

ISLAMIC LAW AND ETHICS: THE ROLE AND OBLIGATIONS OF MARRIAGE FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

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Abstract

This article examines Islamic law and ethics used to analyze the position and ethics of a person with intellectual disabilities in marriage. They have equal rights to marry without discrimination or stigma. The library research method and normative descriptive approach are used in this research. This study uses data sources from classical and contemporary Islamic law and their *ijtihad* methods, then analyzed with ethics theory. The results show that Islamic scholars from various *madhhabs* express their opinions on the marriage of a person with intellectual disabilities and their legal responsibilities. Although the majority of *madhhabs* recognize that their marriages are valid, there is a question about their responsibilities after the marriage. This issue is addressed in some of the scholars' edicts; some of them allow marriage if there is sexual attraction. However, the question of how they can take responsibility and consent in the context of sexuality is still a subject of discussion. Studies show that a person's ability to be responsible is affected by their level of disability. This perspective addresses the impact of Islamic law and the daily lives of a person with intellectual disabilities, such as the possibility of guardianship or representation in decisions about marriage and sexuality. According to this study, the personal responsibilities and rights of persons with intellectual disabilities should be carefully considered. The contribution of this study is to mainstream the discourse of Islamic law and inclusive ethics so that persons with intellectual disabilities in the context of marriage get protection to guarantee their human dignity.

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Introduction

Article 16 of the Universal Declaration of Human Rights recognizes marriage as a right that must be protected to preserve human dignity. Every individual is given equality without discrimination based on race, gender, or disability in carrying out any activity, including marriage. However, society does not necessarily give permissiveness to certain groups in marriage, for example, groups of persons with disabilities. This group is vulnerable to being stigmatized for the conditions they experience and do not know what steps to anticipate (Nario-Redmond et al., 2013). They are doubted by society about their ability to run their households, and they are also faced with various ethical, legal, and social issues (Banks, 2003). In the context of Islamic law, it can be seen that a person with disabilities is allowed to marry, the question is what type of disability is allowed to marry? There are various opinions on Islamic law.

Allah created man in the most perfect state compared to other creatures, this perfection is marked by the grace of Allah given to man in the form of brain and heart with the aim that he can think and feel. Syinqithi states that the logic of ratio is in the heart, just as hearing lies in the ear. This indicates an assumption error put forward by philosophers who state that the logic of ratio is located in the brain, even though it is in the human heart (Al-Syinqithi, 2019). Syinqithi is based on the Qur'an surah al-Hajj (22): 46.

Some people in this world are born in normal circumstances and some are in a state of disability, where they have the same position, rights, obligations, and roles in their lives and livelihoods (Stienstra & Lee, 2019). The state and society must be able to pay attention to and accommodate the position, rights, obligations, and roles of persons with disabilities (Barclay, 2018). God created human beings who are born in a state of enabling intelligence and disabling intelligence, while it is a society that eventually labels a person with disabilities, in this study the subjects were persons with intellectual disabilities (Cluley, 2018). Someone who mentions with a certain name will carry behavioral implications for the party receiving the mention. If someone mentions the term defect, it will have negative connotations, namely shortcomings that cause grades or quality to be less good or less perfect, and vice versa (Van Den Bogaard et al., 2019).

In the context of Indonesian legislation, Law No. 8/2016 on persons with disabilities mentions four types of disabilities, namely: Persons with physical disabilities; Persons with intellectual disabilities; Persons with mental disabilities; and/or Persons with sensory disabilities. The hope is that those who experience these limitations can interact with the environment without experiencing obstacles and difficulties to participate fully and effectively with other citizens based on equal rights (Ayuningtyas et al., 2022). Although national law is there to provide protection, the lack of detail in other laws and the ambiguity in the marriage law should give them a sense of comfort in marriage.

This research highlights the rights and responsibilities that persons with intellectual disabilities have in marriage, to identify societal barriers and challenges to the practical realization of persons with intellectual disabilities in marriage. Some research on the marriage of a person with intellectual disabilities, such as Fadlurrohman, describes the opinions of scholars who do not forbid the marriage of a person with intellectual disabilities but are prone to divorce because of the limitations they have (Fadlurrohman, 2022). Badran Leena and Rimmerman Arie posit that religious stereotypes and community traditions persist in their application to individuals with intellectual disabilities. In the context of marital transitions, they contend that individuals often seek guidance from religious leaders (Leena & Arie, 2022). Muḥammad Fawzy 'Abdel-Hay examines the ethical and legal position of Islam regarding marriage for a person with permissible intellectual disabilities to protect their dignity ('Abdel-Hay, 2018). Iris Manor-Binyamini explores the reasons for marriage between Bedouin women and men with intellectual

disabilities from a female perspective, offering intra-cultural insights (Manor-Binyamini, 2020). Jennifer Clegg supports Living's view that disabled people need a welfare and social model approach, particularly in marriage (Clegg, 2020).

Research Method

This type of research is a type of library research and based on its nature, this research is categorized as descriptive research (Spencer & Millson-Martula, 2014). The present study is situated within the broader context of research exploring the nexus between Islamic law, ethics, and individuals living with intellectual disabilities. A comparative analysis of classical and contemporary Islamic legal opinions is imperative, complemented by interdisciplinary discourses encompassing ethics and human rights (Baderin, 2014). The research utilizes a triangulation approach to validate the data and employs analytical methods to elucidate the socio-legal dimensions and norms of Islamic law, emphasizing its foundational principles.

Results and Discussions

Critique of Misogynistic Fiqh and Review of Classification in Madhhab

A person with intellectual disabilities is not male or female, young or old, Arab or non-Arab, and so on, but their existence must be recognized with due regard to their human dignity. They have the same position, roles, rights, and obligations as others, they just have limitations on intellectual functioning and adaptive behavior with classifications of mild, moderate, severe, and profound (Purugganan, 2018). In Islamic law, they are still recognized as legal subjects, but there are special provisions under the guidance of a guardian (Khalaf, 1978).

In Islamic jurisprudence, a person with intellectual disabilities is known *al-Safih* (al-Nawawi, 1347H; Al-Qarafi, 1994; Ibn al-Hammam, n.d.; Ibn Qudamah, 1997). The classification of *al-Safih* consists of little wisdom, no wisdom, ignorance, limited intellectual function (Ibn Manzhur, n.d.), obvious ignorance, poor adaptability, low morals, or lack of social concern (Al-Kafawi, 1431H). This deprivation does not recognize gender, age, ethnicity, nation, and religion (Al-Qardhawi, 1996). Their limitations make them a vulnerable group that is subject to discrimination and stigmatization, resulting in their lives being marginalized by their society.

Hanafi scholars state a dearth of contemplation on the subject results in ineptitude in the management of possessions or in the pursuit of extravagant behaviors that are driven by the gratification of desires rather than the satisfaction of fundamental needs (Ibn al-Hammam, n.d.); Maliki scholars in the field, a person with intellectual disability is considered to be a form of weakness, specifically in regard to the functions of reason, intelligence, and intellect (Al-Qarafi, 1994); Shafi'i scholars state that a person with intellectual disability is an un-*Rasyd* person who behaves extravagantly, uncaring and ignorant in his *muamalah* or behaves like a child or an old person but has a weak perspective to know certain limits (al-Nawawi, 1347H); and Hanabilah scholars states that a person with intellectual disability is lacking in thinking about things so that he is not good at spending wealth or one who behaves extravagantly by following his passions with how to prioritize wants over needs (Al-Syinqithi, 2019).

Madhhab	Islamic Legal Opinion
Hanafi scholars	People who do something contrary to the Shariah, do something based on lust by abandoning logic.
Maliki scholars	Weakness of reason (functions of intelligence and intellect)
Syafi'i scholars	Unchastic people who behave extravagantly, uncaring, and ignorant in their reconciliation or behave like children or old people but have a weak perspective to know certain limits.
Hanabilah scholars	Lack of thinking about something so that they are not good at spending possessions or people who behave extravagantly by following their passions by prioritizing wants over needs.

Table 1

The meaning of a person with intellectual disability
in the opinion of the scholars of Madhhab

The concept of a person with intellectual disability necessitates reinterpretation through the lens of inclusive values and the protection of human rights as articulated in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). A social model of disability (Haegele & Hodge, 2016), as outlined in the UNCRPD, is instrumental in ensuring justice and welfare for individuals with disabilities, thereby mitigating discrimination and stigma. Within the framework of Islamic law, the concept of *mahkum 'alayh* is recognized, which encompasses the concept of *abliyah* or individuals with legal capacity. This capacity is further categorized into two distinct categories: *abliyah al-wujub* and *abliyah al-ada'* (Syarifuddin, 2000). *Abliyah al-wujub* is related to the capacity of the person in the implementation of obligations and acceptance of rights, while *abliyah al-ada'* is related to the capacity of the person in his intellectual abilities with the size of *'aqil*, *baligh*, and *rusyd* (Intelligent, Puberty, and Capability) (Zuhaily, 1999). Society must be present through attitudes and actions to ensure the protection of human rights. The debate on the meaning of a person with intellectual disability as a group of *abliyah al-ada' al-naqishah* or a group that lacks legal capacity is a discussion that is not finished if it only uses a medical model but must begin to shift to a social model (Barnes, 2013).

Learning from this social model, contemporary Muslim scholars must begin to raise awareness that inclusion is important for a person with intellectual disabilities to demonstrate their legal capacity, so it is necessary to pay attention to the level of intellectual disabilities in the classification of mild, moderate, severe, or profound (Ghaly, 2019). Someone with intellectual disabilities can memorize the Qur'an (developer, n.d.), demonstrate superior performance in the domain of sports (Arzad, n.d.), painting (*Mereka Yang Melukis Dalam Keterbatasan Fisik | Kumparan.Com*, n.d.), and so on. They should not be marginalized by the law and society, they should also be helped to gain equality through inclusive guidance and education.

The principles of Islamic law that teach *tawhid*, *amar ma'ruf nahi munkar*, equality, tolerance, helping, justice, and freedom (Hamzani, 2019) The provision of opportunities for individuals with intellectual disabilities to live autonomous lives and contribute to various fields is a crucial aspect of social inclusion. Society will come to recognize them as valuable members of the community who possess the capacity to achieve significant accomplishments. To this end, both the community and government must prioritize the promotion of social inclusion in all residential areas, irrespective of any differentiating factors. This approach will facilitate community acceptance, thereby enabling individuals with intellectual disabilities to flourish and evolve in their social interactions.

The Validity of Marriages of Persons with Intellectual Disabilities and Their Responsibilities

The marriage certificate of a person with intellectual disability is valid with the permission of the guardian, or valid if a person with intellectual disability marries without the permission of the guardian, provided that the guardian permits or chooses a person with intellectual disability, as is the opinion of the Hanafi scholars (Ibn al-Hammam, n.d.); Maliki scholars argue that a marriage contract performed by a person with intellectual disabilities is valid if he obtains permission from his guardian or if he does not obtain a marriage license is considered valid if the guardian agrees and vice versa (Al-Qara'fi, 1994); Shafi'i scholars argue that a marriage contract performed by a person with an intellectual disability is valid if he obtains permission from his guardian, but if he does not obtain permission then according to the majority of Shafi'i scholars his marriage is considered invalid because the person with intellectual disability does not have the right to determine something related to him. This is because they cannot take care of themselves, so even the contract made is considered void except with the permission of the guardian (al-Nawawi, 1347H); and Hanabilah scholars argue that a marriage contract performed by a person with intellectual disabilities is valid if the guardian permits or the guardian has the right to allow to marry a person with intellectual disability by being given the option to be chosen or to choose the woman himself absolutely or if a person with intellectual disability married without the permission of his guardian, then the marriage is valid (Ibn Qudamah, 1997).

Madhhab	Islamic Legal Opinion
Hanafi scholars	Marriages of persons with intellectual disabilities are legal without requiring permission from a guardian.
Maliki scholars	A marriage with an intellectual disability is valid if it has permission from the guardian, or if the guardian agrees or does not give permission, the marriage remains valid.
Syafi'i scholars	Marriages of persons with intellectual disabilities are valid with the permission of the guardian, without the permission of the guardian, the marriage is considered void except the permission of the guardian.
Hanabilah scholars	A marriage with an intellectual disability is valid with the permission of the guardian, or valid if a person with an intellectual disability is married without the permission of his or her guardian, provided the guardian permits or a person with intellectual disabilities chooses.

Table 2

Validity of Marriage of Persons with Intellectual Disabilities

In the opinion of the scholars of Madhhab

The big question for researchers when reading the opinion of Maliki, Shafi'i, and Hanabilah scholars who allow the marriage of a person with intellectual disabilities if they get permission from the guardian is whether the marriage is a guardian's right or not. The researcher states that the above opinion denies the existence of persons with intellectual disabilities as independent subjects of law, they are impaired in their intellectual and intellectual functions, and they are in the view of all madhhab scholars including people who are not *Rasyd* and not crazy people. For reasons not yet *Rasyd*, in terms of managing their property, they must go through the permission of their guardians, so it is feared that there will be chaos for reasons that are not good at taking away their rights or giving other people's rights and also behave extravagantly which they do by following their passions, meaning prioritizing their wants over their needs.

This difference of opinion among Muslim scholars can be seen as one of the important points in positioning persons with intellectual disabilities as legal subjects in marriage. The next point relates to obligation, duty, and responsibility in marriage. Obligation and duty can be categorized as synonyms because they presuppose the emergence of consequences for explicit or implicit contracts, actions, and words. However, there is a substantive difference between obligation and duty that can be seen in practice and the code, such as a husband's obligation to his wife. Obligation is raised and made voluntarily, while duty is raised and made based on role, status, and position (Brandt, 1964). Meanwhile, responsibility is always asymmetrical (non-reciprocal), beyond existing rules, concrete, and beyond human freedom. Even the presence of others requires one to be responsible for others. In other words, the ethical concept of responsibility strongly inspires ethical action (Lévinas, 1991).

The basis of responsible action is something that creates a legal right for one person to sue another, as well as something that creates a legal obligation for another person to account for him (Bergsteiner, 2013). The moral attitude when people concretely meet with other people is the attitude of responsibility. This attitude of responsibility towards others is what makes him truly exist as a human being. When critically studied and analyzed, the concept of responsibility is very inspiring for the formation of one's attitude toward others. One of the bad tendencies of people today is to use the presence of others to satisfy all their own needs. Similarly, the attitude of responsibility is usually carried out by a person because there is a desire to fulfill one's own needs (Grisez & Shaw, 1988). For example, in the area of marriage, it is often found that husbands take responsibility for their wives because of other motivations, such as fulfilling inner needs, rules, religious demands, and the state. This kind of responsibility makes the wife an appendage of himself. In other words, the responsibility towards the wife arises from the urge to fulfil the needs of the husband. This reality objectifies the wife, because it uses her presence only to fulfil all his needs.

From this description, researchers can see that, according to Lévinas, a person with intellectual disabilities will be less responsible or even unable to be responsible, how can they be responsible, they are unable to distinguish between rights and duties due to impaired intellectual and mental functions. The responsibility of husbands with intellectual disabilities towards their wives is because there are other incentives such as the fulfillment of internal income, for the sake of rules, the demands of religion, and the state. It may be that this kind of responsibility makes the wife a compliment rather than a free subject. Especially when the responsibility towards the wife is under the supervision of the husband's guardian. Conditions such as these seem to objectify the wife because the wife's presence is used only to fulfill all her needs.

The classification of persons with intellectual disabilities into four levels, namely mild, moderate, severe, and profound, allows researchers to state that mild and moderate intellectual disabilities may be responsible for the possibility that they can be educated, while the rest group may not be responsible because they cannot be educated. Marriages over five years in the whole population of young adults with intellectual disability, it was found that no one with very severe intellectual disability married. Significantly fewer a person with mild mental intellectual disabilities were married by the age of twenty-two (Koller et al., 1988). They married a person with mild intellectual disabilities then turned out to have an intellectual intelligence that was significantly higher than other persons with mild intellectual disabilities. Women with intellectual disabilities have more problems in their marriages than normal women (Chou et al., 2015). However, the marriages of women with mild intellectual disabilities seem to go almost well. The condition of a person with mild intellectual disabilities is not significantly different

from normal people, but the marriages of a person with mild intellectual disabilities have many problems (Van Asselt-Goverts et al., 2015).

A person with intellectual disabilities wants to marry, they should be ready physically and psychologically, this applies to the bride and groom who are "normal" both physically and mentally but if it turns out that the bride and groom have physical, intellectual, and mental disorders, then in this case a judge must play an active role in determining whether or not the bride or not to hold the wedding. Vardit Rispler-Chaim cites the fatwa of the Palestinian Egyptian and Gaza cleric allowing marriage: "In a 1998 fatwa from Gaza, Sheikh Muhammad Dib Qusa is asked whether disabled people can marry at all. He concludes that they may, but only if they are attracted to members of the opposite sex. He explains that sanity (*'aqal*) is not a prerequisite for marriage. In an Egyptian fatwa, the mufti distinguishes between *'atab* (mental deficiency) and *junun* (insanity), claiming that *'atab* is a quiet insanity and *junun* is a violent, extroverted insanity. He allows a *ma'tub* (one who has *'atab*) to marry only if he or she can distinguish between good and evil, and if they have the consent of their guardian to marry. It is believed that *'atab*, unlike *junun*, is less dangerous to the partner" (Rispler-Chaim, 2007).

A person with intellectual disabilities has the same legal rights to marry, drive a car, and own a home (Björnsdóttir et al., 2015). However, more than thirty states restrict or even prohibit their marriage on the grounds of mental instability, although such marriage laws are rarely enforced. But when they are about to marry, the guardian or family member goes to court to have a competency test (whether or not the person with intellectual disability has the mental capacity to enter into the marriage contract and its consequences) because the guardian may suspect manipulation or coercion behind the marriage (Jameson et al., 2015). In this case, the court may decide on the denial of fundamental rights, such as the right to marry or procreate, with a high degree of scrutiny to assess whether persons with intellectual disabilities are unfairly denied constitutional rights if they do not marry (Garbero, 2020).

Conclusion

This article illustrates the opinions of Islamic legal scholars who agree that persons with intellectual disabilities are subject to the law by considering the obligations, duties, and responsibilities of marriage from the perspective of Islamic law and ethics. The social model is developed as a form of equal acceptance and recognition as a legal subject so that persons with mild and moderate intellectual disabilities when entering into a marriage contract can be considered valid through the provision of recommendations and permission from competent guardians. The social model approach must be encouraged and promoted without eliminating the medical model, so there needs to be a reinterpretation of the concept of *abliyah* with an interdisciplinary approach that is inclusive by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). A comprehensive legal and social approach by the government and the community to enable persons with intellectual disabilities to participate fully and effectively in society on an equal basis with others. Formulation and evaluation of policies, plans, programs, and actions at national, regional, and international levels to further equalize opportunities for persons with disabilities to enhance respect and recognition of human dignity.

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