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**Marriage Guardianship in Interfaith Marriages from the Perspective of
Madhhab Scholars (Case Study in Ponggok Blitar, East Java)**

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ABSTRACT:

The issue of the status and validity of marriage guardianship for girls in interfaith marriages remains a subject of debate in society. The practice of marriage guardianship that occurs in the field is often socially justified, even though it contradicts Islamic law and the views of religious scholars. This situation has implications for the status and validity of marriage, both from the perspective of Islamic law and state law. This study uses a *field research* approach with descriptive analysis methods, as well as data from Islamic law and fiqh. The results show that, fundamentally, the ulama agree to prohibit marriage guardianship for Muslim women with non-Muslim men, because religious differences are an obstacle to the validity of the marriage contract. However, socially, this practice still occurs on the basis of tolerance and local customs. Case analysis shows that formally valid marriages can only be conducted through the *muallaf* mechanism, while marriages without a guardian are declared invalid or null and void according to Sharia law. These findings emphasize the importance of increasing public understanding of the law on marriage guardianship for women in interfaith marriages, in order to create legal awareness and certainty regarding marital status.

Key words: *Marriage Guardianship, Interfaith Marriage, Madhhab Scholars*

INTRODUCTION

A guardian is a person who has the obligation or responsibility to determine the validity of a marriage contract for a bride to make a marriage promise with a groom.¹ A guardian in marriage is very necessary because this is one of the pillars of marriage that must be fulfilled. In determining the position of a guardian, there are differences, especially according to the four madhhabs. In guardianship, a guardian must meet certain requirements, as not everyone can become a guardian in a marriage.² The requirements for a guardian are that they must be of legal age, of sound mind, share the same religion as the prospective bride, be male, and be fair.³

¹ Leni Marlinah and Zaki Mubarak, "Interfaith Marriage as an Obstacle to Inheritance and Guardianship Rights Between Islamic Law and Civil Law," *At-Tawasuth* 5, no. 01 (June 2025): 42, <https://doi.org/10.62490/tawasuth.v5i01.1503>.

² Hikmatullah, *Fiqh Munakahat Pernikahan Dalam Islam (Marriage Fiqh in Islam)*, (Jakarta: Edu Pustaka, 2021), 33.

³ Wahbah Az Zuhaili, *Fiqh Islam Wa Adillatuhu Volume 9* (Jakarta: Gema Insani, 2011), 185–86.

Law Number 1 of 1974, which was amended to Law Number 16 of 2019 concerning marriage, does not specifically explain the pillars of marriage, but if we refer to Article 2 paragraph (1), which reads: "A marriage is valid if it is conducted in accordance with the laws of their respective religions and beliefs." It is clear that a marriage is considered valid if it complies with the laws of the religion. Meanwhile, the Compilation of Islamic Law directly explains the pillars of marriage in Article 41, which states that there are five pillars, namely: the prospective husband, the prospective wife, the marriage guardian, two witnesses, and the *ijab and kabul*.⁴ Guardianship in marriage is regulated in the Compilation of Islamic Law, which explains in detail that the guardian is one of the pillars of marriage, as stated in Article 19 of the Compilation of Islamic Law.⁵

In essence, marriage aims to bring peace between husband and wife so that both are expected to attain happiness in this world and the hereafter. This is stated in the Qur'an, Surah Ar-Rum, Verse 21, which explains that Allah gives two potentials in the purpose of marriage, namely *sakinah* or peace and happiness, which can be achieved through love and affection. This love and affection must be nurtured so that this potential continues to be honed and becomes an integral part of the household. In order for the purpose of marriage to be achieved and for the marriage to be valid according to Islam, certain pillars and conditions must be fulfilled. Without fulfilling the pillars, the marriage will be invalid; without fulfilling the conditions, the marriage will be invalid. If the conditions and pillars are not fulfilled, the purpose of marriage will not be achieved.⁶

The requirements for marriage guardians are explained in Articles 20 and 21 of the KHI. The order of guardians who are eligible to act as guardians if the guardian does not meet the requirements is explained in Article 22 of the KHI. Furthermore, the types of marriage guardians are listed in Article 23. The explanation of this regulation indicates that if a marriage is conducted without a guardian, the marriage will be invalid. These articles of Law No. 1 of 1974, through PMA No. 1 of 1990, also stipulate the necessity of a marriage guardian for women who are to be married, as well as the position of a guardian as the determinant of the validity of a marriage for a woman ().⁷

⁴ Nabiela Nailly et al., *Islamic Marriage Law in Indonesia*, 1st ed. (Jakarta: Prenada Media, 2019), 101.

⁵ Theadora Rahmawati, *Fiqh Munakahat 1: From the Marriage Process to the Rights and Obligations of Husband and Wife* (Pamekasan: Duta Media Publishing, 2021), 58.

⁶ Nailly et al., *Islamic Marriage Law in Indonesia*, 98–99.

⁷ Umar Haris Sanjaya and Aunur Rahim Faqih, *Islamic Marriage Law in Indonesia* (Yogyakarta: Gama Media, 2017), 62–64.

The order of the pillars of marriage differs among scholars. According to the majority of scholars, the pillars of marriage are: the presence of the prospective husband and wife who will be married, the presence of a guardian from the woman's side, the presence of two witnesses, and the *ijab kabul* (marriage contract). According to the Maliki school of thought, there are five pillars of marriage, namely a guardian from the woman's side, a dowry (*mahar*), a prospective groom, a prospective bride, and the *ijab kabul* marriage contract. According to the Shafi'i school of thought, there are five pillars of marriage: the prospective groom, the prospective bride, the guardian, two witnesses, and the acceptance of the marriage contract. According to the Hanafi school of thought, there are only two pillars of marriage: acceptance and consent.⁸

One of the requirements for a valid marriage is the presence of a guardian, which is why the guardian plays the most important role in the marriage. As is generally the case, the woman says "*ijab*" and the man says "*kabul*," which is where the guardian plays a very decisive role as the representative of the bride-to-be. The position of the marriage guardian in Islamic law falls under the category of the pillars of marriage. Therefore, the Shafi'i school of thought holds that a marriage is invalid without a guardian.

The Shafi'i school of thought differs from the Hanafi school of thought, which states that marriage for adult women remains valid even without a guardian.⁹ The Maliki school of thought argues that permission must be obtained from a respected guardian from the family or a judicial guardian, but there is no explicit explanation as to whether the guardian must be present at the marriage contract or whether permission alone is sufficient. However, the Maliki school of thought does not allow women to marry themselves. The Hambali school of thought argues that a guardian must be present at the marriage contract and must be present when the marriage contract is performed.¹⁰

Similarly, a guardian must meet the requirements to be a guardian. These requirements are: being Muslim, *baligh* (mature), sane, male, fair, and not currently performing *ihram* or *umrah* (). Sayyid Sabiq, in his book *Fiqh Sunnah*, outlines several requirements for a marriage guardian as follows: the requirements for a guardian are that they must be free, of sound mind,

⁸ Hikmatullah M.Sy, *Fiqh Munakabat Marriage in Islam*, 1st ed. (Jakarta: Edu Pustaka, 2021), 30.

⁹ Rohmat, "The Position of the Guardian in Marriage: A Study of Shafi'i and Hanafi Thought and Its Practice in Indonesia," *AL-'Adalah: Journal of Sharia and Islamic Law* X, no. 2 (July 2011): 177.

¹⁰ Alang Sidek, Diani Syahfitri, and Fatmawati Fatmawati, "The Appointment of a Marriage Guardian for Minors According to the Imam Mazhab and KHI in Its Application in the Stabat Religious Court," *Action Research Literate* 4, no. 1 (February 2020): 9, <https://doi.org/10.46799/ar.v4i1.81>.

and an adult. Slaves, the mentally ill, and children cannot serve as guardians, as these individuals are not entitled to act as guardians for themselves, let alone others. The fourth requirement to be a guardian is to be Muslim, as a non-Muslim cannot be appointed as a guardian for a Muslim, since a non-Muslim is not permitted to act as a guardian for a Muslim.¹¹

Islamic marriage law recognizes four types of guardians: first, the blood guardian, who is a guardian who has a blood relationship with the bride. Second, the *mu'tiq* guardian is a guardian appointed to be the marriage guardian of a woman whom he has freed from slavery. Third, the wali hakim is a guardian who will act as a marriage guardian if the wali nasab is absent or unable to attend, or if his whereabouts are unknown, or if he is absent or unwilling. Fourth, the wali *mubakkam* is a guardian consisting of a man who has been appointed by both bride and groom because there is no wali nasab, wali *mu'tiq*, or wali hakim.¹²

In this case, it has an impact on the status and validity of marriage according to the views of madhhab scholars and state law. There are marriages that are invalid because they do not meet the requirements and conditions. Thus, this case raises new implications regarding the status of children born from unregistered marriages and the confusion of children in following their faith. The researcher will thoroughly discuss the status and validity of marriage guardianship for girls in interfaith marriages.

To date, studies on the issue of marriage guardianship for women in interfaith marriages remain limited. Existing research conducted by Fuad Luthfi and Hatimul Husna in 2024 discusses the concept of guardianship for women in marriage from the perspective of Sheikh Muhammad Arsyad Al-Banjari and Sheikh Ibn Qasim Al-Ghazai.¹³ Another study conducted by Wafda Muhammad and Tutik Hamidah in 2025 focuses on non-Muslim guardians in marriage from the perspective of maqashid syari'ah.¹⁴ Thus, this study discusses

¹¹ Abber Hasibuan, "Guardianship in Marriage According to Islamic Law," *Al-Asblab* 1 (2017): 4.

¹² Sukaynah Q. A. Rizal, Donna Okthalia Setiabudhi, and Susan Lawotjo, "Comparison of the Position of Marriage Guardian for Children Outside of Marriage According to the Perspectives of Islamic Law and Positive Law in Indonesia," *Lex Privatum* 11, no. 4 (May 5, 2023): 4.

¹³ "The Concept of Guardianship for Women in Marriage from the Perspective of Sheikh Muhammad Arsyad Al-Banjari and Sheikh Ibn Qasim Al-Ghazi | Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory," accessed November 10, 2025, <https://shariajournal.com/index.php/IJIEL/article/view/500>.

¹⁴ Wafda Muhammad and Tutik Hamidah, "Non-Muslim Guardians in Marriage from the Perspective of Maqashid Syariah," *USRAH: Journal of Islamic Family Law* 6, no. 1 (January 2025), https://www.google.com/search?q=kenapa+madzhab+maliki+memperbolehkan+wali+seorang+yang+beda+agama%3F+jurnal&oq=kenapa+madzhab+maliki+memperbolehkan+wali+seorang+yang+beda+agama%3F+jurnal&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRiPAjIHCAIQIRiPAjIHCAMQIRiPAiBCTE4MzQ4ajBqN6gCALACAA&sourceid=chrome&ie=UTF-8.

the practice of guardianship for girls in interfaith marriages, focusing on how the guardianship of girls resulting from interfaith marriages in Blitar is carried out.

Based on the above identification, the following questions arise: 1) How is the practice of marriage guardianship for women in interfaith marriages viewed by scholars of fiqh madhhab? and 2) How do scholars of madhhab analyze the status and validity of guardianship for women in interfaith marriages?

Methods

This study uses a descriptive qualitative approach with *a field case study* type of research. This approach was chosen to understand and describe in depth the social phenomena that exist in society. This *research* is also *socio-legal in nature*, examining the practice of marriage guardianship for women in interfaith marriages in Ponggok, Blitar. The research data sources consist of primary and secondary data. Primary Data: Obtained directly through structured and in-depth interviews with key informants, consisting of three families who conducted marriages at the research location. Secondary Data: Obtained through documentation techniques (including data from the village secretary, family cards, and respondents' ID cards) and literature studies (including the Qur'an, fiqh books, marriage law books, and other relevant literature) that serve to support the primary data. The collected data were analyzed using qualitative descriptive methods with inductive reasoning. The researcher systematically examined specific data obtained from interviews and documentation, then drew general conclusions to describe the facts and answer research questions regarding female marriage guardianship in interfaith marriages in the location.

Result

Respondent Data

According to respondent data, the population of Blitar in 2024 is 12,142 people, consisting of 6,091 men and 6,050 women, with 4,255 heads of households. The people of Blitar have various beliefs, which makes them highly tolerant of other religions.

Table 1: Number of Religions in Ponggok Blitar

NO	RELIGION	NUMBER
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1	Islam	11,528
2.	Buddhist	410
3.	Christian	98
4.	Hindu	4
5.	Catholic	97
6.	Belief in One God	5

Based on the population data above, there are 15 families with religious differences within the family. These cases generally occur due to family circumstances and a high level of tolerance, so that differences in beliefs are no longer considered in terms of the laws of each belief. Based on respondent data, there are three types of marriage guardianship that occur in interfaith marriages, leading to problems related to the status and validity of the marriage.

Discussion

The Practice of Guardianship in Interfaith Marriages and the Views of Fiqh Madhhab Scholars.

Blitar is an area with a multi-religious population, including Islam, Christianity, Buddhism, Catholicism, Hinduism, and Javanese traditional beliefs. The community has various religions that coexist, enabling interfaith marriages. It should be noted that there are several cases of interfaith marriages. Historically, the majority of these marriages occur because a non-Muslim individual is already in a relationship and they agree to marry despite their different beliefs. In order for the marriage to be legally valid, one of the partners, whether Muslim or non-Muslim, must convert to the religion that will be practiced in the marriage.¹⁵

The practice of interfaith marriage in society is motivated by a deep love for one's partner, leading to the decision to marry. However, during the initial marriage ceremony, the couple performs the *ijab qabul* or conducts the marriage according to the same religion, but after the ceremony, they return to their respective religions (). There are also couples who remain committed to their respective beliefs during the marriage ceremony. As a result, there are many differences in the married life of the husband and wife, whether from the perspective of the husband or the wife. However, these differences actually make their relationship more harmonious. There are also couples who always remind each other of their respective obligations in carrying out their different religious practices.¹⁶

Based on research conducted, religious leaders, especially Islamic religious leaders, argue that marriages that occur in this manner are forbidden or violate the rules, especially in Islam, because religious leaders in Indonesia have determined and established rules that it is forbidden

¹⁵ Mr. Nur, "Community Leader of Gembongan Village," March 6, 2024.

¹⁶ Ms. Cindy, "Interfaith Marriage Leader of Gembongan Village," March 4, 2024.

for a woman or man to marry someone of a different religion. Marriages are conducted between couples who maintain their respective beliefs and do not convert to an unregistered marriage.¹⁷

Given the diverse nature of society, with its many different religions, people no longer take issue with religious differences within the household but instead prioritize maintaining the family despite differences in beliefs by instilling a high level of tolerance to achieve peaceful coexistence and harmonious families within society.¹⁸ The presence of a guardian in a marriage contract is essential to determine the validity of the marriage contract. Because the guardian is positioned as a pillar of marriage according to Islamic law, a guardian acts on behalf of the bride and is the person whose consent is sought to proceed with the marriage. However, in determining the guardian, there are several issues that prevent the requirements for a guardian from being met due to the religious differences between the bride and her father.¹⁹

Issues arise in the wedding procession when the bride is not a convert to Islam, while the guardian who marries her is Muslim and the wedding procession follows Islamic customs. There are also cases where a Muslim bride marries a non-Muslim man and the wedding is conducted according to non-Islamic customs, with no guardian attending the procession. There are also cases where the bride is non-Muslim but later converts to Islam (), and the guardian is not her biological father but rather a guardian by blood from her father who is Muslim, and the wedding ceremony follows Islamic religious procedures.

According to the Hanafi school of thought, a guardian who marries off a woman who has reached puberty, is free, and of sound mind, whether she is a widow or a virgin, is considered sunnah for the guardian who marries her off. However, a widow or virgin woman has the right to enter into a marriage contract herself without a guardian, and the guardian also has the right to give consent on behalf of his daughter. If the guardian deems the marriage partner to be unsuitable, the guardian has the right to **annul the marriage**.²⁰

A guardian in marriage can be represented by a mother and a person appointed by the father, so that the person appointed has the right to become a guardian and his status will be higher, which will prevent other relatives from becoming guardians. This is stated by the Maliki

¹⁷ Mr. Aziz, "Islamic Religious Leader of Gembongan Village," March 8, 2024.

¹⁸ Mr. Nur, "Community Leader of Gembongan Village," March 6, 2024.

¹⁹ Syafik Muhammad, "THE PROBLEM OF DETERMINING MARRIAGE GUARDIANS IN INDONESIA," *JURNAL INTELEK INSAN CENDIKIA* 2, no. 4 (April 2025): 6828.

²⁰ Fathonah K. Daud and Ramdani Wahyu Sururuie, "The Authority of the Marriage Guardian in Islam: An Analysis of Marriage Without a Guardian in Indonesia from the Perspective of Fiqh and Positive Law," *Akademika* 15, no. 2 (December 2021): 154–55.

school of thought because guardianship in marriage is absolute and cannot be overlooked. If there is no guardian in the marriage, then the woman's marriage will not be valid.²¹

The opinion of the Hanbali school of thought is that if a woman wants to get married, she must have a guardian present. If there is no guardian in the marriage, the marriage will be invalid. Meanwhile, a widow must ask permission from her guardian if she wants to get married. However, for girls under the age of 9, the guardian does not have the right to marry them off. The basis for this opinion of the Hanbali school of thought is found in the Qur'an, Surah Al-Baqarah, verse 228. According to the Hanbali school of thought, the position of a guardian in marriage is very important, and the guardian's permission is mandatory.²²

Meanwhile, the Shafi'i school of thought argues that every marriage contract must be performed by a guardian, regardless of whether the woman is an adult or a minor, or a widow, and regardless of whether she is of sound mind or not. This school of thought requires the presence of a guardian in a marriage contract and prohibits women from contracting themselves. This is based on the legal sources of the Quran, Surah Al-Baqarah verses 232 and 221, and Surah An-Nur verse 32.²³ Imam Shafi'i permits the use of a guardian for unmarried women, while widows are permitted to marry without a guardian, and the marriage remains valid. However, Imam Shafi'i still recommends that a widow use a guardian in marriage.²⁴

Interfaith marriage is a relationship between two people, a man and a woman, who have different beliefs and are bound in marriage. Classical scholars have their own opinions on interfaith marriage and the position of a guardian in marriage. Among the four schools of thought, the following scholars are of the opinion that interfaith marriage and marriage guardianship are permissible:

The Hanafi school of thought permits interfaith marriage for a woman who has a holy book, provided that they do not engage in acts of polytheism and that the woman is in a country at war. In such cases, the woman is permitted to marry a Muslim man. Imam Hanafi refers to the

²¹ Rinwanto and Yudi Arianto, "The Position of the Guardian and Witnesses in Marriage from the Perspective of the Four Madhhabs (Maliki, Hanafi, Shafi'i, and Hanbali)," *Al-Maqashidi Jurnal Hukum Islam Nusantara* 3, no. 1 (2020): 87.

²² Ilgi Ghoswanul Muzakka and Imanuddin Abil Fida, "The Position of the Guardian in Marriage: A Comparative Study of the Four Madhhabs," *USRAH: Journal of Islamic Family Law* 4, no. 1 (May 2023): 46.

²³ Soraya Devy, *Marriage Guardian: Order and Authority from the Perspective of the Madhhab Imams* (Aceh Besar: Sahifah, 2017), 108.

²⁴ Ilgi Ghoswanul Muzakka and Imanuddin Abil Fida, "The Position of the Guardian in Marriage: A Comparative Study of Four Madhhabs," 45.

ruling in the Qur'an, Surah Al-Maidah, verse 5. However, if the woman is in a country that does not adhere to Islamic law, the ruling becomes *makruh tabrim* (something that should be avoided).²⁵

The opinion of the Maliki school of thought is that it is forbidden for a Muslim to marry a woman of the Book because this school of thought prioritizes *sad Dzari'ah* (i.e., measures to prevent greater harm). What is meant by this harm is that there are flaws in the marriage requirements that are not fulfilled, so that the marriage is not considered valid.²⁶ According to the Hanbali school of thought, a Muslim man may marry a woman of the Book without it being considered makruh (disliked), but on the condition that the woman maintains her honor. The Hanbali school of thought also does not determine whether the woman's parents are idolaters or not, even if they are idolaters, the marriage between a Muslim man and the woman is still valid as long as she herself is a woman of the Book. The meaning of People of the Book is a religion that has a book that was revealed by Allah.²⁷ The Maliki school of thought allows a child to marry his mother and the person who is bequeathed by the father, so the person who is bequeathed has the right to become a guardian and will prevent other relatives. A guardian is absolute in a marriage; if there is no guardian, the marriage will be invalid.²⁸

According to the Shafi'i school of thought, it is sunnah for a Muslim man to marry a woman of the Book in the hope that she will convert to Islam. However, it is makruh for a man to marry a woman of the Book on the condition that a Muslim man marries a woman of the Book without expecting her to convert to Islam, a Muslim man who cannot find a suitable Muslim woman to marry, if he does not marry a woman of the Book, there is a concern that he will commit adultery. Therefore, Imam Shafi'i likened a Muslim man who marries a woman of the Book other than a Christian or a Jew to eating animals slaughtered by them, which is forbidden for Muslims.²⁹

Analysis of the Status and Validity of Marriage Guardianship for Women in Interfaith Marriages

Indonesia is a country with a variety of cultures, ethnicities, traditions, and religions, making it one of the most diverse countries in Asia. This is evident in the existence of various religions that coexist in society, one example being Blitar, which has a community of various

²⁵ Sheikh Abdurrahman Al-Juzairi, *Fiqh of* (Jakarta: Pustaka Al-Kaustar, 2015), 160.

²⁶ Wahbah Az Zuhaili, *Islamic Jurisprudence and Its Evidence, Volume 9*, 154.

²⁷ Sheikh Abdurrahman Al-Juzairi, *Fiqh of the*, 154.

²⁸ Rinwanto Rinwanto and Yudi Arianto, "The Position of Guardians and Witnesses in Marriage from the Perspective of the Four Madhhabs (Maliki, Hanafi, Shafi'i, and Hanbali)," *Al Maqashidi: Journal of Islamic Law in the Archipelago* 3, no. 1 (2020): 87.

²⁹ Rusdaya Basri, *Fiqh Munakahat 4 Madzhab Dan Kebijakan Pemerintah* (South Sulawesi: Kaffah Learning Center, 2019), 256.

religions. The majority of the population embraces Islam, Buddhism, Christianity, Hinduism, and believes in one God. Living side by side, the people of Blitar have a high level of tolerance, which means that differences in the community are less noticeable and interfaith marriages are common, affecting the guardianship of girls from families of different faiths. The author will analyze the practice of marriage guardianship for girls from families of different faiths in Blitar from the perspective of Islamic law and non-Islamic law.³⁰

Table 2: Status and Validity of Guardianship

Occurring cases	Status of the Bride and Guardian at the Time of the Contract	Fiqh Analysis of the Four Madhhabs
A Buddhist woman and a Muslim man (unregistered marriage). The father is Buddhist (deceased), the guardian falls to the uncle (Muslim), the woman was not a convert at the time of the marriage contract.	Groom: Muslim, Bride: Buddhist, Guardian: Muslim.	Hanafi, Hanbali, and Shafi'i (prohibit) because there is no religious similarity between the bride and the guardian. The Maliki school of thought (permits) a Muslim/non-Muslim man to be the guardian of a non-Muslim woman who marries a Muslim man.
A Muslim woman and a Buddhist man perform the marriage ceremony according to Buddhist rites without a guardian.	Groom: Buddhist, bride: Muslim, no marriage guardian.	The four schools of thought agree that the position of guardian in marriage is absolute, so that marriage without a guardian is invalid, except for the Hanafi school of thought, which allows adult women to marry themselves.
A Buddhist woman and a Muslim man perform the ceremony according to Islamic rites. The woman converts to Islam at the time of the contract, then returns to Buddhism. The guardian	The groom is Muslim, and the bride is a convert at the time of the contract. The guardian is the biological father.	The Hanafi, Hanbali, and Shafi'i schools of thought (allow it) because the bride and guardian share the same religion at the time of the contract. The Maliki school of thought also (allows it).

³⁰ Ahmad Zahid, "The Law of Interfaith Marriage Regarding the Rights of Guardianship and Inheritance of Children," *ADLIYA: Journal of Law and Humanity* 9, no. 1 (2015): 57–84, <https://doi.org/10.15575/adliya.v9i1.6158>.

is her biological father, who is Muslim.		
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Based on practices according to the analysis of the four madhhabs. According to Imam Shafi'i, the presence of a guardian in a marriage is one of the pillars of marriage that must be fulfilled. Without the presence of a guardian in the marriage contract, the marriage is considered invalid. To determine the status and validity of a marriage, there are four conditions: 1) the presence of a guardian, 2) the consent of the bride and groom, 3) the consent of the bride and groom (repeated), and 4) the presence of two fair witnesses.³¹ According to the Hanafi, Hanbali, and Shafi'i schools of thought, it is prohibited in marriage if the bride and guardian have different beliefs. However, it is permissible according to the Maliki school of thought because the Maliki school of thought argues that a Muslim or non-Muslim man can be a marriage guardian for a non-Muslim woman with a Muslim man.³²

Imam Malik, in his legal thinking, emphasized that the role of the marriage guardian is not merely a pillar of worship, but also a social and legal function to protect women's rights and maintain family stability. Based on his analysis, Imam Malik permits a guardian of a different religion to marry a non-Muslim bride as long as the marriage contract is carried out according to Islamic law and does not violate the objectives of Sharia law. Imam Malik considers *maslahah mursalah* and *saad dzari'ah* as important bases for determining the law.³³ This permissibility in the Maliki school of thought is contextual and constitutes a "state of emergency" (*rukhsah*), meaning that it does not apply to every case, but only in conditions that meet the following requirements: the woman is of a different religion (non-Muslim), the prospective husband is Muslim, and the contract is carried out in accordance with Islamic law.² Thus, even though the guardian is of a different religion, the contract can still be considered valid by some Māliki scholars because they place social welfare aspects (such as preventing adultery and protecting offspring) as part of their legal considerations.³⁴

Conclusion

³¹ Nur Faizah, "The Concept of Marriage Guardian in the Perspective of Classical and Modern Scholars," *Al-Muqaranah: Journal of Madhhab Comparison* 2, no. 2 (2024): 60.

³² Rinwanto and Yudi Arianto, "The Position of the Guardian and Witnesses in Marriage from the Perspective of the Four Madhhabs (Maliki, Hanafi, Shafi'i, and Hanbali)," 87.

³³ Fathullah Muhammad Parhan, Abdul Hamid, and Lutfi Annisa, "Guardianship According to the Fuqaha (A Study of the Book *Fiqh Islam Wa Adillatuh*, and *Kitabun Nikah* Syekh Muhammad Arsyad Al-Banjari)," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (2024).

³⁴ Agung Tri Nugroho, "Reconceptualization of Marriage Guardianship Authority in Indonesia," *Jurnal Mabkamab: Journal of Legal Studies and Islamic Law* 4, no. 1 (2024).

This study concludes that there are differences in opinion among scholars of different schools of thought regarding the validity of guardianship in marriages between people of different faiths. According to the majority of scholars, namely Imam Hanafi, Imam Hanbali, and Imam Syafi'i, a marriage is considered valid if the guardian and the bride share the same faith. If there is a difference in faith between the two, then the guardianship is considered invalid and the marriage is annulled. However, Imam Malik takes a more moderate view by allowing someone to become a guardian even if they do not share the same religion as the bride, as long as there is a greater benefit (*maslahah mursalah*). Imam Malik's view is based on considerations of social benefit and protection of the purpose of marriage, not solely on the aspect of mahdhah worship.

The implications of this research indicate that the practice of guardianship in interfaith marriages still causes tension between classical fiqh norms and modern social realities. In the context of Islamic law and national law, the absence of a valid guardian or a difference in religion between the guardian and the bride can render the marriage legally invalid and affect the validity of lineage, inheritance rights, and the administrative status of the child. This study provides a theoretical contribution to the development of Islamic family law studies through a *maqāṣid al-syar'ah* approach that is adaptive to religious plurality, as well as enriching the discourse of contemporary fiqh munākahāt in Indonesia. In practical terms, the results of this study recommend that the government and religious institutions strengthen legal education for multireligious communities such as those in Blitar in order to reduce marriage practices that are not in accordance with sharia, as well as to develop legal guidelines that are more contextual and in line with the social conditions of modern society.

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<https://doi.org/10.15575/adliya.v9i1.6158>.
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