

The Law of Guardianship in Marriage According to Madhhab Scholars

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ABSTRACT

Guardianship in the marriage contract is one of the key elements in Islamic marriage law and serves as a main differentiator between the views of various scholarly schools of thought (madhhabs). The presence of a guardian (wali) is seen as a form of protection for women in a sacred contract that has significant implications for marital life. This article examines the views of the four major Islamic legal schools—Hanafi, Maliki, Shafi'i, and Hanbali—on the legal status of the wali in marriage, including the form and conditions of guardianship, as well as the legal consequences if a marriage contract is conducted without a wali. Using a literature review methodology on classical and contemporary texts, this study finds a significant difference between the Hanafi madhhab, which allows adult women to marry without a wali, and the other madhhabs, which require the presence of a wali for the validity of the marriage contract. These differences arise not only from divergent legal reasoning but also from differing views on women's autonomy and the concept of protection in Islamic law. This study highlights the importance of understanding madhhab differences as a rich source of Islamic legal heritage, as well as the urgency of ijtihad in responding to contemporary social and legal needs.



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INTRODUCTION

Marriage in Islam is more than just a relationship between two individuals; It is a social and religious institution that has a central position in building the family as a basic unit in society (Adharsyah, Sidqi, and Rizki 2024). The family, in the Islamic view, is expected to be a place that educates, gives birth to a quality generation, and maintains social and moral harmony in society. Therefore, the legal aspect of marriage in Islam does not only involve the personal relationship between husband and wife, but also relates to the social, economic, and religious values that prevail in Islamic society. In every marriage contract, there are certain conditions that must be met so that the marriage is valid according to Islamic law, one of which is the existence of a guardian for the bride (Inayatillah 2024).

The guardian in the marriage contract has a very important function, especially for the bride (Cahyani et al. 2023). The role of the guardian is not only as a witness or the party who signs the contract, but more than that, the guardian functions as a protector and protector of women in undergoing marriage. In many scholars' views, the existence of a guardian is considered a condition for the validity of the marriage contract, because the guardian is considered to have the responsibility to ensure that the marriage is carried out in good faith and without coercion. The guardian, in this view, is also considered the guardian of women's

dignity and honor, as well as a guarantee that the marriage will not harm the woman. This is where the important role of the wali in the process of Islamic marriage lies.

Although the existence of a guardian is often considered a legal requirement in a marriage contract, scholars' views on the law of guardianship in marriage are not uniform. One of the most striking differences arises between the main schools of Islamic fiqh, namely the Hanafi school and three others: Maliki, Shafi'i, and Hanbali. These four schools have different understandings of the status and necessity of a guardian in the marriage contract. These differences not only relate to whether a woman needs a guardian or not, but also involve who is considered legitimate guardian, as well as the terms and rules related to guardianship in marriage.

In the Hanafi school, there is a fairly liberal view regarding guardianship. According to this madhhab, a mature and sensible woman does not need a guardian to marry. They argue that a woman who has reached adulthood and has the freedom to choose her life partner, can enter into a marriage contract without the intervention of a guardian. This view is based on the argument that adult women have the right to manage their own affairs, including in terms of marriage. Therefore, in the Hanafi school, although the guardian is often presented to escort and give advice, the existence of the guardian is not considered an absolute requirement for the validity of the marriage.

On the other hand, in the Maliki, Shafi'i, and Hanbali schools, the existence of a wali is considered a very important condition for the validity of marriage. For these sects, a woman's marriage contract is invalid without a guardian representing the woman. This view considers that the guardian has a function that is more than just a formality, because he is responsible for ensuring that the marriage contract is carried out in a legal way, and does not harm women in the process. These three schools emphasize that the guardian plays the role of the party that maintains the honor and safety of women, as well as protecting them from the possibility of irresponsible parties in the marriage.

This difference of opinion shows that the law of guardianship in Islamic marriage is not a simple thing and can be ignored. Rather, it reflects differences in the basic views between schools regarding individual autonomy, the protection of women, and how Islamic law should be applied in different social contexts. In traditional societies, where family structures are highly respected and women are often under family authority, the presence of guardians in marriage contracts is considered the right measure to protect women. However, in the context of a modern society that increasingly upholds gender equality and individual rights, this debate is becoming increasingly relevant to discuss and understand more deeply.

The social context and the development of the times are important factors in understanding the urgency of guardianship law in marriage (Darna 2021). In modern society, women are given more freedom and the right to make their own decisions, including in choosing a life partner. This raises the question of whether a strict guardianship system is still relevant, or whether there needs to be an adjustment to the current social conditions. For example, in some countries, the role of guardian may be taken over by parties other than the family, or even represented by state institutions, in this case guardian judges, who are tasked with ensuring that the marriage contract is carried out fairly and legally.

A more flexible view of guardianship, such as that of the Hanafi school, provides space for women to have more autonomy in making their life decisions (Nurdin and Abdurahman 2024). However, the more conservative views of the Maliki, Shafi'i, and Hanbali schools

emphasize the importance of protecting women, who are still considered to need assistance from guardians to safeguard their well-being. Therefore, the issue of guardianship is not only related to technical legal issues, but also includes the social and philosophical values contained in Islamic law itself.

In addition, in the context of the development of contemporary Islamic law, the emergence of the debate on guardianship is also a reflection of the social and cultural developments that occur in Islamic society. In many countries, women now have a greater role in public and economic life, and are given more freedom to make decisions in various aspects of their lives, including marriage (Rosida 2018). In this condition, the question arises whether guardianship is still a relevant institution, or whether there should be changes that are more accommodating to the times without ignoring the basic principles of Islamic law.

As part of the development of Islamic law, it is important to respond to evolving social needs without neglecting the essential aspects of sharia teachings. Therefore, this research is very relevant in providing a more comprehensive insight into the dynamics of guardianship law in marriage, as well as providing a perspective on how Islamic law can remain relevant and adaptive to modern social developments. Not only from a theoretical point of view, this study is also important to provide guidance for its application in the diverse and ever-evolving social life of Muslim communities.

The urgency of this research becomes increasingly evident given the legal challenges that exist in contemporary society, which require solutions that take into account not only classical texts, but also existing social, economic, and cultural conditions. A deep understanding of the differences in sects in this issue of guardianship is important, so that Islamic law can continue to develop and provide solutions that are fair, wise, and in accordance with the needs of the times. Thus, this study is expected to make a significant contribution to the development of Islamic marriage fiqh that is responsive to today's challenges.

METHOD

This research uses a qualitative-descriptive approach with the library research method (Stoan 1984). All data are obtained from classical literature sources in the form of authoritative madhhab fiqh books, such as *Al-Mabsuth* by As-Sarakhsi (Hanafi), *Al-Mudawwanah Al-Kubra* (Maliki), *Al-um* by Imam Shafi'i, and *Al-Mughni* by Ibn Qudamah (Hanbali). In addition, contemporary literature and the results of *ijtihad* of modern scholars are also used which represent the development of fiqh views in the contemporary context, including Islamic legal documents adopted in the legislation of Muslim countries. The data were analyzed by examining the legal arguments of each sect, the sources of evidence used (the Qur'an, hadith, and *ijma'*), and the social and philosophical context behind their differing views. The purpose of this analysis is not to determine which school is the most correct, but to provide a complete and critical understanding of the variation of legal opinions in the fiqh of marriage guardianship.

FINDINGS AND DISCUSSION

Before entering into the presentation of the results and discussion, it is important to emphasize that the dynamics of transactions in digital business cannot be separated from the complexity of the contracts involved in it. Technological developments have presented a new

transaction model that is different from conventional buying and selling practices, both in terms of mechanisms, the role of the parties, and the intermediary media used. Therefore, the study of contract concepts in Fiqh Muamalah is very relevant to ensure that practices in marketplaces and e-commerce remain within the sharia corridor. An in-depth understanding of the definitions, elements, and types of applicable contracts, as well as how fatwas and Islamic financial institutions respond to this phenomenon, will be an important foundation in answering the problems of fiqh in the digital era. The following presentation is prepared to systematically explore various aspects of contracts in the context of digital business, as well as assess their conformity with the principles of Islamic law.

Result

The views of the four main schools on the law of guardianship in marriage show fundamental differences in assessing the authority of women in performing marriage contracts. The Hanafi school of thought that a sensible adult woman has the right to marry herself without having to obtain permission or guardian representation, as long as the man she marries is equal (sekufu) and does not cause mudharat (mafsadah). This opinion is based on an understanding of the verses of the Qur'an that give women the right to have control over themselves and their life decisions, as well as the hadiths that are considered to be general and do not require the presence of a guardian in every condition. In the view of the Hanafi school, if a woman is mature, has a sound mind, and is free from pressure, she has the right to make her own life choices, including marriage.

On the other hand, the Maliki, Shafi'i, and Hanbali schools have stricter views regarding guardianship in marriage (Sahir et al. 2025). They require the existence of a guardian in every marriage contract, both for women who are still girls, widows, adults, and those who have not yet reached puberty. For these three madhhabs, the existence of a wali is a valid condition for the validity of the marriage (syarthu sihhah), and if the marriage is carried out without a wali, then the contract is considered void. In these schools, guardianship is seen as a form of protection for women, in order to prevent them from potential exploitation, fraud, or injustice in marriage matters. This is in line with the hadith of the Prophet PBUH which states, "It is not valid to marry without a guardian," which is the main basis for determining the existence of guardians as a mandatory requirement. Guardianship is also seen as a form of family or community supervision of women, ensuring that the decision to marry is made with full consideration and without coercion from any party.

Table Comparison of opinions on guardianship

Mazhab	Opinions about Wali	Legal Basis
Hanafi	A mature and sensible woman can marry herself without a guardian, as long as the man who marries her is sekufu.	Based on verses of the Qur'an and hadith that are general.
Maliki	Guardians must be present in every marriage contract, both for women who are still girls, widows, adults, or before puberty.	The hadith of the Prophet PBUH which states, "It is not valid to marry without a guardian."
Syafi'i	Guardians must be present in every marriage contract, both for women who are still girls, widows, adults, or before puberty.	The hadith of the Prophet PBUH which states, "It is not valid to marry without a guardian."
Hanbali	Guardians must be present in every marriage contract, both for women who are still girls, widows, adults, or before puberty.	The hadith of the Prophet PBUH which states, "It is not valid to marry without a guardian."

These differences in views reflect differences in interpretations of women's rights, as well as how Islamic sharia should be applied in different social contexts. The Hanafi school, which allows women to marry without a guardian, argues that adult women should be given complete freedom in terms of marriage, as they are considered to have the capacity to make rational decisions. Meanwhile, the Maliki, Shafi'i, and Hanbali schools that require the presence of a guardian, argue that the guardian not only functions as a supervisor, but also as a protector of women from potential dangers that can arise in marriage, such as fraud or injustice on the part of the prospective husband (Anisa 2024).

Seeing these differences, the study of the law of guardianship in marriage needs to pay attention to the evolving social and cultural context. In a modern society that places more emphasis on individual autonomy and gender equality, the Hanafi view that gives women more freedom to marry without a guardian can be considered more in line with these values. However, for more conservative societies, the views of the Maliki, Shafi'i, and Hanbali schools that consider the wali as the guardian of women's dignity remain relevant, especially to protect women from abuse or coercion in marriage. In this context, it is important to carry out contextual *ijtihad* so that Islamic law remains responsive to the times, while maintaining the basic principles contained in Islamic sharia.

Discussion

The discussion of the law of guardianship in marriage shows that the difference in views between sects in Islam regarding the authority of women in undergoing a marriage contract is very significant. In the Hanafi school, a sensible adult woman is considered to have the full right to marry herself without intermediaries or permission from the guardian. This is based on their understanding of several verses of the Qur'an that give women the right to manage their personal affairs, including in choosing a life partner. Not only that, the hadiths that are considered common and not bound by the specific provisions on guardianship also support this view. The Hanafi school views that if a woman is mature and has common sense, she is able to make mature decisions, including in the matter of marriage. Therefore, they do not consider the existence of a guardian as a mandatory condition in a marriage contract.

The Maliki, Shafi'i, and Hanbali schools tend to be stricter on the issue of guardianship in marriage. These three schools explicitly require the existence of a guardian in every marriage contract, whether for women who are still girls, widows, adults, or even those who have not reached the age of puberty. In their view, the guardian is not only the party representing the woman in the marriage contract, but also as a protector who ensures that the marriage process takes place fairly and without coercion or fraud. The hadith of the Prophet PBUH which states that "It is not valid to marry without a guardian" is the main basis that corroborates this opinion. According to them, guardians are responsible for maintaining the honor and dignity of women, as well as protecting them from potential abuse that can arise in marriage. Therefore, without a guardian, the marriage is considered invalid, even though both parties have agreed to marry.

These differences in views reflect differences in understanding women's rights in Islam as well as how sharia is applied in diverse social practices. The Hanafi school emphasizes more on individual autonomy and freedom, especially for adult women who are considered capable of making rational decisions. They see guardianship as more flexible, because women are considered mature enough to choose their life partner without the need for intervention from other parties. In contrast, the Maliki, Shafi'i, and Hanbali schools view

guardianship as an integral part of marriage law that cannot be ignored. For them, guardians are not only protectors of the legal aspect, but also function as guardians of women's morality and honor, as well as a safeguard for marriage itself so that there are no deviations that harm women.

In a modern society that increasingly prioritizes personal autonomy and gender equality, the view of the Hanafi school that gives more freedom to women to marry without a guardian becomes relevant to these values (Fiatna 2024). Modern society often considers that women's right to determine their life partner is part of personal freedom that must be respected. This is in line with the spirit of gender equality that is now growing rapidly, where women are no longer considered as parties who need to be overprotected, but as independent individuals and have the right to make decisions about their own lives. From this perspective, the application of the Hanafi madhhab which gives women the freedom to marry without a guardian can be considered more progressive and in accordance with the demands of the times.

The views of the Maliki, Shafi'i, and Hanbali schools that consider guardianship as a legal condition for marriage remain relevant in the context of conservative cultures and societies that value traditional values more. In many conservative Islamic cultures, the role of guardians is essential to maintain women's dignity and avoid potential losses in marriage, such as fraud or exploitation by men. The existence of guardians is expected to be a moral guardian that protects women from unbalanced or unfair marriages, which can often occur in societies that lack social supervision or control (Faizah 2024). This view also shows that guardianship in marriage is not only a matter of women's authority, but also a matter of protection of women's rights in a broader social context.

Contextual *ijtihad* is important to respond to the development of the times without neglecting the basic principles of sharia. For example, in a modern society that increasingly prioritizes individual freedom and gender equality, there is a need to reformulate the application of guardianship law to suit the demands of a growing society. However, while there is room for *ijtihad*, it is important to maintain the core values in Islamic sharia related to the protection of women. This requires scholars to constantly reinterpret classical texts, so that Islamic law remains relevant and can be applied in diverse social contexts.

The importance of *ijtihad* in formulating the law of guardianship is also reflected in the role of women in society. For example, many women in the modern world argue that they should have equal rights in making their life choices, including marriage. Therefore, Hanafi's view that emphasizes women's freedom to marry without a guardian can be considered a step in line with the times. However, in order to maintain harmony between sharia principles and evolving social realities, it is important to involve various parties in an open and inclusive discourse of Islamic law.

CONCLUSION

This study shows that the law of guardianship in marriage is an important aspect of *munakahat fiqh* which has been discussed in depth by scholars of the madhhab. There is a fundamental difference between the Hanafi school which gives adult women the full right to marry without a guardian, and the Maliki, Shafi'i, and Hanbali schools which require the existence of a guardian as a valid condition for marriage. This difference stems not only from the understanding of the text, but also from the approach to the social context and legal

protection of women. In the modern era, this debate remains relevant as it concerns individual rights, family structure, and the social legitimacy of the institution of marriage. Therefore, it is important for Muslims and Islamic law policymakers to understand in depth the treasures of these differences, in order to formulate laws that remain based on sharia principles but are adaptive to the needs of the times. The contextual ijihad space is important to maintain the sustainability of Islamic law that is rahmatan lil 'alamin in the midst of the dynamics of modern life.

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