

Vol. 5, No. 2 April 2007

**PENDEKATAN HERMENEUTIK DALAM HADIS-HADIS TENTANG WALI
NIKAH**

EMA MARHUMAH

PSW, Dosen Fakultas Tarbiyah UIN Sunan Kalijaga Yogyakarta

Abstract

This article examines a number of Prophetic traditions (hadits) dealing with wali (guardianship) in the context of marriage contract ('aqdun nikah) using a hermeneutical approach. There are many approaches and assumptions with regard to studying the issue of wali. There are many approaches and assumptions with regard to studying the issue of wali. The author argues that it is necessary to link the study of wali with that of Arabian culture. Having studied the discourse of wali mentioned in a number of hadits, as well as put them in the contexts of Islamic message and Arabian culture, the writer concludes that the hadits dealing with wali have indeed a temporal function, and addressed to minors (children not reaching their adulthood) and those who lack capability to take care and manage their own lives. Thus the author suggests that patriarchal culture which discriminate adult, intelligent women to act as wali in the event of marriage should be reviewed in order to create egalitarian society.

**WALI NIKAH DAN PERSETUJUAN PEREMPUAN: ANTARA TUNTUTAN
DAN KENYATAAN**

KHOIRUDDIN NASUTION

Dosen Fakultas Syari'ah UIN Sunan Kalijaga Yogyakarta

Abstract

Although it is revealed in a patrilineal Arab community, Islam is substantially introducing a model of bilateral community which perceives men and woman in an egalitarian position. The purpose of Islam to build an egalitarian, bilateral is explicitly stated in a number of Qur'anic verses and prophetic traditions (hadits). With regard to the issue of wali in a marriage contract, there are Qur'anic verses and hadits which indicate that adult, intelligent women might marry off themselves without a male wali. This view is in conformity with that applauded by the Hanafis who argue that adult women, just like adult men, might marry off themselves. Such interpretation, in the opinion of the writer, is the one to serve the purpose of Islam in developing an egalitarian community.

**WALI AS AN AGENT OF WOMEN IN ISLAMIC MARRIAGE LAW: Maliki
School as a Basis for Reinterpretation
RATNA LUKITO
Dosen Fakultas Syari'ah UIN Sunan Kalijaga Yogyakarta**

Abstract

Artikel ini mendiskusikan masalah wali nikah, khususnya menurut mazhab Maliki. Apabila dicermati, wali nikah, yang harus laki-laki, dalam pandangan mazhab Maliki ini pada dasarnya tidak dimaksudkan mensubordinasi otonomi dan hak perempuan, karena secara tegas mereka menyatakan bahwa wali nikah tidak harus bapak atau keluarga laki-laki, tetapi calon mempelai perempuan dapat juga menyerahkan perwaliannya kepada hakim, apabila wali menolak untuk menikahkannya. Karena itu, fungsi wali nikah dalam mazhab Maliki adalah lebih sebagai wakil (agent) dari calon mempelai perempuan untuk memastikan terwujudnya tujuan perkawinan. Adanya konsep wali nikah dalam mazhab Maliki, dengan demikian, pada dasarnya diformulasi untuk membantu calon mempelai, baik laki-laki maupun perempuan, untuk mendapatkan perkawinan yang bahagia, tentu saja dengan cara yang sesuai dengan konteks ketika itu. Dengan perkembangan masyarakat dan bentuk keluarga saat ini, masalah perwalian dalam nikah ini perlu direinterpretasi sesuai dengan konteks masa sekarang, dan reinterpretasi tersebut bisa berangkat dari ide dasar dan nilai yang terkandung dari konsep wali nikah mazhab Maliki ini.

**KONTROVERSI PEREMPUAN SEBAGAI WALI NIKAH
AGUS MOH. NAJIB
Dosen Fakultas Syari'ah UIN Sunan Kalijaga Yogyakarta**

Abstract

The concept of wali in marriage contract is essentially a mean to ascertain the attainment of the goal of a marriage, that is to maintain harmony between a husband and wife in their familial life. The institution of wali (guardianship) is meant to guarantee the rights, safety and welfare of the underage brides before and after they enter their marital life. Thus, it can be said that wali for a bride is needed when she is not adult yet, and has no capability to conduct legal acts by herself. Meanwhile a wali who is meant to be her protector should be an adult person with sound judgment and ability to perform legal acts so that the wali can perform the duties appropriately. If the main condition of wali is adulthood and soundness of judgment, then women, not only men, can be a wali, as it is believed by the Hanafis.

**MENGGUGAT PERAN WALI NIKAH:
Potret Bias Gender & Analisa Fikih Egalitas
M. Yusuf**

Abstract

Islamic society will always be practically encircled by patriarchal culture and male domination if the body of Islamic laws does not offer the solution to the problem. As long as the patriarchal values dominate all legal considerations taken into account the formulation of law produced will be male biased and subordinate women. As a result, Islam as a religion will appear to be unfriendly to women—a situation which is against its own spirit. This present article aims to discuss the issue of wali in a marriage contract by applying a structuralism method within linguistic paradigm and critical historical approach. Using these methods, the author argues that the mainstream views of Islamic law on wali are gender-biased and unfair to women. Because gender injustice is against the spirit of Islam, the patriarchal fiqh should be re-examined and replaced by the egalitarian Islamic law.

**MEMBACA ULANG KONSEP PERWALIAN DALAM PERSPEKTIF
MOHAMMED ARKOUN
MUHAMMAD ISNA WAHYUDI
Alumni Program Pascasarjana UIN Sunan Kalijaga Yogyakarta**

Abstract

Along with the development of human awareness on gender injustice, the provision of wali in Islamic law needs rethinking. Under the mainstream Islamic law a woman cannot marry off herself but a widow. It is only the wali of that woman who can marry her off in a marriage contract. Of course, in the outset such provision seems to be gender bias, because the Islamic law treats woman as incapable person. In order to examine this issue, Mohammad Arkoun has offered what be called as critics of Islamic reason. By applying a deconstruction method and following archeology of knowledge we will be able to reveal the unthinkable issues of Islamic tradition. In this way, we can clarify and understand the issue of wali clearly, criticize the prevailing provision on wali, and reconstruct the concept of wali in accordance with the present context.

**PEREMPUAN SEBAGAI WALI NIKAH
MOH. FAUZI**

Dosen Hukum Islam dan Wakil Sekretaris PSG IAIN Walisongo Semarang

Abstract

The debate on whether or not a wali is required in a marriage contract has been a long standing issue among Muslim jurists, particularly during the formation of madzhab (school of thought). The mainstream view held by Indonesian Muslims who are mostly adhered to the Syafi'I madzhab is that the presence of a wali becomes a criteria for the validity of a marriage. However, if the issue of wali is being re-examined by using historical and Islamic jurisprudence approach it is found that the presence of wali is not required in all marriage contracts of all women. A woman may become a wali and may marry off herself without a wali if she fulfils the requirement of being a wali, namely intelligent, sound of judgment, mature and independent. Such a view is held by scholars from the Hanafi school of law. Netherless, the concept of wali is not merely a legal issue; it is a meant for guaranteeing the wellbeing of a woman upon entering her marriage. The Prophet is therefore suggested that wali should be presented in a marriage contract.