

Laying the Groundwork for a Fatwa on Autism and Marriage: A Conceptual and Legal Exploration in the Malaysian Context

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ABSTRACT

As individuals with autism mature, they eventually reach the age for marriage, influenced by biological desires or cultural practices. In Islamic jurisprudence, autism is linked to the concept of *'awarid ahliyyah* (legal capacity impediments), which refers to obstacles to legal capacity, whether due to natural conditions such as insanity, idiocy, or forgetfulness, or from human factors like ignorance." In the context of the marriage of an autistic person, it is fundamentally subject to the essential pillars of marriage itself. Meanwhile, from the point of view of Islamic family law in Malaysia, it is fundamentally subject to the acts and enactments applied to normal Muslim. The research, utilizing descriptive, inductive, and deductive thematic analysis of library data, concludes that the marriage of an autistic individual is valid, though it may not be ideal, as it fulfills the essential pillar of marriage. In the Malaysian context, Islamic family law applies the same rules to autistic individuals as it does to others, requiring medical expert opinions to assess cognitive capacity. Thus, the opinion of medical experts is crucial in determining the type of autism and the individual's cognitive capacity. If autism does not impair cognitive ability, autistic individuals can form households like any other couple. This aligns with the objectives of the 2007 Disabled Persons Policy, which ensures equal rights and opportunities for the disabled to participate fully in society.

[Ketika individu dengan autisme tumbuh dewasa, mereka akan mencapai usia pernikahan, baik karena dorongan biologis maupun praktik budaya. Dalam kerangka hukum Islam, autisme sering dikaitkan dengan konsep *'awarid al-ahliyyah*, yaitu hambatan terhadap kelayakan atau keabsahan seseorang untuk bertindak secara hukum, baik disebabkan oleh faktor alami seperti kegilaan, kebodohan, atau lupa, maupun oleh faktor manusia seperti ketidaktahuan. Dalam konteks pernikahan individu autistik,

penilaiannya tetap bergantung pada rukun nikah itu sendiri. Dari perspektif hukum keluarga Islam di Malaysia, status pernikahan tersebut pada dasarnya tunduk pada undang-undang dan peraturan yang berlaku bagi individu Muslim pada umumnya. Kajian ini menggunakan metode analisis tematik secara deskriptif, induktif, dan deduktif terhadap data kepustakaan. Pernikahan individu autistik sah secara hukum Islam, meskipun mungkin tidak ideal, karena tetap memenuhi rukun dasar pernikahan. Dalam konteks Malaysia, hukum keluarga Islam memberlakukan ketentuan yang sama terhadap individu autistik seperti terhadap individu lainnya, dengan syarat adanya pendapat dari ahli medis untuk menilai kemampuan kognitif mereka. Oleh karena itu, pandangan ahli medis sangat penting dalam menentukan jenis autisme dan tingkat kemampuan kognitif seseorang. Apabila autisme tidak memengaruhi kemampuan kognitif, maka individu autistik berhak dan mampu membangun rumah tangga seperti pasangan lainnya. Hal ini sejalan dengan tujuan Kebijakan Penyandang Disabilitas 2007, yang menjamin hak dan kesempatan yang sama bagi penyandang disabilitas untuk berpartisipasi secara penuh dalam masyarakat.]

KEYWORDS

Marriage of autistic person, autism, legal capacity impediments, equal rights, Malaysian context

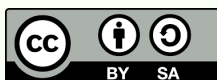
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Introduction

Marriage is an innate part of human nature and is highly encouraged in Islam for those who are capable. Through marriage, the process of reproduction occurs, and thus, human generations continue from time to time. To achieve a successful marriage, it requires components including the existence of a prospective husband and wife. Prospective spouses must be free from defects that could disrupt the stability of the family unit. This is because humans naturally dislike defects that can hinder their daily movements in seeking daily sustenance, such as mental disturbances, madness, and the like.

People who want to marry come in various conditions. Some have physically and mentally healthy bodies, while others might have disabilities in certain parts of their bodies or minds. Among them are individuals who suffer from autism, which manifests in childhood and persists as the child grows into an adult. People with autism also have desires to establish a household just like any other normal individual. The central question is whether they can establish a household while managing their mental challenges.

In connection with this, the purpose of this writing is to explain the rules of marriage conducted by people who suffer from autism from an Islamic perspective

and the application under Malaysian Law as stipulated in the Islamic Family Law of this country. Knowing these rules is crucial so that society to approach marriages involving individuals with autism with appropriate caution. If such a marriage is to be conducted, the community needs to know which levels of autism are considered still viable for marriage, and what proactive measures should be taken by the families to maintain such a marriage.

Existing scholarship on autism within Islamic discourse reveals a growing interest in understanding the condition from legal, social, and theological perspectives. However, a review of available literature indicates a notable gap in research focusing specifically on the issue of marriage among individuals with autism from the standpoint of Islamic law, particularly in the Malaysian context. Most academic works addressing autism within Islam have concentrated on broader questions of religious obligation, legal accountability, and social inclusion. Ab. Rahman et al.¹ (2015) explores how individuals with disabilities engage with acts of worship. Kusrin, Z. M. et al.² (2019) explored legal challenges faced by autistic individuals, while Manalu, A. P. et al.³ (2013) focused on the prevalence and causes of autism. Ibrahim et al.⁴ (2022) and Razif⁵ (2018) discussed the legal frameworks that govern their participation in community life. Such discussions demonstrate that Islamic jurisprudence has long recognized the moral and legal status of persons with cognitive or physical impairments, yet the scope of analysis rarely extends to their marital rights or capacities. Despite Autisme valuable contributions, a clear gap remains in the literature concerning the delve into marriage involving individuals with autism, specifically from the perspective of Islamic law vis-à-vis its application concerning the Malaysian legal context. This research intends to fill this gap by offering a vis-à-vis doctrinal analysis of the legal implications context . for the marriage of persons with autism. Unlike offering studies that often involve field research or sociological and legal implications, this work will focus on traditional Islamic legal texts, classical juristic opinions, and contemporary Islamic scholarship to provide a focused legal analysis.

The article begins by emphasizing the significance of marriage in Islam as a natural and highly encouraged institution, that contributes to the continuation of human generations. The discussion is particularly relevant in the Malaysian context, where Islamic family law governs the personal affairs of Muslims through both deferral and state legislation. The central question, therefore, is how the Malaysian Syariah legal framework responds to the marital aspirations of

¹ Ab. Rahman et al., *Fiqh Ibadah Orang Kelainan Upaya*. (Nilai: Universiti Sains Islam Malaysia, 2015).

² Zurida Kusrin et al., "INDIVIDU AUTISME DAN PERLAKUAN MELANGGAR UNDANG-UNDANG", *Kanun*, 31, no. 2 (2019): 219-237.

³ Manalu, et al., FAKTOR-FAKTOR KEJADIAN PENYAKIT AUTISME ANAK DI BINA AUTIS MANDIRI PALEMBANG. Syifa' MEDIKA: *Jurnal Kedokteran dan Kesehatan*, 4(1) (2013): 16-21.

⁴ Mohd Azim Hakim Ibrahim et al., "AUTISTIK DARI PERSPEKTIF UNDANG-UNDANG DAN HUKUM ISLAM," *Journal of Quran Sunnah Education and Special Needs*, 6 (2022): 47-64.

⁵ Mohamad Razif, 'Bayan Linnas Siri Ke - 150: Fiqh Dan Penyelesaian Isu Autisme' (2018), <https://Muftiwp.Gov.My/>, accessed on February 16, 2023.

individuals with autism, especially in light of the challenges posed by their condition. While Islamic jurisprudence classifies autism under the broader category of mental disturbances (*'awarid al-ahliyyah*), potentially affecting one's legal capacity to marry, current Malaysian enactments such as the Islamic Family (Federal Territories) Act 1984 and state enactments like the Perlis Islamic Family Law Enactment 2006 do not explicitly address this issue. This raises significant questions regarding how legal capacity is addressed in practice and the extent to which Syariah Court judges and medical experts are involved in such determinations. By situating this analysis within Malaysia's dual-level Syariah legal system, the article seeks to evaluate the adequacy of current laws and the potential for interpretive reform, including the role of fatwa issuance in addressing legal gaps.

The article reviews the existing literature on autism, highlighting the gap in research specifically related to marriage for autistic individuals from an Islamic law perspective. It delves into the legal framework of marriage in Malaysia, particularly within Islamic family law, identifying the absence of explicit provisions regarding marriages involving autistic individuals. By exploring various cases and legal provisions, the article discusses the discretionary power of Syariah Court judges in addressing legal ambiguities, especially when dealing with individuals who have disabilities such as autism.

The discussion also covers the importance of expert medical advice, particularly from psychiatrists, in evaluating the mental and cognitive capabilities of autistic individuals. It argues that while autistic individuals may fulfil the essential pillars of marriage under Islamic law, expert opinions are crucial in determining their capacity to manage marital responsibilities.

The expected outcome of this article is a comprehensive understanding of the legal and religious framework surrounding marriage for individuals with autism from an Islamic perspective. This include addressing legal gaps, providing jurisprudential insights, emphasising the role of expert consultation and proposing legal dan religious solutions. By filling a gap in the academic and legal discourse on this topic, the article aspires to contribute to the development of more inclusive laws that uphold the rights of individuals with autism in accordance with both Islamic principles and broader legal frameworks like the Persons with Disabilities Act 2007.

Autistic Individual as Legal Subject in Fiqh

Autism is directly related to barriers of liability or competency or also being discussed under *'awarid ahliyyah* in *Usul Fiqh*. The barriers are of two types: first, barriers due to natural cause, and second, barriers resulting from human efforts. Natural barriers are those established by the lawgiver (*Shari'*), beyond human control or interference. Barriers due to human efforts are those in which human may have role and could interfere with. It involves two types: first, those arising from oneself, such as ignorance, intoxication, and jest. and second those imposed

by one person onto another, or duress.⁶ The natural barriers related to the matter being discussed are:

a. Insanity

Insanity refers to a defect in reason, causing inconsistency and non-alignment between actions and words with the methodology of a sound mind, except on rare occasions. It involves two types namely innate and emergent. By innate, it means someone has been insane from birth. Meanwhile emergent means a person become insane after reaching the age of puberty. Both type of insanity mentioned above does not negate a person from any religious obligations.

Insanity does not negate liability (*dhimmah*), because liability is established following one's birth i.e. when there is life there is liability. However, it affects one's capacity to perform obligations (*ahliyyah al-wujub*), since capacity is established based on reason and discernment. An insane person is regarded as having impaired reasoning and a lack of discernment. Therefore, their status is equivalent to that of a child who lacks discernment in all their actions and behaviours. In the context of worship, an insane person is not obliged to perform the obligation to worship as his/her condition nullifies any acts of worship until he/she regains sanity. On the other hand, if the insanity is intermittent, even if religious duties cannot be performed during episodes of insanity, they can be resumed once the individual has recovered, without any difficulty.

b. Dumbness

Dumbness refers to a deficiency in reasoning, causing a person to having difficulty in understanding things. This results in incoherent conversations and impaired judgment. Sometimes, it may also cause a person losing the ability to discern and differentiate between good and bad. Dumbness is of two types:

First: A type of "dumbness" that results in the loss of discernment and the ability to differentiate between good and bad. Individuals affected by this are akin to the mentally ill person. They lose the capacity to perform (*ahliyyah al-'ada'*) duties but not the capacity to fulfil obligation (*ahliyyah al-wujub*). In terms of the law, they are treated as if they are mentally ill. Second: A type of "dumbness" where the individual could discern and differentiate between right and wrong. However, their discernment is not at par with mentally sound individuals. Such a state of "dumbness" places a mature individual at a legal status similar to a discerning child. Such individuals have a reduced capacity to perform their religious obligations, but they are not subjected to punishments. They are obligated to fulfil rights involving property, and this can be overseen by the guardian, such as guarantees for damaged goods. Their decisions are valid if benefiting them but void if causing harm. Their decisions rely on the consent of their guardian, especially when there is a choice between benefit and harm.

⁶ Abd al-Karim Zaidan, *Usul al-Fiqh*, (Beirut: Mu'assasah al-Risalah, 1987), 102-101.

c. Forgetfulness

Forgetfulness refers to an impediment that befalls a person. Due to forgetfulness, one does not remember what has been obligated upon them. It does not negate the capacity to perform (*ahliyyah al-‘ada’*) and capacity to fulfil obligation (*ahliyyah al-wujub*) because there is still capability as their intellect remains intact. They are not given excuses concerning the rights of slaves, as these rights need to be respected due to necessities. Forgetfulness does not eliminate respect. Therefore, if someone damages another person’s property in the state of forgetfulness, they are obliged to pay the damages. On the other hand, from the point of Allah’s rights, forgetfulness is considered a form of excuse in terms of accountability for sins. In other words, a forgetful person is not sinful. A hadith narrated by Ibn Abbas RA explains that “Allah has pardoned for me my nation for mistakes, forgetfulness and that which they have been forced to do under duress”.⁷

In worldly law, forgetfulness sometimes becomes an excuse, and the worships performed are not invalid. Meanwhile, among the artificial impediments related to this discussion is ignorance. Ignorance means dealing with wealth in a manner different from Shariah requirements and reason, even though the intellect exists. Ignorance does not negate eligibility. A person who is ignorant possesses complete eligibility and is required to fulfil all religious obligations. However, ignorance affects certain legal aspects. This effect can be seen in the prevention of wealth from being managed by ignorant children. Scholars agree that an ignorant child are not allowed or cannot be entrusted to managing their wealth as mentioned in al-Nisa’ 4:5. However according to al-Nisa’ 4:6, wealth can be entrusted to them after they reach the age of puberty and maturity. When an individual reaches both physical maturity and intellectual discernment, they may then be deemed qualified to assume responsibility for their own property. This principle reflects the broader Islamic view that maturity (*rushd*) is not determined solely by chronological age but by the individual’s capacity for sound reasoning and prudent decision-making.

Classical jurists across various schools of Islamic law—such as the Shāfi‘ī, Mālikī, Ḥanbalī, and Ja‘farī traditions, as well as scholars like Imām Abū Yūsuf and Muḥammad al-Shaybānī—generally agree that the attainment of maturity must be assessed based on both physical and cognitive development rather than age alone.⁸ In line with this principle, Islamic jurisprudence recognizes that the validity of a marriage depends on fulfilling several essential elements, known as the pillars of marriage (*arkān al-nikāḥ*), which form the legal and moral foundation of the marital contract.⁹

In Islam, a marriage is considered valid if it fulfils several essential elements, known as the pillars of marriage, which include:

⁷ Ibn Majah, Abu Abdillah Muhammad bin Yazid, Sunan Ibn Majah. (Dar al-Risalah al-‘Alamiyyah, 2004), 2045.

⁸ Zaydān.

⁹ Zaidan, 102-110.

1. The marriage vow (*akad*)

The necessary components of the marriage vow/contract include the *ijab* (offer) and *qabul* (acceptance). The utterance of *ijab* is of a similar kind as "I marry you" or "I offer my daughter to you in marriage," while *qabul* can be phrases such as "I take her in marriage" or "I agree to marry her." Interestingly, the order can be reversed; for instance, a prospective groom might say, "I wish to marry your daughter" or "marry me to your daughter." Subsequently, the guardian (*wali*) may reply with "I give her to you in marriage." The exact wording does not need to be uniform in the marriage contract. So, if the guardian says, "I offer her in marriage," and the groom replies, "I accept this marriage/union," the contract is still valid since the underlying intent is clear and achieved.

The marriage vow is required to be using phrases that mean "marrying" or "to wed", or a combination of these phrases. This is because both are linguistically and religiously established terms to mean concluding a marriage contract. Both terms are also used in the Quran and prophetic traditions (*al-Sunnah*). One may officiate a marriage using a language other than Arabic so long that the essence of the marriage contract and the intention to marry is present. However, officiating a marriage contract using metaphorical phrases is completely invalid. For instance, if someone says, "I make my daughter lawful to you", it is considered metaphorical because such phrasing requires intention, and that intention is a matter of the heart that could not be witnessed by others.¹⁰

A marriage contract (*nikah*) contracted in writing is also invalid because it is considered metaphorical, whether or not both the bride and groom are present at the ceremony. Nevertheless, a marriage contract is valid if officiated using sign language that could be comprehended by those who are present and not exclusive to those experts in sign language alone. In this case, a marriage contract uttered using sign language is considered similar to a contract using explicit statement. However, if that statement is concealed and could not be comprehended except by those skilled in sign language alone, the marriage contract is not valid, because it is considered metaphorical. In addition, the statement of offer must be immediately followed by the statement of acceptance. A short pause for uttering the *basmalah* (saying 'In the name of God'), praising, giving sermon, taking a breath, or sneezing are permissible. A long interval is not permissible for fear that it could be a sign of refusal to accept from the other party.

To ensure the validity of the contract, the guardian or husband must maintain their eligibility and competence until the acceptance (*qabul*) is made. If both lose their eligibility due to situation such as becoming insane or faint prior to the statement of acceptance is made, the offer (*ijab*) is considered null, and subsequently, the marriage contract is not valid because the eligibility and competence lapsed before the contract is concluded.¹¹

¹⁰ Muhammad al-Zuhayli, *Mawsu'ah al-Fiqh al-Islami al-Mu'asir*, (Dimasyq: Dar al-Maktabi, 2007), 4: 53-54.

¹¹ al-Zuhayli, 4: 55.

2. Husband and wife

The woman to be married must be specified during the solemnisation ceremony. Otherwise, the contract will be void, as the primary purpose of the marriage is to identify the bride and groom, either by mentioning their names, giving a sign, or describing in a particular way about the groom or bride to be married. Therefore, if someone says, "I marry you to one of my daughters," that marriage is not valid. However, if someone says, "I marry you to my daughter," and at the same time, he only has one daughter, the marriage is valid. The bride is not required to see the groom before the contract or during the contract, but it is recommended for the groom to see the bride.

The husband must not be prohibited from marrying the bride such as due to blood ties, kinship, or milk kinship ties. The groom must also be clearly identified as this is the purpose of marriage that is a union between specified man and woman. It is mandatory to specify with certainty the groom's name, by sign, or by description of characteristics that distinguish him from others during the solemnisation ceremony.¹²

Recent updates see Muslim jurists as adding another condition requiring the bride and the groom to reach certain age for them to be eligible to marry. The approach that has been adopted by several Islamic countries into their family law code stipulate for example, that the groom should be at least 18 years, and the bride should be at least 17 years. However, provided that permission has been granted by the court (qadi), a bride aged 13 may enter into a marriage contract if she is capable of bearing the responsibilities of marriage. The age requirement in the law aims at achieving public interest, acknowledge the changes of time, and to prevent household damages due to marrying at a very young age.¹³

4. Guardian (*wali*)

In Islamic jurisprudence, guardianship (*wilāyah*) constitutes one of the essential pillars of marriage (*arkān al-nikāḥ*). The concept of guardianship reflects the legal principle that a woman's marriage must be conducted through the authorization of a guardian (*walī*), as she is not permitted to contract the marriage independently. This rule derives from Qur'anic verse al-Baqarah 2:232, which underscores the role of the guardian in overseeing the marital process and ensuring that the union takes place under conditions of mutual respect and propriety. The instruction also serves to prevent coercion or obstruction of a woman's right to marry a suitable partner once proper conditions are met.

Classical jurists, notably al-Shāfi'ī, interpret this injunction as clear evidence for the necessity of guardianship in marriage. The logic underlying this interpretation is that if guardianship were not a legal requirement, the question of a guardian's refusal or consent would carry no juridical relevance. Thus, the guardian's approval functions as both a procedural and moral safeguard within the institution of marriage.

¹² al-Zuhayli, 4: 58-59.

¹³ al-Zuhayli, 4: 60.

The Prophetic tradition in Sahih: al-Tirmizi:1096, further reinforces this framework by establishing that a valid marriage requires the presence and consent of a lawful guardian. Jurists explain that this requirement is intended to uphold the woman's welfare, particularly in situations where emotional vulnerability might lead to imprudent decisions. In this sense, the guardian serves as a protector of her interests, ensuring that the marriage is entered into with deliberation and dignity.

The purpose of instituting guardianship in marriage is to protect women, as women could be easily swayed by emotions in making decisions including marriage. The situation is similar to spendthrift. If a woman contracts her own marriage, the marriage is not valid as mentioned in al-Tirmizi:1021.

If a marriage were to be concluded without the consent of a guardian, the majority of classical scholars consider it legally invalid. However, if the marriage were consummated, the woman would still be entitled to her dower (*mahr*) as recognition of the act of intercourse having occurred under the assumption of legality. In circumstances where a guardian is absent or in dispute, Islamic legal doctrine authorizes the ruler or judge (*sulṭān or qāḍī*) to assume the role of guardian, thereby ensuring that the woman's right to marriage is not unjustly denied.

6. Two Witnesses

The marriage contract (*'aqad*) is a mutual agreement that takes place through offer (*ijab*) and acceptance (*qabul*). However, the Sharia mandates the presence of two witnesses, to ensure the protection of the woman's modesty and to prevent from any potential denials or disputes regarding the marriage contract that could lead to divorce and etc.¹⁴ Based on the elaboration above, marriage of an individual with autism is valid as it meets the four essential pillars. Nevertheless, such a marriage might be facing extra challenges.

Autism in Malaysian Law

Autism has increasingly come under the spotlight, particularly among authorities, following criminal cases involving individuals with autism. Much of the existing literature on autism focuses on specific issues, such as the Standard Operating Procedures (SOPs) for the arrest, investigation, and prosecution of autistic individuals involved in criminal offenses.¹⁵

In Malaysian law, individuals with autism fall under the category of persons with disabilities (OKU), as defined in the Persons with Disabilities Act 2008 (Act 685). While Act 685 affirms the government's responsibility to protect and

¹⁴ al-Zuhayli, 4: 68

¹⁵ Zuliza Mohd Kusrin, et al., "INDIVIDU AUTISME DAN PERLAKUAN MELANGGAR UNDANG-UNDANG," *Kanun: Jurnal Undang-Undang Malaysia* 31, no. 2 (2019): 219-237, Zuliza Mohd Kusrin et al., "CADANGAN PROSEDUR OPERASI STANDARD (SOP) TANGKAPAN DAN TAHANAN INDIVIDU AUTISME UNTUK PEGAWAI PENGUATKUASA AGAMA (PPA) DI MALAYSIA," *Journal of Contemporary Islamic Law* 7, no. 1 (2022): 52-61.

promote the rights of disabled persons—including their right to participate fully in society—it is primarily implemented within the civil law framework. The Act provides for equal access to education, employment, healthcare, and legal protection, yet it does not explicitly address matters related to marriage or legal capacity within the Syariah legal system. This creates a disconnect between civil disability protections and Islamic family law, as the two systems operate independently. Although individuals with autism may be protected under Act 685 in areas such as education or workplace inclusion, their capacity to marry is still governed by the Syariah courts, where legal determinations are rooted in Islamic jurisprudence. The absence of clear mechanisms to integrate the protections of Act 685 into Syariah adjudication raises important questions about whether current laws adequately uphold the marital rights of disabled Muslims. This gap points to a growing need for interpretive guidance—potentially through fatwa or judicial policy—to harmonise both frameworks.

Marriage among Muslims in Malaysia is governed by both Federal and State laws. In general, these two sets of laws are similar, particularly in relation to marriage procedures, divorce, child custody, alimony, and other related matters. However, certain States provide more detailed procedures and requirements for initiating a marriage contract. Despite these similarities, both the Federal Islamic Family Law Act and the various State Islamic Family Law Enactments in Malaysia do not explicitly address marriages involving individuals with autism. For example, the Islamic Family Law (Perlis) Enactment 2006 [Amendment 2008] in PART II on Marriage outlines provisions such as the minimum age of marriage (Section 8), relationships that prohibit marriage (Section 9), null and void marriages (Section 11), and marriages that cannot be registered (Section 12). Similarly, the Islamic Family Law (Federal Territories) Act 1984 (Act 303) does not include specific provisions related to marriages involving autistic individuals. In fact, even though Act 303 is federal legislation, its provisions are largely similar to those of other State enactments.

While the validity of marriage is closely tied to an individual's legal capacity (*ahliyyah*), and developmental disorders including conditions akin to autism are recognised in classical Islamic jurisprudence as part of *'awāriḍ al-ahliyyah*, these concept, despite offering a theoretical framework for assessing capacity, remains underdeveloped in their practical application within the Malaysian Syariah legal system. Existing enactments, such as the Islamic Family Law (Federal Territories) Act 1984 and state enactments like those in Perlis and Selangor, do not provide procedural guidelines for determining legal capacity in cases involving persons with autism or intellectual disabilities. In the absence of codified standards, Syariah judges must rely on discretion, often without specific training in neurodevelopmental assessment. This creates legal uncertainty and potential inconsistency in rulings. These gaps underscore the need for a structured legal or interpretive mechanism—such as a fatwa or standard operating procedure—to guide courts in determining marital eligibility for persons with autism in a manner that respects both Shariah principles and contemporary medical understanding.

In the absence of explicit provisions regarding autistic couples, the current legal framework may still provide a potential solution through the discretionary

powers of the Syariah Court judges. For instance, Section 18 of the State of Perlis Islamic Family Law Enactment 2006 [Amendment 2008], which pertains to 'Reference to and Actions by the Syariah Judge,' offers a mechanism for judges to evaluate and grant leave or deny marriage applications based on their discretion. However, subsection (1) specifies that court approval is required only in certain cases, such as: (a) if one party to the marriage is below the minimum legal age as outlined in Section 8; (b) if the prospective bride is a widow as described under subsection 14(3); or (c) if the prospective bride lacks a guardian by lineage according to Islamic law. While this provision grants the judge authority to assess exceptional cases, it does not explicitly cover cases involving disabilities, including neurodevelopmental conditions like autism as grounds for judicial intervention. In practice, this legal silence leaves judges without formal criteria for determining whether an autistic individual is capable of entering a valid marriage contract. In today's context, this legal omission raises important procedural concern, as judges lack statutory guidance for determining the mental and legal capacity of autistic individuals to consent to marriage. As a result, there remains a legal lacuna in addressing such cases under Malaysian Islamic family law. In light of this, there is a growing need for supplementary legal instrument such as fatwas, administrative guidelines, or judicial circulars, that could support judges in exercising their discretion more uniformly and with greater clarity, particularly in cases involving autism.

Although statistics indicate a notable and consistent rise in autism diagnoses in the country, gaps remain in the relevant legal frameworks.¹⁶ At the legislative level, there has been no recorded initiative by state religious authorities or the Department of Islamic Development Malaysia (JAKIM) to amend existing family law enactments to incorporate disability-specific provisions. The absence of explicit provisions leaves the courts with the potential to rely on the discretion of the judge when handling such cases. In exercising this discretion, judges may consult relevant experts, such as psychiatrists, who could evaluate the mental as well as behavioural condition of the autistic individual, including aspects like speech, cognitive function, and self-management abilities. In this vacuum, fatwa becomes a potentially responsive and timely tool as it may serve to address urgent socio-legal questions in the absence of statutory clarity especially involving complex questions of consent, authority of *wali* and the assessment of *ahliyyah* for persons with autism.

Understanding Autism in the Malaysian Legal and Social Context

Autism is a neurological and developmental disorder that typically emerges in early childhood, affecting an individual's behavior, communication, and social interaction. In Arabic, it is referred to as al-Tawahhud (التوحد) or al-Zatawiyyah (الذاتوية), and the term is derived from the Greek autos, meaning "self," introduced

¹⁶ Ibrahim et al., "AUTISTIK DARI PERSPEKTIF UNDANG-UNDANG DAN HUKUM ISLAM," *Journal of Quran Sunnah Education and Special Needs*, 6 (2022): 47-64.

by psychiatrist Paul Bleuler in 1912. Individuals with autism often display intense focus on specific interests and may struggle with interpersonal relationships and verbal.¹⁷ From a legal standpoint, Malaysian law classifies individual with autism as Persons with Disabilities (OKU) under the Persons with Disabilities Act 2008 (Act 685). According to Section 2 of the Act and international definitions by the World Health Organisation (WHO) and the United Nations (UN), autism is recognized as a long-term sensory impairment that may limit full and effective participation in society.¹⁸

Based on the Registration Guidelines for Persons with Disabilities (PWD), autism is identified through difficulties in communication, social interaction, and behavioural regulation. Medically, autism is commonly categorised into several types, including *Autistic Disorder* – marked by delays in communication and intellectual functioning; *Asperger Syndrome* – with milder symptoms and no intellectual disability; *Pervasive Developmental Disorder – Not Otherwise Specified* (PDD-NOS; also known as atypical autism) – with traits overlapping both previous types; and *Childhood Disintegrative Disorder* – marked by significant regression after normal development. These conditions are often grouped into high-functioning and low functioning autism, based on cognitive and social abilities.¹⁹

The causes of autism remain uncertain, though genetic factors are strongly suggested by several studies²⁰. Environmental contributors include parental age, prenatal infections, premature birth, oxygen deprivation, exposure to heavy metals, air pollution, and toxins such as pesticides.²¹ Neurological dysfunction in areas such as the cerebellum and limbic system has also been linked to the condition. Understanding autism within this medical and legal framework is essential when evaluating issues of legal capacity and social participation – particularly in sensitive matters such as marriage, which involves complex assessments of cognitive ability, consent, and social functioning.

Concluding Remarks

Based on the above discussion and various juristic opinions, it is suggested to classify individuals with autism under the broader category of legal capacity impediment (*‘awāriḍ al-ahliyyah*). Their behaviour, which may deviate from normative expectations, are recognised and, in some cases, exempt from certain religious and legal obligations. This perspective is supported by a well-known hadith, narrated by al- Janbi. In which he recounts an incident where a woman who

¹⁷ Kamus Dewan Bahasa dan Pustaka. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2007); Mohd Razif.

¹⁸ Azman Ab. Rahman et al., 2015 Azman Ab. Rahman et. al, *Fiqh Ibadah Orang Kelainan Upaya*. (Nilai: Universiti Sains Islam Malaysia, 2015).

¹⁹ Mohd Razif, Razhiyah, K. A., *Apa Itu Autisme?* (Kuala Lumpur: PTS Professional Publishing Sdn. Bhd. 2008).

²⁰ Razhiyah; Manalu et al.; Nurjannah, Penyandang, “AUTISME SEBAGAI SUBJEK HUKUM DALAM KONTEKS TAKLIF,” *SHIBGHAH: Journal of Muslim Societies* 2, no. 2 (2020): 171-187.

²¹ Hasnah Toran, *Autisme: Panduan Ibu Bapa*, (Lunas, Kedah: Penerbitan Riyad, 2017); Kusrin et al., 2019.

had committed adultery was brought before Umar, who then ordered her to be stoned. However, when Ali encountered the situation, he intervened, taking the woman away and eventually freeing her. Upon hearing this, Umar summoned Ali. Ali responded, saying, *“O Amir al-Mu'minin, you know that the Prophet Muhammad has said that there are three whose actions are not recorded: a child until they reach puberty, a sleeper until they wake, and a person of unsound mind until they regain reason.”*

The woman in question is from the tribe of Bani Fulan. It is possible that the man who had relations with her did so while she was not in her right mind.” Umar then replied: “I was unaware of this.” Ali responded, “Nor was I.” This account can be found in the narrations of Abu Dawud (4402), Ibn Majah (4402), and al-Bayhaqi in al-Sunan al-Kubra (17672). This narration highlights the importance of mental capacity in assessing responsibility under Islamic law.

Similarly, individuals with autism possess sexual desires and may wish to marry, just like any other person. Their marriage is valid as long as it fulfils the fundamental requirements of marriage, even if the circumstances may not be ideal. In the context of Islamic family law in Malaysia, the key issues regarding marriage involving individuals with autism are mental capability and self-management. In Malaysia, Islamic family law requires that both parties to a marriage be of sound mind (*aqil*) and not legally incapable or fool (*safih*). This places mental capacity and the ability to manage one’s affairs at the heart of the marriage approval process. While the discussion on autism suggests that individuals with autism may fulfil the Islamic law requirements for marriage, the assessment must be made by medical professionals particularly psychiatrist and approved by Syariah court’s judge. These assessments play a crucial role in evaluating an individual’s cognitive ability, understanding, and readiness for marriage. In general, if an autistic individual is found to have sufficient cognitive and emotional awareness; able to make decisions, understand commitments, and function independently, they should be granted the same opportunity to marry as anyone else. This approach not only aligns with the broader objectives of Islamic law, but also reflects the spirit of the Persons with Disabilities Act 2008, which promotes equality and full participation in society for all persons, regardless of disability.

In closing, the issue of marriage for persons with autism must be approached with both legal clarity and human empathy. While current Syariah legal provisions in Malaysia remain silent on this matter, this preliminary analysis seeks to establish a conceptual foundation for understanding the issue through the lens of Islamic jurisprudence, contemporary disability law, and court practice. Recognising the growing need for legal interpretation and structured guidance, this paper calls attention to the possibility of fatwa issuance as a responsive tool within the Malaysian context. A forthcoming paper will build on this foundation by examining the application of these ideas through detailed juristic analysis and empirical insights, particularly in light of the fatwa recently issued in the state of Perlis.

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