



Comparative Analysis of the Istinbath Methods of the Shafi'i and Hanafi Schools Regarding the Role of the Wali Mujbir in Marriage Law

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Abstract

This study provides an understanding of the differing istinbath methods (legal derivation) between the Shafi'i and Hanafi schools regarding the designation of wali mujbir (compelling guardian). The right of a wali mujbir is only applicable to a minor daughter or widow, as an adult woman is considered capable of choosing her own partner without the guardian's consent. This distinction highlights the contrasting approaches of the Shafi'i and Hanafi schools in defining the role and application of a wali mujbir. The focus of this research is the comparative analysis of istinbath methods between these two schools regarding wali mujbir, utilizing a qualitative, literature-based methodology with a normative approach. The normative approach involves a review of sources, including the Qur'an, Hadith, Islamic jurisprudence texts, books relevant to the discussion, Islamic law journals, and other references related to wali mujbir. The findings suggest that, in safeguarding women's rights, this concept may be less appropriate in modern contexts. Although the practice of wali mujbir remains common in Indonesia, particularly as the Shafi'i school is widely followed, it nonetheless conflicts with Indonesia's Law No. 1 of 1974, as stipulated in Chapter II, Article 6, paragraph (1).

Keywords: *istinbath, Shafi'i school, Hanafi school, wali mujbir, marriage law*

Introduction

In the discourse of Islamic jurisprudence on guardianship in marriage, the Hanafi school offers a distinctive and compelling perspective. This school asserts that a guardian does not have the authority to compel marriage upon an adult daughter. This concept underscores that a

guardian lacks the right to arrange a marriage for an adult woman without her full consent. If such a marriage is conducted without her approval, its validity becomes *mauquf*, meaning it is contingent upon her agreement to validate or nullify the union (Daud, 2021). In this context, the right of a *wali mujbir*, or compelling guardian, applies only to minor daughters or unmarried minors. The primary rationale behind this provision is the belief that an adult woman is considered capable of choosing her life partner independently, without interference or unilateral decisions from a guardian. Consequently, if an adult woman rejects a proposed marriage, the marriage contract cannot proceed (Ainiyah, 2020).

The Maliki, Shafi'i, and Hanbali schools prohibit a woman from marrying herself off, restricting the role of guardian to a male figure. A further implication of this is that only the Hanafi school does not require absolute consent from the woman for marriage, while the Maliki, Shafi'i, and Hanbali schools recognize the *ijbar* right of the guardian, granting him authority to marry off the woman without her consent (Mughtar, 2019). This *ijbar* right refers to the guardian's authority, specifically the father or, if absent, the paternal grandfather, known as the *wali mujbir* (Khoiruddin, 2020).

The majority of scholars explain that there is a difference of opinion on who has the right to marry off a minor. According to Imam Malik and Imam Ahmad ibn Hanbal, only the father, a designated guardian, or a judge has the authority to arrange such a marriage due to the father's compassion and genuine desire for his child's welfare. Judges and assigned guardians hold a similar position to the father, sharing a vested interest in protecting the child's well-being and associated benefits. Given the variation in legal rulings among Islamic schools of thought on this issue, the author has chosen to examine the opinions of Imam Abu Hanifa and Imam Shafi'i, as their views are considered the most controversial among the four main schools, each offering distinct legal arguments. The author is thus interested in exploring the legal foundations behind the perspectives of Imam Abu Hanifa and Imam Shafi'i regarding the *wali mujbir*.

The issue of *wali mujbir* has particular relevance for Indonesian Muslims, as it intersects with cultural traditions, Islamic law, and marriage practices. *Wali mujbir* refers to the guardian, typically the father or grandfather, who has the authority to marry off his daughter or granddaughter without her consent. In Indonesia, this concept is significant for several reasons: it reflects traditional cultural values that emphasize family authority in marital decisions, aligns with traditional interpretations of Islamic jurisprudence, and influences marriage practices in communities where family consent and arrangement play a central role. This issue raises questions not only about individual autonomy in marriage but also about the need to balance respect for cultural heritage with evolving understandings of personal rights and consent in the marital process.

In many Muslim communities across Indonesia, the extended family plays an essential role in marriage arrangements, with the guardian—usually the father or grandfather—possessing the

authority to select a spouse for his daughter. Although this practice is not always strictly enforced, the tradition of a guardian's right to choose a husband for his daughter persists, largely due to the concept of *wali mujbir* found within the Shafi'i school, which is widely followed in Indonesia. In a patriarchal social structure, this guardian role is often deemed crucial for upholding family honor and protecting women. However, as awareness of women's rights and the importance of autonomy in choosing a life partner increases, *wali mujbir* has become a focal point of ongoing debate between advocates of traditional guardian rights and those who support female autonomy.

Today, the relevance of *wali mujbir* is increasingly questioned, especially concerning women's rights, personal freedom, and issues surrounding forced marriages. Although Indonesia's Marriage Law does not explicitly address the right of *wali mujbir*, the guardian's role remains acknowledged within the marriage process. This creates space for debate regarding the boundaries of the guardian's authority: does the guardian's right extend beyond the wishes of the woman he intends to marry off? Amid Indonesia's evolving social and religious context, this issue gains significance as it touches upon the intersection of religious teachings, cultural traditions, human rights, and social change, which increasingly demands gender equality. Based on this context, this study focuses on a comparative analysis of the *istinbath* (legal derivation) methods between the Shafi'i and Hanafi schools regarding *wali mujbir*. The objective is to explore the concept of *wali mujbir* from the perspectives of these two schools, a topic that continues to be a matter of discourse and debate within the Indonesian Muslim community.

Method

The research approach employed is a normative-comparative approach. According to Fletcher (2006), this approach allows for a detailed examination of legal principles across different schools of thought, enabling a comparison of their interpretations and applications. By using this method, the study seeks to analyze the normative aspects of *wali mujbir* within the Shafi'i and Hanafi schools, identifying both the similarities and distinctions in their legal perspectives. This study analyzes classical and contemporary Islamic legal texts from madhhab Shafi'i and Hanafi related to the role of *wali mujbir* in marriage law. The goal is to compare the *istinbath* method (law-making process) of the two schools and see how they interpret the role of *wali mujbir*. This type of research is qualitative research that is descriptive-analytical. The data obtained from various sources of Islamic law are categorized and analyzed in depth to find out the differences in the *istinbath* methods of the two schools. Data sources are books, journal articles, and Islamic legal literature that discuss the comparison of the two schools. The results of research and contemporary fatwas from ulama institutions related to the role of *wali mujbir*. Data Collection Techniques, Library Research: Data was obtained from literature studies by examining various classical and contemporary *fiqh* books from both schools. This literature study

also involves the analysis of legal documents related to marriage in the Shafi'i and Hanafi madhabs. Comparative Analysis: This technique is used to compare the *istinbath* method between the two schools in deciding the law of *wali mujbir*. Differences in methodology in the use of legal sources such as the Qur'an, Hadith, Ijma', and Qiyas will be analyzed.

Results and Discussion

Legal Istinbat Method of Wali Mujbir

Abdul Wahhab Khallaf explains that the *istinbat* method according to Imam Abu Abdullah Muhammad al-Shafi'i involves formulating fundamental principles by identifying evidences from the text, then conducting a thorough and precise analysis to examine the relationship between these principles and the evidence and proofs mentioned (Andiko, 2023). The outcome of this analysis forms the established legal principles used as foundational rules.

Imam Abu Abdullah Muhammad al-Shafi'i's method of *istinbat* regarding his stance on *wali mujbir* (compelling guardian) is quite similar to that of Imam Abu Hanifa. Like Imam Abu Hanifa, al-Shafi'i uses the Qur'an as the primary source. Although the Qur'an does not explicitly mention guardianship in text, its contextual references imply the presence of a guardian, as seen in Surah an-Nisa, verse 6: "And test the orphans until they reach marriageable age. Then if you find them sound in judgment..." (Aulia, 2022).

According to Imam al-Shafi'i, the verse implies that matters concerning orphans or minors under guardianship rest with the guardian. Maturity is reached when a child attains 15 years of age, for both boys and girls, or when a boy experiences nocturnal emission as a sign of puberty, and a girl reaches menarche. This aligns with the marriage of Aisha to the Prophet Muhammad (PBUH), where Aisha's father, Abu Bakr as-Siddiq, married her off at the age of six, as he had the right over his daughter's marriage (Hafizh, 2022).

The second *istinbat* method al-Shafi'i uses is *hadith*. Although they draw from the same hadith, Imam Abu Hanifa and Imam al-Shafi'i interpret it differently regarding *wali mujbir*. Al-Shafi'i interprets the hadith, "A widow has more right over herself than her guardian, and a virgin should be asked permission, and her silence is her consent" (Fadillah, 2021), as differentiating the need for consent between a widow and a virgin. For a virgin, silence signifies agreement, while a widow has full control over her decision, meaning a guardian cannot force her into marriage without her consent (Aditya, 2023).

Al-Shafi'i interprets the term *al-Ayyim* in the hadith specifically as referring to a widow. This contrasts with Imam Abu Hanifa, who interprets *al-Ayyim* as a woman who has never been married, whether a widow or a virgin. Consequently, only a widow has complete authority over herself, while a virgin may be married by her father without her explicit consent (Diyansya, 2022). This indicates that a virgin may be married off by her father without her explicit approval.

The Prophet Muhammad (PBUH) stated regarding a virgin girl, "Her consent is indicated by her silence." This ruling generally applies to any virgin when her consent for marriage is sought; her silence suffices as an indication of approval, due to her natural sense of shyness. Therefore, her silence serves as an implicit sign that she does not object to the marriage. In contrast, a widow's consent requires explicit verbal affirmation, as her sense of modesty has lessened due to prior marital experience (Tarantang, 2022).

In his book *Al-Umm*, Imam al-Shafi'i explains the concept of *wali mujbir*, or a guardian who has the right to marry off his daughter without her explicit consent. He elaborates, "Imam al-Shafi'i said: If someone is the guardian of a woman (widow or virgin) and marries her off without her permission, the marriage is invalid, except for a father who marries off his virgin daughter and a master who marries off his female slave, for the Prophet (PBUH) annulled the marriage of Khansa, daughter of Khudham, when her father forced her into marriage." The Prophet's only response was to say, "If you wish to honor your father by approving the marriage he arranged." Thus, if her consent for the marriage is acknowledged, it suggests that the Prophet advised Khansa to accept her father's arrangement due to the father's significant authority over her (Hussain, 2019).

Imam al-Shafi'i's view implies that a father can marry off his virgin daughter without her explicit consent. As he said, "Any woman, whether virgin or widow, who is married off by her guardian without her consent, the marriage is invalid, except for a father marrying off his daughter." Therefore, the right to marry off without consent, known as the right of *ijbar*, applies exclusively to the father.

This opinion by Imam al-Shafi'i is based on a hadith about Khansa bint Khudham. Khansa was married to a man chosen by her father, whom she did not favor, so she reported the matter to the Prophet Muhammad. The Prophet gave Khansa the option to annul or continue the marriage. According to Imam al-Shafi'i's contextual interpretation of this hadith, the Prophet advised her to accept the marriage because a father's authority is considerable, in that he better understands what benefits his daughter (Asmawi, 2020). The *wali mujbir* is thus defined as a guardian (the father, or the grandfather if the father is absent) who has the right to marry off his daughter, even without her consent. Any other guardians (besides the father or grandfather) do not hold the status of *wali mujbir* (Nurdin, 2022).

In the Shafi'i school, the object of *wali mujbir* is a virgin daughter (*al-bikr*), whether she has reached puberty or not. The basis for the right of *ijbar* held by a *wali mujbir* lies in the fact that the person under his guardianship is a virgin (*al-bikr*). The Shafi'i school's legal rationale is supported by the hadith, "From Ibn Abbas, the Messenger of Allah (PBUH) said, 'A widow has more right over herself than her guardian, and her consent is expressed through her silence.'" (HR. Abi Dawud) (Mahdi, 2021). This hadith indicates that a widow holds authority over herself,

and thus, by implication (*mafhum mukhalafah*), if a woman is still a virgin (*al-bikr*), the right of marriage remains with her guardian.

Wali Mujbir In Madhhab Hanafi

The founder of the Hanafi school of thought, Imam Abu Hanifa al-Nu'man bin Thabit, was born in Iraq in 80 AH/699 AD during the Umayyad rule under Abdul Malik bin Marwan. Known by the title Abu Hanifa, this name was not derived from a son named Hanifa, but rather from the Arabic word "Hanif," meaning one who inclines towards the true faith—a reflection of Abu Hanifa's deep dedication to worship and strict observance of religious duties (Mawardi, 2022). Another account suggests that he earned the title due to his adherence to *Abu al-Millah al-Hanifah*, as referenced in the verse, "Follow the religion of Abraham, the upright" (Djafri, 2021).

Imam Abu Hanifa was of Persian descent, with his family originally from Kufa. His father was born during the time of Caliph Ali, who is said to have prayed for both Abu Hanifa's grandfather and father, blessing them to have a pious lineage. Like other children of his time, Abu Hanifa memorized the Qur'an at a young age and later studied with Imam Ashim, one of the renowned Seven Reciters (*Qira'at Sab'ah*). Coming from a family of merchants, Abu Hanifa naturally gravitated towards commerce, establishing himself as a successful and ethical trader (Adiah, 2022).

This background in trade shaped his pragmatic approach to Islamic jurisprudence, emphasizing reasoned deduction and analogical reasoning (*qiyas*) over strict textual interpretation, setting the foundation for the Hanafi methodology. Abu Hanifa's contributions went beyond jurisprudence to include a significant influence on legal reasoning that prioritizes flexibility and societal welfare, making the Hanafi madhhab one of the most adaptable and widely followed schools of Islamic law across the Muslim world.

Legal Istinbat Method of Wali Mujbir

Imam Abu Hanifa's *istinbat* (deductive reasoning) method regarding the role of a *wali mujbir* (compelling guardian) primarily draws on Quranic verses as his legal foundation. One key verse he references is in Surah al-Baqarah (2:232), which states: "If you divorce women, and they fulfill their term, do not prevent them from remarrying their (future) husbands if they agree to it in a fair manner." This verse establishes a prohibition for guardians against preventing a woman from marrying a suitor of her choice if he is deemed *sekufu* (of equal status). However, the guardian may object if the chosen suitor is not *sekufu*, thus preserving the guardian's role in ensuring compatibility (Khoiri, 2022).

Additionally, Imam Abu Hanifa considers the verse in Surah al-Baqarah (2:230), which states: "If he divorces her (after the second divorce), she is no longer lawful to him until she marries another husband. If the latter divorces her, then there is no sin upon them (the former

husband and wife) to reunite if they think they can uphold the limits of Allah.” Here, the term *al-Ayyim* (unmarried woman) in this verse, according to Imam Abu Hanifa, includes both virgins and widows—any woman without a husband, regardless of her marital history (Ridlo, 2022).

This interpretation signifies that a woman has the inherent right to contract her own marriage, supporting her autonomy in marriage decisions. Imam Abu Hanifa’s understanding of these verses led him to conclude that the *wali mujbir’s* authority should not override a woman’s choice in marriage, particularly when she has reached maturity and is capable of making independent decisions. Thus, while the guardian has a role in advising and ensuring compatibility, he does not possess absolute control over the woman’s marriage choices, especially if her decision aligns with fairness and compatibility, as prescribed in the Quran.

Definition of Wali Mujbir

According to Imam Abu Hanifa, *wali ijbar* (compelling guardianship) applies to minor females, whether virgins or widows, as well as to adult women who are mentally incompetent, and to enslaved women (Afiq, 2021). This view clarifies that *wali mujbir* or compelling guardianship is specifically aimed at young girls, regardless of whether they are virgins or widows, and also includes adult women who lack legal capacity, such as those who are mentally unfit or lack legal understanding. In his view, *wali ijbar* thus serves as a protective and directive measure for those unable to independently make sound marital decisions due to age or mental incapacity.

In another text, the Hanafi school defines *wali mujbir* as a guardian who possesses the right to arrange marriage for those under his guardianship without requiring their consent (Arafat, 2021). However, this right is contextually limited by the woman’s mental and legal capacity. For a minor or legally incompetent woman, the guardian’s authority is deemed necessary for safeguarding her welfare and ensuring a marriage arrangement that aligns with family and legal considerations. For instance, in the case of a mentally sound adult woman, her consent is essential, and thus the *wali mujbir’s* authority does not override her personal choice if she is capable of making an informed decision. This approach demonstrates a nuanced application of *wali mujbir*, balancing the guardian’s role in protecting vulnerable women with respect for the agency of those deemed capable of exercising their own judgment in marital decisions.

Table 1. Differences Between Hanafi and Shafi'i Schools on *Wali Mujbir*

Aspect	Hanafi School	Shafi'i School
Understanding	Applies to minor females, both virgins and widows, and adult women who are mentally incompetent.	Applies to virgin girls (<i>al-bikr</i>), whether they have reached puberty or not.

Requirements for Wali Mujbir	Emphasis on the guardian's ability to ensure compatibility (<i>kafaa'ah</i>) with the prospective husband.	Focuses on a harmonious relationship among the guardian, the girl, and the future husband. There should be no hostility between any parties.
Hierarchy of Guardians	Includes siblings, half-siblings, uncles, and their male descendants.	Limited to the father, and in his absence, the grandfather. Other relatives cannot act as <i>wali mujbir</i> .
Method of Legal Derivation (Istinbath)	Qur'an: Surah Al-Baqarah (2:232) - Preventing forced restrictions on marriage choices. Hadith: Emphasizes the adult woman's autonomy. Analogy (Qiyas): Compares marriage to commercial transactions, not requiring a guardian for adults.	Qur'an: Surah An-Nisa (4:6) - Guidance for the guardianship of orphans. Hadith: Specifies that a widow has control over herself, while a virgin's silence signifies consent. Analogy (Qiyas): Only the father may compel marriage, as supported by the example of Khansa bint Khudham.

According to Imam Abu Hanifa, guardianship in marriage only applies to *wali mujbir*—a guardian who can marry off the person under their care without her explicit consent. He holds that an adult, rational woman has the right to marry herself, stating, “A woman who has reached puberty and possesses intellect may contract her own marriage.” For Abu Hanifa and his student Zufar, guardianship over an independent, rational, and mature woman, whether virgin or widow, is considered recommended (*sunnah*) rather than obligatory. This recommendation serves to uphold Islamic customs and ethical values, allowing women to take charge of their marital decisions based on their own choice and will (Muhammad, 2022).

From Imam Abu Hanifa's perspective, *wali mujbir* is a guardian who can marry off a female without her consent, particularly in the cases of young girls, mentally incompetent adults, and formerly enslaved women who have been freed. Furthermore, this guardianship could also extend to young or mentally incapacitated males. The underlying rationale (*'illat*) for this form of guardianship, as Abu Hanifa sees it, is mental incompetency (*ghairu 'aqil*). He believes that the right of *ijbar* (compulsion in marriage) belongs to the father, the grandfather, and other male relatives within the *asabah* (agnatic kinship) circle (Tillah, 2022).

In the Hanafi school, mental competency is not a strict requirement for the marriage contract. Therefore, a guardian, such as the father or another eligible male relative, is permitted to arrange the marriage of a mentally incapacitated male or female—whether young or adult, virgin or widow—under the concept of compulsory guardianship. This type of guardianship is viewed as obligatory to safeguard the interests and rights of individuals who cannot make decisions independently due to their vulnerabilities. Imam Abu Hanifa and Zufar regard the guardianship over an independent, rational, mature woman as a matter of *sunnah* rather than necessity, aimed at preserving social customs and ethical values upheld by Islam (Hariati, 2023).

In Imam Abu Hanifa's view, a woman should be empowered to contract her marriage according to her own choice and free will. However, if she prefers, she may delegate the marriage contract to her guardian as a sign of respect for cultural norms and Islamic values. This allowance serves to balance personal autonomy with adherence to the customs and ethics promoted by Islam, showing flexibility within the Hanafi framework for marriage contracts (Syam, 2023).

Comparison between the Hanafi school and the Shafi'i school about Wali Mujbir

The Hanafi and Shafi'i schools of thought hold differing views on the concept of *wali mujbir* (compelling guardian), with each presenting distinct interpretations and applications. According to the Hanafi school, the object of *wali mujbir* is any young girl who has not yet reached puberty. They define childhood as the period before a girl reaches maturity, and thus a *wali mujbir* (such as a father or other close male relative) is entitled to arrange her marriage without needing her consent (Muhammad, 1995). The Hanafi reasoning is based on the idea that a minor lacks legal capacity to make binding decisions, especially in complex matters like marriage. By giving the guardian this authority, the Hanafi school aims to protect the child's best interests and avoid potentially harmful decisions made without sufficient life experience. Consequently, the Hanafi perspective emphasizes rational considerations (*at-taqdiri*), reasoning that once a girl reaches puberty, the guardian's right of compulsion (*ijbar*) in marriage ceases to exist.

In contrast, the Shafi'i school maintains that the *wali mujbir* has authority over a virgin girl (*al-bikr*), regardless of whether she has reached puberty. This means that according to Shafi'i thought, a guardian retains the right of *ijbar* over a woman who is mature but remains a virgin. The Shafi'i rationale hinges on the understanding that as long as a woman is a virgin and has not engaged in a marital relationship, her guardian retains the *mujbir* status. They define a virgin as someone who has not had sexual relations, even if she engaged in prohibited intercourse (*zina*); hence, her legal status remains that of a virgin. Similarly, a woman who was divorced before consummating her marriage (i.e., *qabla dukhul*) is still considered a virgin (*al-bikr*) by the Shafi'i school. This status impacts the determination of a guardian's *mujbir* role, as it is based on her marital experience rather than societal views of her as a "divorcee" or "widow" (Dimyati, 2009).

Furthermore, not all marriage guardians (*wali nikah*) are eligible to act as *wali mujbir*. The Hanafi school specifies that the right of *wali mujbir* is restricted to guardians from the *asabah* (male agnatic kin), which follows the same hierarchy as inheritance law. This order begins with the father, followed by male relatives in descending order: paternal siblings, half-brothers, sons of paternal siblings, uncles, and their male descendants. The Hanafi method prioritizes proximity in the agnatic lineage, ensuring that closer male relatives can act as *wali mujbir* while excluding more distant ones (Muhammad, 1995).

The Shafi'i school, however, limits the role of *wali mujbir* strictly to the father and, in his absence, the paternal grandfather. This limitation is based on a straightforward interpretation of the relevant Hadith, rather than analogical reasoning (*qiyas*) as in the Hanafi approach. According to Shafi'i jurisprudence, only these direct paternal figures hold the authority of *wali mujbir*, and no other relative, regardless of proximity, may act in this capacity. The Hanafi school, by contrast, employs *qiyas* to equate guardianship with inheritance rules, favoring close kin who can prevent more distant relatives from exercising this right (mahjub principle), while the Shafi'i school adheres strictly to textual sources from Hadith, underscoring a more limited and defined scope for *wali mujbir*.

In summary, the Hanafi school allows broader applications of *wali mujbir*, focusing on rational considerations and analogies from inheritance law, while the Shafi'i school restricts this authority based on specific Hadith texts, thus narrowing the eligible guardians and emphasizing the marital status (virginity) of the woman in question. This divergence reflects each school's unique approach to balancing individual rights with the protective role of the guardian within the Islamic legal framework.

The *wali mujbir* holds the right of *ijbar* (compulsion) over those under his guardianship; however, this right is not absolute or automatic, as certain conditions must be met before it can be exercised. According to the Hanafi school, the *ijbar* right can only be applied if the guardian can present a prospective groom who is compatible (*sekufu*) with the woman under his care. This requirement for compatibility serves to protect the woman's interests and provide a balance to the *wali mujbir's* authority. The Hanafi school mandates that the potential husband must meet compatibility standards in five areas: lineage, freedom status, religious commitment, wealth, and occupation (Amin, 2003). This ensures that the guardian's choice aligns with the woman's social and cultural standards. If the requirement of *sekufu* is not enforced, there is a risk that the guardian might select a spouse based solely on his own preferences without considering the suitability of the match.

The Shafi'i school shares a similar view that the *ijbar* right of the *wali mujbir* is not unconditional. Specific criteria must be satisfied before the guardian can enforce his authority. These conditions include the following (Dimiyati, 2009):

- **No Hostility Between the Guardian and the Woman:** This requirement implies that the guardian should not select a groom out of personal vendetta or any animosity towards the woman. This prevents any malicious intent where the guardian might choose a spouse to punish or disadvantage the woman, rather than to serve her welfare.
- **No Hostility Between the Woman and the Prospective Groom:** This condition aims to prevent discord within the future marriage. If there is known enmity between the woman and the proposed groom, such a match is likely to lead to marital discord, undermining the purpose of marriage as a source of harmony and mutual support.

- **Compatibility with the Woman:** The prospective husband must be compatible (*sekufu*) with the woman, so that she willingly accepts the guardian's choice. In the Shafi'i school, compatibility includes being free from marital disqualifications such as insanity or contagious diseases like leprosy. Additional criteria include financial independence, good lineage, stable employment, and moral uprightness.
- **Ability to Pay the *Mahr*:** The prospective groom should be financially capable of providing the marriage dowry, as this reflects his ability to fulfill his responsibilities in marriage, including providing for his wife.
- **Provision of a *Mahar Mithil*:** This means the dowry should be in line with what is customary for women of similar social standing within her community.
- **Compliance with Local Customs:** The dowry amount and arrangement should align with the customs and traditions of the region, ensuring that the marriage adheres to societal norms and expectations.
- **Immediate Payment of *Mahr*:** The dowry should be given directly and in full, underscoring the groom's financial readiness and commitment to his marital responsibilities.

Both schools thus place conditions on the *ijbar* right to ensure that the guardian's authority serves the best interest of the woman. The Hanafi school emphasizes compatibility in five specific areas, while the Shafi'i school adds further conditions, including the absence of hostility and ensuring the groom's financial and social stability. These requirements aim to balance the guardian's right with safeguards for the woman's well-being, aligning marriage arrangements with Islamic values of fairness, protection, and respect for personal compatibility.

The fifth, sixth, and seventh conditions for *wali mujbir* (compelling guardian) in marriage are interrelated, emphasizing that while the type of guardianship is *mujbir*, not every aspect of the marriage arrangement should cater solely to the guardian's wishes. Specifically, the dowry (*mahr*) must be *mithil*—in accordance with what is customary for women of similar social status within the local community. This condition ensures that the dowry amount aligns with local customs rather than being arbitrarily decided by the *wali mujbir*, thereby alleviating concerns that the guardian might impose his own preferences without regard for fairness. Furthermore, the requirement for the dowry to be paid immediately aims to respect the bride, honoring her rights and signifying her importance in the marriage.

Analysis of Hanafi and Shafi'i Views on Wali Mujbir

The concept of *wali mujbir* in marriage, in both the Hanafi and Shafi'i schools, originates from juristic reasoning (*ijtihad*) based on several verses of the Qur'an, including Surah Al-Baqarah (2:232), which states, "If you divorce women and they reach the end of their waiting period, do not prevent them from remarrying their [future] husbands if they mutually agree in a fair manner. This is instructed for those among you who believe in Allah and the Last Day; this is purer for you and more virtuous. Allah knows, and you do not know." This verse has been subject

to various interpretations by scholars. Some scholars argue that the prohibition mentioned here highlights the incompleteness or imperfection of a marriage without the consent of the *wali* (guardian) and witnesses.

In legal terms, the concept of “imperfection” can be interpreted to mean that the presence of a *wali* and witnesses is not an absolute requirement for a valid marriage. According to some interpretations, a marriage conducted without the involvement of a *wali* or witnesses can still be considered valid, although it lacks an ideal form or full completeness. In this view, the role of the *wali* and witnesses is regarded as *sunnah*—recommended but not obligatory—rather than as an essential element (*rukun*) of marriage. This perspective suggests that, while the *wali* and witnesses contribute to the social and ethical completeness of the marriage, their absence does not necessarily invalidate the contract (al-Zuhaili, 1989).

This interpretation varies across schools of thought. The Hanafi school tends to be more flexible regarding the role of the *wali* in marriage, viewing the guardian’s involvement as recommended rather than mandatory, particularly for adult, rational women. In contrast, the Shafi’i school upholds the necessity of a *wali* in marriage, especially in cases involving a virgin bride. The Shafi’i emphasis on a *wali mujbir* highlights a preference for parental guidance and protection, while also acknowledging the bride’s rights by requiring the dowry to be customary and paid immediately, reinforcing her dignity and autonomy within the boundaries of Islamic tradition. Thus, both schools strive to balance the guardian’s authority with safeguards that uphold the rights and dignity of the bride in the marriage contract.

The explanation provided aligns with the Hanafi school’s reasoning regarding *wali mujbir*. Some scholars question the validity of certain actions, leading to the conclusion that such actions—such as marriage—are invalid if they do not meet certain legal conditions. Within the legal context, if the absence of a guardian or witnesses is understood as a deficiency in the essence of the marriage itself, then, according to this view, the marriage would be invalid. This perspective aligns with the Shafi’i school, which maintains that a guardian (*wali*) is a fundamental element (*rukun*) of marriage; thus, a marriage conducted without a *wali* is considered invalid.

The *wali mujbir* holds the *ijbar* right, allowing him to marry off his daughter or ward without requiring her consent (Usman, 1992). Both the Hanafi and Shafi’i schools agree on the basic concept of *wali mujbir* as described here, but they differ in defining its application—specifically, who qualifies as the *wali mujbir* and what conditions must be met. The Hanafi school, for instance, limits the *ijbar* right to parents while the child is a minor; once the child reaches maturity (*baligh*), the guardian’s *ijbar* right is no longer applicable (Muhammad, 1995). The Hanafi school argues that an adult woman is considered legally competent and therefore capable of independently managing her marriage contract without guardianship.

The Hanafi school also draws on analogical reasoning (*qiyas*) to support its view of *wali mujbir*. In this analogy, an adult woman who has reached maturity is legally capable, so she

should have autonomy in matters such as marriage. This interpretation is reinforced by a hadith narrated by Ibn Abbas, in which a young woman approached the Prophet Muhammad (PBUH) to express her dissatisfaction with a marriage arranged by her father. The Prophet permitted her to make her own choice, signifying that, upon reaching maturity, a woman should have the right to consent to or reject marriage proposals (Sulaiman, 1994). For the Hanafi school, this hadith serves as a foundational basis indicating that the authority of *wali mujbir* does not extend to adult women, and their *ijbar* authority only applies to minor girls.

It is natural for the Hanafi school to rely on analogical reasoning and logical deduction (*at-taqdiri*), as these approaches form part of its identity. From the beginning, Hanafi jurisprudence has heavily utilized analogies as a core aspect of its legal methodology. However, this school does not rely solely on analogies; it also incorporates supporting hadith that align with its legal principles.

The Shafi'i school, on the other hand, maintains that the *wali mujbir's* authority applies as long as the woman is a virgin (*al-bikr*). According to Shafi'i thought, the *ijbar* right remains in effect for a virgin, regardless of her age. This interpretation is supported by a hadith narrated by Aisha, who said: "The Prophet Muhammad (PBUH) married me when I was six years old, and we consummated the marriage when I was nine" (Al-Nasai, 2012). The Shafi'i school interprets this hadith to mean that a guardian's right to compel marriage remains valid as long as the woman remains a virgin. For them, this underscores the idea that *ijbar* is not limited by the woman's age or maturity but rather her marital status as a virgin.

While both Hanafi and Shafi'i schools agree on the concept of *wali mujbir*, they differ in defining its scope. The Hanafi school limits *ijbar* to minors, relinquishing it once the woman reaches maturity. This approach is grounded in both analogical reasoning and hadith that support the woman's autonomy upon adulthood. The Shafi'i school, however, maintains that *ijbar* applies to any virgin, regardless of age, emphasizing a more text-based interpretation that upholds the guardian's authority until the woman marries, based on the precedence of hadith from Aisha's marriage to the Prophet Muhammad (PBUH). These differences reflect each school's distinctive approach to balancing guardian authority with individual rights within Islamic marriage law.

The above hadith is understood by the Shafi'i school to indicate that a widow has the right to make decisions about her own marriage. By contrast, the *mafhum mukhalafah* (opposite understanding) implies that if a woman is still a virgin (*al-bikr*), her right to marriage decisions lies with her guardian. The wording in the hadith is interpreted by the Shafi'i school as a *sunnah* (recommended) directive rather than a strict command, as the language is not assertive, except in reference to widows, where the hadith clearly states that a widow has the right to marry herself. According to the Shafi'i school, the term "widow" in this context specifically refers to a woman who has had marital relations (Dimiyati, 2009).

Both the Hanafi and Shafi'i schools agree on the concept of *wali mujbir*, each outlining specific conditions for its implementation, as discussed in earlier chapters. Implicitly, both schools take women's rights into account. Scholars argue that if the conditions for *wali mujbir* are fulfilled, a woman's rights are indirectly respected because these conditions ensure that her interests are safeguarded, even though she does not explicitly choose her spouse.

When analyzing the concept of *wali mujbir* in the context of Indonesia, the Hanafi perspective seems to align more closely with the legal and cultural landscape. This is largely due to the Hanafi school's emphasis on *maslahah* (public interest), which is a principle upheld by prominent Indonesian scholars, such as KH. MA. Sahal Mahfudh. Mahfudh supports the Hanafi view for *wali mujbir* in Indonesia because it is seen as providing greater benefits to society. The Hanafi stance also aligns well with Indonesian marriage regulations, where the legal age for marriage is set at 19 for men and 16 for women (as per the Indonesian Marriage Law No. 1 of 1974, Article 7(1), and Article 15(1) of the Compilation of Islamic Law).

In Hanafi jurisprudence, a woman who has reached the age of 16 is considered mature (*baligh*), and therefore, the *ijbar* right of the guardian is no longer applicable. This aligns with Indonesian law, effectively eliminating the role of *wali mujbir* for women who are of marriageable age under Indonesian law. According to the Marriage Law, marriage is only permitted if the man is at least 19 years old and the woman is at least 16 years old, while the Compilation of Islamic Law reaffirms this age requirement for the sake of family welfare.

The Hanafi approach is deemed more favorable in the Indonesian context because it respects the woman's right to choose her spouse, reflecting modern values that recognize individual autonomy in marriage decisions. Since the woman ultimately sustains the marriage and its continuity, the Hanafi view is seen as more suitable for Indonesian society, where a woman's freedom to choose her partner is integral to the stability of the marriage. If the Shafi'i approach were applied in Indonesia, it might result in limited benefit. Under the Shafi'i view, if an adult woman is still a virgin, her *wali mujbir* retains the right to marry her off without her consent. This could lead to potential conflicts, as the lack of prior acquaintance with the chosen husband and the absence of mutual choice could increase the likelihood of marital discord and even divorce. By adhering to the Hanafi perspective, Indonesian law aims to reduce such risks, supporting a marriage model where women have a say in their choice of spouse, contributing to a more stable and harmonious marital relationship.

Conclusion

This study identifies significant differences in the *istinbath* (legal derivation) methods between the Shafi'i and Hanafi schools regarding the role of *wali mujbir* (compelling guardian) in marriage law. The Shafi'i school emphasizes the importance of the *wali mujbir's* role, particularly in marrying off a woman who has never been married, based on the understanding

that the guardian has a responsibility to ensure the welfare and honor of the woman. This approach relies on evidence from the Qur'an, Hadith, Ijma' (consensus), and Qiyas (analogy), where the guardian is viewed as a protector of women's rights.

Conversely, the Hanafi school prioritizes the freedom of an adult woman in choosing her spouse without needing the approval of a *wali mujbir*, except in the case of younger women. The Hanafi approach is more rational and socially oriented, granting adult women greater autonomy in determining their marital choices. Both schools illustrate variation in the use of *shari'ah* sources, with the Shafi'i school leaning toward a literal interpretation of texts, while the Hanafi school adopts a more flexible approach, interpreting the texts with a focus on public benefit (*maslahah*) and individual freedom. In the modern context, these differences offer alternative perspectives on women's rights in marriage and the relevance of the *wali mujbir's* role in today's society.

It is recommended that the Religious Affairs Office (KUA) provide comprehensive education to those involved in marriage, including guardians, prospective husbands, and prospective wives, to better understand the marriage process and legal requirements, especially concerning the role of the *wali mujbir*. This awareness can help society understand the concept of *wali mujbir* in alignment with religious guidance and current legislation. Additionally, fathers should be educated on when to assume the role of *wali mujbir* and how their daughters can navigate situations where they may defer to their guardian or independently make marital decisions. This understanding is essential to avoid perceptions of forced marriage, ensuring that marriages fulfill their purpose of building a sacred, loving, and compassionate family (*mawaddah wa rahmah*). Future research should explore the practical application of *wali mujbir* in contemporary Indonesian society, examining its alignment with local laws and the evolving perspectives on women's autonomy in marriage. Further studies could also investigate the impact of these legal interpretations on marital satisfaction and stability, especially in cases where the *wali mujbir's* role is exercised

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