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The Legal Standing of Incestuous Fathers as Marriage Guardians: Islamic Law, Administrative Practice, and Social Impact in Indonesia

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Abstract: Incest between a biological father and his daughter raises serious issues in Islamic family law, particularly regarding the father's legal standing as a marriage guardian (*walī nasab*). Although the father is normatively the primary guardian, his status becomes problematic when he is the perpetrator of sexual violence against his daughter, given the principles of substantive justice, child protection, and *maqāṣid al-syarī'ah*. This article examines the legitimacy of an incest perpetrator as a marriage guardian through a normative–empirical approach, focusing on classical Sunni jurisprudence, national regulations, and the practices of the Office of Religious Affairs (KUA) in Gunung Kijang District. The findings show that the four Sunni schools generally recognize that a guardian who commits grave acts of immorality that threaten a child's dignity and safety may lose his guardianship (*sāqiṭ al-wilāyah*). However, the absence of specific technical regulations leads the KUA to retain the father as guardian based on *nasab*, creating a gap between substantive norms and administrative practice and potentially causing revictimization. From the perspective of *maqāṣid al-syarī'ah*, removing the guardianship of an incestuous father protects *ḥifẓ al-nafs*, *ḥifẓ al-nasl*, and *ḥifẓ al-'irdh*. The study therefore calls for policy reconstruction and stronger KUA institutional mechanisms to prevent revictimization in Islamic family law.

Keywords: Incest, Marriage Guardians, Social Impact, Maqāṣid al-Syarī'ah

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Abstrak: *Inses antara ayah kandung dan anak perempuannya menimbulkan persoalan serius dalam hukum keluarga Islam, khususnya terkait kedudukan hukum ayah sebagai wali nikah (walī nasab). Meskipun secara normatif ayah merupakan wali utama, kedudukannya menjadi problematis ketika ia merupakan pelaku kekerasan seksual terhadap anaknya, mengingat prinsip keadilan substantif, perlindungan anak, dan maqāṣid al-syarī'ah. Artikel ini mengkaji legitimasi pelaku inses sebagai wali nikah melalui pendekatan normatif–empiris dengan berfokus pada fikih klasik mazhab Sunni, regulasi nasional, dan praktik Kantor Urusan Agama (KUA) Kecamatan Gunung Kijang. Hasil penelitian menunjukkan bahwa keempat mazhab Sunni pada umumnya mengakui bahwa wali yang melakukan perbuatan tercela berat yang mengancam martabat dan keselamatan anak dapat kehilangan hak kewaliannya (sāqiṭ al-wilāyah). Namun, ketiadaan regulasi teknis yang spesifik menyebabkan KUA tetap mempertahankan ayah sebagai wali berdasarkan hubungan nasab, sehingga menimbulkan kesenjangan antara norma substantif dan praktik administratif serta berpotensi menyebabkan reviktimisasi korban. Dalam perspektif maqāṣid al-syarī'ah, pengguguran kewalian ayah pelaku inses merupakan langkah untuk melindungi ḥifẓ al-nafs, ḥifẓ al-nasl, dan ḥifẓ al-'irdh. Oleh karena itu, penelitian ini menegaskan perlunya rekonstruksi kebijakan dan penguatan mekanisme kelembagaan KUA untuk mencegah reviktimisasi dalam hukum keluarga Islam.*
Kata Kunci: *Inses, Wali Nikah, Dampak Sosial, Maqāṣid al-Syarī'ah*

Introduction

The phenomenon of incest (incest sexual relations) is one of the most extreme forms of sexual violence, causing profound damage to moral values, social order, and family legal structures.[1] In the Indonesian context, incest cases involving the biological father as the perpetrator present complex legal and ethical dilemmas,[2] especially when the victim is then in a position as a bride-to-be. Komnas Perempuan data recorded 433 cases of incest in 2022 and 213 cases in

[1]Siti Dian Natasya Solin et al., "Batak Customary Marriage: A Study of the Prohibition of Same-Clan Marriage and Its Relevance in the Contemporary Era," *El-Usrah* 7, no. 1 (2024). Lana Majid Hayder et al., "Incest in Iraq and the Legal View of the Act," *Journal of Law and Sustainable Development* 11, no. 7 (2023), p. 1–24. Sukataman et al., "Maqāṣid Al-Sharī'ah and the Prohibition of Incest in Indonesian Legislation: An Analysis of the Protection of Lineage and Public Morals," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025).

[2]Ishma Raihan et al., "Legal Protection for Child Victims of Incest Crimes: Evidence from the Aceh Women's Empowerment and Child Protection Agency," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 15, no. 1 (2026), p. 60–78. Putri Eka Zaltina and Lidwina Inge Nurtjahyo, "Right To Be Forgotten as a Legal Protection for The Victims of Electronic Sexual Violence Cases," *Indonesian Journal of Socio-Legal Studies* 3, no. 2 (2024). Sri Utami, Hepy Krisman Laia, and Muhammad Arif Sahlepi, "Legal Protection of Child Victims of Sexual Crimes in the Perspective of Criminal Law," *International Journal of Law, Crime and Justice* 2, no. 2 (2025).

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2023,[3] which shows that sexual violence in family relationships is still a serious reality. These findings are reinforced by a 2024 empirical study showing that incest generally occurs in dysfunctional families and has a heavy psychological impact on victims, while increasing the risk of victimization.[4] Normatively, Islamic marriage law in Indonesia places the biological father as the main wali nasab, as codified in the Compilation of Islamic Law (KHI).[5] However, when the father becomes the perpetrator of violence or sexual abuse of his own child, a fundamental tension arises between the validity of formal law and the demands of substantive justice based on the protection of children and *maqāṣid al-syarīʿah*.[6]

In the treasures of classical fiqh, it has long been recognized that a guardian who commits gross moral transgressions or persistently *sins (fisq*) can lose his guardianship (*sāqiṭ al-wilāyah*), because he fails to safeguard the honor, safety, and welfare of those under his guardianship.[7] This principle is in line with the purposes of Islamic law, especially the protection of the soul (*ḥifẓ al-nafs*), heredity (*ḥifẓ al-nasl*), reason (*ḥifẓ al-ʿaql*), and human dignity (*ḥifẓ al-ʿirdh*).[8] In its development, the study of contemporary Islamic law increasingly emphasizes the importance of reinterpreting the doctrine of guardianship through the perspective of the best interests of the child, in order to ensure that Islamic family law remains socially responsive and ethically grounded in the modern context.[9]

Despite having such a normative foundation, various empirical studies show that legal practice in Indonesia still faces a serious dilemma at the administrative level. The officials of the Office of Religious Affairs (KUA) are often bound by formal documents that designate the biological father as the legal guardian, even in situations when the person concerned has been proven or

[3]Komnas Perempuan, "Annual Record of Violence Against Women 2023" (Jakarta, 2023), https://komnasperempuan.go.id.

[4]Julie A. Lipovsky, et al., "Parent-Child Relationships of Victims and Siblings in Incest Families," *Journal of Child Sexual Abuse* 1, no. 4 (1993).

[5]Wulandari Tursilarini, et al., "Psychological Impacts of Incest on Child Victims," *ASEAN Journal of Psychology and Child Development* 7, no. 3 (2024), p. 155–73. Yusefri, et al., "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations," *Samarah* 8, no. 2 (2024).

[6]Yusefri, et al., "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations."

[7]Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh, Juz VII*, IV (Dimasyq: Dâr al-Fikr al-Mu'âshir, 2002).

[8]Al-Syathibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, I (Beirut: Dar Al-Fikr, n.d.). Mohammad Al-Tahir, *Ibn 'Asyur, Treatise on Maqasid Asy-Syari'ah* (London-Washington: The International Institute of Islamic Thought (IIIT), 2006). Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008).

[9]Souha Korbatieh, "Evidence Rules In Sharia And The Impact Of Modern Technology And Dna Testing," *Australian Journal of Islamic Studies* 5, no. 3 (2020).

DOI: 10.22373/b7bd0h27

convicted of committing a sexual crime against his child.[10] The absence of strict technical regulations regarding the revocation or transfer of guardianship rights in such cases causes KUA officers to often take procedural mechanisms such as *taukil walī bil kitābah*, which is the delegation of guardianship authority through a written power of attorney, which in practice can be done even from within the correctional institution.[11] The practice reflects the widening gap between the ideal norms of Islamic law and the reality of positive law enforcement, which ultimately weakens legal protections for victims of incest.[12]

Viewed from a socio-legal perspective, victims of incest bear the double burden of severe psychological trauma and prolonged social stigma.[13] A number of studies show that families often prioritize efforts to "cover up the disgrace" by marrying the victim to the perpetrator or immediately arranging the marriage without adequately considering the victim's mental health condition, autonomy, and legal rights.[14] This kind of practice, when analyzed within the framework *of maqāṣid al-syarīʿah*, is clearly contrary to the fundamental purpose of Islamic law, because it sacrifices human dignity and safety for the sake of formalistic or patriarchal considerations.[15] Therefore, an urgent paradigm shift is needed, one that places child protection and substantive justice as the primary basis in determining the legitimacy of guardianship, not merely a biological relationship.[16]

Empirical evidence also shows that family law reforms in Indonesia, including Law Number 16 of 2019 on Marriage, have not explicitly regulated the

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[10]Norani Othman, "Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women's Struggle for Human Rights and Gender Equality," *Women's Studies International Forum* 29, no. 4 (2006). Najichah Najichah, "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions," *Walisongo Law Review (Walrev)* 4, no. 2 (2022).

[11] Sidanatul Janah, "The Practice of the Guardian Judge in the Marriage of Children Resulting from Extramarital Relationships from the Perspective of Compilation of Islamic Law Fiqh Syafi'iyyah Measuring the Authority of the Guardian Judge in the Marriage of Pregnant Children from the Perspective of Compilation of Islamic," *Al-Aqwal: Journal of Islamic Law* 04, no. 01 (2025), p. 47–58.

[12]Christian C. Joyal, et al., "Discriminant Factors for Adolescent Sexual Offending: On the Usefulness of Considering Both Victim Age and Sibling Incest," *Child Abuse and Neglect* 54 (2016)

[13]Peter Choate and Radha Sharan, "The Need to Act: Incest as a Crime given Low Priority a View with India as an Example," *Social Sciences* 10, no. 4 (2021).

[14]Siti Muniroh and Khoiruddin Nasution, "The Adoption of Found Child According to Islamic Law and Law No. 3 of 2006 on Religious Courts in the Perspective of Maqasid Al-Shari'ah," *Millah: Journal of Religious Studies* 21, no. 1 (2021), p. 89–112.

[15] Bambang Tri Bawono et al., "Human Trafficking and the Relevance of Hifz Al-Nafs and Hifz Al-'ird in Contemporary Islamic Legal Ethics," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025), p. 597–618.

[16]Redwan Yasin et al., "Guardian's Responsibility For The Welfare Of Children In Marriage: A Study According To Islamic Law," *Malaysian Journal of Syariah and Law* 12, no. 3 (2024).

DOI: 10.22373/b7bd0h27

issue of guardianship in cases involving sexual violence or incest.[17] Although the doctrine of Islamic law provides a normative justification for disqualifying morally corrupt guardians, institutional implementation at the bureaucratic level is still fragmented and inconsistent.[18] This condition underscores the urgency of integrating classical jurisprudence, *maqāṣid al-syarīʿah*, and contemporary administrative practices into a coherent legal framework.

Based on this, this study aims to examine the legal position of the biological father of the incest perpetrator as the guardian of the marriage by using a normative-empirical approach. Normative analysis was carried out through the study of classical and contemporary Islamic legal doctrines, while empirical data was obtained from case studies at KUA Gunung Kijang District, which included institutional practices and administrative constraints. By placing legal doctrine in its social and bureaucratic context, this article seeks to reconstruct a model of guardianship based on substantive justice, child protection, and Islamic legal goals. Thus, this study is expected to contribute to the discourse on Islamic family law reform and provide relevant policy input for religious courts and marriage administration institutions in Indonesia.

The Ideality of Islamic Law on Incest and Guardians of Marriage

The prohibition of incest is one of the most fundamental norms in Islamic law because it is directly related to the protection of humanity, family structure, and the sustainability of the social order. The Qur'an explicitly forbids marriage and sexual relations with *maḥārim* as affirmed in Q.S. al-Nisāʾ [4]: 23. This verse not only serves as a normative provision about who is haram to marry, but also reflects the purpose of the shari'a in maintaining the purity of the lineage (*ḥifẓ al-nasl*), family honor, and the moral stability of society. Within the framework of Islamic law, this prohibition is absolute and does not open up room for compromise through social, customary, or administrative reasons.

The study of contemporary Islamic law based on *maqāṣid al-sharīʿah* emphasizes that the prohibition of incest cannot be understood narrowly as a sexual norm, but as an instrument of *public moral order*. Sukataman et al. point out that violations of the prohibition of incest have direct implications for the destruction of the nasab structure and the increase in social risks that threaten public order, so that the state and religious law institutions have strong legitimacy

[17]Hari Disemadi, Sholahuddin Al-Fatih, and Mochammad Yusro, "Indonesian Children Protection against Commercial Sexual Exploitation through Siri Marriage Practices in Maqashid Al-Shariah Perspective," *Brawijaya Law Journal* 7, no. 2 (2020).

[18]Abdul Rahman, Zainal Amin Ayub, and Ratnawati, "Legal Framework for Protecting Children from Commercial Sexual Exploitation," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025). Febby Mutiara Nelson and Topo Santoso, "Financial Service Provider and Online Sexual Exploitation of Children: A Lacunae in Indonesia Legal Framework?," *Journal of Law and Legal Reform* 6, no. 1 (2025).

DOI: 10.22373/b7bd0h27

to reject any form of normalization of the practice.[19] This prohibition, therefore, is not only an individual interest, but concerns the protection of society collectively.

The hadith of the Prophet Muhammad (peace be upon him) strengthens this prohibition through the principle of safeguarding family honor and the prohibition of causing harm (*lā ḍarar wa lā ḍirār*). In the hadith tradition, family relations are positioned as a moral mandate that must be guarded from all forms of exploitation and violence. The sexual relationship between father and son inherently contains elements of coercion, power inequality, and moral corruption, thus contrary to the basic values of justice and protection that are the spirit of Islamic teachings. This principle makes incest a grave offense (*kabīrah*) that has a multidimensional impact.

From the perspective of Islamic family law, the prohibition of incest has direct implications for the institution of marriage and guardianship. In fiqh, the marriage guardian is not just an administrative complement to the contract, but a representation of moral responsibility to protect the interests of women. The biological father is normatively placed as *the main guardian because* it is assumed to have the strongest commitment in maintaining the honor and benefit of his daughter. However, this assumption is conditional and is built on the prerequisites of moral integrity and protective ability.

Classical jurisprudence asserts that guardianship is a mandate (*wilāyah amānah*), not an absolute right that is unconditionally attached to biological relationships. Wahbah al-Zuhaylī emphasized that guardians must meet the requirements of legal competence and moral feasibility because the marriage contract concerns the rights and future of women and has a wide social impact.[20] Thus, the legitimacy of guardianship depends on the fulfillment of the protective function, not solely the status of nasab.

The madhhab approach also shows that the authority of the guardian is not infinite. The Ḥanafī school, although granting greater autonomy to adult women to marry herself, still places the guardian within the framework of social protection and welfare.[21] Meanwhile, the Mālikī, Shafiʿī, and Ḥanbalī schools affirm the necessity of guardians in marriage, but at the same time provide strict restrictions that guardians must not act arbitrarily or to the detriment of the woman. In the case of guardians who fail to carry out the protection function, fiqh

[19]Agung Nugroho, Reformis Santono, and Umar Chamdan, "Maqāṣid Al-Sharī ' Ah and the Prohibition of Incest in Indonesian Legislation : An Analysis of the Protection of Lineage and Public Morals" 19, no. 2 (2025), p. 205–26.

[20]Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh, Juz VII*.

[21]Muhammad Ifzal Mehmood and Noraini Binti Md Hashim, "Marriage Without Wali'S Consent: A Paradigm Shift in the Family Structure of Pakistan," *IIUM Law Journal* 29, no. S1 (2021), p. 135–51.

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opens up the space for the transfer of guardianship to other parties who are more deserving.

In the context of serious offenses such as incest, the father-son relationship suffers fundamental moral damage. The relationship no longer reflects the mandate of protection, but rather an exploitative relationship that damages the soul, intellect, and honor of the victim. A number of studies on the protection of children from inbreeding confirm that the normalization of this practice, including through the route of marriage, actually prolongs the suffering of victims and is contrary to the principle of the best interests of the child.[22] Therefore, maintaining the legal authority of the incest father's father in any context, including as a marriage guardian, is substantively contrary to the purpose of Islamic law.

The framework *of maqāṣid al-sharīʿah* clarifies this normative position by placing the protection of the soul (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), and heredity (*ḥifẓ al-nasl*) as the main goals of the sharia. Incest directly undermines these three goals at once, both through psychological trauma, abuse of power relations, and threats to the quality of offspring. Within this framework, the prohibition of incest and the restriction of guardianship are not forms of legal rigidity, but rather a manifestation of substantive justice oriented towards human protection.

This normative foundation is the starting point for assessing the moral feasibility of guardians in Islamic law. When a father commits incest, he not only violates sexual prohibitions, but also destroys the ethical basis that underpins the legitimacy of guardianship. Therefore, the discussion of wickedness (*fisq*) and the doctrine of the fall of guardianship (*sāqiṭ al-wilāyah*) becomes a logical necessity within the framework of the ideals of Islamic law, which will be discussed in the next section.

In the framework of Islamic law, violations of the prohibition of incest do not stop at the aspect of the prohibition of sexual acts alone, but have direct implications for the moral integrity of the perpetrator and his ability to carry out certain legal functions. One of the most important implications is the status of wickedness (*fisq*) inherent in the perpetrator of sexual crimes against *the maḥārim*. In fiqh literature, *fisq* is understood as a serious deviation from obedience to the Shari'ah through the act of great sin (*kabāʾir*) that is committed consciously and repeatedly. This violation undermines *ʿadālah* (moral integrity), which is a major prerequisite for exercising legal authority, including marital guardianship.

[22]Satria Juanda, Burhanuddin Abdul Gani, and Syarifah Rahmatillah, "The P2TP2A's Effort to Cope with the Intensification of Sexual Abuse of Children in Perspective of the Islamic Family Law (A Case Study at the City of Banda Aceh)," *El-Usrah* 6, no. 1 (2023). Muhammad Ammad Khan et al., "Child Sexual Abuse in Pakistan: A Phenomenological Study on Parental Understanding and Prevention Strategies for Child Protection," *Journal of Child Sexual Abuse* 33, no. 1 (2024).

DOI: 10.22373/b7bd0h27

Wahbah al-Zuḥaylī explains that a guardian who loses *ʿadālah* because of committing a great sin is no longer qualified to take care of the interests of others, because guardianship is a form of trust that demands honesty, responsibility, and protection.[23] In this context, incest is not only categorized as a grave sin, but also as a crime that damages the family structure and poses a real danger to the victim. Therefore, the perpetrator of incest is normatively included in the category of *fisq mubīn* (real wickedness), which in fiqh has concrete legal consequences.

This consequence is known in the doctrine of *sāqiṭ al-wilāyah*, which is the loss of the right of guardianship due to the inability of the guardian to carry out the function of protection. This doctrine is not marginal, but has strong roots in the treasures of classical fiqh. Shafiʿiyyah scholars, for example, affirm that a guardian who abuses his power or causes harm to the woman he guardians can be replaced by another guardian or guardian of a judge.[24] This principle departs from the principle that guardianship is determined for the benefit of women, not as an absolute right of guardians.

The Mālikī school is even more assertive in looking at the moral dimension of the guardians. In the Mālikiyyah's view, a guardian who is known to have committed heinous acts or damaged the honor of the family loses the moral legitimacy to act as a guardian of the marriage.[25] This approach shows that biological destiny never stands alone as the basis for guardianship, but is always accompanied by an evaluation of moral and social feasibility. Thus, a father who commits incest against his own child has collapsed the ethical foundation that underpins his authority as a guardian.

The Ḥanbalī school also associates guardianship with the principle of harm prevention (*darʾ al-mafāsid*). Ibn Qudāmah emphasized that guardians who act detrimental or threaten the safety of women can be removed in order to protect the benefit of the contract.[26] Meanwhile, although the Ḥanafī school provides more room for adult women to marry themselves, they still recognize that a wicked guardian is unfit to impose his authority on marital matters.[5] The entire view of this school reflects an implicit consensus that moral integrity is at the core of guardianship legitimacy.

The approach *of maqāṣid al-sharīʿah* strengthens the argument of fiqh by providing a more systematic normative framework. Incest directly damages *ḥifẓ al-nasl* because it mixes up the relationship of the nasab and poses biological and social risks to the offspring. At the same time, this practice violates *ḥifẓ al-nafs* because it causes deep psychological trauma and prolonged suffering to the victim. In addition, the coercive sexual relationship between father and son also

[23]Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh, Juz VII*.

[24]Al-Nawawi, *Al-Majmū' Sharḥ Al-Muhadhdhab*, 6th ed. (Beirut: Dār al-Fikr, 1996).

[25]Mohammad Hashim Kamali, "Istiḥsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004).

[26]Ibn Qudamah, *Al-Mughni*, 7th ed. (Riyadh: Dar 'Alam al-Kutub, 1997).

DOI: 10.22373/b7bd0h27

damages *ḥifẓ al-ʿaql*, as it destroys the mental development and autonomy of the victim.[27]

Jasser Auda emphasizes that *maqāṣid* should not be understood as a normative slogan, but rather as a tool for evaluating concrete legal policies.[7] In the context of guardianship, *the maqāṣid approach* demands that legal authority be given to those who are best able to guarantee protection and benefit. Therefore, retaining the father of the perpetrator of incest as a guardian of the marriage even though he is still administratively recorded as a guardian of the nasab is contrary to the basic purpose of the sharia and turns the law into an instrument of formality that ignores substantive justice.

From the point of view of Islamic law ideals, biological relationships are never enough to legitimize guardianship when the relationship has been tainted by sexual violence. Guardianship should be read as an ethical and protective function, not just a genealogical status. In this framework, the father of the incest perpetrator normatively loses his guardianship rights (*sāqiṭ al-wilāyah*), and the authority must be transferred to another guardian or guardian of the judge in order to maintain the dignity and safety of the victim.

Thus, the ideals of Islamic law consistently show that the biological father who commits incest is not legally acting as the guardian of the marriage. This conclusion rests not only on the normative prohibition of incest, but also on the principle of wickedness, the madhhab consensus on the detrimental loss of guardianship, as well as the main purpose of *maqāṣid al-sharīʿah* which places the protection of human beings as the top priority of the law.

Field Reality: Case Study of KUA Gunung Kijang District

Field findings in this study show that cases of sexual harassment committed by biological fathers against their daughters actually occurred in the work area of KUA Gunung Kijang District, Bintan Regency, Riau Islands Province. The case was revealed after the victim experienced prolonged psychological distress, as well as abnormalities in the victim's physique and received assistance from family and related officials. The victim's father was then processed under criminal law and served a prison sentence. However, a new problem arises when the victim wants to hold a wedding, namely related to the status of the biological father as the guardian of the marriage.

Administratively, the biological father is still registered as the main guardian based on the Compilation of Islamic Law (KHI). The Head of KUA of Gunung Kijang District emphasized that as long as there is no court determination that explicitly revokes a father's guardianship rights, then the legal guardianship

[27]Nafiah and Kuncoro, "Protection of Children's Human Rights from Insured Marriage (Incest) in Indonesian Legal Systems."

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is still valid.[28] This view refers directly to Article 20 and Article 21 of the KHI which place the father as the guardian of the priority nasab without mentioning the revocation clause due to sexual crimes.[29]

In practice, because the victim's father is serving a prison sentence, the KUA does not present him directly, but uses the *mechanism of taukīl al-walī bil kitābah*, which is the granting of written power of attorney from the father to the head to carry out the marriage contract. This mechanism is seen as a legitimate administrative solution, because in the interpretation of the KUA, the father's condition does not fall into the category of "non-existent", "unknown existence", or "supernatural" as referred to in Article 23 of the KHI.[30] Thus, the normative basis for transferring guardianship to the guardian of the judge is considered to have not been met.

However, the practice poses serious dilemmas at the social and psychological level. Based on interviews with the victim's family, especially the victim's mother, there is a firm rejection of the father's involvement as a guardian, either directly or through a representative.[31] The presence of the father, even if only in a symbolic form through *taukīl,* is seen as having the potential to aggravate the victim's psychological trauma and cause rehabilitation.[3] The victim's family explicitly requests that the marriage contract be carried out by the guardian judge in order to maintain the mental condition and dignity of the victim.

The Head of KUA acknowledged that there was a conflict between moral considerations and administrative attachments. On the one hand, ethically and humanely, perpetrators of sexual harassment are considered unfit to carry out their protection functions as guardians. On the other hand, the absence of technical regulations that explicitly revoke the rights of guardians of sexual offenders makes KUA take a cautious position by adhering to written norms.[32] This position is strengthened by the view of the Head of Islamic Guidance of Bintan Regency which states that Indonesia's positive law has not provided an explicit legal basis to revoke the father's guardianship for sexual crimes.[33]

The main obstacle faced by the KUA in this case is the absence of a special Standard Operating Procedure (SOP) that regulates the handling of problematic guardians in the context of sexual violence. As a result, the decision is highly dependent on the individual interpretation of KUA officials of KHI and PMA Number 20 of 2019. The PMA does regulate the mechanism of guardianship and

[28]Interview with the Head of KUA of Gunung Kijang District, September 16, 2025.

[29]Ministry of Religion of the Republic of Indonesia, "Compilation of Islamic Law" (Jakarta, 1991).

[30]Compilation of Islamic Law, Article 23.

[31]Interview with the victim's mother, September 16, 2025.

[32]Interview with the Head of KUA of Gunung Kijang District, September 16, 2025.

[33]Interview with the Head of Islamic Guidance of Bintan Regency, September 18, 2025.

DOI: 10.22373/b7bd0h27

the validity of the administration of marriage, but it does not provide substantive guidance on the moral feasibility of guardians in extreme cases.[34]

In the practice of determining guardians, the KUA also does not use the guardian *ʿadhal* mechanism, because the father does not explicitly refuse to marry his child. Instead, he gave a written power of attorney. In fact, from the perspective of fiqh, the actions of the guardians that substantially cause harm can be qualified as *substantive ʿadhal*, even though they are not in the form of formal rejection.[35] The unwillingness of the KUA to interpret the concept *of ʿadhal* substantively shows the limitations of the legal-formal approach used.

Analysis of this practice shows that there is a discrepancy between the reality of the field and the ideals of Islamic law. Legally positive, the actions of the KUA are still justified because they are in accordance with the text of KHI and PMA. However, from the perspective of fiqh and *maqāṣid al-sharīʿah*, the determination of the father of the incest perpetrator as a guardian even through *the mechanism of taukīl* is contrary to the principles of the protection of the soul (*ḥifẓ al-nafs*), honor (*ḥifẓ al-ʿird*), and descent (*ḥifẓ al-nasl*).[36]

Thus, the reality in KUA Gunung Kijang shows that there is a serious gap between the administrative norms of the state and the demands of substantive justice of Islamic law. This case confirms that without procedural reforms and technical guidance sensitive to sexual violence, marriage registries have the potential to reproduce injustices against victims through formal legality that is devoid of protection. Furthermore, administrative practices that ignore the trauma dimension and power relations between perpetrators and victims not only fail to provide substantive justice, but also open up space for *rehabilitation*, namely the repetition of victims' suffering through legal and bureaucratic mechanisms that should serve to protect, rather than exacerbate the psychological and social impact that the victim has experienced.

The Social Impact of Incest on Victims, Families, and Communities

Incest as a form of sexual violence in family relationships not only has legal implications but also a very profound social impact both on the individual victim and on the family structure and society at large. Empirical research shows that victims of incest often experience complex long-term psychological trauma, which goes beyond mere physical impacts. Case studies that adopted an empirical-normative approach found that individuals who experience incest generally exhibit a variety of psychological symptoms, including mood swings, social withdrawal, severe feelings of guilt, decreased self-esteem, as well as

[34]Minister of Religion, "PMA No. 20 of 2019 concerning Marriage Registration," *State Gazette of the Republic of Indonesia*, no. 1118 (2019), p. 29.

[35]Al-Nawawi, *Al-Majmū' Sharḥ Al-Muhadhdhab*.

[36]Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

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interpersonal communication disorders, all of which significantly impair their quality of life and social functioning.[37]

This psychological trauma is often exacerbated by the social stigma inherent in incest victims and their families. In a society that still strongly upholds family shame, victims often face discrimination, social exclusion, and public silence that not only isolate them from social support but also worsen their mental state. Research on social discourse on incest in social media concluded that the stigma and taboos surrounding this issue often discourage victims from speaking out or seeking support, creating a circulation of shame in both family and community environments that reinforce social isolation.[38]

Other social impacts that are also significant are the risk of pregnancy in the victim, reproductive health problems, and the long-term psychological consequences associated with sexual trauma, including anxiety disorders and PTSD (*Post-Traumatic Stress Disorder*) symptoms. The practice of "marriage as a solution" that sometimes occurs actually makes the situation worse, as the victim is forced to shift the trauma into responsibility as a wife or mother at a very young age which is contrary to the principle *of the best interest of the child* in child protection law.[39]

In the realm of positive Indonesian law, this social impact has received a response through a number of legal protection instruments. Law Number 35 of 2014 concerning Child Protection affirms the right of children to protection from violence, exploitation, and discrimination, including in the context of incest which is a form of domestic violence. These rights include the right to safe parenting, physical and mental health, and psychosocial support.[40]

In addition, Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) provides a procedural framework for comprehensive handling of sexual violence, including witness and victim protection, rehabilitation, and trauma recovery services. The TPKS Law recognizes the need to reduce reporting barriers and strengthen the assistance system for sexual victims. In the context of the Law on the Elimination of Trafficking in Persons (TPPO), the protection of children as victims of sexual crimes is also regulated, especially in the aspects of rehabilitation and rehabilitation services that must be provided by the government and related institutions. It recognizes that victims of

[37]Hikmiyah, Musthofa, and Naim, "The Psychological Impact of Incest Victims: An Analysis of Quality of Life and Social Function in a Normative Empirical Approach."

[38] Incest Taboos and Social Solidarity," *American Journal of Sociology* 72, no. 6 (1967).

[39]Sukataman et al., "Maqāṣid Al-Sharī'ah and the Prohibition of Incest in Indonesian Legislation: An Analysis of the Protection of Lineage and Public Morals."

[40]Ahmad Sofian, "Misuse of Financial Services for the Sexual Exploitation of Children: A Socio-Legal Study in Indonesia," *Indonesian Journal of Socio-Legal Studies* 5, no. 1 (2025).

DOI: 10.22373/b7bd0h27

incest often experience dual vulnerability: as victims of sexual crimes and as individuals tied to a traumatic family system.[41]

The sociology approach of law reveals that the social impact of incest is also related to public perceptions of disgrace, patriarchal power, and social mechanisms that cover up or hide cases, thereby increasing the risk of victim neglect.[42] The strong patriarchal pattern in many Indonesian societies makes room for intra-family sexual abuse to be concealed for the sake of the family's good name, which in turn exacerbates the psychological and social suffering of victims.[43]

Contemporary research confirms that the protection of victims of incest cannot be achieved only through criminal punishment, but must also be accompanied by psychosocial rehabilitation support, public education to remove stigma, and access to adequate health and rehabilitation services.[44] This requires cross-sectoral work between legal, health, educational, and social institutions, so that victims are not left alone in their recovery process.

To clarify the range of implications described earlier, the various social impacts of incest on victims, families, and communities can be summarized in the following table. This presentation is intended as a concise mapping to make the relationship between aspects look more systematic.

Table 1: Social Impact of Incest on Victims, Families, and Communities

No	Impact Dimension	Key Aspects	Description
1	Psychological	Trauma and mental disorders	Victims of incest experience long-term psychological trauma, including anxiety, social withdrawal, decreased self-esteem, and PTSD symptoms that interfere with quality of life.
2	Social	Stigma and taboo	The stigma of family disgrace and social taboos causes victims to experience discrimination and silence, thus hindering recovery and access to social support.

[41]Seno Adhi Wibowo, "Child Sexual Violence and the Violation of Human Rights: The Darkest Side of Law Enforcement in Indonesia," *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020), p. 422–34.

[42]Stephanie Hill, "Partners for Protection: A Future Direction for Child Protection?," *Child Abuse Review* 14, no. 5 (2005).

[43] Ilyya Muhsin, Sukron Ma'mun, and Wardah Nuroniyah, "Sexual Violence in an Islamic Higher Education Institution of Indonesian: A Maqasid Al-Shariah and Foucauldian Perspective," *Samarah: Journal of Family Law and Islamic Law* 5, no. 1 (2021), p. 127–52.

[44] Maria Hardeberg Bach et al., "Underserved Survivors of Sexual Assault: A Systematic Scoping Review," *European Journal of Psychotraumatology* 12, no. 1 (2021), p. 1–15.

DOI: 10.22373/b7bd0h27

3	Family	Role dysfunctio n	Incest damages trust relationships in the family, weakens parental protective functions, and triggers prolonged internal conflicts.
4	Health	Reproduct ion and mental	Victims face the risk of unwanted pregnancy as well as reproductive and mental health issues that require ongoing assistance.
5	Social Practice	Forced marriage	The practice of marrying the victim to close the case actually aggravates the trauma and is contrary to the principle of the best interests of the child.
6	Law	Victim protection	The national legal framework has regulated the protection of victims of incest, but its implementation still requires strengthening rehabilitation services and cross-sectoral coordination.

Critical Analysis: Legal Reconstruction of the Guardian's Standing in Incest Cases

Analysis of the legal standing of the marriage guardian in incest cases requires an approach that goes beyond normative and administrative fiqh positivism. In the context of the biological father as the perpetrator of incest, the issue of guardianship is no longer just a matter of the hierarchy of guardians, but touches on moral legitimacy, victim protection, and the fundamental purpose of Islamic law. Therefore, the conceptual reconstruction of guardianship must be placed within the framework *of maqāṣid al-sharīʿah* as a *decisive principle*, not merely as an additional justification.

In contemporary *maqāṣid* literature, Islamic law is understood as a normative system that aims to maintain and realize human welfare through the protection of five basic needs: religion, soul, intellect, descent, and property.[45] In the context of incest, violations occur simultaneously against *ḥifẓ al-nafs* (protection of the soul), *ḥifẓ al-nasl* (protection of offspring), and *ḥifẓ al-ʿaql* (protection of intellect/psychic). Sexual violence by the biological father is not only an individual crime, but structural damage to the function of the family as a protection institution, so it is *maqāṣidiy* impossible for the perpetrator to remain as a marriage guardian.

A rereading of classical jurisprudence shows that the authority of the guardian is never absolute. The majority of fuqahāʾ do place the father as the primary guardian, but the authority is built on the assumption that the guardian

[45]Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

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performs the functions *of ḥimāyah* (protection), *riʿāyah* (nurturing), and *taḥqīq al-maṣlaḥah* for the woman who is guardian.[46] When this basic assumption collapses, as in the case of incest, the legitimacy of guardianship is lost substantively, even though formally the relationship of nasab remains. These differences of view show that in classical jurisprudence, the construction of nasab is never singular, but is formed by the difference in the methodological approach of the imams of the madhhab in assessing biological relationships born from relationships that are prohibited by sharia.[47]

In the Mālikī and Ḥanbalī schools, the moral integrity of the guardian (*ʿadālah*) is an important condition in the exercise of guardianship, especially when the guardian has a record of serious violations of the honor and safety of the child.[3] The Shafiʿī school, although it does not explicitly require *ʿadālah*, still recognizes the concepts of *ʿaḍl* and *taʿassuf* guardian, which opens the space for the transfer of guardianship if the guardian acts detrimental or endangers the guardian.[48] Even in the Ḥanafī school, which is relatively loose on the issue of guardians, the principle of benefit remains the basis for assessing the validity or not of guardian authority in practice.[49]

The concept of fisq in classical jurisprudence also has crucial relevance. The perpetrators of incest are consensually categorized as perpetrators of great sins (*kabīrah*), which not only damage personal honor, but also threaten the moral order of society.[50] In the literature of fiqh proposals, actions that manifestly cause *ḍarar muḥaqqaq* (real danger) are the basis for the loss of certain social rights, including the right of guardianship. Thus, the doctrine *of sāqiṭ al-wilāyah* cannot be understood narrowly as a theoretical concept, but rather as a mechanism of legal protection against vulnerable parties.

The *maqāṣid* approach emphasizes that the relationship of nasab does not automatically give birth to the legitimacy of authority, especially when the authority is actually an instrument of violence and domination.[51] Therefore, retaining the father of the incest perpetrator as the guardian of the marriage either directly or through the mechanism *of taukil wali bil-kitābah* is a form of reduction *of maqāṣid* to a legal formality that is empty of substantive justice. This kind of

[46]Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh, Juz VII*.

[47]Mursyid Djawas et al., "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)," *Samarah: Journal of Family Law and Islamic Law* 6, no. 1 (2022), p. 139–55.

[48]Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, Mass: Harvard University Press, 2010).

[49]Muhammad Tang and Nilfatri, "The Law of Guardianship in Marriage According to Madhhab Scholars," *Zabags International Journal of Islamic Studies* 2, no. 1 (2025), p. 1–7.

[50]Jonathan Brown, *Misquoting Muhammad* (London: Oneworld, 2014).

[51]Mohammad H Fadel, "Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights Law," *Chicago Journal of International Law* 8, no. 1 (2007), p. 1–20.

DOI: 10.22373/b7bd0h27

practice has the potential to perpetuate the trauma of the victim and ignore the principle *of best interest of the child*, which is now widely recognized in contemporary Islamic family law.[52]

From a theoretical point of view, the legal reconstruction of the guardian's standing in incest cases requires a paradigm shift: from guardianship as a biological right to guardianship as a protection trust. This shift is in line with the systemic *maqāṣid* thinking that places Islamic law as an instrument of social transformation, not just the preservation of traditional structures.[53] Thus, the death of the guardianship of the father of the perpetrator of incest is not a deviation from fiqh, but the most consistent manifestation of the purpose of Islamic law itself.

The empirical findings of this study show that the problem of legal standing of guardians in incest cases does not stop at the normative level, but continues at the administrative impasse at the institutional level, especially in the Office of Religious Affairs (KUA). A case study at KUA Gunung Kijang District shows how KUA officers are in a dilemma between compliance with formal rules and demands for substantive justice for victims. In some cases, biological fathers who are legally proven to be perpetrators of sexual violence against their children are still registered as guardians, thus opening up space for the practice of delegating guardianship through the *mechanism of taukil wali bil-kitābah*, even though the perpetrator is serving a criminal sentence.

Sociologically-legal, this condition reflects what is called *institutional inertia*, which is the tendency of legal institutions to maintain formal procedures even when it is contrary to the purpose of legal protection itself. In the context of Islamic family law, the KUA functions as *a gatekeeper* for the legality of marriage, so the absence of clear technical regulations causes officers to tend to take the safe route administratively, not the fairest path for the victim. These findings are in line with contemporary Islamic family law studies that highlight the tension between fiqh norms, state law, and social realities.[54]

From the perspective of Islamic law, the practice of maintaining the guardianship of the incest perpetrator's father, either directly or through a power of attorney, is contrary to the principle *of al-ḥukm yadūru maʿa al-maṣlaḥah wujūdan wa ʿadaman* (the law revolves according to benefits).[55] When the existence of the guardian actually causes *a real ḍarar* for the victim, then the authority loses the legitimacy of the sharia. However, empirical findings show

[52]Kadarisman, Fedro, and Arifin, "Best Interest of the Child in Islamic Family Law: Integrating *Maqāṣid al-sharīʿah* and Double Movement Theory in Ḥaḍānah Cases."

[53]Yasin et al., "Guardian's Responsibility For The Welfare Of Children In Marriage: A Study According To Islamic Law."

[54]Yusefri, Faizin, and Jafar, "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations."

[55]Zuliza Mohd Kusrin et al., "Muslim in Malaysia Understanding in Regards to the Concept of Compatibility (Kafa'ah) in Islamic Marriage," *El-Usrah* 7, no. 2 (2024).

DOI: 10.22373/b7bd0h27

that this principle has not been internalized in the administrative practice of the KUA, which still relies on formal nasab documents, not on a substantive assessment of the feasibility of the guardian.

The absence of special Standard Operating Procedures (SOPs) related to the handling of marriage of incest victims is a key factor that aggravates the situation. In modern administrative law, SOPs serve as instruments to bridge abstract norms with concrete practices. Without SOPs, the discretion of officers becomes very limited, even when morally and legally they realize that the father of the incest perpetrator is not fit to carry out the function of guardianship. As a result, administrative decisions are often defensive and oriented towards legal risk avoidance, rather than victim protection.

Comparative studies in Islamic family law in various Muslim countries show that institutional reform is precisely the key to implementing the principles of *maqāṣid al-sharīʿah* effectively. In some jurisdictions, the transfer of guardianship to a guardian of a judge or state institution is possible when the guardian is proven to have committed violence or gross violations against the child.[56] This confirms that *maqāṣid* does not stop at the level of academic discourse, but must be translated into an operational administrative mechanism.

In the Indonesian context, the findings of this study show that there is a gap between substantive law and procedural law. Normatively, Islamic law and child protection law both emphasize the importance of the safety and dignity of the victim. However, procedurally, there is no standard mechanism that allows the KUA to automatically override the guardian of the incest perpetrator's father and appoint an alternative guardian without waiting for a court decision which often takes a long time. This has the potential to prolong the suffering of victims and hinder their access to safe and dignified civil rights.

Therefore, the urgency of preparing special SOPs within the KUA environment is inevitable. The SOP must contain: (1) objective indicators of the loss of parental guardianship in cases of sexual violence; (2) verification mechanism based on criminal verdicts or official reports; and (3) the procedure for determining guardians of judges who are in favor of the best interests of the victim. Thus, the KUA is no longer trapped in administrative formalities, but functions as an institution of legal protection that is in line with *maqāṣid al-sharīʿah* and the principles of substantive justice.

Based on a normative analysis based on *maqāṣid al-sharīʿah* and empirical findings at KUA Gunung Kijang District, it can be emphasized that the problem of legal standing of guardians in incest cases is not enough to be solved through textual fiqh approaches or administrative compliance alone. What is

[56]Othman, "Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women's Struggle for Human Rights and Gender Equality."

DOI: 10.22373/b7bd0h27

needed is an operational normative reconstruction, namely a model for the determination of guardians that is able to bridge the ideals of Islamic law, the demands for child protection, and the reality of the state bureaucracy.

Theoretically, this reconstruction departs from a paradigm shift in guardianship: from *right-based authority* to *trust-based authority*. Within *the framework of maqāṣid*, guardianship was never intended as an inviolable biological privilege, but rather as an instrument to ensure the safety, dignity, and future of married women.[57] When the guardian is the source of the most serious threat to the victim's life and honor *as in cases of incest*, then maintaining the authority of the guardian is a form of *taʿāruḍ al-maqāṣid* (contradiction of the purpose of the law).

A rereading of classical jurisprudence shows that this reconstruction space has internal legitimacy within the Islamic tradition itself. The concept *of sāqiṭ al-wilāyah* was not born as an emergency exception, but as a corrective mechanism to prevent abuse of guardian authority.[58] In the modern context, sexual violence against children, especially by biological fathers, clearly meets the criteria *of fisq mubīn* and *ḍarar muḥaqqaq*, which in fiqh proposes the revocation of certain social authority.[59] Thus, the transfer of guardianship to the guardian of the judge is not a foreign innovation, but an actualization of classical principles in the contemporary context.

The empirical findings of this study show that the absence of special SOPs in KUA causes these normative concepts to not be implemented consistently. Therefore, this article proposes a normative-operational model for the determination of guardianship for incest victims, with three main pillars.

First, the affirmation of the death of the guardianship of the father of the incest perpetrator automatically (ipso jure). In this model, a criminal verdict, official confession, or strong evidence of sexual violence is enough of an administrative basis for the KUA to negate the father's guardianship without waiting for the consent or *taukil* of the perpetrator. This approach is in line with the principle *of the best interest of the child* that has become a universal norm in modern family law and is beginning to be integrated into contemporary Islamic legal discourse.[60]

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[57]Ali Abubakar, et., al, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law Illat," *Samarah* 5, no. 1 (2021), p. 153–73.

[58]Ali Abubakar, et., al, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law Illat"

[59]Fatkhurrokhman, et., al,, "Covering Shame, Sacrificing Rights : A *Maqāṣid* Al-Shari'ah Perspective on Child Protection in Incestuous Marriage Practices."

[60]Endad Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025).

DOI: 10.22373/b7bd0h27

Second, the determination of guardian judges is based on victim protection, not solely because of the absence of guardians. The guardian judge in incest cases should be positioned as a representative of the state performing *the functions of ḥimāyah* and *riʿāyah*, not merely an administrative complement. Comparative studies in various Muslim countries show that the state has the shari'a legitimacy to take over the role of the guardian when the guardian fails to carry out his mandate.[61] This strengthens the argument that the strengthening of the role of the guardian of the judge reflects *maqāṣid al-sharīʿah*, not a deviation from it.

Third, the institutionalization of the KUA SOP based on *maqāṣid*. This SOP needs to contain substantive indicators of guardian eligibility, procedures for verifying cases of sexual violence, and coordination mechanisms with law enforcement officials and child protection institutions. From a legal sociology perspective, the existence of SOPs not only increases legal certainty, but also protects KUA officers from social pressure and the risk of administrative criminalization[62]. With a clear SOP, officers' discretion is no longer personal, but institutionalized within a legal policy framework.

This reconstruction model also has broader theoretical implications. He shows that *maqāṣid al-sharīʿah* can serve as an epistemic bridge between classical jurisprudence and modern family law, as well as a tool for correction against administrative practices that are insensitive to victims. In this context, Islamic law does not appear as a rigid normative system, but rather as a dynamic ethical framework responsive to sexual crimes and power imbalances in the family.

Thus, the determination that the father of the perpetrator of incest is not legally the guardian of the marriage is not only a normative conclusion, but the result of a synthesis between texts, legal goals, and social reality. The reconstruction of the legal standing of guardians proposed in this study is expected to be a reference model for the reform of Islamic family law in Indonesia, especially in strengthening the protection of women and children victims of intra-family sexual violence.

Conclusion

The legal standing of a marriage guardian in cases of incest, particularly when the biological father is the perpetrator of sexual violence against his daughter, reveals a tension between Islamic legal ideals, administrative practice, and victim protection. Normatively, Islamic law prohibits incest to protect life, lineage, and human dignity. Classical Islamic jurisprudence views guardianship as a protective trust rather than an absolute biological right; therefore, a father

[61]Ali, "Marriage Guardians in Indonesian and Algerian Legislation: A Comparative Analysis of the Concept of Maslahat and Gender Justice", p. 81-98.

[62]Jonathan Lewallen, "Emerging Technologies and Problem Definition Uncertainty: The Case of Cybersecurity," *Regulation & Governance* 15, no. 4 (2020), p. 1035–52.

DOI: 10.22373/b7bd0h27

who commits incest constitutes *fisq mubīn* and may lose the moral and juridical legitimacy to exercise guardianship (*sāqiṭ al-wilāyah*). However, the practice at the KUA of Gunung Kijang District tends to retain the father as *walī nasab* based on formal lineage due to the absence of specific regulations and SOPs governing guardianship transfer in cases of intra-family sexual violence. This creates a gap between substantive Islamic law and administrative practice and risks revictimizing survivors. Given the profound psychological trauma, family dysfunction, stigma, and long-term social and health consequences associated with incest, maintaining the perpetrator as guardian may further undermine the victim's welfare and the principle of the best interests of the child. Based on *the framework* of *maqāṣid al-sharīʿah*, the study argues for reconstructing marriage-guardianship policy by prioritizing substantive justice and child protection through the disqualification of the incestuous father as *walī nasab*, strengthening the role of the *wali hakim*, and reformulating KUA policies and procedures. This approach contributes to contemporary Islamic family law by promoting fairer, victim-oriented, and *maqāṣid*-based administration of marriage.

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Interviews

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Interview with the Head of Islamic Guidance of Bintan Regency, September 18, 2025

Interview with the victim's mother, September 16, 2025.

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