

## **Women's autonomy in marriage: A comparison of the marriage guardians of widows in the Sunni and Shia schools of thought in Muslim countries**

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**Abstract:** This study aims to analyze the position of guardians in marriages for widows from the perspective of the Sunni schools of thought (Shafi'i, Maliki, Hanbali, and Hanafi) and compare it with the Shia Ja'fari school. The debate over the position of guardians in marriage contracts is a classic issue in the jurisprudence of munakahat (jurisprudence) and remains a significant topic of discussion in Islamic family law. The differences in views among these schools reflect the varying interpretations of scholars regarding women's authority to contract marriage, particularly for adult women such as widows. This study uses a normative legal method with a comparative approach through analysis of classical Islamic jurisprudential literature, family law regulations in several Muslim countries, and related academic studies. The results show that the majority of Sunni schools of thought, particularly the Shafi'i, Maliki, and Hanbali schools, require a guardian as a pillar or requirement for the validity of marriage, while the Hanafi and Shia Ja'fari schools provide greater leeway for adult women, including widows, to contract marriage independently. These differing views are also reflected in family law practices across Muslim countries. Indonesia and Malaysia, influenced by the Shafi'i school of thought, still require a guardian for marriage, while Iran, based on the Ja'fari Shia school, grants widows greater authority to marry independently. Meanwhile, Iraq and Jordan, influenced by the Hanafi school, demonstrate a more moderate approach, allowing some degree of autonomy for women within marriage.

**Keywords:** Marriage guardians, Widows, Women's autonomy, Sunni sect, Shi'ite sect

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### **Introduction**

Guardians play a crucial role in marriage contracts because their presence is linked to the validity of the marriage and the woman's authority in choosing a life partner. This position becomes a more complex issue for widowed women, as scholars differ in their opinions regarding the widow's right to determine and perform the marriage contract after the end of her previous marriage. These differing opinions demonstrate the diversity of Islamic legal views regarding the limits of women's authority and the guardian's role in marriage. Guardians not only play a role in the process of implementing the contract, but also have a protective function for women and are part of the social order that supports orderly family relationships and community life (Az-Zuhaili, 2011, p. 6510).

The majority of scholars in the Sunni fiqh tradition believe that a guardian is an essential element in the marriage contract. This view is based on several hadith of the Prophet which state that a marriage is invalid without a guardian (Al-Sijistani, 2009, p. 399). Within this framework, a guardian is understood as a party who has the authority to represent and protect the interests of women in the marriage contract. Therefore, most Sunni schools of thought, such as the Shafi'i, Maliki, and Hanbali schools, emphasize that the presence of a guardian is one of the conditions for a valid marriage. However, not all schools share this view. The Hanafi school, for example, allows more space for mature and wise women to carry out their own marriage contract without the presence of a guardian, as long as

the chosen partner is considered *sekufu* (Al-Kasani, 2003, p. 248). This view shows that within the Sunni fiqh tradition itself there are various approaches to understanding women's authority in marriage.

A more stark contrast can be found when comparing Sunni and Shia views, particularly within Ja'fari jurisprudence. In Imami Shia jurisprudence, a widowed or previously married woman is generally considered to have full authority to marry on her own without requiring a guardian's consent (Khomeini, 2012, pp. 263–265). This view is based on an interpretation of the principle of adult women's freedom to manage their personal affairs, including choosing a life partner. This perspective demonstrates that the concept of guardianship in marriage is not always understood uniformly within the Islamic legal tradition.

Various studies have examined the issue of marriage guardianship with varying focuses. Hidayati (2018) discussed women as marriage guardians from a fiqh perspective and found that restrictions on women as guardians are closely related to classical fiqh thought that positions men as the party with authority in marriage (Hidayati, 2018). Muhamad (2023) examined Khoiruddin Nasution's thoughts on women as guardians through the *istinbath* method, which takes into account the bilateral and egalitarian character of society (Muhamad, 2023). Daud and Sururue (2021) examined marriage without a guardian based on fiqh and Indonesian positive law and found that a guardian is one of the pillars of marriage according to applicable law in Indonesia (Daud & Sururue, 2021). Hamzah (2022) compared the views of the Hanafi and Shafi'i schools of thought regarding guardianship in marriage and showed differences in the authority of adult women in carrying out the marriage contract (Hamzah, 2022). Meanwhile, Diyansyah (2022) specifically examined the position of marriage guardians for widows based on the views of Imam Abu Hanifah and found that adult women, including widows, can perform their own marriage contracts by fulfilling certain requirements, one of which is *kafā'ah* (Diyansyah, 2022).

These various studies demonstrate that the issue of marriage guardianship has been examined through the perspectives of classical Islamic jurisprudence, positive law, the thoughts of prominent figures, and comparisons between schools of thought. However, discussions specifically examining the authority of widows in conducting marriage contracts are still relatively limited. Research that reconciles the views of the Sunni and Shia schools regarding the authority of widows is also limited, even though the two fiqh traditions differ in their understanding of the legal capacity and authority of adult women in marriage contracts. Based on this gap, this study offers something new by examining the concept of marital guardianship for widows through a comparative approach between the Sunni and Shia schools of thought and connecting it with marital law practices in Muslim countries, thereby providing a more comprehensive perspective on the relationship between the authority of guardians and women's autonomy in marriage.

This study aims to analyze the position of marriage guardians for widowed women from the perspective of the Sunni School of Law, especially the Shafi'i, Maliki, Hanbali, and Hanafi Schools, and examines the concept of women's authority in marriage according to the Shia School of Law, especially the Ja'fari School which allows widows to marry themselves. In addition, this study also aims to examine how the different views between the Sunni and Shia Schools are implemented in family law in several Muslim countries, such as Iran, Iraq, and Indonesia, so as to provide a more comprehensive understanding of the relationship between the position of marriage guardians and women's autonomy in marriage in the context of contemporary Islamic law.

### **Method**

This research is a normative legal study that aims to examine the differences in views of Islamic legal schools regarding the position of marriage guardians for widowed women and their influence on the concept of women's autonomy in Islamic family law. Normative legal research focuses on the study of norms, principles, doctrines, and legal provisions as the research object. Therefore, the analysis

process is carried out by examining various legal materials related to the research problem. In this study, a normative approach is used to analyze the legal construction of marriage guardians through fiqh sources and family law provisions applied in several Muslim countries. The use of this approach is in accordance with the development of normative legal research methods that prioritize accuracy in determining the object of study, research approach, and legal sources used (Negara, 2023).

This research uses a comparative legal approach (*comparative legal approach*) by comparing the views of the Sunni schools of thought, namely Shafi'i, Maliki, Hanbali, and Hanafi, with the Shia Ja'fari school of thought. This comparison is based on several aspects that are *third of comparison*, including the legal basis, the status and role of guardians, and the authority of widows in performing marriage contracts. These aspects were chosen so that each school of thought could be analyzed using the same comparative criteria. In comparative legal research, determining the elements and criteria to be compared is a crucial step because the accuracy of these elements influences the results of the analysis. Therefore, the comparison in this study aims not only to demonstrate differences between schools of thought but also to reveal the similarities, differences, and patterns of legal argumentation underlying the views of each school of thought (Bhat, 2015; Petretta, 2020).

The legal materials used are divided into primary, secondary, and tertiary legal materials. Primary legal materials consist of statutory regulations and family law provisions relating to marriage and guardianship, such as the Compilation of Islamic Law (Indonesia). *Civil Code of the Islamic Republic of Iran*, *Iraqi Personal Status Law*, *Jordanian Personal Status Law*, And *Islamic Family Law (Federal Territories) Act 1984* (Malaysia). Secondary legal materials include classical and contemporary fiqh texts from the Sunni and Shia schools of thought, Islamic family law books, and various scholarly articles discussing marriage guardianship, the status of widows, and women's autonomy. Meanwhile, tertiary legal materials include dictionaries, encyclopedias, and other reference sources that help clarify the terms and concepts used in the research.

A comparative legal approach is used to examine and compare the legal constructions of each school of thought regarding the position of guardians for widowed women. The study was conducted on the Shafi'i, Maliki, Hanbali, Hanafi, and Ja'fari schools of thought, taking into account the normative basis, the position and function of guardians, and the widow's authority in carrying out the marriage contract. Through this approach, similarities and differences in views between schools of thought, as well as their relationship to the concept of women's autonomy in marriage, can be identified.

The analysis of legal materials was conducted qualitatively using a descriptive-comparative method. The first stage involved identifying and categorizing the legal materials based on the schools of thought and the legal systems of the countries being studied. The second stage involved examining the views of each school of thought regarding the status of guardians in marriage for widows, including the guardian's status, the legal basis used, and the limits of women's authority in carrying out marriage contracts. The third stage involved comparing the results of these studies to identify similarities, differences, and trends in legal argumentation between schools of thought. The fourth stage involved analyzing how these Islamic jurisprudence views are applied or adapted in family law regulations in the countries being compared. The final stage involved drawing conclusions regarding the relationship between the position of guardians in marriage and women's autonomy in Islamic family law.

This study compares family law with Indonesia, Iran, Iraq, Jordan, and Malaysia. These countries were selected based on differences in Islamic jurisprudence (fikih) traditions and family law structures governing the position of marriage guardians. Indonesia and Malaysia represent legal systems heavily influenced by the Shafi'i tradition, Iran represents a legal system based on the Ja'fari school of thought, while Iraq and Jordan represent Sunni family law systems with differing characteristics regarding women's authority in marriage. This comparison aims to examine the extent to which the differing Islamic jurisprudence views on marriage guardianship for widowed women are reflected in family law arrangements in contemporary Muslim countries.

## Result and Discussion

### The Position of the Guardian of Marriage for Widows in the Sunni School of Thought (Hanafi, Maliki, Syafi'i and Hanbali)

The research results show that the majority of Sunni schools of thought, especially the Shafi'i, Maliki, and Hanbali schools, consider a guardian as one of the pillars or valid conditions of a marriage contract. Therefore, a marriage conducted without a guardian is considered invalid (Umar & Purnama, 2018, pp. 45–46). This opinion is based on the hadith of the Prophet Muhammad (PBUH) which states that a marriage cannot be conducted without a guardian. Based on this hadith, the guardian is seen as the party with the authority to carry out the marriage contract.

Hadith of the Prophet (Saw) from Abu Musa Al Ash'ari.

عن أبي موسى عن أبي الله تعالى عنهما قل: قال رسول الله ص.م.: لا نكاح إلا بولي (رواه أحمد والأربعة وصحه ابن المديني والترمذي وابن حبان)

Translation: "From Abu Musa Al-Ash'ari from his father (may Allah be pleased with him) who said: "There is no marriage except with a guardian" (Narrated by Ahmad and the Four Imams and confirmed by Ibn Madani, At-Tirmidhi and Ibn Hibban) (HajarAl-Asqolani, 1959, p. 207).

This hadith is one of the bases for the majority of Sunni scholars in establishing a guardian as an element that determines the validity of a marriage contract. Understanding the hadith "*day nikāḥa illā biwalī*" are not entirely consistent across the various schools of Islamic jurisprudence. These differences arise from how scholars understand the meaning of the hadith, its position as legal evidence, and its connection to Qur'anic verses and other hadiths concerning women's right to determine their marriage. The Maliki, Shafi'i, and Hanbali schools understand the hadith as affirming that a marriage contract without a guardian cannot be declared valid. Therefore, a guardian is positioned as a mandatory element in the implementation of the marriage contract. The Hanafi school has a different understanding. A guardian is not considered an absolute requirement for a woman to be an adult and sane. Women who have met the legal capacity are considered to have the right to perform a marriage contract themselves, including women who are widows. Al-Sarakhsi, through *al-Mabsūṭ* explains that women have the authority to perform the marriage contract for themselves, whether they are virgins or widows (Ahmad, 2000).

These differences in opinion are inseparable from how each school of thought processes and connects the various arguments regarding women's authority in marriage. The Hanafi school considers not only the hadith concerning guardians but also refers to several Quranic verses that directly link the act of marriage to women. "*al-ayyim aḥaqqu binafsihā min waliyyihā*" It is also one of the foundations that provides a stronger position for women who are no longer married. Based on this understanding, the hadith "*day nikāḥa illā biwalī*" should not be interpreted as revoking the right of adult women to perform marriage contracts for themselves. The difference between the majority and Hanafi opinions is not only related to the acceptance or rejection of a hadith. These differences also depend on how the text is understood, how the argument is assessed, and how the arguments relate to the same issue.

The majority of scholars believe that this hadith essentially negates the validity of a marriage contract without a guardian and does not invalidate the marriage contract's perfection. The hadith above contains several meanings: First, if the marriage contract is performed without a guardian, then the marriage contract is void. Second, engaging in sexual intercourse for reasons of lawful (halal) requires the male perpetrator to pay a mitsil dowry. Third, for a woman who has a dispute with her guardian or is not visible or does not have a guardian, then the guardian of the judge is her guardian.

Furthermore, they believe that marriage has many purposes, while women are often perceived as being more emotionally invested in decision-making. Therefore, women are considered less selective in their choices, thus preventing them from achieving the primary purpose of marriage (Nurhadi & Gadapi, 2020, p. 47). Scholars agree that a guardian is an absolute requirement for a bride to perform a marriage contract, especially if she is still a minor. This is because minors are considered incapable of performing the marriage contract themselves and therefore require a guardian to represent them. However, in the context of adult women, both virgins and widows, scholars have a different view, as follows (Syarifuddin, 2014):

- a. The Shafi'i and Hanbali schools of thought stipulate that a marriage contract must be performed by a guardian. This provision applies to both minor and adult women, whether virgins or widows. A woman's educational background and social background do not make a difference in this provision. Women also do not have the authority to perform the marriage contract themselves. This opinion places the guardian as having a crucial role in the validity of the marriage contract, not simply providing consent to the marriage. This view is based on an understanding of the hadith "*day nikāḥa illā biwalī*" as evidence that a marriage contract conducted without a guardian is not considered valid. The requirement for a guardian still allows women to choose their potential partner. Widows, for example, still have the right to accept or reject a potential husband. The guardian's role is more related to the implementation of the contract and protecting the woman's interests in marriage. This view shows that the Shafi'i and Hanbali schools place strong emphasis on the guardian's involvement as part of the validity of the marriage contract.
- b. The Zahiri school of thought provides different provisions regarding the role of guardians. Women who have reached adulthood are considered able to perform a marriage contract without a guardian. They only need permission to enter into marriage and do not have to appoint a guardian as the party performing the contract. This provision does not apply to minor women, as a guardian is still required to represent their interests in marriage (Ahmad, 2000; Syarifuddin, 2011). The Zahiri school's view demonstrates differences in treatment based on a woman's maturity and legal capacity. Adult women are considered capable of choosing a partner and making decisions regarding their marriage, so the contract does not require a guardian to perform. Guardians still have a role for underage women, as they are not yet considered capable of making independent marital decisions. This view demonstrates that the need for a guardian is not solely based on a woman's status as a woman, but also considers her age and decision-making capacity. Adult women therefore have greater freedom to determine and carry out their own marriages.
- c. The Hanafi school of thought does not require a guardian to be a valid marriage contract for an adult and sane woman, whether a virgin or a widow. A woman who meets these requirements can marry herself if her prospective husband meets the requirements. *kafā'ah* When the prospective husband does not meet the principles *kafā'ah*, the guardian has the right to file for annulment of the marriage (Gunawan et al., 2022, p. 482). The Hanafi opinion grants adult women broader authority to determine and execute their marriage contract. The guardian does not determine the validity of the contract, but still has the function of protecting the woman's interests through the concept of *kafā'ah*. This provision indicates that women's freedom to perform marriage contracts is still accompanied by certain limitations. Guardians can raise objections if the prospective husband does not fulfill the principles *kafā'ah*, which is considered essential for the continuation of a marriage. This view demonstrates an effort to balance women's ability to choose a partner with the protective function that remains with guardians.

The most explicit view on the necessity of a guardian is found in the Shafi'i school of thought, formulated by Muhammad ibn Idris al-Syafi'i. This school asserts that a guardian is a pillar or prerequisite for the validity of marriage that cannot be ignored, both for virgins and widows. A woman does not have the authority to perform a marriage contract herself, even if she has reached puberty and

is of sound mind. From a Shafi'i perspective, a guardian acts as the party who performs the contract on the woman's behalf to maintain the legal order of marriage and protect the woman's interests. Therefore, if a woman performs a marriage contract without a guardian, the contract is considered invalid. This view has become the basis for many family law systems in countries that follow the Shafi'i school of thought, including Indonesia (Al-Hishni, 2002, p. 474).

A similar view is expressed by the Maliki School of Law, founded by Malik ibn Anas. This school places the guardian as a crucial element in the marriage contract, as the guardian is considered to have a social and moral responsibility to ensure that the marriage is conducted properly and in accordance with sharia norms. However, the Maliki School emphasizes the woman's consent in marriage. A widow cannot be forced into marriage by her guardian, as she has full control over her choice of life partner. However, even though the widow has the freedom to choose a partner, the marriage contract must still be performed by the guardian, who holds the formal authority in the marriage (Gazali & Payuhi, 2023, pp. 102–105).

The Hanbali school views a guardian as a valid requirement for a marriage contract, so a woman, whether a virgin or a widow, cannot enter into a marriage contract without a guardian. This view is based on a literal understanding of the Prophet's hadith "*day nikāḥa illā bi-walī*" (marriage is invalid without a guardian), which according to Hanbali scholars applies generally to all women. However, the Hanbali School of thought strongly emphasizes the right of women to give consent, especially for widows. A guardian does not have the right to force a widow to marry, because she is considered to have the experience and maturity to determine her life partner. Therefore, from the Hanbali perspective, the authority of a widow lies in her right to accept or reject the marriage, while the execution of the marriage contract must still be carried out by the guardian as the party with formal authority in the marriage (Qudamah, 1994).

The Hanafi school of thought differs from the other three Sunni schools of thought regarding the role of the guardian in a marriage contract. The Shafi'i, Maliki, and Hanbali schools of thought consider the guardian to be a crucial factor in determining the validity of a marriage contract. The Hanafi school grants rights to women who are mature and of sound mind (*balighah* and *intellect*) to perform the marriage contract on her own without being represented by a guardian. This provision applies to both virgins and widows. Women can perform the contract directly or appoint someone else as their representative as long as the prospective husband meets the requirements. *kafā'ah*, namely, equivalence. Guardians can still raise objections if the prospective husband does not meet this equivalence and the marriage is deemed to have the potential to harm the woman (Ahmad, 2000).

These differing views relate to how each school of thought views women's legal capacity and the role of guardians in marriage. The Shafi'i, Maliki, and Hanbali schools view the involvement of a guardian as essential to the validity of the marriage contract, preventing a woman from marrying herself. The Hanafi school views an adult and sane woman as having the legal capacity to choose a partner and perform the marriage contract. The guardian's role is still recognized, but with greater emphasis on safeguarding the woman's interests. This function can be seen through the concept of *kafā'ah*, which allows guardians to object if a prospective husband is not considered suitable for the woman they intend to marry. This distinction demonstrates that discussions regarding guardianship extend beyond the presence or absence of a guardian during the marriage contract, but also address the issue of who has the authority to determine and execute the marriage.

The Hanafi school of thought holds particular relevance for widowed women. A mature and sane widow has the right to choose her own husband and perform the marriage contract. The guardian does not determine the validity of the contract, but can still serve as a protector if the prospective husband is deemed unsuitable for the widow. This view provides women with greater legal authority to determine marriage, while maintaining the guardian's role in protecting their interests (Ahmad, 2000). These

differences demonstrate that the relationship between the guardian's authority and a woman's right to determine marriage is understood differently by each school of thought.

This argument is based on the interpretation of several verses of the Qur'an that relate the marriage contract to women, such as QS. al-Baqarah [2]: 232, which shows that women have the authority to determine their marriage. Thus, in contrast to the Shafi'i, Maliki, and Hanbali schools of thought that place the guardian as the party that validates the marriage contract, the Hanafi school emphasizes the legal independence of women in the marriage contract, so that the guardian is not an absolute requirement for the validity of the marriage (Az-Zuhaili, 2011, pp. 6577–6580).

In the Hanafi school of thought, women are allowed to marry without a guardian through legal *istinbath* using the method *istihsan*. This is similar to the issue of male authority in marriage without a male guardian, as seen from the ability to buy and sell. Imam Abu Hanifah firmly defined marriage as the same as buying and selling. The basic argument underlying the Hanafi school is the use of *istihsan*, namely as follows (Muhammad et al., 2022, p. 203):

وَاتَّبِعُوا أَحْسَنَ مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَكُمُ الْعَذَابُ بَغْتَةً وَأَنْتُمْ لَا تَشْعُرُونَ ﴿٥٥﴾

Translation: “And Follow the best of what has been revealed to you from your Lord (the Quran) before the punishment comes upon you suddenly, while you perceive it not.”

To clarify the differing views of the four Sunni schools of thought regarding the status of guardians in marriage, particularly for adult women or widows, here is a comparative summary of each school's position. The primary difference lies in whether a guardian is considered a valid requirement for a marriage contract.

**Table 1.** Comparison of Sunni School Views on the Position of the Guardian of Marriage for Widows

| Sect    | Position of Guardian                                                                  | Widow's Authority                                                                               |
|---------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Shafi'i | Guardian is pillars of marriage, so that the contract is not valid without a guardian | The widow must agree to the marriage, but the marriage contract is carried out by the guardian. |
| Maliki  | Guardian is marriage license requirements                                             | A widow has the right to agree or refuse, but cannot marry herself.                             |
| Hanbali | Guardian is absolute conditions for a valid marriage                                  | The widow's consent is mandatory, but the marriage contract remains with the guardian.          |
| Hanafi  | Still not a legal requirement for adult women                                         | Widows can marry himself if the prospective husband is a fool                                   |

### The Authority of Widowed Women in Marriage Contracts According to the Ja'fari Shia School

Based on the research results, the Ja'fari Shia school provides more space for widowed women to determine and carry out their own marriage contract compared to the majority of the Sunni school. Widow (*al-thayyib*) who are adults and have legal capacity are deemed to have authority over themselves (*wilāyat al-nafs*). Therefore, she can enter into marriage without having to rely on a guardian. This view shows that a person's experience in previous marriages is also a consideration in determining a woman's authority in the marriage contract. Thus, the difference between the Ja'fari school of thought and the majority of Sunni schools of thought lies not only in the necessity of a guardian in the marriage contract, but also in how the two fiqh traditions understand the legal capacity and authority of women in determining their marriage.

The Ja'fari School is a school of jurisprudence in the Imamiyyah Shia tradition attributed to Imam Ja'far al-Ṣādiq (died 765 AD), a scholar from among the *Ahl al-Bayt* which made a major contribution to the development of Islamic legal thought (Takim, 2020, pp. 45–49). This school

developed among the Twelver Shia community (*Ithna 'Ash'ariyyah*) and until now has become the main basis for family law practice in several Muslim countries such as Iran and parts of Iraq. In the methodology of legal istinbath, Ja'fari jurisprudence uses legal sources that are basically the same as the Sunni school, namely the Qur'an, hadith, ijma', and reason (*al-'aql*). However, there are different characteristics in its use, especially in the emphasis on hadiths that come from the lineage *Ahl al-Bayt* and a stronger use of legal rationality in the legal determination process. This methodological approach has given rise to a number of differences of opinion with the Sunni School on various fiqh issues, including in the area of family law, such as the position of guardians in marriage contracts and women's authority to determine their marriage (Modarressi, 2023, pp. 312–315).

This difference is particularly evident in the issue of guardianship for widows. In the Sunni fiqh tradition, particularly in the Shafi'i, Maliki, and Hanbali schools of thought, a guardian is considered a pillar or valid requirement for a marriage contract, making a marriage without a guardian invalid. In contrast, the Ja'fari school places greater emphasis on the legal capacity of the individual, particularly for women who are mature and experienced in married life. Therefore, a widow (*al-thayyib*) is considered to have the authority to perform the marriage contract independently without requiring a guardian. This view is based on the principle that a woman who is mature and sane (*bālighah 'āqilah*) has authority over herself (*wilāyat al-nafs*) in various forms of contracts, including marriage contracts (Stiawan et al., 2025).

Contemporary Ja'fari fiqh literature also explains that the obligation of guardian involvement is more often associated with virgin women (*al-bikr*), because they are considered inexperienced in married life. Meanwhile, women who have been married before are no longer under the authority of a guardian in the marriage contract. Thus, a widow can perform the marriage contract herself or appoint a representative to represent her in the process without having to obtain the approval of a lineal guardian. This approach shows that the Ja'fari school of thought provides greater scope for women's autonomy in determining marital decisions compared to some Sunni schools of thought, which still place a guardian as an essential element in the marriage contract (Sidqi & Farisi, 2023).

The conceptual differences between these two traditions also have implications for the practice of family law in various Muslim countries. Countries with legal systems heavily influenced by the Sunni school of law, such as Indonesia, still require the presence of a guardian as part of the legal marriage procedure. Conversely, in family law systems influenced by the Ja'fari school of law, such as Iran, adult women in principle have greater authority to determine and regulate their own marriages. This suggests that the differences in Islamic jurisprudence between the Sunni and Shia schools of law are not merely theoretical but also influence the formation of family law in Muslim countries (Haris, 2023).

To clarify the differences in views between the Sunni and Shia Ja'fari schools regarding the position of guardians and women's authority in marriage contracts, a comparison is necessary that highlights several key aspects of both fiqh traditions. This comparison is important because the different methodologies and understandings of women's authority have different implications for the position of women, particularly widows, in marriage. The following comparative table summarizes the key differences between the two schools.

**Table 2.** Comparison of Sunni and Shia Ja'fari School of Thought on the Position of Guardians and Women's Authority in Marriage Contracts

| Comparative Aspects                  | Sect Sunni                                                                                                                                    | Ja'fari Shia School                                                         |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Guardian status in marriage contract | Generally seen as a pillar or condition for valid marriage (Shafi'i, Maliki, Hanbali)                                                         | Not an absolute requirement for adult women                                 |
| Adult female position                | Adult women still need a guardian to carry out the marriage contract (except according to the Hanafi school of thought in certain conditions) | Adult women have the legal capacity to perform their own marriage contract. |

| Comparative Aspects           | Sect Sunni                                                                                                    | Ja'fari Shia School                                                                                 |
|-------------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Position of widowed women     | Widows have the right to choose their partners, but the marriage contract is still carried out by a guardian. | Widows can perform the marriage contract themselves or through a representative without a guardian. |
| Legal basis for consideration | Emphasizing the guardian's function as a protector and representative of family authority                     | Emphasizing the principle of individual legal capacity ( <i>ahliyah</i> ) and women's autonomy      |

Based on the table, it can be seen that the differences between the Sunni and Ja'fari schools of thought extend beyond the role of the guardian in the marriage contract. These differences also relate to the extent of authority a widowed woman has in determining her marriage. In the majority of Sunni schools of thought, the guardian still plays a role in the marriage contract, although the widow retains the right to choose her husband. Meanwhile, the Ja'fari school grants widows broader authority to determine and execute the marriage contract based on their own legal capacity. This difference demonstrates that the two Islamic jurisprudence traditions differ in determining the source of a woman's authority in marriage.

These differences also impact women's autonomy in making decisions regarding marriage. In the Ja'fari school of thought, widows have a greater opportunity to determine their own marriage because their maturity, marital experience, and legal competence form the basis of their authority in the marriage contract. Conversely, in the majority of Sunni schools of thought, the widow's choice of a potential spouse is still accompanied by the involvement of a guardian during the marriage contract. Thus, differences regarding guardianship not only reflect differences in Islamic jurisprudence but also influence the level of independence of women in exercising their legal rights and authority to determine marriage.

### Implementation of Different Views on Marriage Guardianship in Family Law in Muslim Countries

This study found that differing Islamic jurisprudence (*fiqh*) views on guardianship influence how Muslim countries regulate their family law. However, the opinions of these schools of thought are not always fully implemented in state regulations. Each country adapts *fiqh* principles to its legal system and societal conditions. Indonesia and Malaysia, for example, still place a guardianship as a crucial element in the marriage contract due to the strong influence of Sunni tradition, particularly the Shafi'i school of thought. In contrast, Iran, heavily influenced by the Ja'fari Shia school, grants broader authority to previously married women. Jordan, influenced by the Hanafi school of thought, also grants relatively greater leeway to adult women, while Iraq demonstrates a more balanced arrangement between various *fiqh* traditions. Thus, *fiqh* can serve as a basis for establishing family law, but its implementation still requires adjustments to the legal regulations and policies of each country.

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In Indonesia, the Marriage Law does not specifically and comprehensively explain the provisions regarding guardianship. The law emphasizes the guardian's role in granting permission to prospective brides and grooms under their guardianship. This permission is one of the requirements that must be met in the marriage process. However, the law does not yet specify the guardian's function, types of guardians, or the order in which parties can act as guardians in a marriage contract.

More detailed regulations regarding guardianship are then found in Islamic law, codified through the Compilation of Islamic Law (KHI). The KHI serves as one of the guidelines for the implementation of Islamic family law in Indonesia. It regulates guardianship as one of the pillars of marriage, the types of guardians, the structure of lineage guardians, and the use of judicial guardians in certain circumstances when lineage guardians are unavailable or unable to exercise their authority. Therefore, the KHI holds a crucial position as a guideline for the Muslim community and religious courts in implementing regulations regarding marriage guardianship (Mahdi & Lewa, 2021, p. 823).

The provisions regarding marriage guardians in Indonesia are essentially within the framework of national marriage law, which began with Law Number 1 of 1974 concerning Marriage and was later amended through Law Number 16 of 2019. These regulations are clarified through the Compilation of Islamic Law (KHI), which serves as a guideline for religious courts. Article 14 of the KHI includes a guardian as one of the pillars of marriage, while Article 19 explains that a guardian has the authority to marry a prospective bride. These provisions show that Islamic family law in Indonesia tends to align with the views of the majority of Sunni schools of thought, especially the Shafi'i school, which places a guardian as an important part of the validity of a marriage contract (Kompilasi Hukum Islam, 1991, p. Pasal 14 dan 19).

Based on these provisions, it can be seen that the influence of the Shafi'i school of thought in Indonesia has been incorporated into positive law through a process of codification. The principle of the importance of guardianship is not only maintained as an opinion in Islamic jurisprudence books, but is also incorporated into legal regulations that more structuredly regulate the position of guardians. Regulations regarding lineage guardianship, judicial guardianship, and the authority of religious courts demonstrate that these Islamic jurisprudence principles have been adapted to the needs of the national legal system. Thus, the formation of family law in Indonesia demonstrates the process of translating Islamic jurisprudence norms into regulations that can be formally implemented.

In Iran, family law is heavily influenced by the Ja'fari Shiite School. The provisions regarding guardians of marriage are found in *Civil Code of the Islamic Republic of Iran (Laws and Conditions Article 1043* stipulates that unmarried women require the permission of their father or paternal grandfather for marriage. This provision differs for women who have been married. Women with prior marital experience have greater freedom to determine their marriage because they are not placed in the same position as unmarried women. This provision demonstrates the influence of Ja'fari's Islamic jurisprudence on the capacity of adult women to determine the marriage contract (Civil Code of the Islamic Republic of Iran, 1928).

Regulations in Iran demonstrate a close relationship between Ja'fari fiqh thought and nationally applicable family law. The distinction between unmarried and previously married women indicates that marital status and experience are among the considerations in determining a woman's authority (Nasser, 2026). By granting greater authority to previously married women than to unmarried women, Iranian positive law reflects the influence of the concept of legal capacity in Ja'fari fiqh. However, the authority of unmarried women remains limited by certain provisions, particularly those related to the consent of a guardian.

In Iraq, provisions regarding family law are regulated in *Iraqi Personal Status Law No. 188 of 1959*. This law remains the basis for family law, with various changes and developments in its application. Marriage is essentially based on the consent of both prospective bride and groom and must be ratified by a competent judicial institution. Guardians still have a role in the marriage process, but

there is a legal mechanism in place for guardians to refuse a marriage without justifiable grounds. In such circumstances, the court can exercise its authority to resolve the marital dispute. This regulation demonstrates that Iraqi family law does not strictly follow a single Islamic jurisprudence model, but rather seeks to accommodate the various views that have developed within its society (Iraqi Personal Status Law No. 188, 1959).

This situation demonstrates the more complex relationship between Islamic jurisprudence and positive law in Iraq. The existence of Sunni and Ja'fari traditions means that family law issues are not based solely on a single school of thought. Positive law then serves as a means to regulate these differences within a single national legal system. The court's authority in addressing guardianship issues demonstrates an effort to safeguard the guardian's role while providing legal certainty for parties to a marriage. Thus, Iraqi family law demonstrates a process of adapting the diversity of Islamic jurisprudence to the needs of national legal regulation.

In Jordan, the rules regarding guardianship are contained in *Jordanian Personal Status Law No. 15 of 2019*, which replaces and updates previous provisions. This regulation differentiates the status of women who have never been married from women who have experienced marriage. Women marrying for the first time remain within the framework of a guardian's involvement. Meanwhile, women who have been married and have reached adulthood have greater freedom to determine their marriage. This regulation demonstrates the influence of the Hanafi school of thought, which emphasizes the legal capacity of adult women to determine marriage (Jordanian Personal Status Law No. 15, 2019).

The provisions regarding guardianship in Jordan demonstrate that Sunni tradition does not have a unified view on women's authority in marriage (Rosmita et al., 2022). The Hanafi school's view on the legal capacity of adult women also forms the basis for regulations that provide more space for women with marital experience to determine their own marriage contracts. This is evident in Jordanian personal status law, which differentiates the status of unmarried women from married women (Al-Jaber, 2023). Over time, these regulations have not fully implemented a single school of thought, but rather represent the result of the selection and codification of various Islamic jurisprudence views within the national legal system. Therefore, the influence of schools of thought on marriage law in Jordan is more accurately understood as a normative source that contributes to shaping legal policy regarding the position of guardians and women's authority in determining their marriages.

In Malaysia, the provisions regarding marriage guardians are regulated in *Islamic Family Law (Federal Territories) Act 1984 (Act 303)* which has undergone several changes. The regulation places a guardian as a crucial part in the implementation of the marriage contract for Muslim women. However, if the guardian refuses to marry the woman without justifiable reasons, the Sharia court can appoint a guardian-judge to replace the lineal guardian in carrying out the contract. Thus, the Malaysian legal system maintains a strong concept of guardianship, but provides a legal mechanism if the guardian's authority actually prevents a woman from entering into marriage (Islamic Family Law (Federal Territories), 1984).

These provisions demonstrate that the influence of the Shafi'i school of thought in Malaysian family law is not rigidly applied. The guardian's position remains intact, but the state provides a solution when the guardian fails to exercise his or her authority properly. The appointment of a guardian-judge through the Sharia courts represents a compromise between the principle of guardianship and the need to provide legal protection to women. Thus, Malaysian family law demonstrates that Islamic jurisprudence norms can be maintained while also being adjusted through state policy to avoid creating obstacles for women in entering into marriage.

A comparison of the laws of these five countries shows that the influence of Islamic jurisprudence (*fiqh*) on the regulation of marriage guardianship in positive law varies. Indonesia and Malaysia both maintain a guardianship as a crucial element in marriage. However, both countries also provide a judicial guardianship mechanism, which is authorized by the state when the lineal guardian is

unable to perform his duties or refuses to act as guardian in the marriage contract. This demonstrates that the application of fiqh in family law is not simply a direct adherence to fiqh provisions but also through a process of codification and adaptation to each country's national legal system (Syahputera & Ferdiyan, 2022).

In a broader context, these differences indicate that the relationship between Islamic jurisprudence (*fiqh*) and positive law in regulating marriage guardianship in Muslim countries does not follow a uniform pattern. While Islamic jurisprudence (*fiqh*) schools can form the basis for establishing family law, the state retains the authority to select, codify, and adapt fiqh provisions to the institutional system and national legal needs. These differences in application then influence the position of guardians and the scope of women's authority in determining their marriage (Zayyadi et al., 2023). Iran demonstrates the influence of the Ja'fari school of thought by granting greater latitude to previously married women in determining their marriage. Jordan demonstrates the influence of the Hanafi school, which provides relative flexibility to adult women, while Iraq exhibits a regulatory pattern that attempts to accommodate the diversity of Islamic jurisprudence traditions through the role of the courts.

Based on this comparison, it is clear that the relationship between Islamic jurisprudence (*fiqh*) and positive law regarding guardianship in marriage does not follow the same pattern in every country. While Islamic jurisprudence (*fiqh*) is one of the primary sources of consideration in the formation of family law, the state still plays a role in selecting, codifying, and adapting these provisions to national legal needs. This process results in differences in the status of guardians and the level of women's authority in determining marriage. Countries that strongly maintain the role of guardians tend to place them as a key element in the marriage contract, while countries that emphasize women's legal capacity provide greater space for women, especially widows, to determine their own marriages. An overview of the implementation of guardianship in various Muslim countries can be seen in the following table:

**Table 3.** Implementation of Different Views on Marriage Guardianship in Family Law in Muslim Countries

| Country   | Family Law Regulations                                                  | Dominant Sect Policy      | Marriage Guardian Regulations                        | Widow's Position                                                               |
|-----------|-------------------------------------------------------------------------|---------------------------|------------------------------------------------------|--------------------------------------------------------------------------------|
| Indonesia | Compilation of Islamic Law (Presidential Instruction No. 1 of 1991)     | Sunni (Shafi'i)           | Guardian is a pillar of marriage                     | Widows are still married by their guardians                                    |
| Iran      | <i>Civil Code of the Islamic Republic of Iran</i>                       | Ja'fari Shia              | Guardian is only required for virgin women           | Widows can marry themselves                                                    |
| Iraq      | <i>Iraqi Personal Status Law No. 188 of 1959 (amended)</i>              | Sunni–Ja'fari combination | Guardians have a supervisory function                | Widows can marry without the consent of a guardian                             |
| Jordan    | <i>Jordanian Personal Status Law No. 15 of 2019</i>                     | Sunni (Hanafi)            | Guardians are still recognized in marriage contracts | Widows can marry without the permission of their guardian.                     |
| Malaysia  | <i>Islamic Family Law (Federal Territories) Act 1984 (amended 2006)</i> | Sunni (Shafi'i)           | Guardian is a valid requirement for marriage         | If the guardian refuses without a valid reason, the judge can act as guardian. |

### Conclusion

This study concludes that views on the role of a guardian in a widow's marriage contract vary across Islamic jurisprudence schools. The Shafi'i, Maliki, and Hanbali schools continue to consider a guardian a crucial element in the marriage contract. Conversely, the Hanafi school provides adult women with greater opportunity to perform the marriage contract themselves, while still adhering to the provisions of the Islamic jurisprudence. *kafā'ah* The Ja'fari Shia school of thought recognizes the right of an adult widow with legal capacity to perform a marriage contract without a guardian. Comparing these findings reveals two main patterns in determining women's authority in marriage: authority that still

involves a guardian and authority that rests on the woman's legal capacity to determine her own marriage.

These differing views are also reflected in family law regulations in several Muslim countries, although their implementation follows the legal systems of each country. Indonesia and Malaysia maintain the role of guardians in marriage, while Iran grants broader authority to women with prior marital experience. Jordan and Iraq exhibit relatively more open regulations regarding guardianship. These findings demonstrate that school of thought is one of the foundations for the formation of family law, but its application can undergo change and adjustment through the process of legislation formation and national legal systems. From a theoretical perspective, this study demonstrates that the relationship between guardianship and women's authority in Islamic family law takes various forms. Practically, the research findings can be used as study material to understand the position of widows in marriage contracts, taking into account differences in Islamic jurisprudence and the legal regulations applicable in each country.

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