



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

A Discourse of Initiating 'Wali Adhal' as a Contentious Case

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WALI ADHAL

is a term used to define marriage guardian who is reluctant to wed. Religious Courts use the term of wali adhal to refer to a case filed by a woman whose guardian/proxy is unwilling to marry her off.



Big Nine

(Cases received and finalized by Religious Courts)

1. Divorce Claim
2. Divorce Petition
3. Marriage Declaration
4. Inheritance
5. Marriage Dispensation
6. P3HP
7. Wali Adhal
8. Marital Properties



Wali Adhal as a Volunteer Case

- ❑ Religious Courts still consider wali adhal as a volunteer case involving only one party, a petitioner (woman).
- ❑ The guardian summoned to the courts is only to be heard his statements, not as a party.



Legal Basis

Legal basis for wali adhal as a volunteer case:

- ❖ Permenag (Regulation of Ministry for Religious Affairs) No. 2/1987 Art.2 (3): “Religious Courts examine and decide the absence of guardian’s willingness based on a petition from bride candidate and by summoning the guardian to the courts.”
- ❖ Book II on Technical Judicial and Administrative Guidance (2007 edition).
 - ✓ Page 134: “A bride candidate, who is going to marry but her guardian refuses to wed her, can file a petition of wali adhal declaration to the Religious Court.”
 - ✓ Page 135: “Religious Courts can grant the petition of wali adhal declaration after hearing parents’ or close relatives’ statements.”



Big Questions ?

- Why is 'Wali Adhal' examined as a Volunteer Case?
- Why can't the guardian be made as a party (defendant)?
- Is it possible to make Wali Adhal as a Contentious Case?



Wali Adhal should be made **a contentious case** for at least 4 main reasons:

First :

One main character of a volunteer case is the absence of dispute. The case must be without dispute or differences with another party.

Principally, what the petitioner asks does not interfere with some body else's rights or interests. (Yahya Harahap: 2007)

There is an obvious dispute/difference between the petitioner and the guardian (father) in wali adhal cases.



Second :

One of Civil Law principles is “*audie et alteram partem*” or hearing both parties (Sudikno Mertokusumo: 1993). Wali Adhal that is examined as a volunteer case does not fulfill the above principle.

The presence of guardian (parents/father) in the court room is only for judges to hear their statements, not as a party.

The guardian/father does not have appropriate opportunity to defend his rights and interests.



Third :

Wali Adhal as a volunteer case is against the principle of Equality Before the Law.

Since wali adhal is volunteer, guardian (father) does not have legal standing and legal opportunity to challenge the court's verdict of wali adhal to a higher court for appeal or cassation because he is not a party.

The only opportunity for guardians is to file a claim of marriage prevention or cancellation. But this lawsuit is believed to mean nothing when the petition has got married.



Fourth :

Compilation of Islamic Law (KHI) article 23 (2) stipulates that “In terms of reluctant guardian, an appointed guardian (wali hakim) can only execute his task as a marriage guardian after the availability of court verdict.”

KHI uses the term ‘verdict’ (putusan) not ‘declaration’ (penetapan). Verdict is produced from a claim, while declaration is produced from a petition.

KHI (1991), Law No. 7/1989, Law No. 3/2006 and Law No. 50/2009 clearly distinguish the term verdict from declaration.

Remember! The Regulation of Wali Adhal is PERMENAG No. 2/1987



Conclusion

- ❖ Divorce which is an absolute right of a husband is examined contentiously, with the wife can act as independent party.
- ❖ Marriage Declaration, with almost no disputes, should now be made contentious in some circumstances.
- ❖ Wali Adhal should now be made contentious.



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Wallahu A'lam Bishowab

Thank You