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## RESPONSE OF THE PEOPLE OF BATUBARA REGENCY TO THE MUI BATUBARA FATWA ON THE PROHIBITION OF MARRIAGE BY WALI MUHAKKAM

**Mirdiana Putri Ibsah,<sup>1</sup> Sukiati,<sup>2</sup> Imam Yazid<sup>3</sup>**

**<sup>1,3</sup> North Sumatra State Islamic University**

*Jl. Willem Iskandar Psr. V Percut Sei Tuan*


[mirdianaputriibсах@gmail.com](mailto:mirdianaputriibсах@gmail.com), [sukiatisugiono@uinsu.ac.id](mailto:sukiatisugiono@uinsu.ac.id), [imam.yazid@uinsu.ac.id](mailto:imam.yazid@uinsu.ac.id)

### **Keywords:**

*Response, Community,  
Coal, Ban, Marriage,  
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### **Abstract**

In the laws and regulations in Indonesia, namely the Compilation of Islamic Law (KHI), only two guardians are recognized, namely lineage guardians and judge guardians and there is no mention of muhakkam guardians. However, in reality in society, it is known that there are marriages with muhakkam guardians in Batubara Regency. This validity is due to the opinion of the ulama who allow marriage with muhakkam guardians. This is where there is a gap between the regulations of the Compilation of Islamic Law (KHI) and what is happening in the Batubara community, what should happen. From here the problem arises, namely the existence of parties who complain and demand rights in terms of birth certificates and inheritance rights that they should get, because from the beginning the two brides and grooms were not officially registered by the Marriage Registration Committee (PPN). The purpose of this study is to find out about marriages with muhakkam guardians in Batubara Regency, as well as to find out the public's response to the MUI Batubara Fatwa regarding the prohibition of marriage with muhakkam guardians. The research method used in this study uses the type of empirical or field legal research and is descriptive analytical. In this case, the source of research information was obtained from the Muslim Community of Batubara Regency who appointed a guardian muhakkam. The results of this study indicate that the guardian muhakkam is invalid as long as the guardian nasab and guardian hakim still exist.

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## **A. INTRODUCTION**

Marriage is a Sunnatullah which is highly recommended to the people of the Prophet Muhammad (saw) for the survival of human beings themselves.(About et al., 2022) One of the human natures is to perform a holy bond or Mitsaqan Gholidzhoh In order to channel human instinctive desires and become a place to give birth to a continuous generation of descendants.(Muhammad Arifin Siregar, 2020) Marriage is the best way and is suitable for delivering and enjoying intercourse according to human nature, so that the married couple feels calm and can avoid committing adultery.(Wafiah Rafifatun Nida, 2023)

In marriage, there are many things that need to be considered in achieving the pleasure of Allah swt, one of which is the fulfillment of the pillars of marriage, namely in terms of guardians.(Bakar, 2015) In line with the hadith proclaimed by the Prophet (saw) from Abu Musa, he said: "Marriage without the presence of a guardian is invalid.(Bakar, 2015) A marriage will not be able to go well without the presence of a guardian. Generally, in a marriage the legal guardian is the guardian of the nasab, but if the guardian of the guardian does not exist or the guardian is adhal (reluctant), then the guardianship rights may be transferred to the guardian judge appointed directly by the government, namely the guardian judge of the Office of Religious Affairs after there is a decision of the religious court regarding the guardian in accordance with the Compilation of Islamic Law (KHI) Article 23 paragraphs (1) and (2), then the guardian judge can only act.(Fitrisya, 2021)

In practice, the validity of a marriage depends on the rules of harmony and conditions according to their respective teachings or beliefs. In the Compilation of Islamic Law, there is such a thing as the rukun nikah, namely wali. Wali is one of the pillars of marriage agreed upon by Malikiyah, Syafiiyah and Hanabilah. In contrast to the Hanafiyah school which says that guardians are not included in the harmony. The evidence guided by the majority of scholars is the hadith of the Prophet (saw) from Abi Burdah bin Abu Musa r.a., that the Prophet said:

It means from Abi Burdah from Abi Musa from his father, he said: The Prophet (peace be upon him) said: "A marriage is not valid except in the presence

of a guardian". (HR. Narrated by Ahmad and Imam Four and authenticated by Ibn al-Madiny, Tirmidhi, and Ibn Hibban and some consider it a mursal hadith).(Al-Asqalani, 1991) Another evidence related to the position of the guardian is the hadith narrated by Sayyidah Aisyah r.a that the Prophet said.

Means: "From Aisha ra, the Prophet (saw) said: "A woman who marries without the permission of her guardian, then her marriage is invalid. If the man has interfered with her, then he is obliged to pay the mascot for the honor that has been permissible from him, and if they quarrel then the ruler can be the guardian for the woman who has no guardian." (H.R Abu Daud, Imam Four except Nasa'i. Hadith is authentic according to Ibn Uwanah, Ibn Hibban, and Hakim).(Bassam, 2008)

Based on the hadith, it is clear that marriage without a guardian is invalid according to Islamic law. In Indonesia regulations, namely the Compilation of Islamic Law (KHI) that are recognized as guardians, there are only two, namely the guardian of the nasab and the guardian of the judge and there is no mention of the guardian of the muhakkam. However, the reality is that in the community it is known that there is a marriage by the wali muhakkam in Batubara district. Wali muhakkam is a person appointed by both prospective husband and wife to act as guardian in the marriage contract. The legalization is because there is an opinion of jurisprudence scholars who allow marriage by the wali muhakkam.

This is where there is a gap between the regulations of the Compilation of Islamic Law (KHI) and what happens in the coal community what should happen. From here, the problem arises that there are those who complain and demand rights in terms of the child's birth certificate and the inheritance rights that they should get, because from the beginning the bride and wife were not officially registered by the Marriage Registration Committee (PPN), so the problem became a dilemma for ordinary people who did not understand the pillars of marriage in Islam in its entirety. Therefore, the Coal Religious Department urged the MUI Batubara Fatwa Commission to discuss the issue, so that a fatwa was born that was agreed upon and contained "That the wali muhakkam is invalid as long as the wali nasab and wali hakim still exist".

To avoid repetition in the research being conducted, the author conducted a literature review. This activity aims to identify the gap between the research

position being studied by the author and the research that has been carried out by others. This study was conducted to show that, both in terms of the theme and methodology used by the author, this research has developed the focus raised. Thus, it will be shown that this study is different from previous studies. Therefore, the author should review the relevant findings from previous studies in this section. Several studies were found to be relevant to the problems presented by the authors as follows.

The first research was conducted by Mohammad Febry Rahadian, Gusti Muzainah, Jalaluddin in 2024, which was published in the journal *Al Qalam: Scientific Journal of Religion and Society*. The title he raised was the *Reconstruction of Fiqh Wali Muhakkam in the Case of Marriage Legalization*. The focus of this research is to find out the subject of the reconstruction of fiqh of wali muhakkam in the case of marriage legalization. Meanwhile, this study is a library research that uses a statute approach and a case approach. The results of this study show that the legalization of Siri's marriage with wali muhakkam was granted by the panel of judges. The author found that the appropriate reconstruction is to declare that the marriage with wali muhakkam must be considered invalid and the application for ratification. The marriage should have been rejected.

The two studies conducted by Hasan Munthe, Nurul Huda Prasetya, and Arifuddin Muda Harahap in 2022, which were published in the journal *Al-Mashlahah: Journal of Islamic Law and Islamic Social Institutions*. The title he raised was the *Validity of Wali Muhakkam as a Guardian of Marriage in Indonesia: An Analysis of Decision No. 197/Pdt.P/2020/Pa.Ppg of the Supreme Court According to Syad Al Zariyah's Perspective*. Meanwhile, this research is a library research using two data covering primary data and secondary data. The results of this study show three things. First, the judge's consideration in granting the decision is that there is a minimal level of public understanding and knowledge about the issue of guardianship in marriage. Second, the KHI's view regarding marriage with wali muhakkam is not explicitly mentioned, but if analyzed based on other articles, marriage with wali muhakkam will be rejected because it can damage the ideals of KHI. Third, when viewed from the implications, there are two impacts: first, the positive implication is that their

marriage will be recorded and they will get administrative rights such as Deed, KK, and KTP for their needs as citizens; second, the negative implication is that marriage with wali muhakkam will damage the ideals of KHI and weaken the role of the government, such as KUA.

From these two studies, the author can show that the research being studied by the author is not a new research. Because this study has been studied by previous researchers. However, what is new about the research studied in this study is the focus of research studies, where the research studied by the author is focused on field studies, so this is what is newer than the research conducted by previous researchers, because they are only focused on the study of literature on theory without looking at what is happening in the field. And in the end, the results of the research reviewed by the author will be much different from the research conducted by previous researchers.

## **B. METHODS**

This research is a type of empirical or field research. In this case, the source of research information was obtained from the Muslim Jamaah of Batubara Regency who carried out the appointment of guardians Muhakkam or guardians under their hands in their marriage. The research analysis model used in this discussion is a qualitative analysis model, an approach that is not carried out using statistical formulas and symbols. (Sunggono, 2006) This type of qualitative research is a research used to examine the condition of natural subjects in which the researcher is a key instrument. Qualitative research is often also referred to as natural research or case study research. The basis for using qualitative research in this study is because this research is related to direct field facts that are descriptive and tend to use analysis.

The data source used by the author in this study has three parts. First, primary data sources. This means that the researcher conducted interviews with Islamic religious leaders, Muslim community leaders, and Muslim families in Batubara district who appointed muhakkam guardians in marriage. Third, secondary data sources. Namely data obtained through library research, namely by collecting data and reading books or documents related to marriage by muhakkam guardians in Islamic sharia from the perspective of madhhab Shafii. Third, tertiary

resources. That is the material that can provide explanations for primary and secondary data. Among them, Indonesian dictionaries, scientific dictionaries, and journals related to this research.

## C. RESULTS AND DISCUSSION

### 1. Definition of Guardian of Marriage

The root of the word wali comes from the Arabic language, namely waliya – yaliyu–waliyan means guardian, assistant and ruler (Hidayat, 2024). This term also exists in the form of a word Al Waali – Wulan – Waalin which means judges, governments, guardians.(Hidayat, 2024) Linguistically, wali nikah comes from two syllables, namely wali and nikah. The word wali is interpreted as a caregiver.(Simbolon et al., 2024) While the word nikah means a form of bond between men and women.(Setiawan, 2020) The terminology of the marriage guardian has undergone a process of adaptation into Indonesian which can be understood by a caregiver who can certify the marriage bond carried out by the prospective groom with the prospective bride who is required to be present during the implementation of the marriage (Dahwadin & Muhibban, 2022) The definition of wali according to Al-Shaykh Sayyid Sabiq has a general meaning and a special one. That Special is related to people and maal or property. The guardian referred to here is the guardian related to humans, namely guardianship in Zaawaaj or marriage.

According to the jurists (experts of Islamic law), guardianship is the power or authority of a person to perform an act without having to ask for permission from others. Trusteeship in fiqh is the complete control given by religion to a person to control and protect people or goods. The person who is given guardianship power is called a guardian.(Simbolon et al., 2024) It is also mentioned by Abdur Rahman al-Jaziri, in his book fiqh 'ala madzahibil 'arba'ah, defines guardian in the context of marriage as a person who has the highest discretion in determining the validity of the marriage contract. (Al-Jaziri, 2004)

In marriage, the wali is a man who acts on behalf of the bride in the process of ijab qabul marriage. That is the marriage contract carried out by both parties of the bride and groom, namely the man and the woman carried out by the guardian.(Yunita & Sahera, 2022) Based on the explanation of the definition of

guardian above, it can be extracted that the person who has the most right to be a guardian in the validity of the marriage is the biological father of the bride. This is because the father is the closest person who has been taking care of and financing his children. If the father is absent, then the guardianship is replaced by another close family member on the father's side.(Rusli & Putri, 2024).

## **2. Position of Marriage Guardian**

The majority of scholars Imam Shafii and Imam Malik agree that the existence of a wali in a marriage is a must, meaning that the marriage contract is invalid unless there is a wali.(David & Sururuie, 2021) As contained in the Qur'an and hadith as follows. That is, and marry those who are still single among you and also those who are worthy (married) of your servants, both male and female. If they are poor, God will empower them with His gifts. Allah is Vast and Knowing.”. (QS. An nur verse 32).(Nurnazil, 2015).

Meaning: "From Abi Musa Al-Ash'ari from his father he said the Prophet PBUH said: "There is no marriage except with a guardian" (HR. Ahmad and Imam Four and justified by Ibn Madini and At Turmudzi and Ibn Hibban).(Yunita & Sahera, 2022).

## **3. Legal Basis of Marriage Guardian**

Whether or not a marriage is valid depends on the rules of harmony and its conditions. And wali is an absolute pillar that is fulfilled in marriage. The necessity of having a marriage guardian is not a stipulation that makes it difficult for the bride and groom, but to achieve the pleasure of Allah swt. This determination is based on valid postulates from the Qur'an and the Sunnah. This verse is often used as the basis by many scholars regarding the importance of guardians in marriage.(Saputra, 2024) Wali nikah is one of the pillars of marriage in Islam which aims to protect the rights and interests of the bride and ensure that the marriage is carried out in a legal way and in accordance with sharia.(Akmal & Asti, 2021) The verse in question is contained in the Qur'an surah Al-baqarah verse 232 which reads:

*It means, "If you are worried about your wives, and they are nearing the end of their iddah, then you (the guardians) should not prevent them from remarrying their future husbands if there is a willingness between them in a ma'ruf way. That is what is*

*advised to those who believe among you to Allah and the last day. It is holier to you and cleaner. Allah knows, but you do not know." (Q.S. Al-Baqarah : 232). (Syamsuddin & Hasbi, 2023).*

Asbab an-nuzul this verse relates to the story of Ma'qil ibn Yasar. In the narration, Ma'qil ibn Yasar prevented her sister from remarrying her ex-husband after they divorced. When this verse comes down, it is clear that the act of Ma'qil is not permissible, and the wali has no right to obstruct a valid and mutually agreed marriage. And there is also in surah Nur verse 32 which reads:

*It means: "And marry those who are alone among you, and those who are worthy (to marry) of your male servants and your female servants. If they are poor, Allah will enable them with His bounty. And Allah is Vast and Knowing." (QS. An-nur verse 32). (Jamhuri & Mufid, 2020).*

Although this verse does not directly mention guardians, the command to "marry" indicates the active role of guardians or responsible parties in society to help and facilitate marriages, especially for those who may need help or support. The legal basis of the marriage guardian is not only from the Qur'an but also in the hadith verse. Among them is the nash hadith narrated as follows:

Means: From Aisha ra, the Prophet (saw) said: "A woman who marries without the permission of her guardian, then her marriage is invalid. If the man has interfered with her, then he is obliged to pay the mascot for the honor that has been permissible from him, and if they quarrel then the ruler can be the guardian for the woman who has no guardian." (H.R Abu Daud, Imam Four except Nasa'i. Sahih hadith according to Ibn Uwanah, Ibn Hibban, and Hakim). (Bassam, 2008)

*This hadith explains that in Islam, the guardian has an important role in marriage, but this does not mean that the guardian has the absolute power to refuse the marriage of his child without a clear and valid reason according to the Shari'a. If the guardian is reluctant to marry his child who has met the requirements and has found a suitable partner, then the guardianship right can be transferred to the judge or the competent authority As Imam Shafii also opined about the guardian in marriage in his book Al-um which reads:*

Meaning: Imam Shafi'i (may Allah have mercy on him) said: "Any marriage without a guardian is invalid." As our Prophet said: "The marriage of a woman who marries (three times) without the permission of her guardian is invalid." (Ash-Shafi'i, 2014) So from some of the explanations that the author has conveyed, it appears that marriage does require the existence of a guardian as a harmony and



condition of a marriage and must be approved by the guardian of the bride, even if it is married by a girl or a widow, this is the fruit of the thoughts of the majority of scholars who are approved.

#### **4. Wali Muhakkam in Islam**

Basically, the wali muhakkam does not have the right to be a guardian in marriage if there is still a guardian judge in a place or region.(Nelli, 2020) However, the practice of marriage with the muhakkam guardian still occurs in Batubara district. The term wali muhakkam that is commonly heard by the people of Batubara is wali nikah under the hand or NTR. The marriage with the wali muhakkam occurs because the prospective husband and wife are reluctant to deal with the guardian judge because they want to take the easy way in carrying out the marriage, such a marriage causes many losses, especially for the wife because of the absence of legal force (Marriage Book).(Fauzi et al., 2023) So that it is difficult to demand the rights of wives and children and for children will have difficulties in taking care of birth certificates. According to Imam Nawawi, the concept of wali muhakkam originated from a narration from Yunus bin Abdil A'la (one of the disciples of Imam Shafi'i). In the narration, Imam Shafi'i said: "If in a traveling group (rufqah), a woman who does not have a guardian, and the woman leaves her matter to a man, so that the man marries her, then it is permissible".

According to al-Mawardi in *al-Hawi fi Fiqh asy Shafi'i*, tahkim is allowed with four conditions. First, the person appointed as a judge (muhakkam) is an expert in *ijtihad*. The two parties who disagree agree on the muhakkam. The three issues that are disputed are things that are indeed allowed to be done by tahkim. The four decisions taken are acceptable to both parties.(Imam Al-Mawardi, n.d.) Then for objects that can be tahkim, al-Mawardi classifies them into three types. First, it is permissible, namely those related to property rights, business contracts, and matters that are allowed to be granted pardons and releases. Second, it is permissible, that is, it is related to the rights of Allah and is the special authority of the qadhi to adjudicate it, such as the guardianship of orphans. The third is disputed whether it is permissible or not, namely *nikah*, *li'an*, accusation of adultery (*qadzaf*), and *qishash*.(Imam Al-Mawardi, n.d.)

Based on the Al-Mawardi classification, appointing a muhakkam guardian in a female marriage without a guardian is a disputed case. Furthermore, Al-Mawardi allowed the wali muhakkam if the bride and groom were in a war zone (dar al-harb), or in a remote place where it was difficult for them to see the judge. However, if in the territory of Islam and both can still meet with the judge's officials, then in this case there are two opinions, namely allowed and prohibited. The permissible argument is that it depends on the pleasure of both parties. Meanwhile, the argument for those who prohibit it is because marriage to a woman who has no guardian is the absolute authority of the judge. Imam al-Nawawi also said, based on al-Mawardi, that if a woman has no guardian at all, she has three choices: not marry, marry herself in an emergency, or give power of attorney or leave her affairs to someone who then marries her. (Thanks, 2014)

Imam Taqiyuddin al-Hushaini al-Dimasyqi stated that according to Shafi'i, if there is a woman in a society who has no guardian at all, and she gives power of attorney or delegates her case, including marriage, to a man, then it is considered permissible. This is because it is a delegation of power, and the status of the person who receives the power is equivalent to that of a judge. Imam al-Nawawi also said, based on al-Mawardi, that if a woman has no guardian at all, she has three choices: not marry, marry herself in an emergency, or give power of attorney or leave her affairs to someone who then marries her. (Al-Syuwaisyi, 2005)

Al-Syasyi is of the opinion that in the matter of a woman not having a wali at all, she can empower a fiqh scholar who is an expert in ijtihad. Such a transfer of power is legal, so marriage is also allowed. But on the condition that the party who is endowed with such power must be the right person to make a decision, and this is quite difficult to find in this day and age. According to the opinion we have chosen, the marriage is valid if it entrusts its affairs to a just person (his honor and self are maintained), even if it does not reach the level of mujtahid. That is the opinion quoted by Yunus bin Abdul A'la, an honest scholar. (Al-Syuwaisyi, 2005)

In this discussion, Shaykh Zakariya al-Anshari also stated in his book *Asna al-Mathalib fi Syarh Raudh ath Talib* that tahkim is easier:

It means, "If the guardian of the nasab and the guardian of the judge do not exist, it means that both do not exist at the same time, as affirmed in the Book of Raudhatut Talibin, then the woman together with the man who proposes to her entrusts her guardianship to a mujtahid man to marry herself to the suitor, then it is permissible. The mujtahid man appointed by the tahkim wali is a muhakkam, and the status of muhakkam has the same legal status as the guardian of the judge,"

According to him, tahkim does not require the absence of a judge and the muhakkam must be mujtahid. Because of urgent needs, a person who is not a mujtahid can also become a muhakkam wali. Even though there are still judges, people who are not mujtahid can also become muhakkam guardians. Whether on the trip or not, the muhakkam wali is allowed. (Al-Anshari, n.d.) Zakariya al-Anshari's view was strongly criticized by the student, Ibn Hajar al-Haitami, in *Tuhfah al-Muhtaj fi Syarh al-Minhaj*. According to al-Haitami, an opinion that allows wali muhakkam, even though there is still an official wali judge, is an opinion that makes matters or *tasahul* too easy. (Al-Haitami, n.d.) If we look carefully, the ability to use wali muhakkam among the *fukaha* is still *ikhtilaf* in its requirements. Some are only allowed to marry neighbors and some are obliged to guardian their marriage to someone who is *faqih* in religion.

Therefore, among the Shafi'iyah madhhab, they make stricter requirements regarding this. As Al-Mawardi argued, if the bride and groom are in a war zone (*dar al-harb*), or in a remote place where it is difficult for them to see a judge. In other words, that is, the situation where the woman does not find a guardian of the nasab and the guardian of the judge to marry her to the man who has proposed to her, then a person is appointed as a guardian of muhakkam appointed by the second prospective bride.

##### 5. **Fatwa of MUI Coal Number: 01/SK/KOM-FATWA/2019**

The Indonesia Ulema Council, often known as MUI is a non-governmental organization that brings together scholars, scholars and *zu'ama* in Indonesia to

support, uplift, and defend Muslims throughout the country.(Wijaya et al., 2021) To be precise, MUI was established on July 26, 1975 in Jakarta, Indonesia or on 7 Rajab 1395 H.(Mui et al., 2024) The Indonesia Ulema Council, abbreviated as MUI, has two groups that are mutually sustainable, namely the first group containing classical scholars and the second group containing contemporary or modern scholars. Each group sends representatives to join the MUI, then through this institution the ulama issue a fatwa as an answer to the problem that is happening. After the establishment of MUI in 1975 until now, MUI has produced many fatwas whose scope covers various fields, including matters related to religious events, urf and culture, marriage, economics, politics, medical science, and many other fatwas that have been recorded in the Fatwa Collection of the Indonesia Ulema Council.(Judge, 2021).

The Indonesia Ulema Council of Batubara Regency was present after the expansion of Batubara Regency, so the structure of the Batubara Indonesia Ulema Council (DP MUI) was automatically formed in 2008. The Indonesia Ulema Council of Batubara Regency has held a deliberative session regarding the problem of rampant marriage by muhakkam guardians in Batubara district on December 11, 2019 or 14 Rabiul Akhir 1441 H at the MUI secretariat of Batubara Regency in Lima Puluh. The result of the deliberative decision gave birth to the first fatwa and stipulated about the wali muhakkam in marriage with the fatwa of the Indonesia Ulema Council of Batubara Regency Number: 01 SK/KOM-FATWA/XII/2019 concerning the wali muhakkam that marriage by the wali muhakkam is invalid as long as the guardians who are entitled to it, namely the wali nasab and wali hakim, are still in the area.

The members of the Batubara MUI have considered this problem and said that the people of Batubara Regency have not understood properly about guardianship in marriage, especially Wali Muhakkam, and there are some people in Batu Bara Regency who use Wali Muhakkam in the implementation of marriage, so that in order to maintain the authenticity of Islamic sharia in particular In the implementation of marriage, the Indonesia Indonesia Ulema Council (MUI) of Batu Bara Regency considers it necessary to establish a fatwa on the legal status of the use of Wali Muhakkam in marriage to be used as a

guideline for Muslims, especially in Batu Bara Regency, and it should be noted that Wali Muhakkam is someone appointed by a woman and her future husband to marry her (Wali Hakim who is not officially appointed by the Government).

#### **6. Response of the Batubara Regency Community to the Fatwa of MUI Batubara on the Prohibition of Marriage by Wali Muhakkam**

The Indonesia Ulema Council of Batubara Regency has held a deliberative session regarding the problem of rampant marriage by muhakkam guardians in Batubara district on December 11, 2019 or 14 Rabiul Akhir 1441 H at the MUI secretariat of Batubara Regency in Lima Puluh. The result of the deliberative decision gave birth to the first fatwa and stipulated about the wali muhakkam in marriage with the fatwa of the Indonesia Ulema Council of Batubara Regency Number: 01 SK/KOM-FATWA/XII/2019 concerning marriage by the wali muhakkam that it is invalid as long as the guardian who has the right, namely the wali nasab and wali hakim, is still in the area.

The members of the Batubara MUI have considered this problem and said that the people of Batubara Regency have not properly understood guardianship in marriage, especially Wali Muhakkam, and there are some people in Batu Bara Regency who use Wali Muhakkam in the implementation of marriage, so that in order to maintain the authenticity of Islamic law Special in the implementation of marriage, the Indonesia Indonesia Ulema Council (MUI) of Batu Bara Regency considers it necessary to establish a fatwa on the legal status of the use of Wali Muhakkam in marriage to be used as a guideline for Muslims, especially in Batu Bara Regency, and it should be noted that Wali Muhakkam is someone who is appointed by a woman and her future husband to marry her (Wali Hakim who is not officially appointed by the Government). The evidences that are used as a reference in determining this fatwa come from the Qur'an and hadith as well as the arguments of the jurists. In line with the words of Allah swt in Surah An Nisa verse 25 which means, Marry them with the permission of the family and pay their dowries in a good way. (Q.S. An-Nisa: 25).(Zakaria et al., 2022).

Meaning: and in the hadith it is also mentioned, From Abu Musa ra, from the Prophet (peace be upon him), he said: "There is no marriage, except there is a guardian."(Ash-Syaukani, n.d.).

It is from Sulaiman bin Musa from Az zuhri from Urwah from Aisha RA, he said: The Prophet (peace and blessings of Allaah be upon him) said: "Whoever marries herself without the permission of her guardian, then her marriage is false, false, false, then if her husband has married her, then for that woman the dowry of the honor that she has given and is permissible for her, and if there is a dispute from the guardian of the woman's family, And if there is no guardian for the woman, then the judge or the judge who has the right to be the guardian for the woman who has no guardian for her. (HR. Imam Lima except An Nasai).(Al-Sijistani, n.d.)

And some scholars are also of the opinion that if the guardian who has been mentioned earlier is not obtained (wali nasab and wali hakim), then it is permissible to be guardian by a person who is appointed as a wali (wali Muhakkam, fair and independent) where the wali is appointed by the woman together with the man who asks her to be guardian by Muhakkam on the condition that there is no fakih who is mujtahid. If there is no judge to be the guardian of the woman, even though the qadhi is not a mujtahid.(Dimiyati, n.d.)

In the Qur'anic Verse Surah An nisa verse 25 states that it is not permissible to marry a woman without the permission of her guardian. It is said in the hadith point one, it is not legal to marry without a guardian. And if there is no judge, it can be transferred to the wali muhakkam. And the condition for transferring to the muhakkam wali is that there is no judge who becomes the wali (KUA). After looking at the practice of guardianship with the guardian of the muhakkam in Batu Bara Regency does not meet the conditions mentioned above, the MUI Batubara fatwa commission determined that the Wali Muhakkam is not allowed and the marriage is invalid while the guardian of the nasab and the guardian of the judge (Head of KUA) still exists. Therefore, the fatwa of MUI Batubara issued this fatwa circular as an answer to problems that occur in the community and becomes a reference and guideline in matters of guardianship in

marriage, so that the people of Batubara regency can be more careful in choosing guardianship in marriage to avoid misunderstandings so that the purpose of this fatwa is the enforcement of guardianship in accordance with Islamic law.

The opinion on the prohibition of marriage by the wali muhakkam according to the scholar Dr. H.M. Nasir, Lc, MA, Mr. Drs. H. Amir Mukti (as the guardian judge 15 years ago), as well as religious leaders of the community Mr. Jasmani and Mr. Bangun Harahap, and the residents of Batubara Mr. Huzaifah, S.Pd.i expressed the same opinion that a marriage held by the wali muhakkam is not valid in this modern era. According to those who have the right, only the leader who has the power to give directions to each head of KUA can act as a guardian judge if the guardian of the bride is not there, whether it is a guardian of the nasab, guardian of aqrab, guardian of adhal or even those of different religions. A person who has not been appointed by the ruler in terms of guardianship has no right to do so nor does he have the right to make himself a muhakkam guardian in marriage. The reason used as a bride and groom is not perfect, because there is no effort by the bride and groom to try to get married legally and officially recorded at the Religious Affairs Office.

According to the author, these sources are very competent in their fields and are used to problems about this, especially guardianship. Therefore, the rampant marriage using wali muhakkam in Batubara district must be stopped. They are of the view that the law of marrying a wali muhakkam is not valid because something that is halal is clear and what is haram is also clear. So it is appropriate for us as a society to avoid marriage by the wali muhakkam. So every bride and groom who are going to get married should know the harmony and conditions in a marriage and stay away from marriages that use wali muhakkam even during an emergency, it would be good to make maximum efforts to take the official route for the realization of a sakinah family, mawaddah wa rahmah. And people who do not understand and are not experts in their field, especially in marriage, should avoid giving recommendations to use wali muhakkam for a marriage. Likewise, religious leaders and religious teachers should provide the best solution for the bride and groom who will hold a wedding by following the official procedures that have been set by the state.

And according to the religious leader as well as the Coal Society, the social impact of marriage using wali muhakkam is very large and more likely to harm the bride and her children later. Other times, they cannot sue in a religious court because from the beginning their marriage is not considered by the state, starting from demanding inheritance rights, guardianship, not having a child's birth certificate and other mudharats. So the impact will not only affect state administration affairs but many more will bring harm to the bride and her descendants. As in a fiqh rule expresses: "Avoiding harm should take precedence over attracting benefits".(Zuhdi, 1996)

The response of the ulama and the Coal Society is of the opinion about the solution to avoid marriage with the muhakkam wali. First, the Ministry of Religion has taken a firm stance and has provided legal clarity regarding the law of marriage with a muhakkam wali is not valid according to the leadership board of the Indonesia ulema council of Batubara regency by containing a fatwa that marriage using a muhakkam wali is not valid while the wali nasab and wali judge are still there. And along with this fatwa was issued and disseminated to the community and appealed to religious leaders and teachers who had been the wali muhakkam to immediately repent and promise not to repeat it again for the common good.

Second, the ulama of preachers, muballigh/muballighah and related agencies must be more proactive in conducting counseling. Often convey this problem in da'wah, lectures and recitations, so that the community has legal awareness. Ordinary people still do this a lot because they lack knowledge and are illiterate in the law. It must be admitted that da'wah and recitation materials so far have rarely touched on the issue of the existence of muhakkam guardians. In relation to this persuasive approach, KUA officials should find a solution every time there is a problematic marriage. The bride and bridal couple need to be given guidance and enlightenment so that they understand the problem. With the help of KUA, perhaps the guardianship problem in their marriage can be simplified and helped to solve. Including assistance in the form of cost dispensation if married couples cannot afford it. The wedding procedure needs to be simplified



so that the bride and groom do not think about finding a shortcut to marry the wali muhakkam.

The phenomenon of religious leaders daring to marry people with muhakkam guardians seems to be also because they feel right with their actions. This reality needs to involve scholars who have competence in the field of Islamic law. The scholars and religious leaders who usually marry people to the wali muhakkam need to sit at one table, discuss, dialogue and even debate to issue the marriage with the wali muhakkam along with the solution. This is important considering that such things still often occur and become a controversy among scholars and society. From here, it is hoped that a bright spot will emerge, so that those who feel mistaken can revise their stance. Then in the future they agreed to choose a safer way in the view of law, especially Islamic Law.

Third, the scholars and religious leaders of the community agree on the solution to marriage with the wali muhakkam, namely they urge the government to cooperate in socializing guardianship in marriage. Especially anyone who has the right to marry people in marriage so that there is no confusion of opinion between scholars and the community. Mr. Jasmani as a religious figure argued and urged the government to make or appoint someone who understands the religion of Islamic law to be used as a reference for public consultation regarding marriage, so that the bride and groom who want to get married get official information and procedures in terms of guardianship rights to avoid marriage by the muhakkam guardian in Batubara district.

#### **D. CONCLUSION**

The MUI Batubara fatwa prohibiting marriage by the muhakkam wali has triggered various responses among the people of Batubara Regency. Public reactions to this fatwa have varied and reflect different views regarding the long-standing practice of marriage. Some people accept this fatwa well, especially those who have a deeper understanding of religion. They see this fatwa as an important effort from the MUI to maintain the sanctity of marriage in accordance with Islamic teachings. This fatwa is considered the right step to prevent the practice of illegal marriage and can harm one of the parties, especially women. However, there are also community groups that, despite supporting this fatwa, need time to adapt. They are used to the long-standing practice of marriage by wali muhakkam

and have not fully understood the implications of the fatwa. This group tends to need further socialization and education from the MUI and local religious leaders.

On the other hand, there are also community groups that reject this fatwa. This rejection is often based on deep-rooted traditions and customs, as well as distrust of the MUI authority. Some people feel that this fatwa limits their right to determine the marriage guardian according to their respective situations and conditions. In addition, there are also people who feel confused and do not understand the reason behind this fatwa. They may not have adequate access to information or religious education that explains the importance of the ban. This shows the need for a more communicative and educational approach from the MUI as well as cooperation with community and religious leaders at the local level. Overall, the response of the people of Batubara Regency to the MUI Batubara fatwa regarding the prohibition of marriage by the muhkam wali varied, ranging from acceptance to rejection. To achieve a wider understanding and acceptance of this fatwa, continuous education and constructive dialogue between the MUI, religious leaders, and the community are needed.

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