

The Practice of Family Law Implementation: An Analysis of Guardianship Appointment Petitions by Biological Parents

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Received: March 17, 2026; Revised: April 15, 2026; Accepted: April 18, 2026; Published: September 27, 2026

ABSTRACT

This study examines a neglected phenomenon in Indonesian family law: guardianship petitions filed by biological parents whose guardianship rights already arise automatically under Article 47 of Law No. 1/1974. Rather than treating such petitions as ordinary procedural matters, the article identifies them as evidence of a structural disconnect between statutory parental authority and the documentary demands of administrative institutions. Using a juridical-normative approach with a socio-legal perspective, this study analyzes three Religious Court decisions through qualitative content analysis and comparative judicial reasoning. The findings suggest that inheritance-related transactions, legal-administrative representation, and the need for formal legal certainty primarily drive these petitions. The article's main contribution lies in showing that the practice is not simply a doctrinal anomaly, but a socio-legal symptom of a missing administrative bridge between legal status and institutional recognition. Across the cases examined, judges appear to resolve this gap pragmatically by invoking *maslahah* and the best interests of the child. These findings contribute to scholarship on law in books versus law in action in Indonesian Islamic family law and support the need for more coherent legislative and administrative reform.

Keywords: Biological Parents, Indonesian Family Law, Judicial Practice, Legal Gap, Legal Guardianship

INTRODUCTION

Indonesia recorded a total of 1,812,774 divorce cases from 2022 to 2025, with 516,344 cases in 2022 alone as the highest point in recent years (Badan Pusat Statistik Indonesia, n.d.). Divorce does not alter a child's legal status as a legitimate child, but it significantly reconfigures parental authority, custody arrangements, and the formal recognition of guardianship rights (Saputra & Mulyana, 2022). Both parents remain obligated to care for and educate the child in accordance with the best interest principle, yet in practice, the absence of a formally appointed guardian often leaves children's civil rights — particularly over inheritance and legal transactions — inadequately protected (Merchiano et al., 2023; Pratiwi, 2020). It is within this context that the institution of legal guardianship becomes not merely a procedural formality, but a fundamental mechanism for safeguarding children's rights under Indonesian family law (M. Huda & Tohari, 2025).

Article 47 of Law No. 1/1974 explicitly establishes biological parents as the automatic guardians of children under the age of eighteen, rendering a formal court appointment theoretically unnecessary (Fathanah & Sulistyarini, 2020). Yet in practice, biological parents continue to file guardianship petitions before the Religious Court — not because their guardian status is in dispute, but because administrative institutions such as banks, notaries, and land offices the cases examined suggest that administrative institutions often require a court-issued guardianship decree before recognizing any legal action taken on behalf of a child (L. Hakim et al., 2024). This gap between substantive legal rights and administrative

requirements creates a normative paradox: the law grants guardianship automatically, while the formal system demands judicial confirmation to make that right actionable (Salma & Agustiar, 2023). The central question this study seeks to address is therefore not whether parents are guardians, but why the legal system compels them to prove what the law already grants.

Prior studies on child guardianship in Indonesian Islamic family law have predominantly focused on three areas: the protection of orphaned or neglected children (Anjari, 2021; Nasution & Nasution, 2021), custody disputes following divorce (Sebriyani, 2023), and the determination of marriage guardianship (Z. Hakim, 2021; Purnama, 2021). While these studies have substantially advanced the understanding of guardianship as a protective legal mechanism, they share a common limitation — none systematically examines the specific phenomenon of guardianship petitions filed by biological parents who are both alive and legally capable. The existing literature treats guardianship primarily as a response to parental absence or incapacity, leaving unaddressed the growing practice in which parents whose rights are already legally intact still seek judicial confirmation. This gap represents a critical blind spot in the scholarship, as it overlooks the structural tension between automatic statutory guardianship and the administrative demands of formal institutions—a tension this study seeks to examine.

This study addresses two main questions. First, what factors motivate biological parents to file guardianship petitions before Indonesian Religious Courts despite the automatic parental guardianship recognized by Article 47 of Law No. 1/1974? Second, how do judges justify granting such petitions in cases where parental guardianship is not legally disputed? A secondary question asks what this practice reveals about the gap between statutory guardianship norms and administrative recognition in Indonesia. (Nasution & Nasution, 2021; Negara, 2023). This approach allows the study to capture not only what the law prescribes, but how it actually operates in courtrooms and administrative institutions (Kajian et al., 2023).

For this study, a normative gap refers to a condition in which the existing legal framework grants a substantive right but does not provide an operational mechanism for its effective administrative recognition. Legal certainty refers to the degree to which legal norms are clear, predictable, and capable of being relied upon by both rights-holders and institutions. Judicial pragmatism is used here to describe a mode of reasoning in which judges seek workable solutions to concrete social problems, while legal formalism refers to reasoning that emphasizes adherence to statutory text and procedural categories. These concepts are used analytically to explain why courts continue to grant guardianship petitions filed by biological parents even where parental authority already exists by law.

The significance of this study is twofold. Theoretically, it contributes to the ongoing discourse on law in books versus law in action within Indonesian Islamic family law, a field that has increasingly moved beyond doctrinal analysis toward evaluating the social and institutional dimensions of legal implementation (Azhari & Asmuni, 2023; Maimun et al., 2024). By locating the guardianship paradox within Lawrence Friedman's legal system framework of structure, substance, and legal culture, this study offers a theoretically grounded explanation for why normatively sufficient laws may fail to produce administratively effective outcomes (Fauzia et al., 2021). Practically, the findings provide an empirical basis for legal reform, whether through amendments to administrative regulations or through a Supreme Court Circular (SEMA) that clarifies the conditions under which biological parents must seek judicial confirmation of their already-existing guardianship rights (Arrasyid et al., 2024; Nasution & Nasution, 2021).

LITERATURE REVIEW

The Concept of Guardianship in Islamic Law

In Islamic jurisprudence, guardianship (*wilayah*) refers to the authority granted to a person to act on behalf of another in order to realize benefit (*maslahah*) and prevent harm, particularly in matters of family and property (Muttaqin & Fadhilah, 2020). Classical fiqh distinguishes between *wilayah al-'ammah*, the general authority of rulers to govern public affairs

and *wilayah al-khassah*, the specific guardianship exercised in private matters such as marriage and the management of a child's assets (Tohari & Kholish, 2020; Zainuddin, 2021). Within the family domain, guardianship follows a hierarchical order beginning with blood relatives (*wali nasab*) and, in their absence or incapacity, transferring to the judge (*wali hakim*) as a manifestation of state authority acting in the public interest (Jufri et al., 2021). This hierarchy is not merely a formal construct but is grounded in the principle of *maslahah al-mursalah* the legitimacy of a guardian rests on their capacity to uphold the welfare, dignity, and rights of the person under guardianship within the broader framework of *maqasid al-shari'ah* (Quthny, 2019).

Guardianship in Indonesian Positive Law

Indonesian positive law addresses guardianship through a layered regulatory framework that has progressively shifted from a classical civil law model toward a rights-based child protection paradigm. The Civil Code (Articles 331–418a) originally established guardianship as a private civil institution focused on the management of a child's person and property under court supervision (Nurkholis, 2018). Law No. 1/1974 on Marriage (Articles 47–54) further distinguished between parental authority and guardianship as two separate legal regimes, introducing the principle of the best interest of the child as the overriding consideration in all guardianship arrangements (Andhini & Arifin, 2019). The Compilation of Islamic Law (KHI, Articles 107–112) reinforced this by requiring that any significant action taken by a guardian over a child's assets particularly sale or encumbrance — must obtain prior court approval, ensuring judicial oversight of guardianship in the Islamic court system (Aris & Sabir, 2020; Sebriyani, 2023). This framework was further strengthened by Law No. 23/2002 as amended by Law No. 35/2014 on Child Protection, which repositioned guardianship not merely as a legal authority but as a mechanism for safeguarding children's fundamental rights against violence, neglect, and exploitation (Anjari, 2021; Sartini et al., 2021).

The Theory of Legal Certainty as a Framework for Analysis

Legal certainty theory posits that norms must be clear, predictable, and accessible in order to prevent arbitrary interpretation and ensure consistent application of the law (Ogneviuk, 2018; Shcherbanyuk et al., 2023). While a child's rights are inherently attached by law, they remain difficult to enforce without formal judicial recognition a gap that makes court-issued decrees not merely procedural but substantively necessary for the protection of those rights (Widiyono & Khan, 2023). This tension is further illuminated by the principle of the best interest of the child (*kepentingan terbaik bagi anak*), as established in the 1989 UN Convention on the Rights of the Child, which requires that all decisions affecting children prioritize their welfare as the primary consideration (Bobar, 2016; García-Lozano, 2016). In the Indonesian judicial context, courts have navigated between legal formalism, strict adherence to statutory text, and legal pragmatism the use of law as an instrument of substantive justice often combining both approaches to fill normative gaps through principled judicial reasoning (Buana, 2020; Muchtar et al., 2024). It is precisely within this interplay between formal rules and substantive principles that the phenomenon of biological parents seeking judicial confirmation of guardianship rights can be theoretically situated and analyzed.

METHOD

This study adopts a juridical-normative method combined with a socio-legal perspective. The juridical-normative dimension examines the legal framework governing guardianship in Indonesia, including the Civil Code, Law No. 1/1974 on Marriage, the Compilation of Islamic Law, and child protection legislation. The socio-legal dimension is used to examine how these norms are operationalized in judicial practice, particularly in situations where statutory parental authority does not automatically translate into administrative recognition.

This study employs purposive case selection. The three decisions were not intended to represent the entire population of guardianship petitions in Indonesian Religious Courts, but were selected because they capture analytically relevant variation in time period, petition purpose, and judicial reasoning. The cases span 2015, 2020, and 2024, allowing a limited

inter-temporal comparison. They also involve two main forms of practical need, namely inheritance-related transactions and legal-administrative representation. Most importantly, all three cases involve biological parents whose guardianship status was not legally disputed, making them suitable for examining the paradox of judicial confirmation of already-existing parental authority.

The analysis proceeds in three stages. First, each decision is read to identify the factual background, legal issue, statutory basis, and ratio decidendi. Second, the study compares the three decisions across four dimensions: petition motive, institutional barrier, legal basis invoked, and mode of judicial reasoning. Third, the findings are interpreted through the concepts of legal certainty, law in books versus law in action, and the best interests of the child. This framework allows the study to move from descriptive case reading toward a structured explanation of why judicial confirmation persists in practice.

This study is limited by the small number of cases analyzed, which means the findings are analytically illustrative rather than statistically generalizable. The inter-temporal spread of the cases also requires caution, because similarities in outcome may reflect either a recurring institutional pattern or comparable factual circumstances. In addition, because the study relies primarily on court decisions and legal texts, claims regarding notarial, banking, land, and immigration requirements should be read as indications.

RESULTS AND DISCUSSION

Factors Driving Applications for Guardianship by Biological Parents

The analysis of three Religious Court decisions reveals a consistent pattern: biological parents who are legally recognized as automatic guardians under Article 47 of Law No. 1/1974 nonetheless seek formal judicial confirmation of their guardianship status. This phenomenon is not driven by legal incapacity or parental unfitness, but rather by the demands of formal institutions that require a court-issued decree before recognizing any legal action taken on behalf of a child. Three distinct yet interrelated factors emerge from the cases examined.

The first factor is the management of inherited assets. In Decision No. 3309/Pdt.P/2024/PA.Sby, the petitioner a widowed mother sought guardianship confirmation in order to sell a plot of land in the Semolowaru Utara area on behalf of her eleven-year-old daughter, whose father had passed away in 2017. Similarly, in Decision No. 651/Pdt.P/2020/PA.Sor, the petitioner required formal guardianship status to manage and transact inherited property at a notary's office on behalf of her fifteen-year-old son, following the death of the child's father in 2014. In both cases, the mothers were the sole caregivers yet without a court decree, notaries and land offices refused to process transactions involving the children's assets. This reflects a broader institutional reality: third-party institutions require a single, documented legal authority before assuming liability for actions taken on a child's behalf, as the absence of such documentation exposes them to legal risk if the guardian's authority is later disputed (Alston, 2017; Zietlow et al., 2022).

The second factor is legal-administrative representation. Decision No. 0010/Pdt.P/2015/PA.Cbd presents a distinct motivational context. The petitioner, a divorced mother who had been solely raising her nine-year-old son since 2006, filed for formal guardianship in order to process a visa and travel documents for a trip to the Netherlands. The child's father had ceased all involvement following the divorce, yet immigration authorities required a legally recognized guardian to authorize international travel documents. Research confirms that unrepresented individuals whose informal guardians lack formal legal status, face adverse institutional consequences precisely because formal systems are not designed to accommodate moral or social authority without legal documentation (Catlin et al., 2021; Cohen et al., 2015).

The third factor, which underlies both of the above, is the need for formal legal certainty. Across all three decisions, the courts explicitly acknowledged that while the petitioners already possessed guardianship rights by operation of law, formal judicial confirmation was necessary to make those rights actionable in practice. In the Soreang decision, the panel of judges invoked the fiqh maxim *tasharruf al-imam 'ala al-ra'iyah manut*

bi al-maslahah to justify the issuance of a guardianship decree as a measure of legal certainty and child protection. This aligns with the theoretical position that legal certainty requires not only that rights exist in statute, but that they be formally recognizable and enforceable by institutions whose operations depend on documented authority (Shcherbanyuk et al., 2023; Widiyono & Khan, 2023).

Taken together, these three factors converge on a single structural root: the gap between the guardianship right that automatically attaches to biological parents under Indonesian law and the formal recognition demanded by external institutions. As Watson et al. (2020) observe, systems that require full guardianship proceedings for every exercise of parental authority risk transforming a procedural requirement into a substantive barrier. In the Indonesian context, this barrier is compounded by the absence of a simplified administrative mechanism through which biological parents can assert their statutory guardianship rights without resort to full judicial proceedings. The following table summarizes the findings across the three cases.

Table 1. Driving Factors Behind Guardianship Petitions by Biological Parents

Factor	Case	Concrete Need	Institutional Barrier	Legal Basis Invoked
Management of inherited assets	PA Surabaya 3309/2024 & PA Soreang 651/2020	Sale of land/property at notary's office	Notary & land office require court decree	Art. 50–51 UU 1/1974; Art. 107 & 109 KHI
Legal-administrative representation	PA Cibadak 0010/2015	Visa & international travel documents	Immigration authority requires formal guardian	Art. 50–51 UU 1/1974; Art. 107 KHI
Formal legal certainty	All three cases	Legality of legal acts on behalf of the child	All formal institutions require documented authority	Art. 47 UU 1/1974; <i>Maslahah</i> principle

Source: Analysis of court decisions

Normative Analysis: Why Does This Paradox Occur?

The paradox identified last section which that biological parents possessing automatic guardianship rights under statute still resort to judicial proceedings cannot be adequately explained at the level of individual motivation alone. It requires a structural-normative diagnosis: an examination of why the legal framework itself produces this gap between rights on paper and rights in practice.

At its core, the paradox originates from a normative silence in Indonesian guardianship law. Article 47 of Law No. 1/1974 establishes that children under eighteen years of age who have never married remain under parental authority, and Article 50 provides that guardianship arises when parental authority no longer exists. Read together, these provisions leave biological parents in an ambiguous position: they are neither clearly required to obtain a guardianship decree nor formally exempted from doing so when dealing with third-party institutions. The law grants the right but does not create a mechanism for its administrative recognition (Andhini & Arifin, 2019; Nurkholis, 2018). This constitutes what legal theory identifies as a *legal gap* a situation where existing norms fail to anticipate and regulate a category of social need that has since emerged in practice (Fathanah & Sulistyarini, 2020; L. Hakim et al., 2024).

The gap is widened by the operational logic of formal institutions. Banks, notaries, land offices, immigration authorities, and insurance agencies such as ASABRI operate under internal risk-management frameworks that demand documented, unambiguous legal authority before processing any transaction on behalf of a minor. This institutional demand is not arbitrary: research demonstrates that third-party actors face significant legal exposure

if they act on the basis of informal or undocumented guardianship claims that are subsequently disputed (Alston, 2017; Zietlow et al., 2022). this sense, the requirement for a formal court decree is rational from the institution's perspective it provides a legally defensible basis for action. However, from the perspective of the parent whose rights are already guaranteed by statute, it imposes a procedural burden that the law itself does not require (Catlin et al., 2021; Goldman et al., 2020).

A comparative perspective illustrates that this gap is not inevitable. Malaysia's Guardianship of Infants Act 1961 operates within a dual civil-syariah legal system and similarly recognizes biological parents as natural guardians. However, the Malaysian framework more explicitly anticipates the administrative dimension of guardianship by providing clearer procedural pathways for parents to assert their guardianship status in dealings with third-party institutions reducing the need for full court proceedings in routine administrative matters (Goldman et al., 2020). The absence of an equivalent mechanism in Indonesian law means that every administrative need however routine must be resolved through the same formal judicial channel, regardless of whether the guardianship itself is genuinely in dispute.

The result is a structural misalignment between three distinct legal layers. First, guardianship law grants automatic rights to biological parents. Second, administrative regulations across multiple sectors independently require formal documentation of those rights. Third, no bridging mechanism exists to translate the statutory right into the administrative recognition that institutions demand. This three-layer misalignment is the structural root of the paradox and it explains why courts have consistently granted these petitions without controversy: they are not resolving disputes, but filling a normative gap that the legislature has not addressed (Shcherbanyuk et al., 2023; Watson et al., 2020; Widiyono & Khan, 2023).

Table 2. Structural Misalignment Between Legal Layers in Indonesian Guardianship Law

Legal Layer	Provision	Gap
Guardianship law	Art. 47 UU 1/1974 — automatic parental authority	Does not require court decree for biological parents
Administrative regulations	Banks, notaries, immigration, ASABRI	Independently require court-issued guardianship decree
Bridging mechanism	None	No simplified procedure for asserting statutory guardianship rights administratively

Source: Author's analysis based on normative review and comparative study.

Comparative Analysis of Judicial Decisions

A comparative reading of the three decisions reveals not merely that all petitions were granted, but that the judges across different courts, time periods, and jurisdictions employed a remarkably consistent pattern of judicial reasoning. This consistency warrants systematic analysis, as it illuminates how Indonesian Religious Courts have responded whether consciously or pragmatically to the normative gap identified in last section

In terms of legal standing and jurisdictional basis, all three courts grounded their authority in Article 49 of Law No. 7/1989 as amended, which grants Religious Courts absolute competence over guardianship matters involving Muslim parties. None of the courts questioned the admissibility of the petitions despite the fact that the petitioners were biological parents whose guardianship rights already attached by law. This uniform acceptance signals a judicial posture that prioritizes substantive child welfare over formalistic objections regarding the necessity of court proceedings a stance consistent with legal pragmatism, which views law as an instrument for achieving substantive social goals rather than a closed logical system (Buana, 2020; Muchtar et al., 2024).

In terms of evidentiary reasoning, the three courts applied an identical factual framework: they assessed the petitioner's character and fitness as a guardian, confirmed the absence of objections from related parties, verified the child's minority status, and examined authenticated documentary evidence including marriage certificates, birth certificates, and death or divorce certificates. This standardized evidentiary pattern suggests that Religious Courts have developed an informal but consistent procedural template for handling guardianship petitions by biological parents one that functions less as a genuine inquiry into guardianship fitness and more as a formal confirmation of what the law already presupposes.

The most analytically significant divergence lies in the use of Islamic legal maxims. The Surabaya court invoked the classical authority of *Ahkamul Aulaad* to justify guardianship on the basis of a child's legal incapacity, grounding its reasoning in doctrinal Islamic jurisprudence. The Soreang court, by contrast, applied the fiqh maxim *tasharruf al-imam 'ala al-ra'yyah manut bi al-maslahah* the ruler's authority over subjects is oriented toward welfare framing the court's role as an active instrument of public interest rather than a passive confirmer of existing rights. The Cibadak court notably invoked no fiqh maxim at all, relying exclusively on statutory provisions. This variation reveals that while the outcomes are uniform, the theoretical foundations differ across courts reflecting the broader tension in Indonesian judicial practice between legal formalism and principled instrumentalism (Buana, 2020; Tohari & Kholish, 2020).

Taken together, three patterns emerge from this comparative analysis. First, judges consistently grant petitions, demonstrating what may be characterized as *judicial pragmatism* in filling the legislative gap: courts do not refuse petitions on the ground that biological parents are already automatic guardians, but instead treat formal confirmation as a legitimate and necessary service to petitioners facing institutional barriers. Second, judges uniformly anchor their decisions in the principle of *maslahah* and the best interest of the child, using these principles as a conceptual bridge between the statutory right that already exists and the formal recognition that institutions demand (Bobar, 2016; García-Lozano, 2016; Jufri et al., 2021). Third, the absence of any rejected petition across all three cases and the broader pattern this reflects suggests that Religious Courts have effectively assumed a gap-filling function that properly belongs to the legislature: the problem is not that courts are deciding wrongly, but that they are deciding at all in cases where a simplified administrative mechanism should suffice (Shcherbanyuk et al., 2023; Watson et al., 2020).

Table 3. Comparative Analysis of Judicial Reasoning Across Three Decisions

Aspect	Religious court of Surabaya 3309/2024	Religious court of Cibadak 0010/2015	Religious court of Soreang 651/2020
Petitioner	Widowed mother	Divorced mother (father alive)	Divorced mother (father deceased)
Motivation	Inheritance management	Visa & travel documents	Inheritance management
Jurisdictional basis	Art. 49 UU 7/1989	Art. 49 UU 7/1989	Art. 49 UU 7/1989
Primary statutory basis	UU 1/1974 + KHI	UU 1/1974 + KHI	UU 1/1974 + KHI + UU 23/2002
Fiqh maxim invoked	<i>Ahkamul Aulaad</i>	None	<i>Tasharruf al-imam</i>
Judicial approach	Doctrinal-Islamic	Statutory-formalist	Pragmatist-maslahah
Outcome	Granted	Granted	Granted

Source: Analysis of court decisions

A limited comparative reading suggests that Indonesia's difficulty lies not in the absence of parental authority as a legal norm, but in the absence of an administrative bridge that translates parental status into documentary recognition. In Malaysia, for example, the Guardianship of Infants Act 1961 provides a clearer legal framework for parental guardianship and judicial supervision, thereby reducing uncertainty over when court intervention is necessary. Comparative family law scholarship also indicates that jurisdictions with clearer statutory guidance and more predictable documentation pathways tend to reduce discretionary barriers in child-related administrative matters. From this perspective, the Indonesian decisions examined here appear to reflect not only judicial consistency, but also a structural institutional response to documentary uncertainty.

Legal Implications

The normative-gap explanation should not be treated as the only possible account of these petitions. In some circumstances, judicial confirmation may serve a genuinely protective function by verifying the child's legal status, confirming the absence of objections from other interested parties, and ensuring that transactions involving a minor's assets are undertaken by a fit and identifiable adult. From a child-centered perspective, the requirement of court confirmation may therefore function not only as documentary formalism, but also as a procedural safeguard. At the same time, the cases examined in this study suggest that such protective oversight is being used in routine and uncontested matters where a lighter administrative mechanism may be more proportionate. The central problem, therefore, is not the existence of oversight itself, but the absence of a differentiated system that distinguishes between contested and uncontested cases.

At the theoretical level, the phenomenon of biological parents petitioning for guardianship confirmation fundamentally validates the law in books versus law in action distinction as a productive analytical framework for Indonesian family law. Law No. 1/1974 represents the *lex scripta*, the guardianship right as it exists on paper, while the judicial petitions examined in this study represent the *lex actualis*, the law as it must operate in lived administrative reality. The gap between the two is not a failure of legal drafting in the conventional sense, but rather a structural consequence of legislative silence in the face of evolving institutional demands. As Buana (2020) and Muchtar et al. (2024) observe, Indonesian courts have consistently responded to such gaps through principled instrumentalism, applying substantive values such as *maslahah* and the best interest of the child to bridge normative deficiencies. This study confirms that pattern in the specific domain of biological parent guardianship, and in doing so contributes to the broader theoretical discourse on the relationship between formal legal rights and their social operationalization. The three cases demonstrate that a right which exists in statute but cannot be administratively activated without judicial intervention is, in functional terms, an incomplete right one that achieves its protective purpose only through the mediation of the court (Mehra et al., 2018; Widiyono & Khan, 2023).

At the practical level, the most immediate implication concerns the institutional burden placed on Religious Courts. Each guardianship petition by a biological parent, however straightforward and uncontested, must traverse the full procedural apparatus of the court system: filing, notification, hearing, deliberation, and issuance of a decree. Across Indonesia's 516,344 divorce cases in 2022 alone (Badan Pusat Statistik Indonesia, n.d.), even a fraction requiring formal guardianship confirmation translates into a substantial and recurring caseload. This burden is compounded by the fact that, as demonstrated in the last section, none of the petitions examined were genuinely contested; the courts functioned not as dispute-resolution mechanisms but as administrative validation services. Research on guardianship systems internationally confirms that when courts are required to process routine, uncontested guardianship matters, the result is systemic inefficiency that delays access to rights without meaningfully improving their protection (Catlin et al., 2021; Zietlow et al., 2022). In the Indonesian context, this inefficiency falls disproportionately on single parents predominantly mothers, as evidenced by all three cases who must bear the time, cost, and procedural complexity of court proceedings simply to exercise rights the law already grants them (Alston, 2017; Watson et al., 2020).

At the policy level, the findings point toward three concrete reform directions. First, and most urgently, the structural misalignment identified in last section between guardianship law, administrative regulations, and the absence of a bridging mechanism requires direct legislative attention. A targeted amendment to Law No. 1/1974 or the KHI could explicitly establish that biological parents acting within the scope of their statutory guardianship rights are entitled to administrative recognition without a court decree, subject to standard identity verification. This would align Indonesian law more closely with the approach taken under Malaysia's Guardianship of Infants Act 1961, which provides clearer procedural pathways for parents to assert guardianship status in administrative contexts (Goldman et al., 2020). Second, in the absence of legislative reform, the Supreme Court (*Mahkamah Agung*) could issue a circular (*Surat Edaran*) directing administrative institutions notaries, land offices, immigration authorities, banks, and insurance agencies to recognize the statutory guardianship of biological parents on the basis of standard civil documents such as birth certificates, marriage certificates, and death or divorce certificates, without requiring a separate court decree. This would not diminish judicial oversight where it is genuinely needed in contested cases or where parental fitness is in question but would eliminate the procedural burden in uncontested, routine matters. Third, public legal education is needed to ensure that biological parents are aware of their statutory guardianship rights and the circumstances under which court confirmation is and is not legally required, reducing unnecessary petitions driven by institutional misinformation rather than genuine legal need (Andhini & Arifin, 2019; M. A. A. I. Huda & Tohari, 2025).

Table 4. Summary of Legal Implications

Level	Finding	Implication
Theoretical	Law in books ≠ law in action in biological parent guardianship	Confirms gap between statutory rights and their administrative operationalization; judicial pragmatism fills the void
Practical	Courts function as administrative validation services in uncontested cases	Unnecessary caseload burden; disproportionate impact on single parents
Policy	No bridging mechanism between guardianship law and administrative regulations	Requires legislative amendment, Supreme Court circular, or both; comparative reference: Malaysia GIA 1961

CONCLUSION

This study demonstrates that the phenomenon of biological parents petitioning Religious Courts for guardianship confirmation is not a legal anomaly but a rational response to a structural normative gap between Indonesian guardianship law and the administrative demands of formal institutions. Three principal factors drive this practice: the need to manage inherited assets, the requirement for legal-administrative representation, and the pursuit of formal legal certainty, all of which converge on a single root cause: the absence of a bridging mechanism between the automatic guardianship rights granted by Law No. 1/1974 and the documentary requirements imposed by notaries, banks, immigration authorities, and other formal institutions. Across all three decisions examined, judges consistently resolved this gap through principled pragmatism, invoking *maslahah* and the best interest of the child as conceptual bridges to justify formal confirmation of rights that the law already grants, confirming that Indonesian Religious Courts have assumed a gap-filling function that properly belongs to the legislature.

In light of these findings, three recommendations are advanced. First, a targeted amendment to Law No. 1/1974 or the KHI should establish an explicit mechanism for administrative recognition of biological parents' statutory guardianship rights, eliminating the need for court proceedings in uncontested routine matters. Second, the Supreme Court should issue a circular directing formal institutions to recognize parental guardianship on the basis of standard civil documents without requiring a separate court decree. Third,

public legal education is needed to ensure that parents understand the scope of their statutory rights and when judicial confirmation is genuinely necessary. Future research should proceed in at least three directions. First, a broader dataset of Religious Court decisions is needed to assess whether the pattern identified in this study extends across regions, case types, and judicial contexts. Second, empirical socio-legal research involving notaries, immigration officials, banking officers, land administrators, and parents is necessary to verify how documentary requirements operate in practice and to distinguish institutional policy from local administrative habit. Third, comparative research on Muslim-majority jurisdictions, particularly those that combine family-law pluralism with administrative modernization, would help identify reform models that could realistically be adapted to the Indonesian legal system.

ACKNOWLEDGMENT

The authors acknowledge the scholarly contributions of researchers in Islamic family law, child protection, and judicial practice whose publications informed the theoretical and analytical foundations of this study. Particular appreciation is extended to the institutions responsible for maintaining access to legislation and judicial decisions, which are essential resources for documentary legal research. These materials supported the comparative examination of guardianship petitions and the analysis of the relationship between parental authority, administrative recognition, and the protection of children's interests.

AUTHOR CONTRIBUTIONS

Eneng Nuraeni: Conceptualization, formulation of the research questions, selection and examination of the Religious Court decisions, analysis of the factors motivating guardianship petitions by biological parents, and writing of the original draft. Riyan Ramdani: Methodology, analysis of the statutory framework and Islamic legal principles, comparative evaluation of judicial reasoning, and critical review and editing of the manuscript. Both authors contributed to interpreting the findings and developing the conclusions and recommendations concerning the administrative recognition of parental authority and the protection of children's interests.

FUNDING

This research was financed jointly by the authors through their personal funds. These contributions supported the documentary research, examination of legal materials, and preparation of the manuscript. No external grants or financial support were received from governmental, commercial, institutional, or non-profit funding bodies. Financial responsibility for conducting the study and preparing the article was shared by the authors.

CONFLICTS OF INTEREST

The authors declare that they have no financial, professional, personal, or institutional conflicts of interest related to this research. They have no competing interests concerning the guardianship proceedings examined in the study or the institutions discussed in the analysis. The interpretations and conclusions presented in this article reflect the authors' academic assessment of the legal materials and judicial reasoning considered in the research.

DATA AVAILABILITY

The documentary materials analyzed in this study comprise legislation, published academic literature, and three Religious Court decisions: Decision No. 3309/Pdt.P/2024/PA.Sby, Decision No. 651/Pdt.P/2020/PA.Sor, and Decision No. 0010/Pdt.P/2015/PA.Cbd. These decisions are identified in the manuscript to enable readers to trace the sources underlying the comparative analysis. Access to the original judicial documents is subject to the availability and disclosure procedures of the relevant courts or judicial repositories. The comparative tables summarize the authors' interpretation of these materials. No interview, survey, or experimental dataset was generated for this study.

AI USE DECLARATION

Artificial intelligence (AI)-assisted tools were used exclusively to support reference processing and the organization of bibliographic information. Their use did not extend to drafting the manuscript, interpreting the Religious Court decisions, conducting the comparative legal analysis, or formulating the findings and conclusions. AI assistance does not constitute independent verification of the accuracy or relevance of the cited sources. The authors retain full responsibility for the references, legal interpretations, and overall scholarly integrity of the article.

ETHICAL CLEARANCE

This study employed a documentary legal research design involving the analysis of legislation, academic literature, and existing Religious Court decisions. It did not involve the recruitment of human participants, interviews, surveys, experiments, or direct interaction with the parents and children discussed in the judicial documents. Formal ethical clearance was therefore not required under the applicable institutional procedures for this type of documentary research. Nevertheless, the involvement of children and family circumstances in the source materials requires careful attention to privacy. The presentation of the cases focuses on legally relevant facts and judicial reasoning, and unnecessary identifying information should not be reproduced.

REFERENCES

- Alston, B. (2017). Towards supported decision-making: Article 12 of the convention on the rights of persons with disabilities and guardianship law reform. *Law in Context*, 35, 21–43. <https://doi.org/10.26826/law-in-context.v35i2.10>
- Andhini, A. S. D., & Arifin, R. (2019). Analisis Perlindungan Hukum Terhadap Tindak Kekerasan pada Anak di Indonesia. *Ajudikasi: Jurnal Ilmu Hukum*. <https://doi.org/10.30656/ajudikasi.v3i1.992>
- Anjari, W. (2021). Perlindungan Anak Yang Bermasalah Dengan Hukum Dalam Perspektif Pemidanaan Integratif Pancasila. *Jurnal Yudisial*. <https://doi.org/10.29123/jy.v13i3.435>
- Aris, & Sabir, M. (2020). Hukum Islam Dan Problematika Sosial; Telaah Terhadap Beberapa Hukum Perdata Islam Dalam Kompilasi Hukum Islam di Indonesia. *DIKTUM: Jurnal Syariah Dan Hukum*. <https://doi.org/10.35905/diktum.v18i2.1608>
- Arrasyid, F., Pagar, P., & Tanjung, D. (2024). Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A Maqasid Sharia Perspective. *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*. <https://doi.org/10.30659/jua.v6i2.29236>
- Azhari, D., & Asmuni, A. (2023). Progressive Steps in Reforming Indonesian Islamic Family Law Through Gender Studies. *Syakhshiyyah Jurnal Hukum Keluarga Islam*. <https://doi.org/10.32332/syakhshiyyah.v3i2.8020>
- Bobar, C. F. (2016). Considerations on the Best Interests of the Child as a Principle of Exercising Parental Authority. *Journal of Legal Studies*, 18, 88–96. <https://doi.org/10.1515/jles-2016-0018>
- Buana, M. S. (2020). *Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court*. 6, 36–66. <https://doi.org/10.31078/consrev612>
- Catlin, C., Connors, H., Teaster, P., Wood, E., Sager, Z., & Moye, J. (2021). Unrepresented Adults Face Adverse Healthcare Consequences: The Role of Guardians, Public Guardianship Reform, and Alternative Policy Solutions. *Journal of Aging & Social Policy*, 34, 418–437. <https://doi.org/10.1080/08959420.2020.1851433>
- Cohen, A., Wright, M., Cooney, L., & Fried, T. (2015). Guardianship and End-of-Life Decision Making. *JAMA Internal Medicine*, 175, 10, 1687–1691. <https://doi.org/10.1001/jamainternmed.2015.3956>

- Fathanah, R., & Sulistyarini, R. (2020). Tanggung Jawab Anak dalam Memelihara Orang Tua Terkait Ketentuan Pasal 46 Ayat (2) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*. <https://doi.org/10.17977/um019v5i2p226-232>
- Fauzia, A., Hamdani, F., & Octavia, D. (2021). The Revitalization Of The Indonesian Legal System In The Order Of Realizing The Ideal State Law. *Progressive Law Review*, 3(01), 12-25. <https://doi.org/10.36448/plr.v3i01.46>
- García-Lozano, S. T. (2016). El interés superior del niño. *Anuario Mexicano de Derecho Internacional*, 16, 131-157. <https://doi.org/10.22201/ij.24487872e.2016.16.523>
- Goldman, P., Bakermans-Kranenburg, M., Bradford, B., Christopoulos, A., Ken, P., Cuthbert, C., Duchinsky, R., Fox, N., Grigoras, S., Gunnar, M., Ibrahim, R., Johnson, D., Kusumaningrum, S., Agastya, N. L. P. M., Mwangangi, F., Nelson, C., Ott, E., Reijman, S., Van IJzendoorn, M., ... Sonuga-Barke, E. (2020). Institutionalisation and deinstitutionalisation of children 2: policy and practice recommendations for global, national, and local actors. *The Lancet. Child & Adolescent Health*, 4, 606-633. [https://doi.org/10.1016/s2352-4642\(20\)30060-2](https://doi.org/10.1016/s2352-4642(20)30060-2)
- Hakim, L., Alfiyan, I. A., & Renovsi, J. (2024). Implementasi Penambahan Nama Seseorang Pada Dokumen Kependudukan Melalui Proses Permohonan di Pengadilan Negeri (Studi Penetapan Nomor 58/PDT.P/2022/PN.TJK). *Jurnal Hukum Sasana*. <https://doi.org/10.31599/sasana.v8i2.1289>
- Hakim, Z. (2021). Peran Fatwa Mui Sebagai Produk Hukum Islam Dalam Masyarakat. *Al'Adalah*. <https://doi.org/10.35719/aladalah.v24i2.77>
- Huda, M. A. A. I., & Tohari, I. (2025). Keadilan dan Kepastian Hukum dalam Pemenuhan Hak Anak Pasca Perceraian. *Tafáqquh: Jurnal Penelitian Dan Kajian Keislaman*, 13(1), 109-122. <https://doi.org/10.52431/tafaqquh.v13i1.3724>
- Huda, M., & Tohari, I. (2025). Keadilan dan Kepastian Hukum dalam Pemenuhan Hak Anak Pasca Perceraian. *Tafáqquh: Jurnal Penelitian Dan Kajian Keislaman*. <https://doi.org/10.52431/tafaqquh.v13i1.3724>
- Jufri, K. A. Al, Awang, M. S., & Sahid, M. M. (2021). Maqasid Syariah Menurut Imam Al-Ghazali Dan Aplikasinya Dalam Penyusunan Undang-Undang Islam Di Indonesia. *Malaysian Journal of Syariah and Law*. <https://doi.org/10.33102/mjsl.vol9no2.315>
- Jumlah Perceraian Menurut Provinsi dan Faktor Penyebab Perceraian (perkara), 2024 - Tabel Statistik - Badan Pusat Statistik Indonesia. (n.d.). Retrieved January 29, 2026, from <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi-dan-faktor-penyebab-perceraian--perkara---2024.html?year=2024>
- Jumlah Perceraian Menurut Provinsi¹ dan Faktor Penyebab Perceraian (perkara), 2025 - Tabel Statistik - Badan Pusat Statistik Indonesia. (n.d.). Retrieved March 12, 2026, from <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi-dan-faktor-penyebab-perceraian--perkara---2024.html?year=2025>
- Kajian, J., Islam, H., [Httpsdoi.Org10.24090](https://doi.org/10.24090), P. H. H. D., Asmuni, A. . V. 7584, Syahputra, A. R., Meidina, A., Zein, Zayyadi, A., Hidayat, A., Masuwd, M., Profesor, U., Haji, K., Zuhri, S., Jl, P., Jend., A., No, Y., 40-a, Purwokerto, Kunci, K., ... Islam, K. (2023). Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*. <https://doi.org/10.24090/mnh.v17i2.7584>

- Maimun, M., Anggriani, J., Harlina, I., & Suhendar, S. (2024). The Dynamics of Family Law in Indonesia: Bibliometric Analysis of Past and Future Trends. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*. <https://doi.org/10.22373/sjhk.v8i1.21890>
- Mehra, D., Sarkar, A., Sreenath, P., Behera, J., & Mehra, S. (2018). Effectiveness of a community based intervention to delay early marriage, early pregnancy and improve school retention among adolescents in India. *BMC Public Health*, 18. <https://doi.org/10.1186/s12889-018-5586-3>
- Merchiano, R., Syafariansyah, Mohd., Effendi, E., Ichandri, I., & Sadli, S. (2023). Analisis Hukum Dalam Penetapan Pengadilan Agama Tentang Perwalian Anak Kandung Yang Masih Di Bawah Umur. *Lexstricta: Jurnal Ilmu Hukum*, 2(1), 49–62. <https://doi.org/10.46839/lexstricta.v2i1.25>
- Muchtar, S., Irwansyah, I., Yunus, A., Arifin, A. P., & Faried, M. (2024). Juvenile Criminal Responsibility in Justice Systems: A Comparative Study of Judicial Interpretations in Indonesia and Australia. *Jambe Law Journal*. <https://doi.org/10.22437/home.v7i2.387>
- Muttaqin, M., & Fadhilah, N. (2020). *Hak Ijbar Wali Tinjauan Maqashid Syari'ah dan Antropologi Hukum Islam*. 12, 102–119. <https://doi.org/10.18860/j-fsh.v12i1.7923>
- Nasution, K., & Nasution, S. (2021). Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights. *Al-Jami'ah: Journal of Islamic Studies*. <https://doi.org/10.14421/ajis.2021.592.347-374>
- Negara, T. A. S. (2023). Normative Legal Research in Indonesia: Its Origins and Approaches. *Audito Comparative Law Journal (ACLJ)*. <https://doi.org/10.22219/aclj.v4i1.24855>
- Nurkholis, N. (2018). Penetapan Usia Dewasa Cakap Hukum Berdasarkan Undang-Undang Dan Hukum Islam. *Yudisia* 8, 75–91. <https://doi.org/10.21043/yudisia.v8i1.3223>
- Ogneviuk, H. (2018). Anthropological Approaches In Legal Certainty Research. *Anthropological Measurements of Philosophical Research*. <https://doi.org/10.15802/ampr.v0i14.150573>
- Pratiwi, R. W. (2020). Perlindungan Hukum Terhadap Kelalaian Pemenuhan Pembayaran Nafkah Anak Pasca Perceraian Berdasarkan Putusan Pengadilan Agama Blitar. *Negara Dan Keadilan*, 9(1), 50. <https://doi.org/10.33474/hukum.v9i1.7491>
- Purnama, H. (2021). Hukum Islam, Adat Dan Hukum Negara Dalam Perkawinan Masyarakat Suku Melayu Di Pekanbaru Riau: Keabsahan, Etika, dan Administrasi Perkawinan. *Al-Ahwal: Jurnal Hukum Keluarga Islam*. <https://doi.org/10.14421/ahwal.2021.14101>
- Quthny, A. Y. A. (2019). Implementasi Masalah Mursalah sebagai Alternatif Hukum Islam dan Solusi Problematika Umat. *Asy-Syari'ah: Jurnal Hukum Islam*. <https://doi.org/10.36835/assyariah.v5i1.110>
- Salma, S., & Agustiar, A. (2023). Konstruksi Toleransi Beragama Dalam Wasiat Wajibah Melalui Penerapan Maqasid Al-Syari'ah. *Jurnal Yudisial*. <https://doi.org/10.29123/jy.v15i2.480>
- Saputra, A., & Mulyana, M. (2022). Pelaksanaan Hak Asuh Anak Atas Penetapan Pengadilan Yang Berkekuatan Hukum Tetap Berdasarkan Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak. *De Juncto Delicti: Journal of Law*. <https://doi.org/10.35706/djd.v2i1.6384>
- Sartini, S., Mading, B., & Makkawaru, Z. (2021). Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual. *Indonesian Journal of Legality of Law*. <https://doi.org/10.35965/ijlf.v4i1.1196>
- Sebriyani, Y. (2023). Perlindungan Hukum Terhadap Anak dalam Perceraian Menurut Perspektif Hukum Keluarga Islam. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(2), 1967–1976. <https://doi.org/10.37680/almanhaj.v5i2.3822>

- Shcherbanyuk, O., Gordieiev, V., & Bzova, L. (2023). Legal nature of the principle of legal certainty as a component element of the rule of law. *Juridical Tribune*. <https://doi.org/10.24818/tbj/2023/13/1.02>
- Tohari, I., & Kholish, Moh. A. (2020). Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia. *Arena Hukum*. <https://doi.org/10.21776/ub.arenahukum.2020.01302.7>
- Watson, J., Anderson, J., Wilson, E., & Anderson, K. (2020). The impact of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on Victorian guardianship practice. *Disability and Rehabilitation*, 44, 2806–2814. <https://doi.org/10.1080/09638288.2020.1836680>
- Widiyono, T., & Khan, M. Z. K. (2023). Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law. *LAW REFORM*. <https://doi.org/10.14710/lr.v19i1.48393>
- Zainuddin, Z. (2021). Konsep Otonomi Daerah Dalam Hukum Tata Negara Islam. *JISRAH: Jurnal Integrasi Ilmu Syariah*. <https://doi.org/10.31958/jisrah.v2i2.4348>
- Zietlow, K., Dubin, L., Battles, A., & Vitale, C. (2022). Guardianship: A medicolegal review for clinicians. *Journal of the American Geriatrics Society*, 70(11), 3070–3079. <https://doi.org/10.1111/jgs.17797>