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# Academia Open



*By Universitas Muhammadiyah Sidoarjo*

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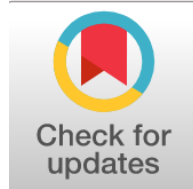
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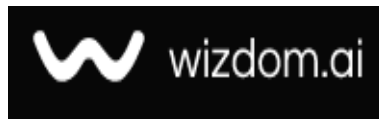
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# Kyai Hegemony as Proxy Marriage Guardians within Madurese ‘Urf Tradition

Warda Tasya Putri, wardatasya4199@gmail.com, (1)

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Malang, Indonesia

Suwandi Suwandi, dr.suwandi61@gmail.com, (0)

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Malang, Indonesia

Burhanuddin Susamto, burhanuddin@syariah.uin-malang.ac.id, (0)

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Malang, Indonesia

<sup>(1)</sup> Corresponding author

## Abstract

**General Background:** The Madurese community places the *kyai* at the center of its religious and social structure, viewing them as authoritative figures whose influence extends into key life rituals such as marriage. **Specific Background:** In many cases, families in Madura appoint *kyai* as proxy guardians (*wakil wali nikah*), despite legal guardianship traditionally belonging to male relatives by lineage. This practice is deeply rooted in cultural and religious reverence. **Knowledge Gap:** However, limited scholarly attention has been paid to how this custom aligns with Islamic jurisprudence and local tradition (*‘urf*) within the framework of social hegemony. **Aims:** This study aims to analyze the *kyai*’s hegemonic role as proxy guardians of marriage from the perspective of *‘urf*, examining how this practice gains legitimacy both socially and theologically. **Results:** The findings reveal that the appointment of *kyai* as marriage guardians is a form of voluntary hegemony grounded in communal trust and cultural continuity, deemed valid under Islamic law as long as it does not contradict Sharia principles and receives the consent of the biological guardian. **Novelty:** This research uniquely integrates Gramsci’s theory of hegemony with Islamic legal concepts to interpret a localized religious practice. **Implications:** It highlights the dynamic adaptability of Islamic law within indigenous traditions, illustrating the harmonious coexistence between *‘urf* and Sharia in sustaining socio-religious cohesion in Madura.

## Highlights:

- The *kyai* holds religious and social authority legitimized by community trust.
- The practice of appointing *kyai* as marriage guardians aligns with valid *‘urf* in Islamic law.
- Reflects harmonious integration of Islamic principles with Madurese cultural traditions.

**Keywords:** Kyai, Marriage Guardian, ‘Urf, Hegemony

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## Introduction

For the Madurese community, the primary elite group consists of the kyai, namely individuals who, due to their expertise in religious knowledge and their contributions in guiding the people, become respected figures within society. The Madurese expression *buppa'-babu'-guruh-rato* illustrates the central role of the kyai. This expression reflects the hierarchy of respect in Madurese culture. Parents (*buppa'-babu'*) are considered the foremost figures within the family who must be honored as those who give life and nurture until adulthood. Meanwhile, within the broader community, the figures who must be respected are the *guruh* (with a primary emphasis on the kyai), followed by the *rato* (the government). The influence of the kyai extends beyond that of other leadership institutions. In various aspects of communal life, the kyai serves as the central point of consultation, whether in matters of religion, healing, livelihood, marriage, social conflict, career, politics, or other life challenges [1].

In this context, the presence of a kyai serves as a religious symbol that continues to exert a strong influence on the socio-cultural continuity of the local community, particularly in practices such as marriage. Marriage is regarded as one of the most significant institutions in the social and religious life of the Madurese people. In Islam, the *wali nikah* holds a central role in the marriage ceremony, as the existence of a wali constitutes one of the essential pillars of marriage. Within the framework of marriage, a wali is defined as an individual who acts on behalf of the bride in the marriage contract (*akad nikah*). The *akad nikah* itself is conducted by two parties: the male side, represented directly by the groom, and the female side, represented by her wali [2]. The pillars of marriage are more explicitly stipulated in Article 14 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), which states that in order to conduct a marriage, there must be a prospective groom, a prospective bride, a wali nikah, and two witnesses for the *ijab* and *qabul*. The wali nikah in a marriage is a fundamental requirement that must be fulfilled for the prospective bride, acting on her behalf to validate the marriage (Article 19, KHI). If this requirement is not met, the marriage is deemed invalid [3].

Under Islamic law, the legitimate guardian (*wali nikah*) is a male relative from the closest paternal line, such as the biological father or another male relative from the father's lineage. However, in practice, there are circumstances in which this authority is transferred or delegated to another party, including the kyai as a religious figure and local elite. In Madura, the kyai holds a highly respected and influential position in community life. Their role extends beyond religious matters to encompass various social and cultural aspects, including marital affairs [1]. In many cases, the kyai is frequently requested or entrusted to act as the wali nikah by the bride's family, even though, according to legal lineage, that right belongs to the male relatives [4].

From an Islamic perspective, the concept of appointing a representative wali nikah has a strong legal foundation. However, the involvement of the kyai in this role is often grounded in local tradition (*'urf*) that has developed in Madura. In Islamic jurisprudence, *'urf* refers to societal customs that do not contradict the principles of sharia and may serve as a complementary source of law in addressing social matters [5]. Therefore, this practice is worthy of further examination. The present study aims to analyze the hegemony of the kyai in the context of serving as a representative wali nikah. The research will focus on how *'urf* functions as the foundation of legitimacy for this practice, as well as how the community understands and accepts the role of the kyai in this regard.

## Method

This study is classified as library research, which involves examining and tracing various written sources related to the research object. The collected data are derived from literature, including books, encyclopedias, newspapers, and other online media [6]. Meanwhile, the approach employed in this research is normative theological (Islamic law). The data collection technique employed is document study, namely a method of gathering data through written sources [7]. In this journal, the document study draws upon references from fiqh texts, books, legislation, journals, previous research, and other relevant materials.

The data analysis technique applied is descriptive research, which aims to provide a systematic, factual, and accurate description or illustration of the facts, characteristics, and relationships among the phenomena under investigation [8]. Thus, in this study, descriptive-analytical methods are employed to explain the practice of marriage contracts

represented by the kyai in Madura. The research framework follows a deductive reasoning pattern, beginning with general statements concerning the practice of marriage contracts delegated to the kyai in Madura, which are then examined from the perspective of 'urf, leading to specific conclusions.

## Results and Discussion

### A. Hegemony

In the Kamus Besar Bahasa Indonesia (KBBI), hegemony is defined as the influence of leadership, domination, or power exerted by one state over another (or over its constituent parts) [9]. The term "hegemony" itself originates from the ancient Greek word *eugemonia*, as noted by the Encyclopaedia Britannica in reference to its use in Greek practice [10]. The word *eugemonia* was applied to denote the dominant position claimed by individual city-states (*polis*), such as Athens and Sparta, over other states of equal standing. In its modern sense, hegemony refers to the leadership of a particular state that extends beyond a single city-state, exerting influence over other states either through loose associations or through tightly integrated structures within the "leading" state. In the context of international politics, for instance, during the Cold War period, the struggle for influence between superpowers such as the United States and the former Soviet Union was commonly described as a contest to achieve hegemonic power in the world [10].

Antonio Gramsci was a prominent intellectual among leftist thinkers, often regarded as the most significant theorist after Karl Marx. His ideas are articulated in numerous articles published in the mass media as well as in his major works, such as *Prison Notebooks*, *The Modern Prince and Other Political Writings*, *Selections from the Prison Notebooks*, *Letters from Prison*, *Selections from Political Writings*, and *Selections from Cultural Writings*, among others. Across his writings, hegemony is considered the central and original idea developed by Gramsci. The theory of hegemony is viewed as having brought significant changes and sparked intellectual debates on theories of social change, particularly among those advocating for radical and revolutionary transformation. Gramsci's conceptual contributions—such as hegemony, civil society, political society, counter-hegemony, war of position, war of movement, the notion of the organic intellectual, and their roles in social transformation—are regarded as brilliant insights that made an important contribution to the development of social theory and fostered critical political consciousness. His concept of hegemony also encouraged the redefinition of class character, social forces, and the true meaning of power and domination [11].

For Lenin, hegemony was understood as a strategy for revolution—a strategy that had to be carried out by the working class and its members in order to gain the support of the majority. In relation to this, Gramsci introduced a new dimension to the issue by broadening its meaning so that hegemony also encompassed the role of capitalists and their members, both in seizing state power and in maintaining the power already attained. Gramsci distinguished between domination (through coercion) and moral as well as intellectual leadership. Thus, Gramsci transformed the notion of hegemony from being merely a strategy, as defined by Lenin, into a concept akin to the Marxist notions of power, relations of production, class, and the state, with the ultimate aim of transforming them. He developed the idea of leadership and its implementation as prerequisites for acquiring state power within his concept of hegemony. Hegemony, in this sense, represents the relationship between classes and other social forces. A hegemonic class, or hegemonic group of classes, is one that secures the active consent of other social forces and classes by creating and sustaining a system of alliances through political and ideological struggle. The concept of ideology was further developed by incorporating several of Lenin's related ideas. This is why a brief definition of hegemony is never sufficient [12].

Hegemony, in Gramsci's conception, is a form of consensus in which subordination is achieved through the acceptance of the dominant class's ideology by the subordinated classes. Hegemony is not a relationship of domination exercised through coercive power, but rather a relationship of consent established through political and ideological leadership. It represents the victory of the ruling class attained through mechanisms of consensus among various socio-political forces [11]. Gramsci elaborates on two strategies for gaining power: the war of maneuver and the war of position. According to him, the war of maneuver is no longer necessary in modern states, since civil society occupies a crucial role within them. Instead, the war of position becomes essential in modern contexts. The

struggle for victory in the war of position is directed toward displacing the ideology, myths, politics, and culture of a particular group to be dominated, rather than through physical assault or destruction. In other words, the war of position is a process of cultural transformation achieved by dismantling an existing hegemony (common sense) that has become entrenched as culture, and replacing it with a new hegemony (a new cultural framework) [13].

According to Antonio Gramsci, one of the ways in which power is established is through the influence of religion. Religion thus becomes a form of power that can be utilized to ensure the exercise of authority. Many people believe that the involvement of religion enables the formation of power structures. Such power may be exercised by religious leaders in order to govern according to their intentions. In the context of Islamic boarding schools (*pesantren*), the *kyai* holds the greatest authority in managing the institution and determining its success. For the students (*santri*), the *kyai* is regarded as a parental figure once they enter the *pesantren*. Consequently, the words and instructions of the *kyai* must be obeyed [14].

## B. 'Urf

### 1. Definition of 'Urf

Etymologically, the term 'urf means "virtue," whereas terminologically, scholars of *usul al-fiqh* define 'urf as an act or expression that has become customary within a community. For instance, in certain regions, the word "meat" is commonly understood to mean beef. If, at some point, a customer goes to a butcher who sells not only beef but also other types of meat, and the customer says, "I would like to buy ten kilograms of meat," then according to the prevailing 'urf, this statement is understood as referring specifically to beef. Such forms of 'urf may serve as a legal basis, provided they meet the necessary conditions of 'urf, as will be further explained [5].

### 2. Types of 'Urf

In terms of its validity, Islamic scholars classify 'urf into two categories, namely [15]:

a. *Al-'Urf al-Shahih* (العرف الصحيح), That is, a custom practiced within society that does not contradict the texts of the Qur'an or Hadith, that promotes public benefit (*maslahah*), and that does not result in harm (*mafsadah*). For example, when a prospective groom proposes by giving something to his prospective bride, such a gift is not considered part of the dowry (*mahr*).

b. *Al-'Urf al-Fasid* (العرف الفاسد) That is, customs that are not in accordance with sharia and even lead to harm. For example, the practice of borrowing and lending that involves usury (*riba*) among traders, or the custom of consuming alcoholic beverages (*khamr*) on the night of someone's death. All of these are practices that contradict sharia, and therefore scholars of *usul al-fiqh* classify them as 'urf fasid (invalid custom).

### 3. Conditions for 'Urf

For 'urf to be accepted as valid evidence (*hujjah*) in legal determination, scholars have established the following conditions [16]:

a. 'Urf must be generally applicable. This means that the custom is practiced collectively within the community at large and is not limited to individual behavior.

b. 'Urf must have already been in practice at the time the legal issue arises. This means that the custom to be used as a legal basis must have existed prior to the occurrence of the case for which the ruling is to be determined.

c. Urf must not contradict the terms explicitly agreed upon in a transaction. This means that if both parties in a transaction have already determined specific conditions to be fulfilled, those agreed conditions take precedence. For example, in the purchase of a desk, if the buyer and seller agree that the buyer will transport the desk independently, even though according to local 'urf purchased goods are normally delivered by the seller, in this case the agreed-upon condition between the buyer and seller applies, and the 'urf does not.

d. Urf must not contradict the textual sources of the Qur'an or Hadith. This means that if a particular 'urf is found to be inconsistent with the Qur'anic injunctions or Prophetic traditions, then such 'urf cannot be applied as a legal basis.

### 4. The Legal Authority of 'Urf

Scholars unanimously agree that *fasid* ‘urf cannot be used as legal evidence in Islamic law. In contrast, *shahih* ‘urf, in principle, can be accepted as a valid basis for legal determination by major schools of jurisprudence, as emphasized by Imam al-Shatibi, a prominent *ushul fiqh* scholar of the Maliki school, and Ibn Qayyim al-Jawziyyah, a leading *ushul fiqh* scholar of the Hanbali school. An example of this can be observed in the practice of utilizing public bathhouses at a fixed rate without specific limitations on the duration of use or the quantity of water consumed. According to general provisions of the *shari’ah*, such conditions should be explicitly defined. However, by invoking ‘urf, this practice has been deemed legitimate by scholars, thereby rendering it valid within the framework of Islamic law.

The reasons they put forward for employing ‘urf as a legal basis (*hujjah*) include the following:

a. The Divine Decree in Verse 199 of Surah al-A’raf:

لَا إِلَهَ إِلَّا اللَّهُ وَأَمَرٌ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

The meaning of the verse is: “Show forgiveness, enjoin what is right (*al-‘urf*), and turn away from those who are ignorant” (Qur’an, 7:199).

The term *العرف* in the verse is understood by scholars of *uṣūl al-fiqh* as something good that has become a customary practice within society. This also provides an indication of the permissibility of employing ‘urf as a legal argument in cases where no explicit textual evidence can be found in the Qur’an or Sunnah.

b. The narration of a hadith from ‘Ā’ishah concerning the case of Hindun bint ‘Utbah, the wife of Abu Sufyān, is as follows:

عَنْ عَائِشَةَ أَنَّ هِنْدَ بِنْتَ عُتْبَةَ قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَجِيحٌ وَلَيْسَ يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي إِلَّا مَا أَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ فَقَالَ خُذِي مَا يَكْفِيكِ وَوَلَدَكَ بِالْمَعْرُوفِ { رواه البخاري }

The meaning is: From ‘Ā’ishah (may Allah be pleased with her), it is narrated that Hindun bint ‘Utbah complained to the Messenger of Allah: “O Messenger of Allah! Indeed, Abu Sufyān is a miserly man; he does not provide sufficient maintenance for me and my child, except for what I take without his knowledge.” The Messenger of Allah (peace and blessings be upon him) then said: “Take what is sufficient for you and your child in accordance with what is customary (*ma’rūf*) in the practice of maintenance.” (Narrated by al-Bukhārī).

This hadith is understood by scholars as evidence that the Prophet Muhammad (peace be upon him) relied on ‘urf when a particular issue was not explicitly addressed in the Qur’anic text. This indicates that customary practices, as long as they are in accordance with the principles of Islamic law, may serve as a legitimate basis for legal judgment in the absence of direct scriptural evidence.

a. The Prophet Muhammad (peace be upon him) permitted the practice of *bai‘ al-salam* (بيع السلم) because it had already become a customary transaction in Medina.

Based on these considerations, the scholars established that ‘urf can be employed as a valid legal argument (*hujjah*) and as a methodological basis in the formulation of Islamic law [5].

## C. Kyai

The *kyai* serves as the principal authority and central figure in the *pesantren* tradition, wherein the *kyai* leads numerous *ustadz* and *santri* in both formal and non-formal educational contexts, such as *madrasah diniyyah*. The growth and development of a *pesantren* are often determined by the ability, authority, and personal qualities of the *kyai* himself. Etymologically, the term *kyai* in the Javanese language is understood in three distinct ways. First, it functions as an honorary title for objects considered sacred, for example, “Kyai Garuda Kencana,” which refers to the golden chariot housed in the Yogyakarta Palace. Second, it serves as an honorary title for elderly individuals in general. Third, it is a title conferred by society upon Islamic scholars who lead *pesantren* and teach classical Islamic texts to their students. The term also designates a person recognized as *alim*, namely one possessing deep knowledge of Islamic sciences. Nevertheless, it is important to note that scholars proficient in Islamic sciences are generally

referred to as ulama. In West Java, such figures are known as ajengan, while in Central and East Java, Islamic scholars leading pesantren are referred to as kyai. In contemporary practice, however, the title kyai is also frequently bestowed upon influential ulama within society, even if they do not own or directly lead a pesantren [17].

In the Madurese language, the term kyai is also referred to as kyaeh or ma'kaeh. Unlike its usage in Javanese, the term kyai in Madurese terminology is a distinctive designation reserved exclusively for religious scholars (ulama). Consequently, the title kyai is consistently associated with an honorific connotation that emphasizes dignity and recognition voluntarily conferred upon scholars and local community leaders as a mark of respect in social life, rather than as an academic title [18].

In a society, there is always a group of individuals who possess influence that often determines the life and transformation of the community, although social change is not entirely dependent on the roles they play. Such an individual or group of individuals is commonly referred to as the elite. In Lasswell's terminology, elites are those who possess and acquire more than what others possess and acquire. Meanwhile, according to Pareto, elites are those who possess and acquire more than others, with a distinction between those who hold power (governing elite) [19] and those outside of power (non-governing elite). On the other hand, the term local, as defined in the Indonesian Dictionary (KBBI), refers to something specific to a certain place; occurring, existing, or applicable only in one area, and not widespread [9].

In the structure of traditional society, there are non-formal leaders such as customary elders, community seniors, and kyai, who serve as points of reference alongside formal leaders such as village heads or regents. As one of the non-formal leaders in traditional society, the kyai is regarded as a spiritual leader or a figure of religious authority. Almost every activity or problem faced by the community is brought to the kyai for consideration, which explains why the kyai is highly respected and acknowledged within traditional communities. From a social perspective, the strength of the kyai lies in two aspects: a profound sense of community solidarity and a consistent reliance on collective consensus. These two elements shape the kyai's position as particularly strong within society, making the kyai a highly influential figure as an informal leader. Furthermore, one of the factors contributing to the prominence of the kyai is theological, as within Muslim communities, kyai are often regarded as descendants of the Prophet. In addition, charisma, which develops through scholarly authority, also plays a significant role in determining the extent of their influence [20].

In examining the kyai as a leader, particularly in the administration of Islamic boarding schools (pesantren), several types of leadership can be identified. First, autocratic leadership, in which the leader independently makes decisions and merely informs subordinates of these decisions for implementation. In this model, subordinates are not involved at all in the decision-making process, as their role is purely that of executors. Second, militaristic leadership, where the leader makes decisions unilaterally and exerts effort to ensure that subordinates comply with the decisions taken. Third, democratic leadership, in which decision-making involves subordinates, thereby enabling them to participate with the leader in achieving common objectives. Fourth, charismatic leadership, which is sometimes autocratic but often democratic. This type of leader usually possesses a strong personal appeal, commands a large number of followers, and demonstrates extraordinary abilities that exceed those of ordinary individuals [21].

Ridlwani adds that there are five models of kyai leadership in Islamic boarding schools (pesantren). First, charismatic leadership, which refers to a central figure believed to possess supernatural power and vast knowledge, with limited community participation and a non-bureaucratic structure. Second, traditional leadership, which requires legitimacy from its supporters and is generally linked to the legacy of a previous charismatic leader, such as the descendants of a prominent kyai or the founder of a pesantren regarded as a "wali." Third, rational leadership, characterized by a collective system, high community participation, leadership that does not focus on a single individual but rather on an institutional and collective basis, and a more bureaucratic and managerial form of governance. Fourth, a hybrid of charismatic and traditional leadership. Fifth, a combination of charismatic, traditional, and rational leadership [21].

## D. Marriage Guardian

In general, a wali is a person who, by virtue of his position, has the authority to act on behalf of another individual. This authority arises because the individual in question possesses certain deficiencies that prevent him or her from acting independently in legal matters, whether related to property or personal affairs. In the context of marriage, a wali is defined as the person who represents the bride in the marriage contract (akad nikah). The marriage contract is conducted between two parties: the male side, represented by the groom himself, and the female side, represented by her wali [2]. The requirement of a wali in marriage is, without doubt, based on strong reasoning. In general, women are considered prone to hastiness in choosing their life partners, which raises concerns that such decisions might lead them toward an unfavorable or bleak future. Furthermore, if a woman were to enter into marriage without the presence of a wali, she could be perceived as lacking modesty and even deemed immoral, as though she were offering herself without propriety. Ultimately, such accusations and disparaging judgments would not only be directed at the woman herself but would also extend to her parents and relatives [22].

The basic assumption underlying the requirement of a wali as one of the pillars of marriage lies in the view that women are considered legally incapable of acting independently in contractual matters. For this reason, scholars unanimously agree on the necessity of a wali when the bride is still a minor. However, differences of opinion emerge among scholars regarding the obligation of a wali for women who have reached maturity, whether as virgins or widows, since there is no definitive textual evidence that can be used as an absolute reference [23]. In Law No. 1 of 1974 on Marriage, there is no stipulation or explanation regarding the obligation of a guardian (wali) as a requirement for marriage; instead, the regulation only provides provisions concerning parental consent for a child who has not yet reached the age of 21, as stipulated in Article 6 paragraphs (2), (3), (4), (5), and (6). However, Article 26 refers to the role of a marriage guardian in the context of annulment, stating that a marriage conducted before an unauthorized marriage registrar, with an invalid guardian, or without the presence of two witnesses, may be subject to annulment upon request by family members in the direct ascending line of the husband or wife, the public prosecutor, or either the husband or the wife [23].

Meanwhile, in the Compilation of Islamic Law (KHI), the provision regarding the marriage guardian (wali) is stipulated in Article 19, which states: “The marriage guardian in a marriage is a pillar (rukun) that must be fulfilled for the prospective bride, who acts to marry her off.” Furthermore, Article 20 stipulates that the one who may serve as a marriage guardian is a man who meets the requirements under Islamic law, namely being a Muslim, of sound mind (‘āqil), and having reached the age of maturity (bāligh). The marriage guardian consists of a wali nasab (guardian by blood relation) and a wali hakim (guardian appointed by the judge). Subsequently, Article 21 provides that:

Wali nasab consists of four groups arranged in hierarchical order, whereby one group takes precedence over the others according to the degree of kinship with the prospective bride

*First*, the group of direct male ascendants, namely the father, paternal grandfather, and so forth. *Second*, the group of male siblings, either full brothers or paternal half-brothers, along with their male descendants. *Third*, the group of paternal uncles, including the father’s full brothers, paternal half-brothers, and their male descendants. *Fourth*, the group of paternal uncles of the grandfather, both full brothers and paternal half-brothers, along with their male descendants.

- a. If within one group of guardians (wali nikah) there are several individuals who are equally entitled to act as guardian, the one with the closest degree of kinship to the prospective bride shall hold the primary right to serve as the guardian.
- b. If within one group the degree of kinship is equal, the individual who is a full-blood relative shall have greater entitlement to act as the guardian of marriage (wali nikah) than one who is related through the paternal line only.
- c. If within one group the degree of kinship is equal, whether they are full-blood relatives or paternal relatives, all of them are equally entitled to act as the guardian of marriage (wali nikah), with priority given to the elder who fulfills the legal requirements of guardianship.

Article 22 further stipulates that: “If the guardian of marriage (wali nikah) who holds the primary right, according to the prescribed order, does not fulfill the legal requirements as a guardian, or if the guardian suffers from speech impairment, hearing impairment, or is incapacitated due to old age, then the right to act as a guardian of marriage

shall be transferred to another guardian according to the next degree of kinship.” Furthermore, Article 23 states that a wali hakim may only act as a guardian of marriage in cases where a wali nasab does not exist, cannot be presented, is of unknown residence, is absent, or is ‘adlal (unjustly refusing) or unwilling. In situations where the wali is ‘adlal or unwilling, the wali hakim may act as the guardian of marriage only after a ruling has been issued by the Religious Court concerning the matter.

In Islamic marital law, the practice of wakalah (representation) is permissible. Representation in marriage contracts is treated in the same manner as representation in other forms of contractual agreements. A guardian of the bride (wali) may delegate his authority to another person to conduct the marriage contract on behalf of the woman under his guardianship. This practice is known as tawkil wali nikah, which refers to the delegation of the guardian’s authority to another qualified individual who assumes the role of the guardian as the representative (wakil) of the bride in the marriage contract. The wakil in this context merely serves as an agent who declares and performs the act on behalf of the muwakkil (the delegating guardian). Once the marriage contract has been concluded, the mandate of the representative is terminated. Essentially, tawkil wali nikah may be conducted verbally. However, to prevent potential disputes or undesirable circumstances in the future, it is preferable that such delegation be executed in written form and witnessed by others [24].

In the implementation of tawkil, there are several pillars (arkan) and conditions (syurut) that must be fulfilled by the parties involved in the delegation. The fundamental pillars and requirements of tawkil are as follows:

## 1. Muwakkil (the principal who delegates authority)

It is stipulated that the individual who delegates authority must be legally competent and permitted to perform the act being delegated. Therefore, the delegation is not valid if carried out by individuals who are legally incapacitated, such as the insane, minors who are still under the guardianship of their parents, or those with unsound mind and incomplete intellectual capacity.

## 2. Representative (Wakil)

The requirements for the representative are the same as those for the muwakkil. A representative must possess the capacity to perform the legal act delegated by the muwakkil, and the representative must be a specific person, namely an individual who has been directly appointed by the muwakkil. Additional requirements that must be fulfilled by the representative are: being a Muslim, having reached legal maturity (baligh), being male, just (not fasiq), and capable of properly practicing the teachings of Islam. These conditions apply exclusively to the representative of the guardian (wakil wali) and not to the representative of the groom (wakil mempelai laki-laki).

## 3. Muwakkil fih (the subject matter of representation)

The requirements concerning the muwakkil fih are as follows:

- a. it must be permissible to delegate, meaning that if the representative is unable to carry out the delegated act, the representative is allowed to transfer the authority to another qualified person.
- b. the act or property subject to representation must be owned by the muwakkil
- c. the delegated act must be one that is not prohibited (mubah); and
- d. it must be clearly specified. The muwakkil must explicitly mention the party being represented to the representative. It is not valid, for example, if a representative states: “I delegate to you the authority to marry off one of my daughters,” since the reference to “one of my daughters” is ambiguous. Instead, the name of the individual must be clearly stated.

## 4. Šīghat (the wording of delegation)

It is required that the šīghat constitute a verbal statement from the muwakkil expressing consent, such as the example: “I delegate this matter to you, or to so-and-so.” Acceptance (qabūl) by the representative is not a requirement; however, it is required that the representative does not reject it

In the case of the marriage contract with tawkil al-walī al-nikāḥ, the declaration (ījāb) is pronounced by the guardian (walī) or his representative on behalf of the bride, while the acceptance (qabūl) is pronounced or responded to by the groom. The wording of the contract is as follows:

1. Declaration (ijāb) by the guardian's representative: *"I marry and I give in marriage Fulanah binti Muhammad, who has been delegated to me, with a dowry of ....., paid in full."*
2. Acceptance (qabūl) by the prospective groom: *"I accept the marriage and the union with Fulanah for myself with the dowry that has been specified."*
3. Offer (ijab) by the guardian's representative: *"I marry to you (the groom) the daughter of Fulan."*
4. Acceptance (qabūl) by the prospective groom: *"Saya terima nikah anak dari Fulan. "I accept the marriage to the daughter of Fulan." [24]*

## **E. The Hegemony of Madurese Kyai as Representatives of Marriage Guardians (Wali Nikah) from the Perspective of 'Urf**

In Madura, kyai hold a highly respected and influential position within the community. Their role extends beyond purely religious matters to encompass various social and cultural aspects, including marital affairs. In many cases, kyai are frequently requested or entrusted to serve as marriage guardians (wali nikah) by the bride's family, even though, according to the legal hierarchy of guardianship, the male relatives of the bride possess the legitimate right to do so. This practice reflects the deep trust and reverence accorded to the kyai, whereby their authority is perceived as both religiously valid and socially binding within the framework of local tradition [1]. The role of the marriage guardian (wali nikah) in matrimony holds a highly significant position in the perspective of Islamic teachings. A wali nikah is an authorized figure entrusted to represent the bride in the marriage contract, underscoring that the process of marriage must be conducted in accordance with religious guidance to preserve its sanctity and honor. Within local communities, kyai are often chosen as wali nikah due to their status as respected and trusted figures. With their profound religious knowledge, kyai serve not only as marriage guardians but also as advisors who provide guidance to the prospective couple and their families.

The selection of a kyai as a marriage guardian (wali nikah) is generally based on family customs and collective deliberation among extended family members. This decision reflects the trust placed in the kyai as a figure believed to bring blessings to the marriage. The practice is further reinforced by the surrounding community, which typically shares the same perspective, thereby making it an integral part of local tradition. The figure of the kyai is deeply respected within the social and religious life of the Madurese community. As religious leaders, they serve as role models in many aspects of life, including resolving various social issues. Their scholarly authority and exemplary character position the kyai as the primary choice for assuming the role of wali nikah [4].

The role of the kyai as a marriage guardian (wali nikah) in Madura reflects the notion of ideological hegemony as conceptualized by Antonio Gramsci. Within the Madurese community, the kyai occupies a central position that extends beyond religious matters, encompassing social institutions such as marriage. The custom of appointing a kyai as wali nikah illustrates the community's acknowledgment of the kyai's authority, which is grounded in religious scholarship and moral standing. This demonstrates how the authority of the kyai is accepted voluntarily by society, without coercion, thereby reinforcing their hegemonic influence within the cultural and religious framework of the community. This custom reflects the voluntary consent of the community. The selection of a kyai as the marriage guardian is carried out based on the collective belief that the kyai is capable of safeguarding the sanctity and honor of the marriage. The process of family deliberation prior to appointing the guardian demonstrates how this practice has been internalized in the daily life of the Madurese community. Thus, this custom has become an inseparable part of the social practices of the local people.

As a respected figure, the kyai not only fulfills the role of marriage guardian but also provides counsel to the prospective bride and groom as well as their families. This practice reinforces the symbolic dominance of the kyai as both a spiritual and social leader, in line with Gramsci's assertion that such practices constitute a form of ideological hegemony. The continuation of this custom is supported by the community's belief that the presence of the kyai brings blessings and legitimacy to the marriage process. In this way, the custom of appointing a kyai as the marriage guardian becomes a mechanism for reinforcing existing social structures. The ideological hegemony established through this custom remains stable because it is sustained by the collective acceptance of the community, which reveres the kyai as an authoritative figure. Overall, the custom of appointing a kyai as the marriage guardian

demonstrates the significant influence that is voluntarily embraced by the community. From Gramsci's perspective, this influence is not coercive but is instead rooted in religious values and shared beliefs that are deeply ingrained in the lives of the Madurese people.

The hegemony of the kyai in this context can also be analyzed through the perspective of 'urf or prevailing local traditions. 'Urf refers to community customs that do not contradict Islamic law and may be accepted as part of jurisprudence [5]. The appointment of a kyai as the marriage guardian, although not a guardian by lineage (wali nasab), is carried out based on the conviction that they are capable of safeguarding the sanctity and blessings of the marriage. This reflects the collective trust of the community in the kyai as a moral figure possessing both social and spiritual legitimacy. The hegemony possessed by the kyai is not coercive but rather rests on the voluntary recognition of the community. The kyai are regarded as possessing extensive knowledge, exemplary conduct, and profound spiritual capacity, such that the family's decision to appoint them as marriage guardians is generally reached through deliberation. This decision reflects the belief that the role of the kyai will bring blessings to the marriage. Such a practice illustrates the social legitimacy of the kyai, which is constructed through religious and cultural relations.

The community's trust in the kyai is also closely associated with the belief that they can bestow blessings upon the marriage. Within Madurese culture, blessings (barakah) are considered essential in maintaining household harmony. The kyai are perceived as intermediaries of such blessings because they are viewed as sacred figures closely connected to Islamic values. This perception renders the role of the kyai as marriage guardians not merely symbolic but also spiritual in nature. In Islamic jurisprudence, marriage guardianship follows a specific hierarchy, beginning with the biological father and extending to the judicial guardian (wali hakim) in cases where the guardian by lineage (wali nasab) is absent or does not meet the required conditions. However, within the Madurese context, the 'urf that legitimizes the appointment of the kyai as marriage guardian is respected, provided that the guardian by lineage grants approval. This practice demonstrates a degree of flexibility in the implementation of Islamic law, which is adapted to local traditions without contravening the fundamental principles of religion.

From the perspective of 'urf, the presence of the kyai as a proxy guardian (wakil wali nikah) in Madura can be understood as a socio-religious practice that is deeply rooted and widely accepted. 'Urf serves as a source of legal consideration in Islamic jurisprudence so long as it does not contradict the Sharia, thereby granting legitimacy to the tradition of appointing the kyai as marriage guardian. The highly respected position of the kyai as an authoritative figure, not only in religious scholarship but also in the social domain, ensures that this practice aligns with the needs of the local community. Consequently, this phenomenon reflects the harmonization between Islamic norms and Madurese cultural traditions, positioning the kyai strategically as both a religious symbol and a social mediator in the marriage process. Scholars unanimously agree that invalid (fasid) 'urf cannot be employed as a legal basis within Islamic law. By contrast, valid (sahih) 'urf is generally accepted by leading jurists of the major schools of Islamic jurisprudence as a legitimate source in legal determinations. This position is supported by Imam al-Shatibi, a prominent scholar of usul al-fiqh from the Maliki school, as well as Ibn Qayyim al-Jawziyyah, an eminent jurist of the Hanbali school [5].

By examining the practice of appointing kyai as proxy guardians of marriage (wakil wali nikah) through the perspective of 'urf, it can be concluded that this tradition is consistent with the views of the majority of Islamic jurists. Scholars agree that 'urf, or customary practices of a community, may serve as a basis for legal consideration in Islam, provided that it does not contradict the Qur'an and the Sunnah. This means that when the Madurese community habitually entrusts the solemnization of the marriage contract to the kyai, such practice may be accepted as part of the Sharia, as long as approval from the guardian by lineage (wali nasab), namely the father or male relatives of the bride, is maintained. Accordingly, the role of the kyai as proxy guardian does not contravene Islamic law. Rather, this tradition demonstrates how Islamic teachings can coexist harmoniously with local culture. Furthermore, the position of the kyai in Madurese society is highly respected, not only because of their religious scholarship but also due to their role as moral and social leaders. Therefore, appointing the kyai as proxy guardians of marriage can be understood as an expression of respect toward figures considered most worthy of presiding over such a sacred ceremony. In this sense, the tradition carries dual significance: on the one hand, it aligns with Madurese cultural values, and on the other, it gains legitimacy within Islamic law through the principle of 'urf.

## Conclusion

In Madura, kyai hold an important and highly respected position, including in the marriage ceremony. The appointment of a kyai as a proxy guardian of marriage (wakil wali nikah) is not only based on their religious knowledge but also on the community's belief that the kyai brings blessings, as well as on family consensus reached through deliberation. Within Gramsci's theory of hegemony, this reflects an ideological dominance that is voluntarily accepted because the kyai are honored and trusted. From the perspective of 'urf, this custom is valid as long as it does not contradict the Sharia and has the approval of the guardian by lineage (wali nasab), thereby granting the tradition social, cultural, and Islamic legal legitimacy. This practice simultaneously demonstrates the flexibility of Islamic teachings, which are capable of coexisting with local culture without abandoning their fundamental principles.

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