



Protection of Inheritance Rights for Children with Mental Disorders in Civil and Islamic Law

Perlindungan Hak Waris Anak Penyandang Gangguan Mental dalam Hukum Perdata dan Islam

Muh Ramdhani Hamzah¹, Nirwan Junus², Moh Taufiq Zulfikar Sarson³

¹⁻³Faculty of Law, Gorontalo State University, Indonesia

Article Info

Corresponding Author:

Muh Ramdhani Hamzah

✉ dhanihamzah04@gmail.com

History

Submitted: 24-06-2026

Revised: 25-07-2026

Accepted: 01-08-2026

Keyword:

Supported Decision Making; Hifz Al Mal; Guardianship Accountability; Disability Property Rights.

Kata Kunci:

Pengambilan Keputusan Didukung; Hifz Al Mal; Akuntabilitas Perwalian; Hak Properti Disabilitas.

Abstract

Current civil and Islamic legal doctrines formally acknowledge the inheritance rights of individuals with mental disorders, yet a critical regulatory vacuum persists regarding subsequent guardianship oversight, exposing vulnerable heirs to predatory property alienation. This doctrinal legal research evaluated this blind spot by comparing Indonesian civil and Islamic jurisprudence against the supported decision making paradigm mandated by the Convention on the Rights of Persons with Disabilities. The analysis revealed that substituted decision making frameworks structurally fail to protect inherited assets due to the absence of mandatory early asset inventories, segregated financial accounts, and periodic judicial audits. Consequently, maintaining absolute guardianship inherently facilitates financial exploitation. To mitigate misappropriation, this study constructs an integrated oversight architecture merging the Islamic hifz al mal doctrine with international disability rights standards. This normative transformation shifts judicial institutions from passive status certifiers into active protectors of equitable wealth administration, offering prescriptive reform for global civil justice systems.

Abstrak

Doktrin hukum perdata dan Islam secara formal mengakui hak waris individu dengan gangguan mental, namun kekosongan regulasi yang kritis tetap bertahan mengenai pengawasan perwalian pascapenetapan, sehingga mengekspos ahli waris rentan terhadap risiko praktik perampasan properti predatorial. Penelitian hukum doktrinal ini mengevaluasi titik buta tersebut dengan membandingkan yurisprudensi sipil dan Islam Indonesia terhadap paradigma pengambilan keputusan yang didukung sebagaimana dimandatkan oleh Konvensi Hak Penyandang Disabilitas. Analisis mengungkapkan bahwa kerangka pengambilan keputusan pengganti secara struktural gagal melindungi aset warisan akibat ketiadaan kewajiban inventarisasi aset awal, pemisahan rekening keuangan, dan audit yudisial berkala. Akibatnya, mempertahankan pengampuan absolut secara inheren justru memfasilitasi eksploitasi finansial. Untuk memitigasi penyalahgunaan, studi ini mengkonstruksi arsitektur pengawasan terintegrasi yang menggabungkan doktrin hifz al mal Islam dengan standar hak disabilitas internasional. Transformasi normatif ini menggeser institusi peradilan dari sekadar entitas pemberi sertifikat status hukum pasif menjadi pelindung aktif tata kelola kekayaan berkeadilan, menawarkan reformasi preskriptif bagi sistem peradilan global kontemporer.



Copyright: © 2026 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA).

<https://doi.org/10.65101/lawric.v2i1.427>

A. INTRODUCTION

1. Background

Current judicial practices and family law governance in Indonesia are confronted with severe normative tensions regarding the instruments protecting the inheritance rights of children with mental disabilities. In sociological and judicial realities, persons with mental disabilities frequently endure systematic exclusion from their proprietary rights due to rigid and regressive interpretations of legal capacity. Although both the national civil code (KUHPperdata) and the compilation of Islamic law (KHI) theoretically acknowledge that a disability does not vitiate an individual's proprietary status as an heir, the applied mechanisms of curatorship (*curatele*) and guardianship (*voogdij*) inadvertently create loopholes of vulnerability. The institution of guardianship is frequently abused by family members or third parties to delay, circumvent, or unilaterally alienate inherited assets that ought to be the absolute right of the heir with a disability. Judicial determinations are often misconstrued as a form of "civil death" that completely strips the legal autonomy of persons with disabilities, ultimately alienating them from the economic benefits of their inherited estate.

The issue of exploiting the proprietary rights of heirs is not exclusively a domestic phenomenon; rather, it represents a focal point in global human rights debates that has triggered a paradigm shift in legal protection. Through Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Indonesia via Law Number 19 of 2011, international instruments mandate a radical transition from a substituted decision-making model to a supported decision-making model.^{1,2} Traditional regimes that strip legal capacity and supplant individual will with the absolute will of a guardian are deemed discriminatory. Conversely, the support model ensures that every individual possesses equal legal capacity before the law, wherein state intervention is restricted to providing proportional assistance rather than an absolute revocation of autonomy. This principle aligns with the foundation of distributive justice, which mandates that legal constructs must provide stronger affirmative protection for vulnerable groups to prevent their

¹ Convention on the Rights of Persons with Disabilities (CRPD), "Article 12 – Equal Recognition before the Law," 2006, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>.

² Indonesia, "Law Number 19 of 2011 Is the Official Legal Approval of the Convention on the Rights of Persons with Disabilities," 2011, <https://jdih.kemnaker.go.id/peraturan/detail/629/undang-undang-nomor-19-tahun-2011>.

exclusion from access to civil justice.³

A review of contemporary literature spanning the last five years (2021–2026) reveals a sharp discursive polarization between the legal-formalistic faction and the rights-based approach faction regarding this inheritance issue. The former group tends to affirm the civil status of heirs with mental disabilities, yet regrettably continues to legitimize the absolute control of the guardian figure. Studies by Sanusi et al. (2023) and Navisa (2022) assert the absolute standing of persons with disabilities as inheriting subjects, yet predicate their solutions on a "legal amnesty" through a plenary curatorship regime.^{4,5} Similar perspectives are examined purely through the lens of classical Islamic jurisprudence and law by Nggoli et al. (2025) and Hurbi et al. (2026).^{6,7} Conversely, the latter group of literature has begun to confront such practices using the CRPD paradigm. Franola et al. (2025) and Rizka & Anindia (2022) critique the Indonesian curatorship regime for being paternalistic, thereby urging the implementation of limited guardianship.^{8,9} Dawwas & Santoso (2023) further dissect the Purworejo District Court Decision Number 50/Pdt.P/2021/PN.Pwr as empirical evidence demonstrating that courts still rigidly position curatorship as an instrument to revoke legal capacity.¹⁰

³ Elizabeth Anderson, "Rawls's Principles of Justice as a Transcendence of Class Warfare," in *Rawls's A Theory of Justice at 50* (Cambridge University Press, 2023), 78–94, <https://doi.org/10.1017/9781009214704.006>.

⁴ Imam Sanusi, Dominikus Rato, and Dyah Othorina Susanti, "Kedudukan Hukum Ahli Waris Penyandang Cacat Mental Dalam Memperoleh Hak Warisnya (Harta Waris)," *MIMBAR YUSTITIA: Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 1 (May 29, 2023): 105–18, <https://ejurnal.unisda.ac.id/index.php/mimbar/article/view/4198>.

⁵ Fitria Dewi Navisa, "Kedudukan Dan Perlindungan Hukum Penyandang Disabilitas Dalam Pewarisan," *Arena Hukum* 15, no. 2 (August 31, 2022): 307–24, <https://doi.org/10.21776/ub.arenahukum.2022.01502.5>.

⁶ Leliana Nggoli, Nirwan Junus, and Mohamad Taufiq Zulfikar Sarson, "Pertimbangan Hakim Dalam Penyelesaian Sengketa Waris: (Studi Putusan Hakim Pengadilan Agama Gorontalo Nomor 487/Pdt.G/2022/Pa.Gtlo)," *Jurnal Polahi* 3, no. 1 (March 11, 2025): 59–78, <https://jp.iregway.com/index.php/polahi/article/view/59-78>.

⁷ Amin Mujahid bin Hurbi et al., "Reevaluation of Judges' Conditions for Disabilities: A Comparative Study of Islamic Jurisprudence and the Convention on the Persons with Disabilities," *JURIS (Jurnal Ilmiah Syariah)* 25, no. 1 (April 13, 2026): 115–29, <https://doi.org/10.31958/juris.v25i1.15992>.

⁸ Frida Azmil Franola, Siti Rohmah, and Shinta Puspita Sari, "Supported vs Substituted: The Urgency of Regulating Limited Guardianship for Individuals with Psychosocial Disabilities in Islamic Inheritance," *Sakina: Journal of Family Studies* 9, no. 1 (February 26, 2025): 17–35, <https://doi.org/10.18860/jfs.v9i1.14186>.

⁹ Rizka Rizka and Anindia Fadhillah, "One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities," *Society* 10, no. 1 (June 30, 2022): 220–28, <https://doi.org/10.33019/society.v10i1.411>.

¹⁰ Rizal Dawwas and Agus Budi Santoso, "Tinjauan Yuridis Penetapan Pengadilan Terhadap Permohonan Pengampunan Orang Pengidap Gangguan Mental (Skizofrenia Paranoid) (Penetapan Perkara Nomor 50/Pdt.P/2021/PN.Pwr)," *Eksaminasi: Jurnal Hukum* 2, no. 2 (June 5, 2023): 115–22, <https://jurnal.umpwr.ac.id/eksaminasi/article/view/3216>.

Elevating this discourse to a global level, comparative research by Kong et al. (2023) and Guo (2025) demonstrates that developed jurisdictions have progressively dismantled their civil codes, abandoning plenary curatorship in favor of tiered legal assistance systems that respect individualized autonomy.^{11,12}

From the synthesis of this discourse and the clash of literature above, a fundamental research gap (blind spot) becomes starkly apparent. The majority of previous literature merely dwells on philosophical debates concerning the "legitimacy of status" of inheritance rights and statically compares normative textual formulations, without ever addressing the operational governance of inherited assets post-judicial determination. There has yet to be a legal study that precisely designs how such inheritance should be inventoried, how its accounts should be segregated, reported, and scrutinized against the potential abuse of a guardian's power. Consequently, the legal novelty of this article is situated in the formulation of an integrated oversight design for inheritance governance. This article does not merely interpret statutory provisions; rather, it integrates the supported decision-making model from international human rights instruments, the administrative legal protection system, and the philosophy of *hifz al-mal* (safeguarding of wealth) in Islamic law as operational instruments to evaluate and constrain curatorial authority.

This article rejects the normative view that the current guardianship and curatorship regimes in Indonesia are adequate. The central thesis advanced in this manuscript is that both the civil and Islamic inheritance curatorship regimes in Indonesia suffer from structural defects, as they merely guarantee the formal recognition of inheritance rights on paper, while remaining entirely devoid of providing material oversight mechanisms against the misappropriation of assets.

2. Problem Formulation

Building upon this foundational premise, the comprehensive analysis within this article is directed toward addressing two primary lines of inquiry: first, a critical examination of the protective frameworks governing the inheritance rights of children with mental disabilities at the intersection of civil doctrine, Islamic jurisprudence, and

¹¹ Camillia Kong et al., eds., *Capacity, Participation and Values in Comparative Legal Perspective* (Policy Press, 2023), 1-25. <https://doi.org/10.1332/policypress/9781529224450.001.0001>.

¹² Xiaoxuan Guo, "The Path of Constructing the Supported Decision-Making System in the Interaction Between International and Domestic Law," *Lecture Notes in Education Psychology and Public Media* 83, no. 1 (February 8, 2025): 134–43, <https://doi.org/10.54254/2753-7048/2024.20782>.

global human rights standards; and second, the deconstruction of the structural deficiencies endemic to the current guardianship regime, aiming to formulate progressive legal reform recommendations that empirically mitigate the risk of third-party exploitation.

3. Research Methodology

This study constitutes doctrinal legal research, adopting a statutory approach, a conceptual approach, and a functional comparative approach. The statutory approach is operationalized to examine the normative friction among inheritance rules, guardianship, and the rights of persons with disabilities within both the civil and Islamic legal systems. The conceptual approach centers on integrating the discourse of individual autonomy (*supported decision-making*) with the objectives of Islamic law (*maqashid al-syariah*), specifically the preservation of wealth (*hifz al-mal*). Furthermore, the functional comparative approach is employed to explore the disparities and convergences of curatorship mechanisms across various legal protection regimes, with the objective of formulating a measurably accountable framework for inheritance governance.¹³

Primary legal materials in this study focus specifically on the Indonesian Civil Code (*KUHPerdata*), the Compilation of Islamic Law (*KHI*), Law Number 8 of 2016 on Persons with Disabilities, and Law Number 19 of 2011 on the Ratification of the CRPD, alongside the Purworejo District Court Decision Number 50/Pdt.P/2021/PN.Pwr as a representation of judicial determination. To ensure the novelty and rigor of the argumentation, secondary data collection procedures were conducted transparently through systematic retrieval from both international (Scopus, HeinOnline) and national (Garuda/SINTA) academic databases. The literature search was strictly confined to publications spanning from 2021 to 2026, utilizing the following Boolean search algorithm: "inheritance rights" AND "mental disorder" OR "disability" AND "CRPD supported decision making". Inclusion criteria strictly required peer-reviewed journal articles investigating conflicts over legal capacity and the administration of guardianship assets, whereas purely clinical-medical literature and popular opinions were excluded from the analytical scope.

¹³ Sanne Taekema, "Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship," *Law and Philosophy* 40, no. 1 (February 14, 2021): 33–66, <https://doi.org/10.1007/s10982-020-09388-1>.

Diverging from conventional descriptive research, the analytical technique applied to the legal materials in this manuscript is not merely classified as "qualitative analysis"; rather, it is operationalized employing Systematic Legal Interpretation integrated with the IRAC (*Issue, Rule, Application, Conclusion*) reasoning structure.^{14,15} Operationally, the *Issue* element is focused on identifying the oversight loopholes in the inheritance governance of children with mental disabilities; the *Rule* is dissected by confronting the statutory provisions within the *KUHPerdata* and *KHI* against the global legal capacity principles enshrined in the CRPD; the *Application* is executed by assessing these norms against the application of legal facts in jurisprudence (specifically, the Purworejo District Court Decision Number 50/Pdt.P/2021/PN.Pwr); and the *Conclusion* culminates in an evaluative synthesis proposing a reform design for inheritance curatorship legal instruments, transitioning from a substituted decision-making model toward a supervised supported decision-making model.

B. DISCUSSION

1. The Protection of Inheritance Rights for Children with Mental Disabilities at the Intersection of Civil Doctrine, Islamic Jurisprudence, and Global Human Rights

The initial step in analyzing this discourse (*Issue*) stems from the sharp dichotomy between the acknowledgment of legal standing (*ahliyyah al-wujub/rechtsbevoegdheid*) and the capacity to execute legal acts (*ahliyyah al-ada'/handelingsbekwaamheid*). Civil law doctrine and classical Islamic jurisprudence inherently agree that persons with mental disabilities do not forfeit their standing as rights-bearing legal subjects. Nevertheless, academic discourse over the past five years has revealed acute polarization regarding how these rights are operationalized. Previous studies from the legal-formalistic faction, such as Sanusi et al. (2023) and Navisa (2022), affirm the standing of persons with disabilities as inheriting subjects; unfortunately, they predicate their solutions on a "legal amnesty" through a plenary curatorship regime.^{16,17} This sentiment is maintained within

¹⁴ Wenhan Yu et al., "Benchmarking Multi-Step Legal Reasoning and Analyzing Chain-of-Thought Effects in Large Language Models," *Information Processing & Management* 64, no. 1 (January 2027): 105030, <https://doi.org/10.1016/j.ipm.2026.105030>.

¹⁵ Lei Liu and Ran Tao, "The Systemic Nature of Law from a Judicial Perspective," *Humanities and Social Sciences Communications* 13, no. 1 (April 8, 2026): 765, <https://doi.org/10.1057/s41599-026-07212-0>.

¹⁶ Sanusi, Rato, and Susanti, "Kedudukan Hukum Ahli Waris Penyandang Cacat Mental Dalam Memperoleh Hak Warisnya (Harta Waris)."

¹⁷ Navisa, "Kedudukan Dan Perlindungan Hukum Penyandang Disabilitas Dalam Pewarisan."

the frameworks of jurisprudence and classical Islamic law by Nggoli et al. (2025) and Hurbi et al. (2026), which legitimize the absolute control of the guardian figure.^{18,19}

Conversely, the human rights faction has begun to deconstruct these practices. Franola et al. (2025) and Rizka & Anindia (2022) sharply criticize the paternalistic nature of Indonesia's curatorship regime.^{20,21} Dawwas & Santoso (2023) even dissect the Purworejo District Court Decision Number 50/Pdt.P/2021/PN.Pwr as empirical evidence illustrating that courts continue to position curatorship as an instrument for the rigid revocation of legal capacity.²²

Departing from this literature debate and the identified research gap, this study finds that the debate concerning the proprietary status of inheritance rights for persons with mental disabilities has essentially been resolved. However, preceding literature has failed to address the true root of the legal pathology: the vacuum of operational oversight instruments post-judicial appointment of a guardian. Normatively, Articles 830 and 832 of the Indonesian Civil Code (*KUHPerdata*), alongside Articles 171 and 174 of the Compilation of Islamic Law (*KHI*), concurrently establish that mental disorders do not constitute an impediment to inheritance (*man'u al-irth*).^{23,24} Islamic law, through Surah An-Nisa verse 5 and Article 184 of the *KHI*, also emphasizes that the essence of guardianship is not the restriction of ownership, but the protection and preservation of wealth (*hifz al-mal*).²⁵ Nevertheless, systematic analysis within this study demonstrates that absent external audit regimes, mandatory segregation of accounts, and transparency in asset inventory, the principle of *hifz al-mal* degrades into an unimplemented moral catchphrase. The inheritance rights of persons with disabilities are ultimately vulnerable to reduction by guardians due to the absence of measurable and accountable financial reporting obligations to judicial institutions.

¹⁸ Nggoli, Junus, and Sarson, "Pertimbangan Hakim Dalam Penyelesaian Sengketa Waris: (Studi Putusan Hakim Pengadilan Agama Gorontalo Nomor 487/Pdt.G/2022/Pa.Gtlo)."

¹⁹ Hurbi et al., "Reevaluation of Judges' Conditions for Disabilities: A Comparative Study of Islamic Jurisprudence and the Convention on the Persons with Disabilities."

²⁰ Franola, Rohmah, and Sari, "Supported vs Substituted: The Urgency of Regulating Limited Guardianship for Individuals with Psychosocial Disabilities in Islamic Inheritance."

²¹ Rizka and Fadhilah, "One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities."

²² Dawwas and Santoso, "Tinjauan Yuridis Penetapan Pengadilan Terhadap Permohonan Pengampunan Orang Pengidap Gangguan Mental (Skizofrenia Paranoid) (Penetapan Perkara Nomor 50/Pdt.P/2021/PN.Pwr)."

²³ Raden Subekti and Raden Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT. Pradnya Paramita, 2013). Pasal 830 dan 832.

²⁴ Indonesia, "Presidential Instruction Number 1 of 1991 Concerning the Dissemination of the Compilation of Islamic Law," 1991. Article 171 and 174.

²⁵ Surah An-Nisa verse 5; Indonesia. Article 184.

Applying these findings to Philipus M. Hadjon's theory of administrative legal protection (*Application*), the judicial regime in Indonesia—as evidenced in the Purworejo District Court case—operates solely within the initial phase of preventive protection (the appointment of a curator), yet is entirely paralyzed during the repressive protection phase (oversight and sanctions for asset misappropriation). Assets are left entirely dependent on the good faith of the administrator, thereby opening loopholes for predatory alienation by family members themselves.²⁶

Elevating this domestic jurisdictional weakness to the global level, these findings align with comparative research by Kong et al. (2023) and Guo (2025), which demonstrates that developed nations have dismantled their civil codes.^{27,28} Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) and Law No. 8 of 2016 mandate a transition from substituted decision-making (the total deprivation of rights) to supported decision-making. The administration of inherited assets does not necessitate the absolute usurpation of authority. Restrictions must be casuistic and proportional; for example, assisting in the collection of monthly dividends presents a substantially different risk profile than executing the sale of inherited real estate.

In conclusion (*Conclusion*), the harmonious integration of supported decision-making from the CRPD and the principle of *hifz al-mal* is an absolute prerequisite for transforming our legal system. To map the similarities, differences, and regulatory gaps between these two legal frameworks, the following matrix presents a comparative synthesis of inheritance rights governance for persons with mental disabilities. This table systematically confronts normative doctrines with the operational critique of this research, predicated upon the supported decision-making paradigm:

Table 1. Comparative Synthesis of Inheritance Rights Protection in Civil and Islamic Law

Dimension	Civil Law	Islamic Law	Critical Synthesis (Research Findings)
Status of the Heir	Determined by legal relationship with the deceased; mental disorder does not extinguish rights.	Determined by lineage/marriage and the absence of impediments; mental disorder is not an impediment.	Inheritance rights must be registered in the name of the heir and cannot be supplanted by the guardian/curator.
Legal Capacity	Distinguished from	Distinguished via <i>ahliyyah al-</i>	Limitations must be

²⁶ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2011). Page, 76-85.

²⁷ Kong et al., *Capacity, Participation and Values in Comparative Legal Perspective*. Page, 1-25.

²⁸ Guo, "The Path of Constructing the Supported Decision-Making System in the Interaction Between International and Domestic Law."

	subject matter standing; curatorship for adults is established via court decree.	<i>wujub</i> and <i>ahliyyah al-ada'</i> .	individualized, proportional, and subject to periodic review (CRPD-based).
Executing Administrator	Guardians for minors; curators for adults decreed as incapacitated.	Guardians based on principles of <i>wilayah</i> (authority), <i>amanah</i> (trust), and <i>maslahah</i> (welfare); Article 184 <i>KHI</i> requires a judge's decree.	Administrators act purely as fiduciary trustees, not as asset owners.
Oversight	Judicial control exists, but obligations for reporting and authorizing material transactions lack specificity.	Judicial decrees exist, but the oversight procedures for <i>hifz al-mal</i> remain inoperative.	Initial inventory, segregated accounts, periodic reporting, judicial audits, and transaction authorizations are imperative.
Value Orientation	Certainty, protection of interests, recovery of damages.	Trust, welfare, and <i>hifz al-mal</i> .	Both must be integrated with the principle of supported decision-making.
Points of Vulnerability	Curatorial authority is overly broad, paternalistic, and post-decree control is exceedingly weak.	The dominant notion of trust remains moral-normative, lacking corresponding financial accountability procedures.	The core issue is not the recognition of inheritance rights, but the architecture of asset governance and auditing.

The comparative table above explicitly validates the findings of this research: the primary point of vulnerability is concentrated in the operational phase of asset management. It is this deficiency in post-decree oversight instruments that necessitates a comprehensive reformulation of inheritance governance law.

2. Structural Deficiencies of the Guardianship and Curatorship Regimes in Inheritance Governance

Delving deeper into the operational anatomy of inheritance regulations (*Issue*), it becomes evident that national legal instruments suffer from a fundamental normative vacuum (*lacunae*). Both the Indonesian Civil Code (*KUHPerdata*) and the Compilation of Islamic Law (*KHI*) provide entry points through the institutions of guardianship and curatorship; however, both fail to establish a specific regime governing the technical administration of the inherited estate itself. The existing legal frameworks are singularly preoccupied with identifying "who" possesses the authority to represent, while entirely neglecting to regulate "how" such assets must be inventoried, segregated, and overseen once they fall under the control of the administrator. Consequently, the protection of the proprietary rights of persons with disabilities is highly susceptible to erosion, as it relies exclusively on summary judicial decrees, biased familial customs, and the mere good faith of the administrator.

The discourse surrounding guardianship accountability has, in fact, been initiated by preceding literature. A study by Heidy Amelia (2021) emphasizes the necessity of legal accountability for guardians to ensure it does not remain a mere moral imperative, whereas Rizka & Anindia (2022) highlight that normative recognition within disability protection legislation does not automatically translate into practical protection on the ground.^{29,30} Nevertheless, these literatures stall at the level of normative critique without offering substantive governance interventions. Extending and sharpening prior discourse, this study finds that the root cause of the rampant expropriation of inheritance rights from persons with mental disabilities stems precisely from the absence of minimum standards for initial asset inventory and the lack of mandatory account segregation enforced by the courts. The commingling of assets between the heir's estate and the guardian's personal property serves as the primary gateway for self-dealing (conflict-of-interest transactions). Guardians, who are typically family members and co-heirs, are highly vulnerable to financial temptations to delay asset distribution or unilaterally alienate assets for personal gain.

Operationalizing Philipus M. Hadjon's theory of legal protection (*Application*), the current inheritance guardianship regime proves structurally defective by allowing the preventive protection layer to operate without sanctions and by designing a repressive protection mechanism that is practically inaccessible to victims.³¹ Mandatory asset inventory, fund segregation, periodic reporting, and pre-transaction authorization for material acts (such as mortgaging or selling inherited land) are absolutely indispensable preventive instruments. Unfortunately, judicial oversight in Indonesia exhibits a "hit-and-run" characteristic—it is highly concentrated and concludes entirely during the guardianship appointment hearing, followed by a complete abdication of responsibility post-decree. Devoid of mandatory periodic financial audits, courts only become aware of discrepancies after the assets have been dissipated. Ironically, when misappropriation occurs, the burden of repressive protection (in the form of transaction annulment or claims for damages) is shifted onto the shoulders of the persons with disabilities, who

²⁹ Heidy Amelia Neman, "Pertanggungjawaban Hukum Wali Tidak Melaksanakan Kewajiban Pada Anak Di Bawah Perwaliaannya," *Jurnal Ilmu Hukum: ALETHEA* 4, no. 2 (January 1, 1970): 147–64, <https://doi.org/10.24246/alethea.vol4.no2.p147-164>.

³⁰ Rizka and Fadhillah, "One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities."

³¹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: Bina Ilmu, 1987). Page, 29–38.

factually encounter massive barriers to accessing legal justice.

Confronting this domestic legal pathology with global discourse, this research validates the argument that the pure substituted decision-making model adopted by traditional curatorship mechanisms is highly paternalistic and hazardous. Contemporary international literature by Bolkan et al. (2020) and Ku et al. (2025) confirms that delegating absolute financial authority to curators inherently usurps autonomy and triggers the property exploitation of vulnerable groups.^{32,33} Therefore, as a critical conclusion (*Conclusion*) to these structural deficiencies, Indonesian inheritance law must urgently adopt the supported decision-making spectrum. Legal intervention must be executed in a tiered manner: ranging from facilitating independent decisions through accessible information, to joint-consent assistance for daily fund disbursements, up to mandating judicial authorization for any liquidation of material assets. Plenary representation must be relegated to a mere *ultimum remedium* (remedy of last resort), accompanied by strictly confined jurisdictional authority subject to periodic review.

C. CONCLUSION

Civil and Islamic law in Indonesia unequivocally recognize the standing of persons with mental disabilities as rights-bearing subjects entitled to inheritance; nevertheless, the existing curatorship and guardianship instruments remain inherently paternalistic, thereby threatening to curtail individual autonomy. The fundamental structural deficiency inherent in both regimes lies in the paralysis of post-decree judicial oversight, specifically the absence of mandatory asset inventories, account segregation, and financial audits, which creates loopholes for the expropriation of property rights. To mitigate these risks, a legal reform of inheritance governance is imperative, necessitating the prescriptive integration of the wealth preservation principle (*hifz al-mal*) alongside the supported decision-making model. This regulatory transformation will shift the function of the judiciary from a mere issuer of formal status decrees into a substantive oversight authority that proactively safeguards the economic utility of inherited estates for vulnerable populations.

³² Cory Bolkan et al., "Abuse of Vulnerable Older Adults by Designated Surrogate Decision Makers," *Innovation in Aging* 4, no. Supplement_1 (December 16, 2020): 702–3, <https://doi.org/10.1093/geroni/igaa057.2467>.

³³ Li-Jung Elizabeth Ku et al., "Exploring Financial Abuse Involving People with Dementia: An Empirical Legal Study of Nation-Wide Court Rulings over a Decade in Taiwan," *Ageing and Society* 45, no. 3 (March 9, 2025): 535–51, <https://doi.org/10.1017/S0144686X23000533>.

REFERENCES

- Anderson, Elizabeth. "Rawls's Principles of Justice as a Transcendence of Class Warfare." In *Rawls's A Theory of Justice at 50*, 78–94. Cambridge University Press, 2023. <https://doi.org/10.1017/9781009214704.006>.
- Bolkan, Cory, Pamela Teaster, Holly Ramsey-Klawnsnik, and Kenneth Gerow. "Abuse of Vulnerable Older Adults by Designated Surrogate Decision Makers." *Innovation in Aging* 4, no. Supplement_1 (December 16, 2020): 702–3. <https://doi.org/10.1093/geroni/igaa057.2467>.
- Convention on the Rights of Persons with Disabilities (CRPD). "Article 12 – Equal Recognition before the Law," 2006. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>.
- Dawwas, Rizal, and Agus Budi Santoso. "Tinjauan Yuridis Penetapan Pengadilan Terhadap Permohonan Pengampunan Orang Pengidap Gangguan Mental (Skizofrenia Paranoid) (Penetapan Perkara Nomor 50/Pdt.P/2021/PN.Pwr)." *Eksaminasi: Jurnal Hukum* 2, no. 2 (June 5, 2023): 115–22. <https://jurnal.umpwr.ac.id/eksaminasi/article/view/3216>.
- Flynn, Eilionóir, and Anna Arstein-Kerslake. "The Support Model of Legal Capacity: Fact, Fiction, or Fantasy?" *Berkeley Journal of International Law* 32, no. 1 (2014): 124–43. <https://doi.org/10.15779/Z38494G>.
- Franola, Frida Azmil, Siti Rohmah, and Shinta Puspita Sari. "Supported vs Substituted: The Urgency of Regulating Limited Guardianship for Individuals with Psychosocial Disabilities in Islamic Inheritance." *Sakina: Journal of Family Studies* 9, no. 1 (February 26, 2025): 17–35. <https://doi.org/10.18860/jfs.v9i1.14186>.
- Guo, Xiaoxuan. "The Path of Constructing the Supported Decision-Making System in the Interaction Between International and Domestic Law." *Lecture Notes in Education Psychology and Public Media* 83, no. 1 (February 8, 2025): 134–43. <https://doi.org/10.54254/2753-7048/2024.20782>.
- Hadjon, Philipus M. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press, 2011.
- . *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara*. Surabaya: Bina Ilmu, 1987.
- Hurbi, Amin Mujahid bin, Ahmed bin Saleh bin Atiqillah Al-Refai, Andi Yaqub, and A. Zamakhsyari Baharuddin. "Reevaluation of Judges' Conditions for Disabilities: A Comparative Study of Islamic Jurisprudence and the Convention on the Persons with Disabilities." *JURIS (Jurnal Ilmiah Syariah)* 25, no. 1 (April 13, 2026): 115–29. <https://doi.org/10.31958/juris.v25i1.15992>.
- Indonesia. "Law Number 19 of 2011 Is the Official Legal Approval of the Convention on the Rights of Persons with Disabilities," 2011. <https://jdih.kemnaker.go.id/peraturan/detail/629/undang-undang-nomor-19->

tahun-2011.

- . “Presidential Instruction Number 1 of 1991 Concerning the Dissemination of the Compilation of Islamic Law,” 1991.
- Kong, Camillia, John Coggon, Penny Cooper, Michael Dunn, and Alex Ruck Keene, eds. *Capacity, Participation and Values in Comparative Legal Perspective*. Policy Press, 2023. <https://doi.org/10.1332/policypress/9781529224450.001.0001>.
- Ku, Li-Jung Elizabeth, Sieh-Chuen Huang, Yi-Han Liao, Hsin-Yu Kang, and Chao-An Chung. “Exploring Financial Abuse Involving People with Dementia: An Empirical Legal Study of Nation-Wide Court Rulings over a Decade in Taiwan.” *Ageing and Society* 45, no. 3 (March 9, 2025): 535–51. <https://doi.org/10.1017/S0144686X23000533>.
- Liu, Lei, and Ran Tao. “The Systemic Nature of Law from a Judicial Perspective.” *Humanities and Social Sciences Communications* 13, no. 1 (April 8, 2026): 765. <https://doi.org/10.1057/s41599-026-07212-0>.
- Navisa, Fitria Dewi. “Kedudukan Dan Perlindungan Hukum Penyandang Disabilitas Dalam Pewarisan.” *Arena Hukum* 15, no. 2 (August 31, 2022): 307–24. <https://doi.org/10.21776/ub.arenahukum.2022.01502.5>.
- Neman, Heidy Amelia. “Pertanggungjawaban Hukum Wali Tidak Melaksanakan Kewajiban Pada Anak Di Bawah Perwaliaannya.” *Jurnal Ilmu Hukum: ALETHEA* 4, no. 2 (January 1, 1970): 147–64. <https://doi.org/10.24246/alethea.vol4.no2.p147-164>.
- Nggoli, Leliana, Nirwan Junus, and Mohamad Taufiq Zulfikar Sarson. “Pertimbangan Hakim Dalam Penyelesaian Sengketa Waris: (Studi Putusan Hakim Pengadilan Agama Gorontalo Nomor 487/Pdt.G/2022/Pa.Gtlo).” *Jurnal Polahi* 3, no. 1 (March 11, 2025): 59–78. <https://jp.iregway.com/index.php/polahi/article/view/59-78>.
- Rizka, Rizka, and Anindia Fadhilah. “One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities.” *Society* 10, no. 1 (June 30, 2022): 220–28. <https://doi.org/10.33019/society.v10i1.411>.
- Sanusi, Imam, Dominikus Rato, and Dyah Octorina Susanti. “Kedudukan Hukum Ahli Waris Penyandang Cacat Mental Dalam Memperoleh Hak Warisnya (Harta Waris).” *MIMBAR YUSTITIA: Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 1 (May 29, 2023): 105–18. <https://e-jurnal.unisda.ac.id/index.php/mimbar/article/view/4198>.
- Subekti, Raden, and Raden Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. Jakarta: PT. Pradnya Paramita, 2013.
- Taekema, Sanne. “Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship.” *Law and Philosophy* 40, no. 1 (February 14, 2021): 33–66. <https://doi.org/10.1007/s10982-020-09388-1>.
- Yu, Wenhan, Xinbo Lin, Lanxin Ni, Jinhua Cheng, and Lei Sha. “Benchmarking Multi-Step Legal Reasoning and Analyzing Chain-of-Thought Effects in Large Language Models.” *Information Processing & Management* 64, no. 1 (January 2027): 105030. <https://doi.org/10.1016/j.ipm.2026.105030>.