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Legal Protection of Women's Rights in the Determination of *Wali Adhal* (Reluctant Guardian)

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ABSTRACT

The issue of gender mainstreaming in Religious Courts has been a prominent concern within the Indonesian judiciary. This article examines the legal protection of women's rights in cases of wali adhal (reluctant marriage guardian) determination within the Indonesian Religious Courts. A wali adhal is a marriage guardian who refuses to consent to a woman's marriage without valid legal justification under Islamic law. This study analyzes the legal framework governing marriage guardianship in Islamic jurisprudence and Indonesian positive law, including the Compilation of Islamic Law (KHI), Law No. 1 of 1974 on Marriage, and Minister of Religious Affairs Regulation No. 30 of 2005 on Wali Hakim. The research demonstrates that the determination of wali adhal constitutes a form of legal protection for women's rights, consistent with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Contact with the Law. The findings reveal that Religious Courts serve as crucial institutions for upholding justice, legal certainty, and protecting women's constitutional right to marry. This study contributes to Islamic family law scholarship by demonstrating how judicial mechanisms in wali adhal cases provide substantive protection for women's rights beyond formal procedural compliance.

Keywords: *wali adhal; legal protection; women's rights; Religious Court; marriage guardian; gender justice*

INTRODUCTION

Gender issues have resonated powerfully within the Religious Courts since the leadership of Drs. H. Wahyu Widiana, MA at the Directorate General of Religious Courts (Badilag) of the Supreme Court of the Republic of Indonesia. According to Lies Marcoes-Natsir, Wahyu Widiana's leadership marked a significant turning point in promoting gender equality within the Islamic judiciary (Muslim & Hudiata, 2012, p. 243). This commitment has been continued by Dr. Drs. H. Aco Nur, S.H., M.H., demonstrating a sustained institutional dedication to gender mainstreaming across different generations

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of leadership (Dokinfo Badilag, 2020). Gender mainstreaming in Religious Courts remains active, particularly in cases concerning petitions for the determination of *wali adhal*.

Petitions for *wali adhal* determination filed by women constitute voluntary (voluntair) cases examined and decided by Religious Courts for the legal benefit of women. In these proceedings, women appear as legal parties rather than as victims or witnesses. Voluntair cases fundamentally concern only the petitioner's interests without involving opposing parties (Direktur Jenderal Badan Peradilan Agama, 2013). Women seeking to marry but prevented by a guardian's refusal to grant permission may file a petition for *wali adhal* determination at the Religious Court.

Data from the Supreme Court's Directorate General of Religious Courts indicates that in 2021, Religious Courts decided 1,207 *wali adhal* petitions from a total of 1,560 cases received (Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung, 2019, p. 5). This figure demonstrates that *wali adhal* cases remain prevalent and continue to affect women. A guardian's reluctance to grant permission inevitably has psychological impacts on women intending to marry, despite marriage being considered a divine ordinance (*sunnatullah*) for humans as social beings. Research has confirmed that the primary causes of *wali adhal* include local cultural influences, such as belief in traditional calculations, as well as psychological factors resulting from family conflict (Putri et al., 2025).

Marriage represents a manifestation of humans as homo homini socius-creatures inclined toward building bonds with others. As a bond, marriage can be categorized as a social contract executed voluntarily without coercion according to religious principles and applicable laws. This bond, characterized in Islamic tradition as *mitsâqan galidzhan* (a very strong covenant), establishes rights and obligations between husband and wife (al-Zuhaily, 1989).

The procedural aspects of marriage are normatively regulated by Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), specifically for Muslims. Article 2, Paragraph 1 of Law No. 1 of 1974 states that "marriage is lawful when conducted according to the respective religion and belief" (Law No. 1 of 1974). Marriage constitutes a woman's right guaranteed by law, as affirmed in Article 50 of Law No. 39 of 1999 on Human Rights, which provides that women have the right to perform legal acts independently, including marriage (Law No. 39 of 1999). A woman's right to marry represents a particularly sensitive gender issue, as it concerns a woman's dignity in establishing a household. Therefore, connecting *wali adhal* petitions with women's rights protection is fundamentally appropriate.

LITERATURE REVIEW

2.1. Marriage Guardian (*Wali*) in Islamic Law

According to Wahbah al-Zuhaily, the institution of a guardian in marriage serves to safeguard women's welfare and protect their rights due to the perceived weakness inherent in women. Due to this perceived weakness-whether physical or intellectual-a woman might err in choosing a husband or determining her dowry. Consequently, the guardian "assumes" authority to marry her to someone deemed suitable for her benefit, not for the guardian's personal interests (al-Zuhaily, 1989, p. 694).

In the Compilation of Islamic Law, the marriage guardian constitutes a pillar (*rukun*) of marriage, as stipulated in Article 19, which states that "*the marriage guardian is a pillar that must be fulfilled for the prospective bride acting to marry her off*" (Presidential Instruction No. 1 of 1991). Islamic jurisprudence divides guardianship based on the authority to marry someone under guardianship into two forms: *al-wilayah al-ijbariyah* (compulsory authority) and *wilayah al-ikhtiyariyah* (voluntary authority) (al-Jaziri, n.d.).

Wali *al-mujbir* is a guardian with direct authority to marry someone under their guardianship even without that person's consent (al-Jaziri, n.d., p. 28). Those who may be compelled to marry by a *wali al-mujbir* include:

a. Persons lacking or having lost legal capacity, such as minors and the insane;
b. Virgin women who have reached puberty and are of sound mind (according to the majority of scholars excluding the Hanafi school); and
c. Women who have lost their virginity due to illness, injury, accident, or adultery (al-Jaziri, n.d.).

Recent scholarship has critically examined these classical doctrines. Research indicates that the concept of marriage guardian in the Compilation of Islamic Law remains biased and patriarchal, as women do not have the right to marry themselves off or marry others (Ramadhan, 2025). The articles concerning marriage guardians are still insufficiently responsive to women's interests (Sofiana & Nuraini, 2023). A gender inequality regarding the concept of marriage guardian is further reinforced by the provisions in the Compilation of Islamic Law that explicitly designate guardianship only to men (Ramadhan, 2025).

Wali al-mukhtar is a guardian without the authority to compel those under their guardianship to marry. The Hanafi school recognizes only the *wali al-mujbir*, while the *wali al-mukhtar* is merely recommended for mature, sane women, whether virgins or previously married. According to Hanafi scholars, such women may marry themselves voluntarily and consciously (Aziz, 2001, p. 1338). These differing views among Islamic jurists can be confusing for laypeople. Consequently, Religious Courts adhere to the Compilation of Islamic Law, which codifies the jurisprudence deemed most appropriate for Indonesian Muslim society.

2.2 *Wali Adhal*: Definition and Legal Framework

Administratively, marriage requirements for Muslims are governed by the Compilation of Islamic Law, Minister of Religious Affairs Regulation No. 20 of 2019 on Marriage Registration, and Minister of Religious Affairs Regulation No. 30 of 2005 on concerning court-appointed marriage guardian (*Wali Hakim*). Article 14 of the Compilation of Islamic Law specifies the pillars of marriage, which include:

a. Prospective husband;
b. Prospective wife;
c. Marriage guardian;
d. Two witnesses; and
e. Marriage contract (*ijab* and *qabul*) (Presidential Instruction No. 1 of 1991).

Marriage registration is addressed in Article 4 letter (h) of Minister of Religious Affairs Regulation No. 20 of 2019, which requires permission from the guardian (Minister of Religious Affairs Regulation No. 20 of 2019).

The KHI specifies the order of lineage guardians (*wali nasab*): father, grandfather (father's father), full brother, paternal brother, son of full brother, son of paternal brother, paternal uncle, and son of paternal uncle (Presidential Instruction No. 1 of 1991). When a guardian is unable to serve, guardianship authority transfers to a judge guardian (*wali hakim*), as regulated in Article 2 of Minister of Religious Affairs Regulation No. 30 of 2005. Article 2, Paragraph 1 states that "*for a prospective bride who will marry within Indonesian territory or abroad, who does not have a lineage guardian who is entitled, or whose lineage guardian does not meet the requirements, or is missing, or is unable, or is adhal, then the marriage is conducted by a wali hakim*" (Minister of Religious Affairs Regulation No. 30 of 2005).

If a guardian refuses to provide permission, Article 2, Paragraph 2 of Minister of Religious Affairs Regulation No. 30 of 2005 requires filing a petition for *wali adhal* determination at the Religious Court. This regulation serves as a solution and technical guideline for female prospective spouses whose guardians refuse to fulfill their role, while the Religious Court serves as the institution deciding such petitions. The resulting court decision provides the basis for completing marriage requirements (Direktur Jenderal Badan Peradilan Agama, 2013).

In Islamic jurisprudence, a guardian who refuses or is unwilling to conduct a marriage is termed *adhal* (reluctant). The derivation comes from *'adala-yu'adilu-adlan-āddẖulun*, meaning to prevent, detain, obstruct, or hinder (Warson, 1999, p. 4441). Thus, *'adhal* refers to a state of obstruction, where a guardian unwilling to marry a woman under their guardianship can be described as obstructing the marriage (Zubaidi & Kamaruzzaman, 2018). *Wali al-adhal* is a guardian who refuses to marry a woman who has reached puberty and is of sound mind with her chosen male partner, despite both parties desiring the marriage. Islamic jurists unanimously agree that when a mature, sane woman requests her guardian to marry her to her chosen, suitable partner, the guardian may not refuse this request (Aziz, 2001, p. 480).

However, scholars differ on cases where the guardian's refusal is based on insufficient dowry not meeting the guardian's demands. In such cases, the Maliki, Shafi'i, Hanbali schools, along with Imam Abu Yusuf and Muhammad bin Hasan as-Syaibani, hold that the guardian may not refuse to marry the woman under their guardianship when she consents, as the dowry is the woman's right. Imam Abu Hanifah permits the guardian's refusal if the dowry falls below local customary levels (Aziz, 2001).

When a guardian refuses to marry the woman under their guardianship, according to Imam Ahmad bin Hanbal, the guardianship authority transfers to the more distant guardian, if all guardians refuse, authority transfers to the judge. According to Hanafi, Maliki, Shafi'i scholars, and one narration from Imam Ahmad bin Hanbal, when a guardian-even a *wali mujbir*-refuses, authority transfers to the judge, not to the more distant guardian (Aziz, 2001). This is consistent with the hadith narrated by Aisha, reported by Ahmad bin Hanbal, Abu Dawud, al-Tirmidhi, al-Hakim, and Ibn Majah, which establishes that when a guardian repeatedly refuses, the guardian is considered *fasiq* and tyrannical (Aziz, 2001).

Recent empirical research has revealed that economic exploitation often underlies guardianship refusal. A socio-legal study from Indramayu, Indonesia found that guardians' refusal to approve marriage constituted *wali adhal* because it was based

on economic motives, including financial demands and efforts to maintain economic benefits derived from the daughter's income as a migrant worker (Hidayat & Kholiq, 2026). This demonstrates that economic exploitation is reinforced by patriarchal authority and unequal family power relations, transforming guardianship from a protective institution into a mechanism of economic control (Hidayat & Kholiq, 2026).

Wali al-gaib refers to a guardian who is not present. Hanafi and Hanbali scholars hold that when a guardian is absent in a difficult-to-reach area and has not appointed a proxy, guardianship transfers to the more distant guardian within the *asabah*. According to Shafi'i scholars, if the guardian is at a distance permitting qasar prayer and has not appointed a proxy, authority transfers to the judge (Aziz, 2001, p. 1340).

2.3 *Wali Adhal* Determination and Women's Rights Protection

When a guardian refuses to serve, the marriage registration is rejected by the Office of Religious Affairs (Putri et al., 2025). Research indicates that the impacts of *wali adhal* include delays in marriage registration, additional costs, and psychological stress for prospective brides (Putri et al., 2025). Petitions for *wali adhal* determination may be filed by female prospective spouses at the Religious Court when their marriage guardian refuses to serve. This petition constitutes a legal solution to the problems faced by these women (Direktur Jenderal Badan Peradilan Agama, 2013). The determination of *wali adhal* by the Religious Court represents a form of protection for women's rights in contact with the law (Mukhlisah et al., 2024).

This aligns with Law of the Republic of Indonesia No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), particularly Article 2 letter (c), which aims to establish legal protection of women's rights on the basis of equality with men and to ensure through competent national courts and other effective public institutions the protection of women against all acts of discrimination (Law No. 7 of 1984). However, research shows that although Indonesia ratified CEDAW in 1984, the implementation of these principles in Indonesian marriage law still faces challenges. While there has been some progress in the equality of marriage rights, there are still inconsistencies in several aspects, such as restrictions on the age of marriage and women's rights in family decisions (Sofiana & Nuraini, 2023).

Furthermore, *wali adhal* determination shares common purpose with Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Contact with the Law. Article 6 of this regulation provides that judges in adjudicating cases of women in contact with the law shall:

a. Consider gender equality and gender stereotypes in legislation and unwritten law;
b. Interpret legislation and/or unwritten law that can guarantee gender equality;
c. Explore legal values, local wisdom, and sense of justice in society to ensure gender equality, equal protection, and non-discrimination; and
d. Consider the application of conventions and international agreements related to gender equality that have been ratified (Supreme Court Regulation No. 3 of 2017).

The determination of *wali adhal* directly correlates with protecting women's rights and facilitates women in building households characterized by tranquility, love, and compassion (*sakinah, mawaddah wa rohmah*).

Recent studies have confirmed that judges in Religious Courts actively examine

the substance of the guardian's refusal, even when the guardian does not appear before the court. The judges affirm that a guardian's refusal without a valid *shar'i* justification fulfills the elements of *wali adhal* as stipulated in Article 23 of the Compilation of Islamic Law (Saputra et al., 2026). Consequently, the authority of guardianship is transferred to the *Wali Hakim* as a form of legal protection for a woman's right to marry. The judges' considerations are not limited to juridical aspects and formal evidentiary requirements but also take into account public welfare (*maslahah*) and the prevention of harm (*mafsadah*), in line with the principles of *maqāṣid al-sharī'ah* and a gender justice perspective (Saputra et al., 2026).

METHODS

This research employs a normative juridical approach, examining legal norms, principles, and doctrines governing *wali adhal* in Islamic law and Indonesian positive law. The study utilizes statutory, conceptual, and case analysis approaches. Primary legal materials include the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991), Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Minister of Religious Affairs Regulation No. 30 of 2005 on Wali Hakim, and Minister of Religious Affairs Regulation No. 20 of 2019 on Marriage Registration.

Secondary legal materials consist of classical Islamic jurisprudence texts, including works by Wahbah al-Zuhaily (1989) and Abdurrahman al-Jaziri (n.d.), as well as contemporary scholarly articles published within the last six years from reputable journals. Tertiary legal materials include legal dictionaries and encyclopedias, such as the Encyclopedia of Islamic Law (Aziz, 2001) and the Kamus al-Munawir (Warson, 1999). Data analysis employs descriptive-analytical techniques to present a comprehensive picture of the legal framework and its implementation in protecting women's rights in *wali adhal* cases.

RESULTS AND DISCUSSIONS

The normative juridical analysis of *wali adhal* determination in Indonesian Religious Courts reveals a complex legal framework that, while providing essential mechanisms for protecting women's marriage rights, simultaneously reflects persistent patriarchal structures within Islamic family law. This section synthesizes the doctrinal principles, statutory provisions, and contemporary research findings to present a comprehensive understanding of how *wali adhal* petitions serve women's rights protection.

4.1. Legal Framework and Doctrinal Foundations

The analysis confirms that the institution of the marriage guardian (*wali*) in Islamic law, as articulated by classical jurists including *Wahbah al-Zuhaily*, was fundamentally predicated on the perceived weakness of women requiring protection. This doctrinal foundation, which characterizes guardianship as serving women's welfare, paradoxically establishes a legal structure where women's marital autonomy is mediated through male authority. The Compilation of Islamic Law (KHI) reinforces this patriarchal framework through Article 19, which designates the marriage guardian as an essential pillar of marriage, and through provisions explicitly limiting guardianship to male relatives in a hierarchical order of lineage.

The classification of guardianship into compulsory authority (*al-wilayah al-ijbariyah*) and voluntary authority (*wilayah al-ikhtiyariyah*) demonstrates the varying degrees of control that male guardians exercise over women's marriage decisions. The concept of *wali mujbir* a guardian with authority to compel marriage without the ward's consent-represents the most extreme form of patriarchal control, particularly affecting minors, the insane, and virgin women reaching puberty according to the majority of schools excluding the Hanafi. This doctrinal position raises significant questions about women's autonomy and consent in marriage, despite contemporary human rights frameworks emphasizing individual choice and equality.

4.2. *Wali Adhal* as Legal Remedy

The analysis identifies *wali adhal* determination as a critical legal remedy when marriage guardians refuse to fulfill their role without valid *shar'i* justification. The Compilation of Islamic Law, Minister of Religious Affairs Regulation No. 20 of 2019, and Minister of Religious Affairs Regulation No. 30 of 2005 collectively establish the procedural framework for addressing guardian refusal. When a guardian prevents marriage whether through direct refusal, absence (*wali gaib*), or obstruction the prospective bride may petition the Religious Court for a determination of *wali adhal*, which subsequently transfers guardianship authority to a judge guardian (*wali hakim*).

Data indicating that Religious Courts decided 1,207 *wali adhal* petitions from 1,560 received cases in 2021 demonstrates the prevalence of guardian refusal in Indonesian society. This substantial caseload confirms that *wali adhal* remains a significant barrier to women's exercise of their marriage rights, with research identifying local cultural factors and psychological dynamics as primary causes. The economic exploitation documented in recent studies from Indramayu, where guardians refused marriage based on financial demands and maintenance of economic benefits derived from daughters' migrant worker incomes, reveals how patriarchal authority becomes intertwined with economic control.

4.3. Protection of Women's Rights

The analysis demonstrates that *wali adhal* determination functions as a mechanism for protecting women's fundamental rights, including the right to marry as guaranteed by Article 50 of Law No. 39 of 1999 on Human Rights. This protection aligns with Indonesia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law No. 7 of 1984, particularly Article 2 letter (c) requiring legal protection of women's rights on the basis of equality with men. The Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Contact with the Law further reinforces judges' obligation to consider gender equality, gender stereotypes, and international conventions in adjudication.

Contemporary research confirms that judges in Religious Courts actively examine the substance of guardian refusal, even when guardians do not appear before the court. The affirmation that refusal without valid *shar'i* justification fulfills the elements of *wali adhal* as stipulated in Article 23 of the KHI, with consequent transfer of guardianship to Wali Hakim, represents judicial protection of women's marital autonomy. Judges' considerations extend beyond formal evidentiary requirements to incorporate public welfare (*maslahah*), prevention of harm (*mafsadah*), and principles

of *maqāṣid al-sharī'ah* and gender justice.

4.4. Persistent Challenges

Despite these protective mechanisms, the analysis reveals persistent challenges in implementing gender equality in Indonesian marriage law. Research indicates that the concept of marriage guardian in the KHI remains biased and patriarchal, as women lack the right to marry themselves or marry others. The explicit designation of guardianship exclusively to men perpetuates gender inequality, reinforcing women's dependence on male authority figures for fundamental life decisions. Sofiana and Nuraini's research demonstrate that provisions concerning marriage guardians remain insufficiently responsive to women's interests (Sofiana & Nuraini, 2023).

The Hanafi school's position, recognizing only *wali mujbir* while considering *wali* mukhtar merely recommended for mature, sane women, highlights the doctrinal diversity that can confuse laypeople and potentially undermine women's autonomy. Religious Courts' adherence to the KHI, which codifies jurisprudential positions deemed most appropriate for Indonesian Muslim society, may inadvertently perpetuate patriarchal interpretations rather than advancing gender-just alternatives.

4.5. Implications for Gender Justice

The *wali adhal* determination mechanism, while providing essential protection for women experiencing guardian refusal, operates within a legal framework that fundamentally subordinates women's autonomy to male authority. The requirement that women seek judicial intervention to overcome guardian refusal imposes additional burdens, including delays in marriage registration, extra costs, and psychological stress. These procedural obstacles suggest that the current legal framework, despite protective mechanisms, does not fully realize gender equality in marriage.

The intersection of *wali adhal* with economic exploitation and family power relations, as documented in recent empirical research, reveals how guardianship authority can be weaponized to maintain economic control over women's lives. The transformation of guardianship from a protective institution into a mechanism of control requires critical examination of the fundamental assumptions underlying Islamic marriage law and its implementation in contemporary Indonesia.

CONCLUSION

This normative juridical analysis concludes that *wali adhal* determination in Indonesian Religious Courts serves as a dual-function legal institution: it provides essential protection for women's marriage rights while simultaneously operating within a patriarchal legal framework that limits women's autonomy. The mechanism enables women to overcome guardian refusal and proceed with marriage, with Religious Courts demonstrating institutional commitment to gender mainstreaming and active judicial protection of women's rights through substantive examination of guardian refusal.

However, persistent challenges remain, including the explicit designation of guardianship exclusively to men in the Compilation of Islamic Law, procedural burdens on women seeking judicial intervention, and the reinforcement of patriarchal authority in family relations. Despite positive developments in judicial practice such as consideration of gender justice principles, public welfare (*maslahah*), and prevention of harm (*mafsadah*) fundamental structural inequalities require reform. Achieving genuine

gender equality in marriage necessitates transformation of both legal frameworks and social attitudes toward women's autonomy, with future research needed to examine implementation outcomes and comparative approaches in other Muslim-majority contexts.

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