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### **The Study on Guardianship in Marriage, Marriage Consent (Ijab Kabul), and Kafa 'Ah in Kitab an-Nikah by Sheikh Muhammad Arsyad Al-Banjari**

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#### **Abstract**

The tendency to understand old texts by studying classical books has increased, especially in studying the book about Marriage. It is due to the awareness that researching ancient studying texts will get something precious and essential. Research should be done on these texts so that older people's work is not faded and forgotten. Besides, this research was conducted not to go beyond the ability and success of the author nor to go back (to the age of camels). In contrast, we are now in the millennial generation, but at least the old texts can be used as a reference to breaking through a collective and static mindset to a progressive and dynamic ethos of mind. This research was library research by conducting research and studies on the manuscript *Kitab an-Nikah* by Sheikh Muhammad Arsyad al-Banjari and the thoughts contained in the manuscript. The book is one of the old texts written in Arabic *Malay*. From the results of the study, it is known that the discussion is about the guardianship in Marriage, Ijab Kabul, and kafa 'ah in *Kitab an-Nikah* turned out to be very influential on the Marriage in Banjar community both in the past and in the present, as well as being a reference for the leaders as a guide to the technical implementation in Marriage.

#### **INTRODUCTION**

Nowadays the tendency to understand old texts is increasing. It is due to the awareness that researching ancient studying texts will get something valuable and essential. The old text is the spiritual heritage of the ancestors, contained in the results of the expression of feelings, thoughts, attitudes, and views of people's lives in the past and ideals that used to be the guide of life in today's times. The old texts can be seen from many sources, such as inscriptions, literature, history books, and chapters. This national cultural heritage needs attention to be studied and researched and lived the meaning of "*local genius*" and the depth of creativity in the nation itself. Moreover, the Indonesian people have various tribes, which show the life of multiple styles and patterns. They have different social lives, and each tribe has different language patterns and cultural characteristics.

Among the cultural relics mentioned above is literature, which includes understanding what is stated using oral and written language tools. In literature, people can read and know about the history, experiences, and views of life, customs, laws, and all activities

around the life of the human as the owner of the literature, which is a reflection of knowledge, wisdom, religion, and ideals of the people in that time. Malay literature is written in Jawi, which is Arabic writing adapted to Malay needs.

The Malay literary works are indeed sourced from original Arabic texts expressed in all Malay languages in the form of quotation, translation, and equivalent. This situation causes the presumption that Malay scholars do not have authenticity and cannot reform their thinking. In this connection, it should note that under the stage of Islamization that was being experienced, the needs in the Malay realm at that time were not renewal but the consolidation and acknowledgment of Islamic understanding and appreciation. Excavations and research on these old texts should be done, so that *older people's* work is not faded and forgotten. Therefore, this research was conducted not to go beyond the ability and success of the author nor to go back (to the age of camels). In contrast, we are now in the millennial generation, but at least the old texts can be used as a reference to breaking through a collective and static mindset to a progressive and dynamic ethos of mind.

Intellectual traditions in Banjar society have reached the height of glory with the appearance and enormous role of a Sheikh Muhammad Arsyad al-Banjari (1122 H-1227 H/1710 M-1812 M) and from now on, abbreviated as al-Banjari – from his various contributions of intellectual thought, which are still the pride of the Banjar community. Religious persons in the past are the role model and leaders of people, so they are generally rooted in them. Likewise, with al-Banjari, his roots in society and his work are spread in South Kalimantan and Southeast Asia. For scholars, al-Banjari is seen as a great scholar who has inherited many writing works that can use to foster the community's religious life at any time. On the other hand, al-Banjari is seen as a historical figure who played an essential role in the development of Islam that has managed to bring significant changes to the people of South Kalimantan, especially from the aspect of religious beliefs and understandings, in preparation for the new era.

Therefore, he is noted as a large historical actor, in South Kalimantan, al-Banjari is known as the Banjar community with three (3) names: Mu 'allim Arsyad, Datuk kalampayan, and *Tuan Haji Besar*. Alongside the Banjar community, some figures give nicknames to al-Banjari, such as Shagir Abdullah, who nicknamed al-Banjari with the name Sun Islam. Meanwhile, Saifuddin Zuhri nicknamed it an Islamic lighthouse from Kalimantan. Azyumardi Azra referred to him as a person who not only played an essential role in his involvement in the scholarly network but also in the fact that he was the first scholar to establish Islamic institutions and introduce new ideas in South Kalimantan.

Al-Banjari left many valuable legacies to humankind afterward. Among his labor was his work entitled *Kitab an-Nikah*. Most of the *Kitab An-Nikah* contents are sourced from original Arabic texts that are expressed in all Malay languages in the form of quotation, translation, and equivalents or are reproductions of past thoughts about Marriage. This is based on the scientific ideal at that time in which significant figures must-have masterpieces like a book, more specifically for the people of Banjar when it requires various references that speak Arabic Malay. So, almost all of them are written in Arabic Malay Banjar, not only with the *Kitab an-Nikah* but also with all the works created by al-Banjari.

The *Kitab an-Nikah* is a literary book whose content contains matters related to fiqh munakahat. Although there have been many classical books that mu'tabar (recognized validity) have discussed the problem of munakahat, But of course, each has a different discussion structure.

Among the uniqueness in the *Kitab an-Nikah* is that this book was written in Malay Arabic with pegon letters, and the existence of al-Banjari's thought substance significantly affects the Banjar community's marriage procedures. The importance of al-Banjari's thought in *Kitab an-Nikah* is about Ijab and qabul (married consent). This

discussion in the Kitab an-Nikah states that the meaning of the Ijab is the guardian's words to the married man:

I marry you to my daughter (name) with a dowry, then the man answered: I accept marry off your daughter (name) with that dowry. If Ijab Kabul (marriage consent) is done in Arabic, then there is no difference from what has been explained by the priests, but the problem is if Ijab Kabul is done in Indonesian (read Banjar). Sentences I accept marry in The Kitab an-Nikah— for some leaders in South Kalimantan - is considered to have been standardized. It is used as a sentence that determines the legality of Ijab Kabul, which means that the sentence of I accept/I accept the marry off is considered invalid for the Ijab Kabul. Even though in the observation of the compiler, in other places, such as Samarinda, the Ijab Kabul is pronounced with the phrase: " I accept the marriage off (name) daughter of Mr. (name) with the dowry mentioned." Therefore, the drafter wants to dig deeper into the contents of this Kitab an-Nikah. This is done because this Kitab an-Nikah significantly affects the procedures for the implementation of Marriage for the Banjar community. This research can contribute to the reading community in general and the Banjar community in particular in the form of a description of al-Banjari's thinking contained in Kitab an-Nikah, as a work that can make a precious contribution to the knowledge of family law, especially marriage law. Besides, this study can also be used as a reference for further studies related to marriage law.

## RESEARCH METHODS

This research was library research by conducting research and studies on the manuscript of *Kitab an-Nikah* by Sheikh Muhammad Arsyad al-Banjari and the thoughts contained in the manuscript.

Because this research was library research, the data was obtained through primary and secondary data. The primary data is the manuscript of *Kitab An-Nikah* by al-Banjari, while the secondary data are the fiqh books and books closely related to this research study.

This research is descriptive-analytical, a complete description of the manuscript of *Kitab An-Nikah* by al-Banjari to further analyze the thoughts contained. This is done to find out the primary ideas of al-Banjari about Marriage contained in the *Kitab an-Nikah*, as well as to find out the substance of al-Banjari's thoughts.

## FINDINGS AND DISCUSSION

### Findings and Analysis Globally on Kitab An-Nikah

The structure of Kitab an-Nikah consists of chapters, each chapter contains articles, and usually, a new discussion sometimes begins with the word "*syahdan*". More detail about the book's contents will be classified as follows: a) Marriage Law (pp. 1-11). b) Chapter on declaring the guardian of women (pp. 12-17). c) Chapter on declaring the named guardian of *Arab* and guardian of *ab'ad* (pp. 17-27). d) Chapter on declaring the witness of Marriage (pp. 28). e) Chapter on declaring *Ijab qabul* (pp. 28-31). f) Chapter on declaring the qabul' (pp. 32-41). g) Article on declaring Ijab and qabul (pp. 41-42). h) Article on declaring *khulu'* (pp. 43). i) Article on declaring *Talak* (pp. 44-58). j) Chapter on declaring female *iddah* (pp. 58-66). k) Article on two *iddah* which belong and which have no input (pp. 66-69). l) Article on declaring *mu'asyarah* law (pp. 69-71). j) Article on declaring *iddah* because of spouse's dead (pp. 71-72) Article on *ihdad* (pp. 72-73).

Most of the *Kitab An-Nikah* contents are sourced from original Arabic texts that are expressed in all Malay languages in the form of quotation, translation and equivalents or are reproductions of past thoughts about Marriage. In short, this *Kitab an-Nikah* has references derived from the classical fiqh books which reflect the views of the **Shafiyah mahzab**, such as the book **Tuhfah al-Muhtaj by Asy-Syarwani, Fath al-Wahhab by Abu Zakariya al-Ansari**. It can be seen in the footnote of *Kitab an-Nikah* published by YAPIDA, as seen in a) Page 8 relating to the discussion of marriage law, b) Page 12 relating to the discussion of female guardians, c) Page 33 relating to the discussion of

*talak*. d) Page 38 relating to the discussion of *khulu*, e) Page 43 relates to the discussion of *khulu*. f) Page 49 relating to the discussion of *talak*. g) Page 52 relating to the discussion of *talak*. h) Page 56 relating to the discussion of *talak*. i) Page 59 relating to the discussion of female *iddah*.

The criticism that researchers want to convey is that there are some difficulties for readers (in general) when they want to understand all the marriage problems described by al-Banjari in the manuscript *Kitab an-Nikah*. Some of these difficulties include that in explaining all the marriage issues, al-Banjari did not describe it beforehand, both in the language (etymological) and terminology, such as in other *munakahat* books. The discussion usually leads directly to the core problem, which is around the explanation of the laws of the marriage problem, as mentioned above. Another difficulty is the language used in the *Kitab an-Nikah*. The researcher intends that the language or vocabulary used in this book must be retranslated into Indonesian because many Malay words still have not become Indonesian by default or EYD (Enhanced Spelling).

Conversely, some of these difficulties are also the advantages of *Kitab an-Nikah* manuscript, because it can be a measure of the originality of al-Banjari's work which makes it different from other works, especially about *munakahat*. Al-Banjari also participated and merited in building the Malay language so that it was able to become a language of knowledge and high *tamaddun*. Al-Banjari can be considered to have enriched Malay by applying many Arabic sentences and terms, especially those related to science and religion, such as the manuscript of *Kitab an-Nikah*, which has absorbed some *fiqh* terms (*munakahat*) into Malay. The Malay language we inherited today, is undeniably nothing but the language that has been built through the process.

### **Findings and Analysis of the Substance of Al-Banjari Thought in the *Kitab an-Nikah***

As mentioned above, there are fourteen (14) discussions that al-Banjari has raised in the book *Kitab an-Nikah*. From the 14<sup>th</sup> discussion, the drafter sees that there are three (3) discussions which are the substance of al-Banjari's thinking, namely the discussion of guardianship in Marriage, *Ijab Kabul*, and *kafa'ah*.

#### **Guardianship in Marriage**

The discussion about the problem of guardianship in the *Kitab an-Nikah* describes a guardian for married women, the problem of guardian *mujbir* and the judge's guardian. In *Kitab an-Nikah* did not explain clearly about the guardian for women. In addition, al-Banjari also did not explain the necessity of the presence of a guardian as one of the pillars of Marriage. According to Imam asy-Shafi 'i in *al-Umm*, in doing *Akad nikah*, if the Marriage without the presence of a guardian, then it is invalid. Ibn Qudamah of the Hambali, in his book *al-Mughni* said that the important thing in the matter of guardianship is permission from the guardian, not his presence. The issue of the marriage guardian in *the Compilation of Islamic Law* is one of the pillars of Marriage without an illegitimate marriage guardian. In principle, the guardian in Marriage is the guardian of the nasab. However, under certain conditions, the guardian of the Marriage can be replaced by the guardian of the judge. There must first be a ruling from the PA to replace the position of the nasab guardian.

The substance of al-Banjari's thought about guardianship is as follows:

Suppose the woman who married the woman is not her guardian. In that case, the guardian must first represent the other person to marry her, and also provided that the woman should first be expressed to her guardian, as he said: "Marry me with (name). Then the guardian will also represent the other person. He said: You represent me marrying (name) or you are the representative of marrying (name) with (name). Then let's say the name of the man and woman we want to marry and the nation as he says: my son or my grandson or my niece etc. Furthermore, it should be mentioned how much the dowry would be. " And if there is a judge, then the woman must represent herself to the judge and adequately (sufficient) her representative with authenticity, as it says: Mr. Andika, I marry off and wed off with (groom's name), then the man's name must be

mentioned by the woman. The judge must be perfect in hearing the word of the woman. The judge must know the woman's name, and the judge must not marry a person who is not in the land of his order (territory) like another person. The judge must not marry a woman who is not known to him, the wife of the person, a person is still in iddah? The problem of representative procedures like this continues today in South Kalimantan. In almost every wedding event, whether it is held at the Office of Religious Affairs (KUA) or held in homes, mosques, mashallah and other places, before Ijab Kabul is spoken, then such representative procedures must be done.

This representative method must in sequence, such as first of all there is a greeting (delegating) from bride-to-be to her guardian who is then her guardian charged to the headman to marry her child. Even in the authors' observation, in East Kalimantan, such procedures are carried out and practiced by the headmen who will lead the Akad nikah (marriage contract).

### **Ijab Qabul**

This discussion in the *Kitab an-Nikah* states that the meaning of the *Ijab* is the guardian's words to the married man:

*I marry off and wed off you to a (name) with a dowry (mention the amount). And the meaning of the qabul is the word of the married man with his words: I **accept her Marriage and wedding of (bride's name)** with a dowry mentioned above. "* When the one who married his father was himself, the sound of the Ijab Kabul was:

I marry off and wed off you to my daughter with a dowry (mention the amount), then the man answered: I accept her Marriage and wedding of your daughter (name) with the dowry mentioned. If the married person is his grandfather, then the Kabul Ijab sounds is: I marry and wed off my granddaughter to a man with a dowry (mention the amount). If the married person is his grandfather, then the Kabul Ijab sounds is :

I marry and wed off you to a man with a dowry. So the man who was married answered him: I accept her Marriage and wedding with the dowry mentioned. In the *Kitab an-Nikah*, it is stated that the condition of Ijab qabul is five kinds : 1) Do not say that the married man will have another saying between Ijab and qabul. 2) Answer the Ijab directly. 3) Do not dispute between the guardian's Ijab and the man's qabul. 4) There is agreement on both about the amount of dowry. 5) Between Ijab and qabul, there is no ta'lik. The scholars agreed that a new marriage is valid if it is done by a contract that includes *Ijab* and *qabul* between the two brides or between the parties who replace them. The statement of *Ijab qabul* described by al-Banjari is also stated by Imam asy-Shafi 'i. He states that Marriage is valid when done with the statement *zawwajtu* or *ankahtu* (I marry off/wed off) from the party who proposed or who represents him and *qabiltu* (I accept her marry) from the party who submitted or who represents him Imam Malik and Hambali, but they also stated the marriage dowry. Whereas Imam Hanafi views that the contract may be done with any statements that indicate the intention of Marriage, even with the terms *at-tamlik* (ownership), *al-grant* (submission), *al-bay* (sale), *al- 'data'* (giving), *al- ibahah* (giving) and *al-ihlal* (routing). If *Ijab Kabul* is done in Arabic, then there is no difference from what has been explained by the priests, but the problem is if *Ijab Kabul* is done in Indonesian (read Banjar). The sentences I accept marry in The *Kitab an-Nikah*– for some headman in South Kalimantan is considered to have been standardized and used as a sentence that determines the legality of *Ijab Kabul*. It means that besides the sentence **of I accept/I accept her to marry**, it is considered invalid for the Ijab Kabul. Even though in the authors' observation, in other places, such as Samarinda, the Ijab Kabul is pronounced with the phrase: " I accept the marriage of (name) daughter of Mr. (name) with the dowry mentioned..." It is sometimes what causes difficulties for prospective grooms who are not from South Kalimantan (Banjar people) because they are usually used to saying, "**I accept the marriage off (name) the daughter of Mr. (name) with a dowry (mentioned the amount)...**" so that it causes the Ijab Kabul needs to say repeatedly. In the matter of *Ijab Kabul*, it is also stated that one condition of Ijab Kabul is *not silence for a long time in answering (qabul)*. This statement has implications for some chiefs in South Kalimantan (to be more careful) in establishing rules that the qabul spoken by men must be done in one breath (not to be cut off). If disconnected, it

is considered invalid and must be repeated because it is considered disconnected (Banjar: hang). This sometimes makes the prospective bride and groom prepare them more before the *Ijab Kabul* is held, either by studying themselves or by going to the headman. He will marry him so that there will be conformity in the *Ijab Kabul* contract.

### **Kafa'ah**

The discussion of kafa 'ah in the *Kitab An-Nikah* stated that those who wish *kufu* are women's rights, not men's, whereas the norm *kufu* between a woman and a man contained in the *Kitab of An-Nikah* states five types, namely: 1) Safe from all disgrace (illness) that convicts it of *khiyar fasakh* Marriage. 2) Independent women not in *kufu* with male servants. 3) *Senasab* (descendants). Therefore, a Muslim man while his father is not Muslim, is not *sekufu* with a Muslim woman and his father is also a Muslim. *Ajam* Men, or non Arab men are not in *sekufu* (*sekufu* means: equivalent) with Arab women, and men whose father is *ajam* (even if their mother is Arabic) are not *sekufu* with Arab women whose father is Arab even though their mother is *ajam*, and Arab men who are not Quraysh with Arab women who are Quraysh, and again Quraysh who are not Hashim and Muthalib not *sekufu* with Quraysh who are Hashim and Muthalib. 4) *Iffah* which is piety and obedience to religion, meaning refraining from illegal work. That's why there are no *fasiq* men with good women and no *bid'ah* men with good women who are Ahl as-Sunnah. Next, the son of the person who is *fasiq* or the son of the person who is *bid'ah*, is not *sekufu* with the daughter of the person who is *fasiq*. Men who are *fasiq* *sekufu* with *fasiq* women and men doing *bid'ah* are *sekufu* with women doing *bid'ah* as well. 5) *Hirfah*, i.e. livelihood as a source of livelihood. The norms of that al-Banjari has described in the *Kitab An-Nikah* and it can conclude that this kind of view is in line with what Abu Zakariya Yahya an-Nawawi stated from the Shafi'iyah *mahzab*. An-Nawawi argues that it can be seen in five ways: disease-free or disgrace, independence, discipleship, religion and moral goodness, and work (*hirfah*). In the view of the priests of other *mahzab*, there is a difference of opinion regarding norm *kufu*. Imam Malik argued that what can be seen as *kuvu* in Marriage is religion and morals. Imam Hanafi and Imam Hambali said that what is seen as the norm *kufuu* are descent, independence, Islam, piety, wealth, and work. As for the problem of kafa'ah, in book *compilation of Islamic Law in Indonesia*, it is stated that inadmissibility cannot be a reason for preventing Marriage. Thus, although not expressly mentioned, Indonesia is a country that does not recognize the concept or institution of inequality. In the *Kitab an-Nikah*, it is stated that those who want *kufu* are women's rights, not men's, and one of the points mentioned is the problem of *senasab* (descent). This implies that men *ajam* other than Arab are considered not *sekufu* with Arab women (*syarifah*). This problem is very influential for the people of Banjar, where rarely there are Banjar people who are married to *Sharifah*, because they are considered not to be *sekufu*. More than that, in *Kitab An-Nikah*, it is mentioned that a judge is considered illegitimate to marry a person who is not *sekufu*. Therefore, thought of al-Banjari contained in the manuscript of *Kitab an-Nikah* is very influential on the marriage procedures of the Banjar community both in the past and in the present, especially about the problem of guardianship in Marriage, *Ijab Kabul*, and *kafa'ah*. Because it is considered very influential on the Marriage of the people of Banjar, then, according to Alfani David, *the Kitab an-Nikah* became the main reference for the *mufti* and the leaders in Banjarmasin South Kalimantan in carrying out the legal law *munakahat* (Marriage). Gazali Usman also said that *Kitab an-Nikah* was intended for the judges of the Kingdom of Banjar, officials, and religious officials as a guide to the technical implementation of Marriage for the entire territory of the Kingdom and until now has remained used.

### **CONCLUSION**

From the various exposures above, it can be concluded that: the description of the manuscript *Kitab an-Nikah* by al-Banjari contains about: marriage law, female guardians, aqrah guardians, and ab'ad guardians, marriage witnesses, *Ijab qabul*, *kufu'* or *kafa'ah*, *khulu'*, *talak*, female *iddah*, *mu'asyarah* law, *iddah* died, and *ihdad*. The discussions are

the substance of al-Banjari's thinking, namely the discussion of guardianship in Marriage, *Ijab Kabul*, and kafa 'ah. In the manuscript *Kitab an-Nikah*, research on the main mind of al-Banjari has not reached the perfect stage. Therefore, for the perfection of a scientific study, the researcher suggested that a more universal and comprehensive study can be conducted. Also, a further study is needed to determine which areas in South Kalimantan still use the *Kitab an-Nikah* as a reference in implementing the law *munakahat* (Marriage), as well as areas that no longer use it.

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