

Gender Relations in the Legal Construction of Marriage Guardians: An Analysis of Women's Positions and Male Authority

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Abstract

This study discusses gender relations in modern households, focusing on the pattern and factors of domestic labor division between dual-earner couples. The research is motivated by the persistence of patriarchal culture that causes unequal domestic roles despite women's increasing participation in the public sphere. The aim of this study is to analyze the forms of domestic labor division, the influencing factors, and the efforts to achieve equality within modern households. Using a qualitative descriptive approach through a literature review of academic sources and statistical data, the results indicate that domestic work division is influenced by economic factors, working hours, cultural norms, education level, presence of children, and power relations in the family. Efforts to promote equality include fostering awareness and communication, utilizing household technology, and providing emotional support between partners. In conclusion, gender equality in domestic life can be achieved when husbands and wives build cooperative relationships grounded in justice and compassion as taught in Islam.

Keywords: *Gender equality, domestic labor division, dual-earner couples, modern household, family relations.*

Abstrak

Penelitian ini membahas tentang relasi gender dalam rumah tangga modern dengan fokus pada pola dan faktor pembagian kerja domestik antara suami dan istri yang sama-sama bekerja. Latar belakang penelitian ini berangkat dari masih kuatnya budaya patriarki dalam masyarakat yang menyebabkan ketimpangan peran domestik, meskipun perempuan telah turut berkontribusi dalam ranah publik. Penelitian ini bertujuan untuk menganalisis bentuk pembagian kerja domestik, faktor-faktor yang memengaruhinya, serta upaya untuk mewujudkan kesetaraan peran dalam rumah tangga modern. Dengan menggunakan pendekatan kualitatif deskriptif melalui kajian pustaka terhadap berbagai sumber akademik dan data statistik, hasil penelitian menunjukkan bahwa pembagian kerja domestik dipengaruhi oleh faktor ekonomi, jam kerja, norma budaya, tingkat pendidikan, kehadiran anak, serta relasi kuasa dalam keluarga. Upaya yang dapat dilakukan untuk menciptakan keadilan domestik antara lain melalui kesadaran dan komunikasi yang setara, pemanfaatan teknologi rumah tangga, serta dukungan emosional antara pasangan. Kesimpulannya, kesetaraan gender dalam rumah tangga dapat terwujud apabila suami dan istri mampu menumbuhkan kerja sama yang adil dan berlandaskan nilai-nilai Islam tentang keadilan dan

kasih sayang.

Kata Kunci: Kesetaraan Gender, Pembagian Kerja Domestik, Suami Istri Bekerja, Rumah Tangga Modern, Relasi Keluar.

INTRODUCTION

According to Islamic law, the term marriage is a marriage that is described with the meaning of *mitssaqaan ghalidzan*, which is a very strong contract for the sake of carrying out obedience to Allah's commands and its implementation is considered as worship.¹ One of the basic elements of marriage is *shigat ijab kabul* (marriage contract) where the declaration of *ijab* is made by the guardian of the marriage and the statement of *kaubul* is made by the prospective groom or his representative with two people as witnesses (Akhtar, 2018).

Marriage Guardians are one of the pillars of marriage that must be fulfilled for the Indonesian Muslim community when they want to carry out a marriage. Through the guardian, the marriage contract will be able to be carried out and can determine whether or not a marriage is valid. The existence of the *wali* in the procession of the marriage contract is used as a person who acts to pledge *ijab* from the bride to the groom. What is meant by a *wali nikah* is a man from the bride's side (Lahaji & Ibrahim, 2019).

The necessity of a guardian in the marriage contract is basically aimed at maintaining the benefits and safeguarding the rights of the person under his guardianship (Jalil & Wirnanda, 2020a). With such an intention, some scholars used to require the presence of a male guardian from the bride's side when carrying out the marriage contract procession. This is because, at that time, scholars viewed that women were considered as people who were less able to act perfectly. Therefore, it is impossible for women to become guardians of marriage. However, if the parameter is a person who has the criteria of ability to act perfectly (mature and reasonable), then an adult woman can also be seen as a person who has these criteria.

Along with the development of awareness of gender injustice today, there is a need to review various provisions in Islamic marriage law. Islamic marriage law as discussed in *fiqh* books turns out to contain various provisions that are gender-biased. This is understandable because the various books of jurisprudence were compiled at a time when the dominant episteme followed androcentric norms (Rahyu & Muzhaffar, 2022).

Among the provisions in Islamic marriage law that are important to be reviewed are related to the issue of guardianship in marriage. This is because in the *Isla* marriage law the existence of a guardian for women is a harmony in marriage, so it seems to place women as parties who are not legally competent, so they must be protected, because if not, then the marriage is invalid. Such a provision is of course very discriminatory against women (Laili & Santoso, 2021).

Departing from these conditions, a critical study of the concept of guardianship in Islamic marriage is important to be carried out. This study effort is not intended to deny the teachings of Islam or reduce the authority of Islamic legal sources, but to reinterpret the provisions of *fiqh* that have been understood textually and ahistorically. The reinterpretation needs to be carried out taking into account the social, historical, and epistemological context when the provision was formulated, as well as being associated with the social realities of contemporary Muslim society that have undergone significant changes, especially in terms of education, legal awareness, and women's social position.

This approach is in line with the main purpose of Islamic sharia (*maqāṣid al-syarī'ah*) which

places justice, benefit, and protection of human dignity as fundamental principles. In this framework, women are seen as subjects of the law who have full competence to act, as long as they meet the requirements of maturity and common sense. Thus, Islamic marriage law is not only normative-dogmatic, but also responsive to social dynamics and able to answer the challenges of gender injustice that still occur in the practice of marriage in society.

RESEARCH METHODS

This research is a qualitative research on literature with a theological-normative approach that focuses on the analysis of Qur'anic verses, hadith of the Prophet (peace be upon him), and the opinions of scholars in classical fiqh books that are relevant to the object of study (Rasyid et al., 2020). The research data is sourced from primary materials in the form of the Qur'an, hadith, and classical fiqh literature, as well as secondary materials in the form of supporting books and scientific journals. Data is collected through qualitative-analytical analysis to reveal the principles and arguments of Islamic law, then inferred inductively based on the results of the study.

RESULTS AND DISCUSSION

The Concept and Normative Basis of the Law of Marriage Guardians in the Qur'an, Hadith, and Classical Fiqh

A guardian is a guardian who has a kinship or direct blood relationship with the bride. Given the importance of the role of the guardian in the implementation of the marriage contract, the sharia stipulates a number of conditions that must be met by the guardian, including that they must be independent, mature, sensible (mukallaf), fair, and male. In principle, the guardian of the nasab comes from a woman's legal lineage, starting from her biological father. However, if the father cannot act as a guardian, then the guardianship rights are transferred to the nearest male relative according to the order of priority of the closest blood relationship to the female (Jaafar et al., 2020).

In the book of Islamic Fiqh wa Adillatuhu, the order of marriage guardians according to the Shafi'iyah School starts from:

1. Dad
2. Grandfather, i.e. father of father and so on
3. Siblings
4. Brother of the Spaniard
5. Brother Brother
6. Brother Brother
7. Uncle, who is the brother of the biological father
8. Uncle, who is the brother of the father
9. Uncle's son who is as close as father
10. The uncle's son who is the same as his father.
11. Al-Mu'tiq, i.e. the one who liberates women who are below his guardianship.
12. Judge.

The issue of marriage guardians has been regulated normatively in human life. It is based on the following legal sources:

1. Al-Qur'an

There are several verses in the Qur'an that indirectly hint at the existence and authority of guardians in marriage, including:

a. QS. An-Nur: 32

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِنْ يَكُونُوا فُقَرَاءَ يُعْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Marry those who are still single among you and also those who are worthy (to marry) from your servants, both male and female. If they are poor, God will empower them with His grace. Allah is Vast and All-Knowing.

b. QS. al-Baqarah: 232

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

If you think of your wives, and their iddah is over, then you (the saints) should not prevent them from marrying again with their future husbands, if there is a willingness between them in a ma'ruf way. That is what is advised to those who believe among you in Allah and the Hereafter. It is better for you and more holy. Allah knows, but you do not know.

c. QS. al-Baqarah: 221

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ تُؤْمِنَ ۚ وَلَٰمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ ۚ وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۚ وَبَيِّنُ الْآيَاتِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ ۚ

Do not marry polytheistic women until they believe! Indeed, a faithful female servant is better than a polytheistic woman, even though she attracts your heart. Nor should you marry polytheistic men (to believing women) until they believe. Indeed, a faithful male servant is better than a polytheistic man even if he attracts your heart. They invite to hell, while Allah invites them to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they can learn lessons.

2. Hadits

In the hadith of the Prophet can be found many hadiths that underlie the existence of wali in marriage. Among them are:

a. Hadith narrated by Abu Dawud about the annulment of marriage due to the absence of a guardian

حَدَّثَنَا مُحَمَّدُ بْنُ قُدَامَةَ بْنِ أَعْيَنَ حَدَّثَنَا أَبُو عُبَيْدَةَ الْحَدَّادُ عَنْ يُونُسَ وَإِسْرَائِيلَ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَىٰ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا نِكَاحَ إِلَّا بِوَلِيِّي قَالَ أَبُو دَاوُدَ وَهُوَ يُونُسُ عَنْ أَبِي بُرْدَةَ وَإِسْرَائِيلُ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي بُرْدَةَ

It has been narrated to us Muhammad bin Qudamah bin A'yan, has narrated to us Abu 'Ubaidah Al Haddad from Jonah, and Israil from Abu Ishaq from Abu Burdah from Abu Musa that the Prophet said, "There is no (invalid) marriage except with a guardian." Abu Daud said, Jonah narrated from Abu Burdah, while Israel narrated from Abu Ishaq from Abu Burdah.

b. Hadith narrated by Ahmad bin Hanbal about no marriage without a guardian

حَدَّثَنَا وَكِيعٌ وَعَبْدُ الرَّحْمَنِ عَنْ إِسْرَائِيلَ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي بُرْدَةَ عَنْ أَبِيهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا نِكَاحَ إِلَّا بِوَلِيِّي

He narrated to us Waki' and Abdurrrahman from Isra'il from Abu Ishaq from Abu Burdah from his father he said, the Messenger of Allah said, "There is no marriage (invalid) except with the presence of a wali."

c. Hadith narrated by al-Turmudzi about widow's marriage

حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ أَخْبَرَنَا شَرِيكَ بْنُ عَبْدِ اللَّهِ عَنْ أَبِي إِسْحَقَ وَحَدَّثَنَا قُتَيْبَةُ حَدَّثَنَا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَقَ ح وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ إِسْرَائِيلَ عَنْ أَبِي إِسْحَقَ ح وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَبِي زِيَادٍ حَدَّثَنَا زَيْدُ بْنُ حُبَابٍ عَنْ يُونُسَ بْنِ أَبِي إِسْحَقَ عَنْ أَبِي إِسْحَقَ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا نِكَاحَ إِلَّا بِوَلِيِّ قَالَ وَفِي الْبَابِ عَنْ عَائِشَةَ وَابْنِ عَبَّاسٍ وَأَبِي هُرَيْرَةَ وَعِمْرَانَ بْنِ حُصَيْنٍ وَأَنْسٍ

Narrated to us Ali bin Hujr, narrated to us Shari'ah bin Abdullah from Abu Ishaq and narrated to us Qutaibah, narrated to us Abu 'Awanah from Abu Ishaq and replaced it with narration: narrated to us Muhammad bin Bashar, narrated to us Abdurrahman bin Mahdi and Isra'il from Abu Ishaq: Abdullah bin Abu Ziyad, narrated to us Zaid bin Hubab from Yunus bin Abu Ishaq from Abu Ishaq from Abu Ishaq from Abu Musa said, the Messenger of Allah said, "It is not valid to marry unless there is a guardian." (Abu Isa At Tirmidhi) said, "The hadith is narrated from Aisha, Ibn Abbas, Abu Hurairah, Imran bin Hushain and Anas."

3. Classical Fiqh

As in various legal cases, the issue of marriage guardians has also become a polemic of Fuqaha. The cause is the difference in determining whether the marriage guardian includes the conditions and pillars of marriage or not. The Malikiyah, Shafi'iyah and Hanabilah groups make wali as one of the requirements for marriage (Bakari & Darwis, 2019). According to Imam Shafi'i, the pillars of marriage consist of five things, namely: husband-to-be, wife-to-be, marriage guardian, two witnesses, and ijab qabul. Meanwhile, the Hanafiyah school of thought that the existence of a guardian is a valid condition for marriage only for those who are immature (*ṣaghīr* or *ṣaghīrah*) and for people who are not of common sense, even if they have reached adulthood. Meanwhile, for women who are mature and sensible, both virgins and widows, no party has the power to marry her. Women in this category have the right to marry themselves to the man of their choice, as long as her future husband is considered *sekufu* (*kafā'ah*). However, if the prospective husband is not a match, the guardian has the right to reject or cancel (*fasakh*) the marriage contract (Kudhori, 2017)

According to the majority of scholars (the majority of scholars), marriage without a guardian is declared invalid. They are of the opinion that a woman should not marry herself, and this opinion is based on the hadith of the Prophet (peace be upon him): "A woman should not marry another woman, nor should she marry herself." (HR. Ibn Majah from Abu Hurairah).

In addition, there is a hadith that states:

"Any woman who marries without the permission of her guardian, then her marriage is null and void. If there has been a conjugal relationship, then the man is still obliged to give a dowry as compensation for the relationship that has legalized the woman's honor. If the guardians refuse to marry her, then the ruler (judge) is authorized to act as guardians for the woman who does not have a guardian." (HR. Ahmad bin Hanbal, Abu Dawud, al-Tirmidhi, and Ibn Majah from Aisha).

Imam al-Shafi'i also strengthened his view by referring to the words of Allah SWT in Surah QS An-Nur verse 32 regarding the matter of marrying those who are still single, both men and women, and in surah al-

Baqarah (2): 232 which means:

"... So do not prevent them from remarrying their future husbands..."

According to Imam al-Shafi'i, this verse is the clearest evidence showing the necessity of a wali in a marriage contract, because Allah's prohibition on wali will not be meaningful if marriage can be carried out without a wali (Khoiruddin, 2020).

In contrast to Abu Hanifah, Zufar, Ash-Sha'bi, and Az-Zuhri who argued that a woman can perform her marriage contract without a guardian. Imam Abu Hanifah allowed a woman to marry without a guardian, either by marrying herself or by asking others outside her line of descent to perform a marriage contract, both for girls and widows. The hadith of the Prophet that is used as the basis for this opinion includes:

1. "A woman is more entitled to herself than her wali"
2. "The guardian has no right to interfere in the affairs of the widow."
3. Hadith about the case of al-Khansa who was forcibly married by his father. This received a response from the Prophet who did not recognize the marriage. More completely, the Prophet at that time did not ask about the status of his girl or widow.
4. The hadith about the case of Um Salamah when she was proposed by the Prophet PBUH. Immediately he conflated to um Salamah about the absence of a wali who did not merit. Then the position of guardian was represented by Umar at the request of the Prophet PBUH.

The hadith shows that no one from the guardians of Um Salamah was present at the time of the marriage, as mentioned in her narration. On the other hand, this hadith also affirms that the wali does not have the right to refuse marriage just for the reason of unfounded dislike. Thus, the rejection of the wali is not considered valid if the marriage has met the requirements of kafa'ah (equivalence), especially since the validity of the marriage contract does not depend on the execution by the wali. Based on this understanding, the Hanafiyah school distinguishes the position of women in relation to guardians into two categories, namely widows and girls. For widowed women, the existence of a guardian is not a valid requirement for marriage. As for girls, guardians only function to be asked for permission (Jalil & Wirnanda, 2020). This is based on the consideration that widows are more experienced and understand the affairs of life than girls, so that they are considered able to manage themselves without the need to involve others (their guardians), including in marriage matters. According to Ibn 'Abidin and al-Kasani, who are scholars of the Hanafiyah School, the existence of a wali is only a valid condition for the marriage of an immature child, a person who is not sensible (crazy), and a servant of sahaya (slave). As for women who are mature, sensible, and independent (mukallafah), their marriage is still considered valid even if it takes place without the permission or approval of their guardian.

Gender Relations Built in the Legal Construction of Marriage Guardians

The term gender still often causes confusion, especially because for some people this concept is still relatively new so it is often misinterpreted. Literally, a number of English dictionaries translate gender as gender (Nisaurasyidah, 2019). However, what is meant here is not gender in a biological sense, but a social, cultural, political, and religious construct that is built on the physical differences between women and men. Thus, gender refers to the study of behavior, roles, and social relations between men and women. This concept is different from sex or biological sex which is natural and unchangeable.

Gender differences are essentially not a problem as long as they do not cause injustice. However, in social reality, gender construction often gives birth to various forms of injustice for

men, especially women. Gender injustice is a product of social systems and structures that place men and women as the disadvantaged parties by these mechanisms (Meo & Boro, 2021). Gender issues are strengthened when it is realized that the gender difference between men and women has given birth to injustice in various forms such as marginalization or economic impoverishment, subordination or unimportant assumptions in political affairs, stereotypes or negative images for women. The image of women in question is only to struggle with the 3Rs (kitchen, well, mattress), violence, and double burden (double burden) against women. These manifestations cannot be analyzed in isolation because they are interrelated, related, and affect each other dialectically.

Gender injustice arising from social constructions and the prevailing system can also be seen in marriage regulations in Indonesia, especially in the regulation of marriage guardians. The positive legal provisions that apply through the Compilation of Islamic Law (KHI) place the existence of guardians as a pillar that must be fulfilled to realize a valid marriage contract. In KHI, the authority to become a marriage guardian is exclusively given to mature and sensible Muslim men from the male kinship line of the bride's side, according to the order of the hierarchy that has been established. This rule expressly closes the possibility for women and even their closest female relatives to carry out guardianship functions (Maghviroh, 2023).

The consequences of such a legal structure raise a number of problems, especially when the father and male relatives in the paternal line no longer exist. In such a situation, male relatives from the maternal line, such as the mother's brother, maternal grandfather, or other relatives, still do not have the authority as guardians. Guardianship is automatically transferred (*intiqal*) to the next male relative in the paternal line, although they may be socially or geographically distant. In addition, another problem arises when the wali is not willing to marry a woman without a justified reason, or what is known as wali 'adal. The case of wali 'adal shows how a highly patriarchal guardianship structure has the potential to limit women's autonomy in determining their life partner (Chaq, 2017).

Likewise, Susilaningsih still wants to highlight the importance of reviewing the position of women in marital guardianship in more depth, especially in relation to the power relations formed in it. Meanwhile, Alimatul Qibtiyah and Evi Sofia try to capture the substance behind the concept of guardianship which then comes to the view that a woman can actually act as a guardian for herself, or a mother can be a guardian for her daughter. This view shows an attempt to dismantle the guardianship structure that has been completely dominated by men. In contrast, Mahsunah, Soimah, and Aisyah still maintain the traditional view that the marriage guardian must remain and be exclusively held by the father, or transferred to a male relative in the line of descent if the father is not present. According to them, these provisions are part of religious teachings that are standard, universal, and cannot be changed. All three tend to keep their distance from debates that are considered to touch the sacred territory" in the practice of marriage, especially because they hold firmly to the construction of classical fiqh (Syarif, 2018).

In examining gender issues more deeply, there are a number of important issues in religious interpretation that need serious attention. One of them is the issue of women's subordination which arises from religious interpretations that place women in a lower position than men. In fact, in principle, the relationship between men and women in Islamic teachings is built on the principles of justice and equality.² If analyzed through the framework of gender justice, the provision of guardianship that is exclusively given to men can indeed be understood as another form of female

subordination which implies that women are considered not to have the full capacity to take care of their own contracts. However, if in this context what is used as a basis is the principle of moral equality and substantive justice between men and women, then the structure of the guardianship needs to be critically reviewed. Thus, the provision of guardianship should not be understood as a final and immutable rule, but rather as a historical socio-historical construction that can be reviewed. This reinterpretation is important so that the concept of guardianship remains in harmony with the value of justice which is the core of Islamic teachings. The substance of the existence of a marriage guardian is basically to ensure the benefits, ensure the clarity of the contract, and provide protection for the bride, not to put the woman in a position of less power.

CONCLUSION

Based on the results and discussion of the research, conclusions can be drawn, first, the jurists differ in their opinions about the necessity of a marriage guardian. Most scholars require wali as a valid element of marriage, while the Hanafiyah School allows mature and sensible women to marry themselves as long as the elements of kafa'ah are met. This difference shows that the provision of marriage guardians is the result of ijtihad that is not singular. Second, the provision of marriage guardianship that is exclusively given to men can be understood as the result of religious interpretations that have the potential to perpetuate women's subordination, even though in principle Islamic teachings place the relationship between men and women on the principles of justice and equality. Therefore, the structure of the trust should not be seen as a final and immutable provision, but rather as a socio-historical construct that is open to critical review. This reinterpretation is necessary so that the concept of marital guardianship remains oriented to its main goal, which is to realize the benefits, clarity of contracts, and protection for women, without eliminating the autonomy and moral capacity of women as equal subjects of the law.

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