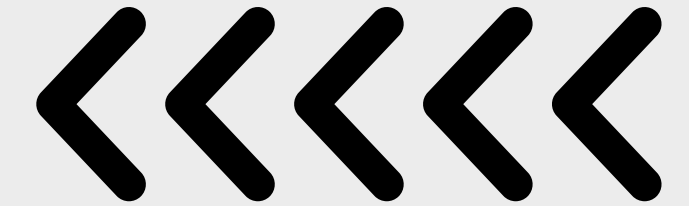




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GROUP 6

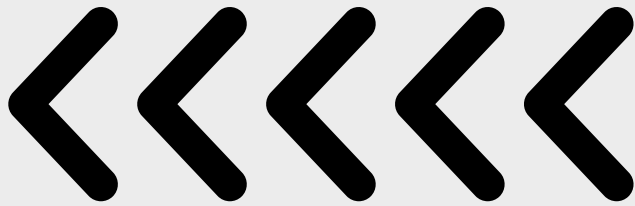
# ISSUES RELATED TO MUNAKAHAT

- Breach of contract to Marry
- Marriage Without the Consent of a Wali

USTAZ AHMAD MURSHIDI



# GROUP MEMBERS



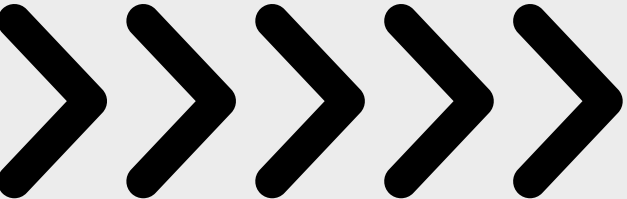
MOHAMMAD IKRAM BIN ZAKARIA  
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# INTRODUCTION

Marriage is a sacred bond prescribed in Islam to legalize the relationship between a man and a woman, as well as to ensure the continuation of human lineage in an orderly and dignified manner. It is not merely a social contract, but also an act of worship that carries spiritual, social, and legal implications (Al-Qaradawi, 1998). In Islam, marriage is seen as a means to preserve dignity, honor, and social harmony, as advocated by the Prophet Muhammad (peace be upon him) in his saying narrated `Abdullah:

**We were with the Prophet (ﷺ) while we were young and had no wealth. The Messenger of Allah (ﷺ) said, "O young people! Whoever among you is able to marry, let him marry, for it helps him lower his gaze and guard his modesty (private parts from unlawful sexual acts) and whoever is not able to marry should fast, as fasting diminishes his sexual power."**

However, there are several emerging issues and points of confusion within the community regarding marriage, such as breach of contract to marry and marriage without consent of wali. A breach of contract to marry arises when an individual who has made a clear promise or engagement to marry fails to fulfil that promise without reasonable justification and marriage without consent of wali is a marriage that conducted without the approval or presence of a wali. Both issues must be taken seriously by the relevant authorities to prevent misunderstanding and uncertainty among the public.



# ISSUE 1: BREACH OF CONTRACT TO MARRY

## THE CONCEPT OF A CONTRACT TO MARRY (WA'D AL-ZAWAJ) IN ISLAM

### **Consensus of Scholars (Ijma' Ulama):**

In Islam, a promise to marry (wa'd al-zawaj) is a form of commitment that reflects a person's sincere intention to enter into a marriage contract in the future. Although this promise carries moral and ethical weight, it does not constitute a valid marriage contract, as it does not fulfill the essential pillars and conditions of nikah. such as the formal offer (ijab), acceptance (qabul), and the presence of witnesses.

This promise is considered an ethical encouragement that expresses good intentions, but it does not carry legal consequences such as rights to maintenance (nafaqah) or inheritance. Wahbah al-Zuhaili explains that while such a promise is not legally binding, it should still be honored, as promises in Islam are regarded as a trust and moral responsibility (amanah) (Fiqh al-Islami wa Adillatuhu, 1985).





## ISSUE 1: BREACH OF PROMISE TO MARRY



### THE CONCEPT OF A CONTRACT TO MARRY (WA'D AL-ZAWAJ) IN ISLAM

#### Views of the Four Madhhabs

Shafi'i and Hanbali schools hold that gifts given during engagement become the woman's property and cannot be reclaimed, except in the case of a father reclaiming from his child, as supported by a hadith of the Prophet ﷺ. The Hanafi school permits reclaiming such gifts unless the items have been consumed or destroyed. The Maliki school differentiates between who breaks the engagement: if the woman withdraws, she should return the gifts; if the man withdraws, the gifts belong fully to the woman. Regarding compensation, the Maliki school permits claims for damages where actual loss occurs due to reliance on the marriage promise. This view is supported by Dr. Wahbah al-Zuhaili, who argues that compensation aligns with general Shariah principles, such as the prohibition of deceit and the obligation to redress harm caused by wrongful acts. Although classical jurists did not provide detailed provisions on compensation for broken promises to marry, modern scholars see it as consistent with Islamic values of justice and accountability. As Allah commands in Surah al-Isra (34): "And fulfil [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned."