



Reconstructing the Role of the Marriage Guardian Based on *Maqāṣid al-Sharī'ah*: Toward Substantive Justice for Women in Islamic Family Law in Indonesia

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Abstract: *This study aims to analyze the principles and role of the marriage guardian in Islamic marriage law in Indonesia by highlighting the relationship between the validity of the marriage contract and the protection of women. The study employs a normative legal method with a qualitative approach based on a literature review of fiqh texts, the Compilation of Islamic Law, legislation, and contemporary scholarly studies. The results show that the construction of the marriage guardian in Indonesian positive law still tends to position women as subjects dependent on the guardian's authority, thereby creating a tension between legal justice and substantive justice particularly when rigid requirements for guardianship actually encourage unregistered marriages and weaken legal protections for women. This study finds that the concept of kāmīl al-ahliyyah can serve as a reconstructive solution by establishing the full legal capacity of adult women as the primary basis for determining the need for guardianship. Through the maqāṣid al-syarī'ah approach, the guardian is repositioned not merely as an absolute requirement but as a contextual protective instrument through the normative reinterpretation of the Compilation of Islamic Law (KHI) and the strengthening of the role of the judicial guardian. This concept enables the creation of a balance between the validity of contracts, the protection of women, and legal certainty within the Islamic family law system in Indonesia.*

Kata Kunci:

Wali Nikah, Keabsahan Akad, Perlindungan Perempuan, Maqāṣid al-Sharī'ah

Abstrak: Penelitian ini bertujuan menganalisis prinsip dan peran wali nikah dalam hukum perkawinan Islam di Indonesia dengan menyoroti hubungan antara keabsahan akad dan perlindungan perempuan. Penelitian menggunakan metode hukum normatif dengan pendekatan kualitatif berbasis studi kepustakaan terhadap literatur fikih, Kompilasi Hukum Islam, peraturan perundang-undangan, dan kajian ilmiah kontemporer. Hasil penelitian menunjukkan bahwa konstruksi wali nikah dalam hukum positif Indonesia masih cenderung menempatkan perempuan sebagai subjek yang bergantung pada otoritas wali, sehingga memunculkan ketegangan antara legal justice dan substantive justice, terutama ketika syarat wali yang kaku justru mendorong praktik nikah tidak tercatat dan melemahkan perlindungan hukum perempuan. Penelitian ini menemukan bahwa konsep kāmīl al-ahliyyah dapat menjadi solusi rekonstruktif dengan menempatkan kapasitas hukum penuh perempuan dewasa sebagai dasar utama dalam menentukan kebutuhan perwalian. Melalui pendekatan maqāṣid al-syarī'ah, wali direposisi bukan semata sebagai rukun mutlak, melainkan instrumen protektif yang kontekstual melalui reinterpretasi normatif KHI dan penguatan peran wali hakim. Konsep ini memungkinkan terciptanya keseimbangan antara keabsahan akad, perlindungan perempuan, dan kepastian hukum dalam sistem hukum keluarga Islam di Indonesia.

INTRODUCTION

Marriage in Islam is a fundamental institution that not only encompasses a spiritual dimension but also has broad legal, social, and economic implications in society.¹ As a country with a Muslim majority, marriage practices are inseparable from the interaction between Sharia norms and positive law, particularly as regulated in the Compilation of Islamic Law (KHI) and administrative practices at the Office of Religious Affairs (KUA).² However, in contemporary social reality, various issues still arise in the practice of marriage, such as marriages without a guardian, marriages under family pressure, and conflicts regarding the guardian's authority in selecting a spouse.³ This phenomenon highlights a gap between the ideal norms of Islamic law

¹ Murshida Khatun, Md Amirul Islam, and A. K. M. Abdul Latif, "The Multifaceted Significance of Marriage: Exploring Its Role in Religion, Family Dynamics, Social Cohesion, and Economic Context," *International Journal of Social Sciences & Humanities* 7, no. 1 (2022): 55–70, <https://doi.org/https://doi.org/10.58885/ijssh.v7i1.55.mk>.

² Prahasti Suyaman and Temmy Fitriah Alfiany, "Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law," *KnE Social Sciences* 7, no. 15 (2022): 537–49, <https://doi.org/10.18502/kss.v7i15.12129>.

³ Ade Ulfa Amin, Syafruddin Syam, and Imam Yazid, "Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia," *Journal of World Science* 2, no. 8 (2023): 1268–1279, <https://doi.org/https://doi.org/10.58344/jws.v2i8.410>.

which emphasize justice and protection and on-the-ground practices that do not fully reflect these values. The issue of the marriage guardian is not only related to the formal validity of the marriage contract but also concerns the protection of women's rights and legal certainty within the national marriage system. On the one hand, the existence of a wali is viewed as a Sharia instrument to ensure the validity of the marriage contract, social order, and the protection of women, as affirmed in the KHI and the administrative practices of the KUA. However, in practice, patriarchal dynamics still influence the exercise of guardianship, such as the appointment of a wali *'adhal*, forced marriage, and restrictions on women's authority to choose their life partners.⁴ Under certain conditions, the rigidity of the guardian requirements and limited access to the judicial guardian mechanism actually drive some women to choose the path of unregistered marriage, especially when facing administrative obstacles or family conflicts, thereby weakening the protection of their rights to maintenance, inheritance, and the legal status of their children.⁵ Therefore, criticism of patriarchal practices in guardianship is not intended to negate the role of the guardian in Islamic law, but rather to promote the strengthening of protective functions through a more responsive marriage administration system, including the optimization of the roles of the KUA, judicial guardians, and marriage registration to ensure a balance between Sharia values, legal certainty, and substantive justice for women.

To date, studies on guardianship in Islamic family law have not yet fully and comprehensively addressed the tension between the normative function of the guardian as a pillar of the legal validity of the marriage contract and contemporary social realities that demand gender protection and justice for women. This tension is evident in the clash between *legal justice*—which emphasizes the fulfillment of the pillars and conditions of marriage according to classical fiqh and *substantive justice*, which demands tangible protection of women's rights in family life. From a fiqh perspective, the validity of a marriage is determined solely by the fulfillment of the elements of the guardian (wali), witnesses, dowry (*mahar*), and the exchange of consent (*ijab qabul*), without requiring state registration as a condition for the marriage's validity. However, within the framework of national law, marriage registration serves as the primary instrument for protecting the civil rights of women and children, such as the right to alimony, inheritance, birth certificates, and access to state legal protection.⁶ In practice, the overly rigid application of the guardian requirement often

⁴ Aidil Rahman, Nor Annisa Rahmatillah, and Lisnawati Lisnawati, "Reorientasi Keadilan Dalam Hukum Keluarga Islam: Gagasan Kesetaraan Hak Suami-Istri Era Kontemporer," *Mitsaqan Ghalizan* 5, no. 2 (2025), <https://doi.org/10.33084/mg.v5i2.11616>.

⁵ Sariati, "Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law -in Indonesia," *Justice Law Review* 1, no. 1 (2025), <https://doi.org/10.64317/jlr.v1i1.17>.

⁶ Erni Sulhati Roudho Siregar and Uswatun Hasanah, "Problematika Nikah Siri Di Indonesia (Tinjauan Hukum Islam Dan Hukum Nasional)," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 3, no. 1 (2026), <https://doi.org/10.62383/demokrasi.v3i1.1507>.

drives women to choose unregistered marriage when a *blood-related* guardian refuses to consent to the marriage without a sharia-based reason or when access to a judicial guardian is hindered by bureaucratic obstacles. Research on guardians for widows shows that the ambiguity of guardian regulations in the Compilation of Islamic Law leads some widows to choose to marry through unregistered marriage via informal practices based on the Hanafi school of thought, as they do not wish to be hindered by formal guardian procedures.⁷ A similar situation occurs in cases involving a wali *adhal*, where a guardian's refusal based on differences in social or economic status, customs, or choice of partner drives women to take a shortcut through unregistered marriages.⁸ Ironically, although nikah siri is often considered religiously valid because it fulfills the pillars of fiqh, this practice actually places women in a legally and socially vulnerable position. Studies on siri polygamy show that 78% of siri wives experience economic marginalization, 89% lack legal access to spousal support, and 81% face inheritance issues that disadvantage them. In fact, the phenomenon of unregistered marriages has given rise to widespread structural problems, including thousands of children without administrative certainty or a clear legal status. Thus, an excessive emphasis on the formality of the guardian as a requirement for a valid marriage contract without considering the concrete well-being of women has the potential to shift the guardian's function from an instrument of protection to a source of structural vulnerability. This situation also demonstrates that most previous studies still view guardianship in a formalistic manner and have not deeply connected it to power relations, the protection of women, and the objectives of *maqāṣid al-sharī'ah* in Islamic family law.

Most research still tends to view marriage guardianship in a linear manner as a formal legal requirement, without deeply connecting it to social implications, power relations, and the dynamics of women's protection in practice. At least three major trends in the literature can be identified. *First*, research by Hasmy et al. focuses on the normative and juridical aspects of marriage guardians, such as their role as a legal pillar for the validity of the marriage contract, differences in views among Islamic schools of thought, and the hierarchy of guardians and judicial guardians.⁹ This study underscores the importance of guardians within the structure of Islamic law, but tends to under-explore how these provisions impact women's autonomy and actual

⁷ Ahmad Suryana, Khoirul Hidayah, and Muhammad Muhammad, "Rethinking Marriage Guardians for Widows in Indonesia," *Justicia Islamica* 22, no. 1 (2025), <https://doi.org/10.21154/justicia.v22i1.9990>.

⁸ Fazlon Umar and Muhammad Fazlurrahman Syarif, "Reformulating the Concept of Guardianship in Marriage: Between Classical Fiqh Traditions and the Demands of Modern Law," *Journal of Mujaddid Nusantara* 2, no. 2 (2025), <https://doi.org/10.62568/jomn.v2i2.373>.

⁹ Misbahul Munir Hasmy, M Ridho, and Anggi Harianto, "Keutamaan Ayah Menjadi Wali Nikah Dibandingkan Ulama Dalam Perspektif Hukum Islam," *Maqashiduna: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025), <https://doi.org/10.47732/maqashiduna.v3i1.624>.

protection in modern social contexts. *Second*, research by Ade and Menad focuses on issues surrounding guardianship practices, such as the phenomenon of the “wali *adhal*,” conflicts among guardians, manipulation of guardian status, and the role of judicial guardians in resolving marriage obstacles. Although these studies make important contributions to understanding empirical dynamics, they generally remain limited to procedural and administrative aspects and have not examined the dimensions of substantive justice and power relations that influence women’s position within the institution of marriage. *Third*, the research by Umar and Syarif presents a critique and reconstruction of the concept of the guardian from the perspectives of gender and the reform of Islamic law, such as a critique of male dominance as guardians, as well as efforts to expand the role of adult women in marriage contracts.¹⁰ From these three trends, it is evident that studies on the marriage guardian have yet to systematically integrate the normative dimensions of fiqh, the realities of social practice, and the demands of gender justice based on maqashid al-sharia. No study has yet simultaneously linked classical and modern legal foundations, examined empirical practices and their impact on women, and formulated a design for the reconstruction of Islamic family law that preserves the protective function of the guardian while minimizing the potential for women’s subordination.

The purpose of this paper is to address the shortcomings of previous research, which tends to position the marriage guardian normatively as a pillar of the legal validity of the marriage contract or merely as a procedural mechanism within positive law, yet has not comprehensively analyzed how the guardian’s function as an instrument of both legitimation and protection for women operates in the practice of Islamic family law in Indonesia. In social reality, practices such as nikah siri, isbat nikah, and unregistered marriages still create legal, social, and economic vulnerabilities for women and children, highlighting the gap between the normative concept of guardianship and the effectiveness of its protection.¹¹ Therefore, an analysis is needed that views the guardian not only as a requirement for a valid marriage contract but also as a social institution operating within the context of power relations, culture, and the modern legal system. Thus, three main questions can be formulated. *First*, how is the concept of marriage guardianship constructed from the perspective of classical jurisprudence and the thought of modern scholars, and what is its position as a requirement for a valid marriage under Indonesian positive law, particularly in relation to the protection of women’s honor, lives, and destinies. *Second*, how does the marriage guardian function as an instrument for the protection of women in social

¹⁰ Umar and Syarif, “Reformulating the Concept of Guardianship in Marriage: Between Classical Fiqh Traditions and the Demands of Modern Law.” <https://doi.org/10.62568/jomn.v2i2.373>

¹¹ Muhammad Iran Simbolon and M Ridwan, “Analisis Hukum Islam Terhadap Praktik Nikah Siri Di Indonesia: Studi Kritis Atas Aspek Legalitas, Perlindungan Hak Perempuan, Dan Dampaknya Terhadap Tatanan Sosial,” *Journal of Legal Sustainability* 2, no. 1 (2025), <https://doi.org/10.63477/jols.v2i1.239>.

practice—including in the context of *nikah sirri*, child marriage, and patriarchal culture—and to what extent do these practices truly guarantee or, conversely, undermine the protection of women's rights? *Third*, how the application of the judicial guardian in Indonesian marriage law can serve as the basis for reconstructing the concept of marriage guardianship—one that is not only oriented toward the formal validity of the marriage contract but also ensures the protection of women in accordance with the principles of *maqāṣid al-sharī'ah*, gender justice, and modern legal certainty. Answers to these questions are expected to provide a theoretical contribution by strengthening an integrative approach between *fiqh* and positive law in Islamic family law, as well as a practical contribution as a basis for policy formulation, regulatory reform, and social engineering that can strengthen the protection of women within the institution of marriage in Indonesia.

This study is based on the argument that the role of the marriage guardian in Islamic family law cannot be separated from two main dimensions: the validity of the marriage contract and the protection of women. Normatively, the marriage guardian is positioned as a pillar or a requirement for the validity of the contract, ensuring that the marriage process proceeds in accordance with the provisions of *fiqh*. However, at the same time, the existence of the *wali* also serves a social function oriented toward protection, guidance, and safeguarding women's rights so that they are not disadvantaged during the marriage process or as a result of marriage. Differences in the sociocultural context and the modern legal system in Indonesia create a tension between classical jurisprudential understandings and the practical implementation of the *wali nikah*, including the role of the *wali hakim* within the religious court system. Therefore, a comprehensive analysis is needed that not only emphasizes the formal-legal aspects of the validity of the contract but also examines the extent to which the guardianship mechanism truly functions as an instrument for the protection of women in the reality of marriage practices. Thus, this study argues that a normative-theoretical and empirical re-examination of the concepts and practices of marriage guardianship is an essential prerequisite for realizing a marriage legal system that is more equitable and responsive to women's interests.

RESEARCH METHODS

This study employs a qualitative approach based on a literature review, aiming to analyze the principles and role of the marriage guardian as a valid requirement for marriage and as an instrument for the protection of women under Islamic family law in Indonesia. This approach was chosen because the research focuses on legal norms, concepts, and doctrines derived from *fiqh* literature and legislation, thereby enabling a systematic analysis of the relationship between normative provisions and social legal practices in the conduct of marriage. The scope of the research includes a study of classical and contemporary jurisprudence and its implementation in Indonesian

positive law, particularly Law No. 1 of 1974 on Marriage and its amendments, as well as the Compilation of Islamic Law (KHI), which serves as the primary reference in practice at Religious Courts and the Office of Religious Affairs (KUA). In addition, this research also considers empirical findings from studies on the practices of guardians and marriage guardians in Indonesia to identify gaps between normative concepts and social reality. Data sources consist of primary legal materials, such as fiqh texts, the KHI, the Marriage Law, and related regulations, as well as secondary legal materials, including journal articles, dissertations, and previous research relevant to the issues of marriage guardians, guardian judges, and the protection of women.

Data collection was conducted through a documentary study by searching for, critically reading, and classifying various primary and secondary literature related to marriage guardians, Islamic family law, the Compilation of Islamic Law (KHI), marriage regulations in Indonesia, and contemporary studies on women's protection. Data analysis employed a descriptive-qualitative method using *a content analysis* approach, which involved identifying themes, patterns of argumentation, and legal constructs within the studied literature, then grouping them into key issues such as the validity of the marriage contract, the protective function of the guardian, the judicial guardian, and gender relations in marriage law. Furthermore, a normative interpretation was conducted by examining classical fiqh provisions, positive law regulations, and rulings or practices of Islamic family law in Indonesia to identify similarities, differences, and possibilities for reconstructing the concept of the marriage guardian. In the analytical process, this study specifically employs the *maqāṣid al-sharī'ah* approach as an analytical tool to assess the extent to which the concept and practice of guardianship can ensure the protection of women, safeguard the welfare of the family, and fulfill the principle of substantive justice in contemporary Islamic law. To ensure data validity, this study applies source triangulation by comparing fiqh perspectives, positive law regulations, and findings from contemporary research, thereby producing a comprehensive and objective analysis of the position of the wali nikah within the Islamic family law system in Indonesia.

RESULTS AND DISCUSSION

The Concept of the Marriage Guardian from a Fiqh Perspective

From a fiqh perspective, the marriage guardian is understood as the party who possesses sharia authority to perform or validate the marriage contract on behalf of the bride with the aim of safeguarding her welfare, honor, and interests. This position places the wali not only as a formal element in the contract but also as a normative

institution that links legal aspects with the social protection of women.¹² The legal basis for marriage by a wali is derived from the Qur'an and hadith, including Qur'an 2:232

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضُوا بَيْنَهُمْ بِالْمَعْرُوفِ ۗ ذَٰلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۗ ذَٰلِكُمْ أَزْكَى لَكُمْ وَأَطْهَرُ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ ۚ ۲۳۲

"When you divorce your wives and their waiting period has elapsed, do not prevent them from marrying their husbands if there is mutual consent between them in an appropriate manner. That is what is advised to those of you who believe in Allah and the Last Day. That is purer for your (souls) and holier (for your honor). Allah knows, but you do not know."

The verse above does not explicitly state whether a guardian is required or not, but it is stated that it is forbidden for a guardian to prevent a woman from marrying,¹³ as well as the hadith of the Prophet Muhammad (peace be upon him) in Sahih Muslim No. 1421

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا سُفْيَانُ، عَنْ زِيَادِ بْنِ سَعْدٍ، عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ، سَمِعَ نَافِعَ بْنَ جُبَيْرٍ، يُخْبِرُ عَنْ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «التَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالْبِكْرُ تُسْتَأْمَرُ، وَإِدَّتْهَا سَكُوتُهَا

"Qutaibah bin Sa'id narrated to us: Sufyan narrated to us, from Ziyad bin Sa'd, from 'Abdullah bin Al-Fadhl, that he heard Nafi' bin Jubair narrate from Ibn 'Abbas, that the Prophet, may Allah's peace and blessings be upon him, said, "A widow has more right over herself than her guardian. As for a virgin, she is asked for her opinion, and her silence constitutes her consent."

The hadith states that marriage without a wali is invalid; the majority of scholars cite this as the basis for the necessity of a wali in the marriage contract. Based on this hadith, it can be concluded that the wali is a cornerstone of a marriage's validity, as the wali plays a vital role in safeguarding and overseeing his daughter's life, and bears significant responsibility for all forms of behavior exhibited by his daughter. Since the

¹² Nur Faizah, "The Concept of Marriage Guardian in the Perspective of Islamic Law," *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 1, no. 2 (2023): 1–8, <https://doi.org/10.59966/yudhistira.v1i2.1217>.

¹³ Chamim Tohari, "Kedudukan Wali Sebagai Syarat Sahnya Perkawinan Dalam Hukum Islam: Perspektif Historis Dan Ushul Fiqh," *Al-Maslahah: Jurnal Ilmu Syariah* 17, no. 1 (2021): 1–27, <https://doi.org/10.24260/al-maslahah.v17i1.1894>.

guardian is the pillar of marriage, he cannot be omitted for the marriage to be valid.¹⁴ In fiqh, marriage guardians are divided into two main types: the *blood-related* guardian (wali *nasab*) and the judicial guardian (wali hakim). A wali *nasab* is a male relative on the paternal side who holds priority in the following order: father, grandfather, full brother, half-brother, uncle, and other relatives. If a wali *nasab* is absent, ineligible, or refuses without a *valid* reason, the authority of the wali passes to the wali hakim as a representative of state authority.

Furthermore, fiqh also recognizes a distinction between a wali mujbir and a wali ikhtiyar. A wali mujbir typically the father or grandfather possesses the right of compulsion (ijbar) within certain limits, whereas a wali ikhtiyar merely grants consent without any element of coercion.¹⁵ Additionally, there are differing viewpoints among the schools of law (*madhhabs*) that highlight significant dynamics in the legal framework of the marriage guardian. The Shafi'i, Maliki, and Hanbali schools (along with many scholars) regard the wali as a pillar of marriage law, such that a marriage contract without a wali is considered invalid. On the other hand, the Hanafi school allows women who have reached puberty and have a valid reason to marry on their own, provided they meet the principles of kafa'ah and a reasonable dowry (*mahar*); thus, the wali is viewed as an encouraged element rather than a mandatory one. In practice, the guardian plays a crucial role in ensuring the suitability of the couple (*kafa'ah*), safeguarding the woman's honor, and preventing marriages that could be socially or morally harmful. However, this authority is not absolute. Contemporary legal thought emphasizes the importance of a woman's consent as a legal subject with full legal capacity, thereby increasingly limiting the practice of coercion through the right of ijbar.¹⁶ In Indonesia, regulations under Article 19 of the Compilation of Islamic Law emphasize the guardian as a pillar of marriage that must be fulfilled while also providing a mechanism for a judicial guardian, thereby ensuring women's protection within a positive legal framework. This demonstrates that the marriage guardian holds a dual role: as the determiner of the validity of the marriage contract and as an instrument of social protection for women. This dual function underscores that the concept of guardianship in fiqh is not solely oriented toward formal-legal aspects but also encompasses ethical and protective dimensions that must be exercised proportionately.

¹⁴ Muchlis, "Wali Mujbir Dan Kebebasan Memilih Pasangan Bagi Perempuan Persepektif Ulama Kontemporer Dan Fiqh Klasik," *ASASI: Journal of Islamic Family Law* 3, no. 1 (2022), <https://doi.org/10.36420/asasi.v3i1.196>.

¹⁵ Toha Andiko, Zurifah Nurdin, and Ahmed Abdul Malik, "Reactualization of Wali Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi'i's Concept Regarding Wali's Ijbar Right," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 2 (2023), <https://doi.org/10.30631/alrisalah.v23i2.1403>.

¹⁶ N Faizah, "Konsep Wali Nikah Dalam Perspektif Ulama Klasik Dan Modern.," *Al-Muqaranah: Jurnal Perbandingan Mazhab Dan Hukum* 2, no. 2 (2024): 57–64, <https://doi.org/10.55210/jpmh.v2i2.446>.

From a critical perspective, it is evident that there is a tension between the classical fiqh framework which emerged within a patriarchal social context that positions the guardian as a dominant authority and the evolution of modern society, which demands recognition of the autonomy and legal capacity of adult women. In this regard, the *maqāṣid al-sharī'ah* approach is crucial for reconstructing the meaning of guardianship as a mandate of protection, rather than a legitimization of domination. The reinterpretation of the concept of guardianship including the limitation of the right to compel (*ijbar*) and the strengthening of the role of the guardian judge reflects an effort to achieve a balance between normative validity and substantive justice in Islamic family law.

The Role of the Marriage Guardian as a Condition for the Validity of the Contract

The marriage guardian holds a central position as the determinant of the contract's validity, according to the perspective of a number of scholars, and serves as a widely adopted normative instrument in Islamic family law in Indonesia. The presence of a guardian is not merely understood as an administrative formality but as an integral part of the contractual structure that determines whether a marriage is valid or not.¹⁷ In fiqh practice and institutional settings such as the Office of Religious Affairs (KUA), a wali must meet several requirements: he must be Muslim, male, of puberty, wise, independent, just, and not in a state of ihram for Hajj or Umrah. These requirements serve as indicators of the guardian's validity; thus, if they are not met, the guardian's authority becomes invalid, affecting the validity of the marriage contract itself.¹⁸ Consequently, the guardian's personal and moral qualities play a crucial role in ensuring the validity of the contract according to Sharia. The order of *blood-related* guardians is also a determining factor in the validity of the marriage contract. Fiqh establishes a hierarchy that must be followed in sequence, starting with the father, grandfather, full brother, paternal half-brother, uncle, and other male relatives. Violations of this order such as bypassing a guardian with greater rights without a valid reason can result in legal consequences, such as the annulment or invalidation of the marriage, and may necessitate the renewal of the marriage contract. This demonstrates that kinship structures are not merely social in nature but have direct legal implications for the validity of the marriage contract.

The types of guardians in this context include, among others, the wali *mujbir*, the wali *ikhtiyar*, the wali hakim, and the wakil wali taukil. The wali *mujbir* who is generally the father or grandfather has the right of *ijbar* up to a certain limit, but this

¹⁷ Yasfin Maulana Muhammad et al., "Konflik Pemikiran Metode Istinbath Hukum Madzhab Hanafiyyah Dan Syafi'iyah Dalam Hukum Nikah Tanpa Wali," *JURNAL AL-IJTIMAIYYAH* 8, no. 1 (2022), <https://doi.org/10.22373/al-ijtimaiyyah.v8i1.13397>.

¹⁸ Ahmad Zakky Fikri and Musyafa, "Pertimbangan-Pertimbangan Yang Mengantarkan Pada Persetujuan Pernikahan Dengan Wali Hakim (Studi Kasus Di Kantor Urusan Agama Di Kecamatan Sumbersari Kabupaten Jember)," *Rayah Al-Islam* 7, no. 3 (2023), <https://doi.org/10.37274/rais.v7i3.779>.

right must not be exercised arbitrarily or in a manner that harms the woman. The wali *ikhthiyar* serves only as a party who approves the woman's choice. Meanwhile, the judicial guardian (wali hakim) acts as a substitute when the *blood-related* guardian is absent, ineligible, or refuses without a valid reason. A delegated guardian (*taukil*) allows for the delegation of the guardian's authority to another party through specific legal mechanisms.¹⁹ The legal consequences of failing to meet the requirements for a guardian or the absence of a guardian in a marriage contract are significant. In the Shafi'i, Maliki, and Hanbali schools of thought, a marriage without a guardian or with an ineligible guardian is deemed void or voidable. In the Indonesian context, this is reinforced by the Compilation of Islamic Law, specifically Article 71(e), which states that a marriage may be annulled if it is conducted without a guardian or by an ineligible guardian. Practice in religious courts also shows that in such cases, repeating the marriage contract is the legal solution that must be taken to restore the validity of the marriage. On the other hand, the Hanafi school offers a more flexible perspective by recognizing the validity of a contract without a guardian for women who have reached puberty and possess sound judgment, provided that the principles of equality (*kafa'ah*) and a reasonable dowry (*mahar*) are met. However, in legal practice in Indonesia, the view of the majority of scholars, particularly the Shafi'i school, is more dominant and serves as the basis for positive law; thus, the presence of a guardian remains a primary requirement for the validity of the marriage contract.

In situations where a *blood-related* guardian (*wali nasab*) cannot fulfill their role, the mechanism of appointment by a judicial guardian (*hakim wali*) is a legally recognized solution. A judicial guardian may be appointed if all *blood-related* guardians have passed away, their whereabouts are unknown, they do not meet the requirements, or they refuse to consent to the marriage without a valid Sharia-based reason. This procedure is typically carried out through the KUA (Religious Affairs Office) or a religious court ruling, including in cases of marriage to ensure the legality of a marriage that has already taken place.²⁰ This mechanism demonstrates the state's role in ensuring legal certainty while protecting women's rights in marriage. The application of the guardian's role as a requirement for a valid marriage contract is inseparable from the tension between formal and substantive aspects. An excessive emphasis on formal legitimacy such as the administrative fulfillment of guardianship requirements can overlook aspects of justice and the woman's consent, particularly in cases where the guardian coerces or obstructs the marriage without a valid reason. This highlights the tension between formal and substantive legitimacy in the practice

¹⁹ Aswat and Hidayat, "Analisis Kedudukan Wali Hakim Sebagai Wali Nikah Pengganti Dalam Hukum Islam Perspektif Mazhab Syafi'i." <https://doi.org/10.20414/alihkam.v14i2.6927>

²⁰ M Sabir, Aris Aris, and Iin Mutmainnah, "The Problems of the KHI on Article 7 About the Marriage Isbat in a Religious Court," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021), <https://doi.org/10.18592/sjhp.v21i1.3994>.

of Islamic family law.²¹ Therefore, the *maqāṣid al-sharī'ah* approach is essential to ensure that the guardian's role remains focused on the public interest, particularly in safeguarding honor, lineage, and justice (*hifz al-nasl, al-ird, and al-adl*).

The Role of the Marriage Guardian as an Instrument for the Protection of Women

From the perspective of classical jurisprudence, the marriage guardian is positioned as a protective mechanism that plays a strategic role in preventing exploitation and ensuring that women's rights are safeguarded from before the marriage contract is signed through to after it is signed, while the rationale behind the institution of the guardian is inseparable from the scholars' view on the need to protect women in social and family relationships. The guardian is understood as a protector tasked with anticipating potential injustices whether stemming from power dynamics within the family or from external parties so that marriage does not become a vehicle for exploitation but rather a space that guarantees women's well-being and welfare.²² During the pre-contract stage, the guardian's role is particularly prominent in vetting the prospective husband through the concept of *Kafa'ah*, or equivalence. The guardian ensures that the prospective partners are equal in terms of religion, morality, economic capability, and social status, so that the woman does not enter into a marriage that could potentially be detrimental to her. Additionally, the guardian serves to prevent coercion, family pressure, or external interference that could deprive the woman of her freedom to choose her life partner. In this regard, the guardian also protects a woman's right to a fair dowry and ensures that the marriage is conducted legally and free from manipulation or coercion.

When the marriage contract is formalized, the guardian acts as the woman's legal representative, ensuring that the entire process complies with Sharia provisions. The guardian oversees adherence to the principles and provisions of marriage and acts as the woman's representative during the exchange of consent (*ijab*), ensuring no clauses are detrimental or place the woman in an unfair position.²³ This function demonstrates that the guardian is not merely a formal symbol but an actor who ensures both the legality and fairness of the marriage contract. In modern times, this role also includes helping women understand their rights within the country's legal system, ensuring that protection is not only normative but also practical. Furthermore,

²¹ Sidiq et al., "Wali Al-Nikāḥ Hierarchies in Theory and Practice: Disputes, Authority, and Social Reality in Indonesian Muslim Communities." <https://doi.org/https://doi.org/10.25217/jf.v10i1.6367>.

²² Herlinda, A Rofiq, and Nuri Kamilia, "Penentuan Wali Nikah Bagi Anak Di Luar Pernikahan Perspektif Hukum Islam Dan Hukum Positif," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 6, no. 2 (2025), <https://doi.org/10.36701/bustanul.v6i2.2234>.

²³ Ahmad Muhamad et al., "Wali Nikah Dalam Perspektif Pancasila Dan Hukum Islam : Konflik Dan Konvergensi Marriage Guardians in the Perspective of Pancasila and Islamic Law : Conflict and Convergence," *DIRASAH: Jurnal Kajian Islam* 2, no. 1 (2025): 54–69, <https://litera-academica.com/ojs/dirasah/article/view/72>.

in the post-contract phase, the guardian continues to serve a protective role as a mediator when conflicts arise within the household. The guardian can play a role in mediating disputes between husband and wife, as well as helping women assert their rights in cases of neglect, such as regarding alimony, inheritance, or unfair treatment. In this context, the guardian can also collaborate with formal legal institutions, including religious courts, to ensure that women's rights remain legally protected.

Based on this discussion, it can be understood that the function of the guardian in Islamic marriage law is fundamentally designed as an instrument of protection for women, not merely as a formal requirement for the validity of the marriage contract. However, in the development of contemporary family law practice, the concept of the guardian often emphasizes legal-formal aspects more than its protective function. Therefore, a reinterpretation of the concept of the wali is needed through the *maqāṣid al-sharī'ah* approach so that the function of guardianship remains relevant to the principles of justice, the protection of women's rights, and modern legal certainty. The following comparison illustrates the shift in orientation from the classical/formal construction of the wali toward a *maqāṣid*-based construction:

Table 1: Shift in Orientation from the Classical/Formal Concept of a Guardian to a *Maqāṣid*-Based Concept

Aspect	Classical/Formal Guardian Construction	<i>Maqāṣid</i> -Based Guardian Construction
Primary Orientation	Formal validity of the contract	Protection and welfare of women
Basis of Legitimacy	Textual Compliance and the Guardian's Authority	<i>Hifz al-nafs, hifz al-'ird, and al-'adl</i>
The Status of Women	Object of Protection	Legal subjects with the capacity to act
Functions of a guardian	Determiner of the validity or invalidity of a contract	Companion, mediator, and instrument of protection
Power relations	Dominated by male authority	Based on partnership and justice
Conflict resolution	Dependent on the authority of the <i>blood-related</i> guardian	Prioritizes the protection of women's rights through judicial guardians and legal institutions
Impact of the practice	Has the potential to lead to unregistered marriages and subordination	Promotes legal protection and administrative certainty

Relationship with the state	Focus on fiqh requirements	Integrated with the KUA, marriage registration, and legal protection
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Source: Author's Analysis (2026)

This comparison shows that the reconstruction of the concept of wali is not intended to eliminate the function of guardianship in Islam, but rather to restore its orientation as an instrument of protection in line with the objectives of Sharia. This perspective is consistent with the text of the Qur'an, specifically Surah an-Nisa': 19,

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا ۖ وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبَيِّنَةٍ ۚ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ ۚ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ۙ ۱۹

"O you who believe, it is not lawful for you to inherit a woman by force. Do not harass them because they wish to take back a portion of what you have given them, unless they commit a clear act of immorality. Treat them with kindness. If you dislike it, (be patient), for you may dislike something, yet Allah has placed much good in it."

This verse reaffirms the prohibition against treating women unfairly, directly highlighting practices from the Jahiliyyah era in which women were treated as property or inheritance, subjected to forced marriage, or detained without their consent. The Qur'an uses the term *karha* (coercion) in this context to explicitly prohibit violence and coercion against women. This includes prohibiting the treatment of women as inheritance, forcing them to marry, or restricting their rights and freedoms. This verse emphasizes the importance of "dealing with them *ma'ruf* (treating them fairly)," which implies a standard of good conduct that includes non-interference, non-coercion, and practicing *ihsan* (kindness) toward one's wife, even if love has faded. Therefore, this verse establishes the fundamental principle that women must not be subjected to arbitrary and inhumane treatment, and that their rights including the right to choose a spouse fairly and with dignity must be protected within the framework of Islamic law. Consequently, the role of the wali is to uphold these rights and ensure that women are not harmed or exploited.²⁴

²⁴ Samsudin and Lilik Andaryuni, "Reinterpretasi Makna Kekerasan Terhadap Perempuan (Studi Kajian Tematik Tentang Terminologi Kekerasan Dalam Al-Qur'an)," *MAQASID: Jurnal Studi Hukum Islam* 13, no. 1 (2024): 72–85, <https://doi.org/10.30651/mqs.v13i1.22581>.

The Application of the Judicial Guardian in Indonesian Marriage Law

The judicial guardian in Indonesian marriage law is an essential part of the guardianship system, which aims to ensure the validity of the marriage contract while protecting women's rights. Normatively, the role of the judicial guardian is regulated in Articles 19–23 of the Compilation of Islamic Law (KHI) and reinforced by various Minister of Religious Affairs Regulations, thereby providing a clear legal basis for the transfer of guardianship when the guardian is unable to perform his or her functions.²⁵ This indicates that the judicial guardian serves a dual function: as a formal substitute within the guardianship structure and as a corrective mechanism against guardianship practices that obstruct women's right to marry, particularly in cases involving an "adhal" guardian. In practice, the use of a judicial guardian at the Office of Religious Affairs (KUA) arises under several relatively uniform concrete conditions, such as the absence of a guardian (deceased or unknown), a guardian who does not meet the requirements (non-Muslim, mentally incapacitated, or not yet having reached puberty), and a guardian's refusal without a sharia-based justification (*wali adhal*). In addition, special circumstances such as *converts to Islam* or children born out of wedlock also serve as grounds for appointing a judicial guardian as a form of legal protection to ensure that the marriage remains valid and recognized by the state. This empirical practice indicates that cases involving judicial guardians occur quite frequently, particularly in the context of the 'adhal guardian and the absence of a *blood-related* guardian.

Administratively, the procedure for appointing a judicial guardian begins with the prospective bride and groom submitting an application to the KUA (Religious Affairs Office) along with the required marriage documents. Next, the existence and eligibility of the *blood-related* guardian are verified. In certain cases, particularly involving a wali 'adhal, a ruling from the Religious Court is required before the KUA can act as a judicial guardian.²⁶ After the appointment, the head of the KUA or an official designated to perform the marriage contract as the guardian carries out the marriage; the procedure for a marriage with a judicial guardian is the same as that for a marriage using a *blood-related* guardian. The only difference lies in who represents the marriage; in this case, the marriage is represented by the Head of the KUA. This procedure demonstrates that the judicial guardian system is not merely normative but also incorporates a structured administrative mechanism within the practice of family law in Indonesia. Furthermore, the judicial guardian serves as a corrective mechanism

²⁵ Baharudin Baharudin, "Implementasi Pertimbangan Hakim Dalam Mengabulkan Permohonan Penetapan Wali Adhal Untuk Melaksanakan Perkawinan Menurut Hukum Islam (Studi Putusan Nomor 0055/ Pdt. P/ 2019/PA.Mt)," *World Journal of Hepatology* 4, no. 2 (2020): 245–53, <https://doi.org/10.33087/wjh.v4i2.186>.

²⁶ Jon Nedy, Syamsuddin, and Baehaqi, "Penetapan Wali Hakim Sebagai Pengganti Wali 'Adal Di Kantor Urusan Agama (KUA) Kecamatan Nogosari Kabupaten Boyolali," *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 5, no. 2 (2023), <https://doi.org/10.33474/jas.v5i2.20531>.

for the protection of women. When a *blood-related* guardian abuses their authority for example, by refusing a marriage on the basis of customary, economic, or social status grounds not justified by Sharia law the presence of a judicial guardian serves as a means to restore women's rights to legally choose their marriage partner.²⁷ Furthermore, the use of a judicial guardian has also proven effective in preventing the practice of secret marriages and ensuring the protection of women's civil rights, such as the legal status of children, alimony, and inheritance.

However, the implementation of the guardian judge system in Indonesia is not without challenges. A number of studies indicate that there are bureaucratic issues, a lack of public understanding, and inconsistencies in the implementation of procedures at the KUA level.²⁸ In addition, the requirement for a Religious Court ruling in certain cases is often seen as prolonging the process and adding to the administrative burden on the public. However, it is important to note that in the context of applications for a wali *adhal*, the process in the Religious Court is designed as a voluntary proceeding (unilateral interest) that does not allow for appeal or cassation, with the aim of expediting resolution and preventing harm. In practice, the wali hakim procedure in Religious Courts cannot yet be fully considered women-friendly, as there are still obstacles such as administrative complexity, low levels of legal literacy among the public, limited access to services, and uneven capacity among court officials particularly in comprehensively understanding fiqh munakahat which also affect the quality of wali hakim implementation in the field. In some cases, these conditions actually drive people to take a shortcut through unregistered marriages to avoid a process they perceive as complicated and costly. In reality, the practice of unregistered marriages has the potential to place women in a vulnerable position due to weak protections regarding the right to alimony, inheritance, the status of children, and legal certainty regarding the marriage. When the judicial guardian mechanism is implemented through strict verification, the summoning of guardians, the examination of grounds for refusal, and the issuance of appropriate legal rulings, this system is capable of ensuring the legality of the marriage while protecting women's rights within the framework of both Islamic law and state law.²⁹ Thus, the judicial guardian can be understood as a meeting point between the principles of fiqh (which regard the guardian as an essential pillar) and Indonesia's positive legal system (which

²⁷ Maftuh Hidayatullah, Muhammad Najib Asyrof, and Krismono, "Putusan Hakim Pada Perkara Wali 'Adhal Karena Tidak Sekufu Pada Adat Perkawinan Pamekasan," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 5, no. 1 (2023), <https://doi.org/10.20885/mawarid.vol5.iss1.art3>.

²⁸ Ade and Menad, "The Legal Complexities of Wali Hakim in Islamic Marriages: Comparative Insights from Indonesia and Beyond." <https://doi.org/10.63077/byjene53>

²⁹ Muhammad Qoyyum Kridho Utomo, Moh. Nafik, and Mochammad Agus Rachmatulloh, "Penetapan Perkawinan Dengan Wali Hakim Akibat Wali Adhal Di Pengadilan Agama Nganjuk," *Al-Syakhsyiyah: Journal of Law & amp; Family Studies* 4, no. 2 (2023), <https://doi.org/10.21154/syakhsyiyah.v4i2.4864>.

requires registration and legal certainty), as well as a mechanism that fulfills the objectives of *Maqāṣid al-Sharī'ah* in safeguarding honor, lineage, and justice.

The Relationship Between Contract Validity and the Protection of Women in the Practice of the Marriage Guardian

The marriage guardian exists in a conceptual tension between legal justice (the formal validity of the contract) and substantive justice (the actual protection of women). Normatively, Islamic law and positive Indonesian law affirm the importance of the guardian as a pillar of marriage; however, in practice, this construct does not always align with the protection of women's rights. From the perspective of classical fiqh, hadith and the consensus of scholars establish the guardian as an absolute pillar, such that his absence results in the nullification of the contract and the loss of legal consequences such as maintenance and inheritance.³⁰ This framework is adopted in the Compilation of Islamic Law (KHI), specifically Article 19 and Article 20(1), which restrict the guardian to male relatives by blood or a judicial guardian.³¹ However, gender studies indicate that restricting the role of guardian to men alone reflects patriarchal bias, as it positions women as legal subjects who do not fully possess authority over themselves, even though adult women fundamentally possess *kamil al-ahliyyah* or full legal capacity to independently engage in legal acts. In contemporary Islamic legal practice, women are recognized as capable of conducting economic transactions, owning property, and entering into legal agreements; however, in marriage contracts, they are still positioned as dependent on the authority of a male guardian. This situation reveals an ambivalence in the construction of Islamic family law, which acknowledges women's legal capacity in the public sphere but restricts it within the personal and family spheres. On the other hand, differences among the schools of Islamic jurisprudence (*madhhabs*) open the door to reinterpretation, as the Hanafi school and some Maliki scholars recognize that adult women who have attained *kamil al-ahliyyah* may marry themselves under certain conditions, unlike the Shafi'i and Hanbali schools, which continue to require a guardian absolutely. These differences demonstrate that the obligation of a wali is not a single, absolute construct, but rather the result of contextual ijtihad influenced by the social conditions and legal approaches of each school of thought. Consequently, tensions arise when Indonesian positive law tends to formally adopt a single school of thought's perspective without accommodating the diversity of opinions which could actually strengthen the

³⁰ Adillah Karim Munir, "Analysis of the Authority of Marriage Guardians in the Perspective of Islamic Law and Marriage Law in Indonesia," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 2, no. 1 (2025), <https://doi.org/10.35335/k2t0nd10>.

³¹ Mughni Labib Ilhamuddin Is Ashidiqie, "Kritik Atas Peraturan Wali Nikah Dalam KHI Dan Fikih Perspektif Gender," *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (2021), <https://doi.org/10.14421/al-mazaahib.v9i1.2304>.

protection of women and the recognition of their legal capacity resulting in *legal justice* often taking precedence over *substantive justice*.

This imbalance is not merely theoretical; it is also evident in practice, where Indonesia's family law structure exhibits normative ambivalence: women are recognized as having legal capacity in economic and contractual matters, yet remain restricted in matters of marital guardianship.³² The implications can be seen in the phenomenon of adult women or widows who cannot access a formal guardian, thereby driving them into unregistered marriages that may be religiously valid but undermine their rights; the ambiguity of guardian regulations in the KHI, which allows for inconsistent practices; and bureaucratic guardian procedures that restrict women's access to protective mechanisms.³³ The impact is significant, as women in unregistered marriages are more vulnerable to losing their rights to alimony, inheritance, and legal protection, and face social stigma and economic vulnerability. Thus, an excessive emphasis on formal legitimacy without substantive protection actually creates new injustices. In the development of Islamic family law in Indonesia, there is actually a progressive trend regarding other issues such as post-divorce alimony and the division of joint property, where judges have begun to use the *Maqāṣid* approach to achieve substantive justice. However, this approach has not yet been fully applied to the issue of the marriage guardian. By analogy, treating the guardian as an absolute pillar does indeed satisfy formal legal aspects; however, when it prevents adult women who are legally competent from exercising their rights, encourages the practice of secret marriages, and weakens social and administrative protections, then Sharia objectives such as *hifz al-nasl*, *hifz al-ird*, and *al-adl* are not achieved.

From the *Maqāṣid* perspective, law is evaluated not only based on its formal conformity with the text but also on its ability to produce benefits; thus, the dominance of legal justice without balance with substantive justice has the potential to perpetuate structural injustice against women. Therefore, the reconstruction of the law regarding the marriage guardian must be directed toward shifting the orientation of guardianship from a mere legal-formal requirement to a substantive protection mechanism grounded in *Maqāṣid al-Sharī'ah*. This reconstruction can be achieved through the reinterpretation and revision of Articles 19 and 20 of the Islamic Family Law (KHI) by contextualizing the role of the guardian based on the principle of *kamil al-ahliyyah*, thereby ensuring that adult women of legal capacity receive more proportional recognition in marriage contracts. In addition to normative reform of the

³² Imam Mustofa, Wildani Hefni, and Mufliha Wijayati, "Perempuan Menggugat Diskriminasi: Pembaruan Hukum Keluarga Dalam Narasi Yuridis Mahkamah Konstitusi," *Raheema: Jurnal Studi Gender Dan Anak* 8, no. 1 (2021): 1–28, <https://doi.org/10.24260/raheema.v8i1.1646>.

³³ Simbolon and Ridwan, "Analisis Hukum Islam Terhadap Praktik Nikah Siri Di Indonesia: Studi Kritis Atas Aspek Legalitas, Perlindungan Hak Perempuan, Dan Dampaknya Terhadap Tatanan Sosial." <https://doi.org/10.63477/jols.v2i1.239>

KHI, this reconstruction can also be realized through judicial *ijtihad* in Religious Courts by strengthening the role of the judicial guardian as a corrective mechanism against an “*adhal*” guardian, the abuse of family authority, and practices that are detrimental to women. Thus, the guardian is retained within the Islamic marriage legal system, but its orientation is directed toward the protection of rights, gender justice, and modern legal certainty.

CONCLUSION

It can be concluded that the role of the marriage guardian in Islamic family law in Indonesia needs to be repositioned not merely as a formal legal requirement for the validity of the marriage contract, but as a protective instrument oriented toward the public interest and substantive justice for women. Therefore, a reformulation is needed in the Compilation of Islamic Law, particularly regarding Articles 19 and 20, by positioning the wali as a contextual and protective requirement for women who do not yet have, or do not fully possess, legal capacity, while for adult women who *are kamil al-ahliyyah*, the wali's function is directed toward guidance and protection, not the restriction of rights. Furthermore, Religious Courts need to strengthen judges' *ijtihad* based on *Maqāṣid al-Sharī'ah* by optimizing the role of the judicial guardian as a corrective mechanism against the practice of the “*wali adhal*,” forced marriage, and administrative barriers that could potentially encourage unregistered marriages. Thus, the integration of fiqh, positive law, and human rights principles can create a guardianship system that is more responsive to the protection of women while maintaining legal certainty in Islamic marriage law in Indonesia.

BIBLIOGRAPHY

- Ade, Faisal, and Safia Menad. “The Legal Complexities of Wali Hakim in Islamic Marriages: Comparative Insights from Indonesia and Beyond.” *Antmind Review: Journal of Sharia and Legal Ethics* 2, no. 1 (2025). <https://doi.org/10.63077/byjene53>.
- Afroo, Fakhriyah Annisa, Septiana Vratwi, Putri Febri Wialdi, and Intan Slipilia. “Peran Dan Legalitas Wali Hakim Dalam Pernikahan Mualaf: Perspektif Hukum Keluarga Islam.” *MAQASHID* 8, no. 1 (2025). <https://doi.org/10.35897/maqashid.v8i1.1879>.
- Ali, Ghifari Hirza Firhan. “Marriage Guardians in Indonesian and Algerian Legislation: A Comparative Analysis of the Concept of Maslahat and Gender Justice.” *Legitima: Jurnal Hukum Keluarga Islam* 6, no. 2 (2024). <https://doi.org/10.33367/legitima.v6i2.4802>.
- Amin, Ade Ulfa, Syafruddin Syam, and Imam Yazid. “Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia.” *Journal of World Science* 2, no. 8 (2023): 1268–1279. <https://doi.org/10.58344/jws.v2i8.410>.
- Andiko, Toha, Zurifah Nurdin, and Ahmed Abdul Malik. “Reactualization of Wali

- Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi'i's Concept Regarding Wali's Ijbar Right." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 2 (2023). <https://doi.org/10.30631/alrisalah.v23i2.1403>.
- Ashidiqie, Mughni Labib Ilhamuddin Is. "Kritik Atas Peraturan Wali Nikah Dalam KHI Dan Fikih Perspektif Gender." *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (2021). <https://doi.org/10.14421/al-mazaahib.v9i1.2304>.
- Aswat, Hazarul, and Taufik Hidayat. "Analisis Kedudukan Wali Hakim Sebagai Wali Nikah Pengganti Dalam Hukum Islam Perspektif Mazhab Syafi'i." *Al-Rasikh: Jurnal Hukum Islam* 13, no. 2 (2024). <https://doi.org/10.38073/rasikh.v13i2.1850>.
- Auliya, Marisa, Asep Ramdan Hidayat, and Encep Abdul Rojak. "Kedudukan Hukum Terhadap Pengulangan Akad Yang Tidak Didahului Dengan Pembatalan Perkawinan Akibat Wali Nikah Tidak Sah Berdasarkan Kompilasi Hukum Islam Pasal 71 Huruf (E)." *Bandung Conference Series: Islamic Family Law* 4, no. 2 (2024). <https://doi.org/10.29313/bcsifl.v4i2.13146>.
- Azhar, Muh Zaim, and Muh Fuad Rifqie Alisyah. "Peran KUA Dalam Mengatasi Nikah Siri Di Kecamatan Balikpapan Timur Kota Balikpapan." *FIKRUNA Jurnal Ilmiah Kependidikan Dan Kemasyarakatan* 7, no. 1 (2024). <https://doi.org/10.56489/fik.v7i1.281>.
- Baharudin, Baharudin. "Implementasi Pertimbangan Hakim Dalam Mengabulkan Permohonan Penetapan Wali Adhal Untuk Melaksanakan Perkawinan Menurut Hukum Islam (Studi Putusan Nomor 0055/ Pdt. P/ 2019/PA.Mt)." *World Journal of Hepatology* 4, no. 2 (2020): 245–53. <https://doi.org/10.33087/wjh.v4i2.186>.
- Daelani, Supian. "Refleksi Maqashid Syariah Dalam Istinbath Hukum Progresif Terhadap Pembagian Harta Bersama Dalam Kompilasi Hukum Islam Di Indonesia." *An-Nisa: Journal of Islamic Family Law* 2, no. 1 (2025). <https://doi.org/10.63142/an-nisa.v2i1.115>.
- Fahrol, Muhammad, and Mhd Haikal. "Rukun Nikah Menurut 4 Imam Mazhab." *Akhlak: Jurnal Pendidikan Agama Islam Dan Filsafat* 2, no. 2 (2025). <https://doi.org/10.61132/akhlak.v2i2.628>.
- Faizah, N. "Konsep Wali Nikah Dalam Perspektif Ulama Klasik Dan Modern." *Al-Muqaranah: Jurnal Perbandingan Mazhab Dan Hukum* 2, no. 2 (2024): 57–64. <https://doi.org/10.55210/jpmh.v2i2.446>.
- Faizah, Nur. "The Concept of Marriage Guardian in the Perspective of Islamic Law." *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 1, no. 2 (2023): 1–8. <https://doi.org/10.59966/yudhistira.v1i2.1217>.
- Fikri, Ahmad Zakky, and Musyafa. "Pertimbangan-Pertimbangan Yang Mengantarkan Pada Persetujuan Pernikahan Dengan Wali Hakim (Studi Kasus Di Kantor Urusan Agama Di Kecamatan Summersari Kabupaten Jember)." *Rayah Al-Islam* 7, no. 3 (2023). <https://doi.org/10.37274/rais.v7i3.779>.
- Firman, Kafka Nafisa, Adyan Dhio Akhdany, and Rizky Syahrul Ramadhan.

- “Analysis of the Validity and Legal Implications of Siri Marriage on the Rights of Wives and Children.” *Alsysis* 6, no. 1 (2026): 438–50. <https://doi.org/10.58578/alsysis.v6i1.8647>.
- Haika, Ratu. “Unregistered Marriage (Nikah Sirri) in Tanjung Palas, Indonesia: A Normative-Empirical Analysis Through the Maxim Al-Dhararu Lā Yuzālu Bi Al-Dharari.” *International Journal of Islamic Studies Issues* 1, no. 2 (2025). <https://doi.org/10.59966/14scwm85>.
- Hasmy, Misbahul Munir, M Ridho, and Anggi Harianto. “Keutamaan Ayah Menjadi Wali Nikah Dibandingkan Ulama Dalam Perspektif Hukum Islam.” *Maqashiduna: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025). <https://doi.org/10.47732/maqashiduna.v3i1.624>.
- Herlinda, A Rofiq, and Nuri Kamilia. “Penentuan Wali Nikah Bagi Anak Di Luar Pernikahan Perspektif Hukum Islam Dan Hukum Positif.” *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 6, no. 2 (2025). <https://doi.org/10.36701/bustanul.v6i2.2234>.
- Hidayatullah, Maftuh, Muhammad Najib Asyrof, and Krismono. “Putusan Hakim Pada Perkara Wali 'Adhal Karena Tidak Sekufu Pada Adat Perkawinan Pamekasan.” *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 5, no. 1 (2023). <https://doi.org/10.20885/mawarid.vol5.iss1.art3>.
- Khatun, Murshida, Md Amirul Islam, and A. K. M. Abdul Latif. “The Multifaceted Significance of Marriage: Exploring Its Role in Religion, Family Dynamics, Social Cohesion, and Economic Context.” *International Journal of Social Sciences & Humanities* 7, no. 1 (2022): 55–70. <https://doi.org/10.58885/ijssh.v7i1.55.mk>.
- Mahdi, Muammar, and Irfan Lewa. “Pandangan Imam Mazhab Terhadap Wali Bagi Janda Relvansinya Dengan Kompilasi Hukum Islam Di Indonesia; Studi Komparatif.” *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum* 2, no. 3 (2021). <https://doi.org/10.24252/shautuna.v2i3.23237>.
- Muchlis. “Wali Mujbir Dan Kebebasan Memilih Pasangan Bagi Perempuan Perspektif Ulama Kontemporer Dan Fiqh Klasik.” *ASASI: Journal of Islamic Family Law* 3, no. 1 (2022). <https://doi.org/10.36420/asasi.v3i1.196>.
- Muhamad, Ahmad, Mustain Nasoha, Muhammad Nurhidayat, and Muhammad Bagus Wijayakusuma. “Wali Nikah Dalam Perspektif Pancasila Dan Hukum Islam: Konflik Dan Konvergensi Marriage Guardians in the Perspective of Pancasila and Islamic Law : Conflict and Convergence.” *DIRASAH: Jurnal Kajian Islam* 2, no. 1 (2025): 54–69. <https://litera-academica.com/ojs/dirasah/article/view/72>.
- Muhammad, Yasfin Maulana, Israqunnajah Israqunnajah, Fakhruddin Fakhruddin, and Mufti Rahmani. “Konflik Pemikiran Metode Istinbath Hukum Madzhab Hanafiyyah Dan Syafi'iyah Dalam Hukum Nikah Tanpa Wali.” *JURNAL AL-IJTIMAIYYAH* 8, no. 1 (2022). <https://doi.org/10.22373/al-ijtimaiyyah.v8i1.13397>.

- Munir, Adillah Karim. "Analysis of the Authority of Marriage Guardians in the Perspective of Islamic Law and Marriage Law in Indonesia." *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 2, no. 1 (2025). <https://doi.org/10.35335/k2t0nd10>.
- Mustofa, Imam, Wildani Hefni, and Mufliha Wijayati. "Perempuan Menggugat Diskriminasi: Pembaruan Hukum Keluarga Dalam Narasi Yuridis Mahkamah Konstitusi." *Raheema: Jurnal Studi Gender Dan Anak* 8, no. 1 (2021): 1–28. <https://doi.org/10.24260/raheema.v8i1.1646>.
- Nedy, Jon, Syamsuddin, and Baehaqi. "Penetapan Wali Hakim Sebagai Pengganti Wali 'Adal Di Kantor Urusan Agama (KUA) Kecamatan Nogosari Kabupaten Boyolali." *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 5, no. 2 (2023). <https://doi.org/10.33474/jas.v5i2.20531>.
- Nisa, Afdilla, and Andriyaldi Andriyaldi. "Esensi Wali Nikah Perspektif Surat An-Nisa Dan Relevansinya Terhadap Masyarakat Modern." *USRATY: Journal of Islamic Family Law* 1, no. 1 (2023): 11–11. <https://doi.org/10.30983/usraty.v1i1.6614>.
- Pancarani, Sylvania. "Prevention of Marriage: Legal Parameters and Guardianship Rights in Islamic Law." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 1 (2023). <https://doi.org/10.62976/ijjel.v2i1.98>.
- Rahman, Aidil, Nor Annisa Rahmatillah, and Lisnawati Lisnawati. "Reorientasi Keadilan Dalam Hukum Keluarga Islam: Gagasan Kesetaraan Hak Suami-Istri Era Kontemporer." *Mitsaqan Ghalizan* 5, no. 2 (2025). <https://doi.org/10.33084/mg.v5i2.11616>.
- Rohmana, Indah Amin, S Syamsuddin, and B Baehaqi. "Alasan Peralihan Wali *Nasab* Kepada Wali Hakim Dalam Pelaksanaan Perkawinan Perspektif Hukum Islam Di Kantor Urusan Agama Kecamatan Nguter Kabupaten Sukoharjo Tahun 2022-2023." *AL HUKMU: Journal of Islamic Law and Economics* 3, no. 2 (2024). <https://doi.org/10.54090/hukmu.417>.
- Sabir, M, Aris Aris, and Iin Mutmainnah. "The Problems of the KHI on Article 7 About the Marriage Isbat in a Religious Court." *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021). <https://doi.org/10.18592/sjhp.v21i1.3994>.
- Samsudin, and Lilik Andaryuni. "Reinterpretasi Makna Kekerasan Terhadap Perempuan (Studi Kajian Tematik Tentang Terminologi Kekerasan Dalam Al-Qur'an)." *MAQASID: Jurnal Studi Hukum Islam* 13, no. 1 (2024): 72–85. <https://doi.org/10.30651/mqs.v13i1.22581>.
- Sariati. "Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law -in Indonesia." *Justice Law Review* 1, no. 1 (2025). <https://doi.org/10.64317/jlr.v1i1.17>.
- Sasmito, Seno Aris, and Adinda Mutiara Sari. "Penetapan Wali Hakim Dalam Perkawinan (Studi Di KUA Karanganyar Kabupaten Karanganyar)." *IMTIYAZ: Jurnal Ilmu Keislaman* 7, no. 2 (2023). <https://doi.org/10.46773/imtiyaz.v7i2.624>.

- Sidiq, Muhammad Sirojudin, Andi Ali Akbar, Anggita Vela, and Muhammad Farid Zulkarnain. "Wali Al-Nikāḥ Hierarchies in Theory and Practice: Disputes, Authority, and Social Reality in Indonesian Muslim Communities." *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya* 10, no. 1 (2025). <https://doi.org/10.25217/jf.v10i1.6367>.
- Simbolon, Muhammad Iran, and M Ridwan. "Analisis Hukum Islam Terhadap Praktik Nikah Siri Di Indonesia: Studi Kritis Atas Aspek Legalitas, Perlindungan Hak Perempuan, Dan Dampaknya Terhadap Tatanan Sosial." *Journal of Legal Sustainability* 2, no. 1 (2025). <https://doi.org/10.63477/jols.v2i1.239>
- Siregar, Erni Sulhati Roudho, and Uswatun Hasanah. "Problematika Nikah Siri Di Indonesia (Tinjauan Hukum Islam Dan Hukum Nasional)." *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 3, no. 1 (2026). <https://doi.org/10.62383/demokrasi.v3i1.1507>.
- Stiawan, Thoat, Salman Al Farisi, Hisam Sidqi, and Agil Laksamana. "Judicial Guardianship in Marriage: A Comparative Study of Indonesia's Shafi'i and Iran's Ja'fari Schools from a Maqasid Al-Shariah Perspective." *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (2025). <https://doi.org/10.32505/qadha.v12i2.12304>.
- Suryana, Ahmad, Khoirul Hidayah, and Muhammad Muhammad. "Rethinking Marriage Guardians for Widows in Indonesia." *Justicia Islamica* 22, no. 1 (2025). <https://doi.org/10.21154/justicia.v22i1.9990>.
- Suyaman, Prahasti, and Temmy Fitriah Alfiany. "Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law." *KnE Social Sciences* 7, no. 15 (2022): 537–49. <https://doi.org/https://doi.org/10.18502/kss.v7i15.12129>.
- Tang, Muhammad, and Nilfatri. "The Law of Guardianship in Marriage According to Madhhab Scholars." *Zabags International Journal of Islamic Studies* 2, no. 1 (2025). <https://doi.org/10.61233/zijis.v2i1.12>.
- Tohari, Chamim. "Kedudukan Wali Sebagai Syarat Sahnya Perkawinan Dalam Hukum Islam: Perspektif Historis Dan Ushul Fiqh." *Al-Maslahah: Jurnal Ilmu Syariah* 17, no. 1 (2021): 1–27. <https://doi.org/10.24260/al-maslahah.v17i1.1894>.
- Umar, Fazlon, and Muhammad Fazlurrahman Syarif. "Reformulating the Concept of Guardianship in Marriage: Between Classical Fiqh Traditions and the Demands of Modern Law." *Journal of Mujaddid Nusantara* 2, no. 2 (2025). <https://doi.org/10.62568/jomn.v2i2.373>.
- Umar, H. "Peran Penghulu Dalam Meningkatkan Kualitas Pelayanan Administrasi Nikah/Rujuk Pada Kantor Urusan Agama Kecamatan Kota Utara Kota Gorontalo." *Jurnal Ekonomi Manajemen, Ilmu Sosial Dan Politik* 1, no. 1 (2024). <https://doi.org/10.69623/j-emspol.v1i1.3>.
- Utomo, Muhammad Qoyyum Kridho, Moh. Nafik, and Mochammad Agus

Azima Amalia, Jayusman, Zuhraeni, Iskandar Syukur

Reconstructing the Role of the Marriage Guardian Based on Maqāṣid al-Sharī'ah: Toward Substantive Justice for Women in Islamic Family Law in Indonesia

Rachmatulloh. "Penetapan Perkawinan Dengan Wali Hakim Akibat Wali Adhal Di Pengadilan Agama Nganjuk." *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 2 (2023). <https://doi.org/10.21154/syakhsyiyah.v4i2.4864>.

Wati, Asrat Nita, Pagar Pagar, and Hasan Matsum. "Legal Protection for Wives in Unregistered Polygamous Marriages: An Analysis of Islamic Law in Indonesia." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025). <https://doi.org/10.31941/pj.v24i2.6589>.

Wicaksono, Adnan B, and Winning S Ashari. "Analisis Perlindungan Islam Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga Dalam Tinjauan Maqashid Syariah." *Rayah Al-Islam* 8, no. 3 (2024): 888–904. <https://doi.org/10.37274/rais.v8i3.1027>