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Taṣarruf of *Tirkah* Involving *Mahjūr ʻalaih*: *Iżn* in Fiqh and Indonesian Islamic Family Law

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Abstract. *This study examines the normative tension between the prohibition on taṣarruf of a tirkah containing the rights of mahjūr ʻalaih heirs in classical fiqh and the authority of a guardian over a child's property under Indonesian positive law. In classical fiqh, the status of mahjūrʻalaih results in the loss of ahliyyah al-adā', so that any iżn granted by such a party is not considered valid, consequently, taṣarruf of a tirkah classified as al-māl al-musyā' is prohibited even if other legally competent heirs have given their consent. Conversely, the Compilation of Islamic Law, through Articles 106 and 110, actually grants the guardian active authority to manage and develop the assets of the child under his or her guardianship. This study is a normative research employing conceptual, statutory, and comparative approaches, utilizing primary legal sources such as cross-school fiqh texts, the Compilation of Islamic Law, the Marriage Law, and the Child Protection Law. Analysis through the framework of maqāṣid al-shariʻah indicates that the absolute application of the prohibition on taṣarruf regarding productive assets may result in mafsadat in the form of a depreciation in asset value, which contradicts the principle of ḥifẓ al-māl. This study offers a conceptual reconstruction in the form of a distinction between taṣarruf istihlākī, which remains prohibited, and taṣarruf iṣlāḥī, which is justifiable when carried out by a guardian possessing valid wilāyah under adequate supervision.*

Keywords: *Tirkah*; *Mahjūr ʻAlaih*; *Taṣarruf*; *Iżn*; *Wilāyah*.

INTRODUCTION

Inheritance under Islamic law holds a strategic position, in addition to concerning the individual rights of heirs, its management also has direct implications for the welfare of the family following the death of the decedent. Inheritance regulations have been comprehensively established in the Qur'an, particularly in Surah an-Nisa, which specifies the share of each heir based on blood ties and other grounds for inheritance, in order to ensure legal certainty, distributive justice, and prevent disputes

among those entitled to the inheritance (Zen et al., 2026). Nevertheless, in practice, the distribution of an estate is not always carried out immediately after the decedent's death. The distribution process is often delayed because some heirs are not yet legally competent to act, such as minors, so the family postpones the distribution until the individual in question is deemed capable of managing their own rights (Islamiyati, 2015). Such a delay is essentially a form of protection for heirs who are not yet legally competent. However, without a clear basis in Islamic law or legal justification, such a delay has the potential to hinder the rights of other heirs and open the door to the unlawful control or use of the estate, which contradicts the principle of justice in Islamic law (Novendri Eka Saputra, 2026).

This issue becomes more complex when the undistributed estate consists of productive assets, such as farmland, rental properties, or a family business, which require ongoing management to prevent their economic value from diminishing (Muttaqin, 2023). From a fiqh perspective, undistributed inherited assets are classified as *al-māl al-musyā'*, that is, joint ownership whose shares cannot yet be physically separated, even though the proportion of each heir's rights has been determined based on faraidh (Abdullah, 2023). This status means that any *taṣarruf* of the inherited estate, particularly those of a consumptive or alienating nature, cannot be carried out freely or unilaterally without a valid legal basis, because the property still encompasses the collective rights of all heirs. This status differs from *al-māl al-musytarak*, where the boundaries of each party's ownership have been clearly identified, so that legal actions regarding a specific portion no longer depend on the rights of other owners (Dahliani et al., 2018). Thus, as long as the estate retains the status of *al-māl al-musyā'*, the legality *of* any *taṣarruf* requires a clear legal basis to ensure its management does not conflict with the principle of protecting the heirs' rights.

The issue of the legality *of a taṣarruf* becomes even more complex if among the heirs there is a party with the status of *mahjūr 'alaih* that is, a person whose capacity to perform legal acts regarding their property is restricted for certain reasons recognized by Islamic law (Sunnatullah, 2024). Groups falling into this category include minors *(ṣabī)*, the mentally ill *(majnūn)*, and those incapable of managing their assets *(safīh)*, as stated in the *verse* quoted in Ḥāsyiyah al-Bujairimī. (Bushiri, 2024) This restriction removes *ahliyyah al-adā'*, namely the capacity to perform legal acts, although *ahliyyah al-wujūb* the capacity to hold and receive rights remains attached to the individual in question (Sinlae et al., 2024). Thus, a minor who is an heir retains the right to a share of *tirkah* according to the *faraidh*, but is not authorized to grant valid *iẓn* or consent regarding legal acts concerning that inherited property (N. A. Wahyudi et al., 2025).

In muamalah fiqh, the exercise of *taṣarruf* over jointly owned property essentially requires *iżn* of each rights holder as a form of consent (Bushiri, 2024). This provision becomes problematic when one of the rights holders is a *maḥjūr 'alaih*, because their limited legal capacity (*ahliyyah al-adā')* renders their consent legally ineffective. Consequently, even if all legally competent heirs have given their consent, the exercise of *taṣarruf* over the *tirkah* still faces obstacles to legal legitimacy. The issue of managing a *tirkah* that includes the rights of a *mahjūr 'alaih* thus does not merely concern the mechanism of for the distribution of the estate, but also the relationship between joint ownership, legal capacity, and the validity *of* the *iżn* as a prerequisite for legal acts in Islamic jurisprudence (M. Syafi'ie, 2022). The intersection of these three aspects raises questions regarding which party is authorized to grant *permission (iżn)* on behalf of the *mahjūr 'alaih* and the limits of that authority.

The issue of granting of *iżn* for *taṣarruf* of *tirkah* to which the *mahjūr 'alaih* is entitled is approached differently in Indonesian positive law. The Compilation of Islamic Law grants the guardian a more active role in managing the assets of the person under his or her guardianship (Harahap, 2018). Article 110(1) of the Compilation of Islamic Law (KHI) stipulates that a guardian is obligated to manage the person and assets of the individual under his or her guardianship to the best of his or her ability (*Kompilasi hukum Islam*, 2004). Meanwhile, Article 106(1) of the KHI states that parents are obligated to care for and develop the assets of their minor children and may not transfer or pledge them except for urgent needs in the best interests of the child (*Kompilasi hukum Islam*, 2004). The use of the phrases "manage" and "develop" indicates that positive law positions the guardian not merely as a passive custodian of assets, but as a legal subject with active authority to manage assets for the protection and welfare of the person under guardianship (M. R. Santoso & Adlhiyati, 2025). This construction reflects a more functional orientation toward the management of the assets of *a mahjūr 'alaih* compared to classical fiqh, which places greater emphasis on legal capacity and the validity of permission *(iżn)*.

This difference in legal framework between classical fiqh and positive law has been the focus of several studies, although the discussion remains limited. Research on the guardianship of children indicates that fiqh bases the determination of guardianship not only on age but also on intelligence and the ability to manage assets, whereas positive law places greater emphasis on maturity as the primary criterion (Munadiati et al., 2026). Another study reveals that weak oversight of guardians creates opportunities for abuse of authority in the management of inherited assets, as reflected in the Banten High Court Decision No. 89/Pdt/2015/PT BTN (Abubakar et al., 2026). These findings enrich our understanding of guardianship and the protection of children's assets, but they have not

yet specifically analyzed the legitimacy of *taṣarruf* over *tirkah* classified as *al-māl al-musyā'*, which involves the rights of *mahjūr 'alaih* , nor the relationship between the concepts of *iżn, ahliyyah*, and the guardian's authority as the basis for reconstructing the legitimacy of legal actions regarding *the tirkah* in Islamic jurisprudence and Indonesian Islamic family law.

To fill this gap, this study is situated within the framework of *maqāṣid al-sharī'ah*, specifically the principle of *ḥifẓ al-māl* as one of the *al-maqāṣid al-khamsah*, combined with the rule of *jalb al-maṣāliḥ wa dar' al-mafāsid* as the primary objective of establishing Sharia law (Afridawati, 2011). Within this framework, the study analyzes whether the absolute prohibition on the disposal of an estate by *a mahjūr 'alaih* actually causes *mafsadat* in the form of a depreciation in asset value when rigidly applied to modern productive assets, thereby contradicting the Sharia objective of preserving wealth, including the wealth of *the mahjūr 'alaih* themselves.

Based on the above discussion, this study focuses on the legal construction *of taṣarruf* over *the tirkah* of *a mahjūr 'alaih* from the perspective of classical fiqh, as well as its relevance to the regulation of a wali's authority in Indonesian Islamic family law, through an examination of the normative basis for the prohibition *of taṣarruf* which is grounded in the concepts *of iżn* and *ahliyyah* an examination of the status of the guardian's authority within the framework of fiqh, and an evaluation through the *maqāṣid al-sharī'ah* approach, particularly the principle of *ḥifẓ al-māl*. On this basis, this study aims to reconstruct the concept *of iżn* in *taṣarruf* of *a tirkah* involving a *maḥjūr 'alaih* through a conceptual model that bridges the principles of classical fiqh with developments in Indonesian Islamic family law.

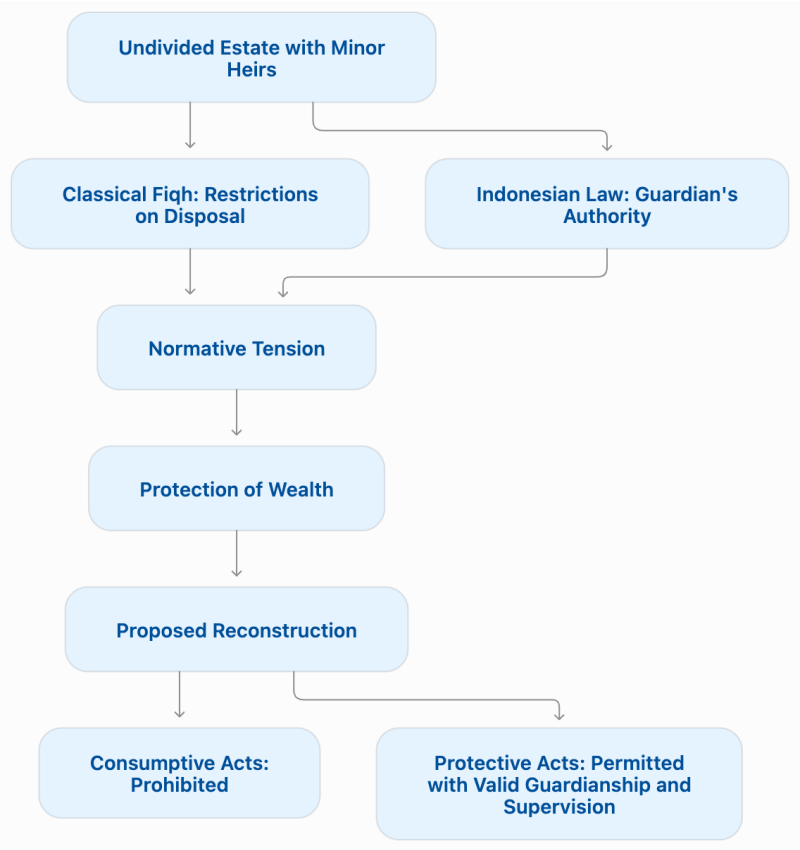


Figure. 1 Mapping Concept

METHOD

This study is a normative legal research (*doctrinal legal research*) focused on examining legal norms, principles, and doctrines to address the legal issues that are the subject of the study, with the final outcome being a prescription regarding what should be applied. The choice of this research type is based on the nature of the issue under study, namely an analysis of norms derived from classical fiqh and Indonesian positive law. This study employs three complementary approaches. *The conceptual approach* is used to examine the concepts *of al-ḥajr*, *ahliyyah*, *iżn*, *tirkah*, and *al-māl al-musyā'* as the central concepts of the study, drawing upon perspectives and doctrines developed within legal scholarship to identify relevant legal ideas and principles as the foundation for constructing arguments. *The statutory approach* is used to examine the Compilation of Islamic Law, Law No. 1 of 1974 on Marriage, and Law No. 35 of 2014 on Child Protection, particularly the articles governing the guardian's authority over a child's property. The comparative approach is used to compare the construction of norms in classical fiqh with that in Indonesian positive law and contemporary fiqh, in order to identify points of convergence and points of tension between the two.

The legal sources used in this study include primary, secondary, and tertiary sources. Primary legal sources consist of authoritative legislation, including the Compilation of Islamic Law (Kompilasi Hukum Islam), Law No. 1 of 1974 on Marriage, Law No. 35 of 2014 on Child Protection. In addition, primary legal sources also include classical fiqh texts that form the foundation of the fiqh argumentation in this study, specifically: *Ḥāsyiyah al-Bujairimī* by Sulaymān al-Bujairimī (Shafi'i school), used as the primary reference for the classification of *mahjūr 'alaih* and the legal consequences of *al-ḥajr*; *al-Mughnī* by Ibn Qudāmah al-Maqdisī (Hanbali school), consulted for its comparative cross-school analysis of *al-ḥajr*, legal capacity *(ahliyyah)*, and guardianship; *Badā'i' al-Ṣanā'i'* by Abū Bakr al-Kāsānī (Hanafi school), used as the primary Hanafi reference for the concept of al-ḥajr and the prohibition on legal acts by those under guardianship; and *Bidāyat al-Mujtahid* by Ibn Rusyd (cross-school), used as a comparative jurisprudential reference for the rules of *al-ḥajr* and their consequences for *ahliyyah* across the schools of thought. Secondary legal materials consist of scientific journal articles, previous research findings, and academic publications discussing the themes *of al-ḥajr*, *ahliyyah*, guardianship of a child's property, *tirkah*, and *of maqāṣid al-sharī'ah* which are used to provide explanations of the primary legal materials. Tertiary legal sources, such as legal dictionaries and encyclopedias, are used to provide additional explanations of the technical terms in this study. The analysis is conducted prescriptively through systematic interpretation and teleological interpretation. Systematic interpretation is used to understand how a norm relates to other norms within a legal system, while teleological interpretation is used to understand the purpose of a norm so that it can be assessed whether that purpose is achieved or, conversely, not achieved when the norm is rigidly applied to the context of modern productive assets. The theoretical framework underpinning the entire analysis in this study encompasses the theories *of al-ḥajr* and *ahliyyah* in usul al-fiqh, the theories *of tirkah* and *al-māl al-musyā'* in contemporary muamalah fiqh, the theory of wilayah in Islamic family law and Indonesian positive law, as well as the theory *of of maqāṣid al-sharī'ah* particularly the principle *of ḥifẓ al-māl* and the prohibition against *kanz al-māl* all of which are used in an integrated manner to analyze the normative tensions that form the focus of this study.

FINDINGS

The Concept *of al-Ḥajr* and the Prohibition on *Taṣarruf* of a *Tirkah* Containing the Rights of *a Mahjūr 'alaih*

1. The Status of the *Tirkah* as *al-Māl al-Musyā'* in Terms of *Taṣarruf*

When a person dies, all the assets they leave behind whether movable property, immovable property, or rights attached thereto automatically become part of *the tirkah*, or estate (Afridawati, 2011). Under Islamic inheritance law, *the tirkah* cannot be immediately distributed to the heirs because there are still a number of obligations that must be settled first, including the preparation of the deceased for burial *(tajhīz al-mayyit)*, the repayment of the deceased's debts, the return of any entrusted property, if any, and the execution of the will in accordance with applicable provisions (Muttaqin & Zubir, 2023). Article 175 of the Compilation of Islamic Law further emphasizes that the settlement of the deceased's obligations is a step that must be prioritized before the distribution of the estate takes place (*Kompilasi hukum Islam*, 2004). Once all these obligations have been fulfilled, the remaining assets become the subject of the inheritance to be distributed to the heirs in accordance with the provisions of *faraidh.* As long as the distribution has not yet taken place, *the tirkah* remains undivided, thus, the rights of each heir are still held jointly, and the physical boundaries of their ownership cannot yet be determined, even though the size of each heir's share has been established according to *faraidh.* On this basis, Islamic jurisprudence classifies undivided *tirkah* as *al-māl al-musyā'*, that is, jointly owned property where the ownership proportions are known, but the specific shares of each owner cannot yet be separated (Irwan, 2021).

This condition applies to an undivided *tirkah.* Although the legal share of each heir has been precisely determined by the rules of *faraidh* for example, a son receives two shares and a daughter receives one share these shares cannot yet be physically identified or separated from the total estate. For example, if the *tirkah* consists of a one-hectare plot of land, before a physical division is carried out, it is not possible to concretely determine which portion belongs to the son and which portion belongs to the daughter, even though the distribution ratios are mathematically clear. It is this type of situation that is referred to in muamalah fiqh as *al-māl al-musyā'.*

In muamalah fiqh, the *taṣarruf* of joint property can, in principle, only be carried out with the *iẕn* or consent of all rights holders (Rifqi Qowiyul Iman, 2026b). This principle is reflected in the concept *of syirkah* according to the Maliki jurists, who view *syirkah* as the delegation of authority among partners to manage joint property, such that each partner retains authority over their own share while simultaneously granting authority to the other partners within the bounds of joint ownership.(Bushiri, 2024) This concept also applies to a tirkah that is still classified as *al-māl al-musyā'.* As long as the estate has not been distributed, any *taṣarruf* whether sale, lease, or other utilization requires the *iẕn* of all heirs. This requirement is not met if one of the heirs is in a state of *mahjūr 'alaih* , as that person lacks the legal capacity *(ahliyyah al-adā')* necessary for the validity of

granting *iẕn* (Kausari, 2021). Consequently, *a taṣarruf* of the entire *tirkah* cannot be carried out even if the other legally competent heirs have given their consent, because *the tirkah,* as *al-māl al-musyā',* constitutes a single unit of ownership involving the rights of all heirs. This situation can hinder the management of productive assets within *tirkah*, meaning that the assets cannot be utilized until the *iẕn* requirement is met, including until the person under legal restriction (*mahjūr 'alaih)* regains legal capacity *(ahliyyah al-adā')*.

2. The Concept *of al-Hajr*, the Classification *of Mahjūr 'alaih* and *Ahliyyah*, and Their Implications for the Practice of Inheritance Distribution

Etymologically, *al-ḥajr* means a prohibition, restriction, or limitation on a person's authority. In Islamic legal terminology, *al-ḥajr* is understood as a condition that prevents a person from performing certain legal acts regarding their property (Zainuddin Lubis, 2024). This concept is explained in various ways in fiqh literature, although it shares the same essence regarding the restriction of legal capacity. According to the Hanafi school, *al-ḥajr* constitutes a legal impediment that prevents a person under guardianship from independently concluding contracts or conducting legal transactions concerning their property; consequently, any such transaction whether a sale, exchange, or gift carried out without the guardian's authorization is rendered legally void and without binding effect (Abū Bakr ibn Mas'ūd ibn Aḥmad al-Kāsānī, 1910). The Maliki school, by contrast, defines *al-ḥajr* as a judicially recognized legal condition imposed by Sharia upon a person, limiting their authority to perform legal acts that exceed their capacity and, in particular, prohibiting the disposal of more than one-third of their property to others (Muḥammad ibn Aḥmad ibn Muḥammad ibn Rusyd, 1982).

In muamalah fiqh, *mahjūr 'alaih* are classified into eight categories: minors *(ṣabī'),* those who have lost their sanity *(majnūn),* those incapable of managing their assets *(safīh)*, a person declared bankrupt *(muflis),* a person suffering from a serious illness *(marīḍ makhūf),* a slave, an apostate, and a person who has pledged their property as collateral *(rāhin)* (Bushiri, 2024). The classification of these eight groups as *mahjūr 'alaih* indicates that the restriction of authority to manage property in Islamic jurisprudence is not intended to deprive them of their right of ownership, but rather serves as a protective mechanism for the individuals concerned as well as for others who may be affected by their legal actions (Sunnatullah, 2024). These restrictions are applied to prevent losses resulting from a person's inability to manage their assets wisely, whether due to age, mental condition, or financial circumstances which serve as the basis for the imposition of *al-ḥajr* (Bushiri, 2024).

This discussion focuses on the category of *mahjūr 'alaih ,* specifically minors *(ṣabī),* as the issue being analyzed pertains to the administration of a *tirkah* in which the rights of heirs who are not yet competent to perform legal acts regarding their assets are involved. This focus is maintained to keep the discussion centered on the research subject. Nevertheless, the legal framework regarding the restriction of legal capacity for minors can, in principle, also be applied to other categories of *maḥjūr 'alaih,* such as individuals with mental disorders, provided that their status *as maḥjūr 'alaih* has been established in accordance with applicable legal provisions.

The status of *mahjūr 'alaih* in Islamic law does not automatically deprive a person of all legal capacity. To understand the legal consequences, ushul fiqh distinguishes between two forms of legal capacity, *ahliyyah al-wujūb* and *ahliyyah al-adā'* (Maulana, 2023). *Ahliyyah al-wujūb* is a person's capacity to hold rights and be subject to legal obligations, which is inherent in every human being from the moment they become a legal subject, including a fetus and individuals with mental disorders *(majnūn)* (Sainul, 2019). Unlike legal capacity to be subject to obligations (*ahliyyah al-wujūb*), legal capacity to perform acts (*ahliyyah al-adā')* relates to the ability to perform legal acts that give rise to legal consequences and simultaneously serve as the basis for liability for those acts (M. Syafi'ie, 2022). It is this capacity that a person under legal restriction (*mahjūr 'alaih*) lacks *ahliyyah al-adā'*, consequently, the restriction on the authority to act is a consequence of the lack of legal capacity to perform acts *(ahliyyah al-adā'*).

This distinction forms the basis for understanding the legal status of a *maḥjūr 'alaih* with regard to rights to the *tirkah*. For a minor child, the status *of mahjūr 'alaih* does not affect their right as an heir to receive a share of the estate, because their *ahliyyah al-wujūb* remains in effect from the moment of birth (Hardiansyah & Mufidah, 2021). This right is even recognized while the child is still in the womb, provided they meet the requirements to be an heir (Hardiansyah & Mufidah, 2021). The restriction applies only to their *ahliyyah al-adā'* meaning they lack the authority to independently perform legal acts regarding the assets to which they are entitled (Maulana, 2023). This legal incapacity also includes the lack of authority to grant *iẓn* for any form of *taṣarruf* (Jauhari, 2015). Therefore, legal acts performed by a person under guardianship without the consent or permission of their guardian do not produce legal consequences (Rusfandi, 2020).

The distinction between *ahliyyah al-wujūb* and *ahliyyah al-adā'* has tangible implications for the practice of inheritance distribution in society, one such implication is evident in the postponement of the distribution of the estate when there are still minor children among the heirs. Research by Asnawi Abdullah shows that the most common reasons for postponement are that the heir's child

is still young, unmarried, or has not yet completed their education (Abdullah, 2023). The same study reveals that a delay without a reason justified by Islamic law has the potential to cause harm, ranging from disputes among heirs to the possibility of unlawful and unjust control over the estate (Abdullah, 2023). Based on the legal framework outlined above, the postponement of inheritance distribution due to the presence of an heir with *mahjūr 'alaih* status essentially has a legal basis, since *taṣarruf* over a *tirkah* that is consumptive or alienating in nature cannot take place without a valid *iżn* from all rights holders, including the *mahjūr 'alaih*, whose consent cannot be legally recognized owing to their lack of *ahliyyah al-adā'*. A more complex issue arises if this situation persists over the long term, particularly when the estate consists of productive assets that require ongoing management to maintain their economic value (Muttaqin, 2023). Assets such as land that is left untended, buildings that are not maintained, or businesses that are not managed risk losing value if left unmanaged until the child with *maḥjūr 'alaih* status attains the legal capacity to act independently (Priyadi, 2024). This issue demonstrates that the prohibition on *taṣarruf* over a *tirkah* that includes the rights of a *mahjūr 'alaih* not only has legal consequences but also raises practical issues that require further analysis.

3. Iżn as a Condition for *Taṣarruf* of Joint Property

The validity *of a taṣarruf* in Islamic jurisprudence is not determined solely by the intention to perform a legal act, but also depends on the legal capacity of the party performing it. Any legal act performed by a party with the status of *mahjūr 'alaih* whether through speech or other forms of legal declaration generally does not produce legal consequences if performed without the permission of their guardian (M. Syafi'ie, 2022). This provision indicates that *iżn* is not merely understood as consent, but rather as legal authority that can only be granted by a party possessing *legal capacity* to act *(ahlīyyah al-adā')* (Lubis, 2023). Thus, consent given by a party with the status of *mahjūr 'alaih* cannot be regarded as valid *iżn*, as the requirement of legal capacity which forms the basis for the validity of a legal act is not met.

The status of *iżn* as a prerequisite for exercising *taṣarruf* over joint property can be understood through the legal framework of *"syirkah"* in muamalah fiqh. This concept illustrates how the legal relationship among property owners is built upon the authority mutually granted to manage the joint property. Scholars of the Maliki school view *syirkah* as a form of cooperation that grants each party the authority to manage the joint property, while each party retains the right to their own share of the property (Febriani, 2023). Thus, the authority to perform legal acts is not a right that can be exercised unilaterally, but rather arises from the consent of all parties with an interest in

the property. This framework demonstrates that *iżn* is not merely a formality but rather the foundation that legitimizes the exercise of *taṣarruf* over joint assets (Rifqi Qowiyul Iman, 2026b).

The concept of *iżn* in *syirkah* applies not only to cooperative relationships but also explains the mechanism of *taṣarruf* regarding undivided inheritance (*tirkah*). As long as the *tirkah* is classified as *al-māl al-musyā'*, each heir's right is attached to the entire estate; thus, any legal action regarding it cannot be separated from the interests of the other rights holders (Jamarudin et al., 2026). On this basis, any *taṣarruf* whether sale, lease, or other utilization in principle requires *iżn* from all heirs (Aldiansyah et al., 2025). This requirement does not pose a problem if all heirs are legally competent, but the situation is different when one of them is a *mahjūr 'alaih* , such as a minor, because their consent cannot be considered valid *iżn* due to their lack of *ahliyyah al-adā'*, and thus the requirement for the validity *of a taṣarruf* over *the tirkah* has not been met.

The invalidity of the *iżn* granted by *a mahjūr 'alaih* has direct implications for the execution *of taṣarruf* regarding the undistributed *tirkah*. Even if all other heirs have given their consent and possess legal capacity, this alone is insufficient to legitimize *taṣarruf* of the entire estate, because *tirkah,* which still holds the status of *al-māl al-musyā'*, is regarded as a single, undivided mass of assets that has not yet been physically separated; thus, any legal action concerning it remains tied to the rights of all heirs (Suratinoyo, 2018). On that basis, the validity of any consumptive or ownership-transferring disposition depends on obtaining valid *iżn* from all rights holders without exception, including those who have a share in the *tirkah* but are still considered *mahjūr 'alaih*. As long as this condition has not been met, any *taṣarruf* of a consumptive or alienating nature over the tirkah remains prohibited under fiqh (Junaidi, 2024).

The Guardian's Authority Over a Child's Property Under Indonesian Positive Law and Its Relevance as a Legitimate *Wilāyah*

1. Guardians' Authority in the Compilation of Islamic Law and Legislation

Regulations regarding a guardian's authority over a child's property in Indonesian positive law demonstrate an approach that differs from the construction of *al-ḥajr* in classical fiqh. While classical fiqh emphasizes the legal incapacity of the *mahjūr 'alaih* such that any *iżn* granted by them is invalid the Compilation of Islamic Law, on the other hand, provides more detailed provisions regarding a guardian's authority to manage the property of a minor (Harahap, 2018). This provision is reflected in Article 110 (1) of the Compilation of Islamic Law (KHI), which designates the guardian as the party obligated to responsibly manage the person and property of those under

their guardianship, accompanied by the duty to respect their religion and beliefs and to provide guidance through education, religious instruction, and life skills as preparation for the future (*Kompilasi hukum Islam*, 2004). Paragraph (2) of the same article also sets forth limitations on its implementation. A guardian is not permitted to encumber, burden, or transfer assets under their guardianship, unless such actions benefit the child or are unavoidable (*Kompilasi hukum Islam*, 2004). Consequently, Article 110, paragraph (3) of the KHI imposes responsibility on the guardian for the management of the child's assets, including the obligation to compensate for losses arising from errors or negligence in performing these duties (*Kompilasi hukum Islam*, 2004).

Provisions regarding the authority to manage a child's assets are not only found in Article 110 of the KHI but are also reaffirmed through Article 106 (1), which governs the obligations of parents toward the assets of minors and children still under guardianship. This provision positions parents not merely as custodians of the child's assets, but also as bearers of the responsibility to maintain and develop those assets so that they remain beneficial to the child's interests in the future (*Kompilasi hukum Islam*, 2004). This authority is not granted without limits. The KHI explicitly prohibits parents from transferring or pledging a child's assets under their control, except in cases of urgent need, when such actions are genuinely intended for the child's best interests and welfare, or when they arise from unavoidable circumstances (Diniyah, 2014). This restriction indicates that every action regarding the management of a child's property must remain focused on protecting the child's rights and interests as the owner of the property, thus, parental authority cannot be exercised arbitrarily or for personal gain (Rusyadi & Muliya, 2022).

Articles 110 and 106 of the Compilation of Islamic Law (KHI), upon closer examination, highlight two key phrases relevant to this study "managing" and "developing" a child's assets under guardianship. The use of these two phrases indicates that Indonesian positive law does not treat the property of a minor child merely as an object to be preserved without any action until the child reaches adulthood (F. Wahyudi, 2019). This provision requires active management by the guardian or parent, provided that such actions are directed toward protecting the interests and welfare of the child as the owner of the property (Idami, 2012). Thus, the obligation to manage and develop the assets does not merely mean ensuring that the assets do not diminish, but also reflects the responsibility to ensure that the value and benefits of the assets are preserved as long as the child is not yet capable of managing them independently. This interpretation serves as one of the key foundations for assessing the extent to which a guardian's authority over a child's assets can be understood within the framework of both Islamic law and Indonesian positive law.

A similar regulatory approach is also found in various laws and regulations governing the protection of a child's assets. Law No. 35 of 2014 on Child Protection grants a guardian the authority to manage and develop the assets of a child under their supervision, provided that every such action is intended for the benefit of the child as the owner of the assets (Undang-Undang No. 35 Tahun 2014). In line with this, Law No. 1 of 1974 on Marriage also designates the guardian as the party responsible for managing the child's assets, while simultaneously imposing an obligation to compensate for any losses or damages resulting from loss or damage caused by the guardian's intentional acts or negligence (K & Hakim, 2024). The consistency of these provisions across various legal instruments indicates that a guardian's authority is not understood merely as passively safeguarding the child's assets, but also encompasses the responsibility to manage them in a manner that benefits the child's interests, as reflected in the consistent use of the terms "manage" and "develop" throughout various statutory provisions. This consistency demonstrates that the legislature intends for the value and utility of a child's assets to be preserved as long as the child is not yet legally capable of independently, consequently, the guardian's authority is not intended to leave the assets in their original state, but rather to manage them responsibly while prioritizing the child's best interests (Larasati et al., 2022).

2. Supervisory Mechanisms, Court Rulings, and a Comparison of Eligibility Criteria for Guardianship

The broad authority granted to guardians in managing the assets of minors is balanced by oversight mechanisms designed to prevent the abuse of that authority. These provisions demonstrate that Indonesian positive law not only grants guardians the authority to act on behalf of the child but also establishes a supervisory system as a form of protection for the child's rights and interests regarding the assets they own. One of the institutions carrying out this function is the Estate Administration Office (Balai Harta Peninggalan), a technical implementing unit under the Ministry of Law and Human Rights that serves as *a "toeziende voogd"* or supervisory guardian (Balai Harta Peninggalan Jakarta, 2023). In this capacity, the Inheritance Assets Office is tasked with overseeing the guardianship exercised by guardians whether the surviving father or mother including actions related to the management of a minor child's assets. This oversight is intended to ensure that the authority held by guardians is exercised in accordance with legal provisions and does not result in actions that conflict with the child's interests or rights regarding their assets (Yani, 2022).

The role of the Estate Administration Office (Balai Harta Peninggalan) is not limited to overseeing the implementation of guardianship but also includes the authority to act as a temporary guardian under certain circumstances. In this capacity, the Estate Administration Office (Balai Harta Peninggalan) is obligated to conduct an inventory of all assets belonging to the person under temporary guardianship as an initial step to ensure clarity regarding the assets under its supervision. In addition, this agency is also authorized to represent various legal interests related to the person under guardianship, while simultaneously protecting their rights, obligations, and assets until a permanent guardian is appointed by the competent authority. At the end of its term of office, the Estate Administration Office (Balai Harta Peninggalan) is also required to prepare an accountability report detailing all administrative actions taken, which is then submitted to the permanent guardian as a form of accountability in the administration of guardianship (Balai Harta Peninggalan Jakarta, 2023). Oversight of the implementation of such guardianship is not solely the responsibility of the Estate Administration Office (Balai Harta Peninggalan). Legislation provides scope for the central government through the ministry responsible for social affairs local governments through their authorized local agencies as well as the public, whether as individuals or through families, community organizations, foster care institutions, and child protection agencies, to participate in oversight in accordance with their respective authorities (Tang, 2019). These provisions indicate that the protection of a child's assets under Indonesian positive law is implemented through a multi-layered oversight mechanism, such that the management of assets by a guardian is not only supervised by a single institution but is also subject to a system of controls involving various parties in accordance with their respective functions and responsibilities.

Although Indonesian positive law grants guardians the authority to manage the property of children under their guardianship, the exercise of this authority does not apply absolutely to all forms of legal action. Under certain circumstances particularly when the action taken has the potential to result in a transfer of rights to the child's property the law requires a prior court order or permission. This provision is evident in the transfer of rights to land owned by a minor, where such an action may only be carried out by a party legally representing the child whether a parent or a guardian appointed in accordance with applicable law after obtaining a court order granting permission to sell the property on behalf of the child in question (Bernadetha Aurelia Oktavira, 2024). This regulation demonstrates that a guardian's authority to perform legal acts that directly impact a child's property remains under the supervision of the judicial system as a form of protection for the child's interests. In practice, the authority to issue such a court order is

determined by the applicable judicial system for Muslim children, this authority lies with the Religious Court, while for children of non-Muslim faiths, it falls under the jurisdiction of the District Court (Bernadetha Aurelia Oktavira, 2024).

This court-determined mechanism plays a crucial role in the analytical framework of this study, namely as a substitute for the *iẕn* that should have been granted by *the mahjūr 'alaih* but cannot be considered valid. The court, as the institution authorized to assess whether an action is truly in the child's best interest or not detrimental to the child's interests, essentially assumes the role of ensuring that the *taṣarruf* carried out by the guardian on behalf of the child is in line with the child's interests and welfare, as required by Article 110(2) and Article 106(1) of the Compilation of Islamic Law.

The relevance of these court oversight and determination mechanisms becomes even more apparent when considered in light of the differences in the criteria for legal guardianship recognized in fiqh and Indonesian positive law. Studies comparing the two systems show that fiqh bases eligibility for legal guardianship on two elements namely, adulthood and competence in managing assets while Indonesian positive law generally considers adulthood to be the primary criterion (Munadiati et al., 2026). Under fiqh, a person who has reached the age of majority is not necessarily considered competent to perform legal acts if they still fall under the category of *safih* thus, the status of *mahjūr 'alaih* may still apply to them (Bushiri, 2024).

Conversely, Indonesian positive law, through Supreme Court Circular Letter No. 7 of 2012, stipulates that a person is considered an adult if they have reached the age of eighteen or have married, without making competence in managing assets a separate criterion (Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012). This difference indicates that the concept of guardianship in Islamic jurisprudence has a broader scope than that under positive law. From this perspective, the guardian's authority to act on behalf of *the mahjūr 'alaih* can be understood as a form of legal representation intended to protect those who do not yet possess full capacity to manage their assets. The presence of the Estate Administration Office (Balai Harta Peninggalan) as a supervisory body, along with court-established mechanisms, further strengthens this representative function, as every action taken by the guardian remains subject to oversight and accountability to ensure that the management of assets is truly directed toward the interests of the *mahjūr 'alaih*.

DISCUSSION

An Analysis of the Wali's Authority as a Legitimate Form of *Wilāyah*

The description of a guardian's authority in various provisions of Indonesian positive law provides a basis for placing that authority within the perspective *of wilāyah* as understood in fiqh. The obligation to care for, manage, and develop the assets of a minor which is consistently regulated in the Compilation of Islamic Law, the Marriage Law, and the Child Protection Law demonstrates that the law grants the guardian the authority to act on behalf of the child as long as such actions are directed toward protecting the child's rights and interests (Kalimatus Sa'diyah, 2021). Within the framework of fiqh, such authority can be understood as a form of legitimate *wilāyah* that is, legal authority that enables a person to act on behalf of another who does not yet possess full legal capacity to perform legal acts independently. In this capacity, the guardian does not act based on his or her own interests but rather performs a representative function on behalf of *the mahjūr 'alaih* who does not yet possess *ahliyyah al-adā'*, including in actions related to granting permission *(iẕn)* for *the* disposal *(taṣarruf)* of property to which the child is entitled (Rifqi Qowiyul Iman, 2026a).

This representative function can be understood through an explicit chain of legal reasoning that underpins the reconstruction proposed in this study. The starting point of this chain is *iẕn*: in classical fiqh, any *taṣarruf* over jointly owned property *(al-māl al-musyā')* requires valid consent from all rights holders, including the *mahjūr 'alaih*. However, because *the mahjūr 'alaih* lacks *ahliyyah al-adā',* the consent they provide cannot be considered legally valid *iẕn*. This gap in legal capacity is precisely what *wilāyah* is designed to fill: it serves as the legitimate legal mechanism through which a qualified party, namely the wali (guardian), is authorized to act in place of the *mahjūr 'alaih* and to exercise the representative function of granting *iẕn* on their behalf. For routine asset management actions, this *wilāyah* based *iẕn* is exercised directly by the wali within the boundaries prescribed by Articles 106 and 110 of the Compilation of Islamic Law and the applicable child protection legislation. For actions that carry a greater potential impact on the value or ownership of the assets, such as the sale or transfer of the *mahjūr 'alaih's* share, the *wilāyah* of the wali must be validated and supervised through a court adjudication mechanism, specifically through the Religious Court for Muslim children and the District Court for non-Muslim children, as this judicial authorization functions as the highest and most accountable form of representative *iẕn* on behalf of the *mahjūr 'alaih*.

It is this sequential and mutually reinforcing relationship that forms the structural foundation of the conceptual reconstruction offered in this study, *iẕn* functions as the normative requirement

whose absence in the *mahjūr 'alaih*, owing to their lack of *ahliyyah al-adā'*, creates the legal gap that *wilāyah* is designed to fill, *wilāyah* in turn is exercised through the wali as its authorized holder, and where the nature of the intended taṣarruf demands a higher level of legal accountability, the wali's authority is further validated through the mechanism of court adjudication, which serves as the most authoritative institutional expression of representative *iẓn* on behalf of the *mahjūr 'alaih*."

Although *wilāyah* authority provides the basis for a guardian to act on behalf of a *mahjūr 'alaih*, that authority cannot be understood as absolute. Indonesian positive law, in fact, imposes strict limitations on the scope of its exercise. This is reflected in Article 110 (2) and Article 106 (1) of the Compilation of Islamic Law, which require that any legal action taken by a guardian regarding a child's property must always be directed toward benefiting the child or, at the very least, must not cause harm to the child as the owner of the property (*Kompilasi hukum Islam*, 2004). These provisions indicate that the primary criterion is not merely the existence of the guardian's authority, but rather the purpose and legal consequences of the action taken. Thus, the aspect of public interest *(maslahah)* serves as the determining factor in whether a particular form *of taṣarruf* can be justified in the exercise of *wilāyah* (Muhammad, 2023). An understanding of these limitations then forms the basis for distinguishing between forms *of taṣarruf* that carry different legal consequences in the management of assets involving the rights of a *mahjūr 'alaih* .

Based on these parameters of public interest, acts of *taṣarruf* regarding a *tirkah* that includes the rights of a *mahjūr 'alaih* can be understood in two distinct ways. The first form is a consumptive disposition (*taṣarruf istihlāki*), which is an action that results in the *tirkah's* assets being used or diminished for purposes other than those of *the mahjūr 'alaih* without providing commensurate benefit to the holder of the right to those assets (Naufal Al Nabai, 2025). Such a form of *taṣarruf* has the potential to reduce the value of the *mahjūr 'alaih 's* share in *tirkah*, and thus is inconsistent with the objective of protecting the assets to which they are entitled (Bushiri, 2024). Therefore, both from a fiqh perspective and within the framework of Indonesian positive law, such actions lack legal justification because they contradict the principle of public interest reflected in the provisions of Article 110 (2) and Article 106 (1) of the Compilation of Islamic Law, which require that any action taken by a guardian regarding a child's property must be beneficial or, at the very least, must not cause harm to the child as the owner of the property.

In contrast to consumptive forms of *taṣarruf*, there is also a form of *taṣarruf* oriented toward the preservation and enhancement of the value of assets *(taṣarruf iṣlāḥī).* This form of action is not intended to deplete or reduce the value of *tirkah*, but rather to ensure that the economic value of

the assets is preserved until the distribution of the inheritance can be carried out (Dian Berkah, 2020). In practice, this may involve leasing agricultural land to keep it productive or performing maintenance on buildings that are part of *tirkah* to prevent damage that could reduce the value of the assets. As long as these actions are carried out by a guardian with legitimate authority, are subject to the oversight mechanisms prescribed by law, and all proceeds from their management remain part of *tirkah* to be distributed to all heirs in accordance with their respective shares, including the *mahjūr 'alaih* , then such actions may be understood as not contradicting the protective purpose underlying the prohibition on *taṣarruf* in classical fiqh (B. E. Santoso et al., 2025). From this perspective, the substance of the prohibition does not lie in any form of management of undivided assets, but rather in actions that have the potential to reduce, eliminate, or harm the rights of the *mahjūr 'alaih* to the portion of the *tirkah* that belongs to them.

The distinction between *taṣarruf istihlākī* and *taṣarruf iṣlāḥī,* as outlined above, should not be interpreted as granting the guardian unrestricted authority to act on the property of the *mahjūr 'alaih*. On the contrary, the exercise of such authority must remain within the framework of legal protection, accompanied by adequate oversight and accountability mechanisms. This aspect is crucial because, in practice, not all management of assets by guardians is always oriented toward the best interests of the children under their guardianship. Research findings on the legal protection of children's assets from an Islamic economic perspective indicate that a guardian's control over inherited assets has the potential to obscure or even eliminate a child's inheritance rights if not accompanied by an effective system of oversight and regulation.(Sinlae et al., 2024) These findings demonstrate that the success of a guardian's asset management is determined not only by the existence of legal authority but also by the assurance that such authority is exercised accountably and is genuinely directed toward protecting the rights of the *mahjūr 'alaih* as the owner of the assets.

This critical observation indicates that the conceptual distinction between *taṣarruf istihlākī* and *taṣarruf iṣlāḥī* cannot be separated from the existence of effective oversight mechanisms. Without an adequate system of oversight and accountability, the line between actions genuinely intended to preserve and enhance the value of the estate and those that instead exploit the estate for the guardian's personal gain risks becoming blurred. Such a situation can create opportunities for abuse of authority by using the pretext of management to justify actions that, in essence, harm *the mahjūr 'alaih*. Therefore, the existence of the Office of the Guardian's Assets as a supervisory body, along with the court's adjudicative mechanisms regarding certain legal actions, serves not only as

a control mechanism but also as an integral part of the conceptual framework proposed in this study. Thus, the distinction between *taṣarruf istihlākī* and *taṣarruf iṣlāḥī* can only be applied if their implementation falls within the framework of legitimate *wilāyah*, is accompanied by adequate oversight, and is genuinely aimed at protecting the rights and interests of the *mahjūr 'alaih* as a co-owner of the *tirkah*.

Taṣarruf of a *Tirkah* within the Framework of Maqāṣid al-Sharī'ah: Between *Ḥifẓ al-māl* and the Prohibition of *Kanz al-māl*

1. *Ḥifẓ al-māl* as One of the Objectives of *Shari'ah*

An analysis of the administration of an estate involving the rights *of* those under guardianship cannot be separated from the perspective of the *maqāṣid al-sharī'ah*, given that the issues at hand are not merely related to the textual application of norms but also concern the objectives sought to be achieved through the establishment of Islamic law. As a discipline that examines the objectives of Sharia, *maqāṣid al-sharī'ah* began to develop as a distinct branch of knowledge in the eighth century Hijri through the thought of al-Syāṭibī, although the concept of the objectives of Islamic law had, in fact, been known earlier through various concepts, such as *'illat al-ḥukm, ḥikmah al-ḥukm, maṣlaḥah, ghāyah al-ḥukm, murād asy-syāri',* and *asrār asy-syarī'ah* (Afridawati, 2011). All of these concepts stem from the understanding that every provision of Sharia is fundamentally aimed at realizing public interest while preventing harm. This principle is then formulated in the fiqh maxim *jalb al-maṣāliḥ wa dar' al-mafāsid*, which establishes the realization of public interest and the prevention of harm as the primary orientation in the formulation and application of Islamic law (Samsul Hadi, 2024).

Within the framework of *maqāṣid al-sharī'ah*, public interest is understood to have different levels corresponding to the degree of urgency of the protection sought. Scholars divide them into three categories, *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt*. Public interests falling under the category of *ḍarūriyyāt* are fundamental needs directly related to human survival, their absence can lead to serious harm. As for *ḥājiyyāt,* these are needs that serve to alleviate difficulties and provide ease in life, while *taḥsīniyyāt* relate to the refinement of ethical values, propriety, and nobility in behavior and social life (Beni, 2015). Among the public interests classified at the *ḍarūriyyāt* level, the preservation of property (*ḥifẓ al-māl*) holds a very important position because it is one of the fundamental elements of the *al-maqāṣid al-khamsah*, alongside the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), and lineage (*ḥifẓ al-nasl*) (Amin et al., 2024). It is precisely

the status of ***ḥifẓ al-māl*** as part of the fundamental objectives of Sharia that serves as the basis for evaluating various legal actions related to the management of wealth, including in the context *of taṣarruf* over *tirkah* that involves the rights *of mahjūr 'alaih* .

From the perspective of *maqāṣid al-sharī'ah*, property is not viewed merely as an object of ownership, but rather as a trust that must be managed in such a way as to realize public interest and prevent harm. Therefore, every form of asset management is fundamentally aimed at preserving its utility, both for its owner and for other parties who have rights to the asset (Irwan, 2021). This understanding indicates that the objective of asset preservation (*ḥifẓ al-māl*) does not stop at efforts to maintain the physical existence of the asset, but also encompasses the preservation of its value, function, and economic benefits. In line with this, the *maqāṣid al-sharī'ah* also regard the circulation and utilization of wealth as part of the effort to achieve the public good, so that wealth is not allowed to remain in a state that negates its economic function (Ridwan, 2022). On this basis, the management of wealth is directed more toward its utilization and distribution than toward allowing it to remain stagnant or hoarded, since the hoarding of wealth (*kanz al-māl*) has the potential to hinder economic circulation and reduce the benefits that could otherwise be realized through that wealth (Irwan, 2021). It is this understanding that subsequently serves as the foundation for examining the relationship between the principle of ***ḥifẓ al-māl*** and the prohibition against *kanz al-māl* in the context of *the taṣarruf* of undistributed *tirkah*.

2. The Prohibition of *Kanz al-māl* and the Distinction Between Productive Wealth and Hoarded Wealth

The prohibition of *kanz al-māl,* or the hoarding of wealth, is one of the key principles in Islamic law that has a strong normative foundation. This principle is emphasized in Surah At-Taubah, verse 34, which warns those who hoard gold and silver without spending it in the way of Allah, threatening them with severe punishment (Zainuddin Lubis, 2025). This provision demonstrates that Islam not only regulates how wealth is acquired but also guides how it should be utilized so that it does not lose its social function. From an Islamic economic perspective, the ownership of wealth inherently carries a social responsibility because it involves the rights of others that must be fulfilled (Mun'im et al., 2024). Therefore, wealth is not viewed as a symbol of affluence hoarded for personal gain, but rather as an instrument that must provide broader benefits through various mechanisms permitted by Islamic law, such as zakat, sadaqah, and waqf (Zainuddin Lubis, 2025). Thus, the prohibition against *kanz al-māl* is not only intended to prevent the hoarding of wealth

but also to ensure that wealth continues to function productively and is capable of bringing benefit to both its owner and society.

The primary focus of the prohibition *on kanz al-māl* lies in whether the wealth continues to fulfill its economic function or ceases to provide benefits; thus, wealth that is managed productively and continues to circulate in economic activities does not fall under the category of hoarded wealth as prohibited by Islamic law (Rohmah et al., 2025). Conversely, wealth that is left idle without being utilized whether in the form of money, commodities, or real estate has the potential to cause various negative impacts, such as the creation of artificial scarcity, the hindrance of economic circulation, and a reduction in opportunities for social justice within society (Zainuddin Lubis, 2025).

The distinction between productive wealth and hoarded wealth is closely related to the issue of *tirkah,* which is the subject of this study. When *tirkah* consists of assets that are still economically usable such as farmland, rentable buildings, or family businesses but remain unmanaged for an extended period solely because they are blocked by the invalidity of *the iẕn* from *the mahjūr 'alaih* , the economic function of those assets ultimately ceases as well. As a result, assets that should have benefited all heirs instead lose their productivity during the period of delayed estate distribution. From a substantive perspective, this situation exhibits characteristics similar to *kanz al-māl* that is, wealth that no longer circulates and does not yield public benefit, neither for *the mahjūr 'alaih* as the owner of a share in *the tirkah* nor for the other heirs (Muttaqin, 2023). It must be clarified, however, that the condition of an unmanaged *tirkah* is not legally equivalent to *kanz al-māl*, whereas *kanz al-māl* refers specifically to the deliberate and intentional accumulation of wealth by its owner for the purpose of withholding it from circulation, the stagnation of *tirkah* assets arises not from the owner's intention but from a legal impediment, namely the absence of valid *iẕn* from the *mahjūr 'alaih*, which renders any *taṣarruf* over the estate legally blocked regardless of the wishes of the other heirs. The conceptual similarity invoked here pertains solely to the consequential impact on economic circulation and the realization of *maṣlahah*, not to the legal characterization of the act or the intention of the parties involved. In this context, the issue at hand is no longer limited to the legal validity of *taṣarruf* but also touches upon the objectives of Sharia in ensuring that assets continue to provide benefits and do not lose their economic function. In this context, the issue at hand is no longer limited to the legal validity of *taṣarruf* but also touches upon the objectives of Sharia in ensuring that assets continue to provide benefits and do not lose their economic function.

The framework *of maqāṣid al-sharī'ah* provides a broader perspective for understanding the prohibition on disposing of an estate that includes the rights of *the mahjūr 'alaih* . Through this perspective, it becomes evident that the absolute application of the prohibition on *taṣarruf* not only serves a protective function but also has the potential to create problems when applied without considering the objectives that Sharia seeks to achieve. On the one hand, this prohibition has a strong basis because it aims to safeguard the rights *of the mahjūr 'alaih* from legal actions taken without valid *iẓn* (Sunnatullah, 2024). In this context, the prohibition *on taṣarruf* reflects the implementation of the principle of *ḥifẓ al-māl*, namely, providing protection for the property of the *mahjūr 'alaih* so that it is not arbitrarily transferred, utilized, or controlled by another party.

On the other hand, the rigid application of the prohibition *on taṣarruf* without considering the nature of the assets that constitute the *tirkah* has the potential to result in a situation that runs counter to the objective of *ḥifẓ al-māl*. This issue arises particularly when the *tirkah* consists of productive assets that require management to maintain their economic value. For example, if *the tirkah* consists of a shop house with the potential to be rented out, but it has been left vacant for years because *taṣarruf* cannot be exercised due to the lack of valid *iẓn* from the *mahjūr 'alaih* , then the asset risks losing value as a result of deterioration and lack of maintenance. By the time the distribution of the inheritance can finally be carried out after the *mahjūr 'alaih* attains legal capacity, the economic value of the building may have decreased significantly. This situation indicates that the party originally intended to be protected by the prohibition *on taṣarruf* namely, the *mahjūr 'alaih* may actually receive a share of the inheritance of lower value than if the asset had been properly managed during the period of delayed distribution. Thus, the issue that arises does not lie in the purpose of the prohibition *on taṣarruf*, but rather in its application, which fails to distinguish between actions that have the potential to cause harm and those that are actually intended to preserve the value of the estate.

This situation indicates that the problem lies not in the purpose of the prohibition *on taṣarruf* itself, but rather in its application to objects with different characteristics. The prohibition *on taṣarruf* is intended to protect the rights of the *mahjūr 'alaih* from actions that could diminish or eliminate their rights to the *tirkah* (Sunnatullah, 2024). However, if the same provision is applied absolutely to *tirkah* in the form of productive assets that require management to maintain their economic value, such application could actually lead to consequences that run counter to the objective of protecting the estate. The depreciation in value of farmland that is no longer managed,

buildings that have deteriorated due to lack of maintenance, or family businesses that have ceased operations during the period of deferred estate distribution indicate that the party intended to be protected may suffer losses due to the reduction in the value of the assets to which they are entitled. From the perspective of *maqāṣid al-sharī'ah*, such circumstances require *taḥqīq al-manāṭ* that is, an assessment of the appropriateness of applying a legal provision to the specific facts and context surrounding it so that the objective of *ḥifẓ al-māl* can still be achieved without neglecting the protection of the rights of the *mahjūr 'alaih* (Zuhdi et al., 2026).

A Reconstruction of the Concept of *Iżn*: A Proposal to Distinguish Between *Taṣarruf Istilakhi* and *Taṣarruf Iṣlāḥī*

The results of an analysis of the construction *of al-ḥajr* in classical fiqh, the authority of *wilāyah* in Indonesian positive law, and the *maqāṣid al-sharī'ah* approach reveal that the main issue in *taṣarruf* over *tirkah* involving the rights *of mahjūr 'alaih* does not lie solely in the existence or absence of legal actions regarding the property, but rather in the purpose and legal consequences of such actions on the rights *of mahjūr 'alaih* . On this basis, this study offers a conceptual reconstruction of the interpretation *of iżn* in *the taṣarruf* of *a tirkah* by distinguishing between two forms *of taṣarruf* that have different characteristics and legal consequences, namely *taṣarruf istihlākī* and *taṣarruf iṣlāḥī*. This reconstruction provides an understanding that the prohibition *on taṣarruf* in classical fiqh is, in essence, intended to protect the rights of *the mahjūr 'alaih* from actions that could reduce or eliminate the portion of the estate to which they are entitled (Sunnatullah, 2024). Therefore, the assessment of a *taṣarruf* cannot be based solely on the existence of the legal act itself, but must also consider whether the act has the potential to harm the rights of *the mahjūr 'alaih* or is performed to preserve the value and utility of *the tirkah,* which ultimately remains part of the *mahjūr 'alaih 's* rights.

This distinction classifies *taṣarruf istihlākī* as a form of *taṣarruf* that remains within the scope of classical fiqh prohibitions. Its defining characteristic lies in the use, transfer, or reduction of the estate's assets for the benefit of parties other than the *mahjūr 'alaih* without providing any benefit in return to the rights holder, thereby potentially permanently reducing the value of their share (Naufal Al Nabai, 2025). Such a situation can be found, for example, when cash that is part of the *tirkah* is used by one of the heirs to fulfill their personal interests without valid consent from all rights holders, including the party who legally represents the *mahjūr 'alaih* (Muhammad Arafat, 2025). Under such conditions, the prohibition on *taṣarruf* as formulated in classical fiqh retains a strong foundation because its protective purpose is indeed aimed at preventing the erosion of the *mahjūr 'alaih 's* rights due to actions

that do not benefit him or her. Therefore, *taṣarruf istihlākī* not only contradicts the principle of protecting the rights of the *mahjūr 'alaih* but also conflicts with the objective *of ḥifẓ al-māl*, which requires that assets be preserved for their owners.

Unlike *taṣarruf istihlākī*, *taṣarruf iṣlāḥī* is a form of *taṣarruf* aimed at preserving or increasing the economic value *of the tirkah* without diminishing the rights of the heirs attached to it (Muttaqin, 2023). This action is taken solely to ensure that the assets remain productive while the distribution of the estate has not yet been carried out, whereas all proceeds from their management remain an integral part of the estate and are ultimately distributed proportionally to all heirs, including *mahjūr 'alaih* (Sirin, 2015). Such a situation may arise, for example, when a guardian leases agricultural land that is part of the *tirkah* to ensure it continues to generate economic benefits, while the rental income is recorded and maintained as part of the *tirkah* to be accounted for when the estate is distributed (Hamid, 2024). In this regard, the guardian's authority as stipulated in Articles 110 and 106 of the Compilation of Islamic Law, Law No. 1 of 1974 on Marriage, and Law No. 35 of 2014 on Child Protection may be understood as a legitimate form of wilāyah to represent the interests of the *mahjūr 'alaih* . Thus, the guardian's actions in *taṣarruf iṣlāḥī* are not intended to replace the *mahjūr 'alaih 's* rights to the *tirkah*, but rather to exercise the function of legal representation based on *an izin* that cannot be validly granted because the *mahjūr 'alaih* does not yet possess *ahliyyah al-adā'*, thereby ensuring that the value and benefits of the *tirkah* are preserved until its distribution can be carried out.

The distinction between *taṣarruf istihlākī* and *taṣarruf iṣlāḥī* has conceptual implications for the application of the prohibition on *taṣarruf* regarding *a tirkah* that includes the rights of *the mahjūr 'alaih*. First, the prohibition established in classical fiqh remains fully applicable to *taṣarruf istihlākī* because such actions directly diminish the value of the estate to which the *mahjūr 'alaih* is entitled without providing any benefit in return to them. Second, *taṣarruf iṣlāḥī* carried out by a guardian based on legitimate authority *(wilāyah),* accompanied by oversight mechanisms through the Estate Administration Office (Balai Harta Peninggalan) or court orders for specific legal actions, is conceptually not at odds with the purpose of the prohibition, as such management is specifically aimed at preserving and maintaining the value *of* the *tirkah* for all heirs. Third, this distinction also reaffirms the difference between *ahliyyah al-wujūb* and *ahliyyah al-adā'*, namely that the *mahjūr 'alaih 's* right to a share of the *tirkah* remains in force and cannot be diminished, whereas what is represented through *wilāyah* is merely the authority to take legal actions to protect that right. To prevent the abuse of authority, *taṣarruf iṣlāḥī* is justified only when carried out by a party holding valid *wilāyah*, intended to preserve or increase the value of the assets without diminishing the rights of the *mahjūr 'alaih*, all

proceeds from its management are transparently recorded as part of the *tirkah*, and any actions that could potentially reduce or permanently transfer the assets remain subject to court adjudication mechanisms as stipulated in applicable legal provisions.

CONCLUSION

The findings of this study highlight the normative tension between classical fiqh and positive law in Indonesia regarding the administration *(taṣarruf)* of an estate *(tirkah)* that includes individuals whose legal capacity is restricted *(mahjūr 'alaih)*. According to classical fiqh, the status of *al-māl al-musyā'* (undivided joint property) requires the consent *(iżn)* of all heirs. However, because the status of *mahjūr 'alaih* eliminates the capacity to act *(ahliyyah al-adā')* even though the capacity to receive rights *(ahliyyah al-wujub)* remains, any *taṣarruf* that is consumptive or potentially harmful to the *mahjūr 'alaih's* share becomes legally blocked without a valid substitutive *iżn*, even if other legally competent heirs have given their consent. This does not preclude, however, *taṣarruf* of a constructive and asset-preserving nature, which, as this study argues, may be carried out through the mechanism of *wilāyah* as a legitimate substitute for the *iżn* that the *mahjūr 'alaih* is unable to provide. The Compilation of Islamic Law (KHI), through Articles 106 and 110, grants the guardian active authority to manage and develop such assets, which from a fiqh perspective can be understood as a form of legitimate authority *(wilāyah)*.

From the perspective of *maqāṣid al-sharī'ah*, the absolute blocking of *taṣarruf* over productive assets actually triggers adverse effects *(mafsadat)* in the form of a decline in the value of the assets due to delays in distribution. This situation, which resembles the hoarding of wealth *(kanz al-māl),* clearly contradicts the principle of protecting wealth *(ḥifẓ al-māl)*. To resolve this impasse, this study reconstructs the meaning of *iżn* by distinguishing between two forms of action *taṣarruf istihlākī* (consumptive/detrimental actions), which remain prohibited, and *taṣarruf iṣlāḥī* (constructive/developmental actions), which are permitted. These *iṣlāḥī* actions may be carried out by an authorized guardian under the supervision of relevant institutions (such as the Estate Administration Office (Balai Harta Peninggalan) or by court order), with the proceeds still counted as part of the *tirkah*. The novelty of this study lies in its conceptual reconstruction of *iżn*, which distinguishes between *taṣarruf istihlākī* and *taṣarruf iṣlāḥī* as a means of resolving the normative tension between the protection of the rights of the *mahjūr 'alaih* under classical fiqh and the imperative of managing productive estate assets under positive law, while also advocating for the further

operationalization of *taṣarruf* restrictions within the KHI framework to ensure that this distinction can be applied with greater legal certainty.

REFERENCES

Abdullah, A. (2023). Penundaan Pembagian Harta Warisan dan Dampaknya: Pesan. *Jeulame: Jurnal Hukum Keluarga Islam*, *2*(1), 1–20. https://doi.org/10.47766/jeulame.v2i1.1812

Abū Bakr ibn Mas'ūd ibn Aḥmad al-Kāsānī. (1910). *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* (Vol. 7). Maṭba'at al-Jamālīyah.

Abubakar, A. B. S., Marniati, F. S., & Turhamun, M. S. (2026). Perlindungan Hukum Anak dalam Perwalian Terkait Peralihan Harta Peninggalan Orang Tua Kepada Wali Menurut Hukum Perdata. *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora*, *5*(1), 297–317. https://doi.org/10.55606/jurrish.v5i1.6826

Afridawati, A. (2011). Stratifikasi Al-Maqashid Al-Khamsah (Agama, Jiwa, Akal, Keturunan dan Harta). *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, *6*(2), 100–117. https://doi.org/10.32694/qst.v6i2.1231

Aldiansyah, S., R, K., & Sani, A. (2025). Harta Waris yang Dijual sebelum Pembagian. *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora*, *3*(1), 266–276. https://doi.org/10.59246/aladalah.v3i1.1181

Amin, I., Salma, S., Bahar, M., & Lendrawati, L. (2024). Stratification of Al-Maqashid Al-Khamsah (Preserving Religion, Soul, Reason, Heredity and Property) and Its Application in al-Dharuriyah, al-Hajiyah, al-Tahsiniyah, and Mukammilat. *AJIS: Academic Journal of Islamic Studies*, *9*(1), 264–281. https://doi.org/10.29240/ajis.v9i1.8941

Balai Harta Peninggalan Jakarta. (2023). *Perwalian*. Balai Harta Peninggalan Jakarta, Direktorat Jenderal Administrasi Hukum Umum (Ditjen AHU. https://bhpjakarta.kemenkum.go.id/layanan-publik/perwalian

Beni, F. (2015). Tingkatan-Tingkatan Maqashid berdasarkan Kemaslahatan yang Dipelihara dalam Setiap Hukum Syara'. *Jurnal Diniyyah*, *IV*(4), 1–17. https://repo.uinbukittinggi.ac.id/99/

Bernadetha Aurelia Oktavira. (2024). *Melihat Ketentuan Perwalian Penjualan Tanah Milik Anak di Bawah Umur*. Hukumonline. https://www.hukumonline.com/berita/a/melihat-ketentuan-perwalian-penjualan-tanah-milik-anak-di-bawah-umur-lt66696e29c4f79

Bushiri. (2024). *Klasifikasi dan Ketentuan Penangguhan Transaksi Keuangan dalam Fiqih Muamalah*. NU Online (Nahdlatul Ulama). https://islam.nu.or.id/syariah/klasifikasi-dan-ketentuan-penangguhan-transaksi-keuangan-dalam-fiqih-muamalah-ATla5

Dahliani, L., Ananda, F., & Yamamah, A. (2018). Penundaan Pembagian Warisan pada Masyarakat Muslim di Kota Langsa. *TAHKIM*, *14*(1), 34–58. https://doi.org/10.33477/thk.v14i1.573

Dian Berkah. (2020). *Meningkatkan Nilai Ekonomi Melalui Pengelolaan Harta Waris Secara Produktif (Insiyab Al Miras): Studi Perilaku Pengelolaan Harta Waris di Kota Gresik* [PhD Thesis, Universitas Airlangga]. https://repository.unair.ac.id/108321/

Diniyah, K. (2014). *Analisis Pasal 106 Kompilasi Hukum Islam terhadap Transaksi Jual Beli Tanah Milik Anak yang Dilakukan oleh Wali di Desa Bindang Kecamatan Pasean Kabupaten Pamekasan* [Undergraduate, UIN Sunan Ampel Surabaya]. http://digilib.uinsa.ac.id/1650/

Febriani, A. R. (2023). *Apa Itu Syirkah? Ini Pengertian, Dalil, dan Jenis-jenisnya*. Detik.com (detikHikmah). Detikhikmah. https://www.detik.com/hikmah/khazanah/d-6746485/apa-itu-syirkah-ini-pengertian-dalil-dan-jenis-jenisnya

Hamid, M. F. (2024). *Analisis Hukum Islam (Fikih Waris) terhaddap Penyatuan Harta dalam Pasal 189 Kompilasi Hukum Islam* [Undergraduate, Universitas Islam Negeri Kiai Haji Achmad Soddiq]. https://digilib.uinkhas.ac.id/34649/

Harahap, N. (2018). Perwalian Anak dalam Tinjauan Kompilasi Hukum Islam. *Jurnal EL-QANUNIY: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial*, *4*(1), 116–129. https://doi.org/10.24952/el-qonuniy.v4i1.1831

Hardiansyah, S. N., & Mufidah, M. (2021). Keikutsertaan Anak di Bawah Umur Dalam Aksi Demonstrasi Menurut Hukum Islam dan Hukum Positif di Indonesia. *SALAM: Jurnal Sosial Dan Budaya Syar-i*, *8*(1), 267–278. https://doi.org/10.15408/sjsbs.v8i1.19490

Idami, Z. (2012). Tanggung Jawab Wali Terhadap Anak yang Berada di Bawah Perwaliannya (Suatu Penelitian di Kota Banda Aceh). *Jurnal Dinamika Hukum*, *12*(1), 60–73. https://doi.org/10.20884/1.jdh.2012.12.1.107

Irwan, M. (2021). Kebutuhan Dan Pengelolaan Harta Dalam Maqashid Syariah. *Elastisitas: Jurnal Ekonomi Pembangunan*, *3*(2), 160–174. https://www.researchgate.net/publication/354636454

Islamiyati, I. (2015). Analisis Asas Keadilan Pada Pembagian Harta Warisan Menurut Hukum Islam. *Masalah-Masalah Hukum*, *44*(1), 104–113. https://doi.org/10.14710/mmh.44.1.2015.104-113

Jamarudin, A., Sucipto, I., Komarudin, D., Pudin, O. C., & Rasip, O. bin M. (2026). Kedudukan Harta Bersama dalam Kewarisan Islam (Studi Komparatif Pemikiran Ulama Klasik dan Praktik Hukum Keluarga di Indonesia). *Al-Ihkam Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyyah Fakultas Syariah IAIN Mataram*, *18*(2), 70–85. https://doi.org/10.20414/alihkam.v18i1.15375

Jauhari, S. (2015). Akad dalam Perspektif Filsafat Hukum Islam. *Tafáqquh: Jurnal Penelitian Dan Kajian Keislaman*, *3*(2), 01–22. https://doi.org/10.52431/tafaqquh.v3i2.43

Junaidi. (2024, September 16). *4 Ketentuan Syar'i Transaksi dengan Harta Bersama Menurut Fatwa DSN MUI*. Majelis Ulama Indonesia (MUI). MUI - Majelis Ulama Indonesia. https://mui.or.id/public/baca/berita/4-ketentuan-syari-transaksi-dengan-harta-bersama-menurut-fatwa-dsn-mui

K, K., & Hakim, L. (2024). Perlindungan Hukum Ahli Waris Dibawah Umur Terhadap Penjualan Tanah Harta Waris Yang Dilakukan Oleh Wali (Studi Kasus Putusan Nomor: 313/Pdt.P/2023/PN Dps). *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, *1*(9). https://doi.org/10.5281/zenodo.11077315

Kalimatus Sa'diyah. (2021). *Tinjauan Yuridis Pertanggungjawaban Wali dalam Pengelolaan Harta Warisan Anak di Bawah Umur menurut Hukum Islam* [Postdoctoral, Universitas Tadulako]. https://repository.untad.ac.id/id/eprint/141517/

Kausari, M. A. A.-. (2021). *Konsepsi Ahliyah dalam Transaksi Ekonomi Syariah | AS-SABIQUN*. https://ejournal.stitpn.ac.id/index.php/assabiqun/article/view/1070

Kompilasi hukum Islam. (2004). Pustaka Widyatama. https://www.alkhoirot.net/2024/05/kompilasi-hukum-islam-khi.html

Larasati, L., Adillah, S. U., & Listyawati, P. R. (2022). The Responsibility of the Guardian for the Transfer of Land Rights to the Children Due to Instruction. *Sultan Agung Notary Law Review*, *4*(2), 570–580. https://doi.org/10.30659/sanlar.4.2.570-580

Lubis, I. H. (2023). The Pillars and Conditions of A Contract in Muamalat Transactions. *Mu'amalah: Jurnal Hukum Ekonomi Syariah*, *2*(1), 15–32. https://doi.org/10.32332/muamalah.v2i1.6983

M. Syafi'ie. (2022, January 4). *Islam dan Diskursus Kecakapan Difabel Mental*. Fakultas Hukum, Universitas Islam Indonesia. Fakultas Hukum - Universitas Islam Indonesia. https://law.uii.ac.id/blog/2022/01/04/islam-dan-diskursus-kecakapan-difabel-mental/

Maulana, D. F. (2023). Kedudukan Penyandang Disabilitas pada Lembaga Keuangan di Indonesia: Subjek Hukum, Ahliyah dan Telaah KHES. *Muslim Heritage*, *8*(2), 201–218. https://doi.org/10.21154/muslimheritage.v8i2.6924

Muhammad, A. R. (2023). *Tinjauan Hukum Islam Tentang Penetapan Wali untuk Pengelolaan Harta Anak (Studi Analisis Putusan Pengadilan Agama Purwokerto Nomor 0029/Pdt.P/2021/PA.Pwt)* [Skripsi, UIN Prof. K.H. Saifuddin Zuhri]. https://repository.uinsaizu.ac.id/17682/

Muhammad Arafat. (2025). *Menjual Harta Warisan Tanpa Persetujuan Ahli Waris*. MariNews Mahkamah Agung Republik Indonesia. Menjual Harta Warisan Tanpa Persetujuan Ahli Waris. https://marinews.mahkamahagung.go.id/artikel/menjual-harta-warisan-tanpa-persetujuan-ahli-waris-0boW

Muḥammad ibn Aḥmad ibn Muḥammad ibn Rusyd. (1982). *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Vol. 2). Dār al-Kitāb al-'Arabī.

Munadiati, Anis Kurlillah, Iskandar Ibrahim, & Nevi Hasnita. (2026, July 2). Analisis Kelayakan Pengampuan terhadap Anak dalam Hak Mengelola Harta Menurut Konsep Fiqh dan Hukum

Positif. *ResearchGate*. Aceh Development International Conference 2013. https://www.researchgate.net/publication/357476725

Mun'im, M. H., Khakimah, H., Imtiyaz, N. B., & Arishandy, M. A. (2024). Tinjauan Konseptual Kepemilikan dalam Ekonomi Islam. *AMAL: Jurnal Ekonomi Syariah*, *6*(1), 69–78. https://doi.org/10.33477/eksy.v6i1.7135

Muttaqin, Z. (2023). Hukum Penundaan Pembagian Harta Warisan Produktif Perspektif Al-Mashlahah Al-Mursalah. *At-Tafkir*, *16*(2), 157–176. https://doi.org/10.32505/at.v16i2.5645

Muttaqin, Z., & Zubir. (2023). Tirkah Distribution Obligation Rules According to Fiqh Al-Awlawiyyat. *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, *15*(1), 88–101. https://doi.org/10.32505/jurisprudensi.v15i1.5091

Naufal Al Nabai. (2025, December 5). *Penjelasan Kitab Tasyrihatal Muhtaj 21 :Tasarruf yang Tertahan, Memahami Hijr dalam Pandangan Fiqih Tasyrihah*. Rifa'iyah. https://rifaiyah.or.id/pembatasan-tasaruf-dalam-fikih-dan-hijr/

Novendri Eka Saputra. (2026). *Rekonstruksi Hukum Penundaan Pembagian Warisan pada Masyarakat Muslim Indonesia: Pendekatan Keadilan Substantif dan Mediasi Keluarga*. Pengadilan Tinggi Agama (PTA) Pekanbaru. https://pta-pekanbaru.go.id/57473/rekonstruksi-hukum-penundaan-pembagian-warisan-pada-masyarakat-muslim-indonesia-pendekatan-keadilan-substantif-dan-mediasi-keluarga.html

Priyadi, A. (2024). Analisis Yuridis Terhadap Permohonan Perwalian Dalam Pengurusan Izin Jual Tanah Anak Di Bawah Umur. *Wijayakusuma Law Review*, *6*(2), 1–8. https://doi.org/10.51921/wlr.745g8179

Ridwan, M. (2022). Konsep Harta dalam Tinjauan Maqashid Al-Syariah. *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan Dan Keperdataan*, *8*(2), 149–161. https://doi.org/10.24952/almaqasid.v8i2.6142

Rifqi Qowiyul Iman. (2026a). *Perwalian Bersama Demi Kepentingan Terbaik Anak*. Mahkamah Agung Republik Indonesia (MariNews). Perwalian Bersama Demi Kepentingan Terbaik Anak. https://marinews.mahkamahagung.go.id/artikel/perwalian-bersama-demi-kepentingan-terbaik-anak-0bd3

Rifqi Qowiyul Iman. (2026b, January 12). *Haq Al-Kadd wa al-Si'ayah dan Konstruksi Harta Bersama dalam Hukum Islam Indonesia*. Direktorat Jenderal Badan Peradilan Agama, Mahkamah Agung Republik Indonesia. Direktorat Jenderal Badan Peradilan Agama MA RI. https://badilag.mahkamahagung.go.id/artikel/haq-al-kadd-wa-al-si-ayah-dan-konstruksi-harta-bersama-dalam-hukum-islam-indonesia-oleh-rifqi-qowiyul-iman-lc-m-si-12-1

Rohmah, R. A., Jolie, S. A., Ichsan, M. F., Azanta, A. R., & Hidayati, A. N. (2025). Peran Sistem Keuangan dan Moneter Islam dalam Mendorong Pembangunan Berkelanjutan yang Berbasis Nilai. *Jurnal Media Akademik (JMA)*, *3*(12). https://doi.org/10.62281/j8hydv29

Rusfandi, R. (2020). Kedudukan Hukum Dari Wali Anak Di Bawah Umur Dalam Melakukan Transaksi Penjualan Harta Warisan. *Jurnal Jendela Hukum*, *7*(1), 55–63. https://doi.org/10.24929/fh.v7i1.1569

Rusyadi, M. A., & Muliya, L. S. (2022). Kewenangan Orang Tua sebagai Wali dalam Pengurusan Harta Waris Anak di Bawah Umur berdasarkan Hukum Islam. *Bandung Conference Series: Law Studies*, *2*(1), 914–919. https://doi.org/10.29313/bcsls.v2i1.2238

Sainul, A. (2019). Konsep Kedewasaan Subyek Hukum. *Jurnal EL-QANUNIY: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial*, *5*(2), 257–269. https://doi.org/10.24952/el-qonuniy.v5i2.2153

Samsul Hadi. (2024). *Prinsip-Prinsip Darurat dan Implementasinya ddalam Istinbat Hukum (Kajian terhadap Pemikiran Wahbah Az-Zuhaili)* [Monograph, Fakultas Syari'ah dan Hukum UIN Sunan Kalijaga Yogyakarta]. https://digilib.uin-suka.ac.id/id/eprint/69833/

Santoso, B. E., Kuncoro, A. T., & Ardi, M. N. (2025). Penetapan Wali untuk Pengelolaan Harta Waris Anak dibawah Umur dalam Perspektif Maqashid Syariah (Studi Analisis Putusan Pengadilan Agama Kelas 1A Semarang Nomor 212/Pdt.P/2023/PA.Smg). *Jurnal Ilmiah Sultan Agung*, *3*(4), 265–275. https://jurnal.unissula.ac.id/index.php/JIMU/article/view/43030

Santoso, M. R., & Adlhiyati, Z. (2025). Perbuatan Melawan Hukum Pembeli yang Beretikat Baik dalam Perjanjian Jual Beli. *Verstek*, *13*(1), 127–136. https://doi.org/10.20961/jv.v13i1.86732

Sinlae, E. S. P., Syahda, I. F., Putra, R. D., Syifa, T. S., Fauzi, M., & Mahipal, M. (2024). Perlindungan Hukum Terhadap Anak dalam Ekonomi Islam: Pengelolaan Harta dan Santunan. *Jurnal Al-Kharaj: Studi Ekonomi Syariah, Muamalah, Dan Hukum Ekonomi*, *4*(1), 39–51. https://doi.org/10.30863/alkharaj.v4i1.6572

Sirin, K. (2015). Pengelolaan Harta Warisan secara Produktif menurut Kompilasi Hukum Islam: Productive Heritage Property Management in The Compilation of Islamic Law. *Penamas*, *28*(1), 11–24. https://penamas.kemenag.go.id/penamas/article/view/100

Sunnatullah. (2024). *8 Mahjur 'Alaih yang Ditangguhkan Tasaruf Hartanya dalam Fiqih Muamalah*. NU Online (Nahdlatul Ulama). https://islam.nu.or.id/syariah/8-mahjur-alaih-yang-ditangguhkan-tasaruf-hartanya-dalam-fiqih-muamalah-nl9LK

Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012. (n.d.). Retrieved 6 July 2026, from https://jdih.ptun-jakarta.go.id/detil-undang/sema-nomor-7-tahun-2012

Suratinoyo, T. A. N. (2018). Sengketa Harta Warisan yang Belum Dibagi Akibat Perbuatan Seorang Ahli Waris yang Menjual Harta Warisan. *LEX PRIVATUM*, *6*(1). https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/view/19429

Tang, A. (2019). Hak-Hak Anak dalam Pasal 54 UU No. 35 Tahun 2014 tentang Perlindungan Anak. *JURNAL AL-QAYYIMAH*, *2*(2), 98–111. https://doi.org/10.30863/aqym.v2i2.654

Undang-undang No. 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak. (n.d.). Database Peraturan | JDIH BPK. Retrieved 6 July 2026, from http://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014

Wahyudi, F. (2019). Penerapan Prinsip Prudential Dalam Perkara Perwalian Anak. *Mimbar Hukum*, *31*(3), 368–383.

Wahyudi, N. A., Risky, M. J., Reza, M. F., Yamin, S., Syaifuddin, M., & Prayogi, A. (2025). Sejarah Perlindungan Hak Waris Anak Yatim: Analisis Hukum Dalam Al-Qur'an Surah An-Nisa' Ayat 6. *Maqasid: Jurnal Studi Hukum Islam*, *14*(3), 263–277. https://doi.org/10.30651/mqsd.v14i3.28864

Yani, D. (2022). Perlindungan Hukum terhadap Harta Warisan Anak melalui Revitalisasi Balai Harta Peninggalan (BHP). *Jurnal Notarius*, *1*(1). https://jurnal.umsu.ac.id/index.php/notarius/article/view/10702

Zainuddin Lubis. (2024). *Tafsir Surat An-Nisa Ayat 5: Dalil tentang Al-Hajru atau Penangguhan Transaksi*. NU Online (Nahdlatul Ulama). NU Online. https://islam.nu.or.id/tafsir/tafsir-surat-an-nisa-ayat-5-dalil-tentang-al-hajru-atau-penangguhan-transaksi-IUbL2

Zainuddin Lubis. (2025). *Tafsir Surah At-Taubah Ayat 34: Larangan Menimbun Harta dan Memonopoli Kekayaan*. NU Online (Nahdlatul Ulama). NU Online. https://islam.nu.or.id/tafsir/tafsir-surah-at-taubah-ayat-34-larangan-menimbun-harta-dan-memonopoli-kekayaan-DLUyQ

Zen, F. S., Amry, I. I., & Rufi'i, F. Z. (2026). Analisis Hukum Dan Dampak Penundaan Pembagian Waris Dalam Perspektif Hukum Islam. *Seminar Nasional Hukum, Sosial Dan Ekonomi*, *5*(1), 511–522. https://jurnal.umsu.ac.id/index.php/sanksi/article/view/30386

Zuhdi, S., Adawiyah, L. R., Kurnianingsih, M., Junaidi, M., & Hakim, A. (2026). Bipolar Disorder and Child Custody in Indonesian Religious Courts: Operationalizing Sadd al-Dharīʿah to Balance Child Welfare and Parental Rights. *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, *11*(1), 149–176. https://doi.org/10.22515/alahkam.v11i1.13136