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 maqashid syari’ah yang terkandung di dalamnya, dan relevansi penerapannya di era modern. Jenis penelitian
Reactualization of Wali Mujbir in the Modern Era...

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 Shafii 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

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democracy (al-dimuqratihiyah). 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. 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 have 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-khuruj 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 (manhajiy) at once.5

Meanwhile, Rabiatul 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

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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).
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).

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 intiqa'i.

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.

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, 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.
Result and Discussion

1. The Concept of Wali Mujbir

According to Sayyid Sabiq, guardianship is a sharaʿ right exercised by the will of sharaʿ 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:

"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,
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 Maqil 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 فتكافحها ببطل، فتكافحها ببطل، فإن دخل بما فتاكها المهرب بما استحلل من فرجها، فإن اشترجا فالتسلط 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 إنْكَاحُ أبي بَكْرٍ عَائِشَةَ النبي صلى اللََُّّ عليه وسلم ابْنَاتِهَا تسْتِعَ شَعَّ بَيْنَ الْأَبِّ أَحَقُّ بِالْبِكْرِ منْ أَشْبَهَ أَنْ لاَ يََُوزَ له عليها حتى تََُّبْلُغَ فَيَكُونَ ذلك بِِِذْئِنَهَا.

> 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 childhood 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

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19 Muhammad ibn Idris al-Syafi‘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:

\[
\text{فَلَمَّا كان من سنة رسول اللَّه صلى اللَّه عليه وسلم أَنَّ}|\text{al-Risalah}\]
\[
\text{الِّهَادَ يَكُونُ على بن خََْسَ عَشَرَةُ سنة وَأَخذَ أنَّ الِّهَادَ يَكُونُ على بن خََْسَ عَشَرَةُ سنة وَأَخذَ}.
\]

In the hadith which reads:

\[
\text{الأَيُِِّ أَحَقُّ بِن َفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِِ ن َفْسِهَا}.
\]

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

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 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.

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

\[
\text{الاَيُّ أَحَقُّ بِن َفْسِهَا مِنْ وَلِيِّهَا}.
\]

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

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

\[
\text{وَيُشْبِهُ في دَلاَلَةِ سُنَّةِ رسول اللَّه صلى اللَّه عليه وسلم إذَا}|\text{al-Risalah}\]

\[
\text{فَرَّقَ بين الْبِكْرِ وَالْثَّيِّبِ فَجَعَلَ الثَّيِّبَ أَحَقَّ بِن َفْسِهَا من وَلِيِّهَا}.
\]

20 Ibid. p. 17
21 Ibid. p. 19.
22 Al-Imam Abi Husain Muslim bin Hajjai Al-Qusyairi, Al-Naisaburi, Shahih Muslim, Juz III, 1971, p. 604.
“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.”

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:

وإذا جمعت بينكاح صحيح أو قاسي أو نثأ صغير كأنت بالعلي أو غير بالعلي كانت نثأ.

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. 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 Shaf”i tried to provide a means for the father to help his daughter.

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.

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. 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.

23 Muhammad ibn Idris al-Syafi‘i, al-Umm, p. 18

24 Ibid., p. 18.

25 Ibid., p. 19

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

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. 5) The husband should not have difficulty giving dowry. 6) She should not marry someone difficult to live with, such as a blind man or an elderly. 7) 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.

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. 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 jihad 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 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:

> "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."

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 *mahfum mukhalafah* of the following *hadith*:

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

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


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

31 Ibid., p. 19
“Said ibn Manshur and Qutaibah ibn Sa‘id 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:

"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

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34 Muhammad ibn Idrîs al-Syâfi‘i, Al-Umm, p. 18.
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 wilayah 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 Kiat Atas Wacana Agama Dan Gender (LKIS Pelangi Aksara, 2001), p. 118.

\(^{37}\) Ibid., p. 120.


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 Shafi'i, 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

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 maqāsid sharīa (al-mashlahah) into five levels, which al-Ghazālī then summarized into three levels, namely dharūriyat (primary), hajiyat (secondary), and taḥsiniyāt (tertiary).45 Furthermore, Al-Ghazālī explained the level of dharūriyat into five pillars: protecting religion, soul, offspring, intellect, and property.46

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

المقاصد العامة: حفظ النظام وجلب المصالح ودرء المقاسد واقامة المساواة بين الناس وجعل الشريعة مهابة مطاعة نافذة وجعل أمة قوية مرهوبة الأمل... إن مقاصد الشريعة هي الغايات التي وضعت الشريعة لأجل تحقيقها لصلحة العبد.

“The general objective is to maintain the rule, attract benefit, reject damage, establish equality among humanity, make sharīa (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, maqāsid sharīa is the purpose of establishing Islamic law to be realized for the benefit of the people as a whole.” 48


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.91 Hitherto, the classification of *maqasid* has been identified with the division of *maqasid dharuriyat*, *maqasid hajiyat*, and *maqasid tahniniyat*. *Maqasid* is the proof of the realization and hierarchy of the good that must exist for human beings. In developing the new theory of *maqasid*, the emphasis is on establishing the obligations and rights, purposes and secrets of Islamic law (*asrār al-tasāyri*), 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.90

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

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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

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 *mujibur* according to Imam Shafii 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 mitsir* 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, *kaf'a* considerations are often overlooked, making it unwise to manage problems in the household.

*Kaf'a* 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 *kaf'a* 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 mujibur* and his consent right is necessary. Because a father with the right of *wali mujibur* 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


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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