



The Concept of Marriage Guardian in the Perspective of Islamic Law

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Abstract:

Marriage Guardian (wali nikah) is one of the pillars of marriage in Islam that must be fulfilled for marriage to be considered valid. In the perspective of Islamic law, the marriage guardian has a very important role because without the presence or permission of the guardian, the marriage can be considered invalid. Marriage guardian is generally a man who has the closest blood relationship to the prospective bride, such as a father, brother, or other relative. The main task of the guardian is to give permission or approval for the marriage of the woman he is guardian of, with the aim of protecting the rights and honor of the prospective bride and keeping the marriage in accordance with Islamic law. In the fiqh literature, there are different views among scholars regarding the type of guardian and the conditions that must be met by the guardian, such as whether guardianship must be given by the nasab guardian (blood relative) or wali hakim (legal authority) if the nasab guardian is absent. This study aims to examine the position of marriage guardians in Islamic law, by reviewing the shar'i arguments and views of various madhhabs regarding the validity of marriage and the responsibilities of guardians.

Keywords: *Marriage guardian, Islamic law, women, socio-legal landscape*

Abstrak :

Wali nikah merupakan salah satu rukun pernikahan dalam Islam yang wajib dipenuhi agar pernikahan dianggap sah. Dalam perspektif hukum Islam, wali nikah memiliki peran yang sangat penting karena tanpa kehadiran atau izin wali, pernikahan dapat dianggap tidak sah. Wali nikah umumnya adalah laki-laki yang memiliki hubungan darah terdekat dengan calon mempelai perempuan, seperti ayah, saudara laki-laki, atau kerabat lainnya. Tugas utama wali adalah memberikan izin atau persetujuan atas pernikahan perempuan yang diwalikannya, dengan tujuan untuk melindungi hak dan kehormatan calon mempelai perempuan serta menjaga agar pernikahan berlangsung sesuai dengan syariat Islam. Dalam literatur fikih, ada perbedaan pandangan di antara para ulama mengenai jenis wali dan syarat-syarat yang harus dipenuhi oleh wali, seperti apakah perwalian harus diberikan oleh wali nasab (kerabat darah) atau wali hakim (otoritas hukum) jika wali nasab tidak ada. Penelitian ini bertujuan untuk mengkaji kedudukan wali nikah dalam hukum Islam, dengan meninjau dalil-dalil syar'i dan pandangan berbagai mazhab terkait keabsahan pernikahan serta tanggung jawab wali.

Kata Kunci: *Wali nikah, hukum Islam, perempuan, lanskap sosial hukum.*

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INTRODUCTION

Marriage in Islam is a form of worship and a means to build a family that is *sakinah*, *mawaddah*, and *rahmah*. One of the important elements in marriage is the existence of a marriage guardian for the prospective bride, which aims to safeguard the interests and rights of women in undergoing the marriage process. In various *fiqh* literature, the marriage guardian is considered one of the pillars of marriage, which if not fulfilled, then the marriage can be considered canceled or invalid. Therefore, the role of marriage guardians in Islamic law is a very important issue to be understood in depth. (Nur Faizah, 2017).

The *wali nikah* in Islam serves as a protector of women, given that in the current cultural and social context, women may be in a vulnerable position or lack a full understanding of their rights. The presence of a guardian aims to ensure that the marriage is performed with good will and in an environment that complies with religious principles. However, amidst the times and social variations, different interpretations of the role of marriage guardians have emerged, both among classical and contemporary scholars. This leaves the question of how the position of the marriage guardian in the context of Islamic law continues to evolve.

In addition, cases where the marriage guardian is unable to attend, does not give permission, or does not meet the requirements as a guardian, also pose a dilemma in the marriage process. To solve this problem, the concept of a *wali hakim* as a substitute for the *nasab* guardian has been recognized in Islamic law. However, how it is implemented and the limits of the guardian hakim's authority have also become points of debate among the various schools of *fiqh*. (Asghar Ali Engineer, 1992: 162)

With this background, this research is important to further examine the concept and role of marriage guardians in the perspective of Islamic law, by referring to *shar'i* arguments and the views of scholars from various *madhhabs*, so as to provide a comprehensive understanding for Muslims about the importance of the role of guardians in marriage according to *sharia*.

RESEARCH METHOD

The research methodology used in this research is library research, namely examining and analyzing books and writings related to the issues discussed, namely the concept of marriage guardian, the position of marriage guardian in the perspective of Islamic law.

RESULTS AND DISCUSSION

Concept of Marriage Guardian (*Wali Nikah*)

In Islamic law, a *wali nikah* is a male relative who has the legal authority to supervise and approve a woman's marriage. The *wali*'s role is to ensure that the interests and welfare of the bride are protected in the marriage contract. This concept is rooted in the principles of guardianship and protection, which reflect the social and legal norms of early Islamic society. (Sayyid Sabiq, 1986: 41).

The term “*wali nikah*” combines two Arabic words, each of which has its own meaning when separated. The word “*wali*” means “guardian” and the word “*nikah*” means “marriage contract between husband and wife”. The phrase “*wali nikah*” has been assimilated into the Indonesian language and simultaneously means “the guardian of the bride at the time of marriage (the person who performs the marriage contract with the groom).” (Kamal Mukhtar, 1974: 89)

The word “*wali*” is etymologically derived from the word *wilayah*, which among other meanings means friendship, favor, power, and authority. Therefore, *wali* means one who helps, supports, protects, and loves, or one who has authority. Terminologically, a *wali* is a person who has the authority to perform a legal action without relying on the permission of others. In *fiqh* terminology, a *wali* is a person who has the authority to perform *tasharruf* without depending on the permission of others (Wahbah al-Zuhaili, 1989: 186).

From the above definitions, it can be concluded that a guardian is someone who has the authority to perform legal actions, either for himself or others. However, in general, a person is referred to as a “guardian” when they act on behalf of the individual under their guardianship. Conversely, if they act on their own behalf, they are usually not called “guardians”

Presidential Instruction No. 1/1991 on the Compilation of Islamic Law (KHI) explains that guardians based on lineage (nasab guardians) consist of four groups which in certain conditions must be prioritized due to the closeness of the kinship relationship. Similarly, Imam Shafi'i states that the closest wali (aqrab) must be prioritized. If the closest wali (aqrab) is not available, then the next closest wali (ab'ad) should be used. (Said Talib al-Hamdani, 1989). In Islamic jurisprudence, the concept of guardianship basically follows the concept of asabah, where those entitled to be guardians are usually male descendants. When detailing the order of entitlement to be a marriage guardian, the commonly observed order is as follows. (Said Talib al-Hamdani, 1989: 84).

- 1). The biological father,
- 2). Grandfather (from the father's line) and so on upwards in the male line,
- 3). A sibling brother,
- 4). A father's brother,
- 5). The son of a biological brother,
- 6). The son of a seayah brother,
- 7). The son of a son of a biological brother,
- 8). The son of a son of a brother in law,
- 9). The father's brother by birth,
- 10). The father's brother in law,
- 11). The son of a biological uncle,
- 12). The son of a paternal uncle,
- 13). The brother of the grandfather on the father's side,
- 14). The son of a paternal grandfather's brother,
- 15). The son of a brother of a paternal grandfather.

If none of the fifteen registered marriage guardians are available, cannot be contacted, or their whereabouts are unknown (ghaib), then the right of guardianship passes to the wali hakim. A wali hakim is an official appointed by the Minister of Religious Affairs or his/her designate to act as a marriage guardian for a prospective bride who has no guardian. This includes the head of the sub-district Religious Affairs Office (KUA), which functions as a marriage registrar in the local area. (Minister of Religious Affairs Regulation No. 2 of 1987).

Therefore, it is clear that all marriage guardians are male. The marriage process in Islam, from ancient times to the present day, has relied heavily on the role and presence of these male marriage guardians. Particularly in Indonesia, the entire community agrees that the role of the marriage guardian is very important, and a marriage is considered invalid without one. This consensus stems largely from adherence to the teachings of Imam Shafi'i.

Marriage Guardian (Wali Nikah) in the Perspective of Islamic Law

The issue of marriage guardianship (wali nikah) has been discussed in the Qur'an and the Sunnah of the Prophet, including references from: Al-Baqarah (2): 230, 231, 232, 235, 240, Ali Imran (3): 159, An-Nisa' (4): 25, 34, At-Talaq (65): 2, An-Nur (24): 32. However, there is a debate among Islamic jurists (fiqh) regarding the role of the marriage guardian in determining the terms and conditions of marriage. In general, there are at least two different groups with different opinions regarding marriage guardianship.

In general, there are at least two different groups with different opinions regarding marriage guardianship. The first group is of the opinion that the marriage guardian is very important in determining the validity of the marriage. According to this group, a woman cannot legally marry herself or anyone else, even if she is of legal age. This view is shared by the Malikiyyah, Shafi'iyah, Hanabilah and Zahiriyyah madhhabs. On the other hand, the second group, led by the Hanafiyyah madhhab, is of the opinion that guardians are only required for underage women. An adult and sensible woman has the right to marry any man of her choice, provided they are compatible. To provide clarity on the perspectives of each group, I will outline the opinions of the followers of each madhhab and the arguments they use.

According to Imam Malik, as explained by al-Zarqani, the consent of a girl in marriage is only recommended (sunnah) or supplementary; the marriage can proceed even without her

consent if arranged by her guardian. However, the consent of a widow is obligatory according to her legal status. Thus, the right of a widow over herself in marriage is the right to give consent, not to perform the marriage. The authority to solemnize the marriage rests with the guardian. In other words, a widow still cannot marry herself. (Khoiruddin Nasution, 2005: 70-76). Therefore, the presence of a guardian is one of the conditions for the validity of marriage.

According to Imam Shafi'i, the presence of a guardian is one of the pillars of marriage. This means that without the presence of a guardian during the marriage contract, the marriage is considered invalid. For a marriage to be valid, there are four things that must be fulfilled: (1) a guardian, (2) the consent of the person to be married, (3) the consent of the person to be married, and (4) two fair witnesses. Except that a girl may be married to her father and a slave may be married to his master or mistress without the consent of the person to be married. Without paying the dowry at the time of the marriage contract, the marriage is valid. (Muhammad ibn Idris as-Shafi'i, tt: 151). In addition to the obligations of the guardian in marriage, the guardian is also prohibited from preventing the marriage of the woman under his guardianship as long as the woman finds a suitable match.

Regarding the freedom and consent of the prospective woman in marriage, Imam Shafi'i classifies them into three groups: (1). Underage Girls: Girls who have not reached the age of puberty, which is defined as under 15 years of age or have not yet experienced menstruation. In this case, a father may marry off his daughter without her consent, provided that the marriage is beneficial and does not cause harm. (2). Mature Daughters: An adult woman has equal rights between the father (guardian) and the daughter. The father still has greater authority in determining the marriage affairs of his daughter, although consultation between both parties (adult daughter and father/guardian) is highly recommended. (3). Widows: For a widow, explicit permission from the widow herself is required, either from her father or guardian. This requirement is based on cases where marriages were rejected by the Prophet because a widow was married off by her guardian without her consent. This is also in line with the case of al-Khansa'a, where a widow has greater authority over herself than her guardian. (Khoiruddin Nasution, 2005: 87-89). This classification illustrates Imam Shafi'i's perspective on the roles and permissions associated with marriage for different categories of women. (Muhammad bin Idris as-Shafi'i, tt: 15).

According to Abu Hanifah, the founder of the Hanafi madhhab, marriage without a guardian (marrying oneself), or asking someone other than a guardian to marry a girl or widow, whether she is compatible or not, is permissible. However, if the marriage is not compatible, then the guardian has the right to cancel the marriage. Meanwhile, according to Muhammad bin Hasan al-Saibani, a close student of Abu Hanifah, the status of marriage is permissible if it is compatible and not permissible if it is not compatible. Meanwhile, according to Abu Yusuf, another close disciple of Abu Hanifah, there was a development of thought. Initially, it was not allowed at all if there was a guardian, whether sibling or not. Then it evolved again, it could be absolute, it could not be absolute. Likewise, an adult woman of sound mind can marry herself off without a guardian. (Shamsuddin al-Sarakhs, 1989: 10).

The arguments put forward by Abu Hanifah and Abu Yusuf are (Shams al-Din al-Sarakhs, 1989: 128-129): 1). Surah al-Baqarah (2):230, 232, and 240. In these three verses, the contract is imposed on the woman, which shows that women have the right to marry directly (without a guardian). 2). Women are free to do sale and purchase contracts and other contracts, therefore they are free to do marriage contracts. This is because there is no legal difference between a marriage contract and other contracts. 3). The hadiths that link the validity of the marriage to the permission of the guardian are specific, namely when the woman who is getting married is not qualified to act on her own, for example because she has not reached puberty or is not of sound mind. This opinion of the Hanafiyah scholars is closer to the concept of bilateral society and equality between men and women (Khoiruddin Nasution, 2007: 182).

Regarding the parties whose permission is required in this marriage, the jurists divide guardians into two types: 1) the mujbir guardian, who has the right to force the person under his guardianship to enter into marriage, even if the person under his guardianship is not willing. 2) Wali ghairu mujbir, which is a guardian who does not have the right to force the person under his guardianship, and cannot marry someone without his consent. According to the Hanafi madhhab, a guardian has the right to force and marry off the person under his guardianship without his consent. However, the people under his guardianship are children and majnuns. Meanwhile, adults no longer need a guardian. (Nur Faizah, 2017: 15-22).

Ibn Qudamah of the Hanbali school of thought states that the guardian must be present in the marriage (a pillar of marriage), i.e. must be present when performing the marriage contract. According to Ibn Qudamah (1984), this requirement is based on the hadith of the Prophet, that in marriage there must be a guardian. As for the Prophetic hadeeth that some scholars hold that what is important in marriage is the permission of the guardian, not his presence, Ibn Qudamah dismissed it by saying that the hadeeth that requires the presence of a guardian is general, meaning that it applies to all. On the other hand, the hadeeth that states that you only need permission is a specific hadeeth. Another reason is that the prohibition of marriage without a guardian (the command that there must be a guardian) aims to avoid the tendency and desire of women towards men who sometimes lack careful consideration. So it is hoped that the presence of a guardian can avoid this tendency (Khoiruddin Nasution, 2005: 94).

Ibn Qudamah (1984) also explains that a woman does not have the right to marry herself and others even if she has received permission from her guardian. Nor can she represent anyone other than her guardian. This prohibition is based on the reason that women are weak of mind and narrow of thinking. To prevent a woman from being corrupted, the presence of a guardian is absolutely necessary. If a woman does this, then her marriage is invalid.

Ibn Qudamah's view is somewhat different from that of Ibn Qayyim al-Jauziyah. According to Ibn Qayyim al-Jauziyah, a woman's consent is required in marriage, based on the hadith: (i) the case of al-Khansa'a (widow) and a slave (woman), whose marriage was rejected by the Prophet because she was forced to marry a man not of her choice. (ii) the Prophet's statement that he should ask permission to marry the girl, with his silence. To reject the charge that the tradition about the case of the girl is a mursal tradition, al-Jauziyah rejects it by citing three reasons namely: (i) reliable narrators, (ii) qiyas, and (iii) sharia rules. Meanwhile, for widow marriage, there must be consent from the person concerned. If married without the widow's consent, the marriage can be annulled, even if she later agrees. (Khoiruddin Nasution, 2005: 94).

The concept of khiyar owned by a woman who is married before she reaches puberty means the right to choose whether to continue the marriage or divorce when she reaches puberty. According to al-Haddad, this implies giving women half (not full) freedom to choose their spouse. Al-Haddad protested against the practice of marrying off women only to fulfill the wishes and interests of guardians and prospective husbands. This practice, according to him, contradicts the message of the Qur'an, for example; and test the orphans until they are old enough to marry. (Al-Thahir al-Haddad, 1993).

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The practice of guardians marrying off women is often abused to fulfill the interests of the guardian, perhaps to gain wealth, position, and other goals, al-Haddad said. On the other hand, women are not encouraged to exercise their right to vote to develop love and affection for

the man of their choice. Such actions show that the guardians' treatment of women is more heinous than what the women themselves do. Al-Haddad adds that the dictatorship of guardians or parents does not only afflict girls, but also boys, because it is not uncommon for parents to determine the boy's mate, which usually the boy cannot refuse the parents' choice. (Khoiruddin Nasution, 2002: 128).

With reference to Imam Malik and Shafi'i, on the importance of guardians Quraysh Shihab (2003) states "if the guardian does not have the right of guardianship, then the prohibition of al-Baqarah (2): 232 would be meaningless". Against the guardians is indicated al-Baqarah (2): 221, while against men is also mentioned in al-Baqarah (2): 221. According to Quraish Shihab (2003), the prohibition for guardians or ex-husbands to prohibit women who are under their guardianship from marrying men of their choice aims to show the importance of the role of guardians in a marriage.

In addition, Quraish Shihab (2003) is also of the view that maintaining the presence of a guardian is wise, both for the girl and the widow. This is very important because "if something goes wrong", then there is something to refer to. This is in line with the spirit of the Qur'anic command in Surah an-Nisa' (4): 25 which states "Marry them with the permission of their families (guardians)". Yet this verse was revealed about slave girls who can be married.

The debate that occurs around the issue of marriage guardians is due to the absence of a text that explicitly requires the presence of a guardian in marriage. Both those who require marriage guardians and those who do not require them, argue with texts that do not explicitly discuss the issue of marriage guardians. The verses they rely on are only verses that are indirectly considered to justify their views, although what they do cannot necessarily be considered as justification, but rather as interpretation. (Nur Faizah, 2018)

The purpose and importance of the role of guardians in Islamic marriage must be linked to the goals and principles of marriage itself, namely the creation of a *sakinah, mawaddah wa rahmah* family. Before this is achieved, a guardian cannot force marriage on his child. Because with coercion and without deliberation in determining the child's prospective partner, it is feared that the seeds of hatred and hostility will grow between the child and his parents, which can result in the sinking of the household. So that the purpose of marriage in creating a family that is *sakinah, mawaddah wa rahmah* will fail. (Nur Faizah, Ahmad Fathoni, 2018).

Therefore, consultation between the child and the guardian in deciding on a potential spouse is the best way. Guardians who have experience are needed to provide advice and thoughts based on experience. Meanwhile, the woman who will live a household life is also given freedom based on the advice and consideration of her guardian. (Khoiruddin Nasution, 2005:126).

CONCLUSION

The marriage guardian plays a very important role in marriage from an Islamic legal perspective. As one of the pillars of marriage, the guardian serves to protect the rights and honor of the prospective bride, ensuring that the marriage is carried out with the right will, and in accordance with the guidance of sharia. Based on evidences from the Qur'an, hadith, and *ijma'* of the scholars, the marriage guardian is obliged to give permission or consent in the marriage contract, except in certain situations where the *nasab* guardian is unavailable or refuses without a valid reason, which can then be replaced by *wali hakim*.

In a study of the various *madhhabs*, there is agreement that the marriage guardian is a valid condition of marriage, but there are different views on the conditions of the guardian and the circumstances in which the judge guardian can replace the *nasab* guardian. The schools of Shafi'i, Hanbali, Maliki and Hanafi have different views on the type of guardian and the level of involvement in the marriage process, but all agree that the existence of a guardian aims to protect women.

In the modern context, the role of the marriage guardian remains relevant, although some adjustments have been made, particularly in cases where the guardian does not give consent unlawfully. The concept of wali hakim provides a solution to this situation, while maintaining the principles of sharia and protecting the interests of women. In Indonesia, marriage law also accommodates the role of marriage guardians in the Marriage Law, which shows that this provision is still significantly applied in national legal regulations.

Thus, it can be concluded that the marriage guardian has a fundamental role in maintaining the validity of marriage under Islamic law, while protecting the rights of women in the marriage process. However, flexibility in the application of the law, such as the use of wali hakim, shows that Islamic law is able to adapt to the times without neglecting its basic principles.

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