

Implementation of Taukil Wali at the KUA of Jati District, Kudus Regency from the Perspective of Minister of Religious Affairs Regulation Number 20 of 2019

Almadatus Saekhatus Zahro,¹ Nabila Luthvita Rahma,²

^{1,2} State Islamic Institute of Kudus

Email: nabilalr@iainkudus.ac.id

Keywords:
Guardian Judge;
Marriage
Guardian;
PMA Number 20
of 2019.

DOI:
10.19109/nurani.v%
vi%i.19508

Abstract: *The role of the guardian in marriage is an important pillar that must be fulfilled. In the event that the guardian is unable to attend the ceremony, representation can be made by the Head of the Sub-district KUA or Penghulu. The practice of "taukil wali" in Jati Sub-district is quite common, sometimes for justifiable reasons and sometimes without valid reasons. This research aims to explore the implementation of "taukil wali" in the KUA of Jati Sub-district in accordance with the Regulation of the Minister of Religious Affairs Number 20 of 2019. This research takes a Juridical Empirical approach, involving fieldwork to collect data on the application of "taukil wali" in the jurisdiction of KUA Jati, analyzed based on PMA Number 20 of 2019. The findings show that the application of "taukil wali" in KUA Jati is in accordance with the regulation. However, there are consequences that must be considered if the appointed guardian is not valid. Among them is the potential annulment of the marriage, which results in the absence of legal rights and obligations for the parties involved and the possibility of legal action. Even if the nasab guardian does not know the condition of the prospective bride, taukil wali is still carried out using taukil wali bil kitabah, in accordance with the provisions of PMA Number 20 of 2019.*

Introduction

The Compilation of Islamic Law (KHI) explains that marriage is mitssaqan ghalidzan or an act of worship that involves obedience to Allah's commands. Marriage Law Number 1 of 1974 in Indonesia defines marriage as a bond between a man and a woman with the aim of forming a happy and eternal family based on God Almighty (Departemen Agama R.I, 2000).

According to Article 28 of the Compilation of Islamic Law, a marriage guardian is required in the marriage contract for the bride-to-be. However, PMA No. 20/2019 from the Ministry of Religious Affairs also allows the use of a representative in this case, as explained in Article 12 Paragraph 4. (Kemenag: PMA, 2019).

Nikah is a formal and legally binding union between two individuals, recognized as life partners by law. It is formed through mutual agreement and usually involves formal registration (Moh. Ali Wafa, 2018). In accordance

with Article 1 of Law Number 1 of 1974, marriage is defined as a sacred bond between a man and a woman, which aims to form a happy and eternal family based on God Almighty. Article 2 of the Compilation of Islamic Law (KHI) characterizes marriage as a firm contract or *mitsaqan ghalidzan*, which requires obedience and devotion to Allah. In addition, Article 3 emphasizes the purpose of marriage to create a peaceful, loving, and nurturing household. (Departemen Agama Republik Indonesia, 2000).

In the context of the Compilation of Islamic Law (KHI) in Indonesia, there are two types of guardians in marriage, namely *nasab* guardians and judges. The *nasab wali* is a relative of the bride through lineage, usually a male relative such as a father, grandfather, brother, or other direct male descendant. On the other hand, a *wali hakim* is appointed by the KUA or relevant authority to represent the bride. (Fathonah K., dan Ramdani Wahyu Sururuie, 2021).

A marriage guardian, also known as a "wali" in Islamic law, is responsible for representing and looking after the interests of the bride. This role is usually filled by a close family member such as a father, brother or uncle. In certain cases, a court or religious authority may appoint someone to act as a guardian. (Moh. Ali Wafa, 2018).

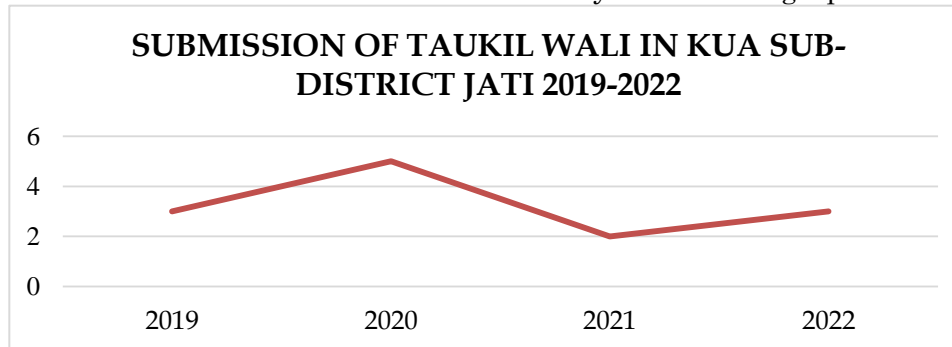
Taukil, or transfer of proxy, is a process whereby a new proxy is appointed to act on behalf of one of the parties to a marriage contract. This occurs when the natural guardians are unable or unwilling to continue in their role. (Moh. Ali Wafa, 2018). In Brunei, appointing a taukil marriage guardian requires an application to the Syariah Court, which is responsible for matters of Islamic law (Faizal, L., & Qohar, A, 2021). In Malaysia, the appointment of a taukil wali is governed by Section 12 of the Islamic Family Law (Federal Territory) Act 1984 (IFLA). According to IFLA (Mohd, Azizah, Badruddin Ibrahim, dan S. Abdul Razak, 2015).

In Pakistan, the appointment of taukil wali in marriage is regulated by the Muslim Family Law Act of 1961 (Khan, Asmat Ali, 2017). In Algeria and Morocco, taukil wali is recognized and regulated in Islamic family law. The appointment of a guardian is mandatory for marriages involving minors, as well as divorced or widowed women (Nadia Ait-Zai, 2005). In Indonesia, taukil wali is a legal mechanism used to facilitate marriages in accordance with Islamic law. It is regulated by the Ministry of Religious Affairs through PMA Number 20 of 2019 which regulates the procedures and requirements for issuing taukil wali (Zabidi, Haya, dan Siti Khadijah, 2020).

In some cases, the guardian submits a taukil letter to the wali hakim, citing distance and work responsibilities as reasons for their absence during the marriage contract (Observation, 2022). Thus, taukil wali arises in the marriage contract. Taukil wali refers to the transfer of the *nasab wali* to a judge wali determined by the KUA (Moh. Ali Wafa, 2018).

An explanation of the procedure for appointing a substitute guardian is contained in PMA No. 20/2019 on "Marriage Registration". Article 12 Paragraph 5 of PMA No. 20/2019 which allows the appointment of a substitute guardian if the guardian cannot be present, then the authority of the *nasab guardian* is transferred to the judge wali to carry out the marriage contract (Ministry of Religion: PMA, 2019). The KUA of Jati Sub-district is one of the implementers of marriage registration in Jati

Sub-district, Kudus Regency. This practice has been observed to increase, especially during the COVID-19 pandemic, where guardians face difficulties in attending weddings due to travel restrictions and health issues. This is reinforced by the graph below:



Source: Researcher Observation at KUA Jati District, Kudus Regency

The Head of the Religious Affairs Office, Soehartono, highlighted the need for research on taukil wali (substitute guardian) based on the provisions of PMA Number 20 of 2019. So far, research on Taukil Wali is limited to: first, implementation as conducted by Nattasya Meliannadya who focused on the implementation of Minister of Religious Affairs Regulation No. 20/2019 in Malang City, highlighting how this regulation increases the burden on guardians, brides-to-be, and grooms compared to the previous regulation. The taukil obligation is seen as a deterrent against potential manipulation by guardians when they are unable to attend the wedding (Meliannadya, 2020). The second focuses on the role of the guardian judge in replacing the nasab guardian in marriage as Ahmad Nabil Atoilah and Ahmad Kamal Research (Atoilah, Ahmad Nabil, and Ahmad Kamal, 2019). The third, Research by Oktaviani and Arif Sugitanata explores the practice of granting marriage guardian rights to local kyai among the Sasak Sade Indigenous Community by highlighting cultural aspects and traditions related to taukil wali. (Sugitanata, 2020).

This study aims to determine the implementation of Taukil Wali in the Jati Sub-district Religious Affairs Office, Kudus Regency, because of the rampant cases where the authority of the nasab guardian is transferred to the judge's guardian without any clear reason. This certainly has the potential for legal consequences. The selection of this location is based on the high number of such cases and the ease of access for data collection.

Research Methods

This research is classified as Empirical Legal Research, which uses empirical methods such as statistical analysis and data collection to study legal phenomena. Empirical legal research uses social science methods to collect and analyze data, which aims to provide an evidence-based understanding of legal issues and test hypotheses regarding the practical functioning of law (Muhaimin, , 2020).

While the research approach used in this research, namely descriptive qualitative, is used to understand and interpret human experiences,

behaviors, and perspectives by collecting and analyzing non-numerical data. (Suharsimi Arikunto, 2016).

The data used includes primary data in the form of interviews with Soeharsono (head of KUA Jati), Noor Ali (administrative staff of KUA Jati) and Hindun Handayah and Soni Sandra Susanto as people in the KUA Jati area, observation, and documentation. The results were then transcribed for further data testing. Data validity testing in this research is in the form of: Triangulation, which is data validity. Comparing the analysis and findings of researchers for consistency ensures data reliability and validity. Finally, checking findings against existing theories or previous research helps establish data validity (Jonaedi Efendi, 2016). The stages of data analysis include data examination, classification, verification, analysis, and conclusion drawing. (Jonaedi Efendi, 2016).

Discussion and Results

Implementation of Taukil Wali in Jati Sub-district

Prior to the issuance of PMA No. 20/2019, the appointment of guardian judges in the KUA of Jati District was not transparent and accountable. However, with the new regulation, there is now a structured procedure for the appointment of guardians and supervision from the KUA, ensuring a more orderly and legitimate process (Khoiriyah , 2023).

An interview with Noor Ali, administrative staff of KUA Jati, Kudus District, confirmed that they have first-hand experience of implementing Taukil Wali Bil Kitabah according to the regulation. Noor Ali highlighted the clear and structured procedure for appointing a wali hakim, which emphasizes transparency, accountability, and protection of rights and interests in the marriage contract. (Noor Ali, 2023).

Compliance with PMA No. 20/2019 ensures transparency and accountability in the appointment of Taukil Wali, leading to increased certainty and legal protection for all parties involved. Informant 3's explanation highlights the importance of Taukil Wali in Jati District and indicates that the implementation of this process is viewed positively, as it improves welfare and provides greater protection for individuals in need.

Prior to the issuance of PMA Number 20 of 2019, the appointment of guardians at KUAs in Jati District lacked transparency and accountability. However, with the new regulation, there is now a structured procedure, ensuring a more orderly and legal process of appointing guardians. An interview with Noor Ali, administrative staff at the KUA in Jati District, highlighted the positive impact of implementing Taukil Wali Bil Kitabah according to the regulation. Clear and structured procedures promote transparency, accountability and protection of rights and interests in the marriage contract. Compliance with the regulations ensures transparency and accountability in the appointment of Taukil Wali, leading to increased legal certainty and protection for all parties involved.

Procedure for implementing Taukil Wali based on PMA Number 20 of 2019

The person wishing to appoint a Taukil Wali must give an affidavit stating his intention in the presence of two witnesses. The affidavit must include the identity of the guardian, the bride, and the groom. It must be

signed and dated by the person making the appointment, the two witnesses, and the Taukil Wali. The affidavit is then submitted to the KUA of the bride's domicile to document the approval to the head of the KUA. (Soehartono, 2023).

Suhartono correctly identifies the relevant articles in the regulations that govern the roles and responsibilities of Taukil Wali appointed during the marriage contract. However, it is important to note that the regulation primarily focuses on the exercise of Taukil Wali in taking care of the affairs of those who are unable to do so themselves due to illness, disability, or old age. (Soehartono, 2023).

This indicates that the Head of the Jati Sub-district KUA has correctly identified the relevant articles in the regulation governing the roles and responsibilities of Taukil Wali during the marriage contract. However, it should be underlined that the main focus of the regulation is the implementation of Taukil Wali for individuals who are unable to manage their own affairs due to illness, disability, old age and out of the area. This suggests that the Taukil Wali mechanism is specifically designed to provide assistance and support to those who need it in fulfilling their obligations and rights in the context of marriage.

Constraints in the Implementation of Taukil Wali at KUA Jati Sub-district

According to Suhartono, the Head of the KUA, one of the main obstacles in marriage registration is when the guardian of the bride-to-be is outside the KUA area. The requirement to appoint a taukil guardian according to the regulation can make it difficult for those who live far from the KUA office due to distance, time, and cost constraints. (Soehartono, 2023).

However, Hindun Handayah and Soni Sandra Susanto, community members, highlighted the importance and benefits of Taukil Wali. They believe it provides a solution for individuals whose guardians are unable to attend the wedding and shared their personal experiences. Despite the obstacles, Soni Sandra Susanto said the KUA officers were very helpful in the process of making the taukil letter. (Hindun Handayani, 2023).

The implementation of Taukil Wali in the KUA of Jati Sub-district faces several obstacles, as revealed by Suhartono, the Head of the KUA. One of the major challenges is when the bride-to-be's guardian resides outside the KUA's jurisdiction. The necessity of appointing this taukil wali according to the regulations can make it difficult for individuals who live far away, because it involves issues such as distance, time, and cost constraints. These practical considerations can pose challenges for individuals who wish to appoint a taukil wali.

However, community members such as Hindun Handayah and Soni Sandra Susanto highlighted the importance and benefits of the Taukil Wali process. They believe that it provides a solution for individuals whose guardians are unable to attend the wedding, and they shared their personal experiences to support this view. Despite the obstacles, Soni Sandra Susanto expressed appreciation for the assistance provided by KUA officials during the process of obtaining the taukil letter. This shows that despite the obstacles, KUA officials were supportive and helpful in facilitating the

implementation of Taukil Wali. Their assistance can alleviate some of the challenges individuals face in completing the necessary procedures.

Effectiveness of the Implementation of Taukil Wali Based on Regulation of the Minister of Religious Affairs Number 20 of 2019

According to Suhartono, S.HI., MH, the implementation of Taukil Wali in the KUA of Jati Subdistrict provides legal benefits, including the guarantee of legal certainty of marriage and a solution for guardians who are unable to attend their child's marriage contract. The Taukil Wali system allows a marriage to be legally recognized even if the guardian cannot be physically present, as a representative is appointed to act on their behalf in the marriage process. This ensures that the marriage has a strong legal basis and can proceed smoothly. (Soehartono, 2023).

Noor Ali, Administrative Staff of the Jati District KUA, highlighted distance as a common reason for people in remote areas to appoint a proxy to give consent to the wali hakim. In situations where the legal guardian is far from the location of the marriage contract, appointing a proxy can provide a practical solution and ease the marriage process. By appointing a deputy, the legal guardians ensure that consent is given legally and responsibly, even if they cannot be physically present. The deputy acts on behalf of the natural guardian and fulfills the religious and legal requirements of giving consent. (Noor Ali 2023).

The implementation of Taukil Wali in Jati District follows the guidelines set out in PMA Number 20 of 2019 by the Ministry of Religious Affairs. Islamic law requires a wali, a male relative of the bride, to act on her behalf during the marriage process. In the absence of a guardian, the bride has the option to appoint a deputy as her guardian. Overall, the implementation of Taukil Wali in Jati District follows the regulations and principles outlined by the Ministry of Religious Affairs.

The research findings emphasize the importance of Taukil Wali in various countries, ensuring proper representation and consent in the marriage process. In the Jati region, the implementation of Taukil Wali is in line with PMA Number 20 of 2019, specifically referring to Taukil Wali bil Kitabah. This concept involves appointing a representative in writing to act as a guardian in a marriage. When the appointed guardian cannot be physically present, they can appoint a Taukil Wali bil Kitabah to fulfill their role and give consent on their behalf. This written appointment serves as proof of the guardian's authority for the representative to act as a guardian, ensuring the adherence of Islamic principles and rules in marriage.

Legal Effects of the Implementation of Taukil Wali Based on Regulation of the Minister of Religious Affairs Number 20 of 2019 in the KUA Area of Jati District, Kudus Regency

According to Noor Ali, Administrative Staff of KUA Jati, the implementation of Taukil Wali at KUA Jati provides legal benefits such as ensuring the legal certainty of marriages conducted through taukil guardians and providing solutions for guardians who cannot attend their children's marriage contracts. (Noor Ali 2023).

Suhartono, Head of the Jati Sub-district KUA, emphasized the legal consequences of Taukil Wali, including the recognition and binding nature of the marriage contract, as well as potential issues related to the appointment of a deputy (Suhartono, 2023). Khoiriyah, a member of the Sakinah Family Guidance at KUA Kecamatan Jati, highlighted the importance of following the guidelines in PMA No. 20/2019 to ensure the legality and validity of the marriage. In Islamic law, the presence of an eligible guardian is an essential condition for a valid marriage. (Khoiriyah, 2023).

If the nasab guardian is not present at the marriage, the legal consequences may vary depending on the country, culture and legal system. In general, the legal consequences that may arise are as follows:

1. Lack of legal recognition

In some jurisdictions, the presence of a qualified guardian is required for a marriage to be legally recognized. If the legal guardian is missing, and there are no alternatives or exceptions in place, the marriage may not be recognized by the government or competent authority. This can impact the legal rights and protections associated with marital status. (Soehartono, 2023).

2. Administrative challenges

The absence of a legal guardian in a marriage can cause administrative difficulties. Obtaining a marriage certificate or processing various marriage-related administrative documents can be problematic. This can affect the legal recognition and protection of the relationship. (Soehartono, 2023).

3. Seeking alternative legal approaches

In certain cases, when there is no qualified legal guardian, the community or legal system may seek alternative approaches to legalize the marriage. For example, the marrying party may seek the consent or authorization of another guardian who is deemed to have an interest or authority under local law. This approach can provide legal recognition of the marriage. (Soehartono, 2023).

Taukil Wali Nikah Without Wali Nasab Knowing the Condition of the Bride-to-be

Surat taukil wali bil kitabah is a form of marriage guardian submission that is used when the marriage guardian is far from the bride and groom's residence or cannot be present in person at the wedding. To fulfill this requirement, in accordance with Minister of Religious Affairs Regulation No. 20/2019, a letter of taukil wali bil kitabah is made.

Taukil wali bil kitabah serves as a way to appoint a deputy when the nasab wali is unavailable in a marriage. It acts as proof that all the pillars of marriage have been fulfilled and serves as a legal document with the relevant signature. The regulation has been effectively implemented in the Religious Affairs Office in Jati District. However, challenges arise when the guardian is in a remote area and has difficulty visiting the Sub-District Religious Affairs Office, thus hindering the issuance of the letter. (Soehartono, 2023).

Certain conditions must be met for both the representative (muwakkil) and the person being represented (deputy). They must be legally capable and willing to perform the delegation. The muwakkil must have ownership of the

act being represented, which must be permissible according to Shariah. A clear and unambiguous statement is required for the shigat (pronouncing of the representation). (Soehartono, 2023).

Meanwhile, the existence of a nasab guardian who knows the condition of the prospective bride is very important, if the guardian delegates his authority to the judge's guardian correctly, the marriage is still valid according to the PMA No. 20/2019 procedure. (Soehartono, 2023).

Conclusion

Based on the analysis in this paper, the suitability of the implementation of taukil wali in the KUA of Jati District, Kudus Regency with the Regulation of the Minister of Religious Affairs Number 20 of 2019 can guarantee the implementation of marriage administration. This has implications for safeguarding the rights and interests of the bride and groom, especially if the bride's nasab guardian is absent. Wali nikah taukil without the nasab guardian knowing the requirements of the bride and groom is valid as long as all the conditions and pillars are met, according to Regulation of the Minister of Religious Affairs Number 20 of 2019. The results of this paper can contribute thoughts in national law, especially in the field of Islamic family law by strengthening the function of the KUA in the implementation and supervision of Taukil Wali in the neighborhood or region because the implementation of Taukil Wali is proven to bring benefits to the bride and groom. The limitations in this research include research methods that are limited to qualitative and limited to the context of this research, namely the KUA of Jati District, Kudus Regency. The hope is that further research will be conducted with a different methodology and focus on the implications of Taukil Wali in society.

References

- Ahmad Rofiq. (2015). *Hukum Perdata Islam Indonesia*. Depok. PT Raja Grafindo Persada. Jakarta.
- Atoilah, A. N., & Kamal, A. (2019). Penggantian Wali Nasab oleh Wali Hakim menurut Intruksi Presiden Nomor 1 Tahun 1991. *Istinbath | Jurnal Penelitian Hukum Islam*, 15(1), 113-134. <https://doi.org/10.36667/istinbath.v15i1.276>.
- Daud, F. K., & Sururuie, R. W. (2021). Otoritas Wali Nikah Dalam Islam: Analisis Perkawinan Tanpa Wali di Indonesia Perspektif Fiqh dan Hukum Positif. *Akademika*, 15(2). <http://journalfai.unisla.ac.id/index.php/akademika/article/view/544>.
- Departemen Agama R.I. (2000). *Direktorat Jenderal Pembinaan Kelembagan Agama Islam*. Kompilasi Hukum Islam di Indonesia: 2000.
- Faadhilah, S., & Setyaningsih, S. (2022). Pembatalan Perkawinan Akibat Wali Nikah Tidak Sah. *Reformasi Hukum Trisakti*, 4(2), 295-302. <https://www.trijurnal.trisakti.ac.id/index.php/refor/article/view/13603>.
- Faizal, L., & Qohar, A. (2021). The Age Limit for Marriage in Brunei Darussalam in Maslahah and Legal Politics Perspectives. *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 6(1), 65-80. <https://doi.org/10.25217/jm.v6i1.1334>

- Iftidah, I. (2017). Pandangan Masyarakat Tentang Taukil Wali: Studi Di Desa Dempet Kabupaten Demak. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 9(1), 87-100. <https://doi.org/10.14421/ahwal.2016.09106>.
- Jonaedi Efendi. (2016). *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Kencana.
- Kemenag. (2019). Peraturan Menteri Agama Republik Indonesia Nomor 20 Tahun 2019 Tentang Pencatatan Pernikahan.
- Khan, A. A. (2017). Marrying Without the Consent of the Wali (a Case Study of Pakistan) Compatibility of Pakistani Family Laws with UDHR. Available at SSRN 3067457. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067457.
- Moh. Ali Wafa. (2018). *Hukum Pernikahan di Indonesia*. Tangerang. Yayasan Asy-Syari'ah Modern Indonesia.
- Mohd, A., Ibrahim, B., & Abdul Razak, S. (2015). Protecting women's interest (Maslahah) in marriage through appointment of a guardian (wali) under Islamic law. *Pertanika Journal of Social Science & Humanities*, 23, 75-84. <https://core.ac.uk/download/pdf/300434037.pdf>.
- Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram. University Mataram Press.
- Nadia Ait-Zai. Reforms in Family Law in the Maghreb. <https://www.iemed.org/publication/reforms-in-family-law-in-the-maghreb/>. Akses pada 20 Februari 2023.
- Nuridin, D. (2022). Konsep Hak Ijbar Wali Nikah dalam Perspektif Kompilasi Hukum Islam (KHI). *Jurnal At-Tadbir : Media Hukum Dan Pendidikan*, 32(2), 93-105. <https://doi.org/10.52030/attadbir.v32i2.150>
- Nurfatoni, A. (2022, December). View of Penghulu on the Implementation of Taukil Wali in Peraturan Menteri Agama Nomor 20 Tahun 2019 (Study in Batang Regency). In *International Conference on Islamic Studies (ICIS)* (pp. 288-296). <https://proceeding.uingusdur.ac.id/index.php/icis/article/view/955>.
- Siregar, G., & Siregar, R. S. (2022). Implementation of Minister of Religious Affairs Regulation No. 20 of 2019 Concerning Taukil Wali Marriage. *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam*, 7(2), 206–217. <https://doi.org/10.25217/jm.v7i2.2792>.
- Sugitanata, A. (2020). Memberikan Hak Wali Nikah Kepada Kyai: Praktik Taukil Wali Nikah Pada Masyarakat Adat Sasak Sade. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 12(2), 161-172. <https://doi.org/10.14421/ahwal.2019.12204>.
- Umar Haris Sanjaya. (2017). *Hukum Perkawinan Islam di Indonesia*. Yogyakarta. Gama Media.
- Zabidi, H., & Khadijah, S. (2020). Implementasi Peraturan Menteri Agama (Pma) No. 20 Tahun 2019 Tentang Taukil Wali Bilkitabah Dalam Akad Nikah Di Kantor Urusan Agama (KUA) Kabupaten Banjar. *Syariah Darussalam: Jurnal Ilmiah Kesyarahan dan Sosial Masyarakat*, 5(1). <http://dx.doi.org/10.58791/sydrs.v5i1.98>.
- Zainudin Ali. (2016). *Metode Penelitian Hukum*. Jakarta. Sinar Grafika.

