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The Paradigm Shift of Wali Mujbir in Islamic Jurisprudence Following Law No. 12 of 2022 on Sexual Violence Crimes in the Banda Aceh Office of Religious Affairs

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Abstract

The shift in the meaning and position of the wali mujbir in the marriage of daughters in Indonesia has become an interesting issue to analyze following the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes. In classical Islamic law, a wali mujbir holds full authority to marry off his daughter without her consent. However, this new regulation, through Article 10 of the Sexual Violence Crimes Law, imposes limitations and criminal sanctions on forced child marriages. This study aims to analyze the position of wali mujbir under Islamic law and Indonesian marriage regulations, the shift in meaning and status of wali mujbir post-enactment of Law Number 12 of 2022, its implementation in the Religious Affairs Offices (KUA), and the maslahah (public interest) values in the UU TPKS regarding child marriage. The research employs normative and empirical/sociological legal methods, using a conceptual and qualitative approach. The data were analyzed qualitatively. The findings reveal that while the concept of wali mujbir in Isla The Minister of Religious Affairs should strictly regulate interview procedures to detect potential coercion by the wali. The government is advised to revise the Marriage Law to explicitly prohibit forced marriage and align it with the TPKS Law and the Child Protection Law. KUA officers should receive gender-sensitive training and be required to provide a private, safe space for prospective brides to express objections without family or guardian pressure.

Keywords: Wali Mujbir, Sexual Violence Law, Maqāshid al-Shari'ah, Women's Protection.

A. Introduction

One of the terms related to guardianship is the right of ijbar. The right of ijbar is an action carried out on the basis of responsibility, which in Islam is known as part of marriage law (Arini Robbi Izzati, 2011: 342). This right is owned by fathers and grandfathers, whose status as mujbir guardians, gives them the power to marry daughters who are under their guardianship, even without the consent of the parties concerned, and the marriage is considered valid according to Islamic law. The right of ijbar is seen as a form of protection or responsibility of the guardian towards the daughter Bunga Annisa, 2024: 1816). Especially because girls are often considered not yet or do not have the ability to make their own decisions. The mujbir guardian, who

has the right of ijbar, namely the nasab guardian is a guardian who has a direct blood relationship with the daughter being married (Maghfirah, 2016).

One of the terms related to guardianship is the right of ijbar. The right of ijbar is an action carried out on the basis of responsibility, which in Islam is known as part of marriage law (Arini Robbi Izzati, 2011). This right is owned by fathers and grandfathers, whose status as *mujbir* guardians, gives them the power to marry daughters who are under their guardianship, even without the consent of the parties concerned, and the marriage is considered valid according to Islamic law (Abu Ishaq as-Syatibi, 1975). The right of *ijbar* is seen as a form of protection or responsibility of guardians towards girls (Bunga Annisa, 2024). Especially because girls are often considered not yet or do not have the ability to make their own decisions. The *mujbir* guardian, who has the right of *ijbar*, namely the *nasab* guardian is a guardian who has a direct blood relationship with the daughter being married (Maghfirah, 2016)

The position of guardians has begun to shift following the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (hereinafter abbreviated as the TPKS Law). This law establishes criminal penalties for forced child marriage. Article 10 of this law expressly prohibits anyone from forcing or placing someone under their control to enter into marriage. This provision carries a prison sentence of up to nine years or a fine of Rp 200 million for violators.

This rule has caused polemics, especially because it contradicts the concept of *mujbir* guardian in Islamic jurisprudence, which gives guardians the right to marry off daughters under their care. In jurisprudence, the guardian's act of marrying off a child is considered an obligation as well as a legal and moral responsibility. Guardian concept *mujbir* In Islamic jurisprudence, the guardian's responsibility to protect the interests of a daughter, including ensuring her marriage to a suitable candidate, is rooted in Islamic law. This action is considered legitimate and in accordance with Islamic law, particularly in the context of maintaining family honor (Sayyid Sabiq, 2006). Changes have been made in the TPKS Law, which considers a guardian's actions forcing a marriage on a child a violation of the law. This has sparked debate, as on the one hand, religious authority governs the matter, while on the other, state regulations limit the guardian's rights with the threat of criminal penalties.

The provisions regarding forced marriage in the TPKS Law are in line with Law Number 1 of 1974 concerning Marriage as stated in Article 6 paragraph (1) which states that marriage must be based on the consent of both prospective bride and groom. This means that every marriage must be based on the consent of the parties as evidence that the government prohibits marriage based on coercion. This provision does not provide punishment for perpetrators who carry out coercion, however, the presence of the TPKS Law further strengthens the prevention of marriage without the consent of the parties by providing punishment for the perpetrators. Likewise, the Compilation of Islamic Law (KHI) emphasizes the importance of the consent of the bride and groom before the marriage takes place. The KHI regulates this in Articles 16 and 17 of the KHI

(Moch. Aufal Hadliq Khayyul Millati Waddin & Ridwan Yunus, 2022). Even marriage registrars must ask for the consent of the bride and groom before carrying out the marriage contract. Marriages carried out under duress can be annulled according to the provisions of Article 71 letter f of the KHI (Rustan Darwis, 2020).

The pressure from the state through the TPKS Law represents a shift in the meaning of the guardian mujbir, who is no longer permitted to arbitrarily marry off minors. The guardian mujbir can no longer act according to his wishes because he can be punished by applicable law. This shift in the meaning and position of the guardian *mujbir* in child marriage is interesting to analyze comprehensively in this study, because after the TPKS Law, it can limit the authority of a guardian in marrying off his daughter (Kamal Al-Din Muhammad bin Abdurrahman Ibn Himami. (1995).

This limitation on guardians' authority is relevant in the Acehnese context, where the number of marriage cases is increasing. Child marriage under the age of 18 remains a serious problem in Aceh. Based on data from the 2023 National Socioeconomic Survey (SUSENAS) released by the Central Statistics Agency (BPS), 4,319 children in Aceh were recorded as having married before reaching the age of 18. When viewed based on the distribution across 23 districts/cities in Aceh, Subulussalam City ranks highest with 248 cases of child marriage. Followed by North Aceh with 231 cases, East Aceh with 228 cases, West Aceh with 221 cases, and Gayo Lues with 218 cases. Meanwhile, Banda Aceh City recorded the lowest number with only 79 cases, followed by Sabang with 108 cases, Langsa with 130 cases, Southeast Aceh with 154 cases, and Central Aceh with 157 cases (Dialeksis, 2025).

The high rate of child marriage is an interesting topic to analyze, especially when linked to the authority of guardians (*wali mujbir*) who are authorized to marry children under their control. This is especially true after the enactment of the TPKS Law, which provides penalties for those who force children to marry (Dwi Atmoko, & Ahmad Baihaki, 2022). The enactment of the TPKS Law also shows that child marriages continue to occur, even though those who force child marriages will be subject to criminal penalties. The empirical facts above demonstrate a gap between the dass sollen (sollen) and dass sein (sollen) that occur. Ideally, das sollen should be minimized, but in reality, or das sein, child marriages continue to occur despite the TPKS Law being passed.

This study will delve deeper into the shift in meaning and position of the guardian *mujbir* after the enactment of the TPKS Law and its implications for guardians in marrying off children under their guardianship from the perspective of the penghulu operating at the KUA in Banda Aceh City. This study aims to provide a real contribution to the development of Islamic legal science in Indonesia, especially in Aceh. This is important because the existence of the TPKS Law has a different perspective from the concept of the guardian *mujbir* in classical *fiqh* (Amir Syarifuddin, 2006). Classical *fiqh* gives the guardian the authority to force his child because of the responsibility that lies with him, while the TPKS Law regulates with different

dimensions so that it has implications for a guardian who wants to marry off a daughter under his guardianship (Abi Ishaq Ibrahim al-Lakhmi al-Gharnati Al-Syatibi, 1998).

B. Methods

This study uses normative legal research and empirical/sociological legal research, which aims to analyze the legal norms contained in the TPKS Law and the implementation of legal norms at the empirical level practiced by law enforcers, particularly the Religious Affairs Office (KUA). Empirical legal research is research that seeks to examine and discuss legal regulations at the empirical level and the relationship of law to their implementation in a sociological context (Zainuddin Ali, 2008, Abdul Manan, 2015, 2021). This sociological study analyzes the implementation of TPKS regulations at the KUA in Banda Aceh City as the spearhead for conducting marriages in the Muslim community. The main focus is to examine the implementation of positive legal regulations related to forced child marriage, as regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. This study will also examine aspects of Islamic jurisprudence that form the basis for the concept of guardian *mujbir* in Islamic law.

a. Research Approach

This research uses two main approaches: a statutory approach and a conceptual approach (Peter Mahmud Marzuki, 2014). This statutory approach examines the issue from a statutory perspective (M. Syamsuddin, 2007). The statutory approach is conducted by analyzing applicable legal provisions, namely the TPKS Law, the Child Protection Law, the Marriage Law, and the Compilation of Islamic Law (KHI). Meanwhile, the conceptual approach is used to understand the concept of guardian *mujbir* in Islamic jurisprudence, including the underlying principles and rules. These two approaches enable researchers to identify conflicts between positive legal norms and religious norms. Thus, the research results are expected to provide a holistic view of the issues raised (Abdul Manan, 2007).

b. Data collection technique

In this study, data collection techniques were carried out through two main methods: in-depth interviews and documentation studies of library literature. In-depth interviews were conducted directly with the penghulu (religious leaders) who work at the Office of Religious Affairs (KUA) in three sub-districts in the Banda Aceh region: Ulee Kareng, Baiturrahman, and Banda Raya. These interviews aimed to comprehensively explore the penghulu's views regarding the shifting meaning of wali mujbir as regulated in the TPKS Law. Penghulu were chosen as key informants

because they play a central role in the implementation of marriages and understand the dynamics that occur in the practice of Islamic marriage law.

The documentary study technique was conducted by analyzing all relevant literature, particularly materials related to guardians (wali mujbir), references related to forced child marriage, and all other relevant materials. The documentary study involved reviewing written sources, including books, scientific journals, research reports, and official legal documents. These sources were selected based on their relevance and credibility in supporting the analysis of the issue of forced marriage as a criminal act. This data collection process aimed to identify the legal basis, religious principles, and social phenomena related to the shift in the concept of guardians (*wali mujbir*).

c. Legal Mate rials

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant laws and regulations, namely the Marriage Law, the TPKS Law, the Child Protection Law, and the Compilation of Islamic Law (KHI). Secondary legal materials include scientific literature, legal journals, and expert opinions related to guardianship and child marriage. Meanwhile, tertiary legal materials include legal encyclopedias, legal dictionaries, and other supporting documents. The combination of these three types of legal materials is expected to provide a comprehensive understanding of the legal issues studied.

d. Research Location

This research was conducted in Banda Aceh City, selecting three KUA: Ulee Kareng, Baiturrahman, and Banda Raya. These two KUA were chosen because they represent the central area of Banda Aceh City, and are expected to provide in-depth information related to the data needed for this study.

e. Data analysis

Data analysis was conducted qualitatively using descriptive and prescriptive methods. The descriptive method was used to describe the legal rules and concept of guardians as stipulated in Islamic jurisprudence and state regulations. Data obtained from legal materials were then systematically compiled to provide a clear picture of the shifting concept of guardians. The prescriptive method was used to formulate solutions or recommendations that could bridge the conflict between positive law and religious norms. With this approach, the research is expected to contribute to the development of more inclusive law (Al-Albani, Muhammad Nashiruddin, 2006).

This study employs content analysis. This method is used to explore the legal norms, principles, and rules governing forced marriage and the concept of guardianship. This analysis is conducted by identifying normative conflicts,

interpreting legal principles, and evaluating the implications of applicable regulations. The primary focus is to assess the extent to which positive legal norms align with or conflict with Islamic jurisprudence principles. With this approach, the research can uncover the legal dynamics that occur in the context of child marriage in the contemporary era. This study also analyzes the implications of the shift in guardianship rights on social and legal practices in society. This analysis examines the impact of regulations on family relationships.

Data obtained from secondary legal materials and expert insights will be analyzed to provide a more comprehensive picture. The analysis focuses on normative aspects. The results are expected to enrich understanding of the legal issues studied. This research examines how national regulations influence the formation of laws related to forced marriage in Indonesia (Muhammad Jawwad Mughniyyah, 2011).

The qualitative method was used because the researcher will explore the relationship between theory, law, and legal principles contained in Islamic law and positive law in Indonesia in depth. The analysis will critically examine the relevance and consistency of existing legal norms. This approach allows the researcher to explore innovative and applicable solutions.

C. Findings and Discussion

In the context of the dynamics of contemporary marriage law which demands a balance between the authority of the guardian and the rights of the prospective bride and groom, the relevance of the provisions in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law) is closely related to the practice of forced marriage by the guardian mujbir in Islamic law. Article 10 paragraphs (1) and (2) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law) states that Any person who unlawfully forces, places a person under his or her power or power to carry out or allow a marriage to be carried out with him or with another person, shall be punished for forced marriage, with a maximum imprisonment of 9 (nine) years and/or a maximum fine of IDR 200,000,000,00 (two hundred million rupiah). Furthermore, Article 10 paragraph (2) states that including forced marriage as referred to in paragraph (1):

a. Child marriage;
b. forced marriage within the name of cultural practices; or
c. forced marriage of the victim with the perpetrator of rape.

This provision covers forced marriage of children, coercion in the name of culture, and forcing rape victims to marry the perpetrator. However, the problematic aspect is that the phrase "under their authority" in the TPKS Law is not explained in detail. The explanation only provides a clear sentence. There is no explicit explanation of the form and limits of the authority in question, including whether the parent-child

relationship falls into this category normatively or only if accompanied by an element of real coercion. This gap creates an interpretative loophole that perpetrators can exploit to defend themselves using the pretext of parental authority or cultural norma (Al-Albani, Muhammad Nashiruddin, 2006).

There are three meanings of power in the context of sexual violence, namely 1) power (to manage, command, and so on); 2) ability, capability; 3) the ability of a person or group to control another person or group based on authority, power, charisma, or physical strength. This definition shows that power is related to power relations. Supreme Court Regulation Number 3 of 2017 concerning Adjudicating Cases of Women in Conflict with the Law defines power relations as relationships that are hierarchical, unequal and/or dependent on social status, culture, knowledge/education and/or economics. Inequality in these relationships allows one party to dominate the other in the context of intergender relations, thus harming the party in a weaker position (Asfinawati et al., 2024). This means that the guardian can be said to be the party who has a power relationship over his daughter (Sa'id bin Abdullah bin Thalib al-Hamdani, 2002).

Under Islamic law, guardians have the authority to marry off girls, especially minors, for the purpose of protection. However, in practice, this authority is often abused when the child's wishes and interests are ignored. If a marriage takes place without consent, this action not only violates the child's rights but, from a modern legal perspective, is also understood as a form of coercive sexual violence (Mohsi, 2020).

Article 10 of the TPKS Law stipulates that forced marriage constitutes a criminal act of sexual violence. This provision marks a significant shift in Indonesian law, as it criminalizes forced marriage for the first time, including those committed by those legally acting as guardians (Philipus M. Hadjon. (2011). This change reflects a paradigm shift from classical Islamic jurisprudence—particularly the Shafi'i school, which permits guardians to force marriages—to a positive legal approach that prohibits the practice. Thus, the guardian's authority is no longer viewed solely as a form of protection but can also constitute a basis for criminal liability if used to force marriage (Mongkaren, Antow, & Mamengko, 2023).

Forced marriages by *mujbir* guardians still often occur in environments that are strongly influenced by conservative religious customs and interpretations, so that girls often do not have the space to reject the guardian's decisions. This practice often ignores the psychological, social and biological impacts on children.

Article 10 of the TPKS Law provides legal protection by recognizing forced marriage as a criminal offense, while also affirming the child's autonomy and right to determine their own future. This provision aligns with the principles of the Convention on the Rights of the Child, which limits the authority of guardians and opens up legal accountability if such power is used to force marriage. Thus, the TPKS Law positions girls as full legal subjects and corrects the concept of guardian mujbir

when it is used to legitimize coercion. The state, through this law, intervenes in unequal power relations to prevent violence that is hidden behind the guardian's authority.

Following the enactment of the TPKS Law, which prohibits coercion in marriage, a number of Religious Affairs Offices (KUA), including the Banda Raya KUA, have begun implementing preventive measures in the marriage registration process. One of these measures is to ensure that marriages take place based on the free will of the prospective bride and groom, in line with Article 6 paragraph (1) of the Marriage Law, which requires the consent of both bride and groom, as well as the Ministry of Religious Affairs' internal policy through the signing of an N4 letter as a statement of marriage without coercion. The Head of the Banda Raya KUA, Martoni, emphasized that his office is now more cautious by directly asking for the consent of prospective brides and grooms and requiring the signing of an N4 letter as a form of prevention. He stated that this step was taken to "prevent marriages forced by guardians," because prevention is considered more important than dealing with the legal and social impacts later (Martoni, interview, May 14, 2025).

Despite the absence of any direct admission from the prospective bride and groom of coercion, the Office of Religious Affairs (KUA) still considers the potential for coercion a key consideration in the pre-marriage registration examination. The risk of coercion is considered potentially hidden, making preventative measures more effective than waiting for problems to arise. This approach emphasizes the KUA's vigilance as part of protecting individual rights and marital ethics.

A similar practice is implemented at KUA Baiturrahman, where prospective brides and grooms are given space to express their consent freely through short and closed interviews. The head of KUA Baiturrahman, Muhammad Qusai, stated that his party asked "politely but firmly" about the element of coercion without the presence of parents so that the prospective bride and groom felt comfortable, and to date all brides and grooms have stated that they married of their own free will without intimidation (Muhammad Qusai, KUA Baiturrahman, interview, 8 June 2025).

The Head of the Ulee Kareng Religious Affairs Office (KUA), Saifuddin, confirmed that during his tenure, no cases of abuse of guardianship authority were found in marriages. He stated that the prospective bride and groom demonstrated full awareness in making their marriage decisions and that the KUA always conducted direct confirmation to ensure there was no pressure, while the guardian was present as a companion, not a decision-maker. This situation indicates that the role of the guardian *mujbir* has been correctly understood by the community as a protective figure, in line with the findings of Nur Ilma Islami, which positions the guardian as a guarantor of the implementation of marriages in accordance with sharia. Saifuddin also explained that the KUA continuously provides education to the community and prospective brides and grooms, emphasizing the importance of consent and the prohibition of using guardianship authority to suppress the wishes of children, which

he considered in line with the spirit of protection in the TPKS Law. In general, no cases of abuse of the guardian *mujbir's* position were found in the jurisdiction of the KUA Banda Aceh City, where guardians are increasingly understood as companions and the TPKS Law plays a role in encouraging changes in legal and cultural awareness in the community (Saifuddin, KUA Ulee Kareng, interview, June 13, 2025).

The introduction of the TPKS Law marks a paradigm shift in the protection of women's and children's rights, including in the context of marital guardianship. This aligns with Nur Kamilia's findings, which assert that the TPKS Law provides more comprehensive legal protection for victims of sexual violence (Nur Kamilia, 2024). A study by Prianter Jaya Hairi and Marfuatul Latifah confirms that the TPKS Law complements the legal framework for addressing sexual violence. In this context, the role of guardians is no longer understood as holding absolute power, but rather as companions who respect the wishes of the child. This change is also reflected in the practice of the Office of Religious Affairs (KUA), which has shifted from an administrative approach to a more humanistic approach oriented toward rights protection. Interviews with three KUA heads reinforce a new awareness, both among state officials and the public, regarding the importance of respecting women's and children's rights in marriage (Hairi & Latifah, 2023).

The Head of the Banda Raya Religious Affairs Office (KUA), Martoni, emphasized that the introduction of the TPKS Law marked a turning point in building awareness of women's rights in marriage. He stated that following the law's enactment, the KUA became more cautious in processing marriages, particularly regarding prospective brides, because "women's right to self-determination must be protected," and the TPKS Law provides a strong legal basis to prevent coercion by guardians. He noted that the role of guardians, previously understood as absolute, is now beginning to be understood as having limitations, as societal perspectives shift (Martoni, KUA Banda Raya, interview, May 14, 2025).

The implementation of protection for the rights of prospective brides is reflected in the consistent inspection procedures carried out by the KUA (Office of Religious Affairs). The Head of the Banda Raya KUA, Martoni, explained that although most prospective brides and grooms arrive conscious and without pressure, his office still conducts personal confirmation to detect possible pressure from family or guardians. He stated that if "signs of discomfort" are found, the marriage registration process can be postponed as a form of moral and legal responsibility, with the TPKS Law serving as the basis for legitimizing such action (Martoni, Banda Raya KUA, interview, May 14, 2025).

This practice demonstrates the existence of a preventive mechanism for detecting potential coercion, where vigilance against social and family pressure is part of the professionalism of KUA officers. By using the TPKS Law as the legal basis, the KUA integrates legal protection norms with values of caring in public services oriented toward gender equity.

From a *Maqāṣid al-Sharīʿah* perspective, violations of the TPKS Law in marriage practices conducted by guardians at the Banda Aceh City Religious Affairs Office (KUA) demonstrate a close relationship between legal protection and the objectives of Islamic law. Field findings at the Banda Raya Religious Affairs Office (KUA), the Baiturrahman Religious Affairs Office (KUA), and the Ulee Kareng Religious Affairs Office (KUA) did not reveal any abuse of guardianship authority, reflecting increasing public awareness of the rights of women and children. The understanding of guardians as protectors, not coercers, is in line with the *Maqāṣid al-Sharīʿah* (the legal principle) of Islamic law. *Maqāṣid al-Sharīʿah* in guarding the soul (*ḥifẓal-nafs*), descendants (*ḥifẓal-nasl*), and reason (*ḥifẓal-ʿaql*) (Ginting & Nasution, 2019). The TPKS Law functions as a positive legal instrument that controls deviant guardianship practices and encourages victims to report when there are indications of coercion. State intervention in the private realm of marriage emphasizes its adherence to the principle of universal benefit (Hartanto & Praseida, 2022).

Statements from the heads of the KUA (Office of Religious Affairs) indicate that the principle of protecting women and children has been internalized in marriage services. At the Banda Raya KUA, confirmation of the prospective bride is conducted personally and free from family pressure, in line with the *Maqāṣid al-Sharīʿah* (obligatory religious law). *Maqāṣid al-Sharīʿah* in maintaining honor (*ḥifẓal-ʿirḍ*) and freedom of choice (ikhtiyār). This protection is also strengthened by Law no. 23 of 2002 concerning Child Protection, which emphasizes children's rights to be free from all forms of violence, including forced marriage, so that the concept of guardian mujbir is no longer understood as legitimizing absolute power (Ahmad bin Ali bin Hajar Al-'Asqalani, 2000).

Practices at the Baiturrahman Office of Religious Affairs demonstrate a communicative, gender-equality approach through two-way interviews to ensure free and informed consent. This approach reflects the goal of sharia to protect the soul from psychological and physical violence and emphasizes the need to reconsider classical Islamic jurisprudence (*fiqh*) views permitting guardianship in the context of today's protection of children's and women's rights (Hafizh & Armi, 2022).

In this context, the marriage practice carried out by the guardian by forcing his will is contrary to the spirit of maqāshid. Research shows that the KUA in Banda Aceh has established a non-formal system that ensures that prospective brides can express their views freely. This is in accordance with the theory of women's protection developed by Naila Kabeer, which states that legal empowerment must guarantee women's rights in making decisions. Women's protection is not only a legal aspect, but also a social and moral dimension. The absence of abuse of guardian mujbir at KUA Banda Aceh is a reflection of the success of internalizing this protection (Peter Mahmud Marzuki, 2014).

Forcing marriage by guardians is contrary to the spirit of *maqāṣid al-syarī'ah*. Research findings indicate that the KUA (Religious Affairs Office) in Banda Aceh has established an informal mechanism that allows prospective brides to freely express their consent. This practice aligns with Naila Kabeer's theory of women's protection, which emphasizes that legal empowerment must guarantee women's decision-making capacity. The absence of abuse of the guardian's authority at the KUA in Banda Aceh reflects the successful internalization of legal, social, and moral protection for women. (Alcika, Fadhil, & Marluwi).

Marriage of a girl without intellectual maturity and psychological readiness is contrary to the objectives of *maqāṣid al-syarī'ah*, because it has the potential to cause long-term damage to family life. A guardian's decision to ignore a child's mental maturity not only violates the principle of protecting the mind and soul, but also contradicts the principle of justice (*al-'adl*), especially when driven by social, economic, or family honor interests.

In this context, the TPKS Law provides a positive legal correction to the potential abuse of guardianship authority by criminalizing forced marriage and encouraging victims to report it (Nursariani Simatupang, & Faisal. (2018). The state acts as a protector when the guardian's function no longer reflects the public interest, thus enabling the role of state law to become a manifestation of the implementation of the maqā (the principle of protection). ṣid in a modern context. Practices at the Banda Aceh Office of Religious Affairs (KUA) show that the guardian's authority is no longer exercised absolutely, but rather through direct verification and confirmation with the prospective bride and groom, reflecting the protection of the freedom of soul and lineage.

Public awareness of the risks of early marriage, especially for women's reproductive health, increasingly strengthens the view that offspring protection (*ḥifẓal-nasl*) and soul (*ḥifẓal-nafs*) must be a priority. Marriage that sacrifices the child's right to growth, education, and development is contrary to the *maqāṣid* and the Child Protection Law (Al-Imam Al Hafizh Ali bin Umar Ad-Daraquthni, 2008). Therefore, the concept of *mujbir* guardian needs to be reviewed substantively so that it remains in line with the objectives of the *Syari'ah* as a blessing and protection for humans, where the guardian functions as a guardian of benefits, not a holder of power who negates the child's will (Puspasari & Pawitaningtyas, 2020.

D. Conclusion

In Islamic law, a guardian (wali mujbir) is understood as a male lineal guardian who has the authority to marry off his daughter without her direct consent if deemed beneficial. This concept positions the guardian as the party empowered to make decisions in the name of child protection. However, in Indonesia's positive legal system, specifically the Marriage Law, the concept of a guardian (wali mujbir) is not

explicitly regulated, as marriage validation requires the consent of both prospective bride and groom. Thus, national law places the wishes of the prospective bride and groom as the primary element that must be respected, while the guardian's role is positioned as complementary and supportive, not the absolute determinant of the marriage's success.

Along with the development of law and human rights awareness, the meaning of the guardian mujbir has shifted from the concept of absolute power to a companion role oriented towards protection. The TPKS Law explicitly categorizes coercion in marriage as a form of sexual violence, so that guardians are no longer permitted to marry off children without considering the wishes and willingness of the prospective bride and groom. This shift demonstrates the adjustment of Islamic legal norms in social practice with the principles of justice and protection of individual rights, particularly the rights of women and children, where every form of guardian's authority is limited by the child's fundamental rights as a legal subject.

The implementation of this paradigm shift is reflected in the practice of marriage services at the Banda Aceh City Office of Religious Affairs (KUA). The KUA implements a more substantive verification mechanism through direct and private interviews with prospective brides and grooms to ensure there is no element of coercion from guardians or families. The marriage administration process is no longer a mere formality, but has been expanded to become an instrument for protecting and validating the wishes and psychological readiness of prospective brides and grooms. In this context, the KUA acts as an institution that protects rights, not merely a registrar of legal events, by internalizing the provisions of the TPKS Law through the mandatory completion of the N4 letter as a statement that the marriage was conducted without coercion.

Furthermore, the TPKS Law presents beneficial values in the form of protecting children's rights to live safely, free from pressure, exploitation, and coercion in marriage. Preventing forced marriage has direct implications for ensuring the continuity of children's education, health, and optimal personal development. This principle aligns with the *Maqāṣid* of marriage in Islamic law, which safeguards the soul, intellect, lineage, and honor of humankind. Through state legal norms, the child's position is affirmed as a legal subject with will and rights that must be considered. Thus, positive law functions not only as a regulatory tool but also as a response to social dynamics that demand more just, humane, and welfare-oriented legal protection.

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