

KHI Objectivation: Study of Female Marriage Guardians Progressive Maqasid Syariah Perspective

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Abstract: The marriage guardian is one of the mandatory marriage pillars fulfilled, as found in Hadith, Laws, and also the Compilation of Islamic Law, however in possible KHI settings become marriage guardian is a man just like that in article 20 paragraph 1 compilation of Islamic law. However, reality in society someone implemented a draft female marriage guardian, even though the No by article 20 paragraph 1 Compilation of Islamic Law, as ever told by Kh Imam Nakhai (teacher Ma'had Aly Situbondo and Commissioner National Commission Women in Indonesia). the method used is normative with approach laws and studies References or library research and content analysis for explaining female marriage guardians in KHI with phenomenon existing reality about female marriage guardians in Indonesia. the theme raised is "Objectification KHI: Perspective Study of Female Marriage Guardians Progressive Maqasid Sharia " In the study there are two important questions, First How to draft female marriage guardians in KHI?, and the second How KHI objectification of female marriage guardians in perspective maqasid sharia Jasser Auda? Research results This shows that KHI's objectification regarding marriage guardians required a man to be refuted If seen from the corner of Maqasid Sharia Jasser some implement it draft justice To reach benefit people as Grace lil natural.

Keywords: objectification Compilation of Islamic Law, female marriage guardian, maqasid sharia.

Introduction

The case of limiting women's roles has long been a matter of debate. Such as restrictions on women permeate all aspects of life; they are not only found in sociological context, even in a theological perspective. Restrictions The position of women associated with patriarchal culture has affected everyone. products created by fikh (Islamic Rules). Thus, patriarchal culture becomes a an example of a cultural debate that makes theological interpretations of the text of the Qur'an and the Prophet's Instructions (Hadith) in understanding of gender issues emerged. The case of gender studies in Indonesian Muslim Society was chosen as the topic of this research paper; it concerns the equality of women's position as witnesses/guardians in marriage is still debatable. In addition, most of the Indonesian ethnic groups are in Indonesia

practicing patriarchal culture which may be contrary to Islamic ideas rules in certain cases.¹

The patriarchal system in Indonesia, in many ethnic communities, may not be so culturally influenced by Islamic rules. So the presence of Islam, for some people community, has brought a mission of liberation from oppression and female inferiority. For example, there are four types of marriage procession known before the era of Islamic intervention in Asia; namely: (1) ethnic marriage which begins with a man asking to be married to a woman by giving a dowry; (2) istibdha marriage; a wife is ordered by her husband to interact with other men to have more

¹ Paisol P Burlian, "Public Debatable Position of Women as Witnesses in Marriage: The Perspective of Islamic and Constitutional Laws," *Italian Sociological Review* Vol 8 (18 September 2018): 487 Pages, <https://doi.org/10.13136/ISR.V8I3.216>; Paisol P. Burlian, "Public Debatable Position of Women as Witnesses in Marriage: The Perspective of Islamic and Constitutional Laws," *Italian Sociological Review* 8, no. 3 (18 September 2018):pages 501–501, <https://doi.org/10.13136/isr.v8i3.216>.

children; (3) marriage begins after a woman is pregnant; several men will be chosen to be her husband; (4) the marriage is carried out by a pregnant prostitute and she is able to direct the man through miracles.²

In the development in Indonesia that in the context of Guardians and Witnesses in the KHI rules are still dominated by men and women cannot be given the opportunity to become guardians, even though in the view of Ibn Hazm who allows women as witnesses to marriage but the dimensions are still the same ½ the price of men and this does not guarantee gender equality that has developed in developing and developed countries such as in Indonesia³. The case of legal products in Indonesia has attracted public attention, for example For example, the Compilation of Islamic Law (KHI), it shows a case. It was issued through Presidential Instruction of the Republic of Indonesia Number 1 of 1991. It should be remembered that CIL is still widely studied by both academics and legal observers. The CIL case arose due to socio-political factors; (1) KHI is considered as the coming of the New Order of the Indonesian Government, which means that the formation of KHI was not purely from the government's interests and not in order to accommodate the needs of Muslims, (2). The presence of KHI is expected to be able to refresh Muslims after the incident the heat of stress during the Old Order. ⁴So don't amazed role women are very restricted in KHI, this paper want to to study repeat related with study This with shift study qowama and do approach with study MAqasid Sharia is the right thing to do Auda and dimensions with KHI in Indonesia . While in context of female marriage guardians are considered No the veil in give room For to marry in case certain even though it was the mother who sacrificed herself to raise her child child woman the only one , this paper want to do study with

comprehensive in " Khi Objectivation: Study Of Female Marriage Guardians Progressive Maqasid Syariah Perspective."

Review

In study this, writer will gather similar study with the medium writer do , dimension start with in tune with theme research , and in line with study methods and so on that bring about law Islam and KHI are related with Woman as marriage guardian in view Progressive Maqasid Sharia , a number of research that the author collect is :

First research entitled "Women as Marriage Guardians: Prohibition " or Warning " written by Nurzulia Febri Hidayati in study This stated that As believed from generation to generation in the marriage contract, the concept of a guardian is an inseparable part, because it is one of the requirements for the validity of an Islamic marriage that must be met. However, the orientation of the goals demanded by the guardian of marriage has shifted, due to the increasingly developing context of the times. In the past, the guardian of marriage was formulated to protect women's rights in order to realize a harmonious marriage, but then in its development, the guardian of marriage was dominant, thus ignoring the rights, choices and interests of the bride. The stereotype of women as weak creatures results in men always being under the control of the guardian of marriage (father, grandfather or family). Because the justification is that women cannot marry on their own, they are considered not allowed to marry other people, including marrying their daughters even though she is someone who has an emotional closeness. In fact, women are one step ahead of men in terms of acting ability, but if it is used as an excuse for women not being worthy of being guardians, it feels inappropriate. Indeed, the construction of a guardian like that needs to be re-examined whether it is an absolute prohibition or the impact of a lasting tradition. ⁵This study Already give room understanding new about

² Burlian, "Public Debatable Position of Women as Witnesses in Marriage," September 18, 2018.

³ Qhoer Fuad Pratama Dika, "THE POSITION OF WOMEN AS WITNESSES IN MARRIAGE (A COMPARATIVE STUDY OF IBNU HAZM AND SAYYID SABIQ)" (PhD Thesis, UIN Prof. KH Saifuddin Zuhri, 2023), <https://eprints.uinsaizu.ac.id/19782/1/DIKA%20QHOER%20FUAD%20PRATAMA%201617304008-2.pdf>.

⁴ Burlian, "Public Debatable Position of Women as Witnesses in Marriage," 18 September 2018.

⁵ Nurzulia Febri Hidayati, "Women as Marriage Guardians: Prohibition or Warning," *Palita: Journal of Social Religion Research* 3, no. 1 (2018): pp. 55–66.

Woman Can become marriage guardian, but Not yet come to the discussion about studies in the Compilation of Islamic Law.

The second research is research conducted by Moh . Fauzi with title "Women as Marriage Guardians" in article This delivered that The debate on whether or not a guardian is obligatory in a marriage contract has been a long-standing issue among Islamic legal experts, especially during the formation of the madzhahib (school of thought). The mainstream view held by Indonesian Muslims, most of whom adhere to the Shafi'i school of thought, is that the presence of a guardian is one of the criteria for the validity of a marriage. However, if the issue of guardians is re-examined using the historical and Islamic jurisprudence approach, it is found that the presence of a guardian is not required in all marriage contracts for all women. A woman may become a guardian and may marry herself without a guardian if she meets the requirements to become a guardian, namely being sane, well-mannered, mature, and independent. This view is held by scholars of the Hanafi school of thought. However, the concept of a guardian is not just a legal issue; it is intended to ensure the welfare of a woman when entering into her marriage. Therefore, the Prophet advised that a guardian be present in the marriage contract. ⁶In this study, it provides a contribution to the author's research basis that Islamic law traditionally provides space for the connection of the context of women as guardians, only the distinctiveness in this study, with the study conducted by Fauzi, is that the author builds by conducting a study of the objectification of Islamic law in a more urgent dimension, namely in the KHI as the heart of positive Islamic law studies in Indonesia.

The third research is a research conducted by Rusda Khoiruz Zaman who wrote a final assignment entitled a review of legal hermeneutics on Musdah Mulia's views on marriage guardians for women, in this research it is stated that first is the change of the times, second the authentic meaning of marriage guardians for women is a form of *tadrij al-Tasri* stages of legal legislation)

which is temporal in nature. And third in order to see the relevance of Musdah Mulia's idea of marriage guardians for the renewal of Islamic family law in Indonesia,⁷ distinctive from the study conducted by the author is that there is an open space for women to no longer need guardians because they can be responsible for themselves, over the age of 21, as the three reasons above, while the difference with the research conducted by the author is that women can become marriage guardians for their children not only can they marry themselves,

The next research is a research conducted by Amirudin Nur Muhammad et al entitled The Position of Women as Marriage Guardians: Khoirudin Nasution's Legal Istinbath Method in this study The position of a woman in marriage must obtain approval from her guardian, namely her father or stepfather. This research is the result of library research using descriptive analysis methods and utilizing the Holistic Thematic legal istinbath method of Khoiruddin Nasution. The purpose of this study is to analyze how the law of women as marriage guardians according to Khoiruddin Nasution, how the legal procedures for istinbath for women as marriage guardians according to Khoiruddin Nasution, how the relevance of thinking about women as marriage guardians according to Khoiruddin Nasution in Indonesia. The results of this study indicate that women can be guardians. This opinion is based on the verses of the Qur'an and Hadith which are the concept of the rights of marriage guardians and the rights of the closest person to the prospective bride and groom. So the marriage guardian can be male or female. Second, Khoiruddin uses the epistemological basis of bilateral society by using a holistic thematic approach based on the bilateral paradigm and using the sociological analysis that has been developed. Third, following the development of the modern era which is identical with the advancement of science and technology that opens up opportunities for women to play a role in the domestic and public sectors, Khoiruddin's thoughts on women as marriage

⁶ Moh Fauzi, "Women as Marriage Guardians," *Musawa Journal of Gender and Islamic Studies* 5, no. 2 (2007): pages 281–98.

⁷ RUSDA KHOIRUZ ZAMAN, "Legal hermeneutic review of Musdah Mulia's views on marriage guardians for women," accessed October 28, 2023, <https://eprints.walisongo.ac.id/id/eprint/21692/>.

guardians can be an alternative in this context. development of guardianship in Islamic law for this modern era. ⁸By looking at the studies of several studies above, it can be concluded that the study of "Khi Objectivation: Study of Female Marriage Guardians Progressive Maqasid Syariah Perspective" Still few and far between, distinctive and novelty are proposed is view about objectification law Islam to The concept of Marriage Guardian in view Progressive maqasid syariah .

Objectification of Islamic Law in Indonesia

This concept comes from one of the Indonesian intellectuals, namely Kuntowijoyo ⁹, Wariyani Fajar Riyanto stated that Objectification departs from internalization, not from subjectification, and this is what distinguishes subjectification from Objectification, and confirms the fundamental difference between Objectification and secularization. Objectification is the translation of internal values into objective categories. That objectification can also be seen as the concretization of an internal belief. Objectification is an effort to understand that is directed outward while externalization is directed into the adherents of a religion. Objectification is ¹⁰an act and an action where the values are rationalized in a rational act so that outsiders can also enjoy it without having to agree with the original values. So the objectification of Islamic marriage law is an effort to rationalize the provisions or principles of law that will be

legalized by the state and become a role model for Muslims with universal values in the form of the values of the maqasid Syari'ah that are developing in Indonesia.

In its development, when marriage law was developed in a very wide area, it interacted with various local rules that varied greatly in structure and culture. Therefore, local legal products emerged, and in Indonesia the idea of the need for an Indonesian fiqh formula emerged, for example, put forward by Hasbi Ash Shiddieqy, Hazairin, Munawir Syadzali, Busthanul Arifin and A. Qodri Azizy. In studying Indonesian marriage law that has interacted with various local rules and traditions, two sequential steps were taken, namely first, efforts to objectify Indonesian marriage law, *second*, efforts to apply the concept of Indonesian marriage law that is in accordance with the spirit of modernity, but does not completely abandon various local rules and traditions. The first step offers four methods of analysis in determining the objective criteria of Indonesian marriage law, namely: *first*, a normative-deductive theoretical analysis of contemporary problems of Indonesian marriage law. *Second*, an inductive-objective empirical analysis of these problems, namely analyzing problems related to reality, theoretical views, and concrete practices in Indonesia. *Third*, a dialectical analysis between the first and the second, with the intention of mediating between modern and traditional ideas. *Fourth*, a critical analysis of the existing concept of marriage law, so that laws can be reformulated in accordance with the expectations of the Indonesian people.

Meanwhile, the second step offers consideration that local traditions are worth maintaining, with the intention of continuing to use tradition as a basis for paradigm to carry out transformation. Therefore, the historical-induction method is carried out, with the intention that the condition of Indonesian society which still considers tradition in its daily life practices, requires legal regulations that are able to understand these conditions ¹¹. The two steps above will be combined into an inseparable unity. This methodology is to

⁸ Amirudin Nur Muhammad and Rohmah Maulidia, "The Position of Women as Marriage Guardians: Khoiruddin Nasution's Legal Istinbath Method," *Journal of Economics, Law, and Humanities* 2, no. 1 (2023): pages 1–16.

⁹In understanding the objectification of Indonesian Islamic marriage law, it is necessary to review the objectification theory offered by Kuntowijoyo. According to Kuntowijoyo's perspective, objectification begins with internalization, not subjectification. That is the main difference between objectification and secularization. With this, the author tries to retranslate this idea into Indonesian Islamic marriage law. This is done because the author assumes that Islamic marriage law as summarized in classical fiqh has not been able to fully control the development of the times related to new cases that arise in marriage problems. These new cases require new rules of marriage law that can solve these problems. See Wariyani Fajar Riyanto, *Maqasid Syari'ah as a System of Islamic Legal Philosophy*, (Yogyakarta, Integrasi Interkoneksi Press, 2012) page 722.

¹⁰Wariyani Fajar Riyanto, *Maqasid Syari'ah as a System of Islamic Legal Philosophy*, (Yogyakarta, Integrasi dan Interkoneksi Press, 2012) page 722, see also Kuntowijoyo, *Political Identity of the Muslim Community*, (Bandung, Mizan, 1997) pages 82-83.

¹¹ *Gus Dur said: Editor: Alvian Muhammad* (Daily Proaksi, 2005), //10.170.10.3%2Findex.php%3Fp%3Dshow_detail%26id%3D11832%26keywords%3D.

formulate a combination of ideas that will be developed in analyzing the objective criteria of marriage law seen from the Indonesian context. Meanwhile, the process of shifting marriage law from traditional community rules to modern community rules in the form of statutory regulations requires a formulation methodology based on *maqasid al-syari'ah* (basic objectives of sharia), namely upholding the values of the principles of social justice, the welfare of humanity, universal mercy and local wisdom using four main approaches, namely; gender, pluralism, human rights and democracy.

These four approaches will also be used briefly in dismantling the objective criteria of Indonesian marriage law in view of or based on *Maqasid Syari'ah*. A gender approach will be used to dismantle the established patriarchal system that still plagues Indonesian marriage law. Meanwhile, a pluralism approach is used to examine elements of marriage law that can be unified for all Indonesian citizens. Meanwhile, the human rights approach is used to identify family rights in Indonesian marriage law. Then a democratic approach is used to analyze the principles of justice, harmony and local wisdom in marriage law. Meanwhile, *Maqasid Syari'ah's view* is that it is a goal established by Islamic marriage law in Indonesia. We can see a clearer picture below which I took from Fajar Riyanto in *Maqasid Syari'ah as Islamic Legal Philosophy (Family Law studies)*. In this case, the objectification of Islamic law can also be used for Islamic Marriage Guardians/Witnesses and Inheritors, which have also undergone various in-depth studies in Indonesia, the use of customary divisions in each region, for example in Java with Guardians and Inheritors divided equally, dividing equally. For all children, it is *local wisdom* that is used by religious leaders and community leaders to carry out the objectification of Islamic law through customary marriage, culture and existing social conditions. On this occasion, the objectification of Islamic law is attempted to provide an in-depth analysis related to the study of Marriage Guardians. There is still no local wisdom in its implementation.

Khi Study (Islamic Law Compilation on The Concept Of Marriage Guardians In Indonesia)

In study this, will I express three matter important. *First* How Guardian concept in contract marry : the views of the Ulama, and *secondly* is position of the Guardian in Akad, and *third* Female Marriage Guardians: An Attempt to Objectify Islamic Law in the KHI.

As for the first one is the Guardian in Contract Marry : The Views of the Scholars, in Guardian concept (usually is men) get right For can to marry Female relatives and things This Already happen since pre -Islamic. and as is known in knowledge General that the Guardian has right prerogative in choose and determine wedding relatives his woman, with Who only they consider worthy and desired. With request agreement or even No with agreement permission from The female relative. In development When Islam was present in the midst of society, the rights of the guardian were reduced and eliminated The same once, in the Koran itself in The study conducted by Asghar Ali Engineer was very helpful autonomy full against Women in matter problem marriage. Although thus practice pre -Islam in context can and right to marry Female relatives reappear. Even though women were in the early days Islam is very active role in determine wedding they, however then in the future next they are placed in Position Passive.¹²

So from That I will try see to what extent role Active Women in context wedding special in context marriage contract, which if We review with more in the theme This Lots difference field the events that occurred, in our glasses we see there are two things important the difference we can see day this, *first* Can women to marry himself Alone or must with intercession of the Guardian. And *secondly* Can women become marriage guardian or No can, in study this is what is meant is an adult female, because if child small Not yet adult, good with type Men and women scholars agree they need guardian in condition do

¹² Agus Moh Najib, "The Controversy of Women as Marriage Guardians," *Musāwa Journal of Gender and Islamic Studies* 5, no. 2 (April 30, 2007): 211–25. <https://doi.org/10.14421/musawa.2007.52.211-225>; Asghar Ali Engineer, *The Rights of Women in Islam* (Hurst, 1992).

contract marriage. ¹³If we see treasury jurisprudence of course The majority of scholars provide view For Then see man different with Women, so that in matter This guardian for women is inevitability For become the conditions of a valid marriage contract. While in Imam Malik's view is a must existence guardian is very given attention especially for women who have high social status (Sharifah) while ordinary women can to marry himself Alone or request to man adult (in matter This his/her relatives / not his relatives) for to marry himself myself. And things this is very different backwards with draft The majority of scholars, including Abu Hanifah and Hanafi scholars in general, such as al- Sya'bi and Al-Zuhri, who have view that adult women can to marry himself Alone without through intermediary a Guardian, then with thus in view This guardian No enter in marriage ceremony and not A requirements. While Ulama Dawud Al-Zhahiri (founder School Zhahiri) distinguishes draft between widows and girls, if married is Widow so can to marry himself Alone whereas if a girl has to There is guardian. Likewise with Ibn Tsa'ur's view, emphasized No existence existing guardian in contract wedding but permission guardian in contract marriage, then with thus he can, marry himself Alone. ¹⁴

Whereas in The Bidayatul Mujathid Ibn Rushd's work The differences between these scholars Because No existence clear and definite text in the Qur'an and Sunnah which can give understanding and obligation of the Guardian in marriage. Views this is caused with existence verses of the Koran and Sunnah throughout this is made runway existence condition guardian and not existence condition guardian The same The same still interpretable (Muhtamillah) if more Far Again The hadiths used are seen in a way phrase contain a number of its meaning and validity still being

debated,¹⁵ let shift from view There is guardian or no , and from the arguments used by the Ulama, can be We draw the conclusion that those who are entitled determine marriage a Woman is a Woman himself . And open it to his guardian. Can We Look in The hadith narrated by Aisyah is also used as the basis of the Ulama's views guardian is A must if read in a way Intact, can be very understandable that the dispute that has been going on for This happen is a woman and a guardian , then it is won by the woman's choice myself , and things That ignore right guardian and government or the judge will marry the woman in accordance with his choice . This is also supported with a number of existing hadith for example is hadith narrated by Ahmad, Abu Dawud, and Ibn Majah from Ibn Abbas who gave story that There is a woman who was still a girl complained to the Prophet Muhammad SAW because has married with people he does n't like , and with so the prophet gave choice to the woman . In advanced The Hadith of the Woman state that he Can Actually accept the proposed view or a candidate who was forced by his father, but this woman want to give that you are the same very have no rights whatever in wedding his son. And with thus this is it chronological he reject it. So with hadith This Moral message is that the Guardian is mentor and giver advice as in The case of Fatimah Binti Ghaist who was proposed to by two of the Prophet's friends, namely Abu Juham Ibn Hudhaifah and Muawiyah Ibn Abi Sufyan, the Prophet gave advice that < uamiyah too poor and and Abu Juham too hard the character , so that the Prophet suggested No choose both of them. Finally Fatimah got married with Usamah.¹⁶

¹³ *Fiqh Sunnah 13 / by: Sayyid Sabiq: translated by: Kamaluddin A. Marzuki / Senayan* , accessed July 24, 2024, https://opac.iainpare.ac.id/2Findex.php%3Fp%3Dshow_detail%26id%3D276%26keywords%3D.

¹⁴ Najib, "The Controversy of Women as Marriage Guardians"; "Subulus Salam: Syarah Bulughul Maram) / Muhammad bin Ismail Al-Amir Ash-Shan'ani; translator, Muhammad Isnani, Lc., Muhammad Rasikh, Lc., Muslim Arif, Lc., Ali Fauzan, Lc.; editor, Darus Sunnah Team | OPAC National Library of the Republic of Indonesia.," accessed November 18, 2023, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1215448>.

¹⁵ Najib, "The Controversy of Women as Marriage Guardians"; *Fiqh Sunnah 13 / by* ; "Bidayatul mujtahid wa nihayatul muqtashid: a complete reference for comparative fiqh of madzhabs / Ibn Rushd; translator, Al-Mas'udah; editor, Achmad Zirzis. | OPAC National Library of the Republic of Indonesia.," accessed July 24, 2024, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1008854>.

¹⁶ Najib, "The Controversy of Women as Guardians of Marriage"; "Subulus Salam: Syarah Bulughul Maram) / Muhammad bin Ismail Al-Amir Ash-Shan'ani; translator, Muhammad Isnani, Lc., Muhammad Rasikh, Lc., Muslim Arif, Lc., Ali Fauzan, Lc.; editor, Darus Sunnah Team | OPAC National Library of the Republic of Indonesia.;" Yusuf; Al-Qardawi, *Al-Halal wa al-haram fi al-Islam / Yusuf al-Qardawi* (Maktabah Wahbah, 1993), [/library.walisongo.ac.id/slims/index.php?p=show_detail&id=9180](https://library.walisongo.ac.id/slims/index.php?p=show_detail&id=9180); Abdur Rahman I. ; Doi, *Women in Shari'ah : Islamic Law / Abdur Rahman I. Doi* (Noordeen, 1992), https://perpanjangmandiri.walisongo.ac.id/slims/index.php?p=show_detail&id=10085&keywords=.

View whether must there is a Guardian or no the Ulama also in the end discussing Women can what to be a Guardian No. As No can to marry himself myself. Good in condition he become a Guardian or become a representative of other people. The arguments that are built is with see hadith that has been narrated by Ibn Majah, Ad-Duruqutni and Abu Hurairah which provides an overview of statement Prophet :

عن أبي هريرة رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: «لا تُرْوَجُ المرأةُ المرأةَ، ولا تُرْوَجُ المرأةُ نفسها، فَإِنَّ الزَّانِيَةَ هي التي تُرْوَجُ نفسها»

Anya Abe Harry Riya God ANN Call : Call Rosol God Salim God Allah Jesus: lo The Lord The Most Merciful The Lord of the Rings, Yes Toze The Most Merciful Nafisa, Faisal The Lord of the Rings Hi Alto Toze Nafisa »

“A woman does not can marrying off (another) woman and also not can to marry herself Alone”¹⁷

So with existence base this, then Don't amazed Most of it is stated in the book of Fiqh Man (dhukurah) is One conditions that must be met For become marriage guardian , in other languages is marriage whose guardian is a woman is considered wedding is not valid. Because of the factors and arguments above , even in several books of Islamic jurisprudence on women who become guardians of marriage or to marry himself considered alone as adulterer .¹⁸ whereas if We shifted to Abu Hanifah 's study view that women can to marry himself alone , women can also become a Guardian for his child who has not mature or also become a representative of another person to marry her off ¹⁹.

view This No without Abu Hanifah's basis have a view under A Woman Has to marry child his woman with his consent. After the Guardians his marriage knowing, they reject wedding said . Then matter this is brought in studies that were taught by Ali bin Abi Thalib, and he allow and assume legitimate wedding that ²⁰. and this History can give a number of understanding important *First* Women can become marriage guardian, and *second* that the basic point that must be understood is legitimate marriage No based on on the authority of the Guardian. But it is based on the agreement from Women's side . Women and men who need guardian Actually only can be implemented for women and men who have not adults, while those who are already mature No must There is a Guardian. That needs to be studied more carry on is context what kind of adult allows it? a men and women who can to marry himself himself and become a Guardian for himself yourself and others . Because in some societies it is very different, size is considered adult and not here it is study objectification law should be work and measure context maturity so that later draft guardian can be slid from only right man can also move to the female side.

Second the position of the Guardian in the Contract , if We reviewing the word Wali can also be called Clear *area* the meaning you want to convey is friendship , help and power and strength so with thus context of the word guardian contain understanding protector and person who has power²¹ if reviewed from term can be interpreted as a person who is blessed power For do action law without There is permission from other parties or other people.²² with thus meaning in a way generally is guardian is someone who has and is able do action law Good for himself yourself and

¹⁷ Najib, “The Controversy of Women as Guardians of Marriage”; “Subulus Salam: Syarah Bulughul Maram) / Muhammad bin Ismail Al-Amir Ash-Shan’ani; translator, Muhammad Isnani, Lc., Muhammad Rasikh, Lc., Muslim Arif, Lc., Ali Fauzan, Lc.; editor, Darus Sunnah Team | OPAC National Library of the Republic of Indonesia.”; شرح وترجمة حديث: لا تُرْوَجُ المرأةُ المرأةَ، ولا تُرْوَجُ المرأةُ نفسها، فإن: “ موسوعة الأحاديث النبوية الزانية هي التي تُرْوَجُ نفسها.” accessed 24 July 2024, <https://hadeethenc.com/ar/browse/hadith/58069>.

¹⁸ “Subulus Salam: Syarah Bulughul Maram) / Muhammad bin Ismail Al-Amir Ash-Shan’ani; translator, Muhammad Isnani, Lc., Muhammad Rasikh, Lc., Muslim Arif, Lc., Ali Fauzan, Lc.; editor, Darus Sunnah Team | OPAC National Library of the Republic of Indonesia.”

¹⁹ “Subulus Salam: Syarah Bulughul Maram) / Muhammad bin Ismail Al-Amir Ash-Shan’ani; translator, Muhammad Isnani, Lc., Muhammad Rasikh, Lc., Muslim Arif, Lc., Ali Fauzan, Lc.; editor, Darus Sunnah Team | OPAC National Library of the Republic of Indonesia.”;

“Islamic Fiqh wa Adillatuhu / Wahbah Az-Zuhaili; Translator, Abdul Hayyie al- Kattani, et al.; editor, Budi Permadi | OPAC National Library of the Republic of Indonesia.” accessed November 18, 2023, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=118843>.

²⁰ “Book of Al Mabsuth Volume 1: Juz 1 - 2 / Syamsuddin Al Sarkhasi | Library of Sultan Syarif Kasim State Islamic University, Riau,” accessed July 24, 2024, <https://inlisite.uin-suska.ac.id/opac/detail-opac?id=31130>.

²¹ “A Dictionary of Modern Written Arabic ,” in Wikipedia , May 4, 2024, https://en.wikipedia.org/w/index.php?title=A_Dictionary_of_Modern_Written_Arabic&oldid=1222148128.

²² “Islamic Fiqh and Adillatuhu / Wahbah Az- Zuhaili; Translator, Abdul Hayyie al- Kattani, et al.; Editor, Budi Permadi | OPAC National Library of the Republic of Indonesia.”

for others, Only in the existing reality in context the marriage referred to by the Guardian is do a action on other person's name below his guardianship and not on himself Alone .

Draft existing guardian in contract if reviewed in a way more wide is its function as benefit For guard the rights of those below his guardianship , if in study subject law in study knowledge principle fiqh is known with The Court God , and humans Good men and women are as Legal subjects can be seen from two tools skills law (al-ahliyah) namely ability accept rights and obligations and (al- Ahliyah wujub) and ability For do action law (al- Ahliyah al- ada)²³ in ability accept rights and obligations (al- Ahliyah al- wujub) are the view that gives legitimacy that somebody That deserve to be loved rights and obligations. And things This in a way directly everyone has appropriateness those. Because they together The same The same human. With thus as long as it becomes object law is man so he own appropriateness the Good man and Women. In Context (ah- Ahliyah al- wujub) has two kinds , namely human beings who have ability not enough perfect (al- Ahliyah al- wujub an Naqisah) and humans who have ability accept in a way perfect (al-Ahliyah al- wujub al- Kamilah), deep category (al- Ahliyah al- wujub an Naqisah) is ability that can receive right just but No Can accept obligation , in matter this is mentioned as The fetus is still in content Her mother , in context inheritance, waqf and so on. And the ability is said to be perfect what if can accept all existing obligations. And things it's very attached until die.²⁴

Whereas the second ability is ability (al- Ahliyah al- wujub al-Kamilah). Is legitimate ability for someone get rights and obligations and in context contract, then Action Action That is valid and can cause consequence law and vice versa if you make a mistake you will be punished with legal action . So with thus (al- Ahliyah al- wujub al-Kamilah) is question accountability and measurable with Talk

act and be of sound mind. In context development knowledge knowledge ability someone act This There is three type *First* is a person who does not have the same (al- Ahliyah al ada). once (faqid al- Ahliyah) like child small yet mumayiz, a madman and a less intelligent person have reason , while the *second* is a person who has ability under - acting perfect (Naqis al- ahliyah) like a pious child that is child who has can differentiate good and bad in in an action and deed . It is just Not yet perfect his mind. So that need get advice from adults, and the third is a person who has ability act in a way perfect (kamil - al - ahliyah) namely an adult who is intelligent healthy , with so in principle ability act (Ahlihay al- ada) someone can be measured with ability his wits and abilities his maturity .²⁵

So from that, ability become a Guardian with ability act it is very related with close, then with thus someone who doesn't have ability act (Faqid al- Ahliyah) then with thus all action must with guidance and permission from the Guardian. Likewise then basically people who have ability his actions not enough perfect (Naqis al- Ahliyah). Whereas in existing contracts and transactions and containing benefits, such as in context accept grants , and charity , then the act of charity without must permission from His guardian. However If transaction the contract that contains element of ownership rights then get in The view of the Ulama is No legitimate even though with with the permission of the Guardian, then If in rule the agreement in which There is usefulness and contains elements displacement right owned by then the action is legitimate or No is depends permission His guardian. So basically the existence of a Guardian on the side of the Faqid and Naqish al- ahliyah This is as a guide and one who safeguards the rights and benefits of those under him his guardianship. While on the contrary, people who fulfill ability act perfect (Kamil al- ahliyah) they No need a Guardian even can

²³ Wahbah; al Zuhaili, *Usul al fiqh al Islami 1 / Wahbah al Zuhaili* (Dar al Fikr, 1986), //10.170.10.3%2Findex.php%3Fp%3Dshow_detail%26id%3D697%26keywords%3D.

²⁴ Ali; Hasbullah, *Ushul al tasyri' al Islami* (Daru Al Fikr Al Arabi, 1997), //perpus.staima-alhikam.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D2486%26keywords%3D.

²⁵ Abdul Karim; Zaidan, *Al Wajiz fi ushul al fiqh* (Muassasah Al Risale, 1996), //perpus.staima-alhikam.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D1878%26keywords%3D; Abdul Wahab; Khalaf, *Ushul Fiqh Science: Abdul Wahab Khalaf* (Darul Hadith, 2003), //slims.perpus.iainptk.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D42238.

become guardian for those who really necessary and appropriate be under his guardianship²⁶

With thus to dig with Ulama's view with mutually contradictory arguments intertwined This give the Ushul Fiqh process space is part from Objectification of Islamic Law in Indonesia: A Study of Khi (Compilation of Islamic Law on The Concept of Marriage Guardians in Indonesia). KHI which was compiled based on the 13 existing books most give room to view about only men who are allowed become a marriage guardian. *Third Female Marriage Guardian: Is it possible? Objectification Efforts Islamic law in KHI (Compilation) Islamic law*, in matter This must departing from the concept of the Guardian who is indeed appear as an Effort for Maslahah towards people who are considered become or below his guardianship with objective to maintain and care for right they. Reason This is the one who gives background behind Why The majority of Ulama provide and require the existence of a Guardian for Women, including Adult Women , in marriage contract , in Ulama's view (must) see context his time) Women were considered as someone who is less capable choose the right partner, because they will easy fooled and on the next the rights they have have will be ignored consequence matter So with that. Thus women need a guardian who can give advice and guidance as well as choose a suitable partner and also can give advice and approval and consideration.²⁷

So from That a view that places adult women who then must be under guardianship is form views that are temporal and contextual in nature , in other things can be understood that at the time That woman is considered as a person who does not perfect his skills in act (naqis al ahliyah) then required guardianship and matters This For guard welfare and maintenance his rights . In the context day This objective Adult women who need guardianship for the present Still in corridor benefit or harm? refers to some case about Lots single parent who is left behind by her husband

and struggles independent to live children the woman and then When the child Marry must be supervised to his biological father? then the answer is need Objectification of Islamic Law in Indonesia Re-understanding the basics argument in the related KHI with the Guardians and the living community day this , if of course Already No relevant so to function guardian as advisor and mentor No coercive . With placing women as lesser people perfect her skills and actions (Naqis al-ahliyah) then women do not can to marry himself alone, moreover marry someone else. With matter thus then Women are clear No Can become guardian. If we critical more in criteria for people who have ability act in a way perfect (Kamil al-ahliyah) as explained in the existing explanation, namely man mature with the health of his mind, then truly an adult woman also can in view as a person who has ability act in a way perfect (Kamil al- Ahliyah). So with thus If expression This can be justified women in modern times No need a Guardian in do contract , Including in Category even the marriage contract more from those are the women entitled become guardian to Girls who have been this is in his care with sweat and work hard that exists , then can be concluded under Compilation Islamic law which only gather view of the 13 books of fiqh that are true since early in the morning with framework the become not enough relevant in The context of Indonesian society today, which provides equality between men and women in front law Islam and Law general .

Movements like This is the Movement for the Objectification of Islamic Law in Indonesia: Study of Khi (Compilation of Islamic Law on The Concept of Marriage Guardians in Indonesia) Where to see KHI from origin Formation and trying do excavation repeat to existing studies in KHI and do update with existing community context moment This.

Khi Objectivation: A Study of Women Marriage Guardians From A Progressive Maqasid Syariah Perspective

Seeing the above understanding, the researcher tries with " Objectification of Khi: Study of Female

²⁶ "Hikmatut tasyri ': revealing the wisdom behind the commandment of worship / Syekh Ali Ahmad al-Jurjawi; translator, Toyib Arifin, Lc ; editor, Abd. Kholiq | OPAC National Library of the Republic of Indonesia," accessed 24 July 2024, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1161373>; Zaidan, *Al Wajiz fi ushul al fiqh* .

²⁷ al Zuhaili, *Ushul al fiqh al Islami 1 / Wahbah al Zuhaili* .

Marriage Guardians in the Perspective of Progressive Maqasid Syariah" for the *second approach*, is to use System Theory and *Maqasid Syari'ah*, System Theory is a new independent discipline, which involves a number and various sub-disciplines. Systems Theory and System Analysis are inseparable parts of the Systems approach. *Systems Theory* is another type of philosophical approach that is 'anti-modernism' (*anti-modernity*) which criticizes modernity in a different way from the way it is usually used by post-modern theories. The basic concepts commonly used in the *Systems* approach and analysis include seeing the problem as a whole (*Wholeness*), always being open to various possibilities for improvement and refinement (*Openness*), interconnectedness between values (*Interrelated-Hierarchy*), involving various dimensions (*Multidimensionality*) and prioritizing the main goal (*Purposefulness*).²⁸The six features are closely related, interpenetrating (semi-permeable) and related to each other, thus forming a complete system of thought, one of the bridges between system theory and *maqasid theory* is system analysis with the feature of "intention" (*maqasid*) this is based on the fact that the effectiveness of a system is measured based on the level of achievement of its goals, so the effectiveness of Islamic law is assessed based on the level of achievement of its *maqasid sharia*.²⁹

The description of the first system theory, Cognitive features (*Al-idrokiyyah, cognition*) proposes an Islamic legal system that separates 'revelation' from its cognition, which means that fiqh is shifted from the field of 'divine knowledge' to the field of 'cognition' of human rational understanding of *divine knowledge*. This clear distinction between sharia and fiqh has implications for the absence of practical fiqh opinions that are qualified or claimed as *divine knowledge* in "Objectification of Khi: Study of Female Marriage Guardians in the Perspective of Progressive Sharia Maqasid" we must bring it

towards cognition in the form of practical fiqh that can be changed³⁰

Second, the comprehensive feature (*al-kulliyah, wolloiness*) is to fix the weaknesses of classical ushul fiqh which often uses a reductionist and atomistic approach. In this proposal there is an attempt to reactulize the concept of Islamic law towards "Objectification of Khi: Study of Female Marriage Guardians in the Perspective of Progressive Maqasid Sharia" *Third*, the openness feature (*infittahyyah, openness*) functions to expand the reach of 'urf (customs), with this concept trying to open the views of an Islamic Law expert to the concepts of natural, social, and cultural sciences. The concept of " Objectification of Khi: Study of Female Marriage Guardians in the Perspective of Progressive Sharia Maqasid" which already has an embryo in Islamic Law and is tried to be developed more widely with this feature. *Fourth*, the Interrelated Hierarchy Feature (*al-Harakiyyah al-mu'tamadah tabadulliyan, interalitud hierarchy*) this feature tries to open the reach of *maqāsīd*, if traditional or classical *maqāsīd* is only particular and/or specific, then the interrelated hierarchy feature provides a social and public dimension to contemporary *maqāsīd theory*. So that " Khi Objectivation: Study of Female Marriage Trustees in the Progressive Maqasid Sharia Perspective" is not an atomistic thing, it is friendly to " Khi Objectivation: Study of Female Marriage Guardians in the Progressive Sharia Maqasid Perspective" including the public dimension and social dimension which must receive serious and in-depth study like other fiqh terms. *Fifth*, the multi-dimensional feature (*taaddud al-abad; multidimensionality*) attempts to deal with conflicting postulates by including *maqāsīd* as a new reading. So the question of " Khi Objectivation: Study of Female Marriage Guardians from the Perspective of Progressive Maqasid Sharia" in the study of fiqh is seen from its *maqasid*. *Sixth*, the feature of purpose (*al-maqaqsidiyyah; purposelfunness*) that " Objectification of Khi: Study of Female Marriage

²⁸ Jasser Auda, "Maqasid al-Shariah: An introductory guide," *Herndon: International Institute of Islamic Thought, (IIIT)*, 2008; Hidayati, "Women as Guardians of Marriage."

²⁹ Auda, "Maqasid al-Shariah"; Muhammad and Maulidia, "The Position of Women as Guardians of Marriage"; Fauzi, "Women as Guardians of Marriage."

³⁰ Jasser Auda, *Maqasid al-shariah: A beginner's guide*, vol. 14 (International Institute of Islamic Thought (IIIT), 2008); Jasser Auda, "A Maqāsīdī approach to contemporary application of the Shari'ah," *Intellectual Discourse* 19, no. 2 (2011); Retna Gumanti, "Maqasid Al-Syariah According to Jasser Auda (System Approach in Islamic Law)," *Al Himayah Journal* 2, no. 1 (2018): 97–118.

Guardians in the Perspective of Progressive Sharia Maqasid" is included in *maqāsid*, because the Islamic religion teaches *rahmatil lil 'alamin*³¹

The *Maqasid Syariah* used in this research is the concept of *maqasid* contemporary concept developed by Jasse Auda, this concept tries to shift *maqasid* which has the dimension of "guardianship" Preventive and "protection" towards "Development" and "Human Rights" which are based on advocacy, for example from *hifd al-dîn* (protection of Religion) which in the classics is interpreted as "punishment for leaving Religion" to "freedom of belief" *Freedom of Faith*, while *hifd al-nafs* (protecting the Soul) can be developed from protecting and providing "Objectification of KHI: Study of Female Marriage Guardians in the Perspective of Progressive Sharia Maqasid".

There is a Maqasid Syariah process according to Jasse Auda:



Figure 1: classical era.



Figure 2: modern era.



Figure 3: Post Modern era.

Conclusion

So there are two major conclusions in this paper, *first* that what is meant by "Objectification of KHI: Study of Female Marriage Guardians in the Perspective of Progressive Maqasid Sharia" is that the objectification of Islamic law can also be used on Marriage Guardians/Witnesses and Islamic Heirs who have also undergone various in-depth studies in Indonesia, the use of customary division of each region for example in Java with Guardians and heirs divided equally, dividing equally for all children is *local Wisdom* used by religious leaders and community leaders to objectify Islamic law through customary marriage, culture and existing social conditions, on this occasion the objectification of Islamic law is tried to provide an in-depth analysis related to the study of Marriage Guardians who are still not local wisdom in their implementation. *Second*, explore KHI studies and sources, namely the 13 existing books of fiqh and try to trace this study to the study of Ushul fiqh and look critically at the placement of women as guardians of marriage and review it with the same study and then examine it with the objectification of Indonesian-style Islamic law. *Second* that women as marriage guardians is a process where the shift in the authority of female guardians has space and by reading and exploring linguistic studies and then reading it with the view of Maqasid sharia in the context of Jasse Auda which strongly supports women as marriage guardians.

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³¹ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law* (International Institute of Islamic Thought (IIIT), 2022); Gumanti, "Maqasid Al-Syariah According to Jasser Auda (System Approach in Islamic Law)."

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