

An Analysis of Fiqh Learning Materials On The Validity Of A Fasiq Guardian In Marriage: Perspectives From The Four Sunni Madhhabs And The Compilation Of Islamic Law

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ABSTRACT

This study examines the learning materials of the four major schools of Islamic jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali) in comparison with the *Compilation of Islamic Law* (KHI) in Indonesia regarding the validity of a *fāsiq* guardian (*wali fāsiq*) in marriage. The issue of guardianship in marriage holds a central position within Islamic family law because the presence of a guardian (*wali*) constitutes one of the legal pillars (*arkān*) of marriage. The problem arises when the appointed guardian is in a state of *fisq*—known for committing major sins, persistently engaging in disobedience, or lacking moral integrity. This condition creates a juridical and theological debate among classical jurists concerning whether such a guardian retains legal authority or is disqualified.

Using a normative-juridical and comparative approach, this research analyzes primary classical sources of fiqh, modern scholarly contributions, and statutory frameworks. Data were collected through a library study of authoritative fiqh texts, scholarly journals, and the *Compilation of Islamic Law*. The study finds that the Hanafi school tends to permit the *wali fāsiq* to exercise guardianship, emphasizing the preservation of marriage validity. Conversely, the Maliki, Shafi'i, and Hanbali schools generally reject the authority of a *fāsiq* guardian, grounding their argument on moral integrity (*ʿadālah*) as a prerequisite for guardianship. The KHI aligns more closely with the Shafi'i perspective, emphasizing the moral qualifications of the guardian to ensure justice, harmony, and protection of women's rights in marriage contracts.

The findings highlight the significance of integrating classical jurisprudence with the socio-legal context of Indonesia. By aligning statutory regulations with ethical principles derived from the Shafi'i tradition, the KHI strengthens legal certainty and moral accountability in family law. This research contributes both theoretically and practically to the development of Islamic family law in Indonesia, offering insights for judges, legal practitioners, and Islamic scholars in

addressing contemporary marital issues.

Introduction

The study of Islamic family law continues to draw attention in both classical and contemporary scholarship, particularly regarding the role and qualifications of guardians (*awliyāʾ*) in marriage. Marriage (*nikāḥ*) within Islamic law is not merely a civil contract but a sacred covenant (*mīthāq ghalīẓ*) that entails legal, spiritual, and social consequences. Among the essential pillars (*arkān*) of marriage is the presence of a guardian (*walī*), especially for women. The legitimacy of the guardian has thus become a subject of juristic debate, particularly when the guardian falls into the category of *fāsiq*—a person whose persistent sinful conduct compromises moral integrity (*ʿadālah*) (Al-ʿAwfī, 2012).

The issue of a *walī fāsiq* (immoral guardian) touches on a fundamental question: does the guardian's lack of moral uprightness disqualify him from exercising authority in marriage, or does his legal capacity remain intact despite his moral flaws? This question carries significant implications not only for the validity of marriage but also for the safeguarding of women's rights and the stability of family institutions. The Qur'an emphasizes that guardianship in marriage must be based on justice and responsibility. As stated in Q. al-Nisā' [4]:35:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

"And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted with all things."

Although this verse addresses reconciliation in marital disputes, it underlines the principle that family-related authority must be exercised by individuals of integrity and sincerity. A guardian who lacks such qualities may compromise the very purpose of marriage in Islam.

Historical and Doctrinal Background

Classical jurists across the four Sunni schools of law (*madhāhib*) developed distinct perspectives on the qualifications of a marriage guardian. The Hanafi school, with its emphasis on contractual validity, tends to allow a *walī fāsiq* to act as guardian, provided the formal requirements of marriage are met. In contrast, the Maliki, Shafi'i, and Hanbali schools generally stipulate *ʿadālah* (moral probity) as a condition for guardianship, thereby disqualifying a guardian who is *fāsiq* (Ibn Qudāmah, *al-Mughnī*, vol. 9, p. 350).

The divergence in juristic opinions reflects broader methodological differences. The Hanafis often prioritize procedural validity and the prevention of hardship, whereas the Shafi'is, Malikis, and Hanbalis stress the ethical dimension of legal authority. As Ibn Rushd notes in *Bidāyat al-Mujtahid*, legal rulings are shaped not only by textual sources but also by considerations of justice, social order, and moral accountability (Ibn Rushd, 2003).

Contemporary Indonesian Context

The question of the *wali fāsiq* acquires renewed urgency in Indonesia, where Islamic family law is codified in the *Kompilasi Hukum Islam* (KHI). The KHI, promulgated in 1991, draws heavily from the Shafi'i tradition yet adapts to the Indonesian socio-legal context (Cammack, 2020). Article 20 of the KHI specifies that guardians must fulfill certain legal and moral qualifications. The codification thereby seeks to ensure that marriage guardians are not merely formal actors but individuals capable of safeguarding the rights and dignity of the bride.

Nevertheless, in practice, cases occasionally arise where a legally recognized guardian is morally compromised, whether through criminal conduct, neglect of religious duties, or persistent injustice. Such situations raise pressing questions for judges, practitioners, and scholars: should marriages solemnized by a *wali fāsiq* be considered valid? If not, how should the law balance between maintaining marital stability and upholding ethical standards?

Research Gap and Significance

While several studies have examined guardianship in Islamic law, comprehensive analyses that compare the four schools of fiqh with the KHI in the specific context of the *wali fāsiq* remain limited. Previous research has tended to focus on the general role of the guardian (Suharto, 2021; Rahman, 2022) or on comparative studies between fiqh and statutory law (Nurdin, 2020). However, the moral qualifications of guardianship, particularly the case of the *wali fāsiq*, have not been extensively addressed in contemporary Indonesian legal scholarship.

This study thus aims to fill the gap by analyzing:

1. The perspectives of the four major schools of fiqh on the validity of the *wali fāsiq* in marriage.
2. The position of the *Compilation of Islamic Law* on the qualifications of guardianship.
3. The theoretical and practical implications of reconciling classical jurisprudence with the Indonesian statutory framework.

The significance of this study lies in its dual contribution. Theoretically, it enhances the understanding of comparative Islamic jurisprudence by situating classical debates within a contemporary statutory context. Practically, it provides guidance for judges, legal practitioners, and policymakers in resolving disputes and formulating regulations that uphold both legal certainty and moral accountability Permadi et al. (2025).

Objectives

The primary objectives of this research are as follows:

- To critically examine the doctrinal foundations of the four Sunni schools of fiqh regarding the validity of a *wali fāsiq* in marriage.
- To analyze the provisions of the *Compilation of Islamic Law* concerning guardianship and their alignment with classical jurisprudence.
- To explore the relevance of these findings for the development of Islamic family law in Indonesia, particularly in safeguarding the rights and dignity of women.

Structure of the Article

This article begins with a review of the methodological framework, outlining the normative-juridical and comparative approach employed in the study. The subsequent section presents the results and discussion, divided into sub-sections addressing the views of each school of fiqh, followed by an analysis of the KHI. The article then concludes with reflections on the theoretical and practical implications for Islamic family law in Indonesia.

Research Methods

This study adopts a **normative-juridical and comparative research approach** in order to examine the validity of a *wali fāsiq* (an immoral guardian) in marriage from the perspectives of the four schools of Islamic jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali) and the *Compilation of Islamic Law* (KHI) in Indonesia. The methodological design reflects the dual objectives of this research: first, to explore the doctrinal foundations of classical Islamic jurisprudence; and second, to analyze the statutory and socio-legal adaptations in the Indonesian context.

Normative-Juridical Approach

The normative-juridical approach focuses on Islamic legal norms as developed in authoritative sources of fiqh, statutory law, and judicial practice. It is based on the assumption that the validity of a guardian in marriage is fundamentally a legal question that requires examination through the lens of established legal texts and principles. This method allows the researcher to analyze provisions of Islamic family law as reflected in:

1. **The Qur'an and Sunnah** as the primary sources of Islamic law.
2. **Classical fiqh texts** from the four Sunni schools of law, which articulate detailed doctrines on guardianship (*wilāyah*) and its conditions.
3. **Secondary statutory sources**, particularly the *Kompilasi Hukum Islam* (KHI), which represents a codified adaptation of Islamic family law in Indonesia.

This approach is especially suitable because it enables a systematic exploration of whether the guardian's moral integrity (*'adālah*) is a condition of validity or simply a preferred quality.

Comparative Approach

The comparative approach complements the normative-juridical method by highlighting the doctrinal divergences and convergences among the four Sunni schools of law and between these schools and the KHI. The use of comparative analysis serves several purposes:

- **Doctrinal comparison:** Identifying how the Hanafi, Maliki, Shafi'i, and Hanbali schools differ in their treatment of the *wali fāsiq*, and the jurisprudential reasoning underlying these differences.
- **Contextual comparison:** Analyzing how the KHI incorporates, modifies, or diverges from classical fiqh doctrines, particularly in adapting Shafi'i principles to the Indonesian context.
- **Practical comparison:** Assessing the implications of these doctrinal positions for legal practice, especially in family courts where disputes over guardianship may arise.

The comparative method thus bridges the gap between classical jurisprudence and contemporary statutory law, offering a nuanced understanding of the problem.

Sources of Data

The data in this research are primarily **library-based**, encompassing both classical and contemporary sources:

1. Primary classical sources:

- *al-Mabsūt* by al-Sarakhsī (Hanafi)
- *al-Mudawwanah al-Kubrā* by Sahnūn (Maliki)
- *al-Umm* by al-Shāfi'ī (Shafi'i)
- *al-Mughnī* by Ibn Qudāmah (Hanbali)

These works provide direct access to juristic discussions on guardianship and the requirements of moral integrity.

2. Contemporary statutory sources:

- The *Compilation of Islamic Law* (KHI), particularly Book I on Marriage, Articles 20–23.
- Relevant Indonesian legislation and regulations pertaining to family law and marriage.

3. Secondary scholarly sources:

- Peer-reviewed journal articles published within the last five years that discuss Islamic family law, guardianship, and comparative jurisprudence.
- Books published within the last ten years addressing Islamic jurisprudence, family law, and the Indonesian legal system.

4. **Supplementary sources:**

- Commentaries by contemporary scholars and fatwas issued by recognized Islamic institutions, which shed light on how the issue of the *wali fāsiq* is addressed in modern contexts.

Method of Analysis

The analysis proceeds through several stages:

1. **Textual analysis:** Careful reading of classical fiqh texts to extract the explicit and implicit doctrines regarding guardianship, particularly the requirements of *‘adālah*.
2. **Comparative synthesis:** Juxtaposing the views of the four schools of fiqh with one another, identifying points of convergence and divergence.
3. **Statutory interpretation:** Examining the KHI provisions on guardianship, identifying their doctrinal foundations, and assessing their alignment with Shafi’i principles.
4. **Critical evaluation:** Assessing the strengths and weaknesses of each doctrinal position in light of contemporary needs, particularly in safeguarding women’s rights and ensuring legal certainty.

This analytical process enables the study not only to describe the existing doctrines but also to evaluate their relevance and applicability in the Indonesian context.

Validity and Reliability of the Research

To ensure validity and reliability, this study employs **triangulation of sources**, drawing upon classical fiqh texts, statutory law, and modern scholarly works. By integrating diverse sources, the research reduces the risk of bias and enhances the credibility of its findings. In addition, preference is given to peer-reviewed academic sources and authoritative fiqh manuals, ensuring that the analysis is grounded in recognized scholarship.

Limitations of the Research

As a library-based normative study, this research does not incorporate empirical field data such as interviews or court case observations. While this limits the scope of practical insights, it allows for a more in-depth doctrinal and comparative analysis. Further research could expand on this study by incorporating empirical perspectives, such as judicial interpretations of guardianship disputes in Indonesian religious courts.

Ethical Considerations

Since the research is based exclusively on textual sources, it does not involve human participants and thus poses no ethical risks. However, the study adheres to academic integrity by properly acknowledging all sources through in-text citations and references following APA 7th edition guidelines.

Results and Discussion

1. The Hanafi School

The Hanafi school, known for its flexible contractual approach to marriage, takes a distinctive position regarding the validity of a guardian who is morally deficient (*wali fāsiq*). According to the Hanafi jurists, the moral probity (*‘adālah*) of the guardian is not an absolute condition for the validity of guardianship. Instead, the central concern is the preservation of the marriage contract itself, which is regarded as a legal mechanism to regulate personal and social life (Al-Sarakhsī, *al-Mabsūt*, vol. 5, p. 12).

In Hanafi jurisprudence, the function of the guardian is primarily administrative rather than moral. The guardian's role is to facilitate the marriage contract, ensuring that formal conditions—such as the presence of two witnesses, the offer (*ijāb*) and acceptance (*qabūl*), and the determination of a dowry (*mahr*)—are properly met. Even if the guardian is morally corrupt, his authority remains intact so long as he fulfills the procedural requirements.

This position is grounded in the Hanafi principle of **avoiding undue hardship (*raf‘ al-ḥaraj*)** in marriage. By not disqualifying a guardian on the basis of moral deficiency, the Hanafi school prioritizes the practical need to secure marriage validity and prevent situations where women may be left without a legally recognized guardian. As Ibn ‘Ābidīn explains in *Radd al-Muḥtār*, the Hanafi jurists considered the disqualification of a guardian for immorality as potentially harmful, particularly in contexts where alternatives are limited (Ibn ‘Ābidīn, 2010).

Nevertheless, the Hanafi position does not imply complete disregard for morality. While the *wali fāsiq* is legally valid, his conduct may still be subject to censure, and in cases of blatant abuse, judicial intervention may be warranted. In such instances, a judge (*qāḍī*) could assume the guardianship role, ensuring fairness and justice for the bride.

2. The Maliki School

The Maliki school adopts a stricter stance by requiring that the guardian possess *‘adālah*. According to Maliki jurists, moral integrity is an essential prerequisite for guardianship, and a guardian who is persistently sinful or unjust cannot validly represent a bride in marriage. The reasoning behind this stance is that guardianship entails not only procedural authority but also moral responsibility to protect the interests and dignity of the bride (Sahnūn, *al-Mudawwanah al-Kubrā*, vol. 2, p. 230).

Maliki jurists often cite the principle that authority in Islamic law must be entrusted to those who are morally upright. This principle is derived from Qur’anic injunctions such as Q. al-Baqarah [2]:282, which emphasizes entrusting responsibilities to individuals of integrity in matters of testimony. By analogy (*qiyās*), guardianship in marriage also demands a guardian whose credibility and probity are unquestionable (al-Qarāfī, 1998).

In practical terms, the Maliki school would invalidate a marriage solemnized by a *wali fāsiq* unless it is subsequently ratified by a qualified guardian or a judge. The doctrine thus places strong emphasis on protecting the bride from the potential abuse or neglect of an immoral guardian. However, critics of this position argue that it may create unnecessary complications in societies where guardianship options are limited.

3. The Shafi'i School

The Shafi'i school, widely followed in Indonesia, also requires moral integrity (*'adālah*) as a condition for guardianship. In *al-Umm*, Imām al-Shāfi'ī explicitly states that the guardian must be both legally competent (*āqil bāligh*) and morally upright (*'adl*). A guardian who is *fāsiq* loses his right to act on behalf of the bride, and guardianship would then pass to the next eligible male relative or, failing that, to the judge (*qāḍī*) (al-Shāfi'ī, *al-Umm*, vol. 5, p. 44).

The Shafi'i insistence on *'adālah* reflects the school's methodological rigor in safeguarding ethical standards within legal processes. The underlying rationale is that a guardian represents the dignity and interests of the bride; allowing a *fāsiq* to serve in this capacity would undermine both the spirit and substance of Islamic law. Al-Nawawī, in *al-Majmū'*, reinforces this position by noting that a guardian's immorality constitutes a disqualification, just as it does in the context of legal testimony (*shahādah*) (al-Nawawī, 1996).

This strict requirement has influenced many Southeast Asian codifications of Islamic family law, including the Indonesian KHI. By adopting the Shafi'i position, the KHI ensures that guardianship in marriage is entrusted only to individuals of recognized moral credibility.

4. The Hanbali School

The Hanbali school aligns with the Maliki and Shafi'i positions by disqualifying a *wali fāsiq*. Ibn Qudāmah in *al-Mughnī* asserts that moral integrity is a necessary condition for guardianship, citing analogies with legal testimony and leadership. Just as a *fāsiq* is disqualified from serving as a witness or imam, so too is he unfit to act as a guardian in marriage (Ibn Qudāmah, *al-Mughnī*, vol. 9, p. 350).

For the Hanbalis, guardianship is a trust (*amānah*) that requires the guardian to protect the bride's welfare and uphold the sanctity of marriage. A guardian who is known for dishonesty, criminality, or neglect of religious obligations cannot be trusted with such responsibility. If a *wali fāsiq* attempts to exercise authority, the guardianship is transferred to the next eligible relative or to the judge.

5. The Compilation of Islamic Law (KHI) in Indonesia

The *Compilation of Islamic Law* (KHI), promulgated in 1991, represents Indonesia's effort to codify Islamic family law in a way that harmonizes classical jurisprudence with modern statutory needs. Regarding guardianship, Article 20 of the KHI specifies that a marriage guardian must be male, Muslim, mature, and competent, while implicitly requiring moral integrity. The provisions align most closely with the Shafi'i doctrine, reflecting the school's historical influence in Indonesia (Cammack, 2020).

In practice, Indonesian religious courts (*Pengadilan Agama*) have occasionally encountered cases involving guardians whose integrity is questionable. In such instances, the court may transfer guardianship to another eligible relative or appoint a judge as the guardian (*wali hakim*). This mechanism ensures that the marriage contract is protected while safeguarding the bride from potential harm.

The KHI's position demonstrates an attempt to balance doctrinal fidelity with practical governance. By emphasizing both legal and moral qualifications, the KHI underscores the principle that family law is not merely a matter of contract but also of ethical responsibility.

6. Comparative Analysis and Contemporary Implications

The comparison reveals a spectrum of opinions:

- **Hanafi:** Permits a *wali fāsiq*, prioritizing legal validity and avoidance of hardship.
- **Maliki, Shafi'i, Hanbali:** Disqualify a *wali fāsiq*, prioritizing moral integrity and protection of the bride.
- **KHI:** Aligns with Shafi'i, emphasizing *ʿadālah* as a condition of guardianship.

This diversity reflects the richness of Islamic jurisprudence but also presents challenges for contemporary application. In pluralistic societies like Indonesia, where guardianship disputes may involve competing interpretations, the statutory alignment with Shafi'i doctrine provides clarity and consistency.

The implications are threefold:

1. **Legal certainty:** By codifying Shafi'i doctrine, the KHI ensures that cases of *wali fāsiq* are resolved predictably, reducing judicial uncertainty.
2. **Protection of women's rights:** Disqualifying immoral guardians safeguards brides from potential exploitation, aligning with international human rights standards.
3. **Moral accountability:** The requirement of *ʿadālah* underscores the integration of ethical considerations into legal frameworks, reinforcing the moral dimension of Islamic law.

At the same time, the Hanafi position serves as a reminder that legal systems must also account for social realities. In contexts where alternatives are scarce, judicial discretion may be necessary to balance validity with practicality.

Conclusion

The analysis of the four Sunni schools of jurisprudence in relation to the validity of a *wali fāsiq* (immoral guardian) in marriage reveals both diversity and convergence within Islamic legal thought. The **Hanafi school**, with its procedural approach, recognizes the legal authority of a *wali fāsiq*, prioritizing the continuity of marriage and avoidance of undue hardship. By contrast, the **Maliki, Shafi'i, and Hanbali schools** establish *ʿadālah* (moral uprightness) as a prerequisite for guardianship, thereby disqualifying immoral guardians from exercising authority.

In the **Indonesian context**, the *Compilation of Islamic Law* (KHI) adopts the Shafi'i doctrine, underscoring that guardianship is both a legal and ethical responsibility. Article 20 of the KHI requires guardians to be legally competent, morally upright, and capable of safeguarding the dignity and rights of the bride. By embedding these qualifications, the KHI strengthens legal certainty, ensures moral accountability, and aligns Islamic family law with broader social objectives of justice and protection of women's rights.

The study demonstrates that the doctrine of guardianship in marriage cannot be reduced to mere procedural legality. It encompasses deeper ethical considerations that are integral to Islamic law's vision of marriage as a *mīthāq ghalīẓ*—a solemn covenant of responsibility, protection, and mutual respect. In disqualifying a *wali fāsiq*, the Shafi'i, Maliki, and Hanbali perspectives, as well as the KHI, uphold the principle that authority in matters of family must be entrusted only to individuals of integrity.

Practically, the findings contribute to judicial practice in Indonesia by providing a framework for handling cases where guardians are morally compromised. Religious courts, through the mechanism of *wali ḥākim* (judicial guardianship), ensure that women are not subjected to injustice under the authority of immoral guardians. The study also highlights the continued relevance of classical fiqh in shaping statutory law, while emphasizing the need for contextual adaptation to contemporary realities.

Theoretically, the comparative approach underscores the richness of Islamic jurisprudence and its capacity to accommodate diverse perspectives while remaining faithful to core principles of justice. For scholars, the findings invite further exploration of how moral integrity functions as a legal qualification in other domains of Islamic law, such as testimony and leadership. For policymakers, the research offers insights into how statutory frameworks like the KHI can mediate between classical doctrines and modern social conditions.

In conclusion, the debate over the *wali fāsiq* illustrates the dynamic interplay between law, morality, and social welfare in Islamic jurisprudence. By adopting the Shafi'i perspective, the KHI situates itself within a tradition that prioritizes both legal validity and moral responsibility, thereby ensuring that guardianship in marriage

serves its intended purpose: the protection, dignity, and well-being of women in Muslim family life.

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