GUARDIANSHIP AND CUSTODIANSHIP IN MINORS' DIGITAL TRANSACTIONS

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Abstract - This study addresses one of the issues related to the application of the guardianship and judicial guardianship system to minors' digital transactions in light of the transformations brought about by the digital revolution, as minors are no longer merely recipients of these transactions but have become active participants in the digital environment through the creation of accounts, concluding digital contracts, and managing digital assets. Accordingly, this research aims to clarify the extent to which traditional jurisprudential rules regarding the legal capacity of minors align with these transactions and to analyse the suitability of modern legislation, particularly in light of the laws of the United Arab Emirates. This research relied on an analytical approach to study legal and jurisprudential texts, a comparative approach between Islamic jurisprudence and modern laws, as well as an inductive approach through the analysis of practical cases. The research showed that jurisprudential rules possess the flexibility to be applied to the digital environment, but they require legislative development that takes into account their specific characteristics in the digital environment, particularly regarding the speed of transactions and the difficulty of reversing them. The research also recommended strengthening mechanisms to verify the guardian's consent to these transactions, enacting legislation to regulate minors' digital accounts, and requiring digital platforms to implement effective safeguards to protect minors' rights.

Keywords - Guardianship, Custodianship, Minor, Digital Transactions, Capacity, Legal Liability, Data Protection

I. INTRODUCTION

The importance of having a guardian or custodian in a minor's life is evident, as minors lack full legal capacity and are unable to assess the consequences of their actions, particularly in the digital environment, which is fraught with risks and where it is easy to incur financial or legal obligations. The guardianship and supervision system constitutes a fundamental legal mechanism for protecting minors in the digital environment and ensuring they are not exploited, which necessitates a re-examination of this system in light of recent digital developments.

1.1 Problem of Study

This study examines the extent to which traditional provisions regarding guardianship and custody apply to minors' digital transactions, and assesses whether these provisions are sufficient to provide legal protection for minors in the digital environment, given the unique nature of this environment, which is characterized by speed, the difficulty of supervision, and the involvement of multiple parties.

1.2 The Importance of Study

The significance of this study lies in the fact that it addresses an important issue affecting a key segment of society—minors—in light of the growing reliance on digital media. It is also significant in that it highlights the role of legislation in protecting minors and clarifies the extent to which jurisprudential and legal principles can keep pace with technological advancements.

1.3 Methodology

To achieve the objectives of this study, the study adopted a descriptive-analytical approach, reviewing legal and jurisprudential texts related to the acts of minors and analysing them in light of the digital environment. A comparative approach was also used to highlight the points of agreement and disagreement between Islamic jurisprudence and modern legislation, particularly within the framework of the laws of the United Arab Emirates and relevant international regulations.

II. THE NATURE OF GUARDIANSHIP AND CUSTODIANSHIP DATA

The system of guardianship and judicial guardianship is considered one of the most important legal and jurisprudential frameworks aimed at protecting and safeguarding the interests of minors, particularly in light of their lack of legal capacity and their incomplete awareness and understanding of the risks to which they may be exposed. This system has gained increasing importance in the digital age, as minors have become active participants in a complex electronic environment characterized by rapid transactions, requiring a re-examination of traditional concepts of guardianship and their applicability to this domain (Zl-Zuhayli, 1997).

Guardianship is defined as "a legal authority granted by law or Sharia to a specific person, enabling them to manage the affairs of a minor—whether regarding the minor's person or property—in a manner that serves the minor's best interests and prevents harm" (Al-Sarkhasi, 1993). Guardianship is based on a solid legal and Sharia foundation, embodied in the

Qur'anic texts and the objectives of Islamic law, which emphasize the necessity of protecting the minor and his or her property, as well as in the legal rules governing legal capacity and acts (Al-Shirazi, 1995). In Islamic jurisprudence, guardianship is based on a fundamental principle: the realization of benefit and the prevention of harm, whereby the guardian is only entitled to act within the limits of what benefits the minor himself (Al-Sanhuri, 1952). Furthermore, this authority is not absolute but is subject to restrictions, the most important of which are the obligation to act in the minor's best interest and the prohibition against exposing the minor's assets to risk or waste. As for modern laws, this concept has been incorporated into civil legislation, which stipulates that the actions of a minor are subject to the guardian's supervision, particularly in transactions that may involve financial risks or legal obligations (Ibn Qudamah, 1997).

In the digital environment, guardianship expands to include new fields, such as:

1. Managing the electronic accounts of the minor.
2. Supervising the digital wallets of the minor.
3. Approving the processing of the personal data of the minor.

This reflects the evolution of the concept of ownership itself to include digital assets, which imposes a greater and more complex role on the guardian that goes beyond the traditional concept.

Guardianship is considered a complementary system to trusteeship, arising in the event of the trustee's absence or loss of capacity, and is granted to a specific person by law or by will to manage the affairs of a minor—particularly financial matters—under judicial supervision in most cases. The digital guardianship system is characterized by being more heavily regulated compared to traditional guardianship, as certain actions require judicial approval, particularly those involving significant risks or substantial financial implications. In the digital context, the importance of digital guardianship is clearly increasing due to the emergence of new types of assets, such as online accounts, digital wallets, digital assets, and online subscriptions.

Consequently, it is no longer sufficient for a guardian to be merely trustworthy; they must also possess the technical competence to manage these assets and protect them from risks such as hacking, exploitation, or waste. Furthermore, the guardian's authority, like that of other guardians, remains bound by the principle of best interests; therefore, they must not engage in high-risk or unsecured transactions, particularly in the digital environment, which is characterized by rapid execution and the difficulty of reversing certain actions. It is clear that guardianship in the digital age is no longer merely traditional money management but has become the complex management of digital assets and data, a development that requires legal frameworks to keep pace with these transformations (Organization for Economic Cooperation and Development, 2021).

III. LEGAL CHARACTERIZATION, LIABILITY, AND PROTECTION MECHANISMS IN MINORS' DIGITAL TRANSACTIONS

Technological advancements have led to the emergence of new and diverse forms of legal transactions, particularly those conducted through digital means, raising questions about the nature of these acts as they pertain to minors, the extent to which they are subject to traditional capacity rules, as well as the determination of the legal liability arising therefrom, and the protective mechanisms that must be provided to ensure that minors are not exploited in the digital environment (UNICEF, 2020).

Digital transactions carried out by minors are among the legal acts that often take the form of electronic contracts, such as online purchases or subscriptions to digital services. In principle, these acts are subject to the general rules governing the legal capacity of minors, but the specific nature of the digital environment requires a re-examination of some of these rules. Traditional jurisprudential and legal rules classify minors' acts into three categories: acts that are purely beneficial, acts that are purely harmful, and acts that fall between benefit and harm (Livingston et al., 2018).

In this context, this classification can be applied to the digital environment, where accessing free services or educational content is considered purely beneficial, while making financial transfers without compensation constitutes purely harmful acts, whereas paid subscriptions or in-app purchases fall under mixed acts, the validity of which depends on the guardian's consent.

However, the digital environment introduces new elements that affect legal classification, most notably the speed of contract formation, the difficulty of rescinding certain transactions, and the absence of direct supervision. Therefore, these characteristics make it necessary to develop a flexible interpretation of traditional rules in line with the nature of digital transactions.

Legal liability is one of the most complex issues in digital transactions involving minors, given the multiplicity of parties and the overlap of roles. Legal liability is based on three elements: fault, damage, and causation.

As for fault, it may arise on the part of the minor due to lack of awareness, such as conducting financial

transactions without knowing their risks; it may also arise on the part of the guardian in the event of negligence in supervision, or on the part of the digital platform if it fails to provide adequate safeguards. As for harm, it takes many forms in the digital environment, such as financial harm resulting from purchases or transfers, informational harm resulting from data breaches, or even emotional harm resulting from cyberblackmail. Causal relationship emerges as a complex element due to the multiplicity of parties, as liability may be distributed among the minor, their guardian, and the digital platform, requiring a flexible approach to allocating liability according to the circumstances of each case. In this context, the UAE legislature has played a significant role in regulating these issues by recognizing the validity of electronic transactions, regulating the protection of personal data, and establishing rules for electronic evidence, thereby enhancing the protection of minors in this digital environment.

As for protection mechanisms, they are no longer limited to traditional legal solutions alone but now rely on the integration of law and technology, most notably verifying the guardian's consent in significant digital transactions, verifying the user's age in transactions, imposing legal obligations on various digital platforms, and promoting digital awareness among minors and their guardians (Livingstone et al., 2018).

Consequently, it is clear that protecting minors in the digital environment requires adopting a modern model based on proactive prevention, distributing responsibility among various parties, and strengthening the regulatory role of modern legislation.

IV. CONCLUSION

Based on the foregoing, it is clear that the guardianship and supervision system remains a fundamental legal framework for the protection of minors; however, the digital environment poses new challenges that require legislative and regulatory developments to keep pace with these changes. Striking a balance between enabling minors to benefit from technology and protecting them from its risks is the primary goal that modern legislation should strive to achieve.

So, the present study has reached a number of conclusions, namely:

1. Digital development has led to the expansion of the scope of the minor's actions.
2. Jurisprudential rules are applicable but need development.
3. There is relative legislative deficiency in regulating digital transactions.
4. Multiplicity of liability parties (minor – guardian – platform)

In light of the findings, and given the accelerating pace of digital transformation, the study has identified a number of recommendations, which are summarised below:

1. Developing special legislation for minors in the digital environment.
2. Obliging platforms to verify age and guardian consent.
3. Enhancing legal supervision over digital transactions.
4. Spreading digital awareness among minors and parents

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