



A juridical analysis of judges consideration of the syar'iyah sigli court in deciding the matter of the Adhal Guardian (*Wali Adhal*)

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Abstract

Article 14 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), states that to carry out a marriage there must be a prospective husband, prospective wife, marriage guardian, two witnesses, consent and acceptance. In Article 19 it is reaffirmed, marriage guardians (*wali*) in marriage are pillars that must be fulfilled for the prospective bride who acts to marry her off. On that basis, the guardian becomes one of the important requirements and must be present in every marriage event. This study aims to find out the considerations of the judges of the Sigli Syar'iyah Court to determine the adhal guardian in the decision no. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt.P/2021/Ms.Sgi, and No. 75/Pdt.P/2022/Ms.Sgi, then analyze the position of the three decisions in terms of the principles of certainty, expediency, and legal justice. The method used in this research is juridical-normative, using 3 approaches, namely the statute approach, the historical approach, and the conceptual approach. The nature of the analysis of this research is prescriptive-analysis. The results of the study indicate that the consideration of the judges of the Sigli Syar'iyah Court determined the adhal guardian (*wali adhal*) in Decision No. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt. P/2021/Ms.Sgi, and Decision No. 75/Pdt.P/2022/Ms refers to three categories. First, juridical considerations, second, the doctrinal opinion regarding the legality of replacing an adhal nasab guardian to a guardian judge (*wali hakim*), third, the rules of fiqh or principles and principles of law.

Keywords: juridical analysis, judge's consideration, *Wali Adhal*

Introduction

Guardianship is an important element in marriage and is recognized in the Indonesian legal system. Law Number 1 of 1974 concerning Marriage, and has been revised through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter written the Marriage Law) states that marriage is only legally performed according to religious norms and based on the beliefs recognized by each religious community, this is regulated in Article 2 paragraph (1) of the Marriage Law that marriage is legal if it is carried out according to the laws of each religion and belief.

Through Article 14 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), it is stated that to carry out a marriage there must be a prospective husband, prospective wife, marriage guardian, two witnesses, consent and kabul (Abdul Gani Abdullah, 2002, p. 81). In Article 19 it is reaffirmed, marriage guardians in marriage are pillars that must be fulfilled for the prospective bride who acts to marry her off. On that basis, the guardian becomes one of the important requirements and must be present in every marriage event.

In fact, cases of adhal guardian determination at the Syar'iyah Court are quite often carried out. This is what happened at the Sigli Syar'iyah Court, Pidie Regency, Aceh. From 2016 to 2021 at the end of December, the number of stipulations of adhal guardians at the Sigli Syar'iyah Court of Pidie Regency amounted to 30 (thirty) cases, as can be detailed and understood.

Applications for adhal guardian at the Syar'iyah Court have increased, especially from 2019 to 2021. Applications for the determination of adhal guardian by married couples as above are overall granted by the judge, and the determination of guardian is transferred to the guardian judge. This can be understood from the three decisions that are the focus of this research, namely Decision No. 8/Pdt.P/2021/MS.Sgi, No.273/Pdt.P/2021/MS.Sgi, and No. 75/Pdt.P/2022/Ms.Sgi.

In several studies, Akhmad Shodikin stated that the adhal guardian would usually be replaced by a guardian judge. This adhal guardian's request will be determined through a trial, the results of this judge's decision then become evidence for the woman that her guardian or parents really do not have the legitimacy to prevent marriage. The panel of judges in three decisions, namely the decision No. 8/Pdt.P/2021/MS.Sgi, No.273/Pdt.P/2021/MS.Sgi, and No. 75/Pdt.P/2022/Ms.Sgi, tends not to explain and consider further the existence of other nasab guardians other than the appointed adhal guardian. It is interesting to see to what extent

the reasons and considerations of the judge determined the adhal guardian of the three decisions of the Sigli Syar'iyah Court.

Method

The research method uses descriptive research methods and normative law and sociological legal research with a qualitative approach. This research was carried out in the area of the Sigli Syari'ah Court. Population is all objects or all individuals or all symptoms or all events or all units to be studied. In this study, the population is Judge, Wali Adhal, taukil wali within the jurisdiction of the Sigli Syari'ah Court. Populations are usually very large and very broad, so it is often not possible to study the entire population.

The Sampling in this study was carried out using purposive sampling technique. Purposive sampling or sampling aims to be done by taking the subject based on a specific purpose. This technique was chosen for reasons of time, effort and cost limitations, so it did not take a large number of samples and were far away. Data collection in this study was carried out by collecting various information and input from informants who were considered representative enough to represent the sample. After all the required data is collected, then an examination of the data is carried out both through interviews and an inventory of existing written data. Then the data is processed and arranged systematically.

The Definition and Law of Adhal guardian (*Wali Adhal*)

Etymologically, the word adhal comes from Arabic. The derivation of the word is *adhala-yu'adhilu-'adhlan-'addhulun*, which means, preventing, restraining, something that hinders, hinders, or hinders (Ahmad Warson Al-Munawwir, p. 441). So, adhal here means a condition that hinders. In this case, a guardian who does not want to marry a woman who is under his guardianship can be called a guardian who has the authority to prevent marriage.

In the encyclopedia of Islamic law, it is stated that *wali adhal* is a guardian who cannot marry a woman who has reached puberty and has reason to a man of her choice, where her choice is legally no barrier to marriage, even both parties (women and men) each each still wants to get married (Abdul Aziz Dahlan, 2000, p. 480). The meaning of "cannot marry off" in this formula goes back to the reluctance of the guardian to marry him off, not caused by anything else.

Based on this definition, it can be concluded that adhal wali can be declared when five elements are met, namely: There is a refusal (reluctance) of the guardian to marry the prospective bride.

There has been a request or request from the prospective bride so that she is married to the prospective groom.

Kafa'ah between the prospective groom and the prospective bride.

There is a feeling of mutual love or love between each prospective bride and groom.

The reason for the refusal or reluctance of the guardian is contrary to the *syara'*, or it can also be called making it up.

The determination that a guardian is declared adhal must be based on considerations that are in accordance with the Shari'ah. Therefore, if the guardian interferes for a valid reason, such as the male is not commensurate, or the dowry is less than the dowry of the mitsil, or there is another suitor more appropriate to his rank, then in this situation the guardianship does not transfer to someone else's hands. Because the guardian is not considered reluctant or adhal (Sayyid Sabiq, 2019, p. 386).

In the view of fiqh, the settlement of adhal wali is generally the same. If viewed from the perspective of the scholars of the school of thought, adhal guardians can be replaced with guardians who have a lineage with children. In the opinion of Imam Hanafi, the *aqrab* (near) guardian who prevents his maula (children) from marrying a partner who has been *sekufu'* along with paying the dowry of missiles, then the solution is the same as the settlement of the unseen (missing) guardian who is difficult to find. . That is, by replacing another guardian in accordance with the existing guardianship order, up to the guardian judge (Ibn Rusyd, 2016, p. 177).

According to Imam Malik, the settlement method for *mujbir* guardians (such as fathers and grandfathers) or *aqrab* guardians (near ones) refuses to marry off their children without any reason justified in *syara'*, especially if the prospective spouse of their child is considered commensurate, then the guardianship does not move to a distant guardian (guardian *ab'ad*), but first the child must report to the judge and the guardianship determination is then submitted to the judge (Wahbah Zuhaili, 2017, p. 202).

The adhal guardian case is classified as an application (volunteer) which only involves the prospective bride as the applicant without any other party being made the Respondent. According to Yahya Harahap, one of the characteristics of voluntary cases is the absence of disputes with other parties. This means that what the applicant is arguing about is not related to the rights of others. For that, including in the case of an application or volunteer, namely *wali adhal*. there are at least five points that have been determined by the Supreme Court in submitting an adhal guardian application:

The application for the determination of adhal guardian is submitted by the prospective bride whose marriage guardian does not want to carry out the marriage to the Religious Court/Syar'iyah Court in the jurisdiction where the prospective bride resides.

The application for adhal guardian submitted by the prospective bride can be made cumulatively with a marriage permit to the Religious Court/Syar'iyah Court in the jurisdiction where the prospective bride resides.

The Religious Court/Syar'iyah Court may grant the request for the determination of adhal guardian after hearing the parents' statements.

Application for adhal guardian is voluntary, the product is in the form of determination. If the applicant is not satisfied with the determination, he can file an appeal.

The legal remedies that can be taken by the parents (father) of the applicant are (the Supreme Court of the Republic of Indonesia, p. 139):

1. Prevention of marriage, if the marriage has not yet taken place
2. Annulment of marriage, if the marriage has taken place

Based on the explanation above, it can be understood that the meaning of *wali adhal* in fiqh is also the same as the statutory provisions. The point is that the guardian is reluctant to marry off his child. In this case, it seems that the laws and regulations stipulate additional provisions, whereby a father (guardian) whose child submits an application for adhal guardian over him, can take legal action, both prevention and cancellation of marriage.

Considerations of Judges of the Sigli Syar'iyah Court in Determining Adhal guardian (*Wali Adhal*)

The judge's consideration or legal consideration is one of the core parts of the decision, even the judge's consideration is the juridical core of the judge's decision. The judge's legal considerations in this context refer to the juridical descriptions presented in the three decisions, namely No. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt.P/2021/Ms.Sgi, and No. 75/Pdt.P/2022/Ms.

In general, these three decisions are considered using the same legal construction. As far as the results of research and analysis of the three decisions above, can be identified at least 3 (three) legal considerations, namely referring to the legislation. This statutory regulation is used to prove formally and materially regarding the subject matter submitted by the applicant. In addition to juridical considerations, the panel of judges also refers to the opinions of doctrinal or legal experts, then refers to the rules of fiqh or the rules and principles of law.

Juridical Considerations

Juridical considerations are considerations that contain legal references in the laws and regulations that provide confirmation regarding the subject matter of the case, therefore the panel of judges selects the legal rules according to the suitability of the case being resolved. Regarding the decision of the Sigli Syar'iyah Court No. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt. P/2021/Ms.Sgi and No. 75/Pdt.P/2022/Ms, the rules used consist of:

Article 49 of the Law on Religious Courts

Article 49 of the Law on Religious Courts is used by judges in the three decisions above regarding the legality and absolute competence of judges when resolving marriage cases. *Wali adhal* is part of religious matters in the field of marriage (Supreme Court of the Republic of Indonesia, 2013, p. 149)

Article 4 PMA

The judge of the Syar'iyah Court Sigli tends to use Article 4 PMA as the main basis that the guardian judge does have the authority to marry off prospective brides whose guardians are reluctant to become their marriage guardians.

Article 172 R.Bg

Decision of the Sigli Syar'iyah Court Number 8/Pdt.P/2021/Ms.Sgi, Number 273/Pdt. P/2021/Ms.Sgi, and Decision Number 75/Pdt.P/2022/Ms was determined based on witness statements. The Petitioner in his application presented witnesses. The judge saw that there was conformity with Article 172 R.Bg with the facts of the trial, that based on an oath, the witnesses presented by the applicant who were not related to the family were adults with proof of residence. On that basis, the position of the witness here is confirmed to be one of the strongest pieces of evidence regarding the applicant's desire to marry, evidence of the existence of deliberation efforts made by the applicant with his parents, and evidence of the refusal of parents to marry off their children.

Article 308 R.Bg

Article 308 R.Bg regulates the position of witness testimony. In this context, witness statements must be based on what they heard directly or experienced themselves. Witness testimony must be based on facts that are heard and experienced personally and are relevant to the arguments that must be proven by the applicant. In the three decisions of the judge of Mahkamah Syar'iyah Sigli, the witnesses and witness statements presented by the applicant have relevance to the case being applied for, and as a person who has knowledge of the applicant's case, he has seen and heard it himself. So that the provisions of Article 308 R.Bg according to the judge have been fulfilled.

The Doctrinal Opinion

The opinion of the doctrinal or expert opinion is an important part in the judge's legal considerations. At certain times, judges can refer to doctrinal opinions to strengthen their considerations and even become one of the important principles in judges' legal considerations. In the context of the Sigli Syar'iyah Court Decision No. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt. P/2021/Ms.Sgi, and Decision Number 75/Pdt.P/2022/Ms, the judges seem to use the same expert opinion. The first opinion was quoted from the view of Wahbah Al-Zuhaili in the book of *Fiqh Al-Islami wa Adillatuh* which was later taken as the opinion of the Panel of Judges.

Fiqh Rules

Jurisprudence rules are legal rules that apply to every legal issue, both civil and criminal where this legal rule is used as a reference in solving a problem (A. Djazuli, 2019, pp. 1-4)

In connection with the three decisions of the Sigli Syar'iyah Court, namely Decision Number 8/Pdt. P/2021/Ms.Sgi, No. 273/Pdt. P/2021/Ms.Sgi, and Decision No. 75/Pdt.P/2022/Ms, the judges in these three cases used the same fiqh rules, namely: (Muhammad Al-Amin bin Muhammad Al-Mukhtar Al-Janki Al-Syinqithi, 2010, p. 63) "*Rejecting mafsadat (damage) takes precedence over bringing benefit (goodness).*"

The Position of the Decision of Sigli Syar'iyah Court Seen from the Principles of Certainty, Benefit, and Legal Justice

One of the legal constructions built in the establishment of a judicial institution that holds the role and function of judicial power is to improve the quality of judges in various dimensions. Judges' decisions should ideally reflect on what was well proven in court while still observing the applicable rules. One form of improving the quality of judge decisions and the professionalism of the judiciary is when judges are able to make decisions by taking into account three very essential things, namely justice (*gerechtigheit*), certainty (*rechsecherheit*) and aspects of expediency (*zwachmatigheit*) (Abdul Manan, 2012, p. 291).

In principle, law as a product of legislative policy and law as a product of court decisions is created to give people (humans) confidence in different interests, to fulfill the essence of implementing the law. Through the law, it is hoped that the achievement of human ideals (legal subjects), or in other terms called legal goals, by Gustav Redbruch divides it into 3 (three) points, namely for certainty, benefit, and justice.

Viewed from the aspect of legal certainty, the three decisions of the Syar'iyah Sigli Court Judges which are the center of this research show the efforts of the judges in providing legal certainty to the applicants. In the statute approach, the legal provisions related to the existence of adhal guardians have been regulated in Article 23 paragraphs (1) and (2) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (hereinafter written as KHI) firmly regulates guardian judges. has the right to replace the position of nasab guardian who is adhal or reluctant (The Supreme Court of the Republic of Indonesia, 2011, p. 69). Under the principle of legal certainty, judges can also explore the values that grow in society. In this case, the judge is obliged to explore and formulate it in a decision. The judge's decision is part of the law enforcement process which has one goal, namely the truth or the realization of legal certainty. Legal certainty as outlined in the judge's decision is a product of law enforcement that is based on juridically relevant trial facts from the results of the case settlement process in the trial.

Judging from the aspect of legal expediency, the three previous judges' decisions were based on the aspect of expediency. In the principle of legal expediency, the main aspect of each law (for products of legislation and products of judges' decisions) is how the law can be applied and applied in the community. in the context of the three decisions of the Sigli Syar'iyah Court, the results of the judge's decisions have also fulfilled the principle of expediency. The judge's decision to determine that a female guardian is truly adhal becomes evidence to the applicant (a woman who submits an application for her guardian who is adhal) to then be given back to the District Religious Affairs Office in lieu of N5 (guardian's permit).

Judging from the aspect of legal justice, it can be understood that the three previous decisions of the Syar'iyah Sigli Court have also fulfilled the principle of justice, especially for the applicant. The principle of justice here can be seen from the aspect of the existence of a guardian judge rule that replaces an adhal guardian, and there are also rules for a woman whose guardian is adhal to submit an application to the court. However, the rules that have governed this adhal guardian law must also be realized by the judge when an application is submitted to him. Therefore, the judge's decision to grant the applicant's request in the three previous decisions of the Sigli Syar'iyah Court has fulfilled the principle of legal justice.

Conclusion

The consideration of the judge of the Syar'iyah Court of Sigli in determining the adhal guardian (*wali adhal*) in Decision No. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt. P/2021/Ms.Sgi, and Decision No. 75/Pdt.P/2022/Ms refers to three categories.

First, juridical considerations, namely the juridical basis used by judges in making decisions by referring to the laws and regulations, which consist of Article 49 of the Religious Courts Law as the basis for absolute competence of the Syar'iyah Sigli Court, Article 4 PMA related to the law of guardian judges. , Articles 172 and 308 R.Bg related to the capacity of witnesses proposed by the applicant.

Second, the opinion of doctrinalists regarding the legality of replacing an adhal nasab guardian to a guardian judge. Third, the rules of fiqh on the principles and principles of law. The rule used is to refuse mafsadat to take precedence over taking benefits.

The decision of the Sigli Syar'iyah Court No. 8/Pdt.P/2021/Ms.Sgi, No. 273/Pdt. P/2021/Ms.Sgi, and Decision No. 75/Pdt.P/2022/Ms has complied with and fulfilled the principles of certainty, benefit, and legal justice. This can be seen from the fulfillment of the applicant's application, the decision can be used as evidence as well as a substitute for the N5 (guardian's permit) which is required at the time of submitting the marriage dossier. The quality of the judge's decision is being able to make decisions by taking into account the essence of the principles of legal justice (*gerechtigheit*), legal certainty (*rechsecherheit*) and legal benefits (*zwachmatigheit*).

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