

**ANALISIS PERTIMBANGAN HUKUM HAKIM DALAM PENOLAKAN
PERMOHONAN *ITSBAT NIKAH*
(Studi Penetapan Nomor 157/Pdt.P/2023/PA.Kbm)**

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ABSTRAK

Wali nikah menjadi rukun perkawinan yang mutlak harus dipenuhi sebagaimana amanat Pasal 19 Kompilasi Hukum Islam. Wali nikah pada Pasal 20 ayat (2) Kompilasi Hukum Islam dibagi dan terdiri atas wali nasab dan wali hakim, sedangkan dikenal pembagian wali nikah lainnya menurut hukum Syariat Islam ialah wali muhakkam. Wali muhakkam merupakan wali yang ditunjuk oleh kedua calon mempelai kawin tanpa ada hubungan nasab dengan calon mempelai wanita untuk bertindak sebagai wali dalam akad nikah mereka.

Penelitian ini dilakukan dengan menggunakan metode yuridis normatif yang disajikan secara deskriptif, sistematis, dan logis guna menjawab rumusan-rumusan masalah penelitian ini. Rumusan masalah pada penelitian ini terdiri atas bagaimana keabsahan perkawinan menggunakan wali muhakkam di Indonesia dan bagaimana dasar pertimbangan dasar hukum hakim dalam menolak permohonan *Itsbat Nikah* Nomor 157/Pdt.P/2023/PA.Kbm.

Berdasarkan hasil penelitian yang telah dilakukan penulis bahwasanya perkawinan menggunakan wali muhakkam di Indonesia ialah tidak diakui keabsahannya dikarenakan oleh Kompilasi Hukum Islam melalui Pasal 20 ayat (2) hanya disebutkan macam wali yakni wali nasab dan wali hakim. Meskipun menurut mahzab Syafi'I dan Maliki memperbolehkan perkawinan menggunakan wali muhakkam asalkan dipenuhi tiga persyaratan yaitu tidak adanya wali nasab sama sekali, didaerah setempat tidak ada qadhi syar'i, dan wali muhakkam tersebut merupakan orang yang adil dan mengetahui hukum syar'a perkawinan. Menurut penulis, Majelis Hakim dalam memberikan pertimbangan hukumnya terhadap penolakan permohonan *Itsbat Nikah* register perkara nomor 157/Pdt.P/2023/PA.Kbm ialah sudah tepat dan mencerminkan kepastian hukumnya hal ini dikarenakan penggunaan wali muhakkam tidak diatur dalam Kompilasi Hukum Islam khususnya Pasal 20 ayat (2) yang hanya menyebutkan macam wali menjadi dua yakni wali nasab dan wali hakim.

Kata Kunci : Perkawinan, Itsbat Nikah, Wali Muhakkam

ANALYSIS OF JUDGES' LEGAL CONSIDERATIONS IN REJECTING ITSBAT MARRIAGE APPLICATIONS

(Study Determination Number 157/Pdt.P/2023/PA.Kbm)

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ABSTRACT

Marriage guardians become harmonious and absolute marriage conditions must be fulfilled as mandated by Article 19 of the Compilation of Islamic Law. Marriage guardians in Article 20 paragraph (2) of the Compilation of Islamic Law are divided and consist of nasab guardians and judge guardians, while it is known that another division of marriage guardians according to Islamic Sharia law is muhakkam guardians. Muhakkam guardian is a guardian appointed by the two prospective bride and groom without any relationship with the prospective bride to act as guardian in their marriage contract.

This research was conducted using normative juridical methods which were presented descriptively, systematically and logically to answer the formulations of this research problem. The formulation of the problem in this research consists of the validity of a marriage using a muhakkam guardian in Indonesia and what is the basis judge's legal considerations are in rejecting the application for itsbat marriage number 157/Pdt.P/2023/PA.Kbm.

Based on the results of research conducted by the author, the validity of marriages using muhakkam guardians in Indonesia is not recognized because the Compilation of Islamic Law through Article 20 paragraph (2) only mentions the types of guardians, namely nasab guardians and guardians of judges. Although to the Syafi'I and Maliki schools, marriages are permitted using a muhakkam guardian as long as three requirements are met, namely the absence of a nasab guardian at all, in the local area there is no syar'i qadhi, and the muhakkam guardian is a fair person and knows the Sharia laws of marriage. According to the author, the Panel of Judges in giving their legal considerations regarding the rejection of the marriage registration application number 157/Pdt.P/2023/PA.Kbm was correct and reflected legal certainty this is because the use of muhakkam guardians is not regulated in the Compilation of Islamic Law, especially Article 20 paragraph (2) which only mentions two types of guardians, namely line guardians and judge guardians.

Keywords : Marriage, Itsbat Marriage, Muhakkam Guardian