



Girl's Consent in Marriage (Comparative Study Between Imam Shafi'i and Imam Ibn Qayyim al-Jawziyyah)

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Abstract

The consent of a prospective bride is one of the most debated issues in Islamic family law. Imam al-Shafi'i argues that the consent of a virgin woman is not a mandatory requirement for the validity of marriage, thereby granting the *wali mujbir* (guardian with the right of compulsion) the authority to marry her without her explicit consent. In contrast, Ibn Qayyim al-Jawziyyah maintains that the consent of a virgin woman is obligatory as a manifestation of the protection of women's rights and public welfare (*maslahah*). This study aims to examine the differences in the legal reasoning of Imam al-Shafi'i and Ibn Qayyim al-Jawziyyah regarding a virgin woman's consent to marriage and to evaluate the relevance of their views within the Indonesian legal system. This research employs a normative legal research method using a comparative approach based on library research. Data were analyzed qualitatively by comparing the legal reasoning (*istinbāt*), textual evidence, and legal causes (*'illah*) adopted by both scholars. The findings reveal that Imam al-Shafi'i relies on the method of *mafhūm al-mukhālafah* and considers virginity (*al-bikr*) as the legal cause, thereby recognizing the guardian's right of *ijbār*. Conversely, Ibn Qayyim al-Jawziyyah adopts the approach of *manṭūq al-naṣṣ* and regards legal maturity as the determining legal cause, arguing that an adult woman cannot be compelled to marry without her consent. His opinion is considered more consistent with the objectives of Islamic law (*maqāṣid al-sharī'ah*), the protection of women's rights, and the principle of public welfare. Furthermore, it is more compatible with Indonesian positive law, particularly the Marriage Law and the Compilation of Islamic Law, both of which require the consent of the prospective bride and groom as an essential condition for a valid marriage.

I. INTRODUCTION

Achieving a peaceful, loving, and compassionate household life, as described above, is certainly no simple matter. To achieve this, Islam offers rules and procedures that must be followed.

Mahmud Syaltut in his book *Islamic Aqidah and Sharia* offers five principles as procedures that must be fulfilled in family formation in the pre-marital phase. First, get to know and understand each other (*at-Ta'aruf*) between the bride and groom. With this process of getting to know and understanding each other, it is hoped that each bride and groom will know the condition of their prospective partner. In this case, Islam dictates that the criteria that must be met and prioritized in determining is the goodness of morals and religion and does not merely look at

physical condition, wealth and lineage. The second is *al-Ikhtibar*, namely the exploration stage which is carried out by conducting a sermon. In this sermon, prospective husbands are allowed to see the woman's face, hands and soles of the feet and are also allowed to discuss each other's thoughts.

This engagement is expected to foster a feeling of love between the prospective bride and groom. Third, *ar-ridha* (willingness). Islamic law does not suffice with the two principles mentioned above but also requires true willingness from both parties. Fourth, *kafa'ah*, which refers to equality between the bride and groom. This is intended to ensure there is no gap between them after they have entered the marriage. Fifth, *mahar* (dowry), or dowry (dowry). In this *mahar*, Islamic law

requires that the value of the dowry be within reasonable limits.(Syam et al., 2020).

From the explanation above, it is clear that willingness (ar-ridha) is a principle of family development that must be fulfilled if a harmonious and happy family is to be created.

The status of the prospective bride's consent in marriage is a crucial aspect of Islamic law. In general, Islamic law highly values the consent (rida) of the prospective bride as one of the requirements for a valid marriage. This consent is recognized by various schools of Islamic jurisprudence, although there are differences in its interpretation and application.

The concept of consent or agreement itself must be further separated, because consent itself has two subjects that have different legal status among Islamic jurists, in this case the intended widow or virgin. The Shafi'i school of thought, for example, states that if the consent comes from the widow, then the legal status is mandatory. On the other hand, if the consent comes from the daughter, according to Shafi'i scholars, it is not so important (simply circumcision). In fact, according to Shafi'i scholars, when certain conditions have been met, parents in this case no longer need to ask for the daughter's consent. The conditions in question are as follows:

- 1) Between father and son there is no hostility
- 2) prospective husband sekufu
- 3) Appropriate dowry
- 4) The prospective husband is able to provide a dowry
- 5) It's not with men that makes her suffer in social situations.(Mubarokah, 2020).

In positive law in Indonesia, the consent of the bride is one of the absolute requirements for a valid 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 implementing 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 bride and groom." This paragraph emphasizes that the consent of both prospective

bride and groom, both male and female, is a valid requirement for marriage. Furthermore, Article 6 paragraph (2) states that "To enter into marriage, a person who has not reached the age of 21 must obtain the consent of both parents."

This provision emphasizes that in addition to the consent of both prospective bride and groom, marriage also requires parental permission if one or both prospective bride and groom are under 21 years of age. However, this parental permission must not conflict with the personal consent of the prospective bride and groom. Thus, a woman cannot be forced to marry without her own consent, even if she has permission from her parents or guardian.

In classical Islamic jurisprudence, there are differing opinions regarding the obligation of a guardian to seek the consent/permission of his daughter to marry. Imam Shafi'i explains that the consent of the girl in marriage is important, but as explained in the book *al-Umm*, a guardian is not obligated to seek the consent of a girl.(AL, nd). Fathers and grandfathers may marry a girl without her consent, whether the girl is still a child or an adult. Unlike the Shafi'i school of thought, the Hanafi school of thought holds that the legal status of consent between a widow and a daughter is the same; both must be asked for consent. Furthermore, according to Hanafi scholars, the difference between a widow and a daughter is the sign of consent; a widow must be firm, while a daughter's silence is sufficient.(Nasution, 2016). In contrast to Imam Syafi'i, Ibn Qayyim al-Jawziyyah insisted that a girl's consent must still be sought when marrying her off.(Nasution, 2016).

Looking at the current context along with the development of the times, where previously women were usually secluded in their homes so that they tended to have narrow perspectives and were less familiar with the outside world, then the current condition can be seen that women are a group with insight and not a few of them have become experts in certain scientific disciplines.

Departing from this fact, adding that the school of thought that is developing in Indonesia is the Syafi'iah which considers consent to be not very

important (sunnat), the author is interested in raising this issue. The focus of this study is to analyze the opinions of Imam Syafi'i and Imam Ibnu Qayyim al-Jauziyah regarding the consent of girls in marriage and to analyze which opinions are more relevant to be implemented in Indonesia.

II. RESEARCH METHODS

From the perspective of scientific discipline, the research conducted is a Normative (Juridical Normative) research. Meanwhile, seen from its type, this research is a library research. While the approach used in this research is a legal approach (legal Opinion). While the data will be described by the author is qualitative, namely a method where the data is expressed in a natural state, without using symbols, numbers or formulas. The data analysis method used is a comparative analysis method, namely by comparing the opinions of Imam Syafi'i with the opinions of Ibn Qayyim al-Jauziyah and then making a conclusion.

III. RESULTS AND DISCUSSION

A. Imam Shafi'i's Opinion Regarding Girls' Consent in Marriage

The Shafi'i school of thought states that consent from a widow is legally obligatory. Consent from a daughter, according to Shafi'i, is less important (simply circumcision). In fact, according to Imam Shafi'i, once certain conditions are met, parents no longer need to seek the daughter's consent. These conditions are as follows:

- 1) Between father and son there is no hostility
- 2) prospective husband sekufu
- 3) Appropriate dowry
- 4) The prospective husband is able to provide a dowry
- 5) It's not with men that makes her suffer in social situations.(ROSADA, 2023).

Furthermore, Imam Syafi'i explains in the book al-Umm that it is not obligatory for a guardian to ask for a girl's consent as follows:

ويجوز للأب والجد تزوج البكر من غير رضاها صغيرة أو كبيرة

Fathers and grandfathers may marry a girl without her consent whether the girl is still a child or an adult.(AL, nd).

Furthermore, Imam Syafi'i, as explained by Imam Nawawi, states that a guardian has the right to marry his daughter, if he has a strong reason to hold a marriage without his daughter's permission, then the guardian's will is accepted because he has the right to determine. And if he is not one of those who has the right to decide without his daughter's permission, because he is not a mujbir guardian (who has the right to force), or in conditions where he cannot force, or the future husband is not equal, then he cannot force, the father can marry his daughter, whether small (not yet mature) or adult (already mature) without asking his permission, and more importantly asking his permission if he has reached puberty, even if the father forces then the marriage is valid and the grandfather's position is the same as the father in this matter.(Anugrah et al., 2019).

In the Shafi'i school of thought, a father or grandfather has absolute authority to marry off his daughter, whether a minor or an adult, provided there is no enmity between the father or grandfather and the child. However, seeking permission is preferred. However, according to Imam Shafi'i, as explained above, if a father marries off his daughter without her permission, the marriage is valid. Imam Shafi'i further explains that the grandfather's position is equal to the father's in terms of guardianship—that is, both have the right of consent.

Scholars who believe in the necessity of a guardian (in marriage) agree on dividing them into two categories: the mujbir guardian and the ghairu mujbir guardian. Shafi'i scholars are of the opinion that the mujbir guardian is the father and grandfather. Therefore, with the right of ijbar held by the father and grandfather as guardians, the father and grandfather may marry the girl without the permission of the daughter. In the statement above, Imam Shafi'i clearly states that the grandfather also has the same status as the father in the matter of ijbar.

Imam Syafi'i based his opinion on the following hadith:

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 ra Rasul saw said that widows have more rights over themselves (in marriage) than their guardians and girls are ordered by their guardians to marry.

Imam Syafi'i explained that the meaning of the above hadith is that a guardian has more right to marry off his or her daughter than the daughter herself, even if she is already an adult. Imam Syafi'i further explained that the command to ask a daughter's permission for marriage is sunna, not obligatory. (Hudaya, 2016).

The hadith "permission is silence" referred to by Imam Syafi'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

From Ibn Abbas that the Messenger of Allah shallallahu 'alaihi wasallam said: "A widow has more right over herself than her guardian, while a girl must be asked for her permission and her permission is her silence.

In the view of the Shafi'i school of thought, a woman who is mature and sane and still a virgin, then the right to marry her lies with her guardian, however if she is a widow then the right lies with both, the guardian cannot marry the widowed woman without her consent. Conversely, the woman is not allowed to marry herself without the blessing of a guardian. Imam Shafi'i in this regard makes virginity (al-bikr) as 'illat in determining the law. Thus in the view of Imam Shafi'i, if the girl is still bikr meaning not a widow whether still a child or has reached puberty then the most entitled to marry her is her guardian. Guardians (fathers and grandfathers) may marry their daughters even without her permission, because for Imam Shafi'i the command to ask permission from a girl in marriage is circumcision not obligatory.

B. Imam Ibn Qayyim Al-Jawziyyah's opinion regarding the consent of girls and their 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 has taken, as written in his book Zadal-Ma'ad, namely:

ثبت عنه في الصحيحين : ” عن خنساء بنت خدام زوجها ابوها هي
” كارهة وكانت ثيبا فانت رسول الله صلى الله عليه وسلم فردنكاحها
وفي السنن من حديث ابن عباس : ” ان جارية (بكر) اتت النبي صلى
الله عليه وسلم فذكرت ان اباها زوجها وهي كارهة فخيرها النبي
صلى الله عليه وسلم وهذه غير خنساء فهما قضيتان قضى في
” احدهما بتخير الثيب وقضى في الاخرى بتخير البكر
وثبت عنه في الصحيح انه قال : ” لا تتكح البكر حتى تستأذن قالوا
: يا رسول الله وكيف ادنها قال: ان تسكت ” و صحيح مسلم:
البكر تستأذن في نفسها واذنها صماتها

There is a provision in the authentic hadith sourced from Khansa' bint Khidam whose father married her under duress and she was a widow, so Khansa' reported this incident to the Prophet SAW so the Prophet annulled the marriage. Furthermore, in the Sunan book, a hadith sourced from Ibn Abbas that a girl complained to the Prophet SAW that her father had forced her to marry her, so the Prophet gave her the choice whether she wanted to continue the marriage or cancel it. So the narration of Khansa' has indicated that the Prophet gave the widow the choice to choose whether the marriage was continued or canceled. And the same thing also happened in other narrations. And it has been determined in the authentic narration that it is not permissible to marry a girl before asking for her consent. So the companions asked the Prophet, O Messenger, what form of consent is, the Prophet said her consent is her silence. And in the authentic narration in the Muslim book, the Prophet said that a girl must be asked for her consent and the girl's consent is her silence.

From the series of texts above, Ibn Qayyim al-Jawziyyah argued that the law taken from there was that an adult girl should not be forced to marry, and she should not be married off except with her consent. This is the opinion of the Salaf jumhur and the Abu Hanafi school of thought as well as a narration from Imam Ahmad. Also opinions that are in accordance with the laws of Rasulullah SAW, both in the form of commands and prohibitions, or in the principles of sharia and the benefit of his people (Rosidi, 2019).

From Ibn Qayyim's explanation above, it can be seen that Ibn Qayyim used several hadiths to support his opinion. The hadith from Khansa' binti Khidam:

عن خنساء بنت خدام زوجها ابوها وهي كارهة وكانت ثيبا فأتت رسول الله صلى الله عليه وسلم فردنكاحها

From Khansa' bint Khidam who was married by her father under duress and she was a widow, then Khansa' reported this incident to the Prophet SAW so the Prophet canceled her marriage.

Next is the Hadith narrated by Imam al-Bukhari:

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

From Ibn Abbas ra Rasul saw said that widows have more rights over themselves (in marriage) than their guardians and girls are ordered by their guardians to marry.

The words of the narrator of the hadith, "while she is a widow," are clearly a sign indicating the 'illat' or reason for the Prophet's rejection (not being recognized). Conversely, if she were a virgin, her marriage would have been accepted by the Prophet. (Sari et al., 2021).

Next is the hadith narrated by Imam Muslim:

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

From A'isyah ra. I asked the Prophet SAW about women's rights in their marriage. So the apostle answered him. So I said that in fact a girl was told to get married so she kept quiet. The Prophet said his silence was his consent.

Ibn Qayyim wrote in his book that the opinion that aligns with the Prophet's law is that girls who do not wish to marry are given the right to choose. This hadith is narrated as mursal, not because of an illat (implied evidence), but rather because it has both musnad and mursal status. If we follow the opinion of the fuqaha' (Islamic jurists), who consider this hadith to be ziyadah (additional), then the one who makes it muttasil clearly takes precedence over the one who makes it mursal. This is a normal occurrence in the hadith tradition. If we consider this hadith mursal, as most hadith scholars do, it is indeed mursal. However, it is supported by other authentic

hadith, qiyas (similarity of opinion), and the principles of Islamic law, as will be explained later. Thus, the above opinion can be formulated into the following categories: (Al-Bukhari, 1978):

The opinion that explains that the consent of a girl is obligatory according to the Prophet's command is the saying of al-Bikru Tusta'zana (Rosidi, 2019). According to Ibnu Qayyim, this statement is a clear command, because it is in the form of khabar (news) which functions to strengthen what is being reported and confirm it. The original law is that commands indicate lil wujub (necessity), as long as there is no ijma' that contradicts them (Nawawi, 1972).

The statement that explains that the above opinion is in accordance with the Prophet's prohibition is the hadith la tunkah al-Bikr hatta Tusta'zana (Rosidi, 2019). This hadith contains commands, prohibitions, as well as laws regarding the ability to choose. Establishing this law is the most appropriate way.

The obligation of a daughter's consent according to Islamic law is that a girl who is mature and capable of thinking maturely, the father is not permitted to use her property, even a small amount, without her consent. A father is not permitted to force his daughter to spend even a small amount of her property without her consent. How can a father be allowed to spend his daughter's most valuable property without her consent and then give it to a man of her choice, when the girl does not want that man?

It is certain that using all of the girl's property without her consent is easier for her than being forced to marry a man not of her own choosing. This statement also confirms an opinion that states that if the girl requires sekufu' and the father fulfills it, then the legal basis is the condition she put forward, even if the man is disliked or even has bad character. (Rosidi, 2019).

The obligation of a daughter's consent, in accordance with the interests of the community, is very clear. Marrying a widow is a benefit in itself for her because it is in accordance with her wishes and she is willing to do so. Through this marriage, the widow can achieve the goal of marriage and

avoid the misery of being abandoned by her ex-husband.(Nawawi, 1972).

One more thing that is characteristic, Ibn Qayyim al-Jawziyyah not only expressed his opinion, but he also expressed an opposing opinion. Furthermore, it can be seen in his book *Zad al-Ma'ad* on this matter, groups who differ in opinion with him say that Rasulullah SAW gave different legal decisions between widowed women and girls, as the apostle said(Nawawi, 1972):

ولا تنكح الايم حتى تستأمر ولا تنكح البكر حتى تستأذن

In the case of a widow, she has more rights over her than her guardian, while in the case of a virgin, her father has more rights over her. If this were not the case, there would be no special significance for a widow. Similarly, regarding the form of consent, the Prophet distinguished between the two. If a widow, her consent is expressed, while for a virgin, it is silence. All of this indicates that the virgin's consent is not considered, so she has no authority when she is with her father.(Nawawi, 1972).

So the answer proposed is that there is not a single argument that shows that a girl can be married off without her consent, even though she herself has entered adulthood and is able to think maturely. And another opinion which states that a father may marry his daughter to a man he doesn't like, even if the man is his partner, is clearly rejected by the hadiths on which this opinion is based. There is no stronger argument than the following hadith of the Prophet SAW(Nawawi, 1972):

الايم احق بنفسها من وليها

This Hadith can be understood through the concept of *mukhalafah* (general understanding). Those who argue that it is permissible to marry a girl without her consent typically use this Hadith as evidence. If they were to present this Hadith as evidence, they would not be allowed to prioritize it over the clear text (*mantuqas-sarih*). If it is argued that this Hadith is understood through the concept of *mukhalafah*, as mentioned above, and that the text contains a general meaning, then the correct interpretation is that the text does not contain a general meaning. If there is evidence

within it, it leads to the understanding of *takhsis* (specification), namely, affirming a law other than the *akhsis* itself. It is clear that dividing laws other than *akhsis* into two categories: establishing a law and confirming it, also contains benefits. Establishing a different law regarding a case that has been left unaddressed also contains benefits, even though there is no opposite to the law of *mantuq* (the text). Efforts to detail these laws also contain benefits. Try to reflect on the words of the Prophet SAW(Ahmad et al., 2012):

والبكر يستأذنها ابوها

After his words:

الايم احق بنفسها من وليها

This is certainly to counter the opinion that a girl may be married without her consent and permission, as if she has no authority whatsoever over herself. Therefore, the two Hadith above can be reconciled to avoid misunderstanding. Thus, it is clear that although a widow has more rights over herself than her own guardian, this does not mean that a girl has no authority over herself.(Ahmad et al., 2012).

Furthermore, Ibn Qayyim al-Jawziyyah stated that Rasulullah SAW gave a legal decision to sign a girl's consent by remaining silent, while a widow's sign of consent was by expressing her consent directly. If a girl gives her consent by expressing it through words, it has a stronger legal status. To support this opinion, Ibn Qayyim al-Jawziyyah also quoted Ibn Hazm's opinion, he said: "It is not lawful to marry a girl unless she is silent." This opinion is in accordance with the reality of his *zahiriah*(Kholidah, 2016).

C. Munaqasah Adillah

From an ideal-normative perspective, Islam actually does not differentiate between men and women, or in other words, Islam rejects all forms of gender-related discrimination. Islam as the bringer of safety and mercy to all nature (*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 Prophet's time, were one of the subjects the Quran sought to defend, alongside slaves, the poor, children, and a host of other

vulnerable groups. The Quran even specifically documents this in a special chapter called An-Nisa'.(Nasution, 2016). A number of indications can be put forward to see the Qur'an's defense of women, including the verses of the Qur'an which explicitly state that women and men are equal, as in Surah al-An'am verse 151.

Several verses explicitly overturn pre-Islamic Arab customs. Among these indications is the prohibition on burying newborn girls alive, as pre-Islamic Arabs believed such a girl would dishonor the family's reputation. This is clear evidence that the Quran seeks to liberate women from a culture that discriminates against them. Admittedly, when the Quran was revealed, the patriarchal Arab regime was still very strong.(Nasution, 2016).

The Quran's defense of women was one of the main missions championed by the Prophet Muhammad through his Islamic religion. However, historical evidence suggests otherwise: throughout most of Muslim history, women have been placed in an inferior position while men have been held in a superior position. Yet, the Quran places women on equal footing with men.(Nasution, 2016).

Imam Shafi'i's opinion, upon closer examination, remains a legacy of pre-Islamic Arab tradition. History records that before the arrival of Islam, a father had the right to choose a husband for his daughter, and his daughter had no right to object. Furthermore, pre-Islamic Arab traditions that disregarded women's rights often involved fathers exchanging their daughters in marriage. This is known as shirk marriage in Islam, but this type of marriage was later abrogated and forbidden by Islam.(Rusyd, 1989).

Before providing a further assessment on this issue, it would be a good idea for the author to outline the parts that became the area of debate between Imam Syafi'i and Ibn Qayyim al-Jauzy in discussing this study, in order to obtain a comprehensive understanding of this issue. To provide further clarity regarding munaqasah, Imam Syafi'i and Imam Ibnu Qayyim al-Jauzy first explain the arguments on which their opinions are based.

Imam Syafi'i is of the opinion that it is not obligatory for a guardian to ask for a girl's consent.(AL, nd). Imam Nawawi explained that a guardian has the right to marry his daughter, if he has a strong reason to hold a marriage without his daughter's permission, then the guardian's will is accepted because he has the right to determine. And if he is not one of those who has the right to decide without his daughter's permission, because he is not a 'mujbir' guardian (who has the right to force), or in conditions where he is not allowed to force, or the prospective husband is not equal, then he cannot force, the father can marry his daughter, whether small (not yet mature) or adult (already mature) without asking his permission, and more importantly asking his permission if he has reached puberty, even if the father forces then the marriage is valid and the grandfather's position is the same as the father in this matter.(AL, nd).

In the Shafi'i school of thought, a father or grandfather has absolute authority to marry off his daughter, whether a minor or an adult, provided there is no enmity between the father or grandfather and the child. However, seeking permission is preferred. However, according to Imam Shafi'i, as explained above, if a father marries off his daughter without her permission, the marriage is valid. Imam Shafi'i further explains that the grandfather's position is equal to the father's in terms of guardianship—that is, both have the right of consent.

Scholars who believe in the necessity of a guardian (in marriage) agree on dividing them into two categories: the mujbir guardian and the ghairu mujbir guardian. Shafi'i scholars are of the opinion that the mujbir guardian is the father and grandfather. Therefore, with the right of ijbar held by the father and grandfather as guardians, the father and grandfather may marry the girl without the permission of the daughter. In the statement above, Imam Shafi'i clearly states that the grandfather also has the same status as the father in the matter of ijbar.

Imam Syafi'i based his opinion on a hadith narrated by Imam al-Bukhari ra Rasul SAW, who said that widows have more rights over

themselves (in marriage) than their guardians and girls are ordered by their guardians to marry.(Al-Bukhari, 1978).

Imam Syafi'i explained that the meaning of the above hadith is that a guardian has more right to marry off his or her daughter than the daughter herself, even if she is already an adult. Imam Syafi'i further explained that the command to ask a daughter's permission in marriage is sunna, not wajib. And the command in the hadith to ask a girl's permission in marriage is sunnah, not fardhu, based on the principle that "her permission is her silence." (Al-Bukhari, 1978).

In the view of the Shafi'i school of thought, a woman who is mature and sane and still a virgin, then the right to marry her lies with her guardian, however if she is a widow then the right lies with both, the guardian cannot marry the widowed woman without her consent. Conversely, the woman is not allowed to marry herself without the blessing of a guardian. Imam Shafi'i in this regard makes virginity (al-bikr) as 'illat in determining the law. Thus in the view of Imam Shafi'i, if the girl is still bikr meaning not a widow whether still a child or has reached puberty then the most entitled to marry her is her guardian. Guardians (fathers and grandfathers) may marry their daughters even without her permission, because for Imam Shafi'i the command to ask permission from a girl in marriage is circumcision not obligatory.

Meanwhile, Imam Ibnu Qayyim al-Jauzy is of the opinion that the law taken from there is that an adult girl cannot be forced to marry, and she cannot be married except with her consent. According to Ibn Qayyim al-Jauzy, the consent of girls is obligatory in accordance with the Prophet's command, namely his words:

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

From Ibn Abbas that the Messenger of Allah shallallahu 'alaihi wasallam said: "A widow has more right over herself than her guardian, while a girl must 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) which functions to

strengthen what is being reported and confirm it. The original law is that commands indicate lil wujub (necessity), as long as there is no ijma' that contradicts them (Nawawi, 1972).

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

وُثِّبَتْ عَنْهُ فِي الصَّحِيحِ أَنَّهُ قَالَ : "لَا تَنْكَحِ الْبِكْرَ حَتَّى
تُسْتَأْذَنَ قَالُوا : يَا رَسُولَ اللَّهِ وَكَيْفَ إِذْنُهَا قَالَ : إِنْ تَسَكَتَ " وَ
صَحِيحٌ مُسْلِمٌ : الْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِذْنُهَا 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.

This hadith contains commands, prohibitions, and the law regarding the permissibility of choosing. This legal determination is the most appropriate method. The obligation to obtain a daughter's consent, according to Islamic law, is for a girl who is mature and capable of mature thought. The father is not permitted to use even a small amount of her property without her consent. A father is not permitted to force his daughter to spend even a small amount of her property without her consent. How can a father be permitted to spend his daughter's most valuable property without her consent and then give it to a man of her choice, when the girl does not want that man?

One more thing that is characteristic, Ibn Qayyim al-Jawziyyah not only put forward his opinion ansich but he also put forward opposing opinions. Furthermore, it can be seen in his book Zad al-Ma'ad about this, the group that has a different opinion with him said that the Messenger of Allah SAW gave different legal decisions between widows and virgins, as the saying 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 has become a debate regarding the right of women to choose a partner is 'illat which is used as the basis of the argument to determine whether or not there is the right to freedom itself (Adam, 2022). Imam Syafi'i in this regard makes virginity (al-bikr) as the 'illat in determining the law, while Ibn Qayyim al-Jauzy uses the 'illat of childhood (as-sugr), there are

even scholars who make the 'illat for this case by combining the two 'illats.(Nawawi, 1972).

In this case, there was criticism expressed by Ibn Qayyim, who stated that actually making girlhood an obligatory reason for limiting women's rights is contrary to Islamic principles, and making it an 'illat to limit or hinder women is making an 'illat with a characteristic that has no influence in the sharia'.(Nawawi, 1972). He added that the true 'illat for this case is still small.

Ibn Qayyim al-Jawziyyah agrees with his teacher Ibn Taimiyyah that the 'illat which is used as a legal basis for whether or not these rights exist is the 'illat of childhood, so according to him an adult girl has the right to choose her future husband. In other words, no one can force him to get married.

Another aspect of the difference of opinion among scholars in this regard is their method of determining the law in this case. These different methods of determining the law result in different legal conclusions, even though the texts used are essentially the same. There are two types of methods used by scholars in this case: mafhum mukhalafah and mantuq nas.

The concept of mukhalafah as an analytical tool used by Imam Syafi'i in this case, led them to the opinion that the girl's consent was merely circumcision.(Nasution, 2016) This is based on the hadith:

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

From Ibn Abbas that the Messenger of Allah shallallahu 'alaihi wasallam said: "A widow has more right over herself than her guardian, while a girl must 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 أبوها نفسها رواه
البخاري

From Ibn Abbas ra Rasul saw said that widows have more rights over themselves (in marriage) than their guardians and girls are ordered by their guardians to marry.

If a widow has more rights over herself than her guardian, then the basic understanding is that the guardian has more rights over his daughter, so then they think that asking for the consent of a girl is no longer necessary.

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

Ibn Qayyim further criticized those who applied the mukhalafah understanding to this case, stating that the understanding derived from the mantuq nas should take precedence over the understanding based on the mukhalafah understanding. This is because the legal determination of one particular case does not necessarily establish the opposite law for another. It is possible that other cases have their own legal basis.

The difference of opinion regarding the issue of a girl's consent in marriage, Ibn Qayyim al-Jawziyyah further provides an analogy that a father does not have the right to tasarruf over his daughter's property without her consent, let alone her honor, which is his most valuable asset. So, how can a father be allowed to tasarruf such most valuable property when the girl does not agree?

Ultimately, the issue of women's freedom and consent in choosing a prospective husband comes down to whether it is necessary (obligatory) or not (sunnah).

Imam Syafi'i is of the opinion that the law of a girl's consent is circumcision. In other words, the girl must agree 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 agree to her marriage and the father cannot marry her without her consent.

D. Relevance to the Indonesian Context

After the author outlined the opinions, evidence and just munaqasah between the opinions of Imam Syafi'i and Ibn Qayyim al-Jauzy regarding the consent of girls in marriage, the author assessed that the most accurate was Ibn

Qayyim's opinion, namely that the consent of a girl in marriage is a must (obligatory).

Because Ibn Qayyim's opinion is in accordance with the opinion of the Salaf jumbuh and the Abu Hanafi school of thought as well as a history from Imam Ahmad. Also opinions that are in accordance with the laws of Rasulullah SAW, both in the form of commands and prohibitions, or in the principles of sharia and the benefit of his people(Nasution, 2016).

Dengan pertimbangan kemaslahatan gadis yang bersangkutan, maka hal ini diserahkan sepenuhnya kepada si gadis dan bukan kepada wali. Pendapat yang mendukung persetujuan dan kebebasan wanita dalam konteks ke Indonesiaan, Khoruddin Nasution, dalam tulisannya yang dimuat dalam jurnal asy-Syir'ah menjelaskan bahwa tidak ada paksaan dalam memilih pasangan bagi wanita, berdasarkan sejumlah hadis yang digunakan para fuqaha' untuk memecahkan persoalan ada tidak persetujuan dan kebebasan wanita dalam menentukan pasangan, pada prinsipnya hadis-hadis tersebut menekankan pentingnya persetujuan wanita yang bersangkutan. Sebaliknya, dasar yang digunakan fuqaha' yang berpendapat bahwa persetujuan gadis tidak diperlukan dan tidak adanya kebebasan wanita dalam menentukan pasangan adalah lemah, sebab hanya menggunakan mafhum mukhalafah dari nash yang menyebut bahwa janda lebih berhak terhadap dirinya. Padahal secara tekstual (eksplisit) ada nash yang menyebutkan harus ada persetujuan dari wanita yang akan menikah. Beliau menambahkan bahwa penekanan hadis-hadis yang mengharuskan adanya persetujuan wanita yang akan menikah terdistorsi (sengaja atau tidak), untuk mendukung praktek dan pemahaman yang sangat patriarkal yang sudah mapan oleh para fuqaha'. Sebab para fuqaha' itu tinggal dan hidup dalam masyarakat yang patriarkal tersebut(Nasution, 2016).

Khoiruddin Nasution dalam mendukung pernyataan di atas, menawarkan satu teori yang bisa dijadikan parameter untuk mengukur ada tidaknya hak kebebasan seorang wanita dalam menentukan pasangan yaitu menghubungkan

nash yang berbicara tentang kebebasan dan pemaksaan wanita dalam perkawinan dengan nash yang berbicara dengan perkawinan itu sendiri (paling tidak dengan status akad nikah dan tujuan perkawinan)(Nasution, 2016).

Dalam kaitan ini lebih lanjut, beliau menguraikan bahwa tujuan perkawinan ada tiga macam yang diisyaratkan oleh al-Qur'an, yakni pertama, untuk mengembang biakkan umat manusia (reproduksi) di bumi, Kedua, pemenuhan kebutuhan seksual, Ketiga untuk memperoleh ketenangan (sakinah), cinta (mawaddahdan kasih sayang (rahmah).

Based on the status and purpose of marriage, he continued, at least two notes can be written as follows. First, marriage in Islam is a noble transaction, exceeding transactions in general. In fact, for a normal transaction (akad) to be valid, there is a requirement that the people who enter into the transaction are mukallaf people, with the conditions (1) the mukallaf has a well-functioning mind ('aqil), (2) the transaction is carried out of their own will (not forced), in accordance with an-Nisa' (4): 29, (3) the transaction is carried out by adults. It can be analogized that for a normal transaction to be valid, it must be carried out by parties who fulfill these conditions, how is it possible that a marriage contract, a transaction that exceeds ordinary transactions 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 rise to quite broad legal consequences. Because the marriage contract is the first step in determining the fate of the couple (life as husband and wife) during their life in the world. Therefore, it becomes increasingly clear that the marriage contract should be entered into by both parties with full awareness and careful consideration. This guidance further demonstrates that the decisions of the bride and groom, as the parties who will ultimately suffer the consequences, must be given serious consideration.

Marriage is directly related to a woman's feelings; she will ultimately experience both the sweetness and the bitterness of marriage. Therefore, her

consent and freedom to choose her future partner are crucial factors in marriage.

Islam outlines one of its main missions to fight for women's rights, so the relevant view on this issue is to give women the right to choose their partners. This will show their personal independence which is "taken away" consciously or not by the traditions that surround them (Adhim, 1999).

Based on her Islamic rights, an adult woman can reject anyone she deems unsuitable for marriage. No one can force a marriage upon her. Therefore, if it is said that if she does not agree to the marriage proposed to her, then the marriage is invalid. (Khamenei, 2004).

Upon closer examination, it becomes apparent that Ibn Qayyim al-Jawziyyah still recognized the practice of *ijbar* for immature girls. This is indicated by the fact that the *'illat* of adulthood (*baligh*) is the *'illat* that determines whether a woman has freedom in choosing a partner.

As stated in the Indonesian Encyclopedia of Islam, puberty for women occurs when they begin menstruating, or in Islamic jurisprudence, it's stated to be 7 to 9 years old. Most scholars set the age limit at 15 for both men and women.

Ibn Qayyim al-Jawziyyah, in other words, still allows the practice of underage marriage. However, the maturity of a 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 stated that marrying underage girls is invalid, for the benefit of the girl in question, as well as the family. This opinion provides a rational demand because the household will be run by 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 partner. Marriage should take place after each has reached a level of maturity, both physically-biologically and mentally-psychologically.

Ibn Qayyim believed that the purpose of establishing law was to achieve human welfare and prevent harm. Therefore, legal

implementation is based on this benefit. Laws change based on considerations of this benefit.

Changes and developments in Islamic legal thought based on the public interest will evolve over time and space, not only justified but also necessary, especially for Muslims whose conditions and cultures differ from those of the Middle East, such as Indonesia. This is based on the following considerations: first, many Islamic legal provisions applicable in Indonesia are the product of *ijtihad* (Islamic jurisprudence) based on Middle Eastern conditions and culture. However, what is appropriate and good for Muslims in the Middle East may not necessarily be good and appropriate for Muslims in Indonesia. Second, the complexity of the problems facing Muslims today continues to grow and become increasingly diverse.

The opinion of Ibn Qayyim al-Jawziyyah which requires the consent of a girl is actually in accordance with the laws in force in Indonesia. In the Marriage Law no. 1/1974 (Article 6 paragraph (1) in conjunction with Article 16 paragraph (1)), the KHI stipulates that one of the conditions for marriage is the consent of the prospective bride and groom.

The benefit of having an agreement is that each prospective husband and wife, upon entering the gates of marriage and household, can truly happily divide their duties and obligations proportionally. Thus, the goals of marriage can be achieved. It can be seen that Ibn Qayyim's opinion is in line with Indonesian law. In fact, it can be said that the benefits he aspired to are further refined by Indonesian law.

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

In this regard, prospective husbands and wives must be mentally mature so that both can achieve the goals of marriage well and harmoniously, and hopefully avoid divorce. Maturity is necessary because, based on observations and analysis of various parties regarding cases of disharmony and the dissolution of a household, it is often

caused by immaturity of age and instability of personal integrity, which is very influential in resolving problems that arise in the household.

It is clear, then, that from the perspective of maqasid ash-syari'ah, the concept of maslahah is highly relevant to the pluralistic and dynamic dimensions of human life. Because with maslahah, not only can the concept of change and the evolution of the times be annulled, but also aspects of locality and plurality are not neglected, so that Islamic law remains consistent with sharia guidelines.

Maslahah practically differs in each era, so fiqh as a product of fuqaha' must be adapted to the social context in which fiqh is applied, but of course it must not conflict with the objectives of sharia 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 legal change is not something new in the Islamic world. This theory was put forward by Ibn Qayyim al-Jawziyyah about seven centuries ago.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Ibn Qayyim al-Jawziyyah argued that the girl's consent must be obtained if she wants to marry her. In other words, the girl's consent to marriage is legally mandatory. Meanwhile, Imam Syafi'i believes that a girl's consent is just circumcision, and even the father as guardian can force the girl to marry. Ibn Qayyim al-Jawziyyah adheres to the mantuq nas which is strengthened by using 'illat childhood (as-sugr), while Imam Syafi'i adheres to the understanding of mukhalafah which is strengthened by using 'illat al-bikr.

The most relevant opinion for the Indonesian context is the opinion of Imam Ibn Qayyim al-Jawziyyah. In the legislation in force in Indonesia, namely in the Marriage Law No. 1/1974 (Article 6 paragraph (1) in conjunction with Article 16 paragraph (1)), the KHI stipulates that one of the conditions for marriage is the consent of the prospective bride and groom. This indicates that the legislation in force in Indonesia is in

accordance with the opinion of Ibn Qayyim al-Jawziyyah.

B. Suggestion

To ensure the protection of women's rights in marriage, it is crucial for policymakers, religious scholars, and the public to continue supporting and implementing the principle of the bride's consent, as stipulated in Indonesian laws and regulations. Public awareness of the importance of a girl's consent in marriage must be increased to strengthen public awareness of women's rights in marriage. Furthermore, strict law enforcement is needed against practices that violate these provisions to prevent marriages without valid consent.

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