

Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages

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Abstract

Forced marriage practices have garnered significant attention from various international communities, including the community of female ulama in Indonesia. Despite being a relatively new presence, the community of female ulama affiliated with the Congress of Indonesian Female Ulama (KUPI) has taken a decisive stance against this practice, issuing a firm fatwa (Islamic legal opinion) that underscores its detrimental impact on women. This article addresses the primary question of why female ulama associated with KUPI redefine the concept of *wilāyat al-ijbār* (compulsory guardianship) in marriage, departing from the prevailing opinion among traditional Islamic scholars. Through a combination of literature review and field research conducted over eight months, spanning from April to November 2022, this study reveals that KUPI interprets *ijbār* not as the paternal right to force a daughter into marriage, but rather as a form of guardianship that entails responsibility and nurturance towards their daughter. This fatwa framework is rooted in what is termed the 'KUPI Trilogy': *ma'rūf* (good), *mubādalah* (reciprocity), and *keadilan hakiki* (substantive justice), which promote principles of equality and egalitarianism. By employing theological, sociological, and juridical arguments and emphasizing the experiences of female victims, KUPI contends that the concept of *wilāyat al-ijbār* in *fiqh* (Islamic jurisprudence) is not absolute, thereby prohibiting guardians from coercing or intimidating their daughters into marriage. This article argues that female ulama have boldly contested the authority of traditional ulama by reinterpreting the essence of *ijbār* in *fiqh*, while incorporating the lived experiences of female victims of forced marriage practices.

[Praktik perkawinan paksa telah menarik perhatian serius dari berbagai komunitas internasional, termasuk komunitas ulama perempuan di Indonesia. Meskipun relatif baru, komunitas ulama perempuan yang tergabung dalam Kongres Ulama Perempuan Indonesia (KUPI) ini mengeluarkan fatwa tegas yang menentang praktik ini, menyoroti dampak buruknya terhadap perempuan. Artikel ini menjawab pertanyaan utama mengapa ulama perempuan yang tergabung dalam KUPI merekonstruksi konsep *ijbār* wali dalam perkawinan secara berbeda dengan mayoritas pendapat ulama fikih tradisional. Melalui kombinasi penelitian pustaka dan lapangan selama delapan bulan, mulai dari April hingga November 2022, penelitian ini mengungkap bahwa KUPI menginterpretasikan makna *ijbār* bukan sebagai hak paksa wali untuk menikahkan anak perempuannya, melainkan sebagai bentuk tanggung jawab dan kasih sayang wali terhadap putrinya. Pendekatan fatwa ini didasarkan pada konsep Trilogi KUPI, yaitu *ma'rūf*, *mubādalah*, dan

keadilan hakiki, yang menawarkan semangat kesetaraan dan egaliter. Dengan mengadopsi argumen teologis, sosiologis, dan yuridis dengan menekankan pengalaman korban perempuan, KUPI berpendapat bahwa konsep ijbār wali dalam fikih tidak bersifat mutlak, sehingga wali dilarang memaksa atau mengintimidasi anak perempuannya untuk menikah. Artikel ini berargumen bahwa ulama perempuan telah berani menantang otoritas ulama tradisional dengan merekonstruksi makna ijbār dalam fikih, dengan melibatkan pengalaman korban perempuan terkait praktik perkawinan paksa.]

Keywords: Compulsory Guardianship, Fatwa, Female Ulama, Forced Marriage, KUPI Trilogy.

Introduction

The practice of forced marriage has drawn serious attention from various international communities.¹ Forced marriage culture is considered a form of violence that violates human rights, particularly the rights of women and children,² with negative implications for the rise in child marriages.³ The relationship between child marriage and forced marriage is a complex phenomenon closely intertwined with educational, legal, cultural, religious, and economic contexts.⁴ Based on the experiences of survivors, forced marriage practices trigger various forms of betrayal, legal violations, and abuses against women.⁵ The adverse effects of forced marriage compel women activists and researchers to advocate for its eradication. They endeavor to listen to and incorporate women's experiences into policymaking processes and research spaces, aiming to strengthen context-appropriate solutions.⁶ Victims of forced marriage require advocacy beyond mere assistance focused on prevention and protection. With diverse impacts, it is important for professionals to thoroughly identify and understand these impacts on victims.⁷

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- ¹ See: Alexia Sabbe et al., "Forced Marriage: An Analysis of Legislation and Political Measures in Europe," *Crime, Law and Social Change* 62, no. 2 (September 1, 2014): 171–89; Neha Jain, "Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution," *Journal of International Criminal Justice* 6, no. 5 (November 1, 2008): 1013–32; Kathleen M Maloney, "Ending Impunity for Forced Marriage in Conflict Zones: The Need for Greater Judicial Emphasis on the Human Rights of Girls," *Journal of International Criminal Justice* 19, no. 2 (May 1, 2021): 327–58.
 - ² Symphorosa Rembe et al., "Child and Forced Marriage as Violation of Women's Rights, and Responses by Member States in Southern African Development Community," *Agenda* 25, no. 1 (January 2011): 65–74.
 - ³ Geetanjali Gangoli and Khatidja Chantler, "Protecting Victims of Forced Marriage: Is Age a Protective Factor?," *Feminist Legal Studies* 17, no. 3 (December 2009): 267–88.
 - ⁴ See: Masimmo Pottoelo et al., "Child Brides and Forced Marriages: An Aspect of Child Abuse and Neglect," *The Journal of Pediatrics* 250 (2022): 116–17; Aisha K. Gill and Taher Hamed, "Muslim Women and Forced Marriages in the UK," *Journal of Muslim Minority Affairs* 36, no. 4 (October 2016): 540–60; Alexia Sabbe et al., "Determinants of Child and Forced Marriage in Morocco: Stakeholder Perspectives on Health, Policies and Human Rights," *BMC International Health and Human Rights* 13, no. 1 (December 2013): 1–12.
 - ⁵ Khatidja Chantler, Geetanjali Gangoli, and Marianne Hester, "Forced Marriage in the UK: Religious, Cultural, Economic or State Violence?," *Critical Social Policy* 29, no. 4 (November 2009): 587–612.
 - ⁶ Eyleen et al., "Young Leaders' Experiences and Recommendations to Strategically Tackle Child, Early, and Forced Marriage," *Journal of Adolescent Health* 69, no. 6 (2021): 511–12.
 - ⁷ Carolina Villacampa, "Forced Marriage: What Do Professionals Know?," *International Journal of Law, Crime and Justice* 67 (2021): 1–3.

In the context of Indonesia, forced marriage has become one of the main causes of increasing divorce rates.⁸ The Directorate General of Religious Courts of the Supreme Court reported 314 divorce cases per year caused by forced marriage.⁹ The National Commission on Violence against Women (Komisi Nasional Anti Kekerasan terhadap Perempuan/Komnas Perempuan) assesses that the increase in forced marriage cases is due to the lack of optimization and implementation of laws aimed at protecting women, including cases of forced marriage, influenced by cultural factors and dogmatic religious understandings.¹⁰ Moreover, the difficulty in eliminating the culture of forced marriage is also caused by religious justifications and efforts to preserve tradition.¹¹ In November 2022, the Congress of Indonesian Female Ulama (Kongres Ulama Perempuan Indonesia/KUPI) responded to this phenomenon by issuing a fatwa (Islamic legal opinion) prohibiting forced marriage against women and highlighting its negative impacts.¹² However, the reinterpretation of the meaning of *wilāyāt al-ijbār* (compulsory guardianship) in Islamic marriage proposed by female ulama in KUPI has sparked controversy as it contradicts the views of the majority of *Sunnī* schools of Islamic jurisprudence (*madhhab*).¹³

While research on the authority and role of female ulama is still limited, previous studies provide important insights in this regard. Kusmana highlights the ability of female ulama to formulate alternative views by utilizing Islamic legal sources and moral movements to address issues such as the status and role of women, children's welfare, and environmental issues.¹⁴ Nor Ismah emphasizes the efforts of female ulama in gaining community legitimacy to interpret religious texts and issue fatwas.¹⁵ Meanwhile, Eva F. Nisa demonstrates the presence of Indonesian Muslim women, both progressive and

⁸ Luluk Latifah and Iskandar Ritonga, "Difference of Divorce Determination in Indonesia: A Study Systematic Literature Review," *Jurnal Biometrika dan Kependudukan (Journal of Biometrics and Population)* 11, no. 2 (November 1, 2022): 223–35.

⁹ Nabilah Muhammad, "Perselisihan hingga Kawin Paksa, Ini Alasan Perceraian di Indonesia pada 2023," *databoks.katadata.co.id*, February 28, 2023.

¹⁰ The 2012 data from the National Commission on Violence Against Women highlighted that a significant portion of violence against women stems from cultural factors. This study identified various forms of marriages linked with violence, encompassing intermarriage, elopement, *cina buta* marriage, *kawin grebeg*, *kawin tangkap*, or *mudemu*, forced marriages arising from adultery, and early marriage. See: National Commission on Violence Against Women, "Pemaksaan Perkawinan" (Jakarta: National Commission on Violence Against Women, 2013), 4.

¹¹ Marnawati, "Praktik Kawin Paksa di Desa Ulaweng Riaja Kecamatan Amali Kabupaten Bone," *Jurnal Sosio Religius* 5, no. 2 (2020): 74–82.

¹² "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

¹³ See: 'Abd al-Rahmān bin Muḥammad Iwāḍh al-Jazārī, *Al-Fiqh 'ala al-Madhāhib al-Arba'ah*, IV (Bayrūt: Al-Dār al-'Ālamīyah li al-Ta'šīl wa al-Tawzī', 2003), 56. According to the Shāfi'iyyah schools, marriage necessitates a guardian, and without one, a marriage is deemed invalid. They assert that regardless of the woman's age or marital status, it is the father or grandfather who holds the authority to grant consent. Within this context, *ijbār* encompasses the guardian's prerogative to determine a spouse for their daughter. Aligned with the Shāfi'iyyah schools, a guardian retains the right to choose a partner for his daughter without her consent. See: Ibn Hajar al-'Astqalānī, *Fath al-Bāry Syarḥ Saḥīḥ al-Bukhārī* (Beirut: Dār al-Kutub al-Ilmiyah, 2005), 177.

¹⁴ Kusmana Kusmana, "The Qur'an, Woman and Nationalism in Indonesia: Ulama Perempuan's Moral Movement," *Al-Jāmi'ah: Journal of Islamic Studies* 57, no. 1 (June 29, 2019): 83–116.

¹⁵ Nor Ismah, "Destabilising Male Domination: Building Community-Based Authority among Indonesian Female Ulama," *Asian Studies Review* 40, no. 4 (October 2016): 491–509.

conservative, in the context of pluralism and the complex interaction between Islam, civil society, and gender equality.¹⁶ David Kloos and Nor Ismah discuss the significant role of KUPI in expanding the Islamic feminist project from a scholarly movement into a locally and globally impactful social movement.¹⁷ Inayah Rohmaniyah et al. demonstrate that the collective power of KUPI allows for the emergence of inclusive religious interpretations.¹⁸ Nor Ismah highlights how female ulama build community-based authority,¹⁹ complementing three factors that enable them to hold religious authority, namely government sponsorship, male support, and female agency.²⁰ In the context of KUPI's fatwa prohibiting forced marriage, this article asserts that female ulama have boldly challenged traditional ulama authority by reinterpreting the concept of *wilāyāt al-ijbār* in marriage, involving the experiences of female victims of forced marriage.

This article aims to address the main question of why female ulama affiliated with KUPI expand the meaning of *wilāyāt al-ijbār*, whose fatwa contradicts the opinions of the majority of traditional Islamic jurists. To achieve this goal, this article adopts a combined approach of literature and field research. Literature research is conducted by analyzing the KUPI's fatwa No. 06/MK-KUPI-2/XI/2022 on the Dangers of Forced Marriage to Women. Meanwhile, field research was carried out for eight months, from April to November 2022, by observing the process of drafting the fatwa from inception to implementation at the Congress in Jepara on November 24-26, 2022. Using a socio-legal approach, the data, as per Bobbitt's theory, is then analyzed by employing textual interpretation reasoning to examine the meaning of *wilāyāt al-ijbār* in the Quran, hadiths, and scholars' opinions, while ethical interpretation is a value-based approach that philosophically considers the substantive meaning of texts. This reasoning works by interpreting grammatically using semantic extension. The authors examine the reasons for the revelation of hadiths about *wilāyāt al-ijbār*, the values contained therein, and trace the word *ijbār* in *fiqh* (Islamic jurisprudence) works of literature.²¹

KUPI and Its Trilogy: Towards Gender-Just Islam

KUPI is a social movement specifically addressing issues related to women's rights.²² It was first established on the initiative of a group of female ulama along with several non-

¹⁶ Eva F. Nisa, "Muslim Women in Contemporary Indonesia: Online Conflicting Narratives behind the Women Ulama Congress," *Asian Studies Review* 43, no. 3 (July 3, 2019): 434–54.

¹⁷ David Kloos and Nor Ismah, "Siting Islamic Feminism: The Indonesian Congress of Women Islamic Scholars and the Challenge of Challenging Patriarchal Authority," *History and Anthropology* 34, no. 5 (October 20, 2023): 818–43.

¹⁸ Inayah Rohmaniyah et al., "Female Ulama's Authority: Deconstructing Masculine Domination in Islamic Norms and Practices," *International Journal of Islamic Thought* 6, no. 1 (June 1, 2022): 54–61.

¹⁹ Nor Ismah, "Women's Fatwa-Making in Indonesia: Gender, Authority, and Everyday Legal Practice," *International Journal of Islam in Asia*, 4 (2023), 75–97.

²⁰ Hilary Kalmbach, "Introduction: Islamic Authority and the Study of Female Religious Leaders." In *Women, Leadership, and Mosques: Changes in Contemporary Islamic Authority*, edited by Masooda Bano and Hilary Kalmbach. (Leiden: Brill, 2012): 1–27.

²¹ Philip Bobbitt, *Constitutional Fate: Theory of the Constitution* (New York: Oxford University Press, 1984), 14–23.

²² The KUPI embraces multiple visions, incorporating Islamic, Indonesian, humanitarian, and universal ideals. It espouses the principle of *rahmatan li al-'ālamīn* (universal grace) as outlined in the Qur'an, alongside the *akhlāq karīmah* (noble character) of Prophet Muhammad. See: Muhammad Ridwan, "Keren! Inilah Tiga

governmental organizations such as Alimat (founded in 2009),²³ Rahima (founded in 2000),²⁴ Fahmina (founded in 1999),²⁵ and AMAN Indonesia (founded in 1990),²⁶ all sharing similar goals and aspirations. This movement serves as a platform for female ulama to meet with women's rights advocates, academics, women's empowerment activists, victims of injustice, experts, practitioners, as well as representatives of state and government institutions. The meetings involve individuals connected to KUPI, with diverse visions, thoughts, paths of struggle, and experiences, yet with clear points of convergence. Therefore, after the Congress is held, one of its main tasks is to respond to religious phenomena through the issuance of fatwas.²⁷ In Indonesia, fatwas do not have legally binding power, as they are not included in the hierarchy of legislation.²⁸

Pendekatan Metodologi Fatwa KUPI," *Keadilan dan Kesetaraan Gender - Mubadalah* (blog), May 19, 2023, <https://mubadalah.id/keren-inilah-3-pendekatan-kupi-metodologi-fatwa-kupi/>.

²³ Alimat embodies a movement, activism, and intellectual endeavor led by a group of female activists in Indonesia, with a particular emphasis on family studies. Its objective is to attain gender equality and justice within the family, grounded in an Islamic law perspective. See: Kupipedia, "Alimat," accessed May 31, 2023, <https://kupipedia.id/index.php/Alimat>.

²⁴ Rahima is a Non-Governmental Organization committed to advocating for women's rights from an Islamic standpoint. While Alimat focuses on family studies, Rahima's scope extends to a broader examination of women's rights, encompassing issues both within and beyond the family sphere. In the field of Islamic law studies, Rahima operates a program called *fiqhunnisa* (Islamic jurisprudence of women), which conducts recruitment activities across various regions in Indonesia. See: Swara Rahima, "Tentang Rahima," accessed May 31, 2023, <https://swararahima.com/tentang-rahima/>.

²⁵ Fahmina is a movement consisting of scholars and activists primarily rooted in *pesantren*, actively engaged in social initiatives advocating for marginalized communities. The scope of Fahmina's studies encompasses various fields including law, democracy, citizens' rights, and public discourse focusing on humanity and gender issues. See: Fahmina, "Sejarah Fahmina," May 6, 2015, <https://fahmina.or.id/sejarah-fahmina/>.

²⁶ AMAN Indonesia, or The Asian Muslim Action Network, is a progressive Muslim network founded in 1990 by Muslim scholars and activists. It aims to promote understanding and solidarity among Muslims and other religious communities in Asia. AMAN Indonesia focuses on empowerment, women's rights, human rights, gender equality, justice, and peace as core values and objectives. See: Kupipedia, "AMAN Indonesia," Kupipedia, accessed May 31, 2023, https://kupipedia.id/index.php/AMAN_Indonesia.

²⁷ KUPI, "KUPI Vision and Mission," May 31, 2023, <https://kupi.or.id/visi-misi-kupi/>. Several Islamic community organizations in Indonesia have established their own fatwa institutions to address socio-religious issues. Among the most prominent ones are the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI), Muhammadiyah, and Nahdlatul Ulama. These institutions play a significant role in providing religious guidance and interpretations on various matters affecting society. See: Ahmad Munjin Nasih, "Lembaga Fatwa Keagamaan di Indonesia (Telaah atas Lembaga Majelis Tarjih dan Lajnah Bathsul Masail)," *De Jure: Jurnal Hukum dan Syaria* 5, no. 1 (June 30, 2013): 67–78; Ayu Rahayu Nurhalizah and Ach Fageh, "Future Gold Commodity: Indonesian Ulema Council Vs Lajnah Daimah lil Buhuts al-'Ilmiyyah wal Ifta," *JURIS (Jurnal Ilmiah Syaria)* 21, no. 1 (January 31, 2022): 1–10; M. Asrorun Niam Sholeh, Muhammad Fauzinudin Faiz, and Moh Muhlis Anwar, "A Critical Analysis of Islamic Law and Fatwa of MUI (Majlis Ulama Indonesia) & NU (Nahdlatul Ulama) on A Gold-Backed Cryptocurrency (OneGram)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 506–30; Musda Asmara, "Komparasi Fatwa Ulama Indonesia dalam Menyikapi Pandemi Coronavirus Disease 2019 (COVID-19)," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 1 (May 30, 2022): 29–44; Johari Johari et al., "Istih̄san Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant," *De Jure: Jurnal Hukum dan Syaria* 15, no. 1 (July 4, 2023): 1–20; Muhammad Rasyid et al., "Science and Its Role in Changes in Islamic Legal Thought (An Analysis of Changes in the Fatwa of the Indonesian Ulema Council Due to Recent Scientific Findings)," *Syaria: Jurnal Hukum dan Pemikiran* 23, no. 2 (2023): 120–37.

²⁸ Elsy Renie, "The Urgency of Fatwa in the Law of Sharia Economics in Indonesia," *JURIS (Jurnal Ilmiah Syaria)* 20, no. 2 (December 15, 2021): 201.

Generally, the Congress involving several Indonesian female ulama has three main objectives. Firstly, to support the movement of female ulama and recognize and reaffirm the existence and role of female ulama in the history of Islam and the Indonesian nation. Secondly, to create a meeting space for Indonesian and global female ulama to share experiences related to women's empowerment efforts and the achievement of social justice by embodying Islamic, national, and humanitarian values, as well as to expand knowledge about female ulama and their contributions to the advancement of women and the civilization of humankind. Thirdly, to formulate fatwas and religious views of Indonesian female ulama related to contemporary issues from the perspective of Islam as a mercy to the world (*rahmatan li al-'ālamīn*).²⁹ Additionally, the concept of KUPI is manifested through nine basic values: monotheism, mercy, benefits, equality, reciprocity, justice, nationality, humanity, and universality. These nine values are encompassed in three approaches known as the KUPI Trilogy: *ma'rūf* (good), *mubādalah* (reciprocity), and *keadilan hakiki* (genuine justice). The KUPI Trilogy serves as the methodology used by female ulama in KUPI as a foundation for assessing the benefits for both men and women, and for integrating women's experiences into the process of formulating fatwas.³⁰

The first approach, *ma'rūf*, emphasizes the importance of the neutrality of religious texts to ensure the achievement of more humane benefits by considering logical and inclusive aspects of *Shari'ah* (Islamic law) within the social context. *Ma'rūf* emphasizes a focus on the overall interests of humanity and directs the interpretation of religious texts to be non-exclusive, as well as emphasizes the importance of considering social needs and avoiding interpretations that appear intimidating. In the context of understanding religious texts, *ma'rūf* emphasizes the values of benefits that promote equality and justice.³¹ The second approach, *mubādalah*, embodies the spirit of spreading benefits to the entire universe with a focus on fostering reciprocity between men and women.³² *Mubādalah* involves two approaches, namely social and linguistic, which seek to holistically respond to women's issues.³³ The social

²⁹ The KUPI acts as a gathering platform for female ulama from diverse backgrounds. These include representatives from educational institutions, women's empowerment activists, individuals who have experienced injustice, experts, practitioners, as well as representatives from state institutions and government officials. Over time, it has transformed into a cohesive movement that brings together various stakeholders dedicated to advancing equitable relations between men and women, propagating moderate Islamic values, and championing global peace initiatives. See: KUPI, "History and Background of KUPI," accessed May 31, 2023, <https://kupi.or.id/tentang-kupi/>.

³⁰ Mubadalah.id, "Pendekatan Makruf Ala Nyai Badriyah Fayumi," *Keadilan dan Kesetaraan Gender - Mubadalah* (blog), June 15, 2023, <https://mubadalah.id/pendekatan-makruf-ala-nyai-badriyah-fayumi/>.

³¹ The concept of *ma'rūf* was initially introduced by Nyai Hj. Badriyah Fayumi, who served as the Deputy Secretary-General of the MUI. See: Faqihuddin Abdul Kodir, *Metodologi Fatwa KUPI Pokok-Pokok Pikiran Keagamaan Kongres Ulama Perempuan Indonesia* (Cirebon: Fahmina Institute, 2022), 94.

³² Faqihudin Abdul Qodir is not only a lecturer at IAIN Syekh Nurjati, Cirebon, but also serves as a member of the KUPI Consultative Assembly. See: Faqihuddin Abdul Kodir, *Qira'ah Mubadalah: Tafsir Progresif untuk Kesetaraan Gender dalam Islam* (Yogyakarta: IRCISOD, 2019), 613; Ismah, "Destabilising Male Domination," 495; Lukman Hakim, "Corak Feminisme Post-Modernis dalam Penafsiran Faqihuddin Abdul Kodir," *Jurnal Studi Ilmu-Ilmu Al-Qur'an dan Hadis* 21, no. 1 (January 30, 2020): 237–59.

³³ Faqihudin Abdul Kodir, *Perempuan Bukan Mahluk Domestik* (Bandung: Afkaruna, 2022), 6.

approach of *mubādalab* pays particular attention to patriarchal views in society and the importance of integrating women's experiences into policy-making and fatwa formulation. Meanwhile, the linguistic approach of *mubādalab* offers a method of interpretation that considers linguistic structures and the legal targets aimed at, thus allowing for a broader understanding of religious texts.³⁴ The final approach, *keadilan hakiki*, serves as the key perspective in producing a gender-just *fiqh* view. By considering women's specific experiences both biologically and socially,³⁵ *keadilan hakiki* emphasizes that the position of humans, both men and women, is equal servants of God. This asserts that the values underlying the relationship between men and women are piety to God,³⁶ not external factors such as domination or power.³⁷ Thus, these three approaches (the KUPI Trilogy) bring a profound spiritual dimension to realize gender-just *fiqh*.

KUPI has held two Congresses to date. The First Congress was held at the Pondok Pesantren (Islamic boarding school) of Kebon Jambu Al-Islamy in Cirebon from April 25-27, 2017.³⁸ This First Congress addressed three crucial issues: sexual violence, child marriage, and environmental destruction. The Second Congress was held at the Pondok Pesantren of Hasyim Asy'ari in Jeparu, Central Java, from November 24-26, 2022. The Second Congress successfully formulated five fatwas related to several prevalent issues in Indonesia. First, on the marginalization of women in safeguarding the Unitary State of the Republic of Indonesia from violence in the name of religion. Second, on waste management for environmental sustainability and women's safety. Third, on protecting women from forced marriage. Fourth, on protecting women's lives from the dangers of pregnancy resulting from rape. Fifth, on the Protection of Women from Female Genital Mutilation (Perlindungan Perempuan dari Pemoangan dan Pelukaan Genitalia Perempuan/P2GP) that endangers women without medical reasons.³⁹

³⁴ Faqihuddin Abdul Kodir, *Perempuan Bukan Sumber Fitnah: Mengaji Hadis dengan Metode Mubadalah* (Bandung: Afkaruna, 2021), 8–9.

³⁵ Faqihuddin Abdul Kodir, *Metodologi Fatwa KUPI* (Jogjakarta, 2019), 54.

³⁶ Pera Sopariyanti, *Membina Keluarga Bahagia* (Jakarta: Perhimpunan Rahima, 2019), 5–7.

³⁷ Differences in women's social experiences often render them vulnerable to differential treatment compared to men, thus making them susceptible to injustices solely based on their gender. This vulnerability manifests in various forms, including stigmatization, marginalization, subordination, violence, and the imposition of a double burden. Additionally, disparities exist in women's biological experiences, particularly concerning menstruation, pregnancy, childbirth, postpartum recovery, and breastfeeding. These experiences can extend over hours, days, weeks, months, or even years, leading to ailments (*adwā*), fatigue (*kurban*), and in severe cases, prolonged illness (*wahn 'alā wahn*). Contrasted with men's reproductive experiences, which typically involve the brief release of sperm, often lasting only minutes or even seconds and accompanied by sensations of pleasure. See: Nur Rofiah, *Metode Studi Islam Keadilan Hakiki bagi Perempuan, The Paper was Presented in the Women Ulama Congress in Indonesia (KUPI) at Pondok Pesantren Kebon Jambu al-Islamy Babakan Ciwaringin* (West Java on 25-27 April 2017).

³⁸ The KUPI serves as a convergence point for female ulema from diverse backgrounds, including figures from educational institutions or organizations, women's empowerment activists, victims of injustice, experts, practitioners, representatives of state institutions, and government officials. It has evolved into a movement that unites individuals and institutions focused on fostering just relations between men and women, promoting moderate Islam, and advocating for world peace. See: KUPI, "History and Background of KUPI."

³⁹ See: KUPI, "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI)" (KUPI (Kongres Ulama Perempuan Indonesia), 2023).

Ijbār and *Ikrāb* in Marriage Guardianship in *Fiqh* Rules

Ijbār is an action taken based on responsibility,⁴⁰ a terminology known in *fiqh* when discussing *wilāyah* or guardianship in marriage. According to Mālikīyah⁴¹ and Shāfi‘īyah scholars,⁴² the individuals who have the right of *wilāyāt al-ijbār* are the father and grandfather,⁴³ where their position as marriage guardians gives them the authority or right to arrange marriages for their daughters, even without the consent of the parties involved. In jurisprudence, a guardian of this kind is known as a *walī mujbir*.⁴⁴ The right of *wilāyāt al-ijbār* is considered a form of protection or responsibility of the father towards his daughter because the daughter is deemed to lack the capability or strength to act in marriage.⁴⁵

Understanding of *ijbār* is closely related to the discussion of Islamic jurists regarding guardianship. Ḥanafīyah scholars define *wilāyāt al-ijbār* as guardianship over young girls, both virgins and widows, as well as women who have reached adulthood but lack sufficient capacity to choose a partner and are legally incompetent.⁴⁶ Based on this definition, Ḥanafīyah scholars believe that guardianship in Islam can involve coercion, as long as it is directed towards underage girls or widows, or towards adult women who lack sufficient capacity to choose a partner and are legally incompetent.⁴⁷ According to Imām Abū Ḥanīfah, the right of *wilāyāt al-ijbār* for the guardian only applies to girls or widows who have not reached maturity, as adult women are considered capable of determining their life partner without the consent of the guardian. Meanwhile, Shāfi‘īyah scholars argue that every marriage must involve a guardian, as their presence is crucial to validate the marriage. In this school of thought, the father or grandfather has the right to force (*ijbār*) their daughters into marriage, whether the daughters are underage or adults, and whether they are widows or virgins.⁴⁸ According to Imām al-Shāfi‘ī, the *walī mujbir* is a party that holds authority within the family, including the authority to force marriage upon someone under their guardianship.⁴⁹

⁴⁰ Wahbah al-Zuhaylī, *Mawsū‘ah al-Fiqh al-Islāmī wa al-Qadāyā al-Mu‘āṣirah* (Bayrūt: Dār al-Fikr, 2003), 114.

⁴¹ Mālik ibn Anas, *Al-Muwattā’* (Bayrūt: Dār al-Fikr, 1989), 331.

⁴² Muḥammad ibn Idrīs al-Shāfi‘ī, *Al-Umm* (Bayrūt: Dār al-Fikr, 1994), 19.

⁴³ In Indonesia, the marriage guardian can be substituted by a judge as the guardian (Indonesian: *wali hakim*), while still adhering to the order of guardianship in *fiqh*. See: Zaiyad Zubaidi and Kamaruzzaman Kamaruzzaman, “Perpindahan Wali Nasab kepada Wali Hakim (Analisis terhadap Sebab-Sebab ‘Aḍal Wali pada KUA Kecamatan Syiah Kuala Kota Banda Aceh),” *El-Ushrah: Jurnal Hukum Keluarga* 1, no. 1 (June 19, 2018): 93–108; Abdul Kadir Syukur, “Pernikahan dengan Wali Muhakkam (Studi Tentang Implikasi dan Persepsi Ulama di Kota Banjarmasin),” *Syariah: Jurnal Hukum dan Pemikiran* 14, no. 1 (September 17, 2014): 1–23; Adinda Dewi Mutiara Sari and Seno Aris Sasmito, “Penetapan Wali Hakim dalam Perkawinan di Kantor Urusan Agama Kecamatan Karanganyar Kabupaten Karanganyar Tahun 2020,” *El-Ushrah: Jurnal Hukum Keluarga* 5, no. 2 (December 31, 2022): 340–53.

⁴⁴ See: Toha Andiko, Zurifah Nurdin, and Ahmed Abdul Malik, “Reactualization of Wali Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi’i’s Concept Regarding Wali’s Ijbar Right,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 2 (December 31, 2023): 274–91.

⁴⁵ Al-Zuhaylī, *Mawsū‘ah al-Fiqh al-Islāmī wa al-Qadāyā al-Mu‘āṣirah*, 114.

⁴⁶ Kamāl al-Dīn Muḥammad al-Sakandarī, *Sharḥ Fatḥ al-Qadīr* (Bayrūt: Dār al-Kutub al-‘Ilmiyah, 1995), 246.

⁴⁷ Muḥammad bin Aḥmad ibn Rusyd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtashid*, V (Bayrūt: Dār al-Ma‘rifah, 1981), 324.

⁴⁸ Al-Shāfi‘ī, *Al-Umm*, 19.

⁴⁹ *Ibid.*, 19–20.

Unlike *ijbār*, *ikrāh* is an act of coercion that results in *al-mukrah* (the coerced) doing something they do not like or desire.⁵⁰ In *fiqh*, *ikrāh* has four conditions for an act to be considered coercion: *al-mukrah* (the coerced), *al-mukrih* (the coercer), *al-mukrah bih* (the method of coercion used by the coercer), and *al-mukrah ‘alaih* (what is forced to be done by the coercer).⁵¹ Islamic jurists also categorize *ikrāh* into several types. First is *ikrāh mulji*, also known as *ikrāh tām*, which is coercion that causes harm to the victim because they cannot escape it, such as physical assault or injury. Second is *ikrāh ghayr mulji*, which is coercion that does not result in injury or physical assault to the victim. Next is *ikrāh ma‘nawī*, which is an indirect threat to the victim through intermediaries.⁵²

Ikrāh involves threats and has negative consequences for the coerced victim. According to al-Jurjāni, *ikrāh* is compelling someone to do something against their will or desire, whether it is against *Shari‘ah* or conscience and reason.⁵³ In the terminology of *fiqh*, *ikrāh* is considered one of the reasons that can mitigate someone’s guilt in Islamic law.⁵⁴ Al-Suyūṭī mentions several criteria for *ikrāh*, namely the threat conveyed by the coercer, the fear felt by the coerced person,⁵⁵ and the compulsion of the person to accept the threat.⁵⁶ *Ikrāh* becomes an important topic when discussing *ijbār* because there is still much understanding that *ijbār* is often equated with *ikrāh*, whereas they have substantial differences in terms and concepts. *Ikrāh* involves the necessity to do something under coercion, while *ijbār* is the right to coerce held by a guardian over a woman under their care or guardianship.⁵⁷

KUPI’s Fatwa regarding the Dangers of Forced Marriage to Women

One of the five fatwas discussed in the Religious Consultation Results of the Second KUPI was Fatwa No. 06/MK-KUPI-2/XI/2022 on the Protection of Women from the Dangers of Forced Marriage.⁵⁸ This fatwa was prompted by feedback from AMAN Indonesia, Fahmina, Rahima, and Alimat (the four organizing organizations of KUPI) regarding the increasing practice of forced marriages in various regions of Indonesia. KUPI formed a team called the KUPI Consultative Council to gather data from women’s experiences related to this phenomenon. The KUPI Consultative Council team invited internal researchers to collect data and research results on forced marriages, which had been extensively conducted by researchers, both in Indonesia and abroad. The research was conducted in three regions: Makassar and its surroundings representing Eastern Indonesia, areas around Yogyakarta representing Central Indonesia, and Medan representing Western Indonesia.⁵⁹

⁵⁰ ‘Alī ibn Muḥammad al-Jurjānī, *Al-Ta‘rīfāt* (Teheran: Dār Kutub al-‘Ilmiyah, 2004), 96.

⁵¹ *Ibid.*, 96.

⁵² Sa‘d al-Dīn al-Taftāzānī, *Sharḥ al-Tawḍīḥ ‘alā Matn al-Tanqīḥ* (Bayrūt: Dār al-Kutub al-‘Ilmiyah, 2004), 196.

⁵³ Al-Jurjānī, *Al-Ta‘rīfāt*, 96.

⁵⁴ Muḥammad ibn Yazīd, *Sunan ibn Mājah* (Bayrūt: Dār Ihyā al-Turās al-‘Arābi, 2000), 27.

⁵⁵ Jalāluddīn al-Suyūṭī, *Asbāb wa al-Nadhāir* (Bayrūt: Dār al-Kutub al-‘Ilmiyah, 1983), 31.

⁵⁶ Imād Ban‘al, “Al-Ikrāh ‘ala al-Zawāj fi al-Tasyrī‘ al-Maghribī,” *Jurnal: Al-Majallah al-Ilktrunīyah li al-Abbās al-Qānūniyah* VII (2021), 70.

⁵⁷ Sayyid Ṣābiq, *Fiqh al-Sunnah* (Mesir: Dār al-Fikr, 1983), 355.

⁵⁸ “Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women’s Protection from the Danger of Forced Marriage.”

⁵⁹ Observation of Each Stage of the Process of Drafting the Fatwa on Women’s Protection from the Danger of Forced Marriage conducted by KUPI, April-November 2022.

Based on the data collected by the KUPI Consultative Council team, KUPI agreed that forced marriage is an urgent issue to be addressed through a fatwa.⁶⁰ Subsequently, KUPI held the Second Congress at Pondok Pesantren of Hasyim Asy'ari, Jepara, Central Java, on November 24-26, 2022. In the process of drafting the fatwa, KUPI first conceptualized (*tashawwur*) many data from previous research results on the dangers of forced marriage. After that, the KUPI Consultative Council team invited survivors of forced marriage practices to recount their experiences, from the motives of coercion to efforts to escape from such dangerous conditions. They also invited researchers from international campuses who researched forced marriages. Based on the knowledge gained about forced marriages, KUPI decided to issue a fatwa regarding the dangers of forced marriage to women.⁶¹

After gaining an overview of the dangers of forced marriage, KUPI formulated three important questions in April 2022.⁶² These three questions were answered by female ulama in KUPI through the fatwa it produced. The first question is, what is the law of protecting women from the dangers of forced marriage? KUPI argues that all parties must protect women from the dangers of forced marriage. The second question is, what is the law to minimize the adverse effects experienced by women who are victims of forced marriage? According to KUPI's study, the impact of forced marriage is highly diverse and complex. Therefore, KUPI believes that all parties, including the government, religious figures, traditional leaders, society, and the state, must make their best efforts to assist victims and minimize the dangers caused by forced marriages to women. The third question is, what is the law in making legislative regulations that impose criminal sanctions on perpetrators of forced marriages against women? KUPI believes that the government is obliged to enact legislative regulations that impose criminal sanctions on perpetrators of forced marriages against women to prevent forced marriages and reduce their negative impact.⁶³

KUPI's fatwa is based on legal sources (*adillah*). In formulating the fatwa, KUPI refers to the Quran, hadiths, opinions of scholars, and legislative regulations. The process of legal reasoning is carried out by referring to these sources. In addition, KUPI uses two methods in the process of legal reasoning, namely *qawli* (referring to the opinions of scholars) and *manhajī* (using methods that have been used by scholars before). KUPI uses the opinion of al-Suyūṭī, which explains hadiths about the prohibition of creating harm or retaliating with other harm, as the basis for argumentation in its fatwa. In the *manhajī* method, KUPI uses *maqāṣid al-sharī'ah* (objectives of Islamic law) to realize the benefits in marriage by emphasizing the importance of agreement between the two spouses based on egalitarian principles.⁶⁴

⁶⁰ Observation of the Halaqah Methodology of KUPI Fatwa on the Issue of Forced Marriage in Surabaya, June 14, 2022.

⁶¹ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁶² Observation of Each Stage of the Process of Drafting the Fatwa on Women's Protection from the Danger of Forced Marriage conducted by KUPI, April-November 2022.

⁶³ KUPI, "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI)," 119–57.

⁶⁴ Other than *al-musāwabah* (egalitarianism), *al-ḥiṭrah* (religious instincts), *al-samāḥah* (tolerance), and *al-ḥurriyah* (freedom of action) are epistemological frameworks found in the theory of *maqāṣid al-sharī'ah al-āmmah* by Ibn 'Ashūr. See: Ulul Umami and Abdul Ghofur, "Human Rights in Maqāṣid al-Sharī'ah al-Āmmah: A Perspective of Ibn 'Ashūr," *Al-Abkam* 32, no. 1 (April 28, 2022): 87–108; Darul Faizin, "Kontribusi

Therefore, forced marriage must be eliminated to preserve spirituality (*ḥifẓ al-dīn*), protect the soul (*ḥifẓ al-nafs*)⁶⁵ from domestic violence, maintain mental stability (*ḥifẓ al-'aql*) by preventing disruptions in education access, preserve progeny (*ḥifẓ al-nasl*) from the adverse effects of the reproductive system, and safeguard the property (*ḥifẓ al-māl*) of women from economic neglect.⁶⁶ In practice, the *kyai* (Islamic religious leaders) among *pesantren* play a role as *wali mujbir* to maintain their lineage while considering the opinions of their daughters.⁶⁷

Unlike other religious fatwa institutions in Indonesia, KUPI not only relies on the Quran and hadiths as legal sources but also refers to legislative regulations, opinions of scholars, and *maqāsid al-syarī'ah*. In addition, women's experiences are also considered in formulating the fatwa.⁶⁸ While fatwas are usually formed as considerations in drafting state laws,⁶⁹ the KUPI's fatwa is based on legislative regulations to adhere to the principles of the state.⁷⁰ If the Nahdlatul Ulama's Legal Board of Inquiry (LBM) uses authoritative books (*ketub mu'tabarab*) written by Shafī'yyah scholars as the standard for drafting fatwas,⁷¹ KUPI instead draws references from various relevant and contextual *madbhab*, both classical and contemporary, in formulating its fatwas. What sets KUPI apart from other fatwa institutions is the use of women's experiences reflected in the KUPI Trilogy, making it more inclusive and representative in formulating fatwas.⁷² Additionally, the popularity of female scholars in delivering religious messages, including fatwas, through modern media today can be accepted.⁷³

Legal Reasoning behind the Prohibition of Forced Marriage: Perspectives of *Ma'rūf, Mubādalah, and Keadilan Hakiki*

In formulating three religious stances regarding the dangers of forced marriage to women, KUPI employs legal argumentation: theological, sociological, and juridical. The theological

Muhammad at-Ṭāhir Ibnu 'Āsyūr terhadap Maqāsid asy-Syarī'ah," *El-Masbhab* 11, no. 1 (June 28, 2021): 1–12.

⁶⁵ In utilizing the five elements of *maqāsid al-syarī'ah*, several fatwa institutions in Indonesia sometimes prioritize the preservation of life over safeguarding religion, as practicing religious teachings can only be done when one's life is preserved. See: Mashuri Mashuri, Iffatin Nur, and Muhammad Ngizzul Muttaqin, "Maqāsid Sharī'ah Flexibility to Overcome COVID-19 in Indonesia: From Government Policies to Fatwa of Council of Indonesian Ulama (MUI), Nahdlatul Ulama (NU), and Muhammadiyah," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 2 (December 31, 2021): 240–63.

⁶⁶ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁶⁷ Dea Salma Sallom and Kholil Syu'aib, "Matchmaking in Pesantren: The Role of Wali Mujbir in Matchmaking with Maqasid Sharia Perspectives," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no. 1 (June 30, 2022): 78–91.

⁶⁸ Kodir, *Metodologi Fatwa KUPI*, 54.

⁶⁹ Muhammad Lutfi Hakim et al., "Between Exclusivity and Inclusivity of Institutions: Examining the Role of the Indonesian Ulama Council and Its Political Fatwa in Handling the Spread of Covid-19," *Khazanah Hukum* 5, no. 3 (December 31, 2023): 230–44.

⁷⁰ M. Cholil Nafis, "Penyerapan Fatwa ke dalam Undang-Undang Perbankan Syariah di Indonesia," *Jurnal Middle East and Islamic Studies* 3, no. 6 (2014): 206–29.

⁷¹ Nazar Nurudin, "Self-Isolation in Islam: Methodological Criticism of Fatwa of LBM PWNU Central Java on Suggestions for Isolation during Outbreaks," *Journal of Islamic Law* 2, no. 1 (2021): 1–21.

⁷² Kodir, *Metodologi Fatwa KUPI*, 5–10.

⁷³ Imam Subchi et al., "Cyber Fatwa and Da'wah Acceptance in New Media: How Technology Affects Religious Message by Female Ulama," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022): 35–85, <https://doi.org/10.15408/ajis.v22i1.23687>.

argumentation is reflected in its legal reasoning, which refers to the texts of the Quran, hadiths, and scholars' opinions in building arguments about the dangers of forced marriage to women. The sociological argumentation is reflected in its legal reasoning, which considers women's experiences as social facts; that women who are married off forcibly often experience adverse effects on themselves and their children. The juridical argumentation is reflected in its legal reasoning, which refers to the Marriage Law No. 1 of 1974 and Sexual Violence Criminal Offenses Law No. 12 of 2022.⁷⁴

KUPI employs the perspectives of *ma'rūf* and *mubādalab* in interpreting the texts of the Quran and hadiths.⁷⁵ By using the *ma'rūf* approach, KUPI refers to Sūrah al-Nisā' verse 19, which is a command to treat women well in the context of family life. This means that the peace and comfort of women are highly regarded by Sharia. Conversely, Sharia prohibits committing wrongdoing against women in marriage, including forcing women to marry against their conscience. KUPI also refers to Sūrah al-Baqarah verse 232, which explains the prohibition of forcing women not to return to their former husbands. In this verse, no party is allowed to impose the will of women who want to marry their former husbands. From the *ma'rūf* perspective, both of these verses are present to protect women from physical, psychological, and sociological violence that is highly likely to make them victims of injustice. Physical violence is highly likely to occur for victims of forced marriage. Coercion to engage in sexual relations in a forced marriage is highly likely to occur. As a result, the woman will experience psychological disturbances, stress, intimidation, and mental disorders.⁷⁶

In addition to the above two verses, KUPI also refers to a hadith narrated by al-Nasā'ī.⁷⁷ The hadith states: 'Abd al-'Azīz bin Rufa'ī said: "Abu Salamah informed me that a man married off his daughter, while his daughter did not like it." Then his daughter came to the Prophet and complained: "My father married me to a man, whereas I did not like it, and at that time my cousin had already proposed to me." The Prophet said: "There is no marriage for him, marry whomever you wish."⁷⁸ This hadith explains that the Prophet prohibited a companion from marrying off his daughter forcibly. In this context, *ijbār* cannot be interpreted as the right of coercion, because if *ijbār* is interpreted as the right of coercion of a guardian to his daughter under his guardianship, then Islamic law cannot prohibit coercion in marriage. The *ma'rūf* approach in marriage⁷⁹ makes

⁷⁴ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁷⁵ In this context, the religious approach involves issuing a fatwa, which represents an Islamic legal opinion provided by an individual or institution vested with the authority to address specific issues. Fatwas are typically issued in response to community inquiries or significant problems that require clarification. During the era of the founding scholars of the *madhhab*, the concept of *istiqrā'*, introduced by Imām al-Shāfi'ī, emerged. This method employed an inductive approach based on personal experiences. Imām al-Shāfi'ī, during his time, conducted research on women's experiences related to menstruation. See: Faqihuddin Abdul Kodir, *Metodologi Fatwa KUPI: Pokok-Pokok Pikiran Keagamaan Kongres Ulama Perempuan Indonesia*. (Cirebon: Fahmina Institute, 2019), 54.

⁷⁶ *Ibid.*, 54.

⁷⁷ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁷⁸ Hadith narrated by al-Nasā'ī, No. 5359.

⁷⁹ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

women's experiences an important element that underlies goodness (*ma'rūf*), so that both men and women benefit equally, there is no coercion, and both feel comfortable.

From the *mubādalah* perspective, forced marriage contradicts the principle of reciprocity or mutuality within the household. From the *mubādalah* perspective, this can be analyzed through two aspects, namely social and linguistic approaches. In the social approach, the hadith narrated by al-Nasā'ī above emphasizes the importance of the consent of the guardian with his daughter who will be married, so the Prophet prohibited marriage based on unilateral consent. In this hadith, women are treated as subjects who have the right to choose to continue or terminate the marriage.⁸⁰ Women in this hadith are not viewed as objects and have full rights to determine the prospective spouse they will marry. Meanwhile, in the linguistic approach, the hadith narrated by al-Quthnī describes the *mubādalah* perspective. This hadith conveys a story where a girl came to Prophet Muhammad and complained that her father had married her to his nephew to elevate his status. Prophet Muhammad left the decision to the woman, who stated that although she had agreed to her father's decision, she wanted other women to know that her father had no right to force this marriage.⁸¹

This hadith gives the important meaning that fathers do not have sole authority in marriage, because the final decision is left to the woman to be married.⁸² In the linguistic context, this hadith uses the word *al-nisā'*, emphasizing that women must understand that fathers are not the ultimate authority in approving marriage. However, from the *mubādalah* perspective, knowledge of the right to choose in determining marriage not only applies to women but also to men. Men in this case must understand who should be involved in determining the choice of marriage. In their capacity as a guardian, men must understand the rights and obligations inherent in them, so that in determining marriage, they consider the interests of women under their guardianship. This analysis is in line with the opinion of al-Sharbāshī who emphasizes the need for the consent of women under the guardianship of a guardian.⁸³ Al-Sharbāshī explains that Islam gives women the right to choose a partner, and family members should not take over this important decision on behalf of the women concerned. Therefore, *ijbār*, interpreted as the right of coercion of a guardian to his daughter, needs to be further analyzed.⁸⁴

In using sociological arguments, KUPI employs a perspective of *keadilan hakiki* that is highly responsive to the unique biological and social experiences of women. Its main principle is not to set a single standard for the strong party to the weak party.⁸⁵ Considering women's biological experiences, the concept of *ijbār*, interpreted as the right of coercion for a father to his daughter, will affect women's reproductive function. For example, if forced marriages are carried out when the child is at a young age, the woman's reproductive function will be disrupted. Children who become victims of forced marriage at a young age with the pretext

⁸⁰ Hadith narrated by al-Nasā'ī, No. 5359.

⁸¹ Hadith narrated by Imām al-Dār al-Quthnī, No. 3555.

⁸² "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁸³ Aḥmad al-Sharbāshī, *Yas'alūnaka fī al-Dīn wa al-Ḥayāh* (Bayrūt: Dār al-Jīl, 2008), 143.

⁸⁴ Imam Nakhei, *Materi Kamin Paksa pada Halaqah Metodologi Fatwa KUPI* (Surabaya, 2022), 22.

⁸⁵ Nur Rofiah, *Nalar Kritis Muslimah: Refleksi atas Keperempuanan, Kemanusiaan, dan Keislaman* (Bandung: Afkaruna, 2020), 4.

of coercion will be vulnerable to many vulnerabilities in their reproductive organs, vaginal infections, and miscarriages that are very dangerous to women's safety.⁸⁶ The interpretation of *ijbār* that emphasizes the authority of a guardian to coerce his daughter into marriage is contrary to the concept of *keadilan hakiki*. The guardian in this case cannot be called the determinant of his daughter's marriage, because as a strong party in the family does not mean the guardian can force his will on his daughter. Although daughters are considered weak parties in the family due to hierarchy and their position as children who must respect their parents, in choosing a spouse to marry, daughters have the most authority to be asked for their consent.⁸⁷

From the perspective of women's social experiences, the concept of *ijbār*, interpreted as the right of coercion from a guardian to his daughter, will have adverse effects on the social system of the victims. Marginalization will occur because victims of forced marriage will be marginalized from their social class. Dropping out of school will be experienced by women who are victims of forced marriage, which will then experience a system that weakens them.⁸⁸ In addition, women who are victims of forced marriage will experience double burdens; they must deal with domestic affairs because their social system has weakened them. The social impact most vulnerable to victims of forced marriage is violence. They will be vulnerable to verbal, psychological, and physical violence because they are not considered to have equal value with their partners.⁸⁹ Their weak condition will be further exacerbated by the existing social system. This is contrary to the Islamic legal maxim, *lā ḍarar wa-lā ḍirār*, which means harm should not be eliminated with another harm.⁹⁰

In using juridical arguments, KUPI refers to the 1945 Constitution. Article 1 paragraph (1) emphasizes the freedom of every individual's rights and freedom of thought and conscience. This article emphasizes the freedom to choose a spouse by a daughter without intimidation from a guardian. KUPI also refers to the Marriage Law, especially Article 6 paragraphs (1) and (2) which require the consent of prospective spouses before the marriage contract is conducted. Both of these paragraphs affirm that both prospective spouses have the right to be asked for consent, because both are subjects who will undergo and accept legal consequences after the contract. Additionally, KUPI also refers to Sexual Violence Criminal Offenses Law No. 12 of 2022. Article 10 paragraph (1) establishes forced marriage as a criminal offense.⁹¹ As mandated by the law, coercion by utilizing the power to marry is included in coercion.

⁸⁶ Deybi Santi Wuri & Anak Agung Istri Ari Atu Dewi, "Pemaksaan Perkawinan sebagai Faktor Terjadinya Kekerasan Seksual dalam Rumah Tangga Ditinjau dari Perspektif Hukum Pidana Indonesia," *Jurnal Kerta Negara* 9, no. 5 (2020): 557–69.

⁸⁷ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁸⁸ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁸⁹ "Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage."

⁹⁰ Ibrāhīm Muḥammad Maḥmūd al-Ḥarīrī, *Al-Madkhal ilā al-Qawā'id al-Fiqhiyyah al-Kullīyyah* (Amman: Dār 'Ammar, 1998), 115.

⁹¹ "Sexual Violence Criminal Offenses Law No. 12 of 2022."

Reconstruction of the Meaning of *Ijbār* from the Perspective of *Mubādalāh*: Not the Right to Force Marriage, But the Manifestation of Guardian Responsibility

From the perspective of the KUPI Trilogy, which includes *ma'rūf*, *mubādalāh*, and *keadilan hakiki*, the concept of a compelling guardian in the context of marriage needs to be scrutinized more carefully. This concept indicates a significant difference from the traditional interpretation that gives absolute authority to the guardian to decide on the marriage of his daughter without considering the wishes or interests of the daughter. First, the principle of *ma'rūf* emphasizes the importance of harmony and benefit for both parties in marriage.⁹² Forced marriage not only harms one party but also diminishes the value and voice of women. Second, the concept of *mubādalāh* emphasizes equality and reciprocity between prospective spouses,⁹³ which contradicts authoritarian coercion in the meaning of *wilāyāt al-ijbār* from traditional Islamic jurists. Third, from the perspective of *keadilan hakiki*, it is important to consider women's experiences biologically and socially.⁹⁴ Forced marriage is considered an act of intimidation that can harm women psychologically and socially. Therefore, the meaning of *wilāyāt al-ijbār* becomes a subject of debate that requires deeper analysis from religious, legal, and social perspectives.

The Mālikiyyah and Shāfi'iyyah scholars believe that the guardian of lineage, namely the father and grandfather, has the right of *wilāyāt al-ijbār* in the sense of coercion towards someone under his guardianship, slightly different from these two *madhhabs*,⁹⁵ the Ḥanafiiyyah schools also interpret *wilāyāt al-ijbār* as the right of the guardian to coerce but with different implications, according to this school, only underage daughters can be coerced, but if they are already adults, they have the right to determine for themselves. Looking at the opinions of the Islamic jurists, all three interpret *wilāyāt al-ijbār* as the right of the guardian to coerce, none of them use *ikrāb* to refer to coercion or intimidation by the guardian towards his daughter under his guardianship.

In *fiqh*, coercion is closer to the concept of *ikrāb* than *ijbār*. *Ikrāb* refers to coercion that intimidates someone into doing something against their will.⁹⁶ However, in contemporary jurisprudence, Wahbah al-Zuhaylī explains that the presence of a guardian in marriage is not only as the holder of ultimate authority (*ṣāhib al-sulṭah wa al-quḍrah*) who decides without considering the daughter's opinion, but as a responsible leader. Al-Zuhaylī adds that *wilāyāt al-ijbār* also includes the meanings of affection and providing security to individuals under one's guardianship.⁹⁷ Therefore, in the context of the KUPI Trilogy, the meaning of *wilāyāt al-ijbār* includes the responsibility and affection of parents towards their daughters under their guardianship.

Taking into account the spirit of *ma'rūf*, *mubādalāh*, and *keadilan hakiki*, as well as the religious principles reflected in the Second KUPI's Religious Consultation Results, preventing the negative impacts of coercion in marriage is a necessity. The main purpose of marriage in

⁹² Kodir, *Metodologi Fatwa KUPI*, 52.

⁹³ *Ibid.*, 22.

⁹⁴ *Ibid.*, 34.

⁹⁵ Ibrahim Hosen, *Fiqh Perbandingan Masalah Pernikahan* (Jakarta: Pustaka Firdaus, 2003), 204–5.

⁹⁶ Al-Jurjānī, *Al-Ta'rifāt*, 51.

⁹⁷ Al-Zuhaylī, *Mamsū'ah al-Fiqh al-Islāmī wa al-Qaḍāyā al-Mu'āṣirah*, 114.

Islam is the formation of a harmonious family, emphasized within the framework of *mu'āshirah bi al-ma'rūf*, the companionship of husband and wife covering all aspects of marital life with a suitable attitude. The importance of creating mutual satisfaction between husband and wife becomes the main focus, while Islam expressly prohibits coercion, whether in the form of hegemony or customary agreements, because it contradicts the legal principle of removing all forms of harm (*al-darar yuzāʿ*).⁹⁸ One of the negative impacts to be avoided is the exploitation of women that does not consider their biological and social experiences.⁹⁹

With this development, female scholars have dared to challenge the authority of traditional scholars by reinterpreting the concept of *wilāyāt al-ijbār*, involving the experiences of female victims related to forced marriage practices. They assert that *wilāyāt al-ijbār* should be more characterized by responsibility and affection, not just as a tool of power. This perspective from KUPI reinforces the research on the dangers of forced marriage conducted by Khatidja Chantler, where forced marriage practices trigger various legal violations that harm women, not only cultural, but other factors such as the weakness of state protection for women reveal the lack of government responsibility.¹⁰⁰ In light of this situation, women increasingly lack the power to voice their choices; they face intimidation from various parties, and authoritarian guardians empowered by state power and customs.

Conclusion

The fatwa issued by female ulama in KUPI is instrumental in condemning forced marriage by emphasizing the imperative to shield women from coercion within marital unions. Grounded in the principles of the KUPI Trilogy—*ma'rūf*, *mubādalah*, and *keadilan hakiki*—this fatwa embodies values of equality and justice. Methodologically, it employs a multifaceted legal approach, incorporating sociological, theological, and juridical perspectives. By interpreting religious texts through the lens of *ma'rūf* and *mubādalah*, and contextualizing genuine justice within women's experiences, the fatwa provides a comprehensive framework for understanding and addressing coercion in marriage. Juridically, it references legal foundations like the 1945 Constitution and relevant legislation, grounding its principles in legal tenets of justice and prohibition of coercion. Furthermore, the fatwa redefines the concept of *wilāyāt al-ijbār* as guardianship responsibility rather than a tool of coercion, thereby offering a holistic and value-based approach to prevent forced marriage and uphold women's rights within marital relationships.

⁹⁸ “Result of Religious Deliberation of the Second Congress of Indonesian Female Ulama (KUPI) No. 06/MK-KUPI-2/XI/2022 on Women's Protection from the Danger of Forced Marriage.”

⁹⁹ Sabbe et al., “Forced Marriage,” 89.

¹⁰⁰ Chantler, Gangoli, and Hester, “Forced Marriage in the UK,” 587–612.

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