

# THE RELIGIOUS COURT TRIAL OF *WALI ADHAL* CASES IN THE INDONESIAN LEGAL SYSTEM: A LEGAL ANALYSIS

**Mardi Candra**

*University of Jayabaya, Indonesia*  
[mcandra@pascajayabaya.ac.id](mailto:mcandra@pascajayabaya.ac.id)

**Ramlani Sinaulan**

*University of Jayabaya, Indonesia*  
[ramlani\\_ls@jayabaya.ac.id](mailto:ramlani_ls@jayabaya.ac.id)

**Fahadil Al Hasan**

*Sunan Gunung Djati Islamic State University, Indonesia*  
[dielfabad@gmail.com](mailto:dielfabad@gmail.com)

**Jelang Ramadhan**

*Bursa Uludağ University, Turkey*  
[711816010@ogr.uludag.edu.tr](mailto:711816010@ogr.uludag.edu.tr)

## Abstract

Marriage combines the husband-wife relationship and unifies two families of different ethnicities, cultures, and backgrounds. The consent of the *wali* is a significant function of the family, particularly the prospective bride's family. Marriage requires the permission of the *wali* because it is null and void without it. In actuality, the *wali* of the prospective bride may be hesitant to marry off the woman under his supervision for various reasons, both *Sbar'i* and non-*Sbar'i*. As a result, the prospective bride must apply to the Religious Court for *wali adhal* for the marriage to occur. This qualitative research employs a normative legal approach, which examines legal norms found in laws and regulations, judge judgments, and other legal sources. According to the findings of this study, *wali adhal* cases are currently evaluated by voluntary trials or unilaterally. However, because it is unilaterally assessed and there is no opponent, fulfilling the legal purpose of building integrative justice in this examination requires considerable

effort. Therefore, *wali adhal* cases must be examined using a contentious trial.

**Keywords:** contentious, marriage, *wali adhal*, *wali*, and voluntary.

## A. Introduction

According to Article 1 of Marriage Law Number 1 of 1974, marriage is a physical and mental relationship between a man and a woman as husband and wife to build a happy and permanent family (home) based on the Almighty God. It is consistent with the explanation in Article 2 of the Compilation of Islamic Law, which states that marriage is a very strong compact (*mitsaqan ghalidzan*) between a man and a woman to build a family that is *sakinah*, *mawaddah*, and *rohmah* as a form of worship to Allah Almighty.<sup>1</sup> Based on this reasoning, it is possible to conclude that marriage is the link between husband and wife in forming an eternal family as a kind of worship to Allah. However, marriage combines the husband-wife relationship and unifies two families of different ethnicities, cultures, and backgrounds.<sup>2</sup> As a result, the family's function becomes critical for a home's sustainability.

Another essential aspect of the family, particularly the bride's family, is the *wali mujbir's* consent. As the Prophet (peace and blessings of Allah be upon him) stated below, the existence of this *wali* in a marriage is one of the pillars of marriage that must not be abandoned:<sup>3</sup>

لا نكاح إلا بولي وشاهدي عدل

According to the Hadith, it is explicitly stated that the validity of a marriage depends upon the permission of the *wali* and the presence of

---

<sup>1</sup> Zikri Darussamin, Armansyah Armansyah, and Ahmad Zikri, "The Urgency of Maturity to Get Married and Its Relevance to Family Life Goals," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 2023): 215–236, <http://journal.iaincurup.ac.id/index.php/alistinbath/article/view/5324>.

<sup>2</sup> Subairi, "Keharmonisan Rumah Tangga Perspektif Hukum Islam," *Mabahits: Jurnal Hukum Keluarga* 2, no. 2 (2021): 171–187.

<sup>3</sup> A B Al-Baihaqi, *Al-Sunan al-Kubra*, Vol.7. (India: Dairoh al-Ma'arif, 1926).

two fair witnesses. Hence, the role of the *wali* assumes significant importance in ascertaining the legitimacy of the marital relationship. Imam Bajuri asserts that the majority of scholars (*jumbur ulama*) have identified who is eligible to assume the role of a *wali* (*wali mujbir*) as the father, grandfather, brother, uncle, or nephew.<sup>4</sup>

In actuality, there are situations when the *wali* of the prospective bride is hesitant to marry off the woman under his supervision for various reasons, whether they are legitimate in Islam or not. To carry out the marriage, the prospective bride must submit an application to the Religious Court to determine *wali adhal*, as stipulated in Article 13 paragraph (1) of Minister of Religion Regulation Number 20 of 2019 on Marriage Registration. The court will examine the reasons for the *wali*'s reluctance to marry the woman under his supervision to determine whether it follows Islamic values. If the hesitation is not following Islamic values, the Religious Court will decide that the *wali* is *adhal*, so the woman can still marry through a *wali hakim*.

According to the preceding explanation, the examination process in the Religious Court will be carried out voluntarily (*voluntaire rechtspraak*, voluntary jurisdiction), namely the examination of the application unilaterally from the Applicant without any other party or third party being drawn as an opponent, and the examination process is truly purely *ex-parte* or unilaterally, in this case only the Applicant is examined without any rebuttal (*verweer*, resistance) from the other.<sup>5</sup> In voluntary trials, a *wali* is only heard without being given legal instruments to show his argument for refusing to marry off someone who is under his supervision, including instruments of resistance if he challenges the Court's judgment/Court's decision. To achieve

---

<sup>4</sup> Akhmad Shodikin, "Penyelesaian Wali Adhal Dalam Pernikahan Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia," *Mabkamah : Jurnal Kajian Hukum Islam* 1, no. 1 (2016): 61–70, <http://kukalideres.blogspot.com/2015/10/pernikahan>.

<sup>5</sup> Irfan Fahmi, "Yurisdiksi Kontentiosa Dalam Penanganan Perkara Permohonan Pemeriksaan Terhadap Perseroan Terbatas," *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan* 10, no. 1 (September 2019): 75–93, <http://www.openjournal.unpam.ac.id/index.php/sks/article/view/3176>.

integrative justice, the *wali* must be allowed to justify why he is reluctant to marry off those under his guardianship, as well as the right to file a challenge if he opposes the Court's decision. The spirit of Cassation Decision No. 703 K/Ag/2021, issued October 11, 2021, allowed *the wali's* appeal by rejecting his younger sister's application for *wali adhal*. In that situation, the Cassation Petitioner was not a party to the *wali adhal* petition because he was a *Wali*. However, the Cassation Council allowed his petition because his arguments were strong.

Cassation Decision No. 703 K/Ag/2021 provides space for *wali adhal* cases to be examined with Contentious Jurisdiction, which contradicts the previous Supreme Court decision, namely Cassation Decision No. 209 K/AG/2009 dated June 5, 2009, and the provisions of Book II on Guidelines for the Implementation of Duties and Administration of Religious Court in 2014, which only states that *wali adhal* applications are voluntary cases, so *wali* does not have legal standing in the case.

Based on the background description, the main issues in this article are as follows: first, what is the procedure for applying *wali adhal*; and second, how is the application of contentious jurisdiction in the implementation of trial in the case of the application of *wali adhal* in the Religious Court in realizing integrative justice?

Several studies on *wali adhal* in Islamic law and Indonesian laws have been conducted, including the First study conducted by Muhammad Qoyyum Kridho Utomo, et al.<sup>6</sup> Their studies discussed some judges' arguments for approving the *wali adhal* petition. That study did not mention the position of the *wali* in defending his reasons for not marrying off the woman under his supervision. As a result, the research differs from that undertaken by the author. In this paper, the author explores the *wali's* position on *wali adhal* to achieve integrative justice,

---

<sup>6</sup> Muhammad Qoyyum Kridho Utomo, Moh Nafik, and Mochammad Agus Rachmatulloh, "Penetapan Perkawinan Dengan Wali Hakim Akibat Wali Adhal Di Pengadilan Agama Nganjuk," *Journal Al-Syakhsyiyah Journal of Law and Family Studies* 4, no. 2 (2022): 170–186, <http://webcache.googleusercontent.com/search?>

whether for the Petitioner or the *wali* himself. Second, Hanafiah's study.<sup>7</sup> According to his study, a *wali* reluctant to marry off his child will eventually become a *wali hakim*, depending on the judge's ruling at the Religious Court. The judge's consideration when making a ruling in the case of a *wali adhal* is the reason the *wali* refuses to marry off his child because it is not Shari'ah-compliant. The study has not examined the position of *wali* in the trial process, while the author's research focuses on *wali's* position in the trial process. Third, a study conducted by Akhmad Shodikin.<sup>8</sup> According to the study, if the *wali* is *adhal*, then the one who marries the girl and revealed what solutions are produced to answer the problems in writing this article.<sup>9</sup>

This research aims to look into the processes for applying *wali adhal* and the implementation of contentious jurisdiction in examining a *wali adhal* petition in the Religious Court to achieve integrative justice.

## B. Discussion

### 1. The Concept of *Wali Adhal* in Islamic Law

The words "*wali adhal*" are made up of the syllables "*wali*" and "*adhal*." Scholars of Hanafiah divide *wali* into three categories: *wali* of the soul (*al-walayah 'ala an-nafs*), *wali* of the property (*al-walayah 'ala al-mal*), and *wali* over both the soul and the property at the same time (*al-walayah 'ala an-nafsi wa al-mali ma'an*).<sup>10</sup> *Wali* in marriage is a part of *al-walayah 'ala an-nafs*, which has something to do with overseeing (*al-Isyraf*) family-related matters like marriage, child maintenance and education,

---

<sup>7</sup> Hanafiah, "Kedudukan Wali Adhal Dalam Menikahkan Anaknya," *Jurnal Al-mizan: Jurnal Hukum Islam dan Ekonomi Syariah* 7, no. 1 (2020): 18–26.

<sup>8</sup> Shodikin, "Penyelesaian Wali Adhal Dalam Pernikahan Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia."

<sup>9</sup> Fahmi, "Yurisdiksi Kontentiosa Dalam Penanganan Perkara Permohonan Pemeriksaan Terhadap Perseroan Terbatas."

<sup>10</sup> M A Mubarak, E Fauziah, and Ilham Mujahid, "Tinjauan Kompilasi Hukum Islam (KHI) Terhadap Putusan Hakim Tentang Perkawinan Wali Adhal," *SPeSLA: Prosiding Hukum Keluarga Islam* 6, no. 2 (2020): 28–31, [http://karyailmiah.unisba.ac.id/index.php/hukum\\_keluarga\\_islam/article/view/22207](http://karyailmiah.unisba.ac.id/index.php/hukum_keluarga_islam/article/view/22207).

health, and others.<sup>11</sup> Nevertheless, in his perspective, it is not mandatory for a woman of mature age, whether a virgin or a widow, to have a wali in marriage.<sup>12</sup> Meanwhile, Imam Maliki,<sup>13</sup> Imam Shafi'i,<sup>14</sup> and Imam Hanbali<sup>15</sup> agree that *wali* is an absolute requirement for marriage legality and that marriage without a *wali* is invalid. A *wali*, therefore, has a great deal of duty because the law has affirmed that he is permitted to marry off the girls under his supervision.

*Adhal's* etymological equivalent is *al-man'u*, which denotes prohibition or obstruction. It is described as "'*adhalu al-mar'ab an aṣ-ṣauj*" in the book of *Lisanul Arabi*, which refers to holding back his daughter or preventing her from marrying the guy of her choosing.<sup>16</sup> Terminologically stated, the term "*adhal*" refers to the *wali's* defiance of his obligation to marry off the subject of his supervision with a partner who satisfies the requirements of *kafa'ab*.<sup>17</sup> This justification agrees with the viewpoint of Al-Sharkhasi, who said that *wali adhal* is the condition in which a *wali* forbids and restrains the person under his supervision, forbidding and confining her at home so she does not get married.<sup>18</sup>

According to some of the explanations above, a *wali adhal* is a *wali* who is reluctant or refuses to marry a woman to a man who has become her choice (*kafa'ab*). This idea is then incorporated into the definition of *wali adhal* in Minister of Religion Regulation Number 20 of 2019 about Marriage Registration.

---

<sup>11</sup> Shodikin, "Penyelesaian Wali Adhal Dalam Pernikahan Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia."

<sup>12</sup> A B Al-Kasaniy, *Bada'i Ash-Shana'i Fi Tartibi Asy-Syara'i*, Vol.2. (Beirut: Darul Kutub Al-Ilmiyyah, 1986).

<sup>13</sup> Ibnu Rusyd, *Bidayah Al-Mujtabid Wa Nihayab al-Muqtasid Vol. 2* (Beirut: Dar al-Fikr, n.d.).

<sup>14</sup> A I Al-Shafi'i, *Al Umm*, Vol.7. (Beirut: Daar al-Kutub, n.d.).

<sup>15</sup> Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adilatuhu*, Vol.7. (Beirut: Daar al-Kutub, n.d.).

<sup>16</sup> Ibnu Mandzur, *Lisanul Arab* (Kairo: Dar al-Ma'arif, n.d.).

<sup>17</sup> A K Zaidan, *Al-Mufassal*, Vol.6. (Beirut: Muassasah Ar-Risalah, 1993).

<sup>18</sup> S Al-Sarkhasi, *Al-Mabsut*, Vol.3. (Beirut: Dar al-Ma'arif, n.d.).

## 2. The Reasons for a Wali Being Called 'Adhal' and its Resolution

When a *wali* is named '*adhal*,' experts disagree. As previously stated by Ibn Qudamah as representative of Mazhab Hanbali, a *wali* is termed '*adhal*' when he refuses to marry a woman under his supervision to someone who satisfies his standards of *kafa'ah*, and they both love each other.<sup>19</sup> He concluded that it is required for a woman to marry the one she loves, even if there are certain obstacles. This viewpoint is also congruent with Imam as-Safi'i, Abu Yusuf, and Muhammad Hasan ash-Shibani, who stated that as long as a woman loves her prospective mate, a *wali* is required to marry her off, whether with a *mabar misli* or not.<sup>20</sup>

Ibn Abi Zaid al-Qayrawani defined '*adhal*' as when a *wali* refuses to marry off a woman who is under his supervision because she likes a man even though he is not comparable to her in terms of income and appearance.<sup>21</sup> Thus, '*adhal*' occurs when a *wali* refuses to marry off a woman under his supervision to a man who has reached the standard of *kafa'ah*, particularly regarding wealth and attractiveness. However, if the *wali's* reluctance is due to religious grounds or is founded on *Shar'i* reasons, this cannot be considered '*adhal*'. *Shar'i* reasons include the following: the daughter has already been proposed to by someone else, and this proposal has not been canceled; the daughter is not of the same religion (non-Muslim); the daughter is not old enough or is still in school, and so on.

As elucidated before, the variations in perspectives of *adhal* among scholars can be attributed to disparities in establishing the parameters encompassed within the *kafa'ah* standard. The consensus among the Ulama is to prioritize the religious aspect as the primary determinant of *kafa'ah*. This perspective is shared even by the Ulama from the Maliki school of thought, who assert that religious considerations alone should be considered when assessing *kafa'ah*.

---

<sup>19</sup> Ibnu Qudamah, Al-Mughni (Beirut: Dar al-Ma'rifah, 1997), p. 383

<sup>20</sup> Ibid, p.340

<sup>21</sup> Ibnu Abi Zaid Al-Qayrowani, *An-Nawadir Wa Az-Ziyadah Vol. 4* (Dar al-Ghorbu al-Islam, n.d.).

According to the Shafi'i Madhab, the concept of *kafa'ah* in marriage encompasses five essential criteria. These criteria include religion, descent, occupation, independence, and freedom from physical and psychological abnormalities. Some companions of Shafi'i require financial status in determining *kafa'ah*. The Hanafi perspective aligns with the viewpoint of Shafi'i, with the exception that Abu Hanifah does not consider the inclusion of freedom from abnormalities as a need in the requirements for *kafa'ah*. The Hanbali school of thought encompasses two distinct perspectives.<sup>22</sup>

In the case of a woman who likes a man who fits the *kafa'ah* standards, but her wali also likes another man who meets the same standards, scholars react variably; some classify it as *'adhal*, while others do not. In this example, Imam Shafi'i classified it as *'adhal*,<sup>23</sup> however, the Maliki scholars,<sup>24</sup> as well as some other Shafi'i scholars<sup>25</sup> and some Hanbalis,<sup>26</sup> believe that the *wali's* position should be classified as *wali mujbir* (not *adhal*).

Most scholars agree that if a *wali*, whether *mujbir* or not, prevents a woman under his supervision from marrying a compatible partner, the *wali's* right does not pass to a distant *wali* (*wali ab'ad*). However, the woman can report the matter to the judge, who can question the *wali* about why he is reluctant to marry off his daughter. If the wali has a reasonable cause, the authority to handle the daughter remains with him (*wali nasab*). However, if the explanation does not follow Islamic

---

<sup>22</sup> Zahrotus Nafisah and Uswatun Khasanah, "Komparasi Konsep Kafa'ah Perspektif M. Quraish Shihab Dan Fiqh Empat Mazhab," *Istidlal: Jurnal Studi Islam* 5, no. 2 (2018): 125–137.

<sup>23</sup> Al-Dasuqi, S. Hasyiyah Ad-Dasuqi 'Ala Asy-Syarh al-Kabir Vol. 2 (Ihya' Kutub al-'Arobiyah, n.d.), p.231; Abdu al-Sami' Al-Azhuriy, Jawahir Al-Iklil Vol. 1 (Beirut: Maktabah ats-Atsaqofiyah, n.d.), p.282.

<sup>24</sup> Al-Dasuqi, S. Hasyiyah Ad-Dasuqi 'Ala Asy-Syarh al-Kabir Vol. 2 (Ihya' Kutub al-'Arobiyah, n.d.), p.231; Abdu al-Sami' Al-Azhuriy, Jawahir Al-Iklil Vol. 1 (Beirut: Maktabah ats-Atsaqofiyah, n.d.), p.282.

<sup>25</sup> Al-Nawawi A., Z. Raudhah at-Thalibin Vol. 5 (Beirut: Dar Alimul Kutub, 2003), p.55; Khatib L-Syarbini, Mughni Al-Mughtaj Vol. 3, n.d, p.154

<sup>26</sup> Al-Mawardi, A. al-Inshaf Vol. 20 (Libanon: Dar al-Kutub al-Ilmiyah, 1997), p.127.



standards, the judge might order the *wali* to marry her off immediately. If the *wali* refuses, the judge (government) has the authority to marry her off as *wali hakim*.<sup>27</sup>

Thus, to determine whether a *wali* is *adhal*, the judge must have a complete understanding of the concept of "*kafa'ah*" who his or her decision would be based on, and, most significantly, all of this must be assessed in a careful trial process.

### 3. The Examination of Wali Adhal Cases in Religious Court

The examination of a petition for *wali adhal* is one of the legal remedies provided by Indonesia's applicable legal instruments to secure a woman's legal protection. It is established in Article 49 of Law Number 50 of 2009 on the latest revision to Law Number 7 of 1989 on Religious Court, which means that religious courts have authority over everything relating to marital difficulties among Muslim communities. This authority is then emphasized in the provisions of Article 2 of the Minister of Religious Affairs of the Republic of Indonesia Number 2 of 1987 *jo.* Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 30 of 2005 on *wali hakim*, which was later amended by the provisions of Article 13 paragraphs (1, 2, 4, and 4) of Religious Affairs of the Republic of Indonesia Number 20 of 2019 on Marriage Registration.

Article 13, paragraphs 1, 2, 3, and 4 explain as follows:

Paragraph 1: "In the absence of a *wali nasab* as referred to in Article 12 paragraph (3), the marriage contract shall be conducted by a *wali hakim*".

Paragraph 2: "The *wali hakim*, as referred to in paragraph (1), shall be appointed by the Head of the Sub-district KUA/PPN LN (Religious Affairs Office/Overseas Marriage Registrar Officer)".

---

<sup>27</sup> Rusyd, *Bidayah Al-Mujtahid Wa Nihayah al-Muqtasid* Vol. 2, p.15; Adurrahman Al-Jaziri, *Al-Fiqih Alal Mazahib al-Arba'ah* Vol. 4 (Beirut: Dar al-Fikr, n.d.), p.41.

Paragraph 3: The *wali hakim*, as referred to in paragraph (1), may act as a *wali nikah* if: a. the *wali nasab* is absent; b. the *wali* is *adhal*; c. the *wali*'s whereabouts are unknown; d. the *wali* cannot be found because he is imprisoned; e. the *wali nasab* is not Muslim; f. the *wali* is in a state of *ihram*, and g. the *wali* who will marry the bride herself.

Paragraph 4: "*Wali adhal*, as referred to in paragraph (3) letter b, is determined by the Religious Court or the Syar'iyah Court".

According to this law, a woman stopped from marrying by her *wali* may file a petition with the Religious Court for *wali adhal*. It means that the legal remedy in question is a voluntary "petition" legal remedy (*voluntaire rechtspraak*, voluntary jurisdiction), i.e., a unilateral request from the Applicant without any other party or third party being drawn as an opponent, so that the examination process is carried out *ex-parte* or unilaterally, with only the Applicant being examined without any rebuttal (*verweer*, resistance) from the other party.<sup>28</sup> The investigation of the *wali adhal* petition case follows what is outlined in Book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts, which contains various provisions relating to the examination of *wali adhal* cases, including the following:<sup>29</sup>

1. A prospective bride who intends to marry but whose *wali* does not want to be a *wali nikah* in that marriage may apply to the Religious Court/Shar'iyah Court to determine *wali adhal*.
2. The prospective bride whose *wali* is unwilling to execute the marriage must apply to the Religious Court/Shar'iyah Court in the jurisdiction where the prospective bride resides to determine *wali adhal*.

---

<sup>28</sup> Fahmi, "Yurisdiksi Kontentiosa Dalam Penanganan Perkara Permohonan Pemeriksaan Terhadap Perseroan Terbatas.", p.75-93.

<sup>29</sup> Directorate General of Religious Courts, *Book II: Guidelines for the Implementation of Duties and Administration of Religious Courts (Jakarta: Ditjen Badilag MA RI, 2013)*, p.148-149.

3. The prospective bride may apply for *wali adhal* with a marriage license to the Religious Court/Shar'iyah Court in her jurisdiction.
4. After hearing the parents' testimony as *wali*, the Religious Court/Mahkamah Syar'iyah may grant the application for *wali adhal* determination.
5. The application for *wali adhal* is volunteer, resulting in stipulation. If the Petitioner is dissatisfied with the decision, he or she may submit a cassation.
6. Legal remedies available to the *wali* (parents) include: (a) marriage prohibition if the marriage has not yet occurred. (a) Marriage annulment if the marriage has already occurred.

According to the above description, the court hears the testimony of the Applicant's *wali* during the application examination to determine *wali adhal*, with no agenda of rebuttal and proof from the *wali*. As a result, the prospective bride is the only party, i.e., the Applicant. At the same time, the parents (*wali nasab*) are merely shown as other parties to provide information on their unwillingness to marry off their children. As a result, the presence or absence of a *wali*, such as a father, grandfather, brother, uncle, or nephew,<sup>30</sup> has no bearing on the petition. The *wali nasab* is not a party in a *wali adhal* case for a variety of reasons, including:

1. So that the child's relationship with his parents is not directly confronted;
2. So that the case takes little time because if the *wali* is made a party, the case will be examined for a long time; and
3. The prospective bride urgently needs the case to be resolved only at the court of first instance.

---

<sup>30</sup> Akhmad Shodikin, "Penyelesaian Wali Adhal Dalam Pernikahan Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (2016): 61–70.

#### **4. The Use of Contentious Jurisdiction in the Examining of Wali Adhal Petition Cases in the Pursuit of Integrative Justice**

*Wali adhal* cases are currently investigated utilizing the voluntary trial procedure outlined above. Despite the complications involved with this case, the investigation of the *wali adhal* case is carried out via a contentious trial procedure, specifically by naming the *wali nasab* as the Defendant. This is because of a dispute between the prospective bride and her *wali nasab*. Because there was a dispute, this case should have been classified as a contentious case, according to Yahya Harahap, who stated that one of the characteristics of voluntary cases is that there is no dispute with other parties or the Petitioner's interests are unrelated to the rights of others.<sup>31</sup>

A *wali adhal* case is investigated to determine whether there is a valid reason for a wali to refuse to marry off his daughter. As a result, when reviewing the case, the court must use the legal principle of "*audi et alteram partem*," or listening to both parties. Thus, it is not enough to employ the *wali* as a source of information; he must also be created as a Defendant who can prove the grounds for his reluctance in an evidentiary procedure. If the *wali adhal* case is still categorized as voluntary, the principle of "*equality before the law*" would be ignored, making it challenging to achieve integrative justice, which can fulfill the principles of justice, legal certainty, and legal advantage.<sup>32</sup> A decision must satisfy these three criteria of the fundamental concept of justice. For more information on the three fundamental values, consider the following:

---

<sup>31</sup> Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2010), p.38-41.

<sup>32</sup> Syarif Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim* (Jakarta: Prenadamedia Grup, 2020), p.4.

Justice is synonymous with the word "fair," which denotes "not one-sided" or "adhering to truth and propriety."<sup>33</sup> The term fair is related to equality, balance, and fairness. When a court rules a case following truth and appropriateness, the judge is said to have done justice.<sup>34</sup> According to Amran Suadi,<sup>35</sup> justice is the utmost regard for each person's natural rights as an essential aspect of the social order, as defined by Robert Nozick.<sup>36</sup> Based on this theory, it is possible to see that in justice, values, and morals interact, such that justice is generated from problems of facts and questions of law, as well as *stimulus*, *location*, and *time* that impact each other.<sup>37</sup> Judges' roles and responsibilities, including the examination of *wali adhal* cases, are required to find this.

The legal advantage is a monetary value with justice and legal certainty. It means that the law can give tangible benefits to the community. According to Ridwansyah's utility theory,<sup>38</sup> the value of legal benefits is to promote the maximum potential happiness for the community. As a result, when the court issues a decision, the

---

<sup>33</sup> H M Subarna and Sunarti, *Kamus Umum Bahasa Indonesia Lengkap* (Jakarta: Pustaka Grafika, 2012), p.74.

<sup>34</sup> Jimly Asshiddiqie, *Konstitusi Keadilan Sosial* (Jakarta: Kompas Media Nusantara, 2014), p.54.

<sup>35</sup> Amran Suadi, "Protection of Women's and Children's Rights Based on System Interconnection: A New Paradigm of Execution of Women and Children's Rights after Divorce," *Jurnal Hukum dan Peradilan* 11, no. 3 (December 2022): 499-522, <https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/750>.

<sup>36</sup> R Nozick, *Anarchy, State, and Utopia* (London: Oxford Blackwell, 1980), p.78.

<sup>37</sup> Amran Suadi, "Protection of Women's and Children's Rights Based on System Interconnection: A New Paradigm of Execution of Women and Children's Rights after Divorce," *Jurnal Hukum dan Peradilan* 11, no. 3 (December 2022): 499-522, <https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/750>.

<sup>38</sup> Muhammad Ridwansyah, "Mewujudkan Keadilan, Kepastian Dan Kemanfaatan Hukum Dalam Qanun Bendera Dan Lambang Aceh," *Jurnal Konstitusi* 13, no. 2 (August 2016): 278, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1323>.

community immediately feels satisfied with what it is attempting to accomplish. All court judgments will be easily implemented or performed due to this value. In *wali adhal* proceedings, benefit indicates that the outcome benefits the Applicant and other persons affected by the court's decision, such as his parents or even his children if he has children.

In terms of legal certainty, Lord Lloyd, as reported by Mirza Satria Buana,<sup>39</sup> stated that "...law seems to require a certain minimum degree of regularity and certainty, or it would be impossible to assert that what was operating in a given territory amounted to a legal system." According to what he explained, legal certainty is an urgent thing that must always be guaranteed in the community because, with legal certainty, people will know what to do. Eventually, there will be uncertainty, which will ultimately lead to violence (chaos) due to the existing legal system's uncertainty.<sup>40</sup> As a result, legal certainty is one of the elements that must be met in law enforcement, according to Soedikno Mertokusumo.<sup>41</sup> In a *wali adhal* petition, certainty is the confidence that the court's judgment cannot be amended by the same legal remedy at the first level, whether by annulling or preventing the marriage.

Cassation Decision Number 703 K/Ag/2021, dated October 11, 2021, examines *wali adhal* cases from an integrative justice viewpoint by placing *wali* as the Defendant. In this decision, the dimension of justice is seen by granting the cassation request from the Cassation Petitioner, who is the *wali* of the cassation, which is usually declared "inadmissible" because the *wali* is not a party to the case, as in the

---

<sup>39</sup> Mirza Satria Buana, "Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstitusi," 2010, p.34.

<sup>40</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *CREPIDO* 1, no. 1 (July 2019): 13–22, <https://ejournal2.undip.ac.id/index.php/crepido/article/view/6325>.

<sup>41</sup> E Fernando M Manullang, *Menggapai Hukum Berkeadilan: Tinjauan Hukum Kodrat Dan Antinomi Nilai* (Jakarta: Kompas, 2007), p.92.

previous Cassation Decision Number 283 K/Ag/2018 on the decision on the case of *wali adhal* petition Number 703 K/Ag/2021 of October 11, 2021.

The Supreme Court proposes that a contentious trial can be used to investigate *wali adhal* by making the *wali* a defendant in its most recent cassation decision, which overturned the court's decision at the first level. The judge can examine the case more thoroughly by applying a contentious trial. The Supreme Court's decision in the cassation case involved rejecting the petition of the Petitioner or Respondent in the case and delaying the marriage of the Petitioner or Respondent with his candidate until the Petitioner or Respondent in the case had settled the inheritance dispute with her daughter.

The basis of the decision was that the Applicant had applied for *wali adhal* to the South Jakarta Religious Court. The Applicant's brother or her *wali* hesitated to marry her off to the guy of her choosing, which was the basis for the application. She was reluctant to marry the guy of her choosing since her daughter did not support the decision, and she also did not want to share the assets of her late husband with her daughter. Moreover, after the South Jakarta Religious Court approved the Petitioner's application, the Petitioner's younger brother (her *wali*) filed an appeal, which the Supreme Court ultimately upheld.

Cassation Decision Number 703 K/Ag/2021 covers formal and material legal reform. According to the ruling (formal law perspective), the evaluation of *wali adhal* applications might be carried out through a contentious trial, which can undermine material justice. Meanwhile, the desired integrative justice can be delivered from a material legal standpoint. For example, in this decision-making, the panel of judges granted genuine justice to the child, even though the child did not seek it. It is consistent with the rules of the Child Protection Law, which declare that the commitment to safeguarding children is a shared responsibility, beginning with the family (parents) and continuing with society and the state. If the child's protection is suggested to be ignored by their closest relatives, the state, including the courts, must safeguard

them. In this case, the Applicant, as the child's mother, was said to have violated her child's rights by not quickly dispersing the inheritance from her deceased spouse. As a result, it is appropriate for the court or the Supreme Court to postpone the marriage until she distributes the property that is the right of her child to safeguard the child's rights.

Based on the above explanation, the Cassation Judges concluded that by allowing the Applicant to marry, the Court had also allowed the Applicant to delay the distribution of the inheritance to the rightful beneficiaries, which could potentially cause harm to the Applicant's family, particularly the Applicant's child. In contrast, the purpose of marriage is, in principle, to realize the benefit and welfare and avoid harm to the perpetrators of the damage. The rights of the child must be protected for the sake of the principle of benefit (fulfilling the principle of *maqashid sharia*) and the best interests of the child so that the Cassation Respondent must give rights to her daughter before the marriage between the Cassation Respondent and her prospective husband takes place.

Thus, to achieve integrative justice in the examination of *wali adhal* cases, the examination must be conducted through a contentious trial so that the product or outcome of the *wali adhal* application is in the form of a decision rather than a determination, as indicated by Cassation Decision Number 703 K/Ag/2021 and the explanation in Article 23 paragraph (2) of Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law, which states that "in the case of *wali adhal*. The text explicitly states that if the *wali* is hesitant to marry off his child, the person who functions as a guardian is the judge after a "Court Decision" rather than a "Court Determination."

### **C. Conclusion**

The *wali adhal* case is currently a "petition" legal remedy, so it is examined through a voluntary trial (*voluntaire rechtspraak*, voluntary jurisdiction) or a unilateral request from the Applicant without any other party or third party being drawn as an opponent or defendant so



that the examination process is carried out *ex-parte* or unilaterally, in which only the Applicant is examined without any rebuttal (*verweer, resistance*) from the other party. Because the examination is unilateral, achieving the legal goal of achieving integrative justice takes much work. As a result, the investigation of *wali adhal* cases must be accompanied by a contentious trial. It is because marriage is not only related to husband and wife but also to the families of each husband and wife, so the examination of this case must be carried out carefully to realize true justice by simultaneously fulfilling the principles of justice, legal certainty, and legal advantage.

## References

- Al-Azhuriy, A. S. *Jawahir al-Iklil*. vol. 1. Beirut: Maktabah ats-Atsaqofiyah, n.d
- Al-Baihaqi, A. B. *al-Sunan al-Kubra*. vol. 7. India: Dairoh al-Ma'arif, 1344 H
- Al-Bajuri, *Hasyiyah al-Bajuri*, vol. 7. Jakarta: Dar Al Kutub Al Islamiyah, n.d
- Al-Dasuqi, S. *Hasyiyah ad-Dasuqi 'Ala asy-Syarh al-Kabir*. vol. 2. n.p: Ihya' Kutub al-'Arobiyah, n.d
- Al-Jaziri, A. *al-Fiqih Alal Maṣāḥib al-Arba'ah*, Vol. 4. Beirut: Dar al-Fikr, n.d.
- Al-Kasaniy, A. B. *Bada'i Ash-Shana'i fi Tartibi Asy-Syara'i*, vol. 2. Beirut: Darul Kutub Al-Ilmiyah, 1406 H
- Al-Mawardi, A. *al-Inshaf*. vol. 20. Libanon: Dar al-Kutub al-Ilmiyah, 1997
- Al-Nawawi, A, Z. *Raudhab at-Thalibin*. vol. 5. Beirut: Dar Alimul Kutub, 2003
- Al-Sarkhosiy, S. *al-Mabsut*, vol. 3. Beirut: Dar al-Ma'arifah, n.d

Mardi Candra, Ramlani Sinaulan, Fahadil Al Hasan, Jelang Ramadhan  
*The Religious Court Trial Of Wali Adhal Cases In The Indonesian Legal System: A Legal Analysis*

Al-Shafi'i, A.I, *al-Umm*, vol. 7. Bairut: Daar al-Kutub, n.d

Al-Syafi'i, M. *al-Umm*. vol. 5. Beirut: Dar al-Ma'arif, n.d

Al-Zuhayli, *al-fiqhu al-Islami wa Adilatuhu*, vol. 7. Bairut: Daar al-Kutub, n.d

Asshiddiqie, J. *Konstitusi Keadilan Sosial*. Jakarta: Kompas Media Nusantara, 2014

Buana, M.S. *Mirza Satria Buana. Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) dalam Putusan-Putusan Mahkamah Konstltusi*. Tesis Magister Ilmu Hukum Universitas Islam Indonesia, Yogyakarta, 2010

Darussamin, Z., Armansyah, A., & Zikri, A. "The Urgency of Maturity to Get Married and Its Relevance to Family Life Goals". *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (May 2023): 215-236, <http://dx.doi.org/10.29240/jhi.v8i1.5324>

Direktorat Jenderal Badan Peradilan Agama, *Buku II: Pedoman Pelaksanaan Tugas Dan Administrasi Peradilan Agama*. Jakarta: Ditjen Badilag MA RI, 2013

E. Fernando M. Manulang, *Menggapai Hukum Berkeadilan: Tinjauan Hukum Kodrat Dan Antinomi Nilai*. Jakarta: Kompas, 2007

Fahmi, I. "Yurisdiksi Kontentioasa dalam Penanganan Perkara Permohonan Pemeriksaan Terhadap Perseroan Terbatas". *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan* 10, no. 1 (March, 2019): 75-93, <http://dx.doi.org/10.32493/-jdmhkdmmhk.v10i1.3176>

Hanafiah. "Kedudukan Wali Adhal Dalam Menikahkan Anaknya". *Jurnal Al-Mizan* 7, no. 1 (June 30, 2020): 18-26. <https://ejournal.iaialaziziyah.ac.id/index.php/jiam/article/view/557>

- Harahap, Y. *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Jakarta: Sinar Grafika, 2010
- Ibnu Abi Zaid al-Qayrowani, *an-Nawadir wa az-Ziyadah*, Vol. 4. n.p: Dar al-Ghorbu al-Islam, n.d.
- Ibnu Mandzur, *Lisanul Arab*. Kairo: Dar al-Ma'arif, n.d
- Ibnu Qudamah. *al-Mughni*, vol. 3 (Beirut: Dar al-Ma'rifah, 1997
- Mappiasse, S. *Logika Hukum Pertimbangan Putusan Hakim*, Jakarta: Prenadamedia Grup, 2020.
- Mario Julyano & Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum". *Jurnal CREPIDO* 1, no. 1 (July 2019): 13-22. <https://doi.org/10.14710/crepido.1.1.13-22>.
- Mubarok, M.A, Fauziah, E., & Mujahid, I. "Tinjauan Kompilasi Hukum Islam (KHI) terhadap Putusan Hakim tentang Perkawinan Wali Adhal". *SPeSLA: Proceeding Hukum Keluarga* 6, no. 2 (August, 2020): 28-31, <http://dx.doi.org/10.29313/islamic%20family.v6i2.22207>
- Nafisab, Z & Khasanah, U. "Komparasi Konsep Kafa'ah Perspektif M. Quraish Shihab Dan Fiqh Empat Mazhab". *Istidlal: Jurnal Studi Islam* 5, no. 2 (2018): 125-137, <https://doi.org/10.34001/istidal.v5i2.1320>
- Nozick, R. *Anarchy, State and Utopia*. London: Oxford Blackwell, 1980
- Ridwansyah, M. *Mewujudkan Keadilan, Kepastian dan Kemanfaatan Hukum dalam Qanun Bendera dan Lambang Aceh*. *Jurnal Konstitusi* 12, Nomor. 2 (2016): 290-291, <https://doi.org/10.31078/jk1323>
- Rusyd, I. *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*, vol. 2. Beirut: Dar al-Fikr, n.d.
- Shodikin, A. "Penyelesaian Wali Adhal Dalam Pernikahan Menurut Hukum Islam Dan Perundang-Undangan di Indonesia". *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (Juni, 2016): 61-70, <http://dx.doi.org/10.24235/mahkamah.v1i1.102>

- Suadi, A. "Protection of Women's And Children's Rights Based On System Interconnection: A New Paradigm of Execution of Women and Children's Rights after Divorce", *Jurnal Hukum dan Peradilan* 11, no. 3 (2022): 499-522, [10.25216/jhp.11.3.2022.499-522](https://doi.org/10.25216/jhp.11.3.2022.499-522)
- Subairi. "Keharmonisan Rumah Tangga Perspektif Hukum Islam". *Mabahits: Jurnal Hukum Keluarga* 2, no. 2 (November, 2021): 171-187, <https://doi.org/10.36835/mabahits.v2i2.765>
- Subarna, H. M. & Sunarti, *Kamus Umum Bahasa Indonesia Lengkap*. Jakarta: Pustaka Grafika, 2012
- Utomo, M, Q, K, et all. "Penetapan Perkawinan dengan Wali Hakim Akibat Wali Adhal di Pengadilan Agama Nganjuk". *Al Syakhsyiyah Journal: Journal of Law and Family Studies* 4, no. 2 (December, 2022): 170-186, [10.21154/syakhsyiyah.v4i2.4864](https://doi.org/10.21154/syakhsyiyah.v4i2.4864)
- Zaidan, A.K. *al-Mufassal*. vol. 6. Beirut, Muassasah ar-Risalah, n.d