

A COMPARATIVE STUDY OF TAWKIL AL-WALI UNDER INDONESIAN AND MALAYSIAN LAW

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Abstrak

Taukil wali merupakan pelimpahan wewenang dari wali nikah kepada pihak lain untuk melangsungkan akad pernikahan atas nama wali yang sah. Penelitian ini bertujuan untuk menjelaskan persamaan dan perbedaan ketentuan hukum taukil wali serta menganalisis perbandingan akibat hukum pelaksanaannya di Indonesia dan Malaysia. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan dan perbandingan, menggunakan sumber data dari Peraturan Menteri Agama, Kompilasi Hukum Islam, serta Undang-Undang Keluarga Islam Malaysia. Hasil penelitian menunjukkan bahwa kedua negara sama-sama mengatur mengenai taukil wali nikah, dengan beberapa persamaan dalam hal pengertian, urutan wali nikah, syarat wakil wali, dan alasan diperbolehkannya pelimpahan kuasa wali. Perbedaannya terletak pada aspek prosedural dan sanksi hukum. Indonesia memiliki prosedur administratif yang rinci dan diatur secara tegas dalam peraturan perundang-undangan, sedangkan Malaysia lebih menekankan pada prinsip syariah yang disesuaikan dengan hukum setiap negeri. Dari sisi sanksi, Indonesia tidak mengenal sanksi pidana terhadap pelanggaran taukil wali, sementara di Malaysia pelanggaran tersebut dapat dikenai sanksi pidana.

Kata Kunci: Taukil wali, Wakalah Wali, Perbandingan Hukum

Abstract

Taukil wali is when a marriage guardian gives their authority to someone else to perform a marriage. The goal of this study is to explain the differences and similarities in the legal rules about taukil wali. It also looks at how these rules have different legal effects in Indonesia and Malaysia. This is a type of legal research that uses existing laws and compares them. The information comes from documents like the Regulation of the Minister of Religious Affairs, the Compilation of Islamic Law, and Malaysian Islamic Family Law. The study found that both Indonesia and Malaysia have rules about taukil wali. They are similar in how they define taukil wali, who can be a guardian, what qualifications are needed for a deputy guardian, and why

taukil wali is allowed. Indonesia has very clear and detailed rules for how this process works, which are in official laws. Malaysia uses general sharia principles and adjusts the process according to their own laws. When it comes to penalties, both countries have.

Keywords: *Taukil Wali, Wakalah Wali, Comparative Law*

A. Introduction

Marriage is one of the noble acts of worship in Islam. It has essential conditions and pillars, including the bride and groom, a guardian (*wali*), witnesses, and the marriage contract (*akad*). A marriage is considered legally valid when all its conditions and pillars are fulfilled. One of the most crucial requirements in marriage is the presence of a marriage guardian (*wali nikah*). The guardian is the person who represents the bride in concluding the marriage contract. The absence of a guardian renders a marriage invalid.¹

The Maliki, Shafi'i, and Hanbali schools of Islamic law regard the guardian as a pillar (*rukun*) of marriage; therefore, a marriage conducted without a guardian is invalid. In contrast, the Hanafi school holds that the guardian is merely a condition, while the essential pillar of marriage consists of *ijab* and *qabul*. According to this view, an adult who is legally competent (*baligh* and of sound mind), whether a widow or a virgin, is not required to have a guardian. A guardian is only required for minors and for adults who are mentally incapacitated.²

In practice, however, not all guardians are able to be physically present at the marriage ceremony. This may be due to various factors, such as the geographical distance between the guardian and the place of marriage, the absence of an eligible lineage guardian (*wali nasab*), the guardian's failure to meet legal requirements, the guardian's unknown whereabouts (*mafqud*), legal or practical impediments, or the guardian's refusal to act as guardian (*adhal*).³

¹ Amir Syarifuddin, *Hukum Perkawinan Di Indonesia* (Jakarta: Kencana Prenadamedia Group, 2006).

² Dedi Supriyadi, *Fiqih Munakahat Perbandingan* (Bandung: CV Pustaka Setia, 2011).

³ Peraturan Menteri Agama Republik Indonesia Nomor 30 Tahun 2005, Pub. L. 30 (2005).

In such circumstances, *tawkil al-wali* may be carried out. *Tawkil al-wali* refers to the delegation of a guardian's authority to another qualified person to assume the role of guardian in representing the bride during the marriage contract.

A research article by Fashihuddin Arafat published in the *Journal of Islamic Law*, entitled "The Legal Construction of the Transfer of Guardianship Rights Due to *Masafatul Qashri*," employs a library research method using secondary data sources. The study concludes that according to the Shafi'i school, when the closest guardian (*wali aqrab*) is unknown or cannot be located due to *masafatul qashri*, the right of guardianship is transferred to the *wali hakim* (state-appointed guardian). Meanwhile, the Hanbali school allows the transfer of guardianship rights to a more distant guardian (*wali ab'ad*) when the closest guardian's whereabouts are unknown. The transfer of guardianship rights due to *masafatul qashri* is considered still relevant, even though geographical distance does not necessarily prevent a guardian from marrying off his child. The distinction between Arafat's study and this article lies in the object, scope of discussion, and research method. While Arafat's research focuses on the legal construction of transferring guardianship rights due to *masafatul qashri*, the novelty of this article lies in its comparative legal analysis and examination of the legal consequences of *tawkil al-wali* in Indonesia and Malaysia—an area that has received limited scholarly attention. This study is expected to contribute to the development of Islamic family law and to serve as a practical reference for the implementation of marriages that are both legally valid and compliant with applicable laws.⁴

Indonesia and Malaysia, as countries with Muslim-majority populations, regulate the practice of *tawkil al-wali* within their respective legal systems. In Indonesia, provisions on *tawkil al-wali* are stipulated in Article 28 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), reinforced by the

⁴ Fashihuddin Arafat, 'Konstruksi Hukum Berpindahnya Hak Perwalian Sebab Masafatul Qashri', MASADIR: Jurnal Hukum Islam 1, no. 2 (2022), <https://ejournal.unkafa.ac.id/index.php/masadir/article/view/424>.

Regulation of the Minister of Religious Affairs (PMA) No. 30 of 2005 on the *Wali Hakim* and PMA No. 20 of 2019 on Marriage Registration. In Malaysia, regulations concerning *wakalah al-wali* are contained in the Islamic Family Law (Federal Territories) Act 1984 (Act 303) as well as in the enactments of each individual state.⁵

Although both countries fundamentally permit the practice of *tawkil al-wali*, there are notable differences in their regulatory frameworks. In Indonesia, the rules governing *tawkil al-wali* are elaborated in detail, including the grounds that justify its use and the procedures to be followed. In contrast, Malaysian regulations do not specify *tawkil al-wali* in detail and provide no explicit procedural guidelines. Therefore, a comparative study using a statutory approach is necessary to identify the similarities and differences between the two legal systems. Furthermore, it is essential to analyze the legal consequences that may arise when *tawkil al-wali* is implemented in a manner that does not comply with established procedures.

B. Similarities and Differences in the Regulation of *Tawkil al-Wali* between Indonesia and Malaysia

1. Similarities in the Regulation of *Tawkil al-Wali* between Indonesia and Malaysia

With regard to the order of marriage guardians (*wali nikah*), Indonesia and Malaysia share similar provisions, as both countries adhere to the Shafi'i school of Islamic law. The following table presents the similarities in the regulation of *tawkil al-wali* between Indonesia and Malaysia.

⁵ Undang-Undang Keluarga Islam (Wilayah Wilayah Persekutuan) 1984 (1984).

Aspect	Similarities between Indonesia and Malaysia
School of law	Both adhere to the Shafi'i school of Islamic law
Order of marriage guardians	Father, grandfather, brothers, and male relatives along the paternal line according to lineage hierarchy
Basis of guardian order	Based on Islamic law; the order of marriage guardians corresponds to the order in Islamic inheritance law (<i>Kifāyah al-Akhyār</i>) ⁶
Legal basis of <i>tawkil al-wali</i>	Islamic law permits the delegation of guardianship authority to a representative
Requirements for the guardian's representative	Male, Muslim, legally competent (<i>baligh</i>), free, of sound mind, and not in a state of <i>ihram</i> ⁷
Form of <i>tawkil al-wali</i>	Conducted in written form and accompanied by official documentation ⁸

⁶ Imam Taqiyudin Abu Bakar Bin Muhammad Al-Husaini Ad-Dimasqi Asy-Syafi'i, *Kifayatul Akhyar: Memahami Fikih Madzhab Syafii*, ed. Rohmatulloh Ngimadudin (Solo: Al-Qowam, 2016).

⁷ Abdur Rahman Adi and Ahmad Maulana Saputera, 'Wakalah Wali Nikah Di Kecamatan Dumbo Raya Perspektif Hukum Islam', *QadāuNā* 5, no. 2 (April 2024).

⁸ Pasal 12 Ayat 5 Peraturan Menteri Agama No. 20 Tahun 2019 (2019).

Aspect	Similarities between Indonesia and Malaysia
Authentication of documents	Authorized by religious officials (the Office of Religious Affairs/KUA in Indonesia and the District Islamic Religious Officer in Malaysia) ⁹
Legal position of the guardian's representative	Acts as an intermediary of the legitimate lineage guardian, not as a transferee of guardianship rights ¹⁰
Factors contributing to similarity	Shared cultural roots, common legal sources (the Qur'an and Hadith), and Muslim-majority populations

2. Differences in the Regulation of *Tawkil al-Wali* between Indonesia and Malaysia

The differences in the legal regulation of *tawkil al-wali* between Indonesia and Malaysia fundamentally reflect variations in their legal systems, governmental structures, and the socio-cultural contexts inherent in each country. The following table outlines the key differences concerning marriage law in Indonesia and Malaysia.

⁹ Syeksyen 7 Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984 (1984).

¹⁰ Pejabat Mufti Wilayah Persekutuan, 'Irsyad Al Fatwa Ke 408: Hukum Nikah Menggunakan Wali Hakim Walaupun Ada Wali Nasab', Muftiwp, 7 February 2025.

Comparative Aspect	Indonesia	Malaysia
Form of state	Unitary state in the form of a republic	Federal state
System of government	Presidential system, with supreme executive authority vested in the President	Parliamentary system, with the King as Head of State and governance carried out by the Prime Minister
Islamic family law system	Centralized and uniformly applicable nationwide	Decentralized, under the jurisdiction of each individual state
Legal basis of <i>tawkil/wakalah al-wali</i>	Law No. 1 of 1974, the Compilation of Islamic Law (KHI), and Regulations of the Minister of Religious Affairs (PMA)	Islamic Family Law Enactments of each respective state
Regulatory pattern	Uniformly applied from Aceh to Papua	Varies among states according to local policies and customs

Comparative Aspect	Indonesia	Malaysia
Terminology used	<i>Tawkil al-wali</i>	<i>Wakalah al-wali</i>
Meaning of the term	Delegation of authority from a lineage guardian to another person	Delegation of authority from a lineage guardian to another person
Regulatory flexibility	Relatively limited due to adherence to national regulations	More flexible, as it accommodates state-specific conditions and policies
Background of differences	Influenced by the history of national law and the presidential system of government	Influenced by the history of state Islamic law and the federal system of government
Principle of Islamic law	Permits the delegation of guardianship authority when the guardian is legally or practically impeded	Permits the delegation of guardianship authority when the guardian is legally or practically impeded

Comparative Aspect	Indonesia	Malaysia
Underlying fiqh maxim	“What a person is permitted to do personally may be delegated to another”	“What a person is permitted to do personally may be delegated to another” ¹¹

Indonesia (Article 12 paragraph (3) of the Regulation of the Minister of Religious Affairs Number 20 of 2019 on Marriage Registration)	Malaysia (Administration of Islamic Law Act (Federal Territories) 1993)
<ul style="list-style-type: none"> a. Biological father b. Grandfather (from the paternal line and upwards through the male lineage) c. Full brother d. Paternal half-brother e. Son of a full brother f. Son of a paternal half-brother g. Son of the son of a full brother and downwards h. Son of the son of a paternal half-brother and downwards 	<ul style="list-style-type: none"> a. Father b. Grandfather (father's father) and upwards c. Full brother (same mother and father) d. Paternal half-brother e. Son of a full brother f. Son of a paternal half-brother g. Son of the son of a full brother and downwards h. Son of the son of a paternal half-brother and downwards

¹¹ Syaikh Abdurrahman Al-Juzairi, *Fikih Empat Madzhab*, 5th ed. (Jakarta: Pustaka Al-Kautsar, 2015).

<p>i. Full paternal uncle (father's full brother)</p> <p>j. Paternal half-uncle (father's half-brother)</p> <p>k. Son of a full paternal uncle</p> <p>l. Son of a paternal half-uncle</p> <p>m. Paternal half-brother of the grandfather</p> <p>n. n. Son of the grandfather's full brother</p> <p>o. o. Son of the grandfather's paternal half-brother¹²</p>	<p>i. Full paternal uncle (father's full brother)</p> <p>j. Paternal half-uncle (father's half-brother)</p> <p>k. Son of a full paternal uncle (cousin)</p> <p>l. Son of a paternal half-uncle (cousin)</p> <p>m. Son of a full cousin and downwards</p> <p>n. Son of a paternal cousin and downwards</p> <p>o. Full paternal uncle of the father (great-uncle)</p> <p>p. Paternal half-uncle of the father (great-uncle)</p> <p>q. Son of a full great-uncle</p> <p>r. Son of a paternal half-great-uncle</p> <p>s. Son of the son of a full great-uncle and downwards</p> <p>t. Son of the son of a paternal half-great-uncle and downward</p> <p>u. Full paternal uncle of the grandfather (great-great-uncle)</p>
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¹² Peraturan Menag No. 20 Tahun 2019, accessed 23 December 2025, <https://peraturan.bpk.go.id/Details/130632/peraturan-menag-no-20-tahun-2019>.

	v. Paternal half-uncle of the grandfather (great-great-uncle)
	w. Son of a full great-great-uncle
	x. Son of a paternal half-great-great-uncle
	y. Son of the son of a full great-great-uncle
	z. Son of the son of a paternal half-great-great-uncle ¹³

This reflects Malaysia's particularly detailed attention to kinship structures in determining the rights of a lineage guardian (*wali nasab*). In Indonesia, *tawkil al-wali* is regulated under Article 28 of the Compilation of Islamic Law, which states: "The marriage contract shall be concluded personally by the marriage guardian concerned. The marriage guardian may delegate his authority to another person." Accordingly, a marriage guardian may be represented by another person when the lineage guardian is unable to be present at the marriage ceremony.¹⁴

In Malaysia, provisions on *tawkil al-wali* are found in the Islamic Family Law (Federal Territories) Act 1984 (Act 303) as well as in the Islamic Family Law enactments of the respective states, including: (1) Islamic Family Law Ordinance No. 43 of 2001; (2) Islamic Family Law (State of Penang) Enactment 2004; and (3) Islamic Family Law (State of Selangor) Enactment 2003. These regulations stipulate that: (1) every marriage in the Federal Territories must be solemnized in accordance with the Act and concluded in compliance with *Hukum Syarak*, namely: (a) by the guardian in the presence of the prospective

¹³ Akta Pentadbiran Undang-Undang (Wilayah-Wilayah Persekutuan) 1993 (1993).

¹⁴ Instruksi Presiden RI Nomor 1 Tahun 1991, Pub. L. 1 (1991).

bride; (b) by the guardian's representative, with the knowledge and consent of the prospective bride; or (c) by a person acting as an authorized representative of the guardian; and (2) where a woman has no lineage guardian in accordance with *Hukum Syarak*, the marriage contract shall be concluded by the Ruler's guardian (*wali Raja*).¹⁵

However, the enactments of the individual Malaysian states do not provide detailed procedural rules on *tawkil al-wali*. Section 13(a) of Act 303 merely states that the woman's guardian must consent to the marriage in accordance with *Hukum Syarak*. Thus, it can be understood that the regulation of *tawkil al-wali* in Malaysia follows the doctrinal rules of the Islamic school of law adhered to in each jurisdiction.¹⁶

In Indonesia, the procedure for implementing *tawkil al-wali* is regulated under the Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 20 of 2019, particularly Article 12 paragraph (5), which requires that the delegation of guardianship authority be made in writing before the Head of the Office of Religious Affairs (*Kantor Urusan Agama/KUA*) and witnessed by two witnesses. This power of attorney serves as a valid legal basis for the conduct of the marriage contract by the authorized representative.¹⁷ In Malaysia, the *wakalah al-wali* document must be formally prepared and endorsed by the District Islamic Religious Office (*Pegawai Agama Islam Daerah/PAID*), complete with an official seal, and accompanied by a verbal declaration made directly by the guardian granting the authority. The *wakalah* document consists of two parts: the bride's statement of consent and the guardian's letter of authorization, both of which must be pronounced in person

¹⁵ Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984 (1984); Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003 (2003); Enakmen Undang-Undang Keluarga Islam (Negeri Pulau Pinang).

¹⁶ Akta Pentadbiran Undang-Undang (Wilayah-Wilayah Persekutuan) 1993.

¹⁷ Peraturan Menag No. 20 Tahun 2019.

before the Registrar or Assistant Registrar of Islamic Marriages and witnessed by two Muslim witnesses.

In the practice of Islamic family law in Malaysia, the position of the guardian constitutes a fundamental element and a pillar of the validity of marriage. In the absence of a valid guardian or where the delegation of guardianship authority is not carried out in accordance with the prescribed procedures, the marriage contract may be deemed invalid (*fasid*) and subject to annulment (*difaraqkan*) by the Syariah Court. Therefore, the mechanism for delegating guardianship authority, or *tawkil al-wali*, is regulated stringently to ensure the legal validity of the marriage contract.

One of the important provisions in the implementation of *tawkil al-wali* concerns the domicile of the guardian and the administrative jurisdiction of the mosque where the marriage contract is to be solemnized. When the marriage guardian resides in a mosque jurisdiction different from that of the bride's place of residence, and intends to delegate his authority to the Chief Registrar or Assistant Registrar from the bride's mosque jurisdiction, the witnesses to the delegation must originate from the mosque jurisdiction where the guardian resides. In this context, such witnesses may include Assistant Registrars or officers of the Religious Affairs Office who possess legal authority within that mosque's jurisdiction. This requirement is intended to ensure the authenticity and legal validity of the act of *tawkil al-wali*, thereby preventing identity manipulation or abuse of authority by unauthorized parties.

Furthermore, where the guardian resides in a different state (*negeri*), the delegation of authority must involve the Registrar, Assistant Registrar, or Religious Affairs Officer from the mosque jurisdiction in the state where the guardian resides. In certain circumstances, the delegation may also be witnessed by other persons who possess lawful authority within that jurisdiction, in accordance with the provisions of the Islamic family law regulations of the respective state. Accordingly, the presence of witnesses from

the guardian's place of residence constitutes an essential requirement to ensure the authenticity of the administrative process and the legal validity of the marriage contract to be solemnized in the bride's jurisdiction.

In addition, to ensure that all administrative processes and document verification can be properly conducted, an application for the delegation of authority (*tawkil al-wali*) must be submitted to the Registrar no later than seven days prior to the scheduled date of the marriage contract. This time limit provides religious officials with the opportunity to examine the validity of the guardian, verify the completeness of supporting documents, and prevent potential disputes after the marriage has been concluded.

Through this orderly and legally grounded administrative system, Islamic family law in Malaysia demonstrates a strong emphasis on prudence (*ihtiyat*) in the conduct of marriage, ensuring that Sharia values and legal order operate in harmony to maintain public order and the legal validity of marriages within society.¹⁸

The Malaysian system emphasizes the active involvement of religious officials at every stage, including the requirement for witnesses from the guardian's place of domicile when the location differs from that of the marriage ceremony. Even when the guardian resides abroad, the *wakalah* letter must be authenticated by the local religious authority and officially transmitted to Malaysia, whether by email, postal service, or facsimile. This procedure underscores the importance of formality and strict administrative supervision to guarantee the validity of the marriage contract.

In Indonesia, the grounds permitting *tawkil al-wali* are set out in detail. Article 13 specifies the circumstances under which a *wali hakim* may act as guardian, namely:

¹⁸ E-Munakahat, 'Aplikasi Nikah Cerai Ruju' Pulau Pinang Capaian Awam Atas Talian', E-Munakahat, 2025.

- a. the absence of a lineage guardian;
- b. the guardian's refusal to act (*adhal*);
- c. the guardian's unknown whereabouts;
- d. the guardian's inability to be presented or contacted due to imprisonment;
- e. the absence of any Muslim lineage guardian;
- f. the guardian being in a state of *ihram*; and
- g. the guardian who is to solemnize the marriage being the groom himself.¹⁹

In Malaysia, the regulation of *tawkil al-wali* places greater emphasis on the principle that when a guardian is *adhal* (unjustifiably refusing to act) or is in a state of *ihram*, the guardianship may not be transferred to a more distant guardian (*wali ab'ad*), but must instead be assumed directly by the judge or the Sultan. In such circumstances, *wakalah al-wali* is also deemed invalid if the authorization is improperly executed. Several conditions necessitate the appointment of a representative guardian, as outlined below:

a. Absence of a Lineage Guardian

Where no lineage guardian (*wali nasab*) exists, the right of guardianship devolves upon the judge (*hakim*), who is appointed and authorized by the state to safeguard public interests, particularly those of the Muslim community.

b. Refusal of the Guardian to Solemnize the Marriage

If the guardian who is legally entitled to solemnize the marriage refuses to do so, the Sultan assumes the guardianship authority. This is because a guardian is obligated to marry off a woman who is compatible (*kafā'ah/sekuju'*).

¹⁹ Peraturan Menag No. 20 Tahun 2019.

When the guardian fails to discharge this duty, the responsibility falls upon the judge.

c. The Closest Guardian Lacking the Required Qualifications and the Absence of a More Distant Guardian

Under Islamic law, a person who may act as a marriage guardian must be just, legally competent (*baligh*), of sound mind, free from mental incapacity, capable of managing his property without being impeded by prodigality (*safah*), and not in a state of *ihram* for Hajj or 'Umrah. Where the right of guardianship lies with the closest guardian (*wali aqrab*) and does not pass to the next in line, the judge shall solemnize the marriage as a substitute if that guardian is in a state of *ihram*.

According to Imam al-Muti'ie, if a woman has more than one potential guardian, the right of guardianship devolves upon the closest guardian, analogous to the rules of inheritance. If a more distant guardian solemnizes the marriage, the marriage is deemed invalid. However, a judge may not solemnize the marriage without the consent of the closest guardian if the latter is located within a distance of less than two *marhalah*, as the guardian should be encouraged to attend in person or to act through delegation due to the relatively short distance involved.²⁰

Indonesia adopts highly detailed administrative procedures that are explicitly regulated in statutory instruments, whereas Malaysia follows general Sharia principles with procedures adjusted according to the laws of each respective state. Nevertheless, the fundamental principle of *tawkil al-wali* remains the same in both countries, namely to ensure that a marriage is conducted in accordance with Islamic law and possesses legal validity.

Several factors account for the differences in the regulation of *tawkil al-wali* between Indonesia and Malaysia:

²⁰ Pejabat Mufti Wilayah Persekutuan, 'Irsyad Al Fatwa Ke 408: Hukum Nikah Menggunakan Wali Hakim Walaupun Ada Wali Nasab'.

1. In Indonesia, the regulation of *tawkil al-wali* is contained in Ministerial Regulations of Religious Affairs, which provide detailed and explicit procedural rules. In contrast, in Malaysia, the relevant provisions are primarily set out in statutory legislation, resulting in less comprehensive regulation of *tawkil al-wali* procedures.
2. Differences in state structure and governance systems also contribute to divergent regulatory approaches. Indonesia is a unitary republic, while Malaysia is a federal state composed of multiple constituent states. This condition allows the regulation of *tawkil al-wali* in Malaysia to vary among states, depending on the authority of each state. Conversely, in Indonesia, the regulation of *tawkil al-wali* is applied nationally through the Compilation of Islamic Law (KHI), Regulations of the Minister of Religious Affairs (PMA), and Law No. 1 of 1974 on Marriage, resulting in a more uniform implementation.
3. Divergent legal histories further explain the differences between the two countries. Indonesia's legal system was shaped under Dutch colonial rule, whereas Malaysia's legal system developed under British colonial influence, leading to distinct legal traditions and legislative frameworks.

In line with the view of Prof. Romli Atmasasmita, as cited by Beni Ahmad Saebani, comparative law is the study of two or more legal systems through a methodical and critical-analytical approach, employing comparative techniques to identify advantageous similarities and differences from both theoretical and practical perspectives.²¹ By comparing legal regulations with those of other countries, it becomes possible to identify elements that may be adopted or adapted as considerations in future law-making processes. In this way, a country's legal system can continue to develop and remain dynamic in accordance with the evolving needs of its society.

C. Legal Consequences of *tawkil al-Wali* in Indonesia and Malaysia

²¹ Beni Ahmad Saebani and dkk, *Perbandingan Hukum Perdata* (Bandung: CV Pustaka Setia, 2016).

1. Similarities in the Legal Consequences of *Tawkil al-Wali* in Indonesia and Malaysia

Both Indonesia and Malaysia have legal provisions governing *tawkil al-wali* (delegation of guardianship authority) in marriage. These regulations play a crucial role in ensuring the legal validity of a marriage, particularly when the marriage guardian (*wali nikah*) is unable to be physically present at the marriage contract (*akad nikah*).

In practice, situations frequently arise in which the guardian cannot attend the marriage ceremony due to factors such as geographical distance, health conditions, or other urgent circumstances. To address such situations, Islamic law provides a mechanism in the form of *tawkil al-wali*, namely the delegation of authority by the guardian to another qualified person to represent him in the marriage contract. Through this mechanism, the marriage contract may still be validly concluded without undermining its legal legitimacy, provided that the *tawkil al-wali* is carried out in accordance with the applicable legal and procedural requirements.

In Malaysia, provisions concerning the validity of marriage are stipulated in the Islamic Family Law (Federal Territories) Act 1984 (Act 303). Article 11 provides that: "A marriage shall not be valid unless all the conditions required by *Hukum Syarak* for its validity are fulfilled."

This provision emphasizes that every marriage must satisfy all requirements prescribed by Islamic law, including the presence of a lawful guardian or a validly authorized representative of the guardian. Where these requirements are not fulfilled, the validity of the marriage may be called into question, potentially giving rise to administrative and legal issues, such as the refusal of marriage registration or disputes regarding the legal status of the marriage.²²

²² Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984.

In practice, a marriage rendered invalid due to *tawkil al-wali* being carried out contrary to legal procedures may give rise to serious consequences, including the possibility of annulment (*fasakh*). Both the Indonesian and Malaysian legal systems provide avenues for interested parties to seek annulment of a marriage where legal defects are found in the marriage contract process, including defects related to the improper delegation of guardianship authority that fails to comply with either Sharia or administrative requirements.

Irregularities in the delegation of guardianship authority—such as the absence of required witnesses, the lack of a formal written authorization, or the absence of approval from a competent authority—may result in the marriage contract being legally defective. If such defects are proven, the marriage may be declared invalid and, consequently, produce no legal effects. From the perspective of state law, the parties concerned may be deemed never to have been legally married, even though a marriage ceremony was outwardly performed.

In Indonesia, these provisions are reflected in Article 22 of Law No. 1 of 1974 on Marriage, which states: “A marriage may be annulled if the parties do not fulfill the requirements for entering into a marriage as stipulated in this Law.” Furthermore, Article 26 of Law No. 1 of 1974 affirms that: “If a marriage is not solemnized by a legally entitled marriage guardian, the marriage may be annulled.”

These provisions clearly demonstrate the central importance of the marriage guardian in the marriage contract, as the guardian constitutes one of the essential elements determining the validity of a marriage under both Islamic law and state law. In the absence of a lawful guardian or a properly authorized representative, the marriage contract loses its legal force and cannot be recognized by either the state or religious authorities.

Accordingly, *tawkil al-wali* is not merely an administrative formality but a substantive legal mechanism designed to safeguard the sanctity and validity of

marriage. Errors or non-compliance in its implementation may have far-reaching consequences, not only for the legal status of the spouses but also for lineage (*nasab*), inheritance rights, and other civil rights. Therefore, a proper understanding and strict adherence to procedural requirements are essential to ensure that a marriage is recognized as valid under both Islamic law and national law.²³

This position is further reinforced by Article 71 letter (e) of the Compilation of Islamic Law (KHI), which specifies that one of the grounds for the annulment of a marriage is the invalidity of the marriage guardian who solemnized the marriage contract.²⁴

Provisions regarding the mechanism for annulment of marriage in Malaysia are regulated in detail under Section 55 subsections (1) to (5) of the Islamic Family Law Enactment (State of Selangor) 2003. These provisions stipulate that an application for annulment begins with the submission of a complaint or objection to the Syariah Court. Upon receiving such a complaint, the Court summons the parties concerned, proceeds with the examination of evidence and witness testimonies, and ultimately renders a decision as to whether the marriage is valid or should be annulled.

This procedure is essentially similar to the process for filing a divorce claim, as it involves administrative procedures, court hearings, and evidentiary examination before a judge. However, in the context of marriage annulment, the primary focus lies in examining the validity of the marriage contract (*akad nikah*) and its essential elements (*rukn*), particularly the legality of the marriage guardian (*wali nikah*) or the delegation of authority (*taukil*) exercised.²⁵

An invalid *taukil wali* also gives rise to administrative problems, particularly with regard to marriage registration. In Indonesia, a marriage that is not registered due to failure to meet administrative requirements will not be

²³ Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan, Pub. L. 1 (1974).

²⁴ Intruksi Presiden RI Nomor 1 Tahun 1991.

²⁵ Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003.

issued a marriage certificate (akta nikah), thereby creating legal difficulties in other matters such as child registration, inheritance, or the division of marital property. Article 2 paragraph (2) of Law Number 1 of 1974 on Marriage stipulates that for a marriage to be formally recognized as valid and to possess legal force, it must be registered in accordance with applicable regulations.²⁶ This requirement is further reinforced by Article 5 paragraphs (1) and (2) of the Compilation of Islamic Law (Kompilasi Hukum Islam), which state that every marriage must be registered in order to preserve order in the marital affairs of the Muslim community.

A marriage conducted without complying with legal procedures will not be recorded at the Office of Religious Affairs (Kantor Urusan Agama). In Malaysia, a similar issue arises when a marriage is not recognized by the State Religious Department due to non-compliance with the procedures for taukil wali. This situation may prevent the couple from lawfully registering their marriage, resulting in an unclear legal status of the household in the eyes of the state. Unregistered marriages constitute an offense in most states in Malaysia. Failure to register a marriage may result in a fine of up to 1,000 Malaysian ringgit or imprisonment for a maximum of six months.²⁷

A wali's delegation of authority (wakalah wali) that does not comply with established procedures cannot be registered and may lead to serious consequences, such as a wife being unable to assert legal claims due to the unregistered status of her marriage. Therefore, both countries place significant emphasis on the importance of marriage registration as a form of legal protection and assurance of the rights of the parties involved in a marriage. Lawful marriage registration can only be carried out if all elements and conditions of marriage, including the proper execution of taukil wali in accordance with applicable procedures, are fulfilled. Accordingly, the correct

²⁶ Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan.

²⁷ Kementerian Agama RI and Direktorat Jendral Bimbingan Masyarakat Islam, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Bina KUA dan Keluarga Sakinah, 2018).

²⁸ Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984.

implementation of *taukil wali* not only ensures the validity of the marriage contract but also provides legal certainty for spouses and their descendants in the future.

2. Differences in the Legal Consequences of *Taukil Wali* between Indonesia and Malaysia

Although there are similarities in the legal consequences arising from *taukil wali*, significant differences exist between Indonesia and Malaysia regarding the legal effects of improperly executed *taukil wali* or *wakalah wali*. In Indonesia, violations of the procedural requirements for *taukil wali* primarily result in administrative legal consequences, such as the invalidity of the marriage contract, annulment of the marriage, or the failure to register the marriage. Indonesia does not impose criminal sanctions for violations of *taukil wali* procedures; instead, it emphasizes procedural compliance to ensure the validity and legality of marriage.

In contrast, Malaysia imposes criminal legal consequences for violations of *wakalah wali* procedures. If a person who solemnizes a marriage lacks proper authority, or if the delegation of guardianship is carried out without approval from the competent authority, such actions constitute a criminal offense. This is regulated under Section 39 of the Islamic Family Law (Federal Territories) Act 1984, which stipulates that such violations may be subject to a fine of up to one thousand Malaysian ringgit or imprisonment for a maximum of six months.²⁹ Furthermore, in the State of Terengganu, Article 26 of the Islamic Family Law Enactment (Terengganu) provides for more severe sanctions, namely a fine of up to five thousand Malaysian ringgit, imprisonment for a term not exceeding three years, or both.³⁰

Thus, when comparing the legal consequences of improperly executed *taukil wali* within the framework of legal consequences theory, these differences clearly reflect the principle that any individual who fails to comply with

²⁹ Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984.

³⁰ Enakmen Undang-Undang Keluarga Islam Trengganu Tahun 2017.

applicable legal norms will be subject to legal sanctions for such non-compliance. This is consistent with the view of Marwan Mas, who argues that legal consequences are sanctions imposed by law upon legal subjects as a result of legal events or actions.³¹ In this context, individuals who fail to adhere to statutory procedures governing *taukil wali* will inevitably bear the legal consequences of their actions.

In accordance with the theory of comparative law, comparing rules within one legal system to those of another reveals both similarities and differences. According to Prof. Romli Atmasasmita, as cited by Beni Ahmad Saebani, comparative law is the study of two or more legal systems conducted methodically and through critical-analytical approaches, using communicative techniques to identify similarities and differences that are beneficial from both theoretical and practical perspectives.³²

The similarities in legal consequences arise because both Indonesia and Malaysia regulate *taukil wali*, thereby imposing legal consequences for violations of these rules. Meanwhile, the differences in legal consequences stem from the distinct social, cultural, and legal backgrounds of the two countries, which necessitate legal provisions tailored to their respective societal contexts. In Indonesia, the prevailing legal framework prioritizes administrative order and legal certainty in marriage registration. Consequently, violations of *taukil wali* provisions generally result in administrative legal consequences, such as the inability to register a marriage or ambiguity regarding the legal status of the marriage.

In legal practice, both Indonesia and Malaysia impose legal consequences for the improper execution of *taukil wali*. Both legal systems regard *taukil wali* as a crucial matter due to its direct relationship with the validity of the marriage contract and the legal recognition of marriage.

³¹ Yapiter Marpi, *Ilmu Hukum Suatu Pengantar* (Tasikmalaya: PT Zona Media Mandiri, 2020).

³² Saebani and dkk, *Perbandingan Hukum Perdata*.

In general, the legal consequences of an invalid *taukil wali* in both countries include several aspects. First, the validity of the marriage becomes questionable because one of the essential pillars of marriage—namely, the presence of a lawful guardian—is not properly fulfilled. Second, the marriage may be annulled through legal proceedings if it is proven that the delegation of guardianship was not carried out in accordance with statutory requirements and procedures. Third, administrative issues may arise, such as refusal to register the marriage by authorized institutions or the inability of the couple to obtain legal documents such as a marriage certificate. Fourth, the marriage may remain unregistered, thereby lacking legal force under both religious and state law.

However, despite these similarities, a significant difference exists in the imposition of criminal sanctions between Indonesia and Malaysia. In Indonesia, violations of *taukil wali* provisions are not subject to criminal penalties. The applicable legal framework focuses solely on civil or administrative remedies, such as annulment or confirmation of the validity of marriage. In other words, procedural errors in the execution of *taukil wali* affect only the legal validity of the marriage, without entailing criminal punishment for the parties involved.

Meanwhile, in Malaysia, violations of *taukil wali* regulations may give rise to criminal sanctions. This provision indicates that Malaysia's Islamic family law system adopts a stricter approach in enforcing marriage regulations. Criminal sanctions function as both preventive and repressive measures, aiming to deter the misuse of authority or unlawful practices in the delegation of guardianship. Through the imposition of criminal penalties, it is expected that all parties involved in the solemnization of marriage will exercise greater caution and comply strictly with the applicable legal requirements.

Based on the findings of this study and comparative analysis, it can be concluded that both Indonesia and Malaysia share a common commitment to safeguarding the sanctity and legal validity of marriage, particularly in relation

to the implementation of *taukil wali*. Nevertheless, stronger measures are still required in both countries to reinforce and effectively enforce legal regulations governing *taukil wali*, especially to prevent deviations in practice.

For Indonesia, such reinforcement may take the form of enhanced supervision and stricter enforcement of administrative law, for instance by clarifying sanction mechanisms for officials or parties who violate established procedures. In contrast, in Malaysia, the existing criminal sanctions should be complemented by continuous legal guidance and public legal education, so that society better understands the importance of adhering to proper *taukil wali* procedures.

Accordingly, it is hoped that both Indonesia and Malaysia will continue to uphold the integrity of Islamic family law and ensure that every marriage contract is conducted in a manner that is genuinely valid and fully compliant with both Islamic legal principles and the respective positive laws of each country.

D. Legal Politics of Taulil Wali in Indonesia and Malaysia

The imposition of criminal sanctions for marriage-related violations in Malaysia cannot be separated from the characteristics of its federal legal system and its coercive Islamic legal policy. In Malaysia, Islamic family law falls under the jurisdiction of the individual states, and the Syariah Courts are vested with quasi-criminal authority to impose minor criminal sanctions, such as fines, short-term imprisonment, or both.

This approach is driven by several factors. First, the state perceives marriage as a public institution rather than merely a private matter; consequently, procedural violations—such as marriage without a lawful guardian, cross-border unregistered marriages, or invalid *wakalah wali*—are regarded as violations of legal order and public morality. Second, criminal sanctions function as a deterrent against illegal marriage practices that may cause harm to women and children. Third, the federal system allows individual states to develop more administratively and criminally repressive forms of

Islamic law in order to maintain state authority over religious practices. Accordingly, the criminalization of marriage law in Malaysia is not merely a form of moral punishment, but rather part of a broader strategy to strengthen state control over Islamic family law practices.

In contrast, Indonesia tends to place violations of marriage law within the domain of administrative regulation rather than criminal law. The state emphasizes administrative validity and marriage registration, with sanctions primarily taking the form of marriage annulment, refusal of registration, or difficulties in accessing civil rights.

This approach reflects Indonesia's accommodative and non-repressive legal character; however, it also raises concerns regarding legal effectiveness. In the absence of criminal sanctions, practices such as unregistered marriages, manipulation of guardianship, and fictitious *taukil wali* arrangements continue to occur, as the legal costs of non-compliance remain relatively low. As a result, women are often placed in a vulnerable position due to the lack of coercive legal mechanisms to hold husbands accountable. Thus, Indonesia's approach can be considered overly administrative, particularly when addressing violations that have direct implications for the protection of women and children.

From a normative perspective, the Shāfi‘ī school of Islamic jurisprudence permits *taukil wali* and recognizes the validity of guardianship delegation in marriage contracts, provided that the legal requirements for both the guardian and the representative are fulfilled. Both Indonesia and Malaysia adopt the Shāfi‘ī school as their primary jurisprudential foundation. However, the divergence emerges at the level of legal positivization. Indonesia tends to adopt the Shāfi‘ī doctrine in a textual and normative manner, focusing primarily on the formal validity of the marriage contract. Malaysia, by contrast, institutionalizes Shāfi‘ī jurisprudence by embedding it within a state legal framework that includes criminal sanctions. Thus, the difference lies not in the

jurisprudential school itself, but in how the state interprets and operationalizes Shāfi‘ī principles within a modern legal system.

These differing legal approaches carry significant implications for the protection of women. In Malaysia, the existence of criminal sanctions provides preventive protection by suppressing illegal marriage practices at an early stage. The state assumes an active role in ensuring legal certainty for women through punitive mechanisms.

Conversely, in Indonesia, the protection of women is largely curative and reactive. Legal protection is generally afforded only after disputes arise and are brought before the Religious Courts—a process that often entails considerable time, financial costs, and psychological burden. In this context, administrative law alone has not been fully effective in shielding women from structural vulnerabilities arising from invalid or unregistered marriages.

Therefore, this comparative analysis demonstrates that a proportionate criminal-law approach, as implemented in Malaysia, may serve as an important reference for the reform of Islamic family law in Indonesia, without undermining principles of justice, humanity, and the normative values of the Shāfi‘ī school.

E. Epilogue

Both Indonesia and Malaysia regulate *taukil wali* (delegation of a marriage guardian) within their respective legal frameworks. The two countries share several similarities, including the definition of *taukil wali*, the order of marriage guardians (*wali nikah*), the requirements for an authorized representative (*wakil wali*), and the circumstances under which *taukil wali* is permitted. In practice, *taukil wali* in both jurisdictions must be conducted formally before authorized religious officials and witnessed by two witnesses.

The differences lie primarily in terminology and procedural mechanisms. Indonesia adopts a highly detailed administrative procedure regulated through statutory instruments, whereas Malaysia applies general principles of Islamic

law with procedures adapted to the legislation of each individual state. Nevertheless, the fundamental principle of *taukil wali* in both countries remains the same, namely to ensure that marriage is conducted in accordance with Islamic law and possesses legal validity.

With regard to sanctions, both Indonesia and Malaysia recognize legal consequences arising from improper implementation of *taukil wali*. These consequences include doubts regarding the validity of the marriage, the possibility of annulment, administrative complications, and the inability to register the marriage officially. The key distinction concerns criminal sanctions: Indonesia does not impose criminal penalties for violations of *taukil wali* procedures, whereas Malaysia provides for criminal sanctions.

Based on the findings of this study, both Indonesia and Malaysia should further strengthen and enforce legal regulations concerning marriage guardianship, particularly with respect to *taukil wali* procedures that do not comply with applicable legal requirements.

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