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

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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


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 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 hadanah (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:

\[\text{قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم:} \text{"كَفِي بَاَلْمَاءِ إِلَّا أَن يَضْرِعُ مِن يَقُوَّت" (حَدِيث صَحِيحٌ)}\]

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-Ḥākim)

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-Ḥākim’s kitâb al-Mustadrak 'ala al-Shabihayn it is found that the history comes from 'Abd Allâh ibn 'Amrû ibn al-'Āsh which is complete as follows:

\[\text{قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم:} \text{"كَفِي بَاَلْمَاءِ إِلَّا أَن يَضْرِعُ مِن يَقُوَّت" (حَدِيث صَحِيحٌ)}\]

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-Ḥākim).

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'tabarah (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

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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 Isnانتzana (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 focus 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

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 (VAT); [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.

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14 Case Number 0420/Pdt.G/2017/PA.Pdg which is classified as a Polygamy Permit case with Minutation 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/

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, 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. 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 Matktabah Syamilah Version 3.64 application was used and strengthened by direct verification into the hadith books. In this


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) Ithbat 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.

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


   That is to say: Has told us Umar ibn Hafsh, has told us my father, has told us Al'A'masy, 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."

   The hadith above is contained in Copy of Determination No 0175/Rev.P/2016/PA. The LK issued by the Tanjung Pari Religious Court 18 Firdaus (Head of the Tanjung Pari 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.
b. Hadith on the Determination of the Origin of a Child and the Determination of the Adoption of a Child Based on Islamic Law;

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:

Hadîth that were conveyed by Ya'qûb b. Ibrâhîm al-Bazzâr and Isma'il b. 'Abd al-Barr al-Warrâq, both said: have told us `Umar b. Shahabah, have told us Bakkâr, have told us 'Abd Allâh bin Muharrar of Qatadâb of al-Hasan of `Imrân b. Hushayn of 'Abd Allâh bin Mas'ûd, be 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


There are three possible meanings of the term Hadith Hasan Shahih, namely: [1] Hadith hasan lidzâtihi which rose to become a hadith shahih lighayrihi, because it will be more easy his turmoil." (HR. al-Bukhârî).19

The narration of the hadith derived from 'Abd Allah ibn Mas'ûd is also narrated by Imam Muslim (206-261 H)20, Imam al-Nasâî (215-303 H)21, Imam al-Tirmidzî (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-Tirmidzî as the Hadith of Hasan Shahih26, even contained in the book Shahih al-Bukhârî and the Muslim book of Shahih so as to not to overdo Husayn Salim Asad in the Book of Sunan al-Dârimî states his isnad shahih and has the status of muttafaq 'alayh27. This is because Imam al-Bukhârî (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.


27 That is to say: Have told us Ya’qûb b. Ibrâhîm al-Bazzâr and Isma’il b. ‘Abd al-Barr al-Warrâq, both said: have told us ‘Umar b. Shahabah, have told us Bakkâr, have told us ‘Abd Allâh bin Muharrar of Qatadâb of al-Hasan of ‘Imrân b. Hushayn of ‘Abd Allâh bin Mas’ûd, be 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
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. Meanwhile, there is an additional expression:

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

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

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

In terms of validity, the history of the above hadith can also be accounted for and of shabib quality. 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 (Iṣbaḥat) or Statement about the Validity of Marriage that Occurred Before Law Number 1 of 1974 concerning Marriage and Carried Out According to Other Regulations

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

In terms of validity, the history of the above hadith can also be accounted for and of shabib quality. 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.

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:

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-
Marâm Min Adillat al-Ahkâm. 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:

وَغَيْرُ عَائِشَةٍ رَضِيَ اللهُ عَنْهَا قَالَ: قَالَ رَسُولُ اللهِ صلى الله عليه وسلم: «إِنَّهَا مُزَوَّةُ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَيُكْلِفَهَا بِمَا أَسْتَحْلَى مِنْهَا فِي حُرَّجِهَا، فَإِنَّهَا لَنَشْرَتْ فَالسُّلْطَانُ وَلَِّ مَنْ لاَ وَلِِه لَهُ» 

That is to say: From Aisyah radhiyallahu 'anha, 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'i and Abu 'Awânah, Ibn Hibban and al-Hâkim shahîh-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:

خُطِّتَنَا وَصِيبَنَا بِكَينَانِي لَعَلَّهَا اسْتَحْلَى مِنْهَا فَإِنَّهَا لَنَشْرَتْ فَالسُّلْطَانُ وَلَِّ مَنْ لاَ وَلِِه لَهُ»

The statement that this hadith is considered shabîb 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-Hâkim (321-405 H) considered this hadith to be shabîb 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 shabîb by

Prophet Muhammad without any shadh and 'illat. See, Mahmúd al-Thâhân, Tayîr Mustâhbalâl al-Hadîths, ([tt:], [tp:], [tth:]), hal. 38


36 al-Qatîfî, Sunan Abu Dawûd.

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 (dhâbîth) of narrators such as those that reached the Prophet Muhammad without any shadh and 'illat. See, Mahmúd al-Thâhân, Tayîr Mustâhbalâl al-Hadîths, ([tt:], [tp:], [tth:]), hal. 38

40 al-Turmudzî, Sunan Al-Turmudzî.

41 Ibn Hibbân., Shahih Ibn Hibbân Bi Tarîh Ibn Bulhân, ed. Syu'ayb al-Arnawîth (Beirut: Mu'assasat al-Risâlah, 1414), 384 Juz 9, hadis 4074.

Abū 'Awānah (d. 316 H) deserves criticism because the isnad is hasan and this hadith is a zawa'id (additional) of Abu 'Awānah against Imam Muslim. On the other hand, this hadith was also narrated by Imam al-Dārimi (181-255 H) and Imam Ahmad bin Hanbal (164-241 H).

THE NARRATION OF HADITH THAT ONLY MENTIONS ITS RAWI

a. Hadith about Wali 'Adhal

فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلُِّ مَنْ لاَ وَلِِه لَهُ [رواي الترمذي]

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 daughter. If the daughter has asked (her guardian) to be married off by a man commensurate with his daughter. If the guardian is unwilling or reluctant to marry, then the refusal is according to the "prohibited" syara. Thus, it can be stated that the guardian 'adhal contains at least five elements, namely: (1) The guardian refuses (reluctantly) to marry off his daughter; (2) The bride-to-be is 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-Turumzadz 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:

فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلُِّ مَنْ لاَ وَلِِه لَهُ [رواي الترمذي]

That is to say: Has told us Ibn Abu Umar, has told us Suffian bin 'Uyainah of Ibn Jurraj of Sulayman ibn Musa of Al-Zuhri of 'Urwaib 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-Turumzadz).

According to Abū 'Isā al-Turumzadz (209-279 H), this hadith is hasan quality. He added that this hadith was narrated by Ibn Jurraj as narrated from Yahya ibn Sa'id al-Anshari, Yahya ibn 'Ayyub, Suffyan Tsauri and others among the huffazh." Al-Turumzadz 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-Rab' narrated from Abu Ishaq of Abu Burdah of Abu Musa of the Prophet Saw. Meanwhile, Ashbah bin Muhammad and Zaid bin Hubab narrated from Yunus bin 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...
Yunus ibn 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 hadîts 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 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-Auzi, '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), 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 Dâwûd.  
\(^{50}\) 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:

الث هي أحق بنفسها من ولدها وأي بكر تستأجر وإذا ما أتيت عليه وسلم قال: "الث هي أحق بنفسي من ولدها وأي بكر تستأجر وإذا ما أتيت عليه وسلمANO.

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

وحدثنا قتيبة بن سعيد حدثنا شفان عن زيد بن سعد عن عبد الله بن الفضل جمع نافع بن جرير يخبر عن أبي عاصم أن النبي صلى الله عليه وسلم قال: "الث هي أحق بنفسي من ولدها وأي بكر تستأجر وإذا ما أتيت عليه وسلمANO. [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 Naafi' 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-Nasa'i, Sunan Al-Nasa'i Al-Mujtaba.
54 al-Sijistani, Sunan Abu Dawud.
55 Hanbal, Musnad Al-Imam Ahmad Ibn Hanbal.
That is to say: And has told us Muhammad ibn Sulayman al-Maliki, be said he has told us 'Amru bin 'Ali, he said he has told us Yâbiya bin Sa'id, he said, has told us Abu al-Asyhab of al-Hasan. He said: The Messenger of Allah Shadallahu 'Alihi Wasalam said: "Whoever is called by a judge among the judges of the Muslims, then he does not face, then he has zhâlim and there is no right of answer for him." (HR. al-Dâruquthnî).  

The same narration can also be found in the book of Musnad al-Bazzâr.  

Based on the statement of 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 tabî'în 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, stated:

(they 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 munqath' (disconnected) sanad and falls into the category of hadith majhûl 'ain i.e. narrator which is unknown or unknown whose personal identity is.

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. 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 unbeliving 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.

Rawh ibn 'Athâ leaned the narration to his Father and Rawh himself is known as a narration which is "layyin al-hadîth" and 'Athâ himself is famous as the Basrah people where Khâlid al-
Hadzda', 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, 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

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 Isbat Nikah), even one of them is considered to meet the standards of shahih al-Bukhari 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 dbâlîf (munqathî' and majhûl 'ain) is the divorce case.

REFERENCES


https://doi.org/10.15575/jra.v2i2.16934.


Yusrizal Efendi and Hafizzullah

Hadiths About Marriage

Beirut: Mu’assasat al-Risâlah, 1414.


**Interview**

Firdaus (Head of the Tanjung Pati Religious Court), *Interview*, 12 Oktober 2018

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

Jubaedah (Deputy Head of the Batusangkar Religious Court), *Interview*, 1 November 2018

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