

Comparison of the Ijtihad of Imam Abu Hanifah and Imam Syafi'i About Marital Guardianship

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ABSTRACT

Marriage in Islamic law is a significant contract that must fulfill certain pillars and conditions, one of which is the presence of a marriage guardian (wali). However, within the intellectual heritage of Islamic scholars, there are differing opinions regarding the role of the wali in marriage, particularly between Imam Abu Hanifah and Imam al-Shafi'i. This study aims to examine and compare the views of these two imams concerning guardianship in marriage and to analyze its implications for Islamic law. This research employs a qualitative approach with a library research design. The method used is a comparative madhhab approach, by collecting data through the study of primary sources in the form of classical texts representing the thoughts of both imams, as well as secondary sources such as books, journals, and related academic works. Data analysis is conducted using a comparative approach to identify similarities and differences between their opinions. The findings indicate that Imam Abu Hanifah holds that a wali is not an essential pillar or condition for the validity of marriage for an adult, sane, and free woman. Therefore, a woman may contract her own marriage as long as the principle of *kafā'ah* (compatibility) is fulfilled. In contrast, Imam al-Shafi'i asserts that the presence of a wali is obligatory and constitutes a fundamental requirement for the validity of marriage; thus, a marriage conducted without a wali is considered invalid. This difference reflects their distinct legal methodologies, where the Hanafi school tends to employ a more rational approach, while the Shafi'i school is more textually grounded. In the Indonesian context, the Shafi'i opinion is more widely adopted, making the presence of a wali a mandatory requirement in marriage.

Keywords: Marriage Guardian, Ijtihad, Hanafi School, Shafi'i School, Islamic Law

ABSTRAK

Pernikahan menurut hukum Islam adalah sebuah perjanjian yang penting dan harus memenuhi rukun serta syarat tertentu, salah satunya adalah adanya wali nikah. Namun, dalam warisan pemikiran ulama Islam terdapat perbedaan pendapat mengenai peran wali dalam pernikahan, terutama antara Imam Abu Hanifah dan Imam Syafi'i. Penelitian ini berupaya untuk mempelajari dan membandingkan pendapat kedua imam tersebut mengenai perwalian dalam pernikahan serta menganalisis dampaknya terhadap hukum Islam. Penelitian ini menggunakan pendekatan kualitatif dengan jenis penelitian berupa studi pustaka. Metode yang digunakan adalah perbandingan mazhab, dengan cara mengumpulkan data melalui studi terhadap dokumen-dokumen primer berupa kitab-kitab yang mewakili pemikiran kedua imam, serta dokumen sekunder berupa buku, jurnal, dan karya ilmiah yang terkait. Analisis data dilakukan dengan pendekatan perbandingan untuk menemukan kesamaan dan perbedaan pendapat yang ada di antara

keduanya. Penelitian menunjukkan bahwa Imam Abu Hanifah berpendapat bahwa wali bukan merupakan bagian yang wajib atau syarat untuk sahnya pernikahan bagi perempuan yang sudah dewasa, berakal, dan bebas. Dengan demikian, perempuan bisa menikahkan dirinya sendiri selama memenuhi prinsip kafa'ah. Imam Syafi'i menegaskan bahwa wali adalah bagian yang wajib dan syarat utama dalam pernikahan, sehingga pernikahan tanpa wali dianggap tidak sah. Perbedaan ini menunjukkan perbedaan cara dalam menemukan hukum, di mana Mazhab Hanafi cenderung lebih logis, sedangkan Mazhab Syafi'i lebih berlandaskan pada teks. Dalam konteks Indonesia, pendapat Mazhab Syafi'i lebih banyak dipakai, sehingga adanya wali menjadi syarat yang wajib dalam pernikahan.

Kata Kunci: Wali Nikah, Ijtihad, Mazhab Hanafi, Mazhab Syafi'i, Hukum Islam

INTRODUCTION

Marriage, or what is often called matrimony, is a crucial institution in human life, influencing social, legal, and religious aspects. According to Article 1 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, marriage is a bond between a man and a woman as husband and wife, encompassing both physical and spiritual relationships, with the goal of forming a harmonious and eternal family based on the belief in one God. (Muhammad Sirojudin Sidiq, 2023). Consistently, the Compilation of Islamic Law (KHI) explains that marriage, according to Islamic law, is a very strong agreement (mitsaqan ghalidzan) aimed at obeying the commands of Allah SWT, and its implementation is part of worship (Cameron, 2001).

In Islamic law, a marriage is considered valid if it meets the specified conditions and requirements. The validity of a marriage contract has broad legal implications, including permitting a relationship between husband and wife, requiring the husband to provide maintenance to his wife and children, establishing the right to inherit from each other, and legally recognizing any offspring born of the marriage. Therefore, fulfilling the pillars and requirements of marriage is crucial (Nuzha, 2023).

The Compilation of Islamic Law, particularly Article 14, explains that there are five requirements for marriage: (1) the prospective husband, (2) the prospective wife, (3) a guardian who permits the marriage, (4) two witnesses, and (5) recognition and acceptance from both parties. Of these five pillars, the presence of a marriage guardian is a crucial aspect, particularly for women's marriages. A marriage guardian is defined as the party authorized to marry the bride and responsible for the validity of the marriage contract (Sukaynah Q. A Rizal, 2023).

The role of parents in marriage is also emphasized in the Quran, particularly in Surah Al-Baqarah. Verse 2:232 prohibits guardians from preventing a woman from remarrying if there is already a mutual agreement between the two parties. This verse demonstrates that guardians play a crucial role in the marriage process, but also imposes limitations to prevent abuse of their authority (Husni A. Jalil, 2020).

Apart from that, in the hadith of the Prophet Muhammad SAW. narrated by Abu Dawud from Aisyah r.a., it is stated that a woman's marriage without the permission of the woman's guardian or parents is invalid and invalid. This hadith strengthens the role of the guardian as an important factor in realizing the validity of a marriage. If a dispute occurs, the solution is to grant guardianship to the ruler (sultan) for women who do not have a guardian (Abu Daud, n.d.).

However, within the Islamic jurisprudence, there are differing opinions among scholars regarding the role of a guardian in marriage. Imam Shafi'i stated that the

presence of a guardian is a mandatory requirement for a valid marriage, so a marriage without a guardian is considered invalid. Meanwhile, Imam Abu Hanifah held a more flexible opinion, permitting an adult and sane woman to marry without the assistance of a guardian under certain circumstances. The differences in opinion between these two prominent figures indicate a difference in Islamic legal thought that deserves further study. Therefore, this study aims to examine and compare the opinions of Imam Abu Hanifah and Imam Shafi'i regarding the role of a guardian in the marriage process.

METHODS

The type of research used was library research, employing qualitative descriptive analysis methods to compare several research objects. The approach used was a comparative approach to schools of thought. The data collection technique utilized primary data sources consisting of works representing the thoughts of Imam Abu Hanifah and Imam Shafi'i, both written by the two scholars themselves and those associated with their respective schools of thought. Secondary data sources were books written by both schools of thought. In addition, the author also drew on references from articles, journals, and final assignments related to the research objects. Furthermore, data analysis was carried out by collecting, modeling, and transforming data to obtain useful information and conclusions to aid decision-making (Restu Kartika Widi, 2010). In analyzing the collected data, the author used a comparative method, namely comparing methods on the same topic. This allowed the author to identify the similar thoughts of the two scholars, as well as the differences between the two schools of thought.

RESULTS AND DISCUSSION

A. Imam Abu Hanifah

Imam Abu Hanifah, whose full name is Nu'man ibn Thabit ibn Zuta ibn Marzuban, is indeed an important figure in Islamic history and one of the four imams of the Sunni school of thought. The school he founded, the Hanafi school, is one of the most widely followed schools of Islamic law worldwide.

Imam Abu Hanifah was born in 80 AH (696 AD) in Kufa, Iraq, and died in 150 AH (767 AD) in the same city. Throughout his life, he became a renowned scholar and was known for his knowledge in Islamic law and the science of inheritance. Imam Abu Hanifah played a significant role in the formation and development of Islamic law, and the school of thought he founded encompassed various aspects of the daily lives of Muslims. His father was of Persian descent (Kabul-Afghanistan), but before his birth, his father had moved to Kufa. Therefore, he was not of pure Arab descent, but rather of the Ajam (non-Arab) race, and he was born into a Persian family (Moenawir Chalil, 1955).

Views on the role of a guardian in marriage vary among Islamic schools of thought. Imam Hanafi is one of the leading figures among the four main schools of Islamic law. According to the Hanafi school, a guardian in marriage, namely a marriage wali (guardian) is not a necessary requirement for a valid marriage. A guardian is considered an additional requirement that must be included in the marriage contract, as expressed by Imam Abu Hanifah in his book *Bidayatu al-Mujtahid wa Nihayatu al-Muqtashid*. According to him, if a woman marries without a guardian, but the choice is suitable, the marriage is still permissible (Ibn Rushd Al-Hafid, 2004).

This is in accordance with the view of Imam Abu Hanifah in his book *Al-Ikhtiar Lita'lili Al-Mukhtar*, that if a woman marries herself to a suitable man with an equivalent

dowry, then this act is considered good and there is no fault for her guardians in this matter (Hanafi, 1937).

Imam Abu Hanafi argues that a guardian is not a mandatory requirement or a requirement for a marriage to be valid, but rather merely an addition to the marriage contract, except in the case of the marriage of an immature woman or an insane person, even if they are adults. A guardian is only required as a valid condition for marriage for an immature person, an insane person, or a slave. Conversely, a guardian is no longer required for the marriage of a free woman, so the marriage remains valid even without the guardian's permission. However, the guardian still has the right to refuse the marriage if the couple is unequal in status. This argument is based on a Prophetic hadith stating that a widowed woman has rights over herself, more than her guardian. The girl is asked for her permission, and her permission is her silence.

Imam Abu Hanifah used various sources of evidence from the Qur'an and hadith to determine legal rules, including those concerning marriage and the role of a guardian in the marriage process. The following are some of the verses used by Imam Abu Hanifah as a basis for determining the role of a guardian in marriage. The following are the arguments applied by Imam Abu Hanifah related to the verses in the Qur'an. Al-Baqarah [2]: 230, namely:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ۖ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۚ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

Meaning:

"If he divorces her again after the second divorce, then the woman will not have her rights. It is permissible for her again until she marries another man. If (the other husband) is divorced, then there is no sin on both of them (the first and former husbands). The wife can remarry if both feel confident that they can carry out the applicable laws. These are the provisions of Allah which He explains to people who (want) to know" (Q.S. Al-Baqarah: 230) (Ministry of Religious Affairs of the Republic of Indonesia, 2019a).

The next verse is used as a basis by Imam Abu Hanifah in the marriage guardian case. located in Q.S. Al-baqarah [2]: 234 namely:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ۖ فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ ۚ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

Meaning:

"Those among you who die and leave wives behind, they must wait for four months and ten days. After that, when their iddah period has ended, there is no blame on you (guardians) for anything they do with themselves in the proper manner. Allah is well-acquainted with all your deeds" (Q.S. Al-Baqarah: 234) (Ministry of Religious Affairs of the Republic of Indonesia, 2019b)

This verse states that after a woman has completed her iddah period, her guardians or those responsible for her are not responsible for the decisions or actions she takes regarding herself, as long as these actions are in accordance with reasonable norms.

Ibn Abbas narrated that a woman came to the Prophet sallallaahu 'alaihi wasallam and said, "O Prophet, my father married me to my cousin's daughter in order to increase his position, while I did not agree." "I don't like this wedding!" said the girl. The Prophet sallallaahu 'Alaihi Wasallam said, "Accept what your father has done." The girl replied, "I don't want to do what my father did." Then the Prophet sallallaahu 'Alaihi Wasallam said, "Go, marry whoever you like." The girl answered, "I don't want to oppose my father's

decision, O Messenger of Allah, but I want to tell women that fathers have no right to determine their daughters' affairs." (Abdullah Bin Mahmoud Bin Mawdud Al-Mawsili Al-Hanafi, 1937).

In this story, a woman goes to the Prophet SAW. to tell her complaints about her marriage being determined by her father. Even though the Prophet sallallaahu 'alaihi wasallam gave the girl freedom to choose, she still showed her obedience to her father, while also conveying the message that fathers should not determine everything about their daughters without paying attention to their wishes (Abdullah Bin Mahmoud Bin Mawdud Al-Mawsili Al-Hanafi, 1937).

And the evidence from this hadith includes several aspects: First, the words of the Prophet SAW, 'So marry whoever you like.' Second, the woman's words, which are not criticized, so that it is known that this has become a permanent decision; because, if not, the Prophet SAW would not be silent about him. Third, his words, 'Accept what your father has done,' show that the agreement made by his father does not bind him. In this case, there is evidence for our group that the agreement depends on the agreement of both parties (Abdullah Bin Mahmoud Bin Mawdud Al-Mawsili Al-Hanafi, 1937).

This hadith mentions an incident found in the Sahih Bukhari. The translation of the text of the hadith is: "In the book of Bukhari it is mentioned that Khansa bint Khidam was married by her father, although she did not agree to the marriage." The Prophet SAW returned her (annulled the marriage)" (Abdullah Bin Mahmoud Bin Mawdud Al-Mawsili Al-Hanafi, 1937).

In the Hanafi school of thought, a marriage is considered valid if it is entered into with the consent of both parties, the man and the woman, without the involvement of a guardian. However, the guardian is considered the party who revises the marriage agreement, provides additional legitimacy, and is expected to provide advice and protection to the prospective bride and groom, especially in the case of marriages involving minors or insane women, even if they are adults.

This view may differ from that of other Islamic schools of thought, such as the Maliki, Shafi'i, and Hanbali schools, which have stricter requirements regarding the presence of a guardian for the validity of a marriage. Although these schools differ in their understanding and application of Islamic rules, they are all based on Islamic principles and the Quran.

According to Hanafiyah clerics, guardianship is not one of the pillars of marriage that must be carried out, but is only a condition of marriage for small children, male or female crazy people even though they are adults (Dedi Supriyadi, 2022). Imam Hanafi believes that women can marry without going through a guardian. This is because according to Imam Hanafi, a guardian is not an important requirement in marriage. So, a woman can marry herself, but the prospective husband chosen must have an equal position with her (Muammar Mahdi, 2022).

The Hanafi Imams argue that custody transfers to the next in line. According to them, distance cannot be measured by the entry of prayer times, which are commonly referred to in Islamic jurisprudence as two levels, namely the distance a camel travels in a day and a night. If a lineage guardian arrives, he cannot annul the marriage because a person's absence is tantamount to their absence. This is also the opinion of Imam Malik. Meanwhile, Imam Shafi'i argues that guardianship transfers to the judge (Rachmat Syafe'i, 2021).

Imam Hanafi is of the opinion that "and being of sound mind, he has the right to enter into a marriage contract himself without a guardian, whether he is a virgin or a widow. No one has authority over him or opposes his choice, provided that the person he

chooses is his equal, but if he chooses a man who does not share his marriage, then his guardian may oppose it and ask the Qadhi to cancel the marriage contract (Muhammad Jawad Mughniyah, 2023).

In wali mujbir, the Hanafi school of thought stipulates that it can be applied to the following people:

- a. Children who are not yet adults
The opinion of this school is that the guardian of a child who has not yet reached puberty is his biological father, while his mother does not have the right of guardianship, and all close male relatives, such as brothers and uncles, have the right.
- b. Unreasonable person (crazy)
In Islamic jurisprudence, scholars do not differ in their rulings on the same treatment for insanity as for children, whether insanity from birth or after puberty.
- c. Idiots
The marriage of a safih (idiot) is invalid, except with the permission of his guardian. However, if a person who is not yet old enough to reach puberty is in a state of mumayyiz, and then becomes an idiot, then his guardianship is handed over to the judge only, not to his father or grandfather, nor to the person who received the will from his father and grandfather.
- d. Women who are mature, of sound mind (Akil) or widows
For women who are mature and proficient, they are allowed to determine their own future husband, and it is also permissible to marry themselves even without a guardian and without two witnesses (Fathonah K. Daud, 2021).

In creating this order of marriage guardians, the Hanafiyah School put forward the theory that guardianship is based on aspects of kinship and 'aṣābah' and those closest to the woman to be married (Wahbah Al-Zuhaili, 1989).

“Aṣābah” is an inheritance term meaning the heir who can dispose of the remaining assets and who is the closest heir to the deceased (mayyit). In the context of marriage guardianship, the ‘aṣabah is seen as the closest kinship to the woman to be married. The order of marriage guardians according to the Hanafi school of thought is as follows:

1. Son (al-ibn)
2. Son of a son (ibn al-ibn) and so on down
3. Father
4. Grandfather (father's father or al-jadd or āb al-āb) and so on upwards. If the woman is crazy and has a father and son (ibn) or a grandfather and son (ibn) then the guardian of her marriage is the son (al-ibn). This is according to Imam Abū Hanifah and Burhān al-Dīn Mahmud ibn Tāj al-Dīn. According to Muhammad al-Syaibāniy, the woman's crazy father (al-majnūnah) was the guardian of her marriage. But what is more important is stated in Sharh al-Tahāwi, that the father of the crazy woman (almajnūnah) should order the son of the crazy woman (al-majnūnah) to be the marriage guardian for her crazy mother.
5. Uncle (‘Amm)
6. Half Brother (‘Amm Lil Ab)
7. Son of a sibling and so on

8. The son of the half-brother and so on down
9. Real Uncle ('amm li abawain)
10. Half brother of father ('amm li āb)
11. Fathers brothers son (ibn 'amm li abawain) and so on down.
12. Half brothers son (ibn al- 'amm li āb)
13. Uncle ('amm al-āb li abawain) dan his sons.
14. My father uncle ('amm al-ab li āb) and his sons.
15. Grandfathers biological uncle ('amm al-jad li abawain) and his son.
16. Fathers uncle ('amm al-jadd li āb) and his son.
17. A man is a distant 'aṣābah from a woman who wants to marry, namely the son of a distant uncle (ibn 'amm ba'id). All of the people mentioned above have the right to act as marriage guardians for women who have lost their Ahliyyah al-adā`.
18. Muwalak
19. Sultan or qadi (Al-Syaikh Nizam Al-Hammam in Soraya Devy, 2017).

Imam Abu Hanifah's view on the transfer of a marriage guardian to another guardian, as expressed by Abdurahman al-Jazairi, is that the transfer of a guardian to another guardian is due to a particular reason, as he wrote:

اتفق الشافعية و الحنابلة و الحنفية عل انه لا يصله للولي الابدع او الحاكم ان يباشر عقد الزواج مع وجود
الولي الاقرب المستكمل للشروط

Meaning:

"The Shafi'i, Hanafi, and Hanbali schools of thought agree that a distant guardian or a judge cannot perform a marriage contract as long as there is a qualified guardian" (Abdurrahman al-Jazairi, 2003).

Thus, the concept of transferring a marriage guardian to a legal guardian is important and can occur in certain situations. It is clear that this process follows established regulations, but it requires strict requirements. These strict requirements for transferring a marriage guardian to a legal guardian ensure that the process is carried out with great care and in accordance with applicable Islamic legal principles.

B. Imam Shafi'i

Imam Shafi'i, whose full name is Abu Abdullah Muhammad ibn Idris al-Shafi'i, was one of the great imams in the Islamic legal tradition and also the founder of the Shafi'i school of law. He was born in 150 AH (767 AD) in Gaza, Palestine, and died in 204 AH (820 AD) in Fustat, Egypt. Imam Shafi'i is known as one of the main figures in the development of the science of ushul fiqh and the systematization of Islamic law. The Shafi'i school of law he founded became one of the four main schools of Islamic law, along with the Hanafi, Maliki, and Hanbali schools.

Imam Shafi'i received his early education in Mecca and then continued his studies in Medina under Imam Malik, the founder of the Maliki school of thought. He also traveled to learn from various scholars and deepen his understanding of Islamic law. Imam Shafi'i wrote several important works, including "Al-Risalah," which discusses the principles of Islamic law, and "Al-Umm," a collection of legal teachings and fatwas. The Shafi'i school is known for its balanced approach between nash (Quranic texts and hadith) and qiyas (analogy). Imam Shafi'i emphasized the use of textual evidence, but left the door open to analogical reasoning in certain contexts.

Imam Shafi'i, like other schools of thought, requires the presence of a marriage guardian for the prospective bride in marriage. A marriage guardian here is a male figure who is responsible for the woman who is getting married, and his presence is considered important to protect the woman's interests in the marriage process. As explained by Imam Shafi'i in the book *al-Uum*, namely: a marriage guardian is a person who has the authority to care for and protect those under his guardianship or protection. A marriage guardian also means someone who acts on behalf of the bride during the marriage ceremony. At that time, the guardian acts as the party who makes the marriage vows with the groom. Therefore, the guardian in marriage has a great responsibility, as has been determined and emphasized by Allah in the Islamic religious texts.

Imam Shafi'i is of the opinion that a guardian for the bride is one of the pillars and conditions for a valid marriage, so a marriage without a guardian is invalid. Considering its urgent position, the authority of a marriage guardian should not be delegated to a party who does not have the right. Therefore, the guardianship of a marriage must be carried out by someone who has the right to do so, namely someone who is related to the family structure (lineage). Imam Shafi'i is of the opinion that a guardian for the bride is one of the pillars and conditions for a valid marriage, so a marriage without a guardian is invalid (Imam Shafi'i, 1983)..

From the perspective of the Shafi'i school of thought, marriage guardianship is obligatory. This opinion is based on verses of the Qur'an and the hadiths of the Prophet Muhammad (peace be upon him). Among them is Q.S Al-Baqarah [2]: 232:

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ۚ ذَٰلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَٰلِكُمْ أَزْكَىٰ لَكُمْ وَأَطْهَرُ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

It means:

"If you (have) divorced (your) wives and then their 'idah period has reached (expired), do not prevent them from marrying (their future) husbands if there is agreement between them in an appropriate manner. That is what is advised to those among you who believe in Allah and the Last Day. It is purer for your (soul) and purer (for your honor). Allah knows, while you do not know (Ministry of Religion of the Republic of Indonesia, 2019)."

Imam Shafi'i explained that if a husband divorces his wife and the divorced wife's 'iddah (waiting period) has expired, guardians are prohibited from preventing her from remarrying. This verse clearly indicates that guardians have rights and authority regarding their daughters' marriages. Allah forbids guardians from interfering with their daughters' voluntary remarriage (Imam Shafi'i, 1983)..

A hadith from Aisha r.a. refers to the importance of a guardian's permission for a woman's marriage. Here is the hadith and its meaning:

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ جُرَيْجٍ، عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنِ الرَّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ: أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا امْرَأَةٍ نِكَحْتَ بِغَيْرِ إِذْنٍ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ»، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ

It means:

"Has told us Ibn Abu Umar, he said: Has told us Sufyan bin Uyainah, from Ibn Juraij, from Sulayman bin Musa, from Az-Zuhri, from Urwah, from Aisyah r.a that Rasulullah

sallallaahu 'alaihi wa sallam said, "A woman's marriage is carried out without the permission of her legal guardian, then the marriage is void. The marriage is void. The marriage is void. If she marries, then the dowry is his right to what has been made lawful from himself" (H.R. At-tirmizi: 1102) (Abu Isa Muhammad Bin At-Tirmizi, 1996).

The hadith emphasizes that permission from a legitimate (authorized) guardian is a prerequisite for a woman's marriage to be valid in Islam. If a marriage takes place without such permission, it is considered null and void. Furthermore, the hadith also states that if a woman marries without the permission of a legitimate guardian, the dowry she receives is her right to receive what has been made lawful from her.

This opinion is actually not only held by the Shafi'i school of thought, but this view is also the view of Imam Malik, as stated by Ibn Rushd in his book *Bidayatu al-Mujtahid wa Nihayatu al-Muqtashid*, he said: Maliki is of the opinion that marriage is not valid unless there is a guardian, and that a guardian is a condition for the validity of the marriage, according to Ashhab's report from him. This opinion is also followed by Imam Syafi'i (Ibnu Rushd Al-Hafid, 2004).

According to Islamic law, a child is considered legitimate by birth if he is born within a valid marriage between his father and mother. If a child is born in a legal marriage, then he is automatically considered the child of both parents. In the Shafi'i school of thought, a child is said to be related to his father if he is born more than six months after his parents' marriage. Meanwhile, he is said to be related to his mother if the child is born less than six months after his parents' marriage (Wardatussoleha, 2023).

Imam Syafi'i, one of the imams in the Syafi'i school of thought, compiled the rules for marriage guardians which refer to Islamic law. The following are the rules for marriage guardians:

- a. Father
- b. Grandfather
- c. Saudara laki-laki seibu sebak atau sebak saja
- d. Saudara laki-laki ayah, paman
- e. Anak laki-laki dari saudara laki-laki seibu sebak atau bila tidak ada sebak saja
- f. Anak laki-laki dari yang tersebut dalam poin d
- g. Paman dari bapak (adik dari kakak)
- h. Anak laki-laki dari bapak.
- i. Paman dari kakek
- j. Anak laki-laki dari paman dari kakek
- k. Hakim (Agus Hermanto, Lutfiana Dwi Mayasari, 2021).

Imam Shafi'i's opinion regarding the transfer of guardianship rights from a lineal guardian to a judicial guardian can refer to several specific situations or conditions, depending on the circumstances of the individual or community concerned. The following are several reasons or causes for the transfer of guardianship rights according to the Compilation of Islamic Law, which refers to Imam Shafi'i's opinion:

- a. There is no guardian lineage
- b. Wali Mafqud
- c. A lineal guardian becomes the groom of a woman under his guardianship. This occurs when a woman marries her cousin, biological brother, or paternal brother.
- d. The guardian of lineage (wali nasab) is in the ihram/hajj

- e. The guardian is in prison or a prisoner who cannot be found
- f. The address of the guardian of the lineage is unknown or has disappeared
- g. Guardian lineage tawaro' (hiding to avoid marriage)
- h. Adhol guardian, meaning the guardian is unwilling or refuses to marry (Director General of Islamic Community Guidance, 2023).

In the Shafi'i school of thought, a child is said to be related to his father if he is born more than six months after his parents' marriage. Meanwhile, he is said to be related to his mother if the child is born less than six months after his parents' marriage (Wardatussoleha, 2023).

Sayyid Sabiq provides the following opinion regarding the dispute over the transfer of guardianship to a judge: "The transfer of guardianship to a judge occurs for several reasons: a) There is a conflict between the guardians, meaning the guardian authorized to marry is prevented from doing so because he does not want to marry the prospective wife. b) The guardian authorized to marry is absent, meaning the guardian authorized to marry is dead, missing, or has disappeared. His legs are disabled (Sayyid Sabiq, 1991).

Syafi'i is of the opinion that guardianship is transferred to a judge if a guardian is unable to attend and is within the distance of the shortened prayer and the guardian has not appointed a deputy. In this case, guardianship is transferred to the judge to perform the marriage (Abdul Hakim, 2017).

CONCLUSIONS

Based on the comparative discussion of the *ijtihad* of Imam Abu Hanifah and Imam Shafi'i regarding marriage guardianship, it can be concluded that there are fundamental differences in determining the role of a guardian in marriage. Imam Abu Hanifah is of the opinion that a guardian is not a pillar or requirement for a valid marriage for women who have reached puberty, are sane, and free. Therefore, women in this category have the right to marry themselves without the involvement of a guardian, as long as the chosen husband meets the criteria for *kafā'ah* (*sekufu*).

However, the guardian still plays a role in completing the marriage contract and has the right to intervene if there is any imbalance in the marriage. The obligation to have a guardian remains in place for women who are immature, not sane, or in certain circumstances requiring legal protection. In contrast, Imam Shafi'i emphasizes that a guardian is both a pillar and a requirement for a valid marriage. Therefore, a marriage conducted without a guardian is considered invalid. This view is based on a textual understanding of the verses of the Qur'an and the *hadith*, which place the guardian as the party who has authority in the marriage contract, especially to protect the welfare of women.

The differences in *ijtihad* between the two imams demonstrate the diversity of methodologies in Islamic legal *istinbath*. The Hanafi school tends to allow more room for individual rationality and independence, while the Shafi'i school places greater emphasis on the strength of textual evidence (*nash*). Despite their differences, both views remain oriented toward the same goal: safeguarding the welfare, honor, and protection of women within the institution of marriage. In the context of Islamic law in Indonesia, which predominantly follows the Shafi'i school, the presence of a guardian in marriage is an indispensable requirement. Nevertheless, understanding these differences in schools is crucial as a treasure trove of Islamic intellectual knowledge that can provide alternative solutions to the dynamics of family law issues in society.

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