

**Normative Juridical Analysis of Marriage Without a Guardian
In the Practice of Unregistered Polygamy Reviewed from
Islamic Law and Indonesian Positive Law**

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ABSTRACT

This inquiry examines the legal standing of matrimonial unions contracted in the absence of a guardian within the landscape of officially unregistered polygamous arrangements, appraising them through the converging lenses of Islamic jurisprudential tradition and Indonesia's statutory architecture. Deploying a normative juridical methodology enriched by legislative, doctrinal, and case-oriented analytical pathways, the investigation draws upon Quranic scripture, Prophetic narrations, the national marriage statute of 1974, the codified Islamic legal compendium, and pertinent adjudications from religious tribunals accessible via the apex court's digital repository. The analysis substantiates the preponderant scholarly consensus, particularly in the Shafi'i tradition that pervades the Indonesian archipelago, that the guardian is a non-negotiable constituent of marital validity. National legislative provisions mirror this stance, rendering guardianless unions legally deficient. Concurrently, solemnizing a polygamous bond without spousal acquiescence and judicial endorsement contravenes multiple statutory imperatives. The investigation culminates in establishing that the confluence of these twin procedural shortcomings generates compounded juridical vulnerabilities: prospective retroactive nullification, erosion of spousal civil protections, and precarious legal standing for progeny.

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1. INTRODUCTION

The matrimonial institution occupies a pivotal position within the architecture of Islamic legal thought. Its overarching aspiration is to cultivate a familial unit permeated by serenity, affection, and compassion, three qualities that Quranic scripture, specifically Surah Ar-Rum, verse 21, designates as the hallmarks of conjugal bonds. The scholarly tradition of Islam references this bond through the terminology *al-nikah* and *al-zawaj*, both of which lexically signify unification. At the jurisprudential plane, marriage constitutes a covenant that legitimizes the relationship between a man and a woman for the purpose of constructing a household that earns divine approval. Transcending the parameters of an ordinary civil transaction, matrimony holds the distinction of being a *mitsaqan ghalizhan* a solemn pact of profound gravity as the Quran intimates in Surah An-Nisa verse 21:

﴿وَأَخَذَ مِنْكُمْ مِيثَاقًا غَلِيظًا﴾

This Quranic fragment underscores the transcendent dimension and solemnity inherent in the marital institution as perceived through the Islamic worldview (al-Zuhaili, 2021).

Within the Indonesian state's regulatory landscape, matrimonial governance is distributed across several legislative instruments. The 1974 statute, subsequently revised by legislation enacted in 2019, serves as the primary umbrella. This is complemented by the codified compendium of Islamic legal provisions issued through a presidential instruction in 1991. The national marriage framework conceptualizes matrimony as an integrated physical and spiritual bond connecting spouses with the aspiration of establishing a durable household grounded in monotheistic conviction. Such a conceptualization signals that the Indonesian matrimonial regime synthesizes the religious and secular legal dimensions into an indivisible whole (Nuruddin and Tarigan, 2021).

To attain recognized legal efficacy, Islamic jurisprudence mandates the satisfaction of designated pillars and prerequisites. Scholarly consensus stipulates that the indispensable pillars encompass: the prospective groom, the prospective bride, a guardian who solemnizes the union, two individuals serving as witnesses, and the articulation of *ijab qabul* (the reciprocal offer-acceptance formula). The codified Islamic legal compendium likewise codifies these identical five pillars. The absence of any single pillar strips the marriage of its juridical validity (Rofiq, 2022).

Among all matrimonial pillars, the guardian's existence has provoked the most sustained intergenerational debate within the *fiqh* tradition. Three prominent schools Shafi'i, Maliki, and Hanbali converge on the position that the guardian is an obligatory pillar whose absence renders the union null. The foundational evidence for this stance is a Prophetic statement transmitted through the channels of Abu Dawud, al-Tirmidhi, and Ibn Majah from Aisha (may Allah be pleased with her):

«أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ. فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ
بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا. فَإِنْ اشْتَجَرُوا فَالْأُسْلُطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ»

The import of this tradition: "Whichever woman enters matrimony absent her guardian's authorization, her union is null stated thrice for emphasis. Should conjugal relations have transpired, she retains entitlement to the dower for that which was made permissible from her. In the event of contestation, the sovereign authority assumes guardianship over those lacking one." The threefold iteration within the hadith's diction signals the gravity and urgency of this prohibition (al-San'ani, 2019).

The Hanafi tradition, by contrast, charts a divergent course of argument. Within this perspective, a woman who has attained maturity and possesses full mental faculties is authorized to solemnize her own matrimonial contract without the intervention of a guardian. This line of reasoning draws upon Quranic passages that attribute the matrimonial contract directly to the feminine party, particularly in Surah Al-Baqarah, verses 230 and 232. This intellectual richness mirrors the vibrant dynamism of the jurisprudential heritage, although within Indonesia, the codified Islamic legal compendium has definitively embraced the majoritarian scholarly position (al-Kasani, 2003).

Beyond the guardianship problematic, the phenomenon of polygamous unions conducted outside formal legal corridors has also surfaced as a pivotal concern in Indonesian family law. Statistical compilations gathered by the religious adjudication apparatus indicate an upward trajectory in cases involving polygamy petitions and matrimonial annulments. This trajectory reflects the persistent prevalence of polygamous practices that circumvent established legal mechanisms—proceeding without spousal consent, without judicial determination, and even without registration at the competent authority. The ramifications of such conditions prove especially detrimental to women and children enmeshed in these arrangements (Manan, 2023).

At the principal level, Islam countenances polygamy subject to specified conditions. Quranic scripture signals this permissibility in Surah An-Nisa verse 3:

﴿فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً﴾

The import: "...then espouse women whom you favor: two, three, or four. Yet should you apprehend an inability to maintain equitable treatment, confine yourself to one alone." Notwithstanding this scriptural license, the national marriage framework imposes stringent procedural prerequisites encompassing spousal acquiescence, judicial authorization from the religious tribunal, and satisfaction of stipulated alternative conditions (Syarifuddin, 2022).

When guardianless marriages intersect with unregistered polygamy, the resultant problematic assumes a stratified and multifaceted character. The jurisprudential perspective interrogates the substantive validity of contracts that fail to satisfy essential pillars, while the regulatory perspective highlights a dual transgression: the guardian's absence and the circumvention of polygamy procedures. This convergence of two legal deficiencies engenders consequences substantially weightier than either infringement appraised in isolation. The phenomenon lays bare a chasm between the normative order (das sollen) and empirical realities (das sein) that demands thorough and systematic investigation (Manan, 2023).

A constellation of antecedent studies has engaged with this problematic in fragmentary fashion. Hasballah (2023) explored guardianship through a comparative inter-school optic without touching the polygamy dimension. Wahyudi (2022) investigated unregistered polygamy from the vantage point of women's rights protection without probing the guardianship facet in depth. Musawwamah (2023) scrutinized judicial products of religious tribunals pertaining to guardianless marriage annulments but did not connect them to the polygamy context. Rahmawati (2022) examined the legal ramifications of unregistered unions for offspring, without centering on the guardianship dimension. Hermanto (2023) dissected polygamy without authorization through the maqashid al-shari'ah framework, yet did not integrate the guardianship variable. Consequently, an academic lacuna persists: no study has

concurrently analyzed the intersection of guardianless marriage and unregistered polygamy within a unified, integrative analytical architecture.

Grounded in this backdrop, the present inquiry targets three cardinal issues: (1) the extent of validity attaching to guardianless marriages when assessed through Islamic jurisprudence and the Indonesian statutory framework; (2) the legality of polygamous unions solemnized absent the first spouse's endorsement and without religious court determination; and (3) the juridical ramifications for matrimonial status, first-spouse rights protection, and the civil standing of children born from such arrangements. The anticipated academic contribution spans enriching Islamic family law scholarship and providing practical guidance for marriage registrars, law enforcement personnel, and the broader public.

2. METHODS

This inquiry adopts a normative legal methodology that positions law as a constellation of norms encompassing foundational principles, rules, statutory provisions, scholarly doctrines, and judicial precedents (Marzuki, 2021). Frequently characterized as doctrinal legal scholarship, this approach focuses on the normative content embedded in legislative products and scholarly thought. The methodological selection reflects the character of the research object, norms of Islamic law, and national statutes governing guardianship and polygamy protocols, rather than empirical occurrences in the field (Ibrahim, 2022).

Three analytical pathways are deployed in complementary fashion. First, the legislative pathway scrutinizes all pertinent regulations: the marriage statute and its amendments, implementing regulations, the codified Islamic legal compendium, the ministerial regulation on matrimonial registration, and ancillary provisions. This pathway facilitates elucidation of the ratio legis and ontological underpinnings motivating guardianship and polygamy regulation (Marzuki, 2021). Second, the doctrinal pathway examines concepts within Islamic jurisprudence spanning *walayah* across four Sunni schools, *mashlahah mursalah* in family law construction, and *maqashid al-shari'ah* as a philosophical instrument for appraising guardianless marriages within unregistered polygamy (Ibrahim, 2022). Third, the case-based pathway examines religious tribunal adjudications possessing permanent legal force, procured through the apex court's digital decision repository (Amiruddin and Asikin, 2020).

Research materials are exclusively secondary and are stratified into three tiers. The primary tier encompasses Quranic scripture, Prophetic traditions, marriage legislation, implementing regulations, the Islamic legal compendium, ministerial regulations, and relevant judicial determinations. The secondary tier comprises classical jurisprudential works: *al-Umm* by Imam al-Shafi'i, *Bada'i al-Sana'i* by al-Kasani, *al-Mughni* by Ibn Qudamah, *al-Fiqh al-Islami wa Adillatuhu* by al-Zuhaili, supplemented by contemporary academic literature. The tertiary tier consists of legal lexicons, jurisprudential encyclopedias, scholarly rulings, and legislative databases. Data gathering employs library research techniques, while analysis combines content analysis with prescriptive analysis (Marzuki, 2021).

3. RESULTS AND DISCUSSION

Validity of Guardianless Marriage Under Islamic Jurisprudential Tradition

Whether the guardian constitutes an essential pillar or merely a precondition for matrimonial validity has been debated across centuries within the marriage-focused jurisprudential tradition. This

divergence originates from epistemological differences in legal derivation methodology and in the hermeneutics applied to authoritative scriptural and Prophetic texts concerning matrimonial guardianship. The majoritarian coalition of Islamic legal scholars spanning the Shafi'i, Maliki, and Hanbali traditions collectively holds that the guardian is an imperative pillar of marriage. Al-Shafi'i, in his magnum opus *al-Umm*, articulates in unequivocal terms that a matrimonial contract executed without a guardian is void and generates no juridical consequence whatsoever. Beyond the previously cited narration from Aisha, the majoritarian stance is fortified by the transmission from Abu Musa al-Ash'ari reporting the Prophet's pronouncement:

«لَا نِكَاحَ إِلَّا بِوَلِيِّ»

Its import: "No marriage possesses validity in the absence of a guardian." This narration has been transmitted through diverse chains and authenticated by numerous hadith specialists. Together, these two narrations constitute the principal argumentative foundation for the majoritarian position that renders the guardian a non-negotiable element (al-San'ani, 2019).

Within the Maliki tradition, supplementary emphasis falls upon the guardian's protective function vis-à-vis the woman's welfare. Far from a ceremonial figurehead, the guardian serves as a guarantor that the marriage is contracted with a compatible partner and imposes no detriment on the woman or her kinship network. Al-Zuhaili documents Imam Malik's insistence that marriages must be publicly announced, since clandestine unions contravene the objectives of divine legislation (al-Zuhaili, 2021). Correspondingly, Ibn Qudamah in *al-Mughni* elaborates that guardianship authority in marriage pertains to the holistic welfare of the woman and her family. He references the practice of early Muslim generations, including the pronouncement of Umar ibn al-Khattab:

«لَا تُنْكَحُ الْمَرْأَةُ إِلَّا بِإِذْنِ وَلِيِّهَا أَوْ ذِي الرَّأْيِ مِنْ أَهْلِهَا أَوْ السُّلْطَانِ»

Its import: "A woman shall not be wedded except upon the authorization of her guardian, or a judicious member from her household, or the sovereign authority." This statement from a senior Companion demonstrates the consistent early Islamic practice of mandating guardianship in every matrimonial union (Ibn Qudamah, 2004).

The Hanafi tradition charts an alternative course, contending that a woman of mature age and sound intellect possesses the legal capacity to enter into a matrimonial contract. Al-Kasani in *Bada'i al-Sana'i* grounds this position in the legal capacity (*ahliyyah*) that women hold across all contractual domains. The evidentiary basis includes Surah Al-Baqarah verse 230:

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا﴾

And Surah Al-Baqarah verse 232:

﴿وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضُوا بَيْنَهُمْ بِالْمَعْرُوفِ﴾

Under the Hanafi interpretation, these scriptural passages attribute matrimonial contractual authority directly to the woman. However, within the Indonesian milieu, this position proves inapplicable for two foundational reasons: the predominance of Shafi'i adherence among Indonesian Muslims and the codified Islamic legal compendium's explicit adoption of the majoritarian stance. In

consequence, within the operative legal framework, the guardian functions as a *conditio sine qua non* for matrimonial validity (Rofiq, 2022).

Validity of Guardianless Marriage Under the Indonesian Statutory Framework

National legislative provisions stipulate that matrimonial validity hinges upon conformity with the religious law governing each party. For Muslim citizens, this directive entails fulfilling all pillars and prerequisites established by Islamic jurisprudence. Since the Indonesian Islamic legal framework tracks the majoritarian scholarly position mandating a guardian, the guardian's absence automatically vitiates the marriage under state law (Manan, 2023). The codified Islamic legal compendium elaborates guardianship stipulations in granular detail. The guardian is designated as an obligatory pillar for the bride. Two guardian categories receive recognition: kinship-based guardians and judicially appointed guardians. Prerequisites for serving as a guardian include: male gender, Islamic faith, mental soundness, and attainment of maturity. The priority sequence for kinship-based guardians follows a hierarchical ordering commencing from the direct ascending lineage (Syarifuddin, 2022).

The legal architecture also accommodates scenarios in which kinship-based guardians are unavailable. When this occurs, whether due to the guardian's nonexistence, inability to be present, unknown domicile, recalcitrance, or other impediments, judicial authority may designate a substitute guardian. The availability of this alternative mechanism eliminates any conceivable justification for contracting a marriage devoid of guardianship altogether (Nuruddin and Tarigan, 2021). The juridical consequences of a guardian's absence are severe: the marriage becomes susceptible to annulment. Eligible petitioners include ascending-line relatives, the spouses themselves, competent officials, and interested parties cognizant of defects in the matrimonial pillars. Furthermore, from an administrative standpoint, guardianless marriages cannot be registered because the registration documentation requires guardian identification. The Constitutional Court, through its landmark 2010 ruling, clarified that matrimonial registration fulfills an administrative ordering function without determining religious validity; nevertheless, absent registration, marital rights remain unenforceable through state legal mechanisms (Harahap, 2022).

Legality of Polygamy Without Spousal Endorsement and Judicial Authorization

Indonesia's matrimonial regime rests upon the monogamy principle as its default foundation while permitting polygamy through a controlled judicial gateway. This configuration is commonly characterized as open monogamy, a system countenancing polygamy exclusively under rigorous procedural and substantive conditions (Manan, 2023). Prospective polygamy applicants must satisfy two categories of prerequisites. The first category operates fulfillment of any single criterion, alternatively suffices, comprising: the wife's incapacity to discharge spousal obligations, an incurable medical condition afflicting the wife, or the wife's inability to produce offspring. The second category operates cumulatively every criterion must be simultaneously satisfied, encompassing: endorsement from the existing spouse, assurance of financial capability to sustain the entire household, and a guarantee of equitable treatment (Nuruddin and Tarigan, 2021).

The codified Islamic legal compendium further crystallizes these stipulations by declaring that polygamous marriages contracted without religious court authorization possess no legal force whatsoever. This declaration confirms that judicial permission transcends mere administrative formality, constituting instead a material prerequisite governing the legal efficacy of polygamous unions. During the adjudication of polygamy petitions, the court bears an obligation to summon and

hear testimony from the concerned spouse, corroborating that spousal consent requires direct verification before the judicial panel (Syarifuddin, 2022).

Polygamy that circumvents the entirety of these procedures spawns a spectrum of consequences: in civil law terms, the subsequent spouse lacks recognized legal status and forfeits access to maintenance entitlements, inheritance rights, and marital property claims; administratively, the marriage proves unregistrable; from a criminal law perspective, punitive sanctions await transgressors; and relationally, the first spouse retains multiple legal remedies ranging from annulment petitions and divorce suits to civil damage claims (Wahyudi, 2022).

Cumulative Legal Ramifications: Guardianless Marriage in Unregistered Polygamy

When guardian absence converges with circumvention of polygamy procedures, the outcome is an accumulation of dual legal defects producing ramifications substantially more severe and complex than either infringement assessed independently. Through the jurisprudential lens, the scholarly majority categorizes guardianless marriage as *batil*, a nullity that operates *ab initio*, as though the marriage never materialized from inception. The Shafi'i tradition unequivocally qualifies post-nullity conjugal relations as *zina*, carrying Islamic criminal law implications. The Hanafi tradition differentiates between *batil* and *fasid*: where all prerequisites except guardianship are satisfied, the status is *fasid*, preserving the possibility of rectification through contractual renewal. Yet even within Hanafi jurisprudence, contracting marriage clandestinely without the first spouse's awareness remains censurable, as it harbors elements of deception (*ghisy*) and betrayal (*khiyanah*) that transgress the justice principle foundational to polygamy (al-Zuhaili, 2021).

From the perspective of national regulation, this dual legal deficiency has several concrete ramifications. First, the matrimonial status carries two independent annulment bases guardian absence and unauthorized polygamy each autonomously sufficient (Musawwamah, 2023). Second, the first spouse's rights suffer multidimensional infringement: psychologically through betrayed trust, economically through potential division of marital assets without consent, and socially through diminished communal standing (Wahyudi, 2022). Third, offspring face uncertain civil standing—though the Constitutional Court's 2010 pronouncement opens an avenue through scientific verification, the process demands costly and protracted litigation (Harahap, 2022). Fourth, inheritance entitlements for the subsequent spouse and progeny are either extinguished or contingent upon lengthy judicial verification proceedings (Rofiq, 2022).

Fifth, examination of religious tribunal judicial products reveals consistent patterns wherein judges grant annulment petitions for guardianless marriages, reasoning that pillar defects possess a fundamental and irreparable character (Musawwamah, 2023). Sixth, appraised through the *maqashid al-shari'ah* framework, this practice contravenes three of the five cardinal objectives of divine legislation: *hifz al-nasl* (lineage preservation) given children's juridical vulnerability; *hifz al-'ird* (honor preservation), given potential detriment to women's dignity; and *hifz al-mal* (property preservation) given uncertainty pervading asset distribution, maintenance entitlements, and inheritance rights (al-Zuhaili, 2021). This comprehensive analysis affirms that guardianless marriage within unregistered polygamy simultaneously transgresses both Islamic jurisprudence and the Indonesian statutory order. The practice breaches not merely formal legal provisions but also the substantive aspirations of matrimonial law: the cultivation of a family environment characterized by *sakinah*, *mawaddah*, and *rahmah* accompanied by adequate legal safeguards for every family member.

D. Conclusion

Grounded in the normative juridical investigation conducted, this study crystallizes three principal findings. Finding one: guardianless marriage is adjudged void by the majoritarian scholarly coalition because the guardian is deemed an imperative matrimonial pillar. Argumentative foundations drawn from Quranic scripture, Prophetic traditions, and early-generation consensus robustly demonstrate the indispensability of guardianship. The Hanafi position permitting guardian absence proves inapplicable in Indonesia, given the codified Islamic legal compendium's definitive embrace of the majoritarian stance. Within the national regulatory architecture, guardianless marriage fails to satisfy legislative requirements and remains susceptible to annulment petitions. Finding two: polygamy solemnized in the absence of the first spouse's endorsement and without a religious court determination transgresses multiple legislative and regulatory provisions. Polygamous marriage lacking judicial authorization is explicitly declared to possess no legal force.

Finding three: the accumulation of these twin legal deficiencies produces extraordinarily complex ramifications encompassing retroactive nullification prospects; evaporation of legal safeguards for the subsequent spouse; precarious offspring civil standing; infringement of the first spouse's protected rights; and potential criminal liability. Appraised through the *maqashid al-shari'ah* lens, the practice contravenes lineage preservation, honor preservation, and property preservation—three of the five cardinal objectives of divine legislation. Recommendations advanced include: intensified public education regarding valid matrimonial requirements and the consequences of non-compliance; institutional capacity building for marriage registrars and religious courts in their supervisory functions; regulatory modernization establishing proportionate criminal sanctions for transgressors; and subsequent empirical research exploring sociological dimensions through field-based methodologies to complement this normative analysis.

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