

**EXISTENCE OF WITNESSES IN MARRIAGE
ACCORDING TO HADIST PERSPECTIVE**

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Abstract

A marriage contract is analogous to a sale and purchase agreement, then women are free or have the right to make a marriage contract, as women are free and have the right to enter into a contract of sale and purchase. Thus, women have the free right to make a marriage contract because there is no legal difference between contracts. In a marriage contract, although guardians have rights, they are not absolute. Guardians can only exercise their absolute trust rights if there is an error made by the woman in doing so or marrying an unequal male. It is said so because of the mistake of women in making a marriage contract, will also cause disgrace on his guardian in the future.

Keywords: Marriage; Hadist; Women

**INTRODUCTION**

to offspring. Thus, marriage is seen as something sacred because it justifies a relationship that was originally haram. Therefore, in terms of fiqh marriage is referred to as mitsaqan ghalidzan (read; sacred ties or agreements) between men and women to live together according to Islamic shari'ah provisions in building a sakinah family structure, mawaddah wa rahmah.

Provisions on the necessity of witnesses in marriage are indeed not explicitly and specifically regulated in the Koran. However, the rules or provisions regarding witnesses in marriage in detail, only found in the hadith of the Prophet. Even so, jumhur ulama are of the opinion that marriages that are carried out without witnesses are considered illegitimate. This is based on the provisions of the hadith which explicitly require (read; require) the presence of witnesses in marriage. It is recognized that the provisions regarding witnesses in marriage are only regulated in the hadith, but

The universality of Islamic teachings appears in its teachings which cover all aspects of human life, both relating to aspects of worship (mahdah) or those relating to aspects of muamalah (ghaer mahdah). Islamic teachings relating to aspects of muamalah include all the teachings that govern human relations with humans and human relations with their environment. Therefore, it can be said that the teachings of Islam which regulate the way humans interact in meeting their needs, are categorized as part of the muamalah aspect. Thus, it is no exaggeration to say that the muamalah aspect has a broader scope of worship aspects.

One very important aspect of your muamalah's life is the issue of marriage. In Islamic teachings, marriage is not only intended to legalize sexual relations between men and women, but more than that marriage is a legitimate and dignified way (read; justified by Islamic sharia) to give birth

perfect person, for the benefit of those under his guardianship.

In Islamic law, a guardian in a marriage is a condition that must be fulfilled for the bride who acts to marry her or give her marriage permission. If a marriage takes place without a guardian, it is expressly stated that the marital status is invalid. This affirmation, refers to the history of Aisha's tradition as follows:

Meaning: Sufyān bin Uyainah told us, from Ibn Juraij from Sulaimān bin Mūsa, from al-Zuhri, from Aisyah, that Rasūlullāh peace be upon him said: If a woman marries without her guardian's permission, her marriage is null and void. If the husband has been associating with him, then he has the right to receive dowry just to justify his farji. If the guardian is reluctant (giving permission), the guardian of the judge (the government) becomes the guardian for women who (considered) do not have a guardian. In this context, guardians are seen as one aspect of determining the validity of a marriage. Even guardianship in marriage has implications for the change of law from haram to halal. Therefore, Islam asserts that guardians in marriage are required to meet Shari'ah qualifications, that is, they must be independent, sensible, mature, people who are Muslim, male and fair.

In relation to the importance of the position of guardian in marriage, jumhur 'Ulama (Shafi'i, Malik and Ahmad bin Hanbal) argued that the guardian in marriage is one of the pillars of marriage. This means that a marriage is invalid (void) if there is no guardian. This is because women are seen as not allowed to (read; legitimate) marry themselves, even appoint others to marry, except those who are entitled to become trustees according to what has been stipulated in the Shari'ah. The necessity and placement of trustees as a harmony in marriage, based on several arguments, namely:

1. In QS. al-Nur (24) verse 32 Allah says:

it needs to be underlined that the hadith is the main source of Islamic law which is obligatory to be obeyed by Muslims. In this case, the Hadith occupies the second position after the Koran and functions as a parrot against the Koran. Although the hadith is the second source of Islamic teachings after the Koran, but in terms of transmission it is different from the Koran. Alquran in his narration took place in worry, while the hadith, part of his narration took place in worry, and some in ahad. Therefore, from the aspect of transmission, it is included in the zanniy al-wurud category. In this context, witnesses in marriage are still a controversy among scholars, especially regarding the existence of marriage witnesses. This is because the hadith on which the legal basis is still debated by the scholars. Therefore, the paper will focus on the discussion of the hadith that talks about witnesses in marriage.

DISCUSSION

1. Marriage guardian.

In Arabic, wali (al-waliy) is the islamic word of al-wilayah which means al-sultah (power) or al-qudrah (ability). Therefore, etymologically wali means shahib al-sultan or shahib al-qudrah (who has power and ability). Whereas terminalogically, a guardian is a person who has the power or ability to marry, namely the female biological father, the recipient of the will or the closest relatives and so on according to the order of the woman's asabah or wise person from the woman's family or local leader (judge).

According to Abu Zahrah that guardian is the power that applies to the desired contract. That means that the guardian is the owner of the power that applies to the desired contract. Therefore, Sayyid Sabiq stressed that guardian is a legal provision that can be imposed on others in accordance with their legal fields. Likewise, Muhammad Jawad al-Mughniyah interpreted guardianship in marriage as shar'iyah power over people under ability or mastery, which is bestowed upon a

him and I glorify you. Thus, it can be understood that this verse descended on Ma'qil's actions which obstructed his sister's desire to remarry with her ex-husband. That means that Ma'qil has custody of his younger sibling.

Meaning: From 'Ayesha ra. said, Rasulullah peace be upon him said that any woman married without his guardian's permission, then his marriage was canceled, his marriage was canceled, his marriage was canceled. If the man has sex with him, then he has the right to his dowry, because he has justified his honor. If the guardian is not willing to marry, then the judge will act as guardian for someone who does not have guardians. "

A different view was expressed by Abu Hanifah, Abu Yusuf, Imamiyah, Zufar, al-Sya'biy, al-Zuhriy and Daud that the guardian in marriage is only implied for women who are not yet mature, whereas women who are adults and widows may marry themselves. This means that the guardian is seen as not belonging to one of the pillars of marriage. Thus, the marriage is valid even without a guardian.

According to jumhur scholars from the Hanafi group that marriage is related to women, as mentioned in the QS. al-Baqarah {2} verse 230 and verse 232. Therefore, linking a job or business to the culprit, shows that he is the main actor. In the sense that the person who has the right to handle an assignment assigned to him is that person himself. Thus, if in the Qur'anic verse it is stated that women are the essential perpetrators of marriage, then that woman is entitled to the marriage. This means that if a woman is seen as a person who can marry herself, then women also have the right to represent themselves in the marriage aqad, whether there is consent from the guardian or not.

Furthermore, Hanafiyah scholars say that women are entitled to their marriages, based

..... وَإِمَائِكُمْ عِبَادِكُمْ مِنَ الصَّالِحِينَ مِنْكُمْ الْأَيَامَى وَأُنْكِحُوا

The translation: And marry those who are alone among you, and those who are worthy (of marriage) from your male servants and your female servants.

In general, this verse shows that a woman should not marry without a guardian. It is said so because the command to marry in this verse is to the wali, so the wali is seen as shahib al-qudrah or shahib al-shulthan (read; the holder of power or authority) to marry his guarded woman to him.

2. In QS. al-Baqarah (2) verse 221 Allah says:

يُؤْمِنُوا حَتَّى الْمُشْرِكِينَ تَنْكِحُوا وَلَا ...

The translation: And don't marry the polytheists (with mu'min women) before they believe.

This verse explains that Allah gave marriage to the man and not to the woman. Therefore, this verse seems to say that "O guardians; do not marry the woman whom you take care of with men who are still idolaters". That means the authority to marry a woman is a guardian.

3. In QS. al-Baqarah (2) verse 232 Allah says:

..... أَرْوَاجُهُنَّ يَنْكِحْنَ أَنْ تَعْضُلُوهُنَّ فَلَا

Her translation: ... then don't you (the guardians) prevent them from remarrying with their future husband ...

Asbab al-nuzul this verse is known from the history of Ma'qil bin Yasar who married his brother to a Muslim man. Some time later, he divorced with one divorce. After the end, they both wanted to come back again. So the man came with Umar ibn Khatthab to ask for her hand. Ma'qil answered: Hi wretch! I glorify you, and I marry you to my brother, but you divorce him. By God, I will not return it to you. "So this verse comes down which prohibits blocking the desires of the marriage of the two men. When hearing this verse, Ma'qil said: "I hear and I obey my Lord". He called the man and said: "I married you to

themselves and get their approval. Therefore, there is a *qarinah* (read; strong reason) which shows that the necessity of guardianship for women is relative.

c. In translating the word "لا" in the hadith *بِوَالِيٍّ إِلَّا نِكَاحٌ لَا*, it is not absolute and does not always mean "invalid" because sometimes the word "لا" is interpreted as "imperfect". The imperfection of a marriage contract does not mean invalid.

2. Witness in Marriage

Etymologically, a witness is a noun meaning "one who sees or knows". In the Indonesian dictionary, witnesses have several meanings, namely:

a. People who see or know for themselves an event or event.

b. People who are present at an event and are considered to know the event, so they can provide information that justifies that an event or event actually happened.

c. People who explain and provide information in front of the judge for the benefit of the accuser or the defendant.

In Arabic, witnesses are referred to as *شاهد*, those who know and explain what they know by witnessing or seeing it with the eyes of an event. In the Dictionary of al-Munawwir the word *shaheed* (*shaheed*) refers to the meaning of attending, bringing and witnessing with the eyes. Whereas Sayyid Sabiq stated that *shaheed* (witnesses) is synonymous with the word *'Islam* (notification). A more detailed understanding of the witness was stated by al-Jauhari that the witness is the person who is responsible for the testimony and presents it, because he witnessed something (case) that other people did not witness.

In a marriage event, a person or several people who witness or attend a marriage contract are referred to as a marriage witness. However, marital witnesses are specifically interpreted as people who are

on the hadith narrated by the Jama'ah of hadith experts except Bukhari from Ibn Abbas who said:

عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ النَّبِيُّ أَحَقُّ بِنَفْسِهَا وَالْبِكْرُ يَسْتَأْمِرُهَا أَبُوهَا وَإِنْتَهَا صُمَّائِهَا

That is; From Ibn 'Abbas that the Prophet said the Widow was more entitled to him. And the girl should be asked for permission in her case. And his permission is his silence.

In this context, according to the author's analysis that the existence of a guardian is considered important in a marriage, but its existence is not to the degree of absolute obligation (relative). Therefore, not all marriages that are held without a guardian are considered illegal. Thus, the obligation to have a guardian for women cannot be generalized to all women, but only to certain women. The implication of the law is that women who are not yet mature, slave girls and women who are deemed incompetent to do the law, are required (read; required) to have a guardian in the marriage contract. As for widows, free women, capable girls, the existence of guardians in their marriages is recommended (read; circumcision).

The arguments presented are as follows:

a. The Qur'anic texts and the hadith that explain about guardians for women, some are interpretive (*dzanni*) and some are casuistic. Therefore, all women must be legalized in a less proportional marriage guardian.

b. On the one hand, there are traditions that require a guardian for women, but on the other hand there are traditions that give authority to women to marry

¹Abu 'Abd al-Rahman Ahmad bin Syu'aib al-Nasa'iy, *Sunan al-Nasa'iy, Jilid III* (Bairut: Dar al-Fikr, 1980), h. .85

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given the mandate or are asked to be witnesses in a marriage contract. Witnesses in marriage are harmony and conditions. Therefore, the marriage must be witnessed and the absence of witnesses in the marriage contract has legal consequences on the illegality of the contract.

The Koran does not explicitly explain the witnesses in the marriage contract, except witnesses in the sale and purchase agreement and witnesses when the husband will reconcile, but the instructions are found in the hadith. For this reason, jurists disagree over the position of witnesses in marriage, especially whether the witnesses in marriage are a condition of perfection that is demanded before a married couple engages in sexual relations, or is a legal condition for marriages that demanded their presence at the time of the marriage contract.

CONCLUSION

Referring to the description that has been stated above, the following conclusions are drawn:

1. The hadith about witnesses in marriage from the path of Ibn Majah is categorized as garib because it is only through the path to the Holy Prophet. Ibn Mundhir called it a weak tradition. While the hadith through the route of Abu Dawud who has mutabi 'and with a variety of paths of sanad, categorized as a tradition that has a good quality sanad. Therefore, regardless of the view of Ibn Mundhir, according to the author, the existence of witnesses in marriage has a basis or reference in the hadith.

2. There are two basic views about the existence of witnesses in marriage from the perspective of the hadith. On the one hand, jumhur ulama place witnesses as the pillars and conditions of marriage, so marriages without witnesses are null and void. Whereas on the other hand, witnesses in marriage do not become harmonious and marital conditions, so that marriages without witnesses are still considered valid.

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