



## Consent of Girls in Marriage (A Comparative Study Between Imam Shafi'i and Imam Ibn Qayyim al-Jawziyyah)

<sup>1</sup>Arifin Siahaan, <sup>2</sup>Fandi Wahidi

<sup>1</sup>Universitas Islam Negeri Sumatera Utara, <sup>2</sup>Institut Agama Islam Negeri Datuk Laksemama Bengkalis  
E-mail: <sup>1</sup>[arifinalmishry@gmail.com](mailto:arifinalmishry@gmail.com), <sup>2</sup>[fandiwahidi2005@gmail.com](mailto:fandiwahidi2005@gmail.com)

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### Abstract

There is a difference of opinion between madhhab Shafi'i and Imam ibn qoyyim al-jauzy regarding the law of a guardian asking for his daughter's consent to marry, even though the position of the bride's consent is in place. This research is a literature study using the comparative analysis method. The results of this study show that the most relevant opinion for the Indonesian context is the opinion of Imam Ibn Qayyim al-jauzy. In the applicable legislation in Indonesia, namely in the law on marriage No. 1/1974 (ps. 6 paragraph (1) jo. ps. 16 paragraph (1) ) KHI stipulates that one of the conditions for marriage is the consent of the prospective bride. This indicates that the applicable legislation in Indonesia is in accordance with the opinion of Ibn Qayyim al-Jawziyyah. In positive law in Indonesia, it is very important and is an absolute requirement for the validity of a marriage. Existing laws and regulations ensure that marriage can only be performed with the free consent of both prospective brides, especially the bride, as part of efforts to protect human rights and ensure justice in the execution of marriage.

## I. INTRODUCTION

Realizing a *sakinah, mawaddah* and *rahmah* household life as above, of course, is not a simple thing. To achieve this, Islam offers rules and procedures that must be met.

Mahmud Syaltut in his book *Akidah and Islamic Sharia* offers five principles as procedures that must be fulfilled in family development in the premarital phase. First, to know and understand each other (*at-Ta'aruf*) between the two brides. With this process of getting to know each other and understanding each other, it is hoped that each bride and groom will know the state of their prospective partner. In this case, Islam bequeaths that the criteria that must be met and prioritized in determining are the goodness of morals and religion and not solely looking at physical conditions, property and descendants. The second is *al-Ikhtibar*, which is the exploration stage that is carried out by doing *khitbah*. In this *khitbah*, the husband-to-be is allowed to see the face, hands and soles of the woman's feet and is also allowed to discuss to know each other's thoughts.

From the implementation of this *khitbah*, it is hoped that a sense of love will arise in each prospective bride. Thirdly, *ar-ridha* (willingness), here the Islamic *shari'a* is not sufficient on the above two principles alone but also requires the

existence of willingness in the true sense of the two bride and groom. The four *Kafa'ah* are the parallels between the two brides. This is intended so that there is no gap between the two after sailing the household ark. Fifth, dowry or dowry, in this dowry the *shari'a* teaches that the value of the dowry is within reasonable limits (Syam et al., 2020).

From the above information, it is clear that willingly (*ar-ridha*) is a principle of family development that must be fulfilled if we really want to realize a harmonious and happy family.

The position of consent of the bride and groom in marriage is one of the important aspects of Islamic law. In general, Islamic law highly values the consent (*rida*) of the bride-to-be as one of the conditions for the validity of marriage. This agreement is recognized in various schools of *fiqh*, although there are differences in interpretation and application.

The concept of voluntariness or consent itself must be further separated, because consent itself has two subjects that have different legal statuses among *fiqh* scholars, in this case the meaning is a widow or a girl. The Shafi'i school, for example, states that if the widow has the consent, her legal status is mandatory. It is another case if the consent of the arrival of the girl according to the

Shafi'iah scholars is not so important (just circumcision), even according to the Shafi'iah scholars when certain conditions are met, the parents in this case no longer need to ask for the consent of the girl. The conditions in question are as follows:

- 1) There is no enmity between father and son
- 2) Sekufu's future husband
- 3) Suitable dowry
- 4) Husband-to-be willing to give dowry
- 5) Not with men who make her suffer in association (Mubarokah, 2020).

In positive law in Indonesia, the consent of the bride is one of the absolute requirements for the validity of a marriage. This is regulated in several laws and regulations, including Law Number 1 of 1974 concerning Marriage (Marriage Law) and the Compilation of Islamic Law (KHI), which is the legal basis for the implementation of marriage in Indonesia, especially for Muslims. According to Article 6 paragraph (1) of the Marriage Law, "Marriage must be based on the consent of both prospective brides." This verse affirms that the consent of the two brides-to-be, both male and female, is a valid condition for marriage. Furthermore, Article 6 paragraph (2) states that "To carry out a marriage a person who has not reached the age of 21 must have the permission of both parents."

This provision emphasizes that in addition to the consent of both prospective brides, marriage also requires permission from parents if one or both prospective brides have not reached the age of 21. However, this parental permission must not conflict with the personal consent of the bride-to-be. Thus, a woman cannot be forced to marry without her own consent, despite the permission of her parents or guardians.

In classical fiqh literature, there is a difference of opinion regarding the obligation of a guardian to ask for the consent of his daughter to marry. Imam Shafi'i explained that the consent of a girl in marriage is important, but a guardian as explained in the book of al-um is not obliged to attack the guardian to ask for the consent of the girl (AL, n.d.). Parents and grandparents can marry a girl without her consent, whether the girl is a child or an adult. In contrast to the Shafi'i madhhab, the Hanafi madhhab is of the opinion that the legal status of consent between widows and girls is the same, both must be asked for consent. Furthermore, according to Hanafiah scholars, the distinction between widows and girls is in their sign of consent; If the widow must be firm, while

the girl is enough to be silent (Nasution, 2016). In contrast to Imam Shafi'i, Ibn Qayyim al-Jawziyyah insisted that girls should still be asked for consent when marrying them (Nasution, 2016).

Looking at the current context along with the development of the times, where in the past women were usually confined to their homes so that they tended to have narrow views and little knowledge of the outside world, the current condition can be seen that women are an insightful group and not a few of them are experts in certain disciplines.

Departing from this fact, coupled with the fact that the school that developed in Indonesia is Shafi'iah which considers consent not so important (sunnat), so the author is interested in raising this problem. The focus of this study is to analyze the opinions of Imam Shafi'i and Imam Ibn Qayyim al-Jauziyah regarding the consent of girls in marriage and analyze which opinions are more relevant to be implemented in Indonesia.

## II. RESEARCH METHODS

In terms of disciplines, the research carried out is Normative (*Normative Juridical research*). Meanwhile, judging from the type, this research is a library *research*. Meanwhile, the approach used in this study is the legal approach (*legal Oprouch*). Meanwhile, the data that the author will describe is qualitative, which is a method where the data is expressed in a reasonable state, not using symbols, numbers or formulas. The data analysis method used is a comparative analysis method , namely by comparing the opinion of Imam Shafi'i with the opinion of Ibn Qayyim al-Jauziyah and then making a conclusion.

## III. RESULTS AND DISCUSSION

### A. Imam Shafi'i's Opinion On Girls' Consent In Marriage

The Shafi'i school states that the consent of the widow is mandatory. Another case is that the consent of the arrival of a girl according to Shafi'i is not so important (just circumcision), even according to Imam Shafi'i when certain conditions are met, the parents in this case no longer need to ask for the consent of the girl. The conditions in question are as follows:

- 1) There is no enmity between father and son
- 2) Sekufu's future husband
- 3) Suitable dowry
- 4) Husband-to-be willing to give dowry
- 5) Not with men who make her suffer in association (ROSE, 2023).

Furthermore, Imam Shafi'i explained in the book *al-Umm* about the non-obligation to attack the guardian asking for the consent of the girl as follows:

ويجوز للأب والجد تزوج البكر من غير رضاها صغيرة أو كبيرة

*Parents and grandparents can marry a girl without her consent, whether the girl is a child or an adult (AL, n.d.).*

Furthermore, Imam Shafi'i as explained by Imam Nawawi that a wali has the right to marry his daughter, if he has a strong reason to have a marriage without the permission of his daughter, then the will of the wali is accepted because he has the right to decide. And if he is not among those who have the right to determine without the permission of his daughter, because she is not a wali mujbir (who has the right to coerce), or in a condition that is not permissible, or her future husband is not coercive, then it is not permissible to coerce, the father may marry his daughter, both young (not yet puberty) and adult (puberty) without asking for her permission, and especially asking for her permission if she has reached puberty. Even if the father insists, then the marriage is valid and the position of the grandfather is the same as the father in this matter (Anugrah et al., 2019).

In the Shafi'i madhhab, a father or grandfather has absolute authority to marry his daughter, both young and adult, provided that there is no enmity between the father or grandfather and the child. However, asking for permission is preferred. However, according to Imam Shafi'i, as in his explanation above, if the father marries his daughter without her permission, then the marriage is valid. Furthermore, Imam Shafi'i explained that the position of grandfather is the same as that of father in terms of wali – that is, both have the right to *ijbar*.

Scholars who argue that the need for wali (in marriage) agree to divide it into two parts, namely wali mujbir and wali ghairu mujbir. Shafi'iyah scholars are of the opinion that the wali mujbir is the father and grandfather. So with the right of *Ijbar* owned by the father and grandfather as guardians, the father and grandfather can marry him without the permission of the daughter. In the above statement, it is clearly said by Imam Shafi'I that grandfather also has the same position as his father in the matter of *Ijbar*.

Imam Shafi'i based his opinion on a hadith as beirkut:

عن ابن عباس رضي الله عنه أن النبي صلى الله عليه وسلم قال  
الثيب أحق لنفسها من وليها والبكر يستأمرها أبوها نفسها رواه  
البخارى

*From Ibn Abbas r.a. the Prophet PBUH said that a widow has more rights to herself (in marriage) than her guardian and a girl is told by her guardian to marry.*

Imam Shafi'i explained that the meaning of the above hadith is that the wali has more right to marry his daughter who is still a girl than the girl herself even though she is an adult. Furthermore, Imam Shafi'i explained that the command to ask for permission for girls in marriage is sunna, not mandatory (Hudaya, 2016).

The hadith "the permission is silent" referred to by Imam Shafi'i above is a hadith sourced from Abbas as follows:

عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْأَيِّمُ أَحَقُّ  
بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِذْنُهَا صُمَاتُهَا

*It was narrated from Ibn 'Abbas that the Messenger of Allah (peace and blessings of Allaah be upon him) said: "The widow has more rights over herself than her guardian, whereas a girl should be asked for her permission and her permission is her silence.*

In the view of the Shafi'i school, a woman who is puberty and sensible and is still a girl, then the right to marry herself is with the wali, but if she is a widow then the right is with both, the wali cannot marry the widow without her consent. On the other hand, the woman should not marry herself without the blessing of a guardian. Imam Shafi'i in this regard makes girlhood (*al-bikr*) as 'illat in determining the law. Thus, in the view of Imam Shafi'i, if the girl is still a *bikr* with the meaning of not being a widow, either a child or a puberty, then the one who has the most right to marry her is the guardian. The guardian (father and grandfather) may marry his daughter even without her permission, because for Imam Shafi'I the command to ask permission from a girl in marriage is not mandatory.

## B. Imam Ibn Qayyim Al-Jawziyyah's Opinion About Girls' Consent And Her Consent In Marriage

In his book entitled *Zadal-Ma'ad* before talking about the consent of girls in marriage, there are a number of hadiths that he raises, as written in his book *Zadal-Ma'ad*, namely:

ثبت عنه في الصحيحين : ” عن خنساء بنت خدام زوجها  
ابوها وهي كارهة وكانت ثيبا فانت رسول الله صلى الله عليه وسلم  
”فردنكاحها

وفي السنن من حديث ابن عباس : ”ان جارية (بكر) انت النبي  
صلى الله عليه وسلم فذكرت ان اباها زوجها وهي كارهة فخيرها

النبى صلى الله عليه وسلم وهذه غير خنساء فهما قضيتان قضى فى  
”احداهما بتخيير الثيب وقضى فى الاخرى بتخيير البكر  
وثبت عنه فى الصحيح انه قال : “لا تتكح البكر حتى تستأذن قالوا  
: يارسول الله وكيف اذنها قال: ان تسكت” و صحيح مسلم:  
”البكر تستأذن فى نفسها واذنها صامتاً

There is already a provision in the sahih hadith that says from khansa' bint Khidam that her father married her under duress and she was a widow, so the khansa' reported this incident to the Prophet PBUH so the Prophet annulled his marriage. Furthermore, in the book Sunan hadith sourced from Ibn Abbas, a girl complained to the Prophet PBUH that she was forcibly married by her father, so the Prophet gave her the choice whether she wanted to continue the marriage or cancel it. So the history of khansa' has shown that the Prophet gave the widow the choice to choose whether the marriage was continued or annulled. And the same thing happened in other histories as well. And it has been established in a valid history that it is not permissible to marry a girl without asking for her consent. So the companion asked the Messenger, O Messenger, what form of consent was given, the Messenger said that the consent was silence. And in a valid narration in the book of Muslim, the Prophet said that a girl should be asked for her consent and that the consent of a girl is her silence.

From the above series of nash Ibn Qayyim al-Jawziyyah argues that the ruling taken from it is that an adult girl should not be forced to marry, and she should not be married unless with her consent. This is the opinion of the Salaf and the Abu Hanafi school and a narration from Imam Ahmad. Also opinions that are in accordance with the law of the Prophet PBUH, both in the form of his orders and prohibitions, or in the rules of shari'ah and the benefit of his people (Rosidi, 2019).

From Ibn Qayyim's explanation above, it can be seen that Ibn Qayyim used several hadiths in basing his opinion on it. Hadith from Khansa' bint Khidam:

عن خنساء بنت خدام زوجها ابوها هو كارها وكانت ثيبافانت  
رسول الله صلى الله عليه وسلم فردنكاحها

*From khansa' bint Khidam who was married by her father under forced circumstances and she was a widow, then khansa' reported this incident to the Prophet PBUH and the Prophet annulled her marriage.*

Furthermore, the hadith narrated by Imam al-Bukhari:

عن ابن عباس رضي الله عنه أن النبي صلى الله عليه وسلم قال  
الثيب احق لنفسها من وليها والبكر يستأمرها ابوها نفسها رواه  
البخارى

*From Ibn Abbas r.a. the Prophet PBUH said that a widow has more rights to herself (in marriage) than her guardian and a girl is told by her guardian to marry.*

The words of the narrator of the hadith in the form of "while she is a widow" are clearly a gesture that indicates the 'illat or the cause of the rejection (not acknowledged) of the Prophet. The opposite thing is that if she is a girl, then her marriage will be accepted by the Prophet (Sari et al., 2021).

Furthermore, a hadith narrated by a Muslim imam:

عن عائشة رضي عنها قالت قلت يا رسول الله يستأمر النساء في  
ابضاعهن قال نعم قلت فان البكر تستأمر فتستحيي فتسكت قال  
سكاتها اذنها

*From A'isyah ra. I asked the Prophet PBUH about the rights of women in their marriage. So the Apostle answered him. So I said that a girl is told to marry so she is silent. The Apostle said his silence was his approval.*

Ibn Qayyim wrote in his book that the opinion that is in accordance with the law of the Prophet is the granting of the right to vote for girls who do not want to marry. This hadith is narrated in a mursal manner, not because of the existence of 'illat, but indeed has the status of musnad and mursal. If we follow the opinion of Fuqaha': that making the status of this hadith is ziyadah (additional), then the person who makes the hadith muttasil clearly takes precedence over the one who makes it mursal. This is a natural thing to happen in the Hadith tradition. If you judge the Hadith to be mursal like most Hadith experts, it is indeed a hadith that has the status of mursal. However, it is supported by other saheeh hadiths, qiyas and the rules of sharia' as will be explained next. Thus, the above opinion can be formulated in the following categories (Al-Bukhari, 1978):

The opinion that explains that the consent of girls is obligatory in accordance with the Prophet's orders is the words of al-Bikru Tusta'zana (Rosidi, 2019). According to Ibn Qayyim, this statement is a clear commandment, because it is in the form of khabar (news) that serves to strengthen what is reported and confirm it. The original law is that the commandment indicates lil wujub (obligation), as long as there is no ijma' that contradicts it (Nawawi, 1972).

The statement that explains that the above opinion is in accordance with the prohibition of

the Prophet is the hadith la tunkah al-Bikr hatta Tusta'zana (Rosidi, 2019). In this hadith there are commandments, prohibitions, as well as the law of the ability to choose. This legal determination is the most appropriate way.

The obligation of consent of a girl in accordance with the rules of sharia is that a girl who is mature and capable of thinking carefully, the father is not allowed to use his property even if it is small except with his consent. A father is not allowed to force his daughter to withdraw even a small amount of her wealth without her consent. How could the father be allowed to take out the most valuable treasure for his daughter without his consent and then give it to a man of his choice, while the girl did not want the man.

It was certain that using all the girl's possessions without her consent was lighter for her than having to be forced to marry a man of her own choice. This statement also confirms an opinion that if the girl requires sekufu' and the father fulfills it, then what is used as a legal basis is the requirements she proposes, even if the man does not like her or even has bad manners (Rosidi, 2019).

The obligation to approve a girl in accordance with the benefit of the ummah is clear that marrying a widow is a separate benefit for her because it is in accordance with her wishes and she is willing. With this marriage, the widow can achieve the goal of marriage while avoiding the fascism because she has been abandoned by her ex-husband (Nawawi, 1972).

Another thing that is characteristic is that Ibn Qayyim al-Jawziyyah not only put forward his ansich opinion but he also put forward the opposite opinion. It can be further seen in his book Zad al-Ma'ad on this matter, those who disagree with him say that the Prophet PBUH gave different legal decisions between widows and girls, as the Prophet said. (Nawawi, 1972):

ولانتكح الایم حتی تستأمر ولا تتكح البكر حتى تستأذن

Another Prophet's Words (Nawawi, 1972):

الایم احق بنفسها من وليها والبكر يستأذنها ابوها

If in the case of a widow, she has more rights to herself than to her own guardians, while in the case of a girl, the father has more rights to her. If this is not the case, then of course there is no special meaning for a widow. Likewise, in the form of agreement, the Prophet distinguishes between the two. If she is a widow, then the form of consent is by expressing it, while the form of consent for a girl is by silence. All this shows that there is no perceived consent from a girl, so that there is no

authority for her to be with her father (Nawawi, 1972).

So the answer put forward is that there is not a single postulate that shows the girl's ability to be married without her consent, while she herself has reached adulthood and is able to think maturely. And another opinion that a father may marry his daughter to a man whom he does not like, even if the man is sekufu', is clearly rejected by the hadiths on which the law is based. There is no stronger evidence than the following hadith of the Prophet PBUH (Nawawi, 1972):

الایم احق بنفسها من وليها

This hadith can be understood by the way of mafhum mukhalafah. The opinion that it is permissible to marry a girl without her consent usually uses this Hadith as an argument. If they present this Hadith as an argument, then it should not take precedence over mantuq-sarih (the clear sound of nash). When it is said that this Hadith is understood as mafhum mukhalafah as mentioned above, and in mafhum mukhalafah contains a general meaning. So it is true, in mafhum mukhalafah there is no general meaning, if there is evidence contained in it that leads to the understanding that takhsis (specialize), that is, affirming the law other than one's own akhsitu. It is clear that the division of law other than akhsis into two categories; The determination of the law and its affirmation, also contains benefits. The determination of other laws on a matter that is kept silent also contains benefits, although there is no opposite of the law of mantuq (sound of nash). Efforts to detail the law also contain benefits. Try to meditate on the words of the Prophet PBUH (Ahmad et al., 2012):

والبكر يستأذنها ابوها

After his words:

الایم احق بنفسها من وليها

It is certain to oppose the opinion that a girl can be married without her consent and permission, as if she had no authority at all over herself. So that the two Hadiths above can be brought together in order to avoid misunderstandings. So it is clear that even though a widow has more rights over herself than her own guardian, it does not mean that a girl does not have authority over herself (Ahmad et al., 2012).

Furthermore, Ibn Qayyim al-Jawziyyah stated that the Prophet PBUH gave a legal decision, the sign of a girl's consent was to be silent, while the sign of consent of a widow was to express her consent directly. When a girl gives her consent by expressing it through words, it is stronger her

legal status. To support this opinion Ibn Qayyim al-Jawziyyah also quoted the opinion of Ibn Hazm, he said: "It is not permissible to marry a girl unless she is silent". This opinion is in accordance with his zahiriyah statement (Kholidah, 2016).

### C. *Munaqasah Adillah*

Ideally-normatively, Islam does not actually distinguish between men and women, or in other words, Islam rejects all forms of discrimination that smells of gender. Islam as the bringer of salvation and mercy for the whole world (rahmatan lil'alamin) places the dignity and position of women in a noble position (Ismail, 2003).

Women as a social reality of Arab society during the time of the Prophet, became one of the concerns that the Qur'an wanted to defend, in addition to slave groups, the poor, poor children, and a series of other weak people. Even the Qur'an specifically documents it in a special letter called an-Nisa' (Nasution, 2016). A number of indications can be highlighted to see the defense of the Qur'an against women, including even the verse of the Qur'an which expressly states that women and men are equal as surah al-An'am verse 151.

A number of verses that expressly overhauled pre-Islamic Arab customs. Among such indications is the prohibition of burying newborn girls alive, because according to pre-Islamic Arab societies the girl would defame the family. This is clear evidence that the Qur'an seeks to liberate women from a culture that discriminates against them. Because it must be admitted that when the Qur'an was revealed, the Arab patriarchal regime was still very thick (Nasution, 2016).

The defense of the Qur'an against women became one of the main missions that the Prophet Muhammad fought for with the religion of Islam that he brought. However, historical evidence says otherwise, for almost all Muslim history, women were placed in an inferior position while men were in a superior position. Even though the Qur'an places the position of women on an equal footing with men (Nasution, 2016).

Imam Shafi'i's opinion when examined further is still a relic of pre-Islamic Arab traditions. History writes that before the advent of Islam, a father had the right to choose a husband for his daughter and his daughter had no right to oppose. Even the pre-Islamic Arab tradition that does not respect women's rights is that it is not uncommon for fathers to exchange their daughters to marry

each other. This is known as *nikah shari'a* in Islam, but then marriage of this type is canceled and prohibited by Islam (Rusyid, 1989).

Before giving further assessment on this issue, it is good for the author to describe the parts that are the space for debate between Imam Shafi'i and Ibn Qayyim al-Jauzy in discussing this study, in order to gain a comprehensive understanding of this issue. For more details about the *munaqasah adillah* between Imam Shafi'i and Imam Ibn Qayyim al-Jauzy, the author first describes the postulates that are used as the basis of their opinions.

Imam Shafi'i argues that it is not mandatory to attack guardians to ask for the consent of girls (AL, n.d.). Imam Nawawi explained that a wali has the right to marry his daughter, if he has a strong reason to have a marriage without the permission of his daughter, then the wali's will is accepted because he has the right to decide. And if he is not one of those who has the right to determine without the permission of his daughter, because she is not a wali 'mujbir' (who has the right to coerce), or in a condition that is not permissible, or her future husband is not *sekufu*, then it is not permissible to coerce, the father may marry his daughter, both young (not yet puberty) or adult (puberty) without asking for her permission, and preferably asking for her permission if she has reached puberty. Even if the father insists, then the marriage is valid and the position of the grandfather is the same as the father in this matter (AL, n.d.).

In the Shafi'i madhhab, a father or grandfather has absolute authority to marry his daughter, both young and adult, provided that there is no enmity between the father or grandfather and the child. However, asking for permission is preferred. However, according to Imam Shafi'i, as in his explanation above, if the father marries his daughter without her permission, then the marriage is valid. Furthermore, Imam Shafi'i explained that the position of grandfather is the same as that of father in terms of wali - that is, both have the right to *ijbar*.

Scholars who argue that the need for wali (in marriage) agree to divide it into two parts, namely wali *mujbir* and wali *ghairu mujbir*. Shafi'iyah scholars are of the opinion that the wali *mujbir* is the father and grandfather. So with the right of *ijbar* owned by the father and grandfather as guardians, the father and grandfather can marry him without the permission of the daughter. In the above statement, it is clearly said by Imam Shafi'i

that grandfather also has the same position as his father in the matter of Ijbar.

Imam Shafi'i based his opinion on a hadith narrated by Imam al-Bukhari r.a. the Prophet PBUH said that a widow has more rights to herself (in marriage) than her wali and a girl is told by her wali to marry (Al-Bukhari, 1978) .

Imam Shafi'i explained that the meaning of the above hadith is that the wali has more right to marry his daughter who is still a girl than the girl herself even though she is an adult. Furthermore, Imam Shafi'i explained that the command to ask for permission for girls in marriage is sunna, not mandatory. And the command in the hadith to ask for the permission of a girl in marriage is sunnah not obligatory based on "her permission is her silence (Al-Bukhari, 1978).

In the view of the Shafi'i school, a woman who is puberty and sensible and is still a girl, then the right to marry herself is with the wali, but if she is a widow then the right is with both, the wali cannot marry the widow without her consent. On the other hand, the woman should not marry herself without the blessing of a guardian. Imam Shafi'i in this regard makes girlhood (al-bikr) as 'illat in determining the law. Thus, in the view of Imam Shafi'i, if the girl is still bikr with the meaning that she is not a widow, whether she is still a child or has reached puberty, then the one who has the most right to marry her is her guardian. Wali (father and grandfather) may marry their daughters even without her permission, because for Imam Shafi'i the command to ask permission from a girl in marriage is not mandatory.

Imam Ibn Qayyim al-Jauzy argues that the ruling taken from it is that an adult girl should not be forced to marry, and she should not be married unless with her consent. According to Ibn Qayyim al-Jauzy, the consent of girls is obligatory in accordance with the Prophet's command:

عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْإِيْمَ أَحَقُّ  
بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِدْنُهَا صُمَاتُهَا

*It was narrated from Ibn Abbas that the Messenger of Allah (peace and blessings of Allaah be upon him) said: "The widow has more rights over herself than her guardian, whereas a girl should be asked for her permission and her permission is her silence."*

This statement is a clear command, because it is in the form of khabar (news) that serves to reinforce what is reported and affirm it. The original law is that the commandment indicates lil

wujub (obligation), as long as there is no ijma' that contradicts it (Nawawi, 1972).

The statement that explains that the above opinion is in accordance with the prohibition of the Prophet is his saying:

وَتَبَيَّنَتْ عَنْهُ فِي الصَّحِيحِ أَنَّهُ قَالَ : "لَا تَنْكُحُ الْبِكْرَ حَتَّى تَسْتَأْذِنَ قَالُوا : يَا رَسُولَ اللَّهِ وَكَيْفَ إِذْهَا قَالَ : إِنْ تَسَكَتْ" وَ صَحِيحٌ مُسْلِمٌ :  
"الْبِكْرُ تَسْتَأْذَنُ فِي نَفْسِهَا وَإِدْنُهَا صُمَاتُهَا"

*Imam Muslim has narrated in the book Sahih that the Prophet said that it is not permissible to marry a girl without her consent. And the agreement is silence.*

In this hadith there are commandments, prohibitions, as well as the law of the ability to choose. This legal determination is the most appropriate way. The obligation of consent of a girl in accordance with the rules of sharia is that a girl who is mature and capable of thinking carefully, the father is not allowed to use his property even if it is small except with his consent. A father is not allowed to force his daughter to withdraw even a small amount of her wealth without her consent. How could the father be allowed to take out the most valuable treasure for his daughter without his consent and then give it to a man of his choice, while the girl did not want the man.

Another thing that is characteristic is that Ibn Qayyim al-Jawziyyah not only put forward his ansich opinion but he also put forward the opposite opinion. Further can be seen in his book Zad al-Ma'ad on this matter, those who disagree with him say that the Prophet PBUH gave different legal decisions between widows and girls, as said la tunkahu al-Ayyama hataa tasta'mara wa la tunkahu al-bikra hatta tusta'zana as narrated by Imam Muslim One of the parts that became a debate related to women's right to choose a partner was 'illat which was used as a basis arguments to determine whether or not the right to freedom itself exists (Adam, 2022). Imam Shafi'i in this regard makes girlhood (al-bikr) as 'illat in determining the law, while Ibn Qayyim al-Jauzy using childhood 'illat (as-sugr), there are even scholars who make 'illat for this case by combining the two 'illat (Nawawi, 1972).

In this case, there is a criticism made by Ibn Qayyim, who states that actually making girlhood a compelling reason to limit the rights of women is contrary to Islamic principles, and making it an 'illat to limit or hinder women is the creation of 'illat with a nature that has no influence in the sharia' (Nawawi, 1972). He added that the 'illat that is true for this case is still young.

Ibn Qayyim al-Jawziyyah agreed with his teacher Ibn Taymiyyah that the 'illat that is used as a legal basis for the existence or absence of such rights is the 'illat of a young age, so according to him an adult girl has the right to choose her future husband. In other words, no one could force him to marry.

Another part that is the basis for the difference of opinion among scholars in this regard is the method of the scholars in applying the law to this case. With the different legal istinbat methods, it has implications for the determination of different laws even though basically the nash used is the same. There are two types of legal istinbat methods used by scholars in this case, namely mafhum mukhalafah and mantuq nas.

The mafhum mukhalafah as an analytical knife used by Imam Shafi'i, in this case, led them to the opinion that the consent of a girl is only circumcision (Nasution, 2016). This is based on the hadith:

عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْإِيْمَ أَحَقُّ  
بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِدْنُهَا صُمَاتُهَا

*It was narrated from Ibn Abbas that the Messenger of Allah (peace and blessings of Allaah be upon him) said: "The widow has more rights over herself than her guardian, whereas a girl should be asked for her permission and her permission is her silence."*

Likewise, the hadith of the Prophet:

عن ابن عباس رضي الله عنه أن النبي صلى الله عليه وسلم قال  
الثيب احق لنفسها من وليها والبكر يستأمرها ابوها نفسها رواه  
البخارى

*From Ibn Abbas r.a. the Prophet PBUH said that a widow has more rights to herself (in marriage) than her guardian and a girl is told by her guardian to marry.*

If the widow is more entitled to herself than her guardian, then the mafhum mukhalafah is that the guardian has more rights to her daughter, so that then they are of the opinion that asking for a girl's consent is no longer necessary.

With the same hadith, the scholars who adhere to the mantuq nas are represented by Ibn Qayyim al-Jawziyyah, who states that the consent of girls is mandatory.

Ibn Qayyim further criticized those who use mafhum mukhalafah in this case by saying that the understanding that emerges from the mantuq nas should take precedence over the understanding that uses the mafhum mukhalafah. Because the determination of the law in a certain case does not necessarily stipulate the law to the contrary for

other cases. It is something that other cases may have their own legal basis.

Regarding the difference of opinion regarding the issue of the consent of the girl in marriage, Ibn Qayyim al-Jawziyyah further gave an analogy that a father does not have the right to tasarruf over his daughter's property that is rasyidah without her consent, let alone his budu' (honor) which is his most valuable property. Then, how can a father be allowed to dispose of the most precious treasure while the girl does not agree.

In the end, the question of women's freedom and consent in choosing a prospective husband comes down to whether it is necessary (mandatory) or not (sunnah).

Imam Shafi'i is of the opinion that the consent of a girl is legally circumcised, in other words the girl must consent to her marriage and the father may marry her without her consent. Meanwhile, Ibn Qayyim al-Jawziyyah argued that the consent of girls is mandatory. In other words, the girl must consent to her marriage and the father must not marry her without her consent.

#### D. Its Relevance to the Indonesian Context

After the author has elaborated the opinions, evidences and munaqasah adillah between the opinion of Imam Shafi'i and Ibn Qayyim al-Jauzy regarding the consent of a girl in marriage, the author considers that the most rajah is the opinion of Ibn Qayyim, namely that the consent of a girl in marriage is a necessity (mandatory).

Because this opinion of Ibn Qayyim is in accordance with the opinion of the Salaf and the Abu Hanafi school as well as a narration from Imam Ahmad. Also opinions that are in accordance with the law of the Prophet PBUH, both in the form of his orders and prohibitions, or in the rules of shari'ah and the benefit of his people (Nasution, 2016).

With consideration for the benefit of the girl concerned, this is completely left to the girl and not to the guardian. The opinion that supports women's consent and freedom in the Indonesian context, Khoruddin Nasution, in his article published in the journal asy-Syir'ah explained that there is no coercion in choosing a partner for women, based on a number of hadiths used by the fuqaha' to solve the problem of disagreement and women's freedom in determining their partner, in principle these hadiths emphasize the importance of the consent of the woman concerned. On the other hand, the basis used by the fuqaha' which argues that the consent of the girl is not necessary

and that there is no freedom for women in determining the partner is weak, because it only uses the mafhum mukhalafah of the nash which says that the widow has more rights to herself. Even though textually (explicitly) there is a nash that states that there must be consent from the woman who is going to get married. He added that the emphasis on the hadiths that require the consent of women who are going to marry is distorted (intentionally or not), in favor of the highly patriarchal practices and understandings that are already established by the fuqaha'. Because the fuqaha' live and live in the patriarchal society (Nasution, 2016).

Khoiruddin Nasution in supporting the above statement, offers one theory that can be used as a parameter to measure the existence or absence of a woman's right to freedom in determining a partner, namely connecting the nash that talks about the freedom and coercion of women in marriage with the nash that talks about marriage itself (at least with the status of the marriage contract and the purpose of marriage) (Nasution, 2016).

In this regard, he further explained that the purpose of marriage is three kinds hinted at by the Qur'an, namely first, to develop the breeding of mankind (reproduction) on earth, Second, the fulfillment of sexual needs, Third to obtain tranquility (sakinah), love (mawaddahand affection (rahmah).

Based on the status and purpose of the marriage, he continued, a minimum of two records can be written as follows. First, marriage in Islam is a noble transaction, more than a typical transaction. Whereas for the validity of a transaction (akad) there is usually a requirement that the people who hold a taransaksi are mukallaf, provided that (1) the mukallaf has a well-functioning mind ('aqil), (2) the transaction is carried out of his own will (not forced), in accordance with an-Nisa' (4): 29, (3) the transaction is carried out by an adult. It can be analogous that for the validity of ordinary transactions must be carried out by parties who meet these conditions, how is it possible that in a marriage contract, a transaction that exceeds the usual transaction can be carried out by force (without the girl's consent) can be carried out. Second, marriage in Islam has a very noble purpose and gives birth to quite wide legal consequences. Because the marriage contract is the first step to determine the fate of the couple (living as husband and wife) during their life in

the world. Therefore, it is increasingly clear that the marriage contract should be carried out by the parties with full awareness and careful consideration. This guidance further shows that the decision of the bride and groom as the parties who feel it as a result must really get attention.

Marriage is directly related to a woman's feelings, she will be the one who will feel the sweet, beautiful and bitter bitterness of marriage. Therefore, his consent and freedom in determining his potential companion is something that is decisive in marriage.

Islam risks that one of its main missions is to fight for women's rights, so the relevant view on this issue is to give women the right to choose their partners. It will show their personal independence being "robbed" consciously or not by the traditions that surround it (Scott, 1999).

Based on her Islamic rights, a mature girl can reject anyone she considers unqualified as her husband. No one can force marriage on him. So if it is said that if he does not agree with the marriage offered to him, then the marriage is invalid (Khamenei, 2004).

On closer examination, it will be seen that Ibn Qayyim al-Jawziyyah still admitted the practice of ijbar against immature girls. This is indicated by the 'illat (pulig) as the 'illat that determines whether or not there is a woman's freedom in determining a partner.

Balig as written in the Islamic Encyclopedia in Indonesia for women is when women get their period, or in fiqh it is stated 7 to 9 years. And the majority of scholars set the minimum age limit at 15 years, for both men and women.

Ibn Qayyim al-Jawziyyah, in other words, still allowed the practice of underage marriage. Even though the maturity of the life of the couple is very necessary to maintain the integrity of a household.

Regarding the marriage of underage girls, there is an interesting opinion from Ibn Syibrimah quoted by Wahbah az-Zuhaili, he said that marrying underage girls is not valid, for the benefit of the girl concerned, as well as the family. This opinion provides rational demands because the household that will be undergoing is his daughter, so a father must give his daughter the opportunity to grow and develop into an adult, who can choose her life path and determine her mate. Marriage should take place after each has reached the level of maturity, both physically-biological and mentally-psychologically.

Ibn Qayyim believes that the purpose of the enactment of the law is to realize the benefits and

avoid deception for humans. Therefore, the implementation of the law is based on benefits. The law changes because of the consideration of benefits.

The change and development of Islamic legal thinking based on the benefits will change according to time and space is not only justified, but is a necessity, especially for Muslims who have different conditions and cultures from the Middle East, such as Indonesia. This is based on considerations: first, many of the provisions of Islamic law that apply in Indonesia are products of *ijtihad* based on Middle Eastern conditions and culture. In fact, what is suitable and good for Muslims in the Middle East is not necessarily good and suitable for Muslims in Indonesia. Second, the complexity of the problems faced by Muslims today continues to grow and is increasingly diverse.

Ibn Qayyim al-Jawziyyah's opinion that requiring the consent of girls is actually in accordance with the applicable laws in Indonesia. In the Marriage Law no. 1/1974 (ps. 6 paragraph (1) jo. ps. 16 paragraph (1) ) KHI stipulates that one of the conditions for marriage is the consent of the prospective bride.

The benefit of consent is that each prospective husband and wife, entering the gate of marriage and marriage, can really happily divide their duties and obligations proportionately. Thus, the purpose of marriage can be achieved, it can be seen that what is the opinion of Ibn Qayyim is in line with the laws in Indonesia, it can even be said that the benefits that he aspires to are further perfected by the laws in Indonesia.

This is evidenced by the existence of legislation that regulates the age limit for men and women who are allowed to marry, in the legislation it is clearly stated that the age limit for men is 19 years old while for women is 16 years old.

In connection with this, the prospective husband and wife who have matured their souls so that both of them can realize the goals of marriage in a good and harmonious manner, and it is hoped that it will not end in divorce. Maturity of age is necessary, because based on the observation and analysis of various parties on cases of disharmony and the dissolution of a household, it is often caused by immaturity and instability of personal integrity, so it is very influential in solving problems that arise in the ark of the household.

So it is clear that from the perspective of *maqasid asy-shari'ah*, the concept of *maslahah* is

very relevant to the dimension of plurality and the dynamics of human life. Because with the concept of *maslahah*, not only the concept of change and change in the development of the times can be annulled, but the aspects of locality and plurality are also not neglected, so that Islamic law will not be rigid, in accordance with the direction of the *shari'ah*.

*Maslahah* is practically different in each era, so *fiqh* as a product of *fuqaha'* must be adapted to the social context in which it is applied, but of course it does not contradict the purpose of the *shari'ah* itself.

With the concept of *maslahah* as a factor in legal change, the law is flexible and can adapt to social changes. *Maslahah* as a factor in changing the law is not something new in the Islamic world. This theory was put forward by Ibn Qayyim al-Jawziyyah about seven centuries ago.

#### IV. CONCLUSIONS AND SUGGESTIONS

##### A. Conclusion

Ibn Qayyim al-Jawziyyah argued that there must be the consent of a girl if she wants to marry him. In other words, the consent of the girl in the marriage is legally mandatory. While Imam Shafi'i argues that a girl's consent is just circumcision, even the father as a guardian can force a girl to marry. Ibn Qayyim al-Jawziyyah in adhering to the *mantuq nas* which is strengthened by using the 'illat of childhood (*as-sugr*), while Imam Shafi'i adheres to the *mafhum mukhalafah* which is strengthened by using the 'illat *al-bikr*.

The most relevant opinion for the Indonesian context is the opinion of Imam Ibn Qayyim al-jauzy. In the applicable legislation in Indonesia, namely in the law on marriage No. 1/1974 (ps. 6 paragraph (1) jo. ps. 16 paragraph (1) ) KHI stipulates that one of the conditions for marriage is the consent of the prospective bride. This indicates that the applicable legislation in Indonesia is in accordance with the opinion of Ibn Qayyim al-Jawziyyah.

##### B. Suggestions

To ensure the protection of women's rights in marriage, it is important for policymakers, scholars, and the public to continue to support and implement the principle of consent of the bride and groom as stipulated in the applicable laws and regulations in Indonesia. Socialization about the importance of girls' consent in marriage must be increased so that public awareness of women's rights in marriage is stronger. In

addition, there is a need for strict law enforcement against practices that are contrary to this provision to prevent marriages without legal consent.

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