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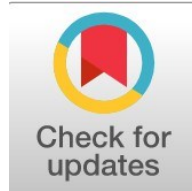
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Protection of the Right to Marry Against Guardians' Refusal Based on Javanese Custom Taboos

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Abstract

General Background: The right to marry is protected within Indonesian law, while Islamic marriage requires a guardian whose authority is not absolute when refusal lacks a legitimate religious basis. **Specific Background:** At the Blitar Religious Court, wali nasab refusal may arise from Javanese customary taboos involving weton or jilu, ngalor-ngulon, kebo balik kandang, the Brantas River boundary, and beliefs associated with parental death. **Knowledge Gap:** Prior studies have examined wali adhal, guardian authority, and customary marriage law, but empirical analysis combining customary refusal, protection of the prospective bride's right to marry, and judicial reasoning remains limited. **Aims:** This empirical juridical study examines forms of refusal, legal protection through wali adhal and wali hakim, and judges' ratio decidendi using statutory, case, sociological, interview, documentation, and literature approaches. **Results:** Refusals are mainly rooted in personal and psychological fears inherited through customary beliefs rather than recognized legal impediments. Wali adhal determination and wali hakim appointment provide a formal remedy, while judges assess whether stated reasons are valid under Islamic and Indonesian positive law; restrictive customs without such basis may fall within 'urf fasid. **Novelty:** The study connects Javanese customary beliefs, Islamic marriage law, the constitutional right to marry, and judicial reasoning in actual Blitar cases. **Implications:** Judicial review of customary grounds can preserve cultural consideration while securing legal certainty and access to lawful marriage

Highlights:

- Weton or jilu, ngalor-ngulon, kebo balik kandang, Brantas River boundaries, and parental-death beliefs were identified as reasons for rejection.
- A court-appointed substitute may enable the union to proceed when family consent is withheld without a valid religious or statutory basis.
- Judges test asserted traditions against Islamic and positive law; unsupported restrictions may be classified as 'urf fasid.

Keywords: Right to Marry, Wali Adhal, Wali Nasab, Javanese Customary Prohibitions, Legal Protection

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Introduction

Marriage is one of the social and legal institutions that holds an important position in human life.[1] Through marriage, individuals not only fulfill biological and psychological needs but also establish a family as the basic unit of social life. From a human rights perspective, marriage is recognized as a fundamental right inherent to every individual and must be respected, protected, and fulfilled by both the state and society. The recognition of the right to marry is guaranteed in various international instruments, including Article 16 of the Universal Declaration of Human Rights (UDHR) and Article 23 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR).[2] In Indonesia, this constitutional guarantee is regulated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia and is further implemented through Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.[3] Thus, marriage is not merely a private relationship between two individuals but also a legal institution involving religious, social, cultural, and human rights dimensions.

In Islam, marriage is regarded as an act of worship that has spiritual, social, and legal dimensions. It is intended, among other purposes, to establish tranquility, affection, and mercy between spouses, as reflected in QS. Ar-Rum verse 21. Marriage is also related to the objectives of *maqasid al-shari'ah*, particularly the protection of offspring (*hifz al-nasl*) and honor (*hifz al-'ird*). The implementation of an Islamic marriage requires the fulfillment of certain pillars and conditions, including the presence of a marriage guardian (*wali*). Article 19 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) places the marriage guardian as one of the pillars of marriage. In principle, this authority belongs to the *wali nasab*, namely a guardian who has a familial relationship with the prospective bride. However, the authority of the *wali nasab* is not absolute. When a guardian refuses to marry off the woman under his guardianship without a valid reason according to Islamic law, such refusal may constitute *wali adhal*. [4] This condition becomes legally significant because the guardian's refusal may potentially restrict the prospective bride's right to marry.

In the jurisdiction of the Blitar Religious Court, cases of *wali nasab* refusal are still found, and some are influenced by Javanese customary taboos. These beliefs include the calculation of *weton*, such as the *jilu* pattern involving the first and third children, the spatial orientation known as *ngalor-ngulon*, the belief in *kebo balik kandang*, geographical considerations such as being separated by the Brantas River, and beliefs concerning the death of one of the prospective groom's parents. For some members of the community, these traditions are believed to affect the harmony and future welfare of the prospective family. Consequently, the guardian's refusal is not necessarily based on the religious or legal qualifications of the prospective groom, but may instead arise from psychological fears and beliefs inherited through local tradition.

The existence of these practices raises a legal problem when customary beliefs become the basis for preventing a marriage that otherwise fulfills the requirements of Islamic and positive law. On the one hand, customary traditions constitute an important part of the cultural identity and social order of the community. On the other hand, the application of custom cannot be separated from the protection of individual rights. From the perspective of Islamic law, customary practice may be considered through the concept of '*urf*', which distinguishes between '*urf sahih*', namely a valid custom that does not contradict Islamic law, and '*urf fasid*', namely a custom that conflicts with established Islamic legal principles. Therefore, the existence of a customary prohibition does not automatically make it a legitimate legal basis for preventing marriage. Its validity must be assessed in relation to Islamic law, statutory law, and the consequences it produces for the rights of the individuals concerned.

The tension between customary values and individual rights requires a legal mechanism that can prevent the authority of the *wali nasab* from becoming an arbitrary obstacle to marriage. Article 23 of the Compilation of Islamic Law provides a mechanism through which a *wali hakim* may act as marriage guardian when the *wali nasab* is unavailable or refuses to perform his guardianship function (*adhal*). This mechanism places the Religious Court in an important position because the court must assess whether the guardian's refusal has a legitimate basis under Islamic law and applicable legislation.[5] The determination of *wali adhal* therefore does not merely function as a procedural mechanism for transferring guardianship but may also serve as a form of legal protection for the prospective bride. Through judicial examination, the guardian's reasons can be assessed against the applicable legal norms, while the prospective bride is provided with a legal avenue to exercise her right to marry.

Previous studies concerning the refusal of marriage guardians have generally focused on the concept of *wali adhal*, the authority of the guardian in Islamic marriage law, and the role of the Religious Court in resolving guardianship disputes. Other studies have examined the relationship between customary law and Islamic marriage law, particularly concerning marriage prohibitions that develop within local communities. However, studies that specifically examine the refusal of a *wali nasab* based on Javanese customary taboos while simultaneously analyzing the legal protection of the prospective bride's right to marry through the determination of *wali adhal* remain limited. In particular, there is still a need for empirical research that examines how judges assess customary reasons for refusal and how such reasons are incorporated into judicial reasoning in actual cases.

The novelty of this research lies in examining the refusal of a *wali nasab* not merely as a family or cultural dispute, but as a legal issue involving the intersection of Javanese customary beliefs, Islamic marriage law, and the constitutional right to marry. This research specifically examines several customary prohibitions found in the Blitar community, including *weton* or *jilu*, *ngalor-ngulon*, *kebo balik kandang*, geographical separation by the Brantas River, and beliefs concerning the death of a parent. These customary practices are analyzed through the perspective of '*urf*', particularly the distinction between '*urf sahih*' and '*urf fasid*', to examine whether customary beliefs may legitimately be used as grounds for preventing marriage. Furthermore, the research examines how judges at the Blitar Religious Court provide legal protection when a *wali nasab*

refuses to marry off his daughter based on such customary considerations.

Based on this research gap, this study focuses on three main issues: first, how *wali nasab* refusal occurs based on Javanese customary taboos in cases at the Blitar Religious Court; second, how the prospective bride's right to marry is protected through the determination of *wali adhal* and the appointment of *wali hakim*; and third, how judges construct their legal reasoning (*ratio decidendi*) when assessing a guardian's refusal based on Javanese customary taboos. To address these issues, this research employs an empirical juridical approach with the Blitar Religious Court as the research location. The research uses a statutory approach, a case approach, and a sociological approach. Primary data are obtained through in-depth interviews with judges of the Blitar Religious Court, while secondary data consist of primary, secondary, and tertiary legal materials. Data are collected through interviews, documentation, and literature studies and are analyzed qualitatively through the stages of data reduction, data presentation, and conclusion drawing.

Method

This study uses a juridical-empirical approach with a qualitative method. The research aims to analyze the protection of the right to marry when a guardian refuses a marriage due to prohibitions or Javanese custom taboos. Primary data was obtained through interviews with prospective brides and grooms, guardians, religious leaders, traditional leaders, and related parties. Secondary data includes legislation, Islamic law, court decisions, and literature on marriage and customary law. The data is analyzed descriptively and analytically through stages of data reduction, data presentation, and drawing conclusions. The analysis focuses on the relationship between individual rights to marry, the authority of the guardian, provisions of Islamic law and positive law, and the existence of Javanese custom taboos, so that the forms of legal protection for prospective brides and grooms can be identified when the guardian's refusal lacks a strong legal basis.

Results and Discussion

A. Forms of Guardian Rejection Based on Javanese Customary Taboos in Cases at the Blitar Religious Court

Based on empirical legal research (*law in action*) conducted at the Blitar Religious Court, requests for the determination of *wali adhal* arising from the refusal of *wali nasab* on the basis of Javanese customary taboos continue to occur in practice. Although the people of Blitar have experienced modernization and increasing access to religious education, certain marriage guardians continue to maintain traditional beliefs, myths, and customary prohibitions inherited from previous generations. These beliefs continue to function as a form of *living law* within particular families and communities and influence the way guardians assess the suitability of a prospective marriage. In such circumstances, the refusal of the guardian does not necessarily arise from the absence of religious or legal qualifications of the prospective groom, but rather from the guardian's belief that violating a particular customary prohibition may bring misfortune to the prospective couple or their families.

The empirical findings indicate that customary considerations constitute one of the significant reasons underlying the refusal of *wali nasab* in cases submitted to the Blitar Religious Court. Compared with considerations such as employment, economic conditions, social status, or *kafa'ah* (compatibility), customary prohibitions may become a particularly strong basis for refusal because they are associated with fears concerning future disasters and the welfare of the family. The guardian's decision is therefore not merely a matter of personal preference but is embedded in a broader system of belief in which marriage is understood not only as a relationship between two individuals but also as a union involving two families, their ancestors, social environment, and inherited traditions.

The forms of rejection by *wali nasab* based on Javanese customary taboos identified in cases at the Blitar Religious Court can be classified into four main types, namely:

1. Calculation of Weton and Birthday Compatibility: This is the most frequently encountered form of rejection. It is based on the calculation of *neptu* derived from the birth day and *pasaran* of the prospective bride and groom according to the Javanese calendar. A guardian may refuse to approve the marriage when the result is considered unfavorable or falls within a prohibited category, such as the *jilu* pattern, which refers to a marriage involving the first and third children. Guardians who strongly maintain this belief may associate violation of the *weton* calculation with various forms of misfortune, including economic difficulties, domestic conflict, disharmony between families, illness, or even death. In this context, *weton* is not merely a cultural calculation but functions as a mechanism through which the guardian attempts to anticipate the future consequences of marriage. Thus, even when the prospective groom fulfills the requirements of Islamic law and there is no legal impediment to the marriage, the guardian may nevertheless refuse because the *weton* calculation is considered unfavorable.
2. House Layout and Direction (*Ngalor-Ngulon*): The second form of rejection concerns the geographical position and direction of the prospective couple's houses, particularly the customary belief known as *ngalor-ngulon*. In certain communities, the direction of a house is believed to influence the future welfare of the family. A marriage involving a particular spatial orientation may therefore be considered undesirable because it is believed to bring economic hardship, domestic problems, or other forms of misfortune. The guardian's refusal in this category is not based on the character, religion, occupation, or legal status of the prospective groom, but on the symbolic interpretation of geographical direction. For guardians who continue to hold this belief, violating the prohibition may create a strong sense of fear concerning the future of their daughter. This finding demonstrates that customary norms may continue to influence individual legal behavior even when they do not constitute requirements or prohibitions under formal state law.

3. Natural Geographic Boundaries and Local Traditions (*Kebo Balik Kandang* and the Brantas River): The third form of rejection concerns natural geographical boundaries and local traditions. One example is the belief that marriage should not take place when the residences of the prospective bride and groom are separated by the Brantas River. Within certain local traditions, the river is not viewed merely as a geographical feature but also as a symbolic boundary that should not be crossed for marriage. Another belief concerns *kebo balik kandang*, according to which the prospective groom is expected to come from the same village or social environment associated with the bride's maternal family. A marriage that violates this customary expectation may be regarded as inappropriate because it is believed to disturb the established social order of the family. These beliefs demonstrate that customary marriage prohibitions may be connected to territorial identity, family history, and inherited patterns of social relations. The problem emerges when these customary considerations are transformed from social expectations into an absolute basis for preventing a marriage that otherwise satisfies the requirements of Islamic and positive law.
4. The Myth of Parental Death and Family Disaster: The fourth form of rejection concerns the belief that a marriage may bring disaster when one of the prospective groom's parents has previously died. In this form of customary belief, the death of a parent is interpreted as an unfavorable sign that may affect the future of the prospective marriage. The guardian may fear that the death represents a pattern of misfortune that could be repeated after the marriage. This form of rejection illustrates the relationship between cultural beliefs, family memory, and psychological fear. The guardian does not necessarily reject the prospective groom because of an objective deficiency; rather, the refusal may arise from an attempt to prevent a feared future event based on previous family experiences or inherited interpretations of those experiences. The death of a parent is therefore transformed from an individual event into a symbolic sign that is believed to have predictive meaning for the prospective marriage.

Psychologically, the main factor influencing the guardian's persistence in refusing the marriage is the fear that violating a customary prohibition will bring disaster to the prospective couple or their families.[6] This fear may arise from stories transmitted through generations, previous experiences within the extended family, or repeated social narratives concerning marriages that allegedly resulted in misfortune after violating customary rules. The belief may become stronger through social reinforcement because guardians often receive advice, pressure, or warnings from parents, siblings, relatives, community members, or other individuals regarded as knowledgeable about Javanese customs. Consequently, refusing the marriage may be perceived by the guardian as an act of responsibility toward the family rather than as an attempt to obstruct the prospective bride's rights.

As a result, the prospective bride may be prevented from proceeding with the marriage through the ordinary legal mechanism and may have to submit an application for the determination of *wali adhal* to the Blitar Religious Court. The consequences are not limited to the legal process itself. The prospective bride may also face social and familial risks, including conflict with parents and relatives, strained family relationships, and the possibility of being regarded as having violated family traditions or being excluded from certain family relationships.[7] This situation demonstrates that the problem of *wali adhal* involves not only the relationship between formal law and customary law but also the tension between individual autonomy and collective cultural expectations.

From the perspective of Islamic legal epistemology, the use of Javanese customary beliefs as a basis for refusing marriage must be examined through the concept of '*urf*'. In Islamic jurisprudence, custom may become a consideration in legal reasoning through the principle *al-'adah muhakkamah*, but its recognition is subject to certain conditions. Abdul Wahhab Khallaf explains that a customary practice may be taken into consideration when it does not contradict established Islamic legal principles and does not conflict with an explicit religious text.[8] Therefore, the existence of a practice within a particular community does not automatically establish its legal validity.

The distinction between '*urf sahih*' and '*urf fasid*' is particularly relevant to the cases examined in this research. '*Urf sahih*' refers to customary practices that are acceptable from the perspective of Islamic law because they do not contradict religious principles, while '*urf fasid*' refers to customs that conflict with Islamic legal principles or produce consequences that cannot be justified within the framework of Sharia. Consequently, a customary practice must not be assessed solely on the basis of how long it has existed or how widely it is practiced. Its substantive compatibility with Islamic law must also be examined.

In the context of the Blitar cases, beliefs concerning unfavorable *weton* calculations, house directions, geographical boundaries, or the death of a prospective groom's parent become problematic when they are treated as determinative grounds for preventing marriage despite the absence of a corresponding prohibition under Islamic law. The issue is not the existence of Javanese culture itself. Cultural practices may constitute an important part of social identity and may coexist with Islamic law. The legal problem arises when a customary belief is given normative authority that exceeds its position within Islamic law and is subsequently used to restrict the marriage of a person who otherwise fulfills the applicable legal requirements.

Some of these beliefs may also be examined in relation to the Islamic concept of *tathayyur*, namely the attribution of good or bad fortune to particular signs, events, or circumstances without a valid religious basis. This perspective helps explain why the guardian's fear can become strong despite the absence of an objective legal impediment to marriage. Nevertheless, the classification of a particular practice as '*urf fasid*' or as a form of *tathayyur* should be based on the specific facts and beliefs demonstrated in each case rather than being applied indiscriminately to Javanese customs as a whole.

Therefore, when a *wali nasab* prioritizes customary fears over the legal interests of the prospective bride, the func guardianship may shift from protection to restriction. Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia recognizes the right of every person to establish a family and continue their offspring through a lawful marriage.[9] This constitutional provision must be understood together with the provisions of Islamic marriage law governing the role and authority of the *wali nasab*. Guardianship is intended to facilitate and protect the interests of the prospective bride and should not become an instrument for imposing an arbitrary prohibition.

When a guardian refuses to perform his guardianship function without a legally or religiously valid basis, such refusal may constitute *wali adhal*. The determination of *wali adhal* by the Religious Court provides a legal mechanism through which the prospective bride can continue the marriage process through the appointment of a *wali hakim* in accordance with the applicable legal framework. In this sense, the determination of *wali adhal* represents more than a procedural transfer of guardianship. It constitutes a form of legal protection when the authority entrusted to the *wali nasab* is exercised in a manner that prevents the prospective bride from exercising her legally recognized interest in entering into marriage.

The concept of *ta'assuf fi isti'mal al-haqq*, or abuse in the exercise of a right, may also provide an analytical framework for examining this situation. The authority of the guardian is not an unlimited personal right but a form of legal responsibility attached to guardianship. Its exercise should remain directed toward the purposes for which guardianship is established. When such authority is exercised solely on the basis of customary prohibitions that have no recognized legal basis, the exercise of guardianship may lose its protective function and instead become an obstacle to the prospective bride's lawful interests.

Accordingly, the refusal of a *wali nasab* based on Javanese customary taboos must be examined not merely from the perspective of cultural legitimacy but also from the perspective of Islamic law and positive law. The court must examine the substance of the reason for refusal, its relationship with Islamic legal principles, its conformity with applicable legislation, and its consequences for the rights of the prospective bride. Where the refusal is found to lack a valid basis and satisfies the legal requirements for *wali adhal*, judicial intervention through the determination of *wali adhal* and the subsequent appointment of a *wali hakim* provides a legal mechanism for resolving the conflict between customary authority and the prospective bride's right to marry.

The cases at the Blitar Religious Court therefore demonstrate that the interaction between Javanese customary beliefs and Islamic marriage law is not simply a conflict between tradition and modernity. Rather, it represents an ongoing negotiation between social beliefs, family authority, religious norms, and state law. Javanese customs may continue to possess strong social significance, but their normative force within the legal process is subject to the limits established by Islamic law and positive law. The central issue is therefore not whether Javanese customs should be eliminated, but under what circumstances they may be respected as social and cultural values without being transformed into an instrument that prevents the exercise of legally protected rights.

B. Protection of the Right to Marry Through the Appointment of a Proper Guardian

The right to get married and establish a family is a fundamental right that belongs to every individual and must receive legal protection from the state. The constitutional basis for this protection is clearly laid out in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees everyone's right to form a family and have children through a lawful marriage. This provision demonstrates that marriage is not merely a private relationship between two individuals but also has constitutional, social, and legal dimensions. Therefore, when the exercise of the right to marry is obstructed by the arbitrary refusal of a guardian (*wali adhal*) based on reasons that are not recognized by Islamic or positive law, the state must provide an effective legal mechanism to protect the rights of the prospective bride.[10]

Based on field research findings at the Blitar Religious Court, the determination of *wali adhal* plays a vital role as a form of repressive legal protection. According to Philipus M. Hadjon's Legal Protection Theory, repressive legal protection is provided after a violation of rights or a dispute has occurred in order to restore the rights of legal subjects from actions that cause or potentially cause harm. In cases where guardians refuse to perform their guardianship function because of Javanese customary prohibitions, the Religious Court provides a judicial mechanism through which the reason for the refusal can be examined and its legal validity determined. When the refusal is proven to be based solely on customary beliefs without a sufficient basis in Islamic law or positive law, the court may determine the guardian to be *adhal* and transfer the authority of guardianship to the *wali hakim* in accordance with the applicable legal framework.

The determination of *wali adhal* should therefore not be understood merely as a technical mechanism for replacing the guardian. It represents a form of legal intervention when the authority of the *wali nasab* is no longer exercised in accordance with the purpose of guardianship. The position of the *wali nasab* is important in Islamic marriage law, but that authority is accompanied by responsibility to protect the interests of the prospective bride. Consequently, guardianship cannot be interpreted as an unlimited authority to reject a marriage based on personal preferences, family pressure, or customary beliefs that have no recognized legal basis. The intervention of the Religious Court seeks to maintain the balance between respect for family authority and protection of the individual legal rights of the prospective bride.

The transfer of guardianship authority to the *wali hakim* through a court ruling provides protection for the prospective bride in several important legal dimensions, including:

1. Validity of Legal Marriage Status: The determination of *wali adhal* ensures that the marriage can proceed through a legally recognized mechanism when the *wali nasab* is found to be *adhal*. This enables the marriage to fulfill the pillars and requirements of Islamic marriage, including the requirement concerning the marriage guardian as regulated in Article

19 of the Compilation of Islamic Law (KHI). The subsequent registration of the marriage also provides formal recognition by the state. In this respect, the appointment of a *wali hakim* prevents the refusal of the *wali nasab* from becoming an obstacle that forces the prospective couple to choose an informal or unregistered marriage. Legal protection is therefore provided not only at the moment of the marriage ceremony but also throughout the legal consequences arising from the marital relationship.

2. **Civil Rights Protection for Wives:** A legally valid and registered marriage provides the prospective wife with a legal basis for exercising various civil rights arising from the marital relationship. These include rights relating to maintenance (*nafkah*), dowry (*mahr*), marital property, and other rights recognized under Islamic and Indonesian family law. The protection is important because an unregistered marriage may create difficulties in proving the existence of the marital relationship and exercising related civil rights. Thus, the determination of *wali hakim* indirectly protects the prospective bride from the legal vulnerability that may arise when marriage is conducted outside the formal legal system.
3. **Legal Certainty for Children:** The protection provided through a legally recognized marriage also has consequences for the legal certainty of children born from the marriage. A formally recognized marriage provides an important legal basis for matters concerning birth registration, parental responsibilities, custody, lineage, and inheritance in accordance with the applicable legal framework. Therefore, the appointment of a *wali hakim* should not be viewed only from the perspective of the immediate interests of the prospective bride. It also has implications for the legal certainty of the family that will subsequently be established. The intervention of the court can therefore prevent the consequences of a guardian's refusal from extending to future family members.
4. **Preventing Coercion and Social Harm:** The judicial mechanism also protects prospective brides from social pressure and the possibility of being forced to abandon a lawful marriage because of customary prohibitions. A guardian's refusal may place a woman in a difficult position between obedience to family expectations and the exercise of her legally recognized right to establish a family. In some circumstances, prolonged family conflict may encourage couples to consider an unregistered (*siri*) marriage, which may create further legal difficulties. Through the determination of *wali hakim*, the state provides a formal legal avenue for resolving the dispute and reducing the possibility that the conflict will result in greater social and legal harm.

From a human rights perspective, the appointment of a *wali hakim* through the determination of *wali hakim* can therefore be understood as part of the state's responsibility to provide effective legal protection when the exercise of a recognized right is obstructed. Article 16 of the Universal Declaration of Human Rights (UDHR) and Article 23 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) recognize the right of men and women to marry and establish a family.[11] These provisions must nevertheless be understood together with the legal requirements applicable in each national legal system. The right to marry is not an unlimited right that removes all legal requirements for marriage, but restrictions on that right should have a legitimate legal basis rather than being imposed solely on the basis of subjective fears or customary beliefs.

In the context of the Blitar Religious Court, the appointment of a *wali hakim* demonstrates the ability of the formal legal system to respond to conflicts between customary norms and individual rights. Javanese customs may continue to have cultural and social significance for families and communities. However, the existence of a custom as a social norm does not automatically give it the same legal authority as Islamic legal principles or statutory provisions. The court therefore has the responsibility to distinguish between customs that function as cultural values and customs that are used as a basis for preventing the exercise of a legally protected right.

The legal protection provided through the determination of *wali hakim* is consequently not intended to eliminate Javanese traditions from the social life of the community. Rather, it establishes the boundary between respect for cultural values and the exercise of legal authority. A customary practice may continue to be respected when it functions as a social or cultural consideration and does not conflict with Islamic law or positive law. However, when the custom is transformed into an absolute prohibition that prevents a lawful marriage, its legal consequences must be examined by the court.[12]

The effectiveness of this legal protection ultimately depends on the judicial examination conducted before the determination of *wali hakim*. The court must establish whether the guardian has genuinely refused to perform the guardianship function, identify the reasons for the refusal, determine whether the prospective bride and groom satisfy the applicable requirements for marriage, and assess whether any legally recognized impediment exists. This examination is important because the determination of *wali hakim* should not automatically follow every disagreement between a prospective bride and her guardian. Instead, it must be based on sufficient evidence and a careful assessment of the legal and factual circumstances of the case.

Thus, the appointment of a *wali hakim* at the Blitar Religious Court can be understood as a form of judicial protection that restores the prospective bride's ability to proceed with a lawful marriage while maintaining the requirements established by Islamic and positive law. The mechanism demonstrates that the state does not simply choose between individual rights and customary values. Instead, the court examines the extent to which customary values can be recognized within the legal system and determines whether their application remains compatible with the rights and interests of the parties involved.

C. Judge's Consideration in Assessing Guardian's Refusal Based on Javanese Customary Prohibitions

In deciding cases regarding the determination of *wali adhal* triggered by the rejection of a guardian based on Javanese customary taboos, the judges at the Blitar Religious Court conduct a comprehensive material examination. The judges do not merely examine the guardian's refusal administratively but also assess the substantive aspects of the proposed marriage. The examination includes the age of the prospective bride and groom, the existence or absence of marriage prohibitions based on blood relations, affinity, or milk kinship, the civil status of the parties, the ability of the prospective husband to fulfill his marital obligations, and the religious and moral considerations relevant to the prospective groom.[13]

This approach demonstrates that the determination of *wali adhal* requires a distinction between two different questions. The first concerns whether the guardian has genuinely refused to perform the guardianship function. The second concerns whether the prospective marriage itself satisfies the requirements established by Islamic law and positive law. The court therefore cannot determine a guardian to be *adhal* merely because the prospective bride wishes to marry. The court must establish that the refusal is unjustified while simultaneously ensuring that the proposed marriage does not contain a legally recognized impediment.

The main indicator used by the judges in determining whether a guardian can be considered *adhal* is the existence of an actual and unjustified refusal. This may be demonstrated when the *wali nasab*, after being properly and formally summoned, fails to appear at the hearing, or appears but explicitly maintains his refusal to act as marriage guardian despite the absence of a legitimate religious or legal reason. Where the refusal is based solely on an inner fear of Javanese customary consequences, the court examines whether such fear has sufficient legal significance to justify preventing the marriage.

Evidence presented in the hearing is therefore important in establishing the factual basis of the application. The evidence may include documents such as identity cards, family cards, marriage-related documents, and statements or documents from the Office of Religious Affairs (*Kantor Urusan Agama/KUA*), together with statements from witnesses under oath.[13] The witnesses may provide information concerning the relationship between the prospective bride and groom, the existence of the guardian's refusal, the reason for the refusal, and whether the guardian has maintained the refusal despite the absence of a recognized impediment to the marriage.

The evidentiary process is particularly important in cases involving customary beliefs because the reasons for refusal are often rooted in personal and family beliefs that cannot be understood solely through written documents. The court may therefore need to identify the actual reason behind the guardian's refusal and determine whether the stated customary prohibition is genuinely the basis of the refusal. This allows the judges to distinguish between a guardian who has a legitimate objection under Islamic law and a guardian whose refusal is based primarily on inherited beliefs, social pressure, or fear of supernatural consequences.

In formulating the legal basis for their decision, the judges of the Blitar Religious Court combine Islamic legal arguments with positive legal regulations. The main legal foundations relevant to the determination of *wali adhal* include:

1. Surah Al-Baqarah verse 232: This verse contains a prohibition against preventing women under guardianship from marrying when the prospective spouses have reached an acceptable agreement. In the context of *wali adhal*, this verse provides an important Islamic legal principle concerning the prohibition against unjustified obstruction of marriage by those who possess authority over the woman.
2. Hadith concerning the transfer of guardianship: The prophetic tradition concerning disagreement or refusal among guardians is used in Islamic jurisprudence as a basis for the principle that when a guardian refuses to perform his guardianship function, authority may be transferred to the ruler or judge. This principle provides a religious foundation for judicial intervention in cases where the *wali nasab* refuses to perform his function without a valid reason.
3. Positive Legal Rules: The legal framework includes Article 23 of the Compilation of Islamic Law concerning the role of the *wali hakim* when the *wali nasab* is *adhal*, together with the applicable regulations governing *wali hakim* and marriage. These provisions provide the formal legal basis for the Religious Court to examine the guardian's refusal and determine whether the legal conditions for the appointment of a *wali hakim* have been fulfilled.

The main legal reason (*ratio decidendi*) of the panel of judges in approving an application for the determination of *wali adhal* based on Javanese customary prohibitions is rooted in the resolution of competing normative systems. On one side, Javanese customary beliefs may have strong social and emotional significance for the guardian and extended family. On the other side, the guardian's authority must operate within the boundaries established by Islamic law and positive law. When beliefs concerning *weton*, *jilu*, house direction, geographical boundaries, or similar customary prohibitions are used as absolute grounds for refusing marriage despite the absence of a corresponding prohibition under Islamic law, the court must determine whether such reasons can legally justify the refusal.[14]

From the perspective of *'urf*, the distinction between *'urf sahih* and *'urf fasid* becomes relevant in assessing these customary prohibitions. Custom may be recognized as a consideration in Islamic law when it does not conflict with established Islamic principles. However, when a customary belief produces consequences that contradict Islamic legal principles or prevents a person from exercising a lawful right without a valid basis, the custom cannot automatically be given legal authority. In this context, the classification of a particular custom as *'urf fasid* should be based on the substance and consequences of the custom rather than simply on the fact that it is a Javanese tradition.

The judges' reasoning can also be understood through Gustav Radbruch's Legal Certainty Theory. Legal certainty requires

that restrictions on rights and the legal consequences of individual actions be based on recognized legal norms.[15] In this context, a guardian's subjective fear that a particular *weton*, house direction, geographical location, or family circumstance will cause future misfortune does not by itself constitute a formal legal impediment to marriage. Therefore, the court must distinguish between subjective belief and legally recognized grounds for refusing a marriage.

At the same time, legal certainty does not require the court to disregard the cultural background of the parties. The judges may still consider the social context in which the refusal occurs, particularly where customary beliefs have a strong influence on the guardian and extended family. However, consideration of the cultural context is different from giving the custom decisive legal authority. This distinction is important because it allows the court to acknowledge the social reality of the community while ensuring that the final legal determination remains based on recognized legal norms.

The judicial reasoning therefore reflects an effort to balance respect for local traditions with the enforcement of Islamic and positive law. Javanese customs are not necessarily rejected in their entirety. Rather, their legal consequences are examined according to their compatibility with Islamic principles, statutory provisions, and the rights of the parties. When a tradition merely functions as a cultural consideration, it may remain part of the social life of the family. However, when the tradition is used to prevent a lawful marriage without sufficient legal justification, the court has a basis for setting aside its restrictive effect.

The role of the Religious Court in this context is therefore not limited to determining whether the guardian is *adhal*. The court also functions as an institution that mediates the tension between family authority, religious norms, customary beliefs, and individual legal rights. Through judicial examination, the court transforms a conflict that initially occurs within the family into a legally structured dispute that can be resolved according to established legal principles. This process provides legal certainty for the prospective bride while simultaneously preventing the authority of the *wali nasab* from being exercised beyond its legitimate purpose.

Thus, the judges' considerations in *wali adhal* cases at the Blitar Religious Court demonstrate that the protection of the right to marry involves more than simply transferring guardianship from the *wali nasab* to the *wali hakim*. It requires a careful examination of the factual background, the validity of the guardian's reasons, the fulfillment of the marriage requirements, the relevant Islamic legal principles, and the applicable statutory provisions. The judicial determination ultimately seeks to ensure that customary beliefs remain within the sphere of social and cultural values and do not become an absolute legal barrier to the exercise of the prospective bride's right to establish a family through a lawful marriage.

Conclusion

Based on the analysis and discussion presented above, several conclusions can be drawn. First, the rejection of marriage by *wali nasab* based on Javanese customary prohibitions at the Blitar Religious Court takes several forms, namely the calculation of *weton* and the *jilu* pattern involving the first and third children, the customary prohibition of *ngalor-ngulon* concerning the direction or layout of the house, geographical boundaries associated with the concepts of *kebo balik kandang* and separation by the Brantas River, and the belief that a marriage may bring misfortune when one of the prospective groom's parents has passed away. These forms of rejection are generally rooted in the guardian's personal and psychological fears concerning the possible consequences of violating inherited customary beliefs. Thus, the rejection does not necessarily arise from a legally recognized impediment to marriage, but from the guardian's interpretation of customary norms that continue to operate within the family's social and cultural environment.

Second, the protection of the prospective bride's right to marry is realized through the judicial determination of *wali adhal* and the appointment of a *wali hakim* when the *wali nasab* is proven to refuse the marriage without a legitimate religious or legal basis. This mechanism constitutes a form of repressive legal protection because it provides a legal remedy after the prospective bride's right to marry has been obstructed. Through this mechanism, the Religious Court provides a formal legal avenue for the prospective bride to exercise her right to establish a family in accordance with Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The appointment of a *wali hakim* also enables the marriage to proceed through the formal legal system and contributes to legal certainty concerning the rights and obligations arising from the marital relationship, including the legal interests of the wife and children.

Third, the judges' legal reasoning (*ratio decidendi*) in examining guardian refusal based on Javanese customary prohibitions focuses on whether the reasons presented by the *wali nasab* constitute a legitimate impediment under Islamic law and positive law. The judges examine the factual circumstances of the proposed marriage, the fulfillment of its legal requirements, the existence or absence of prohibited relationships, the guardian's actual refusal, and the evidentiary basis supporting the application. In this assessment, Javanese customary beliefs such as *weton*, *jilu*, *ngalor-ngulon*, *kebo balik kandang*, geographical boundaries, and fears associated with parental death are not automatically regarded as legal prohibitions against marriage. Their legal consequences are assessed according to their compatibility with Islamic legal principles and applicable Indonesian law.

Fourth, from the perspective of *'urf*, customary practices may be recognized as social and cultural values as long as they do not contradict established Islamic legal principles or produce consequences that conflict with legally protected rights. However, when a customary belief is used as an absolute basis for preventing a lawful marriage despite the absence of a corresponding prohibition in Islamic law or positive law, its restrictive application may be understood within the framework of *'urf fasid*. The judges' approach therefore does not necessarily reject Javanese culture as a whole, but places limits on the legal consequences that may be attached to customary beliefs. In this sense, the determination of *wali adhal* represents an effort to balance respect for cultural traditions, Islamic marriage law, positive law, legal certainty, and protection of the

prospective bride's right to marry.

Overall, the findings demonstrate that the determination of *wali adhal* at the Blitar Religious Court functions not merely as a mechanism for replacing a marriage guardian, but also as an instrument for resolving normative conflict between family authority, Javanese customary beliefs, Islamic law, and state law. The judicial process ensures that guardianship is exercised according to its legal purpose and that customary beliefs do not become an absolute barrier to a lawful marriage. Through this mechanism, the Religious Court provides legal certainty and protection for the prospective bride while maintaining the position of marriage within the framework of Islamic and Indonesian law.

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