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Rethinking Wali Mujbir In Islamic Family Law: *Maqasid Al-Shariah*, Gender Justice, And Legal Reform

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Abstract

The phenomenon of forced marriage remains a critical issue in Indonesian society, especially considering the high rate of child marriage, which is often legitimized by the concept of wali mujbir. In classical Islamic law, the wali mujbir is granted the right of ijbār to marry a girl without her consent, a practice that is considered a form of protection. However, in the contemporary context, this practice is increasingly questioned because it is contrary to the principles of gender equality, human rights, and maqāṣid shari'ah. This study shows that forced marriage by a guardian without the consent of a woman has the potential to create mafsadat, such as household disharmony and violation of individual autonomy. From the perspective of maqāṣid syarī'ah, marriage must ensure the public interest, justice, and individual freedom. Countries such as Indonesia have abolished the right of guardians to force marriage through regulations, such as Law No. 1 of 1974 and KHI. The recontextualization of the guardian mujbir is needed to shift the role of the guardian from a coercive authority to a companion who ensures the public interest.

***Keywords**: Wali Mujbir, Ijbār, Maqāṣid Syarī'Ah, Gender Equality, Legal Reform.*

Abstrak

Fenomena pernikahan paksa tetap menjadi isu kritis dalam masyarakat Indonesia, terutama mengingat tingginya angka pernikahan anak, yang sering kali dilegitimasi oleh konsep wali mujbir. Dalam hukum Islam klasik, wali mujbir diberikan hak ijbār untuk menikahkan seorang gadis tanpa persetujuannya, praktik yang dianggap sebagai bentuk perlindungan. Namun, dalam konteks kontemporer, praktik ini semakin dipertanyakan karena bertentangan dengan prinsip-prinsip kesetaraan gender, hak asasi manusia, dan *maqāṣid syarī'ah*. Penelitian ini menunjukkan bahwa pernikahan paksa oleh wali tanpa persetujuan wanita berpotensi menciptakan mafsadat, seperti ketidakharmonisan rumah tangga dan pelanggaran terhadap otonomi individu. Dari perspektif maqāṣid syarī'ah, pernikahan harus memastikan kepentingan publik, keadilan, dan kebebasan individu. Negara-negara seperti Indonesia telah menghapus hak wali untuk memaksa pernikahan melalui peraturan, seperti Undang-Undang No. 1 Tahun 1974 dan KHI. Rekontekstualisasi wali mujbir diperlukan untuk mengalihkan peran wali dari otoritas yang memaksa menjadi pendamping yang memastikan kepentingan publik.

Kata Kunci: Wali Mujbir, Ijbār, Maqāṣid Syarī'Ah, Kesetaraan Gender, Reformasi Hukum.

INTRODUCTION

Forced marriage remains a persistent problem in contemporary Muslim family law because it intersects with religious interpretation, patriarchal family structures, women's legal capacity, and state regulation of marriage. In Indonesia, the issue is particularly urgent because child marriage and coerced marriage continue to appear despite legal reform. The joint report by BPS, UNICEF, PUSKAPA, and Bappenas notes that around one in nine Indonesian women aged 20–24 had married before the age of eighteen, placing Indonesia among countries with a high absolute number of child marriages.[1] Komnas Perempuan also identifies child marriage as a harmful practice that obstructs women's rights and long-term social development.[2] Although Law No. 16 of 2019 has equalized the minimum age of marriage for men and women at nineteen, legal reform alone has not eliminated social and religious arguments that can be used to normalize marriage without meaningful female consent.

One of the concepts frequently invoked in this debate is wali mujbir, namely a guardian who is understood in several classical fiqh traditions as possessing the authority of ijbār in marriage. In its original juristic setting, ijbār was not formulated simply as arbitrary coercion; it was often framed as a protective authority exercised by a father or grandfather for a daughter presumed to be legally or socially vulnerable. Classical jurists differed considerably on this issue. The Shafi'i, Maliki, and Hanbali schools generally maintained a stronger role for the guardian, although with different restrictions, while the Hanafi school granted adult women broader legal capacity to contract their own marriages when they possessed sound judgment and the prospective spouse fulfilled the requirement of compatibility.[3] These differences

[1] Badan Pusat Statistik, "Berita Resmi Statistik Hasil Sensus Penduduk 2020," 2020. ,10.

[2] Komisi Nasional Anti Kekerasan terhadap Perempuan, "Siaran Pers Komnas Perempuan Tentang 'Perkawinan Anak Merupakan Praktik Berbahaya (Harmful Practice) yang Menghambat Indonesia Emas 2045,'" *Komnas Perempuan* (Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan, August 2021)., 111-112.

[3] 'Abd al-Rahmān Al-Jazaīrī, *Kitāb Al Fiqh 'Alā Al Madhāhib Al Arba'Ah* (Beirut: Dār al-Kutub al-'Ilmiyah, 2011); Alauddin Abu Bakr Al-Kasani, *Bada'i Al-Sana'i Fi Tartib Al-Shara'i* (Beirut: Dar al-Kutub al-Ilmiyyah, 1986); M bin I Al-

show that guardianship in marriage has never been a monolithic doctrine, but a contested legal construction shaped by assumptions about maturity, protection, family honor, and social risk.

The problem arises when the protective logic of guardianship is transformed into a coercive practice that silences women's consent. Such transformation contradicts the ethical orientation of Islamic marriage, which is directed toward sakīnah, mawaddah, raḥmah, mutual protection, and responsible companionship. Contemporary Muslim scholars have therefore re-read wali mujbir through a more restrictive and purposive framework. Wahbah al-Zuḥailī argues that a guardian, including a father, may not force an adult woman of sound mind to marry a person she rejects, because consent is integral to the validity and moral purpose of marriage.[4] Yūsuf al-Qaraḍāwī similarly distinguishes protective guardianship from repressive guardianship and stresses that the guardian's function must serve welfare rather than domination.[5] These contemporary readings demonstrate that the concept of wali mujbir must be evaluated not only through formal validity but also through the consequences it produces for justice, dignity, and family welfare.

Existing studies have contributed significantly to the discussion of wali mujbir by examining the opinions of classical jurists, the position of guardianship in the Compilation of Islamic Law, and the relevance of women's consent in modern marriage law. Some studies focus on the doctrinal debate between schools of Islamic law, while others analyze the issue through human rights, legal reform, or gender equality.[6] However, much of the existing literature remains descriptive. It often

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Syafi'i, *Al-Umm* (Dar al-Ma'rifah, 1990); A M Ibn Qudamah, *Al-Mughni*, vol. 1–15 (Dar 'Alam al-Kutub, 1997).

[4] Wahbah al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Beirut: Daar al-Fikr, 2011).

[5] Yusuf Al-Qaradawi, *Fatwa-Fatwa Kontemporer*, vol. 2 (Jakarta: Gema Insani, 1995).

[6] M I Mehmood and N B M Hashim, "Marriage without Wali's Consent: A Paradigm Shift in the Family Structure of Pakistan," *IIUM Law Journal* 29, no. S1 (2021): 135–51, https://doi.org/10.31436/iiumlj.v29iS1.639; M N Muttaqin and N Fadhilah, "Hak Ijbar Wali Tinjauan Maqashid Syari'ah Dan Antropologi Hukum Islam," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 1 (2020): 102–19, https://doi.org/10.18860/j-fsh.v12i1.7580; S Sidiq, "Concept of Wali Mujbir in Marriage: Legal Criticism of Counter Legal Draft Compilation of Islamic Law," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 8, no. 2 (2021), https://doi.org/10.29300/mzn.v8i2.5767.

maps classical and contemporary opinions without sufficiently explaining how the doctrine should be reconstructed into an operational legal-ethical model for contemporary Islamic family law. The gap, therefore, lies not merely in the absence of discussion on wali mujbir, but in the limited development of a conceptually integrated model that links classical fiqh diversity, maqāṣid al-sharī'ah, gender justice, and positive legal reform.

This gap is important because the debate on wali mujbir cannot be resolved by simply rejecting classical fiqh or by repeating its inherited formulations. A more rigorous reconstruction must distinguish between wali as a requirement of procedural validity, wali as a mechanism of protection, and wali mujbir as a potentially coercive authority. From the perspective of maqāṣid al-sharī'ah, every legal rule must be assessed according to its ability to realize maṣlaḥah and prevent mafsadah. Jasser Auda's systems approach to maqāṣid emphasizes that Islamic law must be read through openness, multidimensionality, and purposiveness, especially when inherited doctrines produce harm in changed social contexts.[7] In the context of marriage, this means that guardianship must protect religion, life, dignity, lineage, reason, and personal welfare without nullifying women's agency.

A gender-justice perspective further strengthens this reconstruction. Islamic feminist scholarship argues that unequal gender relations often emerge not from the Qur'anic ethical vision itself, but from interpretive traditions shaped by patriarchal social structures. Amina Wadud emphasizes that Qur'anic interpretation must recover women's moral agency as full legal and spiritual subjects.[8] Musdah Mulia similarly argues that Muslim family law reform in Indonesia must move beyond patriarchal readings and affirm women's equal dignity, consent, and responsibility in marriage.[9] These perspectives are relevant because wali mujbir is not merely a technical doctrine of guardianship; it is also a site where religious authority, gender hierarchy, and legal capacity are negotiated.

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[7] Auda. J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach. International Institute of Islamic Thought.*, 2008.

[8] Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective.* (New York: Oxford University Press, 1999).

[9] Siti Musdah Mulia, *Muslimah Reformis* (Mizan, 2005); Siti Musdah Mulia, "Muslim Family Law Reform in Indonesia: A Progressive Interpretation of the Qur'an," *Al-Mawarid: Jurnal Hukum Islam* 15, no. 2 (2015): 1–18.

Based on this scholarly gap, this article offers a conceptual reconstruction of wali mujbir by proposing a shift from coercive guardianship to consultative-protective guardianship. The proposed model places the guardian not as the primary decision-maker who may override an adult woman's will, but as a companion, verifier, and protector who ensures that marriage is entered into freely, responsibly, and without exploitation. In this model, ijbār is legitimate only in narrowly defined cases involving legal incapacity or clear vulnerability, and even then it must be subject to judicial oversight, the principle of best interest, the absence of harm, and the protection of the prospective bride's dignity. For adult women with legal capacity, consent is not merely an administrative formality but the ethical and legal foundation of marriage.

Accordingly, this study aims to reconstruct the concept of wali mujbir in Islamic family law by integrating four analytical dimensions: the plurality of classical fiqh, the purposive framework of maqāṣid al-sharī'ah, contemporary Islamic gender justice, and Indonesian legal reform. The article argues that wali mujbir should no longer be understood as a coercive privilege attached to male guardianship, but as a limited protective function subordinated to consent, welfare, justice, and legal accountability. This reconstruction is expected to clarify the article's academic novelty and contribute to contemporary Islamic family law by offering a more operational model for aligning inherited fiqh doctrines with the ethical objectives of sharia and the realities of modern Muslim societies.

RESEARCH METHODS

This study employed qualitative library research with a normative-juridical design supported by conceptual and socio-historical approaches to critically examine the doctrine of *wali mujbir* within Islamic family law. The normative-juridical approach was used to analyse the legal construction of guardianship (*wilāyah*) and *ijbār* across classical Islamic jurisprudence, contemporary Islamic legal thought, and Indonesian family law. The conceptual approach facilitated the reconstruction of guardianship by integrating the normative framework of *maqāṣid al-sharīʿah* with the principles of Islamic gender justice, while the socio-historical approach contextualised the emergence of classical juristic doctrines within their historical, cultural, and patriarchal settings and assessed their relevance to contemporary Muslim societies. The primary data consisted of authoritative classical legal sources representing the four Sunni schools of law, including *Al-Mabsūṭ, Al-Mudawwanah al-*

Kubrā, Al-Umm, Al-Mughnī, Bidāyah al-Mujtahid, and other major works of *al-Nawawī, al-Kāsānī, al-Marghīnānī, and al-Buhūtī*, together with contemporary writings by *Wahbah al-Zuḥailī, Yūsuf al-Qaraḍāwī, Muḥammad ʿAbduh, Muḥammad Sayyid Ṭanṭāwī, Jasser Auda, Amina Wadud*, and *Musdah Mulia*. Secondary data comprised peer-reviewed journal articles, scholarly monographs, legal commentaries, statutory regulations, judicial decisions, and comparative legal materials concerning Islamic family law, women's rights, guardianship, and legal reform in Muslim-majority countries, including Indonesian marriage legislation and Morocco's Moudawana (2004). Tertiary data included legal encyclopaedias, dictionaries of Islamic legal terminology, bibliographic databases, and other authoritative reference works used to strengthen conceptual clarification and verify legal terminology.[10]

Data were collected through systematic document analysis by identifying, selecting, classifying, and critically reviewing relevant legal texts and academic literature. The collection process followed explicit inclusion criteria based on scholarly authority, doctrinal relevance, historical significance, and contemporary legal contribution. Classical juristic texts were examined to identify variations in the legal doctrine of wali mujbir, particularly regarding women's legal capacity, consent, guardian authority, and the limits of ijbār. Contemporary legal scholarship and statutory materials were analysed to explore the development of Islamic legal reform, human rights discourse, and gender-responsive interpretations of family law. Comparative legal materials from selected Muslim jurisdictions were incorporated to illustrate alternative regulatory models and to evaluate the evolving position of marriage guardianship within modern Islamic legal systems.[11]

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[10] Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2015); Abdullah Saeed, *Islamic Thought: An Introduction* (London: Routledge, 2006); al-Sarakhsi, *Al-Mabsuth*; al-Sahnun, *Al-Mudawwanah Al-Kubra Lil Imam Malik Ibn Anas*; Al-Syafi'i, *Al-Umm*; Abdullah Ibn Qudamah, *Al-Mughni* (Riyadh: Dar Alam al-Kutub, 1997); Rusyd, *Bidāyah Al-Mujtahid Wa Nihāyah Al-Muqtaṣid*; Al-Kasani, *Bada'i Al-Sana'i Fi Tartib Al-Shara'i*; al-Marghinani, *Al-Hidayah Fi Syarh Bidayat Al-Mubtadi*; An-Nawawi, *Al-Majmu' Syarh Al-Muhadzdzab*; al-Buhti, *Kasysyaf Al-Qina' an Matan Al-Iqna*.

[11] Mehmood and Hashim, "Marriage without Wali's Consent: A Paradigm Shift in the Family Structure of Pakistan"; Muttaqin and Fadhilah, "Hak Ijbar Wali Tinjauan Maqashid Syari'ah Dan Antropologi Hukum Islam"; Sidiq, "Concept of Wali Mujbir in Marriage: Legal Criticism of Counter Legal Draft Compilation of Islamic Law"; Arini Robbi Izzati, "Kuasa Hak Ijbar Terhadap Anak Perempuan Perspektif Fiqh Dan

The data were analysed using descriptive-analytical and critical-synthetic methods through an iterative process of data reduction, categorisation, doctrinal comparison, contextual interpretation, critical evaluation, and conceptual synthesis. Initially, legal arguments contained in classical and contemporary sources were systematically organised according to major analytical themes, including legal capacity, consent, guardianship authority, *maṣlaḥah*, justice, human dignity, and family welfare. These themes were subsequently interpreted using the analytical framework of *maqāṣid al-sharīʿah* particularly the principles of justice (*ʿadl*), public benefit (*maṣlaḥah*), protection of human dignity (*karāmah*), freedom of choice, and prevention of harm (*darʾ al-mafāsid*) and integrated with Islamic gender justice to assess the coherence and contemporary relevance of classical doctrines. Analytical validity was strengthened through source triangulation by comparing classical fiqh literature, contemporary Islamic legal scholarship, statutory regulations, judicial developments, and gender studies, while theoretical triangulation ensured consistency between doctrinal interpretation and the higher objectives of Islamic law. This methodological framework enabled the study not merely to compare legal opinions descriptively but to formulate a normative reconstruction of *wali mujbir* as a consultative-protective institution that aligns with the objectives of Islamic law, constitutional principles, and contemporary standards of justice and gender equality.[12]

RESULTS AND DISCUSSION

The Concept of Wali Mujbir in the Thought of Classical and Contemporary Scholars from the Perspective of Maqāṣid al-Sharī'ah

The objectives of Islamic law are often referred to as the maqāṣid

HAM," *Al-Mawarid* 11, no. 2 (2011): 241–54; Opwis, "New Trends in Islamic Legal Theory: Maqāṣid Al-Sharīʿa as a New Source of Law?; Oka Storms and Edien Bartels, "The Reform of the Moroccan Family Law and Women's Daily Lives: Navigating Between Structural Constraints and Personal Agency," in *North African Women after the Arab Spring*, ed. Larbi Touaf, Soumia Boutkhil, and Chourouq Nasri (Cham: Palgrave Macmillan, 2017), 191–209, https://doi.org/10.1007/978-3-319-49926-0_10.

[12] Asghar Ali Engineer, *The Qur'an, Women and Modern Society* (Berkshire: New Dawn Press, 2005); Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective.*; Siti Musda Mulia, *Islam Dan Inspirasi Kesetaraan Gender* (Yogyakarta: Kibar Press, 2007); Siti Ruhaini Dzuhayatin, *Rekonstrusi Metodologis Wacana Kesetaraan Gender Dalam Islam* (Yogyakarta: Pustaka Pelajar, 2002); al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*; Qardhawi, *Markaz Al-Mar'ah Fi Al-Hayah Al-Islamiyyah*; J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach. International Institute of Islamic Thought.*; Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective.*

syarī‘ah, which are realized through the implementation of fundamental values. The debate on *wali mujbir* should not be understood merely as a disagreement among classical jurists, but as a contestation of legal reasoning regarding protection, consent, and legal capacity. The Hanafi school offers the most autonomy-oriented position by recognizing the legal capacity of an adult woman to contract her own marriage, while the Shafi‘i, Maliki, and Hanbali schools preserve a stronger role for the guardian, although not without certain ethical and legal limitations. This plurality indicates that Islamic jurisprudence provides internal resources for reconstructing guardianship in a more contextual manner. Therefore, contemporary reinterpretation of *wali mujbir* is not a rejection of fiqh tradition, but a continuation of its methodological plurality in response to changing social realities.

These values include the preservation of religion (*hifẓ ad-din*), life (*hifẓ an-nafs*), reason (*hifẓ al-aql*), lineage (*hifẓ an-nasl*), property (*hifẓ al-mal*), honor, and the environment. The main principle of maqāṣid syarī‘ah is to emphasize the importance of creating public interest, realizing peace, and rejecting harm. In this regard, Al-Raysuni states the following relevant view regarding this principle:

> المقاصد العامة : حفظ النظام وجلب المصالح و درء المفاسد وإقامة المساواة بين الناس وجعل الشريعة مهداة مطاعة نافعة وجعل الأمة قرية مرهوبة الجانب مجلبة للبلد... إن مقاصد الشريعة هي الغايات الت ي وضعت الشريعة لأجل تحقيقها لمصلحة العباد

This means that, in general, the maqāṣid al-sharī‘ah aim to maintain order, promote the public good, and prevent harm and injustice. Islamic Sharia serves as a guiding principle that brings benefit, is obeyed, and fosters a strong and respected community. Thus, *Maqāṣid syarī‘ah* constitutes the primary objectives established by Islamic law to ensure the overall welfare of the community".[13]

Maqāṣid al-Shari'ah is expected to foster a perspective on Islamic legal reasoning that is not limited to textual provisions (*dhahir an-nash*) but also capable of engaging with changing times and the dynamics of contemporary issues. Khalid Mas'ud emphasizes that maslahah is the

[13] Ahmad al-Raysuni, *Nazhariyat Al-Maqashid 'Inda Ial-Imam al-Syathibi* (Virginia: Dar ial-'Alamiyah li al-Kitab al-Islami wa al-Ma'had al-'Alami al-Fikr al-Islami, 1981); Amir, Ahmad Nabil, Tasnim Abdul Rahman, Seyed Mohammad Houshisadat, and Musa Adebayo Badrudeen , trans. 2025. "Muhammad Abduh and the Conception of Science: The Framework of Maqasid and Sharia". Al-Battar: Jurnal Pamungkas Hukum 2 (2): 175-86. https://doi.org/10.63142/al-battar.v2i2.167.

core essence of the objectives of Islamic law.[14] Within this framework, *Maqāṣid* are classified into three levels: *maqāṣid ḍaruriyat (*primary public interests), *maqāṣid hajiyat* (secondary public interests), and *maqāṣid tahsiniyat* (tertiary public interests). This classification demonstrates a hierarchy of public interests that must be fulfilled for human well-being. Thus, the categorization of Maqāṣid plays a crucial role in maintaining the relevance and dynamism of Islamic law, ensuring it remains contextual with the times.

One of the current issues frequently debated is the principle of marriage in Islam, particularly regarding the rights of the wali mujbir and a woman's right to choose her life partner.[15] The wali mujbir, who is traditionally granted the right to "force" a daughter to marry his choice, often conflicts with the principle of a woman's individual right to determine her own life partner. This phenomenon is known as forced marriage and is considered contrary to the very purpose of the right of *ijbār* itself. Essentially, the right of *ijbār* is intended as a form of protective guardianship (*wilāyah ḥimāyah*) that brings benefit, not coercion (ikrah) with its negative connotations.[16] This is reinforced by Musdah Mulia's view that the principles of Islamic marriage are (1) the principle of monogamy, (2) the principle *of mawaddah wa rahmah*, (3) the principle of mutual protection and complementarity, (4) the principle of mu'asyarah bil ma'ruf (interaction with courtesy), and (5) the principle of choosing a suitable spouse for both men and women.[17]

The concept of wali mujbir in classical and contemporary Islamic law has undergone significant development when examined from the perspective of maqāṣid syarī'ah. In classical fiqh, this concept emerged as an effort to protect women who were considered not yet fully capable of making decisions regarding marriage. Conversely, contemporary scholars tend to reconceptualize this concept to align with social changes and modern demands for justice, while remaining committed to the primary objectives of sharia: achieving public interest (al-maṣlaḥah) and preventing harm (al-mafṣadah).

From the perspective of maqāṣid al-sharī'ah, the right of the wali

[14] M K Mas'ud, *Filsafat Hukum Islam Dan Perubahan Sosial* (Surabaya: Al-Ikhlas, 1995).

[15] Arini Robbi Izzati, "Kuasa Hak *Ijbār* Terhadap Anak Perempuan Perspektif Fiqh Dan HAM," *Al-Mawarid* 11, no. 2 (2011): 241–54.

[16] Husein Muhammad, *Fiqh Perempuan*, ed. Faqihuddin Abdul Qodir (Yogyakarta: LKiS, 2001).

[17] Siti Musdah Mulia, *Perempuan Dan Hukum* (Jakarta: YOI, 2008).

ijbār can be analyzed within the framework of al-maqāṣid al-ammah, namely, the universal objectives of Sharia that encompass public interests such as justice, ease, and tolerance. This aspect encompasses ad-ḍaruriyat (primary public interest), namely the fundamental needs that must be met to maintain the order of human life. According to Jasser Auda, Maqāṣid must serve as the foundation of Islamic law in addressing contemporary issues, including guardianship in marriage. Auda emphasizes that the primary purpose of Sharia is to achieve public interest and prevent harm (al-maṣlaḥah).[18]

The concept of wali mujbir in marriage is analyzed within two categories of *Maqāṣid syarī'ah: maqāṣid al-syari* and *maqāṣid al-mukallaf.*[19] From the perspective of maqāṣid al-shari'ah, the guardian's right to compel marriage must align with the objectives of Allah's law, which are oriented toward human welfare, both in this world and in the hereafter. This includes the creation of a harmonious family, the preservation of honor, and the protection of individuals from moral corruption such as adultery. However, when the right of *ijbār* is exercised arbitrarily for example, by forcing a marriage without the woman's consent such an action actually leads to mafsadat in the form of disharmony, conflict, and even divorce, which contradicts the *maqāṣid syarī'ah*. From the perspective of *maqāṣid al-sharī'ah,* forced marriage no longer serves the public interest and instead disregards the principle that the Sharia was revealed to ease, not to burden, humanity, as emphasized in Surah Al-Baqarah: 185:

"Allah intends ease for you and does not intend hardship. "You should fulfill the prescribed period and glorify Allah for the guidance He has given you so that you may be grateful."

Meanwhile, from the perspective of maqāṣid al-mukallaf, the objectives of the legal agent (human beings) must be based on good faith, awareness, and responsibility in the implementation of legal rules. In the context of a wali mujbir, the guardian's purpose in marrying off their daughter should be grounded in the intention to protect and ensure the well-being of the young woman under their care. However, if the marriage is forced without regard for the young woman's will, the guardian has failed to fulfill the maqāṣid al-mukallaf, as this violates the

[18] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (King's Lyon: The International Institute of Islamic Thought, 2008), https://archive.org/details/maqasidalshariah0000auda/page/n5/mode/2up.

[19] Nur al-Din Mukhtar al-Khadimi, *Al-Ijtihad Al-Maqasidi: Hujiyatuhu Dawabituhu Majalatuhu* (Doha: Wuzarat al-Awqaf wa al-Shu'un al-Islamiyah, 1998).

woman's right to choose her life partner consciously and willingly. This right is crucial to achieving a harmonious life in accordance with the maqāṣid syarī'ah, namely maṣāliḥ (good) and the avoidance of mafṣadah (harm). Thus, the guardian's right of *ijbār* in contemporary practice which fails to consider individual welfare and the principle of justice must be re-examined to ensure it remains aligned with the maqāṣid syarī'ah, which emphasizes justice, mercy, and the welfare of humanity.

The application of the guardian's right of *ijbār* in marriage contradicts the principle of public welfare. The exercise of this right, which often takes the form of forced marriage, frequently leads to mafsadat such as domestic disharmony, disputes, and even divorce. This situation is certainly not in line with the primary purpose of marriage in Islam, which is to create a family characterized by *sakinah, mawaddah*, and *rahmah.* This view is further reinforced by Yūsuf al-Qaraḍāwī, a prominent scholar of *maqāṣid syarī'ah*, who argues that a guardian is not permitted to force a marriage upon an adult daughter who has no legal impediments to marrying the man of her choice. Furthermore, Yūsuf al-Qaraḍāwī criticizes Imam Shafi'i's opinion permitting the guardian's right of *ijbār*. Imam Shafi'i's opinion was shaped by the social conditions in Egypt during his time, when women rarely left the house and faced restrictions on interacting with men. This made women less likely to know a man's character well. However, if Imam Shafi'i were alive today, in an era when women are active in public life, highly educated, and independent, it is likely he would revise his opinion, much as the concept of *qaul qadim* has been transformed into *qaul jadid*.[20]

From the perspective of *al-maqāṣid al-qath'iyah*, principles such as the removal of hardship, justice, and the preservation of honor have a strong and definitive foundation in sharia. When the guardian's right of *ijbār* has the potential to cause *mafṣadah* such as domestic discord, violations of women's rights, or even divorce its application clearly contradicts these *maqāṣid al-qath'iyah* principles. Contemporary scholars argue that the consent of both spouses is an essential requirement in the marriage contract, as it aligns with the primary objectives of marriage within the *maqāṣid al-sharī'ah*: maintaining peace, fostering happiness, and avoiding hardship.

Furthermore, Al-Ṭāhir Ibn Ashūr's discussion of *maqāṣid syarī'ah*, particularly regarding freedom and will, holds significant

[20] Yusuf Qardhawi, *Al-Ijtihad Al-Syari'ah Al-Islamiyah* (Cairo: Dar al-Qalam, 1999).

relevance in addressing the practice of wali mujbir in Islamic marriage law. Ibn Ashūr emphasizes that freedom is part of the universal objectives of *syarī'ah*, encompassing freedom of thought, belief, and action, not merely physical freedom such as the concept of *'itq* (the emancipation of slaves). This principle of freedom reflects the individual's right to determine their life choices, including freedom in marriage. In the context of the wali mujbir, the guardian's act of forcing a marriage without the woman's consent can be considered contrary to the *maqāṣid syarī'ah*, which prioritizes individual freedom and well-being as primary objectives. Freedom of will, mentioned in the Qur'an as the right to choose to believe or not to believe, affirms that the individual's will must be respected in all aspects of life, including marriage.

Reconceptualizing the Wali Mujbir from a Gender Equality Perspective

The concept of the wali mujbir a guardian with the authority to marry off a daughter without her consent is a crucial issue in the discourse on gender equality within Islamic family law. In practice, this concept often deprives women of the right to choose their own life partner. Within the framework of gender equality, such actions are viewed as a form of discrimination that hinders women from exercising their reproductive rights and personal autonomy. This indicates that women are still viewed as inferior and lack the capacity to make major decisions in their lives. Feminist theory highlights that forms of oppression against women, including within the family context, are often overlooked by contextual academic approaches; instead, they are merely reproduced through popular discourse without considering women's local experiences.[21]

A gender-justice perspective does not require the abolition of the guardian's role, but demands the transformation of its meaning. The problem is not guardianship itself, but the patriarchal interpretation that turns guardianship into male control over women's marital decisions. In contemporary Muslim societies, women possess broader access to education, legal awareness, and social participation. Therefore, the assumption that adult women are inherently incapable of choosing their spouses is no longer sociologically valid. The reconstruction of *wali mujbir* must therefore begin by recognizing women as full legal subjects whose consent is central to the validity and ethical legitimacy of

[21] G Arivia, "Filsafat Berperspektif Feminis" 24 (2002): 7–21.

marriage.

In many societies, the role of a guardian is often interpreted as a representation of male power over women, reinforced by patriarchal norms. This authority implies that women lack the competence to choose a life partner, which ultimately reinforces women's inferiority in social relations. A report by the UN Human Rights Council (2018) affirms that every individual has the right to freely choose their life partner, without coercion from any party, including family. However, in reality, women often lack control over their own marriage decisions. Such views hinder women's active participation in society and widen gender inequality.[22]

Feminist discourse attempts to deconstruct power structures that limit women, yet there remains a tendency for feminist theories to draw on Western thought without delving into the concrete experiences of women in the Muslim world.[23] Within the context of Islamic law, the granting of the right of *ijbār* to a guardian is intended to protect women, particularly those who are not yet of age. However, in practice, this right actually reproduces male superiority and restricts women from determining their own futures independently. Such power structures place women in a subordinate position, even when they are permitted to consent to marriage.

This contradicts the fundamental spirit of Islam, which prioritizes justice and liberation from oppression. Rejection of the absolute practice of *ijbār* is also consistent with the principles of maqāṣid syarī'ah, namely the protection of human rights and dignity.[24] Before the advent of Islam, Arab society viewed women as a burden. They even practiced the burial alive of female infants because they were considered to bring misfortune.[25] Islam arrived as a revolution that liberated women from such oppression. However, the legacy of patriarchal culture and narrow textual interpretations has eroded this emancipatory spirit and even reinforced the stigma that Islam discriminates against women.[26]

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[22] Naila Kabeer, "Gender, Labour, Markets and Poverty: An Overview," *Gender & Development* 13, no. 1 (2008): 3–5.

[23] B Hooks, *Feminism Is for Everybody* (Boston: South End Press, 2000).

[24] Dzuhayatin, *Rekonstrusi Metodologis Wacana Kesetaraan Gender Dalam Islam*.

[25] Muhammad Anis Qasim Ja'far, *Perempuan Dan Kekuasaan: Menelusuri Hak Politik Dan Persoalan Gender Dalam Islam* (Bandung: Penerbit Zaman Wacana Mulia, 1998).

[26] Muhammad Adres Prawira Negara, "Keadilan Gender Dan Hak-Hak Perempuan Dalam Islam (Studi Analisis Pemikiran Asghar Ali Engineer)," *Az-Zahra:*

Asghar Ali Engineer explains that the Qur'an actually provides equal standing for men and women. The superiority of men mentioned in some verses reflects the social context of that time, not an absolute norm.[27] In this context, the role of the guardian needs to be redefined. Gender, according to Kessler and McKenna, is a social construct shaped through norms and social interactions.[28] In the practice of wali mujbir, women are not only constructed to be submissive but are also forced into passivity within a system that requires the guardian's consent, as if women lack the capacity to make decisions.[29]

This view is further emphasized by Nawal El Saadawi, who states that women are often forced to accept decisions made by men within the family and society. Yet, Islamic teachings substantially recognize women's freedom and capacity to determine their own life paths.[30] When the practice of *ijbār* is carried out without critical evaluation, it actually contradicts the spirit of liberation championed by Islam. Therefore, a progressive approach is needed in interpreting the role of the guardian to avoid disregarding women's rights and autonomy.[31]

This disparity can be seen in how the Qur'an underscores the principle of equality: Q.S. An-Nisa' verse 1, Q.S. Al-Isra' verse 70, and Q.S. Al-Ahzab verse 35 imply that men and women were created from the same essence and possess equal potential to attain reward and honor.[32] The engineer classifies these verses as normative, forming the theological basis for equality. Islam highlights the roles of women such as Queen Balqis (Q.S. An-Naml: 23), the women of Madyan (Q.S. Al-Qashash: 23), and Pharaoh's wife, who defied patriarchal authority (Q.S. Al-Tahrim: 11), as symbols of women who are free in thought and

Journal of Gender and Family Studies 2, no. 2 (2022): 74–88, https://doi.org/10.15575/azzahra.v2i2.15840.

[27] Engineer, *The Qur'an, Women and Modern Society*.

[28] Suzanne Kessler and Wendy McKenna, *Gender: An Ethnomethodological Approach* (Chicago: University of Chicago Press, 1978).

[29] Butler, *Gender Trouble: Feminism and the Subversion of Identity*; West and Zimmerman, "Doing Gender."

[30] Nawal El Saadawi, *The Hidden Face of Eve: Women in the Arab World* (London & New York: Zed Book, 1980).

[31] Fakih, *Analisis Gender Dan Transformasi Sosial*.

[32] Hairus Salim, "Menimbang Teologi Pembebasan Islam: Refleksi Pemikiran Asghar Ali Engineer," *Jurnal Orientasi Baru* 19, no. 2 (2010): 139–53.

action.[33]

Islamic gender justice should be understood as a maqāṣid-based commitment to human dignity, mutual responsibility, and the removal of oppression. In this framework, women's consent is not a Western import but an Islamic ethical requirement rooted in justice and protection from harm. Marriage without meaningful consent contradicts the Qur'anic vision of marital reciprocity and undermines the moral purpose of the family. Thus, the reconstruction of *wali mujbir* must affirm that the guardian's duty is to strengthen women's welfare, not to substitute their decision-making authority.

Based on the comparison between classical and contemporary scholars, this article identifies three possible models of guardianship. The first is the coercive-authoritarian model, in which the guardian is treated as the dominant decision-maker and the woman's consent becomes secondary. This model is no longer compatible with *maqāṣid al-sharī'ah* because it risks producing harm and injustice. The second is the procedural-formal model, in which the guardian functions mainly as a requirement for the validity of the marriage contract. This model is more moderate, but it remains insufficient if it does not guarantee meaningful consent. The third is the consultative-protective model, in which the guardian acts as an adviser, verifier, and protector who ensures that marriage is conducted freely, responsibly, and without coercion. This third model is the most appropriate reconstruction because it preserves the protective function of guardianship while affirming women's autonomy and legal capacity.

Reconceptualizing the wali mujbir does not entail abolishing the guardian's function entirely but rather adapting it to the principles of gender justice. The exercise of *ijbār* is justifiable only for the protection of girls who are not yet legally competent and should not serve as a mechanism of control over adult women who possess full autonomy. Within the framework of *maqāṣid al-sharī'ah*, the guardian's role should be to facilitate public interest rather than to exercise absolute authority over a woman's life. In contemporary societies that value freedom and equality, the guardian's role must be redefined as that of a companion rather than a primary decision-maker in marital matters.

The proposed reconstruction may be formulated into four

[33] Siti Musdah Mulia, "Muslim Family Reform In Indonesia: A Progressive Interpretation of The Quran," *Al-Mawarid Journal of Islamic Law* 15, no. 1 (2015): 1–18.

operational principles. First, the principle of consent, which requires the explicit or clearly verifiable approval of the prospective bride. Second, the principle of capacity, which limits any form of substitute decision-making only to cases of legal incapacity or demonstrable vulnerability. Third, the principle of welfare, which requires the guardian's involvement to be directed toward preventing harm and ensuring the prospective bride's best interest. Fourth, the principle of accountability, which requires that any disputed exercise of guardianship be subject to legal or judicial review. These principles transform *wali mujbir* from an instrument of compulsion into a framework of consultative and protective guardianship.

The Relevance and Implementation of the Concept of Wali Mujbir in the Context of Contemporary Islamic Family Law

The concept of wali mujbir is a key element in classical fiqh that grants authority to a guardian typically the father or grandfather to marry off his daughter without her consent, particularly if she is still a virgin. In the past, this was intended as a protective mechanism for women against the possibility of making a poor choice in a life partner. However, with changing times and increasing awareness of human rights and gender equality, this concept faces serious challenges in its implementation in contemporary Islamic family law. In a society that increasingly prioritizes individual autonomy, the exercise of wali mujbir without considering the woman's will is viewed as detrimental and potentially perpetuating discriminatory patriarchal practices.

In Indonesian family law, the reconstruction of *wali mujbir* is strongly supported by the principle of consent. Law No. 1 of 1974 and the Compilation of Islamic Law require the agreement of both prospective spouses, while marriage conducted under coercion can be challenged through legal mechanisms. This means that the coercive interpretation of *wali mujbir* has no strong basis in Indonesian positive law. The remaining task is therefore not only legal codification, but also interpretive reform among religious authorities, marriage registrars, judges, and communities so that guardianship is consistently understood as protection rather than domination.

Historically, the legitimacy of the wali mujbir stems from the opinions of classical scholars who justified marrying a woman without her consent, provided it was done by the primary blood-related guardian and aimed at the greater good. However, in the modern context, this view is considered problematic. This is because there is a loophole that allows the abuse of the guardian's authority, thereby disregarding the woman's

will. This criticism is increasingly relevant given the growing awareness of women's rights to determine their own fate, including the choice of a life partner. Therefore, redefining the role of the guardian in a modern context is imperative to align Islamic law with evolving values of social and gender justice.

The principle of *maqāṣid syarī'ah* emphasizes the importance of protecting human rights and dignity, including in matters of marriage. According to Yusuf Ahmad Muhammad Badawi, Islamic law aims to safeguard five basic human needs: religion, life, intellect, lineage, and property.[34] In this context, marriage must reflect justice and well-being, not domination or coercion. Therefore, the role of the guardian should be directed toward support, not absolute control. The guardian's duty is to ensure the common good, not to usurp a woman's right to determine her own life choices. When the guardian's authority overrides a woman's will, the values of maqāṣid are compromised.

In the context of Indonesian positive law, the guardian's right of *ijbār* has lost its legitimacy. Law No. 1 of 1974, Article 6(1), states that a marriage is valid only if based on the consent of both prospective spouses. This provision is reaffirmed in the Compilation of Islamic Law (KHI), Article 16(1), which states that a marriage is valid only with the consent of both prospective spouses. Furthermore, Article 71(f) of the KHI clarifies that a marriage entered into under duress may be annulled through a religious court. Thus, the concept of the guardian's right of compulsion has no place in national family law, as it contradicts the principle of individual free will.

Furthermore, the abolition of the wali's right of *ijbār* is also consistent with the principles of human rights (HAM) as stipulated in Law No. 39 of 1999 on human rights, particularly Article 10, which states that every person has the right to form a family through a valid marriage and of their own free will. This concept is also consistent with CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), which requires the consent of both parties in marriage.

This Convention has been ratified by Indonesia through Law No. 7 of 1984. Therefore, strengthening national laws that guarantee women's freedom to choose a partner must be interpreted as a commitment to respecting women's rights both nationally and internationally. The

[34] 'Abd al-Qadir ibn Hirzillah, *Al-Madkhal Ila 'Ilm Maqasid Al-Shari'Ah* (Riyadh: Maktabat al-Rushd Nashirun, 2005); Yusuf Ahmad Muhammad Badawi, *Maqasid Al-Shari'ah 'ind Ibn Taymiyah* (Beirut: Dar al-Nafais, 2000).

reconceptualization of the wali mujbir must involve a shift from absolute authority to a supportive companion.

In some Muslim-majority countries, such as Morocco, family law reforms have been implemented through the Moudawana (Family Code) of 2004, which grants adult women the right to marry without the guardian's intervention, although the guardian may still offer advice (Moudawana, 2004, Article 24). This change reflects recognition of women's capacity as independent individuals entitled to make their own life decisions. In such a system, the guardian's role is not to control but to accompany.[35]

The Moroccan reform through the Moudawana demonstrates that Muslim family law can preserve the ethical role of the family while recognizing adult women's legal autonomy. This comparative example is important because it shows that reconstructing guardianship does not necessarily secularize Islamic family law. Rather, it can be carried out through Islamic legal reasoning that prioritizes consent, welfare, and justice. For Indonesia, such reform is relevant not by copying another legal system, but by strengthening the maqāṣid-oriented interpretation already compatible with national marriage law.

This is also consistent with the contextual approach in Islamic legal studies developed by Abdullah Saeed. He asserts that Islamic legal texts must be read contextually to remain relevant to the ever-changing times and social circumstances of society.[36] In the contemporary world, women have greater access to education and economic opportunities, rendering the classical argument that women are incapable of making decisions obsolete. Therefore, efforts to recontextualize the role of the guardian in marriage must not be detached from this social reality.

Amina Wadud asserts that Islam positions individuals, including women, as subjects possessing full autonomy. Marriage decisions in Islam should reflect the principles of justice, free consent, and respect for the woman's will.[37] Thus, the implementation of the recontextualization of the wali mujbir requires a comprehensive approach. In the intellectual sphere, contextual ijtihad is needed that takes into account the maqāṣid al-sharī'ah to reinterpret classical fiqh

[35] Kingdom of Morocco, "Law No. 70.03 as the Family Code (Moudawana)" (2004); Storms and Bartels, "The Reform of the Moroccan Family Law and Women's Daily Lives: Navigating Between Structural Constraints and Personal Agency."

[36] Saeed, *Islamic Thought: An Introduction*.

[37] Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1992).

texts. Meanwhile, from a legislative perspective, the state must enact regulations protecting women from forced marriage with strict penalties.

Finally, a socio-cultural approach is also crucial to ensure broader societal acceptance of these changes. A positive example can be drawn from Pakistan through the Child Marriage Restraint Act, which provides legal protection for women and explicitly prohibits forced marriage. This law serves as a legal framework reinforcing women's right to freely choose their life partners and can be adapted to the Indonesian context. Efforts like these demonstrate that the reconstruction of Islamic law is not only possible but also necessary to realize a family system that is more just, inclusive, and humane.

Overall, the analysis shows that the future relevance of *wali mujbir* depends on its reconstruction from coercive authority into consultative-protective guardianship. The guardian remains relevant as a moral and social actor who provides advice, verifies the absence of exploitation, and protects the welfare of the prospective bride. However, this role must not override the consent of an adult woman with legal capacity. The article therefore proposes that *wali mujbir* should be limited to exceptional cases involving incapacity or vulnerability, while ordinary marriage must be based on free consent, mutual welfare, and legal accountability. This model clarifies the article's novelty by moving beyond descriptive comparison and offering an operational framework for contemporary Islamic family law reform.

CONCLUSION

This study demonstrates that the classical doctrine of *wali mujbir* can no longer be sustained in its traditional coercive interpretation within contemporary Islamic family law. Although historically intended to protect women in conditions of legal or social vulnerability, its application as a guardian's authority to contract the marriage of a legally competent adult woman without her consent is inconsistent with the higher objectives (*maqāṣid al-sharī'ah*) of justice, human dignity, and the prevention of harm. The findings confirm that forced marriage undermines women's autonomy, weakens the ethical foundation of marital relationships, and contradicts the Qur'anic ideals of sakinah, mawaddah, and raḥmah. Consequently, consent should be recognized as an indispensable legal and moral prerequisite for a valid Islamic marriage.

This research further proposes a normative reconstruction of wali mujbir from a doctrine of coercive authority into a consultative-protective model of guardianship. Within this framework, the guardian's

role is redefined as providing guidance, protection, verification, and the prevention of exploitation rather than exercising unilateral decision-making over an adult woman's marital choice. Such reconstruction is firmly grounded in the internal plurality of classical Islamic jurisprudence, interpreted through the framework of maqāṣid al-sharī'ah, Islamic principles of justice, and contemporary legal reform. Theoretically, the study contributes to Islamic family law scholarship by integrating classical fiqh discourse, maqāṣid-oriented legal reasoning, gender justice, and positive law into a coherent normative model that reconciles Islamic legal tradition with evolving conceptions of human rights and constitutional legality.

Practically, the proposed reconstruction reinforces the direction of Indonesian family law, which requires the free consent of both prospective spouses and provides legal protection against forced marriage. More broadly, the findings suggest that meaningful reform of Islamic family law should extend beyond statutory amendment to encompass the reinterpretation of legal doctrines that continue to legitimize patriarchal authority. Future studies should empirically examine how judges, religious officials, marriage registrars, and Muslim communities interpret guardianship and consent in contemporary marriage practices, while comparative research across Muslim-majority jurisdictions may further evaluate the applicability and effectiveness of the consultative-protective guardianship model in advancing justice, legal certainty, and the objectives of Islamic family law.

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