

HADITHS ABOUT MARRIAGE IN LEGAL REASONING JUDGES OF RELIGIOUS COURTS IN WEST SUMATRA: LIVING HADITH STUDIES

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DOI: <http://dx.doi.org/10.302831/fuaduna.v6i1.5415>

Submission: April 08, 2022

Revised: June 17, 2022

Published: June 30, 2022

Abstract

This study aims to clarify and examine the pattern of the hadith narrations regarding marriage that are cited, authenticated, and validated in the legal reasoning of religious court judges' rulings. This study is a library study that takes the form of a written living hadith. By using the *takhrij al-hadith* approach, the hadith's veracity is confirmed, and its applicability is assessed using the perspectives and techniques of hadith experts. Inductive techniques are then used to process the outcomes. Two methods of citing hadith history were discovered via the research: using a template application and directly citing the hadith book. Only five of the 22 cases in the subfield of marriage, including marital dispensation, *wali 'adhal*, divorce, determining the parentage of the kid and determining the child's adoption, and *Itsbat* of marriage, include hadith citations. The five examples pertain to seven hadith histories that fit the criteria for Prophet Saw's hadiths. Four are fully cited with sanad and rawi, two are only stated with sanads that differ from *rawi*, and one is quoted without *sanad* and *rawi* (divorce case). Although it does not have legal implications that lead to the annulment of the judge's decision, the condition of the absence of quoting hadith as one of the legal considerations in copies of the decisions of cases shows the lack of authority of decisions that characterize Religious Courts.

Keywords: Living Hadith; Legal Reasoning; Religious Courts.

Abstrak

Studi ini bermaksud memaparkan dan menganalisa pola pengutipan, otentisitas dan validitas riwayat-riwayat hadis tentang perkawinan yang terdapat dalam Legal Reasoning putusan hakim pengadilan agama. Penelitian ini merupakan penelitian kepustakaan (library research) berupa living hadis dalam bentuk tulisan. Otentisitas hadis diverifikasi dengan metode *takhrij al-hadith* dan validitasnya dianalisa mengacu pada pendapat dan kaedah yang ulama hadis. Hasilnya kemudian diolah dengan metode induktif. Dari penelitian, ditemukan dua bentuk pengutipan riwayat hadis yaitu menggunakan aplikasi template dan langsung merujuk ke kitab hadis. Dari 22 perkara sub bidang perkawinan, kutipan hadis hanya ditemukan dalam lima perkara yaitu dispensasi perkawinan, wali 'adhal, cerai gugat, penetapan asal usul anak dan penetapan pengangkatan anak serta *itsbat nikah*. Kelima perkara tersebut merujuk pada tujuh riwayat hadis yang dapat dipertanggungjawabkan otentitasnya sebagai hadis Nabi Saw. Empat dikutip lengkap sanad dan rawi, dua lainnya hanya disebutkan rawi dengan sanad yang berbeda dan satu sisanya tanpa sanad dan rawi (perkara cerai gugat). Meski tidak memiliki implikasi hukum yang berujung pada batalnya putusan hakim, namun kondisi tidak adanya kutipan hadis sebagai salah satu pertimbangan hukum dalam salinan putusan perkara menunjukkan lemahnya kewenangan putusan yang menjadi ciri Pengadilan Agama.

Kata Kunci: Living Hadis; Legal Reasoning; Pengadilan Agama.

INTRODUCTION

In a hadith narrated by Abu Dawud (202-275 H) of al-Harits bin 'Amru son of brother al-Mughirah bin Syu'bah, of some of the inhabitants of Himsh who are some of the companions of Mu'adz bin Jabal, it is stated that the Qur'an and Sunnah (Hadith) are the main guidelines and sources of reference for solutions when there are legal problems. If there is no direct argument from the Qur'an and Sunnah on an issue, then the judge performs *ijtihad* by using all his potential to explore the provisions of the law of the shari'a on an issue.¹

In this context, in order to ensure fairness and legal certainty, the Panel of Judges in religious courts should make the Qur'an and Hadith as a basis for legal considerations in deciding the cases they handle. The phenomenon of the existence of hadith histories in the Copy of the Decision of the Judge of the Religious Court is a form of response as well as a form of understanding of the Panel of Judges to implement the teachings of Islam in accordance with what the Prophet Muhammad Saw taught.

This makes hadith a living teaching in writing in the field of jurisprudence. Symptoms that are seen among the public in the form of patterns of behavior and responses as meanings to the hadith of the Prophet Muhammad Saw are commonly referred to as living hadith.² Of the three models of living hadith, namely the written tradition, oral tradition and practical tradition, the hadith of the Prophet Saw, which was implemented by the judges of the Religious Court and manifested in the case decision documents they made included the model of written tradition.³

As an example of a case, the case of *badhanah* (child custody) of the Panel of Judges

in a Copy of the Judgment of the Religious Court Class 1 A Padang Number: 0989/Rev.G/2015/PA. PDG dated May 9, 2016, whose legal basis in its ruling uses the following hadith history:

قال رسول الله صلى الله عليه وسلم: "كفى بالمرء إثماً أن يضيع من يقوت" حديث صحيح (رواه النسائي والحاكم)
That is to say: The Messenger of Allah (SAW) said: It is enough for a person to be said to be sinful because he has wasted the person under his responsibility. (HR. al-Nasâ'i and al-Hâkim)

After being verified and validated into the book of hadith by Imam al-Nasâ'i, the history of this hadith that is not mentioned by his sanad is not found. Nevertheless, in *al-Hâkim's kitab al-Mustadrak 'ala al-Shahihayn* it is found that the history comes from 'Abd Allâh ibn 'Amrû ibn al-'Âsh which is complete as follows:

قال رسول الله صلى الله عليه وسلم: "كفى بالمرء إثماً أن يضيع من يقوت" حديث صحيح (رواه الحاكم)
That is to say: The Messenger of Allah (SAW) said: "It is enough for a person to be said to be sinful because he has wasted the person under his responsibility". This hadith is shahih al-isnad, but al-Bukhâri and Muslims do not narrate it. (HR. al-Hâkim).

From the illustration above, it can be seen that the citation of some of the hadiths that are used as the legal basis for making decisions is not careful. This is partly because the taking is "strongly suspected" not directly quoted from the hadith source book which is *mu'tamad* and *mu'tabarab* (standard and recognized).

Observing these conditions, the existence of this research is a necessity. This is because the colonization of the Hadith as the source of Islamic teachings second only to the Qur'an, needs to be studied in more depth so that its

¹ Abû Dâwud Sulaymân al-Sijistânî, *Sunan Abî Dâwud*, ed. Muhammad Nâshir al-Albâni, III (Beirut: Dâr al-Kitab al-'Arabî, n.d.), 330.

² Suryadi M. Alfatih Suryadilaga, *Metodologi Penelitian Hadis* (Yogyakarta: TH-Press dan Penerbit Teras, 2009), 193.

³ M. Alfatih Suryadilaga, *Aplikasi Penelitian Hadis Dari Teks Ke Konteks* (Yogyakarta: TH-Press dan Penerbit Teras, 2009), 83-184.

validity as something that really comes from the Prophet Saw can be accounted for. Because not everything referred to as hadith can be accepted as a source of Islamic teachings that must be interfered with and practiced

In this regard, Ulama agree that the hadiths that are qualified to be accepted and used as hujah are only hadiths of shahih and hasan value only. As for the hadith of dha'if value, it must be rejected. In this context, trying to criticize the hadiths that "live" in legal reasoning copies of the decisions of religious court judges is interesting and necessary so that the history of the hadith listed is in accordance with the standards of hadith science.

Many previous studies have been conducted related to Legal Reasoning. Among them are related to the legal reassociation of judges in the Religious Courts carried out by Kushdayati (2015),⁴ Isnantiana (2017),⁵ Marfu'ah, et.al (2017),⁶ Fauziah (2013),⁷ and Rozaqi (2014).⁸ Meanwhile, the Living Hadith study related to marriage, for example, was carried out by Shufiyah (2018),⁹ Himsyah (2021),¹⁰ Awaliyah (2022),¹¹ Muzaaky (2021),¹² and Khoiria (2020).¹³ However, none of these studies have specifically examined the Living

Hadith in the Legal Reasoning Decisions of Religious Court Judges related to marriage issues at the Religious Courts in West Sumatra, from the theoretical side of hadith science. Based on these conditions, the study that criticizes the "living" hadiths in Legal Reasoning, a copy of the decision of the Religious Court judges in the matter of marriage, is interesting to follow up.

RELIGIOUS COURT DECISIONS IN THE FIELD OF MARRIAGE

Based on Law number 7 of 1989 concerning Religious Justice Article 49 as amended by Law number 3 of 2006, out of 22 sub-fields of marriage, it is known that the cases that were granted and decided in the four Religious Courts that became the locus of research in 2017 were dominated by divorce lawsuit cases as many as 1960 judgments (54.19%), marriage disputes as many as 787 judgments (21.76%) and divorce due to *talak* peer 746 judgments (20.62%). As for other cases of the sub-field of marriage, the number of cases is relatively small, for example, marriage dispensation for persons who are not yet 21 years old as many as 63 judgments (1.74%), settlement of common property as many as 18

⁴ Lina Kushidayati, "Legal Reasoning Perempuan Dalam Perkara Gugat Cerai Di Pengadilan Agama Kudus Tahun 2014", *Jurnal Hukum Dan Hukum Islam. Yudisia* 6, no. 1 (2015): 141–59.

⁵ Nur Ifitah Isnantiana, "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan," *Islamadina Jurnal Pemikiran Islam* XVIII, no. 2 (2017): 41–56.

⁶ Nurul Ainun Marfu'ah, "Legal Reasoning Hakim Dalam Menentukan Besaran Harta Bersama Dalam Perkara Perceraian (Studi Putusan Nomor 139/Pdt.G/2017/PA Takalar IB. QadauNa," *Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* II, no. 1 (2017): 27–37.

⁷ Fauziah Farah, "Legal Reasoning Izin Poligami Dan Penetapan Harta Bersama Di Pengadilan Agama Kudus (Studi Kasus Putusan Nomor Perkara: 0323/PDT.G/2012/PA.KDS" (Fakultas Hukum Universitas Muria Kudus, 2013).

⁸ Yusuf Rozaqi, "Legal Reasoning Majelis Hakim Dalam Mengembalikan Hadhanah Pada Putusan Verstek: Studi Perkara No. 1681/Pdt.G/2014/PA.Kab.Mlg" (Fakultas Syariah UIN Maliki Malang, 2014).

⁹ Fauziatu Shufiyah, "Pernikahan Dini Menurut Hadis Dan Dampaknya," *Jurnal Living Hadis* 3, no. 1 (September 2018): 47, <https://doi.org/10.14421/livinghadis.2017.1362>.

¹⁰ Fatroyah Asr Himsyah, "The Judge's Understanding of Iwad (Living Hadith in Palembang Religious Court)," *Jurnal Living Hadis* 6, no. 1 (June 2021): 49, <https://doi.org/10.14421/livinghadis.2021.2673>.

¹¹ Robiah Awaliyah, "Nilai-Nilai Pernikahan Ideal Perspektif Hadis Dalam Film Twivortiare," *Jurnal Riset Agama* II, no. 2 (2022): 35–57, <https://doi.org/10.15575/jra.v2i2.16934>.

¹² Althaf Husein Muzakky, "Tradisi Tilik Pada Masyarakat Jawa Dalam Sorotan Living Hadis," *Substantia: Jurnal Ilmu-Ilmu Ushuluddin* 23, no. 1 (April 2021): 24–38, <https://doi.org/10.22373/substantia.v23i1.8499>.

¹³ Mita Khoiria, "Studi Living Hadis Tentang Implementasi Kafaah Pasangan Suami Istri Penganut Tarekat Naqshabandiyah Di Pondok Pesantren Raudlatul Ulum 2 Putukrejo Gondanglegi" (Program Studi Hukum Keluarga Islam Fakultas Syariah UIN Maulana Malik Ibrahim Malang, 2020).

judgments (0.50%), guardians *'adhal* as many as 13 judgments (0.36%), the appointment of a guardian in the event that a child left by both parents is not old enough 18 (eighteen) years as many as 10 verdicts (0.28%), legalization of children as many as 8 judgments (0.22%), child control of 7 judgments (0.19%), appointment of others as guardians in the event that the power of a guardian is revoked by the court as many as 2 judgments (0.06%), polygamy permits as many as 2 judgments (0.06%) and determination of the origin of a child and determination of the adoption of children under Islamic law are only 1 judgment each (0.03%).

Meanwhile, the other sub-fields of marriage, only marriage annulment cases entered one (1) case each to the Padang Religious Court and the Batusangkar Religious Court and the status of which there was no verdict until 2017.¹⁴ The other matters are: [1] Prevention of marriage; [2] Refusal of marriage by the Registrar of Marriages (VAI); [3] Annulment of marriage; [4] Claims for negligence of husband and wife's obligations; [5] The livelihood of the child by the mother if the father who is supposed to be responsible does not carry out his obligations; [6] The former wife's right is in the form of the cost of subsistence by the husband or the determination of an obligation to the former wife; [7] Revocation of parental power; [8] Revocation of guardianship; [9] The appointment of another person as guardian in the event that the power of a guardian is revoked; [10] Encumbrance of indemnification obligations on the property of the child under the power; and [11] The ruling on the matter of refusing to provide information for performing mixed marriages, none of the cases went to the

four Religious Courts that were the locus of research in 2017. On that basis, it is understandable that the documents are also absent.

Whereas, subfields in which there is no hadith citation as a legal consideration in the copy of the judgment of his case at the Tanjung Pati Religious Court include: [1] Polygamy permit (having more than one wife), [2] Divorce due to talak; [3] Settlement of common property; [4] Mastery of children; [5] Child endorsement; and [6] The appointment of a guardian in the event that a child left by both parents is not old enough to be 18 (eighteen) years old.

In this context, the study was aimed at 150 judges' decisions that had been decided and uploaded to the Religious Court website which became the locus of the study.¹⁵ To obtain more complete data related to the copy of the case decision in question, the author also optimized the written data from the field officer, namely the religious court admin who became the locus of the research. In addition, it is also confirmed to the data in the Annual Report of the Padang High Religious Court. The study is limited specifically to a copy of the decision of the sub-field of marriage that is applied to the inclusion of hadith history in it as the theme of this study.

REFERENCES OF HADITH CITATION

From the interviews that the researchers conducted with competent speakers in the Religious Courts which became the locus of research, it is known that the use of hadith references as the basis for legal consideration of case decisions has two forms, namely: using a template app and refer to the book of hadith.

¹⁴ Case Number 0420/Pdt.G/2017/PA.Pdg which is classified as a Polygamy Permit case with Minutiation status. This means that the court clerk is still in the process of completing the administrative process, including typing, binding and ratifying a case. See, for example <https://kamushukum.web.id/arti-kata/minutasiperkara/>

¹⁵<https://putusan.mahkamahagung.go.id/pengadilan/pa-padang/periode/putus>, <https://putusan.mahkamahagung.go.id/pengadilan/pa-batusangkar/periode/putus>, <https://putusan.mahkamahagung.go.id/pengadilan/pa-tanjung-pati>, dan <https://putusan.mahkamahagung.go.id/pengadilan/pa-koto-baru/periode/putus>.

1. Using a Template App

From the transcription presentation of interviews conducted by researchers with several judges of the Religious Court in West Sumatra, it is known that the pattern of citation of hadith on the basis of marriage case decisions uses an application with the following pattern: First, in certain Religious Courts (Tanjung Pati), the pattern of citation of the legal basis in the form of verses or hadiths or the Ushul method and its translation in the copy of the judgment is no longer conventional by opening the book, but has used an information technology tool in the form of an application with a template (a certain pattern) that is only selected and taken by the Judge. Second, the template application used previously was called SIAPA (Religious Court Administration System), then changed to SIPP (Case Tracing Information System) whose decision results could be accessed by the public, but related to the template application could only be accessed and used by internal Religious Observing authorities.

2. Refer to the book of hadith

The use of postulates in the form of verses from the Qur'an, hadith history and the *Ushul Fiqh* method is a characteristic of the Copy of the Case Decision issued by the Religious Court so that the panel of judges is still encouraged to study it. In this context, judges at the Batusangkar, Kotobaru Solok and Padang Religious Courts, for example, are more likely to manually search for the required *syara'* arguments to the hadith books in the local court library or the judge's personal collection or use pdf books and certain software, such as *maktabah syamilah*. This is because what is available in the first form application is only decision form templates. So the loading of the postulates of the verses of the Qur'an, hadith and methods of *Ushul Fiqh* in the formulation of

decisions is left to the initiative and ijtihad of the judge in accordance with the facts of the trial and the facts of the law.

AUTHENTICITY AND VALIDITY OF HADITH

Tracking the authenticity and validity of hadith in the legal reasoning of judges' decisions is essentially a process of justification for the legal event,¹⁶ because the process of legal reasoning in the application of law begins with accepting the relevance of the law and working in the existing legal system.¹⁷ Law Number 4 of 2004 concerning Judicial Power Article 25 paragraph 1 states that "All court decisions, in addition to having to contain the reasons and basis for the decision, also contain certain articles of the relevant laws and regulations or unwritten sources of law that are used as the basis for adjudication". Even more technically it is asserted: "In a consultative hearing, each judge is obliged to submit a written consideration or opinion on the case being examined and be an integral part of the judgment" (Article 19 paragraph 4).

On that basis, the panel of judges in the judiciary in Indonesia, including the Religious Courts must state the reasons and basis for their decisions and must submit written considerations related to the cases they handle. One of the legal considerations that must be referred to by a panel of judges at the Religious Court in addition to certain articles of the applicable laws and regulations is the shari'a's postulates, namely verses from the Qur'an and relevant hadith histories, in addition to the fiqh legal methods and the opinions of scholars.

To trace the existence of the hadith contained in the legal reasoning of the judge's decision, the *Matkatabah Syamilah* Version 3.64 application was used and strengthened by direct verification into the hadith books. In this

¹⁶ Carla Huerta, "The Notion of 'Principle' in Legal Reasoning as Understood in Mexican Law". Dalam, "Mexican Law Review II, no. 1 (n.d.): 90.

¹⁷ M J Peterson, "Legal Reasoning," in *Political Science* 356 (University of Massachusetts Amherst International Law, n.d.), 2.

context, from the 150 judges' decisions that have been decided and uploaded to the Religious Court website as well as field data from the religious court admin who is the locus of research related to the 22 sub-fields of marriage, it is found that not all cases in the copy of the judgment are listed as the hadith of the Prophet Muhammad Saw as one of the basis for its legal considerations.

Based on the locus of publication and its theme, it was found that the use of hadith as part of legal considerations in the Copy of the Case Judgment was found in only five cases namely: (1) Dispensation of marriage, (2) Wali 'Adhal, (3) Divorce, (4) Determination of the origin of a child and determination of the adoption of a child under Islamic law, and (5) *Itsbat* of marriage. As for the other 17 cases, it does not contain any hadith at all because generally cases in the Religious Courts are *verstex* and according to the laws of the country, there is no need for any more proof and only use the method, as long as the defendant is not present, he is already considered to be admitting. In this case, there is no need for any more excavation of hadith of all sorts.¹⁸

Meanwhile, in terms of mention of *sanad* and narrator and its reference sources, it can be explained as follows:

1. Complete History of the Hadith Mentioned by Sanad and His Rawi

a. Hadith on the Dispensation of Marriage

عَنْ عَبْدِ اللَّهِ، قَالَ قَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَأَخْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ"

The hadith above is contained in Copy of Determination No 0175/Rev.P/2016/PA. The LK issued by the Tanjung Pati Religious Court

regarding the sub-case of marriage dispensation or permission to carry out marriage for people who are not yet 21 (twenty-one) years old, in the case of guardian parents, or families in a straight line there is a difference of opinion. In the document in question, the hadith on which the legal consideration number 3 is based is mentioned as the history of Imam al-Bukhari and the Muslim Imam of 'Abd Allah bin Mas'ud.

From the searches carried out, it is known that the complete history above is contained in the Book of Shahih Imam al-Bukhari (194-256 H) and the Book of Shahih Imam Muslim (206-261 H) as follows:

حَدَّثَنَا عُمَرُ بْنُ حَفْصٍ حَدَّثَنَا أَبِي حَدَّثَنَا الْأَعْمَشُ، قَالَ: حَدَّثَنِي إِبْرَاهِيمُ عَنْ عَلْقَمَةَ قَالَ: كُنْتُ مَعَ عَبْدِ اللَّهِ فَلَقِيَهُ عُثْمَانُ بِنْتِي فَقَالَ يَا أَبَا عَبْدِ الرَّحْمَنِ إِنَّ لِي إِلَيْكَ حَاجَةً فَحَلِيًا فَقَالَ عُثْمَانُ هَلْ لَكَ يَا أَبَا عَبْدِ الرَّحْمَنِ فِي أَنْ تُزَوِّجَكَ بَكْرًا تُدْرِكُ مَا كُنْتَ تَعْتَهُدُ فَلَمَّا رَأَى عَبْدُ اللَّهِ أَنْ لَيْسَ لَهُ حَاجَةٌ إِلَى هَذَا أَشَارَ إِلَيَّ فَقَالَ يَا عَلْقَمَةُ فَانْتَهَيْتُ إِلَيْهِ وَهُوَ يَقُولُ أَمَا لِمَنْ قُلْتَ ذَلِكَ لَقَدْ قَالَ لَنَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ. [رواه البخاري]

That is to say: Has told us Umar ibn Hafsh, has told us my father, has told us Al-A'masy, he said; has told me Ibrahim of 'Alqamah, he said; I was with 'Abd Allah (bin Mas'ud), and he was met by Uthman in Mina. Uthman said, "O Abu 'Abd al-Rahman, verily I have a celebration on you." So the two talked one-on-one. Uthman asked, "Do you, O Abu 'Abd al-Rahman, want us to marry a girl who will remind you what you are doing?" So when 'Abd Allah (bin Mas'ud) saw that he had no desire for this, he also beckoned to me saying, "O 'Alqamah", then I immediately headed towards him. He said, "If you say like that, then indeed the Prophet Saw has said to us: 'O all young men, who among you has the ability, then let him marry, and whoever is not able, let him fast

¹⁸ Firdaus (Head of the Tanjung Pati Religious Court), *Interview*, 12 Oktober 2018; Jubaedah (Deputy Head of the Batusangkar Religious Court), *Interview*, 1

November 2018; Djulia Herjanara, (Deputy Head of the Kotobaru Solok Religious Court), *Interview*, 4 Desember 2018.

because it will be more able to ease his turmoil.'" (HR. al-Bukhârî).¹⁹

The narration of the hadith derived from 'Abd Allah ibn Mas'ud is also narrated by Imam Muslim (206-261 H)²⁰, Imam al-Nasa'î (215-303 H)²¹, Imam al-Turmudzi (209-279 H)²², Imam Ibn Majah (209-273 H),²³ Imam al-Dârimî (181-255 H)²⁴ and Imam Ahmad bin Hanbal (164-241 H).²⁵ On that basis, the narration contained in Copy of Determination No. 0175/Rev.P/2016/PA. The LK can be accounted for its authenticity as a true hadith derived from the Prophet Saw. In terms of its validity, the history in question is stated al-Turmudzî as the Hadith of *Hasan Shahîh*²⁶, even contained in the book *Shahîh al-Bukhârî* and the Muslim book of *Shahîh* so as not to overdo Husayn Salim Asad in the Book of Sunan al-Dârimî states his isnad *shahîh* and has the status of *muttafaq 'alayh*²⁷. This is because Imam al-Bukhari (194-256 H) and Imam Muslim (206-261 H) both narrated the hadith from the same source at the friend level namely 'Abd Allâh bin Mas'ûd.

b. Hadith on the Determination of the Origin of a Child and the Determination of the Adoption of a Child Based on Islamic Law;

عن عبد الله بن مسعود رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: لا نكاح إلا بولي وشاهدي عدل (رواه الدارقطني والبيهقي)

In a Copy of Judgment 0390/Rev.G/2017/PA. LK, the panel of judges weighed and put forward the hadith without mentioning the source of the sanad. After research, the complete history of the hadith can be accounted for its authenticity and is contained in the Book of Sunan al-Dâruquthnî (306-385 H) which is as follows:

حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الْبَرْزِيُّ وَإِسْمَاعِيلُ بْنُ الْعَبَّاسِ الْوَرَّاقُ، قَالَا: حَدَّثَنَا عُمَرُ بْنُ شَيْبَةَ حَدَّثَنَا بَكْرُ بْنُ بَكَّارٍ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ عِمْرَانَ بْنِ حُصَيْنٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاهِدَيَّ عَدْلٍ [رواه الدارقطني]

That is to say: Have told us Ya'qûb bin Ibrâhîm al-Bazzâr and Isma'îl bin al-'Abbâs al-Warrâq, both said: have told us 'Umar bin Shababah, have told us Bakkâr, have told us 'Abd Allâh bin Muharrar of Qatâdah of al-Hasan of 'Imrân bin Husbayn of 'Abd Allâh bin Mas'ûd, he said, The Messenger of Allah Saw said: "It is not valid to marry except in the presence of a marriage guardian and two fair witnesses." (HR. Al-Dâruquthnî).²⁸

¹⁹ al-Bukhârî, *Shahîh Al-Bukhârî* (Cairo: Dar al-Sya'ab, 1407), 3 Juz 7, hadis 5065. Riwayat hadis yang semakna dari sumber yang sama yaitu 'Abdullah bin Mas'ûd juga terdapat pada Juz 7, hal. 3, hadis 5066 (selanjutnya disebut al-Bukhârî, *Shahîh al-Bukhârî*).

²⁰ Muslim al-Naysâbûrî, *Shahîh Muslim* (Beirut: Dâr al-Afâq al-Jadîdah, n.d.), 128 Juz 4, hadis 3464. Riwayat hadis yang semakna dari sumber yang sama yaitu 'Abdullah bin Mas'ûd juga terdapat pada Juz 4, hal. 128, hadis 3466 (selanjutnya disebut Muslim ibn al-Hajjâj, *Shahîh Muslim*).

²¹ 'Abd al-Rahmân Ahmad Al-Nasâ'î, *Sunan Al-Nasâ'î Al-Mujtabâ* (Halb: Maktab al-Mathbu'ât al-Islâmiyyah, 1406), 171 Juz 4, hadis 2239.

²² Abû Isâ Muhammad al-Turmudzî, *Sunan Al-Turmudzî* (Beirut: Dar al-Gharb al-Islami, 1998), 383 Juz 2, hadis 1081.

²³ Abû 'Abd Allâh Muhammad Ibn Mâjah., *Sunan Ibn Mâjah* (t.tp: Maktabat Abî al-Mu'âthî, n.d.), 53 Juz 3, hadis 1845.

²⁴ Abû Muhammad al-Dârimî, *Sunan Al-Dârimî*, ed. Husayn Salim Asad (t.tp: Dâr al-Mughnî, n.d.), 177 Juz 2, hadis 2165.

²⁵ 'Abd Allâh Ahmad Ibn Hanbal., *Musnad Al-Imâm Ahmad Ibn Hanbal*, ed. al-Nuri (Beirut: Alim al-Kutub, 1419), 378 Juz 1, hadis 3592 dan lainnya.

²⁶ There are three possible meanings of the term Hadith Hasan Shahîh, namely: [1] Hadith hasan lidzâtîhi which rose to become a hadith shahîh lighayrihi, because it has many hasan sanad that are strong-reinforcing each other; [2] Hadith which has many sanad, some are hasan value, some are saheeh; and [3] Hadith in which the sanad or part of the narration is disputed, some scholars view it as hasan, but some other scholars view it as authentic. M.Alfatih Suryadilaga, *Studi Kitab Hadis* (Yogyakarta: Teras dan TH Press, 2003), 120.

²⁷ al-Dârimî, *Sunan Al-Dârimî*.

²⁸ Abu al-Dâruquthnî, *Sunan Al-Daruquthni* (Makkah al-Mukarramah: Mu'assasat al-Maktabat al-Syâmilah, n.d.), 322 Juz 4, hadis 3531.

The history of the above hadith comes not only from 'Abd Allâh bin Mas'ûd, but also from Ibn 'Umar or 'Abd Allah ibn 'Umar ibn al-Khathâb.²⁹ Meanwhile, there is an additional expression:

وَأَيْمًا امْرَأَةً أَنْكَحَهَا وَلِيٌّ مَسْخُوطٌ عَلَيْهِ فَنِكَاحُهَا بَاطِلٌ

in the history of Imam al-Dâruquthnî (306-385 H) is from the history of 'Abd Allâh bin 'Abbas.³⁰

It is stated in the book of Sunan al-Kubrâ by Imam al-Bayhaqî that the history does not come from 'Abd Allah ibn Mas'ud, but Aisyah (384-458 H) as follows:

وَأَخْبَرَنَا أَبُو عَبْدِ اللَّهِ الْحَافِظُ حَدَّثَنِي أَبُو الْعَبَّاسِ: عَصْمُ بْنُ الْعَبَّاسِ الصَّبِيُّ حَدَّثَنَا مُحَمَّدُ بْنُ هَارُونَ الْخَضْرَمِيُّ حَدَّثَنَا سُلَيْمَانُ بْنُ عُمَرَ الرَّقِّيُّ حَدَّثَنَا يَحْيَى بْنُ سَعِيدِ الْأَمْوِيُّ حَدَّثَنَا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنِ الرَّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاهِدَيْنِ عَدْلٍ». [رواه البيهقي]

That is to say: Has told us Abû 'Abd Allah al-Hâfiẓ, has told me Abu al-'Abbâs Ushm bin al-'Abbâs al-Dhabbi, has told us Muhammad ibn Hârûn al-Hadbramî, has told us Sulaymân bin 'Umar al-Raqî, has told us Yahya bin Sa'id al-Amawî, has told us Ibn Jurayj of Sulaymân bin Mûsâ of al-Zubri of 'Urwah of 'Aisyah Ra, The Prophet Said: "It is not valid to marry except in the presence of a marriage guardian and two just witnesses." (HR. al-Bayhaqî)³¹

Imam al-Shafi'i (150-205 H) said, narrated from al-Hasan ibn Abî al-Hasan, that the Messenger of Allah Saw said:

لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاهِدَيْنِ عَدْلٍ

"It is not valid to marry except in the presence of a marriage guardian and two fair witnesses."³²

Meanwhile, in the annals of Imam al-Bayhaqî (384-458 H) it is stated with different editorials, although the intention is the same.³³

In terms of validity, the history of the above hadith can also be accounted for and of *shahâb* quality.³⁴ The source of his narration at the level of companions, is not only 'Abd Allâh bin Mas'ûd, but also 'Abd Allah ibn 'Umar ibn al-Khathâb, 'Abd Allâh bin 'Abbâs, and 'Aisyah.

c. Marriage Dispute (*Itsbat*) or Statement about the Validity of Marriage that Occurred Before Law Number 1 of 1974 concerning Marriage and Carried Out According to Other Regulations

عن عبد الله بن مسعود قال: قال رسول الله صلى الله عليه وسلم: لا نكاح إلا بولي وشاهدي عدل (رواه الدارقطني والبيهقي)

Narration of hadith on which legal considerations are based in Case Determination Copy No 349/Rev.P/2017/PA. The above LK, is basically the same as the hadith which is used as the basis for consideration of the case law of the sub-field of determining the origin of a child and determining the adoption of a child based on Islamic law as outlined earlier.

In addition, in the case of *Itsbat* Nikah, the use of other hadiths is also found, namely:

وَعَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَيْمًا امْرَأَةً نَكَحَتْ بِغَيْرِ إِذْنٍ وَلِيِّهَا، فَنِكَاحُهَا بَاطِلٌ،» [أَخْرَجَهُ الْأَرْزَبَعِيُّ إِلَّا النَّسَائِيَّ، وَصَحَّحَهُ أَبُو عَوَانَةَ وَابْنُ جِبَانَ وَالْحَاكِمُ]

After tracing into the source book of the hadith with the citation pattern as found in the Copy of the Case Affirmation above, the piece of history is found in the Book of *Bulûgh al-*

²⁹ al-Dâruquthnî, *Sunan Al-Daruquthni*.

³⁰ al-Dâruquthnî.

³¹ Abu Mûsâ al-Bayhaqî, *Sunan Al-Kubrâ Wa Fîdẓilîh Al-Jawbar Al-Nâqî* (Hayderabad: Majlis Dâ'irat al-Ma'ârif al-Nizhâmiyyat al-Kâ'iat fi al-Hind, 1344), 125 Juz 7, hadits 14089.

³² al-Bayhaqî, *Sunan Al-Kubrâ Wa Fîdẓilîh Al-Jawbar Al-Nâqî*.

³³ al-Bayhaqî.

³⁴ Jalâl al-Dîn Al-Suyûthî, *Al-Jâmi' Al-Shagîr Fî Abâdîs Al-Basyîr Al-Nadẓîr* (Beirut: Dâr al-Kutub al-'Ilmiyyah, 1424), 177 Juz 1, hadits 2962.

Marâm Min Adillat al-Abkâm. Nevertheless, the citation itself is incomplete because there are certain sections that are not listed, especially the follow-up. See the underlined in the following hadith:

وَعَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَيُّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ إِذْنٍ وَلِيِّهَا، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَوَلِيُّ مَنْ لَا وَليَّ لَهُ» [أَخْرَجَهُ الْأَرْبَعَةُ إِلَّا النَّسَائِيَّ، وَصَحَّحَهُ أَبُو عَوَانَةَ وَابْنُ حِبَّانَ وَالْحَاكِمُ]

That is to say: From Aisyah radhiyallahu 'anhâ, he has said, The Messenger of Allah SAW once said: "Any woman who marries without the permission of her guardian, then her marriage is void. If the husband has been associated with her, then he is entitled to receive a dowry because he has justified his (for the husband). If the guardian objects to marrying him, then the ruler is the guardian for anyone who does not have a guardian". (HR. al-Arba'ah except al-Nasâ'î and Abu 'Awânah, Ibn Hibban and al-Hâkim shahih-kannya).³⁵

Narration of hadith contained in The Copy of Case Determination No 531/Rev.P/2017/PA. The LK in full is as follows:

حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَخْبَرَنَا سُفْيَانُ أَخْبَرَنَا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ «أَيُّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ إِذْنٍ مَوْلِيهَا فَنِكَاحُهَا بَاطِلٌ». ثَلَاثَ مَرَّاتٍ «فَإِنْ دَخَلَ بِهَا فَلَا مَهْرَ لَهَا بِمَا أَصَابَ مِنْهَا فَإِنْ تَشَاجَرُوا فَالسُّلْطَانُ وَوَلِيُّ مَنْ لَا وَليَّ لَهُ». [رواه أبو داود]

That is to say: Has told us Muhammad ibn Katsir, has preached to us Sufyan, has preached to us Ibn Juraij, from Sulayman ibn Moses from al-Zubri of Urwah, from 'Aisyah, he said; The Prophet Saw said: "Every woman who marries without the permission of her guardian, then her marriage is void." He said it three times. If he has interfered with it then for him the dowry is because of what he gets from it, then if they are at odds then the ruler is the guardian for the one who has no guardian." (HR. Abû Dâwud)³⁶

The narration of the hadith derived from 'Aisyah is also narrated by Imam al-Turmudzi (209-279 H)³⁷, and Imam Ibn Majah (209-273 H)³⁸. Statement of Copy of Case No. 531/Rev.P/2017/PA. LK that the above hadith is "akhrajahu al-Arba'ah illâ al-Nasâ'î" is valid because it is found in the Book of Sunan Abû Dâwud, Sunan al-Turmudzî and Sunan Ibn Mâjah. So it is not only authentic to the Prophet's hadith, but also valid for its citation as a history of hadith sourced from 'Aisyah. In this regard, Imâm al-Turmudzî (209-279 H) considers it to be a hadith of *hasan*.³⁹ He adds that this hadith was narrated by Yahya bin Sa'îd al-Anshârî, Yahya bin 'Ayyûb, Sufyân al-Tsawrî, and not just one *huffâẓ* from Ibn Juraij like this hadith.⁴⁰

The statement that this hadith is considered *shahîh* by Ibn Hibbân (d. 354 H)⁴¹ and al-Hâkim (321-405 H)⁴² is also true because these scholars also include it in their respective hadith books. Even al-Hakim (321-405 H) considered this hadith to be *shahîh* according to the requirements of al-Shaykhân, although Imam al-Bukhari (194-256 H) and Imam Muslim (206-261 H) did not narrate it. However, the statement that this hadith is considered *shahîh* by

³⁵ Ibnu Hajr al-Asqalani, *Bulġh Al-Marâm Min Adillat Al-Abkâm* (Riyadh: Dar al-Qabs li al-Nasyr wa al-Tawzi', 1435), 383 hadis 983.

³⁶ al-Sijistânî, *Sunan Abî Dâwud*.

³⁷ al-Turmudzî, *Sunan Al-Turmudzî*.

³⁸ Mâjah., *Sunan Ibn Mâjah*.

³⁹ The hasan hadith is the hadith that is continued in the chain and narrated by narrators who are 'fair but somewhat lacking in the level of accuracy and accuracy (dhâbith) of narrators such as those that reached the

Prophet Muhammad without any shadz and 'illat. See, Mahmûd al-Thahân, *Taysîr Mushthalah al-Hadîts*, ([tt.]: [tp.], [t.th.]), hal. 38

⁴⁰ al-Turmudzî, *Sunan Al-Turmudzî*.

⁴¹ Ibn Hibbân, *Shahîh Ibn Hibbân Bi Tartîb Ibn Balbân*, ed. Syu'ayb al-Arnâwuth (Beirut: Mu'assasat al-Risâlah, 1414), 384 Juz 9, hadis 4074.

⁴² Mushthafa 'Abd al-Qadir 'Atha', ed., *Abû 'Abd Allâh Al-Hâkim. Al-Mustadrak 'ala Al-Shahîbayn* (Beirut: Dâr al-Kutub al-'Ilmiyyah, 1411), 182 Juz 2, hadiths 2706.

Abû 'Awânah (d. 316 H) deserves criticism because the *isnad* is *hasan* and this hadith is a *ḥawa'id* (additional)⁴³ of Abu 'Awânah against Imam Muslim. On the other hand, this hadith was also narrated by Imam al-Dârimî (181-255 H)⁴⁴ and Imam Ahmad bin Hanbal (164-241 H).⁴⁵

THE NARRATION OF HADITH THAT ONLY MENTIONS ITS *RAWI*

a. Hadith about Wali '*Adhal*

فَإِنْ اشْتَجَرُوا فَالْسُّلْطَانُ وَوَيْ مِنْ لَأ وَوَيْ لَهُ. [رواه الترمذی]

Guardians who refuse, are unwilling or reluctant to marry are referred to by the term '*adhal*. By the definition of the scholars, a wali '*adhal* is a guardian who refuses to marry off his baligh and sensible daughter to a man commensurate with his daughter. If the daughter has asked (her guardian) to be married and each bride-to-be loves each other, then the refusal is according to the "prohibited" *syara*.⁴⁶ Thus, it can be stated that the guardian '*adhal* contains at least five elements, namely: (1) The guardian refuses (reluctantly) to marry the bride-to-be; (2) The bride-to-be has requested or pleaded for her to be married to the bridegroom-to-be; (3) The bridegroom-to-be is *sekufu* (commensurate) with the bride-to-be in terms of religion, position, education, wealth, social status and so on; (4) Between each of the brides-to-be there is a feeling of mutual affection or love, and (5) The reason for the refusal of the guardian is contrary to the law of the *syara*'.

In this context, in Copy of Determination No. 0011/Rev.P/ 2017/PA. LK related to the sub-field of the Wali '*Adhal* case, the historical hadith of Imam al-Turmudzi became the basis for legal consideration number 4. In the full history of the hadith that is not mentioned

sanad, from the research carried out it is known that it reads as follows:

حَدَّثَنَا ابْنُ أَبِي عُمَرَ قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنِ الرَّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، فَإِنْ اشْتَجَرُوا فَالْسُّلْطَانُ وَوَيْ مِنْ لَأ وَوَيْ لَهُ. [رواه الترمذی]

That is to say: Has told us Ibn Abu Umar, has told us Sufyan bin 'Uyainah of Ibn Juraj of Sulayman ibn Musa of Al-Zubri of 'Urwah of Aisyah that the Messenger of Allah Saw said: "Any woman who marries without the permission of her guardian, then her marriage is void, her marriage is void, her marriage is void. If she has been snubbed, then she is entitled to a dowry, because the husband has justified her. If there is a quarrel between them, then it is the ruler who becomes the guardian of the one who has no guardian." (HR. al-Turmudzi).⁴⁷

According to Abû 'Isâ al-Turmudzî (209-279 H), this hadith is *hasan* quality. He added that this hadith was narrated by Ibn Juraj as narrated from Yahya ibn Sa'id al-Anshari, Yahya ibn 'Ayyub, Sufyan al-Tsauri and others among the *huffazh*." Al-Turmudzî continued, "The hadith of Abu Musa where it is a dispute because Isra'il, Sharik bin 'Abd Allah, Abu 'Awanah, Zuhair bin Mu'awiyah, Qais bin al-Rabi' narrated from Abu Ishaq of Abu Burdah of Abu Musa of the Prophet Saw. Meanwhile, Asbath bin Muhammad and Zaid bin Hubab narrated from Yunus bin Abu Ishaq of Abu Ishaq of Abu Burdah from Abu Musa of Prophet Saw. As for Abu 'Ubaidah al-Haddad narrated from Yunus bin Abu Ishaq of Abu Burdah of Abu Musa of the Prophet Saw as above with no mention in it of Abu Ishaq. This hadith is also narrated from

⁴³ Abû 'Awânah al-Isfarâyîni, *Al-Musnad Al-Shabîh Al-Mukbarraj 'ala Shabîh Muslim*, ed. Muhammad bin 'Abd Allah bin 'Athâ' Allâh 'Athiyallâh. (al-Mamlakat al-'Arabiyyat al-Sa'ûdiyyah, 1435), 215 Juz 11, hadits 4473 .

⁴⁴ al-Dârimî, *Sunan Al-Dârimî*.

⁴⁵ Hanbal, *Musnad Al-Imâm Ahmad Ibn Hanbal*.

⁴⁶ Wahbah al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, trans. Abdul Hayyi dkk (Jakarta: Gema Insani, 2007), 343 Jilid. 9.

⁴⁷ al-Turmudzî, *Sunan Al-Turmudzî*.

Yunus ibn Abu Ishaq of Abu Ishaq of Abu Burdah of Abu Musa of prophet Saw as well as Syu'bah and al-Tsauri narrated from Abu Ishaq of Abu Burdah of Prophet Saw: "There is no (invalid) marriage except with the guardian." The companions of Sufyan mention this hadith from Sufyan of Abu Ishaq of Abu Burdah of Abu Musa and not shahih of their history which narrates from Abu Ishaq of Abu Burdah of Abu Musa of prophet Saw: "It is not legal to marry except with the guardian." Al-Turmudzî, however, considered it more shahih because they heard from Abu Ishaq at different times. Moreover, Syu'bah and al-Tsauri are more awake and lebit tsabat from all the narrators narrating the hadiths of Abu Ishaq. Al-Turmudzî considers their history more similar because the Syu'bah and al-Tsauri had heard this hadith from Abu Ishaq in one majlis. Another proof, the hadith presented to us, in which Mahmud ibn Ghailan said: Has told us Abu David, he said: Has preached to us Syu'bah said; I have heard Sufyan al-Tsauri ask Abu Ishaq; have ye heard Abu Burdah say; The Prophet Saw said: "There is no (invalid) marriage except with a guardian." He replied; "Yes." This hadith shows that Syu'bah and al-Tsauri heard this hadith at one time. Isra'il was a tsiqah (trusted) and tsabat (sturdy) person in narrating the hadith of Abu Ishaq. Al-Turmudzî had heard Muhammad ibn al-Mutsanna say; i have heard 'Abd al-Rahman ibn Mahdi say; I did not miss the hadith al-Tsauri of Abu Ishaq but rather I resigned myself and believed in Isra'il, because he came up with narrating a more perfect hadith. Whereas the Aisyah hadith in this chapter, from the Prophet Saw: "There is no (invalid) marriage except with the guardian" is a hadith worth hasan.

Ibn Juraij narrated this hadith from Sulayman ibn Musa of al-Zuhri from 'Urwah of Aisyah of Prophet Saw. Hajjaj ibn Arthah and Ja'far ibn Rabi'ah narrated from al-Zuhri of

'Urwah of Aisyah of Prophet Saw and of Hisham ibn 'Urwah of his Father of Aisyah of Prophet SAW with the same lafazh. Some hadith scholars speak of the hadith al-Zuhri of 'Urwah of Aisyah of the Prophet Saw. According to Ibn Juraij, al-Zuhri denied it and dhaif-kan this hadith because of this factor. It is also mentioned from Yahya ibn Ma'in that Isma'il ibn Ibrahim of Ibn Juraij heard it not like that, but he justified his books on the books of Abdul Majid bin Abdul Aziz bin Abu Rawwad and he did not hear from Ibn Juraij. Yahya dhaif-kan the history of Isma'il ibn Ibrahim from Ibn Juraij.

Ulamas from among the companions of the Prophet Saw, such as Umar bin al-Khaththab, Ali bin Abu Talib; Abdullah bin Abbas, Abu Hurairah and others practiced the hadith of the Prophet Saw: "It is not valid to marry except with a guardian." Likewise, it is narrated from some of the fuqaha' of the tabi'in circles, such as Sa'id ibn Musayyab, al-Hasan al-Bashri, Shuraikh, Ibrahim al-Nakha'i, Umar bin Abdul Aziz and others argued; there is no marriage except in the presence of a guardian. Similarly the opinion of Sufyan al-Tsauri, al-Auza'i, 'Abd Allah ibn al-Mubarak, Malik, al-Shafi'i, Ahmad and Ishaq.⁴⁸

This hadith, which is guaranteed authenticity and hasan value in terms of validity, is also narrated by Imam Abu Dawud (202-275 H),⁴⁹ Imam Ibn Majah (209-273 H)⁵⁰ dan Imam Ahmad bin Hanbal (164-241 H).⁵¹ The passage is meaningful with slightly varied editorials. With regard to the guardian *'adhal*, all these histories assert the same thing which is "if there is a quarrel between them, then it is the ruler who is the guardian of the one who has no guardian."

b. Determination of the Origin of a Child and The Adoption of a Child Based on Islamic Law

⁴⁸ al-Turmudzî.

⁴⁹ al-Sijistânî, *Sunan Abî Dâwud*.

⁵⁰ Mâjah., *Sunan Ibn Mâjah*.

⁵¹ Hanbal., *Musnad Al-Imâm Ahmad Ibn Hanbal*.

In this case, another hadith history was found which was also used as the basis for legal considerations in the case of determining the origin of a child and determining the adoption of a child based on Islamic law, namely the history of the Muslim Imam (206-261 H) as stated in the Copy of Judgment 0482/Rev.G/2017/PA. LK follows:

التَّبِيبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبَكْرُ تُسْتَأْمَرُ وَإِذْهَا سُكُوتُهَا

Through the search carried out, it is known that the complete history of the hadith referred to is as follows:

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ حَدَّثَنَا سُفْيَانُ عَنْ زِيَادِ بْنِ سَعْدٍ
عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ سَمِعَ نَافِعَ بْنَ جُبَيْرٍ يُخْبِرُ عَنِ ابْنِ
عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ «التَّبِيبُ أَحَقُّ
بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبَكْرُ تُسْتَأْمَرُ وَإِذْهَا سُكُوتُهَا». [رواه
مسلم]

That is to say: And has told us Qutaibah bin Sa'id has told us Sufyan of Ziyad bin Sa'ad of 'Abd Allah bin Fadhl that he heard Nafi' bin Jubair preach from Ibn 'Abbas that his prophet Saw said: "A widow is more entitled to herself than her guardian, while the virgin (maiden) must be asked for permission from her, and her silence is her permission." (HR. Muslim).⁵²

The narration of the hadith derived from 'Abd Allah bin 'Abbas is narrated also by Imam Abu Dawud (202-275 H),⁵³ Imam al-Nasa'i (215-303 H),⁵⁴ dan Imam Ahmad bin Hanbal (164-241 H).⁵⁵ On that basis, the history contained in Copy of Determination No. 0482/Rev.G/2017/ PA. LK can be accounted for its authenticity as a true hadith derived from the Prophet Saw. In terms of its validity, the history referred to is of shahih quality because it is contained in the book of *Shahih* Muslim, a number of the Books of Sunan and Musnad Ahmad ibn Hanbal.

⁵² al-Naysaburi, *Shahih Muslim*.

⁵³ al-Sijistani, *Sunan Abi Dawud*.

THE NARRATION OF HADITH THAT ITS *SANAD* AND ITS *RAWI* DO NOT MENTION

من دعى إلى حاكم من حكام المسلمين فلم يجب فهو ظالم لا حق له

The above hadith history can be found in the Copy of judgment on divorce case No. 0026/Rev.G/2017/PA. KBr, No. 0012/Rev.G/2017/PA. KBr, No. 0002/Rev.G/2017/PA. KBr and others. The panel of judges of PA Koto Baru stated that the above Hadith is contained in the Book of Ahkam al-Qur'an li al-Jashash, Mauq'ul Islam Juz 08 page 201. After tracing into the book mentioned, the complete history of the hadith is;

وحدثنا عبد الباقي قال حدثنا محمد بن عبدوس بن كامل قال حدثنا عبد الرحمن بن صالح قال حدثنا يحيى عن أبي الأشهب عن الحسن قال قال رسول الله صلى الله عليه وسلم من دعى إلى حاكم من حكام المسلمين فلم يجب فهو ظالم لا حق له [رواه الحصاص]

That is to say: And has told us 'Abd al-Baqi, he said he has told us Muhammad bin 'Abdus bin Kamil, he said he has told us 'Abd al-Rahman bin Shalih, he said, has told us Yahya from Abi al-Asyhab of al-Hasan. He said: The Messenger of Allah Shalallahu 'Alayhi Wasallam said: "Whoever is called by a judge among the judges of the Muslims, then he does not face, then he has zhalim and there is no right of answer for him." (HR. al-Jashash).

As the additional information that the narration is also contained in Juz 08 page 201, as far as the search conducted the Author did not find the existence of the book in question. Meanwhile, in the treasures of the hadith books, the history referred to is found among others in:

حَدَّثَنَا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمَالِكِيُّ نَا عَمْرُو بْنُ عَلِيٍّ نَا
يَحْيَى بْنُ سَعِيدٍ نَا أَبُو الْأَشْهَبِ عَنِ الْحَسَنِ قَالَ: قَالَ

⁵⁴ Al-Nasa'i, *Sunan Al-Nasa'i Al-Mujtaba*.

⁵⁵ Hanbal, *Musnad Al-Imam Ahmad Ibn Hanbal*.

رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ دُعِيَ إِلَى حَاكِمٍ
مِنْ حُكَّامِ الْمُسْلِمِينَ فَلَمْ يُجِبْ فَهُوَ ظَالِمٌ لَا حَقَّ لَهُ»
[رواه الدارقطني]

That is to say: And has told us Mubammad ibn Sulayman al-Maliki, he said he has told us 'Amru bin 'Ali, he said he has told us Yabya bin Sa'id, he said, has told us Abu al-Asyhab of al-Hasan. He said: The Messenger of Allah Shalallahu 'Alayhi Wasallam said: "Whoever is called by a judge among the judges of the Muslims, then he does not face, then he has *zhalim* and there is no right of answer for him." (HR. al-Dâruquthni).⁵⁶

The same narration can also be found in the book of *Musnad al-Bazzâr*.⁵⁷ Ahmad ibn 'Amrû ibn 'Abd al-Kâliq al-Bazzâr (d. 292 H) admits that we do not know of any narrator with the tossed sanad (*muttashil al-isnâd*) narrating this hadith from the Prophet Saw except from this path of Imrân ibn Hushayn. On the other hand, not only one person narrated it mursally from al-Hasan. The hadith has mursal status because al-Hasan al-Bashri (23-110 H) as *tabi'in* narrated it by aborting the friend-level narrator who became his teacher, Imran bin Hushayn (d. 52 H), who received the hadith directly from the Prophet.

Based on the statement of Ahmad ibn 'Amrû ibn 'Abd al-Kâliq al-Bazzâr (d. 292 H) the continuity of the sanad (*muttashil al-isnâd*) hadith through the path of Imrân ibn Hushayn which he narrated also raises its own question mark. This is because his teacher Raja' ibn Muhammad al-Saqathi (d. more than 240 H) who although

judged *tsiqab* by scholars of hadith criticism,⁵⁸ stated:

حَدَّثَنَا رَجُلٌ قَدْ سَمَّاهُ ذَهَبَ عَنِّي اسْمُهُ

(have told us someone whose name I really forgot). A phrase that indicates that he is not dhâbith because he does not remember at all the name of his teacher. This causes the quality of this hadith to become *munqathi'* (disconnected) sanad and falls into the category of hadith *majhûl 'ain* i.e. narrator which is unknown or unknown whose personal identity is.⁵⁹

With regard to the *mursal* hadith of al-Hasan al-Bashri, 'Ali ibn al-Madini says that the *mursal* hadiths narrated by al-Hasan al-Basri are derived from the *tsiqât* narrator.⁶⁰ Although the majority of Muhaddisin stated that *mursal* hadith could not be used as *bujab* because it had fallen in its *sanad* path of unknown narrator or could not be *tsiqab*. In this case, this *mursal* hadith of al-Hasan al-Bashri is the exception. This is because the one who died from his sanad was not a known or unbelieving narrator like the companion of the Prophet Saw, Imran bin Hushayn (52 H). In addition, Imam Abu Hanifah (80-150 H), Imam Malik bin Anas (97-179 H) and Imam Ahmad ibn Hanbal (164-241 H) were in cahoots with the *mursal* hadith. In fact, Imam al-Shafi'i (150-205 H) allowed to abide with the *mursal* hadith on the condition that it was assisted by other hadiths that were *musnad* or assisted by other *mursal* hadiths or with *qiyas*.⁶¹

Rawh ibn 'Athâ' leaned the narration to his Father and Rawh himself is known as a narration which is "*layyin al-hadîts*"⁶² and 'Atha' himself is famous as the Basrah people where Khâlid al-

⁵⁶ al-Dâruquthni, *Sunan Al-Daruquthni*.

⁵⁷ Abû Bakr Ahmad al-Bazzâr, *Musnad Al-Bazzâr*, ed. Zayn Allâh (al-Madinah al-Munawwarah: Maktabat al-'Ulûm wa al-Hikam, 2009), 49 Juz 9, hadis 3573.

⁵⁸ His full name is Rajâ' bin Muhammad bin Rajâ' al-'Udzri, Abu al-Hasan al-Bashri al-Saqath (d. over 240 H). al-Nasâ'i considered it "*lâ ba'sa bihi*", Abu Bakr bin Abi 'Ashim called it "*tsiqab*", even Ibn Hibbân put his name in *Kitab al-Tsiqât* and considered it "*mustqâim al-hadîts*". See Jamâl al-Mizzî, "*Tahdzîb Al-Kamâl Fî Asmâ'*"

Al-Rijâl," in *Bayân Awwâd Ma'rûf*, ed. (Beirut: Mu'assasat al-Risâlah, 1413), 166-68.

⁵⁹ Ramli Abdul Husnel Anwar Matondang Wahid, *Kamus Lengkap Ilmu Hadis* (Medan: Perdana Publishing, 2015), 112.

⁶⁰ al-Mizzî, "*Tahdzîb Al-Kamâl Fî Asmâ'*" Al-Rijâl."

⁶¹ Totok Jumantoro, *Kamus Ilmu Hadis* (Jakarta: Bumi Aksara, 1997), 167.

⁶² Husnel Anwar Matondang Wahid, *Kamus Lengkap Ilmu Hadis*.

Hadzdza', Syu'bah and besides both narrate hadith from him.⁶³

In this context, Drs. Salwi, SH, as a Judge at the Padang Religious Court seems to be extra careful in using the history in question.⁶⁴ Meanwhile, it was also found that there were several copies of the verdict of the case that did not use hadith as part of its legal considerations, namely: (1) Polygamy permit (having more than one wife); (2) Divorce due to talak; (3) Divorce due to the wife's side's lawsuit; (4) Settlement of common property (gono-gini); (5) Child mastery; (6) Endorsement of the status of the child; and (7) The appointment of a guardian in the event that a child left by both parents is not old enough to be 18 (eighteen) years of age.

The condition of there is no citation of hadith as one of the legal considerations in the copy of the judgment of these cases, does not have legal implications that lead to the cancellation of the judge's decision. It's just that it seems that it does not show the authority of the decision that is characteristic of the Religious Court which should include the postulates of the *syara'* in the form of the hadith of the Prophet SAW.

This happened as stated by the investigated judge because generally cases in religious courts were *verstex* or not attended by the defendant. As long as the defendant is not present, he is already considered to have admitted the case filed by the plaintiff so that not all of them require digging the history of the hadith. According to the applicable law, there is no need for proof anymore and just use the *fiqh* method. In addition, the non-inclusion of the history of the hadith on the copies of the judgments of these marriage cases, is generally fulfilled by the citation of the verse or method of *ushul-fiqh* and referencing the opinion of the ulama.

CONCLUSION

From the previous explanation, it can be concluded that this study is limited to the authenticity and validity of the hadith which is used as the legal basis for the decision of the marriage sub-field case. Similar studies can be developed in other sub-fields that are also the authority of the Religious Court, such as inheritance, grants, waqf, zakat, infak, shadaqah and sharia economics.

The Pattern of Citation of Hadith for a Copy of a Judgment in the field of marriage at the Tanjung Pati Religious Court which is the locus of research is not conventional by opening the book, but has used a template (a certain pattern) so that the judge just chooses and takes it. This template is not open access, but can only be operationalized by internal religious courts that are given authority, but the results of the decision can be accessed by the public. This condition occurs because generally cases in PA are *verstex* and according to the laws of their country, there is no need for any more proof and only use the method, as long as the defendant is not present, he is considered to be acknowledging so that not all of them require digging the history of the hadith, but nevertheless the panel of judges is still encouraged to study it.

Of the 22 cases of the sub-field of marriage, only five cases were found to have hadith citations in the legal basis of the decision, namely marriage dispensation, *wali 'adhal*, divorce, determination of the origin of a child and adoption of children based on Islamic law, and marriage disputes with references to as many as seven hadith histories. The seven histories of the hadith can be accounted for as the hadith of the Prophet Saw. In the context of the citation of the source of the narration (*sanad* and *rawi*), four of them are complete *sanad* and *rawi* (the case of marriage dispensation, the determination of

⁶³ al-Bazzâr, *Musnad Al-Bazzâr*.

⁶⁴ Salwi (Religious Court Judge Class 1A Padang), *Interview*, Padang, 5 Desember 2018.

the origin of a child and the adoption of a child under Islamic law, and the marriage certificate). While the other two are only mentioned, the *sanad* is not at all (the case of the guardian 'adhal and the determination of the origin of a child and the determination of the adoption of a child based on Islamic law). As for the remaining one, it is not mentioned at all *sanad* and also its *rawi* (divorce case).

From the seven histories, in terms of validity, one of them is of the quality of *muttafaq 'alayhi* (marriage dispensation case). The other three are of *shahih* quality (the case of *Wali 'Adhal* and *Itsbat Nikah*), even one of them is considered to meet the standards of *shahih* al-Bukhârî and Muslims, but neither narrates the hadith. The other two histories, have the status of *hasan shahih* and *hasan* (the case of determining the origin of a child and the adoption of a child under Islamic law, and the marriage certificate). Meanwhile, one more history of *dha'if (munqathi'* and *majbul 'ain*) is the divorce case.

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