

The Principle of Guardianship in Marriage: A Philosophical Analysis of the Harmonization of Islamic Law and Indonesian Positive Law

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Received: 3/4/2025

Revised: 31/5/2025

Accepted: 1/6/2025

Published: 2/6/2025

Abstract

Guardianship in marriage law has an important position as one of the conditions for the validity of marriage in the perspective of Islamic law and also received recognition in the Indonesian national legal system. However, the application of guardianship principles in the context of positive law often raises debates, especially regarding the authority of the guardian, the position of women, and the limits of state intervention. This study aims to examine the principles of guardianship in the Indonesian marriage law system and its relevance to the values of justice and legal protection. This research uses a normative juridical approach with a literature study method. Sources of data are obtained from legislation, legal doctrine, and relevant court decisions. The analysis is done descriptively-qualitatively by tracing the concepts of guardianship in Islamic law, the Compilation of Islamic Law (KHI), and Law Number 1 Year 1974 on Marriage. The results show that the principle of guardianship in the Indonesian marriage legal system is based on the strong influence of Islamic law, especially in KHI. The marriage guardian is considered as a representation of honor and protection of women. However, there is also ambiguity in guardianship arrangements between the national legal system and social religious practices, which can lead to legal uncertainty. There is a need for harmonization between religious principles and human rights principles in marriage law, especially regarding women's autonomy in choosing a life partner. Revisions to regulations relating to guardianship are also needed to emphasize the position of women as independent and protected legal subjects.

Keywords: *Guardianship; Marriage Law; Compilation of Islamic Law; Women's Rights; Islamic Law.*

Abstrak

Perwalian dalam hukum perkawinan memiliki kedudukan penting sebagai salah satu syarat sahnya perkawinan dalam perspektif hukum Islam dan juga mendapat pengakuan dalam sistem hukum nasional Indonesia. Namun, penerapan prinsip-prinsip perwalian dalam konteks hukum positif sering kali menimbulkan perdebatan, terutama terkait kewenangan wali, kedudukan perempuan, serta batasan intervensi negara. Penelitian ini bertujuan untuk mengkaji prinsip-prinsip perwalian dalam sistem hukum perkawinan di Indonesia serta relevansinya dengan nilai-nilai keadilan dan perlindungan hukum. Penelitian ini menggunakan pendekatan yuridis normatif dengan metode studi kepustakaan. Sumber data diperoleh dari peraturan perundang-undangan, doktrin hukum, dan putusan pengadilan yang relevan. Analisis dilakukan secara deskriptif-kualitatif dengan menelusuri konsep-konsep perwalian dalam hukum Islam, Kompilasi Hukum Islam (KHI), serta Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Hasil penelitian menunjukkan bahwa prinsip perwalian dalam sistem hukum perkawinan Indonesia didasarkan pada pengaruh kuat hukum Islam, khususnya dalam KHI. Wali nikah dianggap sebagai representasi kehormatan dan perlindungan terhadap perempuan. Namun, ditemukan pula

ambiguitas dalam pengaturan perwalian antara sistem hukum nasional dan praktik sosial keagamaan, yang dapat menimbulkan ketidakpastian hukum. Perlu adanya harmonisasi antara prinsip keagamaan dan prinsip hak asasi manusia dalam hukum perkawinan, khususnya terkait hak otonomi perempuan dalam memilih pasangan hidup. Revisi terhadap regulasi yang berkaitan dengan perwalian juga diperlukan untuk menegaskan posisi perempuan sebagai subjek hukum yang merdeka dan terlindungi.

Kata Kunci: Perwalian; Hukum Perkawinan; Kompilasi Hukum Islam; Hak Perempuan; Hukum Islam.

INTRODUCTION

Marriage is a social and religious institution that has a central position in the order of life of Indonesian society. In the legal context, marriage is not only understood as a birth and mental bond between a man and a woman as regulated in Law Number 1 of 1974 concerning Marriage, but also a legal event that creates rights and obligations for the parties involved.¹ One of the important aspects of the marriage process that often causes debate is the issue of guardianship, especially in the context of Islamic law which is embraced by the majority of the Indonesian population.

Juridical-normative, guardianship in marriage is the authority possessed by a guardian, usually a man in the line of kinship of the woman, to give consent to the woman's marriage.² In Islamic law, the validity of marriage is often associated with the existence of a guardian, as affirmed in many classic fiqh books that refer to the hadith of the Prophet Muhammad PBUH, "It is not valid for a marriage without a guardian." This concept was then adopted in the Compilation of Islamic Law (KHI) which became a family law guideline for Muslims in Indonesia.³ In Article 14 of the KHI, it is stated that the marriage guardian is the party who has the right to marry the bride and is one of the legal requirements for marriage.

However, the principles of guardianship in marriage are not singular and static. In Indonesia, which adheres to a pluralistic legal system, the principle of guardianship in marriage is influenced by various sources of law, namely religious law, customary law, and national positive law.⁴ The three are not always in line and often cause tension in the implementation in the field. For example, in certain customary law, the concept of guardianship may not be understood as in Islamic law. Even in the context of modern society, various critical thoughts have emerged on the existence of guardians as an

¹ Bing Waluyo, "THE LEGALITY OF MARRIAGE ACCORDING TO LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE," *Journal of Pancasila and Citizenship Education Communication Media* 2, no. 1 (April 14, 2020): 193–99, <https://doi.org/10.23887/jmppkn.v2i1.135>; Hotmartua Nasution, "Reform of Islamic Family Law on the Age of Marriage in Indonesia (Study on Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage)," *Department of Al-Ahwal Al-Syakhsyah, Faculty of Sharia and Law*, 2019.

² Nova Eliza Safitri, *The Practice of Marriage with Guardian Judges According to the Perspective of Islamic Family Law, Case Study in Lembah Sabil District, Southwest Aceh Regency, Ar-Raniry*, vol. 1, 2021; Ida Kurnia, Alexander Sutomo, and Cliff Geraldio, "GUARDIANSHIP AND ITS PROBLEMS," *Journal of Indonesian Community Service* 5, no. 3 (November 30, 2022), <https://doi.org/10.24912/jbmi.v5i3.18108>.

³ Nursalam Rahmatullah, "The Concept of Guardianship in the Perspective of Western Civil Law and Islamic Civil Law (Comparative Study)," *Faculty of Sharia and Law, UIN Alauddin Makassar*, 2016.

⁴ Holan Riadi, "ISLAMIC FAMILY LEGAL SYSTEM IN INDONESIA," *Minhaj: Journal of Sharia Science* 2, no. 1 (January 15, 2021): 77–90, <https://doi.org/10.52431/minhaj.v2i1.370>.

institution that is considered to have the potential to limit women's autonomy in choosing their life partners.⁵

The presence of the principle of guardianship in marriage law in Indonesia also raises a number of problems when it is associated with the principles of gender equality and human rights. As awareness of individual rights develops, especially women's rights in making decisions related to their personal lives, the existence of guardians in marriage begins to be questioned, especially if guardians use their power in an authoritarian manner and do not pay attention to the will of the woman concerned.⁶ In some cases, the guardian may reject the prospective husband of his daughter's choice for subjective reasons that are not based on legal or moral considerations, which can ultimately hinder the woman's right to marry.

On the other hand, there are conditions in which women lose their guardians, either due to death, unknown whereabouts, or due to other social factors. In cases like this, the role of the guardian judge becomes important as an alternative provided in the Islamic legal system and accommodated in the KHI.⁷ However, the practice of appointing guardian judges often causes administrative problems, thus hindering the continuity of the marriage process. This shows that the guardianship system, both guardians and guardian judges, is not fully adaptive to the social dynamics and reality conditions of Indonesian society.⁸

Not only from the legal side, the problem of guardianship also arises from the sociological side. In traditional societies, the role of guardians is often seen as a form of protection for women.⁹ However, in the context of a modern society that prioritizes women's emancipation and independence, this concept of protection can actually turn into

⁵ Ayu Umami, "JURIDICAL ANALYSIS OF DEVIATION OF PARENTAL GUARDIANSHIP RIGHTS AGAINST ACTS OF FORCED MARRIAGE UNDERAGE," *Lex LATA* 3, no. 3 (July 4, 2022), <https://doi.org/10.28946/lexl.v3i3.1230>.

⁶ Umami.

⁷ Nurlina and Andi Jusran Kasim, "THE ABSENCE OF THE APPROVAL OF THE GUARDIAN OF THE NASAB FOR THE BRIDE AS AN ANALYSIS OF THE APPOINTMENT OF A GUARDIAN OF THE STUDY JUDGE AT THE WATAMPONE RELIGIOUS COURT CLASS I A," *QISTHOSIA: Journal of Sharia and Law* 3, no. 2 (December 16, 2022): 72–85, <https://doi.org/10.46870/jhki.v3i2.308>; Muhamad Hasan Sebyar and A. Fakhruddin, "TAKEOVER OF THE AUTHORITY OF WALI NASAB IN THE CASE OF WALI ADHAL FROM THE PERSPECTIVE OF LEGAL PLURALISM (A Case Study of the Views of Judges and Community Leaders of Pasuruan Regency)," *ADHKI: Journal of Islamic Family Law* 1, no. 2 (February 4, 2020): 73–91, <https://doi.org/10.37876/adhki.v1i2.19>; Ahmad Nabil Atoilah and Ahmad Kamal, "The Replacement of Wali Nasab by Guardian Judges According to Presidential Instruction No. 1 of 1991," *Istinbath | Journal of Islamic Law Research* 15, no. 1 (February 27, 2019): 113, <https://doi.org/10.36667/istinbath.v15i1.276>; Suarjana Suarajana et al., "TRANSFER OF WALI NASAB TO WALI HAKIM ACCORDING TO ISLAMIC LAW," *AL-BALAD : Journal of Islamic Constitutional and Political Law* 3, no. 2 (December 27, 2023): 53–60, <https://doi.org/10.59259/ab.v3i2.73>.

⁸ Nurlina and Kasim, "THE ABSENCE OF THE APPROVAL OF THE GUARDIAN OF THE NASAB FOR THE BRIDE AS AN ANALYSIS OF THE APPOINTMENT OF THE GUARDIAN OF THE STUDY JUDGE AT THE WATAMPONE RELIGIOUS COURT CLASS I A"; Muhamad Hasan Sebyar and A. Fakhruddin, "TAKEOVER OF THE AUTHORITY OF WALI NASAB IN THE CASE OF WALI ADHAL FROM THE PERSPECTIVE OF LEGAL PLURALISM (A CASE STUDY OF THE VIEWS OF JUDGES AND COMMUNITY LEADERS OF PASURUAN REGENCY)"; Atoilah and Kamal, "The Replacement of the Guardian of the Nasab by the Guardian Judge According to Presidential Instruction Number 1 of 1991"; Suarajana et al., "TRANSFER OF WALI NASAB TO WALI HAKIM ACCORDING TO ISLAMIC LAW."

⁹ Kurnia, Alexander Sutomo, and Cliff Geraldio, "GUARDIANSHIP AND ITS PROBLEMS."

a form of social control that limits women's freedom.¹⁰ Therefore, it is important to reinterpret the principle of guardianship, so that it remains relevant to the values of justice and equality that are developing in society.

Several previous studies have highlighted the existence of guardians in marriage from the perspective of Islamic law and women's rights. However, studies that comprehensively describe the principles of guardianship in the Indonesian marriage legal system, including comparisons between religious law, customary law, and positive law, are still limited. In the midst of efforts to reform family law that is more just and responsive to the needs of society, an in-depth and critical examination of the principles of guardianship is needed in order to find a balanced formulation between religious values, cultural values, and human rights principles.

The purpose of this study is not to negate the principle of guardianship as part of religious teachings, but to place it proportionately in the contemporary Indonesian socio-legal context. With an interdisciplinary approach that combines normative legal studies, legal sociology, and comparative legal studies, it is hoped that this research will be able to contribute to the development of a more adaptive, inclusive, and equitable national marriage law.

Departing from this background, this study seeks to systematically explore the principles of guardianship in the marriage legal system in Indonesia. This research will examine the normative foundations of guardianship in Islamic law and KHI, analyze the practice of guardianship implementation in society, and examine the dynamics of guardianship in the context of legal pluralism in Indonesia. This research will also consider the dimensions of gender justice and human rights as an important part of the analysis.

RESEARCH METHODS

This research uses a normative juridical approach, which is an approach that relies on the study of laws and regulations, doctrines, and other written legal sources related to guardianship in marriage law. This approach is used to understand the legal principles that govern guardianship, both in Islamic law, customary law, and Indonesian national law. To enrich the analysis, a limited comparative and sociological approach is also used. The comparative approach aims to compare the arrangements and practices of guardianship in various legal systems that apply in Indonesia, while the sociological approach helps to see how these principles are applied in people's lives, including the constraints and dynamics that arise in the field.

The data used in this study consisted of primary data obtained from Law Number 1 of 1974, the Compilation of Islamic Law, and Islamic Law related to guardianship, while secondary data were obtained from literature studies, books, and scientific journals that have been published. The data collection technique was carried out through literature study. Data analysis was carried out qualitatively, namely by interpreting the content of regulations and the results of literature studies to draw conclusions about the principles and application of guardianship in the marriage legal system. Through this method, it is hoped that a complete understanding of guardianship will be obtained, both normatively and practically, as well as recommendations that are useful for the development of marriage law in Indonesia.

¹⁰ Umami, "JURIDICAL ANALYSIS OF DEVIATIONS FROM PARENTAL GUARDIANSHIP RIGHTS TO ACTS OF FORCED MARRIAGE UNDERAGE."

RESULTS AND DISCUSSION

The Philosophical Foundations of the Principle of Guardianship in Islamic Law

Ontologically, the concept of guardianship in Islamic law represents a social and religious reality that places the guardian as the guardian of women's rights in marriage. The role of a guardian is based on the principle that marriage is not only a contract between two individuals, but also involves a community and social structure that guarantees the well-being and order of society.¹¹ In the classical Islamic legal structure, the wali is present as a protector (*hāmī*) who is in charge of safeguarding the interests of women in contracts that have a long legal impact.

The ontological form of guardianship in Islam is also seen in the division of guardians into two types: guardian nasab (based on lineage) and guardian hakim (representative of the state or ruler if there is no legitimate guardian of nasab), as explained in classic fiqh books such as *al-Mughnī* by Ibn Qudāmah and *Bidayah al-Mujtahid* by Ibn Rushd.¹² This shows that Islamic law views guardianship as a legal entity that is collective and integral to the social structure.

In terms of the epistemology of Islamic law, the principle of guardianship is derived from four main devices: the Qur'an, Hadith, Ijma' and Qiyas. The postulate that is most often used as the normative basis for guardianship is QS. al-Baqarah verse 232 and QS. an-Nur verse 32, which explicitly indicates the involvement of the guardian in marriage (Ministry of Religion of the Republic of Indonesia, 2010). For example, QS. al-Baqarah [2]: 232 states:

وَأَدَّاءُ طَلِّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَنْ
كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَمْ أَزْكَى لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

"When you divorce your wife and her time has passed, do not prevent them from marrying her husband if there is a willingness between them in a proper manner. That is what is advised to those of you who believe in Allah and the Last Day. It is cleaner for your (soul) and more holy (for your honor). God knows, but you do not know."

This verse shows the normative relationship between women and guardians in marriage. The hadith of the Prophet PBUH which reads "It is not valid to marry except with a wali" (HR. Abu Dawud and Tirmidhi) are the main foundations of the legitimacy of guardianship in the fiqh of marriage. The majority of scholars from the Hanafi, Maliki, Shafi'i, and Hanbali schools with slight differences of opinion on the technical aspects recognize the validity of the concept of guardianship as a condition for the validity of

¹¹ M. H. Kamali, *Principles of Islamic Jurisprudence (Islamic Texts Society), Cambridge*, vol. 3rd Revise, 2003; Abdulaziz Sachedina, *Islamic Biomedical Ethics Principles and Application, Islamic Biomedical Ethics Principles and Application*, 2009, <https://doi.org/10.1093/acprof:oso/9780195378504.001.0001>; Nor Musfirah Mohamad and Azhan Taqiyaddin Arizan, "[APPLICATION OF THE Fiqh METHOD 'NO HARM TO ONESELF AND NOT HARMFUL TO OTHERS' (LA DARAR WA LA DIRAR) IN DEALING WITH THE PANDEMIC ISSUE OF COVID-19 IN MALAYSIA]," *Malaysian Journal Of Islamic Studies (MJIS)* 5, no. 1 (June 22, 2021): 153–66, <https://doi.org/10.37231/mjis.2021.5.1.157>.

¹² Ibn Qudāmah, *Al-Mughnī*, ed. M. S. al-Munajjid (Riyadh: Dar 'Alam al-Kutub, 1997); Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Cairo: Dar al-Hadith, 1992).

marriage, except in the Hanafi school which gives leeway for mature and sensible women to marry without a guardian.¹³

In addition, *ijma'* (scholarly agreement) and *qiyas* (legal analogy) reinforce the position of guardians in the Islamic legal system, especially in the context of protecting women from potential exploitation and detrimental marriage. In the epistemology of Islamic law, the combination of revelation (*naqli*) and rationality (*aqli*) shows that guardianship is not only the teaching of normative texts, but also the result of logical contemplation of the social reality of the *ummah*.¹⁴

The role of guardians in Islamic law is not symbolic, but substantive. The function of the guardian includes legal protection, guarantor of the validity of the contract, and symbol of family representation in the marriage relationship. In *al-Fiqh al-Islāmī wa Adillatuh*, Wahbah al-Zuhaili emphasized that the wali functions as a determinant of the validity of the marriage contract and an intermediary between the bride-to-be and the husband-to-be in a system that prioritizes honor and prudence.¹⁵

In the Shafi'i and Hanbali schools, the wali is considered the pillar of the marriage contract. Thus, the existence of a wali is a sharia imperative which, if not fulfilled, is considered invalid. This is based on the rule "*al-'ibratu bi al-maqāshid wa al-ma'ānī lā bi al-alfāz wa al-mabānī*", which shows that in Islamic law, substantive values take precedence over formal forms.¹⁶

The philosophical values that underlie the principle of guardianship in Islamic law reflect an ethical-normative orientation that aims to realize justice, protection, and benefit. Justice in this context is not only limited to the equal distribution of rights, but the fulfillment of rights according to individual needs and capacities, as Imam al-Ghazali affirmed that "justice is putting things in their place".¹⁷

The protection of women is an integral part of the concept of guardianship. In the socio-historical context, women are often in a vulnerable position and at risk of exploitation in marital relationships. Therefore, the guardian is present as a moral and legal guardian to ensure that the marriage contract occurs on the basis of willingness and propriety. Ibn Taymiyyah, in *Majmū' al-Fatāwā*, emphasizes that the guardian must ensure that the groom-to-be has sufficient moral and material worthiness before marrying the bride under his guardianship.¹⁸

The concept of *maslahat* (the common good) is also the philosophical basis of the principle of guardianship. Imam al-Syatibi in *al-Muwafaqat* states that all Islamic law

¹³ Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*, 2008; Wahbah Az-Zuhaili, "Al-Fiqh al-Islāmī wa Adillatuhu Juz 4," *Darul Fikr*, 1985; Wahbah al-Zuhaili, "Al-Fiqh al-Islāmī wa Adillatuhu 1," *Damascus: Dar Al-Fikr*, 2002; Wahbah Az-Zuhaili, "Al-Fiqh Al-Islami Wa Adillatuhu (Translation) Volume 9 : Marriage, Talak, Khulu', Ila', Li'an, Zhihar, Iddah Time," *Dar Al-Fikr 57* (2010); Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*.

¹⁴ Jasser Auda, *Maqashid Al-Shariah as Philosophy of Islamic Law A Systems Approach*, London Office, 2007; Auda; Auda.

¹⁵ Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*; Az-Zuhaili, "Al-Fiqh Al-Islāmī Wa Adillatuhu Juz 4"; Al-Zuhaili, "Al-Fiqh Al-Islāmī Wa Adillatuhu 1"; Az-Zuhaili, "Al-Fiqh Al-Islami Wa Adillatuhu (Terjemah) Jilid 9 : Pernokahan, Talak, Khulu', Ila', Li'an, Zhihar, Masa Iddah"; Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*; Al-Zuhayli; Al-Zuhayli; Al-Zuhayli.

¹⁶ Kamali, *Principles of Islamic Jurisprudence (Islamic Texts Society)*.

¹⁷ Al-Ghazali, *Al-Mustashfa min Ilm al-Usul* (Beirut: Dar al-Kutub al-Ilmiyyah, 1993), 1:112.

¹⁸ Ibn Taymiyyah, *Majmū' al-Fatāwā*, vol. 32 (Madinah: Mujamma' al-Malik Fahd, 2005), 32:78.

aims to protect the five maqāsid: religion, soul, intellect, descent, and property.¹⁹ Guardianship is within the framework of safeguarding offspring (*hifz al-nasl*) and safeguarding the honor of women as part of the protection of human dignity. Thus, the principle of guardianship has a strong axiological dimension as the guardian of the ethical and moral structure in Islamic society. When carried out in the spirit of justice and welfare, guardianship becomes an instrument to balance rights and responsibilities in marriage.

Although the principle of guardianship is fundamental in Islamic law, its application in the contemporary era requires contextualization. The discourse of modern Islamic law, as discussed by Jasser Auda in *Maqasid al-Shariah as Philosophy of Islamic Law*, emphasizes the importance of seeing maqāsid not as static rules, but as a dynamic framework for achieving social justice and²⁰ utility. Therefore, guardianship needs to be reinterpreted to remain relevant in a context where women already have equal legal and social capacities as men.

Some Muslim countries such as Tunisia and Morocco have reformed guardianship laws while maintaining substantial values but adapting them to the times and gender equality.²¹ This shows that the principle of guardianship can be flexible as long as it remains within the framework of maqāsid and does not deny the basic values of Islam.

The Principle of Guardianship in Indonesian Positive Law: Between Norms and Reality

Guardianship in marriage is a legal institution that has been known for a long time in various civilizations. In the context of Indonesian law, guardianship is not only understood as an administrative formality, but also as a legal protection mechanism for parties who do not have full legal competence in making important decisions, especially in the marital bond. The history of the development of guardianship in the Indonesian marriage legal system shows that there is an interaction between customary law, Islamic law, colonial law, and modern national law.²² Therefore, understanding the origins and dynamics of guardianships is essential to examine their role in the current legal system.

Before the formation of the formal legal system as it is today, Indonesian people were familiar with forms of guardianship in their social and cultural practices. In traditional societies, which are generally patriarchal, guardianship is run by the male side of the family, especially the father or eldest male relative, who is considered to have moral and social responsibility for the female family members.²³ In many communities, the decision to marry is not a purely personal decision, but a family or community decision.

¹⁹ Abū Ishāq Ibrahim Ibn Musa Al-Shatibi, "Al-Muwafāqāt Fī Usūl Al-Sharī'ah," 2, 2004; Abu Ishaq Ibrahim al-Shatibi, *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah*, Shaykh 'Abd Allah Diraz Edisi 3, 2019.

²⁰ Auda, *Maqashid Al-Shariah as Philosophy of Islamic Law A Systems Approach*; Auda; Auda.

²¹ John R. Davies, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, 2003, <https://doi.org/10.1017/CBO9780511615122>; Rémy Madinier, "Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning," *Critique Internationale* 29, no. 4 (2005): 197, <https://doi.org/10.3917/cii.029.0197>.

²² Taufik H. Simatupang, "Disharmony of Laws and Regulations in the Field of Guardianship Supervision in Indonesia (Across History from Colonial Law to National Law)," *Journal of De Jure Legal Research* 20, no. 2 (June 12, 2020): 221, <https://doi.org/10.30641/dejure.2020.V20.221-232>; Abber Hasibuan, "Guardianship in Marriage According to the View of Islamic Law," *Al-Ashlah* 1, no. 2 (2017).

²³ Rahmatullah, "The Concept of Guardianship in the Perspective of Western Civil Law and Islamic Civil Law (Comparative Study)"; Kurnia, Alexander Sutomo, and Cliff Geraldio, "GUARDIANSHIP AND ITS PROBLEMS."

For example, in the Javanese and Sundanese customary systems, the involvement of parents or elders in arranged marriage becomes prevalent, even before women reach adulthood. On the one hand, this reflects a form of protection for women, but on the other hand it also shows the limited authority of women in determining their life partner.²⁴ This tradition later became a cultural basis that strengthened the role of guardians in the legal system that developed later.

The concept of guardianship acquires a strong formal and normative form in Islamic teachings, especially in the matter of marriage. In Islamic fiqh, guardianship is a condition for the validity of marriage for women. The guardian has a central position in the implementation of the marriage contract, because he is the one who marries a woman to a man with the sentence *ijab qabul*.²⁵

The evidence from the Qur'an and the Hadith of the Prophet PBUH strengthens the position of the guardian in marriage, one of the famous hadiths states:

"And do not marry your wives to polytheists before they believe." (QS. Al-Baqarah: 221).

"A woman who marries without the permission of her guardian then her marriage is annulled (the Prophet Muhammad (peace be upon him) said at most three times until the marriage is annulled)". (HR. Abu Dawud, At-Tirmidhi, and Ibn Majah)²⁶

لَا نِكَاحَ إِلَّا بِوَالِيٍّ

"It is not valid to marry except with the existence of a guardian."²⁷

لَا نِكَاحَ إِلَّا بِوَالِيٍّ، وَالسُّلْطَانُ وَوَالِيٌّ مَنْ لَا وَوَالِيٍّ لَهُ

"It is not valid for marriage except with the presence of a wali, and the ruler is the wali for whom (the woman) does not have a wali."²⁸

²⁴ Agung Citra Resmi Wulangsih, Ahmad Ainul Anam, and Nita Apriyatin, "VALUE SYSTEM OF INDIGENOUS PEOPLES KASEPUHAN CIPTA GELAR TITLE," *Reason: Journal of Education and Culture* 1, no. 1 (April 25, 2022): 36–45, <https://doi.org/10.56444/nalar.v1i1.131>; Dewani Cipta Maheswari et al., "Protection of Human Rights Violations of the Tradition of Kidnapping Marriage," *Journal of Law and Human Rights Wara Sains* 2, no. 06 (June 28, 2023): 441–51, <https://doi.org/10.58812/jhhws.v2i6.384>; Otom Mustomi, "Changes in the Legal Cultural Order in the Indigenous People of the Baduy Tribe of Banten Province," *Journal of De Jure Legal Research* 17, no. 3 (September 19, 2017): 309, <https://doi.org/10.30641/dejure.2017.V17.309-328>.

²⁵ Sarina Aini, "The Concept of Guardianship in the Qur'an," *Journal Unhasy* 6 (2021); M D Irawan, "GUARDIANSHIP AND TESTIMONY IN MARRIAGE (A COMPARATIVE STUDY OF FIQH OF FOUR MADHHABS AND LAW IN INDONESIA)," *IJTIHAD*, 2014; Backpropagation Example et al., "Reconceptualization of Marriage Guardianship Authority in Indonesia," *Rabit: Journal of Technology and Information Systems Univrab* 1, no. 1 (2019).

²⁶ HR. At-Tirmidhi (no. 1101) of the book of an-Nikah, Abu Dawud (no. 2085) of the book of an-Nikah, Ibn Majah (no. 1881) of the book of an-Nikah, Ahmad (no. 19024) al-Hakim (I/170) and he saheeh it, and it was saheeh by Shaykh al-Albani in Shahiih at-Tirmidhi (no. 879), and see al-Irwaa' (VI/235).

²⁷ HR. At-Tirmidhi (no. 1101) of the book of an-Nikah, Abu Dawud (no. 2085) of the book of an-Nikah, Ibn Majah (no. 1881) of the book of an-Nikah, Ahmad (no. 19024) al-Hakim (I/170) and he saheeh it, and it was saheeh by Shaykh al-Albani in Shahiih at-Tirmidhi (no. 879), and see al-Irwaa' (VI/235).

²⁸ HR. At-Tirmidhi (no. 1102) of the book of an-Nikah, Abu Dawud (no. 2083) of the book of an-Nikah, Ibn Majah (no. 1881) of the book of an-Nikah, Ahmad (no. 19024), ad-Darimi (no. 2184) of the

In the fiqh system, there is a division of the types of guardians:²⁹

- a) Guardian of the nasab: guardians based on blood relations, such as father, grandfather, brother, uncle, and so on.
- b) Guardian judge: guardian authority given to the state or shari'i judge if there is no guardian nasab or there is a valid unjustified refusal.
- c) Wali muhakkam: a person appointed by the bride concerned to be the guardian in his marriage.³⁰

The Shafi'i school, which is embraced by the majority of Indonesian Muslims, expressly states that marriage without a guardian is invalid.³¹ Therefore, the principle of guardianship is fundamental in the legal structure of Islamic marriage in Indonesia. In addition, before the advent of modern legal codification, Indonesian people had known the concept of guardianship in various forms in accordance with the local kinship system. In indigenous peoples that adhere to a patrilineal system, such as the Minangkabau (although matrilineal in lineage), guardian authority remains attached to senior male relatives in the family.³²

During the Dutch colonial period, the European civil law system was introduced to the Dutch East Indies through the Burgerlijk Wetboek (BW) or Civil Code. In this system, guardianship is not interpreted as a legal condition for marriage, but as a form of supervision of minors or individuals who are not legally capable. In the context of marriage, this is seen in the articles that regulate parental consent for those who have not reached the age of majority (21 years old).³³ Thus, during the colonial period there was a dualism of law, Islamic law for the Muslim natives and European civil law for Europeans and some Chinese or natives who chose to submit to the law.

After independence, the Indonesian government sought to unify and organize the national marriage legal system. This effort is realized through Law Number 1 of 1974 concerning Marriage, which generally regulates that:³⁴

- a) The marriage must be carried out on the basis of the consent of both prospective brides.
- b) If one or both of the bride and groom are under 21 years old, they must have permission from a parent or guardian.

In Article 6 paragraph (2) of Law No. 1/1974 it is stated that:

"To carry out a marriage for a person who has not reached the age of 21, he must obtain permission from both living parents or from parents who are able to express their will."

book of an-Nikaah, he authenticated it, and it was saheeh by Shaykh al-Albani in Shahiihul Jaami' (VI/203) and al-Irwaa' (VI/238).

²⁹ Hamid Sarong, *Islamic Marriage Law in Indonesia* (Banda Aceh: PeNA, 2010), 74-76.

³⁰ Hamid Sarong, *Hukum Perkawinan Islam di Indonesia* (Banda Aceh: PeNA, 2010), 74-76.

³¹ Irawan, "GUARDIANSHIP AND TESTIMONY IN MARRIAGE (A COMPARATIVE STUDY OF FIQH OF FOUR MADHHABS AND LAW IN INDONESIA)."

³² Ilham Choirul Anwar, "Getting to Know Bilateral, Patrilineal, and Matrilineal Kinship Systems," *Tirto.Id* 1 (2021); I Putu Windu Merta Sujana, "The Implementation of Nyentana Marriage in the Context of Strengthening the Patrilineal Family System in Bali," *Widya Accarya Education Study FKIP Dwijendra University*, no. 2085 (2017).

³³ Simatupang, "Disharmony of Laws and Regulations in the Field of Guardianship Supervision in Indonesia (Across History from Colonial Law to National Law)."

³⁴ Rahmatullah, "The Concept of Guardianship in the Perspective of Western Civil Law and Islamic Civil Law (Comparative Study)"; Waluyo, "THE LEGALITY OF MARRIAGE ACCORDING TO LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE."

Although it does not explicitly regulate "wali nikah" as in Islamic fiqh, this provision opens up space for the existence of wali as part of the legal system in Indonesia. Then, in 1991, Presidential Instruction Number 1 of 1991 ratified the Compilation of Islamic Law (KHI) as a legal guideline for Muslims. In it, it is explained in detail about:

- a) Guardian category (nasab and judge),
- b) The order of the position of the guardian nasab,
- c) Requirements to become a guardian,
- d) The role of the guardian in the marriage contract,
- e) The procedure for determining guardians of judges through religious courts.

With the passage of the KHI, the principles of guardianship in Islamic law received official recognition in the Indonesian national legal system, especially in cases resolved in the religious courts.

Normatively, the concept of guardianship in Islamic law and national law in Indonesia complement each other in separate spaces. Islamic law establishes guardianship as an integral part of the marriage contract, while national law provides an administrative framework and legal protection through age and permit regulations. In the context of Muslim society, guardianship remains relevant as a religious and cultural instrument, but it needs to be balanced with the principles of justice, freedom of choice, and access to fair and transparent legal mechanisms.

Harmonization of the Guardianship Principle: A Philosophical Study of the Relationship between Islamic Law and National Law

Guardianship in the context of marriage law in Indonesia refers to the authority possessed by a person, usually a man who has a certain blood or family relationship, to provide permission, guidance, and protection to a woman before marriage.³⁵ Guardianship or territory is an important principle that is rooted both in Islamic law and in the provisions of Indonesian national law, especially as reflected in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI).

Conceptually, guardianship in Islamic law places the guardian as a figure who has the right and responsibility to ensure that the woman under his or her dependents marries in a legal, proper, and profitable manner. The guardian is considered the protector of women's honor and rights in the marriage process.³⁶ In Indonesia's pluralistic legal system, this principle is not only accommodated but also institutionalized in the form of formal legal norms that govern the procedure and legality of a marriage.

1) Principles of Legality in Trust

The principle of legality is a fundamental principle in the legal system that requires that all legal actions, including in the case of trusts, must have a clear and valid legal basis. In this context, marital guardianship in Indonesia derives its legitimacy from several main legal sources:

- a) Law Number 1 of 1974 concerning Marriage, especially Article 6 paragraphs (1) and (2) which states that the marriage of a child who

³⁵ Simatupang, "Disharmony of Laws and Regulations in the Field of Guardianship Supervision in Indonesia (Across History from Colonial Law to National Law)."

³⁶ Civil Law, Western and, and Civil Law, "A Comparative Study of the Concept of Guardianship in the Perspective of Western Civil Law and Islamic Civil Law," *Journal of Islamic Law* 2, no. 3 (2020); Rahmatullah, "The Concept of Guardianship in the Perspective of Western Civil Law and Islamic Civil Law (Comparative Study)."

has not reached the age of 21 must obtain permission from parents or guardians.

- b) Compilation of Islamic Law (KHI) Articles 19-23 which explicitly regulates who is entitled to be a guardian of a marriage, the types of guardians, the order of position of guardians, and the authority of guardians.

This principle of legality guarantees that guardianship in the context of marriage is not a purely customary-based cultural practice, but also a legal practice that is explicitly regulated by laws and regulations. This provides a guarantee of legal certainty for the parties involved in the institution of marriage.

2) Principles of Propriety and Eligibility

Guardianship in the marriage legal system is also carried out on the basis of the principles of propriety and worthiness. In this case, the guardian serves not only as an executor of legal formalities, but also as a guarantor that the marriage that will take place is for the benefit of the woman. This principle is in line with the principles of justice and protection of women's rights in Islamic law and national law.

Maslahah (benefit) as the basis for determining the law (*ta'lil al-ahkam*) is an important pillar in determining the criteria for a wali. The guardian must be able to objectively assess the prospective spouse of the child or woman he or she guardians, and must consider the moral, social, economic, and religious aspects of the prospective spouse.

In Indonesia, this principle is reflected in the provision that if the guardian does not give permission without a valid reason, then the woman has the right to apply for guardianship to the Religious Court (KHI Article 23). This reflects the spirit of the law to strike a balance between guardianship authority and the right of individual women to marry.

3) The Principle of Justice

This principle requires that the implementation of guardianship is not used as a tool to oppress or impose the will of the guardian on the guardian. In practice, the guardian should not refuse to grant permission without a reason justified by sharia or positive law. In Islamic law, if a guardian refuses to give permission without a clear reason, then the woman concerned can apply to a religious court to have a guardian judge.³⁷

Justice in guardianship also involves equality and respect for the will of the parties who are going to marry. Thus, the guardianship must pay attention to the best interests of the party concerned (*best interest principle*).

³⁷ Ralang Hartati, Syafrida Syafrida, and Reni Suryani, "Child Guardianship Due to the Death of Her Parents (Case Study of Gala Sky's Child of Artist Couple Vanessa Angel and Febri Ardiansyah)," *Pamulang Law Review* 4, no. 2 (January 22, 2022): 205, <https://doi.org/10.32493/palrev.v4i2.17755>; Hasibuan, "Guardianship in Marriage According to the View of Islamic Law"; Safitri, *The Practice of Marriage with Guardian Judges According to the Perspective of Islamic Family Law, Case Study in Lembah Sabil District, Southwest Aceh Regency*.

4) The Principle of Guardian Substitution

This principle is related to the mechanism of replacement of guardians if the guardian of the nasab does not exist, his whereabouts are unknown, refuses without valid reasons, or does not qualify as a guardian. In the Islamic legal system in Indonesia, this is answered by the presence of the institution of guardian judges. The existence of this guardian judge confirms that the law does not allow the vacancy of guardian to be an obstacle in the implementation of marriage.

The guardian judge is not only a substitute, but a legitimate legal authority. In the practice of religious justice, applications for the appointment of guardians of judges are often submitted under special conditions such as the marriage of orphans, out-of-wedlock children, or family conflicts.³⁸

5) Principle of Hierarchy and Replacement of Trustees

In the marriage legal system in Indonesia, there is a principle of hierarchy in the determination of guardians. KHI systematically regulates the order of marriage guardians, namely:

- a) Biological father
- b) Paternal grandfather
- c) Siblings
- d) Brother of the Spaniard
- e) Son of a biological brother
- f) Paternal uncle
- g) Son of paternal uncle

If the entire list of guardians does not exist or cannot carry out their guardianship functions, then the role of guardian can be replaced by a guardian judge. This shows that the principle of guardian replacement is intended to ensure the continuity of a person's right to marry, without having to be hampered by his absence or objections from the biological guardian.

The existence of guardian judges as a substitute for guardian nasab also has strong legal legitimacy in Islam. In the hadith of the Prophet PBUH it is stated: *"If there is no guardian for her, then the Sultan (ruler) is the guardian for a woman who does not have a guardian"* (HR Abu Dawud). In Indonesia, this function is carried out by the Religious Court, as a representation of the state's authority in the religious field.

The principle of guardianship in the marriage legal system in Indonesia is an important element rooted in Islamic legal values and formally institutionalized in the national legal system, especially through Law Number 1 of 1974 and the Compilation of Islamic Law. Guardianship not only serves as a legal-formal mechanism for the validity of marriage, but also as a protective instrument for women to enter the institution of marriage. Overall, the guardianship system in Indonesia's marriage law shows an effort to maintain religious values while adapting to modern principles of justice and human rights, especially in the context of the protection of women.

³⁸ Kurnia, Alexander Sutomo, and Cliff Geraldio, "GUARDIANSHIP AND ITS PROBLEMS"; Safitri, *The Practice of Marriage with a Guardian Judge from the Perspective of Islamic Family Law, Case Study in Lembah Sabil District, Southwest Aceh Regency*; Suarajana et al., "TRANSFER OF WALI NASAB TO WALI HAKIM ACCORDING TO ISLAMIC LAW."

CONCLUSION

The results of the above conclusion can be drawn that the normative concept of guardianship in Islamic law emphasizes the importance of the presence of guardians as a form of protection, supervision, and representation for those who are not legally competent, especially in the context of marriage. The guardian has an important position in maintaining the validity of the marriage contract and ensuring the interests and honor of the bride-to-be. From the perspective of jurisprudence, the role of the guardian is not only administrative, but also part of the moral and social order that ensures order in the implementation of Islamic law. In the context of Indonesian national law, the principle of guardianship is also recognized, as stipulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. The marriage law system in Indonesia adopts the principles of guardianship from Islamic law, especially for Muslims, by regulating the position, conditions, and procedures for the appointment of guardians in marriage. Nonetheless, national law allows for a variety of guardianship practices by considering juridical, administrative, and protection aspects of individual rights.

Thus, both in Islamic law and in Indonesia's national legal system, guardianship remains a crucial element in marriage, which serves to ensure legality and legal protection for the parties, as well as to maintain moral and social values in society. However, the integration between religious norms and state provisions also requires flexibility and clarity in implementation so as not to cause overlap or legal uncertainty.

BIBLIOGRAPHY

- Agung Citra Resmi Wulangsih, Ahmad Ainul Anam, and Nita Apriyatin. "SISTEM NILAI MASYARAKAT ADAT KASEPUHAN CIPTA GELAR." *NALAR: Jurnal Pendidikan Dan Kebudayaan* 1, no. 1 (April 25, 2022): 36–45. <https://doi.org/10.56444/nalar.v1i1.131>.
- Aini, Sarina. "Konsep Perwalian Dalam Al- Qur'an." *Journal Unhasy* 6 (2021).
- al-Shatibi, Abu Ishaq Ibrahim. *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah*. Shaykh 'Abd Allah Diraz Edisi 3, 2019.
- Al-Shatibi, Abū Ishāq Ibrahim Ibn Musa. "Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah." 2, 2004.
- Al-Zuhaili, Wahbah. "Al-Fiqh Al-Islāmī Wa Adillatuhu 1." *Damascus: Dar Al-Fikr*, 2002.
- Al-Zuhayli, Wahbah. *Al-Fiqh Al-Islami Wa Adillatuhu*, 2008.
- Anwar, Ilham Choirul. "Mengenal Sistem Kekerabatan Bilateral, Patrilineal, Dan Matrilineal." *Tirto.Id* 1 (2021).
- Atoilah, Ahmad Nabil, and Ahmad Kamal. "Penggantian Wali Nasab Oleh Wali Hakim Menurut Intruksi Presiden Nomor 1 Tahun 1991." *Istinbath | Jurnal Penelitian Hukum Islam* 15, no. 1 (February 27, 2019): 113. <https://doi.org/10.36667/istinbath.v15i1.276>.
- Auda, Jasser. *Maqashid Al-Shariah as Philosophy of Islamic Law A Systems Approach*. London Office, 2007.
- Az-Zuhaili, Wahbah. "Al-Fiqh Al-Islami Wa Adillatuhu (Terjemah) Jilid 9 : Pernokahan,

- Talak, Khulu', Ila', Li'an, Zhihar, Masa Iddah." *Dar Al-Fikr* 57 (2010).
- Az-Zuhaily, Wahbah. "Al-Fiqh Al-Islāmī Wa Adillatuhu Juz 4." *Darul Fikr*, 1985.
- Contoh, Backpropagation, Jamila Issa, Ivan Tabares, Pemrograman Berorientasi Berbasis Objek, Laporan Hasil, Teknologi Informasi, Hidayatullah Himawan Aradea, Ade Yuliana, et al. "Rekonseptualisasi Otoritas Perwalian Nikah Di Indonesia." *Rabit : Jurnal Teknologi Dan Sistem Informasi Univrab* 1, no. 1 (2019).
- Davies, John R. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, 2003. <https://doi.org/10.1017/CBO9780511615122>.
- Hartati, Ralang, Syafrida Syafrida, and Reni Suryani. "Perwalian Anak Akibat Meninggal Kedua Orang Tuanya (Studi Kasus Gala Sky Anak Pasangan Artis Vanessa Angel Dan Febri Ardiansyah)." *Pamulang Law Review* 4, no. 2 (January 22, 2022): 205. <https://doi.org/10.32493/palrev.v4i2.17755>.
- Hasibuan, Abber. "Perwalian Dalam Nikah Menurut Pandangan Hukum Islam." *Al-Ashlah* 1, no. 2 (2017).
- I Putu Windu Merta Sujana. "Pelaksanaan Perkawinan Nyentana Dalam Rangka Mengajegkan Sistem Kekeluargaan Patrilineal Di Bali." *Kajian Pendidikan Widya Accarya FKIP Universitas Dwijendra*, no. 2085 (2017).
- Irawan, M D. "PERWALIAN DAN PERSAKSIAN DALAM PERNIKAHAN (Kajian Komparasi Fiqh Empat Madzhab Dan Hukum Di Indonesia)." *Ijtihad*, 2014.
- Kamali, M. H. *Principles of Islamic Jurisprudence (Islamic Texts Society)*. Cambridge. Vol. 3rd Revise, 2003.
- Kurnia, Ida, Alexander Sutomo, and Cliff Geraldio. "PERWALIAN DAN PERMASALAHANNYA." *Jurnal Bakti Masyarakat Indonesia* 5, no. 3 (November 30, 2022). <https://doi.org/10.24912/jbmi.v5i3.18108>.
- Madinier, Rémy. "Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning." *Critique Internationale* 29, no. 4 (2005): 197. <https://doi.org/10.3917/cii.029.0197>.
- Maheswari, Dewani Cipta, Ardi Lestari Rahayu, Aulia Zahra Anwarudin, Erlin Zenandia Putri, Fais Faria Rusdianawati, Icek Reviyana, Indriyana Sholikah, et al. "Perlindungan Pelanggaran Hak Asasi Manusia Terhadap Tradisi Kawin Culik." *Jurnal Hukum Dan HAM Wara Sains* 2, no. 06 (June 28, 2023): 441–51. <https://doi.org/10.58812/jhhws.v2i6.384>.
- Mohamad, Nor Musfirah, and Azhan Taqiyaddin Arizan. "[APPLICATION OF THE FIQH METHOD 'NO HARM TO ONESELF AND NOT HARMFUL TO OTHERS' (LA DARAR WA LA DIRAR) IN DEALING WITH THE PANDEMIC ISSUE OF COVID-19 IN MALAYSIA]." *Malaysian Journal Of Islamic Studies (MJIS)* 5, no. 1 (June 22, 2021): 153–66. <https://doi.org/10.37231/mjis.2021.5.1.157>.
- Muhamad Hasan Sebyar, and A. Fakhruddin. "PENGAMBILALIHAN WEWENANG WALI NASAB DALAM PERKARA WALI ADHAL PERSPEKTIF PLURALISME HUKUM (Studi Kasus Pandangan Hakim Dan Tokoh Masyarakat Kabupaten Pasuruan)." *ADHKI: Journal of Islamic Family Law* 1, no. 2 (February 4, 2020): 73–91. <https://doi.org/10.37876/adhki.v1i2.19>.
- Mustomi, Otom. "Perubahan Tatanan Budaya Hukum Pada Masyarakat Adat Suku Baduy Provinsi Banten." *Jurnal Penelitian Hukum De Jure* 17, no. 3 (September 19, 2017): 309. <https://doi.org/10.30641/dejure.2017.V17.309-328>.
- Nasution, Hotmartua. "Pembaharuan Hukum Keluarga Islam Tentang Usia Perkawinan

- Di Indonesia (Studi Atas Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan).” *Jurusan Al-Ahwal Al-Syakhsiyah Fakultas Syari’ah Dan Hukum*, 2019.
- Nurlina, and Andi Jusran Kasim. “Ketiadaan Persetujuan Wali Nasab Untuk Mempelai Wanita Sebagai Analisis Penunjukan Wali Hakim Studi Di Pengadilan Agama Watampone Kelas I A.” *QISTHOSIA : Jurnal Syariah Dan Hukum* 3, no. 2 (December 16, 2022): 72–85. <https://doi.org/10.46870/jhki.v3i2.308>.
- Perdata, Hukum, Barat Dan, and Hukum Perdata. “Studi Komparasi Konsep Perwalian Dalam Perspektif Hukum Perdata Barat Dan Hukum Perdata Islam.” *Jurnal Hukum Islam* 2, no. 3 (2020).
- Rahmatullah, Nursalam. “Konsep Perwalian Dalam Perspektif Hukum Perdata Barat Dan Hukum Perdata Islam (Studi Komparasi).” *Fakultas Syariah Dan Hukum, UIN Alauddin Makassar*, 2016.
- Riadi, Holan. “SISTEM HUKUM KELUARGA ISLAM DI INDONESIA.” *Minhaj: Jurnal Ilmu Syariah* 2, no. 1 (January 15, 2021): 77–90. <https://doi.org/10.52431/minhaj.v2i1.370>.
- Sachedina, Abdulaziz. *Islamic Biomedical Ethics Principles and Application. Islamic Biomedical Ethics Principles and Application*, 2009. <https://doi.org/10.1093/acprof:oso/9780195378504.001.0001>.
- Safitri, Nova Eliza. *Praktik Perkawinan Dengan Wali Hakim Menurut Perspektif Hukum Keluarga Islam, Studi Kasus Di Kecamatan Lembah Sabil Kabupaten Aceh Barat Daya. Ar-Raniry*. Vol. 1, 2021.
- Simatupang, Taufik H. “Disharmoni Peraturan Perundang-Undangan Di Bidang Pengawasan Perwalian Di Indonesia (Lintas Sejarah Dari Hukum Kolonial Ke Hukum Nasional).” *Jurnal Penelitian Hukum De Jure* 20, no. 2 (June 12, 2020): 221. <https://doi.org/10.30641/dejure.2020.V20.221-232>.
- Suarajana, Suarjana, Muzawir Muzawir, Hartawan Hartawan, and Wildan Wildan. “PERPINDAHAN WALI NASAB KEPADA WALI HAKIM MENURUT HUKUM ISLAM.” *AL-BALAD : Jurnal Hukum Tata Negara Dan Politik Islam* 3, no. 2 (December 27, 2023): 53–60. <https://doi.org/10.59259/ab.v3i2.73>.
- Umami, Ayu. “ANALISIS YURIDIS PENYIMPANGAN HAK PERWALIAN ORANG TUA TERHADAP TINDAKAN PEMAKSAAN PERKAWINAN DIBAWAH UMUR.” *Lex LATA* 3, no. 3 (July 4, 2022). <https://doi.org/10.28946/lexl.v3i3.1230>.
- Waluyo, Bing. “SAHNYA PERKAWINAN MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN.” *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (April 14, 2020): 193–99. <https://doi.org/10.23887/jmppkn.v2i1.135>.