

**Judicial Protection of Women's Marital Rights in Cases of *Wali*
'Adhal:
A Juridical Analysis of Religious Court Decision No.
028/Pdt.P/2021/PA.Kdr**

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Abstract: *This study examines the implementation of women's rights protection in cases of wali 'adl through the application of the Indonesian Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), as reflected in Decision Number 028/Pdt.P/2021/PA.Kdr of the Kediri Religious Court. The position of a marriage guardian (wali nikah) in Islamic law is intended as a protective institution; however, in practice, guardianship authority is often misused to obstruct women's right to marry without valid shar'i justification. This research employs normative legal methodology using statutory and case approaches, with primary legal materials consisting of court decisions, the Compilation of Islamic Law, Law Number 1 of 1974 on Marriage, and the Regulation of the Minister of Religious Affairs Number 30 of 2005. The findings reveal that the court adopted a substantive justice approach by prioritizing women's autonomy, dignity, and legal certainty over formalistic guardianship authority. The designation of a judicial guardian (wali hakim) in this case demonstrates the progressive role of the Religious Court in harmonizing Islamic legal principles, human rights norms, and state law. This decision affirms that KHI functions as an effective legal instrument for preventing abuse of guardianship and ensuring women's fundamental right to marriage within Indonesia's Islamic legal system*

Keywords: *Wali 'Adl, Women's Rights, Compilation of Islamic Law, Religious Court, Substantive Justice*

Abstrak: *Penelitian ini mengkaji implementasi perlindungan hak perempuan dalam perkara wali adhol melalui penerapan Kompilasi Hukum Islam (KHI), sebagaimana tercermin dalam Putusan Pengadilan Agama Kota Kediri Nomor 028/Pdt.P/2021/PA.Kdr. Dalam hukum Islam, wali nikah pada dasarnya berfungsi sebagai institusi perlindungan bagi perempuan, namun dalam praktiknya kewenangan tersebut kerap disalahgunakan sehingga menghambat hak perempuan untuk menikah tanpa alasan syar'i yang sah. Penelitian ini*

menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Bahan hukum utama meliputi putusan pengadilan, KHI, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, serta Peraturan Menteri Agama Nomor 30 Tahun 2005. Hasil penelitian menunjukkan bahwa majelis hakim menerapkan pendekatan keadilan substantif dengan mengedepankan otonomi, martabat, dan kepastian hukum bagi perempuan, di atas otoritas wali nasab yang bersifat formalistik. Penetapan wali hakim dalam perkara ini menegaskan peran progresif Pengadilan Agama dalam mengharmonisasikan prinsip hukum Islam, nilai hak asasi manusia, dan hukum negara. Putusan ini membuktikan bahwa KHI berfungsi sebagai instrumen hukum yang efektif dalam mencegah penyalahgunaan hak perwalian serta menjamin hak fundamental perempuan untuk menikah secara sah dalam sistem hukum Islam di Indonesia.

Kata Kunci: *Wali Adhol, Hak Perempuan, Kompilasi Hukum Islam, Pengadilan Agama, Keadilan Substantif.*

Introduction

Marriage is regarded in Islam as a sacred institution that serves not merely to unite a man and a woman, but also as an act of worship aimed at the completion of one's faith and the observance of the Sunnah of the Prophet Muhammad (*peace be upon him*). Through marriage, a man and a woman establish the foundational structure of a family grounded in mutual affection and compassion, with the ultimate objective of attaining well-being in both worldly life and the hereafter.¹ Given its sacred nature, Islamic law prescribes a set of strict legal requirements to ensure the validity of marriage, one of which is the presence of a (*wali*) as an essential (*rukun*) of the marriage contract.²

In the framework of Islamic law and the Indonesian *Compilation of Islamic Law* (Kompilasi Hukum Islam KHI), the marriage guardian

¹ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh*, vol. 7 (Damascus: Dār al-Fikr, 1989), 36.

² Republik Indonesia, *Kompilasi Hukum Islam* (Instruksi Presiden No. 1 Tahun 1991), Pasal 14.

(*wali nikah*) occupies a pivotal legal position as a protective authority for the prospective bride. However, in practice, this guardianship right is frequently misused by a biological guardian (*wali nasab*) through unjustified refusal to consent to a marriage without any legitimate religious (*shar‘i*) grounds, a condition legally referred to as *wali ‘adhal*. This phenomenon constitutes a serious legal and social issue, as it directly obstructs women’s fundamental right to establish a family through a lawful marriage, thereby necessitating judicial intervention to ensure legal certainty and the protection of women’s rights within the Islamic legal system.³

The implications of *wali ‘adl* are particularly detrimental to women, as their civil and religious rights become constrained by the excessive exercise of guardianship authority. In such circumstances, the state, through the Religious Courts (*Pengadilan Agama*), assumes a crucial role in providing substantive legal protection. Pursuant to Article 23 paragraph (2) of the Indonesian Compilation of Islamic Law (*Kompilasi Hukum Islam*), the Religious Court is vested with the authority to examine the legitimacy of the guardian’s refusal and, where such refusal is proven to be arbitrary or unjustified under Islamic law, to appoint a judicial guardian (*wali hākim*) as a legal remedy. This mechanism reflects the harmonization between classical Islamic jurisprudence and contemporary legal frameworks in safeguarding women’s fundamental right to marriage.⁴

From a juridical perspective, the protection of women’s rights in cases of *wali ‘adl* is reinforced through the harmonization of Law No. 1 of 1974 on Marriage and the Indonesian Compilation of Islamic Law (KHI). Judges assess the material validity of marriage by referring to Articles 6(1) and 8 of the Marriage Law in conjunction with Articles 16(1), 39, and 40 of the KHI. Where the prospective spouses have

³ Wahbah al-Zuhayli, *Islamic Jurisprudence and Its Proofs*, vol. 9 (Damascus: Dar al-Fikr, 2011), 669–672.

⁴ Wahbah al-Zuhaylī, *Islamic Jurisprudence and Its Proofs (al-Fiqh al-Islāmī wa Adillatuhu)*, vol. 9 (Damascus: Dār al-Fikr, 2007), 6675.

fulfilled all substantive requirements and face no legal impediments, such as prohibited kinship or breastfeeding relations, a guardian's refusal based on subjective motives such as compelling reconciliation with a former spouse lacks legal justification. In such circumstances, state intervention through the Religious Court is necessary to ensure that women's civil and religious rights to form a lawful family are not subordinated to the unilateral interests of the *wali nasab*.⁵

The Decision No. 028/Pdt.P/2021/PA.Kdr demonstrates the judiciary's application of the *maslahah* (public interest) approach grounded in Islamic legal principles to safeguard women's dignity and rights. The panel of judges assessed not only the formal legality of guardianship but also the psychological and religious implications of delaying marriage, which could potentially result in *mafsadah* (harm) and contravene Islamic objectives.⁶ By appointing a judicial guardian (*wali hakim*) pursuant to Article 23(2) of the Compilation of Islamic Law and Regulation of the Minister of Religious Affairs No. 30 of 2005, the Religious Court effectively functioned as a protector against arbitrary guardianship (*abuse of power*). This case affirms the role of the KHI as a progressive legal instrument that ensures substantive justice for women within the private sphere of Islamic family law.⁷

The relevance of women's rights protection in cases of *wali 'adl* is clearly reflected in Decision of the Kediri Religious Court No. 028/Pdt.P/2021/PA.Kdr. The case involved a 43-year-old divorced woman who intended to marry her chosen partner but faced refusal from her biological brother acting as her lawful guardian (*wali nasab*). The refusal was based solely on the guardian's personal wish that the petitioner reconcile with her former husband, a justification deemed legally unfounded by the court. The panel of judges determined that such

⁵ Supreme Court of the Republic of Indonesia, *Compilation of Islamic Law (Kompilasi Hukum Islam)*, Arts. 16(1), 39, and 40.

⁶ Ministry of Religious Affairs of the Republic of Indonesia, *Compilation of Islamic Law* (Presidential Instruction No. 1 of 1991), Article 23(2).

⁷ M. Yahya Harahap, *Indonesian Islamic Family Law: Normative and Judicial Perspectives* (Jakarta: Sinar Grafika, 2016), 214.

refusal constituted *wali 'adl*, as it obstructed a lawful marriage without a valid *shar'i* reason.⁸ Consequently, pursuant to Article 23(2) of the Compilation of Islamic Law (*Kompilasi Hukum Islam*) and relevant regulations, the court appointed a *wali hakim* to safeguard the petitioner's civil and religious rights. This decision serves as an important case study demonstrating how the implementation of KHI functions as a progressive legal instrument in ensuring substantive justice and protecting women from arbitrary abuses of guardianship authority within Islamic family law in Indonesia.

Method

This study employs normative legal research grounded in doctrinal analysis of legal texts and judicial documents. It adopts both a case approach and a statutory approach, focusing on the decision of the Religious Court of Kediri City Number 028/Pdt.P/2021/PA.Kdr concerning *wali 'adl* (abusive guardianship). The primary legal materials include the court decision, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), Law Number 1 of 1974 on Marriage, and Regulation of the Minister of Religious Affairs Number 30 of 2005 on *wali 'adl*.⁹

Secondary materials consist of scholarly books and peer-reviewed journal articles discussing guardianship in Islamic law, women's rights protection, and the practice of religious courts in Indonesia. Data were collected through systematic document study and analyzed qualitatively using a descriptive-analytical method, with

⁸ Ministry of Religious Affairs of the Republic of Indonesia, Regulation No. 30 of 2005 on the Appointment of Marriage Guardians (*Wali Hakim*).

⁹ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2015), 85.

conclusions drawn deductively from general legal norms to the specific case examined.¹⁰

Discussion

Concept of *Wali Adhol* in Islamic Law and the Compilation of Islamic Law (KHI)

In classical Islamic jurisprudence, the presence of a marriage guardian (*wali*) constitutes an essential pillar of marriage, serving to safeguard the welfare and dignity of women under guardianship. Although the *wali* is granted legal authority to solemnize a marriage, such authority is neither absolute nor discretionary. Within this framework emerges the concept of *wali adhol*, referring to a situation in which a guardian unjustifiably refuses to marry off a woman under his guardianship to a legally suitable (*kafa'ah*) prospective husband without valid *shar'i* grounds.¹¹ Such refusal is regarded as an abuse of guardianship rights, as it contradicts the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the protection of honor (*ḥifẓ al-'ird*) and lineage (*ḥifẓ al-nasl*). Consistent with the legal maxim *al-ḍarar yuzāl* (harm must be eliminated), an arbitrary refusal by a *wali* is deemed to cause legal and moral harm to women seeking to preserve their dignity through lawful marriage, thereby justifying judicial intervention under both Islamic law and Indonesia's Compilation of Islamic Law (KHI).¹²

The Compilation of Islamic Law (KHI) explicitly adopts the concept of *wali adhol* in Article 23 paragraph (2), stipulating that when a marriage guardian unjustifiably refuses (*adhol*), guardianship may be

¹⁰ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2015), 87.

¹¹ Wahbah al-Zuhayli, *Islamic Jurisprudence and Its Proofs* (Damascus: Dar al-Fikr, 2003), vol. 9, pp. 6695-6698.

¹² Cik Hasan Bisri, *Compilation of Islamic Law and Religious Courts in Indonesia* (Jakarta: Ministry of Religious Affairs of the Republic of Indonesia, 2010), pp. 112.

transferred to a *wali hakim* through a decision of the Religious Court. This provision affirms the authority of the state, exercised through judicial institutions, to intervene in order to protect women's marital rights from arbitrary obstruction. Administratively, this mechanism is further regulated by the Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 30 of 2005, which serves as a legal guideline for the Office of Religious Affairs (KUA) in solemnizing marriages conducted under the authority of a *wali hakim* following a final and binding court ruling.¹³

In the Indonesian legal context, the phenomenon of *wali adhol* is closely related to unequal power relations within the family. Guardians frequently exercise their authority to impose personal or familial interests that disregard the free consent of the prospective bride. Such practices reflect a misuse of guardianship that potentially leads to discrimination against women in marriage. The Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) functions as a mediating legal framework to prevent the guardian's prerogative from transforming into arbitrary domination. Consequently, in adjudicating *wali adhol* cases, religious courts are required to go beyond procedural formalities and examine substantive justice, ensuring that a woman's constitutional and religious right to establish a lawful family is not obstructed by non-judicial considerations.¹⁴

From a philosophical perspective, the transfer of guardianship from a *wali nasab* to a *wali hakim* represents the classical Islamic legal principle of *waliyyu man lā waliyya lahu*—the state acting as guardian for those deprived of rightful protection. In this sense, the *wali hakim* is not merely a technical substitute but a manifestation of state responsibility in restoring justice when the natural guardian fails to uphold religious and ethical duties. Systemically, *wali adhol* constitutes

¹³ Republic of Indonesia, *Compilation of Islamic Law* (Instruksi Presiden No. 1 of 1991), Article 23(2).

¹⁴ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia* (Jakarta: Kencana, 2017), 124–126; see also Article 23(2) of the Compilation of Islamic Law (KHI).

a breach of religious trust (*amanah*) that necessitates legal intervention to safeguard both individual dignity and broader social welfare (*maṣlahah*). The institutional role of the religious court thus becomes central in reasserting Islamic legal values that prioritize protection, fairness, and the elimination of harm (*raf' al-darar*).¹⁵

Protection of Women's Rights in Marriage under the Compilation of Islamic Law (KHI)

The *Compilation of Islamic Law (Kompilasi Hukum Islam/KHI)* was formulated as a legal instrument to ensure justice, legal certainty, and public welfare (*maṣlahah*) within Muslim family life in Indonesia. One form of substantive protection embodied in the KHI is the recognition of women's rights to freely determine their prospective spouse without coercion or unreasonable obstruction. This framework operationalizes a fundamental principle of Islamic law, namely *tarāḍī* (mutual consent), which constitutes an essential pillar for the validity and ethical foundation of marriage. By emphasizing consent, the KHI aligns normative Islamic values with contemporary legal standards aimed at safeguarding personal autonomy and human dignity within marital relations.¹⁶

In cases of *wali adhol* (the unjustified refusal of a marriage guardian), the KHI positions the Religious Court (*Pengadilan Agama*) as a mechanism of substantive legal protection when women's rights are threatened by the guardian's arbitrary or subjective actions. The judicial process for determining *wali adhol* provides women with access to justice and releases them from domination that contradicts principles of fairness and *maṣlahah*. This reflects the judge's role as *pater familias* of society, whereby the court intervenes to restore individual rights impeded by non-judicial barriers. Consequently, the KHI functions not

¹⁵Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 2019), 89-91; Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, vol. 9 (Damascus: Dar al-Fikr, 2007), 6685.

¹⁶ Ministry of Religious Affairs of the Republic of Indonesia, *Compilation of Islamic Law* (Jakarta: Directorate of Islamic Judiciary Development, 2018), Arts. 16.

merely as a procedural regulation, but as a progressive legal instrument that affirms gender justice and protects women's civil and religious rights within the sphere of Islamic family law.¹⁷

The existence of this legal mechanism demonstrates that Islamic law in Indonesia does not merely position women as objects of guardianship (*wilāyah*), but recognizes them as legal subjects entitled to defend their own interests. The Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) implicitly rejects the practice of *ijbār* (coercive marriage), which is often misunderstood and misapplied in traditional societies. By explicitly requiring the consent (*riḍā'*) of the prospective bride under Article 16 KHI, Islamic family law grants women the authority to accept or refuse a marriage proposal and to seek legal remedies when a guardian unjustifiably obstructs their marital choice without valid *shar'ī* (religiously legitimate) grounds.¹⁸

Furthermore, this protection extends to safeguarding women's human dignity. A guardian's act of imposing personal interests or obstructing marriage without lawful justification may be categorized as a form of gender-based discrimination within the familial sphere. In this respect, the KHI functions as a corrective instrument against patriarchal practices that marginalize women's civil rights. Accordingly, the protection of women's rights in marriage under the KHI reflects an effort to harmonize Islamic legal principles (*maqāṣid al-sharī'ah*), substantive justice, and universally recognized human rights norms within Indonesia's constitutional framework.¹⁹

The implementation of this protective mechanism also functions as a preventive measure against unregistered marriages (*nikah siri*). In the absence of accessible legal remedies for cases of *wali adhol* before

¹⁷ Nurul Huda, "Judicial Intervention and the Protection of Women's Rights in Cases of Wali Adhol," *Al-Ahkam: Journal of Islamic Family Law* 30, no. 2 (2020): 215

¹⁸ Compilation of Islamic Law of Indonesia (Kompilasi Hukum Islam), Article 16, emphasizing the necessity of consent of both prospective spouses as a substantive requirement for a valid marriage.

¹⁹ M. Atho Mudzhar, *Islamic Law and Social Transformation in Indonesia* (Jakarta: Ministry of Religious Affairs, 2010), pp. 112.

the Religious Courts, women facing unjustified guardianship obstruction are often compelled to resort to informal marital arrangements lacking legal recognition. The *Compilation of Islamic Law* (Kompilasi Hukum Islam/KHI) therefore operates as a normative bridge between religious compliance and state legal order, ensuring that women's marital rights are safeguarded both spiritually and juridically. By providing a clear procedural pathway through judicial intervention and administrative validation, KHI affirms legal certainty, protects women's civil status, and reinforces the integration of Islamic normative values with Indonesia's formal legal system.²⁰

Juridical Analysis of Decision No. 028/Pdt.P/2021/PA.Kdr

The case originated from a petition filed by a 43-year-old widowed woman who intended to marry a 48-year-old widower. As the petitioner's biological father had passed away, guardianship authority (*wilāyah al-nikāh*) legally shifted to her eldest brother as the closest agnatic guardian (*walī nasab*). However, the intended marriage was obstructed when the guardian explicitly refused to solemnize the marriage. This refusal was not grounded in any legally or religiously recognized impediment under Islamic law or Indonesian positive law, thereby constituting an act of *wali adhol* that unjustifiably restricted the petitioner's right to enter into a lawful marriage.²¹

Based on the facts revealed during the trial, the primary reason for the refusal was the guardian's subjective desire that the petitioner reconcile (*rujuk*) with her former husband. This refusal had legal consequences at the administrative level, as the Office of Religious Affairs (*Kantor Urusan Agama/KUA*) of Mojoroto District issued a formal rejection letter (Model N8) due to the unavailability of a guardian.

²⁰ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 145.

²¹ Article 23(2), *Compilation of Islamic Law of Indonesia* (Kompilasi Hukum Islam), which authorizes the Religious Court to appoint a *wali hakim* when a lawful guardian refuses without valid Shari'a-based reasons.

This administrative impasse ultimately prompted the petitioner to seek legal protection through the Religious Court of Kediri.²²

In examining the case, the Panel of Judges conducted a juridical assessment of the guardian's stated reasons. Under Islamic law, a guardian is permitted to refuse a marriage only on legitimate *shar'ī* grounds, such as religious incompatibility, the existence of a prohibited marital relationship (*mahram*), or demonstrable moral deficiency that could reasonably endanger the welfare of the bride. In this case, the reason that the petitioner should "return to her former husband" was deemed to lack any legal basis (*legal standing*) under both Islamic jurisprudence and positive law. The court found that the prospective husband met all substantive requirements for marriage, was a practicing Muslim, had no legal impediments, and had demonstrated good faith by proposing multiple times. Consequently, the judges held that compelling a woman to abandon her chosen future in favor of her past constituted a violation of personal autonomy (*freedom of will*). The refusal of the guardian was therefore legally qualified as *wali adhol*, an unlawful abuse of guardianship authority.²³

Judicial Reasoning and Substantive Justice In formulating its legal reasoning, the Panel of Judges adopted not only a textual interpretation of statutory law but also a humanistic–theological approach grounded in Islamic legal principles. The Court referred to Qur'anic injunctions, particularly Q.S. al-Nisā' (4):3 and Q.S. al-Nūr (24):32, which emphasize marriage as a religious obligation for those who possess both willingness and capability. Furthermore, the judges applied the well-established legal maxim *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (the prevention of harm takes precedence over the

²² Indonesian Supreme Court, *Compilation of Islamic Law (Kompilasi Hukum Islam)*, art. 23(2); Ministry of Religious Affairs Regulation No. 30 of 2005 on Wali Adhol.

²³ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2016), 189–191; Wahbah al-Zuhayli, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9 (Damascus: Dar al-Fikr, 2007), 6691–6693.

pursuit of benefit), underscoring the necessity of averting potential harm arising from unjustified obstruction of marriage by a guardian.²⁴

The Court reasoned that denying the petition would expose the applicant to psychological and social harm and potentially lead to violations of Islamic norms due to prolonged uncertainty in her marital status. Considering that the applicant was a legally competent adult woman (43 years old) with full capacity to act, the subjective authority of the *wali nasab* could not supersede her fundamental right to marry. Consequently, the guardian's refusal was legally classified as *wali adhol*, prompting the Court to appoint the Head of the Mojoroto Religious Affairs Office (KUA) as *wali hakim*. This decision reflects the judiciary's role in safeguarding women's rights and ensuring that Islamic law functions as an instrument of substantive justice, harmonizing religious norms with state legal protection.²⁵

Implementation of the Compilation of Islamic Law and Its Implications

Decision Number 028/Pdt.P/2021/PA.Kdr represents a concrete manifestation of the consistent and progressive implementation of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) by the Kediri Religious Court. The ruling is not merely grounded in statutory interpretation but integrates substantive human rights protection as embodied in Law Number 1 of 1974 on Marriage. Juridically, this coherence is reflected in the Court's reliance on Article 6(1) concerning the consent of the parties and Article 8 regarding marital impediments, harmonized with Articles 16(1), 39, and 40 of the KHI, to establish the

²⁴ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, Vol. 7 (Damascus: Dar al-Fikr, 1989), 101-103.

²⁵ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2013), 145.

absence of any legal or *shar'i* barriers preventing the applicant from entering into a valid marriage.²⁶

The implementation and implications of this judgment may be further elaborated through several key points as follows:

First, the Transformation of the Judge's Role as a Protector of Women's Rights. This decision affirms a significant shift in the role of judges within Indonesia's contemporary religious court system. Judges are no longer positioned merely as *la bouche de la loi* (the mouthpiece of the law), but as active protectors of women's rights against patriarchal practices and abusive family power relations. By invalidating the subjective authority of the lineage guardian (*wali nasab*), the court emphasized that the individual welfare (*maslahah*) of the woman must prevail over guardianship exercised without legal or religious justification. This ruling establishes an important precedent, demonstrating that women's autonomy in determining their marital future is fully safeguarded by the state through the normative framework of the Compilation of Islamic Law (KHI).²⁷

Second, the Assurance of Legal Certainty and Administrative Legitimacy. The judicial determination of *wali adhol* in this case produces concrete legal implications by ensuring certainty and administrative legitimacy for the applicant's marriage. Absent such a ruling, the applicant would have faced a dilemma between familial obedience and resorting to an unregistered marriage (*nikah siri*), a practice that often undermines women's legal status. Through this decision, the Religious Court enabled the Office of Religious Affairs (KUA) of Mojoroto District to lawfully appoint a *wali hakim*, thereby guaranteeing the protection of future civil rights, including inheritance entitlements and the legal status of offspring. Consequently, this ruling reinforces the function of KHI as a legal bridge between compliance with

²⁶ Republic of Indonesia, *Law Number 1 of 1974 on Marriage* (State Gazette of the Republic of Indonesia No. 1/1974), Articles 6(1) and 8.

²⁷ Compilation of Islamic Law (Indonesia), Article 23(2); see also Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2013), 112–114.

Islamic norms and adherence to state law, ensuring comprehensive legal protection for women in marital relations.²⁸

Third, the Realization of Substantive Justice over Formal Justice. This judgment reflects the court's success in realizing substantive justice, namely a condition in which the law provides concrete solutions for individuals constrained by arbitrary guardianship authority. The panel of judges demonstrated an understanding that Islamic law is fundamentally oriented toward facilitation (*taysīr*), not hardship. By determining that the guardian's refusal—based on the desire for the Applicant to reconcile with her former husband—did not constitute a valid *sharī* justification, the court effectively prevented an abuse of rights (*abuse of right*) within the institution of guardianship. This approach underscores the judiciary's role in ensuring that legal norms serve their ethical objectives (*maqāsid al-sharī'ah*), particularly the protection of human dignity and personal autonomy.²⁹

Fourth, Sociological Implications and Public Legal Education. From a sociological perspective, this decision provides an important form of legal education to the wider community by clarifying that guardianship in Islam does not represent absolute ownership over a woman's personal choices, but rather a protective responsibility bound by ethical and legal limits. The ruling offers moral encouragement for other women facing similar circumstances to assert their rights through lawful judicial mechanisms. Simultaneously, it serves as a warning to lineage guardians (*wali nasab*) against misusing their authority as a means of coercion or intimidation, as the Religious Court retains full

²⁸ Law No. 1 of 1974 on Marriage (Indonesia), Articles 6 and 8; Regulation of the Minister of Religious Affairs No. 30 of 2005 on *Wali Adhol*; Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practices in Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 156–158.

²⁹ Ibn 'Āshūr, *Maqāsid al-Sharī'ah al-Islāmiyyah* (Cairo: Dār al-Salām, 2006), 178–180; see also Kompilasi Hukum Islam (KHI), Article 23(2).

jurisdiction to revoke such authority in order to uphold justice and public welfare (*maṣlahah*).³⁰

Fifth, The Realization of Substantive Justice over Formal Justice
This decision reflects the court's success in realizing substantive justice, namely a condition in which the law provides concrete solutions for individuals constrained by arbitrary guardianship authority. The Panel of Judges demonstrated an understanding that Islamic law is intended to facilitate human welfare (*taysīr*), not to impose unnecessary hardship. By identifying that the guardian's refusal—based on the demand that the applicant reconcile with her former husband—did not constitute a valid *sharī* justification, the court effectively prevented the abuse of rights (*abuse of right*) within the institution of guardianship. This approach affirms that the exercise of guardianship must align with the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the protection of dignity and personal autonomy.³¹

Sixth, Sociological Implications and Public Legal Education
From a sociological perspective, this ruling provides important legal education for the broader community by clarifying that guardianship in Islam does not signify absolute ownership over women, but rather a protective and ethical responsibility. The decision offers moral encouragement to other women facing similar constraints to pursue their legal rights through proper judicial mechanisms. Simultaneously, it serves as a warning to *wali nasab* that guardianship authority may not be exercised as a tool of intimidation or coercion, as the court possesses full authority to revoke such power in the interest of justice and public welfare (*maṣlahah 'āmmah*).³²

³⁰ M. Yahya Harahap, *Hukum Perkawinan Nasional* (Jakarta: Sinar Grafika, 2016), 214. Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia* (Jakarta: Kencana, 2017), 143.

³¹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 21–25; see also Kompilasi Hukum Islam, Article 23(2).

³² M. Atho Mudzhar, *Islamic Law in Indonesia: Institutionalization and Legal Awareness* (Jakarta: INIS, 2003), 134.

Seventh, Reform of Shar‘ī Interpretation through Maslahah Mursalah The ruling reinforces the application of the juristic maxim “*Taşarruf al-imām ‘alā al-ra‘iyah manūṭun bi al-maşlahah*”, emphasizing that judicial authority must be exercised based on public welfare. By rejecting the guardian’s personal motives as lacking *al-asbāb al-shar‘iyah*, the court redirected the focus of Islamic law toward the protection of lineage (*hiḏz al-nasl*) and human dignity (*hiḏz al-naḑs*) through lawful and peaceful marriage.³³

Eighth, Strengthening the Institutional Integrity of the Office of Religious Affairs (KUA) The *wali adhol* ruling provides strong operational legitimacy for the Head of the KUA to act as a judicial guardian. Without a court order, KUA officials are legally vulnerable when officiating marriages without guardian consent. This decision functions as an “administrative shield,” ensuring professional service delivery, legal certainty, and supporting national efforts to reduce unregistered marriages while strengthening population administration governance.

Conclusion

This study concludes that the application of the *wali ‘aḑl* doctrine in Decision Number 028/Pdt.P/2021/PA.Kdr represents a significant advancement in the protection of women’s rights within Indonesia’s Islamic family law system. The court’s ruling confirms that guardianship authority (*wilāyah*) is not absolute and must be exercised within the limits of Islamic legal principles and positive law. When a lineage guardian (*wali nasab*) refuses to solemnize a marriage based on subjective or non-shar‘ī considerations, such conduct constitutes an abuse of rights that justifies judicial intervention. Furthermore, the appointment of a judicial guardian (*wali hakim*) demonstrates the realization of substantive justice over mere procedural compliance. The Religious Court not only ensured the formal validity of marriage but also addressed the psychological, social, and moral harm

³³ Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 30 of 2005 on *Wali Adhol*.

that could arise from unjustified obstruction. This approach reflects the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the protection of human dignity (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasl*), and honor (*ḥifẓ al-ird*).

The decision also highlights the evolving role of judges in Indonesia's religious judiciary as protectors of vulnerable parties, especially women, rather than as passive interpreters of legal texts. By prioritizing women's autonomy and consent, the court reinforced the principle that Islamic family law must function as a means of facilitation (*taysīr*) and justice, not as a tool for patriarchal domination. From a broader legal perspective, this ruling contributes to the harmonization of Islamic law, national legislation, and international human rights norms, including the principles embodied in CEDAW. It further strengthens legal certainty and administrative order by preventing unregistered marriages and ensuring full civil protection for women and their future families. Accordingly, this study affirms that the Compilation of Islamic Law (KHI) operates as a progressive and responsive legal framework capable of addressing contemporary challenges in Muslim family law while remaining faithful to Islamic jurisprudential values.

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