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The Transformation of the Structure and Function of *al-Qurbā* and Its Consequences for the Mother's Position in the Guardianship System

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Abstract: The role of mothers has become increasingly prominent in exercising authority to fulfill their responsibilities in caring for orphaned children and managing their property. This study is motivated by the fact that traditionally, *al-qurbā* (close relatives) such as grandfather, paternal uncle, and other paternal kin have been entrusted with the care, management, and development of orphans and their property, without recognizing the position of the mother in the guardianship structure. Hence, the study aims to explore the transformation of the structure and function of *al-qurbā* and its effects on the status of mothers in the guardianship system. This study employed a qualitative research method using a conceptual analysis approach to normative legal issues. Data were collected through a mixed approach, combining field research conducted by means of observation and interviews in Banda Aceh and Aceh Besar with library research to identify relevant. The findings reveal that the transformation of the structure and function of *al-qurbā* within the guardianship system has occurred through two models. The first one is natural transformation, which is related to cultural factors, family structure, gender issues, modernization, and local traditions. The second is scholarly transformation, which encompasses legal reforms, government policies, and developments in legal scholarship, including the attempts to reformulate the concept of guardianship by means of holistic interpretation of Qur'anic verses that were previously interpreted in a partial manner. Further, three main consequences of these transformations have been identified in this study, including: the elevation of the mother's position in the order of guardianship, the changes in the mother's authority as a legal guardian, and the modifications to the rights and responsibilities assigned to the mother upon her appointment as the guardian of an orphaned child.

Keywords: Transformation, al-Qurbā, Mother, Guardianship.

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Abstrak: *Peran ibu semakin menonjol dalam menjalankan kewenangan untuk memenuhi tanggung jawab dalam merawat anak yatim piatu dan mengelola harta benda mereka. Penelitian ini dimotivasi oleh fakta bahwa secara tradisional, al-qurbā (kerabat dekat) seperti kakek, paman dari pihak ayah, dan kerabat ayah lainnya telah dipercayakan untuk merawat dan mengembangkan anak yatim piatu dan harta benda mereka, tanpa mengakui posisi ibu dalam struktur perwalian. Oleh karena itu, penelitian ini bertujuan untuk mengeksplorasi transformasi struktur dan fungsi al-qurbā dan pengaruhnya terhadap status ibu dalam sistem perwalian. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan analisis konseptual terhadap masalah hukum normatif. Data dikumpulkan melalui pendekatan campuran, menggabungkan penelitian lapangan yang dilakukan melalui observasi dan wawancara di Banda Aceh dan Aceh Besar dengan penelitian perpustakaan. Temuan ini mengungkapkan bahwa transformasi struktur dan fungsi al-qurbā dalam sistem perwalian telah terjadi melalui dua model. Pertama adalah transformasi alam yang terkait dengan faktor budaya, struktur keluarga, isu gender, modernisasi, dan tradisi lokal. Kedua adalah transformasi ilmiah yang mencakup reformasi hukum, kebijakan pemerintah, dan perkembangan dalam keilmuan hukum, termasuk upaya untuk merumuskan kembali konsep perwalian melalui penafsiran holistik ayat-ayat Al-Qur'an yang sebelumnya ditafsirkan secara parsial. Selanjutnya, tiga konsekuensi utama dari transformasi ini telah diidentifikasi dalam penelitian ini, termasuk peningkatan posisi ibu dalam urutan perwalian, perubahan otoritas ibu sebagai wali yang sah, dan modifikasi hak dan tanggung jawab yang diberikan kepada ibu setelah pengangkatannya sebagai wali anak yatim piatu.*
Kata Kunci: *Transformasi, al-Qurba, Ibu, Wali*

Introduction

In the *fiqh* (Islamic jurisprudence) of guardianship, the order of the guardians is determined by the degree of kinship between the potential guardian and the child under guardianship. This close relation of family is called *al-qurbā*.[1] In the Hanafi madhhab (school of law), the order of personal guardianship follows the order of inheritance, yet it does not recognize the mother as one of the closest

[1] In the Qur'an, the term *dhū al-qurbā* appears twenty-four (24) times to refer to close relatives whose rights must be duly recognized and fulfilled. These occurrences are found in the following Qur'anic verses: Al-Baqarah (2):83, 177, 180, 215, Al-Nisā' (4):7, 8, 33, 36, 135; Al-Mā'idah (5):106; Al-An'ām (6):152; Al-Anfāl (8):41, 75; At-Tawbah (9):8, 10, 113; An-Naḥl (16):90; Al-Isrā' (17):26; An-Nūr (24):22; Ash-Shu'arā' (26):214; Ar-Rūm (30):38; Fāṭir (35):18; Al-Ḥashr (59):7. Muhammad Habibi, "Kewenangan Ibu Sebagai Wali Dalam Pengurusan Jiwa Dan Harta Anak Yatim (Analisis Al-Qurbá Sebagai *'Illah* Hukum)" (Universitas Islam Negeri Ar-Raniry Banda Aceh, 2022).

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guardians.[2] Consequently, the mother is placed at the lowest rank in the order of guardianship, immediately above *dhawī al-arḥām* (more distant blood relatives).[3] This study discusses the position of the mother within the child guardianship system and analyzes the change in structure and function of *al-qurbā* in the contemporary family. In the traditional system, the mother is recognized only if no other eligible relatives are available. However, if the order of guardianship is based on the structure of inheritance, then the mother, being one of the closest of heirs (*al-qurbā*), should also be recognized as having a rightful place in the order of guardianship.[4]

In matters concerning property, the father has exclusive guardianship authority.[5] However, on the death of the father, Islamic jurists are divided on the question of who should be the guardian of the child's property. According to the Ḥanafi *madhhab*, guardianship of the property is first entrusted to the individual appointed by the father through a testamentary designation (*waṣiyy*). If no such guardian has been appointed, the responsibility passes to the paternal grandfather, followed by the person designated by the grandfather. In some cases, however, the court may also appoint a guardian to manage the child's property.[6]

The Māliki *madhhab* adopts a more restrictive order of guardianship, in which the mother is excluded from eligibility as a property guardian. The order of guardians consists of the son, the father, the testamentary guardian, the brother, the grandfather, and the paternal uncle. The order of guardians in this *madhhab* is as follows: The son and his descendants, the father, the testamentary guardian, the brother and his descendants, the paternal uncle and his descendants, the grandfather, the paternal uncle and his descendants. Within this hierarchy full siblings take precedence over half siblings, and in contemporary practice a court appointed guardian is also recognized as being legally valid.[7] The conservative hierarchy of guardianship in the classical *fiqh madhhabs*, however, was strongly influenced by the cultural norms and social realities of Arab society, where men

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[2] Ibnu Abidin, *Raad Al-Muhtar 'ala Ad-Duur Al-Muhkhtar* (Beirut: Dar al-Kitab al-Ilmiyah, 2003), p. 567. Wahbah Al-Zuhailī, *Al-Fiqh Islāmī Wa Adillatuh* (Beirut: Dār al-Fikr, 1998), p. 747

[3] Wahbah Az-Zuhaili, *Fiqih Islami Wa Adillatuhu* (Jakarta: Gema Insani, 2011), p. 85; Abdul Rahman Ghozali, *Fiqh Munakahat* (Jakarta: Kencana, 2012), p. 167. Moh Rifa'i, *Ilmu Fiqih Islam Lengkap* (Semarang: Karya Toha Putra, 1978), p. 457. Soraya Devy and Mela Mirdawati, "Peran Perangkat Desa Terhadap Pelaksanaan Perwalian Anak Korban Tsunami (Studi Kasus Di Kec. Krueng Sabee, Kab. Aceh Jaya)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018).

[4] Abdurrahman Al-Juzairi, *Fikih Empat Mazhab*, Jilid 2 (Jakarta: Pustaka Al-Kausar, 2015); Az-Zuhaili, *Fiqih Islami Wa Adillatuhu, Terj. Al-Hayyie Al-Kattani*.

[5] Sayyid Sabiq, *Fiqh Sunnah* (Jakarta: Cakrawali Publishing, 2008).

[6] Az-Zuhaili, *Fiqih Islami Wa Adillatuhu, Terj. Al-Hayyie Al-Kattani*.

[7] Ibnu Rusyd, *Bidayatul Mujtahid* (Jakarta: Pustaka Azzam, 2000); Az-Zuhaili, *Fiqih Islami Wa Adillatuhu, Terj. Al-Hayyie Al-Kattani*.

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were primarily engaged in activities outside the home. Therefore, the matters concerning property management were generally entrusted to male kin only.[8]

On the contrary, Indonesian positive law, as embodied in Law No. 1 of 1974 on Marriage[9] and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI),[10] does not differentiate between men and women for the purpose of guardianship, as in the classical rules of Islamic jurisprudence on the appointment of guardians. Rather they both have equal right to be a guardian as long as the prospective guardian is a close relative of the child. Article 51(2) of Law No. 1 of 1974 provides: "A guardian shall, as far as possible, be appointed from among the child's relatives or another adult who is of sound mind, just, honest, and of good moral character."[11] A similar provision is contained in Article 107(4) of the KHI, which states: "A guardian shall, as far as possible, be appointed from among the child's relatives or another adult who is of sound mind, just, honest, and of good moral character, or a legal entity."

The Marriage Law and the KHI represent a progressive legal framework that reinforces the principle that both men and women have equal opportunities and rights to serve as guardians. This indicates that the appointment of a child's guardian is not determined by the guardian's gender, since Indonesian positive law recognizes both men and women as eligible for guardianship.[12] In this sense, the main consideration in the appointment of a guardian is not gender, but the degree of relationship or closeness between the prospective guardian and the child to be placed under guardianship.[13]

The transformation of the structure and function of *al-qurbā* in contemporary Indonesian law and legislation has a significant impact on the differences in legal rules. The spirit of the decisions of the Sharia Court, which that allow biological mothers and maternal relatives to be guardians of children,

[8] Az-Zuhaili, *Fiqih Islami Wa Adillatuhu, Terj. Al-Hayyie Al-Kattani*.

[9] Negara Kesatuan Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 01 Tahun 1974 Tentang Perkawinan* (Jakarta: Depag RI, 1974), p 1.

[10] Negara Kesatuan Republik Indonesia, "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1998 Tentang Kompilasi Hukum Islam" (Jakarta: Sekretariat Negara republik Indonesia, 1991). Hereinafter is referred to as the KHI.

[11] Law No. 1/1974, Article 51 Paragraph (2).

[12] Muhammad Habibi, "Legalitas Hukum Islam Dalam Sistem Peradilan Indonesia," *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 22, no. 2 (2021). Moh Usman, "Sinkronisasi Regulasi Tentang Hak Ekonomi Anak Di Indonesia Dengan Convention on The Rights of The Child/Synchronization of Regulations on Children's Economic Rights in Indonesia with the Convention on The Rights of The Child," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 2 (2020).

[13] Soraya Devy, *Sistem Perwalian Di Aceh: Pergumulan Antara Hukum Islam, Hukum Positif Dan Praktek Masyarakat* (Banda Aceh: Sahifah, 2018).

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also reflects this transformation.[14] This study refers to *al-qurbā* as the close relationship between the guardian and the child. The focus on the close relationship between the guardian and the child as laid down in Law No 1 of 1974, the KHI, and the rulings of the Sharia Court is meant to safeguard the best interests of the child. Such protection can only be provided by those who have a close and meaningful relation with the child.[15]

The present study is based on the basic assumption that the change in the structure and function of *al-qurbā* has serious implications for the position of the mother as a guardian within the guardianship system, wherein classical *fiqh* assigned her an inadequate or subordinate role. Thus, this paper studies the transformation in the structure and function of *al-qurbā* and how it has changed the guardianship system and its implications for the position of the mother as a guardian of the person and property of orphaned children.

The need to recognize the mother as a legal guardian requires a comprehensive and holistic review that can contribute to the promotion of the protection and welfare of orphaned children in accordance with the objectives of Islamic law (*maqāṣid al-sharī'ah*).[16] Moreover, the study also aims to provide insight into the legal status of the mother as a *maḥkūm ʿalayh* (a legally accountable subject)[17] whose position and legal responsibility can be justified based on Islamic legal theory. The argument was that *al-qurbā* (interpreted as a universal legal value, *al-ma'nā al-kulliyy*) forms the legal basis for the recognition of the mother's authority to be a guardian, as evidenced by Law No. 1 of 1974, the KHI, and the decisions of the Sharia Court in Aceh.

The novelty of this article lies in its argument that mothers may legitimately serve as guardians within the guardianship system, despite the fact

[14] Decisions of the Jantho Sharīʿah Court, Decision No. 420/Pdt.P/2005/MSY-JTH); (Decision No. 705/Pdt.G/2005/MSY-JTH). Guardianship was granted to the child's maternal aunt (Decision No. 709/Pdt.P/2005/MSY-JTH). (Decision No. 403/Pdt.P/2005/MSY-JTH).

[15] Hasliza Talib, et al., "Peranan Dan Tanggungjawab Wali Terhadap Anak Yatim," *E-Prosiding Persidangan Antarabangsa Sains Sosial Dan Kemanusiaan*, 2019, p. 104–12. Nur Saniah, Nawir Yuslem, and Hasan Matsum, "Analysis of Maqāshid Sharī'a on Substitute Heir in Compilation of Islamic Law (KHI)," *Al-'Adalah* 20, no. 1 (2023).

[16] Jabbar Sabil, *Maqasid Syariah*, ed. Badrul Munir, 1st ed. (Jakarta: Rajawali Press, 2023), p. 135. Safrudin Edi Wibowo and Fathiyaturrahmah Fathiyaturrahmah, "Women and the Transmission of the Quran: Marginalization, Legal Strategies, and Maqāṣid Al-Sharī'ah-Based Resolution," *AHKAM : Jurnal Ilmu Syariah* 25, no. 1 (2025), p. 19–36. Qodariyah Barkah and Andriyani Andriyani, "Maqashid Al-Syari'ah Concept Of Kafa'ah In Marriage," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, No. 1 (2020), p. 107–16. H. L. Rahmatiah et al., "Strict Liability And Product Safety: The Case of Dangerous Syrup in Indonesia in The Maqāṣid Al-Sharī'ah Perspective," *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023).

[17], Rahmad Syafi'i, *Ilmu Ushul Fiqh* (Bandung: Pustaka Setia, 2014), p. 334. Alaidin Koto, *Ilmu Fiqh* dan *Ushul Fiqh*, (Jakarta: Rajawali Pers, 2014), p. 146. Muṣṭafā Aḥmad al-Zarqa Muṣṭafā Aḥmad Al-Zarqa, *Al-Madkhal Al-Fiqhiyah Al-'Am* (Damsyiq: Dār al-Fikr, 1968), p. 737.

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that classical *fiqh* generally restricted their role in the administration of property.[18] Indeed, women were once classified among the *sufahāʾ* (persons deemed legally incompetent in financial management) since they were considered excessively wasteful in managing and developing property.[19] This paper, thus, critically reexamines that classical assumption and argues that the inclusion of mothers within the guardianship structure has a sound and well-reasoned basis in Islamic law, which is consistent with both the philosophical and sociological principles underlying the formulation and development of Islamic jurisprudence.[20]

This study employed qualitative research methods[21] with a conceptual analysis approach to normative law.[22] The study also explored the historical evolution of Islamic legal doctrine.[23] This study sought the appropriate legal solution to the problem of mother's authority as a guardian in the guardianship system by tracing the changes in legal rules resulting from social transformation as well as changes in place and time.

Data were collected using a mixed approach. First, library research[24] was undertaken to examine secondary data, including relevant primary, secondary,

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[18] Ibnu Hajar Al-Asqalani, *Al-'Ajab Fi Bayani Al-Asbab* (Damman: Darul Ibnul Jauzi, 1997), p. 824-825.

[19] Wahbah az-Zuhaili, *Tafsir Al-Munir. Aqidah, Syari'ah, Manhaj*, 2016, p. 587.

[20] Roibin, *Sosiologi Hukum Islam: Telaah Sosio-Historis Pemikiran Imam Syafi'i* (Malang: UIN Malang Press, 2008).

[21] Lexy J. Moleong, *Metode Penelitian Kualitatif* (Bandung: Remaja Rosdakaya, 2007).

[22] I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (2013).

[23] Nugrahani, Farida, and M. Hum, *Metode Penelitian Kualitatif* (Solo: Cakra Books, 2014).

[24] Andi Tenri Sucia, "Kedudukan Hak Asuh Anak Pasca Terjadinya Perceraian Karena Salah Satu Orang Tuanya Murtad Menurut Hukum Positif Dan Hukum Islam: Studi Perbandingan Pengadilan Negeri Dan Pengadilan Agama Di Makassar" (Universitas Islam Negeri Alauddin Makassar, 2017). Tali Tulab, "Tinjauan Status Wali Dalam Perkawinan Berdasar Pendekatan Feminis," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 1 (2017). Al Yasa' Abubakar, "Perlindungan Harta Anak Dalam Peraturan Perundang-Undangan Dan Praktek Di Mahkamah Syar'iyah," *Jurnal Ilmiah Islam Futura* Volume X, no. No 2 (2011). Muhammad Habibi, "Kewenangan Ibu Sebagai Wali Dalam Pengurusan Jiwa Dan Harta Anak Yatim (Analisis Al-Qurba Sebagai 'Illah Hukum)" (Universitas Islam Negeri Ar-Raniry Banda Aceh, 2022). Sarmadan Pohan, "Hambatan Yang Ditemui Dalam Perwalian Anak Di Bawah Umur Berdasarkan Surat Penetapan Pengadilan Negeri Di Wilayah Hukum Pengadilan Negeri Padangsidimpuan," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 1, no. 2 (2018). Ishak, "Perwalian Konsep Hukum Tertulis" *Kanun Jurnal and Ilmu Hukum*, 19, no. 3 (2017), p. 571–90. Soraya Devy, *WALI NIKAH: Urutan Dan Kewenangannya Dalam Perspektif Imam Mazhab* (Banda Aceh: Sahifah, 2017). Comfort Asanbe, et al., "Parental HIV/AIDS and Psychological Health of Younger Children in South Africa," *Journal of Child and Adolescent Mental Health* 28, no. 2 (2016). Edith Kiggundu and Wilna Oldewage-Theron, "Coping: A Challenge for Guardians of Children Orphaned by HIV/AIDS in a South African Township," *Development Southern Africa* 26, no. 3 (2009). Mohamad Saran and Dudang Gojali, "The Position of Wali Al Mal in Islamic Law Structure in Indonesia," *Indonesian Journal of Islamic Studies* 2, no. 2 (2018). Radwan Jamal

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and tertiary legal sources.[25] This was followed by field research in Banda Aceh and Aceh Besar to obtain non-legal data that complemented the analysis of the transformation of the structure and function of *al-qurbā* in Aceh.

The data were analyzed within the framework of the anthropology and sociology of Islamic law,[26] which allowed the study to show the consistency of Islamic legal principles with empirical realities in the formation of legal rules.[27] The study utilized the method of *istiqrāʾ al-maʿnawī* (semantic induction) to determine the *maʿnā kullī* (universal meaning) that underlies the textual provisions on guardianship and their relationship with the concept of *al-qurbā* so as to fortify the conceptual basis of *al-qurbā.* The conceptual framework was then used to support the recognition of the mother's authority to be the guardian of an orphaned child within the reformulation of Islamic guardianship jurisprudence.[28]

Islamic Jurisprudence of Guardianship and Changes in Contemporary Family Structures

The definition of guardianship gives rise to six essential elements that must be present in the concept of guardianship, namely: (1) Determination, namely, the existence of an act that establishes the application of a specific and concrete legal rule; (2) Authority, namely, the right and power possessed to perform a particular act; (3) Prescribed by the Sharīʿah, namely, the determination of authority over a particular matter through the provisions of the textual sources (*naṣṣ*), whether from the Qur'an or the Hadith, or through legal rulings derived

Yousef Elatrash and Rochmad Rochmad, "Al-Maqasid Al-Akhlaqiyyah Lil Khitab Al-Maaly Fi Surah Al-Nisa," *Studia Quranika* 7, no. 2 (2023). Eale E. Kris and Mphuthi David, "Perceptions of Parents/Guardians About the Effectiveness of Future Families Orphans and Vulnerable Children Programme in Olievenhoutbosch, South Africa," *Global Journal of Health Science* 12, no. 4 (2020). Gizachew Balew et al., "Assesment of Household Burden of Orphaning and Coping Strategies by Guardians and Families with Orphans and Vulnerable Children in Hossana Town, SNNPR.," *Ethiopian Medical Journal* 48, no. 3 (2010). Oldroyd, John C., et al., "The experiences of children and adolescents undergoing forced separation from their parents during migration: A systematic review." *Health & Social Care in the Community* 30, no. 3 (2022), p. 888-898. Muhammad, Andi. "The Role of a Female Head Assistant at" Al-Walidaturrahmah" Orphanage in Implementing A Just and Civilized Humanity in Samarinda." *Salasika* 3, no. 2 (2020), p. 103-116. Veale, Angela, and Giorgia Donà. "Street children and political violence: a socio-demographic analysis of street children in Rwanda." *Child abuse & neglect* 27, no. 3 (2003), p. 253-269.

[25] Johnny Ibrahim, "Teori Dan Metode Penelitian Hukum Normatif," *Bayu Media, Malang*, 2006.

[26] Roibin, *Sosiologi Hukum Islam: Telaah Sosio-Historis Pemikiran Imam Syafi'i*.

[27] Miftahuddin, "Integrasi Dan Interkoneksi Studi Hukum Islam Dengan Ilmu-Ilmu Sosial," *Al-'Adalah* Vol. X, no. No. 3 (2012).

[28] Muhammad Agus Andika, "Tafsir Maudhu'i Sebagai Langkah Teknis Perumusan Al-Qawa'id Al-Kulliyat Dalam Penemuan Hukum Islam" (Universitas Islam Negeri Ar-Raniry, 2023).

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from both; (4) Granted to a *mukallaf*,[29] meaning that the authority prescribed by the Sharīʿah cannot be conferred upon just anyone but must be granted to a person who possesses the necessary legal capacity and competence. The use of the term *mukallaf* indicates that the person so designated must be a Muslim who has reached legal maturity (*baligh*), is of sound mind, and possesses sound judgment (*rushd*); (5) To perform legal acts, meaning that the purpose of granting such authority, as explained above, is to enable the person to undertake legally effective actions, whether in the form of contracts (*ʿaqd*) or other types of legal transactions; and (6) On behalf of the person under guardianship. The inclusion of this final element in the definition is intended to ensure that the authority granted to the *mukallaf* serves the interests and benefits of the person under guardianship. This definition does not limit the right to serve as a guardian to either men or women. The reason is that both men and women, provided they fulfill the qualifications of a *mukallaf*,[30] have the right and legal authority to serve as guardians, as long as they have a close relationship with the person under their guardianship.

When cases of guardianship are examined from an anthropological perspective and related to the various provisions of *fiqh*, it becomes evident that the legal rules found in *fiqh* were formulated for a society characterized by an extended family structure.[31] The rules of guardianship in *fiqh*, at least in the Shāfiʿī *madhhab*, which stipulate that when the father is absent, guardianship is transferred to the father's brother rather than to the mother, are relatively compatible with the extended family model.[32] In the present industrial era, however, the tendency to move away from the extended family model has become increasingly widespread. Government housing policies, such as the construction of Simple Houses (Rumah Sederhana/RS) and Very Simple Houses (Rumah Sangat Sederhana/RSS), whether intentionally or not, have encouraged people to establish nuclear families rather than extended families. Likewise, policies that designate the wife as the recipient of a husband's pension benefits and as the

[29] Syafi'i, *Ilmu Ushul Fiqh*.; Koto, *Ilmu Fiqh Dan Ushul Fiqh*, p. 146.

[30] Hanif Aidhil Alwana, "Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (2020), p. 147. Bukhari Ali, "Otoritas Ijtihad Dalam Kajian Hukum Islam (Analisis Kaedah Fikih Al-Ijtihadu La Yunqadhu Bi Al-Ijtihadi)," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021), p. 108.

[31] Mukhsin Aseri et al., "Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulema Council," *Journal of Islamic Law* 6, no. 2 (2025), p. 286–316.

[32] Abu Syuja' Ahmad bin Husain bin Ahmad Al-Ashfahani, *Matan Fikih Madzhab Syafi'i* (Solo: Al-Wafi, 2015). Beni Ahmad Saebani, *Fiqh Munakahat: Buku 1* (Bandung: Pustaka Setia, 2001), p. 236-237. Abdul Wahhab Sayyed Hawwas and Abdul Aziz Muhammad Azzam, *Fiqh Munakahat* (Jakarta: Amzah, 2014), p. 118-119.

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beneficiary of inheritance under insurance agreements have, consciously or unconsciously, also encouraged society to adopt the nuclear family model.[33]

The Transformation of the Structure and Function of *al-Qurbā* in the Guardianship System

1. The Cohesiveness of the Term *al-Qurbā* and the Structure of Guardianship

In the literal sense, *al-qurbā* is derived from the Arabic root قرب (*qaruba*), which means "to be near" or "close."[34] This word "close" or "near" in Indonesian is "*dekat*", which has a number of meanings, as provided in the Kamus Besar Bahasa Indonesia (Indonesian Dictionary), including: (1) not far; (2) almost; (3) adjacent or in close proximity (to); (4) close, intimate, or closely connected (in relationships, etc.), as in the sentence, "*Pertemuan itu hanya dihadiri oleh sahabat akrabnya"* ("The gathering was attended only by his close friends"); and (5) approaching or impending.[35]

Al-qurbā itself refers to the family members who maintain the ties of kinship, which include those who are entitled to inheritance and those who are not, as well as relatives who do not get a share of the inheritance, but are still part of the kinship family.[36] This description is in line with what is emphasized in the Qur'an Sūrah al-Nisāʾ (4), verse 8. *Al-qurbā* also includes family or relatives in a broader sense, meaning those who have ties of kinship through the mother or father, as described in Sūrah al-Baqarah (2), verse 83. Classical *ulama* (Muslim scholars) likewise maintain that relatives are those who have kinship relationships through both parents.[37] Since numerous Qur'anic verses employ various derivations of the word *al-qurbā* according to different criteria, the authors therefore formulate a classification of *al-qurbā* in the Qur'an.

[33] Al Yasa' Abubakar, *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh* (Jakarta: Kencana, 2016), p. 349–50.

[34] Kasir Ibrahim, *Kamus Arab Indonesia-Indonesia* (Arab, Surabaya: Apolo Lestari, n.d.), p. 180.

[35] Dendi Sugono et al., *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2009), p. 335.

[36] Ahmad Aṣ-Ṣáwi Al-Maliki, *Hasyiyah Al-'Alamat as-Sawi* (Beirut: Dar al-Fikr, 1993), p. 65.

[37] M. Quraish Shihab, *Tafsir Al-Misbah, Pesan, Kesan Dan Keserasian Al-Qur'an* (Jakarta: Lentera Hati, 2000).

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Table 1. The Scope of the Term *al-Qurbā* in the Qur'an

No	Term	Verse	Meaning and Context of the Verse
1.	ذا القربى	Sūrah al-Mā'idah (5):106	Close relatives
		Sūrah al-Anʿām (6):152	The Prophet's relatives from both the paternal and maternal sides (in the context of guardianship and orphans)
		Sūrah al-Isrāʾ (17):26	Close relatives (e.g., one's mother, father, children, and nearest kin)
2.	ذى القربى	Sūrah al-Baqarah (2):83	Relatives or kinsfolk
		Sūrah al-Anfāl (8):41	Relatives from both the maternal and paternal sides
		Sūrah al-Naḥl (16):90	Relatives or kinsfolk
		Sūrah al-Ḥashr (59):7	The Prophet's relatives from both the maternal and paternal sides
3.	ذوى القربى	Sūrah al-Baqarah (2):177	Relatives
		Sūrah al-Nisāʾ (4):36	Relatives (including siblings and paternal and maternal uncles)
4.	والاقربين	Sūrah al-Baqarah (2):180	Close relatives, whether near or distant
		Sūrah al-Baqarah (2):215	Relatives (including children, grandchildren, and siblings)
5.	والاقربون	Sūrah al-Nisāʾ (4):7	Relatives in the context of inheritance
		Sūrah al-Nisāʾ (4):33	Parents and close relatives
		Sūrah al-Nisāʾ (4):135	Parents and close relatives
6.	أولوا القربى	Sūrah al-Nisāʾ (4):8	Relatives who do not have inheritance rights
		Sūrah al-Tawbah (9):113	The Prophet's relative (Abū Ṭālib)

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It should be understood that, within the guardianship system, the existence of a family relationship constitutes the primary criterion for determining whether a person is eligible to serve as a guardian. Without *al-qarābah* (kinship) relationship, the appointment of a guardian within the guardianship system cannot take place.[38] The hierarchy of those who can be guardians in *fiqh* depends on their closeness to the person concerned, i.e. relatives (*qarābah*). Here, relatives are divided into two: close relatives (*aqrab*) and distant relatives (*abʿad*).[39] The position of close relatives is more dominant in guardianship than that of distant relatives, which give them priority in the order of guardianship, i.e., starting from the nearest relatives.

The underlying rationale of the guardianship system prioritizes a structure based on the kinship relationship between the guardian and the child. The existence of *al-qurbā* is fundamental to guardianship as it establishes a close bond between the guardian and the child, which subsequently fulfils the objectives of protection and the management of the child's property. In addition, when viewed from the perspective of the objectives (*maqāṣid*) underlying the prescription of guardianship, its purpose is to safeguard both the child's person and property. Therefore, the interests that must be protected simultaneously are *ḥifẓ al-nafs* (the preservation of life or person) and *ḥifẓ al-māl* (the preservation of property).[40] It is therefore entirely appropriate to state that *al-qurbā* (a term that some *ulama* express as *al-qarābah*) constitutes the core rationale for the institution of guardianship.

The structure of *al-qurbā* described in *fiqh* is not substantially different from that presented in anthropological studies, where kinship is understood solely through lineage (*nasab*) or the biological system. However, the Qur'an envisions a broader conception of *al-qurbā*, encompassing not only biological kinship but also sociological and spiritual kinship.[41]

[38] Zulfa Salsabila Alfarobi and Mujiono Hafidh Prasetyo, "Penetapan Perwalian Anak Terkait Pertanggung Jawaban Orang Tua Menjual Harta Anak Di Bawah Umur Karena Pewarisan," *NOTARIUS* 12, no. 1 (2019), p. 296–312.

[39] Ibnu Mas'ud dan Zainal Abidin, *Fiqh Madzhab Syafi'i: Buku 2, Muamalat, Munakahat, Jinayat* (Bandung: Pustaka Setia, 2007).

[40] Salman Abdul Muthalib et al., "Changes in Congregational Prayer Practices During the Covid-19 Pandemic in Aceh from Maqashid Al-Sharia Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 2 (2021), p. 421–49. Elfia Elfia et al., "Institutionalizing Maqāsid Ḥifz Al-Naṣl within the Minangkabau Inheritance Framework," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (2024), p. 193–222. Dea Salma Sallom and Kholil Syu'aib, "Matchmaking in Pesantren: The Role of Wali Mujbir in Matchmaking with Maqasid Sharia Perspectives," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (2022), p. 78–91.

[41] Sarina Aini, "Konsep Perwalian Dalam Al-Qur'an" (UIN Ar-Raniry, 2021).

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2. The Transformation of the Structure and Function of *al-Qurbā* in the Qur'an

In pre-Islamic Arab society, *sayyidah* was the term used to refer to "biological mother".[42] The Qur'an adapted this concept later in the context of the marital relationship by introducing the term *qawwām*, as in the Qur'an Sūrah al-Nisāʾ (4) verse 34. Afterward, during the early Madinan period, the Qur'an began to establish the foundations of individual righteousness by instructing men to protect their wives through attentive care for their needs. The verse clearly mentions that, since men are physically stronger than women, they are obligated to protect their wives so as to safeguard them and to spend part of their wealth for the benefit of their wives and families.[43] In addition, Islam also teaches women to uphold moral values and preserve their honor in the absence of their husbands.[44]

The equalization of the roles and functions of men and women has been reflected in the Qur'anic verse that explicitly mentions the term *walī* for both men and women, thereby indicating an egalitarian conception of kinship. The verse describes that believing men (*al-muʾminūn*) and believing women (*al-muʾmināt*) are *awliyāʾ* (protectors, allies, or guardians) of one another. This is expressed in the Qur'an Sūrah al-Tawbah (9), verse 71, as follows:

وَالْمُؤْمِنُوْنَ وَالْمُؤْمِنٰتُ بَعْضُهُمْ اَوْلِيَآءُ بَعْضٍ يَأْمُرُوْنَ بِالْمَعْرُوْفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيْمُوْنَ الصَّلٰوةَ وَيُؤْتُوْنَ الزَّكٰوةَ وَيُطِيْعُوْنَ اللّٰهَ وَرَسُوْلَهٗۗ اُولٰۤىِٕكَ سَيَرْحَمُهُمُ اللّٰهُۗ اِنَّ اللّٰهَ عَزِيْزٌ حَكِيْمٌ

> Translation: "*The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger. Those – Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise*."

In this verse, the meaning of the word *awliyāʾ* is not restricted to biological and sociological roles alone, but also incorporates a spiritual dimension. The word *awliyāʾ* conveys the idea that men and women are the protectors and guides of one another, and are responsible for one another.[45] The Qur'anic concept of *awliyāʾ* signifies that the kinship system is not based solely on paternalistic principles, but also incorporates maternalistic ones. Accordingly, when this concept is related to the system of guardianship, Muslim jurists have differed in their opinions regarding who is most entitled to serve as a guardian.

[42] Karim Zaki Hisam al-Qin, *al-Qarabah: Dirasah Unthurulughiyyah*, p. 322.

[43] Muhammad Habibi, et al., "Fasakh Nikah Dengan Alasan Sumai Miskin (Studi Perbandingan Antara Ulama Syafi'iyyah Dan Hukum Positif Di Indonesia)," *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 8, no. 2 (2018). p. 148–67.

[44] Kaukab Siddique, *Menggugat Tuhan Yang Maskulin* (Ke-I, Jakarta: Paramadina, 2002), 31.

[45] Aini, "Konsep Perwalian Dalam Al-Qur'an."

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These differing opinions arise from the absence of an explicit textual proof that definitively identifies who should be appointed as a guardian.[46]

Because guardianship entails legal responsibility, the jurists unanimously agree that a kinship relationship (القرابة / *al-qarābah*) constitutes one of the legal grounds for guardianship. In this regard, lineage (*nasab*) serves as one of the indicators demonstrating the kinship relationship between the guardian and the person under guardianship.[47] However, the structure of *al-qurbā* (kinship) in the order of guardianship formulated by the classical schools of Islamic law was influenced by the local cultures in which those schools developed, namely societies characterized by a patrilineal kinship system.[48]

The four *madhhabs* of Islamic law are of the opinion that the person who is most entitled to serve as a guardian is the nearest male-line relative. Their differences lie only in determining which male relative occupies the closest position to the child under guardianship. It is therefore understandable that the role and order of guardians in *fiqh* are predominantly occupied by men, since the concept of guardianship was formulated within the context of an extended family system and because the *al-qurbā* system prevailing in the societies where the *madhhabs* developed was patriarchal and based on the extended family model. This, however, differs from the conditions of contemporary society, particularly in Indonesia, which predominantly adopts the nuclear family model.[49]

3. The Transformation of *al-Qurbā* in Aceh: The Reality of the Mother's Role as Guardian

The authors' search for supporting evidence in the form of non-legal materials for this study was conducted in Aceh Besar and Banda Aceh. The purpose was to examine the dynamics of social change and the responses of some members of the community to the role of mothers as guardians in the care of the person and property of orphaned children. In Aceh Besar, there has been a transformation in the structure of guardianship for orphaned children whose parents have passed away.[50] The community tends to prefer appointing a guardian

[46] Devy, *Wali Nikah: Urutan Dan Kewenangannya Dalam Perspektif Imam Mazhab*.

[47] Ibnu Mas'ud dan Zainal Abidin, *Fiqh Madzhab Syafi'i: Buku 2, Muamalat, Munakahat, Jinayat*. Rosmita, Andi Nur Afifah, and Nasaruddin, "The Position of the Guardian in Marriage Perspective of the Hanafi and the Al-Shafi'i Madhhab," *Mazahibuna*, December 2, (2022), p. 152–72.

[48] Rifqiyati, Dewi Ulya. "Dinamika Perkawinan Endogami Pada Keturunan Arab di Yogyakarta." *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam* 2, no. 1 (2020), p. 25-44.

[49] Aini, "Konsep Perwalian Dalam Al-Qur'an". Safrul Muluk et al., "Developing Generic Skills at an Islamic Higher Education Institution Curriculum in Aceh, Indonesia," *Higher Education, Skills and Work-Based Learning* 9, no. 3 (2019).

[50] Zahratul Idami, et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review Journal* 10, no. 1 (2024), p. 64–82. Ajidar Matsyah et al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System," *Juris: Jurnal Ilmiah Syariah* 24, no. 1 (2025). Mursyid

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from within the child's own family. Typically, the orphan's elder brother is given priority as guardian, both with respect to personal guardianship and the administration of the property left by the deceased parents. Nevertheless, the mother's role remains significant in caring for and raising the orphaned child until adulthood. Mothers generally continue to care for their own children and rarely entrust them to guardians from the father's side. Families recognize that separating a child from the mother may cause psychological distress to both the child and the mother.[51]

The care of the person and property of orphaned children should ideally be entrusted to the mother as guardian. The reason is that such an arrangement is considered safer and more prudent (*iḥtiyāṭ*) in safeguarding the interests of the orphaned child. In the contemporary Acehnese context, the welfare and security of orphaned children are better protected when the mother serves as their guardian. Furthermore, it was noted that the role of mothers or women as guardians is now better protected from various forms of social suspicion (*fitnah*) than in the past. Therefore, mothers are considered more suitable to manage the person and property of orphaned children than guardians who have a more distant or less close relationship with the child.[52]

Another interview revealed that, from a mother's perspective, it is difficult to entrust full responsibility for the care of the orphaned child and the management of the child's property entirely to another guardian. Mahwi expressed concern that such a guardian might not possess sufficient capability to provide proper care, which could result in the child's property not being managed optimally for the orphan's benefit. Mahwi further described that, if an orphaned child is compelled to be placed under the care of another guardian, it may worsen the child's economic condition, personal independence, and even psychological well-being.[53]

This view is reinforced by Teungku JM, a *dayah* (Islamic boarding school) administrator in Aceh Besar. Teungku JM emphasized that the reason mothers are better suited to serve as guardians in managing the person and property of orphaned children is that many guardians today have demonstrated acts of betrayal (*khiyānah*), i.e., they have proven to be untrustworthy and incapable of managing property properly. In some cases, the property of orphaned

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Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law," *Samarah*, 2020,.

[51] Soraya Devy, *Sistem Perwalian Di Aceh: Pergumulan Antara Hukum Islam, Hukum Positif Dan Praktek Masyarakat* (Banda Aceh: Sahifah, 2018), p. 147. Mutiara Fahmi, et al., "Islamic Jurisprudence and Local Wisdom in the Humanitarian Protection of Rohingya Refugees by Acehnese Figures," *El-Mashlahah* 14, no. 2 (2024)

[52] Interview with Yusrizal, Member of the Teaching Council, Dayah Ulee Titi, Aceh Besar, August 24, 2023, Aceh Besar.

[53] Interview with Mahwi Rahma Desna, resident of Banda Aceh, August 24, 2023, Banda Aceh.

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children has even been misappropriated by untrustworthy guardians for their personal benefit. Teungku JM also reminded that the warning that the Qur'an describes about those who consume the property of orphans unjustly, also applies to guardians who do not carry out their trust, and such actions may eventually lead to punishment in the Hereafter.[54]

He also said that the guardianship authority could be passed to the biological mother. He believes the biological mother is the one who is closest to the child and who is naturally inclined to protect the child's best interests.[55] He also thinks that a biological mother would not use her child's property for anything that is not beneficial (*maṣlaḥah*). His view is based on the belief of a mother's love and her sense of responsibility for her child. Therefore, to award custody to the biological mother is in line with the values of the family and the intense relationship of love and care existing between a mother and her child.[56]

A different argument was expressed by AR, an administrator of an Islamic boarding school (*pondok pesantren*) and an imam of a mosque in Aceh Besar. He highlighted two aspects concerning the management of the property of orphaned children. First, he referred to the differences of opinion among the classical jurists (*imams* of the schools of law). According to Imam al-Shāfiʿī, the biological mother bears the responsibility for the care and maintenance (*nafaqah*) of an orphaned child. By contrast, according to Imam Abū Ḥanīfah and Imam Aḥmad, the responsibility for providing maintenance rests with both the mother and those relatives who inherit from the orphaned child. Second, AR stressed that the mother has the capacity to manage and develop the property of an orphaned child, provided that its security can be ensured. This is important so that the child's property remains protected and is not diminished or damaged as a result of improper management by an unsuitable guardian.[57]

The role of mothers in Aceh is of considerable significance in the upbringing of children. This applies not only to the mother herself, but also to her entire extended family. Consequently, many children in Aceh are cared for and financially supported by their mothers and their maternal relatives,[58] rather than

[54] Interview with JM (pseudonym), administrator of a dayah (Islamic boarding school) in Aceh Besar, August 24, 2023, Aceh Besar. Samheri, "Hukum Memakan Harta Anak Yatim Dan Ancamannya Perspetif Al-Quran Hasil Penelitian Bersama Antara Mahasiswa Dan Dosen," *ICoIS:International Conference on Islamic Studies* 1, no. 1 (2020).

[55] Arne Huzaimah and M. Tamudin, "Material Rights of Children in Guardianship Maqashid Al Sharia Perspective," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 1 (2024), p. 181–98.

[56] Interview with Hisma Elisa, resident of Banda Aceh, August 23, 2023, Banda Aceh.

[57] Interview with AR (pseudonym), Teungku Dayah (Islamic boarding school scholar) and Teungku Imum (village imam) in Aceh Besar, August 24, 2023, Aceh Besar.

[58] Interview with Saifuddin Sadan, Head of Pesantren Modern Al-Falah Abu Lam U, August 23, 2023, Aceh Besar.

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by their paternal families.[59] This social reality is reflected in the Acehnese proverb*, "wali peusóh mangkóng, karóng roe ie mata,"* which illustrates that guardians from the father's side often appear only to obtain financial benefits from an inheritance, whereas the mother's family experiences hardship and sheds tears while caring for orphaned children who are close to them. The proverb suggests that paternal guardians do not share in the struggle of raising the children but emerge only when material benefits are involved. In contrast, the maternal family (*karóng*) bears the burden of nurturing and educating orphaned children who are close to them, yet they receive no share of the inheritance because they are not regarded as having the requisite lineage-based kinship (*al-qurbā*) with the orphaned child.

Given the patriarchal kinship system (*al-qurbā*) that Arab society adopted, it is quite understandable that the formulations of classical Islamic *fiqh,* whether developed inductively or deductively, show a predominantly masculine orientation by bringing in legal rulings through a process of accommodation between theological principles and the prevailing local culture. In fact, however, the primary objective underlying the guardianship system is not to create male dominance and female subordination, but to achieve equality, equivalence and justice between men and women.[60]

In the Minangkabau matrilineal society, the mother has the main authority over minor children after the father's death. If the mother also dies the responsibility still rests with the mother's relatives.[61] However, the father still maintains his relations with his children during his life. If neither the mother nor the father is able to become guardian, guardianship is assumed by the mother's relatives.[62]

Kinship systems vary across different regions. In a patrilineal system, the male guardians are usually given priority while in a matrilineal system the mother

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[59] Mohammad Dhiya'ul Hafidh Bin Fatah Yasin and Raudlotul Firdaus Binti Fatah Yasin, "Isu Nafkah Untuk Ibu Tunggal Dan Anak Yatim Menurut Syarak (Alimony for Single Mother and Orphan from the Sharia Perspective)," *Journal of Islam in Asia (E-ISSN 2289-8077)* 17, no. 3 (2020). Deri Wanto, et al., "Maqasid Shariah's Change as Theory: From Classical to Cotemporary Maqasid Shariah," *Al-Istinbath : Jurnal Hukum Islam* 6, no. 2 (2021), p. 427.

[60] Habibi, "Kewenangan Ibu Sebagai Wali Dalam Pengurusan Jiwa Dan Harta Anak Yatim (Analisis Al-Qurbá Sebagai 'Illah Hukum)."Fatimah Zuhrah et al., "Tradition Beyond Formal Fiqh: Ethnic Perspectives on Negotiating Kafāʾah in Marriage within the Aceh Singkil Community," *Journal of Islamic Law* 6, no. 2 (2025), p. 155–76.

[61] Surojo Wongnjodipuro, *Pengantar dan Azas-Azaz Hukum Adat*, (Bandung: Alumni, 1973), hlm. 132. Zulfi Ida Syarifah, Hendra Cipta, and Ahmad Syukron, "Deconstructing Misogynistic Interpretations: A Gender-Just Fiqh Approach to the Role of Women in Family and Career," *Ulumuna* 29, no. 2 (2025), p. 755–93.

[62] Yaswirman, *Hukum Kekeluargaan Adat Dan Hukum Kekeluargaan Islam Di Indonesia: Studi Dalam Masyarakat Minang Minangkabau (Disertasi* (Jakarta: Pascasarjana UIN Syarif Hidayatullah, n.d.). Jean Claude Levi-strauss, "Sistem Kekerabatan Dalam Kebudayaan Minangkabau : Perspektif Aliran Filsafat Strukturalisme," n.d.

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and her relatives are more prominent.[63] In urban communities where kinship is bilateral, fathers and mothers tend to share the guardianship role relatively equally. Thus, the changes in the structure and function of *al-qurbā* should be considered as a consequence of the legal rulings that depend on the conditions, the place, the social environment, and the motives of the communities involved.[64]

4. Factors Contributing to the Transformation of the Structure and Function of *al-Qurbā*

Changes in the structure and function of *al-qurbā* are influenced by various factors underlying the prevailing kinship system. This study identifies two models of transformation in the structure and function of *al-qurbā* within the guardianship system. The first model is the natural transformation of *al-qurbā,* which occurs as a result of several inter-connected factors: (1) cultural and family factors,[65] in which traditions, social norms, and cultural values impact the regulation and practice of guardianship,[66] whereas the differences in family structures, e.g., the nuclear and extended family, affect the structure of *al-qurbā* within the guardianship system; 2) gender issues, which contribute to transformations in the structure and function of *al-qurbā* in guardianship,[67] as discourses concerning women's roles and authority, along with growing demands for gender equality, have prompted the development of a more inclusive and balanced model of guardianship in which the fathers and mothers, or members of the paternal and maternal families, might assume the role of guardian; and (3) modernization and social change, through which increasingly interconnected and diverse societies have encountered a shift in social values and norms that have influenced the understanding and practice of guardianship.[68]

The second model is the scientific transformation of *al-qurbā* which takes place through a number of deliberate and systematically designed elements

[63] Erie Hariyanto et al., "The Resistance of Madurese Muslim Society to the Development of Non-Muslim Tourism Objects," *Jurnal Ilmiah Peuradeun* 12, no. 1 (2024), p. 27–50.

[64] *Majallatul ahkam al-'Adliyah* (Damaskus: Maktabah Syi'arku, 1986), p. 20. A. Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana, 2007), p. 110. Muhammad al-Ghazali, *Al-Ta'aṣṣub Bayna Al-Masihiyyah Wa Al-Islam,* (Mesir: Dar Nahdah, n.d.), p. 67.

[65] Imas Siti Fatimah Patimah, "Transformasi Bentuk Dan Fungsi Keluarga Di Desa Mekarwangi," *Sosioglobal : Jurnal Pemikiran Dan Penelitian Sosiologi* 4, no. 1 (2020). Samsudin, *Sosiologi Keluarga: Studi Perubahan Fungsi Keluarga*, ed. Intan Peratasari (Bengkulu: Pustaka Pelajar Press, 2017).

[66] Rahmatullah, "Konsep Perwalian Dalam Perspektif Hukum Perdata Barat dan Hukum Perdata Islam (Studi Komparasi)."

[67] Husnul Haq, "Reformulasi Hak Ijbar Fiqhi Dalam Tantangan Isu Gender Kontemporer," *PALASTREN Jurnal Studi Gender* 8, no. 1 (2016). Tali Tulab, "Tinjauan Status Wali Dalam Perkawinan Berdasar Pendekatan Feminis," n.d., p. 152–64.

[68] Imas Siti Fatimah Patimah, "Transformasi Bentuk Dan Fungsi Keluarga Di Desa Mekarwangi," *Sosioglobal : Jurnal Pemikiran Dan Penelitian Sosiologi* 4, no. 1 (2020).

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aimed at speeding up the pace of change, as follows: (1) legal regulations, whereby laws related to guardianship have formed the formal development of the guardianship system by regulating the procedures of guardianship, the rights and obligations of guardians and the protection of the interests of children under guardianship.[69] In Indonesia, the legal system provides equal guardianship rights for both mothers and fathers over their children;[70] (2) government initiatives, as many other nations and areas have adopted policies to protect children's rights and strengthen families. These programs affect the guardianship process, in particular, in the areas of conflict resolution and child protection,[71] and at the same time, they promote the model of the nuclear family in which fathers and mothers are in equal positions;[72] (3) the development of scientific knowledge, especially in the fields of law and psychology, which has contributed to a more comprehensive understanding of children's needs and rights.[73] This scholarly literature provides the foundation for a more child-centered approach to guardianship focusing on the welfare of children; and (4) the reconstruction of *fiqh* literature via a comprehensive strategy, indicating a shift from a partial interpretation of guardianship to a more holistic perspective. As society progresses, the interpretation of Qur'anic verses related to guardianship is progressively being contextualized within the realities of contemporary social, cultural and legal situations.[74]

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[69] Amer Hadi Abdullah et al., "Effectiveness of Islamic Law in Protecting The Rights of The Child," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025), p. 330–54.

[70] Widya, "Perwalian Terhadap Pengurusan Harta Anak Di Bawah Umur: Studi Penetapan Pengadilan Agama Binjai" (Universitas Sumatera Utara, 2015).

[71] Mursyid Djawas and Riska Fajrina, "Efektifitas Lembaga Perlindungan Anak Terlantar: Studi Pada Panti Asuhan Suci Hati Di Meulaboh, Kabupaten Aceh Barat," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 2 (2019), p. 296–321.

[72] Mark Stephan Felix et al., "Scoping Review: Neglect of the Elderly by Nuclear Family Members," *Journal of Public Health and Development*, 2022. Lolita Sary et al., "Program Indonesia Sehat Dengan Pendekatan Keluarga (PIS-PK): Partisipasi Masyarakat Dalam Penentuan Prioritas Masalah Kesehatan Di Desa Sidosari Kecamatan Natar," *Jurnal Kreativitas Pengabdian Kepada Masyarakat (PKM)* 5, no. 2 (2022). Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam 6* 6, no. 2 (2022). Abubakar, *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*.

[73] Nadhilah Filzah, "Perlindungan Dan Kemanfaatan Hukum Terhadap Putusan Itsbat Nikah Di Mahkamah Syar'iyyah Bireun (Analisis Putusan Perkara No. 82/Pdt.P/2019/Ms-Br)," *El-Usrah* 4, no. 1 (2021).

[74] Soraya Devy, "Urutan Wali Nikah Rumusan Imam Mazhab Ditinjau Dari Perspektif Fiqh Modern" (Pascasarjana IAIN Ar-Raniry, 2006). Nasai Aziz, *Kemutlakan Lelaki Dalam Perwalian Nikah: Kajian Terhadap Fiqih Empat Mazhab* (Banda Aceh: Pascasarjana IAIN Ar-Raniry, n.d.). Sandy Wajiya, *Konsep Wali Nikah Dalam Kompilasi Hukum Islam Perspektif Gender* (Yogyakarta: Pascasarjana UIN Sunan Kalijaga, n.d.). Aini, "Konsep Perwalian Dalam Al-Qur'an"; Soraya Devy, *Sistem Perwalian Di Aceh: Pergumulan Antara Hukum Islam, Hukum*

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The Consequences of the Transformation of *al-Qurbā* for the Mother's Position in the Guardianship System

The transformation of the structure and function of *al-qurbā* mentioned previously has significant implications for the legal status of the mother as a guardian in three respects: (1) the changes in the mother's position within the order of guardianship; (2) the changes in the mother's authority within the guardianship system; and (3) the changes in the mother's rights and obligations within the guardianship system.

One consequence of the transformation of the structure and function of *al-qurbā* is the elevation of the mother's position to one that is equal to that of the father, thereby superseding the traditional precedence of the paternal grandfather and the father's brothers in the order of guardianship. The legal recognition of the mother as a guardian had previously been articulated by the Ḥanafī *madhhab*, which maintained that a woman may serve as a guardian provided that she possesses *kāmil al-ahliyyah* (full legal capacity). The Ḥanafī jurists even regarded a legally competent woman as capable of acting as a marriage guardian or of contracting her own marriage.[75] Nevertheless, subsequent legal developments took a different course by restricting women's ability to act as guardians of their children.[76] To facilitate an understanding of the historical narrowing and contemporary expansion of women's position as guardians, the following figure illustrates this development.

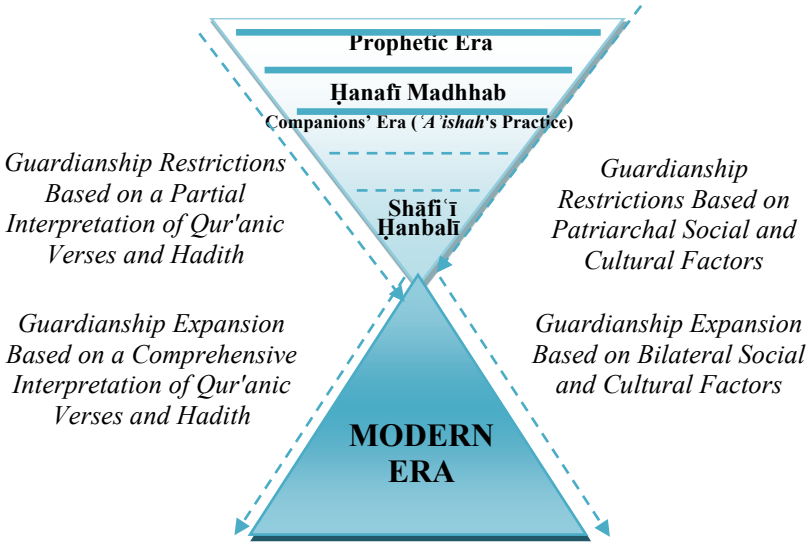
Positif Dan Praktek Masyarakat; Habibi, "Kewenangan Ibu Sebagai Wali Dalam Pengurusan Jiwa Dan Harta Anak Yatim (Analisis Al-Qurbá Sebagai 'Illah Hukum)."

[75] Abidin, *Raad Al-Muhtar 'ala Ad-Duur Al-Muhkhtar*.

[76] Al Yasa Abubakar and Novita, "Pandangan Imam Ibnu Taimiyah Tentang Perkawinan Laki-Laki Muslim Dengan Wanita Ahlul Kitab," *Samarah*, 2017.

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Figure 1. The Orientation of the Mother's/Woman's Authority as a Guardian



Source: Adapted from various literature sources.

As can be seen from the above figure, Muslim jurists have had different opinions regarding the validity of a woman as a guardian. The time of the Prophet Muhammad was a transitional period, where women had just recently been elevated by the coming of Islam. Thus, at the time women were not yet considered to have full legal competence in carrying out legal acts, especially in the matter of guardianship.[77] The subsequent phase is reflected in the practice of Sayyidah ʿĀʾishah, which was later adopted by the Ḥanafī *madhhab.* She arranged the marriage of her niece, Ḥafṣah bint ʿAbd al-Raḥmān, to Mundhir ibn al-Zubayr while ʿAbd al-Raḥmān was in Syria (*al-Shām*).[78] In the following stage, the Ḥanafī *madhhab* further developed this position by permitting women to act as marriage guardians. It also included relatives classified as *dhawī al-arḥām* after the *ʿaṣabah* in the order of guardianship.[79]

By contrast, the majority of Muslim jurists (*jumhūr al-ʿulamāʾ*), i.e., the Mālikī, Shāfiʿī, and Ḥanbalī *madhhabs*, agreed that a woman may not contract a

[77] Agustin Hanapi, *Konsep Perceraian Dalam Islam: Sebuah Reinterpretasi Ulang,* (Banda Aceh: Sahifah, 2018), p. 261. Muhammad Yusuf, "Pendekatan Al-Maṣlaḥaḥ Al-Mursalah Dalam Fatwa MUI Tentang Pernikahan Beda Agama," *AHKAM : Jurnal Ilmu Syariah* 13, no. 1 (2013).

[78] Nasaiy Aziz, *Ketidakmutlakan Laki-Laki Dalam Perwalian Nikah Dilihat Dari Berbagai Perspektif*, ed. Abd. Wahid (Searfiqh, 2018), p. 83. Muhammad Zakaria, *Aujaz al-Masalik ha Muwatta'* ImamMalik, (n.p.: Daar aI-Fikr, n.d.), p. 40.

[79] Ibn al-Hamam al-Hanafi, *Syarh Fath Al-Qadir,* (Beirut: Dar Kutub al-'Ilmiyah, 1424), p. 277–286.

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marriage on behalf of herself or another person.[80] They argued that marriage is intended to achieve harmony, well-being, happiness, and the continuation of lineage within the family. Since women were considered more likely to be influenced by subjective emotions, they were regarded as unsuitable for administering marriage in a manner that would best achieve these objectives.[81] The next phase was the challenges of modernity, which expanded the concept of guardianship enormously. In the classical period, guardianship had been regulated through the *ijtihād* (independent reasoning) of the founders of the four *madhhabs*.[82] However, modernity brought with it the changes in legal understanding and institutional structures, particularly when it came to the status of women and broader changes in society.[83] At least three major issues of modernity have become central to contemporary discussions on guardianship, as follows:[84] First, the substantive concept of guardianship, which encompasses proximity and responsibility, raises the question of whether women may serve as guardians. Second, the requirement of a guardian as a condition for the validity of marriage is viewed as being in tension with the modern principle of gender equality. Third, the transformation of family structures from the extended family to the nuclear family has altered the distribution of authority and responsibility within the family.

The change in the mother's position in the order of guardianship means that her responsibilities in the guardianship of orphaned children are multifaceted. In addition to physical care, the mother is also responsible for the child's education, moral development and character formation. She is well placed to guide the child in facing life's challenges and to help develop the child's full potential. Furthermore, regarding the management of the orphaned child's property, the mother also plays a crucial role. She is able to manage the inherited property of the child carefully and responsibly, using it in the best interests of the child and for the best development of the child. This allows orphaned children to

[80] Krisna Nanda Aufa, "Kedudukan Undang-Undang Perlindungan Anak Terhadap Anak Sebagai Korban Pelecehan Seksual Di Aceh," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021).

[81] Muhammad al-Syarbaini al-Khatib, *Mughni Al-Muhtaj* (Mesir: Mushthafa al-Baabi al-Halabi, 1958), p. 147. Ibn al-Hanafi, *Syarh Fath Al-Qadir* (Beyrut: Dar Kutub al-'Ilmiyah, n.d.), jld. 3, 256-257. Al-Sarakhsy, *Al-Mabsuth,* (Mesir: Al-Sa'adat, n.d.), p. 11.

[82] Devy, "Urutan Wali Nikah Rumusan Imam Mazhab Ditinjau Dari Perspektif Fiqh Modern."

[83] Fazlul Rahman, *Islam* (Bandung: Pustaka Setia, 1984), 43–45. Ibnu Majah, *Sunan Ibnu Majah* (Beirut: Dar Ar-Risalah, 2009), p. 86-87. Mustafa Siba'i, *Al-Mar'atu Baina Al-Fiqhi Wa Al-Qanuni,* (Beirut: Maktabah Islami, n.d.), p. 66.

[84] Devy, "Urutan Wali Nikah Rumusan Imam Mazhab Ditinjau Dari Perspektif Fiqh Modern."

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build a more secure future for themselves and better prepare themselves to face the challenges of life.[85]

The major transformation in the structure and function of the guardianship system presents a new basis for rethinking the rights and obligations in guardianship, especially through the acknowledgement of a wider range of rights and responsibilities of mothers in their role of care and management of the matters of orphaned children. In this sense, it is essential to recognize the significant role that the mother offers in the management of the child's property. If the mother has actively managed the assets of the orphaned child, it is simply fair she should be compensated accordingly for her duties and responsibilities. In addition, the recognition of the mother's right to the earnings or benefits that arise from the management of the property of the orphaned child might serve as an additional incentive for her to manage and develop such assets in a responsible manner. Apart from her rights and duties in the administration of property, reform should also include the right of the mother to participate in the decision-making for the orphaned child. The mother, being the parent most closely associated with the child, has a unique understanding of the child's needs and welfare. Her involvement in decision making assures that decisions are made with full consideration of the aspects that are essential to the child's growth and welfare.

Conclusion

The structural and functional transformation of the *al-qurbā* within the guardianship system is not constrained to one aspect, but has led to two interrelated models of transformation. First, natural transformation indicates that the changes in the guardianship system are related to the cultural factors, family structures, gender issues, modernization, and social traditions. This natural process has brought the society toward a more inclusive and equitable understanding of guardianship and has stimulated a rethinking of the mother's position in the care and management of orphaned children. Second, scientific transformation reflects the developments in legal regulation, government policies, and the advancement of scholarly knowledge. The reformulation of guardianship through a more holistic interpretation of the Qur'anic verses on guardianship has opened the way for a deeper understanding of the mother's role as a guardian. The consequences of these transformations are evident in three important respects. Firstly, the mother's position in the order of guardianship has been elevated to one equal to that of the father. The close relationship of children with their mothers and maternal families has redefined the concept of guardianship by giving more priority to the role of the mother in caring for and raising orphaned children. Secondly, the authority of the mother in the role of guardian has evolved

[85] Habibi, "Kewenangan Ibu Sebagai Wali dalam Pengurusan Jiwa Dan Harta Anak Yatim (Analisis Al-Qurbá Sebagai 'Illah Hukum).

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in response to changing social conditions. Mothers now assume greater responsibility for managing the property of orphaned children, a role that requires legal competence, sound judgment and responsible administration. Thirdly, the rights and responsibilities accorded to mothers have also been redefined through the recognition of appropriate incentives or compensation for mothers who actively manage the property of orphaned children, together with an expanded role for mothers in decision-making concerning the welfare and best interests of the child.

References

Journals and Books

Abdul Muthalib, Salman, Tarmizi M. Jakfar, Muhammad Maulana, and Lukman Hakim. "Changes in Congregational Prayer Practices During the Covid-19 Pandemic in Aceh from Maqashid Al-Sharia Perspective." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 2 (2021). https://doi.org/10.19105/al-lhkam.v16i2.5250.

Abdurrahman Al-Juzairi. *Fikih Empat Mazhab*. Jilid 2. Jakarta: Pustaka Al-Kausar, 2015.

Abidin, Ibnu. *Raad Al-Muhtar 'ala Ad-Duur Al-Muhkhtar*. Beirut: Dar al-Kitab al-Ilmiyah, 2003.

Abu Syuja' Ahmad bin Husain bin Ahmad Al-Ashfahani. *Matan Fikih Madzhab Syafi'i*. Solo: Al-Wafi, 2015.

Abubakar, Al Yasa'. *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*. Jakarta: Kencana, 2016.

———. "Perlindungan Harta Anak Dalam Peraturan Perundang-Undangan Dan Praktek Di Mahkamah Syar'iyah." *Jurnal Ilmiah Islam Futura* Volume X, no. No 2 (2011).

Abubakar, Al Yasa, and Novita. "Pandangan Imam Ibnu Taimiyah Tentang Perkawinan Laki-Laki Muslim Dengan Wanita Ahlul Kitab." *Samarah*, 2017. https://doi.org/10.22373/sjhk.v1i2.2383.

Aini, Sarina. "Konsep Perwalian Dalam Al-Qur'an." UIN Ar-Raniry, 2021.

Al-Asqalani, Ibnu Hajar. *Al-'Ajab Fi Bayani Al-Asbab*. Damman: Darul Ibnul Jauzi, 1997.

al-Hanafi, Ibn. *Syarh Fath Al-Qadir*. Beyrut: Dar Kutub al-'Ilmiyah, n.d.

Al-Maliki, Ahmad Aṣ-Ṣáwi. *Hasyiyah Al-'Alamat as-Sawi*. Beirut: Dar al-Fikr, 1993.

Al-Sarakhsy. *Al-Mabsuth,*. Mesir: Al-Sa'adat, n.d.

Al-Zarqa, Musṭafā Aḥmad. *Al-Madkhal Al-Fiqhiyah Al-'Am*. Damsyiq: Dār al-Fikr, 1968.

Alfarobi, Zulfa Salsabila, and Mujiono Hafidh Prasetyo. "Penetapan Perwalian Anak Terkait Pertanggungjawaban Orang Tua Menjual Harta Anak Di

DOI: 10.22373/vd2r4n67

Bawah Umur Karena Pewarisan." *NOTARIUS* 12, no. 1 (2019).

Ali, Bukhari. "Otoritas Ijtihad Dalam Kajian Hukum Islam (Analisis Kaedah Fikih Al-Ijtihadu La Yunqadhu Bi Al-Ijtihadi)." *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021). https://doi.org/10.22373/ujhk.v4i1.9246.

Alwana, Hanif Aidhil. "Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam." *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (2020). https://doi.org/10.31958/juris.v19i2.2375.

Amer Hadi Abdullah, et, al, "Effectiveness of Islamic Law in Protecting The Rights of The Child." *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025). https://doi.org/10.29240/jhi.v10i1.12586.

Ariawan, I Gusti Ketut. "Metode Penelitian Hukum Normatif." *Kertha Widya* 1, no. 1 (2013).

Asanbe, Comfort, et, al, "Parental HIV/AIDS and Psychological Health of Younger Children in South Africa." *Journal of Child and Adolescent Mental Health* 28, no. 2 (2016). https://doi.org/10.2989/17280583.2016.1216853.

Aseri, Mukhsin, et, al, "Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulema Council." *Journal of Islamic Law* 6, no. 2 (August 23, 2025). https://doi.org/10.24260/jil.v6i2.4702.

Aufa, Krisna Nanda. "Kedudukan Undang-Undang Perlindungan Anak Terhadap Anak Sebagai Korban Pelecehan Seksual Di Aceh." *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021). https://doi.org/10.22515/alahkam.v6i2.3662.

Az-Zuhaili, Wahbah. *Fiqih Islami Wa Adillatuhu, Terj. Al-Hayyie Al-Kattani*. Jakarta: Gema Insani, 2011.

Aziz, Nasai. *Kemutlakan Lelaki Dalam Perwalian Nikah: Kajian Terhadap Fiqih Empat Mazhab*. Banda Aceh: Pascasarjana IAIN Ar-Raniry, n.d.

Aziz, Nasaiy. *Ketidakmutlakan Laki-Laki Dalam Perwalian Nikah Dilihat Dari Berbagai Perspektif*. Edited by Abd. Wahid. Searfiqh, 2018.

Balew, Gizachew, et, al, "Assesment of Household Burden of Orphaning and Coping Strategies by Guardians and Families with Orphans and Vulnerable Children in Hossana Town, SNNPR." *Ethiopian Medical Journal* 48, no. 3 (2010).

Barkah, Qodariyah, and Andriyani Andriyani. "Maqashid Al-Syari'ah Concept Of Kafa'ah in Marriage." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 1 (2020). https://doi.org/10.19109/nurani.v20i1.5651.

Devy, Soraya. *Sistem Perwalian Di Aceh: Pergumulan Antara Hukum Islam, Hukum Positif Dan Praktek Masyarakat*. Banda Aceh: Sahifah, 2018.

———. "Urutan Wali Nikah Rumusan Imam Mazhab Ditinjau Dari Perspektif Fiqh Modern." Pascasarjana IAIN Ar-Raniry, 2006.

———. *Wali Nikah: Urutan Dan Kewenangannya Dalam Perspektif Imam*

DOI: 10.22373/vd2r4n67

Mazhab. Banda Aceh: Sahifah, 2017.

Devy, Soraya, and Mela Mirdawati. "Peran Perangkat Desa Terhadap Pelaksanaan Perwalian Anak Korban Tsunami (Studi Kasus Di Kec. Krueng Sabee, Kab. Aceh Jaya)." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018).

Djawas, Mursyid, and Riska Fajrina. "Efektifitas Lembaga Perlindungan Anak Terlantar: Studi Pada Panti Asuhan Suci Hati Di Meulaboh, Kabupaten Aceh Barat." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 2 (2019). https://doi.org/10.22373/sjhk.v3i2.4904.

Djawas, Mursyid, and Sri Astuti A. Samad. "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehnese Community According to Islamic Law." *Samarah*, 2020. https://doi.org/10.22373/sjhk.v4i1.5271.

Djazuli, A. *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis*. Jakarta: Kencana, 2007.

Elatrash, Radwan Jamal Yousef, and Rochmad Rochmad. "Al-Maqasid Al-Akhlaqiyyah Lil Khitab Al-Maaly Fi Surah Al-Nisa." *Studia Quranika* 7, no. 2 (2023). https://doi.org/10.21111/studiquran.v7i2.8866.

Elfia, Elfia, et, al, "Institutionalizing Maqāsid Ḥifz Al-Naṣl within the Minangkabau Inheritance Framework." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (2024). https://doi.org/10.18326/ijtihad.v24i2.193-222.

Fahmi, Mutiara, et, al, "Islamic Jurisprudence and Local Wisdom in the Humanitarian Protection of Rohingya Refugees by Acehnese Figures." *El-Mashlahah* 14, no. 2 (2024). https://doi.org/10.23971/el-mashlahah.v14i2.8958.

Fatah Yasin, Mohammad Dhiya'ul Hafidh Bin, and Raudlotul Firdaus Binti Fatah Yasin. "Isu Nafkah Untuk Ibu Tunggal Dan Anak Yatim Menurut Syarak (Alimony for Single Mother and Orphan from the Sharia Perspective)." *Journal of Islam in Asia (E-ISSN 2289-8077)* 17, no. 3 (2020). https://doi.org/10.31436/jia.v17i3.987.

Felix, Mark Stephan, et, al, "Scoping Review: Neglect of the Elderly by Nuclear Family Members." *Journal of Public Health and Development*, 2022. https://doi.org/10.55131/jphd/2022/200221.

Filzah, Nadhilah. "Perlindungan Dan Kemanfaatan Hukum Terhadap Putusan Itsbat Nikah Di Mahkamah Syar'iyyah Bireun (Analisis Putusan Perkara No. 82/Pdt.P/2019/Ms-Br)." *El-Usrah* 4, no. 1 (2021). https://doi.org/10.22373/ujhk.v4i1.9368.

Ghozali, Abdul Rahman. *Fiqh Munakahat*. Jakarta: Kencana, 2012.

Habibi, Muhammad. "Kewenangan Ibu Sebagai Wali Dalam Pengurusan Jiwa Dan Harta Anak Yatim (Analisis Al-Qurbá Sebagai 'Illah Hukum)." Universitas Islam Negeri Ar-Raniry Banda Aceh, 2022.

DOI: 10.22373/vd2r4n67

———. "Legalitas Hukum Islam Dalam Sistem Peradilan Indonesia." *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 22, no. 2 (2021). https://doi.org/10.22373/jms.v22i2.8050.

Habibi, Muhammad, et, al, "Fasakh Nikah Dengan Alasan Sumai Miskin (Studi Perbandingan Antara Ulama Syafi'iyyah Dan Hukum Positif Di Indonesia)." *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 8, no. 2 (2018).

Hanapi, Agustin. *Konsep Perceraian Dalam Islam: Sebuah Reinterpretasi Ulang,*. Banda Aceh: Sahifah, 2018.

Haq, Husnul. "Reformulasi Hak Ijbar Fiqhi Dalam Tantangan Isu Gender Kontemporer." *PALASTREN Jurnal Studi Gender* 8, no. 1 (2016).

Hariyanto, Erie, et, al, "The Resistance of Madurese Muslim Society to the Development of Non-Muslim Tourism Objects." *Jurnal Ilmiah Peuradeun* 12, no. 1 (2024):. https://doi.org/10.26811/peuradeun.v12i1.1108.

Hawwas, Abdul Wahhab Sayyed, and Abdul Aziz Muhammad Azzam. *Fiqh Munakahat*. Jakarta: Amzah, 2014.

Huzaimah, Arne, and M. Tamudin. "Material Rights of Children in Guardianship Maqashid Al Sharia Perspective." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 1 (2024). https://doi.org/10.19109/yydyf930.

Ibn al-Hamam al-Hanafi. *Syarh Fath Al-Qadir,*. Beirut: Dar Kutub al-'Ilmiyah, 1424.

Ibnu Mas'ud dan Zainal Abidin. *Fiqh Madzhab Syafi'i: Buku 2, Muamalat, Munakahat, Jinayat*. Bandung: Pustaka Setia, 2007.

Ibnu Rusyd. *Bidayatul Mujtahid*. Jakarta: Pustaka Azzam, 2000.

Ibrahim, Johnny. "Teori Dan Metode Penelitian Hukum Normatif." *Bayu Media, Malang*, 2006.

Ibrahim, Kasir. *Kamus Arab Indonesia-Indonesia*. Arab, Surabaya: Apolo Lestari, n.d.

Ideham, Wahidah. "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam 6* 6, no. 2 (2022). https://doi.org/10.22373/sjhk.v6i2.12466.

Kiggundu, Edith, and Wilna Oldewage-Theron. "Coping: A Challenge for Guardians of Children Orphaned by HIV/AIDS in a South African Township." *Development Southern Africa* 26, no. 3 (2009). https://doi.org/10.1080/03768350903086754.

Koto, Alaidin. *Ilmu Fiqh Dan Ushul Fiqh*. Jakarta: Rajawali Pers, 2014.

Kris, Eale E., and Mphuthi David. "Perceptions of Parents/Guardians About the Effectiveness of Future Families Orphans and Vulnerable Children Programme in Olievenhoutbosch, South Africa." *Global Journal of Health Science* 12, no. 4 (2020). https://doi.org/10.5539/gjhs.v12n4p20.

DOI: 10.22373/vd2r4n67

Levi-strauss, Jean Claude. "Sistem Kekerabatan Dalam Kebudayaan Minangkabau : Perspektif Aliran Filsafat Strukturalisme," n.d.

Majah, Ibnu. *Sunan Ibnu Majah*. Beirut: Dar Ar-Risalah, 2009.

Matsyah, Ajidar, et, al, "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System." *Juris: Jurnal Ilmiah Syariah* 24, no. 1 (2025). https://doi.org/10.31958/juris.v24i1.13272.

Miftahuddin. "Integrasi Dan Interkoneksi Studi Hukum Islam Dengan Ilmu-Ilmu Sosial." *Al-'Adalah* Vol. X, no. No. 3 (2012): 301–12.

Moleong, Lexy J. *Metode Penelitian Kualitatif*. Bandung: Remaja Rosdakaya, 2007.

Muhammad Agus Andika. "Tafsir Maudhu'i Sebagai Langkah Teknis Perumusan Al-Qawa'id Al-Kulliyat dalam Penemuan Hukum Islam." Universitas Islam Negeri Ar-Raniry, 2023.

Muhammad al-Ghazali. *Al-Ta'aṣṣub Bayna Al-Masihiyyah Wa Al-Islam*. Egypt: Dar Nahdah, n.d.

Muhammad al-Syarbaini al-Khatib. *Mughni Al-Muhtaj*. Egypt: Mushthafa al-Baabi al-Halabi, 1958.

Muluk, Safrul, et, al, "Developing Generic Skills at an Islamic Higher Education Institution Curriculum in Aceh, Indonesia." *Higher Education, Skills and Work-Based Learning* 9, no. 3 (2019). https://doi.org/10.1108/HESWBL-06-2018-0064.

Mursyid Djawas, et, al, "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism." *Hasanuddin Law Review Journal* 10, no. 1 (2024).

Mustafa Siba'i. *Al-Mar'atu Baina Al-Fiqhi Wa Al-Qanuni,*. Beirut: Maktabah Islami, n.d.

Negara Kesatuan Republik Indonesia. "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1998 Tentang Kompilasi Hukum Islam." Jakarta: Sekretariat Negara republik Indonesia, 1991.

———. *Undang-Undang Republik Indonesia Nomor 01 Tahun 1974 Tentang Perkawinan*. Jakarta: Depag RI, 1974.

Nugrahani, Farida, and M. Hum. *Metode Penelitian Kualitatif*. Solo: Cakra Books, 2014.

Patimah, Imas Siti Fatimah. "Transformasi Bentuk Dan Fungsi Keluarga Di Desa Mekarwangi." *Sosioglobal : Jurnal Pemikiran Dan Penelitian Sosiologi* 4, no. 1 (2020). https://doi.org/10.24198/jsg.v4i1.23405.

Pohan, Sarmadan. "Hambatan Yang Ditemui Dalam Perwalian Anak Di Bawah Umur Berdasarkan Surat Penetapan Pengadilan Negeri Di Wilayah Hukum Pengadilan Negeri Padangsidimpuan." *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 1, no. 2 (2018). https://doi.org/10.31604/justitia.v1i2.371-379.

Rahman, Fazlul. *Islam*. Bandung: Pustaka Setia, 1984.

DOI: 10.22373/vd2r4n67

Rahmatiah, H. L, et al., "Strict Liability and Product Safety: The Case Of Dangerous Syrup In Indonesia In the Maqāṣid Al-Sharī'ah Perspective." *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023). https://doi.org/10.15408/ajis.v23i2.34240.

Rahmatullah, Nursalam. "Konsep Perwalian Dalam Perspektif Hukum Perdata Barat Dan Hukum Perdata Islam (Studi Komparasi)." *Fakultas Syariah Dan Hukum, UIN Alauddin Makassar*, 2016.

Rifa'i, Moh. *Ilmu Fiqih Islam Lengkap*. Semarang: Karya Toha Putra, 1978.

Roibin. *Sosiologi Hukum Islam: Telaah Sosio-Historis Pemikiran Imam Syafi'i*. Malang: UIN Malang Press, 2008.

Rosmita, Andi Nur Afifah, and Nasaruddin. "The Position of the Guardian in Marriage Perspective of the Hanafi and the Al-Shafi'i Madhhab." *Mazahibuna*, December 2, 2022,. https://doi.org/10.24252/mh.vi.30969.

Sabil, Jabbar. *Maqasid Syariah*. Edited by Badrul Munir. 1st ed. Jakarta: Rajawali Press, 2023.

Sabiq, Sayyid. *Fiqh Sunnah*. Jakarta: Cakrawali Publishing, 2008.

Saebani, Beni Ahmad. *Fiqh Munakahat: Buku 1*. Bandung: Pustaka Setia, 2001.

Sallom, Dea Salma, and Kholil Syu'aib. "Matchmaking in Pesantren: The Role of Wali Mujbir in Matchmaking with Maqasid Sharia Perspectives." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (2022). https://doi.org/10.30631/alrisalah.v22i1.1073.

Samheri. "Hukum Memakan Harta Anak Yatim Dan Ancamannya Perspetif Al-Quran Hasil Penelitian Bersama Antara Mahasiswa Dan Dosen." *ICoIS:International Conference on Islamic Studies* 1, no. 1 (2020).

Samsudin. *Sosiologi Keluarga: Studi Perubahan Fungsi Keluarga*. Edited by Intan Peratasari. Bengkulu: Pustaka Pelajar Press, 2017.

Saniah, Nur, et, al, "Analysis of Maqāshid Sharī'a on Substitute Heir in Compilation of Islamic Law (KHI)." *Al-'Adalah* 20, no. 1 (2023). https://doi.org/10.24042/adalah.v20i1.16062.

Saran, Mohamad, and Dudang Gojali. "The Position of Wali Al Mal in Islamic Law Structure in Indonesia." *Indonesian Journal of Islamic Studies* 2, no. 2 (2018). https://doi.org/10.21070/ijis.v2i2.22.

Sary, Lolita, et al., "Program Indonesia Sehat Dengan Pendekatan Keluarga (PIS-PK): Partisipasi Masyarakat Dalam Penentuan Prioritas Masalah Kesehatan Di Desa Sidosari Kecamatan Natar." *Jurnal Kreativitas Pengabdian Kepada Masyarakat (PKM)* 5, no. 2 (2022). https://doi.org/10.33024/jkpm.v5i2.4532.

Shihab, M. Quraish. *Tafsir Al-Misbah, Pesan, Kesan Dan Keserasian Al-Qur'an*. Jakarta: Lentera Hati, 2000.

Siddique, Kaukab. *Menggugat Tuhan Yang Maskulin*. Ke-I, Jakarta: Paramadina, 2002.

Soraya Devy. *Sistem Perwalian Di Aceh: Pergumulan Antara Hukum Islam,*

DOI: 10.22373/vd2r4n67

Hukum Positif Dan Praktek Masyarakat. Banda Aceh: Sahifah, 2018.

Sucia, Andi Tenri. "Kedudukan Hak Asuh Anak Pasca Terjadinya Perceraian Karena Salah Satu Orang Tuanya Murtad Menurut Hukum Positif Dan Hukum Islam: Studi Perbandingan Pengadilan Negeri Dan Pengadilan Agama Di Makassar." Universitas Islam Negeri Alauddin Makassar, 2017.

Sugono, Dendi, et al. *Kamus Bahasa Indonesia*. Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2009.

Syafi'i, Rahmad. *Ilmu Ushul Fiqh*. Bandung: Pustaka Setia, 2010.

Syarifah, Zulfi Ida, et, al, "Deconstructing Misogynistic Interpretations: A Gender-Just Fiqh Approach to the Role of Women in Family and Career." *Ulumuna* 29, no. 2 (2025). https://doi.org/10.20414/ujis.v29i2.1759.

Talib, Hasliza, et, al, "Peranan Dan Tanggungjawab Wali Terhadap Anak Yatim." *E-Prosiding Persidangan Antarabangsa Sains Sosial Dan Kemanusiaan*, 2019.

Tulab, Tali. "Tinjauan Status Wali Dalam Perkawinan Berdasar Pendekatan Feminis." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 1 (2017). https://doi.org/10.30659/jua.v1i1.2223.

———. "Tinjauan Status Wali Dalam Perkawinan Berdasar Pendekatan Feminis," n.d.

Usman, Moh. "Sinkronisasi Regulasi Tentang Hak Ekonomi Anak Di Indonesia Dengan Convention on The Rights of The Child/Synchronization of Regulations on Children's Economic Rights in Indonesia with the Convention on The Rights of The Child." *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 2 (2020). https://doi.org/10.18860/j-fsh.v12i2.7661.

Wahbah az-Zuhaili. *Tafsir Al-Munir. Aqidah, Syari'ah, Manhaj*, 2016.

Wajiya, Sandy. *Konsep Wali Nikah Dalam Kompilasi Hukum Islam Perspektif Gender*. Yogyakarta: Pascasarjana UIN Sunan Kalijaga, n.d.

Wanto, Deri, et al., "Maqasid Shariah's Change as Theory: From Classical to Contemporary Maqasid Shariah." *Al-Istinbath : Jurnal Hukum Islam* 6, no. 2 (2021). https://doi.org/10.29240/jhi.v6i2.3122.

Wibowo, et al., "Women and the Transmission of the Quran: Marginalization, Legal Strategies, and Maqāṣid Al-Sharī'ah-Based Resolution." *AHKAM : Jurnal Ilmu Syariah* 25, no. 1 (2025). https://doi.org/10.15408/ajis.v25i1.37944.

Widya. "Perwalian Terhadap Pengurusan Harta Anak Di Bawah Umur: Studi Penetapan Pengadilan Agama Binjai." Universitas Sumatera Utara, 2015.

Yaswirman. *Hukum Kekeluargaan Adat Dan Hukum Kekeluargaan Islam Di Indonesia: Studi Dalam Masyarakat Mineal Minangkabau (Doctoral dissertation)*. Jakarta: Pascasarjana UIN Syarif Hidayatullah, n.d.

Yusuf, Muhammad. "Pendekatan Al-Maṣlaḥaḥ Al-Mursalah Dalam Fatwa MUI Tentang Pernikahan Beda Agama." *AHKAM : Jurnal Ilmu Syariah* 13, no.

DOI: 10.22373/vd2r4n67

1 (2013). https://doi.org/10.15408/ajis.v13i1.955.

Zuhrah, Fatimah, et, al, "Tradition Beyond Formal Fiqh: Ethnic Perspectives on Negotiating Kafāʾah in Marriage within the Aceh Singkil Community." *Journal of Islamic Law* 6, no. 2 (2025). https://doi.org/10.24260/jil.v6i2.4187.

Interviews

Interview with AR (pseudonym), *Teungku Dayah* (Islamic boarding school scholar), and *Teungku Imum* (village imam) in Aceh Besar, conducted on August 24, 2023, in Aceh Besar.

Interview with Hisma Elisa, resident of Banda Aceh, conducted on August 23, 2023, in Banda Aceh.

Interview with JM (pseudonym), administrator of a *dayah* (Islamic boarding school) in Aceh Besar, conducted on August 24, 2023, in Aceh Besar.

Interview with Mahwi Rahma Desna, resident of Banda Aceh, conducted on August 24, 2023, in Banda Aceh.

Interview with Saifuddin Sa'dan, Head of *Pesantren Modern Al-Falah Abu Lam U*, conducted on August 23, 2023, in Aceh Besar.

Interview with Yusrizal, a member of the *Dewan Guru* (Teaching Council) at *Dayah Ulee Titi*, Aceh Besar, conducted on August 24, 2023, in Aceh Besar