

## ARTICLE

# Reassessing Child Welfare in Islamic Jurisprudence: The Abrogation of Guardianship According to Al-Būṭī's *Maslahah* Theory

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## Abstract

**Background:** In numerous Muslim-majority nations, paternal guardianship rights over girls are frequently maintained, despite evidence of the fathers' negligence of their duties. This prompts essential inquiries regarding the equilibrium Islamic legal systems must maintain between father power and child care

**Purpose:** This paper examines the legitimacy of designating inattentive fathers as *wali nikāh* (marriage guardians) in accordance with Islamic law, utilizing Sa'īd Ramadān al-Būṭī's *maslahah* theory as the primary analytical framework

**Methods:** This research utilizes a normative-comparative legal method to analyze classical Islamic law, Indonesia's Compilation of Islamic Law (KHI), and pertinent provisions in Tunisia's Code of Personal Status and Morocco's *Mudawwanah*

**Results:** Research indicates that al-Būṭī's quintuple criteria of *maslahah*—comprising its congruence with *maqāṣid al-shari'ah*, the Qur'an, Sunnah, *qiyās*, and a hierarchy of benefits—can substantiate the revocation of guardianship powers from negligent fathers and their reassignment to judicial authorities. The research illustrates that this principle-based, textually anchored paradigm upholds both legal integrity and child protection.

**Implication:** Theoretically, the research redefines *maslahah* as an instrument for reform within conservative legal frameworks, while practically, it advocates for legal systems such as Indonesia's to implement more explicit statutory exclusions and child-focused policies.

**Originality:** This study's originality is in its conservative yet reformist interpretation of *maslahah*, demonstrating that legal reform is both feasible and essential for upholding justice and ethical oversight within Islamic family law, even within a traditionalist context

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## INTRODUCTION

The dilemma of safeguarding the wellbeing of neglected children via Islamic guardianship laws continues to be a significant issue in Muslim-majority nations. Islamic law underscores the significance of guardianship (*wilayah*) in maintaining family integrity and safeguarding women; nonetheless, it frequently faces challenges when the designated guardian neglects their ethical and legal duties (Taru, 2016). In situations where the guardian is absent, abusive, or using guardianship as a means of coercion, the challenge of reconciling paternal authority with child welfare becomes markedly intricate. In reaction to these challenges, numerous Muslim-majority nations have amended their family laws to

emphasize the wellbeing of children (Ansori & Juliansyahzen, 2022). Tunisia's Code of Personal Status (CSP) (Khedher, 2017) and Morocco's *Mudawwanah* expressly integrate the notion of *maslahah* (public welfare) and child protection into judicial reasoning and legislative reform (Aixelà Cabré, 2007).

This article rigorously assesses Indonesia's methodology for shifting guardianship authority (from *wali nasab* to *wali hakim*) within the context of wider comparative advancements in Islamic family law (Simatupang et al., 2023). This research seeks to establish a globally informed framework for resolving guardianship disputes by referencing reforms in Tunisia, where courts can supersede paternal guardianship to safeguard the child's best interests, and Morocco, where *maslahah mursalah* is pivotal in adjudicating conflicting rights. Prior comparative analyses (Cheruvallil-Contractor et al., 2021) have revealed that Islamic legal systems exhibit considerable variation in their approach to reconciling textual legal principles with contemporary interpretations of child care. Indonesia's Compilation of Islamic Law (KHI) provides legal frameworks for the appointment of a *wali hakim*; nevertheless, it lacks the theoretical rigor and clarity present in other jurisdictions concerning the ethical and *maqasid*-based rationale for the removal of a negligent *wali nasab*.

Although other scholars advocate for the adaptable use of *maslahah mursalah* to tackle modern societal issues, Sa'id Ramadān al-Būtī is distinguished by his methodologically prudent and textually grounded interpretation of this principle (Ulya, 2019). In contrast to al-Ghazālī, al-Syātibī, or al-Ṭūfī, who endorsed wider interpretations of *maslahah* encompassing scenarios not specifically addressed by revealed writings, al-Būtī rigorously confines its application to situations that conform to *maqāṣid al-shari'ah* and do not contravene the Qur'an, Sunnah, or *ijmā'* (Jamhar, 2012). His methodology attacks modernist inclinations to excessively extend *maslahah* in legal reasoning without explicit connections to *naṣṣ* (textual sources), establishing him as a custodian of textual coherence in Islamic legal theory. This study regards al-Būtī's limited framework as a crucial countermeasure against broad interpretations of child care that may jeopardize traditional institutions lacking definitive normative grounding.

This research posits that marriage is a *darūriyyah maslahah*, as it safeguards lineage (*hifz al-nasl*) and assures the lawful perpetuation of Muslim households. Ensuring that a guardian have moral and spiritual competence (*murshid*) constitutes a *taḥsīniyyah maslahah*, thereby improving the ethical character of the marriage process. Transferring guardianship from an unfit *wali nasab* to a *wali hakim* serves both necessary and supplementary *maslahah* objectives, reinforcing the dual responsibilities of safeguarding fundamental rights and advancing moral virtue in Islamic administration. Notwithstanding the depth of this framework, Indonesian legal academia has yet to thoroughly engage with worldwide Islamic legal reform movements, especially in the integration of *maslahah* theories with contemporary child rights frameworks and feminist legal theory. This paper addresses the gap by providing a critical comparative analysis of guardianship laws in Indonesia, Tunisia, and Morocco, while exploring the distinctive normative aspects of al-Būtī's theory in reconciling paternal rights with child care. It engages with modern gender-sensitive scholarship on Islamic legal pluralism, offering the a theoretical and practical framework for ethical reform in Muslim family law.

## LITERATURE REVIEW

### 1. The Concept of *Maslahah* in Islamic Jurisprudence: Al-Būtī's Constrained Perspective

The principle of *maslahah* (public interest) has historically been crucial in Islamic law, especially in the absence of explicit instruction from textual sources. Classical jurists such as

al-Ghazali, al-Syatibi, and Ibn Ashur contended that *maslahah mursalah* could validate new legal verdicts if they align with the objectives of shariah (Isnaini, 2020). These jurists permitted greater flexibility, asserting that the essence of the law should supersede its strict interpretation. This transparency occasionally attracted criticism for facilitating legal exploitation under the pretense of public interest. Academics expressed apprehensions with the subjective criteria for defining public benefit in the absence of scriptural limitations. Their interpretations facilitated reformist objectives but also jeopardized legal coherence. This tension established the groundwork for academics such as Sa'id Ramadan al-Būṭī to propose a more limited and textualist methodology (Amirullah, 2021).

Al-Būṭī's viewpoint on *maslahah* is characterized by a strong emphasis on rigorous compliance with the Qur'an, Sunnah, and *ijma'*. He contended that *maslahah mursalah* is inapplicable in instances that contradict or evade divine texts. Al-Būṭī asserts that any demand of public interest must be closely linked to the five fundamental *maqasid*: the safeguarding of religion, life, intellect, progeny, and wealth. He further asserted that any application of *maslahah* must preserve the integrity of legal maxims and should not permit legislative caprice. In this manner, al-Būṭī established himself as a custodian of textual integrity, countering scholars who preferred unfounded reasoning. His view emphasizes a balance between the spirit and the letter of the law, with greater emphasis on the latter. This textualist framework has profoundly influenced discussions over legal procedures in contemporary Islamic philosophy (Arfan, 2013).

Prior literature has frequently concentrated on jurists advocating for more adaptable or reformist methodologies, so underappreciating experts such as al-Būṭī. Numerous scholarly publications extol al-Syatibi's purposive theory and Ibn Ashur's focus on societal benefit (- & -, 2023), however seldom juxtapose them with al-Būṭī's measured perspective. The academic representation of *maslahah* has predominantly favored permissiveness and liberal adaptability. This disparity influences the formulation of contemporary Islamic law, particularly under state legal frameworks. Insufficient attention has been devoted to the risk-averse characteristics of al-Būṭī's doctrine and its emphasis on eschewing speculative legislation. Furthermore, the distinctive merit of al-Būṭī's approach for safeguarding scriptural integrity is frequently disregarded in modern discussions. This gap underscores the need to reevaluate and incorporate his ideas into modern legal discussions.

This article addresses the existing literature gap by implementing al-Būṭī's theory in the context of judicial guardianship. In Indonesia, inquiries regarding the circumstances under which a judge may supersede a *nasab* (biological) guardian necessitate a precise equilibrium between textual fidelity and child welfare. Al-Būṭī's *maslahah* theory provides a framework for judicial involvement alone in instances where such action is consistent with fundamental *maqasid* and does not contravene shariah teachings. This facilitates a logical method for reconciling paternal rights with child protection, rather than depending on subjective interpretations. The framework also prevents arbitrary expansion by requiring clear, identified harms prior to allowing legal deviation. Al-Būṭī presents a systematic framework for legal reform that honors both divine power and human well-being. This dual commitment differentiates his theory from broader jurisprudential frameworks.

This research employs al-Būṭī's framework to provide a normative perspective on the judicial function in superseding guardianship. The article portrays al-Būṭī not only as a conservative jurist but also as a protector against legal overreach under the guise of child welfare. His idea offers an alternative to secular rights-based frameworks that may overlook religious limitations. It also enhances Indonesia's hybrid legal framework, which integrates state law with Islamic legal principles. The article utilizes al-Būṭī's theory to address the significant deficiency in previous research, which lack a comprehensive shariah-based framework for judicial guardianship intervention. This methodology harmonizes ethical considerations with legal conventions, rendering it pertinent to reform discussions in

Muslim-majority countries. Ultimately, al-Būṭī's *maslahah* theory facilitates a conception of guardianship that is both safeguarding and principled.

## 2. *Guardianship (Wilayah) in Islamic Jurisprudence*

In ancient Islamic law, *wilayah* denotes the legal authority and obligation assigned to some individuals over others, especially concerning marriage (Yilmaz, 2020). Most conventional scholars, including those from the Shafi'i, Hanbali, and Maliki schools, stipulate the necessity of a marriage guardian (*wali*) for the validity of the marriage. The Hanafis let an adult woman to independently enter into marriage under certain conditions. This disagreement exemplifies a conflict between paternal authority and female autonomy in Islamic jurisprudence. Over time, *wilayah* has transformed from a solely familial notion into a disputed legal mechanism inside contemporary governmental frameworks. The state-appointed *wali hakim* (guardian judge) has arisen to address deficiencies where a blood-relative guardian is unavailable, unfair, or abusive (Tan, 2018). This change signifies the increasing influence of state authority in family law adjudication.

The evolution of *wilayah* in state law indicates a growing dependence on judicial discretion, frequently rationalized by references to *maslahah* or public interest. In Indonesia, the Compilation of Islamic Law (KHI) permits judges to assume the role of guardians in instances of absence or refusal by a biological *wali* (Riadi, 2021). However, difficulties emerge when judges supersede *nasab* guardians under unclear circumstances, prompting apprehensions regarding legal clarity and familial integrity. Conversely, Morocco's *Mudawwanah* has distinctly redefined guardianship by emphasizing mutual agreement and the welfare of the bride. Tunisia has eliminated guardianship in marriage for adult women entirely, promoting full legal autonomy. These revisions, based on constitutional principles and Islamic doctrine, have incited discussions regarding the boundaries of traditional *wilayah*. While empowering, they also provoke inquiries regarding the extent to which reinterpretation can occur without compromising fundamental principles.

Prior studies have investigated *wilayah* concerning women's legal capacity and governmental interference. Certain studies emphasize that state codification has enhanced protections for women, whilst others criticize the inconsistent execution of judicial guardianship. Research in Indonesia frequently focuses on the procedural dimensions of appointing a *wali hakim* and the validity of guardian substitution (Ridho et al., 2022; Setiawan, 2014). Nevertheless, limited research connects these dialogues to profound theological inquiries, including the spiritual and moral criteria of a guardian (*murshid*). Furthermore, a significant portion of the literature overlooks comparative research with nations such as Tunisia and Morocco, which have implemented substantial legal reforms. These omissions undermine the establishment of a coherent framework for ethical and effective guardianship within Islamic contexts. Consequently, there is an urgent necessity to incorporate legal, theological, and comparative aspects into guardianship study.

A primary criticism of the current literature is its neglect of the junction between guardianship and the concepts of justice and child welfare. Numerous works regard *wilayah* as a definitive legal responsibility instead of a trust (*amanah*) that may be rescinded upon misuse (Syabab, 2022). Moreover, research frequently neglects to examine the patriarchal assumptions inherent in guardianship legislation, particularly in instances involving negligent or absent dads. The connection between a guardian's ethical shortcomings and his legal power is inadequately conceptualized. This results in legal gaps that allow detrimental guardians to maintain authority based on ancestry rather than competence. The issue is exacerbated when judicial rulings fail to explicitly reference *maqashid* or ethical standards such as *maslahah*. As a result, changes are susceptible to inconsistency and judicial discretion in the absence of a cohesive moral framework.

This paper addresses these limits by examining the ethical aspects of *wilayah* through al-Buthi's *maslahah* theory, especially in instances of paternal neglect. It underscores that guardianship should not solely rely on biological connection, but rather on the capacity to maintain justice and promote public welfare. This study presents a paradigm for the morally and legally appropriate transfer of guardianship by blending classical principles with comparative legal observations from Tunisia and Morocco. It contends that *wilayah* should fulfill its fundamental role of safeguarding the ward's interests rather than only maintaining lineage formalism. Consequently, the article presents a principled and contextually aware methodology for assessing guardianship assertions. It addresses a significant deficiency by advocating for a spiritually informed criterion for legal involvement. This methodology not only conforms to traditional Islamic principles but also tackles modern issues of justice and legal responsibility.

### 3. Child Welfare and Feminist Legal Reforms in Islamic Contexts

The notion of child welfare in Islamic jurisprudence is grounded on the *maqasid al-shariah*, namely the aims of safeguarding lineage (*hifz al-nasl*) and life (*hifz al-nafs*). Classical Islamic jurists acknowledged the susceptibility of children and established safeguards under guardianship and custody legislation (Cikka, 2022). Contemporary researchers and activists contend that these safeguards are frequently construed restrictively, prioritizing compliance with guardians over the child's welfare (Tan, 2018). Feminist legal theorists advocate for a reevaluation of Islamic legal standards from a rights-based perspective (McTavish et al., 2022). This encompasses difficult paternalistic interpretations of *wilayah* that overlook a child's actual experiences of abuse or neglect. Academics such as Ziba Mir-Hosseini and Asifa Quraishi have underscored the necessity of prioritizing the child's welfare over the maintenance of male dominance (Azzopardi et al., 2022). Consequently, child welfare is increasingly regarded not merely as a religious obligation but as a legal and ethical necessity.

Legal changes in various Muslim-majority nations have integrated child rights into family law frameworks, frequently shaped by international agreements such as the UNCRC. Tunisia's Code du Statut Personnel specifically prioritizes the child's welfare and permits court scrutiny of parental actions (Voorhoeve, 2018). The *Mudawwanah* of Morocco prioritizes *maslahah mursalah* in adjudicating custody and guardianship matters (Aixelà Cabré, 2007). In Malaysia, Syariah courts are progressively implementing the principle of the best interest of the child (*maslahah al-tifl*) in guardianship conflicts (Rahmat et al., 2021). Nonetheless, these improvements have ignited discussions regarding cultural authenticity and legal legitimacy. Critics contend that the incorporation of global human rights standards into Islamic law threatens to marginalize conventional jurisprudence. Proponents argue that Islamic principles align with progressive interpretations of justice and wellbeing. This contradiction embodies wider conflicts over power and change within modern Islamic jurisprudence.

Current research has recorded both the potential benefits and drawbacks of child-centered legislation reforms. Research on Morocco and Tunisia (Aixelà Cabré, 2007; Voorhoeve, 2018) underscores the significance of legislative clarity in strengthening rights for children in custody and marriage conflicts. In Indonesia, researchers have analyzed the procedural function of judges in establishing guardianship, however ethical factors have received comparatively little focus. Research from Malaysia demonstrates the evolution of Syariah courts in prioritizing child care, occasionally contrary to the preferences of biological guardians (Rahmat et al., 2021). Nevertheless, limited research investigates how classic Islamic legal ideas, such as al-Buthi's *maslahah*, can act as a conduit between reformist and conservative viewpoints. Moreover, feminist critiques of guardianship are hardly included into theological analysis, so constraining their normative efficacy. The absence of integration between rights-based campaigning and traditional law undermines the theoretical consistency of current ideas.

The primary deficiency in the existing literature is its inability to provide a cohesive framework that honors both child rights and the principles of Islamic jurisprudence. Numerous reformist initiatives predominantly depend on international human rights law, lacking a foundation in usul al-fiqh or maqashid frameworks. This engenders a legitimacy deficit in circumstances where religious authority retains significant influence. Conversely, conservative opposition frequently disregards valid child safety issues as Western impositions. An analytical approach is required to reconcile child rights with Islamic legal theory, particularly with guardianship and familial neglect. Al-Buthi's paradigm, emphasizing maqashid-compliant *maslahah*, presents a viable option. Nonetheless, his contributions are still little utilized in feminist and child rights literature. Rectifying this deficiency can augment both the legitimacy and efficacy of Islamic legal reform initiatives.

This study seeks to integrate feminist legal issues with the ethical precision of al-Buthi's *maslahah* philosophy. It presents a comprehensive framework that enables judges to intervene in guardianship matters using moral and religious standards. This research contextualizes child welfare within Islamic epistemology, in contrast to studies that depend exclusively on statutory provisions or human rights rhetoric. It underscores that the removal of an unsuitable guardian is both legally sanctioned and religiously obligatory according to the principles of *maslahah* and '*adl*'. This methodology offers a more credible and efficient instrument for legal reform in various Muslim situations. Furthermore, it promotes interdisciplinary discourse among Islamic jurisprudence, feminist legal theory, and child protection study. The paper thus advances a principled yet flexible model of Islamic family law that prioritizes the child's best interest.

## RESEARCH METHODS

This study utilizes a qualitative, normative legal framework along with comparative legal analysis to assess the legitimacy and ethical ramifications of marriage guardianship in cases when the biological (nasab) guardian has neglected their moral and parenting duties. The selection of normative legal study is warranted by the significance of written Islamic legal sources and state-imposed family laws in influencing jurisprudence in Muslim-majority regions. This study is fundamentally based on the *Maslahah* theory of Sa'id Ramadhan al-Būtī, which stipulates that all assertions of public interest (*maslahah*) must be derived from textual sources (Qur'an, Sunnah, and *ijma'*). Al-Būtī's framework is particularly adept at addressing contemporary legal issues, such as disputed guardianship, while preserving the underlying authority of classical Islamic jurisprudence.

The unit of analysis in this study comprises primary Islamic legal texts (fiqh literature, legal maxims, and relevant Qur'anic and Hadith sources), statutory family law documents from Indonesia, Tunisia, and Morocco (including the Compilation of Islamic Law, Tunisia's Code of Personal Status, and Morocco's *Mudawwanah*), as well as judicial rulings and fatwas pertaining to marriage guardianship and child welfare. The text selection was executed intentionally, grounded in legal significance, doctrinal authority, and the representational diversity of Islamic legal traditions. Particular emphasis was placed on texts that expressly discuss the moral qualifications of the guardian (*murshid*), *maslahah*-based exceptions to paternal power, and procedural transitions to judicial guardianship. For analytical coherence, texts were classified into four categories: (1) fundamental Islamic texts, (2) traditional fiqh commentaries, (3) national statute legislation, and (4) judicial or fatwa-based precedents.

The analytical process employed a qualitative doctrinal analysis, organized into three phases: (1) textual validation, wherein interpretations were verified against the Qur'an, Sunnah, and *ijma'*; (2) comparative reasoning, in which doctrinal positions were juxtaposed across three jurisdictions (Indonesia, Tunisia, and Morocco); and (3) thematic interpretation,

where legal, ethical, and procedural patterns were synthesized. The study, albeit not empirical, utilized thematic analytic frameworks to organize interpretive findings across the aspects of *maslahah*: *daruriyyah* (necessity), *hajiyah* (complementary), and *tahsiniyyah* (enhancement). These categories were employed to assess the extent to which the removal of an unsuitable guardian achieves the layered purposes of Sharia (*maqasid al-shariah*).

To guarantee theoretical credibility and interpretive validity, the research utilized triangulation via multi-source legal analysis (textual, statutory, judicial). Furthermore, comparative case validation was conducted by analyzing documented instances in Tunisia and Morocco when judicial authorities circumvented biological guardians in favor of child welfare. This facilitated the evaluation of the alignment of such judgments with al-Būṭī's *maslahah* standards and differentiated between textually based interventions and merely utilitarian expansions. Reflexivity was considered by recognizing the author's positionality as a Muslim legal expert immersed in Indonesian Islamic legal culture and knowledgeable about North African reforms. This perspective provides interpretive clarity but also poses the danger of normative bias, which is alleviated through systematic adherence to textual criteria and cross-jurisdictional analysis.

This research exemplifies practical Islamic jurisprudence (*fiqh al-waqi'*) influenced by al-Būṭī's theory, utilizing normative legal reasoning to present a systematic, ethically sound, and textually accurate solution to family law challenges. It demonstrates that *maslahah* theory, when firmly rooted in classical sources, can function not just as a rhetorical instrument but also as a dependable approach for crafting equitable and spiritually consistent judicial rulings. The research seeks to solve the legal deficiencies in Indonesia while also contributing to wider discussions on Islamic legal reform and child protection in Muslim-majority nations.

## RESULTS

### 1. *Guardianship as per the Compilation of Islamic Law (KHI) in Indonesia*

The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), as the primary reference for Islamic family law in Indonesia, stipulates the requirement of a marriage guardian (*wali*) for a woman. In contrast to the intricate doctrinal discussions seen in classical *fiqh*, the KHI fails to provide a clear definition of the moral and legal criteria for a guardian, nor does it specify the situations that would prohibit a father from serving as a *wali*. Article 20 of the KHI stipulates that the father is the principal guardian, whereas Article 23 permits the delegation of guardianship to a judge alone in instances when the nasab guardian is missing, unidentified, or declines to arrange a marriage for the woman without just cause. The legal silence about moral disqualification creates considerable difficulty, particularly in instances of parental negligence.

Judicial practice indicates that, in the lack of stated criteria, Indonesian religious courts frequently depend on judicial reasoning based on *maslahah* (public interest) when determining to overrule or transfer guardianship. Judges are obligated to evaluate the father's ethical and functional competence, especially where his negligence has clearly adversely affected the daughter's well-being. For example, rulings from the Pengadilan Agama (Religious Courts) in areas like East Java and South Sulawesi illustrate instances where judges designated a *wali hakim* after concluding that the biological father had neglected the child, solicited financial compensation for marriage approval, or had been absent from the child's upbringing. These verdicts were predicated on a *maslahah*-centric view of guardianship.

Notwithstanding these pragmatic remedies, judicial discretion under the KHI is nevertheless limited by insufficient textual and procedural clarity. Judges frequently

encounter ambiguity in utilizing *maslahah* as a legal instrument due to apprehensions regarding backlash, possible legal challenges, or accusations of exceeding their jurisdiction. The lack of established criteria for assessing "unfit" guardians leads to varied implementation across jurisdictions. Furthermore, while KHI does not explicitly acknowledge moral disqualification, judges face the potential of being accused of contravening the principle of nasab guardianship, even when acting in the child's best interests.

Academics have criticized this uncertainty, contending that it jeopardizes the child's wellbeing to patriarchal interpretations of Islamic law. Feminist legal scholars, including Nani Soewondo and Lies Marcoes, have observed that the emphasis on lineage rather than welfare in marriage guardianship frequently perpetuates male dominance over female autonomy. This framework positions young women—particularly those forsaken or exploited by their fathers—in a vulnerable legal status. The lack of stringent disqualification requirements signifies a significant disparity between established legal protections and the actual experiences among Indonesian Muslim communities. This article argues that the Indonesian system may improve by including a more explicit *maslahah*-based framework, like that suggested by al-Būtī, to address the normative gaps in the KHI and enhance guardianship decisions in favor of neglected children. In contrast to traditional ideologies that emphasize lineage irrespective of suitability, or the KHI that refrains from delineating ethical foundations, a *maslahah*-oriented framework would highlight child protection as a fundamental legal principle. This reform would clarify judicial discretion and establish a more consistent and ethically sound approach to guardianship in modern Islamic family law in Indonesia.

## 2. Tunisia: Enshrined Child Protection and *Maslahah* in the Code of Personal Status (CSP)

Tunisia exemplifies a progressive approach to integrating *maslahah* and child care within a contemporary Islamic legal framework. Since the implementation of the Code du Statut Personnel (CSP) in 1956, Tunisia has explicitly incorporated ideas of equity and welfare into family law, diminishing patriarchal authority and enhancing judicial power to safeguard vulnerable family members—particularly women and children. Articles 67–70 of the CSP permit courts to circumvent paternal guardianship where it jeopardizes the child's welfare, so institutionalizing a *maslahah*-oriented criterion. Tunisian family law employs *maslahah* as a legislative principle instead of depending on case-by-case *ijtihād*. This structural approach signifies a purposeful transition from interpretive jurisprudence (fiqh) to codified child protection that harmonizes with Islamic ethics and human rights principles. Tunisian courts have the authority to annul guardianship when the father is deemed unsuitable, negligent, or absent, devoid of the procedural uncertainty seen in Indonesia's KHI.

The Tunisian model regards *maslahah* not only as a conceptual instrument but also as a fundamental principle for the interpretation and application of family law. Academics like Mounira Charrad and Souad Triki have observed that the CSP intentionally undermines the conventional authority of male guardians (*wilāyah*) by prioritizing the child's best interest (*maslahat al-mawlūd*). Tunisian jurisprudence, unlike traditional fiqh, conceptualizes guardianship as a conditional obligation susceptible to judicial scrutiny rather than a permanent paternal entitlement. For instance, if a father requires financial remuneration to consent to his daughter's marriage or neglects his parental responsibilities, judges may confer guardianship to the mother or another accountable relative. Tunisian courts have integrated *maslahah mursalah* into legal procedure and philosophy, transcending its previous role as a mere occasional justification.

Tunisian academics have discussed whether this alteration of guardianship diminishes Islamic legal tradition or constitutes a valid *ijtihād* based on *maqāṣid al-shari‘ah*. Advocates

contend that this reform embodies the primary principles of Sharia—specifically *hifz al-nafs* (protection of life) and *hifz al-nasl* (protection of lineage). Critics, however, perceive the amendments as exceeding the limits of *nusus* (textual sources) by empowering courts to supersede paternal authority. When analyzed through the prism of al-Būṭī's *maslahah* framework, the Tunisian method effectively corresponds with its fundamental criteria: safeguarding vital interests, ensuring compatibility with the Qur'an and Sunnah, and emphasizing the paramount public good. Tunisia exemplifies a pragmatic use of conservative *maslahah* principles in a formally codified structure.

Tunisia's codification also mitigates the likelihood of conflicting judicial decisions, as observed in Indonesia. The legal criteria for withdrawing guardianship are explicit, and *maslahah* is employed not as a subjective rationale but as a normative criterion. The CSP enables judges to prioritize the child's dignity, psychological safety, and educational requirements—criteria lacking in traditional law yet vital in contemporary family dynamics. Tunisian courts benefit from a cohesive legal training structure that incorporates *maslahah* within judicial ethics and procedural law. This institutionalization allows family judges to manage intricate cases, including those with negligent dads, without the danger of breaching textualist limitations or provoking societal resentment. Tunisia exemplifies the structural incorporation of *maslahah* into national legislation while preserving Islamic legal principles. The CSP has facilitated a transition from guardianship as an inherent male entitlement to a conditional trust predicated on capability and care. This method corresponds with al-Būṭī's advocacy for confining *maslahah* to instances that uphold the *maqāṣid* and do not contravene *naṣṣ*. Indonesia may take cues from Tunisia by revising KHI to incorporate objective standards for disqualifying unsuitable guardians and by embedding *maslahah* as a principled legal mechanism rather than a discretionary one.

### 3. Morocco: Patriarchal Authority in the *Mudawwanah*

Morocco exemplifies the integration of *maslahah* into family law reform, notably through the 2004 amendment of the *Mudawwanah* (Moroccan Family Code). In contrast to Indonesia's disjointed implementation of *maslahah*, Morocco has formalized the idea into enforceable legal standards that redefine gender roles in guardianship and parental authority. The *Mudawwanah* specifically recognizes the child's best interest as the primary criterion in judicial decisions regarding guardianship issues (Article 175). It further specifies that parental authority (*wilāyah*) is a shared obligation between the mother and father, diverging from the classical tradition that assigns guardianship exclusively to men. This signifies a significant shift in jurisprudence, embodying both international human rights discourse and Islamic legal principles rooted in *maqāṣid al-shari'ah*. Instead of applying *maslahah* on an individual basis, Moroccan law incorporates it as a fundamental principle for evaluating suitability for guardianship.

The Moroccan legal reform, influenced by both ulama and feminist legal proponents, emphasizes *maslahah mursalah*—a principle enabling jurists to act in the public interest in the absence of textual sources. The amended *Mudawwanah* employs this principle to validate judicial power in altering or rescinding guardianship when the parent (often the father) acts against the child's best interests. For example, if a father neglects or abuses his role as guardian—by withholding marriage consent, soliciting bribes, or failing to offer support—courts may intervene and reallocate guardianship. This model interprets *maslahah* not through a limited textualist lens but in accordance with the changing requirements of Moroccan society. Nevertheless, these modifications are still rationalized by the superior aims of Islamic law (*maqāṣid*), specifically *hifz al-nafs* and *hifz al-nasl*.

Notwithstanding its progressive nature, the Moroccan reform adheres to Islamic jurisprudence by implementing *maslahah* within a defined legal framework. Judicial bodies are adept at reconciling religious principles with the constitutional rights of women and

children, frequently employing *maslahah* to align traditional values with contemporary family dynamics. Academics like Ziba Mir-Hosseini and Abdessamad Dialmy observe that Moroccan judges are progressively invoking *maslahah mursalah* to reconcile patriarchal conceptions of *wilayah* with the actual circumstances of child neglect or abuse. This institutional acknowledgment has diminished judicial discrepancies, enabling courts to act resolutely when guardianship jeopardizes a child's well-being. Consequently, *maslahah* serves as a conduit between legal continuity and essential transformation.

The Moroccan method presents significant differences compared to Indonesia's dependence on judicial interpretation and the discretionary use of *maslahah* in religious courts. In Indonesia, judges frequently encounter difficulties when textual sources are ambiguous or silent, particularly concerning the guardianship rights of negligent fathers. In contrast, Morocco's incorporation of *maslahah* into legal standards facilitates more consistent and principled adjudications. Moreover, the *Mudawwanah* recognizes the evolving character of familial structures, permitting the re-evaluation of guardianship regulations to confront modern social issues—such as increasing divorce rates, child neglect, and gender disparities in parental power.

This approach proposes a pathway for Indonesia: shifting from a procedural and discretionary application of *maslahah* to its systematic integration inside the KHI or an amended family law code. The *Mudawwanah* of Morocco illustrates the reconciliation of Islamic legal concepts with international human rights standards, while preserving adherence to the textual and ethical foundations of Islamic law. By acknowledging *maslahah* as a legal and ethical obligation, Moroccan family law enables courts to prioritize justice and child welfare over patriarchal traditions—an approach that may provide a significant example for legal change in Indonesia.

## DISCUSSION

### 1. Classical Fiqh: Textual Exegeses and Theological Perspectives

Islamic jurisprudence (fiqh) offers a detailed framework for comprehending guardianship (*wilayah*) in marriage, especially about the credentials necessary for a guardian. Syarifuddin (2018) argue that predominant stance among most Sunni schools—Shāfi‘ī, Mālikī, and Ḥanbali—is that a marriage guardian must exhibit the qualities of 'adalah (moral integrity) and rusyd (legal and moral maturity). These criteria stem from textual analyses of prophetic traditions, exemplified by the ḥadīth "*lā nikāḥa illā bi-waliyyin murshid wa shāhīday 'adlin*." This fundamental legal principle necessitates the presence of both just witnesses and a morally upright guardian (murshid) for a marriage to be deemed genuine. Scholars like Imām al-Nawawī and al-Juwaynī asserted that a guardian who is *fāsiq* (overtly immoral or negligent) loses his legal authority to fulfill a guardianship job. The discourse, however, is not homogeneous. Certain Ḥanafī jurists authorize guardianship by a *fāsiq* with the bride's assent, demonstrating variation rooted in interpretive principles and assumptions regarding consent and moral agency (Tan, 2018).

An analysis of classical texts identifies three main grounds for disqualification from guardianship: moral incompetence (*fisq*), intellectual incapacity (*safah*), and conflict of interest. Imām al-Shāfi‘ī asserted that a guardian must not only be equitable but also possess good judgment to safeguard the bride's interests, associating the concept of rusyd with financial and moral competence. Ibn al-Rushd, in *Bidāyat al-Mujtahid*, organizes these talks and recognizes the commonalities and distinctions among the four schools, demonstrating that despite their doctrinal divergences, all prioritize the welfare and protection of women. Al-Jazīrī, a contemporary Mālikī jurist, affirms that depravity (*fisq*) nullifies guardianship in all four madhhabs. The Ḥanafī school uniquely regards *wilayah* as both delegable and contingent upon permission, particularly for adult women. Nonetheless, following Ḥanafī

doctrine, a mujbir guardian forfeits jurisdiction if he suggests a partner who lacks *kuf* (suitability). This condition signifies an inherent safeguard against the misuse of power (Saleh et al., 2020).

The concept of *rusyd* frequently appears as a moral and legal benchmark in many writings, suggesting that guardianship is not an inherent paternal entitlement but a fiduciary responsibility contingent upon competence. This emphasis positions the moral credentials of the guardian alongside procedural requirements like as witness evidence and *ijāb-qabūl*. Consequently, a father who has persistently disregarded his daughter—neglecting to offer financial, emotional, or religious support—may be deemed deficient in *rusyd* and, consequently, ‘adālah. In such instances, the classical legal system advocates for the transfer of guardianship to the next qualified agnate or, finally, to a judge (*walī hākim*). Classical fiqh, especially within the Shāfi‘ī school, regards guardianship not merely as a familial entitlement but as a conditioned legal obligation rooted in trust and safeguarding. Guardianship is revoked under the doctrine of *wilāyah bi al-maṣlahah* when it becomes a source of harm or exploitation. These principles provide doctrinal latitude for reform, especially in instances concerning negligent fathers (Ali, 2021).

Notwithstanding these robust underpinnings, classical fiqh literature frequently lacks explicit operational tools for the judicial assessment of guardian wrongdoing. Numerous classical jurists depended on assumptions of parental benevolence, which are progressively scrutinized in contemporary situations concerning child neglect, abuse, or coercion. Classical literature has a notable paucity of discourse on the junction of guardianship and prolonged desertion, especially in instances where the father has been absent from his daughter's upbringing. Although the idea of *wilāyah* is theoretically considered reversible, its actual application has typically relied on the initiative of male relatives or judicial discretion. Furthermore, classical literature frequently inadequately theorize the systemic female power dynamics inherent in guardianship practices. This study tackles the gap created by the lack of lived contextual analysis in these sources. This underscores the necessity for interpretive frameworks—such as that of al-Būtī—that amalgamate traditional legal integrity with modern justice considerations.

This article expands on these doctrinal foundations while presenting a more sophisticated interpretive approach through the perspective of al-Būtī's idea of *maṣlahah*. It rigorously challenges the notion that biological paternity alone suffices for guardianship, contending that *rusyd* and ‘adālah must be assessed in the context of ongoing parental involvement. It underscores how classical ideas facilitate legal innovation based on textual faithfulness and ethical accountability. This study organizes the principles of justice, fitness, and moral agency thematically, creating a practical framework that harmonizes traditional fiqh with modern child welfare requirements. This addresses the deficiency in current research that has either excessively depended on formalist interpretations or overlooked the ethical dimensions of guardianship. This section analyzes Indonesia's Kompilasi Hukum Islam (KHI) to investigate the codification or omission of classical ideas in statutory Islamic family law. It subsequently juxtaposes this with al-Būtī's *maslahah* standards to evaluate the legal and moral propriety of substituting a negligent father.

## 2. Al-Būtī's Framework: Five Criteria for *Maslahah* for Indonesian Legal Structure

The implementation of *maslahah* in Indonesian religious courts is frequently positioned within the legal structure of the Compilation of Islamic Law (KHI), which does not provide specific exclusions for unsuitable guardians. This omission imposes considerable interpretive obligation on judges to reconcile textual requirements with ethical reality, especially in cases concerning neglected children. Judges in religious courts often cite *maslahah* as the rationale for assigning guardianship to a *wali hakim* when a biological father is either unavailable or unwilling to act in the child's best interest. Nonetheless, the verdicts

are profoundly contextual, demonstrating discrepancies in judges' interpretations of injury (*mafsadah*), responsibility (*amanah*), and paternal rights. This section provides case-based evidence demonstrating how Indonesian judges navigate this balancing act, while also emphasizing the constraints imposed by the textual ambiguity of KHI. The analysis provides a comprehensive understanding of how al-Būṭī's *maslahah* framework can offer more systematic guidance in these instances. By anchoring judicial discretion in a theoretically coherent framework, Indonesia could transition from discretionary judgments to norm-based reform.

A 2019 case in the Religious Court of Surabaya (Case No. 3723/Pdt.G/2019/PA.Sby) concerned a woman whose father had deserted her in childhood, but later returned seeking a dowry to serve as her *wali*. The judge favored the lady and assigned guardianship to a *wali hakim*, referencing Article 23 of the KHI and the *maslahah* of upholding justice and moral integrity. The ruling emphasized that guardianship is not simply a biological right but a *sharī'* obligation necessitating 'adalah (upright character) and diligence. The judge cited Qur'anic injunctions regarding trust (4:58) and other hadiths concerning murshid guardians, closely aligning with the rationale of al-Būṭī's textualist *maslahah* framework. Judicial reasoning transitioned from strict formalism to ethical priority, reconciling normative fiqh with actual experiences. The court underscored that *maslahah* pertains not merely to practicality, but to preserving the spiritual purity of marriage. This case confirms that *maslahah*, when organized according to al-Būṭī's criteria, can function as a strong legal instrument for principled family law adjudication.

However, the dependence on *maslahah* by Indonesian courts is frequently inconsistent owing to an absence of regulated interpretation rules. Judges often neglect to delineate the five conditions of *maslahah* or differentiate between *maslahah mu'tabarah* (validated benefit) and *maslahah mulghah* (rejected benefit). Without formal guidelines, personal judicial discretion serves as a double-edged sword: it facilitates responsiveness to individual cases while simultaneously engendering unpredictability and inconsistency. A 2021 case in Makassar demonstrated a divergent decision in a virtually same scenario, as the judge contended that the biological father's ceremonial presence, albeit lacking substantial contribution, was adequate to satisfy his role. This indicates that in the absence of a framework such as al-Būṭī's to direct the application of *maslahah*, analogous circumstances may result in divergent verdicts. Incorporating such frameworks into judicial training or standard operating procedures will facilitate the harmonization of verdicts and diminish arbitrariness.

*Maslahah* serves a dual legal and ethical role in these judicial rulings. Judges endeavor to adhere to legal protocols while also striving to maintain communal ethics, social harmony, and moral purity. In this context, *maslahah* serves as both a legal rationale and an ethical guide. In Indonesia, religious courts frequently invoke the moral authority of Islam to rationalize rulings that may not be specifically outlined in the KHI. Nonetheless, this ethical function remains inadequately articulated, necessitating that judges depend on their personal interpretation of what defines community or spiritual harm. Al-Būṭī's paradigm, which associates *maslahah* exclusively with the Qur'an, Sunnah, *ijmā'*, and *qiyās*, establishes more defined epistemic limits for ethical discretion, safeguarding against the misuse or inconsistent application of religious authority.

The necessity to systematize *maslahah* thinking in family law has intensified due to the increasing incidence of child neglect, fractured families, and disagreements over legal guardianship. Judges function in a legal void when guardianship cases entail disputed claims and unsuitable dads. The transition to *maslahah*-based rulings indicates a wider movement in Indonesian Islamic law towards *maqāṣid*-oriented interpretations; yet, lacking a solid theoretical foundation, it may devolve into legal pragmatism. Al-Būṭī's orthodox yet systematic approach provides a balanced perspective—upholding traditional fiqh while

integrating modern ethical considerations. It urges judges to function not solely within positive law but also within a rational interpretive tradition that safeguards both textual integrity and practical justice.

In conclusion, the Indonesian case illustrates the potential and constraints of *maslahah* in practical adjudication. Although religious justices have employed *maslahah* to safeguard neglected women from unsuitable guardians, the absence of systematic standards compromises uniformity and accountability. Integrating al-Būtī's five-fold *maslahah* framework into judicial training and legal analysis of KHI could enhance the quality and predictability of rulings. The Indonesian setting exemplifies the coexistence of tradition and reform, when directed by principled legal theory. This establishes a foundation for comparative analysis with Tunisia and Morocco, where *maslahah* has been more

Sheikh Sa'īd Ramadān al-Būtī provides a very methodical framework for the application of the notion of *maslahah* (public benefit) within Islamic jurisprudence. In contrast to scholars like al-Ṭūfī and al-Shaṭibī, who permit broad interpretations of *maslahah mursalah*, al-Būtī confines its use to instances that are entirely consistent with the Qur'an, Sunnah, *ijmā'* (consensus), and *qiyās* (analogical reasoning). His methodology delineates five evaluative criteria to ascertain the validity of using a suggested *maslahah* as a foundation for judicial determinations. The criteria encompass: (1) conformity with *maqāṣid al-shari'ah*, (2) absence of contradiction with the Qur'an, (3) absence of disagreement with Sunnah, (4) coherence with *qiyās*, and (5) prioritizing according to the hierarchy of advantages. This section illustrates that the exclusion of a negligent father from the position of *wali nikah* (marriage guardian) fulfills all five criteria, thereby establishing a valid instance of *maslahah mu'tabarah*.

The suggested transfer of guardianship directly corresponds with the fundamental *maqāṣid al-shari'ah*, specifically *hifz al-nafs* (protection of life), *hifz al-din* (protection of religion), and *hifz al-nasl* (protection of lineage). A guardian who neglects to nurture, rear, or safeguard his daughter contravenes these ideals, thereby jeopardizing her emotional, physical, and spiritual welfare. Conversely, assigning guardianship to a *wali hākim* guarantees her entitlement to marry legally and with honor, safeguarding her lineage and upholding the societal role of marriage in accordance with Islamic law. This unequivocally satisfies al-Būtī's initial requirement, wherein any *maslahah* must function within the parameters of Sharia aims. The inability to dismiss an unsuitable guardian would represent *mafsadah* (damage), undermining the purpose of *shari'ah* (Arfan, 2013).

Secondly, the *maslahah* does not contradict any explicit textual directive (*naṣṣ*) from the Qur'an. It is instead underpinned by Qur'anic tenets, exemplified in Sūrah al-Nisā' [4:58], which instructs the faithful to assign obligations solely to those who are deserving and equitable. The passage asserts that fairness and competence are essential elements for fulfilling *amānah* (trust), with guardianship in marriage constituting a form of *amānah*. A neglectful or incompetent father attempting to maintain guardianship despite his failure to perform paternal responsibilities violates the moral and legal trust mandated by the Qur'anic injunction. Consequently, this delegation of authority aligns with Scripture and serves to implement it.

Third, the suggested action also fulfills the criterion based on Sunnah. Numerous ḥadīth, such as "lā nikāḥa illā bi-waliyyin murshid" (no lawful marriage save with a righteous and competent guardian), expressly affirm the requirement of a guardian who is both ethically sound and capable of working in the bride's best interest. Al-Būtī's framework stipulates that *maslahah* must not conflict with the Sunnah, particularly *mutawātir* or well-established legal principles. The removal of a negligent parent from guardianship aligns with the Prophet's guidance by ensuring that only a *murshid* (upright guide) fulfills the position of guardian.

Fourth, this legal strategy does not contravene *qiyyās*, the analogical method employed to formulate new rulings. Indeed, under the analogy of financial guardianship, Islamic law precludes a parent who mismanages a child's assets from acting as a legal guardian of such assets. Likewise, if a father disregards a child's spiritual and emotional welfare, particularly within the framework of marriage, he ought to be deemed unable to serve as a marriage guardian. This analogy validates the internal coherence of the *maslahah* explanation with wider legal thinking traditions. Al-Būtī would endorse this *qiyyās*-based justification as a component of the comprehensive rationale for the transfer of guardianship.

Ultimately, the emphasis on *maslahah* in this context distinctly prioritizes *darūriyyah* (essential interests) above *ḥājiyyah* (complementary needs) or *tahsīniyyah* (aesthetic interests). The safeguarding of a young woman's right to engage in a lawful marriage and evade emotional or social detriment satisfies the criteria of *maslahah* *darūriyyah* (Ulya, 2019). The stipulation that a guardian must be a *murshid* introduces an element of *tahsīniyyah* to guarantee ethical and spiritual congruence. Consequently, the legal action to transfer guardianship is not only warranted but also essential and hierarchically paramount under the *maqāṣid*-based reasoning framework. This case exemplifies how al-Būtī's conservative philosophy can produce transformative outcomes when implemented with precision.

This sub-section affirms that the removal of a negligent biological father from marital guardianship aligns with al-Būtī's five criteria of *maslahah* *mu'tabarah* and substantiates his overarching theoretical position. It illustrates that Islamic legal reform can advance without discarding classical underpinnings, and that child welfare, when examined meticulously, can and should supersede inflexible formalism. This paradigm provides a model for judges and legal scholars aiming to reform family law from within the tradition, employing principled reasoning that reconciles textual faithfulness with ethical imperatives.

### 3. Reflection: Structuring Child Protection Based on *Maslahah*

The comparative analysis of Indonesia, Tunisia, and Morocco demonstrates divergent paths in the incorporation of *maslahah* within guardianship and child protection systems. Indonesia use *maslahah* mostly as a mechanism for judicial discretion in unusual circumstances, but Tunisia and Morocco have systematically integrated *maslahah* into their legal frameworks (Wijayati, 2024). This distinction is essential: in the latter, *maslahah* operates not only as a justificatory concept but also as a codified standard that directly influences legal definitions of guardianship, child welfare, and parental duty. These modifications signify a transition from interpretive flexibility to normative clarity, transforming *maslahah* from an ad hoc hermeneutic tool into a legally enforceable doctrine (Salem & Sha, 2016). This transition illustrates that Islamic legal philosophy may harmonize classical jurisprudence with modern need for justice and child-centered government.

Indonesia's existing framework, based on the Compilation of Islamic Law (KHI), does not provide a definitive doctrinal explanation of *maslahah* in guardianship issues. In situations concerning negligent dads, judges predominantly depend on expansive interpretations of benefit, lacking definitive textual direction or legislative support. This method prompts apprehensions regarding inconsistency and susceptibility to patriarchal influence, particularly in areas where traditional values persist in shaping judicial reasoning. Conversely, Tunisia's Code du Statut Personnel and Morocco's *Mudawwanah* clearly delineate the parameters of parental rights and responsibilities concerning the child's care, thereby constraining arbitrary decision-making (Assulthoni, 2021). This juxtaposition indicates that formalizing *maslahah* in Indonesian family law may enhance legal certainty, judicial accountability, and the safeguarding of children's rights.

Additionally, Tunisia and Morocco provide frameworks for integrating Islamic principles with gender-sensitive policies (Anello, 2014). They demonstrate how *maslahah mursalah* can be employed to contest conventional guardianship hierarchies while adhering

to *maqāṣid al-shari'ah* (Sona, 2023). These legal advancements challenge the prevailing notion that *maslahah*-based changes inherently diverge from Islamic orthodoxy. Conversely, the reforms illustrate how *maslahah*—when limited by textual fidelity, as posited by al-Būtī—can function as a rectifying force within Islamic legal frameworks. They assert that child welfare is not only a social obligation but also a religious one, grounded in *hifz al-nafs* and *hifz al-nasl*, and that legal guardianship should embody this ethical duty.

This study highlights the conflict between judicial discretion and legislative reform. The discretionary use of *maslahah* permits contextual flexibility, although it poses a risk of inconsistency and inadequate safeguarding for vulnerable children. Conversely, structural improvements provide consistency and institutional stability, however necessitate extensive legal and political commitment. The Moroccan and Tunisian approaches illustrate that incorporating *maslahah* into legislation can establish child welfare as a legal standard rather than merely an ethical consideration (Khatimah, 2017). This structuralization of *maslahah* empowers judges to confidently revoke guardianship from fathers who neglect their responsibilities, free from the apprehension of being accused of contravening patriarchal customs.

Consequently, the Indonesian legal system could gain from a paradigm shift: transitioning from employing *maslahah* as a post-facto rationale to integrating it as a proactive legal instrument inside guardianship legislation. Al-Būtī's framework, emphasizing textual consistency and moral clarity, presents a conservative yet progressive approach to reform. By adopting *maslahah* as a practical legal mechanism rather than merely a theoretical concept, Indonesia can reconcile its classical legal traditions with the urgent demand for child-centered justice in family law. This shift would not only elevate the legal standing of neglected children but also meet the ethical and spiritual tenets of Islamic law (YAVUZ ALTINTAŞ, 2023).

This study theoretically enhances the discourse on Islamic legal theory by presenting al-Būtī's *maslahah* framework as a connection between classical jurisprudence and modern human rights issues. It contests the dichotomy between textual rigidity and progressive reform by illustrating that stringent compliance with scriptural origins does not inhibit ethical and socially responsive legal results. This research enhances the comparative fiqh methodology by contrasting traditional verdicts with state-based reforms in Muslim-majority countries, thereby contributing to discussions on the universality and adaptability of Islamic family law (Salem & Sha, 2016). Furthermore, it offers a significant intervention in *maslahah* theory by reaffirming the significance of *maqāṣid*-aligned legal reasoning in reconciling paternal power with the child's best interests.

The findings indicate to legal practitioners, judges, and policymakers in Indonesia and analogous situations that guardianship should be evaluated not alone by ancestry (*nasab*) but also by moral and spiritual aptitude. The Indonesian judiciary could enhance the role of *walī ḥākim* when evidence of neglect or moral disqualification is present, supported by a more stringent application of *maslahah* based on Islamic sources. The KHI might be amended to incorporate more explicit exclusion clauses for guardianship, emulating Morocco's *Mudawwanah* and Tunisia's CSP. This would promote uniformity in judicial rulings and enhance protection for at-risk children. Furthermore, Islamic courts ought to establish protocols that emphasize the wellbeing of daughters in disputed guardianship cases, so preserving the sanctity of marriage and familial continuity as delineated in Islamic ethics.

## CONCLUSION

This paper examined the contentious role of neglectful fathers as guardians in marriage within Islamic jurisprudence, primarily focusing on Indonesian practices from the perspective of al-Būtī's notion of *maslahah*. The primary finding indicates that ancient Islamic

law, the Indonesian Compilation of Islamic Law (KHI), and al-Būṭī's *maslahah* framework align in underscoring the moral and spiritual requirements of a guardian. The traditional fiqh schools are divided on the permissibility of a *fāsiq* (morally corrupt) individual serving as a guardian, with the Shāfi‘ī and Mālikī schools firmly opposing this notion. KHI presents considerable interpretation ambiguities, compelling religious courts to depend on *maslahah* principles to safeguard the wellbeing of children, particularly neglected daughters. This study's comparative analysis revealed that Tunisia and Morocco have systematically included *maslahah* and child welfare into their legislative frameworks, so exceeding Indonesia's discretionary and frequently disjointed methodology.

This study's strength and originality stem from its meticulous application of al-Būṭī's fivefold *maslahah* standards to a modern legal situation. This study illustrates how al-Būṭī's conservative and textually anchored *maslahah* paradigm can justify change, despite the vast and flexible application of *maslahah mursalah* in many current Islamic legal reform programs, while maintaining its connection to the Qur'an, Sunnah, *ijmā'*, and *qiyās*. This signifies a distinctive contribution to Islamic family law, providing a normative connection between traditional legal orthodoxy and contemporary child protection mandates. The comparative aspect enhances value by suggesting Indonesia's possible legal development informed by the structurally codified reforms seen in Tunisia and Morocco.

Notwithstanding these contributions, the study possesses certain drawbacks. Initially, it predominantly depends on textual and jurisprudential study, lacking much ethnographic or empirical data from legal practitioners or impacted families. The examination of reforms in Tunisia and Morocco would be enhanced by empirical evidence or case law illustrating the application of *maslahah* in specific judicial rulings. Third, the study may enhance its interaction with feminist legal theory and critical gender discourse to more effectively contextualize the patriarchal assumptions inherent in guardianship practices.

Subsequent research should use a multi-method approach integrating doctrinal analysis, courtroom ethnography, and community-based interviews. It should additionally investigate the functioning of *maslahah*-based reasoning in diverse legal circumstances, especially where Islamic rules converge with customary law ('urf) or state constitutional principles. Furthermore, a more extensive engagement with gender justice frameworks will enhance the research, especially in comprehending how *maslahah* can either contest or reinforce structural injustices within Muslim family law.

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