



PROBLEMS OF WALI ADHAL IN RELIGIOUS COURT PROCEDURE LAW CASE STUDY OF WATANSOPPENG RELIGIOUS COURT

*PERMASALAHAN WALI ADHAL DALAM HUKUM PROSEDUR PERADILAN
AGAMA STUDI KASUS PENGADILAN AGAMA WATANSOPPENG*

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ABSTRACT

This study discusses the problem of wali adhal in the procedural law of religious courts in Indonesia, especially in the Watansoppeng Religious Court. Guardians who refuse or are reluctant to marry their adult daughters when they still want to get married must submit a request for wali adhal to the Religious Court. Based on the type of data and analysis, the type of research in this writing is field research with a qualitative method, namely by providing a description and understanding of a phenomenon experienced by the subject that actually occurs in the field and is descriptive using a sociological and normative legal approach. This study found several factors that cause wali adhal. These factors include: differences in views or principles between the lineage guardian and the prospective bride, economy, differences in social status, family conflict, so that this factor is considered irrelevant according to the provisions of Islamic law.

Keywords: problematic, guardian adhal, religious court, Watansoppeng

ABSTRAK

Penelitian ini membahas permasalahan wali adhal dalam hukum acara peradilan agama di Indonesia, khususnya di Pengadilan Agama Watansoppeng. Wali yang menolak atau enggan menikahkan anak perempuannya yang sudah dewasa ketika tetap ingin melangsungkan pernikahan, maka harus mengajukan permohonan wali adhal di pengadilan Agama. Berdasarkan jenis data dan analisisnya, maka jenis penelitian dalam

penulisan ini adalah *field research* (*penelitian lapangan*) dengan metode kualitatif yaitu dengan memberi gambaran dan memahami suatu fenomena yang dialami oleh subjek yang terjadi dengan sebenarnya di lapangan dan bersifat deskriptif dengan menggunakan pendekatan sosiologis dan yuridis normatif. Penelitian ini menemukan beberapa faktor yang menyebabkan terjadinya wali adhal. Faktor-faktor tersebut meliputi: perbedaan pandangan atau prinsip antara wali nasab dan calon mempelai wanita, ekonomi, perbedaan status sosial, konflik keluarga, sehingga faktor ini di anggap tidak relevan menurut ketentuan hukum Islam.

Kata-kata kunci: problematika, wali adhal, pengadilan agama, Watan-soppeng

A. INTRODUCTION

The legal system in Indonesia requires a marriage guardian for prospective Muslim brides and grooms, as stipulated in Articles 19 to 23 of the Compilation of Islamic Law and Article 18 of the Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 11 of 2007 concerning Marriage Registration. Parents as legal marriage guardians for prospective brides and grooms should support positive marriage goals in accordance with their child's wishes, and should act as guardians for their child's marriage contract, to ensure the achievement of their marriage goals.

Regarding marriage guardians, many people still do not understand the function or position of marriage guardians with all the rules and regulations attached to them. In the end, misunderstandings and debates often occur between the community and officers when registering a marriage intention at the District Religious Affairs Office (KUA), when research or examination of the completeness of marriage administration, examination of prospective brides and grooms and the truth of the marriage guardian is carried out. Officers who accept the registration of marriage intentions are required to be careful and precise about the truth of the marriage guardian as determined by Islamic law with all the valid requirements for whether or not he can be a guardian in marriage. The guardian is so important in the marriage contract that the guardian becomes one of the pillars in the marriage contract. There is no guardian or witness, or there is a guardian and witness but they do not meet the requirements, then the marriage is invalid, the hadith of the Prophet which reads:

يَمَأُؤُاْ اَمْرٌ حَتَّى تَكُونَ بَغِيرِ اِذْنٍ : عَنْ عَائِشَةَ رَضِيَ اللهُ عَنْهَا
الْيَهُودُ، اَمْرَاتٍ ثَلَاثٌ بَاطِلٌ فِنْكَاحُهَا ، بِمَا لَهَا الْمَهْرُ بِفَهَا دَخَلَ فِنْ

منها أصاب، له وَلِيٌّ مَّ لَأَن وَلِيَّ السُّلْطَانِ فَتَشَاجَرُوا فَإِنْ (رواه
الترمذي

It means:

From Aisyah raḍiyallāhuanha in marfu', "Every woman who marries without the permission of her guardian, her marriage is void (invalid). "He said it three times. If there is a dispute then the ruler is the guardian for the person who does not have a guardian." (HR. At-Tirmidhi)

In this hadith the Prophet SAW explains the requirements for a guardian's permission for the validity of a marriage and that if a woman marries without her guardian's permission by carrying out her own marriage then her marriage is invalid. If sexual intercourse occurs during the marriage, the man and woman are separated, and the woman has the right to receive a dowry for having sexual intercourse. Furthermore, the Prophet SAW explained that if the guardians disagree in marrying a woman or the woman disagrees with her guardians, then the woman's affairs are transferred to the ruler, and is considered a guardian for those who do not have a guardian (Muttaqin, 2022).

Adult daughters have the right of guardian from her biological father when she is going to get married and it is the obligation of the biological father to be the marriage guardian for his adult daughter. In essence, the marriage contract is carried out with great happiness, but sometimes a child has a dispute with his parents or marriage guardian because he does not get their blessing to marry the man of her choice. Her parents or biological father do not agree with her daughter's decision and do not want to be her marriage guardian. In this case, when she wants to submit her marriage to the local KUA, she will receive a letter of rejection to marry from the KUA because her guardian does not want to become the marriage guardian or adhal.

☑ In such conditions, the girl, when she is still going to get married, must submit a request for a guardian adhal to the local Religious Court to obtain a determination regarding the guardian of the lineage or her father as the guardian who is adhal or reluctant to marry her and the marriage will use a guardian judge. However, in one unwanted case, when the wedding preparations have been

carried out as well as possible, then the guardian adhal appears, the party from the Guardian of the Lineage does not want or is reluctant to make her a guardian. This problem is still common when parents or guardians of the lineage are reluctant to become guardians for their children, even the worst condition of the problem is that the marriage is canceled.

So that in several cases that occur before the wedding reception begins, when the guardian of the lineage does not want to be the guardian of the marriage to the child or prospective bride, the prospective bride must submit a request for a guardian judge adhal to the local religious court by following the submission process in accordance with the procedural law of religious courts. The guardian adhal in question is the rejection of the guardianship of an adult woman from a sekufu marriage (Qaharuddin, 2023).

The procedural law of religious courts is the law that regulates the method of filing cases, and how the religious court must act with the parties to the case so that substantive regulations are implemented in accordance with material Islamic civil law in the religious court environment. An institution that has the task and authority to examine, decide, and resolve cases between people who are Muslim in the fields of marriage, inheritance, grants, waqf, zakat, infaq, sedekah and sharia economics as regulated in article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. From this background, the author is interested in compiling a study entitled "The Problem of Wali Adhal in the Procedural Law of Religious Courts, a Case Study of the Watansoppeng Religious Court"

B. LITERATURE REVIEW

1. A book by Prof. Dr. H.M.A. Tihami, M.A., MM. and Drs. So-hari Sahrani, M.M., M.H. (2010) entitled *Fikih Munakahat*. This book contains a complete study of marriage fiqh that discusses marriage and everything related to it. Starting from before the contract is carried out to the porridge of the household. With an orientation of the compilation of Islamic law (KHI) and the opinions of scholars.
2. A book by Dr. Sudirman I, entitled *Religious Court Procedure Law*, 1st Edition, 2021. This book contains an explanation of the judicial institutions in Indonesia. Starting from lawsuits and applications, procedures for accepting cases in religious courts, the examination process in trials, evidence to the legal products of religious courts in the form of decisions and determinations.

C. METHOD

The type of research in this writing is field research with a qualitative method, namely by providing a description and understanding of a phenomenon experienced by the subject that actually occurs in the field and is descriptive using a sociological and normative legal approach. Data sources are Primary Data, namely through field observations, and interviews with related parties and secondary data, collected through document studies of the Religious Court, books, journals, and websites related to wali adhal in religious court procedural law. After obtaining data through document studies, observations, and interviews, in an effort to obtain maximum research results, the author will analyze the data using descriptive analysis (description), as a way to obtain conclusions from the data that has been obtained to then present it to others more clearly.

D. RESULT AND DISCUSSION

Procedure for Filing a Case with Judge Adhal's Guardian at the Watansoppeng Religious Court

In accordance with the Religious Court Law, in the field of marriage, it includes the issue of refusal to become a marriage guardian for a prospective bride for various reasons, both those justified by sharia and those not. If this happens, the prospective bride will receive a letter of rejection from the marriage registrar at the local Religious Affairs Office on the grounds that the marriage guardian is unwilling to marry the prospective bride to the groom, to be submitted to the Religious Court (Alimuiddin, 2024).

In resolving a guardian adhal case in accordance with the Religious Court Procedure Law, the guardian adhal case begins with the submission of the case, after which the religious court examines the case to then be processed in court (Arifin, 2024). The process of applying for a guardian adhal at the Religious Court is basically the same as examining other voluntary applications or cases. The difference is that it is necessary to be present and hear information from the female guardian to find out the reasons for her refusal or reluctance (Bakri, 2024).

The steps that must be taken by the prospective bride or her attorney in submitting her application are:

Steps that must be taken by the prospective bride or her attorney in submitting her application, namely:

1. Submitting a written or oral application to the Religious Court in accordance with the legal basis of the procedure (Article 118 HIR,

142 R. Bg jo. Article 66 of Law No. 7 of 1989 which has been amended by Law No. 3 of 2006 and Law. 50 of 2009).

2. The applicant is advised to ask the Religious Court for instructions on how to make a letter of application, in this case the religious court usually provides POSBAKUM or Legal Aid Post to make a letter of application or is made by a legal aid institution.

3. The application is submitted to the Religious Court whose jurisdiction includes the Respondent's residence (Article 66 paragraph (2) of Law No. 7 of 1989 which has been amended by Law No. 3 of 2006 and Law. No. 50 of 2009).

4. If the Respondent leaves the mutually agreed residence without the Applicant's permission, the application must be submitted to the Religious Court whose jurisdiction includes the Applicant's residence (Article 66 paragraph (2) of Law No. 7 of 1989 as amended by Law No. 3 of 2006 and Law No. 50 of 2009).

5. The application contains the names, ages, occupations, religions and residences of the Applicant and Respondent, Posita (facts of the incident and legal facts), Petitum (things demanded based on the posita).

6. Paying court costs (Article 121 paragraph (4) HIR, 145 paragraph (4) R. Bg Jo. Article 89 No. 7 of 1989 as amended by Law No. 3 of 2006 and Law No. 50 of 2009). for those who cannot afford it, they can litigate for free (prodeo) (Article 237 HIR, 273 R. Bg.). (PA Watansoppeng) (Bakri, 2024).

Case Settlement Process in accordance with the formal requirements of the Religious Court Procedure Law:

1. The applicant registers the application for a guardian adhal to the Religious Court according to the registration stages mentioned previously.
2. The prospective bride (Applicant) and her guardian who refuses (Respondent) are summoned by the Religious Court to attend the trial.
3. In intensifying peace efforts as referred to in Article 130 HIR/Article 154 RBg on the first trial day attended by the parties, the judge requires the parties to undergo mediation (Article 7 paragraph (1) and Article 11 paragraph (1) PERMA No.1 of 2008).
4. Mediation efforts are carried out if the applicant's guardian attends the trial to be asked for the reasons for his/her refusal to become a marriage guardian.
5. In terms of asking for the opinion of the applicant's guardian, the watansoppeng religious court usually summons the respondent twice as long as the applicant still has the

opportunity to continue the trial and bring the applicant's guardian.

6. However, if the applicant's guardian is considered not to be present and certain considerations from the judge, then the trial will only be held once.
7. In the trial, the applicant is asked to present the prospective husband and is required to present two witnesses who truly understand and know the applicant's condition.
8. The examination of the case is continued by reading the application letter, answer, answers, evidence and Conclusion of the Religious Court judge's decision.
9. The decision of the Religious Court on the guardian's application is as follows:
 - a. The application is granted, namely when the application has met the terms and conditions in the trial. If the applicant is not satisfied, they can file an appeal through the religious court/sharia court.
 - b. The application is withdrawn, namely when before or during the trial the applicant's guardian is again willing to become the applicant's marriage guardian.
 - c. The application is dropped, namely when the applicant does not attend the trial on the day determined by the Religious Court (Thayyib, 2024)

After the trial process is complete and takes place in accordance with the procedural law of religious courts, the applicant will receive a certificate from the Religious Court that the applicant's guardian truly rejects and is reluctant to become a marriage guardian. And appoints the local Religious Affairs Office (KUA) to be the guardian judge in the marriage of the prospective bride.

The case of the Wali Adhal must be resolved before the Religious Court trial to determine the guardian judge who will replace the guardian of the prospective bride's lineage. So when the prospective bride or her family still insists on continuing the marriage with a siri marriage or is not registered with the KUA and her guardian is not a legitimate guardian lineage or guardian judge, then the marriage is not valid under Islamic law and violates the marriage law (Musyayyadah, 2024).

Factors Causing the Occurrence of Adhal Guardians

The reasons for the refusal of guardians to marry off their daughters are some that are permitted and some that are prohibited according to Islam. The permitted reasons are if the refusal to marry off the daughter is related to the prohibition of marriage according to sharia and in accordance with applicable legal provisions, for

example the refusal of the marriage of a daughter who is about to marry a man of a religion other than Islam, or the refusal to marry because she wants to marry a sibling, of course this kind of refusal is accepted. However, if the refusal of the marriage guardian is due to social status issues, the income of the prospective husband of her daughter which is not in accordance with her father's standards, then reasons such as the latter should be considered by the judge in court. Therefore, for women whose guardians are reluctant to marry, they have the right to request a court ruling against their father as an *adhal* guardian or reluctant to marry, so that the power to marry or marriage guardian becomes a state affair which in the context of marriage is through the court and the Office of Religious Affairs which is then referred to as a judge guardian.

Some cases of *wali adhal* can be concluded in general, the factors that are the reasons for the *wali adhol* to marry off the prospective bride are as follows:

1. Economic Factors

A guardian's refusal to marry off his child is certainly with careful consideration, one of which is the prospective husband's economy, the guardian assumes that the prospective husband's economic condition is inadequate so that it has the potential to make his child lacking after marriage, including the harmony of the family's economy and the prospective husband's job. In the context of certain traditions, economic factors play an important role in maintaining family dignity, including the tradition of dowry for the Bugis tribe.

Sometimes parents force their will too much on prospective in-laws, they demand that their prospective in-laws must have sufficient material and even be more established, have a job with a large income, and come from a well-off family. So they don't pay attention to their child's wishes, whether they are in accordance with their parents' wishes or not. In this case, the guardian usually uses customs or dowry as an excuse (Thayyib, 2024).

2. Divorce Factor

One of the factors that is the reason for the rejection of a guardian is the divorce of the prospective bride's parents, the reason that often occurs is that the biological father refuses because his mother has remarried another man or the prospective bride already has a stepfather, so the biological father refuses because he thinks that he is not respected, or because he was not told that his daughter was getting married, so he refuses to attend and become her marriage guardian (Thayyib, 2024).

3. Differences in choice of prospective husband

One of the reasons why fathers or other lineage guardians refuse to become marriage guardians is because the choice of prospective husbands does not match the wishes of the guardians or parents. The main needs sought in a family, apart from affection, also include economic aspects, because economics is a support for finding fulfillment of basic needs such as food, drink and housing. So psychologically it is natural for guardians to prioritize economic aspects in choosing a husband for their children.

4. Hostility between families

This is one of the factors in the refusal of lineage guardians to become marriage guardians because of hostility or disharmony between the family of the prospective bride and the family of her prospective husband. Differences in social, economic, educational, or cultural backgrounds between the two families can trigger disputes or business, property, or influence competition in society between the two families can trigger deep hostility. High egos and excessive prestige from each party can hinder efforts to make peace.

5. Sekufu' Factor

Sekufu' or kafa'ah is a term in Islam that refers to equality or similarity between prospective husband and wife in terms of social, religious, moral, economic levels, so that each candidate does not feel burdened to carry out the marriage. The refusal of the guardian of the lineage to become a marriage guardian makes social equality a consideration, the difference between those who have noble status and ordinary people, different economies, and differences in religious beliefs.

6. Without a Clear Reason.

Without a clear reason, this reason is often mentioned in the petitum or things that form the basis of the applicant's demands written in the application letter. This is because the guardian who refuses does not provide a clear explanation regarding the reasons for his refusal (Musyayyadah, 2024).

Several factors above are the reasons for the occurrence of wali adhal. Based on these data, it also shows that the matter of guardians is not free from problems, because marriage does not only involve the bride and groom but also involves the extended families of both parties, so that parental permission and blessings are important in marriage because this will have a long-term impact on building a household.

E. CONCLUSION

This study discusses the problem of wali adhal in the procedural law of religious courts in Indonesia, especially in the Watansoppeng

Religious Court. Guardians who refuse or are reluctant to marry their adult daughters when they still want to get married must submit a wali adhal application to the Religious Court. The process of submitting a wali adhal application to the Watansoppeng Religious Court begins with the prospective bride (applicant) submitting a written application to the court. This application must be accompanied by a strong reason why the wali adhal refuses to marry. The court then summons the wali adhal (respondent) to provide information regarding the reasons for the refusal. This study found several factors that cause wali adhal. These factors include: differences in views or principles between the wali adhal and the prospective bride, economy, differences in social status, family conflict, so that this factor is considered irrelevant according to Islamic law.

F. BIBLIOGRAPHY

- Alimuddin, Head of KUA, Lilirilau District, Interview, on August 28, 2024.
- Arifin, Clerk of Watansoppeng Religious Court, Interview, on August 28, 2024.
- Bakri, Andi Maryam. Head of Watansoppeng Religious Court, Interview, on August 28, 2024.
- M. Thayyib, Judge of Watansoppeng Religious Court, Interview, on August 28, 2024.
- Sitti Musyayyadah, Judge of Watansoppeng Religious Court, Interview, on August 28, 2024.
- Muttaqin, Zainal. Study of Hadith on Guardianship and Testimony. Journal: Darussalam Vol 23 No.2 July 2022.
- Watansoppeng Religious Court, Litigation Procedure, Accessed at <https://www.pa-watansoppeng.go.id/layanan-publik/prosedur-berperkara>, September 1, 2024.
- Qoharuddin, Moh. Azis. Position of Guardian in Marriage. Journal: El-Faqih, Vol. 4 No.2 2018.
- Sudirman L. Religious Court Procedure. First ed.; Pare-pare: IPN Press, 2021.
- Tihami, M.A and Sohari Sahrani. Fikih Munakahat: Study of Marriage Fiqh. Sixth ed. Jakarta: Rajawali Press, 2022.