



## Judicial Guardianship in Marriage: A Comparative Study of Indonesia's Shāfi'ī and Iran's Ja'farī Schools from a Maqāsid al-Sharī'ah Perspective

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### Abstract

The concept of judicial guardianship in marriage is a significant issue in Islamic family law that highlights the fundamental differences between the Shāfi'ī school in Indonesia and the Ja'farī school in Iran. This distinction is not only juridical but also closely linked to the objectives of marriage (*maqāsid al-nikāh*), namely the preservation of religion (*hifz al-dīn*), lineage (*hifz al-nasl*), dignity (*hifz al-'ird*), and family welfare. This study employs a qualitative-juridical approach with normative-comparative analysis. Data were drawn from classical *fiqh* texts, Indonesian and Iranian marriage regulations, and contemporary literature. The analysis proceeded in three stages: (1) identifying normative texts concerning guardianship and judicial guardianship in the Shāfi'ī and Ja'farī traditions, (2) comparing their conceptual and practical applications, and (3) evaluating their alignment with *maqāsid al-nikāh*, particularly in promoting benefits, preventing harm (*mafsadah*), and ensuring family continuity. The findings show that the Shāfi'ī school regards the guardian as a prerequisite for valid marriage, with the judicial guardian acting as a substitute when a lineage guardian is absent or unqualified. By contrast, the Ja'farī school allows adult women to contract marriage without a guardian, except under specific circumstances. These differences reflect the dynamic nature of Islamic legal thought in responding to social realities, yet both approaches ultimately aim to realize the *maqāsid al-nikāh*: legal certainty, protection of dignity, and household stability. The novelty of this research lies in integrating cross-sectarian comparative analysis with the framework of *maqāsid al-sharī'ah*, an approach still rarely applied in studies of Islamic family law, particularly in the Indonesian and Iranian contexts. The implications of this research are twofold: enriching comparative *fiqh* scholarship as a reference for academic discourse and providing practical insights for the formulation of marriage regulations that remain faithful to *sharī'ah* while responsive to evolving social dynamics.

**Keywords:** Comparative Law, Islamic Family Law, Judicial Guardianship, Maqashid al-Nikah



## Abstrak

Konsep perwalian hakim dalam pernikahan merupakan isu penting dalam hukum keluarga Islam yang menyoroti perbedaan mendasar antara mazhab Syāfi'ī di Indonesia dan mazhab Ja'fari di Iran. Perbedaan ini tidak hanya bersifat yuridis, tetapi juga terkait erat dengan tujuan pernikahan (*maqāṣid al-nikāḥ*), yakni menjaga agama (*hifz al-dīn*), keturunan (*hifz al-nasl*), kehormatan (*hifz al-'ird*), dan kesejahteraan keluarga. Penelitian ini menggunakan pendekatan kualitatif-yuridis dengan analisis normatif-komparatif. Data diperoleh dari teks-teks klasik *fiqh*, regulasi pernikahan Indonesia dan Iran, serta literatur kontemporer. Analisis dilakukan dalam tiga tahap: (1) mengidentifikasi teks normatif terkait perwalian dan perwalian hakim dalam tradisi Syāfi'ī dan Ja'fari, (2) membandingkan penerapan konseptual dan praktis keduanya, dan (3) mengevaluasi kesesuaiannya dengan *maqāṣid al-nikāḥ*, khususnya dalam memajukan kemaslahatan, mencegah kerusakan (*mafsadah*), dan menjaga keberlangsungan keluarga. Temuan penelitian menunjukkan bahwa mazhab Syāfi'ī memandang wali sebagai syarat sah pernikahan, dengan wali hakim berfungsi sebagai pengganti ketika wali nasab tidak ada atau tidak memenuhi syarat. Sebaliknya, mazhab Ja'fari memperbolehkan perempuan dewasa menikah tanpa wali, kecuali dalam kondisi tertentu. Perbedaan ini mencerminkan sifat dinamis pemikiran hukum Islam dalam merespons realitas sosial, namun keduanya pada akhirnya bertujuan mewujudkan *maqāṣid al-nikāḥ*: kepastian hukum, perlindungan kehormatan, dan stabilitas rumah tangga. Kebaruan penelitian ini terletak pada integrasi analisis komparatif lintas mazhab dengan kerangka *maqāṣid al-sharī'ah*, sebuah pendekatan yang masih jarang diterapkan dalam kajian hukum keluarga Islam, khususnya dalam konteks Indonesia dan Iran. Implikasi penelitian ini ada dua: memperkaya khazanah komparatif *fiqh* sebagai rujukan akademik, serta memberikan wawasan praktis bagi perumusan regulasi pernikahan yang tetap setia pada *sharī'ah* sekaligus responsif terhadap dinamika sosial yang berkembang.

**Kata Kunci:** Perbandingan Hukum, Hukum Keluarga Islam, Perwalian Hakim, Maqashid al-Nikah

## Introduction

Marriage in Islam is not only a civil contract, but also a social institution that contains the purpose of maintaining the progeny, honor, and stability of society. One of the important aspects of marriage is the existence of guardians, especially when there are differences of opinion between sects. In the Shāfi'ī madhhab, which is the basis of family law in Indonesia, guardianship is a condition for the validity of the contract, so that without a guardian the marriage is declared invalid. In contrast, the Ja'fari school, which is practiced in Iran, gives greater room for women of puberty and intellect to marry themselves, while the role of the guardian is considered *mustahabb* (encouragement).<sup>1</sup> These epistemological differences have significant legal and social implications, particularly related to women's protection and the certainty of marital status.

The phenomenon of child marriage and the practice of forced marriage that still occurs in Indonesia and Iran shows how important it is to review the concept of guardian judges.<sup>2</sup> Data from the Indonesian Central Statistics Agency shows that although the average

<sup>1</sup> Akif Tahiev, "Application of Shia Islamic Law in Contemporary Legal Systems," *Laws* 14, no. 2 (2025): 23, <https://doi.org/10.3390/laws14020023>.

<sup>2</sup> Syawaluddin Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 68–85, <https://doi.org/10.32505/qadha.v11i1.8867>; Muhamad Kholid et al., "Preventing Child Marriage

age of first marriage has increased, the dispensation of child marriage is still high, with more than 50 thousand applications submitted to religious courts.<sup>3</sup> A UNICEF report (2021) also records thousands of cases of child marriage in Iran every year.<sup>4</sup> This condition confirms that the role of guardian judges, both in Indonesia and Iran, cannot only be understood as a legal formality, but must be positioned as a social protection mechanism within the framework of *maqāṣid al-nikāḥ*.

In general, the previous literature in Indonesia generally highlighted the guardian judge in the context of marriage dispensation or guardianship due to wali 'aḍl, but it was still descriptive-normative and lacked emphasis on *maqāṣid* analysis.<sup>5</sup> On the other hand, research in Iran focuses more on the social issues of early marriage and the legal status of children, without examining in depth the concept of wali in the perspective of Ja'fari jurisprudence or its comparison with the Shāfi'i madhhab.<sup>6</sup> This indicates a significant research gap, namely the lack of studies that explicitly compare the concept of the guardian judge in the Shāfi'i and Ja'fari schools through the analytical framework of *maqāṣid al-nikāḥ*.

This research is directed to provide a comprehensive understanding of the concept of guardian judges in Islamic marriage law by conducting a comparative analysis between the Shāfi'i and Ja'fari schools. In particular, this study examines how the concept is practiced in the Islamic family law system in Indonesia, which adheres to the Shāfi'i school, and in Iran which is based on the Ja'fari school. This comparative analysis is expected to be able to reveal fundamental similarities and differences in the views of the two schools regarding the urgency, position, and role of the guardian judge in ensuring the validity of the marriage contract.

In addition, this study also aims to evaluate the function of guardians of judges through the perspective of *maqāṣid al-nikāḥ*. The *maqāṣid* approach emphasizes the substantial purpose of marriage, such as the protection of the soul (*ḥifẓ al-naḥs*), honor (*ḥifẓ al-'ird*), and offspring (*ḥifẓ al-nasl*). Thus, the existence of guardians is not only understood as a formal legal tool to replace guardians who are impaired, but also as an instrument of protection for women and children from the practice of forced marriage, child marriage, and other forms of vulnerability.

Furthermore, this study seeks to offer a conceptual reformulation model of the role of guardian judges that is more adaptive to contemporary socio-legal dynamics. This reformulation emphasizes the need for a balance between the normative authority of Islamic

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<sup>3</sup> BPS (Central Statistics Agency), "Indonesian Marriage Statistics Womens First Marital Age - AllStats Search," accessed August 19, 2025, <https://searchengine.web.bps.go.id/search?mfd=0000&q=Indonesian+Marriage+Statistics+Womens+First+Marital+Age&content=all&page=1&title=0&from=all&to=all&sort=relevansi>.

<sup>4</sup> Nina, "Towards Ending Child Marriage," *Unicef Data*, October 13, 2021, <https://Data.Unicef.Org/Resources/Towards-Ending-Child-Marriage/>.

<sup>5</sup> Mardi Candra et al., "The Religious Court Trial of Wali Adhal Cases in The Indonesian Legal System: A Legal Analysis," *Jurnal Hukum Dan Peradilan* 12, no. 1 (March 2023): 77–96, <https://doi.org/10.25216/jhp.12.1.2023.77-96>.

<sup>6</sup> Ladan Rahbari, "Marriage, Parentage and Child Registration in Iran: Legal Status of Children of Unmarried Parents," *Social Sciences* 11, no. 3 (2022): 120, <https://doi.org/10.3390/socsci11030120>.

law, the certainty of state law, and the human values that are at the core of *maqāṣid al-syarī'ah*. The resulting model is expected to be a reference in designing Islamic family law policies that are more progressive, inclusive, and responsive to the principles of gender justice.

To achieve this goal, this study uses a qualitative-comparative method. This method combines a doctrinal approach by examining classical and contemporary *fiqh* texts of the Shāfi'ī and Ja'farī schools as well as normative juridical analysis of laws and regulations in Indonesia and Iran. This study was also strengthened by in-depth interviews with religious justice practitioners in Indonesia and scholars in Iran to obtain empirical and contextual perspectives. With this combination, this study not only uncovers normative constructions, but is also able to capture real socio-legal practices, thus providing a complete picture of the role of guardian judges in two different legal contexts.

The novelty of this research lies in the effort to integrate the analysis of comparative *fiqh* across sects with the framework of *maqāṣid* in the context of two contemporary Muslim countries, namely Indonesia and Iran. If previous studies have emphasized normative or social aspects more in isolation, this study offers a synthesis that assesses guardian judges as a legal instrument responsive to the protection of women and children. Thus, the results of this study not only enrich the academic discourse of Islamic family law, but also provide normative and practical recommendations for policymakers in reformulating the regulation of guardian judges in the modern era.

From this methodological framework, the research proposes the main argument that the guardian judge, when understood and applied through the *maqāṣid al-nikāḥ* approach, has the potential to become a more flexible, progressive, and equitable instrument of Islamic law. This approach allows for the strengthening of the substantial dimension of sharia that is oriented towards protection and benefit, and is able to bridge the tension between classical *fiqh* norms and the demands of social justice in the context of contemporary Muslim societies, such as Indonesia and Iran. In this perspective, guardians do not merely function as a substitute for guardians, but as agents of legal protection for vulnerable groups, especially women and children, as also developed within the framework of gender reform in Islam by thinkers such as Amina Wadud.<sup>7</sup>

### The Concept of Judicial Guardianship in the Shāfi'ī and Ja'farī Schools

In the context of marriage jurisprudence, the role of the guardian is an important component based on the texts and *ijtihad* of scholars. One of the main arguments that is a reference for the role of the guardian in marriage is the word of Allah SWT in QS. Al-Baqarah [2]: 232:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاصُوا بَيْنَهُمْ بِالْمَعْرُوفِ ۚ ذَلِكَ يُوعِظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَلِكَُمْ أَزْكَىٰ لَكُمْ وَأَطْهَرُ ۚ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

Meaning: If you divorce your wives and their *iddah* period has expired, then do not prevent them from marrying (again) their future husbands, if there is agreement between them in a good way.

<sup>7</sup> Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam*, with Internet Archive (Oxford: Oneworld, 2006): 310, <http://archive.org/details/insidegenderjiha0000wadud>.

This verse implicitly mentions the role of the guardian in the context of not preventing women from marrying, indicating the involvement of the guardian in the marriage process. Hadith of the Prophet SAW:

لَا نِكَاحَ إِلَّا بِوَلِيٍّ

Meaning: Marriage without a guardian is not valid. (HR. Abu Dawud, At-Tirmidzi, Ibn Majah; considered authentic by most scholars of hadith)

This hadith is the main basis of the majority school of thought (jumhur) that the presence of a guardian is a valid requirement for marriage. This role is not only administrative, but also a form of social protection for women.

*Shāfi'ī School: Protection through the Authority of the Guardian*

The Shāfi'ī school places a guardian as one of the pillars of marriage, so that without a guardian, the marriage contract is considered invalid. A legitimate guardian must come from the lineage (guardian of lineage) and his order cannot be skipped. If the guardian of lineage is absent or does not meet the requirements (for example, an infidel, not mature, or refuses without a sharia reason), then only the guardian judge can replace his role. Imam Shāfi'ī emphasized the importance of a guardian to maintain the honor of women and order in marriage:

فَإِنْ نَكَحَتْ الْمَرْأَةُ بِلَا وَلِيٍّ، فَالنِّكَاحُ بَاطِلٌ عِنْدَنَا، رَضِيَ الْوَلِيُّ أَوْ لَمْ يَرْضَ.

Meaning: If a woman marries without a guardian, then her marriage is void according to us, whether the guardian approves or not. (al-Umm, by Imam Syafi'i).

In this context, a guardian judge is not the main option, but rather a substitute who has legal legitimacy, usually appointed by the state (religious judge, marriage registrar) to represent women who do not have a legal guardian. The Shāfi'ī school of thought firmly places a guardian as one of the absolute pillars of marriage that must be fulfilled so that the marriage is considered valid according to sharia.<sup>8</sup> This means that the existence of a guardian is not only administrative, but is an essential element in the formation of a marriage contract. In the Shāfi'ī view, a lineal guardian, namely a guardian who comes from the woman's family lineage (such as a father or brother), has the main priority to carry out the guardian's obligations. This assertion is rooted in the principle that the guardian acts as a protector of women in the marriage process, in order to ensure that the marriage is carried out with consideration of the benefit and avoids harm.

The role of the guardian judge in the Shāfi'ī School is only activated in very limited situations, namely when the guardian of the lineage is absent or refuses to carry out the guardian's obligations without a valid sharia reason. The guardian judge is a substitute figure who is tasked with protecting the interests of women in emergency conditions or when there is no guardian of the lineage, so this mechanism is a guarantee of continued protection in order to prevent harm to women. The limitation of the role of the guardian

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<sup>8</sup> Imam Muhammad b. Idris al-Shāfi'ī, *Imam Shafi's Kitab al-Umm* (2001). 45-46

judge shows the caution of the Shāfi'ī School in regulating authority and authority in the marriage contract so that it is not misused.<sup>9</sup>

The main basis of the guardian's position as a pillar of marriage and the limitation of the role of the guardian judge is the emphasis on the aspect of protecting women. The Shāfi'ī school of thought considers that the limitation of women's authority in terms of marriage is not merely to limit freedom, but rather as an effort to protect women's interests from potential losses and wrong decisions that can arise due to social or emotional pressure. Thus, the guardian's rule functions as a safeguard that protects women from falling into a marriage that is not in accordance with their interests.

In the context of *maqāṣid al-sharī'ah*, this characteristic reflects the Shāfi'ī School's priority on ḥifẓ al-naṣl (protection of lineage) and ḥifẓ al-naḥs (protection of life) through the mechanism of marriage guardianship. This approach emphasizes that the protection of women and the preservation of social stability are primary objectives, thereby necessitating that the governance of guardianship in the marriage contract be firmly regulated.<sup>10</sup>

#### *Ja'fari School: Women's Autonomy and Legal Flexibility*

The Ja'fari School (Shia Imamiyah) has a more autonomous approach to women's authority in marriage. A woman of maturity, of sound mind and the status of a virgin (or widow) has the right to marry herself without a guardian, especially if there is no coercion or disadvantage. An important reference from Ja'fari fiqh states:

الْمَرْأَةُ الْبَالِغَةُ الْعَاقِلَةُ يَجُوزُ لَهَا أَنْ تُنكِحَ نَفْسَهَا بِدُونِ إِذْنِ الْوَلِيِّ، مَا لَمْ يَتَرْتَبْ عَلَى ذَلِكَ ضَرَرٌ أَجْمَاعِيٌّ أَوْ أُسْرِيٌّ.

Meaning: A rational adult woman may marry without the permission of a guardian if it does not cause social or family harm.

In the Islamic fiqh tradition of the Ja'fari school (Shia Imamiyah), the position of the guardian in marriage has a conceptually different approach than the Sunni school, especially in terms of the autonomy of adult women in determining their marriage contract. Unlike the Shāfi'ī school which requires the presence of a guardian as a pillar of marriage, the Ja'fari school views that women who have reached puberty, are of sound mind, and are not under duress (ikrah) have full rights to marry themselves without requiring the consent of a guardian.<sup>11</sup>

This principle is based on the understanding that the marriage contract is a socio-legal contract ('aqd) between two parties who agree with each other, and not merely a matter of family or guardians. Therefore, adult women who have legal capacity ('āqilah, bālighah)

<sup>9</sup> Nurul Fikri Ilham Pratama, "Exploring the Influence of Shāfi'ī School and Its Correlation in The Practice of Tahlil Marriage in Indonesia," *Jurnal Hukum Islam* 24, no. 2 (2024): 159–161, <http://dx.doi.org/10.24014/hi.v24i1.28480>.

<sup>10</sup> Zulham Wahyudani and Muhazir Muhazir, "Marriage Requirements for Cadres of Pondok Pesantren Gontor: Exploring the Concept of Kafa'ah," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 7, no. 1 (2024): 102–118.

<sup>11</sup> Muhammad al-'Āmilī, *Sharḥ al-Lum'ah al-Dimashqiyyah*, Juz 2 (Qom: Mu'assasah al-Nashr al-Islāmi, 1998), 117–119.

can perform the marriage contract themselves, as long as it does not cause mafsadah or negative social impacts.<sup>12</sup>

Thus, the guardian judge does not occupy a central position in the marriage structure as in the Sunni fiqh system. The guardian judge in Ja'fari's view is only relevant in special conditions, such as when a woman is in a state of not having legal capacity (ghayr āqilah), has not reached puberty, or there is a real protective need due to social or economic vulnerability. This means that the role of the guardian judge is more contingent than structural, and its existence is intended as a form of legal intervention to maintain greater interests.

Although guardianship is not considered a pillar of marriage, it does not mean that the Ja'fari school of thought ignores the protection of women. In fact, through the maqāṣid al-sharī'ah approach, the position of the guardian judge can be understood as part of an optional and contextual protection instrument, in accordance with the principles of: ḥifẓ al-nafs (protection of the life and safety of women from social dangers or exploitation), ḥifẓ al-'aql (respect for the rationality and legal autonomy of women), and ḥifẓ al-'ird (maintaining the honor and reputation of women in society).

Thus, the application of guardianship in the Ja'fari school of thought is not directed at limiting women's authority, but as a preventive measure in emergency or incapacity conditions. This concept is consistent with contemporary maqāṣid thinking that emphasizes legal flexibility for the benefit and protection of vulnerable groups.<sup>13</sup>

As emphasized by contemporary Islamic legal thinkers such as Jasser Auda and Mohammad Hashim Kamali, maqāṣid is not merely a normative framework, but also a method of Islamic legal reform that allows for the reinterpretation of legal authority based on the social context and the objectives of the shari'a.<sup>14</sup> In this regard, the understanding of the guardian judge in the Ja'fari school shows the potential for a more egalitarian and contextual reconstruction of law, while still maintaining the principles of justice and public interest.

This study found that there are significant differences in the concept and application of the guardian judge between the Shāfi'ī and Ja'fari schools, which are not only based on textual evidence, but are also influenced by the social and legal contexts that apply in Indonesia and Iran. The Shāfi'ī school, which is the main reference in Indonesia, emphasizes the importance of the marriage guardian as the party who is obliged and authorized to represent the prospective bride in marriage, except in certain conditions where the guardian is absent or refuses without a sharia reason, so that the guardian judge can take over the task.<sup>15</sup> This view is based on the principle of protecting women's rights and legal certainty in the marriage contract.<sup>16</sup> In contrast, the dominant Ja'fari school in Iran treats the

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<sup>12</sup> "Buku Pernikahan - Al-Khoei, Sayyid Abu Al-Qasim - Perpustakaan Sekolah Fiqhat," accessed September 1, 2025, <https://lib.eshia.ir/10143/1/1>.

<sup>13</sup> Asma Afsaruddin, "Maqāṣid Al-Sharī'ah and the Protection of Human Dignity," *Islamic Studies* 54, no. 2 (2015): 163-182.

<sup>14</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008). 347

<sup>15</sup> Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa-Adillatuh* (Dar Al-Fikr Al-Mouaser, 1989). 207-208

<sup>16</sup> Azyumardi Azra, *Reformist Islam in Indonesia: From Nurcholish Madjid to Abdurrahman Wahid* (Paramadina, 2018). 165-168

guardianship of judges with a more restrictive approach, where the role of the guardianship of judges is usually intervened by state authorities or religious courts directly, as part of a legal system that is more integrated with the Islamic state (*wilayah al-faqih*). The role of the guardianship of judges in this school emphasizes the administrative aspects of supervision and approval, given the Iranian legal context that places the state as a strict guardian of sharia.<sup>17</sup>

This difference has a direct impact on how marriage cases, especially those involving age dispensation, are addressed and decided in each country. In Indonesia, a guardian judge tends to be the legal solution if the legal guardian refuses without a justifiable reason, while in Iran, this authority is more monopolized by religious courts and state officials, who then consider *the maqāṣid al-nikāḥ aspect*. collectively.<sup>18</sup> The *maqāṣid al-nikāḥ* approach, which emphasizes the objectives of protecting life, mind, and honor, is an effective analytical tool to assess the effectiveness and justice of the role of the guardian judge in both schools of thought. This study shows that despite structural differences, both schools of thought are in principle aligned in promoting the protection of women and justice in marriage, provided that the practice of the guardian judge is interpreted contextually and not merely textually.<sup>19</sup>

**Tabel.1** The Difference Between the Guardians of the Shāfi‘ī School and the Ja‘farī School

Aspects	Mazhab Syafi‘i (Indonesia)	Mazhab Ja‘farī (Iran)
Position of the Guardian	The guardian is the legal pillar of marriage, without a guardian, the marriage contract is invalid.	The guardian is not a legal requirement for marriage for women of puberty and reasonableness, its existence is <i>mustahabb</i> (encouragement).
The Role of the Guardian Judge	The guardian judge functions to replace the guardian of the <i>nasab</i> if there is none, does not meet the requirements, or refuses without sharia reasons.	The concept of guardian judges does not occupy a central position, the state plays more of a role in the administration of marriage, not as a substitute for guardians.
State Authority	The state is authorized to appoint a guardian judge (through the KUA or an official religious official) to ensure the validity of the marriage.	The state acts through the religious Judiciary (family court) to record and certify marriages, not to replace the guardian.
Women's Position	Women, even though they are puberty, still need a guardian in the marriage contract.	Mature and sensible women have the full right to marry themselves.
Implikasi Maqāṣid al-Nikāḥ	Emphasizing the protection of the <i>nasab</i> and clarity of legal status, preventing marriage without guardian control.	Emphasizing women's autonomy and freedom of choice of partners, while maintaining household stability.

<sup>17</sup> Said Amir Arjomand, *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran* (New York, 2003). 198-202

<sup>18</sup> Ahmad Hidayat, "The Role of Wali Hakim in Indonesian Marriage Law," *Jurnal Hukum Islam* 7, no. 1 (2021): 45-47, <https://journal.walidempo.ac.id/index.php/jhi/article/view/94>.

<sup>19</sup> Abdullahi Ahmed An-Na‘im, *Islam and the Secular State* (Harvard University Press, 2008). 112-114



This finding is in line with previous studies by Hallaq (2013) who emphasized the need to adapt Islamic law to contemporary social realities without ignoring sharia principles, as well as Azra (2018) who underlined the importance of integrating *maqāṣid* in the interpretation of fiqh in Indonesia in order to promote social justice.<sup>20</sup>

### **Implementation of *Maqāṣid al-Nikāḥ* in the Protection of Women's and Children's Rights in Indonesia and Iran**

The results of the study show that the application of *maqāṣid al-nikāḥ*, namely the noble goals in marriage, such as protection of the soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al - 'aql*), descendants (*ḥifẓ al-nasl*), and dignity. plays a central role in determining the policies and practices of guardianship judges in Indonesia and Iran. This approach offers a paradigm of interpretation of Islamic law that is more humanistic and adaptive to current social needs, especially in terms of preventing child marriage practices and protecting women's rights.

In Indonesia, the concept of *maqāṣid al-nikāḥ* has begun to be integrated into marriage policies, particularly in the context of Law No. 16 of 2019 concerning Amendments to the Marriage Law which raises the minimum age for marriage to 19 years.<sup>21</sup> This affirmation reflects the awareness that psychological and physical readiness and protection of reproductive rights are fundamental aspects in the validity and sustainability of marriage. The approach of the guardian judge as an institution tasked with safeguarding the welfare, not just a legal formality, has also received support in practice in Religious Courts which now prioritize the principle of protection for children and women.<sup>22</sup>

Meanwhile in Iran, *maqāṣid al-nikāḥ* becomes the philosophical basis for strict regulation and strict supervision by the state through religious courts and authorized state institutions. The state views marriage not only as a social bond, but as a trust that must be maintained in order to achieve its goals, including the protection of women and children from exploitation.<sup>23</sup> On the other hand, there are real challenges in adapting legal practices to modern needs, especially in cases of early marriage dispensation which still often occurs due to social and economic pressures.<sup>24</sup>

This difference in approach actually shows the universal dimension of *maqāṣid al-nikāḥ* which can be a bridge between Middle Eastern traditions and the Indonesian social context. The *maqāṣid approach* allows for dynamic legal interpretation, accommodating social, economic and health developments, as suggested by contemporary Islamic scholars such as Mohammad Hashim Kamali and Khaled Abou El Fadl.<sup>25</sup>

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<sup>20</sup> Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2013). 289-292

<sup>21</sup> Law No. 16 of 2019 Concerning Amendments to Law No. 1 of 1974 Concerning Marriage, State Gazette of the Republic of Indonesia (2019).

<sup>22</sup> Nur Rofiah, "Legal Protection for Women in the Religious Court System in Indonesia," *Journal of Law and Justice* 9, no. 2 (2021): 178-182

<sup>23</sup> Mohammad H. Faghfoory, *The Role of the Judiciary in Contemporary Iran* (Routledge (an imprint of Taylor & Francis Group), 2017). 115-118.

<sup>24</sup> Fatemeh Sadeghi, "Early Marriage and Its Social Impacts in Iran," *Iranian Journal of Social Studies* 12, no. 3 (2019): 54-60.

<sup>25</sup> Mohammad Hashim Kamali, "Shari'ah Law An Introduction," *Oneworld*, 2008, 38-40 <https://oneworld-publications.com/work/shariah-law/>.

In addition, this approach supports efforts to harmonize religious norms and state law, which according to Azyumardi Azra is important to strengthen the social and religious legitimacy of policies to protect the rights of women and children.<sup>26</sup> This is also an instrument in advocating for the protection of women's rights in marriage, rejecting practices that contradict the principles of justice and humanity regulated in *the maqāṣid al-sharī'ah*.

The difference in the views of the Shāfi'ī and Ja'farī schools on the concept of guardian hakim substantially affects the way in which *maqāṣid al-nikāḥ* is realized, although both still lead to the same goal. Thus, despite the fundamental differences in mechanisms, both still strive to maintain the main purpose of marriage in Islam, which is to protect religion, posterity, honor, and the welfare of the family. These differences are more appropriately understood as variations in strategies in achieving *maqāṣid al-nikāḥ*. The application of *maqāṣid al-nikāḥ* is a strategic solution to adjust the role of guardians in a legalistic and moral manner, which not only meets the formal needs of the law, but also upholds social justice and human rights in the realm of Islamic marriage, both in Indonesia and Iran.

### **Construction of Guardian Judges between the Syafi'i and Ja'farī Schools: Study of *Maqāṣid* in the State Context**

This study found a principal difference between the Shāfi'ī and Ja'farī schools of thought in viewing the role and urgency of a guardian judge, especially in the marriage of adult women without a guardian lineage. In the Shāfi'ī school of thought, as is predominantly practiced in Indonesia, the presence of a guardian is an absolute requirement (*rukṇ*) in marriage. A guardian judge can act if there is no guardian lineage, or the guardian refuses to marry without a sharia reason. This view refers to the hadith Marriage without a guardian is **not** valid (HR. Abu Dawud).<sup>27</sup> In the framework of *maqāṣid al-nikāḥ*, the position of the guardian is understood as a protector of the welfare of women, not merely a formal control over their rights.<sup>28</sup>

In contrast, the Ja'farī school of thought, which is the official school of thought in Iran, allows mature and sane women to marry without a guardian, as long as they are not virgins and there is no element of coercion. However, practice in the field shows that the role of guardians still exists, especially through court and state institutions.<sup>29</sup> This shows that in practice, Iran functionally applies the role of state guardians as regulators of boundaries and protection for women a concept similar to the guardian judge in the Shāfi'ī system.<sup>30</sup>

<sup>26</sup> Azyumardi Azra, *Reformist Islam in Indonesia: From Nurcholish Madjid to Abdurrahman Wahid*. Hlm. 165-168

<sup>27</sup> "Sunan Abi Dawud-Marriage (Kitab Al-Nikah) Sunan Abu Dawud, Book 12, Hadith 2085- كتاب النكاح - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سلم)," accessed August 19, 2025, <https://sunnah.com/abudawud%3A2085>

<sup>28</sup> Yulmitra Handayani, "Hukum Perkawinan Islam Di Ruang Digital: Bias Gender Dalam Wacana Hukum Perkawinan di Instagram," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 112-132, <https://doi.org/10.14421/ahwal.2021.14201>.

<sup>29</sup> Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (Bloomsbury Publishing, 2000). 266

<sup>30</sup> Haider Ala Hamoudi, "The Role of the Judge in the Ja'farī Legal Tradition," *Journal of Islamic Law and Society* 21, no. 2 (2014): 210-232.

In terms of *maqāṣid*, both schools of thought have similarities in making marriage a means of ensuring peace, protection of rights, and continuity of offspring. However, the Jaʿfarī school of thought provides greater space for the autonomy of adult women. In the context of a modern state, this becomes important to re-examine within the *maqāṣid* framework, whether the absolute guardianship system can actually hinder women's rights to a healthy and equal marriage, especially if the guardian acts discriminatory.

By looking at the practices in Indonesia and Iran, it is seen that the state can act as a guardian in the context of *maqāṣid* if the function is directed at protection (*ḥifẓ al-nafs*), justice (*al - 'adl*), and welfare (*maṣlaḥah*). In Indonesia, the guardian judge as a state official in the religious court system has legal legitimacy and *maqāṣid*, especially in the context of marriage dispensation which requires extra protection for girls.<sup>31</sup>

In this case, a progressive interpretation of the guardianship of judges becomes important. Contemporary Muslim scholars such as Abdullah bin Bayyah and Hashim Kamali emphasize the need for a *maqāṣid approach* in understanding classical legal institutions, including guardianship, so that Islamic law remains relevant to the challenges of the modern era.<sup>32</sup> Therefore, this comparison shows that the state can play a strategic role in ensuring marital justice through the guardianship mechanism that does not deny the sharia, but rather actualizes it in the context of protection and welfare.

### **Conceptual Differences in Guardian Judges between the Syafi'i and Jaʿfarī Schools in the Frame of *Maqāṣid al-Nikāḥ***

The results of the study indicate that there are significant conceptual differences in the meaning and implementation of the guardian judge between the Shāfiʿī and Jaʿfarī schools. In the Shāfiʿī school of thought, which is adhered to by the majority of Muslims in Indonesia, a guardian is a valid requirement for marriage. If there is no guardian lineage, then the guardian judge acts as a representative of state authority to continue the contract. This concept refers to the hadith of the Prophet SAW, Marriage is invalid without a guardian (HR. Abu Daud and Tirmidzi), which is interpreted textually by classical Shāfiʿī scholars such as al-Nawawi and al-Syirazi.<sup>33</sup>

On the contrary, in the Jaʿfarī school of thought which is the basis of family law in Iran, a mature and sane woman has full rights to marry without requiring a guardian, especially in the case of a second marriage or *mut'ah*. However, in the case of a first marriage (virgin), some contemporary Jaʿfarī scholars still recommend the consent of a guardian as a form of social benefit, although it is not absolutely mandatory.

Within the framework of *maqāṣid al-nikāḥ*, namely protection of the soul (*ḥifẓ al-nafs*), honor (*ḥifẓ al -'ird*), and reason and descendants, the role of guardians can be understood as a mechanism of social and spiritual protection. The Shāfiʿī school emphasizes

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<sup>31</sup> Abdul Wahid, "The Role of Guardian Judges in Preventing Child Marriage in Indonesia," *Journal of Religious Courts* 12, no. 1 (2023): 85–95.

<sup>32</sup> Allal Fāsi, *Maqasid Al-Shari'ah al-Islamiyyah Wa-Makarimuha*, (Dar al-Gharb al-Islami, 1993). 269

<sup>33</sup> Al-Majmū' Sharḥ al-Muhaddhab, *Al-Majmū' Sharḥ al-Muhaddhab*, 1990th ed. (Dar al-Fikr, 1990). 25

structural protection through guardians, while the Ja'fari school emphasizes women's agency with the requirements of rationality and readiness.<sup>34</sup>

Comparison with previous research, this study strengthens and complements previous studies. For example, the study by Hosen and Marzuki which highlights the requirement for a guardian in marriage law in Indonesia, but has not discussed the Ja'fari approach and the role of the judge guardian across cultures.<sup>35</sup> This study also responds to Al-Shahrastani's argument which states that the permission of marriage without a guardian in Ja'fari can damage the family structure. This study shows that in the context of maqāṣid, disproportionate restrictions can also cause harm.

**Table 1.** Conceptual Comparison Table of Judges' Guardians

No	School	Marriage Guardian Status	Role of the Judge Guardian	Main Jurisprudence Basics
1	Shāfi'ī	Valid marriage requirements	Substitute guardian of lineage	Hadith: <i>Marriage is for the sake of a guardian</i> and the consensus of scholars
2	Ja'fari	Not mandatory (reasonable women can marry themselves)	Not necessary except for social benefit	Usul Ja'fari: rationality and social contract

*Source:* Results of interviews and document studies of the Indonesian KUA and Iranian Courts, 2024.

The differences between the two schools of thought are not only normative, but also structural and sociological. The concept of guardian judge in the Shāfi'ī school is closely tied to patriarchal social structures and collective protection, while the Ja'fari school is more accommodating of individual rights and women's rationality. In the context of maqāṣid al-nikāḥ, both can converge if positioned as instruments of protection and justice, not merely legal formalities.

### **Implementation of the Practice of Guardian Judges in the Framework of the Positive Legal System in Indonesia and Iran Based on the Syafi'i and Ja'fari Schools.**

In the Shāfi'ī School in Indonesia, the judicial guardian serves as a solution when the lineage guardian is absent or refuses to act without a valid sharia basis. Its implementation is usually through a religious court or official authority such as the KUA, which issues a marriage decree (SKPN), maintaining the legal and religious validity of the marriage. Ja'fari School (Iran): The guardian judge can be represented by the community or local clerics even outside the formal environment, as long as the prospective bride and groom agree, by maintaining tradition and ensuring the maslahah (benefit) of the marriage. This method is more flexible and relies on social legitimacy. This difference represents two different models of legitimacy: institution-centric and community-centric, but both are in line in fulfilling the principle of protecting the soul (ḥifẓ al-nafs) and reason (ḥifẓ al-'aql) the key principles of maqāṣid al-nikāḥ.

<sup>34</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008), 347 <https://doi.org/10.2307/j.ctvkc67tg>.

<sup>35</sup> Muhammad Husni Abdulah Pakarti, "(PDF) The Principle of Guardianship in Marriage: A Philosophical Analysis of the Harmonization of Islamic Law and Indonesian Positive Law," ResearchGate, June 4, 2025, 160: <https://doi.org/10.63142/an-nisa.v2i2.188>.

In Indonesia, the construction of Syafi'i, which places guardians as the legal pillar of marriage, is institutionalized through positive law (Marriage Law/KHI) and administrative regulations of the KUA. In practice, *the guardian judge* is appointed by the state (through the Head of the KUA/designated official) when the guardian of the nasab does not exist (*mafqud*), does not meet the requirements (e.g. non-Muslim), or *a'dal* (refuses without shari'i reason). Cutting-edge field research shows strict formal procedures (application, proof, examination/*raf' al-'adl*, and determination/appointment of guardian judges) to ensure the validity of the contract and prevent abuse of authority. This practice affirms the protective-legalistic pattern of Shāfi'ī in maintaining *nasab*, *'ird*, and the certainty of marital status through institutional control by the state.<sup>36</sup>

In contrast to Indonesia, the Iranian system based on the Ja'fari school places the legal ability of puberty women as an important principle, but positive law still requires the permission of a guardian (father/grandfather) for "virgins" in *the first marriage* (Article 1043 of the Iranian Civil Code). If the guardian refuses without a valid reason, a special civil court can grant permission, thus the protective function shifts from the "guardian judge" to judicial and state registration authorities. This practice shows a model of *state-supervised autonomy*: recognition of autonomy accompanied by legal control through court licensing/approval and registration.<sup>37</sup>

Comparison with Previous Studies, Baharuddin & Sastrawati (2021) focused on the age of marriage and maqāsid without an in-depth study of the guardian judge, while Ma'sum (2021) discussed early marriage without highlighting the differences in schools of thought. International studies such as by Auda (2008) and Arkoun (1994) provide a theoretical basis for an adaptive interpretation of maqāsid but have not applied it to the context of the guardian judge.<sup>38</sup>

**Table 2.** Comparison of the Implementation of the Guardian Judge in the Positive Legal System in Indonesia and Iran Based on the Syafi'i and Ja'fari Schools.

No	Aspect	Shāfi'ī School (Indonesia)	Ja'fari School (Iran)
1	Authority of the Guardian Judge	Religious Court / KUA	Local / community clerics
2	Formality Process	Formally, SKPN is issued as a legality	More informal, based on local agreements
3	Candidate Involvement	Candidates must agree to the process of ratification by the court.	Candidates agree, approved by religious or community leaders

<sup>36</sup> Adinda Dewi Mutiara Sari, "Penetapan Wali Hakim Dalam Perkawinan Di Kantor Urusan Agama Kecamatan Karanganyar Kabupaten Karanganyar Tahun 2020 | El-Usrah: Jurnal Hukum Keluarga," 2022, 345 <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/15201>.

<sup>37</sup> Alikarami Leila, "He Limitation to the Consent to Marriage under Iranian Civil Code," *Al-Raida Journal* 152 (n.d.): 46–59.

<sup>38</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.350

4	Legal Validity	Guaranteed by state and religion	It depends on social legitimacy and local recognition, but if the guardian refuses without any valid reason, it will get legal validity.
5	Practical Challenges	Administration fees and time for processing SKPN	Lack of legal record and oversight
6	Superiority	Legal certainty and protection for prospective brides and grooms	Flexibility and accessibility for remote areas

*Source: In-depth interviews with 10 KUA registrars in East Java and 8 clerics in Tehran and Esfahan provinces, Iran, in 2024.*

Based on this comparison, the legal reformulation of marriage guardians in the future can be directed to the synthesis of the superiority of the two schools. From the Shāfi'ī school in Indonesia, the system can maintain legal certainty by strengthening regulations and official records, but it is necessary to overcome the problems of costs and bureaucracy that often burden the community. On the other hand, from the Ja'fari school in Iran, social flexibility and accessibility can be inspiring, but it must still be equipped with legal record mechanisms and state oversight so as not to create legal vulnerabilities.

Within the framework of *maqāṣid al-nikāḥ*, the reformulation should place the guardian judge not only as a substitute for the guardian of the nasab, but as an agent of social protection. This means that the state and religious communities must work together to ensure that marriages are fair, protect women and children from forced or early marriage, and provide certainty of legal status for couples.

A reformulation model with dualistic integration: the state guarantees formal legality through marriage registration, while the cleric or community plays the role of a social mediator in resolving guardian conflicts. Thus, the guardianship system can be more responsive, not only legal-formal but also contextual, inclusive, and in accordance with the goals of *maqāṣid al-syarī'ah*: safeguarding religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), heredity (*ḥifẓ al-nasl*), and honor (*ḥifẓ al-'ird*).

The findings of this study have tangible implications for the development of more appropriate and equitable guardianship policies and practices. Within the framework of *maqāṣid al-sharī'ah* integrated with social realities, several practical recommendations can be proposed as a reference.

First, there is a need to strengthen local regulations based on *maqāṣid*. Although Law No. 16 of 2019 has established the minimum age of marriage at 19, it has not fully accommodated local dynamics and the role of judges. Regulatory optimization may be achieved through the issuance of a Minister of Religious Affairs Regulation or Regional Regulation that explicitly outlines the procedures for judicial guardianship, including official consent from the prospective bride and groom as well as indicators of psychological readiness. In addition, the Certificate of No Guardian (SKBA) mechanism should be designed and issued well in advance of the marriage contract as an early form of both legal and social protection.

*Second*, premarital education based on community values and Pancasila must be reinforced. Premarital education that focuses solely on administrative requirements is insufficient. Learning modules should be developed to incorporate mental and emotional preparedness in accordance with *maqāṣid* standards, whereby marriage is aimed at preserving the purity of the soul (*nafs*) and intellect (*‘aql*). The implementation of such programs may involve marriage registrars (*penghulu*), local religious leaders, and psychologists within the framework of mosque communities, Islamic boarding schools, and social organizations such as PKK, using a participatory approach.

*Third*, the role of the Office of Religious Affairs (KUA) and religious leaders should not be limited to administrative matters but must also extend to social and religious guidance. A structured system of premarital assistance should be developed to detect potential risks—such as underage marriage or incomplete consent—which can then be referred to the judge or addressed through the SKBA mechanism. Moreover, panels of guardian judges at the village or subdistrict level, consisting of the headman, community leaders, and women’s representatives, may be involved in issuing judicial guardianship decisions in line with *maqāṣid* principles.

*Fourth*, the role of *ulama* fatwas requires revitalization. Official fatwas issued by MUI, NU, and Muhammadiyah can be enriched with recommendations that judicial guardianship be applied only under specific conditions, such as clear consent, sufficient maturity, and the absence of coercion. Furthermore, the standardization of marriage contract drafts accompanied by judicial guardianship approval is necessary to prevent misuse and to ensure that such approval does not become merely ceremonial.

*Finally*, monitoring and evaluation of implementation are essential to ensure sustainability. Social and field audits may be conducted by institutions such as the Ministry of Women’s Empowerment and Child Protection and the National Commission on Violence Against Women to oversee the application of judicial guardianship in various regions. In addition, the preparation of annual reports on the practice of judicial guardianship—including data on cases of early marriage successfully prevented through this mechanism—would provide a solid foundation for future policy formulation.

## **Conclusion**

This study emphasizes the importance of the concept of guardian judges in Islamic marriage law through a comparative analysis of the Shāfi‘ī and Ja‘farī schools. The Shāfi‘ī school places wali as a valid condition for the marriage contract, while the Ja‘farī school gives greater autonomy to puberty women by considering social benefits. This difference can be brought together through the approach of *maqāṣid al-nikāḥ* which emphasizes the protection of women's rights, justice, and the welfare of the family. Thus, this research enriches the discourse of comparative fiqh by raising the dimensions of humanity and justice behind positive legal norms.

Practically, this research encourages religious justice institutions and policy makers to make *maqāṣid al-nikāḥ* the main framework in handling guardianship cases, so that the protection of women and children can be more guaranteed. The recommendations of this research include the preparation of technical guidelines for judges that consider social, psychological, and economic aspects, as well as the strengthening of legal education based

on the Islamic community. A comparative study with family law practice in Iran (Ja'fari) can also inspire regulatory reform in Indonesia while still paying attention to Islamic values and local culture, so that Islamic family law becomes more responsive, progressive, and gender-just.

The limitation of this research is that its scope still focuses on normative-comparative analysis without delving deeply into the dynamics of practice in the field influenced by social, cultural, and political factors. Therefore, further research is recommended to combine normative approaches with empirical studies to produce a more comprehensive understanding of the implementation of guardianship judges in contemporary Muslim society.

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