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## **THE SUBJECTIVITY INDICATION OF SCHOOL OF FIQH IN THE INTERPRETATION OF MARRIAGE VERSES**

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### **Abstract**

This paper has original contribution of knowledge as not issued earlier. The topic is on injustice interpretation of marriage verses stated by Islamic clerics. A number of the Quran verses and the hadith of the Prophet PBUH related to marriage has a general meaning and apply to all parties. The *Fuqaha'* (Islamic law scholars/Jurist) of four schools and *mufasssir* (Quran interpreter) of the same school (*mazhab*), agree to determine the generality of the meaning of several marriage verses to be applied for all without limiting the certain parties. The difference in their opinions is related to the meaning of the word *nikah*, which is the main subject to understand and interpret the verses. The *jumhur* (majority) of *fuqaha'* and *mufasssir* of the same school always associate the word marriage to the *wali* (Guardian) so that he must handle the matter concerning the marriage. On the other hand, *mufasssir* from Hanafi school argue that the word *nikah* applies to a broader meaning and is not exclusively addressed to *wali*, so the marriage guardianship can be handed to any parties, including women. The different opinions among *mufasssir* in determining the general and specific meaning of the content of the verse are influenced by the background of the school they followed. This article aims to further investigate the subjectivity forms of *mufasssir* to their *fiqh* school in interpreting the marriage verses. The forms of subjectivity might occur because; the difference views of *mufasssir* in interpreting the *Asbab al-Nuzul* (the occasion of revelation), the difference in *mufasssir's* comprehension towards the interpretation of the word *nikah* which is considered as the key concept in the interpretation of marriage verses. The subjectivity might also be caused by difference views in positioning the hadith as specialization tool to the marriage verses that are still general, and also because their dissent in evaluating the importance of the *munasabah* (correlation) between the verses and hadith about marriage in helping them interpret.

**Keywords:** Islamic Jurisprudence, Interpreter of Quranic Verses, Verses of Marriage Law, Islamic Law, Family Law

### **Introduction**

The Quran as the first and foremost source of law in Islam is continuously interpreted and deciphered by the *fuqaha'* and *mufasssir* since the earliest generations of Islam to date (Abubakar, 2019; Fuqohak, 2020). The interpretation and the deciphering of the message of the Quran aim not only to understand the contents of the Quran itself but also to implement its message in everyday life (Mawardi, 2020; Thalib, Sabrie, 2020). The diversity of backgrounds and considerations will influence the *mufasssir* in interpreting the marriage verses, for example, the differences in their competency in understanding and mastering the



language of the Quran and the variations in interpreting the *Asbab al-Nuzul* (Mufid, 2020; Wathani, 2020). On the other hand, there is also the influence of their dependency on the school of *fiqh* (which they subscribed) in their interpretation. Above all, the last-mentioned factor even contributes most to the diversity of their interpretation subjectivity, and at the same time becomes an important highlight in this paper, which will be explained specifically in the next section. The verses which are concerned to are verse 221, 230 232 and 234 of Surah al-Baqarah.

### **The Comprehension of *Fiqh* Schools Towards Marriage Verses**

The *Fiqh* schools here are the Hanafi, Maliki, Shafi'i and Hanbali Schools, of which the last three mentioned - henceforth – termed as *jumhur fuqaha'* (the majority of *fuqaha'*). The *fuqaha'* selected are, Ibn Hazm, Ibn al Humam, Ibn Rusyd, Kasani and Sayid Sabiq. The following will explain of how the four school *fuqaha'* comprehend these verses.

Verse 221 of the Surah Al-Baqarah: Translation: *And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite [you] to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.*

According to Sayid Sabiq, (n.d.) and Ibn Rushd (1992) (when explaining the opinion of *jumhur fuqaha'*), the prohibition in this verse means specifically addressed to the *wali*, as though Allah said "O guardian, don't you marry women who is under your guardianship with men who are still idolaters". However, Ibn Rushd (1992), when explaining the opinion of Abu Hanifah, argued otherwise. He argued that the prohibition is more likely to be understood as *waliyul amri* rather than *wali*. Moreover, there is no further explanation regarding the types of guardians, their nature and degree of marriage guardianship if the prohibition is believed.

Verse 230 of the Surah Al-Baqarah: Translation: *And if he has divorced her [for the third time], then she is not lawful to him afterwards until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.*

When explaining the *jumhur fuqaha'* opinions, Ibn Hazm, (n.d.) said that this verse means a marriage without *wali* is invalid. However, Sayed Sabiq (1971) and Ibn al Humam (n.d.), when explaining the opinion of Abu Hanifah, argued otherwise. They believed this verse is about marriage, which is closely related to

women. They argued that linking a matter to the subject shows that the person is the main subject and is also more entitled to handle the matter compared to others.

Verse 232 of the Surah Al-Baqarah: Translation: *And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not.*

Sayed Sabiq (1971), explaining the opinions of *jumhur fuqaha'*, commented that the prohibition on the word *prevent* here specifically intended for the *wali*. This is in line with the occasion of revelation (*asbab an-nuzul*), which will be explained further later. However, Al Kasani (1910), when explaining the opinion of Abu Hanifa, had the opposite views. According to him, the prohibition here is more general because several possible objectives can be understood from this verse. First, as the concept of *jumhur fuqaha'* above (provided that this possibility is somewhat more difficult compared to the next two possibilities), the prohibition was addressed to the *wali* but in a different meaning from what the *jumhur fuqaha'* maintained above. The point here is about a *wali* who prevents the women under his guardianship to run their own marriage with the men of her choice. Second, the prohibition in the verse is addressed to the husband, in the sense that the husband is prohibited from hindering his divorced wife while she has finished her *'iddah* (waiting period) to marry the man of her choice. This consideration is based on the phrase "If you divorce your wife" at the beginning of the verse.

Verse 234 of the Surah Al-Baqarah: Translation: *And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] acquainted with what you do.*

Ibn Hazm (n.d.), when explaining the opinion of *jumhur fuqaha'*, said that the prohibition in this verse is addressed to the *wali*. It is as if Allah said, "Guardians, do not obstruct a woman whom her husband has died and has finished his *'iddah* (a waiting period) from marrying another man in a way that is *Makruf* (familiar)". This comprehension is different from the Hanafi school, which maintains that an *akad nikah* (hereafter marriage contract) carried out by the woman herself and the man of her choice and blessed with *mithil* dowry is included in the *makruf* concept in this verse. Therefore, the marriage should be considered valid, because it includes the act of *makruf*, which is in accordance with the will of the *wali* (Kasani, 1910).

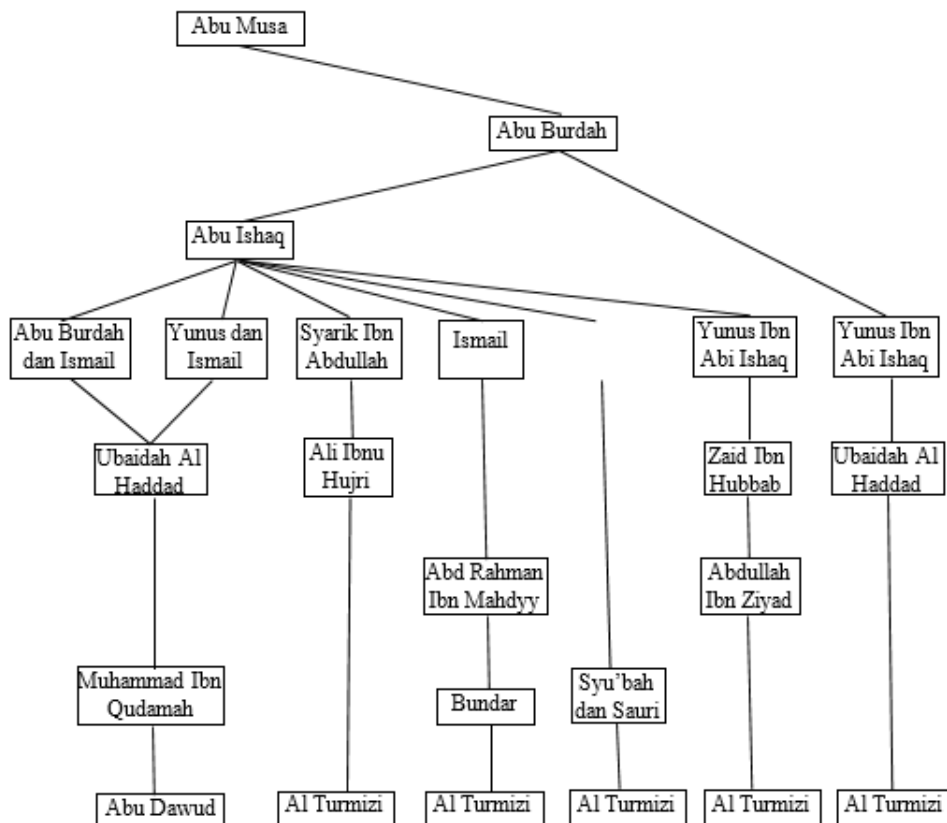
The above explanation shows that, following *jumhur fuqaha'*, the marriage matter will be considered *makruf* if it handed entirely to the *wali*. However, the Hanafi

school believes vice versa, that this matter will not be considered *makruf* if it is not handed to the women.

### The Function and the Degree of Hadith Toward the Generality of Marriage Verses

This discussion is necessary to clarify the function and the degree of the hadith toward several marriage verses. The selected hadiths are the ones narrated from Abu Musa, Aisha ra, and from Muhammad Ibn Abubakar Al-Shiddiq. The chosen hadiths narrators are Ahmad al-Sahar Nafuri, Al-Nawawi, Baihaqi, Ibn al Humam, Ibn Qayyim al-Jauziyyat, Mubarakfuri, Muhammad Zakariya and Zarqani. Among the hadith is the hadith of Abu Musa, the *Matan* (text of hadith) is according to al-Turmuzi (Mubarakfuri, n.d.). Translation: from Abu Musa he said: The Messenger of Allah. said: *"There is no legal marriage without a wali"*. This hadith was narrated from Ahmad, Abu Daud, al Turmuzi, Ibn Majah and Hakim. *The Sanad (or Isnad) of the hadith* (the hadith's chain of transmitters) can be seen in Figure 1.

Figure 1. Diagram of the *Sanad* of the Hadith of Abu Musa

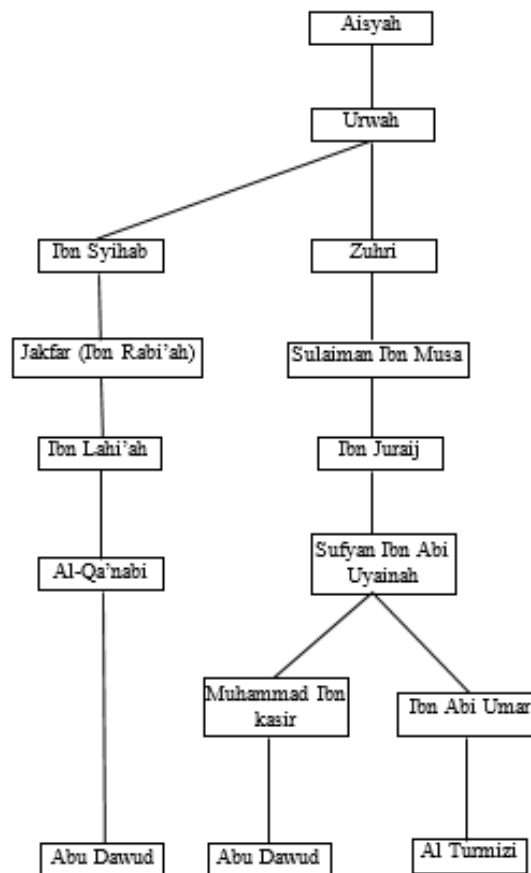


Al-Turmuzi considered this hadith is *hasan sahih*, although other scholars of hadith have different opinions about its validity due to several indicators. First, al-Turmuzi considers all reports based on Abu Ishaq is *shahih* (valid), except for the history of Syu'bah and al-Sauri. According to him, the objection to the two men is because both of them coincided with time and place when they heard the hadith from Abu Ishaq; therefore, the validity of the hadith is doubtful. Secondly, al-Turmuzi also acknowledged the weakness of the narration of the hadith which did not rely on Abu Ishaq but directly to Abu Burdah, which means that his *sanad* was interrupted. Third, there is an error of *sanad* in the narration of Abu Dawud: Yunus, Ismail and Abu Burdah are from one narration, then Yunus and Ismail jointly narrating the hadith from Abu Ishaq, as if, there are two Burdah in the *sanad*. Yet, as it is seen in the Sanad al-Turmuzi, there is only one Abu Burdah (Nafuri, n.d.; Ibn Qayyim, n.d.; Mubarakfuri, n.d.).

Next is the hadith from Aisha, which the *matan* (content/text of hadith) is from Abu Dawood: (Nafuri, n.d.) Translation: Aishah ra., narrated that the Messenger of Allah said: *"Whichever woman married without the permission of her wali her marriage is invalid, her marriage is invalid, her marriage is invalid. If he entered into her, then the Mahr is for her in lieu of what he enjoyed from her private part. If they disagree, then the Sultan is the wali for one who has no wali"*. This hadith was narrated by Ahmad, Abu Dawood and Ibn Majah.

The *sanad* of the hadith can be seen in Figure 2. Al-Turmuzi considered this hadith to be *hasan* (good), even Ibn Hibban and the Hakim judged it as *Shahih* (valid), even though the scholars of other hadith still doubted its validity. That doubt was found in the narration of Zuhri and the statement was very popular among the scholars of hadith. On one hand, Ibn Juraij, in one narration, had met Zuhri and questioned about the hadith, then he answered, "I do not know". Such answer according to the hadith scholar can weaken the validity of the narration (Baihaqi, n.d.; Qayyim, n.d.; Mubarakfuri, n.d.). However, al-Turmuzi, Ibn Hibban and Hakim - to refute these doubts - still considered that the event did not affect the validity of the hadith because none of other hadith scholars narrated the story of Ibn Juraij, except Ibn Ulayyah himself. Whereas, this hadith is narrated by a group of hadith experts from Zuhri, but they did not mention that the explanation is from him. Even though the statement is true, it cannot be used as the reason to weaken this hadith, because the person narrated it from Zuhri was an honest individual, including Sulaiman Ibn Musa (Baihaqi, n.d.; Qayyim, n.d.; Mubarakfuri, n.d.). This statement is ungrounded, because basically they acknowledged the incident, therefore, the validity of the hadith is in doubt.

Figure 2. Diagram of the Sanad of Aisha's hadith



On the other hand, the scholar of hadith also found the issue about the validity of the hadith. Ibn Qayyim (n.d.), a Sunan Abi Dawud explainer - through his narration from al-Qa'naby - said that Jakfar (Ibn Rabi'ah) had never heard this hadith from Zuhri. This statement is also supported by the statement of al-Baihaqy (n.d.) from Ibn Mu'in, that the narration from Ibn Rabi'ah is considered weak due to his personal character. Moreover, he added that Zuhri was considered to deny his narration by saying "If a woman marries without her wali's consent, it is permissible". This opinion is held by Al-Sya'by, Abu Hanifah and Zufar. Ahmad al-Sahar Nafuri (n.d.), a Sunan Abi Dawood explainer, – in relation to this matter – also clarified that: the flaw of the hadith is not only due to the narration doubt about Zuhri as mentioned above, but also because this narration is contrary to his own practice, namely the hadith about the marriage of his brother's son (Hafsah bnt Abd Rahman with Munzir Ibn Zuber), which will be explained afterward.

Both of the hadith above are considered weak, either in its *sanad* or *matan*. The weaknesses in terms of *sanad* sometimes is due to the disconnection of *sanad* between one narrator with the other narrators, as found in the Burdah of the hadith from Abu Musa, or between one narrator and the other narrators do not know about its narration as in the hadith from Aisha. While the weakness in terms of *matan* is sometimes caused by the conflicts between one hadith and another, such

as the practice of Aisha ra. From the hadith of Muhammad Ibn Abubakar Al-Shiddiqi (which will be explained later), which is contrary to his own hadith and as in the hadith of Abu Musa about requiring guardians in marriage.

Build upon the evaluations above, both of these hadith are appeared to be weak. Therefore, the Hasan Shahih level given by al-Turmuzy, and Shahih level given by Ibn Hibban and Hakim is considered too high for these hadith. It is supposed to be downgraded to a lower level and need a further research on it (Ja'far, 2020).

The last one is the hadith from Muhammad Ibnu Abubakar Al-Shiddiq, with the *matan* is based on Imam Malik (Zakariya, n.d.) Translation: *From Muhammad Ibn Abubakar Al-Shiddiq that Aisha, the wife of the Prophet Muhammad, married the Hafsa bint Abdul Rahman with Munzir Ibn Zuber on the matter that he (Abd Rahman) was in the land of Sham. When he came, he was upset about Aisha's actions, then Aisha told the problem to Munzir Ibn Zuber. let the problem be solved by Abd Rahman, Munzir answered. After that Abd Rahman said: I have never rejected Ayesha's wisdom. Based on that, Hafsa (took a stand for) remained with Munzir, and there was no divorce. This hadith was narrated by Malik from Abd Rahman ibn Qasim.*

No detailed explanation was found regarding the *sanad* of this hadith. However, the dissent of the hadith scholars is arousing around the understanding of *matan* hadith itself. According to al-Bakhy, as explained by Muhammad Zakariya (n.d.), there are two possible meaning of this hadith. First, Aisha herself pronounced the marriage contract, but, this narration was refuted by Ibn Muzayyan, as it contradicted the practice of the Madinah clerics (*amal al-Madinah*), because Imam Malik himself and a number of other *fuqaha'* did not allow women to become a marriage guardians. Second, Aisha's attitude towards the marriage was only to stipulate the dowry and other needs, not as a guardian. It is possible that the guardian of the marriage was one of the close relatives of Hafsa. However, there is no further explanation about the guardian in this marriage. This information shows that because the two narrations were not mentioned concretely, it is scientifically difficult to maintain the truth of the narration.

Furthermore, al-Bakhy, as explained by Muhammad Zakariya (n.d.), argued that according to the Maliki school, the marriage between Hafsa Abd Rahman and Munzir Ibn Zuber (whom her father, Abd Rahman, was far away in Sham at that time) is not allowed at all. Besides, Hafsa was still a virgin and her father was alive at the time of the marriage held.

Al-Zarqani (n.d.), who is also an explainer of the Muwatta book, denied al-Bakhy's information, arguing that Aisha's actions was considered legitimate and there was no one to represent her, and her privilege as the wife of Rasulullah PBUH. Although the *wali* is far away, the guardianship in marriage is necessary, even if the *wali* is not the wife of Rasulullah PBUH. If the marriage carried out by Aisha was true and an example of a marriage that was guarded by a woman

because it was Aisha's privilege as the wife of the Prophet; the questions are why some scholars never considered her as guardian in marriage and how to deal with hadiths related to the marriage guardianship which also originated from Aisha herself?. Textually, it can be said that there are two contradicting cases committed by the same person; on one hand, Aisha is presupposed only the men as *wali* in marriage yet on the other hand, she herself through her practice (marrying Hafsah with Munzir) acknowledged the acquisition of women as a *wali* in the marriage (Nafuri, n.d.; Baihaqi, n.d.; Zakariya, n.d.).

Based on the previous analyses, it can be concluded that their dissent in comprehending the *matan* of the hadith is because the lafaz (the pronouncement) of the hadith is too general. The *jumhur fuqaha'* preferences of the first opinion - the best guess- because the hadiths related to marriage (that is mentioned above) are considered as *pentakhsis* (as specialization) for the generality of the former hadith.

Conversely, the Hanafi School preferred the second opinion because the hadiths were not served to explain the generality of this hadith-because the validity of the *sanad* is in doubt. They argued what was done by Aisha (which was approved by all scholars, including *jumhur fuqaha'*) was one of the causes of the weakness of the hadith (about a *wali* must be a man in marriage guardianship) - to be used as a source of law. Hanafi even assumed that Aisha's hadith about the marriage of Hafsah and Munzir was a *nasikh* (abrogation) of Aisha's aforementioned hadith or at least could be considered as *inkar rawi* (the denial on the hadith narrator) in the *Mushthalah hadith* (science about hadith) (Humam, n.d.; Mubarakfuri, n.d.). In addition, the scholars are still debating the validity of the *sanad* of hadith. Also, to comply to the general *dalil* (propositions) in determining the law is better than specific arguments that are weak.

Referring back to the hadiths which *jumhur fuqaha'* assume to be the *dalil* for the existence of a *wali* in a marriage, the Hanafi school considered the opposite. The Hanafi school believed that the validity of these hadiths are questionable, both in terms of *matan* and *sanad*. The flaw in terms of *matan* is sometimes caused by *inkar rawi* between one hadith and another, such as the practice of Aisha (Prophet's wife).

Likewise, for the hadith from Abu Musa and Aisha, the weaknesses of these two hadiths are not only because they contradict the Aisha's practice –in the event of marriage of Hafsah bnt Abd Rahman and Munzir Ibn Zuber, and at that time Abd Rahman was in Bilaad as Sham - but also because the validity of the *sanad* of both hadiths are still debatable.

Regarding the hadith of marriage guardianship, the *jumhur fuqaha'* comprehensions tend to interpret the hadith textually rather than contextually. This is because they concerned more on interpreting the proposition (*dalil*) of the text and disregard other probabilities. For example, when comprehending the



verses, they are more influenced by the meaning of the text of hadiths of marriage guardianship, even implicitly it can be said that there is an assumption from *jumhur fuqaha'* that these hadith are served to specifically explain the general marriage verses.

On the other hand, the way of understanding adopted by the Hanafi school in studying texts, both the Quran and the hadith, is quite different from the pattern adopted by *jumhur fuqaha'*. The subject of the study is more directed toward the understanding of the texts as a whole, with the condition that not only to pay attention to the various possibilities that occur between one text to another, but also to put the concern on the intent or *illat* included. For example, the meaning and *illat* are adjusted to the circumstance and situation of the community. Such thinking is more directed towards comprehension which considers the reason or *illat* of the law itself, in addition to manifesting benefit rather than just explaining the meaning in the text alone (Umar, 2020).

#### **Interpretation of Verses Understood by Scholars of The Four Schools of *Fiqh***

The *mufasssirs* selected in this case were Al-Qurthubi, Al-Thabari, Ibn al-‘Arabi Abu Bakar Al-Jashsas and Rasyid Ridha, assuming that their interpretation can represent the four schools of *fiqh*. *Mufasssir* focused on two main subjects to understand the message behind those Quranic verses: the background of revelation and the literal meaning in those verses. First, the particular verse investigated in relation to its background of revelation is the verse that is more related to the issue of marriage guardianship. In addition, the scope of meaning and message in those verses are discussed.

According to several exegesis (*tafseer*) books, of the four aforementioned verses, the background of the revelation of verse 232 of Surah Al-Baqarah is the most related to this issue. Imam Al- Thabari (1954) outlined several narrations concerning its background of revelation and one that is deemed credible is the one involving Ma’qil Ibnu Yasar, who prevented his divorced sister to return (*ruj’u*) to her husband.

This is in line with the hadith narrated by Abu Dawud as follows: Translation: *From Al-Hasan, that Ma’qil said, I have a sister which is dear to me, and when the son of my uncle came, then I gave her away to him and he divorced her once and did not take her back until her waiting period (iddah) finished. Then when I was going to give her away, her former husband came back and want to remarry her, to whom I said: “By Allah, she will never return to you” and thus that verse was revealed...He said I pay expiation for oath and I gave her away back to him for marriage. This hadith was narrated by Bukhari and Abu Dawood.*

*Mufasssir* agreed to determine that that hadith was the reason why verse 232 of Surah Al-Baqarah was revealed. However, they differ in the interpretation of the background of revelation and the interpretation of the verse itself. Al-Qurthubi (1967) maintained that the verse was revealed in connection to *wali* based on the



interpretation of another verse that *wali* is prohibited to hand his daughters under his guardianship to a polytheist man. This argument is supported by Ahmad al-Sahar Nafuri (n.d.) who stated that this hadith counts as hadith that prescribes the existence of a *wali* in a marriage. Abubakar Al-Jashsas (n.d.) disagreed that the verse was revealed exclusively in relation to *wali*. He believed it is difficult to justify such an opinion since the prohibition has a general context which involves all parties, including the husband. This opinion is shared by Rasyid Ridha (n.d.) who believed that although the verse was revealed for a specific reason, it has a general application nonetheless, including the former husband who prevents his divorced wife to marry another man of her choice. The difference in interpretation will be outlined in the interpretation of verse 232.

According to Ibn al-‘Arabi (1950), the word *nikah* in verse 230 has two meanings, namely marriage contract (explicitly) and sexual intercourse (implicitly) (Khanif, 2019; Armia, 2017). Supposed that one adopts the first meaning, then it means a woman is allowed to give herself and others away in marriage because the word *nikah* is directly tied to her. On the contrary, if the latter meaning was adopted, it means women will never be allowed to give herself and others away in marriage. This is because the verse does not literally state so. In this case, he adopted the implicit meaning (general interpretation is based on the explicit meaning), arguing that the hadiths concerning marriage tend to support such opinions. In contrast, al-Jashsas (n.d.) believed that the verse should be interpreted based on its explicit meaning (instead of the implicit meaning). In fact, it is the meaning of such nature that is intended by the verse. In support of his claim, he pointed out two strings of words in the verse, first; “*until after she marries a husband other than him*”, which means the woman herself in the pronouncement of the marriage contract and, second; “*there is no blame upon the woman and her husband for returning to each other*” which is interpreted that a divorced couple have the right to return to their former marriage without involving a *wali*. In fact, the word *wali*, as intended here, not only includes men but also women. The differences of the interpretation of the implicit and explicit meaning are influenced by the schools of *fiqh* they subscribed.

Concerning the interpretation of verse 232 of Surah Al-Baqarah, *mufasssir* agreed to interpret the word “prevent” in “*do not prevent them from remarrying their (former husbands or other men)*” to mean “to hinder, prevent and make it difficult”. However, their opinions differ when determining the prohibition in that verse. Ibn al-‘Arabi (1950) argued that the verse is related to *wali* who are prohibited against preventing women under their guardianship to marry men of their choice. Preventing from marriage here means that the *wali* is not willing to solemnize the marriage. If women had rights to give themselves away, there would not be any prohibition against the prevention in that verse. However, Al-Jashsas (n.d.) maintained a conflicting opinion stating that the verse serves as the main argument allowing women to handle and run their own marriage, in addition to other supporting verses. In fact, he rejected the opinion saying that women have no right whatsoever in pronouncing the marriage contract.

There are two strings of words in the verse used to support this opinion. The first one is “*do not prevent them from remarrying their (former husbands or other men)*” of which he interpreted to mean that women must not be prevented to pronounce their own marriage contract with men of their choice. The second one is the word “*al ma’ruf*“, which is defined as equality of equivalence, and *mahr al-mithl*. From the concepts of those two groups, he concluded that “*no one has the right to prevent a marriage contract which a woman pronounce herself based on the principle of equality or equivalence and one which involves the giving of the mahr al-mithl*”. Had the prohibition been imposed on *wali*, it would have meant that a *wali* will have the right to cancel the marriage only through a judge; if the woman did not marry a man equal to her or the man did not give her *mahr al-mithl*.

The difference of interpretation among the *mufasssir* occurs they associated the word *nikah* with different things. Al-Jashsas associated the word *nikah* with women with a consideration of the two strings of words mentioned above and, thus, the interpretation takes on a broader meaning. On the other hand, the other *mufasssir* associated the word *nikah* with *wali*, and, therefore, *wali* has the right to solemnize the marriage . This latter understanding is more closely related to that of the majority of *fiqh* scholars, while the former opinion tends to be popular among Hanafi scholars.

Concerning verse 234 of Surah Al-Baqarah, the most important part that *mufasssir* refer to in understanding this verse is the sentence “*There is no blame upon you for what they do with themselves in an acceptable manner*”. Al-Thabari (1954), Ibn al-‘Arabi (1950) and al-Qurthuby (1967) agreed to determine that the prohibition in “there is no blame upon you (*wali*)” are specifically directed towards *wali*. Similarly, the sentence “*for what they do with themselves*” means marriage and the words “*in an acceptable manner*” means every lawful matters in Islam in relation to marriage, such as the choosing of a future husband, determination of dowry, etc., except for running the marriage contract since that is the right of a *wali*. As a matter of fact, the explanation offered by the three *mufasssir* indicates that it is unacceptable and contradictory to the verse to let women take care of their own marriage.

On the contrary, al-Jashsas (n.d.) stated that the generality of the verse covers the marriage contract performed by women. The words “*there is no blame upon you for what they do with themselves in an acceptable manner*” can still be interpreted as there is no right for *wali* to interfere with matters related to the woman until she completes her *iddah* (including the pronouncement of marriage contract) as long as they are permissible in the Islamic law. The fact that male *wali* (guardian) is required in the marriage contract contradicts the intention of this verse. The opinion which holds that in a marriage contract a woman’s only rights are to choose the husband and determine the amount of dowry but not to handle her own marriage is rejected since *wali* cannot solemnize the marriage

without the consent of the woman. The choosing of a husband and determination of a dowry will mean nothing if the marriage fail to take place.

### **Forms of *Mufassir* Subjectivity towards Schools of *Fiqh* in the Interpretation of Marriage Verses**

There are four forms of possible subjectivity that *mufassir* have towards *fiqh* schools in interpreting marriage verses. The first indication lies in the difference of *mufassir* opinions in interpreting the background of revelation of verse 232 of Surah Al-Baqarah in relation to Ma'qil Ibn Yasar. *Mufassir* from the majority of *fuqaha* interpreted that the verse was revealed in regard to *wali*. Therefore, matters concerning marriage should be handed over entirely to *wali*. On the contrary, *mufassir* from Hanafi school interpreted the background of revelation to concern the *wali* but they also believed the verse has a general application. Therefore, the marriage guardianship can also be handled by women.

Another indication is in their disagreement with the definition of the word *nikah*, which is a crucial concept to clarify in interpreting a number of verses on marriage. The *mufassir* from the majority of *fiqh* scholars always associated the word *nikah* with *wali*, and therefore believed that matters about marriage should be taken care of by *wali* (Soraya, 2016), not others. On the contrary, *mufassir* from Hanafi school did not associate the word exclusively with *wali* and therefore maintain that matters concerning marriage can be handled by any parties, including women.

The next indication is in how they differ in the positioning of the function and degree of the hadith in relation to Quran. *Mufassir* from the majority of scholars believed that the command and prohibition in several marriage verses were directed towards *wali*, thus, they also believed that several hadiths on *nikah* (aforementioned) serve to explain the generality of the verse in more details, except for the hadith on Aisha who acted as a *wali* in a marriage, which they considered against the law. On the contrary, *mufassir* from Hanafi school considered that the command and prohibition in the marriage verses have a general application, including to women, thus they maintained that those hadith do not serve to explain the verses in detail. That is because they argued that those hadiths have flaws in terms of *sanad* (chain of narration) and the content itself.

The last indication is concerned with the difference in how they attributes the importance of relationship between verses and hadiths in helping them make their interpretation. *Mufassir* from the majority of scholars did not put great importance toward the relationship. Therefore, their interpretation is more partial and disconnected to each other, and the accuracy is also difficult to justify. On the contrary, *mufassir* from Hanafi school considered the relationship important. As a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation in comparison to the former (Khudhur, 2020). These differences in interpretation may be influenced by the schools of *fiqh* they subscribed.

## **Conclusion**

There are four forms of *mufassir's* subjective indications to the *fiqh* school they subscribed: First, when the *mufassir* differed in interpreting the *Asbab al-Nuzul* of surah al-Baqarah verse 232 concerning Ma'qil Ibnu Yasar. The *mufassir* of *jumhur fuqaha'* maintained that the occasion the verse revelation is specifically addressed to the *wali* (not someone else), then the marriage guardianship must be handed entirely to the *wali*. Meanwhile, the *mufassir* of Hanafi school maintained that the cause of the verse revelation is specifically addressed to the *wali*, but they assume that the law is generally accepted, thus, the marriage guardianship may also be handled by women.

The second indication is in their disagreement concerning the word *nikah*, the key concept to clarify the marriage verses. The *mufassir* of *jumhur fuqaha'* associated the word *nikah* to the *wali*, then it is the *wali* who has the right to solemnize the marriage, not others. Otherwise, the *mufassir* of Hanafi school did not associate the word *nikah* to the *wali*, then the marriage matters might be handled by any parties including women.

The third indication lies in difference of *mufassir's* opinion in positioning the function and the degree of the hadith toward the Quran itself. The *mufassir* of *jumhur fuqaha'* considered that the generality of the commands or prohibitions in the marriage verses are addressed to the *wali*, thus some of the marriage hadith (aforementioned) are served to explain the generality of the verses in detail. On the other hand, the *mufassir* of Hanafi school maintained that the generality of the commands or prohibitions in the verses apply to all, including women, then these hadith are not served to explain the generality of the verses. That is because they think that those hadiths have flaws in terms of *sanad* (chain of narration) and the content itself.

The last indication is concerned with their dissent in how they attribute to the importance of *munasabat* (correlation) between verses and hadiths in helping them in their interpretation. The *mufassirs* of *jumhur fuqaha'* considered the correlation is less important, hence their interpretation is more partial, disconnected to each other and its accuracy is rather difficult to justify. Conversely, the *mufassir* of Hanafi school believed that the correlation is important, as a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation compared to the former.

Finally, it is hope that the schools, *mufassir* and *muhaddith* in studying and analysing the problems occurred and developed should not be subjective in defending the truth of one opinion, or even to blame other opinions that are not in line with the opinions held. That is because an objective truth is difficult to achieve in such practices.

**REFERENCES**

- Abubakar, A. (2019). The Chance on Islamic Family Law Study in Indonesia. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol 4(Nomor 1). <https://doi.org/DOI:https://doi.org/10.22373/petita.v4i1.13>
- Ahmad al-Sahar Nafuri. (n.d.). *Bazl al-Juhud fi Hil AbiDawud*. Beirut: Dar al-Kutub al-‘ilmyyah.
- Ahmad Imam Mawardi. (2020). The Urgency of Maqasid Al-Shariah Reconsideration in Islamic Law Establishment for Muslim Minorities in Western Countries. *International Journal of Innovation, Creativity and Change*, Volume 12(Issue 9). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Al-Jashsas, A. (n.d.). *Ahkam al-Quran* (Juz II). Cairo: Mathba’at Abdurrahman.
- Al Kasani. (1910). *Badai al-Shanai* (Jilid II). Egypt: Mathba’ah al-‘Ilmyyat.
- Al Khanif. (2019). Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol.4(No.2). <https://doi.org/https://doi.org/10.22373/petita.v4i2.24>
- Armia, M. S. (2017). *Wajah Antropologi dan Sosiologi Hukum Keluarga di Beberapa Daerah di Indonesia* (1st ed.). Retrieved from <https://repository.ar-raniry.ac.id/id/eprint/10432/>
- Baihaqi, al. (n.d.). *Sunan al-Kubra* (Juz VII). Beirut: Dar Al-Fikr.
- Ibn‘ Arabi. (1950). *Ahkam al-Quran* (Ali Muhammad al-Bujawi, Ed.). Egypt: Mushthafa al-Babi al-Halabi.
- Ibn al Humam. (n.d.). *Syarh Fath al-Qadir* (Juz III). Egypt: Dar al Fikr.
- Ibn Hazm. (n.d.). *al-Muhalla* (Juz IX.). Egypt: Dar al Fikr.
- Ibn Qayyim al-Jauziyyat. (n.d.). *Aun al-Ma’bud Syarh Sunan Abi Dawud* (Jilid VI). Egypt: Dar al Fikr.
- Mubarakfuri. (n.d.). *Tuhfat al-Ahwazi bi SyarhJami’ al-Turmuzi* (Juz IV). Madinah: Maktabat al-Salafiyat.
- Mufid, F. (2020). Kritik Epistemologis Tafsir Isyari Ibn Arabi. *Hermeneutik: Jurnal Ilmu Al Qur’an Dan Tafsir*, Volume 14(Nomor 01). <https://doi.org/10.1234/hermeneutik.v14i1.6837>
- Muhammad Zakariya. (n.d.). *Aujaz al-Masalik fi Muwatthak Imam Malik*. Egypt: Dar al Fikr.
- Mukhamad Agus Zuruhul Fuqohak. (2020). Pengaruh Maqoshid Syariah di dalam Tafsir. *Hermeneutik: Jurnal Ilmu Al Qur’an Dan Tafsir*, 14(Nomor 1), 93–112. <https://doi.org/10.1234/hermeneutik.v14i1.6802>
- Mukhsin Nya’ Umar. (Interview 29 April 2020). Banda Aceh.
- Prawitra Thalib, Hilda Yunita Sabrie, F. K. (2020). Islamic Law Principles in Islamic Business Activity. *International Journal of Innovation, Creativity and Change*, Volume 13(Issue 5). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Qurthubi. (1967). *al-Jami’ al-Ahkam al-Quran* (Jilid III). Egypt: Dar al-Kitab al-‘Arabi.
- Ridha, R. (n.d.). *Tafsir al-Manar* (Jilid II). Egypt: Maktabat al-Qahirat.
- Rushd, I. (1992). *Bidayatul Mujtahid* (Juz II). Beirut: Dar El Al-Kutub.
- Sabiq, S. (1971). *Fiqh al-Sunnah* (Juz IV dan). Kuwait: Dar al-Bayan.
- Saeed Abed Khudhur. (2020). The Concept of Presumption in the Quran Context:

- Rhetorical Study. *International Journal of Innovation, Creativity and Change*, Volume 11(Issue 1). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Soraya, D. (2016). Konsep Penetapan Wali Harta dalam Pemikiran Mazhab Syafi'i dan Praktek Masyarakat Aceh Besar. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, 1(Nomor 1), 41–51. <https://doi.org/DOI:https://doi.org/10.22373/petita.v1i1.79>
- Tarmizi M. Ja'far. (Interview 30 April 2020). Banda Aceh.
- Thabari. (1954). *Tafsir al-Thabari* (Juz II). Egypt: Dar al Fikr.
- Wathani, S. (2020). Istinbat at-Tafsir (Wacana Istinbat Ayat Hukum dalam Teori Penelitian Tafsir). *Jurnal Al-Irfani STAI Darul Kamal NW Kembang Kerang*, Volume VI(No 1), 53–72. Retrieved from <http://ejournal.kopertais4.or.id/sasambo/index.php/alirfani>
- Zarqani. (n.d.). *Syarh Sahih Muwathtak Imam Malik* (Juz II). Egypt: Dar al Fikr.



# THE SUBJECTIVITY INDICATION ~~OF SUBJECTIVITY~~ OF SCHOOL OF FIQH IN THE INTERPRETATION OF MARRIAGE VERSES

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## Abstract

~~There are~~ A number of the Quran verses and the hadith of the Prophet ~~PBUHSAW~~ related~~ing~~ to marriage ~~has a which general the~~ meaning ~~of the words are general~~ and apply to all parties. The *Fuqaha'* (Islamic law scholars/Jurist) of four schools and *mufasssir* (Qur'an interpreter) ~~who are~~ of the same school (~~m~~*Azhab*), agree to determine the generality of the meaning of several marriage verses to be applied for all without limiting the certain parties. The difference ~~in of~~ their opinions is relat~~ed~~ing to the meaning of the word *nikah*, which is the main subject to understand and interpret the verses. The *jumhur* (majority) of ~~f~~*Fuqaha'* and *mufasssir* ~~who are~~ of the same school always associate the word marriage to the *wali* (Guardian) ~~so~~ that ~~he must handle~~ the matter ~~concerning in regard to~~ the marriage ~~must be handed entirely to him~~. On the other hand, *mufasssir* from Hanafi school argue that the word *nikah* applies ~~to in a broader~~ meaning and ~~is~~ not exclusively addressed to *wali*, so the marriage guardianship can be handed to any parties, including women. The different~~tee~~ opinions ~~among of the~~ *mufasssir* in determining the general and specific meaning of ~~the uen~~ content of the verse are influenced by the background of the school ~~which they~~ ~~followed~~subscribed. This ~~article paper~~ aims to ~~look further investigate at~~ the subjectivity forms of *mufasssir* to their *fiqh* school in interpreting the marriage verses. The forms of subjectivity ~~referred to~~ might occur because; ~~the~~ difference views of *mufasssir* in interpreting the *Asbab al-Nuzul* (~~the~~ occasion of revelation), ~~the~~ difference in *mufasssir*'s comprehension towards the interpretation of the word *nikah* which is considered as the key concept in the interpretation of marriage verses. ~~The subjectivity might also be caused by~~ difference views in positioning the hadith as specialization tool to the marriage verses that are still general, and also because ~~the factor of~~ their dissent in evaluating the importance of the *munasabah* (correlation) between ~~the~~ verses and hadith about marriage in helping them ~~interpretmake the interpretation~~.

Key words: Subjectivity in School, ~~M~~*mufasssir* and Marriage Verse

## I. PREFACE

The Qur'an as the first and foremost source of law in Islam is ~~continuously~~continuously interpreted and deciphered by the ~~f~~*Fuqaha'* and *mufasssir* since the earliest generations of Islam ~~to date~~until ~~contemporary times~~. The interpretation and the deciphering of the message of the Qur'an aim not only to understand the contents of the Qur'an itself, but also to implement its message in everyday life. The diversity of backgrounds and ~~considerations will influence opinions will predispose~~ the *mufasssir* in interpreting the marriage verses. ~~For example, in one hand~~, the differences in their competency in understanding and mastering the language of the Quran and the variations in interpreting the *Asbab al-Nuzul*. ~~And On~~ the other hand, there is also the influence of their dependency on the school of *fiqh*

(which they subscribed) in their interpretation. Above all, the last-mentioned factor even contributes most to the diversity of [their interpretation](#) subjectivity ~~of their interpretation~~, and at the same time becomes an important [highlight](#) in this paper, ~~on~~ which will be explained specifically in the next section. The verses which are concerned to are ~~the~~ verse 221, 230 232 and 234 of Surah al-Baqarah.

## II. DISCUSSION

### The [Comprehension of Fiqh Schools'](#) ~~Comprehension~~ Towards Marriage Verses.

The *Fiqh* schools ~~s referred to~~ here ~~are~~ were the Hanafi, Maliki, Shafi'i and Hanbali Schools, of which the last three mentioned - henceforth – termed as *jumhur fuqaha'* ([the](#) majority of ~~f~~*Fuqaha'*). The *fuqaha'* ~~who were~~ selected ~~here~~ are, Ibn Hazm, Ibn al Humam, Ibn Rusyd, Kasani and Sayid Sabiq.

The following will explain of how the four school *f**Fuqaha'* comprehend these verses.

#### [Verse 221 of the Surah Al-Baqarah](#)

Translation: *And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite [you] to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.*

According to Sayid Sabiq (p. 7) and Ibn Rusyd (p. 9) (when explaining the opinion of *jumhur f**Fuqaha'*), the prohibition in this verse means specifically addressed to the *wali*, as though Allah said "O guardian, don't you marry women who is under your guardianship with men who are still idolaters". However, Ibn Rushd (p. 11), when explaining the opinion of Abu Hanifah, argued otherwise. [He argued that t](#)The prohibition is more likely to be understood as *waliyul amri* rather than *wali*. Moreover, there is no further explanation regarding the types of guardians, their nature and degree of marriage guardianship if ~~indeed such the~~a prohibition is believed.

#### Verse 230: [of the Surah Al-Baqarah](#)

Translation: *And if he has divorced her [for the third time], then she is not lawful to him afterwards until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.*

When explaining the *jumhur f**Fuqaha'* opinions, ibn Hazm (p. 457) said that this verse means a marriage without *wali* is invalid. However, Sayid Sabiq (p. 14) and ibn Humam (p. 257-258), when explaining the opinion of Abu Hanifah, argued otherwise. [They believed According to them,](#) this verse is about marriage, which is closely related to women. [They argued that l](#)Linking a matter to the subject



shows that the person is the main subject and is also more entitled to handle the matter compared to others.

#### Verse 232 [of the Surah Al-Baqarah-](#)

Translation: *And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not.*

Sayed Sabiq (p. 7-8), [explaining the opinions of \*jumhur fuqaha'\*](#), commented that the prohibition on the word *prevent* here specifically intended for the *wali*. This is in [line accordance](#) with the occasion of revelation (*asbab an-nuzul*), which will be explained further later. ~~His statement is in regard to the *Jumhur Fuqaha'*.~~ However, Al-Kasani (p. 247), when explaining the opinion of Abu Hanifa, [had the the opposite](#) views ~~the opposite~~. According to him, the prohibition here is more general because ~~there are~~ several possible objectives ~~that~~ can be understood from this verse. First, as the concept of *jumhur fuqaha'* above (provided that this possibility is somewhat more difficult compared to the next two possibilities), the prohibition was addressed to the *wali* but in a different meaning from what the *jumhur fuqaha'* maintained above. The point here is about a *wali* who prevents the women under his guardianship to run their own marriage with the men of her choice. Second, the prohibition [contained](#) in the verse is addressed to the husband, in the sense that the husband is prohibited from hindering his divorced wife while she has finished her *'iddah* (waiting period) to marry the man of ~~hiers~~ choice. This consideration is based on the phrase "If you divorce your wife" ~~which contained~~ at the beginning of the verse.

#### Verse 234 [of the Surah Al-Baqarah-](#)

Translation: *And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] [a](#)acquainted with what you do.*

Ibn Hazm (p. 459), when explaining the opinion of *jumhur fuqaha'*, ~~said that~~ [the prohibition contained](#) in this verse is addressed to the *wali*. It is as if Allah said, "Guardians, do not obstruct a woman whom her husband has died and has finished his *iddah* (a waiting period) from marrying another man in a way that is *Makruf* (familiar)". This comprehension is different from the Hanafi school, which maintains that an [akad nikah \(hereafter marriage contract\)](#) ~~which is~~ carried out by the woman herself and the man of her choice and ~~is~~ blessed with *mithil* dowry is included in the *makruf* concept in this

verse. Therefore, the marriage should be considered valid, because it includes the act of *makruf*, which is in accordance with the will of the *wali*. (Al-Kasani, p. 248).

The [above](#) explanation ~~above~~ shows that, ~~following according to j~~ *Jumhur fFuqaha*-, the marriage matter will be considered *makruf* if it handed entirely to the *wali*. However, the Hanafi school believes vice versa, that this matter will not be considered *makruf* if it is not handed to the women.

### **The Function and the Degree of Hadith Toward the Generality of Marriage Verses.**

This discussion is ne~~cessary~~~~eded~~ to clarify the function and the degree of the hadith toward several marriage verses. The selected hadiths ~~here~~ are [the ones which were](#) narrated from Abu Musa, Aisha ra, ~~and~~ ~~And~~ from Muhammad Ibn Abubakar Al-Shiddiq. The chosen hadiths narrators are Ahmad al-Sahar Nafuri, Al-Nawawi, Baihaqi, Ibn al Humam, Ibn Qayyim al-Jauziyyat, Mubarakfuri, Muhammad Zakariya and Zarqani. [Among the h](#)Hadith [is the hadith of](#) ~~of~~ Abu Musa, the *Matan* (text of hadith) [is](#) according to al-Turmuzi (Al-Mubarakfury, p. 229).

Translation: from Abu Musa he said: The Messenger of Allah. said: "*There is no legal marriage without a wali*". This hadith was narrated from Ahmad, Abu Daud, al Turmuzi, Ibn Majah and Hakim.

[The Sanad \(or Isnad\) of the](#) -hadith (the hadith's chain of transmitters) can be seen in Figure 1. ~~below~~.

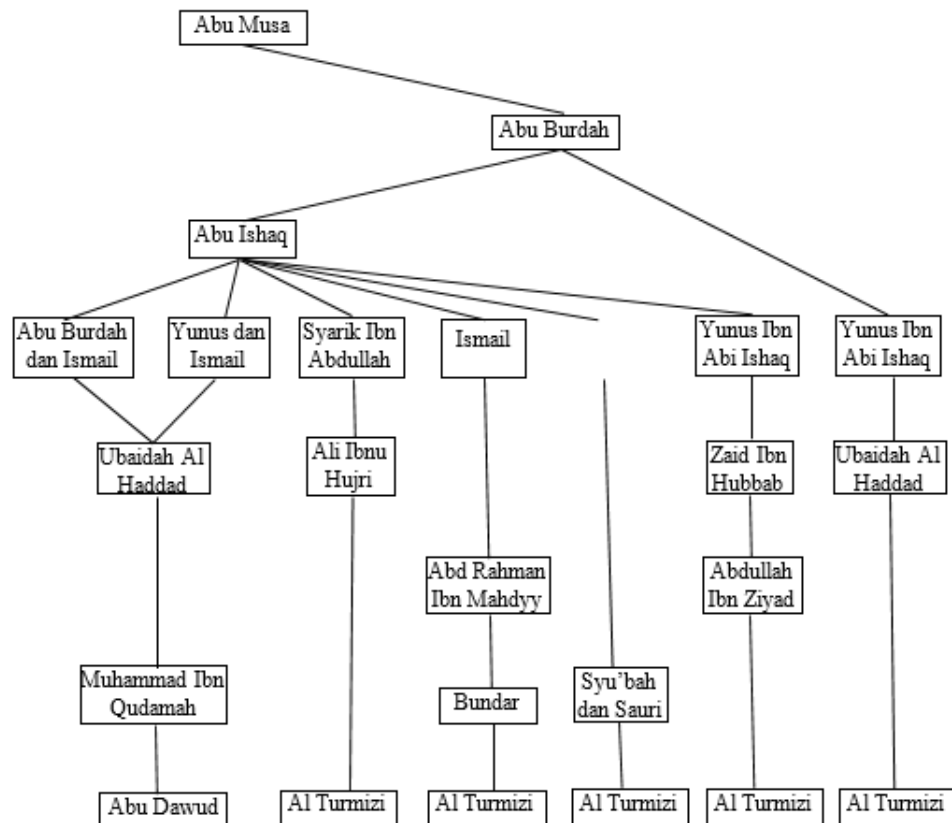


Figure 1. Diagram of the *Sanad* of the Hadith of Abu Musa

Al-Turmuzi Al-Tirmidzi considered this hadith is *hasan sahih*, although other scholars of hadith have different in their opinions about its validity due to several indicators. First, al-Turmuzi considers all reports based on Abu Ishaq is *shahih* (valid), except for the history of Syu'bah and al-Sauri. According to him, the objection to the two men is because both of them coincided with time and place when they heard the hadith from Abu Ishaq; therefore, the validity of the hadith is doubtful. Secondly, al-Turmuzi also acknowledged the weakness of the narration of the hadith which did not was not rely on Abu Ishaq but directly to Abu Burdah, which means that his *sanad* was interrupted. Third, there is an error of *sanad* in the narration of Abu Dawud: Yunus, Ismail and Abu Burdah are from one narration, then Yunus and Ismail jointly narrating the hadith from Abu Ishaq, as if, there are two Burdah in the *sanad*. Yet, as it is seen in the Sanad al-Turmuzi, there is only one Abu Burdah (al-Mubarakfury, p. 230; Ibn Qayyim al-Jauziyyat, p. 102 and Ahmad al-Sahar Nafuri, p. 82).

The Next is the hadith from Aisha, which the *matan* (content/text of hadith) is from Abu Dawood: (Ahmad al-Shar Nafuri, p. 79)

Translation: Aishah ra., narrated that the Messenger of Allah said: "Whichever woman married without the permission of her wali her marriage is invalid, her marriage is invalid, her marriage is

*invalid. If he entered into her, then the Mahr is for her in lieu of what he enjoyed from her private part. If they disagree, then the Sultan is the wWali for one who has no wWali".* This hadith was narrated by Ahmad, Abu Dawood and Ibn Majah.

The *sanad* of the hadith can be seen in Figure 2. Al-Turmuzi considerededs this hHadith to be *hasan* (good), even Ibn Hibban and the Hakim judged it as *Shahih* (valid), even though the scholars of other hHadith still doubted its validity. That doubt wasis found in the narration of from-Zuhri and -tThe statement was very popular among the scholars of hHadith. On one hand, Ibn Juraij, in one narration, had met Zuhri and questioned about the hHadith, then he answered, "I do not know". Such answer according to the hHadith scholar can weaken the validity of the narration (Al-Mubarakfuri, p. 228; al-Baihaqi, p. 106 and Ibn Qayyim al-Jauziyat, p. 99). However, al-Turmuzi, Ibn Hibban and Hakim - to refute these doubts - still considered that the event did not affect the validity of the hHadith because - This is due to-none of the other hadith scholars who-narrated the story of Ibn Juraij, except Ibn Ulayyah himself. Whereas, this hHadith is narrated by a group of hHadith experts from Zuhri, but they did not mention that the explanation is from him. Even though the statement is true, it still-cannot be used as the reasonan excuse to weaken this hHadith, because the person who-narrated it from Zuhri wasis an honest individual, including Sulaiman Ibn Musa (Al-Mubarakfuri, p. 229; Al-Baihaqi, pp. 206 and 206). Ibn Qayyim Al Jauziyyat, p. 99). This statement is ungrounded, because basically they acknowledged the incident, therefore, the validity of the hadith is in doubt.

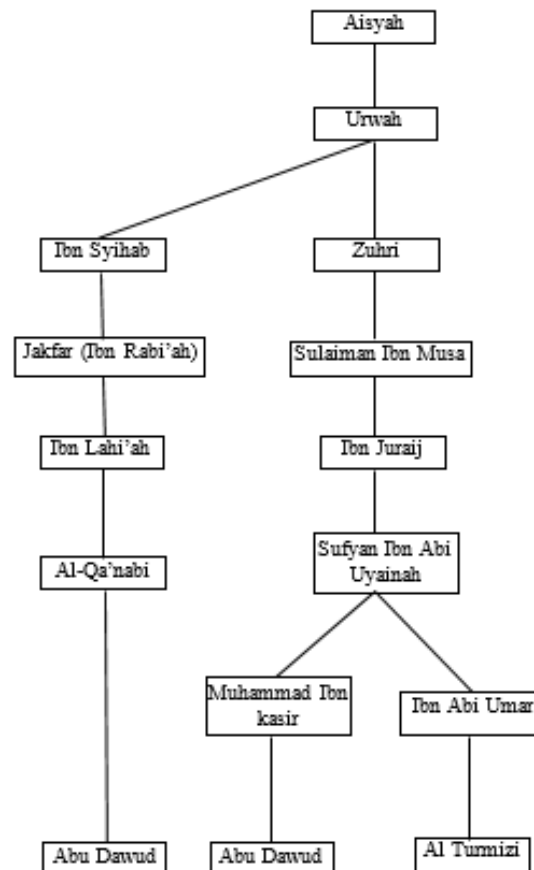


Figure 2. Diagram of [the Aisha's Sanad](#) of [Aisha's hH](#)adith

On the other hand, the scholars of hadith also [found](#) the [issuespotlight](#) about the validity of the [hH](#)adith. Ibn Qayyim al-Jauziyyat (p. 101), a Sunan Abi Dawud explainer - through his narration from al-Qa'nabi - said that Jakfar (Ibn Rabi'ah) had never heard this [hH](#)adith from Zuhri. This [statement](#) is [also](#) supported by the statement of al-Baihaqy (p. 108) from Ibn Mu'in, that the narration from Ibn Rabi'ah is considered weak due to his personal character. Moreover, he added that Zuhri [was is](#)-considered to deny his narration by saying "If a woman marries without her wali's consent, it is permissible". This opinion is held by Al-Sya'by, Abu Hanifah and Zufar. Ahmad Al-Sahar Nafuri (p. 85), a Sunan Abi Dawood explainer, - in relation to this matter - also [clarifiedy](#) that: [t](#)The flaw of the [hH](#)adith is not only due to the narration doubt about Zuhri as mentioned above, but also because this narration is contrary to his own practice, namely the hadith about the marriage of his brother's son (Hafsah bnt Abd Rahman with Munzir Ibn Zuber), [which](#) will be explained afterward.

Both of the hadith above are considered weak, [either](#) in its *sanad* or *matan*. The weaknesses in terms of *sanad* sometimes [is](#) due [to the](#) disconnection of *sanad* between one narrator with the other narrators, [as](#) found in the Burdah [of](#) [the](#) [hH](#)adith from Abu Musa, [or](#) between one narrator and the other narrators do not know about its narration as in the [hH](#)adith from Aisha. While the weakness in terms of *matan* is

sometimes caused by [the](#) conflicts between one hadith and another, such as the practice of Aisha ra. From the hadith of Muhammad Ibn Abubakar Al-Shiddiqi (which will be explained later), which is contrary to his own hadith and as in the hadith of Abu Musa about requiring guardians in marriage.

Build upon the evaluations above, both of these hadith are appeared to be weak. Therefore, the Hasan Shahih level given by al-Turmuzi, and Shahih level given by Ibn Hibban and Hakim is considered too high for these hadith. It [is](#) supposed to be downgraded to a lower level and need a further research on it (Interview with Mr. Tarmizi M. Ja'far, 30 April 2020).

The last one is [the](#) hadith from Muhammad Ibnu Abubakar Al- Shiddiq, with the *matan* is based on Imam Malik (Muhammad Zakaria, P. 40)

Translation: *From Muhammad Ibn Abubakar Al-Shiddiq that Aisha, the wife of the Prophet Muhammad, married the Hafsa bint Abdul Rahman with Munzir Ibn Zuber on the matter that he (Abd Rahman) was in the land of Sham. When he came, he was upset about Aisha's actions, then Aisha told the problem to Munzir Ibn Zuber. let the problem be solved by Abd Rahman, Munzir answered. After that Abd Rahman said: I have never rejected Ayesha's wisdom. Based on that, Hafsa (took a stand for) remained with Munzir, and there was no divorce.* [This](#) hadith was narrated by Malik from Abd Rahman ibn Qasim.

No detailed explanation was found regarding the *sanad* of this hadith. However, the dissent of the hadith scholars is arousing around the understanding of *matan* hadith itself. According to al-Bakhy, as explained by Muhammad Zakaria (p. 40), there are two possible meaning of [the contents of](#) this hadith. First, Aisha herself ~~was~~ pronounced [the](#) marriage contract, but, this narration was refuted by Ibn Muzayyan, as it ~~is~~ contradicted the practice of the Madinah clerics (amal al-Madinah), because Imam Malik himself and a number of other *fuqaha'* did not allow women to become a marriage guardians. Second, Aisha's attitude towards the marriage ~~was~~ only to stipulate the dowry and other needs, not as a guardian. It is possible that the guardian of the marriage was one of the close relatives of Hafsa. [However](#), ~~But~~ there is no further explanation about ~~who was~~ the guardian in this marriage. This information shows that because the two narrations were not mentioned concretely, it is scientifically difficult to maintain the truth of the narration.

Furthermore, al-Baakhy, as explained by Muhammad Zakaria (p. 40), [argued that](#) according to the Maliki school, the marriage between Hafsa Abd Rahman and Munzir Ibn Zuber (whom her father, (Abd Rahman) was far away in Sham at that time) is not allowed at all. Besides, Hafsa ~~was~~ still a virgin [and](#); ~~her it is also because~~ father ~~was is still~~ alive at the time of the marriage ~~was~~ held.

[Al-Zarqany](#) (p. 172), who is also an explainer of the Muwatta book, denied ~~the~~ al-Bakhy's information [above](#), arguing that Aisha's actions was considered legitimate and there was no one to represent her,

and ~~because her this is Aisha's~~ privilege as the wife of Rasulullah ~~PBUH Saw~~. Although the *wali* is far away, the guardianship in ~~m~~Marriage is necessary, even if the *wali* is not the wife of Rasulullah ~~PBUH Saw~~. ~~If Suppose~~ the marriage ~~that was~~ carried out by Aisha was true and ~~it has even been~~ an example of a marriage that was guarded by a woman ~~even though because for the reason that~~ it was Aisha's privilege as the wife of the Prophet; the ~~emerged~~ questions are why some scholars never considered her as guardian in marriage and how to deal with hadiths relat~~ed~~ing to the marriage guardianship which also originated from Aisha herself?. Textually, it can be said that there are two contradic~~ting~~ory cases ~~was~~ committed by the same person; on ~~one~~ hand, Aisha is presupposed only the men as *wali* in marriage yet on the other hand, she herself through her practice (marrying Hafsa with Munzir) acknowledged the acquisition of women as a *wali* in the marriage (Muhammad Zakaria, p. 40; al-Baihaqi, pp. 112-113 and pp. 112-113 and Ahmad al-Sahar Nafuri, p. 85).

~~Based on Referring to the previous~~ ~~se~~ analysis, it can be concluded that their dissent in comprehending the *matan* of the hadith is because the lafaz (the pronouncement) of the hadith is too general. ~~T~~he ~~j~~umhur fuqaha' preferences of the first opinion -the best guess- because the hadiths relat~~ed~~ing to marriage (that ~~is~~ mentioned above) are considered as *pentakhsis* (as specialization) for the generality of the former hadith.

Conversely, the Hanafi School prefer~~red~~s the second opinion because the hadiths ~~we~~are not served to explain the generality of this hadith-because the validity of the *sanad* is ~~still~~ in doubt. ~~They argued~~ ~~According to them~~ what was done by Aisha (which ~~her deed~~ was approved by all scholars, including *jumhur fuqaha'*) was one of the causes of the weakness of the hadith (about a *wali* must be a man in marriage guardianship) - to be used as a source of law. Hanafi even assum~~ed~~s that Aisha's hadith about the marriage of ~~H~~afsa and Munzir was a *nasikh* (abrogation) of Aisha's aforementioned hadith or at least could be considered as *inkar rawi* (the denial on the hadith narrator) in the *Mushthalah* ~~h~~adith (science about hadith) (Al-Humam. p. 261 and Al-Mubarakfuri, p. 229). ~~I~~n addition, ~~the scholars are still debating the validity to of the position of the sanad of h~~adith. ~~Also, which the scholars are still debating about its validity.~~ ~~T~~o comply to the *general dalil* (propositions) ~~that are general~~ in determining the law is better than specific arguments that are weak.

Referring back to the hadiths which ~~according to jumhur fuqaha' are~~ assumed to be the *dalil* for the existence of a *wali* in a marriage, the Hanafi school ~~consider~~considered the opposite. ~~The Hanafi school believed that~~ ~~According to them,~~ the validity of these hadiths ~~are is still being~~questionable, both in terms of *matan* and *sanad*. The flaw in terms of *matan* is sometimes caused by *inkar rawi* between one hadith and another, ~~such as Like~~ the practice of Aisha (Prophet's wife) ~~itself~~.

~~It was L~~ikewise, ~~for~~ the hadith from Abu Musa and Aisha, the weaknesses of these two hadiths are not only because they contradict the Aisha's practice ~~in when~~ the event of marriage of Hafsa bnt Abd

Rahman ~~and~~ Munzir Ibn Zuber, ~~and who~~ at that time Abd Rahman was in ~~Bilaad as the land of Shham~~ - but also because the validity of ~~both of~~ the *sanad* of ~~both~~ *hadiths* are still ~~being debated~~.

Regarding the *hadith* of marriage guardianship, the *jumhur fuqaha* comprehensions ~~tend are prone~~ to interpret the *hadith* textually rather than contextually. This is because they concerned ~~ed~~ more on interpreting the proposition (*dalil*) of the text and disregard other probabilities. For example, when comprehending the verses, they are more influenced by the meaning of the text of *hadiths* of marriage guardianship, even implicitly it can be said that there is an assumption from *jumhur fuqaha* that these *hadith* are served to ~~specifically~~ explain the ~~general~~ marriage verses ~~that are general in detail~~.

On the other hand, the way of understanding ~~which~~ adopted by the Hanafi school in ~~the studying of~~ texts, both the Quran and the *h*~~Hadith~~, is quite different from the pattern adopted by *jumhur fuqaha*-. The subject of the study is more directed toward the understanding of the texts as a whole - with the condition that not only to pay attention to the various possibilities that occur between one text to another, but also ~~to~~ put the concern on the intent or *illat* ~~-included which contained there~~. For example, the meaning and *illat* are adjusted to the circumstance and situation of the community. ~~Such This kind of~~ thinking is more directed towards comprehension which considers the reason or *illat* of the law itself, in addition to manifesting benefit rather than just explaining the meaning ~~contained~~ in the text alone (Interview with Mukhsin nya' Umar, 29 April 2020).

### Interpretation of Verses Understood by Scholars of The Four Schools of *Fiqh*

The *mufassirs* selected in this case ~~were were~~ Al-Qurthubi, Al-Thabari, Ibn al-'Arabi Abu Bakar Al-Jashas and Rasyid Ridha, assuming that their interpretation can represent the four schools of *f*~~Fiqh~~.

~~Mufassir focused on two main subjects There are two main subjects of focus that the mufassir are~~ ~~looking into~~ to understand the message behind those Quranic verses: the background of revelation and the literal meaning ~~contained~~ in those verses. First, the particular verse ~~that is~~ investigated in relation to its background of revelation is the verse that is more related to the issue of marriage guardianship. In addition, the scope of meaning and message ~~contained~~ in those verses ~~are will be~~ discussed.

According to several exegesis (*tafseer*) books, of the four aforementioned verses, the background of ~~the~~ revelation ~~of verse 232 of Surah Al-Baqarah that is the~~ most related to this issue ~~is verse 232 of Surah Al-Baqarah~~. Imam Al-Thabari (p. 489) outlined several narrations ~~concerning regarding~~ its background of revelation and one that is deemed credible is ~~the one that which~~ involv~~ing~~ed Ma'qil Ibnu Yasar, who prevented his divorced sister to return (*ruj'u*) to her husband.

This is in line with the *hadith* narrated by Abu Dawud as follows:



Translation: *From Al-Hasan, that Ma'qil said, I have a sister which is dear to me, and when the son of my uncle came, then I gave her away to him and he divorced her once and did not take her back until her waiting period (iddah) finished. Then when I was going to give her away, her former husband came back and want to remarry her, to whom I said: "By Allah, she will never return to you" and thus that verse was revealed...He said I pay expiation for oath and I gave her away back to him for marriage. This hadith was narrated by Bukhari and Abu Dawood.*

Mufasssir agreed to determine that that hadith was the reason why verse 232 of Surah [Al-Baqarah](#) was revealed. However, they differ in the interpretation of the background of revelation and the interpretation of the verse itself.

Al-Qurthubi (pp. 72-73) maintained that the verse was revealed in connection to *wali* based on the interpretation of another verse that *wali* ~~is~~ prohibited to ~~handgive\_his~~ daughters ~~away~~ under his guardianship ~~\_~~ to a polytheist man. This [argument](#) is supported by Ahmad al-Sahar Nafuri (p. 91) who stated that this hadith counts as hadith [that which](#) prescribes the existence of a *wali* in a marriage, ~~according to scholars who hold the opinion~~. Abubakar al-Jashsas (p. 101) disagreed that the verse was revealed exclusively in relation to *wali*. He believed~~s~~ it is difficult to justify such an opinion since the prohibition has a general context which involves all parties, including the husband. This opinion is shared by Rasyid Ridha (pp. 401-402) who believed~~s~~ that although the verse was revealed for a specific reason, it has a general application nonetheless, including the former husband who prevents his divorced wife to marry another man of her choice. The difference in interpretation will be outlined in the interpretation of verse 232.

According to Ibn al-'Araby (p. 197), the word *nikah* in verse 230 ~~has takes on~~ two meanings, namely marriage contract (explicitly) and sexual intercourse (implicitly). Supposed~~d~~ that one adopts the first meaning, then it means a woman is allowed to give herself and others away in marriage because the word *nikah* is directly tied to her. On the contrary, if the latter meaning was adopted, it means women will never be allowed to give herself and others away in marriage. This is because the verse does not literally state so. In this case, he adopted the implicit meaning (general~~ly~~ interpretation is based on [the](#) explicit meaning), arguing that the hadiths [concerning in relation to](#) marriage tend to support such opinions. ~~In Quite the contra~~~~stry~~, al-Jashsas (p. 101) believed~~s~~ that the verse ~~should be is to be~~ interpreted based on its explicit meaning ([instead of the](#) ~~the interpretation is usually based on~~ implicit meaning). In fact, it is the meaning of such nature that is intended by the verse. In support of his claim, he pointed out two strings of words in the verse, first; “*until after she marries a husband other than him*”, which means the woman herself in the pronouncement of the marriage contract and, second; “*there is no blame upon the woman and her husband for returning to each other*” which is interpreted that a divorced couple have the right to return to their former marriage without involving a *wali*. In fact, the word *wali*, as intended here, not only includes men but also women. The differences of [the](#)

interpretation of the implicit and explicit meaning are influenced by the schools of fiqh to which they subscribed.

Concerning ~~t~~The interpretation of verse 232 of Surah Al-Baqarah, mufassir agreed to interpret the word “prevent” in “*do not prevent them from remarrying their (former husbands or other men)*” to mean “to hinder, prevent and make it difficult”. However, their opinions differ ~~It is~~ when determining the prohibition in that verse ~~that their opinions differ~~. Ibn al-‘Araby (p. 197) is of ~~argued the opinion~~ that the verse is related to ~~is connected to~~ wali who are prohibited against preventing women under their guardianship to marry men of their choice. Preventing from marriage here means that the wali is not willing to solemnize the marriage. If women had rights to give themselves away, ~~it follows that~~ there would ~~not~~ be any prohibition against the prevention in that verse. However, Al-Jashas (p. 197) maintains ~~eds~~ a conflicting opinion which states ~~ing~~ that the verse serves as the main argument allowing women to handle ~~take care of~~ and running their own marriage, in addition to other supporting verses ~~in support of this~~. In fact, he rejected the opinion saying ~~which says~~ that women have no right whatsoever in pronouncing the marriage contract. There are two strings of words in the verse used to support this opinion. The first one is “*do not prevent them from remarrying their (former husbands or other men)*” of which he interpreted to mean that women must not be prevented to pronounce their own marriage contract with men of their choice. The second one is the word “*al ma ‘ruf*”, which is defined as equality of equivalence, and *mahr al-mithl*. From the concepts of those two groups, ~~of concepts~~ he concluded ~~drew a conclusion~~ that “*no one has the right to prevent a marriage contract which a woman pronounce herself based on the principle of equality or equivalence and one which involves the giving of the mahr al-mithl*”. Had the prohibition been imposed on wali, it would have meant that a wali will have the right to cancel the marriage only through a judge; if the woman did not marry a man equal to her or the man did not give her *mahr al-mithl*.

The difference of interpretation among the mufassir occurs they associated ~~due to different things with which~~ the word *nikah* with different things ~~is associated~~. Al-Jashas associated the word *nikah* with women with a consideration of the two strings of words mentioned above and, ~~And thus, that is the reason why~~ the interpretation takes on a broader meaning. On the other hand, the other ~~mufassir who made the~~ association of the word *nikah* with wali, and, therefore, maintain that it is the wali ~~who~~ has the right to solemnize the marriage. This latter form of understanding is more closely related to that of the majority of fiqh scholars, while, ~~On the contrary,~~ the former opinion tends to be popular among Hanafi scholars.

Concerning ~~v~~Verse 234 of Surah Al-Baqarah, ~~t~~The most important part that *mufassir* refer to in understanding this verse is the sentence “*There is no blame upon you for what they do with themselves in an acceptable manner*”. Al-Thabary (p. 516), Ibn al-‘Araby (p. 212) and al-Qurthuby (p. 187) agreed to determine that the prohibition contained in ~~“there is no blame upon you (walis)”~~ are specifically

directed towards *wali*s. Similarly, the sentence “*for what they do with themselves*” means marriage and the words “*in an acceptable manner*” means every lawful matters ~~that are lawful~~ in Islam in relation to marriage, such as the choosing of a future husband, determination of dowry, etc., except for running the marriage contract since that is the right of a *wali*. As a matter of fact, the explanation offered by the three *mufassir* indicates that it is unacceptable and contradictory to the verse to let women take care of their own marriage.

On the contrary, al-Jashsas (p. 197) stated<sup>ds</sup> that the generality of the verse covers the marriage contract performed by women. The words “*there is no blame upon you for what they do with themselves in an acceptable manner*” can still be interpreted as there is no right for *wali* to interfere with matters related to the woman until she completes her *iddah* ~~is finished~~ (including the pronouncement of marriage contract) as long as they are permissible in ~~not disapproved of by~~ the Islamic law. The fact that male *wali* (guardian) is required in the marriage contract contradicts the intention of this verse. The opinion which holds that in a marriage contract a woman’s only rights are to choose the husband and determine the amount of dowry but not to handle ~~take care of~~ her own marriage is rejected since *wali* cannot solemnize the marriage without the consent of the woman. The choosing of a husband and determination of a dowry will mean nothing if the marriage fail to take place.

### **Forms of *Mufassir* Subjectivity towards Schools of *Fiqh* in the Interpretation of Marriage Verses**

There are four forms of possible subjectivity that *mufassir* have towards ~~f~~*Fiqh* schools in interpreting marriage verses.

The first indication lies in the difference of *mufassir* opinions<sup>s</sup> in interpreting the background of revelation of verse 232 of Surah Al-Baqarah in relation to Ma’qil Ibn Yasar. *Mufassir* from the majority of ~~f~~*Fuqaha* interpreted that the verse was revealed in regard to *wali*. Therefore, matters concerning with ~~regard to~~ marriage should be handed over entirely in its entirety to *wali*. On the contrary, *mufassir* from Hanafi school interpreted the background of revelation to concern the *wali* but they also believed<sup>d</sup> the verse has a general application. Therefore, the marriage guardianship can also be handled by women.

Another indication is in their disagreement with the definition of the word *nikah*, which is a crucial concept to clarify in interpreting a number of verses on marriage. The *mufassir* from the majority of ~~f~~*Fiqh* scholars always associated<sup>d</sup> the word *nikah* with *wali*, and therefore believed<sup>d</sup> that matters about ~~with regard to~~ marriage should be taken care of by *wali*, not others. On the contrary, *mufassir* from Hanafi school did not associate the word exclusively with *wali* and therefore maintain that matters concerning in ~~regard to~~ marriage can be handled by any parties, including women.

The next indication is in how they differ in the positioning of the function and degree of the hadith in relation to Quran. *Mufassir* from the majority of scholars ~~who~~ believed<sup>d</sup> that the command and

prohibition ~~contained~~ in several marriage verses were directed towards *wali*, thus, they also believed that several hadiths on *nikah* (aforementioned) serve to explain the generality of the verse in more details, except for the hadith on Aisha who acted as a *wali* in a marriage, which they considered against the law. On the contrary, *mufassir* from Hanafi school ~~who~~ considered that the command and prohibition in the marriage verses have a general application, including to women, thus they maintained that those hadith do not serve to explain the verses in detail. That is because they argued~~think~~ that those hadiths have flaws in terms of sanad (chain of narration) and the content itself.

The last indication is concerned with the difference in how they attributes the importance of relationship between verses and hadiths in helping them make their interpretation. *Mufassir* from the majority of scholars did not put attach great importance toward the relationship. Therefore, their interpretation is more partial and disunconnected to each other, and the ones whose accuracy is also difficult to justify. On the contrary, *mufassir* from Hanafi school considered the relationship important. As a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation in comparison to the former. These differences in interpretation may be influenced by the schools of f*Fiqh* ~~to which~~ they subscribed.

## CONCLUSION

Referring to the arguments of the *fuqaha*, m*Mufassir* and the h*Hadith* explainers in comprehending, explaining the meaning and interpreting several verses of the Qur'an and the h*Hadith* about marriage, it can be they concur with the ~~concluded~~ sion that the commands and the prohibitions ~~contained~~ in the verses of the Quran are ~~still~~ general.

The dissents are around the meaning of the word *nikah*, ~~which is~~ the principal concept to understand and interpret the verses. The *mufassir* from the majority of f*Fuqaha* always associated the word *nikah* to the *wali*, so the matter concerning related to marriage should be handled taken care of by *wali*, not others. Hence, it makes some hadith about marriage are served to explain the generality of the selected verses. On the other hand, the *mufassir* from Hanafi s*School* ~~and did~~ not associate the word *nikah* solely to the *wali* but to any parties. Therefore, the foregoing may be handed to all parties, including women, and accordingly, those hadith do not serve to explain the verses in detail.

There are four forms of *mufassir's* subjective indications to the *fiqh* school they subscribed: First, when the *mufassir* differed in interpreting the *Asbab al-Nuzul* of surah al-Baqarah verse 232 concerning that related to Ma'qil Ibnu Yasar. The *mufassir* of jumhur fuqaha' ~~who~~ maintained that the occasion the verse revelation is specifically addressed to the *wali* (not someone else), then the marriage guardianship must be handed entirely to the *wali*. ~~Meanwhile Another one~~, the *mufassir* of Hanafi school ~~who~~ maintained that the cause of the verse revelation is specifically addressed to the *wali*, but

they assume that the law is generally accepted, thus, the marriage guardianship may also be handled by women.

The second indication is in their disagreement concerning the ~~with the the~~ word *nikah*, ~~which is~~ the key concept to clarify the marriage verses. The *mufasssir* of jumhur fuqaha' ~~who~~ associated~~s~~ the word *nikah* to the *wali*, then it is the *wali* who has the right to solemnize the marriage, not others. Otherwise, the *mufasssir* of Hanafi school ~~who~~ ~~does~~ not associate the word *nikah* to the *wali*, then the marriage matters might be handled by any parties including women.

The third indication lies in difference of *mufasssir's* opinion in positioning the function and the degree of the hadith toward the Qur'an itself. The *mufasssir* of jumhur fuqaha' ~~who~~ consider~~s~~ that the generality of the commands or prohibitions ~~contained~~ in the marriage verses are addressed to the *wali*, thus some of the marriage hadith (aforementioned) are served to explain the generality of the verses in detail. On the other hand, the *mufasssir* of Hanafi school ~~who~~ maintained that the generality of the commands or prohibitions ~~contained~~ in the verses ~~are~~ applied to all, including women, then these hadith are not served to explain the generality of the verses. That is because they think that those hadiths have flaws in terms of sanad (chain of narration) and the content itself.

The last indication is concerned with their dissent in how they attribute to the importance of *munasabat* (correlation) between verses and hadiths in helping them in their interpretation. The *mufasssirs* of jumhur fuqaha' ~~who~~ consider~~ed~~ the correlation is less important, hence their interpretation is more partial, ~~disun~~connected to each other and its ones ~~whose~~ accuracy is rather difficult to justify. Conversely, the *mufasssir* of Hanafi school ~~who~~ believed that the correlation is important, as a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation compared to ~~in comparison to~~ the former.

Finally, it is hope that the schools, mufasssir and muhaddith in studying and analysing the problems ~~which occur~~ occurred and develop~~ed~~ among various schools, mufasssir and muhaddith, should not be supposed not to be subjective in defending the truth of one opinion, or even to blame other opinions that are not in line with the opinions held. That is because ~~As eventually,~~ an objective truth is difficult to achieve in ~~such practices~~ this way.

## REFERENCES

### Books

- Abubakar al-Jashshash, *Ahkam al-Quran*, Juz II, Mathba'at Abdurrahman, Cairo.
- Ahmad al-Sahar Nafuri, *Bazl al-Juhud fi Hil AbiDawud*, Dar al-Kutub al-'ilmyyah, Beirut.
- Baihaqi, al., *Sunan al-Kubra*, Juz VII, Dar al-Fikr, Beirut.
- Ibn'Arabi, al, *Ahkam al-Quran*, Tahqiq Ali Muhammad al-Bujawi, Mushthafa al-Babi al-Halabi, Egypt, 1950.
- Ibn Hazm, *al-Muhalla*, Juz IX, Dar al Fikr, Egypt.
- Ibn al Humam, *Syarh Fath al-Qadir*, Juz III, Dar al Fikr, Egypt.
- Ibn Majah, *Sunan Ibn Majah*, Juz I, Musthafa al-Babi al-Halabi, Egypt.
- Ibn Qayyim al-Jauziyyat, *Aun al-Ma'bud Syarh Sunan Abi Dawud*, Jilid VI, Dar al-Fikr, Egypt.
- Kasani, al, *Badai al-Shanai*, Jilid II, Cet. I, Mathba'ah al-'Ilmyyat, Egypt, 1328 H.
- Mubarakfuri, al, *Tuhfat al-Ahwazi bi SyarhJami' al-Turmuzi*, Juz IV, Maktabat al-Salafiyat, Madinah.
- Muhammad Zakariya, *Aujaz al-Masalik fi Muwatthak Imam Malik*, Dar al-Fikr, Egypt.
- Nawawi, al, *Syarh Muslim*, Juz I, 'Isa al-Babi al-Halabi, Egypt.
- Qurthubi, al, *al-Jami' al-Ahkam al-Quran*, Jilid III, Dar al-Kitab al-'Arabi, Egypt, 1967.
- Rasyid Ridha, *Tafsir al-Manar*, Jilid II, Maktabat al-Qahirat, Egypt.
- Sayid Sabiq, *Fiqh al-Sunnah*, Juz IV dan VII, Dar al-Bayan, Kiut.
- Thabari, al, *Tafsir al-Thabari*, Juz II, Dar al-Fikr, Egypt, 1954.
- Zarqani, al, *Syarh Sahih Muwathtak Imam Malik*, Juz II, Dar al-Fikr, Egypt.

Interview.

Mukhsin Nya' Umar, Director of Postgraduate studies of UIN Ar-Raniry, Banda Aceh.

Tarmizi M. Ja'far, Chairperson of Postgraduate Contemporary Fiqh Study of UIN Ar-Raniry, Banda Aceh.

# THE SUBJECTIVITY INDICATION OF SCHOOL OF FIQH IN THE INTERPRETATION OF MARRIAGE VERSES

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This paper has original contribution of knowledge as not issued earlier. The topic is on injustice interpretation of marriage verses stated by Islamic clerics. A number of the Quran verses and the hadith of the Prophet PBUH related to marriage has a general meaning and apply to all parties. The *Fuqaha'* (Islamic law scholars/Jurist) of four schools and *mufasssir* (Quran interpreter) of the same school (*mazhab*), agree to determine the generality of the meaning of several marriage verses to be applied for all without limiting the certain parties. The difference in their opinions is related to the meaning of the word *nikah*, which is the main subject to understand and interpret the verses. The *jumhur* (majority) of *fuqaha'* and *mufasssir* of the same school always associate the word marriage to the *wali* (Guardian) so that he must handle the matter concerning the marriage. On the other hand, *mufasssir* from Hanafi school argue that the word *nikah* applies to a broader meaning and is not exclusively addressed to *wali*, so the marriage guardianship can be handed to any parties, including women.

**Keywords:** Islamic Jurisprudence, Interpreter of Quranic Verses, Verses of Marriage Law, Islamic Law, Family Law

## Introduction

The Quran as the first and foremost source of law in Islam is continuously interpreted and deciphered by the *fuqaha'* and *mufasssir* since the earliest generations of Islam to date (Abubakar, 2019; Fuqohak, 2020). The interpretation and the deciphering of the message of the Quran aim not only to understand the contents of the Quran itself but also to implement its message in everyday life (Mawardi, 2020; Thalib, Sabrie, 2020). The diversity of backgrounds and considerations will influence the *mufasssir* in interpreting the marriage verses, for example, the differences in their competency in understanding and mastering the language of the Quran and the variations in interpreting the *Asbab al-Nuzul* (Mufid, 2020; Wathani, 2020). On the other hand, there is also the influence of their dependency on the school of *fiqh* (which they subscribed) in their interpretation. Above all, the last-mentioned factor even contributes most to the diversity of their interpretation subjectivity, and at the same time becomes an important highlight in this paper, which will be explained specifically in the next section. The verses which are concerned to are verse 221, 230 232 and 234 of Surah al-Baqarah.



### **The Comprehension of *Fiqh* Schools Towards Marriage Verses**

The *Fiqh* schools here are the Hanafi, Maliki, Shafi'i and Hanbali Schools, of which the last three mentioned - henceforth – termed as *jumhur fuqaha'* (the majority of *fuqaha'*). The *fuqaha'* selected are, Ibn Hazm, Ibn al Humam, Ibn Rusyd, Kasani and Sayid Sabiq. The following will explain of how the four school *fuqaha'* comprehend these verses.

Verse 221 of the Surah Al-Baqarah: Translation: *And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite [you] to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.*

According to Sayid Sabiq, (n.d.) and Ibn Rushd (1992) (when explaining the opinion of *jumhur fuqaha'*), the prohibition in this verse means specifically addressed to the *wali*, as though Allah said "O guardian, don't you marry women who is under your guardianship with men who are still idolaters". However, Ibn Rushd (1992), when explaining the opinion of Abu Hanifah, argued otherwise. He argued that the prohibition is more likely to be understood as *waliyul amri* rather than *wali*. Moreover, there is no further explanation regarding the types of guardians, their nature and degree of marriage guardianship if the prohibition is believed.

Verse 230 of the Surah Al-Baqarah: Translation: *And if he has divorced her [for the third time], then she is not lawful to him afterwards until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.*

When explaining the *jumhur fuqaha'* opinions, Ibn Hazm, (n.d.) said that this verse means a marriage without *wali* is invalid. However, Sayed Sabiq (1971) and Ibn al Humam (n.d.), when explaining the opinion of Abu Hanifah, argued otherwise. They believed this verse is about marriage, which is closely related to women. They argued that linking a matter to the subject shows that the person is the main subject and is also more entitled to handle the matter compared to others.

Verse 232 of the Surah Al-Baqarah: Translation: *And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not.*

Sayed Sabiq (1971), explaining the opinions of *jumhur fuqaha'*, commented that the prohibition on the word *prevent* here specifically intended for the *wali*. This is in line with the occasion of revelation (*asbab an-nuzul*), which will be explained further later. However, Al Kasani (1910), when explaining the opinion of Abu Hanifa, had the opposite views. According to him, the prohibition here is more general because several possible objectives can be understood from this verse. First, as the concept of *jumhur fuqaha'* above (provided that this possibility is somewhat more difficult compared to the next two possibilities), the prohibition was addressed to the *wali* but in a different meaning from what the *jumhur fuqaha'* maintained above. The point here is about a *wali* who prevents the women under his guardianship to run their own marriage with the men of her choice. Second, the prohibition in the verse is addressed to the husband, in the sense that the husband is prohibited from hindering his divorced wife while she has finished her *'iddah* (waiting period) to marry the man of her choice. This consideration is based on the phrase "If you divorce your wife" at the beginning of the verse.

Verse 234 of the Surah Al-Baqarah: Translation: *And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] acquainted with what you do.*

Ibn Hazm (n.d.), when explaining the opinion of *jumhur fuqaha'*, said that the prohibition in this verse is addressed to the *wali*. It is as if Allah said, "Guardians, do not obstruct a woman whom her husband has died and has finished his *iddah* (a waiting period) from marrying another man in a way that is *Makruf* (familiar)". This comprehension is different from the Hanafi school, which maintains that an *akad nikah* (hereafter marriage contract) carried out by the woman herself and the man of her choice and blessed with *mithil* dowry is included in the *makruf* concept in this verse. Therefore, the marriage should be considered valid, because it includes the act of *makruf*, which is in accordance with the will of the *wali* (Kasani, 1910).

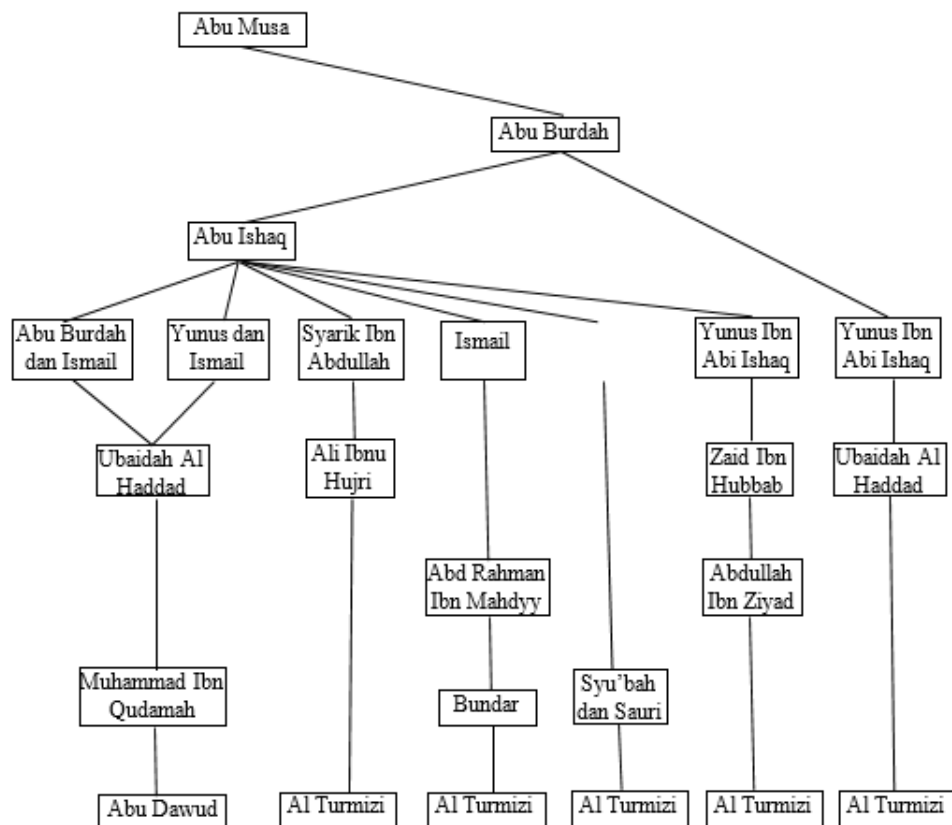
The above explanation shows that, following *jumhur fuqaha'*, the marriage matter will be considered *makruf* if it handed entirely to the *wali*. However, the Hanafi school believes vice versa, that this matter will not be considered *makruf* if it is not handed to the women.

### **The Function and the Degree of Hadith Toward the Generality of Marriage Verses**

This discussion is necessary to clarify the function and the degree of the hadith toward several marriage verses. The selected hadiths are the ones narrated from Abu Musa, Aisha ra, and from Muhammad Ibn Abubakar Al-Shiddiq. The chosen hadiths narrators are Ahmad al-Sahar Nafuri, Al-Nawawi, Baihaqi, Ibn al Humam, Ibn Qayyim al-Jauziyyat, Mubarakfuri, Muhammad Zakariya and

Zarqani. Among the hadith is the hadith of Abu Musa, the *Matan* (text of hadith) is according to al-Turmuzi (Mubarakfuri, n.d.). Translation: from Abu Musa he said: The Messenger of Allah. said: "*There is no legal marriage without a wali*". This hadith was narrated from Ahmad, Abu Daud, al Turmuzi, Ibn Majah and Hakim. *The Sanad (or Isnad) of the hadith* (the hadith's chain of transmitters) can be seen in Figure 1.

Figure 1. Diagram of the *Sanad* of the Hadith of Abu Musa

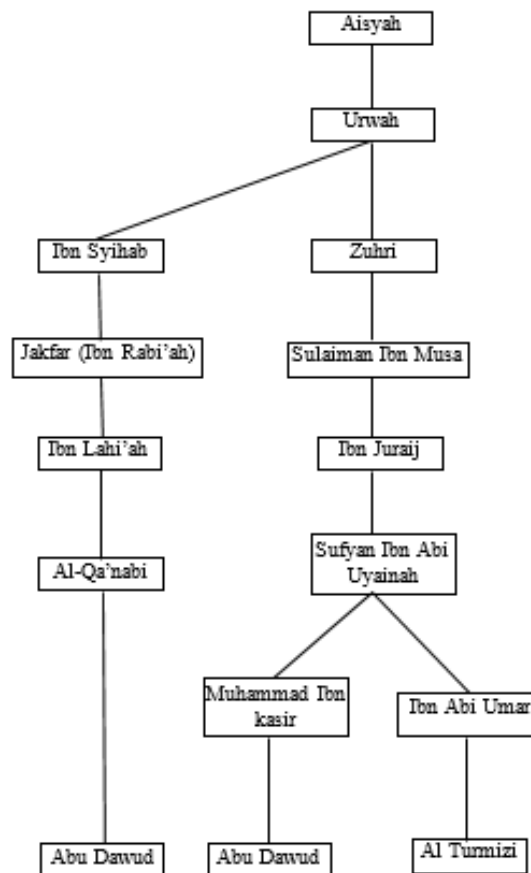


Al-Turmuzi considered this hadith is *hasan sahih*, although other scholars of hadith have different opinions about its validity due to several indicators. First, al-Turmuzi considers all reports based on Abu Ishaq is *shahih* (valid), except for the history of Syu'bah and al-Sauri. According to him, the objection to the two men is because both of them coincided with time and place when they heard the hadith from Abu Ishaq; therefore, the validity of the hadith is doubtful. Secondly, al-Turmuzi also acknowledged the weakness of the narration of the hadith which did not rely on Abu Ishaq but directly to Abu Burdah, which means that his *sanad* was interrupted. Third, there is an error of *sanad* in the narration of Abu Dawud: Yunus, Ismail and Abu Burdah are from one narration, then Yunus and Ismail jointly narrating the hadith from Abu Ishaq, as if, there are two Burdah in the *sanad*. Yet, as it is seen in the Sanad al-Turmuzi, there is only one Abu Burdah (Nafuri, n.d.; Ibn Qayyim, n.d.; Mubarakfuri, n.d.).

Next is the hadith from Aisha, which the *matan* (content/text of hadith) is from Abu Dawood: (Nafuri, n.d.) Translation: Aishah ra., narrated that the Messenger of Allah said: *"Whichever woman married without the permission of her wali her marriage is invalid, her marriage is invalid, her marriage is invalid. If he entered into her, then the Mahr is for her in lieu of what he enjoyed from her private part. If they disagree, then the Sultan is the wali for one who has no wali"*. This hadith was narrated by Ahmad, Abu Dawood and Ibn Majah.

The *sanad* of the hadith can be seen in Figure 2. Al-Turmuzi considered this hadith to be *hasan* (good), even Ibn Hibban and the Hakim judged it as *Shahih* (valid), even though the scholars of other hadith still doubted its validity. That doubt was found in the narration of Zuhri and the statement was very popular among the scholars of hadith. On one hand, Ibn Juraij, in one narration, had met Zuhri and questioned about the hadith, then he answered, "I do not know". Such answer according to the hadith scholar can weaken the validity of the narration (Baihaqi, n.d.; Qayyim, n.d.; Mubarakfuri, n.d.). However, al-Turmuzi, Ibn Hibban and Hakim - to refute these doubts - still considered that the event did not affect the validity of the hadith because none of other hadith scholars narrated the story of Ibn Juraij, except Ibn Ulayyah himself. Whereas, this hadith is narrated by a group of hadith experts from Zuhri, but they did not mention that the explanation is from him. Even though the statement is true, it cannot be used as the reason to weaken this hadith, because the person narrated it from Zuhri was an honest individual, including Sulaiman Ibn Musa (Baihaqi, n.d.; Qayyim, n.d.; Mubarakfuri, n.d.). This statement is ungrounded, because basically they acknowledged the incident, therefore, the validity of the hadith is in doubt.

Figure 2. Diagram of the Sanad of Aisha's hadith



On the other hand, the scholar of hadith also found the issue about the validity of the hadith. Ibn Qayyim (n.d.), a Sunan Abi Dawud explainer - through his narration from al-Qa'naby - said that Jakfar (Ibn Rabi'ah) had never heard this hadith from Zuhri. This statement is also supported by the statement of al-Baihaqy (n.d.) from Ibn Mu'in, that the narration from Ibn Rabi'ah is considered weak due to his personal character. Moreover, he added that Zuhri was considered to deny his narration by saying "If a woman marries without her wali's consent, it is permissible". This opinion is held by Al-Sya'by, Abu Hanifah and Zufar. Ahmad al-Sahar Nafuri (n.d.), a Sunan Abi Dawood explainer, – in relation to this matter – also clarified that: the flaw of the hadith is not only due to the narration doubt about Zuhri as mentioned above, but also because this narration is contrary to his own practice, namely the hadith about the marriage of his brother's son (Hafsah bnt Abd Rahman with Munzir Ibn Zuber), which will be explained afterward.

Both of the hadith above are considered weak, either in its *sanad* or *matan*. The weaknesses in terms of *sanad* sometimes is due to the disconnection of *sanad* between one narrator with the other narrators, as found in the Burdah of the hadith from Abu Musa, or between one narrator and the other narrators do not know about its narration as in the hadith from Aisha. While the weakness in terms of *matan* is sometimes caused by the conflicts between one hadith and another, such

as the practice of Aisha ra. From the hadith of Muhammad Ibn Abubakar Al-Shiddiqi (which will be explained later), which is contrary to his own hadith and as in the hadith of Abu Musa about requiring guardians in marriage.

Build upon the evaluations above, both of these hadith are appeared to be weak. Therefore, the Hasan Shahih level given by al-Turmuzy, and Shahih level given by Ibn Hibban and Hakim is considered too high for these hadith. It is supposed to be downgraded to a lower level and need a further research on it (Ja'far, 2020).

The last one is the hadith from Muhammad Ibnu Abubakar Al-Shiddiq, with the *matan* is based on Imam Malik (Zakariya, n.d.) Translation: *From Muhammad Ibn Abubakar Al-Shiddiq that Aisha, the wife of the Prophet Muhammad, married the Hafsa bint Abdul Rahman with Munzir Ibn Zuber on the matter that he (Abd Rahman) was in the land of Sham. When he came, he was upset about Aisha's actions, then Aisha told the problem to Munzir Ibn Zuber. let the problem be solved by Abd Rahman, Munzir answered. After that Abd Rahman said: I have never rejected Ayesha's wisdom. Based on that, Hafsa (took a stand for) remained with Munzir, and there was no divorce. This hadith was narrated by Malik from Abd Rahman ibn Qasim.*

No detailed explanation was found regarding the *sanad* of this hadith. However, the dissent of the hadith scholars is arousing around the understanding of *matan* hadith itself. According to al-Bakhy, as explained by Muhammad Zakariya (n.d.), there are two possible meaning of this hadith. First, Aisha herself pronounced the marriage contract, but, this narration was refuted by Ibn Muzayyan, as it contradicted the practice of the Madinah clerics (*amal al-Madinah*), because Imam Malik himself and a number of other *fuqaha'* did not allow women to become a marriage guardians. Second, Aisha's attitude towards the marriage was only to stipulate the dowry and other needs, not as a guardian. It is possible that the guardian of the marriage was one of the close relatives of Hafsa. However, there is no further explanation about the guardian in this marriage. This information shows that because the two narrations were not mentioned concretely, it is scientifically difficult to maintain the truth of the narration.

Furthermore, al-Bakhy, as explained by Muhammad Zakariya (n.d.), argued that according to the Maliki school, the marriage between Hafsa Abd Rahman and Munzir Ibn Zuber (whom her father, Abd Rahman, was far away in Sham at that time) is not allowed at all. Besides, Hafsa was still a virgin and her father was alive at the time of the marriage held.

Al-Zarqani (n.d.), who is also an explainer of the Muwatta book, denied al-Bakhy's information, arguing that Aisha's actions was considered legitimate and there was no one to represent her, and her privilege as the wife of Rasulullah PBUH. Although the *wali* is far away, the guardianship in marriage is necessary, even if the *wali* is not the wife of Rasulullah PBUH. If the marriage carried out by Aisha was true and an example of a marriage that was guarded by a woman

because it was Aisha's privilege as the wife of the Prophet; the questions are why some scholars never considered her as guardian in marriage and how to deal with hadiths related to the marriage guardianship which also originated from Aisha herself?. Textually, it can be said that there are two contradicting cases committed by the same person; on one hand, Aisha is presupposed only the men as *wali* in marriage yet on the other hand, she herself through her practice (marrying Hafsah with Munzir) acknowledged the acquisition of women as a *wali* in the marriage (Nafuri, n.d.; Baihaqi, n.d.; Zakariya, n.d.).

Based on the previous analyses, it can be concluded that their dissent in comprehending the *matan* of the hadith is because the lafaz (the pronouncement) of the hadith is too general. The *jumhur fuqaha'* preferences of the first opinion - the best guess- because the hadiths related to marriage (that is mentioned above) are considered as *pentakhsis* (as specialization) for the generality of the former hadith.

Conversely, the Hanafi School preferred the second opinion because the hadiths were not served to explain the generality of this hadith-because the validity of the *sanad* is in doubt. They argued what was done by Aisha (which was approved by all scholars, including *jumhur fuqaha'*) was one of the causes of the weakness of the hadith (about a *wali* must be a man in marriage guardianship) - to be used as a source of law. Hanafi even assumed that Aisha's hadith about the marriage of Hafsah and Munzir was a *nasikh* (abrogation) of Aisha's aforementioned hadith or at least could be considered as *inkar rawi* (the denial on the hadith narrator) in the *Mushthalah hadith* (science about hadith) (Humam, n.d.; Mubarakfuri, n.d.). In addition, the scholars are still debating the validity of the *sanad* of hadith. Also, to comply to the general *dalil* (propositions) in determining the law is better than specific arguments that are weak.

Referring back to the hadiths which *jumhur fuqaha'* assume to be the *dalil* for the existence of a *wali* in a marriage, the Hanafi school considered the opposite. The Hanafi school believed that the validity of these hadiths are questionable, both in terms of *matan* and *sanad*. The flaw in terms of *matan* is sometimes caused by *inkar rawi* between one hadith and another, such as the practice of Aisha (Prophet's wife).

Likewise, for the hadith from Abu Musa and Aisha, the weaknesses of these two hadiths are not only because they contradict the Aisha's practice –in the event of marriage of Hafsah bnt Abd Rahman and Munzir Ibn Zuber, and at that time Abd Rahman was in Bilaad as Sham - but also because the validity of the *sanad* of both hadiths are still debatable.

Regarding the hadith of marriage guardianship, the *jumhur fuqaha'* comprehensions tend to interpret the hadith textually rather than contextually. This is because they concerned more on interpreting the proposition (*dalil*) of the text and disregard other probabilities. For example, when comprehending the

verses, they are more influenced by the meaning of the text of hadiths of marriage guardianship, even implicitly it can be said that there is an assumption from *jumhur fuqaha'* that these hadith are served to specifically explain the general marriage verses.

On the other hand, the way of understanding adopted by the Hanafi school in studying texts, both the Quran and the hadith, is quite different from the pattern adopted by *jumhur fuqaha'*. The subject of the study is more directed toward the understanding of the texts as a whole, with the condition that not only to pay attention to the various possibilities that occur between one text to another, but also to put the concern on the intent or *illat* included. For example, the meaning and *illat* are adjusted to the circumstance and situation of the community. Such thinking is more directed towards comprehension which considers the reason or *illat* of the law itself, in addition to manifesting benefit rather than just explaining the meaning in the text alone (Umar, 2020).

### **Interpretation of Verses Understood by Scholars of The Four Schools of *Fiqh***

The *mufasssirs* selected in this case were Al-Qurthubi, Al-Thabari, Ibn al-‘Arabi Abu Bakar Al-Jashsas and Rasyid Ridha, assuming that their interpretation can represent the four schools of *fiqh*. *Mufasssir* focused on two main subjects to understand the message behind those Quranic verses: the background of revelation and the literal meaning in those verses. First, the particular verse investigated in relation to its background of revelation is the verse that is more related to the issue of marriage guardianship. In addition, the scope of meaning and message in those verses are discussed.

According to several exegesis (*tafseer*) books, of the four aforementioned verses, the background of the revelation of verse 232 of Surah Al-Baqarah is the most related to this issue. Imam Al- Thabari (1954) outlined several narrations concerning its background of revelation and one that is deemed credible is the one involving Ma’qil Ibnu Yasar, who prevented his divorced sister to return (*ruj’u*) to her husband.

This is in line with the hadith narrated by Abu Dawud as follows: Translation: *From Al-Hasan, that Ma’qil said, I have a sister which is dear to me, and when the son of my uncle came, then I gave her away to him and he divorced her once and did not take her back until her waiting period (iddah) finished. Then when I was going to give her away, her former husband came back and want to remarry her, to whom I said: “By Allah, she will never return to you” and thus that verse was revealed...He said I pay expiation for oath and I gave her away back to him for marriage. This hadith was narrated by Bukhari and Abu Dawood.*

*Mufasssir* agreed to determine that that hadith was the reason why verse 232 of Surah Al-Baqarah was revealed. However, they differ in the interpretation of the background of revelation and the interpretation of the verse itself. Al-Qurthubi (1967) maintained that the verse was revealed in connection to *wali* based on the



interpretation of another verse that *wali* is prohibited to hand his daughters under his guardianship to a polytheist man. This argument is supported by Ahmad al-Sahar Nafuri (n.d.) who stated that this hadith counts as hadith that prescribes the existence of a *wali* in a marriage. Abubakar Al-Jashsas (n.d.) disagreed that the verse was revealed exclusively in relation to *wali*. He believed it is difficult to justify such an opinion since the prohibition has a general context which involves all parties, including the husband. This opinion is shared by Rasyid Ridha (n.d.) who believed that although the verse was revealed for a specific reason, it has a general application nonetheless, including the former husband who prevents his divorced wife to marry another man of her choice. The difference in interpretation will be outlined in the interpretation of verse 232.

According to Ibn al-‘Arabi (1950), the word *nikah* in verse 230 has two meanings, namely marriage contract (explicitly) and sexual intercourse (implicitly) (Khanif, 2019; Armia, 2017). Supposed that one adopts the first meaning, then it means a woman is allowed to give herself and others away in marriage because the word *nikah* is directly tied to her. On the contrary, if the latter meaning was adopted, it means women will never be allowed to give herself and others away in marriage. This is because the verse does not literally state so. In this case, he adopted the implicit meaning (general interpretation is based on the explicit meaning), arguing that the hadiths concerning marriage tend to support such opinions. In contrast, al-Jashsas (n.d.) believed that the verse should be interpreted based on its explicit meaning (instead of the implicit meaning). In fact, it is the meaning of such nature that is intended by the verse. In support of his claim, he pointed out two strings of words in the verse, first; “*until after she marries a husband other than him*”, which means the woman herself in the pronouncement of the marriage contract and, second; “*there is no blame upon the woman and her husband for returning to each other*” which is interpreted that a divorced couple have the right to return to their former marriage without involving a *wali*. In fact, the word *wali*, as intended here, not only includes men but also women. The differences of the interpretation of the implicit and explicit meaning are influenced by the schools of *fiqh* they subscribed.

Concerning the interpretation of verse 232 of Surah Al-Baqarah, *mufasssir* agreed to interpret the word “prevent” in “*do not prevent them from remarrying their (former husbands or other men)*” to mean “to hinder, prevent and make it difficult”. However, their opinions differ when determining the prohibition in that verse. Ibn al-‘Arabi (1950) argued that the verse is related to *wali* who are prohibited against preventing women under their guardianship to marry men of their choice. Preventing from marriage here means that the *wali* is not willing to solemnize the marriage. If women had rights to give themselves away, there would not be any prohibition against the prevention in that verse. However, Al-Jashsas (n.d.) maintained a conflicting opinion stating that the verse serves as the main argument allowing women to handle and run their own marriage, in addition to other supporting verses. In fact, he rejected the opinion saying that women have no right whatsoever in pronouncing the marriage contract.

There are two strings of words in the verse used to support this opinion. The first one is “do not prevent them from remarrying their (former husbands or other men)” of which he interpreted to mean that women must not be prevented to pronounce their own marriage contract with men of their choice. The second one is the word “*al ma’ruf*“, which is defined as equality of equivalence, and *mahr al-mithl*. From the concepts of those two groups, he concluded that “no one has the right to prevent a marriage contract which a woman pronounce herself based on the principle of equality or equivalence and one which involves the giving of the *mahr al-mithl*”. Had the prohibition been imposed on *wali*, it would have meant that a *wali* will have the right to cancel the marriage only through a judge; if the woman did not marry a man equal to her or the man did not give her *mahr al-mithl*.

The difference of interpretation among the *mufasssir* occurs they associated the word *nikah* with different things. Al-Jashsas associated the word *nikah* with women with a consideration of the two strings of words mentioned above and, thus, the interpretation takes on a broader meaning. On the other hand, the other *mufasssir* associated the word *nikah* with *wali*, and, therefore, *wali* has the right to solemnize the marriage. This latter understanding is more closely related to that of the majority of *fiqh* scholars, while the former opinion tends to be popular among Hanafi scholars.

Concerning verse 234 of Surah Al-Baqarah, the most important part that *mufasssir* refer to in understanding this verse is the sentence “*There is no blame upon you for what they do with themselves in an acceptable manner*”. Al-Thabari (1954), Ibn al-‘Arabi (1950) and al-Qurthuby (1967) agreed to determine that the prohibition in “there is no blame upon you (*wali*)” are specifically directed towards *wali*. Similarly, the sentence “*for what they do with themselves*” means marriage and the words “*in an acceptable manner*” means every lawful matters in Islam in relation to marriage, such as the choosing of a future husband, determination of dowry, etc., except for running the marriage contract since that is the right of a *wali*. As a matter of fact, the explanation offered by the three *mufasssir* indicates that it is unacceptable and contradictory to the verse to let women take care of their own marriage.

On the contrary, al-Jashsas (n.d.) stated that the generality of the verse covers the marriage contract performed by women. The words “*there is no blame upon you for what they do with themselves in an acceptable manner*” can still be interpreted as there is no right for *wali* to interfere with matters related to the woman until she completes her *iddah* (including the pronouncement of marriage contract) as long as they are permissible in the Islamic law. The fact that male *wali* (guardian) is required in the marriage contract contradicts the intention of this verse. The opinion which holds that in a marriage contract a woman’s only rights are to choose the husband and determine the amount of dowry but not to handle her own marriage is rejected since *wali* cannot solemnize the marriage

without the consent of the woman. The choosing of a husband and determination of a dowry will mean nothing if the marriage fail to take place.

### **Forms of *Mufassir* Subjectivity towards Schools of *Fiqh* in the Interpretation of Marriage Verses**

There are four forms of possible subjectivity that *mufassir* have towards *fiqh* schools in interpreting marriage verses. The first indication lies in the difference of *mufassir* opinions in interpreting the background of revelation of verse 232 of Surah Al-Baqarah in relation to Ma'qil Ibn Yasar. *Mufassir* from the majority of *fuqaha* interpreted that the verse was revealed in regard to *wali*. Therefore, matters concerning marriage should be handed over entirely to *wali*. On the contrary, *mufassir* from Hanafi school interpreted the background of revelation to concern the *wali* but they also believed the verse has a general application. Therefore, the marriage guardianship can also be handled by women.

Another indication is in their disagreement with the definition of the word *nikah*, which is a crucial concept to clarify in interpreting a number of verses on marriage. The *mufassir* from the majority of *fiqh* scholars always associated the word *nikah* with *wali*, and therefore believed that matters about marriage should be taken care of by *wali* (Soraya, 2016), not others. On the contrary, *mufassir* from Hanafi school did not associate the word exclusively with *wali* and therefore maintain that matters concerning marriage can be handled by any parties, including women.

The next indication is in how they differ in the positioning of the function and degree of the hadith in relation to Quran. *Mufassir* from the majority of scholars believed that the command and prohibition in several marriage verses were directed towards *wali*, thus, they also believed that several hadiths on *nikah* (aforementioned) serve to explain the generality of the verse in more details, except for the hadith on Aisha who acted as a *wali* in a marriage, which they considered against the law. On the contrary, *mufassir* from Hanafi school considered that the command and prohibition in the marriage verses have a general application, including to women, thus they maintained that those hadith do not serve to explain the verses in detail. That is because they argued that those hadiths have flaws in terms of *sanad* (chain of narration) and the content itself.

The last indication is concerned with the difference in how they attributes the importance of relationship between verses and hadiths in helping them make their interpretation. *Mufassir* from the majority of scholars did not put great importance toward the relationship. Therefore, their interpretation is more partial and disconnected to each other, and the accuracy is also difficult to justify. On the contrary, *mufassir* from Hanafi school considered the relationship important. As a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation in comparison to the former (Khudhur, 2020). These differences in interpretation may be influenced by the schools of *fiqh* they subscribed.

## Conclusion

There are four forms of *mufassir's* subjective indications to the *fiqh* school they subscribed: First, when the *mufassir* differed in interpreting the *Asbab al-Nuzul* of surah al-Baqarah verse 232 concerning Ma'qil Ibnu Yasar. The *mufassir* of *jumhur fuqaha'* maintained that the occasion the verse revelation is specifically addressed to the *wali* (not someone else), then the marriage guardianship must be handed entirely to the *wali*. Meanwhile, the *mufassir* of Hanafi school maintained that the cause of the verse revelation is specifically addressed to the *wali*, but they assume that the law is generally accepted, thus, the marriage guardianship may also be handled by women.

The second indication is in their disagreement concerning the word *nikah*, the key concept to clarify the marriage verses. The *mufassir* of *jumhur fuqaha'* associated the word *nikah* to the *wali*, then it is the *wali* who has the right to solemnize the marriage, not others. Otherwise, the *mufassir* of Hanafi school did not associate the word *nikah* to the *wali*, then the marriage matters might be handled by any parties including women.

The third indication lies in difference of *mufassir's* opinion in positioning the function and the degree of the hadith toward the Quran itself. The *mufassir* of *jumhur fuqaha'* considered that the generality of the commands or prohibitions in the marriage verses are addressed to the *wali*, thus some of the marriage hadith (aforementioned) are served to explain the generality of the verses in detail. On the other hand, the *mufassir* of Hanafi school maintained that the generality of the commands or prohibitions in the verses apply to all, including women, then these hadith are not served to explain the generality of the verses. That is because they think that those hadiths have flaws in terms of *sanad* (chain of narration) and the content itself.

The last indication is concerned with their dissent in how they attribute to the importance of *munasabat* (correlation) between verses and hadiths in helping them in their interpretation. The *mufassirs* of *jumhur fuqaha'* considered the correlation is less important, hence their interpretation is more partial, disconnected to each other and its accuracy is rather difficult to justify. Conversely, the *mufassir* of Hanafi school believed that the correlation is important, as a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation compared to the former.

Finally, it is hope that the schools, *mufassir* and *muhaddith* in studying and analysing the problems occurred and developed should not be subjective in defending the truth of one opinion, or even to blame other opinions that are not in line with the opinions held. That is because an objective truth is difficult to achieve in such practices.

## REFERENCES

- Abubakar, A. (2019). The Chance on Islamic Family Law Study in Indonesia. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol 4(Nomor 1). <https://doi.org/DOI:https://doi.org/10.22373/petita.v4i1.13>
- Ahmad al-Sahar Nafuri. (n.d.). *Bazl al-Juhud fi Hil AbiDawud*. Beirut: Dar al-Kutub al-‘ilmyyah.
- Ahmad Imam Mawardi. (2020). The Urgency of Maqasid Al-Shariah Reconsideration in Islamic Law Establishment for Muslim Minorities in Western Countries. *International Journal of Innovation, Creativity and Change*, Volume 12(Issue 9). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Al-Jashsas, A. (n.d.). *Ahkam al-Quran* (Juz II). Cairo: Mathba’at Abdurrahman.
- Al Kasani. (1910). *Badai al-Shanai* (Jilid II). Egypt: Mathba’ah al-‘Ilmyyat.
- Al Khanif. (2019). Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol.4(No.2). <https://doi.org/https://doi.org/10.22373/petita.v4i2.24>
- Armia, M. S. (2017). *Wajah Antropologi dan Sosiologi Hukum Keluarga di Beberapa Daerah di Indonesia* (1st ed.). Retrieved from <https://repository.ar-raniry.ac.id/id/eprint/10432/>
- Baihaqi, al. (n.d.). *Sunan al-Kubra* (Juz VII). Beirut: Dar Al-Fikr.
- Ibn‘ Arabi. (1950). *Ahkam al-Quran* (Ali Muhammad al-Bujawi, Ed.). Egypt: Mushthafa al-Babi al-Halabi.
- Ibn al Humam. (n.d.). *Syarh Fath al-Qadir* (Juz III). Egypt: Dar al Fikr.
- Ibn Hazm. (n.d.). *al-Muhalla* (Juz IX.). Egypt: Dar al Fikr.
- Ibn Qayyim al-Jauziyyat. (n.d.). *Aun al-Ma’bud Syarh Sunan Abi Dawud* (Jilid VI). Egypt: Dar al Fikr.
- Mubarakfuri. (n.d.). *Tuhfat al-Ahwazi bi SyarhJami’ al-Turmuzi* (Juz IV). Madinah: Maktabat al-Salafiyat.
- Mufid, F. (2020). Kritik Epistemologis Tafsir Isyari Ibn Arabi. *Hermeneutik: Jurnal Ilmu Al Qur’an Dan Tafsir*, Volume 14(Nomor 01). <https://doi.org/10.1234/hermeneutik.v14i1.6837>
- Muhammad Zakariya. (n.d.). *Aujaz al-Masalik fi Muwatthak Imam Malik*. Egypt: Dar al Fikr.
- Mukhamad Agus Zuruhul Fuqohak. (2020). Pengaruh Maqoshid Syariah di dalam Tafsir. *Hermeneutik: Jurnal Ilmu Al Qur’an Dan Tafsir*, 14(Nomor 1), 93–112. <https://doi.org/10.1234/hermeneutik.v14i1.6802>
- Mukhsin Nya’ Umar. (Interview 29 April 2020). Banda Aceh.
- Prawitra Thalib, Hilda Yunita Sabrie, F. K. (2020). Islamic Law Principles in Islamic Business Activity. *International Journal of Innovation, Creativity and Change*, Volume 13(Issue 5). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Qurthubi. (1967). *al-Jami’ al-Ahkam al-Quran* (Jilid III). Egypt: Dar al-Kitab al-‘Arabi.
- Ridha, R. (n.d.). *Tafsir al-Manar* (Jilid II). Egypt: Maktabat al-Qahirat.
- Rushd, I. (1992). *Bidayatul Mujtahid* (Juz II). Beirut: Dar El Al-Kutub.
- Sabiq, S. (1971). *Fiqh al-Sunnah* (Juz IV dan). Kuwait: Dar al-Bayan.
- Saeed Abed Khudhur. (2020). The Concept of Presumption in the Quran Context:

- Rhetorical Study. *International Journal of Innovation, Creativity and Change*, Volume 11(Issue 1). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Soraya, D. (2016). Konsep Penetapan Wali Harta dalam Pemikiran Mazhab Syafi'i dan Praktek Masyarakat Aceh Besar. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, 1(Nomor 1), 41–51. <https://doi.org/DOI:https://doi.org/10.22373/petita.v1i1.79>
- Tarmizi M. Ja'far. (Interview 30 April 2020). Banda Aceh.
- Thabari. (1954). *Tafsir al-Thabari* (Juz II). Egypt: Dar al Fikr.
- Wathani, S. (2020). Istinbat at-Tafsir (Wacana Istinbat Ayat Hukum dalam Teori Penelitian Tafsir). *Jurnal Al-Irfani STAI Darul Kamal NW Kembang Kerang*, Volume VI(No 1), 53–72. Retrieved from <http://ejournal.kopertais4.or.id/sasambo/index.php/alirfani>
- Zarqani. (n.d.). *Syarh Sahih Muwathtak Imam Malik* (Juz II). Egypt: Dar al Fikr.

# The Subjectivity Indication of School of Fiqh in the Interpretation of Marriage Verses

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This paper has original contribution of knowledge as not issued earlier. The topic is on injustice interpretation of marriage verses stated by Islamic clerics. A number of the Quran verses and the hadith of the Prophet PBUH related to marriage have a general meaning and apply to all parties. The Fuqaha' (Islamic law scholars/Jurist) of four schools and mufassir (Quran interpreter) of the same school (mazhab), agree to determine the generality of the meaning of several marriage verses to be applied for all without limiting the certain parties. The difference in their opinions is related to the meaning of the word nikah, which is the main subject to understand and interpret the verses. The jumhur (majority) of fuqaha' and mufassir of the same school always associate the word marriage to the wali (Guardian) so that he must handle the matter concerning the marriage. On the other hand, mufassir from Hanafi School argue that the word nikah applies to a broader meaning and is not exclusively addressed to wali, so the marriage guardianship can be handed to any parties, including women.

**Key words:** *Islamic Jurisprudence, Interpreter of Quranic Verses, Verses of Marriage Law, Islamic Law, Family Law.*

## Introduction

The Quran as the first and foremost source of law in Islam is continuously interpreted and deciphered by the *fuqaha'* and *mufassir* since the earliest generations of Islam to date (Abubakar, 2019; Fuqohak, 2020). The interpretation and the deciphering of the message of the Quran aim not only to understand the contents of the Quran itself but also to implement its message in everyday life (Mawardi, 2020; Thalib, Sabrie, 2020). The diversity of backgrounds and considerations will influence the *mufassir* in interpreting the marriage verses, for example, the differences in their competency in understanding and mastering the

language of the Quran and the variations in interpreting the *Asbab al-Nuzul* (Mufid, 2020; Wathani, 2020). On the other hand, there is also the influence of their dependency on the school of *fiqh* (which they subscribed) in their interpretation. Above all, the last-mentioned factor even contributes most to the diversity of their interpretation subjectivity, and at the same time becomes an important highlight in this paper, which will be explained specifically in the next section. The verses which are concerned to are verse 221, 230 232 and 234 of Surah al-Baqarah.

### ***The Comprehension of Fiqh Schools towards Marriage Verses***

The *Fiqh* schools here are the Hanafi, Maliki, Shafi'i and Hanbali Schools, of which the last three mentioned, henceforth, termed as *jumhur fuqaha'* (the majority of *fuqaha'*). The *fuqaha'* selected are, Ibn Hazm, Ibn al Humam, Ibn Rusyd, Kasani and Sayid Sabiq. The following will explain how the four school *fuqaha'* comprehend these verses.

Verse 221 of the Surah Al-Baqarah: Translation: *And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite [you] to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.*

According to Sayid Sabiq, (2010) and Ibn Rushd (1992) (when explaining the opinion of *jumhur fuqaha'*), the prohibition in this verse means specifically addressed to the *wali*, as though Allah said "O guardian, don't you marry women who is under your guardianship with men who are still idolaters". However, Ibn Rushd (1992), when explaining the opinion of Abu Hanifah, argued otherwise. He argued that the prohibition is more likely to be understood as *waliyul amri* rather than *wali*. Moreover, there is no further explanation regarding the types of guardians, their nature and degree of marriage guardianship if the prohibition is believed.

Verse 230 of the Surah Al-Baqarah: Translation: *And if he has divorced her [for the third time], then she is not lawful to him afterwards until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.*

When explaining the *jumhur fuqaha'* opinions, Ibn Hazm, (2010) said that this verse means a marriage without *wali* is invalid. However, Sayed Sabiq (1971) and Ibn al Humam (2010), when explaining the opinion of Abu Hanifah, argued otherwise. They believed this verse is



about marriage, which is closely related to women. They argued that linking a matter to the subject shows that the person is the main subject and is also more entitled to handle the matter compared to others.

Verse 232 of the Surah Al-Baqarah: Translation: *And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not.*

Sayed Sabiq (1971), explaining the opinions of *jumhur fuqaha'*, commented that the prohibition on the word *prevent* here specifically intended for the *wali*. This is in line with the occasion of revelation (*asbab an-nuzul*), which will be explained further later. However, Al Kasani (1910), when explaining the opinion of Abu Hanifa, had the opposite view. According to him, the prohibition here is more general because several possible objectives can be understood from this verse. First, as the concept of *jumhur fuqaha'* above (provided that this possibility is somewhat more difficult compared to the next two possibilities), the prohibition was addressed to the *wali* but in a different meaning from what the *jumhur fuqaha'* maintained above. The point here is about a *wali* who prevents the women under his guardianship to run their own marriage with the men of her choice. Second, the prohibition in the verse is addressed to the husband, in the sense that the husband is prohibited from hindering his divorced wife while she has finished her *'iddah* (waiting period) to marry the man of her choice. This consideration is based on the phrase "If you divorce your wife" at the beginning of the verse.

Verse 234 of the Surah Al-Baqarah: Translation: *And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] acquainted with what you do.*

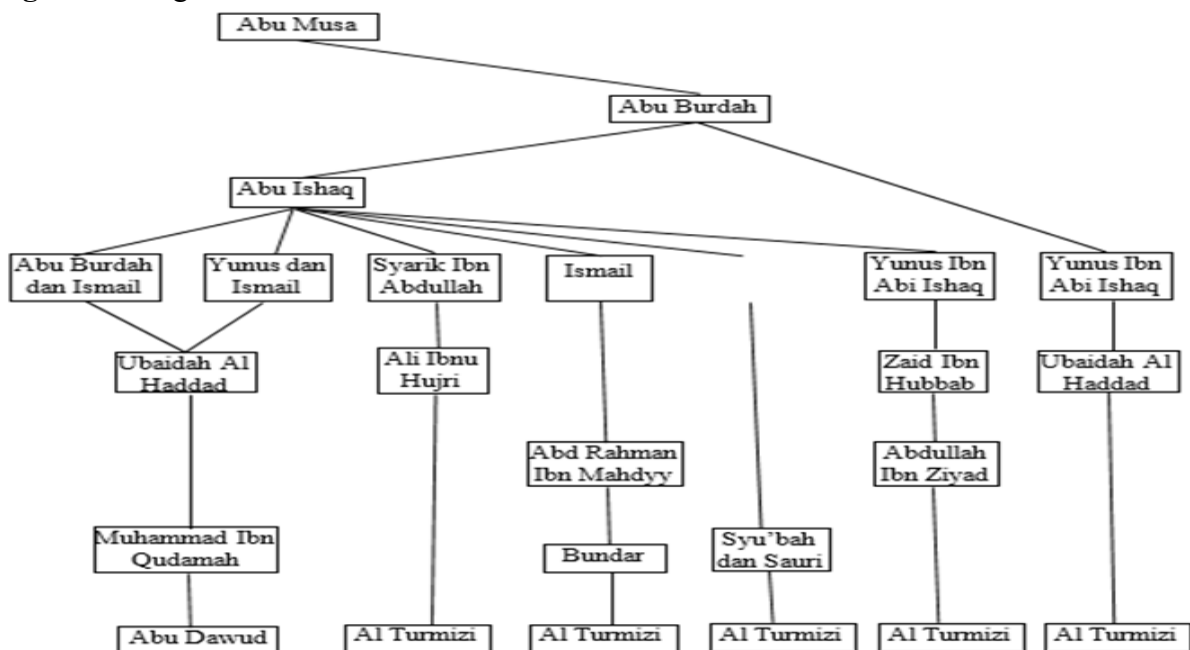
Ibn Hazm (2010), when explaining the opinion of *jumhur fuqaha'*, said that the prohibition in this verse is addressed to the *wali*. It is as if Allah said, "Guardians, do not obstruct a woman whom her husband has died and has finished his *'iddah* (a waiting period) from marrying another man in a way that is *Makruf* (familiar)". This comprehension is different from the Hanafi School, which maintains that an *akad nikah* (hereafter marriage contract) carried out by the woman herself and the man of her choice and blessed with *mithil* dowry is included in the *makruf* concept in this verse. Therefore, the marriage should be considered valid, because it includes the act of *makruf*, which is in accordance with the will of the *wali* (Kasani, 1910).

The above explanation shows that, following *jumhur fuqaha'*, the marriage matter will be considered *makruf* if it is handed entirely to the *wali*. However, the Hanafi school believes vice versa, that this matter will not be considered *makruf* if it is not handed to the women.

### ***The Function and the Degree of Hadith toward the Generality of Marriage Verses***

This discussion is necessary to clarify the function and the degree of the hadith toward several marriage verses. The selected hadiths are the ones narrated from Abu Musa, Aisha ra, and from Muhammad Ibn Abubakar Al-Shiddiq. The chosen hadiths narrators are Ahmad al-Sahar Nafuri, Al-Nawawi, Baihaqi, Ibn al Humam, Ibn Qayyim al-Jauziyyat, Mubarakfuri, Muhammad Zakariya and Zarqani. Among the hadiths is the hadith of Abu Musa, the *Matan* (text of hadith) is according to al-Turmuzi (Mubarakfuri, 2010). Translation from Abu Musa, he said: The Messenger of Allah said: "*There is no legal marriage without a wali*". This hadith was narrated from Ahmad, Abu Daud, al Turmuzi, Ibn Majah and Hakim. *The Sanad* (or *Isnad*) of the hadith (the hadith's chain of transmitters) can be seen in Figure 1.

**Figure 1:** Diagram of the *Sanad* of the Hadith of Abu Musa



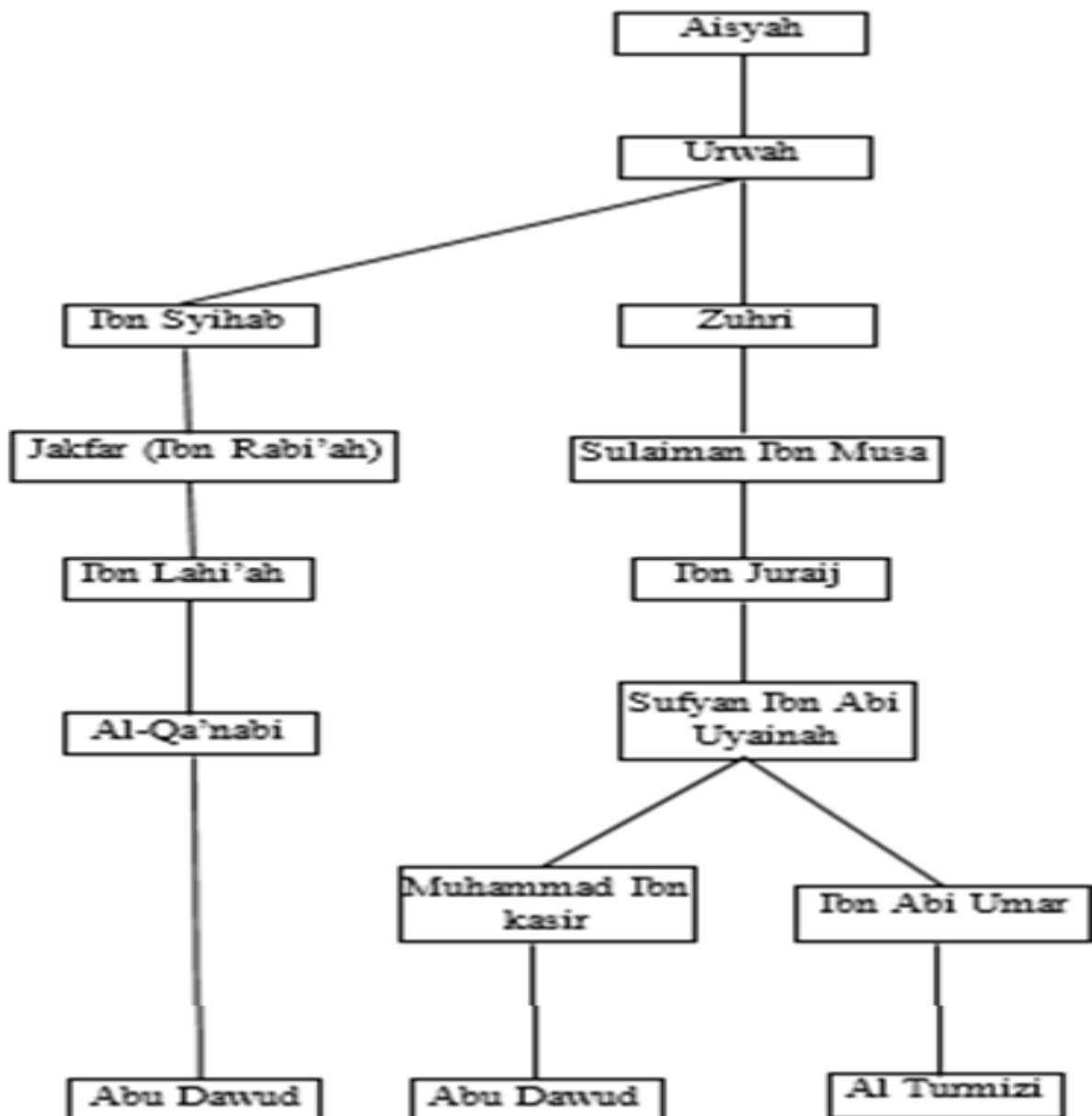
Al-Turmuzi considered this hadith is *hasan sahih*, although other scholars of hadith have different opinions about its validity due to several indicators. First, al-Turmuzi considers all reports based on Abu Ishaq are *shahih* (valid), except for the history of Syu'bah and al-Sauri. According to him, the objection to the two men is because both of them coincided with time and place when they heard the hadith from Abu Ishaq; therefore, the validity of the hadith is doubtful. Secondly, al-Turmuzi also acknowledged the weakness of the narration of the hadith which did not rely on Abu Ishaq but directly to Abu Burdah, which means that his

*sanad* was interrupted. Third, there is an error of *sanad* in the narration of Abu Dawud. Yunus, Ismail and Abu Burdah are from one narration, then Yunus and Ismail jointly narrating the hadith from Abu Ishaq, as if there are two Burdah in the *sanad*. Yet, as it is seen in the Sanad al-Turmuzi, there is only one Abu Burdah (Nafuri, 2010; Ibn Qayyim, 2010; Mubarakfuri, 2010).

Next is the hadith from Aisha, which the *matan* (content/text of hadith) is from Abu Dawood: (Nafuri, 2010) Translation: Aishah ra., narrated that the Messenger of Allah said: *"Whichever woman married without the permission of her wali her marriage is invalid, her marriage is invalid, her marriage is invalid. If he entered into her, then the Mahr is for her in lieu of what he enjoyed from her private part. If they disagree, then the Sultan is the wali for one who has no wali"*. This hadith was narrated by Ahmad, Abu Dawood and Ibn Majah.

The *sanad* of the hadith can be seen in Figure 2. Al-Turmuzi considered this hadith to be *hasan* (good), even Ibn Hibban and the Hakim judged it as *Shahih* (valid), even though the scholars of other hadith still doubted its validity. That doubt was found in the narration of Zuhri and the statement was very popular among the scholars of hadith. On one hand, Ibn Juraij, in one narration, had met Zuhri and questioned about the hadith, then he answered, "I do not know". Such an answer according to the hadith scholar can weaken the validity of the narration (Baihaqi, 2010; Qayyim, 2010; Mubarakfuri, 2010). However, al-Turmuzi, Ibn Hibban and Hakim, to refute these doubts, still considered that the event did not affect the validity of the hadith because none of other hadith scholars narrated the story of Ibn Juraij, except Ibn Ulayyah himself. Whereas, this hadith is narrated by a group of hadith experts from Zuhri, but they did not mention that the explanation is from him. Even though the statement is true, it cannot be used as the reason to weaken this hadith, because the person narrated it from Zuhri was an honest individual, including Sulaiman Ibn Musa (Baihaqi, 2010; Qayyim, 2010; Mubarakfuri, 2010). This statement is ungrounded, because basically they acknowledged the incident, therefore, the validity of the hadith is in doubt.

**Figure 2:** Diagram of the Sanad of Aisha's hadith



On the other hand, the scholar of hadith also found the issue about the validity of the hadith. Ibn Qayyim (2010), a Sunan Abi Dawud explainer, through his narration from al-Qa'naby, said that Jakfar (Ibn Rabi'ah) had never heard this hadith from Zuhri. This statement is also supported by the statement of al-Baihaqy (2010) from Ibn Mu'in, that the narration from Ibn Rabi'ah is considered weak due to his personal character. Moreover, he added that Zuhri was considered to deny his narration by saying "If a woman marries without her wali's consent, it is permissible". This opinion is held by Al-Sya'by, Abu Hanifah and Zufar. Ahmad al-Sahar Nafuri (2010), a Sunan Abi Dawood explainer, in relation to this matter, also clarified that: the flaw of the hadith is not only due to the narration doubt about Zuhri as mentioned above,

but also because this narration is contrary to his own practice, namely the hadith about the marriage of his brother's son (Hafsah bnt Abd Rahman with Munzir Ibn Zuber), which will be explained later.

Both of the hadith above are considered weak, either in its *sanad* or *matan*. The weaknesses in terms of *sanad* sometimes is due to the disconnection of *sanad* between one narrator with the other narrators, as found in the Burdah of the hadith from Abu Musa, or between one narrator and the other narrators who do not know about its narration as in the hadith from Aisha. While the weakness in terms of *matan* is sometimes caused by the conflicts between one hadith and another, such as the practice of Aisha ra. From the hadith of Muhammad Ibn Abubakar Al-Shiddiqi (which will be explained later), is contrary to his own hadith and as in the hadith of Abu Musa about requiring guardians in marriage.

Building upon the evaluations above, both of these hadith appear to be weak. Therefore, the Hasan Shahih level given by al-Turmuzi and the Shahih level given by Ibn Hibban and Hakim is considered too high for these hadith. It is supposed to be downgraded to a lower level and needs further research (Ja'far, 2020).

The last one is the hadith from Muhammad Ibnu Abubakar Al- Shiddiq, with the *matan* is based on Imam Malik (Zakariya, 2010) Translation: *From Muhammad Ibn Abubakar Al-Shiddiq that Aisha, the wife of the Prophet Muhammad, married the Hafsah bint Abdul Rahman with Munzir Ibn Zuber on the matter that he (Abd Rahman) was in the land of Sham. When he came, he was upset about Aisha's actions, then Aisha told the problem to Munzir Ibn Zuber. Let the problem be solved by Abd Rahman, Munzir answered. After that Abd Rahman said: I have never rejected Ayesha's wisdom. Based on that, Hafsah (took a stand for) remained with Munzir, and there was no divorce. This hadith was narrated by Malik from Abd Rahman ibn Qasim.*

No detailed explanation was found regarding the *sanad* of this hadith. However, the dissent of the hadith scholars is arousing around the understanding of *matan* hadith itself. According to al-Bakhy, as explained by Muhammad Zakariya (2010), there are two possible meanings of this hadith. First, Aisha herself pronounced the marriage contract, but this narration was refuted by Ibn Muzayyan, as it contradicted the practice of the Madinah clerics (amal al-Madinah), because Imam Malik himself and a number of other *fuqaha'* did not allow women to become marriage guardians. Second, Aisha's attitude towards the marriage was only to stipulate the dowry and other needs, not as a guardian. It is possible that the guardian of the marriage was one of the close relatives of Hafsah. However, there is no further explanation about the guardian in this marriage. This information shows that because the two narrations were not mentioned concretely, it is scientifically difficult to maintain the truth of the narration.

Furthermore, al-Baakhy, as explained by Muhammad Zakariya (2010), argued that according to the Maliki school, the marriage between Hafsah Abd Rahman and Munzir Ibn Zuber (whom her father, Abd Rahman, was far away in Sham at that time) is not allowed at all. Besides, Hafsah was still a virgin and her father was alive at the time the marriage was held.

Al-Zarqani (2010), who is also an explainer of the Muwatta book, denied al-Bakhy's information arguing that Aisha's actions was considered legitimate and there was no one to represent her and her privilege as the wife of Rasulullah PBUH. Although the *wali* is far away, the guardianship in marriage is necessary, even if the *wali* is not the wife of Rasulullah PBUH. If the marriage carried out by Aisha was true and an example of a marriage that was guarded by a woman because it was Aisha's privilege as the wife of the Prophet; the questions are why some scholars never considered her as guardian in marriage and how to deal with hadiths related to the marriage guardianship which also originated from Aisha herself? Textually, it can be said that there are two contradicting cases committed by the same person; on one hand, Aisha is presupposed only the men as *wali* in marriage yet on the other hand, she herself through her practice (marrying Hafsah with Munzir) acknowledged the acquisition of women as a *wali* in the marriage (Nafuri, 2010; Baihaqi, 2010; Zakariya, 2010).

Based on the previous analyses, it can be concluded that their dissent in comprehending the *matan* of the hadith is because the lafaz (the pronouncement) of the hadith is too general. The *jumhur fuqaha'* preferences of the first opinion -the best guess- because the hadiths related to marriage (that is mentioned above) are considered as *pentakhsis* (as specialisation) for the generality of the former hadith.

Conversely, the Hanafi School preferred the second opinion because the hadiths were not served to explain the generality of this hadith because the validity of the *sanad* is in doubt. They argued what was done by Aisha (which was approved by all scholars, including *jumhur fuqaha'*) was one of the causes of the weakness of the hadith (about a *wali* must be a man in marriage guardianship), to be used as a source of law. Hanafi even assumed that Aisha's hadith about the marriage of Hafsah and Munzir was a *nasikh* (abrogation) of Aisha's aforementioned hadith or at least could be considered as *inkar rawi* (the denial on the hadith narrator) in the *Mushthalah hadith* (science about hadith) (Humam, 2010; Mubarakfuri, 2010). In addition, the scholars are still debating the validity of the *sanad* of hadith. Also, to comply with the general *dalil* (propositions) in determining the law is better than specific arguments that are weak.

Referring back to the hadiths which *jumhur fuqaha'* assume to be the *dalil* for the existence of a *wali* in a marriage, the Hanafi School considered the opposite. The Hanafi School believed

that the validity of these hadiths is questionable, both in terms of *matan* and *sanad*. The flaw in terms of *matan* is sometimes caused by *inkar rawi* between one hadith and another, such as the practice of Aisha (Prophet's wife).

Likewise, for the hadith from Abu Musa and Aisha, the weaknesses of these two hadiths are not only because they contradict the Aisha's practice, in the event of marriage of Hafsa bint Abd Rahman and Munzir Ibn Zuber, and at that time Abd Rahman was in Bilaad as Sham, but also because the validity of the *sanad* of both hadiths are still debatable.

Regarding the hadith of marriage guardianship, the *jumhur fuqaha* comprehensions tend to interpret the hadith textually rather than contextually. This is because they are concerned more about interpreting the proposition (*dalil*) of the text and disregard other probabilities. For example, when comprehending the verses, they are more influenced by the meaning of the text of hadiths of marriage guardianship, even implicitly it can be said that there is an assumption from *jumhur fuqaha* that these hadith are served to specifically explain the general marriage verses.

On the other hand, the way of understanding adopted by the Hanafi school in studying texts, both the Quran and the hadith, is quite different from the pattern adopted by *jumhur fuqaha*. The subject of the study is more directed toward the understanding of the texts as a whole, with the condition not only to pay attention to the various possibilities that occur between one text to another, but also to put the concern on the intent or *illat* included. For example, the meaning and *illat* are adjusted to the circumstance and situation of the community. Such thinking is more directed towards comprehension which considers the reason or *illat* of the law itself, in addition to manifesting benefit rather than just explaining the meaning in the text alone (Umar, 2020).

### ***Interpretation of Verses Understood by Scholars of the Four Schools of Fiqh***

The *mufasssirs* selected in this case were Al-Qurthubi, Al-Thabari, Ibn al-'Arabi Abu Bakar Al-Jashsas and Rasyid Ridha, assuming that their interpretation can represent the four schools of *fiqh*. *Mufasssir* focused on two main subjects to understand the message behind those Quranic verses; the background of revelation and the literal meaning in those verses. First, the particular verse investigated in relation to its background of revelation is the verse that is more related to the issue of marriage guardianship. In addition, the scope of meaning and message in those verses are discussed.

According to several exegesis (*tafseer*) books, of the four aforementioned verses, the background of the revelation of verse 232 of Surah Al-Baqarah is the most related to this issue. Imam Al- Thabari (1954) outlined several narrations concerning its background of



revelation and one that is deemed credible is the one involving Ma'qil Ibnu Yasar, who prevented his divorced sister to return (*ruj'u*) to her husband.

This is in line with the hadith narrated by Abu Dawud as follows: Translation: *From Al-Hasan, that Ma'qil said, I have a sister which is dear to me, and when the son of my uncle came, then I gave her away to him and he divorced her once and did not take her back until her waiting period (iddah) finished. Then when I was going to give her away, her former husband came back and want to remarry her, to whom I said: "By Allah, she will never return to you" and thus that verse was revealed...He said I pay expiation for oath and I gave her away back to him for marriage. This hadith was narrated by Bukhari and Abu Dawood.*

*Mufasssir* agreed to determine that that hadith was the reason why verse 232 of Surah Al-Baqarah was revealed. However, they differ in the interpretation of the background of revelation and the interpretation of the verse itself. Al-Qurthubi (1967) maintained that the verse was revealed in connection to *wali* based on the interpretation of another verse that *wali* is prohibited to hand his daughters under his guardianship to a polytheist man. This argument is supported by Ahmad al-Sahar Nafuri (2010) who stated that this hadith counts as hadith that prescribes the existence of a *wali* in a marriage. Abubakar Al-Jashsas (2010) disagreed that the verse was revealed exclusively in relation to *wali*. He believed it is difficult to justify such an opinion since the prohibition has a general context which involves all parties, including the husband. This opinion is shared by Rasyid Ridha (2010) who believed that although the verse was revealed for a specific reason, it has a general application nonetheless, including the former husband who prevents his divorced wife to marry another man of her choice. The difference in interpretation will be outlined in the interpretation of verse 232.

According to Ibn al-'Arabi (1950), the word *nikah* in verse 230 has two meanings, namely marriage contract (explicitly) and sexual intercourse (implicitly) (Khanif, 2019; Armia, 2017). Supposed that one adopts the first meaning, then it means a woman is allowed to give herself and others away in marriage because the word *nikah* is directly tied to her. On the contrary, if the latter meaning was adopted, it means women will never be allowed to give herself and others away in marriage. This is because the verse does not literally state so. In this case, he adopted the implicit meaning (general interpretation is based on the explicit meaning), arguing that the hadiths concerning marriage tend to support such opinions. In contrast, al-Jashsas (2010) believed that the verse should be interpreted based on its explicit meaning (instead of the implicit meaning). In fact, it is the meaning of such nature that is intended by the verse. In support of his claim, he pointed out two strings of words in the verse first; "*until after she marries a husband other than him*", which means the woman herself in the pronouncement of the marriage contract and second; "*there is no blame upon the woman and her husband for returning to each other*" which is interpreted that a divorced couple have the right to return to their former marriage without involving a *wali*. In fact, the word *wali*, as



intended here, not only includes men but also women. The differences of the interpretation of the implicit and explicit meaning are influenced by the schools of *fiqh* they subscribed.

Concerning the interpretation of verse 232 of Surah Al-Baqarah, *mufasssir* agreed to interpret the word “prevent” in “*do not prevent them from remarrying their (former husbands or other men)*” to mean “to hinder, prevent and make it difficult”. However, their opinions differ when determining the prohibition in that verse. Ibn al-‘Arabi (1950) argued that the verse is related to *wali* who are prohibited against preventing women under their guardianship to marry men of their choice. Prevention from marriage here means that the *wali* is not willing to solemnise the marriage. If women had rights to give themselves away, there would not be any prohibition against the prevention in that verse. However, Al-Jashsas (2010) maintained a conflicting opinion stating that the verse serves as the main argument allowing women to handle and run their own marriage, in addition to other supporting verses. In fact, he rejected the opinion saying that women have no right whatsoever in pronouncing the marriage contract.

There are two strings of words in the verse used to support this opinion. The first one is “*do not prevent them from remarrying their (former husbands or other men)*” of which he interpreted it to mean that women must not be prevented from pronouncing their own marriage contract with men of their choice. The second one is the word “*al ma’ruf*”, which is defined as equality of equivalence and *mahr al-mithl*. From the concepts of those two groups, he concluded that “*no one has the right to prevent a marriage contract which a woman pronounce herself based on the principle of equality or equivalence and one which involves the giving of the mahr al-mithl*”. Had the prohibition been imposed on *wali*, it would have meant that a *wali* will have the right to cancel the marriage only through a judge; if the woman did not marry a man equal to her or the man did not give her *mahr al-mithl*.

The difference of interpretation among the *mufasssir* occurs where they associated the word *nikah* with different things. Al-Jashsas associated the word *nikah* with women with a consideration of the two strings of words mentioned above and thus, the interpretation takes on a broader meaning. On the other hand, the other *mufasssir* associated the word *nikah* with *wali* and therefore, *wali* has the right to solemnise the marriage. This latter understanding is more closely related to that of the majority of *fiqh* scholars, while the former opinion tends to be popular among Hanafi scholars.

Concerning verse 234 of Surah Al-Baqarah, the most important part that *mufasssir* refers to in understanding this verse is the sentence “*There is no blame upon you for what they do with themselves in an acceptable manner*”. Al-Thabari (1954), Ibn al-‘Arabi (1950) and al-Qurthuby (1967) agreed to determine that the prohibition in “there is no blame upon you (*wali*)” are specifically directed towards *wali*. Similarly, the sentence “*for what they do with*

*themselves*” means marriage and the words “*in an acceptable manner*” means every lawful matters in Islam in relation to marriage, such as the choosing of a future husband, determination of dowry, etc., except for running the marriage contract since that is the right of a *wali*. As a matter of fact, the explanation offered by the three *mufasssir* indicates that it is unacceptable and contradictory to the verse to let women take care of their own marriage.

On the contrary, al-Jashsas (2010) stated that the generality of the verse covers the marriage contract performed by women. The words “*there is no blame upon you for what they do with themselves in an acceptable manner*” can still be interpreted as there is no right for *wali* to interfere with matters related to the woman until she completes her *iddah* (including the pronouncement of marriage contract) as long as they are permissible in the Islamic law. The fact that male *wali* (guardian) is required in the marriage contract contradicts the intention of this verse. The opinion which holds that in a marriage contract a woman’s only rights are to choose the husband and determine the amount of dowry but not to handle her own marriage is rejected since *wali* cannot solemnise the marriage without the consent of the woman. The choosing of a husband and determination of a dowry will mean nothing if the marriage fail to take place.

### ***Forms of Mufasssir Subjectivity towards Schools of Fiqh in the Interpretation of Marriage Verses***

There are four forms of possible subjectivity that *mufasssir* have towards *fiqh* schools in interpreting marriage verses. The first indication lies in the difference of *mufasssir* opinions in interpreting the background of revelation of verse 232 of Surah Al-Baqarah in relation to Ma’qil Ibn Yasar. *Mufasssir* from the majority of *fuqaha* interpreted that the verse was revealed in regard to *wali*. Therefore, matters concerning marriage should be handed over entirely to *wali*. On the contrary, *mufasssir* from Hanafi School interpreted the background of revelation to concern the *wali* but they also believed the verse has a general application. Therefore, the marriage guardianship can also be handled by women.

Another indication is in their disagreement with the definition of the word *nikah*, which is a crucial concept to clarify in interpreting a number of verses on marriage. The *mufasssir* from the majority of *fiqh* scholars always associated the word *nikah* with *wali*, and therefore believed that matters about marriage should be taken care of by *wali* (Soraya, 2016), not others. On the contrary, *mufasssir* from Hanafi School did not associate the word exclusively with *wali* and therefore maintain that matters concerning marriage can be handled by any parties, including women.

The next indication is in how they differ in the positioning of the function and degree of the hadith in relation to Quran. *Mufasssir* from the majority of scholars believed that the

command and prohibition in several marriage verses were directed towards *wali*, thus they also believed that several hadiths on *nikah* (aforementioned) serve to explain the generality of the verse in more details, except for the hadith on Aisha who acted as a *wali* in a marriage, which they considered against the law. On the contrary, *mufasssir* from Hanafi School considered that the command and prohibition in the marriage verses have a general application, including to women, thus they maintained that those hadith do not serve to explain the verses in detail. That is because they argued that those hadiths have flaws in terms of *sanad* (chain of narration) and the content itself.

The last indication is concerned with the difference in how they attribute the importance of relationship between verses and hadiths in helping them make their interpretation. *Mufasssir* from the majority of scholars did not put great importance on the relationship. Therefore, their interpretation is more partial and disconnected to each other, and the accuracy is also difficult to justify. On the contrary, *mufasssir* from Hanafi School considered the relationship important. As a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation in comparison to the former (Khudhur, 2020). These differences in interpretation may be influenced by the schools of *fiqh* they subscribed.

## Conclusion

There are four forms of *mufasssir's* subjective indications to the *fiqh* school they subscribed. First, when the *mufasssir* differed in interpreting the *Asbab al-Nuzul* of surah al-Baqarah verse 232 concerning Ma'qil Ibnu Yasar. The *mufasssir* of *jumhur fuqaha'* maintained that the occasion the verse revelation is specifically addressed to the *wali* (not someone else), then the marriage guardianship must be handed entirely to the *wali*. Meanwhile, the *mufasssir* of Hanafi School maintained that the cause of the verse revelation is specifically addressed to the *wali*, but they assume that the law is generally accepted, thus the marriage guardianship may also be handled by women.

The second indication is in their disagreement concerning the word *nikah*, the key concept to clarify the marriage verses. The *mufasssir* of *jumhur fuqaha'* associated the word *nikah* to the *wali*, then it is the *wali* who has the right to solemnise the marriage, not others. Otherwise, the *mufasssir* of Hanafi School did not associate the word *nikah* to the *wali*, then the marriage matters might be handled by any parties including women.

The third indication lies in difference of *mufasssir's* opinion in positioning the function and the degree of the hadith toward the Quran itself. The *mufasssir* of *jumhur fuqaha'* considered that the generality of the commands or prohibitions in the marriage verses are addressed to

the *wali*, thus some of the marriage hadith (aforementioned) are served to explain the generality of the verses in detail. On the other hand, the *mufassir* of Hanafi School maintained that the generality of the commands or prohibitions in the verses apply to all, including women, then these hadith are not served to explain the generality of the verses. That is because they think that those hadiths have flaws in terms of *sanad* (chain of narration) and the content itself.

The last indication is concerned with their dissent in how they attribute the importance of *munasabat* (correlation) between verses and hadiths in helping them in their interpretation. The *mufassirs* of *jumhur fuqaha* considered the correlation is less important, hence their interpretation is more partial, disconnected to each other and its accuracy is rather difficult to justify. Conversely, the *mufassir* of Hanafi School believed that the correlation is important, as a result, their interpretations are more coherent, cohesive and it is relatively easier to justify the accuracy of their interpretation compared to the former.

Finally, it is hope that the schools, *mufassir* and *muhaddith* in studying and analysing the problems occurred and developed should not be subjective in defending the truth of one opinion, or even to blame other opinions that are not in line with the opinions held. That is because an objective truth is difficult to achieve in such practices.

## REFERENCES

- Abubakar, A. (2019). The Chance on Islamic Family Law Study in Indonesia. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol 4(Nomor 1), 1-10. <https://doi.org/DOI:https://doi.org/10.22373/petita.v4i1.13>
- Ahmad al-Sahar Nafuri. (2010). *Bazl al-Juhud fi Hil AbiDawud*. Beirut: Dar al-Kutub al-‘ilmyyah.
- Ahmad Imam Mawardi. (2020). The urgency of maqasid al-shariah reconsideration in islamic law establishment for muslim minorities in western countries. *International Journal of Innovation, Creativity and Change*, Volume 12(Issue 9). 132-136. Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Al-Jashsas, A. (2010). *Ahkam al-Quran* (Juz II). Cairo: Mathba’at Abdurrahman.
- Al Kasani. (1910). *Badai al-Shanai* (Jilid II). Egypt: Mathba’ah al-‘Ilmyyat.
- Al Khanif. (2019). Women, Islam, and modern family construction in the perspectives of legal pluralism in Indonesia. *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol.4(No.2). 142-152. <https://doi.org/https://doi.org/10.22373/petita.v4i2.24>
- Armia, M. S. (2017). *Wajah Antropologi dan Sosiologi Hukum Keluarga di Beberapa Daerah di Indonesia* (1st ed.). Retrieved from <https://repository.ar-raniry.ac.id/id/eprint/10432/>
- Baihaqi, al. (2010). *Sunan al-Kubra* (Juz VII). Beirut: Dar Al-Fikr.
- Ibn‘ Arabi. (1950). *Ahkam al-Quran* (Ali Muhammad al-Bujawi, Ed.). Egypt: Mushthafa al-Babi al-Halabi.
- Ibn al Humam. (2010). *Syarh Fath al-Qadir* (Juz III). Egypt: Dar al Fikr.
- Ibn Hazm. (2010). *al-Muhalla* (Juz IX.). Egypt: Dar al Fikr.
- Ibn Qayyim al-Jauziyyat. (2010). *Aun al-Ma’bud Syarh Sunan Abi Dawud* (Jilid VI). Egypt: Dar al Fikr.
- Mubarakfuri. (2010). *Tuhfat al-Ahwazi bi SyarhJami’ al-Turmuzi* (Juz IV). Madinah: Maktabat al-Salafiyat.
- Mufid, F. (2020). Kritik epistimologis tafsir isyari ibn Arabi. *Hermeneutik: Jurnal Ilmu Al Qur’an Dan Tafsir*, Volume 14(Nomor 01). 114-

122. <https://doi.org/10.1234/hermeneutik.v14i1.6837>

- Muhammad Zakariya. (2010). *Aujaz al-masalik fi muwatthak imam malik*. Egypt: Dar al Fikr.
- Mukhamad Agus Zuruhul Fuqohak. (2020). Pengaruh maqoshid syariah di dalam Tafsir. *Hermeneutik: Jurnal Ilmu Al Qur'an Dan Tafsir*, 14(Nomor 1), 93–112. <https://doi.org/10.1234/hermeneutik.v14i1.6802>
- Mukhsin Nya' Umar. (Interview 29 April 2020). Banda Aceh.
- Prawitra Thalib, Hilda Yunita Sabrie, F. K. (2020). Islamic law principles in islamic business activity. *International Journal of Innovation, Creativity and Change*, Volume 13(Issue 5). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Qurthubi. (1967). *al-Jami' al-Ahkam al-Quran* (Jilid III). Egypt: Dar al-Kitab al-'Arabi.
- Ridha, R. (2010). *Tafsir al-manar* (Jilid II). Egypt: Maktabat al-Qahirat.
- Rushd, I. (1992). *Bidayatul Mujtahid* (Juz II). Beirut: Dar El Al-Kutub.
- Sabiq, S. (1971). *Fiqh al-Sunnah* (Juz IV dan). Kuwai: Dar al-Bayan.
- Saeed Abed Khudhur. (2020). The concept of presumption in the quran context: Rhetorical study. *International Journal of Innovation, Creativity and Change*, Volume 11(Issue 1). Retrieved from [www.ijicc.net](http://www.ijicc.net)
- Soraya, D. (2016). Konsep penetapan wali harta dalam pemikiran Mazhab Syafi'i dan praktek masyarakat aceh besar. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 1(Nomor 1), 41–51. [https://doi.org/DOI: https://doi.org/10.22373/petita.v1i1.79](https://doi.org/DOI:https://doi.org/10.22373/petita.v1i1.79)
- Tarmizi M. Ja'far. (Interview 30 April 2020). Banda Aceh.
- Thabari. (1954). *Tafsir al-thabari* (Juz II). Egypt: Dar al Fikr.
- Wathani, S. (2020). Istinbat at-tafsir (wacana istinbat ayat hukum dalam teori penelitian tafsir). *Jurnal Al-Irfani STAI Darul Kamal NW Kembang Kerang*, Volume VI(No 1), 53–72. Retrieved from <http://ejournal.kopertais4.or.id/sasambo/index.php/alirfani>
- Zarqani. (2010). *Syarh sahih muwathtak imam malik* (Juz II). Egypt: Dar al Fikr.