

## **Supported vs Substituted: The Urgency of Regulating Limited Guardianship for Individuals with Psychosocial Disabilities in Islamic Inheritance**

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### **Abstract:**

The authority to manage inheritance assets in Islamic inheritance law by guardians of individuals with psychosocial disabilities highlights the urgency of limiting such authority to preserve *maqashid sharia*, particularly the protection of individual property and life. Current regulations in Indonesia regarding guardianship remain discriminatory and do not explicitly restrict the powers of guardians, leading to potential abuse. This study aims to analyze the urgency of limited guardianship regulation from an Islamic legal perspective and to formulate a legal framework that aligns with the supported decision-making paradigm. The methodology employed is normative research using legal, conceptual, and comparative approaches against regulations in Aceh Besar, Pakistan, and England. The findings indicate that the current guardianship regulations in Indonesia tend to adopt a substituted decision-making paradigm, granting full authority to guardians without involving individuals with disabilities in decision-making processes. This paradigm contradicts the Convention on the Rights of Persons with Disabilities (CRPD) ratified by Indonesia. To address this legal gap, regulatory reform is necessary, including restricting guardian authority, implementing strict oversight, and establishing criminal penalties for guardians who violate these provisions. This study recommends adopting a more inclusive supported decision-making paradigm where guardians act as decision supporters without replacing the legal rights of individuals with disabilities. Such reform aligns with the principles of social justice in Pancasila and *maqashid sharia*, creating a more inclusive legal system that protects the rights of individuals with psychosocial disabilities while preventing discrimination and abuse of power in managing inheritance assets.

**Keywords:** Mental Disability, Inheritance Assets, Islamic Law, Limited Guardianship, Supported Decision Making.



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## Introduction

Inheritance law plays a central role in ensuring justice and protection for heirs, particularly those belonging to vulnerable groups<sup>1</sup>. Among these groups are individuals with psychosocial disabilities, whose inheritance rights often require the involvement of guardians<sup>2</sup>. In Islamic inheritance law, guardians are granted authority to manage assets on behalf of persons with disabilities, but the absence of clear limitations creates a significant risk of misuse<sup>3</sup>. In Indonesia, existing legal frameworks remain largely discriminatory, as guardianship is predominantly understood as a form of substituted decision-making, leaving persons with disabilities excluded from exercising their legal agency. Such practices contradict both the *maqāṣid al-sharī'a* principle of protecting life and property and Indonesia's obligations under the Convention on the Rights of Persons with Disabilities (CRPD)<sup>4</sup>.

In Islamic legal thought, a person who is deemed capable of acting on the basis of law is referred to as a *mukallaf*, namely those who are prepared and able to assume responsibility for the divine commands and prohibitions (*taklīf*) ordained by Allah. This concept is closely related to *ahliyyah*, or legal capacity, which denotes a person's competence to handle legal matters. In Islamic jurisprudence, *ahliyyah* (legal capacity) is divided into two categories: *ahliyyah al-wujūb* (the capacity to possess rights and bear obligations), which is inherent from birth, and *ahliyyah al-adā'* (the capacity to exercise legal acts), which requires the presence of full intellectual capacity. Individuals with psychosocial mental disabilities fall under the category of *ahliyyah al-wujūb* during periods of relapse. This means that although they retain full rights and obligations, they are not considered capable of performing legal acts. For instance, a person with a mental disability in a state of relapse remains obliged to pay *zakāt* and, at the same time, may also be entitled to receive *zakāt*, depending on their financial circumstances<sup>5</sup>.

In Indonesia, data from the 2020 National Socio-Economic Survey (Susenas) indicates that 10.38% of the population are persons with disabilities, including those with

<sup>1</sup> Deby Mardina and Boy Nurdin, 'Legal Review of Land Inheritance in the Perspective of Islamic Law Compilation Implementation of Article 178 Paragraph 2 of the Islamic Law Compilation - EUDL', European Union Digital Library, 25 May 2025, 1–9, <http://dx.doi.org/10.4108/eai.25-5-2024.2349360>.

<sup>2</sup> Rizka Rizka and Anindia Fadhilah, 'One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities: Salah Satu Bentuk Perlindungan Bagi Penyandang Disabilitas Mental Sebuah Studi Eksplorasi Peraturan Perundang-Undangan Indonesia Tentang Perlindungan Hak Waris Penyandang Disabilitas Mental', *Society* 10, no. 1 (2022): 220–28, <https://doi.org/10.33019/society.v10i1.411>.

<sup>3</sup> Roida Tamba and Besty Habeahan, 'Role and Responsibility of Guardian in Manage of Inheritances Under Supervision of Medan Inheritances Center, Indonesia', *Golden Ratio of Data in Summary* 5, no. 2 (2025): 289–96, <https://doi.org/10.52970/grdis.v5i2.826>.

<sup>4</sup> Mohd Nur Hidayat Hasbollah Hajimin et al., *The Role of Maqasid Shariah Framework in The Management of People with Disabilities (PWD): A Systematic Literature Review*, n.d., accessed 27 August 2025, <https://hrmars.com/index.php/IJARBSS/article/view/20626/The-Role-of-Maqasid-Shariah-Framework-in-The-Management-of-People-with-Disabilities-PWD-A-Systematic-Literature-Review>; Harry Nugroho et al., 'Who Will Advocate? The Impact of Decision 93/PUU-XX/2022 on Article 433 Civil Code Amendments for Disability Rights and Legal Protection', *Indonesian Journal of Advocacy and Legal Services* 7, no. 1 (2025): 95–120, <https://doi.org/10.15294/ijals.v7i1.22699>.

<sup>5</sup> Nasrun Haroen, *Fiqh Muamalah* (Gaya Media Pratama, 2007), 305.

mental disorders<sup>6</sup>. Given that the majority of Indonesia's population adheres to Islam, it is highly likely that most persons with disabilities in the country are Muslims. In the global context, mental disorders such as schizophrenia constitute a significant concern, with a prevalence of approximately 1% of the world's population<sup>7</sup>. Individuals with this condition experience alternating active and passive phases, during which they may be able to function normally in the passive phase. Between 2015 and 2023, there were 95 guardianship rulings issued by the Religious Courts in which the guardian's authority was not limited by the *petitum*, particularly with regard to managing the inheritance of heirs with mental disabilities<sup>8</sup>. In several cases, guardians even transferred assets without clear legal authority, which stands in contradiction to the *maqāṣid al-sharī'ah* principle that emphasizes the protection of property.<sup>9</sup> However, Indonesia does not yet have a legal framework that regulates in detail the authority of guardians, including prohibitions, obligations, time limitations, and mechanisms for transferring responsibility when persons with psychosocial mental disabilities recover. This legal vacuum often results in discrimination against individuals with psychosocial disabilities.

Recent global discourse underscores a transformation toward supported decision-making, recognizing full legal capacity and agency of individuals with disabilities. Comparative studies from Pakistan and England illustrate the role of legal safeguards in enabling participation while preventing exploitation. Within the Indonesian context, contemporary scholarship highlights systemic flaws in the guardianship regime: the reliance on outdated criteria, minimal evidentiary standards in court proceedings, and the involvement of religious courts without appropriate checks and balances<sup>10</sup>.

Studies on guardianship for persons with psychosocial disabilities in Indonesia reveal persistent structural and normative shortcomings. Mulia et al. (2024)<sup>11</sup>, through an assessment of 49 court cases between 2015 and 2018, demonstrate that guardianship proceedings often rely on substituted decision-making, with weak evidentiary standards and little regard for the individual's expressed will. Similarly, Amelia (2024) highlights that Law No. 8/2016 does not provide sufficient safeguards, as court-appointed guardians frequently operate without systematic oversight, creating risks of discrimination and power abuse<sup>12</sup>. Kennedy (2024) further argues that the legal procedure for guardianship

<sup>6</sup> Andrean Rifaldo, 'Aksesibilitas 28 Juta Penyandang Disabilitas', KOMPAS.com, 27 November 2023, <https://lestari.kompas.com/read/2023/11/27/162704486/aksesibilitas-28-juta-penyandang-disabilitas>.

<sup>7</sup> Ayano Shanko et al., 'Attitudes towards Schizophrenia and Associated Factors among Community Members in Hossana Town: A Mixed Method Study', *BMC Psychiatry* 23, no. 1 (2023): 80, <https://doi.org/10.1186/s12888-023-04555-9>.

<sup>8</sup> The data was obtained from the Supreme Court's decision directory. The search was conducted from 2015 to 2023. The year 2015 was chosen because it marks the enactment of Law No. 18 of 2014 concerning Mental Health.

<sup>9</sup> The abuse of authority by the Trustee can be observed in the decisions 132/K/Pdt/2017 and 677.Pdt.G/2012/Pn.Jkt.Bar.

<sup>10</sup> Hisyam Ikhtiar Mulia et al., 'Assessment of the Guardianship System for Persons with Psychosocial Disability in Indonesia', *Scandinavian Journal of Disability Research* 26, no. 1 (2024): 300–314, <https://doi.org/10.26181/26795089.v1>.

<sup>11</sup> Mulia et al., 'Assessment of the Guardianship System for Persons with Psychosocial Disability in Indonesia'.

<sup>12</sup> Hanny Amelia, 'Guardianship Model for People with Disabilities in Indonesia - EUDL', paper presented at AIDRAN Biennial Conference: International Conference on Disability Rights, EAI, 2024, <http://dx.doi.org/10.4108/eai.21-11-2023.2352647>.

in Indonesia marginalizes the identity and agency of individuals with disabilities, reflecting a procedural bias that prioritizes efficiency over inclusivity<sup>13</sup>.

Judicial reforms have attempted to address these issues. The Constitutional Court Decision No. 93/PUU-XX/2022 amended Article 433 of the Civil Code, replacing derogatory terminology with more respectful language and shifting guardianship from a mandatory to a permissive framework<sup>14</sup>. While this represents progress in aligning with the *Convention on the Rights of Persons with Disabilities* (CRPD), critics note that the reform remains largely formal and does not yet ensure substantive recognition of autonomy and participation rights. From a broader perspective, comparative studies emphasize the importance of supported decision-making. For instance, Olayemi and Olagunju (2023) show how Islamic law and positive law traditions alike have historically justified guardianship as protection, but argue that contemporary applications must evolve to uphold individual dignity and prevent exploitation<sup>15</sup>.

Against this backdrop, this study argues for the urgency of regulating limited guardianship in Indonesia through an Islamic legal perspective. By offering a legal construction that harmonizes supported decision-making with *maqāṣid al-sharīʿa* and the constitutional mandate of social justice, this research contributes to both the protection of vulnerable individuals and the development of a more inclusive inheritance law framework.

## Method

This study employed a normative legal research method to examine the urgency of regulating limited guardianship for individuals with psychosocial disabilities within the framework of Islamic inheritance law. The normative approach was chosen because the research primarily addresses legal norms, principles, and doctrines rather than empirical data. The analysis draws on a statutory approach by examining key national regulations, including the Indonesian Civil Code, Law No. 8 of 2016 on Persons with Disabilities, and Constitutional Court Decision No. 93/PUU-XX/2022, as well as local instruments such as the Aceh Qanun. A conceptual approach was also adopted to explore the theoretical foundations of guardianship in both Islamic jurisprudence and contemporary legal scholarship, with particular attention to the principles of *maqāṣid al-sharīʿa* and the supported decision-making paradigm. In addition, a comparative approach was used to analyze guardianship models in jurisdictions such as Aceh Besar, Pakistan, and England in order to identify best practices and potential reforms relevant to the Indonesian context.

Legal sources for this study include primary legislation, secondary materials such as academic books and peer-reviewed articles, judicial decisions, and international instruments, most notably the Convention on the Rights of Persons with Disabilities (CRPD). The collected data were examined qualitatively through content analysis to assess the alignment of Indonesia's guardianship framework with Islamic legal principles and international human rights standards. By integrating these approaches, this study offers a comprehensive understanding of the existing legal gaps and provides a normative

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<sup>13</sup> Richard Kennedy, 'Deconstructing the Legal Procedure for Guardianship in Indonesia: An Embodiment Approach to Disability - EUDL', paper presented at AIDRAN Biennial Conference: International Conference on Disability Rights, EAI, 2024, <http://dx.doi.org/10.4108/eai.21-11-2023.2352652>.

<sup>14</sup> Nugroho et al., 'Who Will Advocate?'

<sup>15</sup> Abdul Azeez Maruf Olayemi and Anthoney Gbadebo Olagunju, *Guardianship, Its Importance and Developments: A Comparative Study Between Shariah Law and the Positive Law* | *El-Aqwal: Journal of Sharia and Comparative Law*, 29 January 2023, <https://ejournal.uinsaizu.ac.id/index.php/elaqwal/article/view/7706>.

basis for constructing a model of limited guardianship that upholds justice in Islamic inheritance law while protecting the rights and dignity of individuals with psychosocial disabilities.

### **The Urgency of Regulating the Limitation of Trustee Authority Over the Estate Management of Individuals with Mental Disabilities in the Perspective of Islamic Law**

Islam is a religion that is both detailed and flexible, as reflected in Hadith Bukhari No. 1117, which states that worship can be performed in various ways according to an individual's ability, especially for those who are ill. The Qur'an, through Surah An-Nur: 61, emphasizes the equality of individuals with physical disabilities and provides ease in performing worship in accordance with their respective conditions. These two sources indicate that Islam not only provides detailed guidance but also adapts to the circumstances and needs of each individual, making it an inclusive and adaptive religion in various situations. Islam brings mercy and compassion, aligning with the goal of achieving *maslahah*, as stated by Imam Al-Ghazali, which involves seeking benefit and avoiding harm.<sup>16</sup> This concept developed into *maqashid al-shariah*, aimed at protecting religion, life, intellect, lineage, and property. In the context of mental health, the Qur'an depicts reprehensible behavior, such as greed and arrogance, as early signs of mental disorders.<sup>17</sup>

Although no verse directly addresses mental disorders within the framework of Disability Laws, such as schizophrenia and others, there are analogous *illat* (causes) for such conditions. In Surah An-Nisa' verse 5, the word "*sufaha*" or "*safah*," derived from the root letters *sin*, *fa*, and *ha*, which also mean ignorance (lack of knowledge), evil, and rudeness, is used<sup>18</sup>. This term developed into the meanings of "foolish" and "ignorant."<sup>19</sup> According to Ibn Khuwaizimad, control and supervision, as mentioned in Surah An-Nisa' verse 5, apply to individuals who fall into three categories: 1) children (who have not yet reached the age of discernment); 2) those suffering from mental illness or similar conditions; and 3) those who mismanage their property and themselves.<sup>20</sup>

Thus, from these definitions, it can be concluded that the difference between mental disability and *sufaha* lies in the scope of actions regulated. The term *sufaha* focuses on an individual's inability to manage property, necessitating legal protection for such individuals. On the other hand, mental disability refers to a more complex health condition that often requires both social and medical support. The legal actions taken in such cases are not limited to property management alone, as is the case with *sufaha*, but extend to other legal actions. However, the underlying *illat* or reason for prohibition in Surah An-Nisa' is to protect assets that should be managed wisely and to ensure the well-being of individuals with mental or emotional limitations. This verse prevents the transfer of property to such individuals due to concerns over misuse or wastefulness. However, the

<sup>16</sup> Nur Asiah Kudaedah, 'Maslahah Menurut Konsep Al-Ghazali', *DIKTUM: Jurnal Syariah dan Hukum* 18, no. 1 (2020): 118–28, <https://doi.org/10.35905/diktum.v18i1.663>.

<sup>17</sup>HM. Zainuddin, "Islam dan Masalah Kesehatan Jiwa," accessed August 30, 2024, <https://uin-malang.ac.id/r/200501/islam-dan-masalah-kesehatan-jiwa.html>.

<sup>18</sup> Abu al-fida Ismail bin Umar bin Kasir, *Lubab al-Tafsir Min ibn Kasir*, Terj. M. Abdul Ghoffat dkk, Jilid II, Pustaka Imam Syafi'i, Bogor, 2004, 172.

<sup>19</sup> Abdul Malik J, *Makna Al-Sufaha dalam Al-Quran (Suatu Kajian Muqaran antara QS al Baqarah/2: 13 dengan QS an-Nisa' /4: 5)* (Skripsi tidak diterbitkan, Makassar: Fakultas Ushuluddin Filsafat UIN Alauddin Makassar, 2022), 30.

<sup>20</sup> Abu Abdillah Muhammad bin Ahmad bin Abi Bakr bin Farh al-Ansari Syams al-Din al-Qurtubi, *al-Jami' li Ahkam al-Quran*, trans. Mahmud Hamid Utsam, vol. V (n.d.; n.p.; n.d.), 71-72.

question of their ability to manage property after recovery is crucial in Islamic legal studies, particularly concerning *ahliyah al-ada* (legal capacity).

If an individual who was previously deemed incapable has recovered and returned to a stable mental state, they can be considered to have the capacity to act legally. In such cases, they have the right to manage their own property legally. This is in line with the principle that every person who possesses intellect and full consciousness has the right to undertake legal actions. Furthermore, when considering the conditions for valid legal acts, one of the requirements is *mukallaf* (having intellect and capability)<sup>21</sup>. This indicates that the law recognizes the importance of mental ability in determining the validity of legal actions. Therefore, only individuals who possess the ability to think and understand the consequences of their actions are deemed legally competent to perform legal acts. Overall, this reflects a positive view on the recovery of individuals from difficult mental conditions and the recognition of their legal rights after recovery. It shows that the legal system aims to protect the autonomy of individuals while ensuring that legal actions are carried out by those capable of understanding and being responsible for their actions. Therefore, it is important for both society and the legal system to support the recovery process, allowing individuals to function fully within their legal capacity.

Conversely, if an individual relapses, they lose their capacity to act or may be legally burdened because they are unable to understand the legal rulings, which can only be realized with the intellect<sup>22</sup>. This is as referenced in Hadith Abu Daud No. 3825. However, in the context of the state's attitude toward individuals with disabilities, we can refer to Surah 'Abasa. This Surah highlights the importance of respecting individuals with disabilities. According to the context of its revelation, this verse was revealed to rebuke the Prophet Muhammad (PBUH) regarding Abdullah ibn Umm Maktum, a blind man who sought guidance from the Prophet but was ignored. It emphasizes that discrimination against individuals with disabilities is strongly condemned in Islam. This is something that contemporary leaders should pay attention to in order to act justly and responsively toward individuals with disabilities, as commanded by Allah.

Law No. 8 of 2016 was enacted after Indonesia ratified the Convention on the Rights of Persons with Disabilities in 2007 without reservations. Although this law establishes the rights of persons with disabilities, protection for individuals with mental disabilities in matters related to property (including inheritance) is still inadequate. The current paradigm of guardianship in Indonesia follows the substitute decision-making model, which grants significant power to the guardian to make decisions on behalf of the ward. This has negative consequences, as it leads to dependency on the guardian's assistance. Therefore, there is a need for a supported decision-making approach to limit the guardian's authority and protect the rights of individuals with mental disabilities.

Prophet Muhammad (PBUH) also warned about the dangers of greed in Hadith Tirmidhi No. 2298, where greed can corrupt one's faith. Greed for wealth and power can lead to lies and injustice. Analyzing the limitation of a guardian's authority in managing the estate of individuals with disabilities becomes crucial to prevent the abuse of power. As the saying goes, "Power tends to corrupt, and absolute power corrupts absolutely."<sup>23</sup> Therefore, the urgency of regulating the limitations of a guardian's authority will be further discussed with a philosophical, juridical, and sociological analysis.

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<sup>21</sup> Muhammad Nur Ali, *Perbuatan dan Tanggungjawab Hukum dalam Konsep Ushul Fiqh*, Istinbath Jurnal Hukum, Vol. 12, No. 1 (2015), 30.

<sup>22</sup> Muhammad Nur Ali.

<sup>23</sup> Brian Martin, *Information Liberation* (London: Freedom Press, 1998), 1.



The analysis begins with the philosophical foundation. According to Law No. 12 of 2011, the philosophical foundation represents a consideration that reflects that all legal regulations should be based on Pancasila and the Opening of the 1945 Constitution. Article 2 of this law affirms that Pancasila is the source of all sources of law, meaning that all regulations, from the Constitution to regional regulations, must align with the values of Pancasila. The Fourth Chapter of the 1945 Constitution sets out the state's goals, which are to protect the entire nation, advance public welfare, educate the nation's life, and establish social justice for all the people of Indonesia. The phrase "for all the people of Indonesia" emphasizes that every citizen has equal rights, as guaranteed in several articles of the 1945 Constitution, such as Article 27(1) on equality before the law, Article 28D(1) on fair treatment and legal certainty, and Article 28I(2) on freedom from discrimination. The principle of "equality before the law" asserts that all citizens, including persons with disabilities, should be treated equally.

In Islam, the principle of justice is also a fundamental foundation, emphasizing equal rights and duties for every individual, regardless of social status. Before Allah Subhanahu wa Ta'ala, every human being is created with equal dignity and worth. Whether male or female, rich or poor, officials or ordinary citizens, and individuals with disabilities or without, all are equal in dignity before Allah. The principle of equality before the law and its application in national life has been present since the Medina Charter, which is closely related to social welfare, respect for human rights, and efforts to maintain unity<sup>24</sup>. Therefore, every individual has basic rights that must be met to live with dignity and integrity. Social welfare development is an effort to achieve the state's goals as mandated in the 1945 Constitution.

However, the legal regulation concerning individuals with mental disabilities, particularly in Article 433 of the Civil Code, is considered discriminatory as it generalizes their inability. This article automatically places individuals with mental disabilities under guardianship without considering their specific conditions, despite the fact that mental disorders are often episodic and not permanent. In Islam, individuals with psychosocial disabilities are categorized under *adim al-ahliyah* and *ahliyah al-wujub* when they experience a relapse. However, when they are conscious, they possess *ahliyah al-ada'* (legal capacity) and are obliged to carry out the commands of Allah, entitled to their rights, and capable of performing legal actions. This concept of *ahliyah* parallels the distinction between legal agency and legal standing in legal contexts.

Legal standing emphasizes the formal aspect, considering persons with disabilities as legal subjects with rights, while legal agency relates to the material ability to exercise those rights<sup>25</sup>. This concept differentiates between legal capacity and mental capacity. Mental capacity refers to the ability to make decisions, while legal capacity pertains to the ability to own and execute rights and duties (legal agency). Individuals with disabilities may lose their legal agency, but this does not negate their legal standing. They are still recognized as legal subjects with certain rights.

According to Constitutional Court Judge Suhartoyo, the guardianship institution is still relevant in protecting civil rights in certain situations<sup>26</sup>. However, the relevance of this institution is difficult to measure due to the current developments in mental disorders

<sup>24</sup>Piagam Madinah, accessed September 30, 2024, <http://repository.umy.ac.id/bitstream/handle/123456789/22222/1.%20Lampiran.pdf?sequence=11>.

<sup>25</sup> Lihat komentar Komite CRPD terhadap Pasal 12 CRPD.

<sup>26</sup>Hukum Online, "Simak! Tafsir MK Terhadap Ketentuan Pengampunan dalam KUHPdata," accessed September 16, 2024, <https://www.hukumonline.com/berita/a/simak-tafsir-mk-terhadap-ketentuan-pengampunan-dalam-kuhperdata-lt64c9ec68cd8c8/>.

and medications. Fajri Nursyamsi, when serving as an expert in case No. 93/PUU-XX/2022, explained that the guardianship paradigm no longer functions as protection because protection should not deprive or replace an individual's rights<sup>27</sup>. The paradigm of guardianship, which substitutes the decision-making rights of individuals with mental disabilities, contradicts the humanitarian principles of Pancasila and the Convention on the Rights of Persons with Disabilities ratified by Indonesia. This Convention affirms that persons with disabilities should enjoy legal capacity equal to that of others, and that legal arrangements related to their capacity should respect their rights, will, and preferences.

To achieve a more inclusive legal treatment, the "supported decision-making" approach becomes a more humane alternative. This system allows individuals with mental disabilities to engage in decision-making about their lives with appropriate support, rather than replacing their right to make decisions entirely. This aligns with the progression of the times and the spirit of social justice as mandated in the 1945 Constitution. Therefore, a legal paradigm shift to limited guardianship is necessary to ensure respect for the rights of persons with disabilities, preserve their dignity, and create a fair and inclusive legal system. In line with the role of law as a tool for social engineering, the law can transform discriminatory situations toward persons with disabilities into more inclusive ones through the supported decision-making paradigm. Thus, the law does not only function as a regulator but also as a catalyst for social change<sup>28</sup>.

The subsequent analysis will continue with the sociological foundation to examine the urgency of the paradigm shift from substituted decision-making to supported decision-making in guardianship in Indonesia. The sociological foundation emphasizes the importance of regulations that provide benefits and meet the needs of society, including in the guardianship of individuals with mental disabilities<sup>29</sup>. This foundation is closely related to the sociological facts regarding the situation and needs of society and the state. There are several sociological considerations that need to be explained related to the authority of a guardian, namely:

First, from 2015 to 2023, there were 95 guardianship rulings concerning inheritance in the Religious Courts with subjects being individuals with mental disabilities<sup>30</sup>. This number is then presented with the diagram below:

**Chart 1.** Number of Guardianship Determinations for Persons with Mental Disabilities with Inherited Assets, 2015–2023

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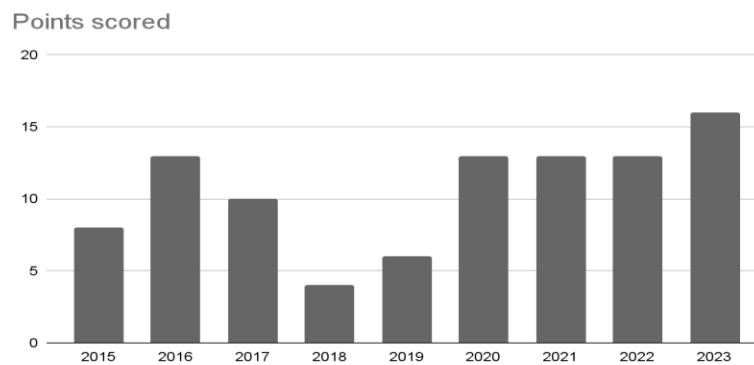
<sup>27</sup>Mahkamah Konstitusi Republik Indonesia, *Risalah Sidang Perkara Nomor 93/PUU-XX/2022* (Jakarta: Mahkamah Konstitusi, December 13, 2022), 2, accessed September 6, 2024, [https://www.mkri.id/public/content/persidangan/risalah/8867\\_Risalah-pdf\\_PERKARA\\_NOMOR\\_93.PUU-XX.2022\\_tgl\\_13\\_Desember\\_2022.pdf](https://www.mkri.id/public/content/persidangan/risalah/8867_Risalah-pdf_PERKARA_NOMOR_93.PUU-XX.2022_tgl_13_Desember_2022.pdf).

<sup>28</sup>Nur Paikah, *Sosiologi Hukum* (Bone: CV Cendekiawan Indonesia Timur, 2023), 83.

<sup>29</sup> Lihat Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan. Lembaran Negara Tahun 2011 Nomor 82 Tambahan Lembaran Negara Nomor 5234.

<sup>30</sup> Data didapatkan dari direktori putusan Mahkamah Agung. Penelusuran dilakukan dari tahun 2015 hingga tahun 2023. Tahun 2015 dipilih dengan alasan bahwa Undang-Undang Nomor 18 Tahun 2014 tentang Kesehatan Jiwa disahkan.





**Source:** Directory of Decisions of the Supreme Court of the Republic of Indonesia

Most applications were submitted to carry out legal acts such as insurance claims, asset sales, or estate management. However, the majority of determinations did not specify the scope of authority of the guardian or the duration of the guardianship. One exception was found in a case at the Semarang District Court, which limited the guardianship period to 10 years.

Based on field observations, judges at Religious Courts rarely appoint supervising guardians, except in cases involving inheritance with significant value<sup>31</sup>. The role of supervising guardians from the Estate Office is crucial to evaluate and equip guardians in performing their duties. The lack of involvement of the Estate Office in overseeing guardianships has been longstanding<sup>32</sup>. From January 2019 to April 2024, only 27 oaths were registered at the Surabaya Estate Office over five years<sup>33</sup>. Meanwhile, at the Medan Estate Office, only 11 oaths were registered from 2016 to 2020. These figures indicate that only a small portion of guardians report their appointment to the Estate Office.

This situation potentially allows abuse of power by guardians, which can harm the ward, as there is no accountability mechanism if unlawful acts occur, and no information exists regarding the whereabouts of the ward's assets<sup>34</sup>. Once appointed, the guardian should report to the Estate Office and request approval to carry out legal actions on behalf of the ward, such as selling inherited assets. The court would then issue a determination approving the sale, in accordance with Articles 366 and 449 of the Civil Code. Additionally, at the end of each year, the Estate Office orders guardians to prepare reports on actions taken on behalf of the ward.<sup>35</sup>

Cases of misuse of guardianship authority are documented in several court rulings, including the West Jakarta District Court Decision Number 677.Pdt.G/2012/Pn.Jkt.Bar, where the guardian sold the ward's inheritance without court approval, violating Article

<sup>31</sup> Fakhrol Maulidin, *Pertimbangan Hakim dalam Menetapkan Permohonan dari Status Wali Pengampu (Studi Pengadilan Negeri Medan Kelas IA Nomor 137/Pdt.P/2019/PN.Mdn)* (Medan: Fakultas Hukum Universitas Medan Area, 2021), 69.

<sup>32</sup> Riri Mela Lomika Siregar, *Curatele (Pengampuan): Suatu Analisis Atas Penetapan Pengadilan Negeri Jakarta Selatan Nomor 94/Pdt.P/2008, PN.Jkt.Sel dan Nomor 100/Pdt.P/2008/PN.Jkt.Sel* (Depok: Fakultas Hukum Universitas Indonesia, 2009), vii dan 30.

<sup>33</sup> Aisyah Octavinita, *Implementasi Perlindungan Hukum Hak Atas Kebendaan Orang Pengidap Gangguan Jiwa Dibawah Pengampuan di Balai Harta Peninggalan Surabaya* (Surabaya: Fakultas Hukum Universitas Indonesia, 2024), 4.

<sup>34</sup> Aswin Junaedi Siregar, "Pengadilan Agama Panyabungan Hadiri Sosialisasi Tugas dan Fungsi Balai Harta Peninggalan Sekaligus Penandatanganan Memorandum Of Understanding (MOU)," accessed September 12, 2024, <https://pa-panyabungan.go.id/id/publikasi/arsipberita/962-pengadilan-agama-panyabungan-hadiri-sosialisasi-tugas-dan-fungsi-balai-hartapeninggalan-sekaligus-penandatanganan-memorandum-of-understanditv-mou>.

<sup>35</sup> Lihat Pasal 372 Kitab Undang-Undang Hukum Perdata.

393 of the Civil Code. In such cases, the guardian should have only temporarily managed the assets, which must be returned after the guardianship ends. Another case, such as in Cassation Decision Number 132 K/Pdt/2017, shows that the sale of the ward's inheritance occurred without reporting to the Estate Office, making it difficult to assess whether the action benefited the ward. This is closely related to the authority of a trustworthy guardian. Every authority must be accompanied by responsibility, both to the ward and to Allah Subhanahu wa ta'ala. A guardian must act faithfully in performing duties because it concerns the life and property of others. If a guardian fails to fulfill this trust, they are accountable for any resulting losses and before Allah Subhanahu wa ta'ala as the grantor of authority.

According to Quraish Shihab, trust (amanah) encompasses both material and immaterial aspects, including relationships with Allah, fellow humans, the environment, and oneself<sup>36</sup>. Every representative has details that must be respected, even with broad authority. In Hadith narrated by Muslim No. 1825, Prophet Muhammad Sallallahu alaihi wasallam reminded that power is a trust, which can lead to disgrace if not exercised correctly. Hadith narrated by Bukhari No. 6015 also emphasizes that if a mandate is neglected and not given to the rightful person, destruction will occur.

From an Islamic law perspective, a guardian's authority can be analogized to a special form of wilayah (guardianship), as regulated in Article 106 of the Compilation of Islamic Law. However, applying this rule to adult persons with mental disabilities creates legal uncertainty, since Islamic guardianship is more relevant for children. Moreover, the guardian's responsibility is not only to the ward but also to Allah Subhanahu wa ta'ala, as emphasized in Q.S. An-Nisa verse 58, which highlights trust as the essence of authority. Guardianship is rarely revoked even if the ward's condition improves, due to cost factors and lack of initiative by the guardian. The decision-making paradigm that replaces the legal capacity of persons with disabilities eliminates their right to request revocation of guardianship, which conflicts with human rights as stated in the Constitution and the Convention on the Rights of Persons with Disabilities.

Second, petitions to revoke guardianship in court are very rare even if the ward has recovered from mental illness. Judges do not set limits on duties, prohibitions, authority, or duration of guardianship, resulting in extremely broad authority for guardians. This does not reflect the reality that persons with psychosocial mental disabilities often experience relapses; for example, in schizophrenia, relapses may occur every 3–4 months, even if the individual functions normally outside those periods<sup>37</sup>. Relapses are influenced by internal and external factors but can be minimized with proper support. According to Article 460 of the Civil Code, guardianship can be revoked if its underlying reasons no longer exist, but revocation rarely occurs because guardians do not file requests, often due to costs. Additionally, the substituted decision-making paradigm removes the legal capacity of the ward, preventing them from filing lawsuits or petitions for revocation. This violates the individual's human rights under the Constitution and the Convention on the Rights of Persons with Disabilities.

The final analysis involves the legal basis indicating the importance of formulating regulations to fill legal gaps while considering existing rules to ensure legal certainty and

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<sup>36</sup>M. Fahmi & Hamidullah, "Wewenang dan Pendelegasian dalam Perspektif Al-Quran," *Al-Misykah: Jurnal Kajian Al-Quran dan Tafsir* 2, no. 2 (2023): 6, <https://doi.org/10.19109/almsykh.v4i2.20227>.

<sup>37</sup>Ayudhia Kartika et al., "Prediksi Angka Kekambuhan pada Pasien Skizofrenia Episode Pertama dengan Kepatuhan Berobat Rendah dalam Waktu Tiga Tahun," *Jurnal Kesehatan Indonesia* 2, no. 1 (April 2014): 53, [10.23886/ejki.2.3178](https://doi.org/10.23886/ejki.2.3178).

protect society. One legal umbrella for persons with disabilities in Indonesia is Law Number 8 of 2016, replacing Law Number 4 of 1997, which was considered discriminatory. This law aims to create equal rights without discrimination but does not yet regulate the limits of guardianship authority or duration in detail, although Article 144 prohibits transferring assets without a court decision. Case examples, such as West Jakarta District Court Decision Number 677.Pdt.G/2012/Pn.Jkt.Bar, highlight the need for criminal sanctions to prevent abuse of guardianship authority, particularly for appointed guardians.

Furthermore, Indonesia has ratified the Convention on the Rights of Persons with Disabilities through Law Number 19 of 2011, adopting a supported decision-making paradigm. However, the convention does not specifically regulate the guardianship process, except in Article 23(2), making detailed national regulations necessary to ensure the protection of the rights of persons with disabilities. Researchers acknowledge that implementing international conventions is left to each state party. This means the convention serves as a legal umbrella for all state actions concerning persons with disabilities. Therefore, it is crucial for Indonesia, as a state party, to formulate regulations regarding guardianship for persons with disabilities transitioning from a substituted to a supported decision-making paradigm.

Additionally, the Civil Code regulates guardianship in 28 articles, including the guardian's obligation to report the ward's assets to the Estate Office. However, no clear limitations exist regarding the guardian's authority, while Article 460 states that guardianship ends if its reasons disappear, without clear procedures for application. Provisions such as Article 433, which stipulate guardianship for adults with certain mental conditions, remain subjective, causing legal uncertainty. The application of Article 460 heavily depends on the judge's decision regarding when the reasons for guardianship have ceased and when release may be granted.

Meanwhile, the Compilation of Islamic Law regulates the appointment of guardians in Article 184 but does not provide detailed rules regarding the management of inherited assets by guardians of persons with mental disabilities. This article is now considered less relevant because it does not align with the paradigm of international conventions (CRPD). Moreover, there are no prohibitions, orders, or obligations imposed on guardians of persons with mental disabilities in managing inherited assets. Over time, this article no longer aligns with the Convention on the Rights of Persons with Disabilities and the Disability Law, which gives persons with disabilities the opportunity to choose who manages their financial matters<sup>38</sup>. Therefore, a proper legal formulation is needed to regulate guardianship in accordance with human rights concepts and the development of the supported decision-making concept under the CRPD.

### **Legal Construction of Limiting the Authority of Guardians for Psychosocially Disabled Individuals in Managing Inherited Assets**

A comparison of guardianship regulations in Aceh Besar, Pakistan, and England reveals differences in the management of authority, rights, obligations, prohibitions, and sanctions for guardians, as well as oversight systems for the implementation of guardianship. In Aceh Besar, guardianship is regulated through Qanun Number 11 of 2008. Guardians are responsible for the care, education, and management of the property of children or orphans under their guardianship. There are no specific rules regarding guardians' remuneration, but impoverished guardians are allowed to use a small portion

<sup>38</sup> Lihat Pasal 9 huruf d Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas Lembaran Negara Republik Indonesia Tahun 2016 Nomor 69 Tambahan Lembaran Negara Nomor 5871.

of the ward's property in a socially acceptable manner<sup>39</sup>. Prohibitions include transferring assets without court approval, except for the child's interest or when unavoidable.<sup>40</sup> Oversight is conducted by Baitul Mal, which acts as a supervisory guardian and can replace a negligent guardian<sup>41</sup>.

In Pakistan, guardianship is regulated under the Mental Health Ordinance 2001, which stipulates that guardians are responsible for the care of the ward and the management of their assets. Guardians are required to submit annual reports to the court regarding the property and its management<sup>42</sup>. Prohibitions include selling, transferring, or leasing the ward's property without court permission<sup>43</sup>. Furthermore, the court will not appoint the ward's heirs as guardians unless there are special reasons. Sanctions apply to negligent guardians, including fines or imprisonment for those who fail to submit reports or act in a way that harms the ward.

In contrast, in England, the Mental Capacity Act 2005 has adopted a supported decision-making paradigm. Guardianship is only applied if the ward is genuinely incapable of making decisions. Prohibitions include making decisions without considering the ward's wishes or making assumptions based on age or physical condition. Guardians are required to ensure that the ward remains as involved as possible in decision-making and must prioritize the ward's best interests. The maximum duration of guardianship is set at six months, which may be extended based on medical evaluation. Thus, the total duration, if extended, is up to one year.<sup>44</sup>

Based on this comparison, guardianship regulations in Aceh Besar and Pakistan still focus on administrative obligations and property management, while England has advanced with a ward-participation-based approach. The English system emphasizes that guardians should not replace the ward's role if it is still possible to involve them in decision-making. Therefore, legal reform in Indonesia is necessary to introduce clear mechanisms regarding authority, obligations, prohibitions, supervision, guardianship duration, and criminal sanctions for violators. This is crucial to protect the rights of individuals with mental disabilities, prevent abuse of authority, and implement a more humane and fair supported decision-making concept. The following presents a comparison of guardianship regulations from the three countries.

**Table 1.** Comparison of Guardianship Regulations in Three Countries

Aspect	Indonesia (Civil Code & KHI)	Indonesia (Aceh Besar)	Pakistan	England
Type of Guardianship	No distinction	Guardianship for person (Article 20 paragraph (1) Qanun 11 of 2008) and guardianship for property (Article 20 paragraph (2)	Guardianship for person (Article 32 The Mental Health Ordinance 2001) and guardianship for property	Guardianship for person (Article 16 paragraph (a) Mental Capacity Act 2005) and guardianship for property (Article 16 paragraph (b)

<sup>39</sup> Hal ini sesuai dengan Q.S an-Nisa' ayat 6.

<sup>40</sup> Lihat Pasal 21 ayat (2) Qanun Nomor 11 Tahun 2008 tentang Perlindungan Anak. Lembaran Daerah Nanggroe Aceh Darussalam Nomor 11 Tahun 2008, Tambahan Lembaran Daerah Nanggroe Aceh Darussalam Nomor 21.

<sup>41</sup> Lihat Pasal 41 ayat (2) Qanun Nomor 10 Tahun 2007 tentang Baitul Mal. Lembaran Daerah Provinsi Nanggroe Aceh Darussalam Nomor 10 Tahun 2007, Tambahan Lembaran Daerah Nanggroe Aceh Darussalam Nomor 10.

<sup>42</sup> Lihat Article 37 paragraph (1)-(3) The Mental Health Ordinance, 2001.

<sup>43</sup> Lihat Article 36 Paragraph (1) The Mental Health Ordinance, 2001.

<sup>44</sup> Lihat Article 20 Mental Health Act 1983.

		Qanun 11 of 2008)	(Article 33 The Mental Health Ordinance 2001)	Mental Capacity Act 2005)
Prohibitions	Not regulated	Selling, transferring, pawning, binding, encumbering, or alienating property except based on necessity and in the best interest (Article 21 paragraph (2) Qanun No. 11 of 2008)	Creating debts, mortgages, sales, transfers, gifts, or exchanges of the ward's property without court approval (Article 36 paragraph (1) The Mental Health Ordinance, 2001)	Making decisions on behalf of the ward if the ward still has the capacity. Guardians must not restrict the ward's freedom unless it endangers them and must not settle any property unilaterally (Article 20 Mental Capacity Act 2005)
Obligations	Not regulated	Caring for the ward, managing property (including record keeping), and handing over all property upon reaching certain indicators (Article 21 paragraph (1) Qanun No. 11 of 2008)	Providing care, including medical costs, submitting an inventory list of the ward every three months, conducting transactions with government-designated banks (Article 37 The Mental Health Ordinance, 2001)	Encouraging the ward's ability to make decisions (Article 4 Mental Capacity Act 2005)
Supervision	Heir Property Office (Article 449 Civil Code)	Baitul Mal (Article 41 paragraph (2) Qanun No. 10 of 2007 concerning Baitul Mal)	Court (Article 45 The Mental Health Ordinance, 2001)	Court (Article 16 paragraph (5) Mental Capacity Act 2005)
Duration	8 (eight) years or more for spouse or direct blood relatives upward or downward; and no more than 8	Not regulated	Not regulated	6 (six) months, extendable for another 6 (six) months (Article 20 Mental Health Act 1983)

	(eight) years for a curator (outsider) (Article 459 Civil Code)			
Aspek	Indonesia (KUHPerdata & KHI)	Indonesia (Aceh Besar)	Pakistan	Inggris
Jenis Pengampunan	Tidak membedakan	Pengampunan untuk diri (Pasal 20 ayat (1) Qanun 11 Tahun 2008) dan pengampunan untuk harta benda (Pasal 20 ayat (2) Qanun 11 Tahun 2008)	Pengampunan untuk diri (Article 32 The Mental Health Ordinance 2001) dan pengampunan untuk harta benda (Article 33 The Mental Health Ordinance 2001)	Pengampunan untuk diri (Article 16 paragraph (a) Mental Capacity Act 2005) dan pengampunan untuk harta benda (Article 16 paragraph (b) Mental Capacity Act 2005)
Larangan	Belum diatur	Menjual, mengalihkan, menggadaikan, mengikat, membebani, dan mengasingkan harta kecuali atas dasar kepentingan dan tidak dapat dihindari. (Pasal 21 ayat (2) Qanun Nomor 11 Tahun 2008)	Membuat tagihan, hipotek, penjualan, transfer, hibah, pertukaran harta Terampu tanpa persetujuan dari pengadilan Article 36 Paragraph (1) The Mental Health Ordinance, 2001)	Membuat keputusan atas nama Terampu jika Terampu masih memiliki keahlian untuk itu. Pengampu tidak boleh membatasi ruang gerak Terampu kecuali membahayakan. Dan tidak boleh melakukan penyelesaian salah satu properti. (Article 20 Mental Capacity Act 2005)
Kewajiban	Belum diatur	Mengasuh, mengelola harta (termasuk pencatatan) hingga menyerahkan seluruh harta ketika memasuki indikator tertentu (Pasal 21 ayat (1)	Merawat, termasuk biaya pengobatan, menyerahkan daftar inventaris Terampu 3 bulan setiap periode akan berakhir, melakukan transaksi	Mendorong kemampuan Terampu untuk mengambil keputusan (Article 4 Mental Health Capacity Act 2005)



			Qanun Nomor 11 2008)	dengan bank yang ditentukan pemerintah (Article 37 The Mental Health Ordinance, 2001)	
Pengawasan	Balai Harta Peninggalan (Pasal 449 KUHPerdata)	Baitul Mal (Pasal 41 ayat (2) Qanun Nomor 10 Tahun 2007 tentang Baitul Mal).	Pengadilan (Article 45 The Mental Health Ordinance, 2001)	Pengadilan (Article 16 paragraph (5) Mental Capacity Act 2005)	
Jangka Waktu	8 (delapan) tahun atau lebih untuk suami atau istri atau keluarga sedarah garis lurus ke atas atau ke bawah. Dan tidak lebih dari 8 (delapan) tahun untuk kurator (orang asing) (Pasal 459 KUHPerdata)	Tidak Mengatur	Tidak Mengatur	6 (enam) bulan dan dapat diperbarui 6 (enam) bulan lagi (Article 20 Mental Health Act 1983)	

*Source: Primary Legal Materials, processed by authors, 2024.*

The substituted decision-making paradigm needs to be transformed into supported decision-making in the management of guardianship for individuals with psychosocial mental disabilities because this approach better aligns with human rights principles, individual needs, and the development of international law. The substituted decision-making paradigm, which currently dominates guardianship regulations in Indonesia, grants full authority to guardians to make decisions on behalf of the ward without involving them in the process. This often overlooks the ward’s capacity to contribute to decisions concerning their own life, even though in many cases, the mental capacity of the ward may be episodic and not permanent.

One fundamental weakness of the substituted decision-making paradigm is the removal of the individual’s right to participate in decision-making that significantly impacts their life. People with psychosocial mental disabilities, such as those experiencing schizophrenia or bipolar disorder, often have periods of remission during which they are capable of rational thought and action. In such conditions, the guardian should provide support rather than fully replace their right to make decisions. The continued use of this outdated paradigm risks creating unnecessary dependency, weakening individual autonomy, and exacerbating stigma against people with mental disabilities. In contrast, supported decision-making offers a more inclusive approach, enabling the ward to retain control over life decisions while receiving guidance from the guardian where expertise or assistance is needed. This paradigm aligns with the Convention on the Rights of Persons with Disabilities (CRPD), which Indonesia has

ratified through Law No. 19 of 2011. The CRPD affirms that all individuals, including persons with disabilities, possess equal legal rights and are entitled to assistance that enables them to exercise those rights effectively.

This approach is also more adaptive to psychosocial conditions, which often require flexibility. For example, during periods of remission, the ward may be given the opportunity to manage their own finances or make personal decisions with minimal guidance. If a relapse occurs, more intensive support can be provided without permanently stripping the ward of their legal capacity. Thus, this paradigm respects the dignity and autonomy of the individual, while allowing for more transparent and accountable decision-making. From a legal perspective, supported decision-making addresses weaknesses in existing regulations by clarifying the limits of guardians' authority, the obligation to involve the ward, and oversight mechanisms to prevent abuse of power. It also reduces the risk of conflicts of interest, as the guardian acts solely as a supporter rather than an absolute decision-maker. By adopting the supported decision-making paradigm, Indonesia can ensure that the guardianship system aligns better with principles of inclusivity, justice, and human rights, while addressing current legal gaps in the management of guardianship for people with psychosocial mental disabilities. This step will strengthen trust in the national legal system and provide better protection for vulnerable groups.

Based on these analyses, the author attempts to formulate a more appropriate guardianship regulation. Proper guardianship regulation includes the suspension of civil legal acts such as inheritance distribution or asset sales if the individual is in an episodic or relapsed condition. This applies not only to individuals with mental disorders but also to those with certain physical illnesses, such as epilepsy, who cannot perform legal acts during a seizure. According to Irmansyah, terms such as "idiot" or "mad" used in the 18th century are now irrelevant because mental disorders like schizophrenia, depression, and bipolar disorder can be managed, allowing affected individuals to live productive lives<sup>45</sup>. Advances in science and modern medicine, including cognitive behavioral therapy, demonstrate that mental disorders should be treated equivalently to physical illnesses. Several witnesses in guardianship cases emphasize that they do not require decisions based on substituted decision-making because they are capable of acting consciously. They also stress the importance of support from those around them regarding their mental condition. In this context, guardianship in England is applied only if the ward is truly unable to make decisions. This principle aligns with the ideal concept of supported decision-making, where the ward's opinions remain considered, as also implemented in Aceh Besar.

Furthermore, Indonesia currently lacks a clear classification of guardians' authority. Based on comparisons with Aceh Besar, Pakistan, and England, guardianship can be distinguished into guardianship over the person, which includes protection and oversight of well-being, and guardianship over property, which aims to manage assets until the ward recovers. Judges in Indonesia should be able to limit the guardian's authority based on specific needs, whether aligned with the application or not. The procedure for establishing guardianship in Indonesia requires reform, such as submitting an application by a relative or expert with authentic evidence from a doctor or psychiatrist. Judges are required to directly assess the condition of the ward and set the term and authority of the guardian, accompanied by a reporting obligation to the Heir Property Office. In England,

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<sup>45</sup> Lihat Putusan Mahkamah Konstitusi Nomor 93/PUU-XX/2022, 49.

guardianship has a maximum duration of six months with a medical evaluation before extension, supported by scientific data on the duration of acute phases in various mental disorders.

The obligations of guardians include prioritizing the ward's best interests, safeguarding assets, and providing guidance in education and health. Prohibitions include transferring assets without court approval or excluding the ward. In Indonesia, sanctions only apply to asset transfers without permission or violations of basic rights by the guardian (as determined by the court), whereas in Pakistan and Aceh Besar, there are penalties for negligent guardians who attempt fraud at the start of the process to control the ward's property. Therefore, reform of Law No. 8 of 2016 is necessary, adding technical mechanisms, time limits, supervision, and criminal sanctions to protect people with mental disabilities. The principle of supported decision-making provides more inclusive protection, ensures justice, and respects human rights in the management of inheritance assets.

### **Conclusion**

This study has demonstrated that the current guardianship system in Indonesia, particularly in the context of Islamic inheritance law, remains heavily rooted in a substituted decision-making paradigm. Such an approach not only marginalizes individuals with psychosocial disabilities but also contradicts both the principles of *maqāṣid al-sharī'a*—which prioritize the protection of life and property—and Indonesia's obligations under the Convention on the Rights of Persons with Disabilities (CRPD). The absence of clear limitations on guardian authority creates significant risks of misuse and undermines the legal agency of those it intends to protect. Drawing on statutory, conceptual, and comparative analyses, this research proposes the adoption of a limited guardianship model that aligns with the supported decision-making paradigm. In this model, guardians serve not as substitutes but as facilitators, ensuring that persons with disabilities are actively involved in decisions concerning their inheritance rights. Implementing such a framework requires reforms that include restricting guardian authority, enhancing judicial and institutional oversight, and imposing sanctions on abusive practices.

By integrating Islamic legal principles with international human rights standards, this study offers a normative construction for guardianship that is both inclusive and just. The proposed reforms contribute not only to safeguarding the rights of vulnerable individuals but also to realizing the constitutional mandate of social justice and reinforcing Indonesia's commitment to non-discriminatory legal development. Ultimately, the shift toward limited guardianship represents a critical step in harmonizing Islamic inheritance law with contemporary principles of equality, autonomy, and protection.

### **References**

- Abdul Malik J. *Makna Al-Sufaha dalam Al-Quran (Suatu Kajian Muqaran antara QS al Baqarah/2: 13 dengan QS an-Nisa'/4: 5)*. Skripsi tidak diterbitkan. Makassar: Fakultas Ushuluddin Filsafat UIN Alauddin Makassar, 2022.
- Abu Abdillah Muhammad bin Ahmad bin Abi Bakr bin Farh al-Ansari Syams al-Din al-Qurtubi. *al-Jami' li Ahkam al-Quran*. Translated by Mahmud Hamid Utsam. Vol. V.

- Abu al-fida Ismail bin Umar bin Kasir. *Lubab al-Tafsir Min ibn Kasir*. Translated by M. Abdul Ghozzat et al. Jilid II. Bogor: Pustaka Imam Syafi'i, 2004.
- Amelia, Hanny. 'Guardianship Model for People with Disabilities in Indonesia - EUDL'. Paper presented at AIDRAN Biennial Conference: International Conference on Disability Rights. EAI, 2024. <http://dx.doi.org/10.4108/eai.21-11-2023.2352647>.
- Ayudhia Kartika et al. "Prediksi Angka Kekambuhan pada Pasien Skizofrenia Episode Pertama dengan Kepatuhan Berobat Rendah dalam Waktu Tiga Tahun." *Jurnal Kesehatan Indonesia* 2, no. 1 (April 2014): 53. <https://doi.org/10.23886/eiki.2.3178>.
- Aswin Junaedi Siregar. "Pengadilan Agama Panyabungan Hadiri Sosialisasi Tugas dan Fungsi Balai Harta Peninggalan Sekaligus Penandatanganan Memorandum Of Understanding (MOU)." Accessed September 12, 2024. <https://panyabungan.go.id/id/publikasi/arsipberita/962-pengadilan-agama-panyabungan-hadiri-sosialisasi-tugas-dan-fungsi-balai-hartapeninggalan-sekaligus-penandatanganan-memorandum-of-understanding-mou>.
- Brian Martin. *Information Liberation*. London: Freedom Press, 1998.
- Fakhrul Maulidin. *Pertimbangan Hakim dalam Menetapkan Permohonan dari Status Wali Pengampu (Studi Pengadilan Negeri Medan Kelas IA Nomor 137/Pdt.P/2019/PN.Mdn)*. Medan: Fakultas Hukum Universitas Medan Area, 2021.
- Hajimin, Mohd Nur Hidayat Hasbollah, Syamsul Azizul Marinsah, Sarip Adul, Issraq Ramli, and Mohd Zohdi Mohd Amin. *The Role of Maqasid Shariah Framework in The Management of People with Disabilities (PWD): A Systematic Literature Review*. n.d. Accessed 27 August 2025. <https://hrmars.com/index.php/IJARBSS/article/view/20626/The-Role-of-Maqasid-Shariah-Framework-in-The-Management-of-People-with-Disabilities-PWD-A-Systematic-Literature-Review>.
- Haroen, Nasrun. *Fiqh Muamalah*. Gaya Media Pratama, 2007.
- HM. Zainuddin. "Islam dan Masalah Kesehatan Jiwa." Accessed August 30, 2024. <https://uin-malang.ac.id/r/200501/islam-dan-masalah-kesehatan-jiwa.html>.
- Kennedy, Richard. 'Deconstructing the Legal Procedure for Guardianship in Indonesia: An Embodiment Approach to Disability - EUDL'. Paper presented at AIDRAN Biennial Conference: International Conference on Disability Rights. EAI, 2024. <http://dx.doi.org/10.4108/eai.21-11-2023.2352652>.
- Kudaedah, Nur Asiah. 'Masalah Menurut Konsep Al-Ghazali'. *DIKTUM: Jurnal Syariah dan Hukum* 18, no. 1 (2020): 118–28. <https://doi.org/10.35905/diktum.v18i1.663>.
- Mahkamah Konstitusi Republik Indonesia. *Risalah Sidang Perkara Nomor 93/PUU-XX/2022*. Jakarta: Mahkamah Konstitusi, December 13, 2022. Accessed September 6, 2024. [https://www.mkri.id/public/content/persidangan/risalah/8867\\_Risalah-pdf\\_PERKARA\\_NOMOR\\_93.PUU-XX.2022\\_tgl\\_13\\_Desember\\_2022.pdf](https://www.mkri.id/public/content/persidangan/risalah/8867_Risalah-pdf_PERKARA_NOMOR_93.PUU-XX.2022_tgl_13_Desember_2022.pdf).
- Mardina, Deby, and Boy Nurdin. 'Legal Review of Land Inheritance in the Perspective of Islamic Law Compilation Implementation of Article 178 Paragraph 2 of the Islamic Law Compilation - EUDL'. European Union Digital Library, 25 May 2025, 1–9. <http://dx.doi.org/10.4108/eai.25-5-2024.2349360>.
- M. Fahmi and Hamidullah. "Wewenang dan Pendelegasian dalam Perspektif Al-Quran." *Al-Misykah: Jurnal Kajian Al-Quran dan Tafsir* 2, no. 2 (2023): 6. <https://doi.org/10.19109/almisykah.v4i2.20227>.
- Mulia, Hisyam Ikhtiar, Albert Wirya, Yosua Octavian, Ricky Gunawan, Piers Gooding, and Jamie Walvisch. 'Assessment of the Guardianship System for Persons with Psychosocial Disability in Indonesia'. *Scandinavian Journal of Disability Research* 26, no. 1 (2024): 300–314. <https://doi.org/10.26181/26795089.v1>.

- Nugroho, Harry, Indah Sri Utari, Irawaty Irawaty, Satrio Sakti Nugroho, Souad Ezzerouali, and Tajudeen Sanni. 'Who Will Advocate? The Impact of Decision 93/PUU-XX/2022 on Article 433 Civil Code Amendments for Disability Rights and Legal Protection'. *Indonesian Journal of Advocacy and Legal Services* 7, no. 1 (2025): 95–120. <https://doi.org/10.15294/ijals.v7i1.22699>.
- Nur Asiah. "Masalah Menurut Konsep Imam Al-Ghazali." *DIKTUM: Jurnal Syariah dan Hukum* 18, no. 1 (2020): 123. <https://doi.org/10.35905/diktum.v18i1>.
- Nur Paikah. *Sosiologi Hukum*. Bone: CV Cendekiawan Indonesia Timur, 2023.
- Piagam Madinah. Accessed September 30, 2024. <http://repository.umy.ac.id/bitstream/handle/123456789/22222/1.%20Lampiran.pdf?sequence=1>.
- Olayemi, Abdul Azeez Maruf, and Anthoney Gbadebo Olagunju. *Guardianship, Its Importance and Developments: A Comparative Study Between Shariah Law and the Positive Law / El-Aqwal : Journal of Sharia and Comparative Law*. 29 January 2023. <https://ejournal.uinsaizu.ac.id/index.php/elaqwal/article/view/7706>.
- Rifaldo, Andrean. 'Aksesibilitas 28 Juta Penyandang Disabilitas'. KOMPAS.com, 27 November 2023. <https://lestari.kompas.com/read/2023/11/27/162704486/aksesibilitas-28-juta-penyandang-disabilitas>.
- Riri Mela Lomika Siregar. *Curatele (Pengampunan): Suatu Analisis Atas Penetapan Pengadilan Negeri Jakarta Selatan Nomor 94/Pdt.P/2008, PN.Jkt.Sel dan Nomor 100/Pdt.P/2008/PN.Jkt.Sel*. Depok: Fakultas Hukum Universitas Indonesia, 2009.
- Rizka, Rizka, and Anindia Fadhillah. 'One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities: Salah Satu Bentuk Perlindungan Bagi Penyandang Disabilitas Mental Sebuah Studi Eksplorasi Peraturan Perundang-Undangan Indonesia Tentang Perlindungan Hak Waris Penyandang Disabilitas Mental'. *Society* 10, no. 1 (2022): 220–28. <https://doi.org/10.33019/society.v10i1.411>.
- Shanko, Ayano, Lonsako Abute, and Temesgen Tamirat. 'Attitudes towards Schizophrenia and Associated Factors among Community Members in Hossana Town: A Mixed Method Study'. *BMC Psychiatry* 23, no. 1 (2023): 80. <https://doi.org/10.1186/s12888-023-04555-9>.
- Tamba, Roida, and Besty Habeahan. 'Role and Responsibility of Guardian in Manage of Inheritances Under Supervision of Medan Inheritances Center, Indonesia'. *Golden Ratio of Data in Summary* 5, no. 2 (2025): 289–96. <https://doi.org/10.52970/grdis.v5i2.826>.
- Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan. Lembaran Negara Tahun 2011 Nomor 82 Tambahan Lembaran Negara Nomor 5234.
- Undang-Undang Nomor 18 Tahun 2014 tentang Kesehatan Jiwa. Data diperoleh dari direktori putusan Mahkamah Agung.
- Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas. Lembaran Negara Republik Indonesia Tahun 2016 Nomor 69 Tambahan Lembaran Negara Nomor 5871.
- Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas.
- Qanun Nomor 11 Tahun 2008 tentang Perlindungan Anak. Lembaran Daerah Nanggroe Aceh Darussalam Nomor 11 Tahun 2008 Tambahan Lembaran Daerah Nanggroe Aceh Darussalam Nomor 21.
- Qanun Nomor 10 Tahun 2007 tentang Baitul Mal. Lembaran Daerah Provinsi Nanggroe Aceh Darussalam Nomor 10 Tambahan Lembaran Daerah Nanggroe Aceh Darussalam Nomor 10.
- Mental Health Act* 1983.
- The Mental Health Ordinance* 2001.