



# Reinterpreting Walī Mujbir in Contemporary Islamic Family Law: Forced Marriage and Its Impact on Indonesian Muslim Family Harmony

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## ABSTRAK

Artikel ini bertujuan menganalisis dinamika terhadap pemaksaan perkawinan di beberapa wilayah Indonesia melalui reinterpretasi konsep walī mujbir dalam hukum keluarga Islam kontemporer. Penelitian ini merupakan penelitian kepustakaan yang menggunakan metode yuridis normatif dengan tipe penelitian deskriptif-analitis kritis. Pendekatan yang digunakan mencakup pendekatan yuridis, filosofis, sosiologis, dan psikologis. Data penelitian bersumber dari bahan hukum sekunder, yang terdiri atas bahan hukum primer, sekunder, dan tersier, seperti kitab-kitab fikih klasik dan kontemporer, uşūl al-fiqh, literatur mengenai filsafat hukum keluarga Islam, serta peraturan perundang-undangan yang relevan. Hasil penelitian menunjukkan bahwa hak ijbār yang dimiliki wali dalam fikih klasik tidak bersifat absolut, melainkan amanah yang dibatasi oleh perlindungan terhadap perempuan dan prinsip kerelaan dalam ikatan perkawinan. Dalam hukum nasional Indonesia, praktik pemaksaan perkawinan dikategorikan sebagai tindak pidana berdasarkan Undang-Undang Nomor 12 Tentang Tindak Pidana Kekerasan Seksual, serta dipandang sebagai pelanggaran hak asasi manusia menurut standar internasional. Hasil penelitian menunjukkan bahwa pemaksaan perkawinan berdampak signifikan terhadap disharmoni keluarga, konflik berkepanjangan, meningkatnya angka perceraian, dan disfungsi pengasuhan anak. Dengan demikian, reinterpretasi terhadap konsep walī mujbir diperlukan untuk menyesuaikan prinsip-prinsip hukum Islam dengan konteks sosial kontemporer, sekaligus memastikan perlindungan perempuan serta terwujudnya keluarga yang harmonis.

## ABSTRACT

This article aims to analyze the dynamics of forced marriage in several regions of Indonesia through a reinterpretation of the concept of walī mujbir in contemporary Islamic family law. This research is a library-based study employing a normative juridical method with a critical descriptive-analytical research type. The approaches used include juridical, philosophical, sociological, and psychological approaches. The research data are derived from secondary legal materials, comprising primary, secondary, and tertiary sources, such as classical and contemporary fiqh books, uşūl al-fiqh, literature on the philosophy of Islamic family law, and relevant statutory regulations. The findings reveal that the ijbār authority possessed by a guardian in classical fiqh is not absolute, but rather a mandate limited by the obligation to protect women and uphold the principle of consent in marriage. Under Indonesian national law, forced marriage is categorized as a criminal act based on Law Number 12 on Sexual Violence Crimes. It is considered a violation of human rights under international standards. The study further indicates that forced marriage has significant implications for family disharmony, prolonged conflict, increased divorce rates, and disruptions in childcare functions. Therefore, a reinterpretation of the walī mujbir concept is necessary to harmonize Islamic legal principles with contemporary social contexts, ensure the protection of women, and uphold the realization of a harmonious family.

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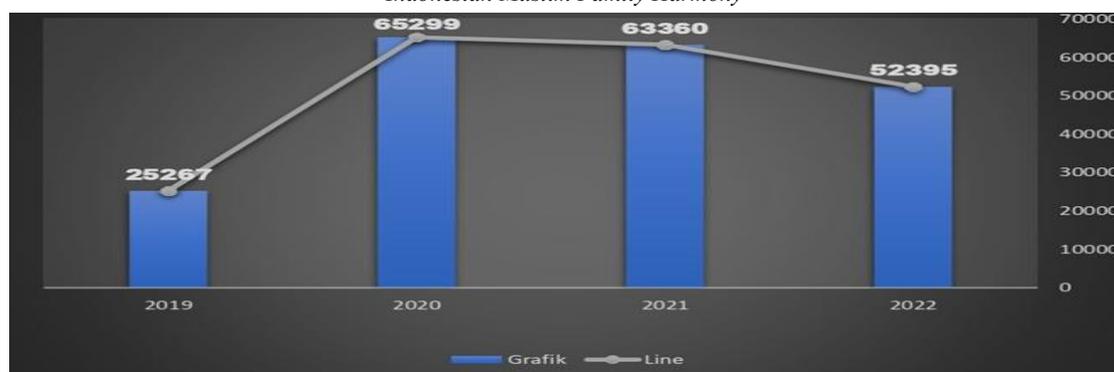
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## 1. INTRODUCTION

Allah SWT, with His absolute power, has created the universe and all creatures in it. One of the wisdom of creation is for living things to interact, reproduce, and preserve offspring. For this purpose, Allah equips all creatures with *gharizah* or biological instincts. However, humans are endowed with reason as a moral instrument capable of distinguishing between right and wrong. Thus, the process of preserving offspring in humans does not occur solely through biological impulses, but is regulated by norms, ethics, and laws that provide direction and control (Sabiq, 2009). In an Islamic perspective, marriage is a normative institution designed to realize benefits and be the only legitimate mechanism for the preservation of offspring. The purpose of marriage is intertwined with the construction of *maqāṣid al-syari'ah*, which includes the level of *darūriyyah*, *ḥājiyyah*, and *taḥsīniyyah*. One of the main *maqāṣids* (*maqāṣid ashliyyah*) of marriage is the care of offspring (*ḥifẓ al-nasl*), which is included in *al-uṣūl al-khamsah*. Meanwhile, the regular fulfillment of biological needs, the realization of *mawaddah wa raḥmah*, and the development of family morality are placed as the benefits of *the ḥājiyyah* and *taḥsīniyyah* levels (Kamali, 2021). In line with this principle, Indonesia's positive law, as outlined in Law Number 1 of 1974, defines marriage as a union between a man and a woman to form a happy and enduring family (Ahyani, 2016). The family is considered the smallest unit of society, comprising a father, mother, and child, each with distinct social roles and legal obligations. Therefore, the discussion of family law conceptually cannot be separated from the regulation of marriage, which forms the foundation of the family (Kusmardani, 2022).

Islam also establishes several fundamental principles in the institution of marriage, including the freedom to choose a partner, gender equality, the obligation of *mu'āsharah bi al-ma'rūf* (Shaltūt, 1986), and the principle of mutual consent between the two parties. Choosing a partner is an inherent right for both men and women. In support of this view, Asghar Ali Engineer emphasized that the Qur'an places women on an equal footing with men in terms of their moral and intellectual capacities (Engineer, 2007). In principle, a marriage of children should occur due to consent, which affords them freedom, and the mutual interest between a man and a woman in entering into a legally recognized bond officially recorded by the marriage registrar, thereby building a happy family. The absence of coercion on women in the marriage process is something that is coveted, namely having a happy and peaceful family, it does not mean that there is a marriage based on the will of parents who cannot achieve happiness, but those who are in family relationships know better what they want, as long as the future husband she chooses is good and able to be a good priest for her child (Puspita & Naf'an, 2022).

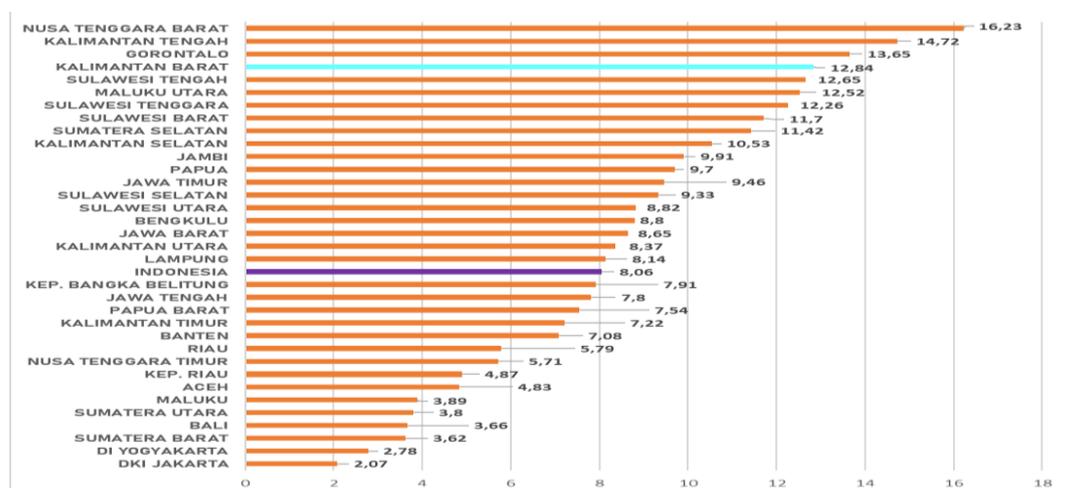
However, social realities reveal a significant gap between these normative principles and the practices that prevail in society. In several regions in Indonesia, the practice of forced marriage and child marriage is still intensively ongoing, influenced by cultural factors, social pressures, and economic conditions. Reports from various regions, including West Java, East Java, South Kalimantan, Central Kalimantan, and Southeast Sulawesi, indicate that the child marriage rate reaches 40%. Field findings from Palu, Donggala, Sigi, and Parigi also suggest that there are dozens of cases of child marriage every year. In fact, data from the Ministry of Women's Empowerment and Child Protection shows that as many as 1,348,866 girls were married before the age of 18 in 2018, and about 300,000 children are married at the age of 16 every year. This condition is also reflected in judicial data. Supreme Court rulings throughout 2018-2022 recorded at least 213 cases of problematic marriages that began with forced marriage, with 199 of them ending in religious courts. According to Lelita Dewi, since the enactment of the provisions on the marriage age limit through Law Number 1 concerning Amendments to Law Number 1 of 1974 regarding Marriage, the number of cases involving minors getting married has also changed significantly (Dewi, 2024). This can be seen from the number of marriage dispensation cases from year to year that enter Religious Courts throughout Indonesia, as follows:



**Figure 1.** Number of Cases of Dispensation of Child Marriage Throughout Indonesia

Source : Directorate General of the Religious Justice Agency of the Supreme Court of the Republic of Indonesia

The data above show that applications for child marriage exemptions in 2020 totaled 65,299 cases, representing a significant increase from 25,267 cases in 2019. In 2021, the number decreased to 63,360 cases; however, it remains higher than before the change in the marriage age limit was implemented in 2019. Furthermore, the National Commission on Anti-Violence against Women reported an increase of up to 300 percent in cases of forced marriage. This increase aligns with the soaring number of child marriages in various regions across Indonesia, as seen in data released by the National Socioeconomic Survey:



**Figure 2.** Percentage of Child Marriages by Province in Indonesia

The data above shows that child marriage in Indonesia has quite significant differences. The data shows that the province with the highest marriage rate is West Nusa Tenggara (16.23%), followed by Central Kalimantan (14.72%), Gorontalo (13.65%), Meanwhile, the province with the lowest rate is DKI Jakarta (2.07%), DI Yogyakarta (2.78%), and West Sumatra (3.62%), Nationally, the prevalence of child marriage is at 8.06%, which means that more than eight percent of women aged 20–24 years in Indonesia have been married before the age of 18. Several provinces are around this figure, such as Lampung, North Kalimantan, Bengkulu, and South Sulawesi, indicating that the issue of early marriage remains a significant challenge in various regions of Indonesia (Peanta, 2023).

This phenomenon not only affects the psychological condition and development of children, but also has implications for legal aspects. Law Number 12 of 2022 concerning the Crime of Sexual Violence includes forced marriage as a form of sexual violence that can be

subject to criminal sanctions. In addition, Law Number 23 of 2022 concerning Child Protection emphasizes that the state is obliged to provide special protection to children from practices that have the potential to endanger their future (Fanny, 2022). In this context, the debate on the use of *ijbār rights* by guardians becomes relevant and warrants critical examination. In the classical fiqh tradition, the existence of the wali *mujbir* is based on the assumption that the wali acts for the benefit of the women who are in his responsibility (Basūnī, 2019).

However, in some Indonesian communities, the guardian authority, whether fathers, uncles, or grandfathers, is often perceived as absolute, thus creating a space for the abuse of authority. This has the potential to ignore women's right to approve or reject potential partners, even though the basic principles of Islam affirm that women have full rights in determining their life partners as a form of respect for their dignity and authority. Based on the description above, the author formulates several formulations of the problem in this study. The first is: What are the legal stipulations for the guardian of the girl who will be married by the guardian in family law? Second, what are the legal provisions of guardianship from the perspective of Criminal Law and Human Rights? Third, what are the implications for forced marriage in the family? This study aims to analyze the position and role of guardians in family law, as well as the legal provisions of guardianship in criminal law and human rights. Then it analyzes the implications of the practice of forced marriage. Therefore, it is necessary to phrase it in the form of a research entitled **Reinterpretation of Wali Mujbir in Contemporary Family Law: A Critical Study of The Practice of Forced Marriage and Its Implications For The Harmony of Indonesian Muslim Families.**

## **2. RESEARCH METHOD**

This research is a qualitative study (Melong, 2020), utilizing a library research approach (Zed, 2004) and employing an interdisciplinary, normative juridical method (Salam, 2021). The nature of the survey is descriptive-analytical, meaning it describes legal concepts related to marriage and the compulsion of marriage, and analyzes them from the perspectives of Islamic law and positive law. The approaches used include juridical, philosophical, sociological, and psychological approaches. The juridical approach examines the norms of Islamic law and laws and regulations. An intellectual approach traces the values and goals of sharia. A sociological approach examines the social reality of the practice of forced marriage, and a psychological approach looks at the psychological impact on children and women.

## **3. RESULTS AND DISCUSSION**

The term *wilāyah* is read with kasrah in the letter "waw", which etymologically means "victory" and "power". In fiqh terminology, a guardian is understood as a party who has *qudrah* (authority) to determine decisions and legal actions without needing the permission of others, either related to themselves or those under their guardianship (al-Hafnāwi, 2009). In the context of marriage, the authority of the guardian is a *syarī'ah* mandate given to certain individuals to execute and ratify the contract on behalf of the bride-to-be without relying on her consent, as long as it is in accordance with the provisions of the law (Khallāf, 1990). Wali is also positioned as the party responsible for protecting women, ensuring they do not experience injustice in marriage (Kusmardani et al., 2022). The reason for the existence of guardianship in marriage, especially *wilāyah al-ijbār* (the right of coercive guardian) for an immature child or a legally incompetent person, is to protect their welfare and protect their rights due to their mental incapacity or limitations (Mir et al., 2013).

A person can be categorized as a guardian if they meet several conditions (Syarifuddin, 2006): first, they must have reached puberty and possess common sense. A child and a person who does not have a mind are not valid as guardians, according to the hadith of the Prophet: "The pen (burden of the law) is lifted from three groups: the one who sleeps until he wakes up,

the little child until he grows up, and the insane person until he recovers." (HR. Abū Dāwūd, al-Tirmidhī, Ibn Ḥibbān, and Aḥmad). Second, men. The majority of scholars do not allow women to become guardians of marriage. However, Hanafiyah and Shia Imamiyah argue that a woman who has reached puberty and is of good sense can become a guardian for herself or for non-Muslim women, third, Muslims. Non-Muslims are not legally guardians for Muslim women (Mutaqin et al., 2022). Fourth, Independence, and not in the condition of *mahjūr 'alaih* (under protection). Fifth, have good thoughts, not disturbed by their intellect. Sixth, Fair and have *murū'ah*. However, some Shī'ah scholars do not require the guardian to be just. Sixth: Not in a state of ihram. Imam Shāfi'ī stated that a person who is in ihram should not marry or be married (Asy-Syāfi'i, 2007). The position of the wali in the marriage contract is an essential condition, according to several scholars. Shāfi'ī and Mālik have *ijma'* that wali is a pillar of marriage.

On the contrary, Hanafiyyah and Hanābilah place wali as a complementary condition in the contract. The basis of the Qur'an regarding guardianship is stated in QS. Al-Baqarah (2): 232, which prohibits the wali from preventing women who have completed the period of iddah from remarrying (Zahrah, n.d.). Based on this verse, Imam Mālik and Imam Shāfi'ī think that marriage without a guardian is invalid. Regarding the status of women in guardianship, scholars distinguish between girls and widows. Scholars agree that the guardian does not have the right to force a widowed woman, even if she is a minor. Meanwhile, girls have different positions according to various sects. The loss of virginity due to adultery makes the woman's status equivalent to that of a widow so that the wali cannot force her to marry (the opinion of Shāfi'ī, Mālik, Abū Ḥanīfah, and Aḥmad). However, if her virginity is lost not because of sexual intercourse for example, because of exercise or an accident she is still considered a girl according to the four sects (Anas, 2012).

In the Compilation of Islamic Law, Article 107 paragraph (1) emphasizes that guardianship only applies to children who are not yet 21 years old and/or have never been married. This means that women who have reached the age of 21 have full legal authority over themselves, including the right to determine a marriage partner. This provision aligns with the view of Abū Ḥanīfah and Ibn Thawrī, who hold that the guardian's authority is limited to young or immature girls. However, social practices in Indonesia show that many parents continue to exercise absolute guardianship even though their children are over 21 years old. This pattern often gives birth to forced marriage, especially when accompanied by certain interests such as economic pressure, debt, or agreements since childhood (Puspita & Octariza, 2022).

In fact, the Compilation of Islamic Law Article 71 letter f states that marriages carried out by force can be annulled, so that the power of guardians is not absolute as understood by some people who are still thick with patriarchal culture. The Compilation of Islamic Law also imposes strict limits on the abuse of authority by guardians. Article 109 states that the Religious Court can revoke the right of guardianship if the guardian is proven to be a drunkard, gambler, extravagant, mentally disturbed, or abusing his authority to harm the party under his guardianship (Rosadi, 2014). This provision demonstrates that the guardian's authority is not absolute power, but rather a mandate that can be revoked if used arbitrarily (Abdurrahman, 2015). Although the provisions of the Compilation of Islamic Law are Presidential Instructions and often cause differences of opinion, the development of the times demands legal reform (Kusmardani et al., 2023). Based on the rules of *taghayyur al-ahkām bi taghayyur al-azmān wa al-ahwāl wa al-'awā'id* (changes in the law due to changes in time, conditions, and customs), the high cases of family disharmony due to forced marriage affirm that the wali mujbir must be fully responsible before the law (Adawiyah, 2019).

## **Forced Marriage as a Criminal Offense, Sexual Violence and Human Rights Abuse**

In principle, humans were created by Allah SWT to live in pairs as husband and wife. From an Islamic perspective, both virgin and widowed women have complete freedom to choose their future life partners, as well as men (Kusmardani, 2024). There is no right for parents or guardians to impose their will in determining who the spouse is. This is because the household cannot function well and achieve happiness without the willingness and cooperation of both parties. During the time of the Prophet PBUH, there was a case of Khansā' bint Khidām, who was forcibly married by her father, even though she was a widow. The case shows that the practice of forced marriage has been known since the early days of Islam and is considered contrary to the principle of voluntariness in marriage. According to Mohsi, coercion in marriage is a form of sexual violence. In the Great Dictionary of the Indonesian Language, sexual violence is understood as an act related to sexuality, including acts that force a person to have intercourse. Other terms used are moral offences or sexual offences. In general, sexual violence is an inhumane act that is contrary to human values and the principle of legal benefits (Mohsi, 2020).

From a human rights perspective, forced marriage is a form of human rights violation. Article 16 of the Universal Declaration of Human Rights affirms that: (1) Adult men and women have the right to marry and form families without restrictions on race, nationality, or religion, and to have equal rights in, during, and after marriage. (2) Marriage can only be solemnized based on free choice and the full consent of both spouses. In line with that, Law Number 12 of 2022 concerning the Crime of Sexual Violence also includes forced marriage as a form of sexual violence (Bidayati, 2024). According to the authors, this arrangement is driven by several reasons. First, the rampant practice of forced marriage carried out by guardians for reasons that are not based on the interests of girls, but for the interests of parents, under the pretext of having *ijbār* rights. Second, socio-culturally, some Indonesian people have a misunderstanding of the position of the wali *mujbir*, as if he has absolute authority in determining a partner for his daughter. This misunderstanding has big implications, not only during the marriage procession, but also in domestic life. Women who reject their parents' wishes are often negatively labeled as disobedient. In some cases, refusal can even lead to threats or acts of violence against women. This condition triggers other extreme actions, such as fleeing or engaging in reckless behavior.

Human rights violations in the form of will-to-be, coercion of thoughts, and physical torture of women still occur. In some countries, the practice of bride kidnapping the abduction of women for forced marriage still takes place, such as in Kyrgyzstan and Turkmenistan. In Indonesia, various regions still practice forced matchmaking, for example, girls who are forced to accept marriage proposals at a very young age or when they are adults. In some communities, girls even have to drop out of school and have their associations restricted to be "nurtured" as future wives, a phenomenon known as "pet mating". The National Commission on Anti-Violence against Women has identified 15 forms of sexual violence, one of which is forced marriage. This form is generally experienced by women who are married at a very young age, even since they were six years old or still in the womb, by adult men who are looking for a wife or want children. Terminologically, the term "coercion in marriage" has two distinct meanings. First, the forced relationship between husband and wife (sexual intercourse) is carried out by the husband to his wife without the consent or readiness of both parties. The misunderstanding that underlies this practice is often associated with the verse that the wife is a "field" for the husband, so that it is considered to be able to be used according to the husband's will.

Second, the coercion carried out by the guardian, *mujbir*, on the daughter to marry the man of the guardian's choice. In this concept, women are required to follow the guardian's decision absolutely. From the perspective of Islamic family law, the practice of forced marriage is often considered not to conflict with the Marriage Law because it states that the laws of the

respective religion determine the validity of the marriage. However, from a criminal law perspective, the criminalization of forced marriage is not recognized in the classical criminal law system (Efendi, 2021). The criminal form in the Criminal Code encompasses basic crimes, including those punishable by the death penalty, imprisonment, and fines, as well as additional penalties such as the revocation of certain rights. Therefore, the law on sexual violence crimes is a crucial instrument for addressing the legal void related to forced marriage as a criminal act.

### **Determining the Causes of Forced Marriage in Family Law and Social Realities**

First, The Role of Parents and Weaknesses in Legal Awareness, In many cases of forced marriage, the role of parents and legal constructs, both formal and normative, are dominant factors. In some communities, especially traditional ones, there is a belief that girls should be married off as soon as they reach adulthood (Anwar et al., 2024). Concerns about potential violations of religious norms and the possibility of tarnishing the family's reputation often encourage parents to expedite the marriage process, even without considering the child's consent (Yusrina & Sururie, 2022). Legal awareness in this context refers to the community's knowledge of the rules that are commanded, permitted, and prohibited. However, the community's understanding of the law is often partial. For example, although Article 6 of Law Number 1 of 1974 concerning Marriage and Article 16 of the Compilation of Islamic Law explicitly require the consent of both prospective bride and groom, some communities still adhere to the teachings of Shāfi'ī Jurisprudence, which recognizes the right of the father or grandfather's guardian to marry off a girl without her consent. This classical understanding of fiqh then becomes the normative justification for the practice of forced marriage. However, legally, forced marriage is a violation of the law. A criminal law perspective provides stricter boundaries. Article 13 of the 2022 Law on Sexual Violence stipulates that placing someone in a helpless state for sexual exploitation is punishable as sexual slavery, with a maximum penalty of 15 years in prison and a fine of one billion rupiah. Therefore, forced marriage may actually be considered an unlawful act and a violation of the victim's human rights.

Second, Economic Factors, Economics is one of the main drivers of forced marriage. Terminologically, economics refers to how humans manage to meet their living needs. Socioeconomic status, according to Soerjono Soekanto, relates to a person's position within the social structure, including access to resources, rights, and obligations. In the family context, economic capacity determines the stability of a household (Soekanto, 2009). The Qur'an emphasizes the husband's commitment to provide for his family decently according to his ability (Quran, Al-Baqarah: 233). However, in societies with low levels of prosperity, parents often view marriage as a solution to reduce economic burdens (Al-Zuhayli, 2010). If a financially secure man proposes to a girl from a low-income family, the chances of marriage are greater, even without the girl's consent. In some extreme cases, forced marriages occur because the parents have large debts, which the lender makes a condition for repayment. In other situations, families hope that marrying off their daughters will reduce their daily financial burden. However, this practice contradicts Article 13 of the 2022 Law on Sexual Violence, which criminalizes the act of placing someone under the power of another party, rendering them powerless to exploit them, including in marital relations. Ethically, under Islamic law, this act is also prohibited because it causes harm, as stated in the principle of "*lā ḍarar wa lā ḍirār*," which forbids mutual harm (‘Alī Jum’ah Muḥammad, 2012).

The Third Factor: Education, Education is a key determinant of forced marriage by guardians. This situation is related to some parents' limited understanding of the importance of education for their children, especially girls. As a result, parents often force their children to marry off immediately after completing secondary education, graduating from Islamic boarding schools, or even while still in formal education (LN, 2019). In certain cultural constructs, women are often viewed as remaining in traditional domestic roles, such as

housewives, regardless of their educational level (Anwar et al., 2024). This view leads to higher education being considered of little strategic value for girls' futures. However, education significantly influences the formation of perceptions, the ability to accept change, and the capacity to make more rational decisions. Furthermore, educational attainment is closely linked to personal maturity. The higher a person's education, the better their ability to respond to social dynamics, broaden their horizons, and manage information within their environment. Therefore, low educational levels among both parents and children contribute to the practice of forced marriage.

Fourth: Cultural and Customary Factors, From a legal perspective, custom is understood as the totality of rules and behavioral patterns that exist within a society (Aprianita, 2023). These customs and cultures, in the context of arranged marriages, still play a significant role in encouraging the practice of forced marriage. In some communities, parents often arrange their children's marriages at an early age, even while they are still in the womb, to close relatives, friends' children, or other family members, to maintain kinship ties and preserve family traditions (Apeldoorn, 2003). This practice has become a cultural legacy passed down through generations (Hanifah et al., 2022). In various regions of Indonesia, the tradition of arranged marriages or forced marriages has multiple terms and forms. For example, in Bengkulu, the practice of grebeg marriage is known, where a man "steals" a woman he is attracted to despite her refusal. In West Sumatra, there is the tradition of "capture marriage," while among the Sasak people of West Nusa Tenggara, the term "maghrib marriage" is known, which also refers to the act of forcibly taking a woman. These traditions essentially represent cultural practices that have the potential to perpetuate violence against women and ignore the principles of freedom and consent in marriage (Bidayati, 2024).

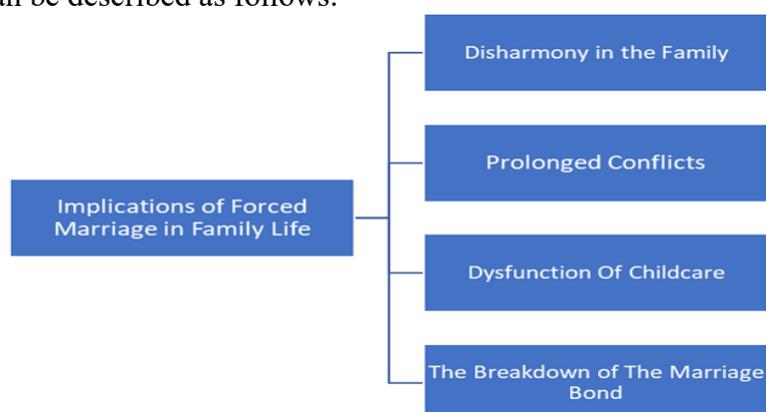
The state has provided clear boundaries for such practices through Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Article 10 stipulates that anyone who unlawfully forces or places someone under their own or another person's control to enter into, allow, or consent to a marriage shall be subject to criminal penalties for forced marriage, which carries a maximum prison sentence of nine years and/or a maximum fine of IDR 200,000,000.00. This regulation covers various forms of coercion, including (a) child marriage, (b) forced marriage under the pretext of cultural practices, and (c) forced marriage between a victim and a perpetrator of rape. Thus, the culture and customs that serve as legitimacy for forced marriage practices not only contradict human rights principles but also clearly violate the provisions of Indonesian positive law.

Fifth, Family Environment Factors, Marriage is a fundamental aspect of people's social life, both in traditional and modern communities. Sociologically, the institution of marriage serves as the basis for the formation of social structures and kinship relationships. Therefore, the practice of marriage that takes place in the community cannot be separated from the influence of the family's social environment (Saebani, 2024). The family environment is one of the factors that contribute to the occurrence of forced marriages. In certain social contexts, there is environmental pressure that encourages families to immediately marry off their children, especially when the family's economic conditions are considered unstable. The assumption that marriage can be a solution to improve economic conditions or reduce the burden on families is one of the triggers for the emergence of the practice of forced matchmaking. Financial stability in the family is closely correlated with the quality of household life. As stated by Khosyi'ah and Jundan, the smooth running of the business and the level of income affect family harmony. Based on these economic considerations and social pressures, families often take the initiative to find a potential partner for their daughters to marry promptly (Khosyi'ah & Jundan, 2020). A family environment with strong social authority and high collectivity values tends to have a significant influence on marriage decisions. In such conditions, the decision to marry is not entirely based on individual will, but rather on the interests of the family and the demands of the social environment.

## **The Social, Psychological, and Legal Implications of Forced Marriage in Indonesian Muslim Families**

Fundamental principles in Islamic teachings and social constructions indicate that human beings are created in pairs male and female to form the bond of marriage. However, in social practice, there are deviations from this principle, especially when parents or guardians use their authority excessively by imposing their will on the child to accept a potential partner who is not in accordance with the child's wishes or readiness. This condition creates a gap between ideal expectations and the reality experienced by the betrothed parties. Every couple who enters the gate of marriage, whether through early marriage, adult marriage, or marriage arranged by others, essentially shares the same desire: to build a harmonious family (Ulfiah, 2002).

Creating a harmonious family is not a simple process; It requires continuous effort, commitment, and the ability to adapt to various dynamics of home life. Family harmony is the result of a long process that needs adjustment, effective interpersonal communication, and the ability to overcome problems that arise in married life. This process applies to all forms of marriage, including those based on the mutual consent of the couple and those that occur through coercion or family pressure. Forced arranged marriage, which in family law studies is known as forced marriage, is a phenomenon that is full of psychological and social pressure from parents or guardians. This practice often leads to the failure to realize the primary goal of marriage, as mandated in Article 1 of Law Number 1 of 1974, which is to form a happy and enduring family based on the One Godhead. The impacts that arise from the implementation of forced marriage can be described as follows:



First, Disharmony in the Family, Forced marriages often result in different family dynamics compared to those based on mutual agreement. Couples who marry forcibly usually experience psychological, emotional, and mental stress. This pressure is especially felt by women who do not have the opportunity to choose their own life partner. This condition has the potential to cause conflict due to differences in character, habits, and preferences between spouses. Wives, in such situations, often struggle to accept their husband's shortcomings, so they sometimes demand that their husband adjust to their will to maintain domestic relations and the welfare of the children.

From the perspective of Islamic family law, acceptance of the spouse is part of the obligation in the conjugal relationship. A wife's disobedience to her husband often arises from a tendency to find fault with the husband, while the husband generally shows tolerance for such behavior. In addition, the influence of the social environment, including family, in-laws, parents, and brothers-in-law, also influences this dynamic of non-compliance. Harmony between in-laws and sons-in-law is one of the key indicators of harmonious relationships within the household. A harmonious relationship is created when both parties can work together, adjust, and emphasize the importance of harmony, thereby minimizing disputes and conflicts. The ideal marriage should be entered into on a consensual basis, in line with the principle of informed consent, which emphasizes the mutual agreement of both parties. In the context of

marriage, this is highlighted through the hadith of the Prophet Muhammad PBUH which emphasizes the importance of women's permission and consent regarding their marriage (al-Shak'ah, 1996).

Some of the conditions that determine the validity of the marriage contract include the permission of the woman's guardian, the woman's pleasure or consent before marriage, the existence of a dowry, and the testimony or announcement of the marriage. Islam gives women very precious rights in the form of independence, honor, dignity, and freedom in determining their future husbands. However, the practice of forced marriage ignores these rights, so that marriages based on coercion have the potential to end in divorce because they are not based on love and mutual agreement. From the perspective of Islamic law, the principle of *Dar'u al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ* emphasizes that preventing harm takes precedence over gaining benefits (Khallāf, 2002). Therefore, the practice of forced marriage that causes psychological and emotional harm to the couple must be prevented because the harm it causes outweighs the possible benefits. In addition to the sharia aspect, forced marriage is also regulated in Indonesia's positive law. Based on Article 10 paragraph (1) of the Sexual Violence Crime Law, a guardian who forces a woman's marriage without her consent can be subject to imprisonment for a maximum of nine (9) years and/or a maximum fine of Rp200,000,000.00. This provision emphasizes the importance of women's consent in marriage as an effort to protect human rights and prevent psychological and social harm.

Second, Prolonged Conflicts, Conflict in family institutions is a phenomenon that often occurs and is socially considered normal. This conflict can involve various individuals, including two parties and more, such as conflicts between spouses, parents and children, or mothers and their children. In general, conflicts can be categorized into two types: short-term conflicts and long-term conflicts (Nurroniyah, 2023). Short-term conflicts are relatively easy to recognize and resolve due to their straightforward nature; however, this type of conflict can recur repeatedly over time, for example, several times a month (Iqbal, 2020). The source of short-term conflict is often related to feelings of jealousy, which is basically interpreted as an expression of love for your partner. In the context of forced marriage, even though a husband-wife relationship begins without mutual agreement, feelings of love can grow over time (Fahri, 2020).

Still, excessive jealousy has the potential to damage the stability of the household. Although jealousy in a husband and wife relationship is normal, conflict will be prolonged if both parties are unable to maintain each other's feelings and maintain their egos. Under these conditions, feelings of love can turn into hatred, accompanied by mutual blame, and even lead to coercion in past marriages. Marriages based on coercion tend to maintain a pattern of prolonged conflict due to the unbalanced foundation of the relationship from the beginning. The impact of forced marriage on family harmony is very significant. In addition to harming the partner, this practice can also hurt parents, siblings, and other family members. Domestic life is basically independent, and conflicts should be resolved internally by a married couple. When female parents completely leave their children to their husbands, they actually entrust the education and welfare of their children to their partners. Disputes in the household often arise from seemingly simple problems. Small, unresolved problems can trigger new issues, leading to conflicts that develop in stages. This situation can be exacerbated if the couple's past mistakes, which have been resolved, are revisited or brought up again. In these conditions, even if one party tries to give in, the other party, who does not want to understand, can prolong the conflict, so that forced marriage has the potential to create unharmonious and prolonged household dynamics.

Third, The Breakdown of the Marital Bond, Ideally, marriage binds married couples to live together by complementing each other and fostering tolerance in their married life. However, in reality, the ideal of marriage often does not align with the social practices prevalent in society. The fracture of the household that leads to divorce is one of the indicators of failure

in achieving family harmony. Forced marriage, according to the author's observation, is one of the main factors in the emergence of divorce, because a marriage based on coercion is not based on love and consent of both parties (Arifin, 2020). This phenomenon still occurs in various circles of society, including in traditional educational environments such as Islamic boarding schools, where the practice of forced matchmaking is known and is the cause of domestic conflicts forcing a woman to marry a man she doesn't love and doesn't like often results in domestic problems after a few years (Kusmardani et al., 2022). Disputes that are initially small (*syiqāq*) can develop into large ones due to various factors, including economic instability, significant age differences, differences in life principles, unbalanced commitments, and domestic violence. The couple's unpreparedness in dealing with household responsibilities, including the absence of a job or lack of attention to the family, also exacerbates the household's dynamics (Kusmardani, 2024). Divorce not only marks the failure of the marriage between husband and wife, but also has an emotional and social impact on the extended family, including parents, siblings, and society. A previously harmonious relationship can turn hostile and difficult to restore. In addition, divorce can have long-term negative consequences, especially for children, which include psychological, educational, and social disorders, as well as affect the stability and harmony of the family environment more broadly (Farid et al., 2024).

Fourth, Dysfunction of Childcare. The presence of a child in the marriage bond is a dream and hope for those who have a family, because, in principle, Islamic family law prioritizes the protection of offspring. A married couple desires to have children, which is the most coveted by every family (Wulandari, et al., 2023). The presence of children is a complement that will give color to family life. The presence of a child, nurturing and educating them, is an additional task of the parental role, which can result in conflicts between husband and wife, often due to a wife's negligence in taking care of the children (Mukhlas, 2015). Couples who are married through the matchmaking process without the pleasure of being together can cause conflict. In fact, not even a little anger of a wife to her husband is vented on her child. Therefore, the wife was negligent in caring for the child (Sulistiani, 2021). In the Child Protection Law, Articles 13, 14, 16, and 17. It is stated that every child, while in the care of a parent, guardian, or any other party responsible for the custody, has the right to protection from the treatment of: 1. Discrimination, 2. Exploitation, both economic and sexual. 3. Neglect. 4. Cruelty, violence, and persecution. 5. Injustice and other mistreatment. 2. If the parent, guardian, or guardian of the child commits any form of treatment as intended in paragraph 1, the perpetrator is subject to punishment (Nurroniyah, 2020).

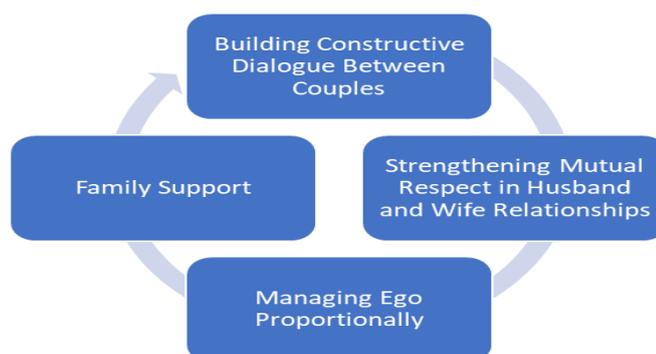
Article 14 1. Every child has the right to be cared for by their own parents, unless there is a valid reason and/or a legal rule that the separation is in the best interests of the child, which should be the last consideration. 2. In the event of separation as defined in paragraph (1), the child still has the right to: a. Meet directly and have regular personal contact with both parents: b get nurturing, maintenance, education and protection for the growth and development process of both parents according to their abilities, then and ask for it; c. obtaining the rights of other children. Every child has the right to be protected from the object of inhuman persecution, torture, or punishment. 2. Every child has the right to freedom in accordance with the law. 4. Arrest, detention, or imprisonment that is valid and can only be done as a last resort (Kamarusdiana & Aprianita., 2018). Every Child deprived of his liberty has the right to: 1. Be treated humanely and be separated from an adult; 2. Obtain legal aid or other assistance effectively in every stage of applicable legal remedies; and defend themselves and obtain justice before an objective and impartial juvenile court in a closed session to the public. Negligence in child custody is reviewed in the law, according to the author, it is a violation based on Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law in Article 81 (1) Every person who violates the provisions as referred to in Article 76 D shall be

punished with the maximum prison sentence short 5 (Five) years and a maximum of 15 years (fifteen) years and a maximum fine of RP. 5000,000,000.00 (Five Billion Rupiah). (2) The Criminal Provisions as intended in paragraph (1) shall also apply to any person who deliberately commits a deception, a series of lies, or persuades the Child to have intercourse with him or with another person.

If criminal acts as intended in paragraph (1) are committed by parents, guardians, people who have family relationships, childminders, educators, education personnel, or officials who handle the protection (one-third) of the criminal threat as intended in paragraph 3, the addition of 1/3 (one-third) of the threat referred to in paragraph (1). (4). In addition to the perpetrator as intended in paragraph (3), the addition of 1/3 (One-Third) of the criminal threat is also imposed on the perpetrator who has been convicted of committing a criminal act as intended in Article 76 D. (5) If the criminal act as intended in Article 76 D causes the victim of more than one person, resulting in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and or the victim dies, the perpetrator is sentenced to death, life, or imprisonment for a minimum of 10 (ten years) and a maximum of 20 (twenty) years. In Legal Sociology, it is understood that the nuclear family has a function, namely, to maintain and develop its members. Meeting the needs of children and other families is crucial, enabling them to keep their lives. The fulfillment of children's rights as family members can be in the form of: First, the fulfillment of the needs of food, clothing, shelter, and health for physical and social development; and second, the fulfillment of the need for formal, informal, and non-formal education to develop intellectual, social, mental, emotional, and spiritual development (Saepullah, 2021).

### **Setrategi Maintaining Households for Forced Marriage Couples in Indonesia**

Forced Marriage, which often occurs in Indonesia from the past to the present, is a serious problem because the practice of forced Marriage is not only contrary to Islamic family law, but also contrary to Law No. 1 of 1974 concerning Marriage, the Child Protection Law, the Law on Sexual Violence, and human rights. This means that this practice of coercion is neither justified in law nor in ethics. Because a marriage that is carried out without the free consent of both parties tends to cause problems, both from psychological, social, and family resilience aspects. The practice of coercion in Marriage has the potential to create unequal relationships, trigger prolonged conflicts, and inhibit the formation of unhealthy emotional bonds in family life. However, behind every problem that arises in the household, there certainly requires the right effort to find a solution. The solution taken is basically part of a strategy to maintain family resilience, especially for married couples who are victims of forced Marriage by guardians. Based on the results of the author's observations and observations on couples who have experienced forced Marriage, the following findings were obtained:



First, Building Constructive Dialogue Between Couples. Open communication plays a crucial role in fostering trust between couples. When each individual feels safe and comfortable

conveying the things that are considered important, a stronger emotional bond and a deeper understanding of one another are created. Through open communication, married couples can also resolve issues more effectively, as they can express concerns, discomforts, and disagreements in a way that encourages constructive dialogue and joint solutions. Thus, open communication is not only an important element in maintaining the quality of the relationship, but it is also a key foundation in building trust and deeper emotional involvement in the couple's life. In the context of married couples who have been forced to marry by their guardians, either among women and men, increasing dialogue is a solution because the dynamics in building a family take a long time, and there are a lot of life struggles that must be fought in building a relationship between husband and wife. Although in family law there is a principle of freedom in finding a partner, if a couple has already married a partner who is forced by the guardian who married him, then there is no other consideration than to live a good household because marriage is a mandate entrusted by Allah as stated in QS al-Rum 21. Therefore, maintaining family harmony is an absolute obligation, *Al-Wājib lā yutrak illā bi-Wājib* and *Mā lā yatimmu al-wājib illā bihi fa-huwa wājibun* (Ali, 1976).

Second, Strengthening Mutual Respect in Husband and Wife Relationships. Mutual respect and respect for your partner are fundamental elements in building a harmonious relationship. The award recognizes various aspects of a couple's lives, including their character, personality, achievements, and the roles they fulfill in domestic life. This attitude plays a role in creating equal, conducive, and understanding relationships. The implementation of mutual respect values involves a willingness to accept the needs and differences of each individual in the relationship. When both parties can appreciate these differences, a foundation of cooperation, emotional support, and mutual understanding will be formed. One of the key aspects of trust in a relationship is the ability to listen actively. This approach requires couples to understand each other's perspectives without making judgments. Through the process of empathic listening, couples can deepen the quality of the relationship and strengthen existing emotional bonds. In addition, mutual respect is also reflected in the recognition of the contributions and sacrifices of each party, both in aspects of housework, emotional support, and other forms of service within the family. By giving appreciation for each other's efforts and roles, this relationship can also develop into a more stable, happy, and satisfying condition. With the efforts mentioned, it is hoped that the problems existing in family life can be resolved, preventing them from escalating into conflicts that may lead to divorce. However, understanding and knowing what is happening will make it easier to find solutions quickly, so we can combat things that can disturb and damage the harmony in the household.

Third, Managing Ego Proportionally, Cases of forced marriage that occurred in several regions in Indonesia caused various problems in the couple's home life. One of the efforts taken to maintain the continuity of the relationship is to reduce each other's egos and cultivate the habit of listening to one another's opinions. This step was taken to maintain harmony in their household. Lowering one's ego in domestic life is a fundamental aspect in maintaining the harmony and sustainability of the husband-and-wife relationship. Uncontrolled egos often trigger conflicts, tensions, and even have the potential to cause divisions in the family. By being able to control and reduce each other's egos, couples can build stronger relationships, present a more stable emotional atmosphere, and make both parties feel appreciated, happy, and fulfilled in their home life.

Four, Family Support, In the context of marriage between married couples, who are the basis for forced marriage, family support is, in principle, an important factor in maintaining stability and harmony, and can even strengthen the condition of the relationship that is predicted to be unhealthy. Family involvement helps justify and encourage the prevention of rifts between the two parties. In several cases in Indonesia, married couples who are in a situation of forced marriage often experience significant emotional and psychological stress. In these conditions, family support can be a deciding factor that provides a way out or a source of

strength for them to end an abusive relationship. Such forms of support can include providing a safe living environment, assistance in obtaining legal services or counseling, and offering consistent emotional support to help individuals escape an unhealthy situation. In principle, authentic family support should be oriented towards the happiness, safety, and well-being of family members. In this context, the best course of action is sometimes to help them leave unhealthy relationships, including relationships formed through forced marriage.

#### **4. CONCLUSION**

Based on the results of the above research, the following conclusions can be drawn: First, from the perspective of Islamic family law, the existence of guardians in the marriage bond is an institution that serves to protect women, especially children or women who are not legally competent. However, the concept of *walī mujbir* cannot be understood as absolute authority. Both classical fiqh and positive Indonesian law provide limits on the right to *ijbār*. The compilation of Islamic Law expressly limits the authority of guardians to children under the age of 21 and provides that marriages performed by force can be annulled. This reinforces the principle that the right of guardianship is not an absolute authority, but a mandate that can be revoked if abused. Second, from the perspective of criminal law and human rights, the practice of forced marriage is a form of serious violation. The Sexual Violence Crime Law explicitly categorizes forced marriage as a criminal offense that can be subject to imprisonment and fines.

Additionally, international human rights standards, such as the Universal Declaration of Human Rights, affirm that marriage is only valid if it is based on the full and free consent of both spouses. Thus, the right to *ijbār* cannot be used as a justification for the practice of coercion, because such actions injure human dignity, violate individual freedom, and cause psychological and sexual violence. Third, the practice of forced marriage has far-reaching implications for family life. Coercion in marriage has been proven to cause disharmony, prolonged conflicts, vulnerability to divorce, and neglect in childcare. Marriages that are not based on the willingness and readiness of both parties find it difficult to develop *mawaddah wa rahmah* as a sacred goal of marriage. The social and psychological impact is not only felt by the couple but also affects the development of children and the stability of the extended family. This demonstrates that forced marriage is substantially contrary to *the maqāsid al-sharī'ah*, particularly the protection of the soul (*ḥifẓ al-nafs*), honor (*ḥifẓ al-'ird*), and offspring (*ḥifẓ al-nasl*). Overall, this study confirms that the reinterpretation of the concept of *walī mujbir* is an urgent need in the contemporary context of Indonesia. The strengthening of human rights awareness, socio-cultural changes, and the rise of cases of forced marriage show that classical textual understanding must be directed towards readings that are oriented towards the benefit, protection of women, and family resilience. Thus, the practice of *walī mujbir* can only be carried out within the corridor of protection, not coercion, in line with the principle of "there should be no harm and mutual harm" (*lā ḍarar wa lā ḍirār*) and the basic purpose of Islamic law to realize benefits.

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