

**TAJDID NIKAH FOR MARRIAGE WITHOUT A GUARDIAN IN POREH  
LENTENG SUMENEP IN THE PERSPECTIVE OF THE COMPILATION OF  
ISLAMIC LAW AND THE HANAFI MADZHAB**

**THESIS**

**BY : RA. ALISA KATHRIN NADA NAFTALIN**

**SIN 200201110153**



**ISLAMIC FAMILY LAW STUDY PROGRAM**

**FACULTY OF SHARIA**

**MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY**

**MALANG**

**2025**

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**2025**

## STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

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Malang, Mei 21<sup>st</sup> 2025

Writer,



RA. Alisa Kathrin Nada Naftalin  
SIN 200201110153

### APPROVAL SHEET

After reading and correcting thesis of RA. Alisa Kathrin Nada Naftalin Student ID : 200201110153, Department of Islamic Family Law Department, Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

**TAJDID NIKAH FOR MARRIAGE WITHOUT A GUARDIAN IN POREH  
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ISLAMIC LAW AND THE HANAFI MADZHAB**

the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

Malang, Mei 21<sup>st</sup> 2025

Acknowledged,

Supervisor I,



Erik Sabti Rahmawati, MA. M.Ag.  
NIP: 197511082009012003

Supervisor II,



Sohibul Hairi, M.Pd.  
NIP: 202304011007

The Head Department of  
Islamic Family Law



Erik Sabti Rahmawati, MA.M.Ag.  
NIP: 197511082009012003



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**UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG**  
**FAKULTAS SYARIAH**

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimili (0341) 559399  
Website Fakultas: <http://syariah.uin-malang.ac.id> atau Website Program Studi: <http://hk.uin-malang.ac.id>

**BUKTI KONSULTASI DOSEN PEMBIMBING I**

Nama : RA. Alisa Kathrin Nada Naftalin  
NIM : 200201110153  
Prodi : Hukum Keluarga Islam  
Dosen Pembimbing : Erik Sabti Rahmawati, MA., M.Ag.  
Judul Skripsi : Tajdid Nikah Bagi Pernikahan Tanpa Wali Di Desa Poreh Lenteng  
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Madzhab Hanafi

No	Tanggal	Materi Konsultasi	Paraf
1	30 September 2024	Konsultasi Judul & Berganti Judul	
2	07 Oktober 2024	Revisi Rumusan Masalah	
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9	16 Mei 2025	Konsultasi Keseluruhan Skripsi	
10	21 Mei 2025	ACC Skripsi	

Malang, 21 Mei 2025  
Mengetahui a.n Dekan  
Ketua Prodi Hukum Keluarga Islam

**Erik Sabti Rahmawati, M.A., M.Ag.**  
NIP. 197511082009012003





**KEMENTERIAN AGAMA REPUBLIK INDONESIA**  
**UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG**  
**FAKULTAS SYARIAH**

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimili (0341) 559399  
Website Fakultas: <http://svariah.uin-malang.ac.id> atau Website Program Studi: <http://hk.uin-malang.ac.id>

**CONSULTATION PROOF II**

Name : RA. Alisa Kathrin Nada Naftalin  
Student Number : 200201110153  
Departmen : Islamic Family Law  
Supervisor : Sohibul Hairi, M.Pd.  
Thesis Title : Tajdid Nikah for Marriage Without A Guardian in Poreh Lenteng  
Sumenep in the Perspective of Compilation of Islamic Law and  
the Hanafi Madzhab

No	Tanggal	Materi Konsultasi	Paraf
1	Mei 16 <sup>th</sup> 2025	Chapter Translation Consultation 1-5	
2	Mei 19 <sup>th</sup> 2025	Revision	
3	Mei 20 <sup>th</sup> 2025	Overall Thesis Consultation	
4	Mei 21 <sup>st</sup> 2025	ACC Thesis	

Malang, Mei 21<sup>st</sup> 2025

Acknowledged by:  
Head Department of Islamic Family Law

**Erik Sabti Rahmawati, M.A., M.Ag.**  
NIP. 197511082009012003

## LEGITIMATION SHEET

The Assembly Board of Thesis Examiners of RA. Alisa Kathrin Nada Naftalin (SIN 200201110153), student of Islamic Family Law Department, Sharia Faculty of The State Islamic University Maulana Maliki Ibrahim of Malang entitled:

**TAJDID NIKAH FOR MARRIAGE WITHOUT A GUARDIAN IN POREH  
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Has been certified to pass in examination

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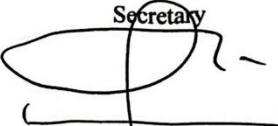
1. Dr. Jamilah, MA., Ph.D.  
NIP: 197901242009012007

  
Chairman

2. Erik Sabti Rahmawati, MA., M.Ag.  
NIP: 197511082009012003

  
Secretary


3. Dr. Zaenul Mahmudi, MA.  
NIP: 197306031999031001

  
Main Examiner



Malang, June 23<sup>rd</sup> 2025

Dekan,

  
Prof. Dr. Sudirman M.A.  
NIP. 1997708222005011003

## MOTTO

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا

رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ ۖ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

*“O mankind, fear your Lord who created you from a single being (Adam) and He created from him his mate (Eve). From them Allah multiplied many men and women. Fear Allah in whose name you ask one another and (maintain) kinship. Verily, Allah is always watching over you.”*

(Q.S. An-Nisa' (4) : 1)



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Shalawat and salam may remain poured out to our lord the Prophet Muhammad SAW, who has become a role model in all aspects of our lives.

The preparation of this thesis is intended as one of the requirements to obtain a bachelor's degree and complete studies at the Faculty of Sharia, Islamic Family Law Study Programme, Maulana Malik Ibrahim State Islamic University Malang. The author realises that this research cannot be separated from the help of many parties, as well as various forms of motivation, both directly and indirectly, have always appeared in all situations and conditions. The author expresses his deepest gratitude to all those who have helped the author in completing this thesis, both directly and indirectly, therefore please allow the author would like to thank:

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3. Mrs Erik Sabti Rahmawati MA. M.Ag as the Head of the Department of Islamic Family Law at Maulana Malik Ibrahim State Islamic University Malang as well as the supervisor who has guided and directed the author in preparing this thesis, so that it can be completed properly..
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Malang, Mei 21<sup>st</sup> 2025  
Writer,



RA. Alisa Kathrin Nada Naftalin  
200201110153

## TRANSLITERATION GUIDENCE

### A. General

Transliteration is the transfer of Arabic writing into Indonesian writing (Latin), not the translation of Arabic into Indonesian. Included in this category are Arabic names of Arabs, while Arabic names of nations other than Arabs are written as the spelling of their national language, or as written in the book being referred to. The writing of book titles in footnotes and bibliographies, still uses this transliteration provision.

There are many options and transliteration provisions that can be used in writing scientific papers, both international and national standards, as well as the provisions of certain publishers. However, the transliteration used in the preparation of this thesis is the transliteration used by the Faculty of Shari'ah, Maulana Malik Ibrahim State Islamic University Malang.

### B. Consonant

Daftar huruf bahasa Arab dan transliterasinya ke dalam huruf Latin dapat dilihat pada halaman berikut:

Arab	Indonesia	Arab	Indonesia
ا	‘	ط	ṭ
ب	B	ظ	ẓ
ت	T	ع	‘
ث	Th	غ	Gh

ج	J	ف	F
ح	h	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	sh	ء	H
ص	ṣ	ي	Y
ض	ḍ		

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

### C. Vowels

Arabic vowels, like Indonesian vowels, consist of single vowels or monoftongs and double vowels or diphthongs.

Single Arabic vowels whose symbols are signs or harakat, the transliteration is as follows:

Huruf arab	Nama	Huruf latin	Nama
أَ	Fathhah	A	A
إِ	Kasrah	I	I
أُ	Dammah	U	U

Arabic double vowels whose symbols are a combination of harakat and letters, transliterated in the form of a combination of letters, namely:

Tanda	Nama	Huruf latin	Nama
أَيَّ	Fathah dan Ya	Ai	A dan I
أَوْ	Fathah dan Wau	Au	A dan U

Example:

*Kaifa:* كَيْفَ

*Haula:* هَوْلَ

#### **D. Maddah**

Maddah or long vowels whose symbols are harakat and letters, transliterated in the form of letters and signs, namely:



Harkat dan Huruf	Nama	Huruf dan Tanda	Nama
مَا مَيِّ	Fathah dan alif atau ya	ā	a dan garis diatas
مَيِّ	Kasrah dan ya	ī	i dan garis diatas
مو	Dammah dan wau	ū	u dan garis didas

Example:

*Māta*: مَاتَ

*ramā*: رَمَى

*qīla*: قِيلَ

*yamūtu*: يَمُوتُ

## E. Ta Marbutah

There are two transliterations for ta marbūṭah, namely: ta marbūṭah which is alive or received fathah, kasrah, and ḍammah, is transliterated as [t]. Whereas the ta marbūṭah which is dead or has the letter sukun, is transliterated as [h].

If the word ending in ta marbūṭah is followed by a word that uses the article al- and the two words are read separately, then ta marbūṭah is transliterated with ha. Example:

*rauḍah al-atfāl*: رَوْضَةُ الْأَطْفَالِ

*al-madīnah al-fāḍilah*: الْمَدِينَةُ الْفَضِيلَةُ

*al-hikmah*: الْحِكْمَةُ

#### **E. Syaddah (*Tasydid*)**

Syaddah or tasydīd which in the Arabic writing system is symbolized by a tasydīd sign (ـَ), in this transliteration is symbolized by a repetition of letters (double consonants) marked with a syaddah sign. Example:

*Rabbanā*: رَبَّنَا

*Najjainā*: نَجَّيْنَا

*al-haqq*: الْحَقُّ

*al-hajj*:

*nu'ima*: نُعَمَّ

*'aduwwu*: عَدُوُّ

If the letter ى is tasydīd at the end of a word and is preceded by a letter with the letter kasrah (ـِ), then it is transliterated as maddah (ī). Example:

*'Alī* (bukan 'Aliyy atau 'Aly)

*'Arabī* (bukan 'Arabiyy atau 'Araby)

## F. Article

The article in the Arabic writing system is symbolized by a letter (alif lam ma'arifah). In this transliteration guideline, the article of faith is transliterated as usual, al-, both when it is followed by a syllabic letter and a qamariah letter. The article does not follow the sound of the letter directly following it. The article is written separately from the word that follows it and is connected with a horizontal line (-). Example:

*al-syamsu:* الشَّمْسُ

*al-zalzalāh:* الزَّلْزَلَة

*al-falsafah:* الفَلَسَفَة

*al-bilādu:* الْبِلَادُ

## G. Hamzah

The rule of transliterating hamzah letters into apostrophes (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolized, because in Arabic writing it is an alif. Example:

*ta'murūna:* تَأْمُرُونَ

*al-nau':* النَّوْءُ

*syai'un:* شَيْءٌ

*Umirtu:* شَيْءٌ أَمَرْتُ

## H. Writing Arabic Words Commonly Used in Indonesian Language

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in the Indonesian language. Words, terms or sentences that are already common and part of the Indonesian language treasury, or are often written in Indonesian writing, are no longer written according to the above transliteration method. For example, the words Quran (from al-Qur'ān), sunnah, hadith, special and general. However, when these words are part of a series of Arabic texts, they must be transliterated as a whole.

Example:

*Fī ṣilāl al-Qur'ān*

*Al-Sunnah qabl al-tadwīn*

*Al-'Ibārāt Fī 'Umūm al-Lafẓ lā bi khuṣūṣ al-sabab*

## I. *Lafẓ al-Jalalah* (الله)

The word “Allah” which is preceded by particles such as jarr and other letters or acts as muḍāf ilaih (nominal phrase), is transliterated without the letter hamzah.

Example:

*dīnullāh* : دِينُ اللهِ

As for the ta marbūṭah at the end of a word that is based on lafẓ al-jalālah, it is transliterated with the letter [t]. Example:

*hum fi raḥmatillāh: هُمْ فِي رَحْمَةِ اللَّهِ*

## **J. Capital Letter**

Although the Arabic writing system does not recognize capital letters (All Caps), in transliteration the letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of proper names (person, place, month) and the first letter at the beginning of a sentence. When a proper name is preceded by the article (al-), the initial letter of the proper name is written in capital letters, not the initial letter of the article. If it is located at the beginning of a sentence, then the letter A of the article is capitalized (Al-). The same provision also applies to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).

Example:

*Wa mā Muḥammadun illā rasūl*

*Inna awwala baitin wuḍi‘a linnāsi lallaẓī bi Bakkata mubārakan Syahru Ramaḍān  
al-laẓī unzila fīh al-Qur‘ān*

Naṣīr al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

Al-Gazālī

Al-Munqiz min al-Ḍalāl



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## ABSTRAK

RA. Alisa Kathrin Nada Naftalin, NIM 200201110153, 2025. **Tajdid Nikah Bagi Pernikahan Tanpa Wali Di Desa Poreh Lenteng Sumenep Dalam Perspektif Kompilasi Hukum Islam Dan Madzhab Hanafi.** Skripsi. Jurusan Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Erik Sabti Rahmawati MA. M.Ag

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**Kata Kunci:** Wali Nikah, Kompilasi Hukum Islam, Madzhab Hanafi.

Pernikahan adalah ikatan sakral antara lelaki dan wanita dalam membangun keluarga. Wali nikah ialah seseorang yang bertindak atas nama mempelai perempuan dalam suatu akad nikah, wali merupakan salah satu syarat sahnya sebuah pernikahan. Di Indonesia yang merupakan negara dengan Muslim terbanyak, hukum Islam yang berlaku didasarkan dalam ketentuan Kompilasi Hukum Islam (KHI). Jika terjadi sebuah pernikahan tanpa kehadiran wali, maka pernikahan tersebut dianggap tidak sah secara hukum negara dan agama. Namun, terdapat perbedaan pendapat diantara para madzhab dalam menjawab pernikahan tanpa wali. Madzhab Hanafi berpendapat sebaliknya, bahwa nikah tanpa wali itu sah.

Penelitian ini menggunakan jenis penelitian empiris atau kualitatif dan pendekatan yuridis sosiologis. Sedangkan, pendekatan penelitian yang dilakukan adalah pendekatan deskriptif kualitatif. Sumber data primer yang didapat dalam penulisan adalah data yang diperoleh secara langsung dengan adanya wawancara dengan informan. Sumber data sekunder penelitian ini diperoleh dari buku-buku, internet, jurnal, tesis maupun karya ilmiah lain yang berkaitan. Penelitian ini menggunakan analisis deskriptif kualitatif.

Dari hasil penelitian terjadinya pernikahan tanpa wali antara N dan B yang terjadi di Bondowoso tidak sah dalam perspektif Kompilasi Hukum Islam karena tidak dihadiri oleh wali nasab N melainkan melalui wali tokoh masyarakat. Hal ini termaktub dalam Pasal 14 KHI bahwa salah satu rukun dan syarat sahnya pernikahan adalah adanya wali. Akan tetapi pernikahan pasangan N dan B dianggap sah secara hukum saat melangsungkan *tajdid nikah* yang dihadiri oleh wali nasab N dan mengajukan isbat nikah untuk melakukan pencatatan perkawinan. Maka pernikahan N dan B sah secara hukum positif dan agama. Jika ditinjau dalam perspektif Madzhab Hanafi, pernikahan keduanya di Bondowoso dianggap sah secara agama. Hal ini karena dalam metode istinbatnya menggunakan *qiyas*. Hanafi menyamakan kedudukan antara perempuan gadis dan janda dalam hal hak untuk menentukan pasangan hidupnya. Persamaan ini didasarkan pada adanya *'illat* yang sama, yaitu keduanya merupakan perempuan yang telah baligh dan berakal sehat.

## ABSTRACT

RA. Alisa Kathrin Nada Naftalin, SIN 200201110153, 2025. **Tajdid Nikah for Marriage Without A Guardian in Poreh Lenteng Sumenep in the Perspective of The Compilation of Islamic Law and the Hanafi Madzhab.** Thesis. Islamic Family Law Department, Sharia Faculty, Maulana Malik Ibrahim Islamic State University Malang. Supervisor: Erik Sabti Rahmawati MA. M.Ag

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**Key Word:** Guardian of Marriage, The Compilation of Islamic Law, The Hanafi Madzhab.

Marriage is a sacred bond between a man and a woman in building a family. A guardian of marriage is someone who acts on behalf of the bride in a marriage contract, wali is one of the legal conditions of a marriage. In Indonesia, which is the country with the most Muslims, the applicable Islamic law is based on the provisions of the compilation of Islamic law. If a marriage occurs without the presence of a guardian, then the marriage is considered legally valid both by state and religion law. However, there are differences of opinion among the madhhab in answering marriage without a guardian. The Hanafi madzhab argues, on the contrary, that marriage without a guardian is valid.

This is a qualitative empirical study and sociological juridical approach. Meanwhile, the research uses a descriptive qualitative approach. The primary data were obtained directly through interviews by interviews with informants. Secondary data sources of this study were obtained from books, the internet, journals, theses and other related scientific papers. This study uses qualitative descriptive analysis.

From the research results, the occurrence of marriage without a guardian between N and B that occurs in Bondowoso is not valid in the perspective of compiling Islamic law because it is not attended by The Guardian of nasab N but through the guardian of community leaders. It is stipulated in Article 14 of the KHI that one of the pillars and conditions for the validity of marriage is the absence of a guardian. However, the marriage of spouses N and B is considered legally valid when performing *tajdid nikah* attended by wali nasab N and submitting *isbat nikah* to register marriage. Then the marriage of N and B is legally positive and religious. When viewed from the perspective of the Hanafi madhhab, the marriage in Bondowoso is considered religiously valid. This is because in *istinbat* method using *qiyas*. The Hanafis equate women with girls and widows in terms of the right to determine their life partner. This is because they are both equal and equal in the sense that they are both mature and sane.

## مستخلص البحث

تجديد النكاح للزواج بدون وصي في قرية بوره لينتنغ سومينب في منظور تجميع الشريعة أطروحة. قسم قانون الأسرة الإسلامي ، كلية الشريعة ، . الإسلامية والمذهب الحنفي جامعة الدولة الإسلامية مولانا مالك إبراهيم مالانج

المشرف: ايريك سبتي رحموي الماجستير.

الكلمة الإشارة والي نكاح, تجميع الشريعة الإسلامية, مذهب حنفي.

الزواج هو رابطة مقدسة بين الرجل والمرأة في بناء الأسرة. والي نكاح هو الشخص الذي يتصرف نيابة عن العروس في عقد الزواج ، والي هو أحد الشروط القانونية للزواج. في إندونيسيا ، وهي الدولة التي تضم أكبر عدد من المسلمين ، تستند الشريعة الإسلامية المعمول بها إلى أحكام تجميع الشريعة الإسلامية (خي). إذا حدث الزواج دون حضور ولي الأمر ، فإن الزواج يعتبر باطلا بموجب قانون الولاية والدين. ومع ذلك ، هناك اختلافات في الرأي بين المذهب في الرد على الزواج دون ولي الأمر. يقول المذهب الحنفي عكس ذلك ، أن الزواج بدون ولي أمر صحيح. من المثير للاهتمام أن هذه الدراسة أجريت على الأحداث التي وقعت بين الزوجين ن و ب الذين دخلوا في الزواج دون وجود وصي.

تستخدم هذه الدراسة نوع البحث التجريبي أو النوعي والنهج القانوني الاجتماعي. وفي الوقت نفسه ، فإن نهج البحث هو نهج وصفي نوعي. المصدر الأساسي للبيانات التي تم الحصول عليها في الكتابة هو البيانات التي تم الحصول عليها مباشرة من خلال المقابلات مع المخبرين. تم الحصول على مصادر البيانات الثانوية لهذه الدراسة من الكتب والإنترنت والمجلات والأطروحات والأوراق العلمية الأخرى ذات الصلة. استخدمت هذه الدراسة التحليل الوصفي النوعي ، وهو طريقة لتحليل البيانات لا تعتمد على الأرقام ، بل تركز على تقديم وصف للنتائج ، وبالتالي التأكيد على جودة البيانات بدلا من كميتها.

من نتائج البحث ، يعتبر حدوث الزواج بدون وصي بين ن و ب الذي حدث في بوندووسو باطلا من منظور تجميع الشريعة الإسلامية. وتنص المادة ١٤ من قانون الزواج على أن أحد أركان وشروط صحة الزواج هو وجود ولي الأمر. ومع ذلك ، يعتبر زواج الزوجين ن و ب صحيحا من الناحية القانونية عند أداء تجديد نكاح وتقديم إصابات نكاح لتسجيل الزواج. عند النظر إليه من منظور المذهب الحنفي ، يعتبر الزواج الثاني في بوندووسو صالحا دينيا. هذا لأنه في طريقة إستينباتنيا باستخدام قياس. يساوي الحنفيون النساء بالفتيات والأرامل من حيث الحق في تحديد شريك حياتهن. هذا لأنهم متساوون ومتساوون بمعنى أنهم متساوون بمعنى أنهم متساوون بمعنى أنهم متساوون بمعنى أنهم متساوون.





## CHAPTER I

### INTRODUCTION

#### **A. Research Background**

According to the Law, marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Marriage is not only uniting two couples and humans, namely men and women, but tying a sacred covenant in the name of Allah that the two parties intend to build a household that is *sakinah* *tertram*, and filled with love and affection.<sup>1</sup>

In an Islamic marriage, a man can marry without his parents being present. However, a woman cannot marry herself and must have a marriage guardian, namely her biological father. A marriage guardian is a person who is authorized to marry off someone who is under his supervision. In the absence of the father, the role of the guardian can be taken over by the father's brother or a judge. Otherwise the marriage is considered invalid because it does not fulfill the pillars of marriage.<sup>2</sup>

The position of the marriage guardian has a very vital position. The guardian acts as a party who represents and protects the rights of women in the marriage contract, as well as being a form of family supervision of the process. The presence of a guardian is also one of the conditions for the validity of a marriage contract according to the majority of scholars,

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<sup>1</sup> Pasal 1 Undang-Undang Nomor 16 Tahun 2019, *t.t.*

<sup>2</sup> Pasal 1 Undang-Undang Nomor 16 Tahun 2019.

including the Shafi'i, Maliki and Hanbali madhhabs. Without a guardian, the marriage is considered invalid because it does not fulfill the elements of protection and validity according to sharia.

In the Compilation of Islamic Law (KHI), which is a guide to Islamic family law in Indonesia, the existence of a marriage guardian has a very important position and cannot be ignored. Article 14 of the KHI explicitly states that one of the pillars of a valid marriage is the presence of a guardian on the part of the bride. This reflects that the guardian is not just an administrative complement in the marriage contract process, but rather a party who has a moral and legal responsibility in ensuring that the marriage takes place correctly, legally and in accordance with religious teachings.<sup>3</sup>

The importance of the position of marriage guardian in KHI also aims to protect women's rights in marriage. In certain cases, such as the absence of a nasab guardian or refusal without valid reasons, KHI also regulates the existence of a judge guardian as a form of legal protection for the prospective bride so that she can still carry out a legal and orderly marriage. Understanding the function and position of marriage guardians according to KHI is very important, both in socio-religious practice and in the context of formal law.

However, there are still many inappropriate legal practices in the community. As happened in 2020, there was a marriage between N (initials of the bride's name) and B (initials of the groom's name) siri. However,

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<sup>3</sup> KHI BAB IV Pasal 14, "Kompilasi Hukum Islam Di Indonesia", 2018.

this happened without the knowledge of N's extended family as the bride. In fact, her only brother as N's guardian did not know about this marriage. The marriage took place in Poreh Village, Lenteng Sub-district, Sumenep District.<sup>4</sup>

Today, Indonesia is also shocked by the news of the marriage of a 16-year-old minor with Muhammad Erik, who is one of the administrators at the Hubbun Nabi Muhammad Islamic boarding school in Candipuro District, Lumajang Regency. The marriage took place without the knowledge of the girl's parents and the marriage was held on August 15, 2023 in a siri manner. Erik lured the victim with Rp. 300,000 and would give her happiness. According to a witness from the victim, the marriage was carried out with two witnesses and the victim and Erik himself as the headman for the marriage. This incident was revealed when the victim's father received news from a neighbor that his daughter was pregnant. Even though the victim's father never married the victim to anyone, after being investigated, the victim finally admitted that she was secretly married to Muhammad Erik. This was finally reported by the victim's parents on May 12, 2024 to the police and Erik was charged with a criminal offense for marrying a minor without parental knowledge.<sup>5</sup>

In Islam, there are differences between the scholars regarding marriage guardians, where according to the Hanafi Mazhab the marriage of a girl or

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<sup>4</sup> Moh Muhdar, informan, (Desa Poreh Lenteng Sumenep).

<sup>5</sup> <https://surabaya.kompas.com/read/2024/07/04/130420378/soal-pernikahan-gadis-16-tahun-tanpa-wali-di-lumajang-kemenag-tidak-sah>

widow can be carried out and considered valid without a guardian.<sup>6</sup> However, the Hanafi Mazhab requires marriage without a guardian if it meets the requirements, namely for a woman who is baligh / adult and has a mind, a proper dowry, sekufu and freedom, while Imam Syafi'i says that marriage without a guardian is invalid because the guardian is a pillar of marriage that must be fulfilled.<sup>7</sup>

As for the above problems, according to the law in force in Indonesia, marriage without consent and without the presence of a guardian is invalid. So, the researcher wants to analyze the problem through the perspective of the Hanafi Madzhab which is unique in the position of the marriage guardian. From that this researcher examines more deeply about the problem with the research title "Tajdid Nikah for Marriage Without a Guardian in the Village of Poreh Lenteng Sumenep in the Perspective of the Compilation of Islamic Law and Hanafi Madzhab".

## **B. Statement Of Problem**

As of this research terdapat several formulations of the problem, among others, as follows:

1. What is the chronology of tajdid nikah for marriage without a guardian that occurs in Poreh Village, Lentang District, Sumenep Regency?

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<sup>6</sup> Muksin, "Persyaratan Pernikahan Menurut Mazhab Hanafi," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2 (Juni 2018): 2549.

<sup>7</sup> Ramadhan Syahrul, Sutisna, Mulyadi, "Nikah Tanpa Wali Dalam Perspektif Ulama Mazhab dan Kompilasi Hukum Islam," *MIZAN* 6 (t.t.): 463.

2. How is tajdid nikah for marriage without a guardian in Poreh Village, Lentang District, Sumenep Regency in the perspective of the Compilation of Islamic Law?
3. How is marriage without a guardian in Poreh Village, Lentang District, Sumenep Regency in the perspective of the Hanafi Madzhab?

### **C. Objective of Research**

As of this study terdapat several formulations of the problem, among others, as follows:

1. To describe and analyze the chronology of tajdid nikah for marriage without a guardian that occurs in Poreh Village, Lentang District, Sumenep Regency.
2. To know and analyze tajdid nikah for marriage without a guardian in Poreh Village, Lentang District, Sumenep Regency in the perspective of the Compilation of Islamic Law.
3. To know and analyze marriage without a guardian in Poreh Village, Lentang District, Sumenep Regency in the perspective of the Hanafi Madzhab.

### **D. Benefit of Reserch**

Based on this research, it is expected to have beneficial values both in terms of theoretical and practical benefits. The benefits of this research are as follows:

1. Theoretical Benefits

With this research, it can add to the scientific treasures in the academic world related to Tajdid Nikah for Marriage Without Guardians in the Village of Poreh Lenteng Sumenep in the Perspective of the Compilation of Islamic Law and Hanafi Madzhab. The presence of this research is also expected to be an additional scientific treasure for students and the authorities..

## 2. Practical Benefits

Practically this research can provide the following benefits. In general, this research is expected to provide guidelines and references for those who are confused in Tajdid Nikah for Marriages Without Guardians Reviewed from the Perspective of the Compilation of Islamic Law and Hanafi Madzhab, especially those that occur in the village of Poreh District Lentang Sumenep Regency both in the realm of academia and Islamic society in general. With the hope that this research can contribute in developing scientific treasures, especially in the issue of marriage practices without guardians.

## **E. Operasional Definition**

To avoid any misunderstanding of the purpose of this study, the researcher gives an affirmation of the terms that are often used in writing as follows:

### 1. Tajdid Nikah

According to the language tajdid is renewal which is a masdar form



تَجَدِّدٌ أَيْدُجَاتٌ مُدْجِيٌّ-<sup>8</sup> which means renewing. The word tajdid means to rebuild, revive, reorganize, or improve as expected. Tajdid has two meanings, namely: First, in the context of its purpose, basis, foundation and consistent source, tajdid refers to returning something to its original state. Second, tajdid refers to modernization when it comes to things that do not have a consistent basis, basis, foundation and source, in order to fit the situation, conditions and context of time and place.<sup>9</sup>

## 2. Guardian Of Marriage

A guardian in marriage is someone who acts on behalf of the bride in a marriage contract.<sup>10</sup> Guardianship in marriage is a shar'i power or authority over a group of people, delegated to a perfect person, because of certain deficiencies in the person being controlled, for his own benefit.<sup>11</sup>

## 3. The Compilation Of Islamic Law

Compilation is a gathering or something that is collected. H Abdurrahman, SH. Gives the opinion that the Compilation of Islamic Law is legal material or material that has been processed through certain processes and methods, then formulated in a form similar to legislation. This material is then determined by a Presidential decree to apply to Religious Court judges in examining, adjudicating, and deciding a case. The

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<sup>8</sup> Abdul Aziz Muhammad Azzam dan Abdul Wahhab Sayyed Hawwas, *Fiqh Munakahat* (Jakarta: Amzah, 2015), 39.

<sup>9</sup> Abdul Manan, *Reformasi Hukum Islam di Indonesia* (Jakarta: PT. Raja Grafindo Persada, t.t.), 147.

<sup>10</sup> Amir Syafiruddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2009), 69.

<sup>11</sup> Muhammad Jawad Mugniyah, *Fiqh Lima Mazhab* (Jakarta: Basrie Press, 1994), 345.

Compilation of Islamic Law is valid and used as a guideline for Religious Courts throughout Indonesia based on Presidential Instruction No.1 of 1991 dated June 10, 1991, and Decree of the Minister of Religious Affairs No. 145 of 1991 dated July 22, 1991.<sup>12</sup>

#### 4. Hanafi Madzhab

The Hanafi Madhhab is one of the Sunni Madhhabs of Islam founded by Abu Hanifah whose full name is al-Nu'man ibn Tsabit ibn Zuthi (80-150 AH). The Hanafi Madhhab was the first Madhhab to exist before the main Madhhabs in Fiqh.<sup>13</sup> The Hanafi madhhab's method of legal analysis is sixfold, namely: Al-Qur'an, Sunnah, Fatwa of the Companions, *Qiyas*, *Istihsan*, and *Urf*. The Hanafi madhhab is known as *ahl- al-ra'y* and developed rapidly and was widely accepted by the public.<sup>14</sup>

#### F. Systematic Structure of the Thesis

To facilitate writing and understanding in writing the proposal, it is necessary to organize it systematically consisting of four chapters. Each chapter consists of sub-chapters to facilitate the explanation of the problems to be studied. The preparation of the proposal is as follows:

Chapter I, contains an introductory chapter, which contains the basic elements of research, namely the background of the problem, problem formulation, research objectives, research benefits, operational definitions, previous

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<sup>12</sup> *Ensiklopedi Hukum Islam*, 3 (Jakarta: PT Ichtiar Baru Van Hoeve, t.t.).

<sup>13</sup> K.H. Moenawar Cholil, *Biografi Empat Serangkai Imam Mazhab: Hanafi, Maliki, Syafi'i, dan Hambali* (Jakarta: Bulan Bintang, 1994).

<sup>14</sup> Murni Utami, Noor Hafizah, Nurul Izatil Hasanah, "Mazhab Hanafiah Dan Perkembangannya: Sejarah Dan Prta Pemikiran," *Journal Islamic Education* 1 (2023).

research, theoretical framework, research methods, and systematic discussion. Chapter II, contains a literature review containing an explanation of Tajdid Nikah For Marriage Without Guardians in the Village of poreh Lenteng Sumenep In the Perspective of the Compilation of Islamic Law And Madzhab which is the subject matter of the researcher's problem.

Chapter III, contains a discussion of research methods which include types and research approaches, research locations, data sources, data collection methods, and data analysis methods.

Chapter IV, contains exposure and data analysis which includes the profile of the object of research on the occurrence of marriage without a guardian in Poreh Village. Researchers also explain the results of research conducted as research entitled, “Tajdid Nikah For Marriage Without Guardian In poreh Village Lenteng Sumenep In Perspective of Compilation of Islamic Law And Hanafi Madzhab”.exposure of data research results, namely explaining the phenomenon of marriage without guardian in Poreh Village, how marriage without guardian from the review of the Compilation of Islamic Law, and how marriage without guardian from the review of Hanafi Madzhab.

Chapter V, is the conclusion and suggestions from the entire series of discussions in the study. The conclusion serves to briefly describe the answers to the formulation of the problems raised by the researcher. Furthermore, the suggestions contain some academic suggestions for both related institutions or parties who have higher authority than the theme under study. Suggestions also

contain proposals for further research so that they can make improvements where to come.

## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

For a more comprehensive discussion, researchers also conducted a study of previous studies written in the form of theses, theses, and other scientific works. Some previous studies aim to avoid duplication between the author's research and previous research. The following previous research is the author's reference:

1. Moch. Aufal Hadliq et al's research in 2022 in the journal *Mabahits Family Law* with the title “Relevance of the Ijbar Rights of Nikah Guardians (Study of *Wahbah Az-Zuhaili's* Thought in Fiqh Islam *Wa Adillatuhu*) and the Compilation of Islamic Law (KHI)”. In this library research, researchers use a qualitative library research approach. Based on the results of research according to *Wahbah Az-Zuhaili's* thinking, the right of *ijbar* or *wali mujbir* is assigned to a young girl even though she is a widow. Marriage of a woman who has reached puberty and has the right mind. She has the right to marry herself. Whereas the majority are of the opinion that it is her guardian who marries her. Meanwhile, the people who can force it at this time are the father and the person he wills. They do not have the right to compel the marriage of virgins, young children and the insane. Other people other than the master, father, and other guardians to whom he gave the will. In the Compilation of Islamic Law (KHI) A guardian may not impose his child's will to marry, in other words, if a guardian will marry his

child there must be the willingness or permission of the bride and groom.

This is mentioned in the Compilation of Islamic Law Part Two concerning Prospective Bride and Groom.<sup>15</sup>

2. Fathonah in her writing in a national journal (Akademika) in 2021 entitled "The Authority of Nikah Guardians in Islam: Analysis of Marriages Without Guardians in Indonesia from the Perspective of Fiqh and Positive Law". Where this research uses a literature review with the final result that marriage without a guardian is declared void. This is based on the argumentation of the Shafi'i Mazhab which is based on the very popular hadith of the Prophet PBUH, "no marriage is valid without a guardian". As for women who do not have a guardian or the guardian is adhal, then use the judge's guardian. The Maliki, Shafi'i and Hanbali schools of thought do not allow a woman, whether a girl or a widow, to marry herself.<sup>16</sup>
3. Rini Purnama's research, in her thesis entitled, "Marriage Requirements without a Guardian According to the Hanafi Madzhab". Faculty of Shari'ah and Law, Ar-Raniry Darussalam State Islamic University Banda Aceh. This research uses a descriptive analytical method (library research), by describing, examining, and analyzing the requirements for marriage without a guardian according to the Hanafi Madzhab. The results of this

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<sup>15</sup> Moch. Aufal Hadliq Khayyul Millati Waddin, M.H. dan Ridwan Yunus, "Relevansi Hak Ijbar Wali Nikah ( Study Pemikiran Wahbah Az-Zuhaili Dalam Fiqih Islam Wa Adillatuhu) Dan Kompilasi Hukum Islam (KHI)" Vol 3 No 02 (2022): November (t.t.): Page 109-123, <https://ejournal.uas.ac.id/index.php/Mabahits/article/download/1058/511/>.

<sup>16</sup> Fathonah K Daud, "Otoritas Wali Nikah Dalam Islam: Analisis Perkawinan Tanpa Wali di Indonesia Perspektif Fiqh dan Hukum Positif," diakses 2 November 2024, <https://journalfai.unisla.ac.id/index.php/akademika/article/view/544/504>.

study are the conditions referred to by the Hanafi Madzhab that a girl or widow can marry herself if she is free (not a slave), puberty and has the mind. The other conditions are marriage with those who are in agreement (equal) between the bride and groom, can provide a fair and appropriate dowry during the contract, namely mahr musamma and mahr mitsil. However, if the man is not compatible, the woman's guardian can cancel the marriage.<sup>17</sup>

4. Yasfin Maulana Muhammad's research, in his thesis entitled, "Dualism of Thought of the Hanafiyyah and Shafi'iyah Madzhab Istinbath Legal Methods Against the Law of Nikah Without Guardians". Al-Ahwal Al-Syakhshiyyah Postgraduate Master Program, Maulana Malik Ibrahim State Islamic University Malang. This research uses the library method (library research) where the main data source is library material obtained from primary and secondary data. The results of this study are *mashadiril ahkam* or methods used almost have similarities between the Hanafiyyah and Shafi'iyah Maddzhab, namely from the Qur'an, Hadith, *Ijma'*, *Qiyas*, and *Istihsan*. In determining laws that are not explained in the Qur'an. The Hanafiyyah Madzhab uses the Istihsan method and is different from the Shafi'iyah Madzhab which uses the *Qiyas* method, so that the answer to the law of marriage without a guardian has different thoughts. The Hanafiyyah Madzhab allows a woman who has reached puberty and legal

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<sup>17</sup> Muksin Nyak Umar dan Rini Purnama Rini Purnama, "Persyaratan Pernikahan menurut Mazhab Hanafi," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (5 Mei 2018): 27–50, <https://doi.org/10.22373/sjhk.v2i1.3103>.

capacity to marry herself without a guardian provided that the man she will marry is equal. Meanwhile, according to the Shafi'iyah Madzhab, the presence of a guardian in marriage determines the invalidity of a marriage because the guardian is one of the pillars of marriage.<sup>18</sup>

**Tabel. 1**

**Previous Research**

No	Name and Tittle	Equation	Difference
1	Moch. Aufal Hadliq, "Relevance of the Ijbar Rights of Nikah Guardians (Study of <i>Wahbah Az-Zuhaili's</i> Thought in Fiqh Islam <i>Wa Adillatuhu</i> ) and the Compilation of Islamic Law (KHI)".	Previous research and researchers both discuss guardians in marriage.	Previous research discussed the ijbar rights of marriage guardians. Meanwhile, the researcher discusses marriage without a guardian.
2	Fathonah, "The Authority of Nikah Guardians in Islam: Analysis of Marriages Without Guardians in Indonesia from the Perspective of Fiqh and Positive Law".	Previous research and researchers both discuss guardians in marriage.	Previous research discussed the authority of a marriage guardian in Islam. Meanwhile, the researcher discusses marriage without a guardian.
3	Rini Purnama, "Marriage Requirements without a Guardian According to the Hanafi Madzhab".	Previous research and researchers both discuss the absence of a guardian in marriage according to the Hanafi Madzhab.	Previous research discussed the conditions that fulfill the law of marriage without a guardian according to the Hanafi Madzhab. While the researcher discusses how the perspective of the Compilation of Islamic Law and Hanafi Madzhab on the marriage that occurred

<sup>18</sup> Yasfin Maulana Muhammad, "Dualisme Pemikiran Metode Istinbath Hukum Madzhab Hanafiyyah Dan Syafi'iyah Terhadap Hukum Nikah Tanpa Wali," t.t., 1–127.



			in Poreh Lenteng Sumenep.
4	Yasfin Maulana Muhammad, “Dualism of Thought of the Hanafiyyah and Shafi'iyah Madzhab Istimbath Legal Methods Against the Law of Nikah Without Guardians”.	Previous research and researchers both discuss the absence of a guardian in marriage according to the Hanafi Madzhab.	Previous research discusses the istimbath method used by the madzhab syafi'ie and hanafi regarding marriage without a guardian. While discussing marriage without a guardian in the perspective of the Compilation of Islamic Law and Hanafi Madzhab.

Based on the description above, it can be seen that there are differences in the research conducted by researchers. In the first study, namely the Relevance of the Right of Ijbar Wali Nikah (Study of *Wahbah Az-Zuhaili's* Thought in Fiqh Islam *Wa Adillatuhu*) and the Compilation of Islamic Law (KHI). The focus of the research is on the right of ijbar or wali mujbir assigned to young girls, and not to adult women according to *Wahbah Az-Zuhaili's* thoughts. In the second study, namely the Authority of Nikah Guardians in Islam: Analysis of Marriages Without Guardians in Indonesia from the Perspective of Fiqh and Positive Law. The focus of the research is the authority of the guardian is very important in marriage, so marriage without a guardian is considered invalid and invalid, whether it is for a girl or a widow.

In the third study, namely Marriage Requirements without a Guardian According to the Hanafi Madzhab. The focus of this research is the conditions that make a marriage valid without a guardian according to

the Hanafi Madzhab. And in the fourth study, namely Dualism of Thought Istinbath Legal Methods Hanafiyyah and Syafi'iyah Madzhab Against the Law of Nikah Without Guardians. The focus of this research is to find the law of marriage without a guardian who becomes *ikhtilaful ulama*, especially between the Hanafiyyah and Shafi'iyah Madzhab through the method of istinbath.

While the researcher will examine about “Tajdid Nikah For Marriage Without Guardian In Village poreh Lenteng Sumenep In Perspective of Compilation of Islamic Law And Hanafi Madzhab”. The focus of the researcher's research is to obtain a legal study of marriage without a guardian from the perspective of the Compilation of Islamic Law in force in Indonesia and the perspective of the Hanafi Madzhab on the phenomenon of marriage without a guardian that occurs in the village of Poreh Lenteng Sumenep.

## **B. Conceptual Framework**

The theoretical framework is a description or research flow that is used to describe, analyze the phenomenon being studied. In this study, researchers provide several explanations, including :

### **1. Tajdid Nikah**

According to the language tajdid is renewal which is a masdar form

نَجَّدَ أَيْدَجَتْ نُدْجُ which means renewing.<sup>19</sup>

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<sup>19</sup> Abdul Aziz Muhammad Azzam dan Abdul Wahhab Sayyed Hawwas, *Fiqh Munakahat* (Jakarta: Amzah, 2015), 39.

The word *tajdid* means to rebuild, revive, reorganize, or improve as expected. According to Masjfuk Zuhdi, the word “*tajdid*” has a broad meaning because it contains three interrelated elements. First, “*al-i'adah*” refers to returning religious issues, especially controversial ones, to the sources of Islamic teachings, namely the Qur'an and Al-Hadith. Second, “*al-ibahah*” refers to cleaning or purifying Islam from various forms of *bid'ah* (unauthorized innovations) and *khurafat* (irrational beliefs), as well as freeing thought in Islamic teachings from attachment to sects, schools, or ideologies that are contrary to the principles of Islamic teachings. Third, “*al-ihya*” means reviving, encouraging, advancing, and renewing the understanding and implementation of Islamic teachings.

This opinion is also agreed by Slamet Abidin who contributed to giving meaning to the term marriage. According to him, marriage is an agreement between a man and a woman that occurs on the basis of the agreement and voluntariness of both parties, with the help of a third party (guardian) in accordance with the rules and requirements set by religion to legalize the relationship between the two. Through this, both need each other and become life partners in forming a family.<sup>20</sup>

In accordance with Law Number 1 of 1974 concerning marriage, the factors that result in *tajdidun nikah* are regulated in Article 26:

- a. The implementation of marriage conducted by a Marriage Registration Officer (PPN) who does not have the authority.

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<sup>20</sup> Aminuddin, *Fiqh Munakahat* (Bandung: Pustaka Setia, t.t.), 12.

- b. The ability to show a marriage record made by a non-authorized Marriage Registration Officer (PPN).
- c. Living together as husband and wife.

In the view of the fuqoha (Islamic jurists), the factors that can lead to *tajdidun nikah* include the aim of caution (*ikhtiyath*) and the aim of maintaining prestige or self-image (*tajammul*). There are different opinions on the basis of the permissibility of *tajdid* marriage, including:

- a. Opinions that do allow

Ahmad ibn ‘Ali ibn Hajar al-Asqalani argues that according to the majority of scholars (*jumhur ulama*’), *tajdid nikah* does not destroy or nullify the original marriage contract. In this view, *tajdid nikah* is more about strengthening and renewing the existing marriage bond, rather than abrogating the original marriage contract. This opinion indicates that *tajdid nikah* can be a way to repair or rebuild the relationship between husband and wife who may have faced certain challenges or problems, without having to revoke the existing marriage contract.

- b. Opinions that do not allow

According to Yusuf al-Ardabili in his book *Al-Anwar Li A'malil Abror*, Juz II, *tajdid nikah* is regarded as an acknowledgement of divorce (*ikrar bith thalaq*) which requires paying the *mahr* again and reducing the number of remaining divorces. By doing *tajdid nikah*, the original marriage is broken and *tajdid nikah* is regarded as a form of acknowledgement (*iqror*).

If *tajdid nikah* is intended to annul the original marriage contract because it was not good enough, or because of the fear of having pronounced divorce after a long period of marriage, there are two opinions among the *Syafi'iyah*. The first opinion states that the first marriage is considered void in this case. However, the second view is that *tajdid nikah* for this reason is a weaker view, because it may invalidate the original marriage contract.<sup>21</sup>

## 2. Guardian Of Marriage

The word guardian according to language comes from Arabic, namely *al-wali*, the plural of *ala-waliyaa* comes from the word *wali-walyan-wawalayatan* which means lovers, close friends, companions, who help, allies, followers, caregivers, and people who take care of someone's affairs.<sup>22</sup> Meanwhile, according to the term, namely, a guardian in addition to a person who has the right to force the person under his guardianship, he is also a person who has a sense of love, a sense of mutual help.<sup>23</sup>

A guardian in general is someone who because of his position is authorized to act towards and on behalf of another person. Meanwhile, a guardian in marriage is someone who acts on behalf of the bride in a marriage contract.<sup>24</sup> Guardianship in marriage is a *shar'i* power or authority

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<sup>21</sup> Ummu Rofi'ah, Wakid Evendi, "Tajdidun Nikah Sebagai Upaya Penguatan Keluarga Sakinah," *Jurnal Kajian Hukum Islam*, t.t., 9.

<sup>22</sup> Atabik Ali, A.Zuhdi Muhdlor, *Kamus Kontemporer Arab Indonesia* (Yogyakarta: Multi Karya Grafika, 1998), 2040.

<sup>23</sup> Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: Raja Grafindo, 2004), 134–35.

<sup>24</sup> Amir Syafiruddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, 69.

over a group of people, delegated to a perfect person, because of certain deficiencies in the person being controlled, for his own benefit.<sup>25</sup>

A guardian is a legal provision that can be imposed on others in accordance with the legal field. In general, guardianship is defined in two meanings, namely, in a general sense and a special sense. Guardianship in the general sense is guardianship with regard to humans and objects, while guardianship in a special sense is guardianship of humans in marriage, here the guardianship of humans is discussed, namely the issue of guardianship in marriage.<sup>26</sup>

In another sense, the guardian is the person closest to the woman or woman. The person who has the right to give a woman in marriage is her father, then her grandfather and so on. It can also be his son and grandson, then brothers in the same family, then brothers in the same family, then uncles. Wali in general is someone who because of his position is authorized to act for and on behalf of others.<sup>27</sup>

Meanwhile, a guardian in marriage is a person who acts on behalf of the bride in a marriage contract. In the large Indonesian dictionary, guardian is defined as the guardian of the bride when she is married, namely the person who makes a marriage promise with a man.<sup>28</sup>

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<sup>25</sup> Syaikh Al Allamah Muhammad bin Abdurahman ad Dimasyqi, *Fiqh Empat Madhab* (bandung, t.t.), 345.

<sup>26</sup> Sayyid Sabiq, *Fiqh Sunnah Jilid 7* (Bandung: Al- Ma'arif, 1981), 20.

<sup>27</sup> Muhammad Khotib al-Sarbani, *Al-Mughnii Muhtaj Juz 4* (Beirut Libanon: Dar alKutubi Ilmiah, t.t.), 249.

<sup>28</sup> Tim Penyusun Kamus Penelitian dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1989), 1007.

Likewise, in Fiqh Sunnah it is stated that Wali is a legal provision that can be imposed on others in accordance with the legal field. So it can be concluded that the guardian in marriage is a person who has the right to marry or a person who makes a marriage promise on behalf of the bride.<sup>29</sup> In marriage, the guardian is someone who acts on behalf of the bride in a marriage contract. The marriage contract is carried out by two parties, namely the male party carried out by the bridegroom himself and the female party carried out by her guardian.<sup>30</sup>

As for the position of the guardian in marriage from the point of view of several Islamic scholars, it is stated that the existence of a guardian in a marriage contract is a must and a marriage contract that is not carried out by a guardian is not valid. The guardian is placed as a pillar in marriage according to scholarly agreement in principle. In the marriage contract itself, the guardian can act as a person acting on behalf of the bride and can also be a person who is asked for his consent for the continuation of the marriage.

In the Prophet's hadith narrated by Imam Ahmad, the Prophet said that there are four aspects that must be fulfilled, including the following<sup>31</sup>:

- a. No marriage is valid except with a guardian and 2 (two) fair witnesses.
- b. Do not marry a woman to another woman and do not let a woman marry herself.

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<sup>29</sup> Sayyid Sabiq, *Fiqh Sunnah Jilid 7*, 20.

<sup>30</sup> Amir Syafiruddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, 69.

<sup>31</sup> Sulaiman Rasyid, *Fiqh Islam* (Jakarta: Attahiriyah, 1955), 362.

- c. Any woman who marries without the permission of her guardian, her marriage is void, void, void, void, three times the words void were said by the Messenger of Allah to strengthen the invalidity of marriage without the permission of the woman's guardian.
- d. If they disagree about the guardian, then there is no guardian for the woman.

### **3. The Compilation Of Islamic Law**

The background of the preparation of the Compilation of Islamic Law cannot be explained briefly, if you pay attention to the consideration of the Joint Decree of the Chief Justice of the Supreme Court and the Minister of Religious Affairs dated March 21, 1985 No. 07/KMA/1985 and No. 25 of 1985 concerning the Appointment of the Implementation of the Islamic Law Development Project through jurisprudence or better known as the Islamic Law compilation project, there are two considerations why this project was held, namely:

- a. that in accordance with the regulatory function of the Supreme Court of the Republic of Indonesia towards the course of justice in all judicial circles in Indonesia, especially in the Religious Courts, it is necessary to compile Islamic Law which has made positive law in the Religious Courts;
- b. that in order to achieve this purpose, in order to improve the smooth implementation of tasks, synchronization and orderly administration in the project of developing Islamic Law through jurisprudence, it is necessary to form a Project team whose composition consists of officials of the Supreme Court and the Ministry of Religious Affairs of the Republic of Indonesia.

If you pay attention, the consideration above does not provide a clear answer as to why the Compilation of Islamic Law should be formed. If examined further, the formation of this compilation is closely related to the condition of Islamic Law in Indonesia. As Muchtar Zarkasyi said, until now there has not been an agreed understanding of Islamic Law in Indonesia.



There are various assumptions about Islamic Law, each of which sees from a different angle.

This makes Islamic law look rigid in dealing with the problems of today, the material contained in fiqh books has not been systematized, so that it can be adapted to the present. The problems faced are not only changes in social structure, but also changes in needs in various forms. There are many new problems that had no equivalent at the time of the Prophet and at the time of the mujtahids during the formation of the madhhabs.<sup>32</sup>

The Compilation of Islamic Law in Indonesia is a Presidential Instruction No. 1 of 1991 dated June 10, 1991 as the foundation for Indonesian Islamic law. This Presidential Instruction was addressed to the Minister of Religious Affairs. The dictum of this decree states :

- FIRST : To disseminate the Compilation of Islamic Law, consisting of: a. Book I on the Law of Marriage; b. Book II on the Law of Inheritance; c. Book III on the Law of Perwakafan. as has been well accepted by the scholars of Indonesia in a workshop in Jakarta on February 2-5, 1988 to be used by Government Agencies and by the people who need it.
- SECOND : Implement this Instruction as well as possible and with full responsibility.

In the Presidential instruction above, there is no confirmation relating to the position and function of this compilation. The instruction only regulates the “dissemination” of the Compilation of Islamic Law received by the Ulama of the national workshop. While the consideration of the Instruction states :

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<sup>32</sup> Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya* (Jakarta: Perpustakaan Nasional RI, 2011), 5–7.

- a. that Indonesian scholars in a workshop held in Jakarta on 2 to 5 February 1988 has received both the draft book compilation of Islamic law, namely book I on Marriage Law, Book II on inheritance law, and Book III on Law Representative;
- b. that the compilation of Islamic law in letter a by government agencies and by communities that require it can be used as a guide in resolving problems in the field;
- c. that is why the compilation of Islamic law in letter A needs to be disseminated.

In the preamble it is implied that this compilation can be used as a guideline in solving problems in these fields (meaning of course the fields regulated by the compilation, namely marriage law, inheritance law and trust law), by government agencies and the people who need it. Based on this, the position of this compilation is as a guideline. The definition as a guideline must mean as a demand or guidance that must be used back by the Religious Courts and citizens in resolving their disputes in the legal fields of marriage, inheritance and representative.

Then the basis and foundation of this Compilation is the Decree of the Minister of Religious Affairs of the Republic of Indonesia dated July 22, 1991 No. 154 of 1991 concerning the Implementation of Presidential Instruction of the Republic of Indonesia No. 1 of 1991. The preamble of this Decree states :

- a. That The Presidential Instruction Of The Republic Of Indonesia No. 1 of 1991 dated June 10, 1991 ordered the Minister of Religious Affairs to disseminate a compilation of Islamic law for use by government agencies and by communities that require it;
- b. That the dissemination of the compilation of Islamic law needs to be carried out as well as possible and with full responsibility;
- c. That therefore it is necessary to issue a decree of the Minister of Religious Affairs of the Republic of Indonesia on the implementation of the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 dated June 10, 1991.

In the dictum of the decree, the Minister stated the following:

- First : All agencies of the Ministry of Religious Affairs and other related government agencies in order to disseminate the compilation of Islamic law in the field of marriage, inheritance and Perwakafan law as referred to in the first dictum of the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 dated June 10, 1991 for use by government agencies and communities that require it in.
- Second : The entire environment of the institution in the first dictum, in resolving issues in the field of marriage law, inheritance and Perwakafan wherever possible apply the compilation of Islamic law in addition to other legislation.
- Third : Director General of Islamic religious institutional development and director of Islamic Community guidance and Hajj affairs coordinate the implementation of the decree of the Minister of Religious Affairs of the Republic of Indonesia in their respective fields of work.
- Fourth : This decision came into force from the moment it was established.<sup>33</sup>

The process of drafting the Compilation of Islamic Law began in March 1985 in a decision by President Soeharto, the Supreme Court, and the Minister of Religious Affairs issued a joint decision No.7/KMA/1985 and No. 25 of 1985 signed in Yogyakarta by the Chief Justice of the Supreme Court and the Minister of Religious Affairs. The content of this joint decision is about the project “development of Islamic Law through Jurisprudence” or called the Compilation of Islamic Law carried out by the project implementation team. The aim is to compile Islamic law covering the area of *muamalah* and the jurisdiction of the Religious Courts into the book of marriage, the book of inheritance, and the book of waqf, alms, grants, and *baitul mal*.

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<sup>33</sup> Mahkamah Agung RI, 35–37.

The head of the project implementation team was Prof. Dr. Busthanul Arifin, who at that time served as the young chairman of the Indonesian Supreme Court for the Religious Courts. The implementation team consisted of several fields, namely the field of kitab/yurisprudence, the field of interviewing, and the field of data collection and processing.

The results of all fields were discussed and formulated by the core team on December 29, 1987. Then the draft of the Compilation of Islamic Law was workshopped on February 2-6, 1988, with the aim of hearing comments and final responses from the ulama and Muslim scholars on the draft. The draft Compilation of Islamic Law was discussed in commission sessions and plenary sessions. The commission sessions were divided into three, namely:

- a. Marriage Law Commission with 41 members;
- b. Commission on Inheritance Law with 42 members;
- c. Waqf Law Commission with 29 members.

The results of this workshop consisted of three books, namely Book I on marriage, Book II on inheritance, and Book III on representative, submitted to the President of Indonesia by the Minister of Religious Affairs through a letter dated March 14, 1988 No. MA/123/1988. Then came Presidential Instruction No.1 of 1991 dated June 10, 1991 concerning the implementation and dissemination of the Compilation of Islamic Law. This was followed by Decree of the Minister of Religious Affairs No. 154 of 1991 dated June 22, 1991 concerning the implementation of Presidential Instruction No. 1 of 1991 concerning the dissemination and implementation

of the Compilation of Islamic Law to all levels of the Ministry of Religious Affairs of the Republic of Indonesia.<sup>34</sup>

#### **4. Hanafi Madzhab**

A madhhab is a group of mujtahids who use ushul science and certain methods to produce an opinion on the law. The mujtahid figures within it are called “Madzhab Imams”. The findings of the Madzhab Imam's legal opinion are conveyed to the people in the form of fatwas to be studied, followed, and practiced by people who then become followers and permanent students. Then the students and followers disseminate the Imam's Madzhab so that it develops and survives for a long period of time even now and colors Muslims throughout the earth.<sup>35</sup>

One of the oldest Sunni Madzhab in Islam is the Hanafi Madzhab, which is also the madzhab with the largest Muslim (*Sunni*) followers throughout the world. The founder of the Hanafi Madhhab is Abu Hanifah whose full name is al-Nu'man ibn Tsabit ibn Zuthi (80-150 AH). One opinion says that the title Abu Hanifah is taken from the word “Hanif” which means straight and pious. Because al-Nu'man ibn Tsabit ibn Zuthi was a righteous and pious person during his lifetime, the people gave him the nickname Abu Hanifah. He was born in Kufa - one of the major cities in Iraq in 80 AH / 659 AD, and died in Baghdad in 150 AH / 767 AD.<sup>36</sup>

##### **a. Method Istinbath Hanafi School**

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<sup>34</sup> *Ensiklopedi Hukum Islam*, 970–72.

<sup>35</sup> Amir Syafiruddin, *Ushul Fiqh Jilid 2* (Jakarta: Kencana Prenada Media Group, 2008), 283.

<sup>36</sup> Wildan Jauhari, *Biografi Imam Abu Hanifah* (Jakarta Selatan: Rumah Fiqih Publishing, 2018), 6.

The istinbath method used by Imam Abu Hanifah does not explain the basis of ijtiḥad in detail, the principle of istidlāl used by Abu Hanifah comes from the Qur'an, Sunnah and *Ijtihad* in a broad sense. In other words, if the texts of the Qur'an and Sunnah clearly refer to a ruling, then the ruling is "*taken from the Qur'an and Sunnah*". However, if the text refers to it indirectly or simply provides basic rules in the form of moral goals, rights, etc., then the derivation of the law is called *qiyas*.

Imam Abu Hanifah held several principles in issuing opinions or fatwas, he rejected ḥadīth that were doubtful and relied only on the Qur'an. Through *qiyas* he tried to make the verses of the Qur'an adaptable to every variety of conditions. The Hanafi school illustrates the effort to adapt Islamic law (*fiqh*) to the needs of society in all fields. Abu Hanifah was known as an *Ahl al-Ra'yi* scholar.

In determining Islamic law, whether derived from the Qur'an or ḥadīth, he used a lot of reasoning. He favored *ra'yi* over *khbar ahad*. When there were conflicting ḥadīths, he ruled by *qiyas* and *istiḥsan*. Abu Hanifah rejected *ahad* ḥadīth if they contradicted the meaning of the Qur'an, either the meaning derived from the text or the legal *illat*. In *mutawatir* ḥadīth Imam Abu Hanifah accepted it unconditionally because the level of validity is *qath'i*, although there is a conflict

between *mutawatir* hadith and reason, he gives precedence to *mutawatir* hadith.<sup>37</sup>

b. The Disciples Of Abu Hanifa

Among the famous disciples of Imam Abu Hanifa are:

- 1) Abu Yusuf Ya'qub Ibn Ibrahim Al-Kufi (113-182 Ah), was born in Kufa.
- 2) Muhammad Ibn Hassan ash-Syaibani (132-189 Ah), born in Wasit.
- 3) Abu Huzail Zufar bin Qais Al-Kufi (110-158 Ah), born in Ashfihan and died in Basrah.
- 4) Al-Hassan bin Ziyad Al-Lu'lu'i, who died in 204 Ah.<sup>38</sup>

It was through these four disciples that Abu Hanifa's thought spread widely and was very instrumental in posting the fatwa and views of Imam Abu Hanifa, especially Abu Yusuf and Mumahammad al-Hasan.<sup>39</sup>

c. Hanafi Madzhab's Books

The books written by the Hanafi madhhab are divided into 3 groups, namely:

- 1) *Masail al-Ushul* (Principal Issues) is a collection of books containing issues narrated from Imam Abu Hanifah and his companions. Imam Muhammad bin Hasan collected *Masail al-ushul* in 6 books namely: *Kitab al-Mabsuth*, *Kitab al-Jami' ash-Shaghir*, *Kitab al-Jami' al-Kabir*, *Kitab as-Sairus as-Shaghir*, *Kitab as-Sairus al-Kabir*, and *Kitab al-Ziyadat*.

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<sup>37</sup> Murni Utami, Noor Hafizah, Nurul Izatil Hasanah, "Mazhab Hanafiah Dan Perkembangannya: Sejarah Dan Peta Pemikiran," 27–29.

<sup>38</sup> Wahbah Zuhaili, 40.

<sup>39</sup> Murni Utami, Noor Hafizah, Nurul Izatil Hasanah, "Mazhab Hanafiah Dan Perkembangannya: Sejarah Dan Peta Pemikiran," 31.

- 2) *Masa-ilun Nawadhir* (Rare Issues) are narrations from Abu Hanifah and his companions other than in the book of *Zhahir ar-Riwayat*. Such as *Haruniyyat*, *Jurjaniyyat* and *Kaisaniyyat* and the book of *al-Mujarrad*.
- 3) *Al-Fatawa al-Waqi'at* (Genesis and Fatwa) is a collection of opinions of the companions and students of Imam Abu Hanifah which contains religious issues from which the mujtahid scholars of the Hanafi school of thought. The first book of *Fatwa wa al-Waqi'at* was the book of *al-Nazawil* compiled by Imam Abdul Laits as-Samarqandy (died in 375 AH).<sup>40</sup>

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<sup>40</sup> Wildan Jauhari, *Biografi Imam Abu Hanifah*, 18.



### **CHAPTER III**

#### **RESEARCH METHODS**

Research methods are scientific ways to obtain data with specific purposes and uses.<sup>41</sup> To produce a study it is necessary to determine the research method that is in accordance with the problem and the objectives to be known. The methods used in the preparation of this thesis are:

##### **A. Types Of Research**

Based on the title and focus of this research, this type of research is empirical or qualitative research. The research approach uses sociological juridical.<sup>42</sup> By using this type and approach of research, the researcher hopes to find the results of the analysis of marriage cases without guardians that occur in Poreh Village.

##### **B. Research Approach**

In this study, the approach used by researchers is juridical sociological. Sociological juridical has an object of study regarding community behavior. The community behavior studied is the behavior that arises as a result of interacting with the existing norm system. Interaction arises as a form of community reaction to the implementation of a provision of positive legislation and can also be seen from community behavior as a form of action in influencing the formation of a positive legal provision.<sup>43</sup>

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<sup>41</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021), 17.

<sup>42</sup> Nurul Qamar dkk., *Metode Penelitian Hukum (Legal Research Methods)* (CV. Social Politic Genius (SIGn), 2017), 11.

<sup>43</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram NTB: Mataram University Press, 2020), 86.

### C. Research Location

Qualitative research is carried out because there is something unique and interesting to be studied by researchers.<sup>44</sup> Therefore, in this study the place chosen was Poreh Village, Lenteng District, Sumenep Regency. This place became the main place in the research because there was a phenomenon where there was a marriage without the knowledge of the guardian of the woman. This is in line with the research to be studied.

### D. Data Sources

Data sources are empirical facts collected by researchers for the purpose of solving problems or answering research questions.<sup>45</sup> Based on its source, research data is divided into two, namely :

1. Primary data, data obtained from the main source. The main source of primary data in empirical legal research comes from field data. Primary data is obtained from informants and sources.<sup>46</sup> The techniques used are interviews, and documentation. In determining the primary data source in this study using Purposive Sampling. Purposive sampling is a sampling technique with certain considerations.<sup>47</sup> So the informants or sources in this study are N and B, the bride and groom who carry out marriage without a guardian in Poreh Village, the younger sibling of N as the only guardian of

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<sup>44</sup> Muhaimin, 92.

<sup>45</sup> DR. Sandu Siyoto dan Ali Sodik, *Dasar Metodologi Penelitian* (Yogyakarta: Literasi Media Publishing, 2015), 58.

<sup>46</sup> Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum* (Yogyakarta: Publika Global Media, 2024), 139.

<sup>47</sup> Sugiyono, *Metode Penelitian Kuantitatif Kualitatif Dan R&D* (Bandung: Alfabeta, 2013), 85.

the bride, and the Head of the KUA of Lenteng District in accordance with the objectives of this study.

2. Secondary Data, is data obtained or collected by researchers from various existing sources (researchers as second-hand). Secondary data can be obtained from various sources such as the Central Bureau of Statistics (BPS), books, reports, journals, and others.<sup>48</sup>

### **E. Data Collection Techniques**

Data collection techniques are the most important step in research, because the main purpose of research is to get data.<sup>49</sup> In carrying out this research, researchers will explore and analyze data in the field to prove the suitability of the research results with existing theories. The techniques used in data collection are as follows:

#### **1. Interview**

Interview is an activity of conducting direct questions and answers between researchers and sources or informants to obtain information. Interviews are primary data collection sourced directly from research sources in the field (location).<sup>50</sup>

The type of interview used by researchers in this research is a semi-structured interview. Semi-structured interviews are a type of interview whose implementation is freer when compared to structured interviews.

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<sup>48</sup> DR. Sandu Siyoto dan Ali Sodik, *Dasar Metodologi Penelitian*, 58.

<sup>49</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Pasuruan: CV PENERBIT QIARA MEDIA, 2021), 120.

<sup>50</sup> Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum*, 145.

The purpose of this type of interview is to find problems more openly.<sup>51</sup> In conducting interviews, researchers need to listen carefully and record what informants say.

## 2. Documentation

The documentation method is to find data about things or variables in the form of notes, transcripts, books, newspapers, magazines, inscriptions, minutes, meetings, agendas, and so on.<sup>52</sup> The documentation used by researchers in research is archives, photographs, regulations, policies, life history and so on.

## F. Data Analysis Techniques

Data analysis technique is a process of systematically searching and compiling data obtained from interviews, field notes, and documentation, by organizing data into information.<sup>53</sup> This research uses descriptive analysis, qualitative descriptive analysis is a data analysis method that does not rely on numbers, but rather focuses on providing a description of the findings, thus emphasizing the quality of the data rather than its quantity.<sup>54</sup>

Descriptive analysis is that the researcher in analyzing wishes to provide a description or explanation of the subject and object of research as a result of the research conducted.<sup>55</sup> Researchers do not justify the results of the research.

In this study, researchers analyzed the phenomenon of marriage without a

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<sup>51</sup> Muhaimin, *Metode Penelitian Hukum*, 96.

<sup>52</sup> Suharsimi Arikunto, "Prosedur penelitian suatu pendekatan praktek," (*No Title*), 2010, 274, <https://cir.nii.ac.jp/crid/1130000795354347648>.

<sup>53</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum*, 129.

<sup>54</sup> Muhaimin, *Metode Penelitian Hukum*, 107.

<sup>55</sup> Muhaimin, 105.

guardian in Poreh Village and the views of the Compilation of Islamic Law and Hanafi Madzhab on the matter to be studied. The data that has been obtained will be processed with several stages as follows :

1. Data Inspection

Editing is the process of correcting the data that has been collected. The data that has been obtained will be checked and corrected through editing. This process also includes processing legal materials, where researchers review and summarize all information that has been obtained. Furthermore, researchers select important points that are relevant to the title being discussed, namely Tajdid Nikah for Marriage Without Guardians in the Village of Poreh Lenteng Sumenep in the Perspective of the Compilation of Islamic Law and Hanafi Madzhab. The goal is to take useful findings and strengthen the analysis in the continuation of the writing process carried out.

2. Classification

Classification is a method for grouping data based on categories that match the typology of answers. In the classification process, researchers review data obtained from interviews, supporting literature such as books, and reference sources relevant to the research objectives. The collected data will then be grouped in the form of classification, and the researcher will group the data obtained according to the appropriate category.

### 3. Analysis

Analysis is the process of collecting, organizing, and presenting data that has been obtained from research. This stage is a step in which the collected data is described and formulated into concepts that are used as a basis for obtaining research results. This process is a continuation of the previous stage, after the data has been collected.<sup>56</sup>

### 4. Conclusion

Conclusion is the final stage of data processing. These results contain answers to the research questions that have been conducted. The conclusion provides a brief overview of the research findings and their implications for our knowledge and understanding of the topic under study.

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<sup>56</sup> Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum*, 153–55.

## **CHAPTER IV**

### **DISCUSSION OF RESEARCH FINDING**

#### **A. Chronology Of The Occurrence Of Tajdid Nikah for Marriage Without A Guardian in the Village of Poreh Lenteng Sumenep**

In Islamic teachings, a guardian is one of the conditions for a valid marriage. This means that without a female guardian, the marriage is considered invalid. However, this is different from the incident that occurred in Poreh Village, Lenteng Subdistrict, Sumenep District, where there was a married couple who got married without involving the bride's guardian.

From the results of the researcher's interview with N (initials of the bride) and B (initials of the groom), this story began with the relationship between N and B, who loved each other and wanted to build a family together. The two have known each other since studying at the same Madrasah Tsanawiyah (MTS). After graduating, they continued their studies at the same Senior High School (SMA). Despite having similar backgrounds, their life journeys after graduating from high school were different. B did not continue her education to university, while N chose to continue her studies in Sumenep City. Nevertheless, their relationship has continued since high school.

However, their relationship did not have the blessing of N's family. N's family opposed the relationship for certain reasons that cannot be revealed. Therefore, they were forced to maintain their relationship secretly. At some point, N's family found out that their relationship was still going on. N's family was very disappointed and angry because they had rejected her from the

beginning. In an attempt to cut off communication between the two, N's family seized N's cellphone and vehicle. This was done so that N could no longer communicate with B or meet secretly. This situation left N feeling depressed and frustrated.

*“When I ran away from home, I took permission to go out with a friend who happened to be a neighbor with the excuse that I wanted to buy something at the sub-district, because the bicycle was also confiscated, so I asked my friend to accompany me. B and I agreed to meet at the subdistrict and we took a bus to Bondowoso”.*<sup>57</sup>

This incident occurred in July 2018, when N decided to run away from home and went with B to Bondowoso City. In the city they stayed at the house of B's older sibling. They settled there temporarily and looked for work to fulfill their needs. Their presence in Bondowoso began to attract the attention of the local community. Residents suspected a relationship between N and B. One of the community leaders, named Pak Arif, called N and B to ask about their relationship and the reason for living there.

*“I told what really happened between me and N when I was called by Pak Arif, because we both also lived for a while in someone's village. I also told her that our relationship was not approved by her family (N)”.*<sup>58</sup>

During the meeting, B honestly told us about their romantic relationship that had been going on since high school. He also explained about the rejection from N's family which was the reason why they were forced to have a secret

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<sup>57</sup> N (mempelai wanita), wawancara, (Sumenep, 09 Maret 2025).

<sup>58</sup> B (mempelai pria), wawancara, (Sumenep, 09 Maret 2025).



relationship. Hearing the story from B, Pak Arif then tried to dig deeper into N's life background.

*"Mr. Arif asked about my family background, so I told him that my parents died when I was still in MTS school, my siblings and I were taken care of by my mother's twin and lived together, coincidentally my house was shared with my aunt. I have three siblings, first a sister, then a brother. I don't have biological uncles and grandfathers from both my father's and mother's side, they have all passed away".<sup>59</sup>*

From the interview with N, she is a girl who has experienced great loss in her life. From the age of 14, N was abandoned by her parents. Her father passed away due to illness, and not long after that, her mother also passed away due to heart disease. After losing both parents, N lived with her mother's twin sister, brother and sister. As there were no living uncles or grandfathers on either side of the family, N's younger brother, who was still very young, became her only legal guardian.

After hearing the story, Pak Arif understood the situation faced by N and B. With full consideration, Pak Arif suggested that N and B get married immediately to avoid various potential social and religious problems that might arise from their relationship that was not yet legal or religious. Mr. Arif volunteered to be the guardian of the couple N and B. At that time N, who did not understand the positive law on the position of the guardian in marriage, agreed and gave permission to Mr. Arif to replace her nasab guardian, H, who she could not contact at that time.

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<sup>59</sup> N (mempelai wanita), wawancara, (Sumenep, 09 Maret 2025).

*“When I heard Mr. Arif's suggestion to get married, at first I was surprised. But because N and I are also determined to go together and we love each other, hehe. So we both agreed and determined a good date for us to get married with Mr. Arif”.*<sup>60</sup>

According to Mr. Arif, marriage was the best way for both of them to continue their relationship in the right way and get recognition from the community and to avoid slander. So on August 20, 2018, N and B got married with Mr. Arif acting as the guardian of the judge on N's side.

After living in Bondowoso for almost a year, the couple decided to return to their hometown, Madura Island. N chose to return to her husband's home in Dhedder Village, Lenteng Sub-district, Sumenep District. N did not return to her family's home in Poreh because she did not want her extended family to know about the sham marriage that had taken place in Bondowoso. Therefore, they decided to stay at her husband's house in Dhedder village.

*“When we decided to go back to Madura, we agreed that N would go back to my house in Dhedder village, but when the neighbors started to get suspicious, of course. Finally, we decided to make another marriage contract”.*<sup>61</sup>

This problem arose when the local community began to suspect their relationship. The surrounding community already knew about their relationship, but only B's family knew about their marriage in Bondowoso. To

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<sup>60</sup> B (mempelai pria), wawancara, (Sumenep, 09 Maret 2025).

<sup>61</sup> B (mempelai pria), wawancara, (Sumenep, 09 Maret 2025).

avoid prejudice and slander and for the sake of social and religious legality, they finally decided to carry out *tajdid nikah* (marriage contract renewal).

Based on these reasons, N and B decided to carry out *tajdid nikah*. This was done because they wanted to gain public recognition that their marriage was religiously valid, as well as to maintain their self-image in the social environment in which they lived. N also felt that the marriage in Bondowoso was flawed because her guardian was not only absent, but unaware of the marriage.

*"I tried to contact my brother, H, to become my guardian, but I kept quiet at first, afraid of being caught by my aunt, I feel sorry for my sister if she gets angry\_".<sup>62</sup>*

Then N secretly contacted her younger sibling and asked him to be the marriage guardian. N's younger brother, whose initials are H.

*"I was surprised when my sister whatsapped me, it had been almost a year since there was no news. When she asked me to be her guardian, I was even more surprised and I felt hesitant, but when she told me about the incident in Bondowoso, I finally Bismillah I wanted to come to her wedding".<sup>63</sup>*

After the researcher interviewed H, he admitted that he was initially hesitant to agree, given that his extended family did not approve of the relationship between N and B. However, after hearing the story that they were already married in Bondowoso and wanted to do *tajdid nikah* to avoid slander from the

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<sup>62</sup> N (mempelai wanita), wawancara, (Sumenep, 09 Maret 2025).

<sup>63</sup> H (adik kandung N), wawancara, (Sumenep, 17 Maret 2025)

surrounding community and to make their marriage religiously and legally valid with the presence of a guardian, H finally agreed to become a guardian for his sister, N. After deliberation, their *tajdid nikah* was held on July 20, 2019 in Dhedder Village. The marriage ceremony was officiated by Mr. Zainullah, a local community leader, with the marriage guardian from the woman's side, namely N's younger sibling, and the *masawin* was Rp. 100,000 paid in cash. From this marriage, the couple N and B were blessed with a daughter who was born in 2020.

*“So when I had a child, I thought how come I think it's better to register a marriage under state law, because I'm afraid of anything in the future and just to anticipate so that my child's life is also guaranteed. Finally, I asked my husband and he also agreed, and it was just right that my sister H asked for my father's death salary to go down to her because she wanted to go to college as well for her additional expenses, so I finally asked for help from my relatives to apply for my marriage”.*<sup>64</sup>

In 2021, N and B decided to apply to the court for *itsbat nikah*. N explained the two main reasons that prompted her and B to apply to the Sumenep Religious Court for *itsbat nikah*. First, they wanted their previous marriage to be recognized and protected by state law. Although the marriage was religiously valid, it had not been officially recorded at the Office of Religious Affairs (KUA). This is important because marriage registration is a form of administrative legitimacy that makes marriage recognized by the state and has formal legal force.

The second reason relates to the right to the death salary of N's parents. Based on the applicable regulations, the right to the death salary can only be

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<sup>64</sup> N (mempelai wanita), wawancara, (Sumenep, 09 Maret 2025).

given to heirs who meet certain requirements, one of which is that they are not married and are still students. In this case, N's younger sibling with the initials H will continue her education to the university level, making her a potential beneficiary of the death salary. However, if N's marital status is not officially recorded, then administratively N is still considered single, and the right to the death salary cannot be transferred to her younger sibling. Therefore, officially recording the marriage through itsbat nikah is a very important step so that N and B's marital status is recognized under state law.

On June 4, 2021, couples N and B, acting as Applicant I and Applicant II respectively, filed an application for itsbat nikah with the Sumenep Religious Court. The application was officially registered at the Registrar of the Sumenep Religious Court with Case Number 301/Pdt.P/2021/PA.Smp. This application was filed with the aim of obtaining state legal validation of their previous marriage, which had not been officially recorded at the Office of Religious Affairs (KUA).

*“I happened to take care of the marriage registration archive at KUA Lenteng. I remember at that time N and B came here with their sister. They came with an istbat letter from the court to register their marriage. So we from the office issued a marriage book according to the isbat stipulation from the court and at that time her sister was also there as a guardian to complete some of the requirements for making a marriage book”.<sup>65</sup>*

Based on the results of the researcher's interview with one of the employees at the Lenteng District Religious Affairs Office (KUA), it was found that the marriage certificate on behalf of N and B was officially issued by the Lenteng

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<sup>65</sup> Junaidi (Petugas KUA Lenteng), wawancara, (Sumenep, 20 Maret 2025).

District KUA on June 24, 2021. The issuance of the certificate was carried out on the basis of the determination of itsbat nikah issued by the Sumenep Religious Court through decision Number 301/Pdt.P/2021/PA.Smp. With the issuance of the marriage certificate, the marriage between N and B has been legally recognized and recorded by the state, so that it has legal force according to positive law in Indonesia.

#### **B. Tajdid Nikah for Marriage Without A Guardian in the Village Of Poreh Lenteng Sumenep in the Perspective of Compilation of Islamic Law**

In the Compilation of Islamic Law (KHI) Chapter II article 2 which reads, *"Marriage according to Islamic law is marriage, which is a very strong contract or mitssaqan ghalidzan to obey Allah's commands and carrying it out is an act of worship."*<sup>66</sup>

Marriage is a contract that has a very noble and sacred value in human life. In Islamic teachings, marriage is not only seen as an external relationship between a man and a woman, but also a form of spiritual bond called *mitsaqan ghalidzan*. This term refers to a strong and solid agreement, as mentioned in the Qur'an, which illustrates how serious and deep the commitment that must be maintained by both parties in living a household life. A marriage contract is not just a social contract or an agreement between two individuals, but a form of worship that has religious, social and moral dimensions. The main purpose

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<sup>66</sup> KHI BAB II Pasal 2, "Kompilasi Hukum Islam Di Indonesia", 2018.

of marriage in Islam is as a way to get closer to Allah SWT, marriage is also a fortress to avoid sinful acts.<sup>67</sup>

A marriage can only be declared valid if it is carried out in accordance with the correct procedures and fulfills the provisions stipulated by the laws of religion and belief of each individual. In the context of Indonesian society, which is predominantly Muslim, the validity of marriage is not only determined by the fulfillment of the pillars and conditions of marriage according to Islamic law, such as the existence of a prospective bride and groom, guardian, two witnesses, and Ijab Kabul, but also by the official recording of the marriage by the state through an authorized institution.<sup>68</sup> This is closely related to the Indonesian marriage law system, which explicitly adheres to the principle that the existence of a marriage guardian is one of the pillars of marriage that must be fulfilled. Therefore, if someone wants to get married, the presence of a marriage guardian is a requirement that cannot be eliminated.<sup>69</sup>

This is in line with the terms and conditions of marriage listed in KHI article 14 that,

To perform the marriage there must be :

- a. The prospective husband;
- b. The prospective wife;
- c. The marriage guardian;
- d. Two witnesses and;
- e. Ijab and Kabul.<sup>70</sup>

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<sup>67</sup> Ramadhan Syahrul Mubarak, Sutisna Sutisna, dan Mulyadi Mulyadi, "Nikah Tanpa Wali Dalam Perspektif Ulama Mazhab Dan Kompilasi Hukum Islam," *Mizan: Journal of Islamic Law* 6, no. 3 (3 Januari 2023): 468, <https://doi.org/10.32507/mizan.v6i3.1356>.

<sup>68</sup> Santoso, "Hakikat Perkawinan Menurut Undang-undang Perkawinan Hukum Islam Dan Adat" 7 (2021): 8.

<sup>69</sup> Abu Mansur Al-Asy'ari, "Hukum Nikah Siri, Ringkasan Paduan Nikah Di KUA," *Deepublish Yogyakarta*, 2022, 11.

<sup>70</sup> KHI BAB IV Pasal 14, "Kompilasi Hukum Islam Di Indonesia", 2018.

The existence of a guardian in marriage has an important role, namely as a party who says ijab on behalf of the bride to the groom. The marriage guardian in question is a man from the bride's family who fulfills certain conditions in accordance with the provisions of Islamic law. This provision regarding the requirement that the marriage guardian come from the male party has become a guideline that is firmly held by the Muslim community in Indonesia, in line with the principles regulated in Islamic law and generally accepted marriage practices.<sup>71</sup> Based on the KHI provisions governing marriage guardians, namely in Article 19 that, “*The marriage guardian in marriage is a pillar that must be fulfilled for the prospective bride who acts to marry her*”.<sup>72</sup>

Thus, marriages that take place without the presence of a guardian are considered invalid according to the Compilation of Islamic Law (KHI), as confirmed in Article 14 which states that the guardian is one of the conditions and pillars of the validity of a marriage.

Compilation Of Islamic Law as one of the legal guidelines applicable to Muslims in Indonesia also regulates the wali hakim, a figure who can act as a marriage guardian in certain conditions if the nasab guardian cannot carry out his function. This is explicitly stated in Article 1 letter b KHI, which states that the judge wali is a marriage guardian appointed by the Minister of Religion or by an official authorized by him. The judge wali has the full right and authority

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<sup>71</sup> Rasyidah dkk., “Hukum Pernikahan Tanpa Wali Perbandingan Pemikiran Hukum Fiqhi Imam Abu Hanifah Dan Kompilasi Hukum Islam:,” *Iqra: Jurnal Ilmu Kependidikan Dan Keislaman* 19, no. 2 (17 Juli 2024): 144, <https://doi.org/10.56338/iqra.v19i2.4632>.

<sup>72</sup> KHI BAB IV Pasal 19, “Kompilasi Hukum Islam Di Indonesia”, 2018.



to act as a marriage guardian, especially in certain circumstances, such as if the nasab wali is absent, his whereabouts are unknown, refuses to marry without a shar'i justified reason, or does not meet the requirements as a marriage guardian. This is also explained in KHI Article 23 that, "*The new guardian judge can act as a marriage guardian if the nasab guardian is absent or it is impossible to present him or his residence is unknown or absent or adlal or reluctant*".<sup>73</sup>

The existence of a wali hakim in the Islamic marriage law system in Indonesia is a solution to the various problems that can arise due to the absence of a nasab guardian. In practice, the appointment of a wali hakim is carried out by the Head of the Religious Affairs Office (KUA) at the sub-district level, in accordance with the authority granted by the Minister of Religious Affairs.

Minister of Religious Affairs Regulation No. 30/2005 on Wali Hakim Stating:

Article 1 paragraph (2), the wali hakim is the Head of the Sub-district Religious Affairs Office appointed by the Minister of Religious Affairs to act as a marriage guardian for a prospective bride who does not have a guardian. Article 2 paragraph (1), for prospective brides who will marry in the territory of Indonesia or abroad / outside the territorial area of Indonesia, do not have a

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<sup>73</sup> KHI BAB IV Pasal 23, "Kompilasi Hukum Islam Di Indonesia", 2018.

rightful nasab guardian or the nasab guardian is not eligible, or mafqud, or absent, or adhal, then the marriage is carried out by a judge guardian.<sup>74</sup>

Based on the chronology of the marriage without a guardian in this study, the researcher concludes that the marriage between N and B that took place in Bondowoso was legally flawed and invalid according to Indonesian Islamic law based on the provisions in the Compilation of Islamic Law (KHI). Although the marriage was conducted using a guardian from a local community leader, Mr. Arif, who was socially considered valid as a substitute guardian because he had been approved by N as the bride, legally this did not meet the provisions as a wali hakim. This was because Mr. Arif did not have an official appointment from the Head of the Sub-district Religious Affairs Office (KUA) to act as a marriage guardian for N, who at the time did not have a nasab guardian. Provisions regarding the official appointment of a wali hakim are set out in Minister of Religious Affairs Regulation No. 30/2005 on Wali Hakim, specifically in Article 1 paragraph (2), which states that a wali hakim is an official appointed by the Minister of Religious Affairs or an official authorized to carry out such duties.

The marriage of N and B finally gained legal force after it was officially recorded at the Lenteng Subdistrict Religious Affairs Office (KUA). This was possible because the two had conducted a tajdid nikah attended by H, N's younger brother, who acted as the only marriage guardian. A year after the

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<sup>74</sup> Hasana, "Pelaksanaan Wali Hakim Dalam Perkawinan Menurut Undang-Undang Perkawinan dan Kompilasi Hukum Islam (Studi Kasus Di Desa Loloan Kecamatan Bayan Kabupaten Lombok Utara)," *Universitas Mataram*, 2021, 6–7.

tajdid nikah, the couple were blessed with a daughter, who was given the initials Q. Furthermore, to strengthen the legal validity of their marriage, N and B applied for itsbat nikah to the Sumenep Religious Court on June 4, 2021. The application was then granted and outlined in Stipulation Number 301/Pdt.P/2021/PA.Smp.

Based on the description above, the researcher concludes that the marriage of couples N and B, and the children born from the marriage, has legal force and is valid according to the provisions in the Compilation of Islamic Law (KHI). This is in line with the provisions of Article 7 paragraph (3) KHI which states that one of the reasons for submitting itsbat nikah to the Religious Court is the existence of doubts about the validity of one of the conditions of marriage. In this case, the doubt arose because the tajdid nikah conducted by N and B took place without the supervision and official registration of the Office of Religious Affairs (KUA). Therefore, the application for itsbat nikah filed later became the basis for obtaining legal recognition of their marriage.

### **C. Marriage Without A Guardian in the Village of Poreh Lenteng Sumenep in the Perspective of The Hanafi Madzhab**

#### **1. Biography Of The Hanafi**

His full name is Al-Imam Al-A'zham Abu Hanifah, an-Nu'man bin Tsabit bin Zuwatha Al-Kufi. He was of free Persian descent. He was born in 80 Hijri and died in 150 Hijri. Abu Hanifah lived in two great reigns, the Umayyads and the Abbasids..<sup>75</sup>

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<sup>75</sup> Wahbah Zuhaili, *Fiqh Islam Wa Adillatuhu*, (Jakarta: Gema Insani, 2011), 39.

Imam Abu Hanifah was known as a leader in the science of *ra'yu* (reasoning) and a master of Fiqh in Iraq, as well as the founder of the Hanafi School. He studied hadith and fiqh from the leading scholars of his time. Abu Hanifah studied Fiqh for 18 years from Hammad bin Sulaiman, who was a student of Ibrahim an-Nakha'i. Imam Abu Hanifah was very careful in accepting traditions. He made extensive use of *qiyas* (legal analogy) and *istihsan* (legal preference). The foundation of his Mazhab consisted of the Qur'an, sunnah, ijma', qiyas, and istihsan. Some of his works in kalam include Al-Fiqh al-Akbar, and he also has Al-Musnad in hadith.

The istinbath method used by Imam Abu Hanifah does not explain the basis of *ijtihad* in detail, but the general rules (*ushul kulliyah*) that underlie the construction of fiqh can be seen in his statement: "I return all questions to the Book, if I do not find a valid answer in the Book of Allah, I refer to the Sunnah of the Prophet and if I do not find a valid answer in the Book of Allah or the Sunnah of the Prophet, then I take the opinion of the companions of the Prophet and do not take fatwas other than them. When the matter reaches Ibrahim, Sha'b, Hasan, Ibn Sirini, Atha' and Sa'id ibn Musayyib (some of the *Tabi'in*), then I am entitled to make *ijtihad* like them

From this we know that the principle of *istidlal* used by Abu Hanifah is derived from the Qur'an, Sunnah and *Ijtihad* in the broadest sense. In other words, if the Qur'ān and Sunnah clearly refer to a ruling, it is "derived from the Qur'ān and Sunnah". However, if the text indicates it indirectly or just

provides basic rules in the form of moral goals, nights, etc., then the law-making is called *qiyas*.<sup>76</sup>

## 2. Marriage Without A Wali According To Hanafi Madhhab

There is a difference of opinion among the scholars as to whether or not there should be a guardian in marriage. Imam Abu Hanifah is of the opinion that the marriage of an adult woman of sound mind is valid without a guardian, and that an adult woman can be a guardian in her own marriage as well as in the marriage of another woman, provided that the husband is compatible with her, and the dowry is not less than the prevailing dowry in the surrounding community. But if she chooses a man who is not compatible with her, then her guardian may oppose her and ask the qadhi to annul the marriage contract. If she chooses a man who is not suited to her, then her guardian may oppose her and ask the qadhi to annul the marriage contract. If it turns out that she is already pregnant or has given birth, then she has no right to ask the court to annul the marriage contract, in order to safeguard the interests of the child and to protect the womb.

Imam Abu Hanifah said that the first order of guardianship is the son of the woman who is to be married off, if she has children, even if they are the result of adultery. This is followed by grandsons (on the son's side), fathers, paternal grandfathers, brothers, brothers in law, uncles (father's brothers), sons of uncles, and so on. Imam Shafi'i lived in Baghdad and Egypt where

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<sup>76</sup> Murni Utami, Noor Hafizah, Nurul Izatil Hasanah, "Mazhab Hanafiah dan Perkembangannya: Sejarah dan Peta Pemikiran," *Journal Islamic Education* 1 (2023): 28.

in both areas, women were married off when they reached puberty or after menstruation, which is in the range of 10-15 years. Of course, a girl at that age is capable of deciding something as important as marriage by her own mind. Even in modern times, women at the age of 10-15 years are still considered children and immature. In contrast to the opinion of the majority of fiqh scholars, Imam Abu Hanifah and his student Abu Yusuf argued that an adult woman of sound mind has the right to do the marriage contract directly without a guardian, whether she is a girl or a widow, whether she marries a man who is compatible or not.

Imam Shafi'i used the ahad hadith which states that a marriage is not valid unless the guardian gives permission. Abu Hanifah, on the other hand, did not accept this hadith because he considered it ineligible to be used as a proof or evidence. This is because, according to Abu Hanifah, an acceptable tradition must reach the level of mutawatir, which is a Prophetic tradition in which it is impossible to deceive or lie about the tradition. A woman is free to enter into sale and purchase contracts and other contracts, therefore she is free to enter into her marriage contract. This is because there is no legal difference between the marriage contract and other contracts.<sup>77</sup>

The Hanafi school, in the book *Al-Mabsuth* by Syams Al-Din Al-Sarkhasi, states that a woman is allowed to marry herself whether she is a girl or a widow.<sup>78</sup> Imam Abu Hanifah based his opinion that allows women

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<sup>77</sup> Muhammad Ridho, Abd. Hannan, "Wali Nikah Dalam Perspektif Imam Syafi'i dan Imam Hanafi," *Al-Muqaranah: Jurnal Perbandingan Madzhab* 1 (2023): 130–131.

<sup>78</sup> Al-Syarkhasiy, *Al-Mabsudth Jilid 5* (Beirut: Dar Al-Fikr, 1989), 10.

to marry themselves without a guardian on several verses of the Qur'an. The verses used as proof are the words of Allah SWT in surah Al-Baqarah (2) verses 230, 232, and 234.

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

(البقرة: ٢٣٤)

*“Then, when they have reached the end of their waiting period, there is no sin on you (the guardians) for what they have done for themselves in a proper manner. Allah knows best what you do.” (Qur'an: Al-Baqarah [2]: 234)<sup>79</sup>*

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ (البقرة : ٢٣٠)

*“If he divorces her again (after the second divorce), she is no longer lawful for him until she marries another man.” (Qur'an: Al-Baqarah [2]: 230)<sup>80</sup>*

The Hanafi school, which allows women to marry without a guardian, argues that in these Qur'anic verses, the subject of the marriage contract is directly related to the woman. All the verbs (*fi'il*) and pronouns (*dhamir*) in these verses indicate that the subject is a woman. For example, in surah al-Baqarah verse 234, there are two *fi'ls* that indicate women, namely “فَعَلْنَ فِي أَنْفُسِهِنَّ” (take care of themselves). In addition, in surah

<sup>79</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, t.t., 57.

<sup>80</sup> Departemen Agama RI, 56.

al-Baqarah verse 232, there is the word “تَتَكَحَّحَ زَوْجًا غَيْرَهُ” (remarry) which also refers to women. This shows that women have the right to do the marriage contract directly without having to go through another person or guardian.<sup>81</sup>

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ

(البقرة : ٢٣٢)

It means “*When you divorce your wives, and their 'iddah has expired, then do not prevent them from remarrying their future husbands, if there is a consensus between them in a manner that is acceptable to them....*”(QS: Al-Baqarah [2]: 232)<sup>82</sup>

The above verse contains a prohibition for a husband to prevent his ex-wife from remarrying after her iddah period is over. According to the Hanafis, the khitaab (object of discussion) in the verse is addressed to the husband, not to the guardian. This is based on the context of the beginning of the verse which states:

It means “ ” *when you divorce your wives ...* ”

The word “you” in the verse is clearly the husband, and not the guardian. This indicates that the one who divorces his wife is her husband.

Then the continuation of the sentence is:

“*Then, "he said," Do not let them get away with it.*”

<sup>81</sup> Dr. Soraya Devy, M.Ag., *WALI NIKAH Urutan dan Kewenangannya dalam Perspektif Imam Mazhab* (Aceh: Sahifah, 2017), 22.

<sup>82</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, 55.



The word “you” in the verse, according to the Hanafi view, refers to the husband, not the guardian. This is an indication from the text that the guardian should not prevent the woman (her daughter) from getting married. Based on this, a woman who has reached puberty and is of sound mind is allowed to choose her own husband and do the marriage contract herself, whether she is a virgin or a widow.<sup>83</sup>

Imam Abu Hanifah interpreted verse 232 of surah al-Baqarah as indicating that the guardian should not prevent a woman (his daughter) from getting married. This interpretation is the basis for the view that a woman who has reached puberty and is of sound mind has the right to choose her own husband and can do the marriage contract without the need for a guardian, whether the woman is a virgin or a widow.

This is also in line with what is explained in the *Asbabun Nuzul* (causes of the revelation) of surah al-Baqarah verse 232. One prominent example is the case of Ma'qil ibn Yasar, who married off his sister to a Muslim man. Some time later, the man divorced Ma'qil's sister. After the iddah period was over, the two wanted to remarry and become husband and wife again. However, Ma'qil bin Yasar did not allow them to remarry. When this news reached the Messenger of Allah, surah al-Baqarah verse 232 was

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<sup>83</sup> ‘Imād al-Dīn ibn Muḥammad al-Ṭabarī al-Ma’ruf bi al-Kiyya al-Harrāsī, *Ahkām al-Qur’ān Jilid I* (Beirut: Dār al-Kutub al- ‘Ilmiyyah, 1985), 184.

revealed which regulates and prohibits the act of preventing a former husband from remarrying his ex-wife.<sup>84</sup>

The Hadith used by Abu Hanifah regarding his opinion on marriage without a guardian is the Hadith from Ibn Abbas that the Prophet said,

عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : الْأَيِّمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِذْهَا صِمَاتُهَا (رواه مسلم)

*“An unmarried man is more entitled to himself than his guardian, whereas a girl is asked for his permission and her permission is silence.” (HR.Muslim)*

The word “الأيّم” refers to unmarried women, both maidens and widows. The above Hadīth shows that both virgins and widows have the right to marry themselves.<sup>85</sup>

According to Al-Hasan's opinion, a marriage is valid if the man to whom the woman is married is of equal status with her. If not, then the marriage is not valid. Initially, Abu Yusuf was of the opinion that a woman cannot marry herself, whether to a man who is equal or not, as long as she still has a guardian. However, Abu Yusuf then changed his opinion by stating that the marriage is valid as long as the man is commensurate with

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<sup>84</sup> Hidayat. Muhammad Irfan Taufiq, “Hukum Wali Nikah Perspektif Maqashid Sharia (Studi Komparatif Pandangan Mazhab Hanafi dan Mazhab Syafii),” t.t., 70.

<sup>85</sup> Al-Syarkhasiy, *Al-Mabsudh Jilid 5*, 12.

the woman he marries. After that, Abu Yusuf's opinion changed again, and he stated that the marriage is valid, whether the man is compatible or not.

At-Thahawi explained Abu Yusuf's view that if the man the woman marries is compatible, then the Qadi should ask the woman's guardian to authorize the marriage. If the guardian refuses, the marriage is still considered valid, and the Qadi himself can give permission.<sup>86</sup>

According to Muhammad, the validity of a marriage depends on the permission of the woman's guardian. If the guardian gives permission, then the marriage is valid. However, if the man is compatible and the guardian refuses, the Qadi has the authority to renew the marriage contract and perform the marriage without the guardian's consent.<sup>87</sup>

In this case, Abu Hanifah used *ta'lili* reasoning. *Ta'lili* reasoning tries to look at the background of the provisions in the Qur'an and Hadith or look for the *'illat* (legal cause) of an action. In the Qur'an and Hadith, there are provisions that clearly mention the *'illat*, some are only hinted at, and some do not mention the *'illat* at all.<sup>88</sup>

For example, in a hadith that states that “*a woman without a husband has more rights over her than her guardian*”, the Hanafi school understands that the woman in question is not only a widow, but also includes a girl.

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<sup>86</sup> Al-Syarkhasiy, 10.

<sup>87</sup> Al-Syarkhasiy, 11.

<sup>88</sup> Mukhsin Nyak Umar, *Wali Nikah Wanita Perspektif Empat Mazhab* (Aceh: Nadiya Foundation, 2006), 18.

This is based on the same *'illat*, which is that they are both mature women who have rights over themselves in certain situations.

From the various explanations above, it can be concluded that the Hanafi Mazhab uses the *qiyas* method in terms of the requirements for marriage without a guardian. *'Illat* is an important part of *qiyas*. In language, *qiyas* means measuring or comparing something with another and equating it. While in terms, *qiyas* is connecting or equating something that does not have a clear sharia provision with something that already has a provision, based on the existence of the same *'illat* between the two.<sup>89</sup>

Based on the description that has been explained previously, the researcher concludes that the marriage between B and N, when viewed from the perspective of the Hanafi school of thought, can be considered religiously valid. The marriage, which took place in Bondowoso with Mr. Arif, a local community leader as the guardian representing the woman, is still considered valid according to the view of the madhhab, even though it was not attended by the nasab guardian of N. Because of the Hanafi Mazhab, a woman who has reached maturity (*baligh*) and has good sense has the right to choose her own prospective husband and can do a marriage contract without the involvement of a guardian. This view is based on the interpretation of Surah al-Baqarah verse 232, which gives women freedom in determining their life partner, whether they are still a girl or have become a widow.

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<sup>89</sup> Amir Syafiruddin, *Ushul Fiqh Jilid 2*, 316.

In this context, the Hanafi school uses a *ta'lili* reasoning approach in understanding the law of marriage. *Ta'lili* reasoning is a method of legal istinbat that aims to explore the background or reason (*'illat*) of the provisions contained in the Qur'an and hadith. This means that legal provisions are not only understood textually, but also analyzed based on logical reasons and the underlying legal objectives (*maqasid al-syari'ah*). The istinbat method used in the Hanafi school to support this view is the *qiyas* method. In this case, the Hanafi school equates the position between a girl and a widow in terms of the right to determine her life partner. This equation is based on the existence of the same *'illat*, namely both are women who have reached puberty and are of sound mind, and have full rights over themselves under certain conditions.

This opinion is also supported by a hadith narrated from the Prophet Muhammad, which states: “*A widow has more rights over herself than her guardian.*” Based on this hadith, the Hanafi school concludes that an adult woman, whether a girl or a widow, has the authority to determine her own spouse and perform a marriage contract without the need for the consent or involvement of a guardian. Thus, the marriage between N and B can be considered valid according to the Hanafi school. This is because N, as an adult and intelligent woman, has the right to marry the prospective husband of her choice without the consent of her guardian. Although in the context of Islamic law applicable in Indonesia, especially based on the Compilation of Islamic Law (KHI), marriage without a guardian is considered invalid,

but in the perspective of the Hanafi school of thought, the marriage still has religious validity.

## CHAPTER V

### CLOSING

#### A. Conclusion

From the research that has been done, the researcher can draw conclusions:

1. N and B were a couple who were disapproved of by N's family for unspeakable reasons. When their relationship was discovered by N's family, N's cell phone and motorcycle were confiscated so that they could not reconnect. N finally decided to run away with B to Bondowoso city where B's brother was. Pak Arif, a community leader there, advised them to get married to avoid slander and for the good of both of them. It was known that N had no parents and only a brother and sister who lived with her mother's brother. Her paternal and maternal grandparents had also passed away. Finally, the two of them held a marriage contract in Bondowoso on August 20, 2018, with Mr. Arif as N's guardian instead of her natural guardian. One year later they returned to Madura and settled in B's house in Dhedder village. N and B decided to conduct a *tajdid nikah* because the local community was unaware of their marriage in Bondowoso. Finally, N contacted her younger sibling, H, to be the marriage guardian. H was initially hesitant to agree as his family did not approve of their relationship, but H chose to agree after learning that his sister had married while in Bondowoso. On 20 July 2019, N and B conducted a *tajdid nikah* with H as the marriage guardian, represented by Mr. Zainullah. N and B decided to apply for *isbat nikah* because their marriage at that time was not registered

at the Office of Religious Affairs, both of them wanted their children to be legally recognized and one of the reasons was because the pension salary of N's father who died had to be taken over by his younger brother H who was going to college, this could be done if N's marriage was legally registered. After submitting an application for isbat nikah at the Sumenep Religious Court on June 04, 2021, a determination of isbat nikah was issued Number 301/Pdt.P/2021/PA.Smp. On June 21, 2021, the KUA of Lenteng Sub-district issued a marriage book for the couple N and B based on the isbat decision.

2. 2. The marriage that took place in Bondowoso by the couple N and B in the Compilation of Islamic Law (KHI) is considered invalid because without the presence of a guardian from N's side but using a community leader guardian, namely Pak Arif. This is stated in Article 14 of KHI which discusses the terms and conditions of marriage. However, the marriage between N and B has legal recognition with the existence of istbat nikah. This is because the couple N and B held a tajdid nikah attended by N's nasab guardian when they returned to Sumenep and filed an application at the Sumenep Religious Court. In this case, the doubts arose because the tajdid nikah conducted by N and B took place without official supervision and recording from the Office of Religious Affairs (KUA). So on June 24, 2021 the Lenteng KUA issued a marriage certificate for their second marriage based on the determination of istbat nikah Number: 301/Pdt.P/2021/PA.Smp. This is in line with the provisions in KHI Article



7 that one of the reasons for isbat nikah can be submitted to the Religious Court due to doubts about the validity of one of the conditions of marriage. It can be concluded that the marriage between N and B is valid in positive and religious law and the children born in the marriage have legal force.

3. From the perspective of the Hanafi school of thought, the marriage between N and B that took place in Bondowoso without the presence of N's guardian is considered religiously valid. In the view of the Hanafi Madhhab, a woman who has reached maturity (baligh) and has good sense has the right to choose her own prospective husband and can do a marriage contract without the involvement of a guardian whether she is a girl or has become a widow. This view is based on the interpretation of Surah al-Baqarah verse 232. The Hanafi Madhhab uses *ta'lili* reasoning which is a method of legal istinbat that aims to explore the background or reason (*'illat*) of the provisions contained in the Qur'an and hadith. The method used is *qiyas*. Hanafi equalizes the position between a girl and a widow in terms of the right to determine her life partner. This equation is based on the existence of the same *'illat*, namely both are women who have reached puberty and are of sound mind, and have full rights over themselves under certain conditions.

## **B. Suggestion**

This research aims to add to the scientific treasure for academics, especially the Islamic Family Law study program. Therefore, as further academics so that they can be more in-depth to study the problem of marriage without a guardian that still occurs around the community. This research also aims to provide a

positive legal understanding of the importance of the position of the guardian in marriage based on the applicable law in Indonesia to the community so that the practice of marriage without a guardian does not occur. With this paper, hopefully it can also be a place of learning for both academics and the public about the laws adopted in Indonesia and religiously around marriage and the position of guardians.

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## APPENDIXES

### A. Research Letter



KEMENTERIAN AGAMA REPUBLIK INDONESIA  
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG  
**FAKULTAS SYARIAH**  
Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimile (0341) 559399  
Website: <http://syariah.uin-malang.ac.id> E-mail: [syariah@uin-malang.ac.id](mailto:syariah@uin-malang.ac.id)

Nomor : 258 /F.Sy.1/TL.01/02/2025  
Hal : **Permohonan Izin Penelitian**

Malang, 15 Maret 2025

Kepada Yth.  
Kepala Kantor Urusan Agama Kecamatan Lenteng  
Sar Perreng Selatan, Lenteng Tim., Kec. Lenteng, Kabupaten Sumenep, Jawa Timur  
69461

*Assalamualaikum wa Rahmatullah wa Barakatuh*

Dalam rangka menyelesaikan tugas akhir/skripsi mahasiswa kami:

Nama : RA. Alisa Kathrin Nada Naftalin  
NIM : 200201110153  
Program Studi : Hukum Keluarga Islam

mohon diperkenankan untuk mengadakan penelitian dengan judul :  
**Pernikahan Tanpa Wali Di Desa Poreh Lenteng Sumenep Dalam Perspektif  
Kompilasi Hukum Islam Dan Madzhab Hanafi**, pada instansi yang Bapak/Ibu Pimpin.

Demikian, atas perhatian dan perkenan Bapak/Ibu disampaikan terima kasih.

*Wassalamualaikum wa Rahmatullah wa Barakatuh*

Scan Untuk Verifikasi



Tembusan :

1. Dekan
2. Ketua Prodi Hukum Keluarga Islam
3. Kabag. Tata Usaha





## B. Dokumentation



*Interview with Officer KUA Lenteng.*



*Interview with couples N and B.*



*Interview with N's younger brother, H.*

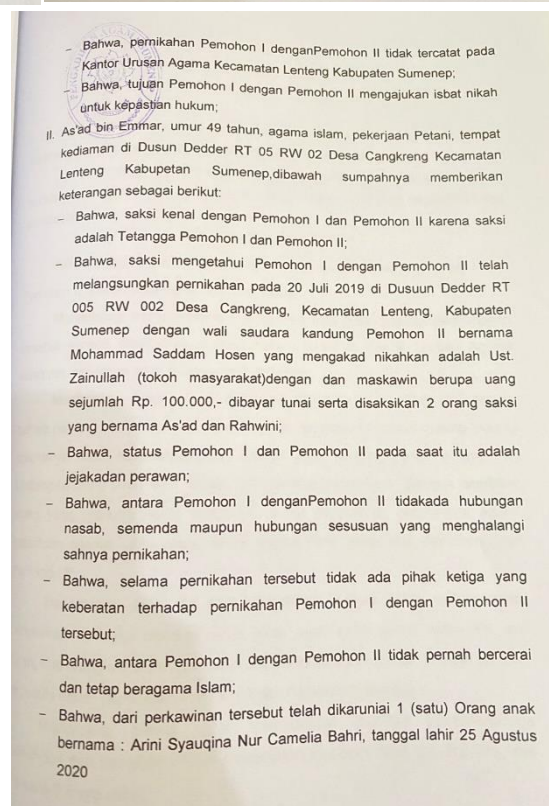
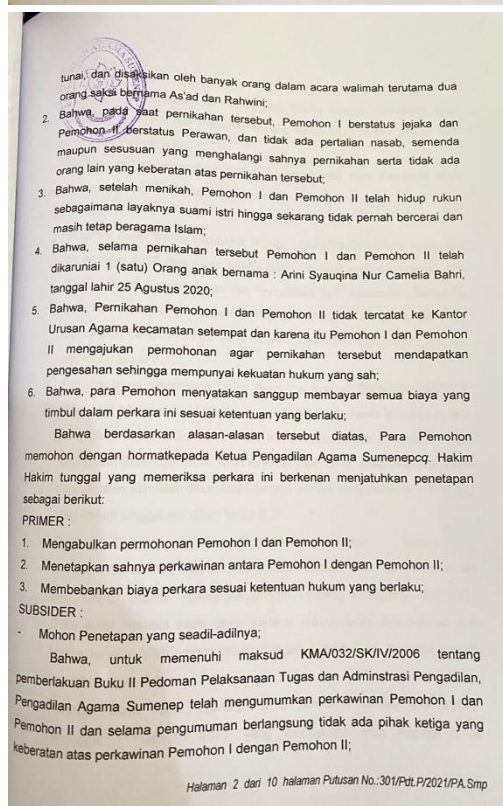
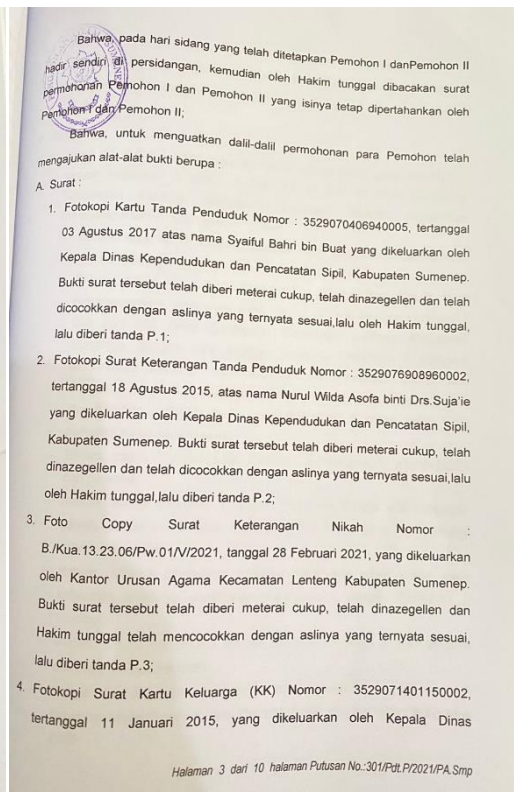
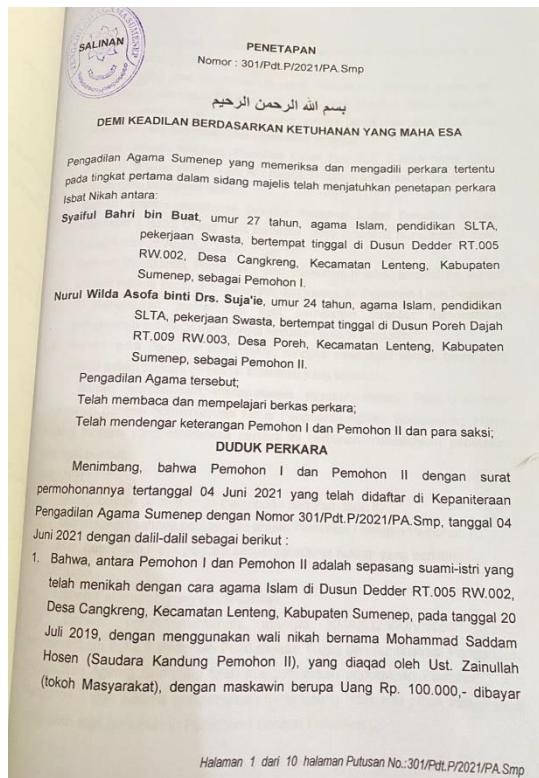


KUTIPAN AKTA NIKAH EXCERPT OF MARRIAGE CERTIFICATE		Dengan seorang wanita / to a woman :	
Nomor / Number: 0180 934 VL 2021		Nama / Full Name: <b>NURUL WILDA ASOFA</b>	
Pada Hari / On the Day: <b>SABTU</b>	Tanggal, Bulan, Tahun / Date, Month, Year: <b>20 JULI 2019</b>	Binti / Daughter of: <b>DRS. SUDJATE (ALM)</b>	
Bertepatan / Or Waktu / Time: <b>17 ZULQAIDAH 1440 07.00 WIB</b>	M/AC: <b>H</b>	Tempat dan tanggal lahir / Place and date of birth: <b>SUMENEP, 29 AGUSTUS 1996</b>	
Telah dilaksanakan akad nikah seorang laki-laki : There has been authenticated a covenant of marriage of a man :		Nomor Induk Kependudukan / Personal Identity Number: <b>3529076908960002</b>	
1. Nama / Full name: <b>SYAIFUL BAHRI</b>		Kewarganegaraan / Nationality: <b>INDONESIA</b>	
2. Bin / Son of: <b>BUAD (ALM)</b>		Agama / Religion: <b>ISLAM</b>	
3. Tempat dan tanggal lahir / Place and date of birth: <b>SUMENEP, 04 JUNI 1994</b>		Pekerjaan / Occupation: <b>SWASTA</b>	
4. Nomor Induk Kependudukan / Personal Identity Number: <b>3529070406940005</b>		Alamat tempat tinggal / Address: <b>DESA CAINGKRENG KECAMATAN LENTENG KA. SUMENEP</b>	
5. Kewarganegaraan / Nationality: <b>INDONESIA</b>		Dengan wali nikah / with wedding guardian :	
6. Agama / Religion: <b>ISLAM</b>		1. Nama / Full Name: <b>MOHAMMAD SADDAM HOZEN</b>	
7. Pekerjaan / Occupation: <b>SWASTA</b>		2. Tempat dan tanggal lahir / Place and date of birth: <b>SUMENEP, 10 JUNI 2000</b>	
8. Alamat tempat tinggal / Address: <b>DESA CAINGKRENG KECAMATAN LENTENG KA. SUMENEP</b>		3. Nomor Induk Kependudukan / Personal Identity Number: <b>3529071006000003</b>	
		4. Kewarganegaraan / Nationality: <b>INDONESIA</b>	
		5. Agama / Religion: <b>ISLAM</b>	
		6. Pekerjaan / Occupation: <b>PETATAR</b>	
		7. Alamat / Address: <b>DESA POREH KEC. LENTENG KAB. SUMENEP</b>	
Sebagai wali nasab / hakim: (*) as nasab / judge guardian,")			



REPUBLIC INDONESIA / REPUBLIC OF INDONESIA	
KUTIPAN AKTA NIKAH EXCERPT OF MARRIAGE CERTIFICATE KANTOR URUSAN AGAMA / OFFICE OF RELIGIOUS AFFAIRS	
Kecamatan / District	LENTENG
Kabupaten / Kota	SUMENEP
Regency / Municipality	JAWA TIMUR
Province / Province	
Perwakilan RI / Indonesian Embassy	
SERIAL NUMBER : JT	

Wedding's Book Photos Of Couple N and B





Kependudukan dan Pencatatan Sipil, Kabupaten Sumenep. Bukti surat tersebut telah diberi meterai cukup, telah dinazeggelen dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Hakim tunggal diberi tanda P.4.

8. Saksi:

I. Lamri bin H. Abdul Adim, umur 48 tahun, agama Islam, pekerjaan Petani, tempat kediaman di Dusun Dedder RT 05 RW 02 Desa Cangkreng Kecamatan Lenteng Kabupaten Sumenep, dibawah sumpahnya memberikan keterangan sebagai berikut:

- Bahwa, saksi kenal dengan Pemohon I dan Pemohon II karena saksi adalah Tetangga Pemohon I dan Pemohon II;
- Bahwa, saksi mengetahui Pemohon I dengan Pemohon II telah melaksanakan pernikahan pada 20 Juli 2019 di Dusun Dedder RT 005 RW 002 Desa Cangkreng, Kecamatan Lenteng, Kabupaten Sumenep dengan wali saudara kandung Pemohon II bernama Mohammad Saddam Hosen yang mengad nikahkan adalah Ust. Zainullah (tokoh masyarakat) dengan maskawin berupa uang sejumlah Rp. 100.000,- dibayar tunai serta disaksikan 2 orang saksi yang bernama As'ad dan Rahwini;
- Bahwa, status Pemohon I dan Pemohon II pada saat itu adalah jelek dan perawan;
- Bahwa, antara Pemohon I dengan Pemohon II tidak ada hubungan nasab, semenda maupun hubungan sesusuan yang menghalangi sahnyanya pernikahan;
- Bahwa, selama pernikahan tersebut tidak ada pihak ketiga yang keberatan terhadap pernikahan Pemohon I dengan Pemohon II tersebut;
- Bahwa, antara Pemohon I dengan Pemohon II tidak pernah bercerai dan tetap beragama Islam;
- Bahwa, dari perkawinan tersebut telah dikaruniai 1 (satu) Orang anak bernama : Arini Syaquina Nur Camelia Bahri, tanggal lahir 25 Agustus 2020

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Menimbang, bahwa bukti P.1 (Fotokopi Kartu Tanda Penduduk Pemohon I), yang merupakan akta otentik identitas Pemohon I dan telah bermeterai cukup telah di Nazeggelen dan cocok dengan aslinya, isi bukti tersebut menjelaskan mengenai domisili Pemohon yang memang benar-benar bertempat tinggal di Dusun Dedder RT.005 RW.002, Desa Cangkreng, Kecamatan Lenteng, Kabupaten Sumenep;

Menimbang, bahwa bukti P.2 (Fotokopi Kartu Tanda Penduduk Pemohon II), yang merupakan akta otentik identitas Pemohon II dan telah bermeterai cukup telah di Nazeggelen dan cocok dengan aslinya, isi bukti tersebut menjelaskan mengenai domisili Pemohon yang memang benar-benar bertempat tinggal di Dusun Poreh Dajah RT.009 RW.003, Desa Poreh, Kecamatan Lenteng, Kabupaten Sumenep;

Menimbang, bahwa bukti P.3 (Surat Keterangan) yang merupakan bukti dan telah bermeterai cukup, telah di Nazeggelen dan cocok dengan aslinya, isi bukti tersebut menjelaskan mengenai pernikahan Pemohon I dan Pemohon II yang tidak tercatat pada Kantor Urusan Agama Kecamatan Lenteng, Kabupaten Sumenep;

Menimbang, bahwa bukti P.4 (Fotokopi Kartu Keluarga), yang merupakan akta otentik dan telah bermeterai cukup telah di Nazeggelen dan cocok dengan aslinya, isi bukti tersebut menjelaskan mengenai Susunan keluarga Pemohon II;

Menimbang, bahwa bukti yang diajukan oleh Pemohon I dan Pemohon II adalah dua orang saksi yang telah memberikan keterangan di bawah sumpahnya bahwa ia mengetahui secara langsung pelaksanaan pernikahan Pemohon I dengan Pemohon II tersebut, saksi mengetahui bahwa Pemohon I dan Pemohon II selama ini telah kumpul sebagai suami istri dan telah dikaruniai 1 (satu) Orang anak bernama : Arini Syaquina Nur Camelia Bahri, tanggal lahir 25 Agustus 2020

Bahwa sampai saat ini tidak ada yang mempersoalkan atau mengajukan keberatan atas pernikahan Pemohon I dan Pemohon II tersebut, dan masyarakat

Bahwa, pernikahan Pemohon I dengan Pemohon II tidak tercatat pada Kantor Urusan Agama Kecamatan Lenteng Kabupaten Sumenep;

Bahwa, tujuan Pemohon I dengan Pemohon II mengajukan isbat nikah untuk keadilan hukum;

Bahwa, Pemohon I dan Pemohon II telah merasa cukup atas segala keterangan yang disampaikan dan selanjutnya mohon penetapan;

Bahwa, untuk mempersingkat uraian putusan ini, maka semua yang tercatat dalam berita acara sidang merupakan bagian yang tidak terpisahkan dari penetapan ini;

**PERTIMBANGAN HUKUM**

Menimbang, bahwa maksud dan tujuan permohonan Pemohon I dan Pemohon II adalah sebagaimana terurai diatas. ;

Menimbang, bahwa Pemohon I dan Pemohon II mengajukan permohonan tersebut karena pernikahan mereka tidak tercatat di Kantor Urusan Agama setempat, sehingga tidak mempunyai bukti nikah;

Menimbang, bahwa pasal 4 Kompilasi Hukum Islam (KHI) menyatakan bahwa perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya, sesuai pula dengan Pasal 2 ayat (1) Undang-Undang (UU) No.1 Tahun 1971 tentang perkawinan. Dengan demikian, maka yang menjadi dasar keabsahan suatu perkawinan, patokannya adalah ketentuan agama, yaitu Islam, sesuai agama yang dianut oleh Pemohon I dan Pemohon II;

Menimbang, pasal 14 KHI menyatakan bahwa untuk melaksanakan perkawinan itu harus dipenuhi rukun nikah, yakni calon suami, calon istri, wali nikah, dua orang saksi dan ijab kabul, dan ternyata kesemua rukun nikah itu telah terpenuhi dalam pernikahan Pemohon I dan Pemohon II tersebut;

Menimbang, bahwa untuk membuktikan dalil-dalil permohonannya Pemohon I dan Pemohon II telah mengajukan alat bukti surat P.1, P.2, P.3, dan P.4 serta 2 orang saksi;

Artinya : Tidak ada suatu pernikahan atau tidak dianggap sah suatu pernikahan kecuali dengan wali dan dua orang saksi;

Maka pernikahan antara Pemohon I dan Pemohon II tersebut dapat dipandang sah menurut hukum Islam;

Menimbang, bahwa berdasarkan pertimbangan - pertimbangan di atas, maka permohonan Pemohon I dan Pemohon II telah terbukti dan patut untuk dikabulkan ;

Menimbang, bahwa sesuai dengan ketentuan pasal 2 ayat (2) Undang-Undang Nomor : 1 Tahun 1974 jo. Pasal 5 Kompilasi Hukum Islam agar terjamin ketertiban perkawinan bagi masyarakat Islam, setiap perkawinan harus dicatat. Oleh karena itu kepada Pemohon I dan Pemohon II diperintahkan untuk mencatatkan perkawinannya tersebut pada Pegawai Pencatat Nikah Kantor Urusan Agama Kecamatan Lenteng Kabupaten Sumenep ;

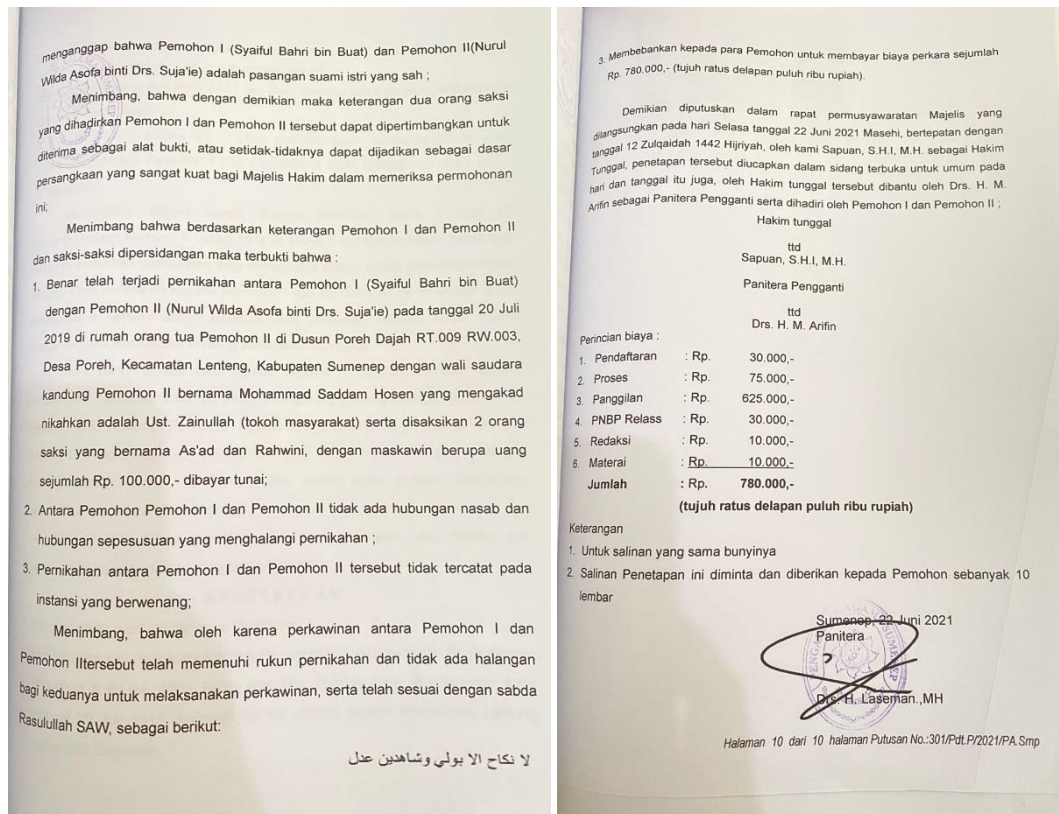
Menimbang, bahwa oleh karena perkara ini termasuk dalam bidang perkawinan, maka berdasarkan pasal 89 ayat (1) Undang-Undang Nomor : 07 Tahun 1989 Tentang Peradilan Agama sebagaimana telah diubah dengan Undang-Undang Nomor : 03 Tahun 2006 dan terakhir diubah dengan Undang-Undang Nomor: 50 Tahun 2009, semua biaya perkara dibebankan kepada Pemohon I dan Pemohon II ;

Mengingat : semua peraturan perundang-undangan yang berlaku dan Hukum Islam yang berkaitan dengan perkara ini ;

**MENETAPKAN**

1. Mengabulkan permohonan para Pemohon;
2. Menyatakan sah Perkawinan antara Pemohon I (Syafid Bahri bin Buat) dengan Pemohon II (Nurul Wilda Asofa binti Drs. Suja'ie) yang dilaksanakan pada tanggal 20 Juli 2019 di wilayah Kantor Urusan Agama Kecamatan Lenteng Kabupaten Sumenep;

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*Isbat Nikah Photos Of Couple N and B*

### **LIST OF N AND B COUPLES INTERVIEWS**

1. How was the meeting between N and B?
2. Why choose to go to Bondowoso?
3. How was the wedding in Bondowoso?
4. How is the process of marriage isbat Sumenep Religious Court?

### **LIST OF INTERVIEWS YOUNGER SIBLINGS N, H**

1. What are the things that make you agree to be a guardian in a marriage between N and B?
2. How was the wedding at that time?

### **INTERVIEW LIST OF ONE OF KUA LENTENG STAFF 1.**

1. What is the process of marriage registration of spouses N and B?

## CURRICULLUM VITAE



Name : RA. Alisa Kathrin Nada Naftalin

SIN : 200201110153

TTL : Sumenep, 10 Juli 2000

Fakultas : Syari'ah

Study Program: Islamic Family Law

Addres : Dusun Gutogu, Desa Poreh Daya,  
Kec. Lenteng, Kab. Sumenep.

No HP : 081907835559

Email : [200201110153@student.uin-malang.ac.id](mailto:200201110153@student.uin-malang.ac.id)

### History Of Formal Education

1. 2005-2007 : RA Tanwirul Hija
2. 2007-2013 : MI Tanwirul Hija
3. 2013-2016 : MTS TMI Putri II Al-Amien Prenduan
4. 2016-2019 : MA TMI Putri II Al-Amien Prenduan
5. 2020-2025 : Universitas Islam Negeri Maulana Malik Ibrahim Malang