

**REACTUALIZATION OF WALI MUJBIR IN THE MODERN ERA:
Maqasid Sharia Analysis of Imam Shafi'i's Concept Regarding Wali's
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Abstract: This research aims to describe the *wali mujbir* concept according to Imam Shafi'i in the book of *al-Umm*, then analyze the *maqasid sharia* in it and the relevance of its application in the modern era. This type of research is qualitative in the form of normative legal research using library research methods. Source data was taken through documentation. As for data analysis, it was used as thematic and inductive with a historical and philosophical approach. The research results concluded that the *wali's* right to *ijbar*, according to Imam Shafi'i is the father's right to force his daughter to marry or forbid her daughter from marrying a man as a form of protection and responsibility under certain conditions. *Wali mujbir* are divided into two groups: (a) for girls who are not yet adults, their father has the absolute right to *ijbar* without having to ask for his consent; (b) for adult girls who are 15 years old or have already had a period, although her father can marry her off without asking for her consent. There is a recommendation to consult with the girl, although this recommendation is optional. In the view of the *maqasid sharia*, the *walis's* *ijbar* aims to safeguard the interests of the girl child so that she can obtain an equal husband, maintain the religious quality of the girl and her future offspring, safeguard her welfare, safeguard her safety from potential abuse by her future husband, and maintain the good quality of offspring from a healthy husband, and complete with all five senses. By holistically understanding the *wali's* *ijbar* rights according to the context, the implementation of *wali mujbir* remains current and relevant to the dynamics of modern society.

Keywords: *Maqasid Sharia, Wali Mujbir, Imam Shafi'i*

Abstrak: Tujuan penelitian ini adalah untuk mendeskripsikan konsep *wali mujbir* menurut Imam Syafi'i dalam kitab *al-Umm*, lalu menganalisis *maqasid syari'ah* yang terkandung di dalamnya, dan relevansi penerapannya di era modern. Jenis penelitian

ini adalah kualitatif dalam bentuk penelitian hukum normatif, dengan metode penelitian kepustakaan. Sumber data digali melalui dokumentasi. Adapun analisis data menggunakan pola berfikir induktif tematik dengan pendekatan historis dan filosofis. Hasil penelitian menyimpulkan bahwa hak *ijbar* wali menurut Imam Syafi'i adalah hak ayah untuk memaksa menikahkan atau melarang menikah anak gadisnya dengan seorang laki-laki sebagai bentuk perlindungan dan tanggung jawab dengan syarat-syarat tertentu. Terbagi ke dalam dua kelompok: (a) bagi gadis yang belum dewasa, ayahnya memiliki hak *ijbar* mutlak tanpa harus meminta persetujuannya; (b) bagi gadis dewasa yang sudah berusia 15 tahun atau sudah mengeluarkan darah haid, walaupun ayahnya dapat menikahnya tanpa meminta persetujuannya, tapi ada anjuran untuk bermusyawarah dengan anak gadis tersebut, tapi anjuran tersebut sifatnya pilihan. Dalam tinjauan *maqashid syari'ah*, *ijbar* wali bertujuan menjaga kepentingan anak gadis agar dapat memperoleh suami yang setara, menjaga kualitas agama si gadis beserta calon keturunannya, menjaga kesejahteraan, menjaga keselamatannya dari potensi tindak aniaya calon suaminya, dan menjaga kualitas keturunan yang baik dari suami yang sehat dan lengkap panca inderanya. Dengan pemahaman secara holistik terhadap hak *ijbar* wali sesuai konteksnya, maka implementasi *wali mujbir* tetap aktual dan relevan dengan dinamika masyarakat modern.

Kata Kunci: *Maqashid Syari'ah*, *Wali Mujbir*, Imam Syafi'i

Introduction

The issue of *ijbar* among *wali* (guardians) of marriage has become a serious discussion among contemporary Muslim intellectuals and Indonesian society, most of whom follow the Shafi'i school of thought, especially if it is related to human rights and gender equality. In modern society, many school or college women are accustomed to doing transactions, public work, and supporting their families or themselves. It shows the capability of women to assume responsibility on reason and maturity. However, there are still some women who are matched or even forced to marry a man of their choice or their guardian.

Choosing a soulmate is one of the most important issues in marriage. However, it is often the case that its implementation clashes with the *ijbar* right. It is what then becomes the highlight, so it seems that in Islam, the woman's right to determine the spouse is the full right of the man. The woman does not have a right to choose the spouse of her life. The discourse that has developed until now is that *wali mujbir* is parents who force their

children to marry their parents' choice, better known as forced marriage.¹

Few of these marriages are performed on girls who are still young, but they are unable to refuse. They are forced to do so by their *walis* (guardians) because they are allowed by the *sharia*. Their refusal is because there is no compatibility with the man their parents have chosen, they are immature, they would continue their education or study, or they already have their own choice, which does not significantly impact the guardian's authority.

Regarding the above phenomenon, the counter-legal draft team on the Compilation of Islamic Law once proposed that the *ijbar* rights of the guardian be eliminated. They argued that marriage must be carried out with the principles of willingness (*al-taradin*), equality (*al-musawah*), justice and goodness (*al-mashlahah*), pluralism (*al-ta'adudiyah*), and

¹ Arini Robbi Izzati, "Kuasa Hak Ijbar Terhadap Anak Perempuan Perspektif Fiqh Dan Ham [Kuasa Hak Ijbar Terhadap Anak Perempuan Perspektif Fiqh Dan Ham]," *Al-Mawarid: Jurnal Hukum Islam* 11, no. 2 (2011). <https://journal.uui.ac.id/JHI/article/view/2864/2620>

democracy (*al-dimuqrathiyyah*). The logical consequence impacts the equal position between men and women regarding consent, witnesses, 'iddah, nusyuz, mourning, reconciliation, giving or receiving dowry, livelihood, position in the household, minimum age of marriage, and guardianship.²

Differences of opinion are necessary and commonplace due to the *ijtihad* of relative human reason. Islam is tolerant of the existing differences and emphasizes that the differences in the results of *ijtihad* will bring spaciousness, ease, or grace to the people.³

The right of *ijbar* owned by the *wali mujbir* should be interpreted as the right that parents have to marry off their daughters based on responsibility. However, due to the patriarchal interests and stereotypes of women that still dominate the views of *fiqh* scholars, the practice of exercising *ijbar* rights often deviates. It happens because there is a shift in the meaning of *ijbar*, which then leads to the assumption that Islam justifies a forced marriage. Forced marriage itself is one of the terms that has a negative connotation (*ikrah*). According to Husein Muhammad, *ikrah* is a form of coercion against someone to do a job accompanied by a threat to his life and body without him resisting. Meanwhile, for a forced person, the action is against the will of his conscience and mind.⁴

The interpretation of *ijbar* with the connotation of *ikrah* is unjustified because it can allow. In addition, marriage is directly related to the feelings of a girl or widow who

will accompany her husband for life. They are the ones who will live and feel the peace and happiness in their household.

In Muttaqin's writing, it is explained that according to KH. MA. Sahal Mahfudh, related to this *wali mujbir*, the child has the right to refuse to be married to a man who is not equal without his consent. Parents also have the right to reject their daughter's desire to marry a man who is not equal. According to him, asking for the child's consent, apart from being considered good in terms of the value of the teachings conveyed by the Prophet Muhammad, is also supported by the *fiqh* rule *al-khuru' min al-khilaf mustahab* (getting out of differences by compromising different opinions is preferable). While the method of *istinbath* KH. MA. Sahal Mahfudh is to use the textual method (*madzhab qauly*), and both are contextual/methodological methods (*manhajy*) at once.⁵

Meanwhile, Rabi'atul Adawiyah's research shows that, first, according to Islamic law, *wali mujbir* have the right to get their daughter married to a man without their child's consent as long as they fulfill the specified requirements. The status of marriage at the will of the *wali mujbir* who meets the requirements is valid in religious law but not under Law Number 1 of 1974 concerning marriage. Second, marriage at the will of the *wali mujbir* can positively or negatively impact domestic life.⁶

Furthermore, Dea Salma Sallom's research has discussed the urgency of the role of *wali*

² Musda Asmara, "CONCEPT OF WALI MUJBIR IN MARRIAGE (LEGAL CRITICISM OF COUNTER LEGAL DRAFT COMPILATION OF ISLAMIC LAW)," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 8, no. 2 (2021): 189-204. <http://dx.doi.org/10.29300/mzn.v8i2.5767>

³ Toha Andiko, *Fiqh Kontemporer* (IPB Press Publisher, 2013).

⁴ Muhammad Husein, *Fiqh Perempuan: Refleksi Kiai Atas Wacana Agama Dan Gender* (Yogyakarta: Zi25, 2001), p. 106.

⁵ Imamul Muttaqin, "Studi Analisis Terhadap Pendapat KH. MA. Sahal Mahfud Tentang Wali Mujbir," *AL-HUKAMA': The Indonesian Journal of Islamic Family Law* 2, no. 1 (2012): 19-36. <https://doi.org/10.15642/al-hukama.2012.2.1.19-36>

⁶ Rabi'atul Adawiyah and Siti Maisarah, "Kedudukan Wali Mujbir Dalam Perkawinan Menurut Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jentera Hukum Borneo* 5, no. 01 (2022): 180-214. <https://ojs.uvayabjm.ac.id/index.php/janter/article/view/323>

mujbir in maintaining family honor. It can be seen from the role of *wali mujbir* in matchmaking in *APTQ Pesantren* (boarding school of Ta'limul Qur'an), especially for girls whose marriages will not be valid without a guardian, and *wali mujbir*. In *APTQ Pesantren* does not have full power because it emphasizes *musyawarah* (deliberation) with elders or directly to the person concerned. Therefore, the meaning of *wali mujbir* in the reality of *pesantren* matchmaking is no longer coercion in marriage but rather the agreement of both parties with the intermediary of parents. In addition, the matchmaking system in *APTQ Pesantren* is carried out so that the *APTQ Pesantren* community does not make dating an arena for choosing a companion so that it becomes one of the ways to avoid sin (*hifz al-din*). Matchmaking in *APTQ Pesantren* is one of the efforts to maintain the dignity of *pesantren*'s sons and daughters (*hifz al-'ird*).⁷

Another study discusses the views of contemporary scholars Yusuf al-Qardhawi and Masdar F. Mas'udi on the right of *ijbar* in marriage. This study compares the opinions of the two figures with different tendencies. Masdar's pattern of thought is classified as eclectic, which tries to choose one better opinion while still paying attention to various schools of religious thought, philosophy, and social theory. In contrast, Yusuf al-Qardhawi is motivated by moderate thinking; his method uses *ijtihad intiqai*.⁸

Therefore, in this modern era, the discourse of the right of *ijbar wali* remains an interesting debate, especially if faced with contemporary issues such as gender. The concept of *wali*'s

ijbar is considered to conflict with gender equality and justice; it is considered to take away women's rights because the guardian of the *mujbir* has the right to get his daughter married off even without her consent. There is also the assumption that a woman is weak in her actions and unable to make decisions.⁹

Method

This type of research is a literature research that uses qualitative research methods. The qualitative research method is one of the research procedures that produces descriptive data in the form of the words or writings of the people and behaviors of the people who are observed,¹⁰ which is analyzed continuously from the beginning to the end of the research, using an inductive thinking pattern to find patterns, models, meanings and even theories. This form of qualitative research is descriptive, and the analysis is presented in a narrative, organized logically and systematically.

The data sources for this research consist of primary and secondary data. Primary data sources include the direct works of Imam Shafi'i, namely the book *al-Umm* and other works. Secondary data sources include books relevant to the topic of discussion, scientific journals, and other research reports. This research uses descriptive-analytical data analysis and synthesis using historical and philosophical approaches.¹¹

⁷ Dea Salma Sallom, "Analisis Maqāshid Al-Syarī'ah Terhadap Peran Wali Mujbir Dalam Perjodohan Di Pesantren APTQ Bungah Gresik," *Al-Qadlāya: Jurnal Hukum Keluarga Islam* 1, no. 2 (2022): 23-33. <https://doi.org/10.55120/qadlāya.v1i2>

⁸ SYAMSUD DUKHA-NIM, "HAK IJBAR DALAM PERKAWINAN (STUDI KOMPARATIF PANDANGAN MASDAR FARID MAS'UDI DAN YUSUF AL-QARADAWI " (UIN Sunan Kalijaga Yogyakarta, 2008). p. 9.

⁹ Ririn Rindiana Dewi, "Ririn Rindiana Dewi, "Persetujuan Mempelai Perempuan Dalam Pernikahan Perspektif Hadis (Kajian Mukhtalif Al-Hadits)" (Fakultas Ushuluddin dan Filsafat, 2017), p. 123.

¹⁰ Jusuf Soewadji, *Pengantar Metodologi Penelitian* (Jakarta: Mitra Wacana Media, 2012), p. 51

¹¹ Husaini Usman, *Metodologi Penelitian Sosial*, 2009, p. 4.

Result and Discussion

1. The Concept of Wali Mujbir

According to Sayyid Sabiq, guardianship is a *shara'* right exercised by the will of *shara'* to another person, whether exercised by force or not.¹² In *fuqaha* terms, *wali* can perform legal acts directly without depending on someone else's legality (someone's approval).¹³ Moreover, the person most entitled to get a free woman married off is her father, then her grandfather, then his son, grandson, and so on downwards. Then, the most entitled are his father, grandfather, children, grandchildren, and so on downwards.¹⁴

Imam Shafi'i in his book *al-Umm* explains that a *wali mujbir* is a guardian who can get his daughter married without her permission. This appears from the statement:

قال الشافعي: فأَيُّ ولي امرأة ثيب أو بكر زوجها بغير إذنها فالنكاح باطل، إلا الأباء في الأباكار، والسادة في الماليك، لأن النبي صلى الله عليه وسلم رد نكاح خنساء ابنة خدام. حينزوجها أبوها كارهة، ولم يقل إلا أن تشائي أن تيري أباك فتجيزي إنكاحه، لو كانت إجازته إنكاحها تيزه أشبه أن يأمرها أن تجيز إنكاح أبيها، والا يرد بقوته عليها.

"Imam Shafi'i said: Whoever becomes the *wali* of a woman (widow or virgin) and gets her married off without her permission, the marriage is invalid, except for the father who gets his virgin daughter married off and the master who marries off his slave woman, because the Prophet rejected the marriage of Khansa', the daughter of Khudzam when her father gets her married

off by force. The Prophet did not react other than to say, "If you wish, be dutiful to your father by approving his marriage." Suppose the Prophet's blessing of the marriage is an authorization from him. In that case, it is more accurate to say that he ordered Al-Khansa' to approve the marriage organized by her father and not reject it because of the great power of the father over her."¹⁵

The opinion of Imam Shafi'i gives the understanding that a father can get his daughter married off, who is still a virgin, without the permission of the daughter. As he argues, "any woman, whether a virgin or a widow, who is married off by her father without his permission, then her marriage is void, except for a father who gets his virgin daughter married off." So, the right to marry by force or any other term only applies to fathers. This opinion is based on the hadith about the story of Khansa' binti Khudzam. Khansa's story was married to a man of her father's choice, and she did not like it, so she reported the incident to the Prophet Muhammad (peace be upon him). Rasulullah gave Khansa' a choice to either annul the marriage or continue it. According to Imam Shafi'i, from the narration of the hadith, it is contextualized that the Prophet advised her to accept the marriage because the father is more powerful, meaning that he knows better the benefits of his daughter.

Imam Shafi'i thinks that the *wali* in marriage must be present because the guardian is one of the pillars of marriage, which means that the marriage contract without a guardian is invalid; the argument rests on the general understanding of Surah al-Nisa in verse 34. This verse is interpreted that free women are not entitled to marry themselves. As also indicated by the Qur'an in Surah Al-Baqarah (2) verse 232: "When you divorce your wives,

¹² Al-Sayyid Sābiq, *Fiqh Al-Sunnah*, Vol. 2, (Beirut: Dar Al-Kitab Al-'Arabi, 1987).

¹³ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islām Wa Adillatuh*, Juz VII (Damascus: Dar Al-Fikr, 1989).

¹⁴ Abu Muhammad Abdullah ibn Ahmad ibn Muhammad ibn Qudamah, *Al Mughni*, Palestine: Dar'Alam Al-Kutub, 1983.

¹⁵ Abu Abdullah Muhammad ibn Idrīs al-Syafi'i, *Al-Umm*, (Cairo: Mathba'ah al-Amiriyah Kubrā, 1321 AH), Volume II, p. 19.

then the *iddah* period expires, then do not you (the *wali*) prevent them from remarrying their future husbands, if there is consent between them in a *ma'ruf* manner. That is recommended to those who believe among you in Allah and the Last Day, and that is better for you and more pure. Allah knows, and you do not know." Some scholars say that this verse was revealed in connection with Ma'qil ibn Yasar, who prevented his sister from reconciling with her first husband, Al-Barrah Abdullah ibn 'Asim. The verse was revealed to indicate that women cannot marry themselves and to prohibit *walis* (guardians) from refusing to marry a woman or being an obstacle to marriage for a woman under their guardianship.¹⁶

This verse also indicates that marriage is consummated with the consent of the *wali* (guardian), the dowry, and the bride-to-be. However, on the other hand, the *wali* (guardian) should not make it difficult for his daughter. Therefore, if the *wali* (guardian) makes it difficult for his daughter, the ruler can get her married off. Suppose a father denies his daughter a right. In that case, the authority of the ruler can take that right away from the father as her *wali* (guardian).¹⁷ as indicated in a hadith:

وعن عائشة رضي الله عنها قالت: قال رسول الله صلى الله عليه وسلم: أيما امرأة نكحت بغير إذن وليها فنكاحها باطل ، فنكاحها باطل ، فإن دخل بها فلها المهر بما استحل من فرجها ، فإن اشتجروا فالسلطان ولي من لا ولي له.

"Aisha RA reported that the Prophet said: If a woman marries without the permission of

her guardian, her marriage is void, her marriage is void, her marriage is void. Suppose sexual intercourse has taken place (after the marriage). In that case, the woman is entitled to her dowry because she has made her chastity lawful. Suppose the guardian is reluctant to perform the marriage. In that case, the judge acts as a guardian for someone without a guardian." (Reported by Abu Daud, Ibn Majah, Al-Darimi and Al-Tirmidzi).¹⁸

Another reason that indicates the power of a father to marry off his daughter, Imam Shafi'i explains:

دَلَّ إِنْكَاحُ أَبِي بَكْرٍ عَائِشَةَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ابْنَةً سِتٍّ وَبِنَاؤُهُ بِهَا ابْنَةً تَسْمَعُ عَلَى أَنَّ الْأَبَ أَحَقُّ بِالْبِكْرِ مِنْ نَفْسِهَا وَلَوْ كَانَتْ إِذَا بَلَغَتْ بِكْرًا كَانَتْ أَحَقُّ بِنَفْسِهَا مِنْهُ أَشَبَّهُ أَنْ لَا يَجُوزَ لَهُ عَلَيْهَا حَتَّى تَبْلُغَ فَيَكُونَ ذَلِكَ بِإِذْنِهَا.

"The marriage of `Aisyah to the Prophet (peace be upon him) by Abu Bakr (may Allah be pleased with him) when she was six years old, and the marriage to the Prophet (peace be upon him) when she was nine years old, shows that the father has more rights over the girl than she does over herself; a girl who has reached the age of girlhood has more rights over herself than her father. It would mean that the father would not be allowed to get her married off until she reaches the age of puberty so that the marriage could only take place with her permission."¹⁹

From the above statement of Imam al-Shafi'i, it is known that a guardian has more rights over his daughter, especially concerning marriage, as long as she has not reached the age of maturity or *baligh*. This is considered reasonable because the child is at the age before *baligh*, and all civil actions are delegated

¹⁶ Muhammad Lutfi Hakim, "Reconstructing the Right of Ijbar Wali (Application of Ibn Al-Qayyim Al-Jawziyyah's Theory of Legal and Social Change)," *Al-Manahij: Journal of Islamic Legal Studies* 8, no. 1 (2014): 45-56. <https://doi.org/10.24090/mnh.v8i1.401>

¹⁷ Muhammad ibn Idris al-Syâfi'i, *al-Umm*, p. 13.

¹⁸ Al-Sayyid al-Imam al-Kahlany and Muhammad bin Ismail, *Subul Al-Salam; Syarah Bulug Al-Maram Min Jami' Abdillahi Al-Ahkam*, Juz III (n.d.), p. 117

¹⁹ Muhammad ibn Idris al-Syâfi'i, *Al-Umm*, p. 17

to his *wali* (guardian) because she is not considered legally capable.

Furthermore, in terms of determining the age of puberty, so that a person is considered legally competent, Imam al-Shafi'i states that:

فلما كان من سنة رسول الله صلى الله عليه وسلم أَنَّ
الْجَهَادَ يَكُونُ عَلَى بَنِ خَمْسَ عَشْرَةَ سَنَةً وَأَخَذَ أَنَّ الْجَهَادَ
يَكُونُ عَلَى بَنِ خَمْسَ عَشْرَةَ سَنَةً وَأَخَذَ. الْمُسْلِمُونَ بِذَلِكَ
فِي الْحُدُودِ وَحَكَمَ اللَّهُ بِذَلِكَ فِي الْيَتَامَى فَقَالَ {حَتَّى إِذَا
بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا} وَلَمْ يَكُنْ لَهُ الْأَمْرُ فِي
نَفْسِهِ إِلَّا بَنِ خَمْسَ عَشْرَةَ سَنَةً أَوْ ابْنَةَ خَمْسَ فِي نَفْسِهِ إِلَّا
بَنِ خَمْسَ عَشْرَةَ سَنَةً أَوْ ابْنَةَ خَمْسَ عَشْرَةَ إِلَّا أَنْ يَبْلُغَ الْحُلُمَ
أَوْ الْجَارِيَةَ الْمَحِيضَ قَبْلَ ذَلِكَ فَيَكُونُ لَهَا أَمْرٌ فِي
أَنْفُسِهِمَا.

"When the stipulation that the obligation of jihad is imposed on fifteen-year-olds became a *sunnah* of the Prophet and the Muslims took this as the limit of the stipulation, and Allah SWT stipulated it in the case of orphans; Allah SWT said "until they are of marriageable age. Then when you think they are of sound mind, and he does not have a commandment that applies to himself unless he is a boy who has reached the age of fifteen, or a girl who has reached the age of fifteen unless he has had a wet dream or a girl who menstruates before the age of fifteen, then the commandment applies to both of them."²⁰

Thus, if a girl has not yet menstruated and has not reached the age of 15 (fifteen) years, her *wali* (guardian) has the *ijbar* right so that the guardian may get her married to any man without having to seek her consent.

2. Differences in Legal Status between *al-Bikr* and *al-Tsayyib*

In *wilayat al-ijbar*, there are different meanings between girls who are virgins and widows, so the legal implications for both are also different. What is called *bikr* is a girl, who is still a virgin and resembles a virgin. What is called a virgin is a term for a girl, who has never really had sexual intercourse. A virgin is a girl who has never had sexual intercourse. The one resembling a virgin is a girl or a woman who has been married many times. All her husbands have died or divorced, and she has received dowry and inheritance from them. In this case, she can be married off as a virgin on condition that they have not had sexual intercourse because, in this case, the title of virgin has not been lost. As for *tsayyib*, if a virgin is no longer a virgin, or if a woman has been married to a man in a valid or invalid marriage, or has been adulterated, whether she has reached puberty or is still a child, then she comes under the same ruling as a widow. It is not permissible for the father to give her in marriage without her permission.²¹

In this case, Imam al-Shafi'i took the proof from the Prophet's hadith which reads:

الْأَيِّمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا
وَإِذْنُهَا صُمَاتُهَا

"The widow has more rights about herself, while the girl is asked for permission in herself, and her permission is her silence."²²

About this hadith, Imam al-Shafi'i analyzes it by stating that:

وَيُشَبِّهُ فِي دَلَالَةِ سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا
فَرَّقَ بَيْنَ الْبِكْرِ وَالتَّيِّبِ فَجَعَلَ التَّيِّبَ أَحَقَّ بِنَفْسِهَا مِنْ وَلِيِّهَا
وَجَعَلَ الْبِكْرَ تُسْتَأْذَنُ فِي نَفْسِهَا أَنَّ الْوَلِيَّ الَّذِي عَنِ وَاللَّهِ
تَعَالَى أَعْلَمُ الْأَبُّ خَاصَّةً فَجَعَلَ الْأَيِّمُ أَحَقَّ بِنَفْسِهَا مِنْهُ فَدَلَّ

²¹ Ibid. p. 19.

²² Al-Imam Abi Husain Muslim bin Hajjaj Al-Qusyairi Al-Naisaburi, *Shahih Muslim*, Juz III, 1971, p. 604.

²⁰ Ibid. p. 17

ذلك على أَنَّ أَمْرَهُ أَنَّ تُسْتَأْذَنَ الْبِكْرُ فِي نَفْسِهَا أَمْرٌ اخْتِيَارٍ
لَا فَرَضٍ لِأَنَّهَا لَوْ كَانَتْ إِذَا كَرِهَتْ لَمْ يَكُنْ لَهُ تَرْوِجُهَا كَانَتْ
كَالْتَّيِّبِ وَكَانَ يُشْبِهُ أَنَّ يَكُونَ الْكَلَامُ فِيهَا أَنَّ كُلَّ امْرَأَةٍ
أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَإِذْنُ التَّيِّبِ الْكَلَامُ وَإِذْنُ الْبِكْرِ
الصَّمْتُ.

"The Sunnah of the Prophet (may Allah's peace and blessings be upon him) in distinguishing between a girl and a widow, i.e., that the widow has more rights over herself than her guardian and that the girl should be asked for permission in her case, implies that the guardian - as intended - is specifically the father -*wallahu a`lam*- and that the widow has more rights over herself than her guardian. It shows that the command to ask permission from the girl is optional, not obligatory. If the girl does not want to marry her prospective husband, so the guardian cannot marry her, then the girl's status is that of a widow. It would mean that all women have more rights over themselves than their *walis* (guardians). The widow's permission is in words, whereas the girl's permission is in silence."²³

Imam al-Shafi'i's explanation above is a continuation of the statement about girls when they reach the age of girlhood (*bikr*), so it is recommended for a guardian to ask permission if he wants to marry them, even though this is not an obligation.

Imam al-Shafi'i is still resistant about *ijbar* rights for a *wali* (guardian) from the context of this right. The only reason for the loss of the *ijbar* rights of a *wali* (guardian) is when the woman is a widow. The criteria for widowhood, according to Imam al-Shafi'i's ruling, are:

وَإِذَا جُمِعَتْ بِنِكَاحٍ صَحِيحٍ أَوْ فَاسِدٍ أَوْ زِنًا صَغِيرَةً كَانَتْ
بَالِغًا أَوْ غَيْرَ بَالِغٍ كَانَتْ تَيِّبًا.

²³ Muhammad ibn Idris al-Syâfi'i, *al-Umm*, p. 18

"When a woman has been married in a valid or invalid marriage or fornication, whether she is a child, has reached puberty or not, she is a widow."²⁴

From this, it is known that the determination of widowhood is due to having had sexual relations with a man, either through legal marriage or illegal means or whether the woman is a child or an adult.

3. Conditions for the Exercise of the *Wali's* Right to *Ijbar*

Imam Shafi'i established the *ijbar* right for a *wali* (guardian) based on a father's deep affection for his daughter. Shafi'i said that no one other than the father has the right to marry off a virgin or widow who is still a child except with his blessing, and it is not permissible to marry them off until they reach puberty and then ask his permission. The marriage is void if anyone other than the father gets a young woman married off. The couple does not inherit from each other, and divorce does not apply to them; the ruling is the same as the ruling on a marriage that is invalid on all sides. This marriage has no consequences concerning divorce or inheritance.²⁵

Therefore, Imam Shafi'i only gave the father the right of *ijbar*. However, in later developments, the Shafi'i scholars modified the *ijbar* right by giving *ijbar* authority to the grandfather.²⁶ A father is personified as a figure who cares deeply for his daughter because the girl has no experience of a married life. In addition, she was embarrassed to look for a partner, so Imam Shafi'i tried to provide a means for the father to help his daughter.²⁷

²⁴ Ibid., p. 18.

²⁵ Ibid., p. 19

²⁶ Pera Sopariyanti, *Kawin Paksa Perspektif Fiqh Dan Perlindungan Anak*, (Jakarta: RAHIMA, 2008), p. 15

²⁷ Agustin Hanapi and Hafizah Hani Azizan, " Hak Wali Mujbir Membatalkan Pernikahan (Analisis Putusan Mahkamah Syaria'ah Perak)," *Samarah: Journal of Family Law and Islamic Law* 1, no. 1 (2017): 17. <http://dx.doi.org/10.22373/sjkh.v1i1.1558>

Imam Shafi'i stipulates the conditions that must be met by the *wali* (guardian) when getting his daughter married without permission, namely: 1) There is no obvious enmity between the father and his daughter. 2) She will be married to an equal person. 3) She is to be married with the *mahr mitsil*. 4) The dowry is the money of the country. 4) The husband should not have difficulty giving dowry. 5) She should not marry someone difficult to live with, such as a blind man or an elderly. 6) The girl should not be someone who is obliged to perform *hajj*. Her husband may forbid her to perform *hajj* because *hajj* is an act of worship performed over a long period.²⁸

Regarding the freedom and consent of women in marriage, Imam Shafi'i classifies them into three groups, namely girls who are still young, girls who have reached adulthood, and widows.²⁹ In this case, the father can marry off the child without his permission first, as long as the marriage is not detrimental to the child. The basis of the father's permission to marry off his child, who is still young, is related to the minimum age of maturity. Shafi'i stipulates that the minimum age of maturity for children is 15 years old. It is based on the *hadith*, which explains that *ijbar* is recommended for boys who have reached the age of 15 because boys who have reached the age of 15 are considered adults. Moreover, Muslims take this age limit of 15 years as the limit for the application of the *had* law.³⁰ The age of 15 is also used as the minimum limit for allowing orphans to manage their property (Q.S. Al-Nisa` [4]: 6).

From the above explanation of the *hadith*, it can be understood that the one who is allowed to handle the matters is personally only a boy or girl who is already 15 years old or who has

already experienced a wet dream or a girl who is already menstruating even though she is not yet 15 years old. Thus, her *wali*'s (guardian)'s permission applies to a girl who has not yet reached the age of 15 years or has not yet had a period. It is in line with the *hadith* of the Prophet, which Aisha narrated:

عن عائشة رضي الله تعالى عنها قالت: نكحني النبي صلى الله عليه وسلم وأنا ابنة ست أو سبع وبني بي وأنا ابنة تسع

"Aisha (may Allah be pleased with her) reported: The Prophet married me when I was six or seven years old and established a household with me when I was nine.³¹

This act of Abu Bakar, who got Aisha married when she was only six or seven years old and held the relationship after she was nine years old, was added to the act of Abu Bakar, who married Aisha when she was still immature, with the reasoning that all the affairs of a young child are the responsibility of his father, this is what later became the basis for the permissibility of marrying off a young child. As for the marriage of an adult child, for Imam Shafi'i, there is a balance between the father and the child. This *ijbar* stipulation is accompanied by a recommendation to consult with the parties who intend to enter into marriage to obtain the permission or consent of those concerned (Q.S. Ali Imran: 119).

However, the recommendation to consult with the adult daughter is only *amru ikhtiyarin la fardin*. This is because the father's right of authorization over his adult daughter is based on the *mafhum mukhalafah* of the following *hadith*:

حدثنا سعيد بن منصور وقتيبة بن سعيد قال حدثنا مالك ح وحدثنا يحيى بن يحيى (واللفظ له) قال قلت لمالك حدثك عبد الله بن الفضل عن نافع بن جبير عن ابن

²⁸ Wahbah Zuhaili, *Fiqhul Islam Wa Adillatuhu* (Gema Insani, 2010), p. 174

²⁹ Pera Sopariyanti, *Kawin Paksa...*, p. 15.

³⁰ Muhammad ibn Idris al-Syafi'i, *Al-Umm*, p. 18.

³¹ Ibid., p. 19

عباس ان النبي صلى الله عليه وسلم قال الأيم أحق بنفسها من وليها والبكر تستأذن في نفسها واذنهما صماتها قال نعم.

"Said ibn Manshur and Qutaibah ibn Said narrated to us, they both said: Malik has narrated to us. And Yahya bin Yahya - and this phrase is his - narrated to us, saying: I said to Malik: Did 'Abdullah ibn Al-Fadhl ever tell you, from Nafi', from Ibn 'Abbas: that the Prophet said: "A widow has more rights over herself than her guardian, while a girl must be asked for her permission. His permission is his silence." He (Malik) replied: "Yes."³²

The above *hadith* states that the widow has more rights over herself. The interpretation of the *hadith* is that when the widow is given the right to express her consent, the opposite understanding is that the father has the right to determine the marriage affairs of his adult daughter, despite the suggestion of consultation between the two parties. From this explanation, it can be concluded that the father's rights outweigh his daughters' rights, whether they are adults or minors.

As for the marriage of a widow, there must be explicit permission from the person concerned. This requirement is based on the case of the marriage of Khansa` bint Khidam, which the Prophet rejected because Khansa was married off by her father to a man she did not like and had not sought his consent beforehand. The legal basis is the following *hadith*:

عن خنساء بنت خدام ان اباها زوجها وهي ثيب فأت رسول الله صلى الله عليه وسلم فرد

"Khansa` bint Khidam reported that her father had married her and she was a widow, so she came to the Messenger of Allah (peace and blessings of Allah be upon

him), and he refused to annul the marriage."³³

The above *hadith* confirms that when a father wishes to marry off his widowed daughter, it is not permissible for him to do so except with her explicit consent. Suppose the father gets the widow married off without her consent. In that case, the marriage will be invalid unless the widow tells him to continue and frees her father to proceed with the marriage. Thus, it can be understood that a widow has more rights over herself than her guardian. The validity of her marriage depends on her consent. No one else has the right to prevent her from getting married.³⁴

4. *Maqasid Sharia* Review of the *Wali's Ijbar* Right

According to Imam Shafi'i, the consent of a girl, whether a child or an adult, indicating her willingness to be married by her father is sufficient by her silence. In contrast, the consent of a widow is by her explicit words. This distinction between the consent of a girl and that of a widow is made because the *hadith* emphasizes that the widow is more fully entitled to give her full consent and decision to marry the husband chosen by her father. Moreover, the consent of the young girl and the adult to the husband chosen by her father is sufficient by her silence. Suppose the girl is given the freedom of express consent in words as is given to the widow. In that case, there is no difference in the distinction of consent as indicated in the *hadith*.³⁵

Furthermore, Imam Shafi'i explained that the purpose of marriage is essentially the formation of a happy family. The marriage contract is not merely a vehicle for the interests of the bride and groom (husband and wife). However, their families also have a very important role. A child generally lacks

³² Muslim ibn Hajjaj Abu al-Husain al-Qusyairi al-Naisaburi, *Shahih Muslim*, Juz VII, p. 1421.

³³ Abû'Abdullah Muhammad ibn Al-Bukhârî, *Shahih Al-Bukhârî*, Juz. VII (Beirut: Dâr Al-Fikr, n.d), p. 347

³⁴ Muhammad ibn Idrîs al-Syâfi'i, *Al-Umm*, p. 18.

³⁵ Ibid., p. 19.

intelligence when choosing his/her life partner. His/her emotional traits are more prominent than his/her intelligence. This condition can be worrisome because the girl may marry the wrong man. The girl's willingness to get married is generally indicated by being silent or smiling or by speaking in other ways that are considered by the tradition of the community as a gesture of approval or at least not rejection. It is already considered sufficient as a consideration for the family's interests.³⁶

In widowed women, the willingness is expressed openly and frankly. The open attitude of a widowed woman is more due to her experience in marriage. Because of this experience, she understands all the risks of marriage. It differs from a young girl because she has not yet experienced marriage and often finds it difficult to express her opinion openly. If a woman is an adult, she has the right to act independently in matters of *mu'amalah maliyah* (economic transactions). However, in matters related to sexual matters, it cannot be equated because sexual matters have more dimensions of sensitivity and emotionality than irrationality. Possibly, in the community traditions that developed during Imam Shafi'i, some of the above requirements became the minimum measure to indicate a girl's willingness to marry her man.³⁷ Whereas the marriage of a girl who is an adult, there is a balance between the father and the girl. This *ijbar* provision is accompanied by a recommendation to consult with the parties who intend to enter into marriage to obtain the permission or consent of the parties concerned.

Imam Shafi'i's legal logic chooses virginity, not a small child, as '*illat wilayat al-ijbar*'. It is based on the fact that marriage for a woman

brings an element of fatigue to her because there is an element of submission and weakening of a woman before her husband, and small children do not need it. On the other hand, guardianship over a child is a form of adult concern for the child and realizes what the child needs, rather than giving something that can bring difficulty to him. Since marriage has nothing to do with the needs of the child, it is not appropriate to use the child as an '*illat*' for the permissibility of *ijbar* marriage, rather, it should be used because she is a virgin.

In addition, if the '*illat*' is because of a child, then *wilayah al-ijbar* will also apply to widows who are still young, and this will contradict the Prophet's *hadith*, which says that the widow is more entitled to herself than her guardian.³⁸ The logic above, which is based on virginity as '*illat wilayat al-ijbar*' is more acceptable, so it is not a child because it has not yet reached puberty. It will be bad for young children who are widowed. Thus, the logic precludes marrying a virgin who is still young, so in the end, what deserves *ijbar* is an adult virgin.

Imam Shafi'i's thought pattern is inseparable from the socio-cultural conditions that influence him. Imam Shafi'i, who grew up in the cities of Mecca and Medina as the place of revelation, the holiest place on earth, and a place rich in science and *fiqh*, as well as the center of *hadith* spread, certainly has environmental and cultural factors that greatly influence the results of his *ijtihad*.³⁹ According to Ridhwan, the things that caused the scholars of Hijaz only to use *hadith* and not use *al-ra'yu* are: *first*, the number of scholars of Hijaz who were influenced by the method of thinking of their teachers, both in the matter of their firmness in relying on the *nash* and their

³⁶ K H Husein Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender* (LKIS Pelangi Aksara, 2001), p. 118.

³⁷ Ibid., p. 120.

³⁸ Abu al-Manaqib Shihab al-Din Mahmud Ibn Ahmad Al-Zanjani, *Takhrij Al-Furu' 'ala Al-Ushul*, (Beirut: Mu'assasah al-Risalah, 1982), p. 257.

³⁹ Wahbah Zuhaili, *Al-Fiqh al-Shafi'i al-Muyassar* (Damascus: Dar al-Fikr, 2008), p. 63

thoroughness in using *ijtihad bi al-ra'yi*; second, the number of scholars of Hijaz who memorized *hadith*; and third, the lack of scholars of Hijaz who encountered new events that did not exist during the Companions' time, unlike in Iraq.

Thus, the scholars of Hijaz can be said to have a pattern of thinking that does not want to override the traditions of the Prophet Muhammad PBUH. Imam Shafi'i defines *ijbar* guardianship as the right of guardianship owned by fathers and grandfathers. It means that a father can marry his daughter, who is a virgin, young or old, full or lack of intelligence, without her permission. However, it is advisable to ask the daughter's permission. A father may not marry off his daughter, who is a widow and has reached puberty without her permission. If the widowed daughter is a minor, she should not be married off before she reaches puberty because the permission of the minor is not regarded. So, he is not allowed to give her in marriage until she reaches puberty. The reason for this *ijbar* guardianship is the status of virginity.⁴⁰

The category of virgin (*al-bikr*), according to Imam Shafi'i, is a woman who has never had intercourse, even if she was born without a hymen. So, a woman whose hymen is damaged before marriage and has not had intercourse, whether damaged by accident, illness, or something else, then she is still said to be a virgin woman. At the same time, a widow (*al-tsayyib*) is a woman whose virginity has been lost due to intercourse, even if intercourse was forbidden.⁴¹

The evidence for establishing *ijbar* guardianship for the father is the hadith narrated by al-Daruqutni: "A widow has more right over herself than her guardian, while a virgin is given in marriage by her father...." Another hadith narrated by Muslim: "A virgin

is given in marriage by her father." This narration leads to the understanding that marrying a woman is Sunnah, taking into consideration that virgin women are very shy. Then the basis of the right of *ijbar* according to Imam Shafi'i, is also based on the action of Abu Bakr, who married 'Aisha when she was six years old and had intercourse after nine years. Abu Bakr's act of marrying off his immature daughter, coupled with the reason that all the affairs of a child are the responsibility of the father, then by Imam Shafi'i is used as a basis for determining the right of *ijbar* to a father.⁴²

The determination of the 'illat virgin on *ijbar* guardianship by Imam Shafi'i was also motivated by the customs that prevailed in the place where he preached and grew up. Because in his time, most Egyptian women got married early, a guardian was very important and needed in a marriage. At that time, even a father had the right to get his daughter married without her consent.

Then another argument from the opinion of Imam Shafi'i, which states that a girl has the right to choose her spouse by her father, is that this marriage has various purposes. Marriage is a bond between two families that have differences. Women, with their inadequacies, are certainly not able to choose a good speech, mainly because women have soft feelings which sometimes override the good aspects in the future. It is clear that the substance of Imam Shafi'i's opinion if examined in more depth, has the objective of preserving the woman's soul (*hifz al-nafs*).

Furthermore, the right of *ijbar* guardianship, according to Imam Shafii, is only given to the father or grandfather when the father is absent. Imam Shafi'i's opinion is also very rational and wise when viewed in terms of benefit. Because a *bikr* (girl) in Egypt at the time was underage, the general habit of a woman who was still a girl was shy. So, a

⁴⁰ Wahbah Zuhaili, *Fiqh al-Islam wa Adillatuhu*, p. 183.

⁴¹ Wahbah Zuhaili, *Al-Fiqh al-Shafi'i...*, vol. 2, p. 467

⁴² Ibid. p. 461

father with a *nasab* relationship is considered the closest and best understands the needs and conditions of his child. Naturally, the father is given the power to marry off his daughter. Moreover, suppose it is traced in its historical context, *sanad*, and *matan*. In that case, the Prophet's *hadith* about asking permission from a girl is a *shahih*.⁴³

The tendency of women who are chosen for marriage by *wali mujbir* is generally women who are still not of age. Sometimes, it is because the woman wants to marry a man of her choice who is still immature and not economically ready. Another reason is the fear of committing adultery. The marriage of a woman who is not old enough can have negative impacts, such as the risk of cancer, the baby's risk of defects, and death during childbirth. In addition, if a woman who is not yet mature and does not have skills and work experience then marries a man who does not have an income, it is feared that it will threaten the economic safety of the family and have the potential to cause continuous quarrels in the household which can lead to divorce, even though the objectives of marriage include preserving the soul (*hifz al-nafs*), maintaining offspring (*hifz al-nasl*), and maintaining property (*hifz al-mal*).⁴⁴

Al-Juwaini classified *maqâsid sharia* (*al-mashlahah*) into five levels, which al-Ghazâlî then summarized into three levels, namely *dharûriyat* (primary), *hajiyyat* (secondary), and *tahsinîyat* (tertiary).⁴⁵ Furthermore, Al-Ghazali

explained the level of *dharûriyat* into five pillars: protecting religion, soul, offspring, intellect, and property.⁴⁶

The purpose of Islamic law (*maqasid sharia*) is actualized by implementing the fundamental values in Islamic law, namely the preservation of religion, soul, reason, offspring, property, respect, and the environment. Linguistically, *maqasid* is translated by various terms: *maqasid*⁴⁷. The general principle of *maqasid sharia* emphasizes the importance of creating benefit and peace and rejecting harm. In this regard, Raysunî said as:

المقاصد العامة: حفظ النظام وجلب المصالح ودرء
المفاسد وإقامة المساواة بين الناس وجعل الشريعة مهابة
مطاعة نافذة وجعل الأمة قوية مرهوبة الجانب مطمئة
البال... إن مقاصد الشريعة هي الغايات التي وضعت
الشريعة لأجل تحقيقها لمصلحة العباد

"The general objective is to maintain the rule, attract benefit, reject damage, establish equality among humanity, make *sharia* (Islamic law) an authoritative law, and be obeyed. On the other hand, it can make the *ummah* a strong (quality) community again respected and calming ... So, *maqasid sharia* is the purpose of establishing Islamic law to be realized for the benefit of the people as a whole."⁴⁸

⁴³ Ramadhita Ramadhita, "Latar Historis Indikator Kerelaan Perempuan Dalam Perkawinan," *De Jure: Jurnal Hukum Dan Syar'iah* 7, no. 1 (2015): 38. <http://dx.doi.org/10.18860/j-fsh.v7i1.3507>

⁴⁴ Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'a Review," in *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, vol. 20, 2020, 8-9. <https://doi.org/10.30631/alrisalah.v20i1.565>

⁴⁵ Lalu Supriadi Bin Mujib, "Maqâshid Al-Syari'ah Al-Shâthibi and Ibn Ashûr's Perspectives on Al-Qitâl Verse," *Madania: Jurnal Kajian Keislaman* 25, no. 1

(2021): 217. <http://dx.doi.org/10.29300/madania.v25i1.4326>

⁴⁶ Abu Hamid Al-Ghazali, *Al-Mustashfa Min Ilm Al-Ushul* (Cairo: Muassasat Al-Halabi Wa Shurakah, n.d.), 217.

⁴⁷ Muhammad Ngizzul Muttaqin and Nur Fadhilah, "The Right of Ijbar Wali in Review of Maqashid Shari'ah and Islamic Legal Anthropology," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 1 (2020): 14. <https://doi.org/10.18860/j-fsh.v12i1.7923>

⁴⁸ Ahmad Al-Raysuni, *Nazariyyat Al-Maqâsid 'inda al-Imam Al-Sathibi* (n.p: Al-Ma'had al-'Alamiy li al-Fikr al-Islamiy, 1995), p. 19

In the study of *maqasid*, it is hoped that it can give birth to a perspective on the study of Islamic law that is not only limited to the provisions of the literary issue of a text (*zhahir nash*), but also gives a perspective on the study of Islamic law that is always able to dialogue with the development of the era with its various actual problems. According to Khaled Mas'ud, there must be an effort to emphasize *maslahah* as the most important essence of the goals of law.⁴⁹ Hitherto, the classification of *maqāsid* has been identified with the division of *maqāsid dharuriyat*, *maqāsid hajiyyat*, and *maqāsid tahsinīyat*. *Maqāsid* is the proof of the realization and hierarchy of the good that must exist for human beings. In developing the new theory of *maqāsid*, the emphasis is on establishing the obligations and rights, purposes and secrets of Islamic law (*asrār al-tasyrī*), through a set of technical tools of science, based on the five basic principles of Islamic law. They must be kept away from distorting factors and avoid the risk of loss. This is done through the study of the indicators and independent variables implied in each Islamic legal case topic.⁵⁰

Based on Jasser Auda's theory of *maqasid sharia*, the concept of *wali mujbir* in the Shafi'i school can be interpreted: a) *wali mujbir* has a significant role in protecting women's rights, b) interpreted as the intention of Islamic universality and local wisdom whose existence as a condition of marriage is not binding, but in accordance with the customary rules of each region, c) as the intention of the Prophet PBUH to teach ideal norms in society, namely so that girls who will marry are not ostracized by the community by giving bad assumptions to them; d) *wali mujbir* as a means

of realizing the purpose of marriage, namely so that the bride and groom can get along and live a calm and serene life.⁵¹

In this case, *ijbar* is intended by Imam Shafi'i as a form of protection or responsibility of the father towards his children, due to their personal circumstances, which are considered incompetent or do not have the ability to act. The two concepts are very different. *Ikrah* is a coercion without right or logical reason to do something with threats, which is considered as a violation of humanity. Whereas *ijbar* is an action to do something on the basis of responsibility.⁵²

It should be noted that Imam Shafi'i in his opinion did not necessarily legalize that a guardian (father) can marry off his daughter just like that to any man whom the father likes, without thinking about the happiness of the girl. However, she stipulates that there are seven conditions that must be fulfilled by a person when he wants to marry off his daughter, namely: (a) there is no visible enmity between the father and his daughter; (b) she is to be married off to an equal; (c) she is to be married off with an equitable dowry; (d) the dowry is in the form of money in the country; (e) the husband is to be allowed to marry off a man who is unable to give a dowry; (f) she is not to be married off to a man who is unable to give a dowry. Not to be married to someone who is difficult to live with, such as a motherless person, or someone who is a motherless person; (g) not to be married to someone whose child is obliged to perform the *hajj*. The reason for the issue is that she may be prohibited from performing

⁴⁹ Muhammad Khalid Mas'ud, *Filsafat Hukum Islam, and Perubahan Sosial*, Translation: Yudian W & Asmin (Surabaya: Al-Ikhlās, 1995), 23.

⁵⁰ Syafaul Mudawam, "The Uṣūl Al-Fiqh Approach on the Understanding of Islamic Law in Contemporary Era: Source and Contextualization," *Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (2021): 329. <https://doi.org/10.14421/ajish.v55i2.1004>

⁵¹ Fithrotin Najiyah, "The Role of Wali Mujbir on Syafi'i Madhhab in the Perspective of Jasser Auda's Maqasid Sharia" (Universitas Islam Negeri Maulana Malik Ibrahim, 2017). p. 61

⁵² Ayi Ishak Sholih Muchtar, Rd Zihad, and Ita Puspitasari, "Pendapat Imam Syafi'i tentang Hak Ijbar Wali: Suatu Kajian Berperspektif Gender," *Istinbath Jurnal Penelitian Hukum Islam* 16, no. 1 (2019): 67. <https://doi.org/10.36667/istinbath.v16i1.280>

the *hajj*, because the *hajj* is an act of worship that is performed over a long period of time.⁵³

From these matters it appears that the essence of the existence of *mujbir* according to Imam Shafi'i is not an act of arbitrariness by the father or grandfather towards the daughter. Rather it is the authority of the father to marry off his daughter to a suitable man on the basis of responsibility. This is evident from the requirement that the prospective husband must be an equal in terms of religion to preserve the religion (*hifz al-din*) of the girl, the existence of a *mahr mitsil* and the prospective husband is not a person who is difficult to give *mahar* to protect the welfare (*hifz al-mal*) of his daughter, the requirement that the prospective husband is not old to ensure the fulfillment of the sexual needs of the girl as a prospective wife to protect her from adultery (*hifz al-nasl*), and the prospective husband is not blind to protect the honor (*hifz al-irdh*) of the girl.

According to data from the Central Bureau of Statistics, there were 516,344 divorce cases in Indonesia in 2022. Of the 8 causes of divorce, the most important cause of divorce is due to continuous disputes and quarrels without the possibility of getting along again, which reached 284,169.⁵⁴ For the average age of couples who divorce at the age of 20-25 years, and this includes the age of young marriage.⁵⁵ This is an indication that each couple when deciding to get married did not go through careful consideration. Especially the woman who is generally younger than the

age of her prospective husband. In addition to insufficient maturity in thinking and acting, *kafa'ah* considerations are often overlooked, making it unwise to manage problems in the household.

Kafa'ah in text or context can be understood as the concept of compatibility between the two prospective brides, both in terms of wealth, lineage, beauty/good looks, especially in religious matters. In some Muslim countries such as Jordan and Pakistan, which are more inclined to the Hanafi madzhab, the main criteria for *kafa'ah* are related to 5 basic things including religion, descent, *hurriyah*, the wealth of the bride and groom, and the field of work. Meanwhile, Morocco, which is inclined to the provisions of the Maliki madzhab, emphasizes religious aspects and health, be it physical or psychological conditions.⁵⁶

The above shows that the capacity support of both prospective brides and grooms is an absolute thing in marriage. Based on this, the ideal meaning of marriage can actually be achieved with the following indicators: *first*, there is a sense of pleasure between the bride and groom, so that marriage can be carried out safely and peacefully; *second*, avoiding domestic violence, so as to bring peace; *third*, prioritizing willingness to achieve marital goals; and *fourth*, obedience to God based on Islamic teachings.⁵⁷

Therefore, the role of *wali mujbir* and his consent right is necessary. Because a father with the right of *wali mujbir* will certainly not carelessly choose a prospective husband who will jeopardize his daughter's future. He will

⁵³ Wahbah Zuhaili, *Fiqh al-Islam wa Adillatuhu*, p. 175

⁵⁴ Ridhwan Mustajab, "Perselisihan Jadi Sebab Utama Perceraian di Indonesia Pada 2022", accessed January 12, 2023, <https://dataindonesia.id/varia/detail/perselisihan-jadi-sebab-utama-perceraian-di-indonesia-pada-2022>

⁵⁵ Ika Defianti, "Angka Perkawinan di Indonesia Terus Naik, Lembaga Perkawinan Tidak lagi Sakral?", accessed January 15, 2023, <https://www.liputan6.com/news/read/5073532/angka-perceraian-di-indonesia-terus-naik-lembaga-perkawinan-tidak-lagi-sakral?page=3>

⁵⁶ Moh Alfin Sulihkhodin, "Examining the Reality of Kafa'ah in the Muslim Countries of Jordan, Morocco, and Pakistan in the Contemporary Era," *Al Hurriyah: Jurnal Hukum Islam* 6, no. 1 (2021): 79-90. DOI: [10.30983/alhurriyah.v6i1.4195](https://doi.org/10.30983/alhurriyah.v6i1.4195)

⁵⁷ Syahrul Mubarak Subeitan, "Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 83. <http://dx.doi.org/10.31958/juris.v21i1.5581>

carefully choose by considering various aspects often not thought of by his daughter so that her daughter can live harmoniously and happily in a household. According to the author, all of the above provisions are very wise and relevant to the modern era, provided that there is no enmity between the father and his daughter. There is no bad faith or arbitrariness on the part of the father. The father wants to achieve the goal. Therefore, if it is viewed in terms of its benefits, the concept of *wali mujbir* from Imam Shafi'i is still worth maintaining and practicing in this day and age and remains actual for the future for the realization of a harmonious and prosperous family.

Conclusion

From the above discussion, it can be concluded that the father has the right of *ijbar wali* in marriage. If he is not available, he can be replaced by the grandfather. The definition of *mujbir* guardian, according to Imam Shafi'i is not a guardian who can force his daughter to marry arbitrarily. The *wali mujbir* is intended as a symbol of responsibility. This is evident from the requirement of virginity of the girl to be married off. It is divided into two groups. *First*, for girls who are not yet an adult, the father has absolute *ijbar* rights without having to ask for her consent. *Second*, for adult girls who have reached the age of 15 or have menstruated, although the father can marry her off without asking for her consent, there is a suggestion to consult with the girl. The suggestion is optional. In addition, it is also required that the prospective husband chosen by the guardian must meet four criteria: being equal, being able to provide the *mahr mitsil*, not being old, and not being blind. Thus, in the perspective of *maqasid sharia*, *wali's* *ijbar wali* aims to safeguard the interests of the girl so that the quality of her religion, her welfare, her offspring, and her dignity or honor can be maintained. Therefore, the

concept of *wali mujbir* from Imam Shafi'i is still worth maintaining and is relevant to be practiced in modern times and remains actual for the future.

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