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REASSESSING *WILĀYAH* AND WOMEN'S LEGAL CAPACITY IN ISLAMIC LAW: A CONTEMPORARY REAPPRAISAL OF CLASSICAL JURISPRUDENCE

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Abstract

This article critically reappraises the classical doctrine of wilāyah (guardianship) and its implications for women's legal capacity in Islamic jurisprudence within contemporary legal and social contexts. It examines the conceptual foundations of wilāyah, its objectives, classifications, and historical evolution, alongside the divergent positions of the four Sunni schools of law concerning women's legal personality, marriage, property rights, and financial autonomy. Employing a qualitative doctrinal methodology based on primary Islamic sources and contemporary scholarship, the study distinguishes between immutable Sharīʿah principles and historically contingent juristic interpretations. The analysis demonstrates that while classical jurists generally conceived guardianship as a protective institution aimed at safeguarding individual welfare and social order, significant differences existed regarding the extent of women's independent legal authority. The study argues that many restrictions traditionally associated with women's legal capacity reflected specific historical and social circumstances rather than universally binding legal norms. Reinterpreting these rulings in light of the higher objectives (maqāṣid) of Sharīʿah—including justice, human dignity, welfare, and the prevention of harm—supports a more contextual understanding of wilāyah that affirms women's independent legal personality and substantial legal and financial capacity. The article contributes to contemporary Islamic legal discourse by demonstrating how fidelity to Islamic legal principles can be harmonized with evolving constitutional, legal, and social realities without compromising the normative objectives of Sharīʿah.

Keywords: Wilayah, Guardianship, Women's Legal Capacity, Islamic Law, Ahliyyah, Classical Islamic Jurisprudence, Sunni Schools of Law, Sharīʿah, Women's Rights, Contemporary Islamic Legal Thought.

Conceptual Foundations of Wilayah (Guardianship)

Guardianship is one of the oldest legal and social institutions recognized in Islamic law. It developed from the basic need to protect individuals who are unable to fully protect or manage themselves, particularly minors, persons lacking legal capacity, and those who require assistance in matters relating to property, marriage, or personal welfare. In Islamic jurisprudence, the concept of guardianship is not merely a legal arrangement; rather, it is deeply connected with responsibility, care, protection, and accountability. The institution of guardianship aims to ensure that vulnerable members of society are safeguarded physically, morally, financially, and socially[1]. The conceptual foundation of guardianship in Islam originates from the broader objectives of Shariah (Maqasid al-Shariah), which seek to preserve religion, life, intellect, lineage, and property. Guardianship serves these objectives by creating a structured system through which individuals who lack full legal independence receive support and protection. Islamic jurists viewed guardianship as a trust (amanah) rather than a privilege. Therefore, a guardian is expected to act honestly, fairly, and always in the best interests of the person under guardianship[2]. In classical Islamic thought, guardianship was closely associated with family structure and social order. The family was considered the primary institution

[1] Yusnita et al., "A Program to Strengthen Women's Legal Literacy for the Prevention of Gender-Based Violence," 2026. 35-39
[2] Wafa et al., "Age Limit of Marriage in Islamic Family Law." 17-20

responsible for upbringing, moral development, and protection of children. For this reason, guardianship was generally entrusted first to close male relatives, particularly the father and paternal grandfather. Their role was not limited to financial management but also included ensuring proper education, discipline, and religious upbringing. This structure reflected the social realities of early Muslim societies where family responsibility formed the basis of legal and social stability. At the same time, Islamic law recognized that guardianship could not operate without limits. A guardian's authority was never absolute. Jurists repeatedly emphasized that the welfare of the child or dependent person remained the most important consideration. If a guardian abused authority, mismanaged property, or acted against the interests of the minor, judicial authorities had the power to intervene[3]. This demonstrates that Islamic law balances authority with accountability. The concept of guardianship also reflects the distinction between legal capacity and legal protection in Islamic jurisprudence. While every human being is granted dignity and certain legal rights from birth, not every person possesses the same ability to exercise those rights independently. Minors, for example, may own property or inherit wealth, but they require a guardian to manage such property until they attain maturity and sound judgment. Thus, guardianship functions as a protective legal mechanism designed to assist individuals until they can independently manage their affairs. Over time, the doctrine of guardianship evolved through interpretations of different Islamic schools of law. Although the Sunni schools agreed on the general necessity of guardianship, they differed on its extent, particularly concerning women's legal autonomy, marriage, and property rights[4]. These differences later influenced the development of Muslim personal laws in various countries, including Pakistan and India.

1.1 Definition and meaning of Wilayah

The term "Wilayah" is derived from the Arabic root word wali, which carries the meanings of protection, authority, support, supervision, and closeness. In Islamic legal terminology, Wilayah refers to the lawful authority granted to a person to supervise, protect, or manage the affairs of another person who may not possess full legal capacity. The person exercising such authority is known as a wali (guardian). In Islamic jurisprudence, Wilayah represents both a legal right and a moral responsibility. It is not simply a position of control but a duty imposed for the welfare and benefit of another person. The concept emphasizes care, responsibility, and accountability rather than domination. A guardian is expected to act sincerely and in accordance with justice, fairness, and Islamic ethical principles. Classical Muslim jurists defined Wilayah as the authority to execute decisions on behalf of another person in matters recognized by law. This authority may relate to personal matters, marriage, property, education, or financial affairs. The scope of guardianship depends upon the nature of the relationship and the legal status of the person under guardianship. Islamic law recognizes different forms of Wilayah depending upon the purpose for which authority is exercised[5]. One important distinction is between guardianship over the person and guardianship over property. Guardianship over the person involves care, custody, upbringing, education, and protection of the child, whereas guardianship over property concerns the management and preservation of the minor's financial interests. In some cases, one person may perform both roles, while in others the responsibilities may be divided.

The **foundation of Wilayah** is derived from the Qur'an, Hadith, and principles developed by Islamic jurists. Various Qur'anic verses emphasize responsibility toward children, orphans, and

[3] Mavani, *A New Reading on Authority and Guardianship (Wilayah)*. 178-183
[4] Ibid
[5] Wafa et al., "Age Limit of Marriage in Islamic Family Law." 121-128

dependents, especially in matters relating to protection of property and fair treatment. Similarly, the traditions of the Prophet Muhammad (peace be upon him) stress kindness, justice, and accountability in dealing with those under one's care[6]. The concept of Wilayah also reflects the social philosophy of Islam, where family responsibility and mutual support are strongly encouraged. Guardianship was designed to create stability within society by ensuring that vulnerable individuals are not left without protection or guidance. However, Islamic jurists consistently maintained that the guardian's authority must always operate within the limits prescribed by law and morality. Under Muslim personal law, Wilayah continues to play an important role in matters relating to marriage, custody, maintenance, and management of a minor's property. Courts applying Muslim law generally recognize the father as the natural guardian, followed by the paternal grandfather, while also emphasizing that the welfare of the child remains the highest consideration[7]. Thus, Wilayah under Islamic law combines legal authority with ethical responsibility, aiming to secure both protection and justice for those under guardianship. The discussion of *wilayah* is closely linked with the concept of legal capacity (*ahliyyah*) in Islamic law. Islamic jurisprudence recognizes that every human being possesses legal personality from birth. However, the ability to independently exercise rights and enter legal transactions develops gradually with age, maturity, and mental competence. Guardianship therefore emerged as a mechanism through which the interests of individuals with incomplete or limited legal capacity could be protected. In relation to women, the doctrine of *wilayah* became particularly important in classical discussions concerning marriage and family law[8]. While Islamic law generally recognizes women's independent legal personality, especially in matters of property ownership, inheritance, and financial transactions, jurists differed regarding the extent to which guardianship was necessary in marriage and related matters. Some schools emphasized the role of the guardian in protecting family interests and ensuring suitable marriages, whereas others recognized a broader scope of legal independence for adult women. These differences demonstrate that classical Islamic jurisprudence contained diverse interpretations regarding the relationship between guardianship and women's legal capacity. Modern scholarship has also re-examined the doctrine of *wilayah* in light of changing social and legal conditions. Contemporary scholars often distinguish between guardianship as a system of protection and guardianship as a restriction upon autonomy[9]. This has led to renewed discussions concerning the historical context of classical rulings and their relevance in modern societies where women participate fully in educational, economic, and public life. Consequently, *wilayah* remains an important concept in contemporary debates about Islamic law, legal authority, and gender relations.

1.2 Types of Guardianship in Islamic Law

In Islamic jurisprudence, *wilayah* (guardianship) refers to the legal authority granted to a person to supervise, protect, and manage the affairs of another individual who may not be fully capable of exercising independent legal judgment in certain matters. Classical Muslim jurists developed the doctrine of guardianship to preserve welfare (*maslahah*), protect property, maintain family order, and regulate social relations. Over time, different forms of guardianship emerged in Islamic law depending upon the nature of authority and the person over whom authority was exercised. Broadly, Islamic law recognizes guardianship over the person, guardianship over property, and guardianship in marriage. These categories were extensively

[6] Afrianty, "Agents for Change."
[7] Mirwan, "Analysis of Marriage Without a Guardian for Former Foreign Migrant Workers from Aikmel District, East Lombok, from the Perspective of Maqashid Syariah."2115-2121
[8] Ibid
[9] Badrian, "Apostasy and Its Legal Consequences in Indonesian Personal Status Law." 72-76

discussed by jurists of the four Sunni schools and became central to classical legal doctrine concerning women, minors, and legally incapacitated individuals.

1.2.1 Guardianship over the Person (*Wilayah 'ala al-Nafs*)

Guardianship over the person refers to authority exercised over the physical care, upbringing, education, protection, and personal welfare of an individual. This type of guardianship is usually applied to minors, mentally incapacitated persons, and in certain classical interpretations, unmarried women[10]. The guardian is responsible for ensuring proper upbringing, moral protection, and social security of the ward. Classical jurists considered this form of guardianship necessary because minors and persons lacking legal competence (*ahliyyah al-ada'*) were deemed unable to independently protect their interests. Fathers were generally recognized as the primary guardians, followed by paternal grandfathers and other male agnates. The guardian's authority included arranging education, residence, discipline, and in some cases marriage[11]. The Hanafi jurists, however, distinguished between protection and domination. While they accepted guardianship over minors, they recognized adult women as possessing independent legal personality in many civil matters. According to the Hanafi school, an adult sane woman retained the capacity to conduct financial transactions and could exercise considerable autonomy, although guardianship in marriage remained debated. In contrast, Maliki, Shafi 'i, and Hanbali jurists generally adopted broader interpretations of guardianship, particularly concerning marriage and family matters[12]. These schools emphasized social protection and family responsibility, arguing that guardianship was designed to preserve women's welfare and social dignity rather than to deny their humanity or legal existence Modern scholars note that the historical application of guardianship over women was influenced not only by religious texts but also by prevailing social structures in medieval Muslim societies. Contemporary Muslim legal thinkers increasingly argue that guardianship over adult women should be reconsidered in light of women's education, economic participation, and recognized legal capacity in modern states.

1.2.2 Guardianship over Property (*Wilayah 'ala al-Mal*)

Guardianship over property refers to legal authority to administer, preserve, and manage the financial affairs and property of another person. This form of guardianship primarily applies to minors, orphans, mentally incapacitated individuals, and persons considered legally incapable of managing wealth responsibly. Islamic law places significant emphasis on protecting wealth because property rights are considered fundamental rights under the Sharī'ah. The Qur'an repeatedly commands guardians to protect the wealth of orphans and vulnerable persons and prohibits misuse of their property[13]. One of the most frequently cited verses states:

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّـهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَّعْرُوفًا

Translation: To those weak of understanding make not over your property which God hath made a means of support for you but feed and clothe them therewith and speak to them words of kindness and justice. (Quran 4:5)[14]

Classical jurists interpreted this verse as evidence for the legitimacy of financial guardianship. The guardian's role was fiduciary in nature, meaning that he was obligated to act solely for the benefit of the ward and was prohibited from exploiting the property for personal gain. Dr.

[10] Nada and Fajriyah, "Authority Reformulation of Gender Equal Marriage Guardians." 2562- 2565
[11] Nada and Fajriyah, "Authority Reformulation of Gender Equal Marriage Guardians"; Muhammad., "Balinese Muslim Minority Rights in Education and Islamic Family Law."
[12] Sarfitri et al., "Battle for Blood."
[13] Harliani, "Child Marriage Challenges and Institutional Countermeasures." 75-83
[14] Surah Nisa 4:5
Yousaf Ali ''The Holy Quran'' 1938

Mudasra Sabreen explains that Islamic law developed detailed rules governing the administration of property belonging to minors and incapable persons. Guardians were permitted to invest, preserve, and utilize property only in ways beneficial to the ward. Any misuse constituted a breach of trust and could result in legal liability. Importantly, classical Islamic law recognized women's independent ownership rights. A woman could inherit, buy, sell, lease, donate, and manage her wealth without requiring permission from her husband or male guardian. This principle distinguished Islamic law from several pre-modern legal systems in which women lacked independent economic identity. The Hanafi school particularly emphasized women's financial autonomy. According to Hanafi jurists, an adult sane woman possessed complete legal competence in financial transactions. The Maliki and Hanbali schools accepted similar principles regarding ownership rights, though they sometimes encouraged family supervision in matters involving financial risk. Contemporary Muslim scholars often cite women's recognized financial autonomy in classical Fiqh as evidence that Islamic law originally acknowledged women's legal personality. Therefore, many modern reformists argue that restrictions imposed upon women in certain Muslim societies arise more from patriarchal customs than from the essential principles of Sharia's.

1.2.3 Guardianship in Marriage (Wilayah al-Nikah)

Guardianship in marriage is one of the most debated forms of wilayah in Islamic jurisprudence. It concerns the authority of a guardian (wali) in the formation of a marriage contract. Classical jurists differed significantly regarding the extent of the guardian's authority and the necessity of guardian consent for adult women[15]. The majority of Sunni jurists namely the Maliki, Shafi'i, and Hanbali schools considered the presence and approval of a guardian necessary for the validity of a woman's marriage. They relied on prophetic traditions such as:

"There is no marriage without a guardian." Sunan Abu Dawud and Al-Tirmidhi[16]

According to these schools, the guardian's role was protective rather than oppressive. The wali was expected to ensure compatibility (kafa'ah), protect the woman from exploitation, and preserve family interests. The father was considered the primary guardian, followed by paternal relatives according to an established order of priority. The Hanafi school adopted a comparatively more flexible position. Hanafi jurists maintained that an adult sane woman possesses the legal competence to contract her own marriage independently, provided the marriage fulfills legal conditions and the spouse is socially suitable. Guardians retained an advisory role but not absolute authority[17]. This position is particularly important in contemporary debates because it demonstrates diversity within classical Islamic jurisprudence itself. Classical jurists further distinguished between two categories of marital guardianship:

- Wilayah al-Ijbar (compelling guardianship), under which certain guardians could arrange marriages for minors without explicit consent;
- Wilayah al-Ikhtiyar (consultative guardianship), where the woman's consent remained essential.

1.3 Legal Authority in Islamic Jurisprudence:

Modern Muslim scholars have critically reexamined these doctrines in light of contemporary understandings of consent, human rights, and gender equality. Many contemporary legal reforms in Muslim-majority countries have restricted compulsory guardianship and strengthened women's role in marital decision-making. Countries such as Tunisia and Morocco introduced reforms emphasizing mutual consent and contractual equality in marriage.

[15] Umro'atin, "Child Protection in Islamic Law Regarding Custody and Guardianship," 2026.
[16] Sunan Abu Dawud: Book 12, Hadith 2085 and Al Tirmidhi: Book 11, Hadith 1101
[17] Ibid

Contemporary scholars argue that the objectives of Islamic law (maqasid al-shari'ah) particularly justice, welfare, and protection from harm support reinterpretation of classical guardianship doctrines where social conditions have fundamentally changed. Legal authority in Islamic jurisprudence is closely connected with the concept of *wilayah* (guardianship), because Islamic law does not treat authority merely as power or control. Rather, authority is understood as a responsibility that must be exercised with justice, trust, and accountability [18]. Classical Muslim jurists developed the doctrine of legal authority to organize social relations, protect vulnerable individuals, and preserve public welfare. Within this framework, questions concerning women's legal capacity became central because jurists debated the extent to which women could independently exercise legal rights in matters such as marriage, financial transactions, property management, and family affairs. The Arabic term *wilayah* linguistically means closeness, protection, support, and authority. In legal terminology, it refers to the lawful power granted to a person to act on behalf of another individual whose interests require protection or supervision. Islamic jurisprudence recognizes that not all people possess the same level of legal competence at every stage of life[18]. Therefore, legal authority was designed to function as a protective mechanism, especially for minors, orphans, and persons lacking full legal capacity. Classical jurists linked legal authority with the doctrine of *ahliyyah* (legal capacity). They divided legal capacity into two categories: *ahliyyat al-wujub* (capacity for rights and obligations) and *ahliyyat al-ada'* (capacity to exercise those rights independently)[19]. According to Islamic law, every human being possesses basic legal personality from birth, including women. However, the ability to independently exercise legal rights may vary according to age, mental competence, and social circumstances. This distinction became highly important in discussions about women. While women were recognized as legal persons capable of owning property, inheriting wealth, and entering contracts, some jurists still placed restrictions on their independent authority in certain family-related matters. As a result, the debate over guardianship was never simply about whether women possessed rights, but rather about the extent to which they could exercise those rights independently within society. The Qur'an provides the foundation for legal authority by emphasizing justice, consultation, and responsibility. Guardianship was not introduced to create oppression but to protect welfare and prevent harm. For example, the Qur'an instructs guardians to safeguard the property of orphans honestly and fairly:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُم مِّنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُم

Translation: "Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them release their property to them" (Qur'an 4:6)[20]

This verse demonstrates that guardianship in Islamic law was originally temporary and conditional. Once a person achieved maturity and sound judgment, authority over their property was to be returned to them. This principle is significant for contemporary discussions because it shows that legal authority was historically connected with capability rather than permanent gender-based control. Classical jurists also emphasized that authority should never be abused. A guardian was considered a trustee (*amin*) rather than an owner or master. His authority was limited by ethical and legal obligations[21]. If a guardian misused property, acted unjustly, or harmed the interests of the ward, Islamic courts could remove him from his

[18] Rasyid et al., "Contestation of Customary Law and Islamic Law in Inheritance Distribution."426-438
[19] "Comparative Normative Study on Child Custody and Guardianship in Islamic Family Law: Lessons from ASEAN and Europe | ASEAN Journal of Islamic Studies and Civilization (AJISC)." 160-170
[20] Surah Nisa 4:6
Yousaf Ali ''The Holy Quran", 1938
[21] Almawarid et al., "From Family Authority to Individual Autonomy." 49-54

position. For example, if a father managed the inheritance of his orphaned daughter, he was expected to preserve her wealth honestly until she became legally competent to manage it herself. He could not spend her money for personal benefit or deprive her of ownership. This example illustrates that guardianship in Islamic jurisprudence was tied to accountability rather than unrestricted power[22]. Women's financial authority provides one of the clearest examples of legal independence in Islamic law. Unlike many pre-modern societies where married women lost control over their wealth, Islamic law recognized women as separate legal and financial persons. A woman could own land, conduct trade, make charitable donations, and enter commercial agreements independently[23]. Khadijah bint Khuwaylid, the wife of the Prophet Muhammad (peace be upon him), is often cited as a historical example of female economic independence because she managed her own trading business before and after marriage. The Hanafi school adopted one of the broadest interpretations of women's legal authority. Hanafi jurists argued that an adult sane woman possessed full legal competence in financial and contractual matters. Therefore, she could buy, sell, lease, donate, and conduct transactions without requiring permission from a male guardian[20]. This position reflected the Hanafi understanding that legal competence depended primarily on intellectual ability rather than gender. However, other Sunni schools adopted comparatively cautious approaches regarding women's authority in certain social matters, particularly marriage. Maliki, Shafi 'i, and Hanbali jurists generally maintained that a guardian's participation in marriage was necessary to protect family interests and prevent exploitation. Their concern was largely social rather than theological. In medieval societies where women often lacked economic security and public mobility, guardianship was viewed as a means of protection within the family structure. For instance, a young woman entering marriage in a tribal society could face social pressure or deception. Classical jurists believed that the guardian could help verify the suitability of the spouse and secure the woman's rights within the marriage contract[24]. In this sense, authority was seen as protective responsibility rather than absolute domination. Nevertheless, the Hanafi jurists differed significantly on this issue. They held that an adult woman could contract her own marriage if the conditions of the contract were fulfilled and the spouse was socially compatible (*kafa'ah*). This disagreement among classical jurists demonstrates that Islamic jurisprudence itself was never entirely uniform regarding women's legal authority. Modern Muslim scholars increasingly revisit these classical interpretations in light of changing social realities. Contemporary education, employment opportunities, and legal systems have transformed women's public roles across Muslim societies. Scholars such as Mohammad Hashim Kamali and Ziba Mir-Hosseini argue that many restrictions historically imposed upon women reflected specific social conditions rather than fixed religious principles[25]. In contemporary legal thought, many scholars distinguish between immutable religious values and historical juristic interpretations. Justice, dignity, and welfare remain permanent objectives of Islamic law, but the methods used to achieve those objectives may evolve with time and circumstances. This approach has encouraged modern reinterpretations of guardianship laws in several Muslim-majority countries. For example, Moroccan family law reforms introduced under the *Mudawwanah* strengthened women's contractual rights in marriage and limited compulsory guardianship. Similarly, Tunisia removed many classical restrictions related to marital guardianship and emphasized mutual consent between spouses. These reforms were

[22]Ibid
[23] Alyasari and Adriani, "Gender Relations in the Legal Construction of Marriage Guardians."
[24] Umar and Syarif, "Reformulating the Concept of Guardianship in Marriage."61-68
[25] Umro'atin, "Child Protection in Islamic Law Regarding Custody and Guardianship," 2026.

often justified through Islamic legal principles such as public welfare (*maslahah*), prevention of harm (*darar*), and the higher objectives of Sharīʻah (*maqasid al-shariʻah*). Another important issue in legal authority concerns the balance between family responsibility and individual autonomy. Islamic jurisprudence traditionally viewed the family as a cooperative institution based on mutual rights and duties. Male authority within the family was associated with financial responsibility and maintenance obligations. However, contemporary scholars argue that authority should not be interpreted as unconditional superiority. Instead, they emphasize partnership, consultation, and shared responsibility within family life. This contemporary reappraisal is particularly relevant to the study of women's legal capacity. Classical jurists operated within societies shaped by tribal customs, limited female public participation, and patriarchal social structures. While many rulings sought to protect women, some interpretations also restricted women's independent authority in ways that modern scholars now critically reassess. Therefore, legal authority in Islamic jurisprudence should be understood as a dynamic and historically developed concept rather than a fixed doctrine[26]. Islamic law recognized women as legal persons with property rights, contractual capacity, and moral agency. At the same time, classical jurists debated the scope of guardianship in family and social matters. Contemporary Islamic legal thought continues to engage with these debates by examining how the principles of justice, welfare, and human dignity can be applied within modern societies while remaining faithful to the ethical foundations of Sharīʻah.

1.4 Historical Development in Classical Islamic Thought

The concept of wilayah (guardianship) developed gradually in classical Islamic thought as Muslim jurists attempted to organize family life, social order, financial responsibility, and legal authority according to the teachings of the Qur'an and Sunnah[27]. The doctrine did not emerge as a single fixed system from the beginning of Islam. Instead, it evolved over centuries through juristic interpretation, social practice, and legal reasoning. Understanding this historical development is important for this research because contemporary debates about women's legal capacity often rely upon classical interpretations of guardianship[28]. A study of historical development shows that many rules concerning guardianship were shaped not only by religious texts but also by the social realities of early Muslim societies.

1.4.1 Foundations of Guardianship in the Qur'an and Sunnah

The earliest foundations of guardianship are found in the Qur'an and the practice of the Prophet Muhammad (peace be upon him). The Qur'an repeatedly emphasizes justice, protection of vulnerable individuals, family responsibility, and preservation of social welfare. Guardianship initially appeared in relation to orphans, minors, widows, and property management rather than as a system of male domination over women. For example, the Qur'an instructed Muslims to protect the wealth of orphans and to return their property once they reached maturity and sound judgment:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُم مِّنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُم

Translation: "Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them release their property to them" (Qur'an 4:6)[29]

This verse demonstrates that guardianship was understood as temporary supervision linked to legal competence[30]. Once a person became capable of managing personal affairs responsibly,

[26] Putri et al., "The Best Interest of the Child in Islamic Family Law."
[27] Stiawan et al., "Judicial Guardianship in Marriage."397-401
[28] Harliani, "Child Marriage Challenges and Institutional Countermeasures."41-63
[29] Surah Nisa 4:6
Yousaf Ali '' The Holy Quran" 1938
[30] MARRIAGE and LAW, *JURNAL SYARI'AH & HUKUM*.

the guardian's authority ended. Similarly, the Prophet Muhammad (peace be upon him) emphasized ethical responsibility in leadership and guardianship. In a famous hadith, he stated: ***"Each of you is a shepherd and each of you is responsible for his flock.[31] Sahih Muslim"***
Classical scholars interpreted this narration broadly to mean that authority in Islam is connected with accountability and care rather than unrestricted power. During the lifetime of the Prophet, women actively participated in trade, education, public consultation, and social affairs. Khadijah bint Khuwaylid conducted business independently, while Aisha bint Abi Bakr became an important transmitter of hadith and legal knowledge. These examples indicate that early Islamic society recognized women's intellectual and financial capabilities. However, Islamic law also developed within a tribal Arabian environment where family protection and collective responsibility were socially important. Guardianship therefore became closely connected to preserving family structure and social stability[32].

1.4.2 Development During the Era of the Companions

After the death of the Prophet Muhammad (peace be upon him), Muslim jurists among the Companions (Sahabah) began addressing legal questions arising from expanding Muslim societies. During this period, guardianship rules became more detailed because new economic and social conditions required legal regulation. The Companions generally agreed on the necessity of guardianship for minors, orphans, and mentally incapable individuals. However, differences began to appear regarding adult women's authority in marriage and financial matters. Some Companions emphasized women's consent and contractual rights, while others focused more strongly on family supervision and protection. For example, Caliph Umar ibn al-Khattab often intervened in cases involving women's welfare and family disputes, demonstrating that public authority could regulate guardianship when injustice occurred [17]. At the same time, women during this period continued to own property, engage in commercial activities, and participate in legal discussions. This early diversity of opinions later influenced the formation of the Sunni legal schools[33].

1.4.3 Formation of the Classical Schools of Law

Between the second and fourth centuries of Islam, the major Sunni schools of jurisprudence developed systematic legal doctrines concerning guardianship and legal authority[34]. Jurists attempted to harmonize Qur'anic principles, prophetic traditions, and social customs within coherent legal systems.

1.4.3.1 Formation of the Hanafi School of Law

The Hanafi school, founded by Imam Abu Hanifah (d. 767 CE), adopted one of the most flexible approaches regarding women's legal capacity. Hanafi jurists argued that an adult sane woman possessed full legal competence in financial transactions and could independently conclude contracts. Regarding marriage, Hanafi scholars maintained that an adult woman could contract her own marriage without guardian approval if the marriage fulfilled legal conditions and involved a socially suitable spouse. This position reflected the Hanafi emphasis on individual legal competence rather than permanent guardianship. For example, if a financially independent woman chose to marry someone considered socially compatible, Hanafi jurists generally recognized the validity of the marriage even without the consent of her guardian. This view later became influential in several Muslim regions including South Asia and the Ottoman Empire.

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[31] Muslim Ibn Al Hajaj, Sahih Muslim, book 33, hadith 24
[32] "Comparative Normative Study on Child Custody and Guardianship in Islamic Family Law: Lessons from ASEAN and Europe | ASEAN Journal of Islamic Studies and Civilization (AJISC)."155-167
[33] Zahraa, "The Legal Capacity of Women in Islamic Law." 245
[34] Ibid, 32

1.4.3.2 Formation of the Maliki School of Law

The Maliki school, founded by Imam Malik ibn Anas (d. 795 CE), adopted a more community-centered understanding of guardianship. Maliki jurists viewed the family as an important social institution requiring collective supervision and protection. Although Maliki scholars recognized women's property rights and legal personality, they generally required guardian participation in marriage contracts[35]. They argued that marriage involved not only two individuals but also family honor, social responsibility, and long-term welfare. For instance, Maliki jurists believed that a guardian could help ensure that a young woman was not pressured into an unsuitable marriage or deceived by false promises. Their approach reflected the social realities of North African and Arabian tribal societies where family alliances carried significant importance.

1.4.3.3 Formation of the Shafi'i School of Law

The Shafi 'i school, founded by Imam al-Shafi 'i (d. 820 CE), developed a more text-centered legal methodology [27]. Shafi'i jurists relied heavily upon prophetic traditions concerning guardianship in marriage, especially the hadith:

"There is no marriage without a guardian." Abu Dawud, At-Tirmidhi, and Ibn Majah[36]

As a result, Shafi'i jurists considered guardian consent necessary for the validity of a woman's marriage. However, they also emphasized that guardians must act in the woman's best interest and could not force her into marriage unjustly. The Shafi'i school illustrates how different legal methodologies influenced interpretations of women's legal authority. Greater emphasis upon textual literalism often produced stricter guardianship requirements.

1.4.3.4 Formation of the Hanbali School of law

The Hanbali school, founded by Imam Ahmad ibn Hanbal (d. 855 CE), generally adopted conservative positions regarding guardianship and family authority. Hanbali jurists strongly emphasized male responsibility within family structures and considered guardianship an important means of protecting social morality. However, Hanbali scholars still recognized women's ownership rights and legal personality in financial matters. Women could inherit, buy, sell, and donate property independently[37]. The primary restrictions concerned marriage and family supervision rather than economic rights.

1.4.4 Influence of Social and Political Contexts

The historical development of guardianship cannot be separated from the social conditions of classical Muslim societies. Medieval societies were largely patriarchal, tribal, and economically unstable [38]. Women often depended upon family structures for physical security and financial support. In such contexts, guardianship was viewed as a practical institution designed to maintain social order and protect vulnerable individuals. Many jurists feared that unrestricted individualism could weaken family structures or expose women to exploitation in societies lacking institutional protections. For example, in societies where travel was dangerous and economic opportunities were limited for women, family guardianship provided social security. As a result, some juristic restrictions reflected prevailing social realities rather than universal principles intended for all times and places. And understood historically rather than treated as entirely disconnected from its social environment. This perspective is especially important for contemporary discussions concerning women's legal capacity.

[35] Memisevic, "The Guardianship of Women in Roman and Sharia Law." 204-208
[36] Ibid,32
[37]Ibid,32
[38] Rafiq, "Role of Guardian in Muslim Woman's Marriage." 1254-1260

1.4.5 Transition Toward Contemporary Reappraisal

By the nineteenth and twentieth centuries, major social transformations began affecting Muslim societies. Colonial legal systems, modern education, urbanization, and women's participation in public life challenged traditional assumptions concerning guardianship. Contemporary Muslim scholars increasingly reexamined classical doctrines by distinguishing between permanent Islamic values and historically conditioned juristic interpretations. Scholars argued that justice, dignity, and welfare remain central objectives of Islamic law, but the application of guardianship may change according to social circumstances. For example, many modern scholars question whether restrictions developed in medieval societies should automatically apply to educated adult women in contemporary legal systems where women possess financial independence and public legal identity. This historical development is directly relevant to the present research because it demonstrates that guardianship doctrines evolved over time and were shaped by both religious principles and social realities[39]. The contemporary reappraisal of classical doctrine therefore does not necessarily reject Islamic tradition. Rather, it seeks to understand how the objectives of Sharī'ah can be realized in changing historical contexts while preserving justice and human dignity.

Conclusion

The doctrine of *wilayah* (guardianship) remains one of the most significant concepts in Islamic jurisprudence, particularly in discussions concerning women's legal capacity and legal autonomy. This study has shown that the original purpose of guardianship in Islamic law was to protect the interests of individuals who lacked the ability to manage their own affairs, including minors, orphans, and persons with limited legal capacity. Rooted in the Qur'an, the Sunnah, and the objectives of Sharī'ah, *wilayah* was established as a legal and ethical responsibility based on trust, justice, and accountability rather than as an instrument of unrestricted authority. The analysis demonstrates that classical Muslim jurists shared a common understanding of the protective nature of guardianship while differing considerably in its practical application, especially regarding women. The Hanafi school recognized broader legal autonomy for adult women, particularly in financial transactions and, under certain conditions, in contracting marriage. In contrast, the Maliki, Shafi'i, and Hanbali schools assigned a more prominent role to the guardian in matters of marriage, emphasizing family welfare and social stability. These differences confirm that classical Islamic jurisprudence was characterized by juristic diversity rather than a single, uniform position on women's legal authority. The study also highlights the close relationship between *wilayah* and the doctrine of *ahliyyah* (legal capacity). Islamic law recognizes every human being, including women, as possessing legal personality and the capacity to hold rights. While guardianship was intended to assist those unable to exercise their rights independently, classical jurists differed on whether adult women required such supervision in all aspects of legal life. At the same time, there is broad agreement within Islamic legal tradition that women possess independent ownership rights and financial capacity, reflecting their recognized legal identity. A historical examination further reveals that many classical rulings on guardianship developed within the social, economic, and cultural conditions of their time. Tribal social structures, limited institutional protection, and prevailing customs influenced juristic reasoning alongside the primary sources of Islamic law. Consequently, not every historical interpretation should be regarded as universally applicable without considering the context in which it emerged. Recognizing this historical dimension allows for a more balanced understanding of the relationship between Islamic legal principles and their practical implementation. In contemporary Muslim societies,

[39] "Women's Rights Activists and the Drafting Process of the Islamic Criminal Law Code (Qanun Jinayat)."88-99

where women actively participate in education, professional life, commerce, and public affairs, the doctrine of *wilayah* continues to be reassessed through the framework of the higher objectives of Sharīʻah (*maqāṣid al-sharīʿah*). Many contemporary scholars argue that the enduring values of justice, human dignity, public welfare, and the prevention of harm provide a legitimate basis for re-evaluating juristic interpretations that were closely connected to historical circumstances rather than immutable religious principles. Ultimately, this study argues that *wilayah* should be understood primarily as a mechanism of protection and responsibility rather than permanent control over women's legal agency. The diversity within classical Islamic jurisprudence itself demonstrates that Islamic legal thought possesses the flexibility to respond to changing social realities while remaining faithful to its foundational sources. A contextual and objective reading of the doctrine not only enriches contemporary scholarship on Islamic law but also contributes to ongoing discussions regarding women's legal capacity, constitutional rights, and legal reform in Muslim societies.

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