

## Research Article

# Educational Fiqh: The Viewpoints of Sheikh Arsyad Al Banjari and Az Zuhaili on the Method for Determining Marriage Witnesses

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## Abstract.

This research examined the means of determining marriage witnesses in the Marriage Books from Sheikh Arsyad al-Banjari and Wahbah Az-Zuhaili. Marriage witnesses are a pillar of marriage that should not be neglected. Thus, one must adhere to some prerequisites to qualify as a marriage witness. This study employed a literature evaluation with the primary sources of Sheikh Arsyad al-Banjari's *Kitabun Nikah* and the Islamic Book of *Fiqh Islam Wa Adillatuhu* and supporting data from numerous Banjar of South Kalimantan's perspectives. The findings were examined descriptively and qualitatively. The results of this study demonstrated that according to Sheikh Arsyad Al-Banjari in the *Kitabun Nikah*, the provisions of the marriage witness are not to be mute, not to fight, and not to be the child of the bride and groom. In contrast, Wahbah az-Zuhaili in the Book of *Fiqh Islam Wa Adillatuhu* permits it, as children and enemies can witness the marriage.

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## 1. Introduction

Marriage is a legally binding contract between a man and a woman to carry out Allah's commands. Marriage is a form of worship in Islam [1, p. 125]. Legal marriage under sharia law and positive law is the satisfaction of the pillars and prerequisites of marriage [2, p. 104]. The requirements and pillars of marriage should not be disregarded; if they are absent, the marriage is invalid. Each marriage position has certain qualifications, and the presence of a witness is one of the fundamental prerequisites for a lawful marriage. A marriage witness is a pillar of marriage that cannot be ignored; thus, in accordance with Islamic law, in order to fulfill the goal of marriage, one must comply with the witness requirements. According to the viewpoint of the ulama (scholars) and the KHI about

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the circumstances of the marriage witness not opposing the opinion of the ulama, as described in Articles 24, 25, and 26 of the Compilation of Islamic Law, witness marriage is a pillar of marriage [3].

Witnesses are those who watch an event with their own eyes. If a witness is associated with a marriage event, then a marriage witness is a person who witnessed, saw, or heard directly that a marriage contract took place at a specific location[4]. A marriage witness can account for his testimony if there is a denial of marriage by one of the parties and uphold the truth for the benefit of the husband and wife [5].

Regarding the assessment of the qualifications for a marriage witness, Imam Khairul (2019) states that he must be a truthful, just individual or a murshid. This decision is an observation of the law to ensure that their marriage is conducted in accordance with Islamic principles and is legitimate under Shari'ah. Similarly, according to Mukhsin (2019), the majority of scholars believed that a marriage is lawful if it is witnessed by two impartial witnesses, as well as in *maqashid al-syari'ah*, which tries to avert damage and retain the benefit. While the Hanafi priest is still valid if witnessed only by an evil witness[6].

This comparison allows us to draw a conclusion on the permissibility of marital testimony under Islamic law. This investigation will determine that the wedding witness must fulfill specific conditions before he may serve as a witness at the wedding.

## 2. Methods

This research utilizes library research techniques from Sheikh Arsyad, al-Banjari *Kitabun Nikah* and Wahbah Az-Book Zuhaily's of *Fiqh Islam Wa Adillatuh* Volume 9 are the primary sources of information. In this study, the researcher used a qualitative descriptive method to describe the material gathered from fiqh books and other book sources pertinent to this investigation. The collected data or information will next be evaluated in order to draw conclusions from this study.

## 3. Results and Discussion

### 3.1. Sheikh Arsyad Al-biographical Banjari's details

Sheikh Muhammad Arsyad al-Banjari is a famous cleric from South Kalimantan's Martapura. On the evening of Thursday, March 19, 1710, he was born in Lok Gabang. He died on October 3, 1812, at age 105, and was buried in the hamlet of Kalampayan [1], [7].

### 3.2. The characteristics and obligations of a marriage witness

Witnesses are those who watch an event with their own eyes. If there is a disagreement over the occurrence, the witness will be held accountable for what he saw; if he testifies in court, he will be sworn in first. The majority of experts agree that witnesses are among the cornerstones of marriage. However, Maliki scholars maintain that witnesses are not included among the pillars and that their presentation is only sunnah. The requirements involving marriage witnesses in the Islamic law collection (KHI) do not contradict with the opinions of the majority of scholars, as stated in Articles 24, 25, and 26, which are derived from fiqh literature, primarily Syafi'iyah fiqh, according to the majority of experts. Article 25 of the Compilation of Islamic Law (KHI) specifies the legal criteria for a marriage witness as follows: "A man, a woman, or a man and a woman may be nominated as witnesses in the marriage contract."

The following are the provisions for witnesses in marriage according to the four schools of thought: based on Hanafiyyah scholars: Two knowledgeable, mature, independent Muslim witnesses can hear (1 male and 2 females). However, a just individual is not required to serve as a marriage witness; whether the union is seen by two unjust men or by one man and two women, the union is legal. According to Malikiyyah scholars, the marriage contract's pillars do not contain marriage witnesses. According to him, notice is a prerequisite for marriage, and the marriage legislation remains legitimate even if only mad individuals or children are present. According to Hanbaliyyah scholars, there are two masculine, rational, impartial, able-to-speak, and able-to-write witnesses.

### 3.3. Terms of marriage witnesses outlined in Sheikh Arsyad al-Banjari

In the marriage book by Sheikh Arsyad al-Banjari, the conditions for a marriage witness are discussed on pages 27-28 of the chapter titled "Statement of a Marriage Witness."

برمول یغ هارس اکن سکسی نکاح ایت ادا فداث تیگ بلس شرط :

فرتام اسلام، كدوا لاکى ۲، كتيك دوا اوراغ، كأمفة مردهيك، كلیم عاقل كدواث، كأنم بالک كدواث، كتوجه مليهه كدواث مك تياد هارس اوراغ بوت، كدلافن مندغر كدواث، مك تياد هارس اوراغ تولى، كسمبيلن دفة بركات كات كدواث، تياد هارس اوراغ بيسو، كسفوله كدواث سكسى ايت جاغن انق اوله يغ نكاح ايت، (ترسبوة ددالم منهاج هارس انق اكن سكسى اتؤ سترو كدواث اكن سكسى) كسبلس جاغن ادا كدواث باف اوله يغ نكاح، كدوا بلس جاغن سترو كدواث، كتيك بلس عادل كدواث، مك تياد صح اوراغيغ فاسق اكن سكسى نكاح. مك افبيل كورغ ساله سواتو درفد يغ تيگ بلس شرط يغ ترسبوة ايت مك تيادله هارس اكن سكسى نكاح.

”Beginning with the requirement of a marriage witness, there are thirteen conditions:

First Islam, second male, third two people, fourth free, fifth both *aqil*, sixth adult both, seventh sees both so no one needs to be blind, eighth hears both so no one needs to be deaf, ninth can speak both, no one needs to be mute, the tenth both witnesses are not children by the married person (the child must be a witness or the enemy is both a witness).

The marriage witness, according to Sheikh Arsyad al-Banjari, is the individual who witnessed the marriage. Muslim, male, two witnesses, independent (not a slave), both intellectual, both mature, and not blind, he wrote in the Arabic-and-Malay marriage book, which he authored, were the 13 requirements for a marriage witness (as per the Shafi scholars). The following is a literal translation of the Arabic passage in *Fiqh Islam Wa Adillatuhu* by Wahbah az-Zuhaily regarding marriage witnesses.

اتفقت المذاهب الأربعة على أن الشهادة شرط في صحة الزواج

*The four schools have agreed that witnesses are required for a marriage to be legal.*

The majority of scholars agree that witnesses must be present for a marriage to be legal, per the hadith related by Aisha:

لا نكاح إلا بولي وشاهدي عدل. رواه الدارقطني وابن حبان.

*There is no marriage without a guardian and two impartial witnesses (Narrated by Darul Qutni and Ibn Hibban)*

Because with the presence of a witness, it is possible to defend the rights of the wife and children so that they are not oppressed, to prevent allegations against the husband and wife, and to explain the significance of marriage.

ينبغي توافر مقاصد معينة في الشهود وهي أولاً - أن يكونوا أهلاً لتحمل الشهادة وذلك بالبلوغ والعقل، وثانياً - أن يتحقق بحضورهم معنى الإعلان، وثالثاً - أن يكونوا أهلاً لتكريم الزواج

بحضورهم ١٣.

According to Sheikh Wahbah az-Zuhaili, there are certain requirements for a witness: first, one must be able to serve as a witness (already mature and intelligent); second, with the presence of a witness, the significance of a marriage announcement will be understood; and third, when attending a contract, one is able to comprehend it.

In the Islamic book *Fiqh Islam Wa Adillatuhu*, there are nine requirements for a marriage witness, including:

1. Being reasonable (crazy people are not valid witnesses),
2. Baligh (even though he is a *mumayyiz* child, his testimony is not valid, agreed by fiqh experts, if only one person witnessed the marriage contract),
3. Men (requirements according to the number of scholars other than *Hanafiah*. requirements according to the number of scholars other than *Hanafiah*)
4. Freedom (the condition according to the number of scholars other than *Hanabilah*, marriage with 2 male slaves is not valid because the slave does not have guardianship rights for himself and he does not have guardianship rights over others),
5. Fair (agree on the number of scholars other than *Hanafiyah* scholars, the marriage contract is illegal with bad testimony) (agree on the number of scholars other than *Hanafiyah* scholars, the marriage contract is invalid with wicked testimony),
6. Islam (agreed by all scholars, applies if the two prospective husband and wife are both Muslim),

Vision is a necessary according to Syafi'iyah scholars, but not the majority of academics. Can hear (a criteria according to the majority of fiqh experts, since the marriage contract is invalid if the witness is asleep or deaf, as the witness's purpose is not met under these conditions). According to the book of Islamic Fiqh Islam Wa Adillatuhu, if the marriage is seen by two children from the bride and groom or from one of the bride and groom, it is legitimate, unless Hanabilah experts deem the marriage invalid. As both the kid and the adversary have the right to testify, the testimony of the enemy from the bride and groom can also be administered.

## 4. Conclusions

Sheikh Arsyad al-Marriage Banjary's Book stipulates 13 conditions for marriage witnesses; however, Sheikh Wahbah az-Book Zuhaili's of *Fiqh Islam Wa Adillatahu* Volume 9 stipulates nine. According to the Marriage Book by Sheikh Arsyad al-Banjary, the following are the criteria for an Arabic-Malay-reading marriage witness: Muslim, male, two witnesses, independent, both intellectual, both adult, not blind, not deaf, and not dumb. Children of the bride and groom are not authorized, nor is the father of the bride and groom (who is not a descendent of the bride and groom).

Regarding the conditions of this marital testimony, there are parallels and differences between these two passages. The two sources concur that witnesses to a marriage must be sane (it is prohibited for a lunatic to act as a witness), and several Islamic requirements are acknowledged by all experts. In the Marriage Book, the bride and groom's children, the bride's father, and the bride's enemies are not permitted to serve as witnesses; however, in the Book of *Fiqh Islam Wa Adillatuhu*, two children from the bride and groom or from one of the bride and groom, as well as the bride's enemy, are permitted to serve as witnesses.

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