

GUARDIAN'S RESPONSIBILITY FOR THE WELFARE OF CHILDREN IN MARRIAGE: A STUDY ACCORDING TO ISLAMIC LAW

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ABSTRACT

In Islam, guardianship is a fundamental pillar of marriage, particularly in cases involving children, highlighting the guardian's critical role in ensuring the child's welfare is fully protected before the marriage is solemnised. This responsibility is essential in preventing potential child abuse arising from the guardian's failure to safeguard the child's rights adequately. This article seeks to elucidate the Islamic legal concept of guardianship in marriage and the guardian's duty to ensure the well-being of children born within the marital union. The analysis extends to key aspects of child welfare that require careful consideration before entering marriage. The research methodology follows a content analysis approach, thoroughly examining textual and contextual elements within Islamic legal sources, scholarly writings, and relevant documents. The research is based on two primary theoretical frameworks, namely *Maqasid al-Shari'ah*, which provides a comprehensive understanding of how guardianship aligns with the broader objectives of *Shari'ah*, and *Fiqh*, which offers a detailed exploration of specific legal rulings across various schools of thought. The findings highlight that, despite the guardian's inherent discretion in facilitating a marriage, Islamic law obliges the guardian to prioritise and take responsibility for the child's welfare. This obligation stems from the understanding that, by overseeing the marriage, the guardian is also accountable for protecting the child from harm throughout the marital period. This study contributes to the scholarly discourse on Islamic family law, providing insights into the theoretical foundations and practical implications of guardianship and child welfare within Islamic marriages.

Introduction

In discussions within Islamic law concerning children, the focal point is undeniably the concept of guardianship. This emphasis stems from the Islamic understanding that individuals who have yet to reach the stages of physical and cognitive maturity, particularly those who have not attained puberty, are deemed children. Within this framework, a guardian assumes a pivotal role, bearing full responsibility for all decisions concerning the child. This encompassing responsibility extends to crucial facets such as marriage matters for girls, property, and other personal affairs. It underscores the indispensable role that guardians play in shaping the well-being and future trajectory of the child within the Islamic legal context.

In contemporary discussions, the contentious issue of child abuse and the infringement of children's rights arising from marriages involving underage girls is actively debated, especially within Muslim societies. While it is undeniable that Islamic law permits a guardian to arrange marriages for their daughters, such arrangements must be undertaken with utmost care and justice to prevent any form of cruelty to children, as stipulated by Islamic law (Adawiyah et al., 2022). The occurrence of a marriage should evoke feelings of happiness and serenity in the child's soul. Conversely, if the guardian is negligent and fails to prioritise the child's welfare, the marriage becomes a source of harm and distress for the child. The responsible application of guardianship, especially concerning underage marriages, is crucial in upholding the principles of justice and compassion advocated by Islamic teachings (Ibrahim, 1997). The focus on preventing harm, ensuring justice, and emphasising the well-being of children in the context of underage marriages aligns with the broader principles of *Maqasid al-Shari'ah*. It encompasses the higher objectives and goals of Islamic law, primarily identifying and prioritising the fundamental purposes and intents behind Islamic legal rulings. The concept underscores the importance of aligning legal principles with overarching objectives. The responsible application of guardianship in the context of underage marriages resonates with multiple aspects of *Maqasid al-Shari'ah*, including the Preservation of Religion (*Hifz al-Din*), Preservation of Life (*Hifz al-Nafs*), Preservation of Lineage (*Hifz al-Nasl*), and Preservation of Honor (*Hifz al-'Ird*) (Alias et al., 2024). This alignment underscores the commitment to safeguarding core religious beliefs, ensuring the well-being and protection of individuals, preserving family structures, and upholding the dignity of all involved parties (Disemadi et al., 2020; Sujiman & Mohamad, 2006).

Therefore, even though Islam gives the right to the father as guardian to make decisions on behalf of the child in the marriage agreement, if the guardian fails or is negligent in safeguarding the child's welfare, then the rights and powers of guardianship will be passed to the government (Hashim et al., 2019). This is important to ensure the children are safe from any form of *mafsadah* and cruelty due to marriage. While Islamic law permits guardians to arrange marriages for minors, it stresses the importance of responsible guardianship to prevent any form of cruelty. If a guardian neglects the child's welfare, the government may take over guardianship to protect the child from harm and mistreatment. This highlights the crucial need for guardians to understand the primary goal of preserving children's well-being in the context of marriage arrangements. This matter requires careful consideration and reflection.

Methodology

This study employs a qualitative research design with a content analysis approach to examine the Islamic legal concept of guardianship in marriage and its implications for child welfare. The method facilitates a detailed examination of texts and contexts, enabling a comprehensive understanding of the rules governing guardianship and child protection in Islamic law. Primary and secondary Islamic legal sources are utilized to explore both theoretical and practical dimensions, grounded in *Maqasid al-Shari'ah* and *Fiqh*. *Maqasid al-Shari'ah* aligns guardianship with the broader objectives of Islamic law, while *Fiqh* provides diverse perspectives from various schools of thought. In addition, the data collection phase involves a systematic review of primary sources, such as Quranic verses, *Hadith*, and classical jurisprudential works, alongside secondary sources like scholarly writings, contemporary research, and critical analyses. Other relevant documents referred to are legal precedents and historical records offer practical insights into the application of Islamic guardianship principles. Lastly, textual and comparative analyses are employed to identify agreements and disagreements among Islamic legal schools, with cross-referencing ensuring consistency, accuracy, and reliability in data interpretation.

Guardianship in Child's Marriage

Guardianship is the primary pillar required by Islamic law to validate a marriage. Without a guardian, the marriage will be considered lacking and face the risk of annulment. The term *al-Wilayah* in terms of language means to control or lead something (al-Bustani, 1977). From the Islamic point of view, scholars such as al-Zuhailiy define guardianship as a right or power that allows an individual to make decisions, create a contract, or spend property that, in fact, belongs to another human being. The matter may be executed on behalf of other individuals either after obtaining their prior consent or without prior consent (al-Zuhailiy, 1985). From the point of view of family jurisprudence, Muhammad Muhyiddin explained that a guardian such as a father has the right or authority to make the best decision on behalf of the individual who is subjected to his dependents and guardianship rights either after obtaining permission or by force (Sujiman & Mohamad, 2006).

In addition, Islamic law also explains that there are three primary forms of guardianship, namely '*al-Walayah al-Nafs*' or guardianship of the soul, '*al-Walayah ala 'al-Mal*' or guardianship of property and '*al-Walayah al an-Nafsi wal Mali ma 'an*' or guardianship of soul and property (Zahrah, 1957). Fathers are the individuals who have the most basic guardianship rights over their children, whether male or female. Such rights will continue to remain under the control of the guardian as Islam entrusts them to look after the personal welfare of the child. Among the rights are alimony, the management of all basic needs, and the ability to make the best decisions on behalf of the child in all situations. Islamic law stipulates that the right to control a child owned by a guardian will only cease when the child has reached puberty and has the maturity and perfection of intellect to think like an individual adult. Among the characteristics that qualify children to make decisions without being subject to the guardian's authority is intelligence in managing themselves in terms of expenses and not taking detrimental actions (al-Barri, 1964).

If the fathers do not exist or are not qualified to be guardians, then the right of guardianship will be handed over to the *qadi* appointed by the government. In such situations, the *qadi* has the right to decide all personal affairs and property matters to safeguard the child's interests. The determination of Islamic law is guided by the hadith of the Prophet SAW, who stated that:

Translation: Sultan is the guardian of he who has no guardian.

(Al-Bugho, 2000, Hadith 2083)

In the context of marriage, a guardian is an individual who has the power to marry off a woman under his or her authority. It is a condition that the guardian's consent is a fundamental pillar that completes the marriage contract (al-Syirbini, 1994). Following the order of guardianship, the father is the most important guardian and is continued with the paternal grandfather, who is considered a *wali mujbir* because he has the right to marry off a virgin and unmarried child or granddaughter without asking for their consent (al-Khin et al., 1998). Individuals who hold authority as *wali mujbir* can marry off a daughter at any time, regardless of the age limit of the bride, including children (Wan Ismail et al., 2022). The right to coerce possessed by a guardian can be clearly understood using the term *Mujbir* in Arabic, which means an individual with the right to force and decide something on behalf of another individual (Al-Ayid, 1989).

In addition, Islamic law also explains that the right of *wali number* to force in marriage is based on two main factors, namely the sense of responsibility and compassion of the guardian for the future life of his daughter. The second factor is the nature of the guardian as a father who will not make choices that will damage or harm his daughter's life. This is because, of course, the guardian will strive to find a man who is believed to be capable and qualified to look after his daughter's welfare in every situation and time. Therefore, a guardian such as a father or a grandfather has the right to marry off his daughter if he believes the choice is correct and will benefit the marriage (Sujiman & Mohamad, 2006).

Al-Nawawi (2001) explains that the power of *wali mujbir* to force marriage is to include the group of girls who have not yet reached puberty. For example, it is permissible by Islamic law for a father to give his daughters in marriage without having to ask permission or consent from them. The argument used by most scholars to allow this matter is practiced by Saidina Abu Bakar R.A, who once married his daughter, Saidatina A'isyah R.A, to Rasulullah SAW when she was seven. It was narrated in a hadith:

Translation: The Messenger of Allah married me when I was six and consummated the marriage with me when I was nine.

(al-Nawawi, 2022, Hadith 1422)

The scholars also allow the marriage of girls who have not reached puberty by *wali mujbir* based on the evidence of the actions of the companions of the Prophet SAW, such as Saidina Ali bin Abi Talib R.A who married his daughter Ummu Kalthum to Saidina Umar ibn al-Khattab R.A (Ibn Qudamah, 1999).

However, the Shafi'e School stressed that the power of *ijbar* for the father as guardian is subject to the status of the bride, which must be *bikarah*, which means virgin or never married, not depending on the age or puberty of the woman. Therefore, Islamic law stipulates that *wali mujbir* has the power to force or marry their daughters who have not or have reached puberty if they are still virgins who have never been married. This right of power is absolute for the guardian as stipulated under Islamic law and should not be denied by anyone. Even the original marriage law also clarifies that *wali mujbir* is not obliged to ask permission from the authorities, either the ruler or the qadi, to marry off the daughter under his care (Syed Husin & Tengku Muda, 2011).

Nevertheless, the power of *wali mujbir* should not be abused or misappropriated for the sake of the guardian without considering the welfare of the bride, especially children under puberty. To balance and ensure that the guardian's power of *ijbar* does not cause harm to the child, several conditions must be met to validate the marriage performed without the bride's consent. Among them are the guardian and the daughter, who are not enmity, and the man nominated to marry the girl must be a *Kufu'* as prescribed by Islamic law. Next is that the prospective husband must be able to afford the wedding dowry as determined by the bride. The scholars also stipulated that the guardian is not allowed to marry the bride without her permission or consent, especially if the prospective husband would make her life difficult after marriage. This includes men who are too old and less self-sufficient, such as blind people and so on (Al-Syirbini, 1994).

Although Islamic law, as in the Syafi'e school, recognises the practice of the concept of *wali mujbir*, some guidelines need to be followed to enable them to decide the marriage of their daughter, including children. Failure to meet these conditions will invalidate the *ijbar* qualification that the guardian should have possessed. This is necessary to ensure that the girl's welfare is protected and that no injustice occurs (Syed Husin & Tengku Muda, 2011). This is so that they might enjoy serenity and contentment in marriage, which is why Islam has always put a high value on girls, especially young girls. After considering the original intent, it is crucial to establish these requirements in order to combat misconceptions about the guardian's coercive power in marriage (Ibrahim, 1997).

In addition, to ensure the guardian's ability to look after a girl's welfare, Islamic law requires the main characteristics that a guardian must possess, which are fairness and intelligence. The term "fair" means an individual who guards the religion by performing all duties and abstaining from all prohibitions in Islam. One must always avoid any form of major sin and avoid minor sins. The personality of the *wali* or as a just human being is essential in strengthening confidence in their decision to marry a girl because they want to protect the offspring and the welfare of marriage (al-Husaini, 2001). Mazhab Syafi'e explains that a wicked and unintelligent guardian is not allowed to carry out responsibilities as a guardian, especially the power to marry off a girl forcibly without their consent (al-Syafi'i, 1973). Marriage is not considered valid if a wicked individual guards it because the law of guardianship requires wisdom in examining the girl's welfare (Jalil & Wirnanda, 2020).

Findings and Discussion

Responsibility of Guardian to Secure Child's Maslahah

Among those covered under the right of guardianship is the care of the welfare of children in every aspect of life, such as managing property owned by children, providing education, maintaining children's health, and so on. Allah SWT also does not permit the guardian to hand over important matters for children, such as property and financial management, if the child has not reached puberty and is sane, as mentioned in the Quran:

Translation: Do not entrust your properties - which Allah has made a means of support for you - to the weak of understanding, but maintain and clothe them out of it, and say to them a kind word of admonition.

(Surah al-Nisa, 4:5)

Based on the verse, it can be understood that children who do not have an immaculate mind are subject to the guardian's responsibility to preserve their welfare (Sabiq, 1998). Therefore, guardians should understand that the right of guardianship provided by Islam, including in the context of marriage, is not a degree to elevate human beings but a great responsibility explicitly borne to ensure the welfare of children is always protected. This is because Islamic law recognises the role of the guardian, especially the father, as protector. This ruling is based on the words of the Prophet SAW:

Translation: Surely! Everyone of you is a guardian and is responsible for his charges.

(Al-Bukhari, 1993, Hadith 7138)

Although Islam provides a guardian with the power to decide, it does not mean that the guardian can act arbitrarily or take lightly the responsibility of looking after the welfare of children (Abdul Mutalib et al., 2024). Any action taken must be rational and prioritise the child's welfare to ensure these girls' bright futures. It is undeniable that the example of marriage involving children who have not reached puberty, as happened in the time of Rasulullah SAW, is aimed at the care of *maslahah*. Guardians, especially fathers, should know their roles and responsibilities as the most important trustees in the child's life (Hashim et al., 2019).

Maslahah of Children in Marriage

The primary objective of Islamic law, as explained by al-Syatibi, is to ensure the well-being of all individuals by promoting what is beneficial and preventing harm (al-Syatibi, n.d.). The basic concept explained by the scholars regarding the philosophy of Islamic law is to provide benefits and reject harm. This is because everything Islam requires will bring good for human beings if implemented properly according to the Quran and Sunnah (Kasdi, 2014). Therefore, the priority in terms of determining benefits under *Maqasid al-Shari'ah* is to focus on the aspect of *dharuriyyat*, which is the basic thing for every human being to continue to survive in the world, and without its existence, will cause damage and destruction to human beings.

Marriage, within Islamic law, benefits individuals in this world and hereafter. One of its primary objectives is the preservation of lineage, protecting individual dignity, and safeguarding against immoral behaviour in the sight of Allah SWT. The marital bond elevates one's status, bringing with it obligations that ensure the integrity of the relationship. Bowden (2013) explains that the decision of the scholars in prioritising the care of *maslahah* is intended to ensure that every action is based on the premise of Islamic law and is not futile or causes damage. However, implementing the law according to the proper method will benefit religion, life, intellect, lineage, and property.

As elaborated earlier, Islamic law states that the welfare of the children in marriage is the primary responsibility of the guardian, especially the father of the bride. This is because, if examined, some special privileges and benefits need to be taken care of before a marriage involving children is performed (Darussamin et al., 2023). Ibn Manzur (2005) defines the term *al-Sighar* as a group of children, indicating something contrary to the meaning of adulthood or the age of majority. He added that the phrase is frequently used to allude to a trait or characteristic every individual has from birth till puberty. Islamic jurists identify puberty through physical signs such as the appearance of coarse pubic hair, nocturnal emissions (wet dreams) for boys, and menstruation for girls. Most jurists, including Al-Shafi'i, hold that if these physical signs are absent, both boys and girls are considered to have reached puberty by the age of 15. This approach ensures that individuals are recognised as adults only when they have fully matured and can fulfil their responsibilities according to Islamic law (Jafari, 2014).

Catic (2023) explains that the term *mumayyiz* (*discern*) refers to a developmental stage in which children can distinguish between right and wrong, as well as good and evil. This indicates that all individuals who have reached maturity (*baligh*) are necessarily *mumayyiz*, and *mumayyiz* children are not considered *baligh* (mature). Adolescents are individuals heading towards adulthood, have reached puberty, and are old enough to marry (Dewan Bahasa dan Pustaka, 2015). Under Malaysian law, the Children's Act (Amendment 2016) (Act 611) defines a "child" as any individual under the age of 18, aligning with the 1989 Convention on the Rights of the Child, which mandates that governments take necessary measures to protect children's rights.

In Islamic law, the well-being of children is protected by granting the *wali mujbir*—typically the father or grandfather—the authority to arrange a marriage. The *wali mujbir* is believed to have a deep love and responsibility toward the child and is thus seen acting in her best interest. Islamic law also stipulates that the guardian must be mature and possess sound judgment to make decisions that benefit the bride (Mubarak & Januddin, 2022; Rohmat, 2011). Guardians are sternly reminded to prioritise the well-being of children in underage marriages rather than only consider the advantages and benefits that they or other family members would experience because of the marriage (al-Khatib, 2002).

Among the aspects of children's welfare that need to be given attention by the guardians are:

Dowry

In Islamic marriage, the dowry (*mahr*) is a mandatory gift or benefit the husband provides to the bride, signifying the union or marital relationship. Islamic law requires the dowry to be of significant value to safeguard the bride's welfare. Scholars agree that while dowry is not a legal condition or pillar of marriage in most schools of thought, the Maliki school considers it one of the essential pillars (al-Syatibi, n.d.). The obligation of dowry is based on the evidence of the Qur'an:

Translation: Then, give those whom you would like to be with their Mahr as prescribed. However, if you agree mutually after this obligation, there is no sin on you. Indeed, Allah is All-Knowing, All-Wise.

(Surah al-Nisa', 4:24)

According to Zaydan (1993), the obligation to give dowry is a law that jurists agree upon. Every husband is required by Islamic law to pay dowry as it is obligatory to provide maintenance to his wife after a valid marriage contract. Unfulfilled dowry will still be counted as a debt to show how Islam preserves the welfare of married wives. Dowry is an exclusive right owned by each wife because if it has not been fulfilled by the husband as promised, then the wife has the right to deny the rights and responsibilities needed in marriage (Sabiq, 1998). Among the rights is to reject the husband's invitation to consummate, and she is not required to manage other household affairs (Abd. Rahman, 2007).

In the context of the guardian's role in protecting the child's welfare, it is also the guardian's responsibility to ensure the husband is *kufu'* (suitable) and that an appropriate dowry (*mithli dowry*) is given. According to Mohd and Khadir (2019), in fulfilling the guardian's responsibility to safeguard the child's welfare, it is essential to ensure that the prospective groom meets the compatibility requirement (*kafa'ah*). Additionally, the dowry (*mahr al-mithl*) must be equivalent to what is customarily given to brides from the wife's paternal side. This standard ensures that the dower reflects what is typically received by women of similar status within the family. As Noor (2013) explains, in certain situations, a father may be compelled to marry his daughter to a suitable man even before puberty, provided the dowry is reasonable and reflects her circumstances. The significance of *mithli* dowry in child marriages is underscored by the Hanafi school, which requires both *kufu'* and *mithli dowry* for marriage contracts arranged by guardians other than the *wali mujbir* (compelling guardian) such as *wali asabah*. The marriage contract is invalid if these conditions are not met, and injustice occurs (al-Jaziri, 1935).

Physical Readiness

Another crucial aspect of a child's welfare that the guardian must consider is the child's physical readiness for sexual relations after marriage. In an everyday marital context, the husband has the right to sexual relations, and Islamic law obliges the wife to fulfil this responsibility unless she has a valid reason, such

as illness. However, in cases involving children, scholars have raised concerns. While there is no specific minimum age for marriage in Islamic law, it is essential to ensure the physical readiness of the bride before consummation, especially in cases of child marriages.

Some scholars argue against marrying girls who have not reached puberty, contending that children are not suited to bear the responsibilities of marriage. They emphasise that child marriage is counterproductive since children lack the desire or maturity to engage in the marital relationship fully. Any action by the guardian that contradicts the child's best interests and causes harm is prohibited under Islamic law (al-Sarakhsi, 1983).

The majority of scholars from the four Sunni schools agree that minors should not be handed over to their husbands for sexual relations until they have reached an appropriate level of physical readiness. While the marriage contract may legalise sexual relations, guardians must ensure the bride is physically capable of fulfilling her marital duties (al-Haitami, 1938). This is particularly important in cases where sexual relations between an adult man and a prepubescent girl may cause physical harm and emotional distress. If pregnancy occurs, the risks to the child's health are even more significant, as she must manage the pregnancy while still being a child herself (Noor, 2013).

The guardian must ensure that the child's physical well-being is prioritised, as this falls under the protection of *Hifzu Nafs* (preservation of life). Medical studies have shown that child marriages can lead to significant physical and psychological harm, including sexually transmitted infections and complications during childbirth (M. Nour, 2009). Guardians should obtain confirmation of the child's physical readiness, preferably from the child herself, before proceeding with the marriage. The Shafi'i school recommends delaying marriage until the girl reaches puberty and obtaining her consent, as sexual relations cannot be avoided after marriage (al-Nawawi, 2000). All scholars agree that the responsibility for ensuring the welfare of a child bride in marriage rests with the husband. The husband must protect and care for his young wife, ensuring her well-being following Islamic principles (Barkah & Huzaimah, 2022). The realisation of the right to life is necessary for the accomplishment of the other SDGs 2030 objectives. For instance, achieving high-quality education, excellent health, and overall well-being goals is only feasible when each youngster is robust, well-fed, and physically fit. This is also in line with Islamic law, which ranks the defence of life as Syariah's second-most important goal after the defence of religion (Abdul Rahman & Yasin, 2022).

Contemporary discussions often associate child marriage with immoral practices such as paedophilia. Criticism has also been directed toward the marriage of Saidatina Aisyah (R.A.) to the Prophet Muhammad (SAW) when she was young by modern Islamophobes. Aisyah RA's early marriage is not the most significant aspect of her life. The most important elements of her legacy are her profound scholarship, her deep devotion to the religion of Islam, and her unwavering love for the Prophet Muhammad SAW. These qualities have left a lasting impact on Islamic history and scholarship. To protect the integrity of Islamic law and avoid negative perceptions, guardians must ensure the child's physical readiness before arranging a marriage. This responsibility falls primarily on the father, who must ensure the child can bear the marriage's physical and emotional responsibilities (Usman et al., 2019). Notably, a father must protect his family and be prepared to shield his children, particularly his daughters, from any threats or intimidation they may face from others. Parents must also recognise the crucial role that a sense of security plays in the healthy character development of a child.

Mental Readiness

In addition to physical readiness, the guardian is responsible for ensuring the intellectual and mental readiness of the child. Scholars like al-Kasaniy (2000) argue that physical maturity alone is insufficient to determine a child's overall well-being. More importantly, the child must attain a level of intellectual maturity, known as *rushd*. Al-Tusi (1987) notes that for a child to be recognised as *mukallaf* (legally responsible), they must possess sound reasoning and an understanding of Islamic obligations, allowing them to perform religious duties.

While physical maturity usually precedes mental maturity, both are essential for the child to be considered fully capable. *Rushd*'s development is influenced by factors such as nutrition, education, and life experiences. Once a child achieves physical readiness through puberty and mental perfection through *rushd*, only then is he eligible to be recognised as *ahliyyatu al-ada 'al-kamilah* (refer as the full ability to acquire obligations and rights) because he has two main conditions, namely *al-Idrak* (ability to understand) and *al-Ikhtiar* (ability to choose), which makes the perpetrator aware of his actions and has a choice (Zakiah, 2019). The relationship between *rushd* and puberty is critical, particularly for girls (Zakiah, 2019). The Quran directs guardians to assess a child's intellectual maturity before granting them control over their property:

Translation: Test (the competence of) the orphans until they reach a marriageable age. Then, if you feel they are capable of sound judgment, you can return their wealth to them.

(Surah al-Nisa, 4:6)

This verse highlights the importance of *rushd* in determining a child's capacity to manage their affairs responsibly. Even if a child reaches puberty, they may not yet have the intellectual maturity required for decision-making. Therefore, many jurists emphasise the need to test a child's mental readiness through a process known as *al-Ikhtibar*, which assesses their intellectual sharpness and decision-making abilities (al-Zuhailiy, 2008).

Al-Syirazi states that *rushd* grants a child the ability to independently manage their affairs, including religious obligations and property management, without requiring the consent of a guardian (al-Syirazi, n.d.). Guardians must assess the level of *rushd* in their children before consenting to a marriage, as this directly impacts the transfer of guardianship rights. To ensure the child's welfare, the guardian must confirm that the child has reached the intellectual maturity required to make informed decisions regarding marriage.

In conclusion, the guardian must evaluate the child's physical and mental readiness before consenting to a marriage. Ensuring the child possesses the characteristics of *rushd*, as defined by Islamic law, is essential for safeguarding the child's welfare in religious and worldly matters (al-Qurtubi, 1996).

Jurisdiction of Qadi in Children's Marriage

While Islamic law permits child marriage with the guardian's consent under certain conditions, the government's role, based on the principle of *Siyasah as-Syariyyah*, determines the practice (Malek et al., 2023). Khallaf (1988) explains that the state must formulate policies and enforce laws that promote public welfare and prevent harm as long as such policies do not contradict the fundamental principles of Islamic law (*qat'ie*). The government's authority is derived from the legal maxim; "the action of the Imam (guardian) towards his subjects must be in their best interest".

This principle emphasises that the government should enact laws or regulations that benefit the public (al-Suyuti, 1998). The government's decisions must adapt to changing circumstances, times, locations, and societal needs to ensure that the law remains relevant and effective in providing benefits and preventing harm (Atwah, 1993).

In the context of Islamic law, the Sharia judge—a judge appointed by the government—plays a pivotal role in granting permission for a child's marriage after considering the child's welfare. If the marriage is deemed potentially harmful to the child, the Sharia judges have the authority to forbid it, even with the guardian's consent. This legal stipulation is guided by the principle of *sadd al-dhara'i*, which aims to prevent harm by closing avenues that could lead to negative consequences, thus protecting children from any actions that could harm their welfare (Syed Husin & Tengku Muda, 2011).

For example, Malaysian Sharia law establishes a minimum age for marriage at 18 for males and 16 for females, with exceptions requiring the written permission of a *shari'ah* judge. Section 8 of the Islamic Family Law (Federal Territories) Act 1984 states:

Section 8.

No marriage may be solemnised under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen, except where the Syariah Judge has granted his permission in writing in certain circumstances.

However, the Act does not specify the criteria for "certain circumstances". Therefore, Islamic law empowers the *shari'ah* judges to assess whether a child marriage poses a risk based on individual circumstances and the evidence presented. Khayr al-Din al-Ramli (1585-1671M) asserts that a Sharia judges may approve a marriage for a prepubescent child if she shows physical readiness (*saminah wa dakhmah*), and the dowry is immediately handed over. If there is any doubt regarding the child's readiness, the Sharia judges may consult experts or women knowledgeable in the matter. If it is determined that the child is not physically ready, the Sharia judges must return the child to the guardian for further care (Zanariah, 2013). One of the key legal principles guiding the Sharia judges is "repelling harm takes precedence over securing benefit".

This principle underscores that while bringing about good is important, avoiding harm is paramount (Tahir, 2020). This issue is significant because it demonstrates the government's obligation to achieve the goal of providing the benefits mandated by Islamic law. As a result, the government-appointed *qadi* can forbid marriage if the guardian fails to protect the children's *dharuriyyah* aspect, and in Malaysia, child marriage is not explicitly prohibited. However, the Mufti of the Federal Territories Office emphasises the need for precautionary measures. According to the Mufti's office, child marriage, from an Islamic jurisprudential perspective, is considered valid if it meets the required conditions and pillars as outlined in Quranic verses and the traditions of the Prophet. Nonetheless, governments are responsible for enacting laws that align more closely with the *Maqasid al-Shari'ah* (the higher objectives of Islamic law). This involves integrating *Shari'ah* texts and *maslahah* (public interest), particularly fostering family institutions built on compassion and love. As a result, governments are empowered to establish policies that set a minimum age for marriage. This falls under the concept of *taqyid al-mubah*, which refers to restricting what is permissible, not to prohibit what Allah has allowed, but to uphold justice (Malek et al., 2023).

This principle has already been implemented in several Islamic countries, such as Jordan and Syria. A fatwa issued by His Eminence Sheikh Dr Nuh Ali Salman Al-Qudhaah from Dar al-Ifta' Jordan states that a marriage contract before reaching adulthood is valid if arranged by the father or grandfather on behalf of the child. However, Islamic authorities have the discretion to prevent such marriages to avoid potential harm. It is obligatory to follow governmental directives in such cases, as when the government prohibits something necessary, it becomes incumbent upon the people to abstain from it. According to Hikmat (2017), Jordanian law avoids permitting child marriages to protect the health of young girls and their unborn children in cases of pregnancy. A 2013 report by the United Nations Population Fund recommended that countries where child marriage occurs should develop legislation prohibiting marriage under the age of eighteen.

While a marriage that fulfils all necessary conditions is valid, it cannot be annulled unless challenged in court by one of the parties. In Morocco, the Islamic Law of Personal Status stipulates that the permissible age for marriage is eighteen for males and fifteen for females. However, the marriage consent process may involve the guardian's approval, and court permission may also be required.

These examples illustrate that child marriage is a complex issue requiring careful consideration. The varying legal approaches and age limits in Islamic jurisdictions highlight the need for a nuanced evaluation of the circumstances surrounding such marriages. Importantly, the focus is placed on the responsibilities of guardians rather than their rights, underscoring the necessity of safeguarding the well-being and interests of the children involved (Malek et al., 2023).

In Malaysia, the responsible authorities consistently conduct research and investigations to make well-informed decisions. The 106th Muzakarah (Deliberation) of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia, held on October 21-22, 2014, discussed the issue of Child Marriage: A Study from Religious, Health, and Psychological Perspectives. After hearing presentations

and examining research reports presented by a research group from Universiti Teknologi Malaysia (UTM) and reviewing the facts, arguments, and viewpoints presented, the Muzakarah concurred on several points:

- i. Child marriages in Malaysia occur not for the sake of benefits but due to compulsion and the desire to conceal family shame or dishonour.
- ii. Health and psychology experts' testimonies affirm the existence of physical and mental health issues experienced by female partners as a result of child marriages.

Hence, the *Muzakarah* emphasises that scholars agree that, from a *Shari'ah* perspective, child marriages are neither obligatory nor recommended, as there is no hadith indicating that child marriages are encouraged. Considering *Shari'ah* texts, *Fiqh* principles, and input from health and psychology experts, it concludes that child marriages should only be permitted if they are solely aimed at serving the best interests of the child according to *Shari'ah* principles. Additionally, it recommends that authorities enhance the conditions for child marriages and ensure their implementation follows proper procedures.

In addition, the former Mufti of Federal Territories, Dato' Seri Dr. Zulkifli bin Mohamad Bakri, said that the issue of child marriage is considered a changeable matter, subject to current circumstances and local contexts rather than an unalterable principle like creed or prayer. The government, guided by rationality and wisdom and considering religious scholars' opinions, is expected to make decisions that benefit the public. In specific cases, such as teenage marriages with concerns about premarital pregnancies, guardians should be vigilant to safeguard the well-being of the married woman. Guardianship responsibilities in marriages must be approached with awareness and fairness, avoiding unjust harm to the child. It is recommended to reach a consensus within the woman's family and seek approval from a *Qadi* or *Shari'ah* judge. Moreover, efforts to enhance social conduct guidance and continuous monitoring are crucial. In the event of a marriage, prioritising the child's right to education, especially on topics like personal health, hygiene, and marital rights and responsibilities, is essential. The overall approach emphasises adapting to current circumstances while upholding the common good and ensuring the well-being of those involved.

In conclusion, while Malaysia has not explicitly prohibited child marriages, the country has adopted proactive measures to regulate such unions through the authority of the *qadi*. The *qadi* holds the sole power to permit or deny child marriages, ensuring a meticulous evaluation of various factors before granting permission. This approach underscores a commitment to responsible governance, prioritising the well-being and interests of children and addressing the complexities associated with underage unions.

Conclusion

In conclusion, Islamic law grants the *wali mujbir* the exclusive right to marry off a child without their consent, but only under specific conditions and circumstances. It is vital to underscore that Islamic law prohibits guardians from arbitrarily forcing children into marriages that may compromise their well-being. Guardians bear full responsibility for the welfare of the children in their care, requiring them to carefully consider various critical factors before proceeding with a marriage. While the guardian holds the authority to arrange such marriages, the role of the Sharia judges, appointed by the government, is instrumental in ensuring the welfare of the child. The Sharia judges' permission is mandated in Islamic law to safeguard the child's best interests, preventing any harm that could arise from the guardian's decision. This system of dual oversight, balancing the rights of the *wali mujbir* with the impartial assessment of the Sharia judges, demonstrates a comprehensive approach in Islamic legal practice to protect children within the framework of marriage. The *Shari'ah* judges' involvement ensures that decisions are made with fairness and careful consideration, emphasising the child's welfare as the paramount concern when adjudicating matters of child marriage.

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