriage.²⁰ Article 28 paragraph (2) of Law No. 1 of 1974 and Articles 75-76 of the KHI affirm that the decision to annul marriage does not apply

¹⁷ Arista Candra Irawati and Eugenia Brandao da Silva, "Beyond Formality in Indonesian Pretrial Law: KUHP Reform, Human Rights, and Islamic Law," *Al-Ahkam* 35, no. 2 (2025): 261–86. <https://doi.org/10.21580/ahkam.2025.35.2.28399>

¹⁸ M. Quraish Shihab, *Fiqh Sunnah: The Law of Marriage and Family* (Jakarta: Lentera Hati, 2005), 23–25.

¹⁹ Norazlina Abdul Aziz et al., "Harm 'Ḍarar' in Polygamous Marriage: Analyzing The Legal Framework in Malaysia and Indonesia," *AHKAM: Jurnal Ilmu Syariah* 25, no. 1 (2025): 53–70.

²⁰ Abdul Aziz, "Impact of Polygamy Practices in Urban Communities in Kramatjati, East Jakarta," *Mazahib* 24, no. 1 (2025): 131–55. <https://doi.org/10.21093/mj.v24i1.8978>

retroactively to the status of children. Thus, the child remains legally valid, has a relationship of descent, inheritance rights, and maintenance obligations from his biological father²¹

Based on the results of the research, it was found that there were two cases of marriage without a guardian in 2022 involving female residents from Gampong SP 4, Kuala District, Nagan Raya Regency. However, the two marriages did not take place in Simpang Peut Village, but were held simply in the village where the future husband lived. This was done secretly without the knowledge of the gampong officials and the women's families. Geuchik of Simpang Peut Village, in an interview, explained: "We received reports from the community and families that there was a female citizen from our village who was married without a guardian in her husband's village. So far, there have been two such cases."²²

From this information, it can be understood that this phenomenon is not a single event, but a recurring problem that shows weak social control and low public understanding of the importance of guardians in marriage. This condition also emphasizes that the role of gampong apparatus and religious institutions needs to be strengthened, both through supervision and legal education to the community. Without systematic preventive efforts, similar cases have the potential to continue to recur and cause social, legal, and psychological impacts that are detrimental to families and society more broadly.

The case of marriage without a guardian does not only occur in Nagan Raya. Based on data from the Directorate General of Islamic Community Guidance (Directorate General of Islamic Guidance, Ministry of Religion of the Republic of Indonesia), in the period 2018-2022 there were more than 1,200 marriage cases that were filed for cancellation to the Religious Court due to guardian issues, including false guardians and guardians of adhal. In 2018 there were 217 cases, in 2019 there were 241 cases, in 2020 there were 198 cases, in 2021 it increased to 276 cases, and in 2022 there were 314 cases²³. This data shows an increase in the practice of problematic marriages related to guardians in Indonesia.²⁴

This phenomenon can be seen from a case that occurred in one of the Simpang Peut gampongs, Kuala District, Nagan Raya Regency. The incident involved a 25-year-old woman with

²¹ Compilation of Islamic Law, Articles 75–76; Law Number 1 of 1974, Article 28.

²² Interview with Mr. Sahabuddin as the Keuchik of Gampong Simpang Peut, on September 17, 2025, at the Office of the Kechik Simpang Peut.

²³ Directorate General of Islamic Guidance of the Ministry of Religion of the Republic of Indonesia. *Annual Report on Marriage Cases 2018–2022*. Jakarta: Ministry of Religion of the Republic of Indonesia, 2023.

²⁴ Directorate General of Islamic Community Guidance, *Ministry of Religion of the Republic of Indonesia*, "Data on Marriage Annulment Cases Based on False Guardians and Adhal Guardians (2018-2022)," accessed September 23, 2025, <https://www.bimasislam.kemenag.go.id>.

the initials (D) and a 32-year-old man with the initials (Y) who had been in an emotional relationship for quite a long time. From a woman's point of view, the growing age encourages her to get married soon, with the fear that if this relationship ends, she will find it difficult to find a suitable partner.

However, the wedding plan did not receive the blessing of the woman's family. Family rejection is based on the consideration of differences in social and economic status, which according to them makes the prospective husband not *sekufu* (*commensurate*) with family status. In addition, there are also concerns about the ability of the husband-to-be to provide a decent living. For this reason, the guardian of the *nasab* from the women's side expressly refused to give permission to marry.

Despite the rejection, the couple still insisted on continuing their intentions. Strong emotional urges make the woman choose to go against her family's decision. Finally, they held a marriage contract secretly in the *gampong* where the future husband lived. In practice, the marriage contract involves a local community leader who is customarily made a *wali*, even though it is not a legal *wali* according to Islamic law. The witnesses who were present came from the surrounding neighbors. Thus, in substance, this marriage contract is carried out without a legal guardian as stipulated in Islamic law and positive law of Indonesia.²⁵

After the marriage took place, there was a fairly strong reaction from the woman's family. They felt disappointed and harassed because their daughter married without the permission of the guardian. For them, marriages that are carried out secretly not only tarnish the dignity of the family, but also bring disgrace (*marmab*) in the eyes of the public. This situation creates tension between the two families, which are supposed to be united by the marriage bond, but instead end up in disputes and social conflicts.²⁶

From a social perspective, the case of marriage without a guardian causes a negative stigma in society. Although the two families have agreed, the marriage that is carried out secretly without the knowledge of the KUA reflects the weak supervision of the conditions for the validity of the contract. This condition has the potential to cause conflicts between families, especially the women's families, who feel cornered due to marriages carried out without the permission of the guardian. In addition to violating the sharia, this marriage also destroys traditional values that make marriage a symbol of family and community honor. As a result, public trust in the social order and

²⁵ Interview with Mr. Sahabuddin as the Keuchik of Gampong Simpang Peut, on September 17, 2025, at the Office of the Kechik Simpang Peut.

²⁶ Interview with Nurlaila's mother as a resident who knew about the case on January 4, 2025.

state institutions has declined, and has encouraged some people to choose the path of non-formal marriage such as *nikah siri*, which has the potential to cause greater legal and social problems in the future.

In an interview with the Chairman of Tuha Peut Gampong Simpang Peut, he expressed his concern about the incident of marriage without a guardian. Chairman Tuha Peut explained, "As an indigenous institution, we have a responsibility to ensure that every marriage that takes place in our gampong is in accordance with the applicable rules, both in terms of religion and customs. Cases like this, carried out without our supervision and the KUA, can damage the honor not only of the two families, but also of the entire community in the gampong." He added that although people often choose traditional marriage paths that do not involve KUA, this ignores the principles that have been regulated in Islamic law and positive law. "We realize that it is important for us to continue to remind the public not to be tempted to cut corners. The use of a legitimate guardian is very important and cannot be ignored."²⁷

Through the interview above, it is clear that Tuha Peut's role as a supervisor of traditional marriage is very crucial. In this case, they have an obligation to ensure that all marriage procedures, including the legality of the guardian, run in accordance with applicable law. This shows that the lack of public oversight and understanding of the importance of guardians can lead to the emergence of illegal marriage practices, which can ultimately undermine social and legal integrity in society.

When viewed from the perspective of gampong customs in Aceh, this marriage practice is not only a formal legal bond, but also has very high social and customary values. In the traditional structure of Aceh, marriage is known as a form of union of two large families and part of *the* dignity (honor) of the family. Usually, before the marriage contract, the gampong through Geuchik (village head) or Tuha Peut (traditional elder) also ensures that the guardian who is present is indeed a guardian according to the sharia. The letter of introduction from the gampong brought to the KUA should be a form of initial verification regarding the status of the guardian.

In the case of Gampong Simpang Peut the use of fake guardians as guardians means not only violating Islamic law and state law, but also considered a form of customary violation. Forging the identity of the guardian is seen as an act that tarnishes the face of the family and damages the honor of the gampong. This was confirmed in interviews with traditional leaders, where they said

²⁷ Interview with Mr. Syamsuddin Rasyid as the chairman of Tuha Peut, on September 14, 2025, at Gampong Simpang Peut.

that marrying a fake guardian is the same as "*bringing disgrace*" that is difficult to remove in the social structure of society. Thus, this marriage is not only legally flawed, but also considered invalid in gampong customs, because Acehnese customs place sharia as the main foundation (*adat bak po teumeureuhom, bukom bak Shia Kuala*).

The Impact of Marriage Without a Guardian in Gampong Simpang Peut Kec.

Marriage, both in the view of Islamic law and positive law in Indonesia, is a sacred bond that connects two individuals and families. To ensure its validity, Islamic law and national laws and regulations have set a number of conditions, one of which is the existence of a legal marriage guardian. In Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), the marriage guardian was adopted from the view of the Shafi'i School, which requires the guardian as one of the pillars for the validity of marriage. Without a legal guardian, the marriage is considered null and void.

However, practices in the field show irregularities, one of which is the case in Gampong Simpang Peut, where the marriage was carried out with a fake guardian. This act not only violates the administrative aspect, but also ignores one of the fundamental pillars of marriage, which has an impact on the validity of marriage and has various legal and social consequences.

a. The Juridical Impact of Marriage Without a Guardian

The most fundamental and direct impact of a marriage that takes place without a legal guardian is on its legal aspect. The absence of this marriage principle creates serious legal defects from the moment the contract is pronounced, which has implications for the marital status itself, the rights and obligations of the parties, as well as the legal status of children and property born from the bond. In Islamic jurisprudence terminology, a marriage that does not fulfill one of its pillars, such as the absence of a legal guardian, is categorized as a *fasid* (damaged or defective) marriage. This *fasid status* means that the marriage is substantively invalid, even though it may have been administratively registered at the Office of Religious Affairs (KUA). Indonesia's positive law expressly regulates the consequences of this defect in harmony. The main foundations are:²⁸

- 1) Article 22 of Law No. 1 of 1974: Stating that, "Marriage can be annulled, if the parties do not meet the conditions for solemnizing marriage". The absence of a legal guardian is a violation of fundamental conditions;
- 2) Article 71 letter (e) of the Compilation of Islamic Law (KHI): Specifically and explicitly is the main legal basis in this case, which states that, "A marriage can be

²⁸ Abdurrahman, *Compilation of Islamic Law in Indonesia*, (Jakarta: Akademika Pressindo, 2004), p. 78.

annulled if the marriage is solemnized without a guardian or performed by an illegitimate guardian".

Based on these provisions, marriages in Gampong Simpang Peut that use fake guardians as guardians are marriages that can be annulled. This cancellation must be submitted through a legal process at the Religious Court. The parties who have the right to apply for this cancellation include the husband or wife, as well as the family in the straight and upward lineage of both. In this case, the husband who feels deceived by the falsification of the guardian's identity has a strong legal right to apply for annulment. Although marriages are annulled and considered to have never existed, Indonesia's positive law provides maximum legal protection for children born from such marriages. The main principle adopted is that the annulment decision does not apply retroactively to the child. The legal basis for this protection is very strong and is regulated in:

- a) Article 28 paragraph (2) of Law No. 1/1974: Declares that the decision of annulment does not apply retroactively to children born from the marriage;
- b) Articles 75 and 76 of the Compilation of Islamic Law (KHI): Clarify these provisions. Article 75 states that the decision of cancellation does not apply retroactively to children born. While Article 76 emphasizes that, "The annulment of a marriage will not break the legal relationship between the child and his parents".

Annulment of marriage also has consequences for property acquired during the marriage bond (before the court decision). This property is known as shared property or *gono-gini*. Although the Marriage Law and KHI do not explicitly regulate the mechanism for the division of joint property due to the annulment of marriage as in the case of divorce, jurisprudence and legal doctrine tend to apply the principle of justice. Logically, as long as the bond is in place (despite the legal flaw), there is a contribution and joint effort from both parties that generate assets. The solution is as follows:²⁹

- a) Inherited Property: Property owned by each party before marriage, or acquired as a gift or inheritance during marriage, will revert to the full property of each party.
- b) Common Property: The property obtained from joint venture during the marriage will be divided based on the contribution of each party or, if it cannot be proved, will be divided equally (half-half) in accordance with the principles applicable in

²⁹ Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Munakahat Fiqh and Marriage Law*, (Jakarta: Kencana Prenada Media Group, 2006), p. 295.

the case of divorce. The Religious Court has the authority to stipulate this division in its decision if requested by the parties. However, it should be noted that if one of the parties is proven to be in bad faith (for example, the wife's side who deliberately falsifies the identity of the guardian), the judge may consider this in the division of the property to protect the party in good faith.

In an interview with the head of KUA, it was stated that the marriage registry institution has an obligation to ensure that all marriage requirements are met, including the validity of the guardian. According to him, "As an institution that registers marriages, we are obliged to ensure that all marriage requirements are met, especially related to legal guardians. If the guardian used is invalid, then the KUA cannot register the marriage. In cases like the one in Gampong Simpang Peut, we will conduct further verification and refer it to the Religious Court for the cancellation process." Furthermore, he emphasized that the KUA was initially unaware of the practice of marriage without a guardian that occurred to one of the women in SP 4. However, if the case is proven to be true, KUA will take firm action in accordance with applicable legal procedures. The Head of KUA also added, "Unfortunately, we still often encounter marriage practices that are carried out in a traditional manner without involving the KUA, making it difficult to verify the validity of the guardian and creating legal problems in the future."³⁰

b. Social Impact

Marriage without a guardian not only causes legal consequences for individuals, but also triggers a series of social impacts in the community of Gampong Simpang Peut and highlights the issue of broader social impact. In a community that upholds religious and customary values such as Nagan Raya, a marriage declared null and void by the court can cause a negative stigma attached to the couple and their family.

Marriage without a guardian, as happened in Gampong Simpang Peut, has significant social and legal impacts. One of the main impacts is the negative stigma against partners, especially women, which is perceived as violating religious and social norms. Marriages that are considered "illegitimate" lead to social exclusion and uncertainty of legal status, even if they are administratively recorded. This makes administrative matters difficult, such as making a child's birth certificate. In addition, falsifying guardian identities triggers conflicts between families, which can damage social relationships. These impacts

³⁰ Interview with Mr. Azharuddin as the Head of KUA Kuala District, on September 16, 2025, at KUA Kuala District.

suggest that marriage without a guardian creates not only legal problems, but also prolonged social tensions.

Marriage without a guardian is not only a legal issue, but also touches on important social and religious aspects in the society. In an interview with Tgk. Imum Meunasah Gampong Simpang Peut, he emphasized that marriage without a legal guardian is contrary to the teachings of Islam. "In Islam, wali is a condition for the validity of marriage," "Without a legal guardian, the marriage is considered invalid according to religion." He also explained that the first impact of this kind of marriage is the negative stigma attached to couples, especially women, who are considered to have violated religious and social norms.

Furthermore, Tgk. Imum added that marriage without a guardian can damage the relationship between the two families. "Women's families feel humiliated, while men's families feel cheated. This can cause tension and conflict between extended families," he said. Even if the marriage is legally annulled, the stigma that arises often persists, and the couple involved will face a skewed view from society. "This is a very serious problem in our society that strongly upholds customs and religion."³¹

This was also confirmed in an interview with the Head of the Kuala District KUA, who stated that marriage without a guardian should basically not happen, because the legal mechanism has provided a solution through the guardian judge. According to the Head of KUA, "If the guardian of the nasab refuses without a justified reason under the sharia, the woman should submit an application for guardian judge to the Religious Court. Unfortunately, many people do not understand this mechanism, so they choose the shortcut of marrying outside of official procedures." This statement reveals a gap in legal knowledge among the public, which can exacerbate the social impact of marriage without a guardian, by increasing the practice of illegitimate marriage and adding to the legal uncertainty that impacts the social status of the couple.³²

In interviews with community leaders, he also stated that marriage without guardians severely damaged the social and customary structure in their village. "Marriage without a guardian is a big problem in our village, in addition to violating religious norms, it also threatens the honor of the family. In addition, although there have been efforts to

³¹ Interview with Mr. Andika Muttaqin as Tgk Imum Meunasah, on September 14, 2025, at Gampong Simpang Peut.

³² Interview with Mr. Azharuddin as the Head of KUA Kuala District, on September 16, 2025, at KUA Kuala District.

educate the public about the importance of guardians, many residents still choose to get married without the correct procedure. "Many do not understand the importance of legal guardians in marriage, which reflects a lack of proper legal understanding. It also emphasizes that without a legal guardian, marriage is considered legally flawed and can tarnish the family's reputation as well as damage their social honor."³³

c. Impact on the Born Child

Marriages that take place without guardians not only have an impact on the couple involved, but also have a significant impact on the children born from the marriage. Although the law provides protection for children born of annulled marriages, both in the context of positive Indonesian law and Islamic law, the social and psychological impact borne by these children cannot be ignored. In a society that strongly upholds religious and traditional values, such as in Gampong Simpang Peut, this impact is often much deeper.

1) Social Stigma Against Children

Children born from annulled marriages often face considerable social stigma. Although legally they are still considered legitimate children of both parents, the reality is that society often perceives them as children of an illegitimate relationship, especially because their parents' marriage is annulled or considered invalid. This stigma, according to Tgk. Imum Meunasah Gampong Simpang Peut, can affect children's psychological development. "Children born from marriages like this are often underestimated by society. They can experience feelings of inferiority or inferiority, and often receive different treatment from other children.

According to Tgk Imum, this stigma does not only come from outside society, but can also come from within the extended family, which can affect the relationship between the child and his relatives. Tgk. Imum added, "Although legally the child is legitimate, social stigma can create feelings of marginalization or unwanted in society, which of course affects their mental and social development."³⁴"That is why

2) Confused about Identity

³³ Interview with Simpang Peut community leaders, on October 7, 2025, at Simpang Peut Village.

³⁴ Interview with Mr. Andika Muttaqin as Tgk Imum Meunasah, on September 14, 2025, at Gampong Simpang Peut

In addition to social stigma, children born from annulled marriages often feel confused about their identity. Uncertainty about their parents' marital status and the consequences of a marriage that has been annulled can create confusion in children. In an interview with Keuchik Gampong Simpang Peut, he revealed that this situation could have an impact on children's emotional stability. "Children often feel confused about who they really are, whether their status as legitimate or illegitimate children is. These kinds of questions can create uncertainty in their lives."³⁵

These children can also face difficulties when they have to deal with administration or population affairs. For example, in taking care of birth certificates, these children may be faced with more complicated procedures due to their parents' illegitimate marital status. In this case, the Kuala District KUA added that they often face situations where children born from canceled marriages face problems in the population administration process. "We are often faced with applications for birth certificates of children from annulled marriages, and in some cases, we have to work with the courts to resolve issues of their legal status."³⁶

3) The Involvement of Legal and Social Institutions in Impact Recovery

Although these children are still protected by their rights, both by Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), which guarantees inheritance and inheritance rights, the reality is that these children remain vulnerable to psychological impacts due to the unclear social status of their children. For this reason, social and religious institutions, such as KUA and customary institutions in Gampong, need to provide more understanding to the community about the legal protection of children born from annulled marriages, and the importance of supporting them so that they are not isolated or treated discriminatory.

Keuchik Gampong Simpang Peut emphasized that although they cannot change the legal decision, the role of the community and indigenous parties is very important in supporting these children. "We as traditional leaders try to provide understanding to the community that the children are not guilty of the decisions

³⁵ Interview with Mr. Sahabuddin as the Keuchik of Gampong Simpang Peut, on September 17, 2025, at the Office of the Kechik Simpang Peut.

³⁶ Interview with Mr. Sahabuddin as the Keuchik of Gampong Simpang Peut, on September 17, 2025, at the Office of the Kechik Simpang Peut.

taken by their parents. It is part of our social responsibility to provide a sense of security and acceptance by them.³⁷

The understanding provided by customary and religious institutions is essential to reduce the social stigma inherent in such children. If there is no clear action from the relevant parties, this negative stigma can continue, affecting the psychological well-being of the child, and damaging the social relationships that exist in society. Therefore, recovering the social impact on children born from annulled marriages urgently requires a concerted effort from all levels of society, with legal and social institutions playing an active role in creating an environment that supports and treats them fairly and equally.

d. Offences That Can Be Perceived as Adultery in Social and Religious Views

Marriage without a guardian in Gampong Simpang Peut, Kuala District, Nagan Raya Regency, not only violates Indonesia's religious law and positive laws, but also has significant social and religious impacts. In Islamic law, especially the Shafi'i School, the guardian of marriage is a condition for the validity of marriage. Without a guardian, marriage is considered fasid (legally flawed) and not religiously valid. Although administratively not recorded in the KUA, the practice of marriage without a guardian is considered a deviation from the teachings of Islam, and is even perceived as an illegal act, such as adultery, in the view of some people. Although Indonesia's positive law does not consider it equivalent to adultery, in the social and religious context in Gampong Simpang Peut, marriage without a guardian is considered a major violation of the sanctity of the marriage contract.

In an interview with Tgk. Imum Meunasah Gampong Simpang Peut, he revealed that the local community views marriage without a guardian not only as an invalid marriage, but as a violation of Islamic law. He stated, "In Islam, wali is a valid condition for marriage. If the marriage is performed without a legal guardian, it is considered contrary to religious teachings. Our society views marriage without a guardian not only as an invalid marriage, but as an act that violates religious and customary norms. For some, it can be seen as adultery, as it is considered an unlawful relationship." Marriage without a guardian, in this view, is not only considered an administrative offense, but a serious deviation from religious rules, which in the society of Gampong Simpang Peut, can be seen as comparable

³⁷ Interview with Mr. Sahabuddin as the Keuchik of Gampong Simpang Peut, on September 17, 2025, at the Office of the Kechik Simpang Peut.

to adultery. This causes couples who marry without a guardian not only to face legal uncertainty, but also severe social stigma, both from the extended family and the surrounding community.³⁸

Marriage without a guardian carries social impacts that cannot be considered insignificant. In addition to tarnishing the honor of families, especially women's families, who often feel humiliated by such invalid marriages, this practice also triggers internal conflicts within the extended family. Social stigma against married couples without guardians can worsen family relationships, with some feeling humiliated and others perhaps justifying the act, even if it is against religious norms. A society that is strong in defending customs and religions, such as in Gampong Simpang Peut, sees marriage without a guardian as an aberration that damages the social order, where an invalid marriage can cause the couple involved to be considered to have committed an act that should not be done within religious norms, which can ultimately be considered adultery.

A Review of Islamic Law Against Marriage Without a Guardian

The existence of a marriage guardian is one of the most fundamental and most debated elements in the discourse of Islamic family law. The position of the guardian, whether as an absolute pillar that determines the validity of the contract or merely a condition of perfection, has become a significant point of difference of opinion among the schools of fiqh. This classic debate is not only theoretical, but also has profound juridical implications, especially after being codified into positive legal systems in Muslim countries, including Indonesia. This section will dissect the dualism of this view and its crystallization within the framework of national law as a foundation for analyzing specific cases in Gampong Simpang Peut.³⁹

Al-Mawardi in his book *Al-Hawi Al-Kabir* said that the guardian must remain in the marriage contract and must also be able to lead and be responsible and not. So the guardian for the woman is the pillar of marriage that can determine the validity of the marriage. So the harmony and conditions of marriage must be fulfilled so that the marriage becomes valid. Some of the scholars do not allow women to marry without the consent of the guardian. Not only the Maliki and Shafi'i schools say that marriage must use guardians, there are also some scholars who agree with Imam Shafi'i such as Ibn Syubrumah and previous scholars who follow the opinions of the two sects.⁴⁰ Allah says in QS An-Nur verse 32 which reads:

³⁸ Interview with Mr. Andika Muttaqin as Tgk Imum Meunasah, on September 14, 2025, at Gampong Simpang Peut.

³⁹ Abdul Rahman Ghazali, *Fiqh Munakahat*, (Jakarta: Kencana Prenada Media Group, 2008), p. 25.

⁴⁰ Ibrahim Hosen, *Fiqh Comparison of Marriage Problems*, Pustaka firdaus, 2003. p. 161.

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Meaning: Marry those who are still single among you and also those who are worthy (to marry) from your servants, both male and female. If they are poor, God will empower them with His grace. Allah is Vast and All-Knowing.

The meaning of the above verse is that it is recommended for the guardians to marry people who still do not have a spouse and are worthy of being married from a female or male servant. If they are not able to do so, then Allah will give them sustenance. Allah is Vast (His Gift), and All-Knowing. And in the hadith it has also been mentioned which was narrated by Ibn Majah which reads: there is no marriage except with wali (HR. Ibn Majah).

The conclusion of the words of Allah SWT and the hadith of the Prophet Saw above is that the khitbah of the above verse is addressed to the wali, then this verse shows that the marriage is given to them the guardians and not to the woman. In the pillars of marriage, the guardian is one of the pillars, that is, the guardian must remain in the implementation of the marriage contract because if the guardian does not exist or the marriage is carried out without a guardian, then the marriage is automatically considered null and void. Marriage law in Indonesia, especially for Muslims, expressly adopts the Shafi'i Madhhab'i view of marriage guardians. This is reflected in Law No. 1 of 1974 concerning Marriage, where Article 2 Paragraph (1) states that "Marriage is valid, if it is carried out according to the law of each religion and belief." For Muslims, this law is further described in the Compilation of Islamic Law (KHI) which regulates in detail the pillars of marriage, including marriage guardians.

Article 14 of the KHI expressly states that the marriage guardian is one of the five pillars that must be fulfilled in marriage, along with the prospective husband, future wife, two witnesses, and the kabul ijab. Article 19 of the KHI further emphasizes that the absence of a legal guardian makes marriage invalid. This suggests that in positive Indonesian law, marriage guardianship is not just a formality, but a condition that cannot be ignored, which if violated causes the marriage to be considered legally defective since the contract was pronounced. KHI also regulates in detail the hierarchy of guardians of nasab in Article 21, providing an alternative through the guardian judge if the guardian of the nasab does not exist, disappears, or is reluctant to marry without a valid reason. This mechanism shows that the Indonesian legal system provides a legitimate and official solution to the problem of illegitimate guardianship, rather than through forgery or fraud in the marriage process.

The case in Gampong Simpang Peut, Kuala District, Nagan Raya Regency, which involved the use of fake guardians in the marriage process, illustrates a violation of one of the most basic pillars of marriage. Although the marriage was recorded in the KUA, the absence of a guardian resulted in the marriage becoming *fasid* (damaged) under Islamic law. Based on Article 71 letter (e) of the KHI, marriages that take place without a guardian or with an invalid guardian can be annulled through a decision of the Religious Court. The applicable legal procedure requires the aggrieved party, in this case the husband who feels deceived, to submit an application for cancellation to the competent Religious Court. If the court decides that the marriage is legally defective, then the marriage will be annulled, even if the marriage has been administratively recorded by the KUA. This annulment has a retroactive effect, meaning that the marriage is considered to have never existed in the first place. However, Islamic law still provides protection for children born from annulled marriages. Based on Article 28 paragraph (2) of Law No. 1 of 1974 and Articles 75-76 of the Criminal Code, children born from annulled marriages still have legal rights to nasab, alimony, and inheritance. This shows the application of the principle of *maslahah* (benefit) in Islamic law to protect the rights of children even if the marriage between their parents is legally annulled.⁴¹

Conclusion

The case of marriage without a guardian that occurred in Gampong Simpang Peut, Kuala District, Nagan Raya Regency, illustrates a violation of the provisions of marriage law both from the perspective of Islamic law and positive Indonesian law. This marriage involves a woman who uses a fake wali as a substitute for a legal wali, even though according to Islamic law and positive Indonesian law, wali nasab is a legal condition in marriage. Marriage without a guardian, such as what happened in Gampong Simpang Peut, has a significant impact on various aspects. Socially, marriage without a guardian creates a negative stigma against couples, especially women, and causes social tension and exclusion from family and society. In addition, the impact on children born from such marriages includes uncertainty of legal status, although the rights of children are still protected. Finally, from a religious and social perspective, marriage without a guardian can be perceived as a violation of serious religious norms, even considered equivalent to adultery by some people. From the perspective of Islamic law, marriage without a guardian is considered invalid (*fasid*) and contrary to the basic principles in the fiqh of the Shafi'i School which is the basis of marriage law in Indonesia. The marriage guardian is one of the pillars that cannot be ignored in

⁴¹ A. R. Nasution, *Fasidic Marriage in Islamic Law: A Study of the Conditions and Pillars of Unfulfilled Marriage*, *Journal of Islamic Law*, 2021.

marriage, and its absence causes the marriage to not meet the requirements stipulated in the Compilation of Islamic Law (KHI). According to Islamic law, the guardian is the party responsible for protecting the rights of women in marriage, and if the guardian used is invalid, then the marriage is considered legally void. Therefore, marriages that occur without a guardian, even though they have been administratively registered, are still considered invalid according to Islamic law and can be annulled through legal proceedings in the Religious Court.

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