

## Exploring forced marriage in Islam: Analysis of Imam Al-Shafi'i's perspective, Indonesian Islamic marriage law, and human rights considerations

Dessy Asnita<sup>1</sup>

<sup>1</sup> Sharia Economic Law Department, IAIN Langsa, Aceh, Indonesia.

<sup>1</sup>[dessyasnita@iainlangsa.ac.id](mailto:dessyasnita@iainlangsa.ac.id)

---

Received  
January 25, 2024

Revised  
April 23, 2024

Accepted  
May 8, 2024

---

### Abstract

*The guardian mujbār is a guardian who has the right to marry off his daughters without their prior consent. Although Imam Al-Syāfi'ī supports this concept, the Marriage Law Number 1 of 1974 and the Compilation of Islamic Law do not explicitly recognize the ijbār right. This article examines the existence and implications of the mujbār guardian's right in the context of Islamic law in Indonesia, considering the voluntary principle in marriage. This research utilizes a qualitative approach with primary data from the Al Umm book and Indonesia's Compilation of Marriage Laws. The results indicate that the ijbār right is not contradictory to Islamic law in Indonesia and does not violate Human Rights, although the guardian must meet certain conditions before forcing a marriage. This highlights the debate surrounding decisions made on the assumption that daughters are incapable of making their own decisions in marriage.*

**Keywords:** *Force married, Islamic marriage law, Mujbār Guardian, Nikah Tahlil, and Imam Syafi'i*

### Abstrak

Wali mujbār adalah wali yang memiliki hak untuk mengawinkan anak perempuannya tanpa persetujuan mereka terlebih dahulu. Meskipun Imam Al-Syāfi'ī mendukung konsep ini, Undang-Undang Perkawinan Nomor 1 Tahun 1974 dan KHI tidak mengakui hak ijbār secara eksplisit. Artikel ini mengkaji eksistensi dan implikasi hak wali mujbār dalam konteks hukum Islam di Indonesia, dengan mempertimbangkan prinsip sukarela dalam pernikahan. Penelitian ini menggunakan pendekatan kualitatif dengan data primer dari kitab Al Umm dan Kitab Undang-Undang Perkawinan di Indonesia. Hasilnya menunjukkan bahwa hak ijbār tidak bertentangan dengan hukum Islam di Indonesia dan tidak melanggar Hak Asasi Manusia, meskipun wali harus



memenuhi syarat-syarat tertentu sebelum memaksa pernikahan. Ini menyoroti perdebatan seputar keputusan yang diambil atas asumsi bahwa anak perempuan tidak mampu membuat keputusan sendiri dalam perkawinan.

**Kata Kunci:** *Nikah Paksa, Hukum Pernikahan Islam, Wali Mujbār, Nikah Tahlil, dan Imam Syafi'i*

## INTRODUCTION

Marriage plays a significant role in human life, not only as a means to fulfill the command of Allah SWT but also as a sacred way to fulfill the innate needs of human nature. Marriage laws uphold the principle of voluntariness as one of their core tenets. Before the marriage contract is solemnized, both prospective spouses are expected to acquaint themselves with each other. On the other hand, "ijbār" entails the act of doing something out of obligation. On the other hand, "ijbār" refers to an action taken out of obligation. In a hadith narrated by Muslim,

وَعَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: النَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالْبِكْرُ تَسْتَأْذِنُ مَرْءًا وَإِذْنُهَا سَكُوتُهَا. (رَوَاهُ مُسْلِمٌ)

*Ibnu Abbas reported that the Prophet Muhammad (peace be upon him) said, "A widow has more right to her own person than her guardian, and a virgin should be asked for her consent; her silence is her consent." (HR. Imam Muslim) (Ibnu Hajar al-Asqalani, 2013)*

In the view of Imam Shafi'i, this hadith indicates that expressing consent or permission differs between a virgin and a widow. (Idrīs Syafi'i, 1983) This hadith suggests that seeking the consent of a young girl is not obligatory. Therefore, a forced marriage without her consent is considered valid. If a father cannot marry off his daughter without her permission, she would be treated the same as a widow. Although the hadith clearly distinguishes between widows and young girls, it emphasizes that a widow must explicitly give her consent. A widow is not the same as a young girl because a widow may remain silent. In efforts to enhance obedience to God and encourage the practice of amar ma'ruf nahi munkar (enjoining good and forbidding wrong), the issue of "ijbār" should be interpreted as the responsibility of parents and a means of properly educating their children.

In the perspective of Imam Shafi'i, as outlined in the book *Al-Umm*, it acknowledges the existence of a "wali mujbār" (an individual with the authority to compel) and specifies that the right of "ijbār" belongs to the father or grandfather. Therefore, if a father is considered a "wali mujbār," he holds the authority to marry off his daughter without her consent, and such a marriage is

legally recognized as valid. The right of "ijbār" serves to protect the daughter from a situation in which she is perceived as unable to make decisions. (Husein Muhammad, 2001) Many people perceive the right of "ijbār" as imposing a marriage by someone else, in this case, the father, who is referred to as the "wali mujbār." The presence of a "wali mujbār" means that a marriage guardian (the father) has the authority to contract the marriage of those under his guardianship without seeking their consent beforehand. Some individuals may be married off without considering their willingness in this process. (Sayyid Sabiq, 2007)

In the Quran, there is no explicit mention of the issue of "ijbār" (forced marriage) in a general sense. However, some verses discuss family issues during the time of the Prophet and provide guidance in response to the situations that arose at that time. The Quran primarily presents general principles and does not advocate coercion in marriage within the framework of Islamic marriage. Furthermore, in the Compilation of Islamic Law (Islamic Law Compilation), Article 16 of the Islamic Family Law (KHI) is stated as follows:

1. Marriage is based on the consent of the prospective spouses.
2. The consent of the prospective bride can be explicitly expressed through written, oral, or gestural means, but as long as there is no clear rejection, silence is also taken as consent. This emphasizes the importance of voluntary consent in Islamic marriages and allows for various forms of expression of that consent. (Sayyid Sabiq, 2007)

Even further, in Article 17 of the Islamic Family Law (KHI), it is specified that the Marriage Registrar asks for the consent of both prospective spouses. According to Article 12, Paragraph 1 of the Minister of Religious Affairs Regulation No. 2 of 1990, both prospective spouses must agree to the marriage. Furthermore, Law No. 1 of 1974 concerning Marriage states that marriage serves as a source of positive law for the Muslim community in Indonesia and adheres to the principle of voluntariness in marriage, in line with Islamic law itself regarding the voluntariness of marriage.

According to Article 6, Paragraph 2 of Law No. 1 of 1974 concerning Marriage, marriage must be based on the consent of both prospective spouses, which must be given freely and without coercion. Consequently, it can be concluded that the consent of both prospective spouses is a requirement for marriage. This stands in contrast to the principles of human rights, wherein every individual has the right to determine their own life choices. In the case of "wali mujbār," women are treated unfairly, and their rights are restricted. The freedom to choose, decide, and act is an example of religious teachings.

However, in reality, freedom often faces challenges when applied, such as the freedom to choose a spouse, which often results in forced marriages. As a result, authoritarian treatment of women should be eradicated in the modern era, as it represents a form of dehumanization that contradicts religious, social, legal, and justice norms and goes against the principles of freedom.

In the book "An Islamic Human Rights Perspective On Early And Forced Marriages: Protecting the Sanctity of Marriage," it explains the Islamic perspective on early and forced marriages (EFM) within the Muslim community. Islam recognizes the importance of marriage in building healthy relationships and societies, but it also emphasizes the need for consent, comprehensive maturity, and the protection of human rights. This writing argues that EFM practices violate Islamic principles of consent, the protection of life and health, and the rights of women and children. Islamic Relief, an independent aid organization guided by Islamic principles, calls for the end of EFM and associated harmful practices. This research highlights the importance of education, children's rights, and the roles of parents and guardians in protecting these rights. The article also discusses forced marriage, but the article I wrote places greater emphasis on upholding Islamic principles and human rights and connecting them with marriage laws in Indonesia. (Anonymous Student, 2020)

Kurniawan and Najib concluded in their article that in early marriage, its harms far outweigh its benefits. Therefore, in holistic *maqāsid al-shaī'ah* reasoning, the age of marriage needs to be regulated by law. However, criticisms from the aforementioned group are not entirely accurate because early marriage is also closely related to the state's function in promoting well-being and providing educational facilities to its citizens. Additionally, there are differences in worldviews between human rights (HAM) and Article 284 of the Criminal Code regarding adultery, as well as Malay customs and various Nusantara customs that need to be addressed. The previous article focused on early marriage, while the article that the researcher will write will focus on forced marriages that are legalized by the Shafi'i imam (Kurniawan & Najib, 2020).

Ahmad Miftakhul Toriqudin asserts that the practice of forced marriage due to the wali's authority over Zubaidah falls under marriages classified as low in *sakinah, mawadah, and rahmah*, as its harms outweigh its benefits. In contrast, in the case of Maudlloh Hasanah, it is considered a marriage high in *sakinah, mawadah, and rahmah*, although the benefits outweigh the harms. However, there is an element of compulsion initially, an imbalance in the fulfillment of rights and obligations. In this research, Ahmad focuses on a case

study, while the author aims to compare Imam Shafi'i's views, the regulations in the Marriage Law, and link them to human rights.(Ahmad Miftakhul Toriquudin, 2022)

In this context, Imam Shafi'i argues that guardians have the right of "ijbār," meaning they can marry off a person under their guardianship without that person's consent. In other words, guardians have absolute authority over the individual and can marry them to whomever they choose without seeking the individual's permission. Based on these findings, the author is interested in further exploring these differences. The importance of this discussion lies in the fact that the majority of the Indonesian population follows the Shafi'i school of thought. However, it raises questions about why Imam Shafi'i's opinion is not followed, and whose opinion the Indonesian laws and regulations are based on, what the strength of the evidence is, and what factors have led to Indonesian laws and even the Islamic Family Law (KHI) not adopting Imam Shafi'i's opinion. This is why the author is inclined to write an article titled "The Position of Wali Mujbīr in Marriage According to Imam Shafi'i and Islamic Law in Indonesia." In writing this article, the author will primarily focus on library research, collecting data through literature, with the primary sources being the book *Al-Umm* and *Islamic Legal Regulations in Indonesia*.

This article presents a number of significant contributions to the understanding of Islamic marriage law in Indonesia. Firstly, it highlights the concept of "ijbār" within the context of Islamic marriage law, with a specific focus on the perspective of Imam Shafi'i. This in-depth analysis reflects a contemporary understanding of Islamic legal principles relevant to marriage practices in Indonesia. Additionally, the article provides a comprehensive review of marriage law regulations in Indonesia, including Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, and how these principles reflect modern values regarding consent and human rights.

Secondly, the article contributes to the understanding of Imam Shafi'i's views within the context of modern marriage in Indonesia. The presentation of these perspectives reflects a current understanding of how traditional thought is adapted to contemporary realities. Furthermore, the article also presents Islamic perspectives on early and forced marriages, as well as efforts to connect them with the protection of human rights. Thus, this article represents the latest understanding of Islamic marriage law in Indonesia, as well as an effort to integrate traditional values with modern perspectives on consent and human rights.

## THEORY

### Guardian

According to legal dictionaries, a guardian is an individual or entity that actually carries out the responsibility of caring for a child as a parent. However, in Islamic terminology, a guardian means a protector. Due to their position, guardians typically have the authority to act on behalf of and against others. They have the ability to act on their own behalf as well as on behalf of others. This is due to the fact that others may have a weakness that prevents them from acting independently, either in acting on their own behalf or with regard to their property. A guardian is the person who acts on behalf of the female spouse during the marriage contract (Amir Syarifuddin, 2006).

The concept of a guardian is explored, with a distinction drawn between the legal definition and its meaning in Islamic terminology. While legal dictionaries define a guardian as an individual or entity responsible for caring for a child, in Islamic terms, a guardian is seen as a protector. Guardians, due to their position, are endowed with authority to act on behalf of others, including the ability to make decisions and take actions. This authority extends to acting on behalf of individuals who may be unable to act independently due to various reasons, such as weaknesses or vulnerabilities. Specifically, a guardian plays a significant role in representing the female spouse during the marriage contract, emphasizing their responsibility and authority in such matters.

### Mujbīr

In Islamic religious terminology, a "wali mujbīr" is a guardian by bloodline who has the authority to enforce their will in marrying a prospective female spouse without seeking prior permission from the concerned party. (Sudarsono, 2003)

In Islamic religious terminology, a "wali mujbīr" is a guardian by bloodline who has the authority to enforce their will in marrying a prospective female spouse without seeking prior permission from the concerned party.

### Islamic Law

Islamic law, which means regulations, (Indrawan Ws, 1996) or formally established rules and customs set by the government; laws; regulations; and others to govern societal life, standards (norms and provisions) concerning specific events, such as decisions (considerations) made by judges (in court); verdicts (Dewi Astuti, 2013).

"Islam is a religion that was revealed by Allah SWT to Prophet Muhammad (peace be upon him), and its teachings are flexible and universal (Rahmatan lil'alam). It is a religion of salvation, safety, and prosperity. Its



followers surrender themselves to Allah, submitting and obedient to Him." Therefore, Islamic law encompasses all regulations that are the commandments of Allah, which every practicing Muslim is expected to follow or adhere to. However, Law No. 1 of 1974 Regarding Marriage and the Compilation of Islamic Law (KHI) are the Islamic laws referred to by the author in this article. The KHI is a compilation of Islamic laws in the field of muamalah (civil matters) that apply to Indonesian citizens who adhere to the Islamic faith within the jurisdiction of religious courts.

Islamic law, as defined by scholars, refers to regulations and established rules governing societal life, including specific events such as court decisions and verdicts. Rooted in the teachings of Islam, which are considered flexible and universal, Islamic law encompasses all regulations derived from the commandments of Allah, emphasizing submission and obedience to Him. Specifically, Law No. 1 of 1974 Regarding Marriage and the Compilation of Islamic Law (KHI) is highlighted, serving as a comprehensive compilation of Islamic laws pertaining to civil matters, particularly marriage, applicable to Indonesian citizens under the jurisdiction of religious courts.

### **Syafi'i**

The Syafi'i referred to here is the full name Abu Abdullah Muhammad bin Idris Al-Shafi'i. He was born in Gaza, Palestine, in the year 150 Hijri (767–820 AD). He hailed from the noble Quraysh lineage and had a close ancestral connection with his father, the Prophet Muhammad (peace be upon him), through Abdul Manaf. One of the books he authored is *Al-Umm*, which will serve as the primary source for the article (Idrīs Syafi'i, 1983).

The discussion focuses on Imam Syafi'i, whose full name is Abu Abdullah Muhammad bin Idris Al-Shafi'i. Born in Gaza, Palestine, in the year 150 Hijri (767–820 AD), he belonged to the esteemed Quraysh lineage and had a direct ancestral connection to the Prophet Muhammad through Abdul Manaf. Notably, one of his significant works is *Al-Umm*, which serves as the primary source for the article, providing valuable insights into Islamic jurisprudence and serving as a reference for understanding Islamic legal principles.

The author presents an understanding of several key concepts in the context of Islamic law, including the understanding of guardian, *mujbīr*, Islamic law, and the contributions of Imam Syafi'i. According to the author, a guardian in Islamic law not only acts as a caregiver for children but also as a protector who has the authority to act on behalf of others, especially in the context of marriage. The concept of *mujbīr* refers to a guardian who has the authority to marry someone without seeking prior permission. The author also outlines that

Islamic law is a set of rules governing social life, highlighting the importance of Law No. 1 of 1974 Regarding Marriage and the Compilation of Islamic Law as references in this article. Additionally, the author provides information about Imam Syafi'i and his work, *Al-Umm*, which serves as the primary source for the article. Thus, the author's perspective portrays a deep understanding of the concepts of Islamic law and the significant contributions of figures like Imam Syafi'i in the context of marriage law in Indonesia.

## METHOD

This research employs a qualitative approach, emphasizing the analysis of deductive and inductive inference processes, as well as the dynamics of relationships among observed phenomena using scientific reasoning. Additionally, this study uses a descriptive method as it aims to describe the meaning of data or phenomena that can be captured by the researcher by presenting the evidence. As a literature review research, the primary data sources for this study originate from books that discuss *Wali Mujbīr* in the context of positive law in Indonesia and the opinion of Imam Shafi'i. In other words, the primary data sources for this research are the foundational data collected directly from the research subject. The data collected here is sourced from the book *Al-Umm*, written by Imam Shafi'i, which discusses *Wali Mujbīr*, Islamic Marriage Law, and the Book of Marriage Laws in Indonesia. Secondary data, considered additional data sources that, according to the researcher, will support the primary data, include various articles written by others on the researched subject. The secondary sources used in this study encompass the Quran, Hadith, articles, and books related to the research topic, such as "*al-Fiqh 'alā Madzāhib al-Arba'ah*" by Abū Zakāriya al-Anshārī al-Nawāwī, "*Gender Equality Arguments in the Perspective of the Quran*" by Nasaruddin Umar, "*Sahih Muslim*" by Imam Muslim, and other books and references on *Wali Mujbīr*.

Research necessitates analysis, which is a critical part of the research process. This is because only through analysis can the meaning of data be identified. Descriptive-comparative analysis is then used to analyze the data collected in this literature study. The comparative method compares the perspectives of Imam Shafi'i and Islamic law in Indonesia regarding the position of *Wali Mujbīr* in marriage, while the descriptive method narrates or presents ideas about the position of *Wali Mujbīr*.



## **FINDING AND DISCUSSION**

### **The Existence of Wali Mujbār in Marriage According to Imam Shafi'i, Indonesian Regulations, and Its Relationship with Human Rights**

#### **Wali Mujbār According to Imam Shafi'i**

Imam Shafi'i regarded a guardian (wali) as a prerequisite for a valid marriage. A Wali Mujbār is a guardian who has the direct authority to marry someone under their guardianship without obtaining consent from that person. Only the father and grandfather, namely the paternal ancestors, are considered to have the greatest affection for the woman under their guardianship. Furthermore, they do not have the right of *ijbār*. (Syamsuddin & Muhammad bin Ahmad al-Khotib Asy-Syarbini, 1997) As for those who may be compelled to marry by a Wali Mujbār, they are those who have lost the legal capacity to act, such as minors, widows, or virgins, and the insane. The majority of scholars, except for Imam Shafi'i, agree that they may be compelled to marry. Imam Shafi'i held the view that a girl's consent is not a mandatory requirement, and a forced marriage without the girl's consent is considered valid. This perspective is based on the premise that if the father cannot marry off his daughter without her consent, she would be considered in a similar situation to a widow. However, Shafi'i, out of his extraordinary affection for his daughter, introduced the concept of *ijbār*, allowing a guardian to make decisions in this regard. Initially, Shafi'i only granted the right of *ijbār* to the father, but his companions later expanded it to include grandfathers. (Syamsuddin & Muhammad bin Ahmad al-Khotib Asy-Syarbini, 1997)

Imam Shafi'i held the view that a girl's consent is not a mandatory requirement, and a forced marriage without the girl's consent is considered valid. This perspective is based on the premise that if the father cannot marry off his daughter without her consent, she would be considered in a similar situation to a widow. However, Shafi'i, out of his extraordinary affection for his daughter, introduced the concept of *ijbār*, allowing a guardian to make decisions in this regard. Initially, Shafi'i only granted the right of *ijbār* to the father, but his companions later expanded it to include grandfathers. (Wahbah Az- Zuhaili, 2001)

Priest Shafi'i permits forced marriage on a number of conditions:

- a. Only the father or the grandfather has the right to do this, because they are both very beloved.
- b. The child is a girl, which means she's not mature enough to understand how to live in a staircase, except for a widow, and
- c. Candidate husband to be elected must be equal. (*setara*).

- d. Ability to pay mahar e. It has been known that the man chosen to be in-ijbār is the man who can fulfil his obligations of subsistence.(Muhammad bin Idrīs al-Syâfi'î, 1983)

In his book "Islamic Marriage Law and the Marriage Act", Soemiyati added a condition that the scholar permits a custodian to marry without prior permission to a prospective bride must qualify for:

- a. There was no hostility between the guardian of mujbār and his daughter;
- b. There is no hostility between the daughter and her future husband;
- c. The daughter of whom is a girl, which means she is not mature enough to understand the ideal way of living in a staircase;
- d. and its mahar must not be less than the mahar of misel.
- e. The man who is elected guardian will be able to fulfil his duty to his wife well, and there is no proof that he will spoil his wife.

According to Syâfi'iyah, fathers and grandparents are also entitled to be the guardians of mujbār, regardless of their age. (Al-Hamdani, 1989)

"The findings and discussions presented need to be juxtaposed with existing theories. In this article, the research findings on the concept of wali mujbār need to be compared with the theoretical framework found in Islamic law literature. For example, the finding that a wali mujbār can conduct a marriage without the consent of the party involved needs to be juxtaposed with theoretical views on human rights and principles of justice in Islam. Discussions on the conditions of forced marriage also need to be compared with the principles of Islamic law governing marriage, and how these principles are interpreted by other Islamic scholars and intellectuals. Thus, this article will provide a more substantial contribution to understanding the concept of wali mujbār and its implications in the practice of marriage in Muslim society."

### **Mujbār In Indonesian Law**

The Act No. 1 of 1974 on Marriage, which provides a positive source of law for Muslims in Indonesia, adheres to the principle of voluntariness in marriage, just as it is adhered to by the Islamic law itself concerning voluntary marriage. The marriage is not free from the compulsion of the parents, because the groom does not agree. Forced bride is a marriage not agreed upon by both prospective ordinary brides. It is one of the types of marriage prohibited. Because the parties do not meet the conditions of marriage laid down in Act No. 1 of 1974, "The Compilation of the Islamic Law of Forced Marriages" will annul marriages. Marriage must be based on the consent of both prospective grooms," says the first paragraph of article 6. Since the purpose of marriage is

for the husband and wife to form a happy and lasting family, marriage must be approved without coercion by both married parties, in accordance with human rights. However, on the basis of the concept of voluntary consent, or free and unforced consent of both prospective brides, adopted by Act No. 1 of 1974, it can be explained that forced marriage is a marriage caused by the force of another person, in this case the parent, who forces his child to marry the person they choose without their consent. Men and women must agree in a marriage. Because marriage is a sacred relationship between husband and wife in a *ma'ruf* manner, the prospective groom must also seek the approval of the prosecuting groom, according to Islamic marriage law in Indonesia. It indicates that the prospective bridegroom has agreed to be his partner, or husband and wife, during the marriage to enjoy the rights and responsibilities as a wife and husband. The prospective bridegroom must sign a *blanco* showing his consent before the wedding. It is the result of the wedding, or ministry. (A. Rahman I Do'I, 1996)

Furthermore, article 16, paragraph (2) of the Compilation of Islamic Law states that the consent of the prospective bride may be shown in writing, orally, or by sign, but if there is no explicit refusal, the marriage registrar may ask them as stated in article 17:

1. Before the marriage takes place, the Wedding Registrar asks for the approval of the prospective groom in front of two marriage witnesses.
2. If one of the prospective groom refuses to marry, the marriage cannot be carried out.
3. A prospective groom who is suffering from speech or foolishness may express his consent by means of understandable signals or writing. It is possible that the above provision is contrary to the practice of forced marriage, in which the guardian may force the woman who is in her marriage to marry the man whom she likes, even if the man is not liked by the prospective bride. (A. Rahman I Do'I, 1996)

Since the Indonesian Marriage Act in principle no longer recognizes the right of a guardian, both parties have the right to apply for annulment of marriage, even if the marriage is forced. (Amiur Nuruddin dan Azhari Akmal Tarigan, 2006)

The research findings indicate that Indonesian law, particularly Act No. 1 of 1974 on Marriage, upholds the principle of voluntariness in marriage, in alignment with Islamic law. This principle emphasizes the necessity of mutual consent between prospective spouses for a marriage to be valid. Forced marriage, defined as a marriage without the agreement of both parties

involved, is deemed invalid and prohibited under the law. Article 6 of Act No. 1 of 1974 underscores the requirement for marriage to be based on the free and unforced consent of both parties, emphasizing the importance of upholding human rights in matrimonial unions.

However, a theoretical contradiction arises in the context of forced marriages, where a guardian may compel a woman to marry a suitor chosen by them, even if the woman does not consent to the marriage. This practice contradicts the principles of voluntariness and mutual agreement espoused by both Indonesian law and Islamic marriage law. Article 16, paragraph (2) of the Compilation of Islamic Law acknowledges the necessity of consent from the prospective bride, but the practical enforcement of this provision may fall short in cases of forced marriages. Moreover, the Indonesian Marriage Act no longer grants guardians the authority to compel marriages, granting both parties the right to seek annulment, even in cases of forced marriages. This legal stance reflects a departure from traditional practices and signifies a commitment to upholding individual autonomy and agency in marriage. Thus, while Indonesian law theoretically upholds the principle of voluntary consent in marriage, the existence of forced marriages presents a challenge in aligning legal principles with practical enforcement, highlighting the need for further examination and clarification in legal practice.

### **Warden Mujbār in the Perspective of Human Rights**

According to His Majesty, there are five main principles of marriage found in the Qur'an. One of them is the freedom to choose a husband or wife, both male and female, as long as they do not violate the rules of the Shariah. Considered to be contrary to gender equality and justice, the concept of *ijbār* allows the custodian of *mujbār* to marry his daughter, even without the consent of the person concerned, because women are considered weak in action and unable to make their own decisions. This provision is very important to implement because of the custom of society that has always regarded women as half men and gave value to half men. Women have long been regarded as under-mature and independent by society. Since women cannot make their own decisions, marriage consent must be given by the guardian, namely the father or brother. According to the text of the Hadith misogynistic, some of the Muslims who followed it regarded women as weak creatures of reason and religion (*naqīsh fi al-'aql wa naqīs fi al-dīn*). This stereotype view is gaining validity (Musdah Mulia, 2010).

This concept of *ijbār* has a negative impact on women, creating resistance to violence among women. For men and women have the same right and

freedom to choose a living partner with full consent. As decent human beings, women have the same right as their brothers to choose their own widows, and parents must consider their choices. It's considered a form of discrimination against a woman. Especially in the midst of the ongoing women's rights struggle. Consider that the granting of the right of *ijbār* to the guardian is a gender injustice, which is not consistent with the Islamic sharia. The aim of the law is to *makâshid syari'ah*, i.e. to keep religion (*hifzu al din*) and soul (*rifzu al nafz*), which means that if they find a suitable mate, their religion will be preserved and they will have a good offspring. In fact, many women are involved in public activities, prostitution transactions, taking financial responsibility for the family, and even engaged in practical politics. On the other hand, there are many parents or guardians who deceive their children without their child's consent, including those who have been deceived since childhood. It is a discrimination against a woman if it is associated with a gender equality variable because it leads to an impasse for reproductive rights, such as choosing a living mate, the right to be injured, differentiated, considered incapable, and treated inferior. Marriage is a covenant between two persons of different sexes according to the guidance of Allah and His Messenger. In this regard, Wahbah az-Zuhaili, as quoted by His Majesty, states that marriage is a covenant between two people who have equal rights and obligations, according to the principle of balance (*tawâzun*), consistency (*takâfu'*), and common (*musâwa*). He relies on the Qur'an, "*walahunna mişlu al-laži 'alaihinna bial-ma'rûf*," which means that women have rights over men just as a man has rights over women. (Musdah Mulia, 2010)

Any agreement made by both parties must be based on the principles mentioned above. Injustice and inequality will arise as a result of agreements made without considering these principles. You are their clothing, and they are your clothing. As described in Surah al-Baqarah verse 187 as follows:

أُجَلَ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ ۗ

*It is appointed to you in the night of the month of fasting, mixed with your wives. They are your garments, and you are their garments.*

It is clear that men and women are in need of one another and have equal degrees. Therefore, equality must be the basis of marriage. In other words, they do not look at each other, both men and women, because they are considered weak and incapable of making decisions, which leads to discrimination against women's rights especially in terms of reproductive rights as it relates to their survival to achieving perfection. (Musdah Mulia, 2010)

Since Act No. 1 of 1974 has a noble orientation in terms of the protection of human rights, especially women's rights, if you understand the issue of marriage on the basis of its historical aspects or using a historical approach and the purpose of forming the laws governing marriage issues, then one aspect that should be noted is that Law. Considered unjustifiable and in violation of human rights, the practice of forcing marriages against girls must be categorized as violating human rights and must be carried out with the consent of women (Mirin Primudiasri, 2003). One of the evidence of the deprivation of women's rights is Act No. 1 of 1974, which prohibits women from being treated as objects of marriage or family interests to be mutilated or forced into marriage because of their equal social, economic, and political status. (Mirin Primudiasri, 2003) So we can conclude that Act No. 1 of 1974 is against human rights and prohibits the existence of *ijbār*. So this guarantees no forced marriage.

## ARGUMENTATIONS OF SYAFI IMMAMS AND THE RULES OF THE ARBITRALS IN INDONESIA WITH THE EXISTENCE OF WALLY MUJBIRR

### The Argumentation Of Imam Syafi'i With The Existence Of The Mujbār.

For the Muslims in Indonesia, the Shafi'i mazhab is not a strange Mazhab because the majority of the Muslim in Indonesia are followers of the Shahfi'i majahab. Shafi'i states that a marriage guardian is the one who has to approve the marriage of a woman who has not been married. The Prophet (peace and blessings of Allah be upon him) said:

عن أبو موسى الأشعر رضي الله عنه عن النبي صلى الله عليه وسلم قال لا نكاح الا بولي (رواه الامام احمد وغيره وصححه ابن حبان والحاكم)

*From Abu Musa al-Asy'ari, he said: The Prophet Muhammad (peace be upon him) said, "There is no marriage without a guardian." (HR. Abu Daud and others) (Al imam Muhammad bin Ismail Amril-Yamani as-Shana'ani, n.d.)*

In this Hadith, the word "tidak" (meaning "not") signifies "not valid," which is the closest meaning to the core issue at hand. Therefore, a marriage without a guardian is considered null and void. (Sayyid Sabiq, 2007)

Also, the Hadith from Aisyah, narrated by Abu Daud, at-Tirmizi, Ibn Majah, and Imam Ahmad, is as follows:

عن عائشة رضي الله عنها قلت ان رسول الله صلى الله عليه وسلم : اما امرأة نكحت بغير اذن ولها فنكاحها باطل فنكاحها ولها فنكاحها باطل. فان دخل بها فلها المهر بها استحلت من فرجها. فان استجروا فالسلطان ولي من لا ولي له (روه ابو داود وابن ماجه واحمد)

*From Aisyah (may Allah be pleased with her), she said: The Messenger of Allah (peace be upon him) said, "Every woman who marries without the permission of her guardian, her marriage is void, her marriage is void, her marriage is void. If the woman has been*



*consummated, she is entitled to her dowry as it is a compensation for what is considered lawful to her. If they disagree, then the ruler is the guardian for the woman who has no guardian."* (HR. Abu Daud, Ibn Majah, and Ahmad) (Al imam Muhammad bin Ismail Amril-Yamani as-Shana'ani, n.d.)

Hence, the marriage is annulled due to the phrase "without the permission of her guardian." This phrase is even repeated three times. Imam Shafi'i unequivocally states that a marriage in which the declaration of consent (ijab) is uttered by a woman or man who does not have a guardian is not valid. (Mustofa Al-Khin, n.d.) Imam Shafi'i classified women into three categories: young girls, mature girls, and widows. Young girls are those who have not yet reached the age of fifteen or have not experienced menstruation. In such a situation, a father can marry off his young daughter without her consent if it is beneficial and does not harm the young girl. According to Shafi'i, the basis for establishing the right of *ijbār* is the Prophet's action of marrying Aisha when she was six years old and marrying her to another man when she was nine. Furthermore, the action of Abu Bakar, who married his immature daughter with the justification that a father is responsible for all matters concerning a young child, served as the basis for Shafi'i to establish the right of *ijbār* for young girls, with the condition that the girl has the right. (Khoiruddin Nasution, 2005) Imam Shafi'i believed that a father (*wali mujbir*) and a mature daughter have equal rights. However, it is emphasized that the father has authority over himself. This conclusion is supported by Shafi'i's statement that a girl's consent is not mandatory but rather optional, and for the marriage of a widow, explicit consent is required (Khoiruddin Nasution, 2005).

### **Argumentation of the rule of law with the existence of the *Mujbār***

Law No. 1 of 1974 on Marriage, the Indonesian national constitution, guarantees that marriage can be entered into without coercion from either side. Article 6, paragraph 2, of the law stipulates that both brides must agree to marry, and such consent must be made freely, without the prospective husband or wife being forced into marriage. The argument found by the Law No. 1 of 1974 on marriage is supported by the Hadith of Rasulullah SAW which mentions that a girl comes complaining to Aisyah RA about her father forcing her to marry a man whom she does not like. When she was brought to the Prophet, he decided to return the marriage to his daughter. He finally accepted the choice of his parents, saying:

ولكن اردن ان تعلم النساء ان ليس للاباء من الامر شيء

*I just want the ladies to know that their father has nothing to do with deciding things like this.* (Sayyid Sabiq, 2007)

According to the book of fiqh sunna, the mazhab scholars agree that before the marriage ceremony, a father (wali) must ask for permission or ask for the opinion of the future wife and know the problems. This is because the agreement of both parties is the primary condition for determining whether a marriage is legal or not (Sayyid Sabiq, 2007).

This is also in accordance with the Hadith of the Prophet (peace and blessings be upon him).

وعن أبي هريرة لرضي الله عنه: إن رسول الله صلى الله عليه وسلم قال: لا تنكح إلا بم حتى تستأمر ولا تنكح البكر حتى تستأذن قالوا: يا رسول الله وكيف إذن؟ قال: إن تسكت (متفق عليه)

*From Abu Hurairah, may Allah be pleased with him, the Prophet said: "A widow should not be married until she is consulted (her opinion is sought), and a girl should not be married until her permission is obtained." The companions asked, "O Messenger of Allah, how can a girl give her permission?" The Prophet replied, "Her silence is her permission." (Muttafaqun 'Alaih)(Al imam Muhammad bin Ismail Amril-Yamani as-Shana'ani, n.d.)*

The scholars of the above-mentioned schools agree with the opinion of Sayyid Sabiq, who stated that Islamic teachings prohibit forced marriages between men and widows with men they do not like because the marriage contract is not valid without the woman's consent, and women have the right to demand their guardian to annul the marriage. According to Imam Shafi'i and Ahmad, seeking permission is recommended, so mere silence is sufficient. However, if the girl's consent is obligatory, it should be expressed. Ibn Taymiyyah considered this opinion to indicate that seeking permission is not a requirement. According to Ibn Taymiyyah, this opinion contradicts the consensus of previous Muslim scholars and the narrations of the Prophet Muhammad, as seeking permission has been established through authentic Sunnah and the agreement of earlier scholars, stating that if a girl's uncle or brother intends to marry her off, they must first seek her permission, which means the girl can remain silent (Ibnu Taimiyah, 1997).

Furthermore, Ibn Taymiyyah stated that marrying a girl against her will is against Islamic law and common sense because Allah does not permit her guardian to force her into any contractual agreement, including marriage, without her consent. Allah also does not permit her guardian to compel her to eat, drink, or wear clothing she dislikes. These arguments support the 1974 Law that forbids a father from compelling his daughter to marry a man of his choosing.

The findings from this discussion reveal a contradiction between the arguments of Imam Shafi'i and the legal regulations in Indonesia regarding the

existence of the Wali Mujbir in marriage. Imam Shafi'i believed that marriage must involve a guardian as a prerequisite for its validity, as stated in the hadith of Prophet Muhammad SAW. For him, marriage without the involvement of a guardian is considered invalid. However, the legal regulations in Indonesia, particularly Law No. 1 of 1974 concerning Marriage, assert that marriage must be based on the free consent of both parties, without coercion from any party. The contradiction arises in the interpretation of marriage requirements according to Imam Shafi'i and the law in Indonesia. Imam Shafi'i regarded the guardian as having significant authority in determining marriage, especially for underage girls. However, the legal regulations in Indonesia emphasize that the free consent of both parties is key in determining the validity of marriage. This creates a conflict between traditional principles and the protection of human rights in the context of marriage.

Meanwhile, Indonesian law and the understanding of other scholars, as stated by Sayyid Sabiq, emphasize that marriage must be based on the consent of both parties, and women have the right to reject a marriage forced upon them by their guardians. This is also reinforced by the hadith of Prophet Muhammad SAW, which emphasizes that the consent of both parties is required in marriage, even if only in the form of silent agreement.

However, Ibn Taymiyyah opposes this view, stating that silent agreement is not sufficient and explicit consent from women is required. This argument raises questions about the consistency of Islamic law interpretation in the context of marriage and the protection of individual rights. Thus, there is a contradiction between the traditional principles upheld by Imam Shafi'i and the modern legal understanding emphasizing the necessity of free consent in marriage.

### **Differences Between The Existence Of Wali Mujbir According To Imam Shafi'i And The Indonesian Legal Regulations**

There is a stark difference between Imam Shafi'i and Law No. 1 of 1974 on marriage. Law No. 1 of 1974 on marriage explicitly rejects the concept of *ijbār* and strongly prohibits forced marriages. It requires the consent of both prospective spouses. On the other hand, the scholars of the Shafi'i school used implicit textual interpretations when defining *ijbār*. According to the implied meaning from the hadith "*Al-ayyimu ahaqu bi nafsi min waliyiha*," a widow has more right over herself than her guardian. Therefore, if a guardian is granted the right of *ijbār*, it cannot be used arbitrarily and must meet the specified conditions. Imam Shafi'i's opinion on *ijbār* implies that a girl's consent is not a priority in a marriage. In contrast, Law No. 1 of 1974 on marriage does

not recognize the concept of *ijbār* (Undang-Undang Perkawinan ps 6 ayat 1, 2018). This law requires the consent of both prospective spouses, and if they disagree with the marriage, the marriage contract cannot be executed. A forced marriage can be annulled. (UU No 1 Tahun 1974 Tentang Perkawinan Ps 27 Ayat 1, 2018).

Furthermore, Law No. 1 of 1974 on marriage asserts that *ijbār* contradicts women's rights over themselves and may lead to girls being trapped in a cycle of violence. Consequently, the purpose of marriage, which is to establish a peaceful and loving family, cannot be achieved. Imam Shafi'i and contemporary scholars involved in formulating Law No. 1 of 1974 on marriage differ in their understanding of the hadith regarding a father seeking his virgin daughter's consent. Seeking consent from a virgin, if she is mature, is recommended. This is understood as a "sunnah" to respect her feelings. If seeking permission or consent from a father to his daughter is considered a recommended practice (sunnah), it implies that guardians other than the father or grandfather cannot marry a girl without her consent. This aligns with the understanding derived from the following statement:

وَأِنْ زَوَّجَ غَيْرُ الْأَبِ وَالْجَدِّ فَلَا بُدَّ مِنْ إِذْنِ الْبِكْرِ بَعْدَ الْبُلُوغِ

"If someone other than the father or grandfather marries (a girl), it is necessary to obtain the girl's consent after reaching the age of maturity." (Taqiyyuddin al-Husaini al-Hushni, n.d.)

However, other opinions state that if a girl's consent is sought, it means there is no difference between a girl and a widow, while the Prophet distinguished between the status of a girl and a widow.

The findings from the discussion reveal significant differences between the views of Imam Shafi'i and Indonesian legal regulations, particularly Law No. 1 of 1974 concerning marriage, regarding the existence of *Wali Mujbir*. Imam Shafi'i's perspective, rooted in the Shafi'i school of thought, allows for the concept of *ijbār*, which grants guardians the authority to decide on marriage matters without explicit consent from the prospective spouse. However, Law No. 1 of 1974 explicitly rejects the notion of *ijbār* and mandates the consent of both prospective spouses for a marriage to be valid.

This contradiction stems from varying interpretations of textual evidence. While scholars of the Shafi'i school employ implicit textual interpretations to justify *ijbār*, Indonesian legal regulations emphasize the need for explicit consent and reject any form of forced marriage. Moreover, Law No. 1 of 1974 asserts that *ijbār* undermines women's rights and may subject them to potential harm, including violence, thus hindering the establishment of a peaceful family environment. This contradicts Imam Shafi'i's stance on the

matter. Additionally, there is a difference in understanding the hadith regarding seeking a virgin daughter's consent. While seeking consent from a mature virgin is recommended as a sign of respect for her feelings, Indonesian legal regulations imply that consent must be obtained from the girl herself, aligning with the principle of respecting individual rights.

However, differing opinions exist regarding the necessity of seeking a girl's consent, with some scholars arguing that it equates her status with that of a widow, contrary to the distinction made by the Prophet. This further complicates the interpretation of marriage laws and the protection of women's rights in the context of Indonesian legal frameworks.

### **Author Analysis**

Based on the various discussions presented in this article, the author argues that Law No. 1 of 1974 does not adhere to the concept of *ijbār* in Islamic law, which means that marriage must be based on the consent of both parties. The author believes that Law No. 1 of 1974 is not in line with Islamic law and is not relevant to the majority of Indonesians who follow their respective schools of thought.

The author aligns more with the argument put forth by Imam Shafi'i, where parents would not willingly subject their children to suffering, as they inherently possess love and care for their offspring. One of the rights of a guardian is the right of *ijbār*, which is the right to choose a spouse for their virgin daughters. Today, the concept of *ijbār* has become a subject of debate, especially in the context of global issues like gender equality. The idea of *ijbār* is considered contrary to gender equality or justice. In other words, it is seen as depriving women of the right to choose their own partners. Under the concept of *ijbār*, the guardian has the authority to marry off their daughter, even without her consent, based on the assumption that women are considered weak and incapable of making decisions for themselves. Women deemed feminine are seen as weak, incapable, and easily influenced. Consequently, the guardian whether the father or grandfather, is deemed the most crucial in choosing a spouse. This notion contradicts the true purpose of marriage, which is to form a happy and prosperous family blessed by Allah. Happiness can only be achieved through harmony, understanding, and most importantly, love between the spouses.

To this day, parents who force their children to marry someone of their choosing are acting as *wali mujbīr*, commonly known as "forced marriage." According to the author, this is a misguided understanding, as *wali mujbīr* takes this action based on their responsibility as guardians to provide the best

match for their child and to protect and care for their child, ensuring they don't make the wrong choices in life due to their perceived incapability. Understanding *ijbār* with the connotation of coercion is wrong, as *ijbār* itself is an act done out of responsibility. Therefore, a father's authority over his daughter to marry a man is not about imposing his own will without considering the daughter's willingness but rather is limited to the right to arrange the marriage. Hence, a father's *ijbār* over his daughter is more about responsibility than coercion.

As previously explained, Imam Shafi'i sets conditions that must be met before a father can marry off his daughter to a man of his choice. Therefore, if the father marries off his daughter without meeting the stipulated conditions, the daughter has the right to demand the annulment of the marriage. As stated by Sayyid Sabiq, a righteous daughter has the right to demand the annulment of her father's marriage to a corrupt man if she is still a virgin. (Sayyid Sabiq, 1990)

If the man to whom she is to be married earns money or works in a forbidden place, the woman can request the annulment of the marriage. So, according to the author, there is no violation of human rights in the concept of *ijbār*. In this context, a child is also not entitled to oppose their parents if they don't want to be categorized as disobedient children. By being obedient and submissive to their parents' commands, God willing, we will be saved in this world and the hereafter. As in the saying of the Prophet: "Obeying your parents is one of the doors of Paradise; so, preserve it or waste it."

Therefore, the author argues that there is no human rights violation regarding the concept of *ijbār*, and children should be obedient and submissive to their parents' decisions to ensure their well-being in this world and the hereafter.

وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ -رَضِيَ اللَّهُ عَنْهُمَا-، عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: رِضَا اللَّهِ فِي رِضَا الْوَالِدَيْنِ، وَسَخَطُ اللَّهِ فِي سَخَطِ الْوَالِدَيْنِ

"Abdullah Ibn Amr al-Ash reported that the Prophet, peace and blessings be upon him, said: 'Allah's pleasure is in the parents' pleasure, and Allah's displeasure is in the parents' displeasure.' (Tirmidhi. The hadith is shahih according to Ibn Hibban and Hakim)

"The law in Indonesia should use the arguments of Imam Shafi'i because the majority of the Indonesian population adheres to the Shafi'i school of thought. Moreover, when we look at the situation in society, those who marry of their own choice are not guaranteed happiness; divorce can even occur within the first year of marriage. Conversely, those who are married with their parents' approval have lasting happiness in this world and the hereafter. This is



because the parents' choice is undoubtedly the best for their child. Currently, there is a growing issue that a compelling guardian (wali mujbir) will lead to problems in the harmony of the couples entering into marriage, even though if we look at society in general, marriages not based on parental approval often end in separation. Happiness in married life is short-lived, and it is better for it to be otherwise.

Parents don't expect much from their children. Marrying their child to a good man is already an honor and pride for them. However, most young people nowadays use marriage laws and human rights as their weapons to get what they want. Marriages without parental approval will lead to anger and disappointment in their hearts and may even become a disgrace. For some parents, marrying their child according to their criteria is as if it's an achievement and pride that happens only once in a lifetime. Which parent wouldn't be sad to see their child unhappy? And which parent would be happy to see their child in distress?"

"A young girl lacks experience in marriage, unlike her parents, who are experienced and knowledgeable about the aspects of marriage and its benefits. With the conditions set forth by Imam Shafi'i, parents will not be arbitrary in choosing a spouse for their daughter, and when all the conditions are met, it guarantees the child's happiness. Most parents know that their child is everything. Parents can provide extraordinary love to their children—more than any other relationships. Friends, ex-lovers, or even people who were once loved can be forgotten. However, it's not the same when it comes to their children. Regardless of what parents do to their children, love is always there. Some parents may not express their love correctly, but the love is still there and will never die.

Furthermore, parents have many fears concerning their children. These fears are not always expressed or shown in various ways. One of the fears parents have for their children is (1) the fear of their child suffering, (2) permission to establish relationships with others in matters of love, or the fear of falling in love with the wrong person is not always easily obtained. This is because parents are afraid that their child might fall in love with the wrong person. Therefore, it makes sense that parents pay more attention. (3) The fear of not being loved by the child, (4) an uncertain future: every parent will fear if their child's future is uncertain. So many start helping and guiding from the beginning, even if they can only offer advice. Parents always want a bright future for their children. Even if no steps are taken to support it, the situation might be the cause.

Parents' love for us is immense. How can we then hurt them with stubbornness in our choices and disregard the feelings of our parents, who have given us their boundless love for all this time? They genuinely strive to make their children happy because of their limitless love. However, there are times when tangible proof cannot be seen. It might be due to incapability or circumstances. Therefore, as children, it is not appropriate to constantly blame our parents for their circumstances."

The author's contention that Law No. 1 of 1974 on marriage does not align with Islamic principles, especially regarding the concept of *ijbār*, challenges prevailing legal interpretations. According to the author, the law's requirement for mutual consent in marriage contradicts the Shafi'i school's understanding of a guardian's right to *ijbār*, which allows parents to arrange marriages for their daughters without their explicit consent. This assertion confronts established legal norms and raises questions about the compatibility of contemporary legal frameworks with Islamic teachings. Furthermore, the author's emphasis on the importance of parental authority in guiding marital decisions, drawing on Imam Shafi'i's teachings, adds another layer of complexity to the discussion. While the author argues that parental involvement in marriage selection is rooted in care and concern for their children's well-being, this perspective may clash with modern notions of individual autonomy and gender equality. By advocating for the preservation of traditional familial roles, the author challenges contemporary interpretations of human rights principles within the context of marriage. In conclusion, the findings and arguments presented in this article underscore the need for a nuanced understanding of the intersection between Islamic law, Indonesian legal regulations, and contemporary societal norms. While the author's perspective offers valuable insights into traditional interpretations of familial and marital dynamics, it also highlights potential conflicts with evolving legal and ethical standards. As such, further research and dialogue are necessary to reconcile these disparate viewpoints and inform equitable legal frameworks that respect both religious traditions and human rights principles.

## CONCLUSION

After discussing the issue of the Position of Wali Mujbir in Marriage According to Imam Al-Shafi'i and Islamic Law in Indonesia, we have arrived at the chapter that summarizes the conclusions of each issue. Based on the research conducted, the author draws the following conclusions:

According to Imam Al-Shafi'i, marriage by a compelling guardian (*wali mujbir*) is allowed. However, this is only applicable to a virgin who has never

been married before, and not for widows. The permissible guardians for wali mujbir are the father, and in the absence of the father, the grandfather and so on. Others are not allowed to act as wali mujbir because the father and grandfather are considered the individuals with the greatest affection. Imam Al-Shafi'i permits the compulsion in marriage under certain conditions that must be met. If any of these conditions are not met, a father or grandfather is not allowed to force the marriage of their daughter. The Compilation of Islamic Law in Indonesia does not provide specific regulations regarding wali mujbir. However, some of its articles address the matter. For instance, Article 16 states that (1) Marriage is based on the consent of the prospective bride and groom. (2) The form of consent of the prospective bride can be an explicit and clear statement in writing, verbally, or through gestures. It can also be through silence, as long as there is no explicit rejection. It is further supported by Article 17, which states: (1) The Marriage Registrar must obtain the consent of two witnesses before a marriage takes place. (2) If one of the prospective spouses does not approve of the marriage, the marriage cannot proceed. (3) If the prospective bride is speech or hearing impaired, consent can be given through written communication or gestures that can be understood, related to *ijbar*, as in Articles 16 and 17 of the Compilation of Islamic Law. Furthermore, in cases where a marriage is forced, both parties have the right to annul the marriage because Indonesian Marriage Legislation fundamentally does not recognize the rights of the guardian. This is in line with Human Rights. According to human rights, the concept of *ijbar* is considered to be against gender equality and justice. In this regard, a compelling guardian is given the right to marry off his daughter without the consent of the concerned individual, as women are seen as less capable of making their own decisions.

The argument used by Imam Al-Shafi'i regarding the existence of *ijbar* is based on Hadith. Abu Musa al-Asy'ari stated: The Messenger of Allah, peace and blessings be upon him, said, "There is no marriage except with a guardian." The term "no" in this Hadith means "invalid." This is the closest interpretation to the core of this discussion. Therefore, a marriage without a guardian is void. In addition, a Hadith from Aisha states that the Messenger of Allah, peace and blessings be upon him, said: "Any woman who marries without the permission of her guardian, her marriage is void, her marriage is void, her marriage is void." Women who have consummated the marriage must pay a dowry or compensation as a consequence of the consummation. A woman who lacks a guardian is represented by the sultan if there is a dispute. Therefore, the marriage is annulled due to the term "without the permission of her guardian," which is repeated three times. It is clear to Imam Al-Shafi'i that a marriage

contract in which the declaration (ijab) is made by a woman or a man who lacks a guardian is not valid. On the other hand, the evidences that support Law No. 1 of 1974 which prohibits a father from compelling his daughter to marry a man of his choosing are backed by Hadiths of the Prophet Muhammad. There is an incident where a girl came to Aisha to complain about her father's attempt to force her to marry a man she didn't like. After informing the Prophet Muhammad about the matter, he decided to leave the marriage matter to the girl. She eventually accepted her parents' decision and said, "I just wanted women to know that their fathers have no say in such matters." In the book of Fiqh Sunnah, it is also mentioned that the scholars of the various schools of thought have unanimously agreed that a father (guardian) must seek the permission or inquire about the consent of the prospective wife and know her willingness before the marriage contract is performed. This is because the approval of both parties is a fundamental requirement that determines the validity of the marriage.

The difference between Imam Al-Shafi'i and Indonesian Islamic Law is evident in whether compelling (ijbar) is allowed in marriage. According to Imam Al-Shafi'i, a compelling guardian can use his power of ijbar. However, even though it is permitted, a compelling guardian is not allowed to marry off his child arbitrarily. There are conditions that must be observed by the compelling guardian for the welfare of the child being married off. In contrast, according to Indonesian Islamic Law, ijbar is not permitted in marriage.

## SUGGESTION

As a conclusion to this article, the author would like to convey some recommendations, hoping that these suggestions will be useful for the community and relevant institutions.

1. For the Community:
  - a. Marriage is not just a bond between a man and a woman; it also involves the extended families of both the husband and wife. You are not just living with your spouse, but also with your respective extended families, and it's essential to maintain good relationships with them.
  - b. Have faith that parents want the best for their children, so it's unlikely that parents would choose a life partner for their child without careful consideration. Demonstrate to both of your parents, whom you have known since childhood, that they mean more to you than someone you have just met.
  - c. The dilemma of marriage without parental consent: happiness once, suffering many times. "Allah's satisfaction depends on the satisfaction of

parents, and Allah's anger depends on the anger of parents." Never make your parents angry, as their anger can lead to the wrath of Allah, the Most Gracious and Most Merciful. If you want to always have His blessings, ensure that your parents are pleased with your choices.

- d. The presence of a compelling guardian is expected to safeguard the welfare of the child, and the compelling guardian should adhere to the marriage conditions to prevent arbitrary actions when marrying off their child.

As the author, we acknowledge that this writing is far from perfect, and we welcome constructive criticism and suggestions for improvement in future writings.

## REFERENCES

- A. Rahman I Do'I. (1996). *karakteristik hukum islam dan perkawinan*. Raja Grafindo Persada.
- Ahmad Miftakhul Toriqudin. (2022). Kawin paksa dan implikasinya; studi kasus di desa Bugo kabupaten Jepara. *Isti'dal : Jurnal Studi Hukum Islam*, 9(1), 1-14.
- Al-Hamdani. (1989). *Risalah nikah, terj. Agus Salim*. Pustaka Amani.
- Al imam Muhammad bin Ismail Amril-Yamani as-Shana'ani. (n.d.). *Subulussalam Syahr Bulughul Maram*.
- Amir Syarifuddin. (2006). *Hukump Perkawinan Islam di Indonesia,"Antara Fiqh Munakahat dan UU Perkawinan*. Kencana.
- Amiur Nuruddin dan Azhari Akmal Tarigan. (2006). *Hukum perdata di Indonesia*. Kencana.
- Anonymous Student. (2020). *An islamic human rights perspective on early and forced marriages protecting the sanctity of marriage*. International Islamic University Malaysia.
- Dewi Astuti. (2013). *Kamus populer istilah Islam*. Kompas Gramedia.
- Husein Muhammad. (2001). *Fiqh perempuan refleksi kiai atas wacana agama dan gender*. Lkis.
- Ibnu Hajar al- Asqalani. (2013). *Bulughul Maram & Dalil- Dalil Hukum*. Gema Insani.
- Ibnu Taimiyah. (1997). *Hukum-hukum perkawinan*.
- Idrîs Syafi'i. (1983). *al-Umm, terj. Isma'il Ya'kub*. Fajar.
- Indrawan Ws. (1996). *Kamus praktis Bahasa Indonesia*. Lintas Media.

- Khoiruddin Nasution. (2005). *Hukum perkawinan*. ACAdemia dan TAZZAFA.
- Kurniawan, E., & Najib, K. (2020). Early marriage, human rights, and the living fiqh: a maqasid al-shari'a review. *Ar Risalah*, June. <https://doi.org/10.30631/al-risalah.v20i1.565>
- Mirin Primudiasatri. (2003). *Perlindungan hukum terhadap hak asasi perempuan dalam menyetujui perkawinan*, *Dinamika Hukum*.
- Muhammad bin Idrîs al-Syâfi'î. (1983). *al-Umm*, terj. Isma'il Ya'kub. Fajar.
- Musdah Mulia. (2010). *Islam dan hak asasi manusia konsep dan implimentasi*, Cet. I. Naufan Pustaka.
- Mustofa Al-Khin. (n.d.). *Mustofa Al-Bugho, Ali Asy-Syarbayi, Kitab Fiqh Mazhab Al-Syâfi'î, Jilid IV*. Pustaka Salam.
- Sayyid Sabiq. (1990). *Fiqh Al-Sunnah, jilid III*. Dar Al-Fath li Al I'lam Al-Araby,.
- Sayyid Sabiq. (2007). *Fiqh Sunnah, Jilid 3*. Pena Pundi Aksara.
- Sudarsono. (2003). *Kamus Agama Islam*. Rineka Cipta.
- Syamsuddin & Muhammad bin Ahmad al-Khotib Asy-Syarbini. (1997). *Mughnil Muhtaj Ila Ma'rifati al-Alfadhil Minhaj*. Darul Ma'rifat.
- Taqiyyuddin al-Husaini al-Hushni. (n.d.). *Kifayah al-Akhyar fi Halli Ghayah al-Ikhtishar, juz, 2*. Dar al-'Ilm.
- Undang-Undang Perkawinan ps 6 ayat 1. (2018). Undang-Undang No 1 Tahun 1974 Tentang Perkawinan. In *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*. <https://doi.org/10.35931/aq.v0i0.57>
- UU No 1 Tahun 1974 Tentang Perkawinan Ps 27 Ayat 1. (2018). *Undang-Undang No 1 Tahun 1974 Tentang Perkawinan*.
- Wahbah Az- Zuhaili. (2001). *Fiqh Islam, terj. Abdul Hayyie al- Kattani, dkk. Jilid 9*. Gema Insani.