

## GUARANTEE'S RIGHT IN MARRIAGE BY PERSPECTIVE OF WOMEN'S STUDY: A GENDER PERSPECTIVE

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**Abstract:** Departing from the shift in the meaning of *ijbar* which is identified with *ikrah* by most Indonesian people, especially in the gender perspective, the center for women's studies UIN Sunan Kalijaga, encourages researchers to conduct a study on the development of the implementation of *ijbar* rights in Indonesia today as well as legal regulations regarding the implementation of *ijbar* rights in marriage which are still a tradition in Indonesia and legal protection for women's human rights that have been degraded as a result of forced marriage as a consequence of the application of *ijbar* in a marriage. The type of research used is field research with a legal-formal approach. The results showed that the absolute right of *ijbar* thereafter should no longer be exercised in Indonesia after the birth of the Marriage Law and the Compilation of Islamic Law. From a number of chapters it is clear that the permission of the bride and groom, or prospective husband and wife, is an important component of the marriage itself. The concept of *ijbar* has a legal basis in *fiqh*, *fiqh* experts have different opinions about forced marriage (*ijbar*). Center for Women's Studies UIN Sunan Kalijaga provides two types of legal protection for women whose human rights are violated because of marriage with *ijbar* rights from the point of view of Islamic law. First, every woman has the same right to choose her partner. Second, a woman may ask her guardian's permission to marry her without his knowledge or consent.

**Keywords:** *Ijbar*, Center for Women's Studies at UIN Sunan Kalijaga, Gender

### INTRODUCTION

Marriage has a very important meaning in life and is a cultural pattern to dominate and become a strong foundation in household life, so this underlies the statement that marriage does not only contain permission to have sexual relations as husband and wife, but is also a place where social circle life.<sup>1</sup>

Marriage is an eternal spiritual agreement between a man and a woman to live together, because the agreement referred to by Allah, namely "*mitsaqan ghalidza*", is only found three times in the Qur'an. First, the agreement concerns the agreement between husband and wife, but then both of them made a covenant Allah with His prophets (Sura Al-Ahzab 33: 7) His agreement with His people, which concerns carrying out

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<sup>1</sup> Abdul Hafizh and Mhd Ilham, "Batasan Hak Wali Mujbir Memaksa Perkawinan," *Ijtihad* 38, no. 2 (2022).

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religious teachings in this matter. (Surah An-Nisa 4:154). it is clear that the height of a marriage is because Allah calls a contract marriage similar in value to Allah's agreement with the prophets for the realization of His message.

In marriage, of course, there are various ways to achieve the goal of happiness in life, to form a *sakinah*, *mawwadah*, and full of grace family, one of which is to choose a good partner. There is no compulsion in any way for humans to have the authority in terms of choosing a life partner, according to the criteria and suitability of the two. Rasulullah SAW, has emphasized that humans are given freedom in terms of choosing their life partner according to the views and needs of each other. However, the religious aspect is the aspect that is most emphasized in terms of choosing a life partner in the future. The advice of the Prophet aims to achieve true happiness. However, the right to choose a potential life partner often clashes with the phenomenon of *ijbar* rights owned by the guardian, which reduces the freedom in choosing a potential partner before marriage.<sup>2</sup>

Not a few who think this is an excuse to become an excuse, that the application of *ijbar* in a marriage is a form of parental love for their children. Parents want everything that is best for their children, but the concretization of this *ijbar* in the surrounding environment seems to need to be reviewed and monitored periodically, bearing in mind the dynamic changes in culture.

Research also states that the concept of *ijbar* rights is also considered to be a form that is contrary to justice and discriminates against women. The phenomenon of discrimination against women as a result of forced marriage is included in human rights violations, however, ironically, incidents of discrimination that occur against women as a result of the phenomenon of forced marriage still have a weak position before the law, this is also rarely exposed. Facts on the ground state that cases of violence that have increased recently are not only violence that occurs against women in the household, but also have an impact on cases of violence against children as victims.

According to previous research, the forms of violence experienced by women have various causes until now, one of which is the phenomenon of forced marriage. Based on data from previous research studies, it was noted that cases of forced marriage were the highest cause of divorce cases in Indonesia. Of course, this case of forced marriage arises with many underlying motives, such as an agreement between parents who agree to arrange an arranged marriage for their child, apart from that there are also family factors, to the point where it is even caused by the prospective father in law who has social status.<sup>3</sup>

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<sup>2</sup> M F Ni'ami, "Study of the NU Congress's Decision on Hanging Marriages in Perspective of Child Protection Regulations," *Al Ahkam* 12, no. 1 (2022): 1-10, <http://jurnal.uinbanten.ac.id/index.php/ahkm/article/view/5619%0Ahttp://jurnal.uinbanten.ac.id/index.php/ahkm/article/download/5619/3776>.

<sup>3</sup> Kudrat Abdillah, "Reinterpretasi Hak Ijbar Dalam Hukum Perkawinan Islam Di Keluarga Pesantren," *Asy-Syari'ah* 22, no. 1 (2020): 35-50, <https://doi.org/10.15575/as.v22i1.7874>.

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The National Commission on Violence Against Women (Komnas Perempuan) said that the significance of divorce cases from 2020 to 2021 is related to the pandemic conditions which affect economic conditions, health, emotions and stress levels. Broadly speaking, according to Islamic law, the concept of the right of *ijbar* is that a father has the right to marry his daughter to a man of his father's choice, with the conditions specified in Islamic law. Generally, a father performs a forced marriage for his daughter, under the pretext that the rights of the girl are still a virgin is on the father, and the father himself as a guardian in marriage has the right of *ijbar* to marry off his daughter. However, the reality on the ground says otherwise. The right of *ijbar* owned by a father is often misused by the wali mujbir, and ignores the conditions in Islamic law, resulting in deviations from the human rights of the girl child.<sup>4</sup>

The problems in the field show that the national legal instrument has been ratified by Indonesia, so that it does not necessarily fully guarantee the protection of women's rights, where every woman has the right to choose her life partner according to her wishes. This can be proven by the existence of the phenomenon of marriage through the implementation of *ijbar* rights that occurs in the tradition of West Lenteng Village, Lenteng District, Sumenep Regency, Madura.

Sidosermo in Surabaya, is one of the areas where until now there has been concrete evidence that the implementation of *ijbar* in girls' marriages is still massive. Factors that parents worry about their children's spouses, myths in the area that are still closely believed, factors of promiscuity of minors, to the relationship between the two families. Not to mention, Syafi'i fiqh understands *ijbar* as something that is still permissible.

In this incident, society in general often turns a blind eye and considers this to be normal even though the practice of marriage is contrary to women's human rights and children's human rights, so that these violations tend to occur repeatedly. Events of coercion in marriage are increasingly becoming a tradition in society and are deeply rooted, especially the Syafi'i madzhab scholars justify that marriage is based on the right of *ijbar*, so they make it the basis for carrying out marriages.

UIN Sunan Kalijaga itself has a special institution, namely the Center for Women's Studies, which focuses on women's studies with a moderate and progressive style. This institution is very worthy of being a reference for research from a gender perspective and gender issues that still often occur in society. A number of researchers who are active in the institution are authoritative researchers regarding their presentation regarding the view of the law of *ijbar* in a marriage that still occurs today.

Among its many activities, the Center for Women's Studies at UIN Sunan Kalijaga studies women and gender issues, develops concepts on gender relations, offers scholarly support for national and regional policy-making, creates and disseminates curricula related to gender studies, and engages in community, empowerment from a gender perspective. The Center for Women's Studies at UIN Sunan Kalijaga also conducts research in the field of gender, which is demonstrated by the publication of national journals to national and regional seminars. For this reason, the author wants to conduct research related to the perspective of experts at the Center for Gender Mainstreaming and Children's Rights at UIN Sunan Kalijaga in his view of reviewing

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<sup>4</sup> Rahul Lokhande et al., "Rationale for near Total Thyroidectomy in Patients with Nodular Goitre," *International Journal of Biomedical and Advance Research IJBAR International Journal of Biomedical and Advance Research Journal* 6, no. 605 (2015): 427-30, <https://doi.org/10.7439/ijbar>.

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Ijbar rights in marriage which are still occurring in society today. In addition, the author also wants to know a number of policies and perspectives from the Institute for Gender Mainstreaming and Children's Rights at UIN Sunan Kalijaga relating to legal protection for women's human rights that have been violated, especially ijbar rights which are applied as a result of promiscuity that befell adolescents today.

Reviewing a number of problems that have been described in the background of the problem, research on the practice of marriage with ijbar rights from the perspective of the Center for Women's Studies at UIN Sunan Kalijaga is very interesting and needs further research.

### DISCUSSION

#### a. Analysis of the Current Development of the Implementation of *Ijbar* Rights in Indonesia, According to the Perspective of Gender Equality Institutions

Witriani as the director of the Center for Gender Mainstreaming and Child Rights at UIN Sunan Kalijaga stated that, on the one hand, it is actually better for parents to force their children to marry the man or woman their father chooses to choose the best partner. But there has to be a better pattern than the past for today. In the past, it was easy for parents or guardians to marry off their children. In some cases, even the child may not know let alone know the potential partner. To achieve the best results, discussions with related parties are urgently needed at this time.

The principle of open debate or communication, and an open attitude in the family are all necessary for the correct use of *ijbar* rights. New patterns need to be formed, for example by instructing daughters to imitate their parents, who also choose partners when they want to marry. the thought suggests that his father was prosperous and produced a happy household. Therefore, the guardian hopes that his son's marriage will remain as successful as his parents.<sup>5</sup>

Today's social developments are increasingly sophisticated and varied. Religious education for girls must begin at an early age, especially in terms of morals and social interactions. The pesantren family really provides space and opportunity for girls to choose husbands. However, consider both the positives and the negatives, because marriage will only last once in a lifetime and, if possible, throughout the life after death.

Witriani also said that the implementation of *ijbar* rights is still widely applied in Islamic boarding schools to date. However, according to him, it is not the right of full *ijbar* or not being forced to marry off girls at Islamic boarding schools; on the contrary, Parents choose partners for their daughters with the aim of making her marriage successful. Even though she was forced to make decisions that were clearly advantageous, had clear consequences, and came from a respectable family, it didn't seem like she was being pushed.

Based on a number of studies on Gender Mainstreaming and Children's Rights at UIN Sunan Kalijaga regarding the implementation of *ijbar* rights in marriage, according to Witriani, choosing a husband for this child has a goal far beyond just building a happy family. Messages from families who don't want kinship ties or

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<sup>5</sup> Muhammad Ngizzul Muttaqin and Nur Fadhilah, "Hak Ijbar Wali Tinjauan Maqashid Syari'ah Dan Antropologi Hukum Islam," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 1 (2020): 102-19, <https://doi.org/10.18860/j-fsh.v12i1.7923>.

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family ties to be broken are another goal. In addition, the selected candidates are expected to be able to continue the efforts that have been made so far to advance the development of Islamic boarding schools. In maintaining the friendship that is increasingly eroding, the next candidate will be chosen. Participate in choosing a future husband for their children is a requirement that must be met. in the hope that any differences of opinion can be resolved peacefully. In addition, they can continue the mission of preaching and Islamic boarding school education while upholding their honor and good name. However, this does not completely rule out the idea of women candidates being nominated.

Today's social developments are increasingly sophisticated and varied. Religious education for girls must begin at an early age, especially in terms of morals and social interactions. The pesantren family really provides space and opportunity for girls to choose husbands. However, weighing the pros and cons is important because marriage only lasts once in a person's lifetime and, if possible, into the afterlife.

According to historical records, the right of *ijbar* to force his daughter to marry has changed. The wali had sole ownership of the right of *ijbar* in the early years of Islamic law. It is proven by examination of traditional texts from the four leading schools of thought, namely Imam Maliki, Imam Hanafi, Imam Shafi'i, and Imam Hambali. The guardian has the legal authority (*ijbar*) to force his daughter to marry, said Imam Malik. Likewise, Imam Malik and Imam Hambali have the same view.

Imam Syafi'i divided them into three groups, namely widows, adult girls and little girls. The guardian has the authority to force a minor girl to marry. There are benefits to seeking his acceptance from mature women, but it's not something that should be done; instead, it's seen as a choice. For widows, the widow has a greater right to break up her marriage based on her preferences.<sup>6</sup>

It can be concluded that this happiness is created by the wali because the madhhab priests who support *ijbar* rights believe that he is the one who best understands what is best for his daughter. It is believed that girls who are still girls cannot make smart decisions for themselves. The child's consent is not something to be honored by relying on the guardian's experience; in fact, it has been largely ignored. As women's interests were gradually monopolized, this distanced girls from their parents.

Imam Hanafi emphasized that the guardian must obtain his daughter's permission before marriage. As a result, a guardian cannot force his daughter to marry a man of her choice. to prevent a guardian from having powers that exceed the limits of his child's marriage. *Ijbar* rights are said to have the ability to lead to

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<sup>6</sup> Mahmudah, "Relevansi Konsep Kafa'ah and Ijbar Guardian Rights in the Modern Era From Perspective of Hanafiyah and Syafi'iyah Madhab," *AL-HAKAM: The Indonesian Journal of Islamic Family Law and Gender* 2, no. 1 (2020): i, <https://doi.org/10.46405/ejms.v2i1.119>.



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various forms of violence against women. In fact, it goes against the basic principles and design of marriage. Obviously, the concept of *ijbar* rights is not recognized by Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Positive legislation seeks to recognize the rights of women, who have historically experienced severe discrimination. In fact, it is the woman and the man who will undergo and wade through the marriage life. According to the methodology of many literature studies, various criteria are cited as justification for changing the definition of *ijbar* rights in marriage.<sup>7</sup>

The maturity factor comes first. According to Ibn Taimiyyah, although several hadiths expressly state that the widow is the object of the right of *ijbar*, the object is not a girl or a widow. The aspect of maturity must be the main concern of *ijbar*. Therefore, regardless of whether the child is a girl or a widow, the guardian's *ijbar* rights will automatically disappear if the child to be married is an adult.

Everyone has a different level of maturity. According to linguistic theory, the word "mature" comes from the Latin verb *adultus*, whose past participle means "to have grown to full size and strength" or "to have developed." Adults are people who have reached their full potential and are ready to take on new roles in society with other adults.<sup>6</sup> Age has little effect on a person's level of cognition and attitude, or on how they position themselves in their environment.

Perhaps the youth will benefit more from this *ijbar* privilege. As a result, fathers feel obligated to contribute to planning and thinking about their children's futures. Since children are immature, it is clear why unwanted things should be avoided. Adults, however, are already aware of good and bad, and their judgments about life are more sophisticated.

According to Yusuf al-Qardhawi, the second consideration is the impact of the social and environmental conditions that existed at the time the hadith about the right of *ijbar* was transmitted. Women were more submissive than men during that time, according to the prevailing tradition. This conveys the idea that choosing a life partner is not something women should do girls are thus characterized as women who do not understand the meaning of marriage. While young children are referred to as those who have not yet developed the ability to apply reason (*qushur al-'aqli*).

Social interaction is the third component. The purpose and main purpose of the right of *ijbar* is to uphold a father's obligation to look after his child. Because of the condition of their children who are considered unable to act or have friends. The evolution of today's society cannot be stopped. Because it is so easy to use public spaces and facilities as social media, the interaction between men and women is very intense. This makes getting to know new individuals easy. Interacting with

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<sup>7</sup> Anwar Hafidzi and Rina Septiani, "Legal Protection of Women Forced to Married In Islamic Law and Human Rights Perspective," *Madania: Jurnal Ilmu-Ilmu Keislaman* 10, no. 1 (2020): 18, <https://doi.org/10.24014/jiik.v10i1.10547>.

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strangers is not always a bad thing. These social contacts are highly valued with the aim of growing networks and friendships. People find it easier to navigate life by helping each other when they have more friends. Since humans cannot survive alone without the help of others, having friends with various skills and knowledge is beneficial for everyone.<sup>8</sup>

Higher education is the fourth factor. Scholars, first degree graduates, were highly respected for their expertise during the reform era. However, today there are millions of graduate students enrolled in second-level courses. It's not just men and women; in fact, women today attend more lecture sessions than men. This shows that women are no longer as submissive as they used to be.

The fifth reason is technological advances that make it easier to obtain research and knowledge. New cutting-edge technologies are constantly being developed and created, especially for electronic devices such as laptops, netbooks, smartphones, iPads and PCs. Information that has been collected using an internet connection can now be accessed more easily thanks to this technological advancement. You can get whatever you want easily. This expands our understanding and makes it easier to master.

*Ijbar* rights meaning has changed as a result of several factors. First of all, everyone's level of maturity is different. Second, the social structure of society is increasingly complex. Third, the possibilities for human connection and involvement are expanding. Fourth is higher education. Fifth, technological developments that facilitate access to information and research.

Research and monitoring of developments in the implementation of *ijbar* rights must of course be carried out continuously, bearing in mind the elements that influence their understanding and application in marriage, both now and in the past. In order to keep abreast of developments and to exercise *ijbar* rights regularly, it is necessary to study the laws surrounding marriages with *ijbar* rights.

### **b. Analysis of Legal Rules Regarding Marriage with *Ijbar* Rights According to the Perspective of the Center for Women's Studies at UIN Sunan Kalijaga as Gender Equality**

Islamic law requires marriage to be based on a legal contract or agreement in the presence of two men. Therefore, according to Islamic law, in order to build a successful and loving marriage, a man and a woman sign a contract or promise known as a marriage which later aims to achieve peace that is blessed by Allah.<sup>9</sup>

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<sup>8</sup> Maisarah et al., "Minimum Marriage Age: Study of Fiqh of Four Madhabs," *Britain International of Humanities and Social Sciences (BloHS) Journal* 1, no. 2 (2019): 149–58, <https://doi.org/10.33258/biohs.v1i2.46>.

<sup>9</sup> 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): 59, <https://doi.org/10.36667/istinbath.v16i1.280>.

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The existence of a *mujbir* guardianship institution in Islamic marriage law, according to the Center for Women's Studies at UIN, Sunan Kalijaga, is based on concern for the welfare of women who are married, as is often the case with women who make the wrong decision. from a partner. If a girl is given the freedom to choose her soulmate, it is feared that it will harm her in the future, for example in terms of maintaining the spirituality of her religion.

The Center for Women's Studies at UIN Sunan Kalijaga argues that the guardianship institution in Islamic marriage law is based on the welfare of married women. If a girl is given the freedom to choose a partner, there is a risk that this will harm her in the future, for example, to protect her religious conscience. Therefore, when parents are going to marry off their daughter using *ijbar* rights in the marriage, the following conditions must be met.

1. The man chosen by the Parents must be of the same class as the woman he marries.
2. There is no enmity between a *Wali Mujbir* and a woman.
3. There is no animosity between the woman and her future husband.
4. The future spouse must be willing to pay cash.
5. The person who chooses a guardian will be able to properly fulfill his obligations to his partner and will not think about doing something that will cause his wife to suffer.

If the above conditions are not met, then the guardian of the married girl may request *Easter* without first seeking permission from her. The male leadership approach to women is democratic, giving freedom to the person being mentored to choose a job based on their wishes and aspirations. In the sense that the individual being instructed is not coerced into following the leader's wishes, it is not coercive leadership. The dominance of men in leadership positions over women does not, therefore, imply that women are less valuable than men. But it does show a constructive method of collaboration.<sup>10</sup>

The Center for Women's Studies at UIN Sunan Kalijaga argues that it is *sunnah* to ask for consent if the guardians are the father and grandfather. If she marries without the permission of the son, the marriage remains valid because it is the perfect expression of protective love for his daughter. If the legal guardians are not the father and grandfather, then the consent of the girl must be obtained for the marriage, and the marriage is invalid unless the consent of the girl is obtained.

From this it follows that the guardian of the marriage, *Mujbir* must be present at the wedding. Not only as a person who represents marriage. One of the conditions for marriage must be a guardian because guardianship is an important component in marriage.

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<sup>10</sup> Dede Nurdin, "Konsep Hak *Ijbar* Wali Nikah Menurut Fiqih Islam Dan Kompilasi Hukum Islam," *At-Tadbir* 32 (2022): 1-23.



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To overcome the problem of coercive rights that apply in society, the Center for Women's Studies UIN Sunan Kalijaga has established legal rules to overcome this problem. The Center for Women's Studies at UIN Sunan Kalijaga is guided by several laws in Indonesia, namely positive law. In addition, the Center for Women's Studies at UIN Sunan Kalijaga does not forget Islamic law when dealing with the issue of *ijbar* law which is based on Islamic law.

In discussing Islamic law, coercive rights are presented with the opinions of well-known Islamic scholars. The well-known beliefs are limited to four, namely the Maliki faith, the Hanafi faith, the Shafi'i faith and the Hanbali faith. According to the Maliki school of thought, it is obligatory for him to distinguish between prospective wives, daughters and widows in terms of guardianship obligations. Prior consent must be obtained for the prospective widow before the marriage contract is finalized. The terms of the contract must be understood completely and beyond any doubt. Therefore, there is no alternative justification.

The Human Rights Law, which more specifically regulates the recognition of human rights principles, is one of the positive legal provisions adopted by the Center for Women's Studies at UIN Sunan Kalijaga in order to answer women's rights issues. The law controls the basic rights that must be protected, even if the law does not specify the violations that fall within the scope of the ICC.

Child protection in Indonesia has a strong legal basis thanks to the ratification of Child Protection Law no. 23 of 2002. Child protection laws generally recognize a wider range of children's rights. UU no. The article on the study or rights of children in paragraph 1 of article 26 actually contains the responsibilities and obligations of parents to avoid marriage at a young age, especially forced marriages in marriage.

From the four rights above, it can be concluded that the Human Rights Law indicates that if there is no clear legal provision regarding the concept of forced marriage in the Human Rights Law, then forced marriage is not permitted.<sup>11</sup>

The absence of legal norms that clearly regulate the concept of marriage with *ijbar* rights in the Human Rights Law does not mean that marriages with *ijbar* rights can be carried out as in Article 10 paragraphs 1 and 2 and Article 23. It can be concluded that the right to forced marriage is not permissible because it violates both rights articles and women's rights. And children are the main victims of forced marriages. The Center for Women's Studies at UIN Sunan Kalijaga must be firm in applying coercive legal rules because it will create a harmonious and peaceful environment if these rules are applied effectively and optimally.

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<sup>11</sup> Husnul Haq, "Reformulasi Hak *Ijbar* Fiqhi Dalam Tantangan Isu Gender Kontemporer A . Pendahuluan Mendambakan Pasangan Merupakan Fitrah Manusia Sebagai Mahluk Sosial , Mahluk Yang Membawa Sifat Ketergantungan Dengan Pihak Lain . Memang Sewaktu-Waktu Manusia Bisa Me," *Palastren* 8, no. 1 (2015): 197-224.

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Based on interviews that have been conducted, according to the Center for Women's Studies at UIN Sunan Kalijaga, the expression "nurturing, nurturing, educating and protecting children" appears in article 26 of Law Number 23 of 2002 concerning child protection. Given the widespread misunderstanding of the term, it is necessary to clarify the term "protecting children" used in the article. Child protection refers to any action taken to keep children safe and to build an environment in which every child can exercise their legal rights and fulfill their responsibilities for healthy physical, mental and social development.

When looking at a number of reasons that have been written in the Compilation of Islamic Law above, it can be said that, indeed, divorce on the grounds of forced marriage has not been written down and has not been included in the regulations or other positive laws. Formulated juridical regulations often use general norms or common sense, and have not been interpreted from a socio-cultural perspective from a sociological perspective. According to research from Karim, explained that, there are a number of factors that cause divorce in the household. The first factor is poor communication between partners, the second factor is the condition of infidelity on one side or both. The third factor is the occurrence of physical violence in the household. The fourth factor is economic problems, and the last factor is forced marriage.

### **c. Legal Protection for Women Whose Human Rights are Violated Due to Marriage and the Law in *Ijbar* from the Perspective of the Center for Gender Mainstreaming and Children's Rights at UIN Sunan Kalijaga**

All forms of women's issues are a reality that faces many challenges in human history. Even since the early days of Jahiliyah, the issue of women has developed, where a woman is seen as a means of propagation that can be owned by men. In this dark era, women are considered to have a low position, and are marginalized. Various injustices are felt by women ranging from poverty, disease and endless exploitation. In this dark era, many people feel ashamed when they are blessed with a daughter. As stated in Allah's word, Surah An-Nahl: 58-59, regarding the shame and hatred of many people when they were blessed with daughters at that time.<sup>12</sup>

Objectively speaking, women at that time, especially in Arab society, went through a very complicated period. They don't want a woman to be born. As a result, the majority of Arab society at that time took action to bury baby girls alive in the ground to death. But not every daughter that was born was buried alive, but some, if allowed to live to maturity, were humiliated, exploited, and became an inheritance after the death of her husband.

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<sup>12</sup> Dea Salma Sallom, "Matchmaking in Pesantren: The Role of Wali Mujbir in Matchmaking with Maqasid Sharia Perspectives," *Al-Risalah Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (2022): 78-91, <https://doi.org/10.30631/alrisalah.v22i1.1073>.

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After that dark era, the position of women was very different from Islam in the previous era, because Islam exalted and glorified women in its true sense. Women enjoy the same rights as men. In inheritance, witnessing, leadership, divorce, and other things, God himself prefers men over women with good reason and wisdom. Allah said in QS. An-Nisa': 34.

The Center for Gender Mainstreaming and Child Rights at UIN Sunan Kalijaga believes that one of the principles of marriage, the principle of choosing a partner, is a form of personal protection that gives back the right to choose to everyone, especially women, in this case husband and wife. However, this condition is sometimes violated by the concept of discretion that is held and ultimately enforced by the guardian. The existence of the principle of marriage indicates that women do have the right to choose their partner, but this does not mean that the guardian's *ijbar* rights are completely contrary to the principle of marriage, but the *ijbar* rights do not lead to the principle of marriage. *Ikrah* is often interpreted as an act of coercive guardianship, an act as a form of protection or responsibility carried out by parents to their children.

UU no. 35 of 2014 became one of the regulations regarding the protection of women as a forced marriage newspaper which should have been implemented and carried out intensive and sustainable outreach to the community. Parents as guardians should know about a number of cases resulting from the treatment of *ijbar* in marriages that violate the *ijbar* rules, and lead to other phenomena that increasingly violate women's rights. Providing an understanding of *ijbar* for parents regardless of background, culture and regional traditions, is expected to minimize the occurrence of forced marriages to minors which still occur today regardless of the series of factors involved.

Source of positive law for Muslims in Indonesia, Law no. 1 of 1974 regarding marriage, in which it is based on the principle of voluntarism in marriage as stated in the previous explanation. Law No. 1 of 1974 in one of its articles namely Article 6 paragraph 2 it is written that marriage must be based on the agreement of the two prospective bride and groom. This agreement must then be carried out freely, without coercion from the prospective bride and groom to marry and build a household later.<sup>13</sup>

This was further strengthened by the opinion of the Center for Gender Mainstreaming and Children's Rights, UIN Sunan Kalijaga, said that the form of protection provided in the Compilation of Islamic Law is also not much different from what has been regulated in the Marriage Law. Apart from requiring the consent of the bride and groom as a condition for a marriage to take place, 232 the

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<sup>13</sup> Perkawinan Perspektif et al., "Dialektika Hak Ijbar Dalam Undang-Undang Perkawinan Perspektif Fiqh Sosial MA. Sahal Mahfud," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 13 (2022): 247-66.

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KHI also stipulates the permissibility of requests for annulment of a marriage carried out by force or a marriage carried out under threats that break the law.<sup>14</sup>

Other legal protection is also regulated in Law Number 39 of 1999 concerning Human Rights. Where the law generally regulates human rights. Law Number 39 of 1999 also specifically regulates women's human rights. In addition, legal protection for women so that they do not become victims of forced marriage practices also receives protection through the recognition of the same rights to have a family and continue offspring freely.<sup>15</sup>

The DUHAM also regulates legal protection of women's human rights related to forced marriages. However, the UDHR does not explicitly regulate the protection of women victims of forced marriage here. The Universal Declaration of Human Rights only mentions a number of rights that every woman receives and enjoys.<sup>16</sup>

Protection for women victims of forced marriage is also clearly regulated in CEDAW. CEDAW is an international convention that specializes in women's human rights issues, including in this case eliminating all forms of discrimination against women. In general, CEDAW regulates the recognition of the rights and obligations of the state to implement, reporting and monitoring mechanisms. The CEDAW convention is binding, and is also directly bound to the international monitoring and reporting system. The ratification of the CEDAW conventional agreement with Indonesia has been entered through Law Number 7 of 1984.<sup>17</sup>

In order to create a process for implementing Article 16 paragraphs 1 a and b, where the article regulates the protection of women victims of forced marriage, the state as a stakeholder is obliged in this case to make regulations to eliminate all forms of discrimination against women, especially in the realm of marriage, family and guarantee the fulfillment these rights. Within CEDAW, there are articles, for example Articles 1 to 4 which regulate state obligations.

The apparatus of state institutions in terms of protecting and upholding human rights, especially women's rights, must immediately act actively, so that the protection and upholding of women's rights is not only regulated by several legal instruments, as explained above.

One of the institutional apparatus that is primarily independent and has a high level of trust by many parties is the National Commission on Women (Komnas

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<sup>14</sup> M.H. Ridwan Yunus Moch. Aufal Hadliq Khayyul Millati Waddin, "Relevansi Hak Ijbar Wali Nikah ( Study Pemikiran Wahbah Az-Zuhaili Dalam Fiqih," *Mabahits Jurnal Hukum Keluarga* 3, no. 02 (2022): 109-23.

<sup>15</sup> Azizah Mohd and Nadhilah A. Kadir, "The Theory of Compulsion (Ijbar) in Marriage Under Islamic Law: Incorporation of the Hanafis View on Compulsory Consent in Marriage Under the Islamic Family Law (Federal Territories) Act 1984," *Advances in Social Science, Education and Humanities Research* 24, no. 2 (2020): 51-55, <https://doi.org/10.2991/assehr.k.200306.180>.

<sup>16</sup> Syahrul Mubarak Subeitan, "Forced Marriage: Implementation of the Mandatory Provisions of the Bride ' s Consent in Indonesia Syahrul Mubarak Subeitan," *Jurnal Ilmiah Syari'Ah* 21 (2022): 77-87.

<sup>17</sup> Muhammad Zainuddin Sunarto and Sitti Nur Halifa, " Analisis Hak Untuk Diberitahu Oleh Wali Dalam Kasus Kekerasan Seksual (CSV)" 4, no. 1 (2022): 114-23.

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Perempuan). Komnas Perempuan in this case is expected to have a role in implementing the protection of women's rights so that it is more effective.

The National Commission on Violence against Women becomes an independent institution or institution and was formed through Presidential Decree No. 181 of 1998 and strengthened by Presidential Regulation no. 65 of 2005. The purpose of forming the National Commission on Violence against Women is none other than to respond to the issue of women's human rights. One of the cases that has become a priority for now is violence against women.

Komnas Perempuan has an orientation and recognizes international law, as well as international standards regarding women's human rights as legal instruments and always uses a new, integral human rights approach where violating women's human rights is the same as a human rights violation. If international human rights are instruments that are absolutely used, Komnas Perempuan specifically refers to the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) which has been legalized by the government along with Law Number 7 of 1984 and the International Declaration on the Elimination of Violence Against Women.<sup>18</sup>

As mentioned above, efforts to protect human rights are not only the duties and responsibilities of the state, but also the duties and responsibilities of the state as citizens. Citizens are expected to participate actively in achieving the protection of women's human rights. PSW UIN Sunan Kalijaga also agreed with that. According to PSW, the awareness of all citizens is crucial in achieving a regulation. The role of citizens in this case can be through political organizations, individually, or collectively through community organizations, NGOs or in academic circles. The attention of these citizens can be carried out from now on, for example to:<sup>19</sup>

1. Become the main reporter in human rights violations in the surrounding environment
2. Express opinions and be critical of the implementation current human rights regulations
3. From an academic point of view, it can conduct research, education and information dissemination about human rights. Dissemination of educative information about women's violence is no longer felt to be an obligation only for academics, but for all citizens.

Documents such as reporting acts of violence against women that occurred in the neighborhood above civilian report, the document must then be sent to KOMNAS HAM or other similar authorized institution. In addition to the issues

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<sup>18</sup> Kekerasan Seksual et al., "Tinjauan Maqashid Syariah Pada Pidana Pemaksaan Perkawinan Dalam Undang-Undang Tindak Pidana Kekerasan Seksual ( UU TPKS ) Pendahuluan," *Annual Conference on Islam Education, and Humanities*, no. 12 (2023): 19-33.

<sup>19</sup> Gaurav Kavi et al., "Evaluation of Right Ventricular Function in Patients with Complete Right Bundle Branch Block with Normal Structural Heart" 8, no. 08 (2017): 307-9.



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mentioned above, legal protection of women's human rights, especially women victims of forced marriage, can be found in various human rights instruments, both national and international.

There are several legal instruments both national and international as mentioned above, all of which have the same goal to achieve protection related to women's rights and create a safe environment for women. However, this goal apparently does not match its implementation. Law enforcement for the sake of creating a legal protection for women is still not optimal. The state is still not fully able to provide protection for women.

However, this is felt to be biased, because it is evidenced by the existence of a number of weak and unresolved legal policies, as for example in Article 6 paragraph 6 and Articles; 27 paragraph 1, all of which are contained in the Marriage Law.

Besides that, the tendency for a woman to ask for the annulment of her marriage is still very small, this is because in our society divorce is still considered taboo, especially when a woman requests the divorce. In addition, the losses received by women victims of forced marriage are enormous. Even though the possibility of requesting an annulment exists, the woman who is a victim of forced marriage will certainly receive further suffering, namely that she will have the status of a widow, where in society a woman who holds the status of a widow is often ignored or belittled.

In addition, the absence of sanctions for violators is also a weakness in the legal protection of women, especially women who are victims of forced marriage. The absence of sanctions for violators is more due to the absence of definite legal rules regarding the prohibition of the practice of marriages with *ijbar* rights (forced marriages), so that the possibility of practicing marriages with *ijbar* rights (forced marriages) is very large.

According to the author, the steps that must be taken by the State to protect women, especially women who are victims of forced marriage, consist of the fact that the State is obliged to take the necessary steps, such as enacting or amending the law on marriage, adding a provision that prohibits marriage with the right of *ijbar* (forced marriage) is accompanied by punishment for violators. This has been done, as has the UK, which explicitly changed the law to "forced marriage laws" or forced marriage laws. In addition, the state must also create institutions that are able to effectively protect women, especially women victims of forced marriage.

## **CONCLUSION**

In historical records, the idea of *ijbar* rights has developed. Most of the *madhhab* scholars recognized the right of *ijbar* for guardians in the early days of Islamic law. so Parents can force their daughters to marry despite opposing views. The absolute right of

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ijbar after that may no longer be exercised in Indonesia after the issuance of the Marriage Law and Compilation of Islamic Law. From a number of articles it is clear that permission from the bride and groom, or the prospective husband and wife, is an important component of the marriage itself.

According to the Center for Women's Studies at UIN Sunan Kalijaga, the concept of ijbar has a legal basis in fiqh. The foundation is found in the hadith of the prophet, which is found in various books of hadith. As one of the concepts that form the legal basis in fiqh relating to the rule of law, fiqh experts have differing opinions regarding forced marriage (*ijbar*).

The Center for Women's Studies at UIN Sunan Kalijaga provides two types of legal protection for women whose human rights are violated due to marriages with ijbar rights from the perspective of Islamic law. First, every woman has the same right to choose her partner. Second, a woman may be asked for her guardian's permission to marry her without his knowledge or consent. It is based on the story of Al-Khansa, whose father married her against her will even though she didn't want to. These efforts are made in an effort to protect and uphold human rights, especially women's rights. These legal safeguards include the Compilation of Islamic Law, Law Number 39 of 1999 concerning Human Rights, and Law Number 1 of 1974 concerning Marriage. UDHR, ICCPR (ratified by Law No. 12 of 2005), Convention on License to Marriage, Minimum Age for Marriage, and Registration of Marriage 1962, and CEDAW (ratified by Law No. 7 of 2005) are some examples of international law currently in effect.

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