

Transformation of Marriage-Guardian Authority in Contemporary Muslim Society: The Limits of Family Intervention in Spouse Selection

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Abstrak

Penelitian ini bertujuan menganalisis proses transformasi otoritas wali nikah dalam masyarakat Muslim kontemporer serta merumuskan batas ideal intervensi keluarga dalam pemilihan pasangan berdasarkan perspektif hukum Islam. Pertanyaan utama yang diajukan adalah bagaimana otoritas wali bergeser dari kewenangan memaksa menuju peran persetujuan dan pendampingan, serta sejauh mana batas antara intervensi protektif dan restriktif dapat dirumuskan secara operasional. Penelitian menggunakan metode kualitatif berjenis studi kepustakaan (library research) dengan pendekatan normatif-yuridis dan sosio-historis, menelaah sumber primer berupa Kompilasi Hukum Islam dan peraturan perundang-undangan perkawinan, serta sumber sekunder berupa jurnal dan hasil penelitian terdahulu, yang dianalisis secara deskriptif-analitis dan interpretatif. Hasil penelitian menunjukkan bahwa transformasi otoritas wali berlangsung tidak sinkron akibat perbedaan kecepatan perubahan pada faktor pemikiran keislaman, hukum positif, dan realitas sosial. Batas intervensi yang sah ditentukan oleh ada tidaknya dharar terhadap substansi perkawinan berdasarkan maqashid syariah, bukan status sosial keluarga; dan peran wali dapat direkonstruksi menjadi mitra pelindung melalui prinsip kesalingan (mubadalah). Implikasinya, kerangka ini menawarkan pedoman aplikatif bagi lembaga peradilan agama dan Kantor Urusan Agama untuk menyeimbangkan fungsi protektif wali dengan penghormatan terhadap otonomi perempuan.

Kata Kunci: wali nikah; otonomi perempuan; pemilihan pasangan; masyarakat Muslim kontemporer.

Abstract

This study analyzes the transformation of marriage-guardian (wali) authority in contemporary Muslim society and formulates the appropriate limits of family intervention in spouse selection from the perspective of Islamic law. It asks how guardian authority has shifted from coercive power toward consent and accompaniment, and how the boundary between protective and restrictive intervention can be formulated operationally. The study employs qualitative library research using normative-juridical and socio-historical approaches. Primary materials include the Compilation of Islamic Law and marriage legislation, while secondary materials consist of journal articles and previous studies, all examined descriptively, analytically, and interpretively. The findings show that the transformation of guardian authority proceeds asynchronously because Islamic thought, positive law, and social reality change at different speeds. Legitimate intervention should be determined by the existence of dharar (harm) affecting the

substance of marriage under the framework of maqasid al-shari'ah, rather than by family social status or subjective preference. The guardian's role can therefore be reconstructed as that of a protective partner through the principle of mubadalah (reciprocity). This framework offers practical guidance for religious courts and Offices of Religious Affairs in balancing the protective function of guardianship with respect for women's autonomy.

Keywords: marriage guardian; women's autonomy; spouse selection; contemporary Muslim society.

INTRODUCTION

In both classical Islamic jurisprudence and Indonesia's national marriage regulations, the marriage guardian is fundamentally positioned as a protector of welfare rather than as the sole determinant of a daughter's biological and emotional future.¹ Law Number 1 of 1974 on Marriage together with the Compilation of Islamic Law places the consent of both prospective spouses at the foundation of a valid marriage. Ideally, therefore, the guardian's function is confined to legal-administrative responsibilities and the safeguarding of religious requirements, rather than serving as an instrument for controlling a daughter's personal preference in choosing a spouse.² This framework has subsequently been reinforced through administrative reform, including Regulation of the Minister of Religious Affairs Number 30 of 2024 on Marriage Registration, which is intended to ensure that guardian involvement remains proportionate, does not exceed the limits of Islamic law, and does not sacrifice a woman's right to determine her own spouse.

The distance between this legal ideal and everyday social practice, however, has become increasingly visible in the growing number of wali adhal petitions before Religious Courts between 2020 and 2025, including in Bantul, Metro, and Sleman.³ Many of these petitions were triggered not by reasons recognized under Islamic law, but by family adherence to custom, local beliefs such as Javanese primbon and Kejawen, or simply parental disapproval of a prospective son-in-law, ultimately causing the authority to solemnize the marriage to be transferred to a judicial guardian (wali hakim) by court order.⁴ The tendency of families, and at times public institutions, to participate in determining a person's spouse was also reflected in a meeting of Commission X of the House of Representatives with the Ministry of Youth and Sports and the Indonesian Football Association on 5 March 2025, when legislator Ahmad Dhani proposed pairing naturalized football players with Indonesian women in order

¹ Fathonah K. Daud Dan Ramdani Wahyu Sururuie, "Otoritas Wali Nikah Dalam Islam: Analisis Perkawinan Tanpa Wali Di Indonesia Perspektif Fiqh Dan Hukum Positif," *Akademika* 15, No. 2 (2021).

² Afrizal Ilyas Dan Roykhatun Nikmah, "Efektivitas Pengumuman Kehendak Nikah Dalam Pma Nomor 30 Tahun 2024 Pada Kua Di Kabupaten Boyolali," *Esensi Hukum* 7, No. 1 (2025): 72–86.

³ Narullita Suryani Prihasti, "Analisis Putusan Hakim Nomor 15/Pdt.P/2023/Pa.Btl Mengenai Wali Adhal Di Pengadilan Agama Bantul Perspektif Maqasid Syari'ah" (Skripsi, Faculty Of Islamic Studies, Universitas Islam Indonesia, 2025).

⁴ Siti Setia Ningsih, "Reinterpretasi Wali Adhal Dalam Penetapan Hakim Di Pengadilan Agama Metro Nomor 13/Pdt.P/2025/Pa.Mt" (Skripsi, Universitas Islam Negeri Jurai Siwo, 2026), https://Repository.Metrouniv.Ac.Id/Id/Eprint/12301/1/Siti%20setia%20ningsih_2202012012_Hki_2026.Pdf.

to produce future football talent.⁵The proposal immediately drew criticism from the National Commission on Violence Against Women for reducing women to reproductive instruments.⁶At roughly the same time, the legal validity of guardianship became a subject of wide public discussion following controversy over the rejection of an isbat nikah application involving Mahalini and Rizky Febian.⁷These developments demonstrate that disputes concerning marriage guardianship are not merely classical fiqh debates confined to academic discourse, but concrete legal problems that also arise in nationally prominent cases.

The disparity between legal ideals and social reality produces multiple consequences. Legally, the accumulation of wali adhal cases burdens Religious Court dockets and shifts decision-making authority from the family sphere to the state through the institution of the judicial guardian, without yet being accompanied by a consistently applied standard for judges to assess whether a guardian's reasons for refusal are justified.⁸Psychologically, excessive family intervention in spouse selection may expose women to emotional pressure, prolonged anxiety, and other mental-health harms, particularly when it culminates in forced marriage or, conversely, the postponement of a marriage desired by the woman concerned.⁹At the policy-discourse level, statements by public figures that continue to treat matchmaking as an ordinary practice risk perpetuating patriarchal assumptions within legislative culture, contrary to the reformist aspiration of Islamic family law to recognize women's autonomy. These layered consequences establish the urgency of examining more precisely the proper limits of family intervention in spouse selection from the perspective of contemporary Islamic law.

A number of earlier studies have addressed related issues.¹⁰Nur Faizah shows that marriage guardianship remains an important component of Islamic marriage law and is shaped by religious values, custom, and social development; both classical and modern scholarship therefore requires a balance between tradition, justice, equality, and respect for individual dignity.¹¹Mustafa Parinduri and Muhammad Amar Adly explain that the majority of jurists regard the guardian as an important element of marital validity, whereas the Hanafi school grants greater autonomy to adult women. In the Indonesian context, guardianship rules can be understood as mechanisms for

⁵ Halla Nurin Fitria, Malik Ibrahim, Dan Dwi Handayani, "Harapan Vs Realitas: Studi Wali Adhal Di Pengadilan Agama Sleman Perspektif Sosiologi Hukum Islam," *Articles, Al-Iqro': Journal Of Islamic Studies* 2, No. 1 (Januari 2025): 31–50, <https://doi.org/10.54622/Aijis.V2i1.444>.

⁶ Arief Apriadi, Adie Prasetyo Nugraha, *Usul Aneh Dpr Ke Pssi: Jodohkan Pemain Asing Dengan Perempuan Indonesia* (Suara.Com, 2025), <https://www.suara.com/bola/2025/03/05/153740/Usul-Aneh-Dpr-Ke-Pssi-Jodohkan-Pemain-Asing-Dengan-Perempuan-Indonesia>.

⁷ Nadia Arina Ilma, "Jurisprudential Analysis On The Determination (Itsbat) Of Marriage And The Potential Cancellation Of Marriage For Illegal Guardianship (Case Study Of The Marriage Of Mahalini And Rizky Febian)," *Iqtisad: Reconstruction Of Justice And Welfare For Indonesia* 11, No. 2 (2024): 253–70.

⁸ Saiful Amar Dkk., "Konstruksi Hukum Kewenangan Pengadilan Agama Dalam Penetapan Wali Adhal Menurut Sistem Peradilan Agama," *Journal Juridisch* 3, No. 1 (2025): 11–25.

⁹ Muhammad Iqbal, *Psikologi Pernikahan: Menyelami Rahasia Pernikahan* (Gema Insani, 2020).

¹⁰ Nur Faizah, "Konsep Wali Nikah Dalam Perspektif Ulama Klasik Dan Modern," *Al-Muqaranah* 2, No. 2 (Agustus 2024): 82–89, <https://doi.org/10.55210/Jpmh.V2i2.446>.

¹¹ Mustafa Parinduri Dan Muhammad Amar Adly, "Wali Nikah Sebagai Rukun Perkawinan Dalam Hukum Islam: Analisis Normatif-Komparatif Mazhab Fikih Dan Rekonstruksinya Dalam Hukum Keluarga Islam Indonesia," *Tabayyanu: Journal Of Islamic Law* 2, No. 02 (Januari 2026): 152–68, <https://doi.org/10.66174/Thh7g330>.

legal certainty, protection of women, and social order.¹² Azhari identifies a shift in the meaning of guardianship from a position of authority toward one of consent and support. In practice, guardians may either obstruct or facilitate women's choices, creating a process of negotiation within the family; the Compilation of Islamic Law nevertheless retains the guardian requirement while providing a mechanism for replacement by a judicial guardian where refusal lacks a justification recognized by Islamic law.¹³ Herlinda and colleagues show that a biological father cannot act as guardian in certain circumstances, requiring the authority to pass to a judicial guardian. Although a legal mechanism is available through the Office of Religious Affairs, stigma against children born outside marriage remains a challenge, requiring attention to justice, child protection, and *maqasid al-shari'ah*.¹⁴ Afdilla Nisa and Andriyaldi similarly emphasize that guardians continue to protect women's rights, provide consent, and assist in resolving conflict, but social change requires an understanding of guardianship that is compatible with Islamic values, equality, and the needs of modern society.

Taken together, these five studies show that scholarship on marriage guardianship has generally remained divided among three relatively separate domains: doctrinal debate among schools of Islamic law regarding the guardian's role in the validity of marriage; the shift from authority to consent in family dynamics; and technical-juridical questions concerning the transfer of guardianship to a judicial guardian because of the status of the biological father or a child born outside marriage. These themes are supplemented by broader discussions of the balance between tradition and gender justice and of the guardian's protective role in family conflict. Despite their contributions, none of these studies specifically formulates a clear and operational normative boundary concerning the extent to which a family, acting through the guardian, may intervene in a woman's choice of spouse in contemporary Indonesian Muslim society while simultaneously connecting that boundary to current phenomena such as the increasing number of *wali adhal* cases and public controversies reflecting changes in guardianship authority. This gap constitutes the academic space addressed by the present study.

The novelty of this study lies in integrating a normative Islamic-law approach with an analysis of ongoing social transformation. Rather than stopping at a description of differences among classical *fiqh* positions or at the procedural mechanism for replacing a guardian, this study develops a framework for the limits of family intervention that can be used to determine when a guardian's involvement remains a legitimate form of protection under Islamic law and when it has shifted into an unjustified restriction on a woman's fundamental freedom to choose her spouse. By treating guardian authority as a concept that continuously changes alongside social structures, rather than as a static institution, the study offers a perspective that

¹² Azhari Azhari, "Dinamika Hukum Perwalian Nikah Dalam Konteks Kemandirian Perempuan Muslim Milenial," *Articles, Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance* 4, No. 3 (Desember 2024): 3402–15, <https://doi.org/10.53363/Bureau.V4i3.782>.

¹³ Herlinda, Ainur Rofiq, Dan Nur Kamilia, "Penentuan Wali Nikah Bagi Anak Di Luar Pernikahan Perspektif Hukum Islam Dan Hukum Positif: The Determination Of A Marriage Guardian For Children Of Marriage From The Perspective Of Islamic Law And Positive Law," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 6, No. 2 (Agustus 2025): 324–42, <https://doi.org/10.36701/Bustanul.V6i2.2234>.

¹⁴ Afdilla Nisa Dan Andriyaldi Andriyaldi, "Esensi Wali Nikah Perspektif Surat An-Nisa Dan Relevansinya Terhadap Masyarakat Modern," *Articles, Usraty: Journal Of Islamic Family Law* 1, No. 1 (Oktober 2023): 1–11, <https://doi.org/10.30983/Usraty.V1i1.6614>.

remains underdeveloped in the existing literature while bridging classical fiqh with the contemporary reality of Islamic family law in Indonesia.

On the basis of this gap and the proposed novelty, the study aims to analyze the transformation of marriage-guardian authority in contemporary Muslim society and to formulate the appropriate limits of family intervention in spouse selection from the perspective of Islamic law. The objective is to produce a framework that is not merely theoretical and doctrinal, but also applicable to concrete social problems, thereby balancing the guardian's protective function with respect for women's autonomy and dignity in determining their life partners.

RESEARCH METHOD

This study employs a qualitative library-research method to examine the concept of marriage guardianship in depth through sources of Islamic law and developments in contemporary thought. This method was selected because the research focuses on tracing, understanding, and interpreting normative provisions and scholarly views concerning the position and function of marriage guardians. The materials collected are critically analyzed to identify changes in the meaning of guardianship from classical perspectives to the context of modern society.

The research combines normative-juridical and socio-historical approaches. The normative-juridical approach is used to examine the legal foundations of marriage guardianship and rules of Islamic family law, while the socio-historical approach is used to understand changes in the guardian's function and authority in response to social development. Combining these approaches makes it possible to identify the gap between the normative construction of guardianship and contemporary marital relationships that increasingly emphasize consent, protection of rights, and justice.

The research materials consist of primary and secondary sources. Primary sources include the Compilation of Islamic Law and legislation relating to marriage and guardianship. Secondary sources include books, scholarly journal articles, research findings, and academic literature discussing marriage guardianship, authority within marriage, gender relations, and the development of Islamic family law. All sources were selected for their relevance to the research focus and used to bring normative perspectives into dialogue with evolving social dynamics.

The materials were analyzed descriptively, analytically, and interpretively through several stages: identifying relevant sources, classifying them by theme, comparing scholarly opinions and legal provisions, and interpreting the relationship between the concept of guardianship and social change. The analysis seeks to identify patterns in the changing function of guardians, tensions between authority and consent, and possibilities for developing an understanding of marriage guardianship that remains grounded in Islamic law while responding to justice and rights-protection principles.

RESULTS AND DISCUSSION

Transformation of Marriage-Guardian Authority in Contemporary Muslim Society

The transformation of marriage-guardian authority essentially reflects three forces moving at different speeds: Islamic thought, which changes relatively quickly through contextual *ijtihad*; positive law, which changes more slowly because it is bound by formal legislative procedures; and social reality, which changes most slowly

because it is constrained by entrenched customs and power relations within the family. These three forces do not move linearly toward a single point of convergence. Instead, they continually pull against and restrain one another, leaving the contemporary guardian at a tense intersection between the expectation that he act as a companion who respects a woman's choice and the legacy of older authority that can be reactivated whenever perceived family interests are threatened.

1. Within Islamic thought, one of the most significant drivers of this transformation has emerged not from the male scholars who have historically dominated family-fiqh discourse, but from the Indonesian Women's Ulama Congress (KUPI), which has deliberately reconstructed the concept of *ijbar* by incorporating the lived experiences of victims of forced marriage into the interpretive process.¹⁵ Epistemologically, this method challenges traditional scholarly authority that has often interpreted *ijbar* primarily through textual analysis without sufficiently considering its effects on the person subjected to coercion.¹⁶ This development should therefore be read not merely as an alternative interpretation, but as a contest over interpretive authority: whether the boundaries of guardian power remain defined exclusively by male scholars inheriting classical fiqh frameworks or are increasingly shared with women ulama who bring victims' perspectives into the process of legal reasoning (*istinbat*). This contest over authority helps explain why debates about guardianship remain unresolved, because what is at stake is not only the content of the law but also who is entitled to interpret it.
2. The shift in Islamic thought has subsequently influenced the legal sphere, although only partially, revealing how progressive *ijtihad* is selectively translated by the state. KUPI's advocacy, including its religious position on preventing child marriage, contributed to the moral and religious pressure behind the revision of Indonesia's minimum marriage age to nineteen for both men and women.¹⁷ This demonstrates that legal change does not occur in isolation but responds to Islamic discourses that may develop earlier. Yet the translation of reform has largely stopped at the issue of age and has not fundamentally altered the structure of guardian authority itself. The Compilation of Islamic Law, for example, continues to require a male guardian without an equivalent reform of the underlying guardianship model.¹⁸ This pattern suggests that the state tends to absorb reformist demands so long as they do not destabilize established structures of authority, and moves further only after repeated pressure or litigation compels reconsideration.
3. The gap between progressive Islamic thought and limited legal reform becomes most visible at the social level, where practice shows that guardian

¹⁵ Amrin Ma'ruf, Wilodati Wilodati, Dan Tutin Aryanti, "Kongres Ulama Perempuan Indonesia Dalam Wacana Merebut Tafsir Gender Pasca Reformasi: Sebuah Tinjauan Genealogi," *Musawa Jurnal Studi Gender Dan Islam* 20, No. 2 (2021): 127–46.

¹⁶ Mohamad Hoirul Anam Dan Jamik Imam Utomo, "Dekonstruksi Hak *Ijbar* Wali Dalam Tinjauan Interdisipliner Hukum Islam, Tradisi Lokal, Dan Psikologi Keluarga," *Mabahits: Jurnal Hukum Keluarga Islam* 6, No. 02 (2025): 267–77.

¹⁷ Hesti Rohma Wadda Dan Zakiyatul Ulya, "Hasil Musyawarah Keagamaan KUPI Tentang Perlindungan Perempuan Dari Bahaya Pemaksaan Perkawinan Perspektif Maqāṣid Al-Sharī'ah Dan Feminist Theory," *Al-Qadlāya: Jurnal Hukum Keluarga Islam* 5, No. 01 (2025): 39–54.

¹⁸ Khoirul Fajri, "Penetapan Wali Adhol Dalam Pernikahan (Studi Komparasi Antara Hukum Islam Dan Khi)," *Journal Of Islamic Law El Madani* 1, No. 1 (2021), 158.

authority and family pressure remain important sources of forced marriage. Supreme Court decisions between 2018 and 2022 recorded 213 problematic marriages involving coercion, 119 of which ended in divorces decided by Religious Courts, while the National Commission on Violence Against Women recorded an increase in forced-marriage cases alongside a dramatic rise in child marriage.¹⁹ These figures should not be read merely as evidence of enforcement failure.²⁰ They also indicate that reforms occurring among religious elites and within national legislation have not fully penetrated family power structures, where spouse-selection decisions are implemented in everyday life. A significant distance therefore persists between progressive discourse in academic and religious forums and actual practice in the domestic sphere.

These three factors reveal a pattern that is rarely stated explicitly in guardianship studies: the transformation of guardian authority is not a single, unidirectional movement from authority to consent. It is an asynchronous three-layer process in which Islamic thought acts as the locomotive challenging inherited interpretations, positive law acts as a filter admitting only part of the reform agenda, and social reality functions as the testing ground where older forms of authority frequently remain active. The implication is that the question of how far a guardian may intervene in spouse selection can no longer be addressed solely through normative fiqh or statutory text; it must also account for the way these three forces interact, constrain, and reinforce one another in social practice.

Formulating the appropriate limits of family intervention in spouse selection therefore requires harmonizing these three different speeds of change rather than simply choosing one fiqh position or amending a single statutory provision. As long as progressive Islamic thought advances without corresponding legal reform addressing the foundations of guardian authority, and legal reform is not accompanied by changes in family culture, the guardian's position will remain ambiguous: discursively expected to accompany and respect women's autonomy, yet still capable of reverting to coercive authority when family circumstances activate older expectations. This incomplete transition is the fundamental issue that contemporary Islamic-law scholarship must address.

Limits of Family Intervention in Spouse Selection from the Perspective of Islamic Law

Determining the boundary between protective and restrictive family intervention is not simply a matter of compiling a list of reasons a guardian may or may not invoke. The more fundamental task is to identify the principle that distinguishes the two categories. If analysis stops at a closed list, Islamic law will always lag behind whenever a new justification appears that has not previously been enumerated, even though the underlying problem remains the same. A more appropriate starting point is therefore to examine why certain reasons for a guardian's refusal are regarded as legitimate under Islamic law while others are rejected, so that

¹⁹ Annidya Khoridatur Rizqi, *Pandangan Dosen Terhadap Kawin Paksa Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual: Studi Di Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang*, 2024.

²⁰ Hendra Gunawan, *Kasus Pernikahan Anak di Masa Pandemi Naik Hingga 300 Persen* (TribunNews.com, 2021), <https://www.tribunnews.com/nasional/2021/05/10/kasus-pernikahan-anak-di-masa-pandemi-naik-hingga-300-persen>.

a principle applicable across cases can be formulated rather than a list that quickly becomes obsolete.

Classical criteria show that the reasons recognized by Islamic law for a guardian to refuse a prospective marriage share a common thread. Situations such as an existing valid engagement to another person, religious incompatibility, serious moral misconduct by the prospective husband, or a condition materially preventing him from fulfilling marital responsibilities all relate directly to the substance and validity of the marriage rather than to the prospective spouse's social status.²¹ Guardian intervention is therefore legitimately protective only where there is a real risk of dharar attached to the marriage itself, whether concerning religious validity, the prospective husband's moral character, or his capacity to perform marital responsibilities. A refusal based on such considerations constitutes the discharge of the guardian's trust rather than an arbitrary restriction on the woman's will.

By contrast, decisions in wali adhal cases confirm that reasons rejected by judges tend to follow a different pattern: subjective family interests or ego that do not affect the substantive validity or welfare of the marriage. The Pangkajene Religious Court, for example, granted a wali adhal petition where the guardian rejected the prospective husband merely because he worked as a factory laborer.²² The Office of Religious Affairs in East Tegal likewise regarded as religiously unjustified a guardian's refusal based on a desire that the woman's older brother marry first and on the fact that the prospective spouses were cousins.²³ Similar reasoning appears in wali adhal determinations of the Kediri Religious Court, where refusals based on economic status, family conflict, and parental imposition were found to lack a valid religious basis once kafa'ah requirements were satisfied and no legal impediment to marriage existed.²⁴ Although arising in different regions and contexts, these decisions apply essentially the same test: whether the guardian's reason concerns the substantive safety and validity of the marriage or merely social status, family prestige, and personal preference. This consistent judicial pattern has rarely been articulated as a general principle even though it repeatedly appears in practice.

The strength of this distinguishing principle becomes clearer when read through the framework of maqasid al-shari'ah. This is reflected, for example, in the reasoning of the Sleman Religious Court when granting a wali adhal petition with reference to al-Shatibi's thought, which treats marriage as a means of preserving religion (hifz al-din) and lineage (hifz al-nasl).²⁵ Within this framework, a guardian's refusal driven by desire or merely complementary family interests is inconsistent with the principal objectives of the Sharia because it may produce mafsadah, whereas refusal genuinely

²¹ Sarwan Sihombing, "Analisis Pemahaman Imam Syafi'i Tentang Perpindahan Wali 'Adhol Menjadi Wali Hakim Dalam Proses Pernikahan (Studi Analisis Kitab Al-Umm)," *Jurnal Landraad* 3, no. 2 (2024): 414–30.

²² Muslimin Muslimin, *Tinjauan Hukum Islam Terhadap Penetapan Wali Adhal di Pengadilan Agama Pangkajene (Studi Penetapan Tahun 2020-2023)*, 2024.

²³ Mohamad Faiz Nurmaulana, *Penolakan Anak Terhadap Ayah Sebagai Wali Nikah (Studi Di Kantor Urusan Agama (KUA) Kecamatan Tegal Timur Kota Tegal)*, 2025.

²⁴ Makhmud Purnomo Maulana dan Sholahuddin Fathurrohman, "PELAKSANAAN PENETAPAN WALI HAKIM AKIBAT WALI ADHAL DI PENGADILAN AGAMA KOTA KEDIRI (Studi Kasus Penetapan Perkara No. 23/pdt. p/2020/pa. kdr)," *Mizan: Jurnal Ilmu Hukum* 14, no. 2 inpress (2025): 356–64.

²⁵ Halla Nurin Fitria, Malik Ibrahim, dan Dwi Handayani, "Harapan Vs Realitas: Studi Wali Adhal Di Pengadilan Agama Sleman Perspektif Sosiologi Hukum Islam," *Al-Iqro': Journal of Islamic Studies* 2, no. 1 (2025): 31–50.

aimed at protecting those core objectives may be justified. Maqasid therefore provides the most fundamental measure for distinguishing protective from restrictive intervention because it does not depend on a closed catalogue of cases. Instead, it poses a general question applicable in any situation: is the guardian's intervention protecting one of the essential objectives of the Sharia, or is it merely serving a replaceable family preference?

The difficulty is that this distinguishing framework, although implicitly applied by judges, has not been expressly formulated in positive law.²⁶ Analyses of Supreme Court Decision Number 703 K/AG/2021 and several Religious Court determinations show that Indonesian law provides a mechanism for transferring guardianship to a judicial guardian but does not standardize the religiously valid reasons that may justify refusal. This absence creates a dual risk. First, decisions may become inconsistent across jurisdictions because judges evaluate cases individually without a measurable common standard. Second, guardians and families may frame subjective interests as if they were protective reasons, leaving courtroom proof as the sole determinant of whether intervention is legitimate rather than providing a normative framework that is accessible to families before litigation arises.

A sharper distinguishing principle can therefore be formulated as follows: guardian intervention should be categorized as legitimate protection when it is based on a real threat to the substance of marriage, including religious validity, morality, the capacity to perform marital responsibilities, or measurable harm to the woman concerned. Conversely, intervention should be treated as an unjustified restriction when it rests only on social status, family ego, custom without a valid religious basis, or personal preferences that can be displaced without undermining the principal objectives of the Sharia. This principle also offers a methodological direction for reforming Islamic family law in Indonesia. The limits of guardian authority should no longer be determined only case by case through successive judicial decisions, but through a clear maqasid-based framework that can be applied consistently, thereby restoring the guardian's function to its essential purpose as a protector of welfare rather than an instrument for controlling a woman's choice of spouse.

Reconstructing the Guardian's Role between Protective Functions and Women's Autonomy

Efforts to reconstruct the guardian's role in a manner compatible with women's autonomy often fall into a false dichotomy, as though only two options were available: retaining the guardian as a potentially repressive authority or eliminating his role in favor of unrestricted individual freedom. This framing obscures a more realistic third possibility: transforming the nature of the relationship between guardian and woman from a hierarchy in which one party decides and the other becomes the object of decision into a relationship grounded in shared responsibility, without eliminating the protective function that originally underpins guardianship in Islamic law. The reconstruction proposed here is therefore not intended to weaken or abolish guardianship, but to change the relational basis through which it operates.

A relevant framework for this relational transformation is the qira'ah mubadalah approach developed by Indonesian Muslim scholar Faqihuddin Abdul Kodir. Mubadalah offers a reciprocal reading of religious texts grounded in maqasid al-

²⁶ Mardi Candra dkk., "The Religious Court Trial Of Wali Adhal Cases In The Indonesian Legal System: A Legal Analysis," *Jurnal Hukum Dan Peradilan* 12, no. 1 (2023): 77–96.

shari'ah and the objectives of the Qur'an. ²⁷Its central principle is that an ideal relationship between parties who differ biologically or socially - in this context, between a guardian and the woman under his guardianship - should be built on reciprocity and partnership rather than domination. ²⁸Applied to guardianship, this means that the guardian's role is no longer understood as unilateral power to determine the woman's marital future, but as a reciprocal responsibility: the guardian must provide protection and honest advice, while the woman has the right to have her views heard and her decision respected. Both parties are therefore bound by a shared objective, namely the welfare of the marriage, rather than by the unilateral interests of either side.

This reorientation is consistent with, and conceptually strengthens, the protective limits already reflected in judicial reasoning on wali adhal. If guardian intervention is legitimate only where it concerns a genuine threat to the substance of marriage rather than social status or family ego, mubadalah adds a procedural dimension: even a substantively legitimate protective concern should be communicated through dialogue that treats the woman as a participant in deliberation rather than merely the recipient of a guardian's final decision. ²⁹The substantive boundary answers the question of what reasons may legitimately be invoked; reciprocity answers how those reasons should be communicated and considered. Together, these two dimensions form a model of guardianship that is coherent both legally and ethically.

This reconstruction will remain purely normative unless it is translated into an operational pattern that can function in everyday family life. The model proposed in this study therefore treats the following three stages as an integrated process:

1. First, the guardian should communicate concerns openly and deliberate with the woman before adopting a final position.
2. Second, the guardian's veto should be limited to substantive reasons identified through the maqasid framework. Refusals based on social status or personal preference should therefore be treated as unjustified at the family level, rather than waiting for correction through litigation.
3. Third, the guardian should remain actively involved in supporting and preparing the marriage even though the ultimate personal choice rests with the woman concerned.

These three stages are not foreign to Indonesian Islamic family law. Article 23 of the Compilation of Islamic Law already provides a corrective pathway through transfer to a judicial guardian when the original guardian departs from his protective function. ³⁰The weakness is that this pathway is generally treated as an exception activated only after conflict has occurred, rather than as evidence of a broader relational standard that should inform family decision-making from the outset.

²⁷ Faqihuddin Abdul Kodir, *Qira'ah mubadalah* (IRCiSoD, 2021).

²⁸ Nurul Hidayah dan Nasrulloh Nasrulloh, "Mubadalah sebagai paradigma kesalingan dalam relasi suami istri," *Al-Istinbath: Jurnal Ilmu Hukum dan Hukum* 2, no. 1 (2025): 262-74.

²⁹ Syukran Mahfuz, *Paradigma perwalian dalam KHI ditinjau dengan metode Qira'ah Mubadalah*, 2024.

³⁰ Faridatus Sholihah dan Irzak Yuliardy Nugroho, "Penetapan wali adhol dalam perspektif hukum Islam dan hukum positif," *Al-Muqaranah: Jurnal Perbandingan Mazhab dan Hukum* 2, no. 1 (2024): 10-19.

The greatest challenge to this reconstruction lies not in its theological or juridical basis, but in cultural resistance within communities that continue to interpret guardian authority as a symbol of family honor and control. The principle of reciprocity may therefore be perceived as a threat to the guardian's position rather than as a strengthening of his legitimate protective function. Translating the model into practice consequently requires the involvement of actors who connect formal norms with communities, including marriage registrars and religious counselors at Offices of Religious Affairs. These actors can integrate deliberation, reciprocity, and the limits of valid religious reasons into premarital guidance so that the change in perspective reaches family practice rather than remaining confined to academic discussion.

The reconstruction proposed in this study ultimately leads to a single formulation: the guardian as a protective partner. Under this model, the guardian continues to safeguard the welfare of marriage in accordance with the objectives of Islamic law, but performs that function through a reciprocal and transparent relationship limited to substantive reasons rather than unilateral domination that disregards the woman's will. The model avoids two equally problematic extremes: family authoritarianism that sacrifices women's dignity and unlimited individualism that ignores the protective rationale of guardianship. At the same time, it remains practically applicable because it builds on mechanisms already available in Indonesian Islamic family law and requires principally a reorientation so that respect for women's autonomy and dignity becomes an inseparable part of the guardian's protective function.

CONCLUSION

The analysis answers the two principal questions underlying this study. First, marriage-guardian authority in contemporary Muslim society does not change in a single, linear direction. It moves through three asynchronous layers: reformist Islamic thought, which has developed most progressively; positive law, which absorbs such reform selectively; and family social reality, which changes most slowly and therefore allows older forms of authority to reappear. Second, the proper limits of family intervention in spouse selection can be formulated through one cross-case principle: the existence of *dharar*, or a real threat to the substance of marriage as assessed through *maqasid al-shari'ah*, rather than social status, family ego, or subjective preference. These two findings support a conceptual reconstruction of the guardian as a protective partner who performs his protective function through reciprocal relations grounded in *mubadalah*. In this model, the guardian retains responsibility for safeguarding marital welfare without sacrificing a woman's right to be heard and to have her choice respected.

The substantive-boundary framework and protective-partner model developed in this study are applicable in practice and can be further refined, particularly for integration into premarital guidance at Offices of Religious Affairs and into assessment guidelines for Religious Court judges examining *wali adhal* cases. Principles that currently operate implicitly could thereby become more measurable and consistent. Because this study is based on library research, future studies should employ field methods, including interviews with guardians, women who have experienced *wali adhal*, and Religious Court judges, to test the protective-partner model empirically. Comparative research across regions and schools of Islamic law would also enrich the proposed limits of family intervention. A further recommendation is to examine

reform of Article 20(1) of the Compilation of Islamic Law so that it better reflects the principle of reciprocity described above, enabling Indonesian Islamic family-law reform to develop in step with contemporary Islamic thought.

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