

RETHINKING *WALI ADHAL* PROCEEDINGS: THE ROLE OF *AUDI ET ALTERAM PARTEM* IN ADVANCING PROCEDURAL FAIRNESS

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Abstract

This study analyzes the procedural reconstruction of *wali adhal* cases in Indonesian Religious Courts, which are currently resolved through voluntary petitions (*voluntair*). In practice, a guardian who refuses without legitimate grounds is replaced by a judicial guardian (*wali hakim*) through a court decree; however, this procedure undermines procedural fairness by excluding the guardian's formal right to present objections. The research employs a normative juridical methodology, utilizing both legislative and conceptual approaches. The legislative approach critically examines the statutory regulations governing *wali adhal* cases, particularly the Marriage Law and the Compilation of Islamic Law. The conceptual approach is used to propose a procedural shift from *voluntair* to *contentiosa*, grounded in the principle of *audi et alteram partem*, which requires equal opportunities for all parties to be heard. Such reclassification is expected to ensure balanced judicial outcomes, protect the bride's right to marry, and proportionately safeguard the guardian's legal position. This study contributes to the development of more equitable judicial procedures within Religious Courts, ensuring procedural justice for both parties involved in *wali adhal* cases. The proposed shift would foster fairness in the legal process, allowing both the guardian and the bride equal legal standing, evidence presentation, and the right to challenge decisions, ultimately enhancing the legitimacy and fairness of judicial decisions.

Keywords: *Wali Adhal*; Voluntary Petition; Contentious Lawsuit; Religious Court; Procedural Justice.

A. Introduction

The Religious Courts in Indonesia represent a fundamental pillar within the national legal system, endowed with absolute authority as stipulated in Article 49 of Law Number 3 of 2006, which amends Law Number 7 of 1989 (Crouch, 2016; Sumner & Lindsey, 2011). This institution is vested with the power to examine, adjudicate, and resolve specific civil cases pertaining to the Muslim community, covering areas such as marriage, inheritance, wills, grants, endowments (*wakaf*), *zakat*, *infak*, *sadaqah*, and Islamic economic matters. Among these domains, matrimonial cases occupy a central role due to their significance as a foundational aspect of the social and religious life of Indonesian Muslims.

The explanatory notes of Article 49 of the Religious Courts Law explicitly detail twenty-two categories of matrimonial cases that fall within the exclusive jurisdiction of the Religious Courts. These include, among others, permission for polygamy, marriage dispensations, prevention of marriages, refusal of marriage registration by Marriage Registrar Officials, annulment of marriages, divorce, and determination of a child's lineage. Nevertheless, beyond this enumerated list, there exists a frequently encountered issue in the practice of the Religious Courts, namely the case of the *wali adhal* (just guardian). This case is closely related to the refusal of a marriage

guardian to solemnize the marriage of his daughter without a legitimate sharia-based reason (Candra et al., 2023).

According to Zulkarnain (2021), *wali adhal* cases constitute one type of case that is not explicitly regulated in Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 and further amended by Law Number 50 of 2009. The absence of explicit normative regulation regarding *wali adhal* cases creates space for interpretation and legal construction through the practice of religious courts.

In Islamic marriage, the *wali* (guardian) holds a critically important role, regarded as a protective figure entrusted with ensuring that the marriage is conducted in accordance with the principles of justice, welfare, and virtue. Although the status of the *wali* as a pillar (*rukn*) of Islamic marriage remains a subject of scholarly debate within the corpus of Islamic legal theory, the Compilation of Islamic Law explicitly stipulates that the *wali* constitutes one of the essential pillars of marriage, the presence of which directly affects the validity of the matrimonial contract. Furthermore, according to Hasan, the *wali nikah* is defined as the individual entitled to solemnize the marriage of a woman based on a direct blood relationship. This category of *wali* includes the father, paternal grandfather, full brother, son of the brother, paternal uncle, and the judge (*qadi*) (Sibawaih & Rasfiudin, 2022). However, rather than safeguarding the interests of the prospective spouse, the *wali* occasionally obstructs an individual's right to marry, which in some instances contradicts the Islamic principle of freedom in choosing one's life partner (Nisa & Andriyaldi, 2023). Nevertheless, the presence of the *wali* is considered essential to assess the benefits and potential harms associated with the marriage to be contracted by the ward. Considering the possibility of such conflicts, Indonesia has established specific procedural mechanisms to address and resolve these issues.

Article 23, paragraphs (1) and (2) of the Compilation of Islamic Law stipulate that the *wali hakim* (judge as guardian) may only act as the marriage guardian in the absence of the *wali nasab* (biological guardian), when the latter is unknown, absent, or unwilling (*adhal*) to perform the guardianship. It is explicitly mandated that in cases where the *wali* is unwilling, the *wali hakim* may assume the role only after a decision rendered by the Religious Court. This provision aligns with the Ministry of Religious Affairs Regulation Number 30 of 2024 concerning Marriage Registration, specifically Article 13, paragraphs (5) and (6), which state that the *wali hakim* may act as the guardian if the *wali nasab* is absent, unwilling (*adhal*), unknown, unable to be present or contacted due to imprisonment, not a Muslim, or if the guardian in question is the prospective bride or groom themselves. Furthermore, it is emphasized that in cases of *wali adhal* as referred to in paragraph (5), letter b, the appointment of the *wali hakim* must be determined by the Religious Court (Ni'ami et al., 2025).

The resolution of *wali adhal* cases in Religious Courts has traditionally been pursued through a voluntary petition mechanism. In this practice, the prospective bride submits an application to the court. At the same time, the guardian who refuses consent is merely summoned to provide testimony without being accorded an equal legal standing. The final product of the examination is a court decree that serves as the basis for the *wali hakim* to replace the biological guardian (*wali nasab*). This mechanism raises significant juridical concerns, as only one party is genuinely allowed to substantiate their claims, whereas the guardian's role remains passive. Consequently, the fundamental principle of *audi et alteram partem*—which mandates that all parties in a dispute must be given an equal opportunity to be heard—is frequently neglected (Amadea et al., 2022).

Normatively, there exists no explicit provision within the Religious Courts Law, the Marriage Law, or the Compilation of Islamic Law that mandates *wali adhal* cases to be initiated through a petition (voluntary) mechanism. In fact, the Compilation of Islamic Law itself employs the term “court decision”, which, within the framework of civil procedural law theory, generally refers to a lawsuit mechanism (*contentiosa*), characterized by a dispute involving two opposing parties. Contrarily, the Supreme Court Circular and the Badilag Book II prescribe that *wali adhal* cases be

processed via a petition (voluntary) procedure. This ambiguity has engendered both academic and practical debates regarding the most appropriate legal form for resolving *wali adhal* cases. The tension between the theoretical underpinnings of dispute resolution and the procedural directive in practice highlights the need for more explicit statutory guidance to ensure procedural fairness and legal certainty in such matters.

When *wali adhal* cases are handled through a petition (voluntary) mechanism, they are treated akin to non-contentious matters. However, the substantive nature of these cases inherently involves a conflict between the prospective bride and her guardian. Consequently, procedural balance is compromised due to the absence of a reciprocal exchange of arguments, the lack of burden of proof allocation, and the guardian's inability to exercise legal remedies if dissatisfied with the court's decision. Conversely, if processed through a lawsuit (contentious) mechanism, both parties would possess equal legal standing, be granted the opportunity to defend themselves, present evidence, and access further legal recourse. This approach better upholds the principles of equality and justice.

The empirical implications of the voluntary mechanism cannot be overlooked. In certain instances, the guardian's refusal to consent to the marriage of his daughter is not merely an expression of authoritarianism or arbitrary reasoning. Still, it is grounded in legitimate considerations such as the mental readiness of the prospective bride, compatibility of the couple, or even concerns related to family honor. Unfortunately, under the petition mechanism, such reasons are not subjected to judicial scrutiny. This omission often results in dissatisfaction on the part of the guardian, which in some cases escalates into familial disputes or broader social conflicts. This situation underscores that the resolution of *wali adhal* cases through the petition mechanism does not fully embody substantive justice.

Numerous studies have extensively examined the issue of *wali adhal* cases within the Religious Courts. For instance, the research conducted by Rossa et al. (2024), entitled "*Analysis of the Decision on the Case of Wali Adhal in the Marriage of a Girl in the Bogor Religious Court*", analyzes the decision rendered by the Bogor Religious Court concerning a *wali adhal* case. This study concludes that the court's ruling is consistent with Islamic law, particularly concerning the concept of *kafa'ah*, which emphasizes equality and compatibility in marriage. Furthermore, a study by Candra et al. (2023), titled "*The Religious Court Trial of Wali Adhal Cases in the Indonesian Legal System: A Legal Analysis*", highlights that *wali adhal* cases are currently adjudicated through a unilateral petition mechanism (voluntary jurisdiction), whereby only the petitioner is heard without the presence of an opposing party. This research underscores the necessity of adopting a contentious trial procedure (*contentiosa*) in *wali adhal* cases to ensure a more equitable and comprehensive judicial examination.

In line with these scholarly discussions, Cholil (2009), in his article "*Mewacanakan Wali Adhal sebagai Perkara Contentious*" further develops the discourse on the procedural nature of *wali adhal* cases by arguing that such cases should be categorized as contentious (*contentiosa*) rather than voluntary (*voluntair*), as they inherently involve a dispute between the prospective bride and her guardian who refuses to grant consent. His work emphasizes the need for a reconfiguration of procedural mechanisms within the Religious Courts to ensure a more balanced realization of procedural justice. This perspective aligns with the author's view, which similarly highlights the importance of procedural fairness in *wali adhal* cases, but differs in focus, as the author elaborates more specifically on the implementation of the *audi et alteram partem* principle when such cases are brought through a contentious lawsuit, thereby ensuring the proportional protection of both parties' legal rights.

Based on the foregoing discussion, a discernible research gap emerges that has not been thoroughly explored in prior studies. The legal ambiguity surrounding the procedural mechanisms—namely, the petition (voluntary jurisdiction) versus lawsuit (contentious jurisdiction)—in *wali adhal* cases remains insufficiently examined. Moreover, the empirical

implications of this ambiguity on the rights of both the guardian and the prospective bride have yet to be comprehensively analyzed. This situation presents an opportunity for further scholarly inquiry that not only elucidates the current practices but also critically addresses the necessity for reconstructing the procedural framework. Such reconstruction should aim to align the resolution mechanisms with the fundamental principles of justice and equality for all parties involved.

Accordingly, this study is motivated by the legal issue concerning the clarity of the procedural mechanism for resolving *wali adhal* cases in the Religious Courts—specifically, whether such cases should be adjudicated through a petition (voluntary) mechanism or through a lawsuit (contentious) mechanism that better guarantees the principle of procedural balance between the parties. This issue serves as the foundation for evaluating the conformity of Religious Court practices with the principles of modern civil law, the principle of justice, and the overarching purpose of the Religious Courts as institutions seeking justice for the Muslim community in Indonesia.

The objective of this research is to analyze the legal framework governing *wali adhal* cases and to evaluate the extent to which current resolution practices conform to the *audi et alteram partem* principle. Furthermore, this study seeks to propose an alternative procedural model that is more appropriate both juridically and substantively.

The contribution of this research lies in its endeavor to clarify the legal status of *wali adhal* cases within the Religious Court system, to enrich the academic discourse on Islamic family law in Indonesia, and to provide practical recommendations for Religious Courts in developing judicial procedures that are more equitable and balanced, in accordance with the *audi et alteram partem* principle

B. Method

This study employed a normative juridical method, utilizing both conceptual and legislative approaches. According to Marzuki (2017), legal research is fundamentally normative, often referred to as normative-juridical research. Accordingly, the normative juridical approach in this research involved a detailed examination of the legal provisions governing *wali adhal* cases within the Indonesian Religious Court system, with particular emphasis on the applicable legislation and the Compilation of Islamic Law.

The conceptual approach is employed to explore the idea of reconstructing the procedural mechanism for resolving *wali adhal* cases, specifically transitioning from a voluntary (*voluntair*) model to a contentious (*contentiosa*) model. This was carried out through a critical analysis of relevant statutory regulations and the legal principle of *audi et alteram partem*, which mandated that all parties in a dispute be afforded an equal opportunity to be heard.

C. Results and Discussion

1. Marriage Guardian and Its Legal Significance

The principal regulation governing marriage in Indonesia is Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 on Marriage. Article 1 of Indonesian Marriage Law stipulates that marriage is “*a physical and spiritual bond between a man and a woman as husband and wife with the purpose of forming a happy and everlasting family (household) based on the Almighty God.*” This formulation indicates that marriage, within the framework of Indonesian positive law, is understood as a multidimensional institution (Hedi et al., 2017).

The element of physical and spiritual bond emphasizes that marriage is not merely a formal legal relationship that creates rights and obligations, but also involves emotional, spiritual, and moral ties. The physical aspect encompasses social recognition and legal regulation, while the

spiritual aspect implies that marriage is grounded in affection, trust, and deeper moral responsibilities.

The provision also explicitly states that the subjects of marriage are a man and a woman. This demonstrates that the legislator decisively excludes other forms of unions beyond heterosexual relationships. Such emphasis is consistent with the social, cultural, and religious construction of Indonesian society, which regards marriage as an institution aimed at preserving lineage and maintaining social order.

The purpose of marriage is described as forming a family or household that is happy and everlasting. Happiness in this context refers to the attainment of both material and spiritual well-being, while the notion of being everlasting reflects the orientation of marriage as a lifelong union, not a temporary arrangement. Thus, marriage is positioned as an institution that is both sacred and permanent.

The final part of the definition underscores that marriage must be based on the Almighty God. This emphasis signifies that the validity of marriage is not only determined by state law but must also conform to the religious laws of the parties involved. Consequently, marriage law in Indonesia is characterized by a dual foundation: it is grounded in the national legal system while simultaneously recognizing the authority of religious law.

The meaning of marriage holds a profound significance, not merely as a physical bond between a man and a woman, but also as a covenant imbued with spiritual dimensions. This aligns with the view of Soemiyati, as cited by Asman (2020), who explains that marriage constitutes a contractual agreement between a man and a woman. However, such an agreement is not an ordinary contract; rather, it is a sacred covenant aimed at establishing a family. The notion of sacredness is understood from a religious perspective, wherein marriage is regarded as a holy institution that entails moral, spiritual, and social responsibilities for the couple who enter it. Thus, marriage should not be perceived solely as a legal contract but also as an exalted covenant encompassing profound religious values.

From the overall formulation, it can be concluded that the Indonesian Marriage Law does not view marriage merely as a civil contract, but rather as a bond that encompasses legal, social, moral, and religious dimensions. This definition reflects the understanding that marriage plays a central role in establishing families, preserving religious values, and maintaining social order.

Article 2 of the Indonesian Marriage Law regulates the validity requirements and registration of marriage. Paragraph (1) stipulates that *“a marriage is valid if it is conducted according to the laws of each party’s religion and belief.”* This provision demonstrates that the Indonesian state places religious law as the primary benchmark for determining the validity of a marriage. In other words, the legitimacy of marriage is first and foremost determined by the religious norms adhered to by the prospective husband and wife. This is consistent with the principle of Belief in the One and Only God, which underpins the national legal system, and at the same time reflects the religious character of Indonesian marriage law.

Furthermore, paragraph (2) affirms that *“every marriage shall be registered in accordance with the prevailing legislation.”* This provision establishes an administrative obligation whereby every marriage must be recorded by the competent official authority, either at the Office of Religious Affairs for Muslims or at the Civil Registry Office for adherents of other religions. Such registration serves essential functions, including providing authentic evidence of the marriage, ensuring legal certainty regarding the status of husband and wife, and guaranteeing legal protection for children and marital property.

Thus, Article 2 encompasses two inseparable aspects. The first is the substantive aspect, namely the validity of marriage as determined by the respective religious laws of the parties. The second is the administrative aspect, namely the obligation to register the marriage in accordance with statutory regulations. The integration of these two aspects shows that Indonesian marriage

law possesses a religio-juridical character, simultaneously recognizing the authority of religious law while upholding legal order through state registration.

This law does not explicitly address the pillars (*rukun*) of marriage, as it regulates marriage not only for Muslims but also for adherents of other religions. The law primarily stipulates the requirement of parental consent for prospective spouses under the age of twenty-one. Consequently, the validity of a marriage is determined according to the rules and procedures applicable within each respective religion.

In the context of the Muslim community, the primary legal references for marriage are the Compilation of Islamic Law and the Ministry of Religious Affairs Regulation No. 30 of 2024 concerning Marriage Registration. Both the Compilation of Islamic Law and the Ministry of Religious Affairs Regulation No. 30 of 2024 agree on the pillars of marriage, namely the prospective husband, prospective wife, marriage guardian (*wali nikah*), two witnesses, and *ijab* and *kabul* (offer and acceptance) (Rahmi et al., 2025).

Before discussing *wali adhal*, it is essential to first understand the concept of *wali nikah*, which is divided into two categories: *wali nasab*, namely a male relative from the woman's family, and *wali hakim*, namely a person appointed when the *wali nasab* is absent or unable to fulfill his role.

In Islamic jurisprudence (*fiqh*), the marriage guardian (*wali nikah*) holds a highly significant position because it is directly related to the validity of the marriage contract (*akad nikah*). A *wali* is understood as the person vested with authority to act on behalf of the bride in the process of *ijab* and *qabul* (the offer and acceptance). Accordingly, the presence of a *wali* is an absolute requirement that cannot be omitted in a marriage contract. This view is emphasized in the *fiqh* literature, which regards the *wali* as an essential element to safeguard the legitimacy, protection, and dignity of women in marriage (Fiatna, 2024; Suarjana et al., 2023).

The definition of a *wali* in marriage generally refers to a Muslim male who meets certain qualifications, including having reached maturity (*baligh*), being of sound mind, free, and possessing legal authority. Within the Shafi'i school of thought, a marriage is not considered valid without the presence of a *wali* representing the woman. These requirements are intended to ensure that the *wali* is fully capable of carrying out his responsibilities and does not act to the detriment of the bride (Sofiana & Nuraini, 2023; Suarjana et al., 2023).

Fiqh literature also recognizes two main categories of *wali*, namely the *wali nasab* and the *wali hakim*. The *wali nasab* is a guardian from the woman's lineage, such as her father, grandfather, or brother. If the *wali nasab* is absent, does not meet the requirements, or is unable to perform his role, the authority may be transferred to the *wali hakim*, who is appointed by religious or state authorities. The existence of the *wali hakim* serves as a vital instrument to ensure that the marriage contract can still be validly concluded even when the *wali nasab* is unable to fulfill his function (Fiatna, 2024; Mahfudhi, 2022).

Nevertheless, there are variations among different schools of Islamic jurisprudence regarding the role of the *wali*. The Shafi'i school, which is widely followed in Indonesia, strictly requires the presence of a *wali* as an integral pillar of marriage. In contrast, the Hanafi school provides more flexibility by allowing an adult woman to contract her own marriage without a *wali*. These divergent perspectives illustrate that the concept of the marriage guardian is not merely a matter of formal law, but also a product of social, cultural, and theological interpretations within the Islamic tradition (Mahfudhi, 2022).

According to Aspandi (2019), the position of a guardian (*wali*) in marriage holds significant importance, as the right to act as the marriage guardian of a woman principally lies with the *wali nasab* (guardian by lineage). This underscores that guardianship in marriage is, first and foremost, a prerogative of the woman's closest relatives. However, when a *wali nasab* is absent or unable to be present (*wali ghaib*), the authority of guardianship automatically transfers to the *wali hakim* (judicial guardian).

Wali adhal refers to a guardian, typically the father, who under both legal and religious provisions should possess the authority to marry off his daughter, but due to unavoidable circumstances—such as neglect or refusal to perform this duty—a substitute guardian becomes necessary. This concept is accommodated within the framework of Islamic law as a theological and juridical mechanism to safeguard women's rights and ensure justice, even when the biological guardian fails to fulfill his responsibilities (Rahmia et al., 2023)

As written by Djati (2020), the term *adhal* in the context of Islamic legal terminology has been defined in various ways by scholars of different schools of thought. Each definition emphasizes aspects, although all share the same essential notion, namely the act of a guardian preventing a woman from marrying a man of equal social standing (*kufu'*).

According to Al-Kasaniy Al-Hanafiy, a scholar of the Hanafi school, *adhal* is defined as the act of preventing a free woman who has reached maturity (*aqil baligh*) from marrying a man who is compatible (*kufu'*) with her. This formulation highlights the conditions of womanhood, namely maturity and freedom. It stresses that the guardian may not obstruct a marriage with a suitable partner.

In the view of Muhammad bin Abdillah Al-Khurasani, a scholar of the Maliki school, *adhal* refers to the situation in which a guardian refuses to marry off his daughter to a compatible man chosen by her, with the intention of causing harm to her. Such an intention may be expressly stated (*iqrar*) or manifested through clear indications. This definition gives particular attention to the element of intention or motive on the part of the guardian in refusing, thus categorizing as *adhal* any refusal that is aimed solely at harming the woman (Djati, 2020).

Al-Khatib Asy-Syirbaini, from the Shafi'i school, defines *adhal* as the condition in which a guardian is unwilling to marry off a woman who has reached maturity, whether she possesses full intellectual capacity or has intellectual limitations, to a compatible man. This formulation makes clear that the intellectual condition of the woman cannot be used as a legitimate reason for the guardian to obstruct marriage, as long as the prospective husband is considered suitable (Djati, 2020).

Meanwhile, Ibn Qudamah Al-Maqdisiy, of the Hanbali school, states that *adhal* occurs when a guardian prevents a woman from marrying a compatible man if she requests it, particularly when there already exists mutual attraction and desire between the prospective spouses. This definition introduces an additional element, namely the woman's explicit request for marriage and the presence of mutual inclination between the two parties (Djati, 2020).

Thus, the terminology of *adhal*, as explained by scholars of the four major schools of thought, displays diverse formulations yet shares a common substantive essence. All definitions underscore the act of obstruction by the guardian against a woman who has fulfilled the conditions for marriage with a suitable partner. The elements emphasized include the woman's status as free and mature, the suitability of the prospective husband, the guardian's intention or purpose, and the woman's request or desire to marry.

The legal status of *wali adhol* in both Islamic law and positive law reflects a similar principle, though founded on different legal bases. According to the majority of *fuqaha*, if a *wali nasab* (guardian by lineage) refuses or fails to marry off a prospective bride without any valid *shar'i* reason (*wali adhol*), the marriage may still proceed under the authority of a *wali hakim* (judicial guardian). Such a marriage is deemed valid, as supported by Qur'anic injunctions and Prophetic traditions emphasizing the prohibition of injustice against women in matters of marriage. In contrast, within Indonesian positive law as codified in the Compilation of Islamic Law, the substitution of a *wali nasab* by a *wali hakim* is explicitly regulated: if the *wali nasab* does not meet the legal requirements, is absent, or unjustifiably refuses to act, the *wali hakim* may serve as the guardian of the prospective bride, provided that such authority is granted through a formal ruling of the Religious Court (Sholihah & Nugroho, 2024).

Based on the research conducted by Pradana et al. (2024) in their article entitled “*Factors Behind the Absence of Wali Adhal in Marriage: A Case Study of Family Conflict and Occupational Status*”, it is revealed that the occurrence of *wali adhal* is influenced by a complex interplay of factors. The research data indicate that the absence or unwillingness of a guardian to marry off his daughter is not solely rooted in legal considerations, but is strongly associated with prevailing traditions and social norms, ongoing disputes between the families of the prospective spouses, as well as the occupational status of the bride, which often emerges as the most significant reason. This phenomenon underscores that the issue of *wali adhal* cannot be separated from the broader social, cultural, and economic dynamics of the family. Hence, it is essential to regard these findings as valuable lessons for the future, so that such factors may be resolved prudently and wisely, and thereby serve as a foundation in adjudicating cases of *wali adhal* within a more comprehensive contextual framework.

In conclusion, Indonesian marriage law affirms that marriage is not merely a civil contract but a multidimensional institution encompassing legal, social, moral, and religious aspects. The Marriage Law places religious norms as the foundation for the validity of marriage, while registration serves to ensure legal certainty. Within the framework of the Muslim community, the pillars of marriage as stipulated in the Compilation of Islamic Law and related regulations emphasize the central role of the marriage guardian (*wali nikah*) as an essential element for the validity of the contract. This position of the *wali* gives rise to a conceptual issue in cases of *wali adhal*, namely a guardian who is unwilling or refuses to exercise his authority. Thus, the existence of *wali adhal* reflects the legal necessity of providing a mechanism that safeguards women's rights while maintaining the legitimacy of marriage in accordance with the principles of justice and Sharia.

2. Legal Analysis of *Wali Adhal* Cases: *Voluntair* or *Contentiosa*

The legal recognition of *wali adhal* within the Indonesian marriage law framework not only rests on theological considerations but also on procedural mechanisms established by state regulations. While Islamic jurisprudence emphasizes the indispensability of a guardian (*wali nikah*) in the validity of marriage, Indonesian positive law seeks to ensure that the authority of the guardian does not become a tool of obstruction that could undermine a woman's right to marry. To address such situations, the Compilation of Islamic Law and subsequent regulations provide a legal pathway whereby the Religious Court or Sharia Court may intervene and appoint a substitute guardian (*wali hakim*).

Regarding the marriage guardian Article 23, paragraph 2 of the the Compilation of Islamic Law stipulates that in the event of a *wali adhal* or an unwilling guardian, the *wali hakim* (judge as guardian) may only act as the marriage guardian following a decision by the Religious Court concerning the guardian. Correspondingly, the Ministry of Religious Affairs Regulation states that a *wali adhal* as referred to in paragraph (3), letter b, is appointed by the Religious Court or the Sharia Court (*Mahkamah Syar'iyah*).

Furthermore, the procedural regulation for resolving *wali adhal* cases is articulated in Book II of the Guidelines for the Implementation of Duties and Administration of the Religious Courts. It provides that a prospective bride whose guardian refuses to act as the marriage guardian may submit a petition to the Religious Court or the Sharia Court. Thus, the *wali adhal* petition is treated as voluntary (*voluntair*), with the final product being a court decree.

This procedural stance is further reinforced by the Supreme Court Circular No. 07 of 2012 concerning the Formulation of Legal Principles from the Plenary Meeting of the Supreme Court Chambers as Guidelines for Court Duties. Specifically, the formulation from the Plenary Meeting of the Religious Chamber of the Supreme Court of the Republic of Indonesia clarifies that *wali adhal* cases continue to be processed as voluntary matters pursuant to Law No. 1 of 1974 (Article 21, paragraphs 1–5). This position is reiterated in Supreme Court Circular No. 5 of 2014, wherein

point 8 of the Plenary Meeting results of the Religious Chamber states that *wali adhal* petitions are examined voluntarily. This approach is justified by the fact that voluntary cases are already regulated by law. However, during the examination of *wali adhal* cases, the marriage guardian should be summoned to present their views in court. Should the guardian object to the court's decree, they may file for marriage prevention or annulment if the marriage has already taken place.

In Supreme Court Circular No. 7 of 2012, the legal basis for treating *wali adhal* cases as voluntary is Article 21, paragraphs 1–5 of the Marriage Law. Meanwhile, Supreme Court Circular No. 5 of 2014 does not specify the law explicitly, but it is understood to refer to the same provisions cited in Supreme Court Circular No. 7 of 2012.

At this juncture, a legal debate arises whether the classification of *wali adhal* cases as voluntary proceedings truly aligns with the principles of civil procedural law, or whether such cases should be treated as contentious (*contentiosa*) lawsuits. To address this question, it is imperative to scrutinize the legal foundation referenced, namely Article 21 of the Marriage Law.

Article 21 paragraphs (1) to (5) of the Marriage Law provides a legal protection mechanism primarily aimed at safeguarding the rights of citizens, particularly prospective spouses, in the process of contracting marriage. The Marriage Registrar Officer is mandated to reject marriages that do not comply with statutory requirements. However, parties aggrieved by such refusal have the right to petition the court to review the decision. Should the court find no legal violation, the marriage may proceed; conversely, if the impediment persists, the court's decree may be amended or revoked once the obstacle is resolved.

A careful reading of this provision reveals that it primarily regulates administrative disputes between the Marriage Registrar Officer and the rejected party, without explicitly addressing the issue of *wali adhal*. The application of Article 21 to *wali adhal* cases thus represents an interpretative extension rather than a textual mandate. In other words, the legal basis for treating *wali adhal* cases as voluntary petitions (*voluntair*) is essentially a product of judicial practice construction rather than an explicit statutory directive.

Further, Article 23 paragraph (2) of the Compilation of Islamic Law stipulates that the *wali hakim* (judge as guardian) may only act to replace a *wali adhal* following a decision by the Religious Court. The term used—"decision"—commonly refers to the outcome of a contentious lawsuit (*contentiosa*), which inherently involves a dispute between opposing parties (Cholil, 2009).

Substantively, the *wali adhal* case clearly embodies a conflict between the prospective bride and her guardian. A guardian's refusal to consent to a marriage on particular grounds constitutes a genuine conflict of interest. Such disputes are more appropriately adjudicated through a contentious lawsuit mechanism. This aligns with the legal theory articulated by Harahap (2005) in his seminal work *Hukum Acara Perdata*, where he defines a *contentiosa* lawsuit as one involving a dispute between two or more parties requiring judicial resolution. Historically, this form of litigation—known as *contentiosa rechtspraak*—involves adversarial proceedings characterized by pleadings, including *replik* (plaintiff's response) and *duplik* (defendant's rejoinder), collectively referred to as *op tegenspraak*. This process entails argumentation, evidentiary presentation, and concluding submissions, culminating in a judicial decision resolving the contested matter. Consequently, parties who perceive their rights as infringed may seek redress by filing a lawsuit against the opposing party (Hutagalung, 2012).

In line with Zainal Asikin's (Asikin, 2016) view, a contentious case (*contentiosa*) or lawsuit is essentially a matter involving a dispute between two or more parties, the resolution of which can only be achieved through the filing of a legal claim or civil lawsuit before the court. Within this mechanism, the conflict must be examined and adjudicated by the court in accordance with the applicable rules of civil procedure. The outcome of such proceedings may result in victory for one party, defeat for the other, or the achievement of a settlement if the parties agree to resolve the dispute amicably during the course of litigation.

In conclusion, the legal recognition of *wali adhal* within the Indonesian marriage system reveals a tension between legal norms, judicial practice, and procedural theory. On the one hand, the Compilation of Islamic Law explicitly stipulates that the replacement of a guardian may only be carried out through a court “decision,” a term that is terminologically closer to *contentious* proceedings (*contentiosa*), as it involves an actual dispute between the prospective bride and her guardian. However, in practice, the Supreme Court through Circular Letters No. 7 of 2012 and No. 5 of 2014 has classified *wali adhal* cases as *voluntary* proceedings (*voluntair*), with the legal product being a court decree (*penetapan*). The legal basis employed, namely Article 21 of the Marriage Law, is in fact primarily designed to address administrative disputes with the Marriage Registrar Officer and does not explicitly regulate the issue of *wali adhal*. Consequently, the classification of *wali adhal* cases as *voluntair* reflects more a judicial practice construction than an explicit normative mandate. Substantively, however, *wali adhal* cases inherently embody a conflict of interest that ought to be adjudicated through *contentious* proceedings. This disharmony between written law and judicial practice thereby generates problems of legal certainty.

3. Reconstruction of *Wali Adhal* within the Framework of the Principle of *Audi Alteram Partem*

The principle of *audi et alteram partem* functions not merely as a procedural rule but also as a fundamental doctrine that embodies the protection of the rights of litigating parties. This principle requires that, before any judgment is rendered, each party must be afforded an equal opportunity to present their views, ensuring that judicial proceedings are not only formally valid but also substantively just. Accordingly, this principle serves as a crucial instrument in safeguarding against the exclusion of any perspective relevant to the fairness and objectivity of a decision.

The application of this principle is evident from the very outset of the trial process, where the summoning of parties and the provision of an opportunity to appear constitute critical steps. Through this mechanism, each party is granted the space to submit arguments, statements, and evidence in support of their position (Herawati et al., 2021). This demonstrates that the principle of *audi et alteram partem* holds a strategic role, not only in maintaining procedural balance but also in preventing the issuance of judgments that are biased or detrimental to one of the parties.

According to Ali & Heryani (2012), the principle of *audi et alteram partem* affirms the existence of equal procedural standing for the parties involved in a dispute. This principle requires that judicial proceedings be conducted in a manner that grants both the plaintiff and the defendant an equal opportunity to assert their rights through the litigation process. In this regard, the judge holds a central role in safeguarding such balance by ensuring that no party is disadvantaged due to being denied adequate space to present arguments or to defend themselves.

The principle of *audi et alteram partem*, when interpreted and applied broadly in judicial proceedings, requires that each party be given a fair opportunity to be summoned and heard by the court. It obliges the court to listen to and permit responses to the plaintiff's claims, ensures that both parties may present evidence with a balanced allocation of the burden of proof, and guarantees the right of each side to make closing arguments. Decisions must be rendered in conformity with this principle, and where a party believes a ruling to be unjust, the principle underpins the right to seek further legal remedies such as appeal, cassation, or judicial review (Handayani, 2020). An analysis of *wali adhal* cases based on the *audi et alteram partem* principle reveals several procedural shortcomings:

a) Fair Opportunity to Be Summoned

In cases submitted as petitions, only the petitioner is formally recognized as a litigant. The guardian who objects to the marriage is not summoned as a party entitled to defend themselves but is merely called upon to provide testimony. This practice contradicts the

principle of a fair trial, which requires that all interested parties be accorded equal legal standing.

Moreover, in contentious proceedings, parties are generally required to engage in mediation before substantive judicial examination. Mediation emphasizes the role of a neutral third party who facilitates dispute resolution between conflicting parties (Abbas, 2009). This requirement is codified in Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Courts, which mandates mediation as a preliminary step in all civil cases, aiming to foster amicable settlements where litigation might otherwise be protracted or adversarial (Karmawan, 2017).

Mediation is a form of alternative dispute resolution in which a neutral third party, the mediator, assists disputing parties in reaching a peaceful and voluntary settlement. This process emphasizes constructive communication and problem-solving, where the mediator's role is not to render a binding decision, as in adjudication or arbitration, but rather to facilitate negotiations so that the parties may identify a fair and mutually acceptable solution. Unlike arbitration or litigation, which produce binding rulings, mediation seeks to create agreements grounded in the voluntary consensus of the parties involved (Andriani & Susanti, 2024).

The implementation of mediation within the judicial system serves strategic purposes. First, it aims to reduce the burden on the courts by encouraging dispute resolution outside the lengthy and complex litigation process. Second, mediation enhances access to justice, particularly for communities that require faster, less costly, and simpler mechanisms of resolution. With its restorative nature, mediation not only resolves conflicts procedurally but also seeks to restore and preserve social relationships between the parties (Maulina et al., 2022).

In practice, mediation contributes to fostering a more harmonious atmosphere among disputants. Successful mediation can minimize the risk of prolonged conflict and create space for reconciliation in a more humanely manner. This underscores that mediation is not only a formal legal instrument but also a social tool that upholds the values of deliberation and consensus (Maulina et al., 2022).

Furthermore, the effectiveness of mediation strengthens public trust in the judicial system. By offering a dispute resolution mechanism that is more flexible, participatory, and responsive to the needs of the parties, mediation aligns with the principles of substantive justice. Thus, the development of mediation in modern legal practice can be regarded as a reform effort that steers the judiciary toward more humanistic, efficient, and equitable modes of dispute settlement (Saragih & Simanjuntak, 2020).

The study conducted by Hayya et al., (2025), entitled "*Penyelesaian Sengketa Wali Adhal dengan Mediasi Non-Litigasi oleh Pegawai Pencatat Nikah di KUA Kedu*" demonstrates that KUA Kedu has effectively played a role in resolving *wali adhal* disputes through non-litigation mediation carried out in a familial and conciliatory manner within the institutional framework of the KUA. Although, juridically, the Religious Court holds exclusive authority over *wali adhal* cases and the KUA is under no legal obligation to intervene, the initiative of the Head of the KUA/Marriage Registrar in facilitating mediation reflects the significance of persuasive and restorative approaches in maintaining social and religious harmony.

In addition, the thesis by Jannah (2023), entitled "*The Effectiveness of Non-Litigation Mediation in Wali Adhal Cases at the Office of Religious Affairs (KUA) of Ponorogo Regency*," highlights the crucial role of mediation in resolving *wali adhal* disputes. The study found that KUA Sukorejo successfully resolved all *wali adhal* cases through mediation without resorting to court proceedings, owing to effective communication between the disputing parties. Similar success was observed at the KUA of Ponorogo District, which conducted mediation in accordance with the mandate of the BP4 (Advisory, Guidance, and

Preservation of Marriage Agency). These findings underscore the strategic importance of mediation as an efficient and harmonious dispute resolution mechanism.

Nevertheless, formal mediation can only be conducted if the *wali adhal* case is filed as a contentious lawsuit (*contentiosa*), since only within the framework of a lawsuit does the judge possess a legal basis to order and facilitate mediation in accordance with procedural law provisions. Therefore, classifying *wali adhal* cases as contentious proceedings not only has a strong conceptual foundation but also opens the possibility for a more comprehensive resolution through a legally recognized and binding mediation process.

Thus, if the *wali* and the prospective bride are positioned equally as Plaintiff and Defendant in the proceedings, each party will be encouraged to attend earnestly and to provide responses that rebut the claims of the opposing side. Furthermore, to prevent protracted litigation, mediation serves as the most appropriate avenue, as it not only simplifies case resolution but also creates space for amicable settlement and preserves familial relationships.

b) Right to Respond to Claims

Because *wali adhal* cases are filed as petitions, there is no adversarial exchange of pleadings as in contentious lawsuit procedures. The guardian is not granted the right to submit a formal response to the petitioner's arguments; instead, the guardian is merely asked to explain his unwillingness or refusal to act as a guardian. Consequently, the court examines the matter from only one perspective, while the guardian's reasons for refusal are deprived of a balanced opportunity for defense.

c) Equal Opportunity to Present Evidence

According to R. Soeparmono (2021), the concept of proof carries two meanings: a broad and a narrow one. In its wide sense, proof signifies the affirmation of a legal relationship between the parties. For instance, when a judge grants the plaintiff's claim, such a decision implies that the judge has concluded that the plaintiff's arguments represent a valid legal relationship. Thus, the function of proof is to reinforce the judge's conviction using legally admissible evidence.

In its narrow sense, proof is only required when the defendant contests the plaintiff's allegations. Any assertion that is not contested does not require proof, as it is deemed legally valid. From this concept arises the principle of the distribution of the burden of proof, which determines who must substantiate a particular claim to avoid losing the case. This principle reflects that the balance of rights and obligations in evidentiary procedures is fundamental to a fair trial, as only through equal opportunities to present evidence can a judge assess a case objectively and without bias (Soeparmono, 2021).

In civil procedural law, evidence holds a central position in upholding truth and justice, as affirmed in Article 1865 of the Indonesian Civil Code and Article 163 of the *Herziene Indonesisch Reglement* (HIR). Both provisions explicitly stipulate that any person who claims a right or denies the right of another is obligated to prove their assertion. This means that the burden of proof rests upon the party who alleges a legal right or event to substantiate the truth of their claim.

Evidence constitutes the fundamental basis upon which a judge renders a decision. A judge is not permitted to issue a ruling without sufficient proof, as every judgment—whether granting or dismissing a claim—must be grounded in factual findings presented and substantiated by the parties. The validity of a judicial decision depends on the extent to which these facts are revealed and supported by relevant evidence. Without verified facts established through the evidentiary process, a ruling would lack legal foundation and risk undermining the principle of substantive justice. Thus, evidence is not merely a procedural formality but

rather a vital instrument for the judge to uncover material truth and uphold justice (Laela & Afriana, 2021).

Within the petition mechanism, only the petitioner is permitted to submit evidence, while the guardian is not afforded the same right to present witnesses or supporting documents for their refusal. In fact, in a dispute, the burden of proof should be distributed evenly between the parties to enable the judge to assess the case objectively. Such imbalance risks creating bias in judicial proceedings, as the court examines the matter primarily from the petitioner's perspective without adequately considering the guardian's standpoint.

Furthermore, this situation may be viewed as inconsistent with the principle of equality before the law, a fundamental tenet of the legal system. This principle asserts that every individual, without exception, has equal rights before the law. No citizen should be subjected to discriminatory treatment or granted special privileges by judicial authorities, ensuring that all individuals are afforded the same opportunity to access justice and legal protection (Suhendar & Aringga, 2024). Thus, granting the guardian equal rights to submit evidence and arguments is not merely a procedural requirement but also a concrete manifestation of the implementation of the principle of equality before the law.

d) Opportunity to Make Closing Arguments

In contentious proceedings, each party is entitled to present closing arguments based on facts revealed during the trial. However, in *wali adhal* cases processed as petitions, the guardian is not afforded the opportunity to submit conclusions grounded in the trial's factual findings. This limitation risks decisions that may not fully reflect the interests and realities of all parties.

e) Decision Based on *Audi et Alteram Partem*

According to Rosadi (2016), a judicial decision can only be deemed to provide a true sense of justice for society—particularly for those seeking justice—if it fulfills three essential components: formal justice, material justice, and ethical justice.

First, formal justice concerns the fulfillment of procedural requirements in a judicial decision, including the completeness of the formal elements that must be contained within the judgment. If these elements are not satisfied, the decision may be rendered null and void by operation of law, as it fails to meet the procedural legitimacy that underpins the validity of a judicial ruling (Rosadi, 2016).

Second, material justice reflects the substantive legal reasoning employed by the judge in resolving a case. At this stage, justice is assessed based on the rationality and proportionality of the legal considerations underlying the judgment—whether the decision truly embodies the values of justice that prevail within society and aligns with the broader objectives of the law itself (Rosadi, 2016).

Third, ethical justice emphasizes the psychological and moral dimensions of the judge as a human being entrusted with ethical responsibility in upholding the law. This form of justice is grounded in the judge's integrity, honesty, and independence, as prescribed by the code of conduct and ethical standards of the judiciary (Rosadi, 2016).

The three components—formal justice, material justice, and ethical justice—constitute an integrated framework that ensures judicial decisions embody both procedural legitimacy and substantive fairness. Without the fulfillment of formal justice, the foundation of a decision's legal validity becomes weak; without material justice, the decision loses its substantive moral authority; and without ethical justice, the integrity of the judiciary itself is undermined. Therefore, only through the harmonious realization of these three dimensions can a judicial ruling truly reflect comprehensive and genuine justice for all parties involved.

In addition, a judge in rendering a decision cannot solely rely on the principle of legal certainty, as such an orientation may lead to a deadlock when written norms fail to address concrete issues arising in society. In such circumstances, the judge is required to engage in legal discovery (*rechtsvinding*) to fill the legal vacuum while considering the principles of justice and expediency. Thus, the ideal application of law must integrate these three principles in a balanced manner—legal certainty to ensure order, justice to uphold moral and social values, and expediency to guarantee that the law genuinely serves the welfare of society at large (Wantu, 2012).

Judges in voluntary *wali adhal* cases tend to consider only the petitioner's submissions and evidence. Without a mechanism allowing the guardian to present a defense, rulings may be one-sided and fail to account for legitimate objections.

This condition is, in fact, contrary to the principle mandated in Article 5 paragraph (1) of the Judicial Power Law, which stipulates that judges and constitutional justices are obliged to explore, adhere to, and comprehend the legal values and sense of justice that live within society. This norm positions judges not merely as the mouthpiece of the law (*la bouche de la loi*), but also as active interpreters who must ensure that every decision reflects the substantive justice expected by society. By relying solely on the petitioner's statements without providing equal space for the guardian to defend themselves, judges risk producing rulings that are formalistic yet detached from the prevailing sense of justice in society. Therefore, the application of the *audi et alteram partem* principle in *wali adhal* cases becomes crucial, not only as a procedural obligation but also as a constitutional mandate for judges to uphold the legitimacy and integrity of the judiciary.

f) Right to Appeal

The parties who are disadvantaged by a court's decision are granted the right to pursue legal remedies, whether ordinary or extraordinary. Ordinary legal remedies include *verzet* (objection), appeal, and cassation, while extraordinary remedies consist of *derden verzet* (third-party objection) and judicial review (Yuliska, 2023). However, in the context of *wali adhal* cases submitted through the petition (*voluntair*) mechanism, the guardian who refuses to consent to the marriage is not recognized as a party to the case and, therefore, lacks legal standing to pursue further legal remedies. Although the court provides an opportunity for the guardian to file a marriage prevention or annulment after the marriage has taken place, such actions are merely formal in nature and do not address the substantive objections raised by the guardian regarding the suitability of the prospective spouse. This procedural gap creates a potential for injustice, particularly when the guardian possesses strong legal and moral grounds for refusing the marriage but is denied the opportunity to seek redress through higher judicial mechanisms to protect their rights.

In essence, this principle affirms that in civil cases, judges must treat parties fairly and equitably, granting each disputant equal opportunity to present arguments and evidence before the court. Accordingly, *wali adhal* cases should no longer be processed as unilateral petitions (*ex parte*), but rather as lawsuits in which both the prospective bride and the guardian enjoy equal rights to submit claims, evidence, and rebuttals.

Moreover, within modern legal systems, the judiciary plays a fundamental role in dispute resolution to uphold the rule of law. As a facilitative institution, the court maintains legal authority by ensuring access to justice for all parties involved in disputes. Through the mechanism of lawsuits and the application of judicial enforcement, courts ensure that legal conflicts are managed fairly and in accordance with applicable legal principles (Sutahar, 2024).

By classifying *wali adhal* cases as lawsuits, the principle of *audi et alteram partem*—meaning “hear the other side”—is fully realized. This principle comprises two main aspects: first,

the right of the defendant to defend themselves; and second, the guarantee of equality between parties in a dispute, both directly and indirectly, as regulated by statutory provisions. This means every party involved in a dispute must be granted equal opportunity to protect their rights and interests (Almitra, 2013).

In summary, the principle of *audi et alteram partem* mandates fair and equal treatment for all parties involved in judicial proceedings, including the rights to be summoned, to respond, to present evidence, to make closing arguments, and to access subsequent legal remedies. An analysis of the practice concerning the resolution of *wali adhal* cases, which have traditionally been processed through a petition mechanism, reveals procedural imbalances that disregard the guardian's right to fully defend and comprehensively present their case. Therefore, to ensure the fulfillment of procedural justice and equality among the parties, *wali adhal* cases should be adjudicated through a contentious lawsuit (*contentiosa*) mechanism that grants equal legal standing to both the prospective bride and the guardian, facilitates a fair process of evidence presentation and defense, and thereby enhances the legitimacy and fairness of the court's decision.

D. Conclusion

Wali adhal cases inherently involve a conflict of interest between the prospective spouse and the biological guardian (*wali nasab*), thus making it more appropriate to be adjudicated as a contentious lawsuit (*contentiosa*) rather than a voluntary petition (*voluntair*). Judicial practices that have traditionally classified *wali adhal* cases as *voluntair* tend to neglect the principle of procedural justice by failing to grant the guardian equal legal standing to defend themselves, present evidence, or pursue legal remedies. Consequently, existing regulations and practices require revision to align with the principle of *audi et alteram partem*, which mandates that all parties in a dispute be afforded equal opportunity to present their arguments and safeguard their rights.

A reconstruction of procedural law in the resolution of *wali adhal* cases is necessary, reclassifying them as *contentiosa* lawsuits, accompanied by harmonization of regulations among the Marriage Law, the Compilation of Islamic Law, the Ministry of Religious Affairs Regulation, and the Supreme Court Circular to ensure legal certainty and uniformity in Religious Court practices. It is incumbent upon the Supreme Court to formulate new legal guidelines that explicitly reaffirm the contentious nature of *wali adhal* cases while simultaneously strengthening the role of mediation as stipulated in Supreme Court Regulation No. 1 of 2016. Through such measures, the resolution of *wali adhal* cases will not only guarantee the prospective spouse's right to marry but also protect the guardian's right to proportionally express objections, thereby enhancing the legitimacy and fairness of judicial decisions.

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