

The Concept of Wali Hakim, Marriage Witness, and Ijab Kabul in the Book of Al-Nikah: Analysis and Relevance to the Contemporary Context

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ABSTRACT

The purpose of this study is to analyze the concept of *wali hakim*, marriage witness, and *ijab kabul* in the Book of Al-Nikah by Sheikh Muhammad Arsyad al-Banjari and its relevance to the current context. The method used in this study is library research. The results of this study indicate that in the Book of Al-Nikah, the concept of *wali hakim* has 10 conditions that allow the transfer of guardian *aqrab* to guardian judge. In terms of marriage witnesses, it is explained that there are 13 conditions that must be met by marriage witnesses. In terms of *ijab kabul*, the meaning of *ijab* and the meaning of *kabul* in the marriage contract are explained and a guide to *ijab kabul* that is applicable to the Banjar community is provided. The three discussions as a whole are in accordance with the opinions of Syafi'iyah scholars and make it easier for the Banjar community at that time to practice them. In the current context, the majority of provisions related to *wali hakim* in the Book of Al-Nikah are still relevant, although some provisions such as *wali aqrab* who are hindered by distance and are in prison can be overcome with technological advances and Extraordinary Permits to Leave Prison. Meanwhile, regarding the marriage witnesses and the *ijab kabul* in the Al-Nikah Book, it can be said that everything is still relevant and even more detailed and practical than the current provisions.

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1. INTRODUCTION

Humans are sexual beings (*homo sexualis*). This expression means that humans always have the potential to do sexual activities (Susylowati, 2022). In addition, finding a soulmate or life companion is a series of businesses that must be prepared carefully and seriously (Hafidzi et al., 2023). In this

case, Islam as a perfect religion has arranged a legitimate way to channel sexual desires and foster a harmonious family, namely through marriage (Malisi, 2022).

In Islam, marriage is not only a means of channeling sexual desire. More than that, marriage is seen as a religious commandment that promises peace of life for humans. This can be realized if the marriage is carried out in accordance with the ordinances that have been set out in Islam (Samad, 2017). Then, as an effort to make it easier for Muslims to understand marriage procedures in accordance with Islamic teachings, many previous scholars wrote books about marriage. One of the most famous, especially in the South Kalimantan region, is Sheikh Muhammad Arsyad bin Abdullah al-Banjari with his book entitled "Kitab al-Nikah". Therefore, this study aims to explain and elaborate on matters related to Sheikh Muhammad Arsyad al-Banjari and the Kitab al-Nikah that he wrote, especially the discussion in the Kitab al-Nikah related to guardian judges, marriage witnesses and *ijab kabul* in marriage and the relevance of the three to the current context.

2. METHOD

The type of research used in writing this paper is *library research*, which is research in which data is collected through library sources in the form of books, articles, journals, *online media* and other documents (Saefullah, 2024). In this study, the main source of literature used is the Book of Al-Nikah written by Sheikh Muhammad Arsyad al-Banjari.

According to Hamzah (2022), *library research* is divided into the study of revelation texts, the study of character thoughts, textbook analysis, and historical studies. This paper itself can be classified as a textbook analysis, which is an evaluative research to assess the extent to which the material in certain books is relevant to the latest social, cultural, and technological developments (Saefullah, 2024).

3. FINDINGS AND DISCUSSION

3.1. Brief Biography of Sheikh Muhammad Arsyad al-Banjari

The people of Banjar are synonymous with Islam (Abduh & Hanafiah, 2021). From a historical perspective, Islam, which is now part of the Banjar community, is inseparable from the important role of a scholar named Sheikh Muhammad Arsyad al-Banjari (Mahlidin, 2016).

His full name is Muhammad Arsyad bin Abdullah bin Abdur Rahman al-Banjari who was born in Lok Gabang, Martapura South Kalimantan on March 17, 1122 H/1710 AD and died on March 3, October 1812 in Dalam Pagar at the age of 102 years (Ipansyah et al., 2021). His father was named Abdullah and his mother was named Aminah. Al-Banjari as a child was named Muhammad Ja'far but as an adult his name was changed to Muhammad Arsyad. The title al-Banjari is a call that indicates its home area, namely Banjar, South Kalimantan (Norcahyono, 2021).

Sheikh Muhammad Arsyad al-Banjari is one of the figures who played an important role in the network of Nusantara scholars in the 18th and late 19th centuries (Jamalie, 2019). As a great scholar, Sheikh Muhammad Arsyad al-Banjari is not only famous in the Kalimantan area. It is also known in various regions in Indonesia. In fact, according to H.W. Muhd Shagir Abdullah, the author of the series Ulama Authors of Southeast Asia, the name al-Banjari is also popular in Cambodia, Thailand and Malaysia (Abdullah, 1983, p. 47).

3.2. Systematics of Writing the Book of Al-Nikah by Sheikh Muhammad Arsyad al-Banjari

Sheikh Muhammad Arsyad al-Banjari is a very influential scholar and has such an important role in history. Not only that, he is also a writer. One of his works that is so famous in the Banjar community is the book al-Nikah. This book is a book that discusses *fiqh* in the field of marriage.

Among the uniqueness of the book *al-Nikah* by Sheikh Muhammad Arsyad al-Banjari is the use of Malay Arabic (pegon) writing in Malay (Luthfi et al., 2024).

The book of *al-Nikah* is a book of jurisprudence that explains issues about marriage law (Norcahyono, 2021). The manuscript of the Book of *Al-Nikah* was completed on 27 Rabi'ul Awal 1202 H/1785 AD, which is seven years after the writing of the book *Sabil al-Muhtadin* (27 Rabiul Akhir 1195 H/1778 AD). The Book of *al-Nikah* was first printed and published in Istanbul, Turkey, in 1304 AH—more than a century since it was first written. The book *al-Nikah* was printed and published by Al-Haramain Singapore- Jiddah without mentioning the year of publication. *Kitab al-Nikah* was also published by YAPIDA (Yayasan Pendidikan Islam Dalam Pagar in a new edition in 2002 and revised in print in 2005 (Norcahyono, 2021).

Broadly speaking, the discussion of the Book of *Al-Nikah* begins with the law of marriage, female guardians, guardians of *aqrab* and *ab'ad*, witnesses of marriage, *ijab-kabul*, *kafa'ah*, conditions of *ijab kabul*, *khulu'*, *thalaq*, *iddah*, *mu'asyarah* law, *iddah* of death, *ihdad*, and ends with an example of a marriage sermon (Norcahyono, 2021). In more detail, the systematics of the Book of *Al-Nikah* are as follows:

1. Foreword
2. The book states the Law of Marriage,
3. The chapter states that the Female Guardian who must be the Guardian,
4. The chapter on which is named *Wali Aqrab* and *Wali Ab'ad*,
5. The chapter on declaring the Marriage Witness,
6. The chapter on declaring *Ijab Kabul*,
7. The chapter on *Kufu'*,
8. The article on *Ijab and Kabul*,
9. The article on declaring *Khulu'*,
10. The article on declaring *Talak*,
11. The article on the *Iddah* of women,
12. The article states the two *Iddah* that are included,
13. The article states the Law of *Mu'asyarah*,
14. The article on declaring *Iddah Died*,
15. The article states *Ihdad*,
16. *Khutbah Nikah*,
17. Prayer
18. The Meaning of Words (al-Banjari, 2005, p. iv).

3.3. Provisions for *Wali Hakim*, Marriage Witnesses and *Ijab Kabul* in the Book of *Al-Nikah*

1. Guardian Judge

The concept of guardian judges will be discussed in this paper as follows:

Bermula perempuan berwali hakim itu sepuluh tempat:

- a. *Ketiadaan walinya daripada keluarganya, dan ketiadaan walinya daripada yang memerdekakan dia dan asabahnya maka hakimlah akan walinya*
- b. *Pergi pergian wali aqrab pada perjalanan yang harus dalamnya qasar yaitu perjalanan sehari semalam atau dua hari atau dua malam dengan perjalanan yang berat, maka ketika itu hakimlah akan walinya tiada harus wali ab'ad mewalikan dia yakni wali aqrab yang musafir sampai kepada masafatu al qasri itu jika ada ia ahli bagi wilayah maka hakim akan walinya dan jika tiada ahli ia bagi wilayah maka ab'ad akan walinya. Maka jika ada yang pergi pergian bapak maka tiada harus nininya yang hadir didalam negeri itu mewalikan dia, dan jika ada yang pergi pergian itu nini maka tiada harus bagi saudara yang seibu sebabak mewalikan dia, demikianlah diqiyaskan pada yang lainnya, hanya hendaklah hakim yang mewalikan dia, melainkan jika ada*

- wali aqrab yang pergi pergian itu meninggalkan wakil didalam negeri maka wakilnya itulah menikahkan dia tiada hakim.
- c. Hilang walinya yang aqrab itu matinya pun tiada diketahui dan hidupnya pun tiada ketahuan, maka wali perempuan itu hakim jua tiada harus wali ab'ad mewalikan dia.
 - d. Wali aqrab itu ada didalam negeri jua tetapi tiada dapat dicari, ada dilihat orang disana maka diikuti tiada ketahuan, demikianlah dicari empat lima hari tiada jua dapat dan perempuan itu sangat darurat hendak nikah, maka hakimlah akan walinya sebab darurat, tetapi ada hadir walinya itu binasalah nikahnya maka hendaklah dibaharui pula nikahnya dengan walinya yang aqrab itu
 - e. Wali aqrab itu didalam perjalanan yang tiada harus dalamnya qasar, tetapi sangat sukar mendatangkannya dia sebab takut kepada barang sesuatu umpamanya, maka pada ketika itu hakimlah akan walinya tiada wali ab'ad
 - f. Wali aqrab itu terpenjara didalam negeri dan sukar mendatangkannya dia sebab sangat takut umpamanya maka hakimlah akan walinya tiada wali ab'ad
 - g. Wali aqrab itu pitam yang berlanjutan didalam beberapa masa sekira kira kesukaran menanti sembuh, maka pada ketika itu hakimlah akan walinya tiada wali ab'ad
 - h. Wali aqrab itu berkehendak menikahi perempuan yang diwalikannya dan walinya yang aqrab sepangkat dengan dia pun tiada ada, hanya yang ada wali ab'ad jua maka pada ketika itu hakimlah akan walinya tiada wali ab'ad
 - i. Wali aqrab itu didalam ihram atau umrah maka tiadalah harus ia akan jadi wali perempuan melainkan hakimlah akan walinya pada ketika itu
 - j. Wali aqrab itu enggan ia daripada mewalikan dia padahal adalah perempuan itu berkehendak nikah dengan laki-laki sekufu dengan dia, dan tsabitlah enggannya itu dihadapan qadhi. Dan jikalau ada sebab enggannya itu sedikit mahar atau memilih laki-laki yang lain yang terlebih kufunya daripada laki-laki yang dikehendaki perempuan itu sekalipun, maka ketika itu hakimlah akan walinya tiada wali ab'ad. Tetapi jika enggannya wali aqrab itu berulang-ulang sekira-kira jadi fasiklah ia dengan dia yakni tiga kali atau lebih enggannya itu maka berpindahlah wilayah perempuan itu kepada ab'ad tiada kepada hakim (al-Banjari, 2005, pp. 21–23).

Based on the quote above, it appears that al-Banjari explained that there are 10 circumstances that can cause the transfer from the guardian of the aqrab to the guardian of the judge, namely:

- a. The guardian does not exist at all (**First Opinion**). This opinion of al-Banjari is actually something agreed upon in the Shafi'I School (Hidayat, 2018),
- b. The guardian of the aqrab does not exist because he goes to a place until the time span that allows him to perform the qasar prayer (two days and two nights) or on a difficult journey and the guardian does not represent to others, then the guardianship rights transfer to the judge (**Second Opinion**). This opinion of al-Banjari is in line with what Imam al-Nawawi mentioned in Minhaj al-Talibin which means as follows:

“Apabila wali aqrab tidak ada hingga jarak dua marhalah, maka sultan/hakimlah yang menikahkan, dan jika kurang dari dua marhalah, dia tidak menikahkan kecuali dengan izinnnya dalam pendapat yang paling sah” (al-Nawawi, 2005),
- c. The guardian of the aqrab is missing and his condition is unknown (**Third Opinion**), or he is not there because he is away from less than two marhalah (**Fifth Opinion**), or because he is imprisoned (**Sixth Opinion**). These three opinions of al-Banjari are in line with what al-Syarbini mentioned in Mughni Muhtaj which explains that if the guardian is not present at all or is not in the place because he is traveling a distance of two marhalah, then the guardianship right is exercised by the judge. Likewise, if the guardian is not within a distance of less than two marhalahs. However, it should be noted that in this case there are two opinions. The most valid opinion views the need for permission from the guardian of the aqrab for the sultan who becomes the guardian. Meanwhile, the second opinion views that there is no need for permission. It seems

- that al-Banjari is more inclined to this second opinion. Al-Syarbini then added the opinion of Al-Adhra'i which stated that if the guardian is in prison and there is difficulty in meeting him, then the judge acts as the guardian. Similarly, if the guardian is missing, his whereabouts are unknown, whether alive or dead (al-Syarbini, 1997),
- d. The guardian of the aqrab exists, but there are difficulties in finding it even for up to four or five days even though the bride-to-be really wants to get married, so the judge who is the guardian for her because of the emergency. However, if later the guardian of the aqrab comes and is present, then the marriage is canceled and the contract must be repeated (**Fourth Opinion**). According to Hidayat in his thesis, al-Banjari's opinion actually has similarities with the opinion of scholars who previously explained that the absence of a guardian of the aqrab, either because of difficulties in meeting him or because he is in prison but the guardianship is transferred to the judge. On the other hand, al-Banjari actually bases his opinion on the state of emergency, so that the legal implications still confer guardianship on the judge. From this, it can be analyzed that the absence of the guardian of the aqrab in the marriage has negative implications because it interferes with the interests of the prospective bride. Al-Banjari then punished the situation with an emergency, so it finally concluded to establish a guardianship of the judge. Apparently, this is also analogous to the absence of guardian aqrab. This ijthid al-Banjari is certainly a uniqueness in itself. In this case, it can also be seen that it is sensitive to benefits. From this, it can be concluded that in this section al-Banjari concludes the law based on the qiyasi method which is based on the benefits and maqashid of sharia (Hidayat, 2018).
 - e. The guardian of the aqrab is a continuous and difficult to wait for healing, so the judge is the wali (**Seventh Opinion**). This opinion of al-Banjari is in line with what al-Rafi'i mentioned in Al-Aziz who explains that some severe diseases that have implications for thinking disorders, such as loss of consciousness for up to three days, then the guardianship rights are transferred to the sultan/judge because it is considered the same as the absence of a guardian (al-Rafii, 1997),
 - f. The guardian of the aqrab wants to marry a woman who is in his guardianship while there is no other guardian of the aqrab who is equal to him, so the right of guardianship passes to the judge (**Eighth Opinion**). Al-Banjari's opinion is based on the opinion of al-Syarbini in Mughni al-Muhtaj which states that a judge acts as a guardian if the guardian of the aqrab wants to marry a woman under his guardianship while the guardian of the aqrab who is equal to the person concerned does not exist (al-Syarbini, 1997),
 - g. The guardian of the aqrab is doing ihram or Umrah, so the guardian of the judge is the guardian of the marriage (**Ninth Opinion**). This opinion of al-Banjari is in accordance with what the Shafi'iyyah scholars said that a guardian who is doing ihram should not be a guardian of marriage and the guardianship rights pass to the judge (Hidayat, 2018),
 - h. The guardian of the aqrab is 'adhal, so the judge is the one who acts as the guardian of the marriage. Wali 'adhal means the reluctance of the guardian to marry his child or who is under his guardianship due to things that cause the guardian not to marry him. The majority of scholars agree that if the wali 'adhal, then the sultan or judge is the wali (**Tenth Opinion**). The legal basis is based on the verses of the Qur'an, surah al-Baqarah verse 232 and the Hadith of the Prophet PBUH narrated by Aisyah ra. which states that if there is a dispute within the guardian, then the judge is the guardian (Hidayat, 2018, p. 134). The reluctance of the wali to become married needs to be stated before the qadi (al-Syarwani & al-Ibadi, n.d., p. 251). If the guardian's reluctance is up to three times, then the guardianship rights pass to the ab'ad guardian, because it is categorized as wickedness (al-Syarbini, 1997).

Thus, it can be concluded that al-Banjari's thoughts regarding the 10 circumstances that allow the transfer of wali aqrab to wali judge are drawn from the opinions of previous Shafi'i scholars such as

al-Nawawi, al-Syarbini and al-Rafi'i. Except for the fourth opinion which seems to be the personal ijtihad of al-Banjari with consideration of maslahat and maqashid sharia.

2. Marriage Witnesses

The book al-Nikah written by Sheikh Muhammad Arsyad al-Banjari also contains Islamic rules regarding marriage witnesses, as follows quote:

Bermula yang harus akan saksi Nikāh itu ada padanya tiga belas syarat:

- a. *Islam*
- b. *Laki-laki*
- c. *Dua orang*
- d. *Merdeka*
- e. *Aqil keduanya*
- f. *Baligh keduanya*
- g. *Melihat keduanya, maka tiada harus orang buta*
- h. *Mendengar keduanya, maka tiada harus orang tuli*
- i. *Dapat berkata-kata keduanya, maka tiada harus orang bisu*
- j. *Keduanya saksi itu jangan anak oleh yang nikah itu (tersebut didalam minhaj harus anak akan saksi atau seteru keduanya akan saksi)*
- k. *Jangan ada keduanya bapak oleh yang nikah*
- l. *Jangan seteru keduanya*
- m. *Adil keduanya, maka tiada sah orang yang fasik akan saksi nikah, maka apabila kurang salah satu daripada yang 13 syarat yang tersebut itu maka tiadalah harus akan saksi nikah (al-Banjari, 2005, pp. 27–28).*

Based on the quote above, it appears that according to al-Banjari there are 13 conditions for marriage witnesses, namely; 1. Islam; 2. Men; 3. 2 (two) people; 4. Independence; 5. Resourceful; 6. Puberty (adult); 7. Able to see; 8. Able to hear; 9. Able to speak; 10. The two witnesses shall not be children of the person who performs the marriage; 11. The two witnesses must not be fathered by the person who performs the marriage; 12. The two Witnesses shall not fight with each other; 13. Be fair (Hafidzi et al., 2024). According to Hafidzi et al, al-Banjari's opinion regarding marriage witnesses has a relationship with the opinion of Imam Shafi'i in the book al-Mughni which states that the witness must be fair based on the meaning of the Hadith about two witnesses must be fair, although it is fair only at the time of the marriage contract. Meanwhile, according to Imam Hanafi in al-Mughni, justice is not a requirement of a testimony, because testimony is a mandate like other mandates, which means that both the just and the wicked do not affect the validity of the testimony of the marriage contract (Hafidzi et al., 2024).

3. Ijab Kabul

The book al-Nikah written by Shaykh Muhammad Arsyad al-Banjari also contains Islamic rules related to ijab kabul, as follows:

Arti ijab itu kata walinya kepada laki-laki yang dinikahkan itu demikian katanya :“ku nikahkan akandikau akan si anu dengan mahar sekian”. Dan arti kabul itu kata laki-laki yang dinikahkan itu dengan katanya: “hamba terima menikāhi si anu dengan mahar sekian”.

Bermula jika bapak perempuan itu akan walinya demikian katanya: “ku nikahkan akandikau akan anakku si anu dengan mahar sekian”, maka dijawabnyalah oleh laki-laki itu :“ku terimalah menikahi anakmu si anu dengan mahar yang tersebut itu”,

Bermula jika neneknya akan perempuan demikian katanya :“ku nikahkan akandikau akan cucuku si anu dengan mahar sekian”.

Bermula jika anak saudaranya atau cucu saudaranya atau maminanya atau cucu maminanya atau yang memerdekakan dia atau cucu yang memerdekakan dia akan walinya, demikian katanya daripada seorang daripada mereka :“aku nikahkan akan dikau si anu yang berwali akan daku dengan mahar sekian”, seperti ada maharnya itu sepuluh riyal atau lima puluh riyal atau seratus riyal umpamanya atau barang sebagainya, maka hendaklah disebutnya bilangan mahar itu jikalau berapa bilangan mahar itu dengan yakin. Maka dijawabnyalah oleh laki-laki yang dinikahkan itu: “ku terimalah menikahi dia dengan mahar yang tersebut itu”.

Adapun jika perempuan itu ‘abdi si anu maka tuan nyalah akan walinya demikian katanya:“ku nikahkan ‘abdiku si anu akan dikau dengan mahar sekian”.

Bermula jika bapaknya berwakil pada seorang laki-laki demikian kata walinya:“ku nikahkan akan dikau akan si anu (anak si anu) yang berwakil ia kepadaku dengan mahar sekian”, maka hendaklah disebutnya akan bilangan mahar itu dengan qarinah bilangannya, jika berapa-berapa bilangannya itu serta menyebutkan jenisnya itu.

Bermula jika nini berwakil kepada seorang laki-laki demikian kata walinya :“ku nikahkan akan dikau akan si anu atau cucu si anu yang berwakil ia kepadaku dengan mahar sekian”.

Bermula jika saudaranya berwakil kepada seorang laki-laki demikian kata walinya :“ku nikahkan akan dikau akan si anu saudaranya si anu yang berwakil ia kepadaku dengan maharnya sekian”.

Bermula jika anak saudaranya atau maminanya yang memerdekakan dia yang berwakil kepada seorang laki-laki demikian kata walinya :“ ku nikahkan akan dikau akan si anu yang ia berwalikan si anu yang berwakil ia kepadaku dengan maharnya sekian”.

Bermula jika seorang laki-laki yang hendak nikah itu berwakil ia kepada seorang laki-laki minta terimakan nikahnya kepada wakilnya itu dengan si anu, maka demikianlah perkataan walinya si perempuan yang hendak menikahkan itu :“ ku nikahkanlah anak ku si anu akan si anu yang berwakil ia kepadamu”, maka jawab wakil laki-laki yang hendak nikah itu :“ku terima menikahi si anu atau bagi si anu yang berwakil ia kepadaku dengan mahar sekian”.

Bermula jika bapak perempuan itu berwakil ia kepada khatib dan laki-laki :“ku nikahkanlah si anu anak si anu yang berwakil ia kepadaku dengan mahar nya sekian” maka kata khatib itu jua sekali lagi : “ku terimakan nikahnya si anu anak si anu yang berwakil si anu itu kepadaku pada menerimakan nikahnya dengan dia dengan mahar nya sekian”.

Adapun jika laki—laki yang hendak nikah itu belum baligh maka tiadalah harus khatib itu atau yang lainnya menerimakan kata wali perempuan itu atau segala wali yang lainnya melainkan bapaknya atau nininya yang harus ia menerimakan kata wali perempuan itu. Demikian katanya: “ku nikahkanlah akan anakku si Fatimah akan anakmu si Abdullah dengan mahar sekian umpamanya”; maka jawab bapaknya atau nininya oleh laki-laki yang hendak nikah yang belum baligh itu: “ku terimalah nikahnya anakku si Abdullah akan anakmu si Fatimah dengan maharnya yang tersebut itu” (al-Banjari, 2005, pp. 28–31).

Based on the quote above, it appears that al-Banjari provides an applicable guide to the *ijab* of *kabul*. Al-Banjari began by explaining the meaning of *ijab* and the meaning of *kabul* in the marriage contract along with examples of sentences how *ijab* and *kabul* sentences are used according to the context that usually occurs in society. According to al-Banjari, the meaning of *ijab* is the word of the wali to the married man. As the words “*ku nikahkan akan dikau akan si anu dengan mahar sekian*” (I marry you with [called a woman's name] with a dowry [called the amount/form of dowry]). While the meaning of *kabul* is the words of a married man, for example the word “*hamba terima menikahi si anu dengan mahar sekian*” (I accept to marry [called female name] with a dowry [called the amount/form of dowry]). The sentences used in the implementation of *ijab* and marriage *kabul* are the language used by the Banjar people at that time, namely Banjar Malay. The marriage *kabul* in the *Kitab al-Nikah* is also presented in detail with examples of sentences adjusting to the person who plays the implementation of the marriage ceremony and marriage. In more detail, the *ijab* sentences and *kabul* sentences used in the marriage contract according to the person who plays the role are as follows:

- a. If the father is the guardian who gets married, then the sentence of ijab is *"ku nikahakan akan dikau akan anakku si anu dengan mahar sekian"*. (I marry you to my son [called a female name] with a dowry [call the amount/form of dowry]). Then answered with a kabul sentence: *"ku terimalah menikahi anakmu si anu dengan mahar yang tersebut itu"* (I accept to marry your child [called a female name] with such a dowry).
- b. If the grandfather acts as the guardian who gets married, then the sentence of ijab is *"ku nikahakan akan dikau akan cucuku si anu dengan mahar sekian"* (I marry you to my grandson [called a female name] with a dowry [call the amount/form of dowry]).
- c. If the brother who acts as the guardian of the marriage, then the sentence of ijab is *"kunikahakan akan dikau akan saudaraku si anu dengan mahar sekian"* (I marry you to my sister [called a woman's name] with a dowry [called the amount/form of dowry]).
- d. If a nephew, grandchild, mamarina (uncle), granddaughter of mamarina (grandson of uncle) or a liberated person acts as a guardian, then the sentence of ijab is *"ku nikahakan akan dikau akan si anu yang berwali akan daku dengan mahar sekian"* (I marry you with [called female name] and I as the guardian to marry her with a dowry [called the amount/form of dowry] the type and amount of dowry are clearly stated). Then the man replied with a kabul sentence: *"ku terimalah menikahi dia dengan mahar yang tersebut itu"* (I accept to marry [called a woman's name] with such a dowry).
- e. If the master of the servant sahaya is the guardian who marries, then the sentence of ijab is *"ku nikahakan akan abdiku si anu akan dikau dengan maharnya sekian"* (I marry you to my servant Sahayaku [called a woman's name] with a dowry [called the amount/form of dowry]).
- f. If a father delegates his daughter's marriage to a man, then the sentence of ijab is *"ku nikahakan akan dikau akan si anu (anak si anu) yang berwakil ia kepadaku dengan mahar sekian"* (I marry you with [called the woman's name and her father's name] and her father has delegated her son's marriage contract to me with a dowry [called the amount/form of dowry clearly]).
- g. If the grandfather represents his granddaughter's wedding, the sentence of ijab is *"ku nikahakan akan dikau akan si anu (cucu si anu) yang berwakil ia kepada aku dengan mahar sekian"* (I married you with [called the woman's name and the name of her grandfather] and her grandfather had delegated her grandson's marriage contract to me with a dowry [mention the amount/form of dowry]).
- h. If you delegate his sister's marriage to someone, the sentence of ijab is *"ku nikahakan akan dikau akan si anu (saudara si anu) yang berwakil ia kepadaku dengan maharnya sekian"* (I married you with [called the woman's name and her brother's name] and her brother has delegated her sister's marriage contract to me with a dowry [called the amount/form of dowry]).
- i. If the nephew, or his mamarina (uncle), or the one who liberates represents a woman's marriage to someone, then the sentence of ijab is *"ku nikahakan akan dikau akan si anu yang ia berwalikan si anu yang berwakil ia kepadaku dengan maharnya sekian"* (I marry you by [female name and guardian's name] and the guardian has represented the marriage... [called a woman's name] with a dowry [call the amount/form of dowry]).
- j. If the master of the sahaya slave delegates the marriage of his sahaya servant to someone, the sentence of ijab is *"ku nikahakan akan dikau akan abdi si anu yang berwakil ia kepada aku dengan mahar sekian"* (I married you to the servant of the sahaya belonging to [called the name of the master] and the master has represented the marriage of the servant of his sahaya to me with a dowry [called the amount/form of dowry]).
- k. If a man delegates his marriage to someone, the sentence of his ijab is *"ku nikahakan anakku si anu akan si anu yang berwakil ia kepadamu"* (I marry my son [called a female name] to [called a male name] and you as his representative to accept his marriage to my son). Then the deputy answered with a kabul sentence *"ku terima menikah si anu bagi si anu yang berwakil ia kepadaku dengan maharnya"*

sekian", (I accept the marriage [called the name of the woman] for [called the name of the married man] that he has represented to me in accepting this marriage for him with a dowry [mention the amount/form of the dowry clearly].

- l. If the father delegates his child's marriage to the khatib (marriage registrar/religious leader) and the married man also delegates his marriage to the khatib (marriage registrar/religious leader), the sentence of *ijab* pronounced by the khatib is "*ku nikahkan si anu anak si anu yang berwakil ia kepadaku dengan maharnya sekian*" (I married [called the woman's name] her child [called father's name] and her father had delegated her son's marriage to me with a dowry [the amount or type of dowry was stated]. Then the khatib answered *kabul* with the sentence "*ku terimakan nikahnya si anu anak si anu yang berwakil si anu itu kepadaku pada menerimakan nikahnya dengan dia dengan maharnya sekian*" (I accepted her marriage [called a woman's name] for [called a man's name] and she has represented to me in accepting this marriage for her with a dowry [called the amount/form of dowry clearly].
- m. If the bride-to-be is not yet of puberty age, the khatib and other guardians (guardians other than father and grandfather) are not allowed to represent their marriage. But father or grandfather can marry them. The *ijab* sentence used is "*ku nikahkan akan anakku si Fathimah dengan anakmu si Abdullah dengan mahar sekian*" (I married my son named Fatimah with your son named Abdullah with a dowry [called the amount/form of dowry]). Then the father or grandfather of the boy who has not yet reached puberty says *kabul* "*ku terimalah nikahnya anakku si Abdullah akan anakmu si Fathimah dengan maharnya yang tersebut itu*" (I accepted the marriage of my son Abdullah to Fatimah with a dowry as mentioned) (Norcahyono, 2021).

The construction of *ijab* and *kabul* marriage that is easy and practical to carry out as written by al-Banjari above has a concept in accordance with what is agreed upon by Shafi'iyah scholars. Shafi'iyah scholars argue that *ijab* and *kabul* marriage are considered valid if they use sentences that mean marriage such as *al-inkah* and *al-tazwij*. In addition, it is also valid if it uses the *azamiah* language (a language other than Arabic). A marriage contract is invalid if it does not use a meaningful word *al-inkah* dan *al-tazwij* (Norcahyono, 2021). Substantively, the guidance for the practice of *ijab* and *kabul* along with the sentences constructed by al-Banjari so that they can be carried out and chosen by the people of Banjar in accordance with the customs, customs and conditions of the people who act out the *ijab* and *kabul* marriage (Norcahyono, 2021).

3.4. The Relevance of the Provisions of the Guardian Judge, Marriage Witness and Ijab Kabul in the Book of Al-Nikah in the Contemporary Context

Based on the previous description and analysis, it appears that al-Banjari's thinking about guardian judges, marriage witnesses, and *kabul ijab* in the Book of Al-Nikah has relevance to the opinions of previous scholars, especially the Shafi'i School. Then, if it is associated with the context of marriage in the modern era, the following analysis can be carried out.

First, related to the guardian of the judge. Al-Banjari explained that there are several circumstances that allow the transfer of guardianship to the guardian of the judge, namely:

1. The guardian does not exist at all (**First Opinion**). This opinion is relevant to the current context. Even in Article 23 paragraph (1) of the Compilation of Islamic Law (KHI) it is stated "*Wali hakim baru dapat bertindak sebagai wali nikah apabila wali nasab tidak ada atau tidak mungkin menghadirkannya atau tidak diketahui tempat tinggalnya atau gaib atau adlal atau enggan* (Mahkamah Agung Republik Indonesia, 2011),
2. The guardian of the *aqrab* does not exist because he goes to a place until the time span that allows him to perform the *qasar* prayer (two days and two nights) or on a difficult journey and the guardian does not represent to others, then the guardianship rights transfer to the judge (**Second**

- Opinion).** This opinion is relevant to Article 23 paragraph (1) of the Compilation of Islamic Law (KHI). However, with the adequacy of transportation technology in the modern era, this condition can actually be overcome,
3. Wali aqrab is missing and his condition is unknown (**Third Opinion**). This opinion is relevant to the current context as well as Article 23 paragraph (1) of the Compilation of Islamic Law (KHI),
 4. The guardian of the aqrab does not exist because he is leaving a distance of less than two marhalah (**Fifth Opinion**). This opinion is relevant to Article 23 paragraph (1) of the Compilation of Islamic Law (KHI). However, with the advancement of transportation technology in the modern era, this condition can actually be overcome,
 5. Wali aqrab because he was imprisoned (**Sixth Opinion**). In the current context, this can actually be overcome because an inmate can ask for extraordinary permission to leave prison to become a marriage guardian with several requirements such as a written guarantee statement from the guarantor, the identity of the inmate's guarantor (KTP and KK), and a certificate from the Head of Village/Lurah explaining the truth regarding the reason for the extraordinary permit (Kementerian Hukum dan Ham Provinsi Sulawesi Selatan, 2023),
 6. The guardian of the aqrab exists, but there are difficulties in finding it even for up to four or five days even though the bride-to-be really wants to get married, so the judge who is the guardian for her because of the emergency. However, if later the guardian of the aqrab comes and is present, then the marriage is canceled and the contract must be repeated (**Fourth Opinion**). This opinion is relevant to the current context as well as Article 23 paragraph (1) of the Compilation of Islamic Law (KHI),
 7. The guardian of the aqrab is a continuous and difficult to wait for healing, so the judge is the wali (**Seventh Opinion**). This opinion is relevant to the current context,
 8. The guardian of the aqrab wants to marry a woman who is in his guardianship while there is no other guardian of the aqrab who is equal to him, so the right of guardianship passes to the judge (**Eighth Opinion**). This opinion is relevant to the current context,
 9. The guardian of the aqrab is doing ihram or Umrah, so the guardian of the judge is the guardian of the marriage (**Ninth Opinion**). This opinion is relevant to the current context because people who are doing ihram should not get married or become the guardian of marriage (Aditya & Fathullah, 2023), However, it can be waited until the marriage guardian returns to his hometown,
 10. The guardian of the aqrab is 'adhal, so the judge is the one who acts as the guardian of the marriage. Wali 'adhal means the reluctance of the guardian to marry his child or who is under his guardianship due to things that cause the guardian not to marry him. The majority of scholars agree that if the wali 'adhal, then the sultan or judge is the wali (**Tenth Opinion**). This opinion is relevant to the current context.

Second, regarding the requirements for marriage witnesses in Banjari, there are 13, namely; 1. Islam; 2. Men; 3. 2 (two) people; 4. Independence; 5. Resourceful; 6. Puberty (adult); 7. Able to see; 8. Able to hear; 9. Able to speak; 10. The two witnesses shall not be children of the person who performs the marriage; 11. The two witnesses must not be fathered by the person who performs the marriage; 12. The two Witnesses shall not fight with each other; 13. Be fair. This condition is very relevant and even more detailed than Article 24 and Article 25 of the KHI which reads:

Pasal 24

(1) Saksi dalam perkawinan merupakan rukun pelaksanaan akad nikah.

(2) Setiap perkawinan harus disaksikan oleh dua orang saksi.

Pasal 25

Yang dapat ditunjuk menjadi saksi dalam akad nikah ialah seorang lakilaki muslim, adil, aqil baligh, tidak terganggu ingatan dan tidak tuna rungu atau tuli (Mahkamah Agung Republik Indonesia, 2011, p. 69).

Third, regarding *ijab qabul*, the provisions in the book *al-Nikah* are very relevant to the current context, especially since there are practical and more detailed examples than Article 27 of the KHI which reads "*Ijab dan kabul antara wali dan calon mempelai pria harus jelas beruntun dan tidak berselang waktu*" (Mahkamah Agung Republik Indonesia, 2011).

1. CONCLUSION

One of the manuscripts left by Sheikh Muhammad Arsyad al-Banjari is the Book of *Al-Nikah* which broadly contains about marriage law, female guardians, guardians of *aqrab* and *ab'ad*, marriage witnesses, *ijab-kabul*, *kafa'ah*, conditions of *ijab kabul*, *khulu'*, *thalaq*, *iddah*, *mu'asyarah* law, *iddah* of death, *ihdad*, and ends with examples of marriage sermons and prayers. One of the three discussions of the Book of *Nikah* is about the guardian of the judge, the witness of the marriage and the *ijab* of *kabul*. In the case of the guardian of the judge, it is explained that there are 10 circumstances that allow the transfer of the guardian of the *aqrab* to the guardian of the judge. In terms of marriage witnesses, it is explained that there are 13 conditions that must be met by marriage witnesses. In the case of *ijab kabul*, the meaning of *ijab* and the meaning of *kabul* in the marriage contract are explained and a guide to *ijab kabul* is given that is applicable to the people of Banjar. The three discussions as a whole are in accordance with the opinions of the *Shafi'iyah* scholars and make it easier for the people of Banjar at that time to practice them. In the current context, the majority of provisions related to guardians of judges in the Book of *Al-Nikah* are still relevant, although some provisions such as guardians of *aqrab* who are blocked from distance and are in prison can be overcome with technological advances and Extraordinary Permission to Exit Prison. Meanwhile, regarding marriage witnesses and *kabul ijab* in the Book of *Al-Nikah*, it can be said that everything is still relevant, even more detailed and practical than the provisions that exist today.

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