

## CHAPTER II

### THE CONCEPT OF WALIȲ IN ISLAMIC LITERATURE

#### A. Waliȳ in the fiqh study

In terms of fiqh, the word of "waliȳ " has an meaning the person who according to the law (religious, traditional) obligations entrusted to attend to orphans, before the child is an adult; parties which represent a bride at the time married (is doing the ceremony with the groom).<sup>1</sup>

##### 1. Waliȳ in marriage

###### a. Definition of waliȳ and its position in marriage

In marriage, the word of waliȳ is a person who acts on behalf of the bride in a marriage ceremony. The existence of waliȳ in the marriage ceremony is one thing that must there and will not be valid marriage contract without action of the waliȳ. Waliȳ was placed as a pillar in marriage according to *ulema* agreement in principally. In the marriage contract itself waliȳ can be located as a person acting on behalf of the bride and also as the person who requested approval for the survival of the marriage.

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<sup>1</sup>Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1989), p. 1007

Position as a person who acts on behalf of the bride in performing the contract there is a difference of opinion among *ulema*. To the young bride, both male or female scholars agree on him sit as a pillar or a condition in the marriage contract. The reason is that the bride is still not able to perform the contract by itself and therefore the contract made by their waliȳ. But for women who have grown up either widowed or still a virgin, *ulema* have different idea. Differences of opinion it is due to no definite proposition that can be used as a reference.

Furthermore, the Syi'ah scholars and Hanafiyah scholars found women who are already mature and healthy minds can do your own marriage and do not need waliȳ to perform the contract. Rational reason is people have grown up and healthy mind can act to legal by itself without the necessary waliȳ assistance.<sup>2</sup>

b. The kinds of waliy in marriage

There are several kinds of waliȳthat can act as the waliȳ of marriage,the waliȳ of nasaband the waliȳ of hakim.

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<sup>2</sup>Kaharuddin, *Nilai-Nilai Filosofi Perkaawinan*, (Jakarta: Mitra Wacana Media, 2015), p. 185

### 1) The waliȳ of nasab

The waliȳ of nasab are those consisting of the bride's family and has right to become waliȳ. Imam Syafi'i found the boys did not include to *ashabah* of woman.<sup>3</sup> According to Imam Syafi'i, a new marriage is considered valid, if married by close waliȳ first. When none is close, then views in its equence orderly. Then when the far waliȳ none exists, the judge who act as waliȳ. The nasab waliȳ sequence is as follows:

- a) Father, grandfather (father from father) and so on to the top
- b) Bladder brother (same in mother and father)
- c) Brother of one father
- d) Son of bladder brother
- e) Son of brother in one father
- f) Bladder uncle (brother from the father)
- g) Uncle (brother from the father) in same fathers
- h) Son of bladder uncle
- i) Son of uncle in one fathers<sup>4</sup>

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<sup>3</sup>Slamet Abidin, dkk, *FIQIH MUNAKAHAT*, (Bandung : Pustaka Setia, 1999), p 90

<sup>4</sup>M. Yunus, *Hukum Perkawinan dalam Islam menurut Empat Mazhab*, (Jakarta: PT. Hidakarya Agung, 1996), p.55

## 2) The waliȳ of hakim

The waliȳ of hakim is the one appointed by the government to act as a waliȳ in a marriage. The waliȳ of hakim may replace the waliȳ of nasab if:

- a) There is a disagreement between the former waliȳ.
- b) The waliȳ of nasab does not exist or exists but is not possible to present it, or not known his residence or reluctant.<sup>5</sup>

### c. The pre requirement of waliȳ in marriage

Waliȳ in marriage is required and its not valid if conducted without the presence of a waliȳ. Therefore, the waliȳ must fill the requirements as waliȳ. These requirements are:

- a) Islam (unbeliever is not legal becomes waliȳ)

Waliȳ must be a Muslim, has been narrated Ijma'by Ibn al-Mundhir in this case.

- b) Baligh (children is not legal becomes waliȳ)

It is the opinion of most of Ulema and this is the *shahih* opinion. Because Allah Almighty has restricted little of age children in the case of using his

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<sup>5</sup> Djamaan Nur, *Fiqih Munakahat*, (Semarang: Toha Putra, 1993), p.

wealth, then because of the case of marriage is higher than the trust property it is illegal.

- c) Sensible (insane person is not legal becomes waliȳ)
- d) Male (women is not legal becomes waliȳ)

A woman should not be waliȳ to marry another woman or himself. If a marriage happens with waliȳ of women, then the marriage is not legal.

- e) Fair (fasiq people is no legal becomes waliȳ)

It has been explained before that waliȳ must be fair, the meaning is not adulterous, not fasiq, good people, pious people, who do not get used to do evil.<sup>6</sup> Others have suggested that the fair be interpreted intelligently. As is the smart here is able or capable of using reason his mind with the best or fairest. This is in accordance with the words of the Prophet which means: *"No legal marriage except with a waliȳ and two fair witnesses."* (HR.Ahmad Ibn Hanbal).

- f) Not doing Ihram Hajj or Umrah .

Sayyid Sabiq in his book *Fiqh Sunnah* forward some requirements of the waliȳ of marriage as

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<sup>6</sup>Zakiah Daradjat, *Ilmu Fiqih*, (Yogyakarta: Dana Bakti Wakaf, 1995), p. 82

follows: The requirement of waliȳ are: independent, sensible and mature. Slaves, insane people and a little child can not be a waliȳ, because these people are not entitled to act as waliȳ for their own selves Imore over for others. In addition, the requirements to be a waliȳ is Muslim, if the one whom get a waliȳ is also Muslims because non-Muslims should not be waliȳ for Muslims.<sup>7</sup>

2. The waliȳ of little children
  - a. Meaning of the hadin and waliȳ of children and their duties

In the process of caring a child from childhood until baligh there are two terms that are adjacent to the point that the term of hadin and word waliȳ, *hadin* or *hadinah* is the term used for a person who performs the duty of hadanah, namely the task of maintaining and caring for or educating a baby or small child from birth until they can feed themselves and dress their own selves and can distinguish between dangerous for their own selves. The term

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<sup>7</sup>Sayyid Sabiq, *Fiqhus sunnah Juz VI*, (Beirut : Dar al Fikr, 1968), p.261

waliȳ is used in addition to the person who becomes guardian of marriage, is also used for people who perform maintenance on children's self since ended hadanah period until he mature and sensible, or until marriage for girls.

The term waliȳ in the meaning of maintenance of the child, more popularly used in the maintenance period after the child becomes *mumayyiz*. So, the task of waliȳ is to connect and enhance the education of children who have started on time hadanah, and are responsible for the survival and maintenance of the child until he mature and sensible, and able to live alone. In addition, the term waliȳ is also used to people who maintains the wealth of little children and manage the expenditure of wealth.

b. The requirement of the hadin and the waliȳ

Some of the requirements below should be complete in a person, both for those who do hadanah, as well as in the discharge of duties as waliȳ of child. In addition to the mature, sensible, and muslim, and also the following conditions:

1. Having the ability and willingness to nurture and educate children who nurtured, and not tied to a job that could lead to duties hadanah be displaced.
  2. Can be trusted to hold the mandate, so can ensure the maintenance of the child. People who are depraved, many do sin such as committing adultery, drinking alcohol, gambling, not worth doing hadanah or become waliȳ.
  3. If the one did hadanah was the biological mother of the child to be cared for, required not remarried with another man. The existence of these requirements due to their fears do not give up his wife's second husband busy taking care of her son from her first husband.<sup>8</sup>
- c. The kinds of waliȳ little children

There are three kinds of guardianship those are:

1. Guardianship by the husband or wife are living longer, article 345 to Article 354 of the Civil Code. However, in this article has not made an exception for the husband and wife who live

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<sup>8</sup>Satria Effendi, *Problematika Hukum Islam Keluarga Islam Kontemporer*, (Rawamangun, Jatim: Prenada Media, 2004), p. 224



apart due to marriage broke up because of divorce or separation tables and beds. So, if the father after the divorce became the waliȳ then the death of the father, the mother itself (by law) be guardians over the children.

2. Guardianship appointed by the father or mother with a will or deed itself. Article 355 paragraph 1 of the Civil Code states that *"Every parent, who did parental authority or guardianship of a child or more are entitled to appoint a waliȳ for the children, if presumably guardianship it after he died by law or because the determination of the judge according to the last paragraph of article 353, should not be done by the other parent"*. In other words, each parent who became the waliȳ or hold parental authority entitled to appoint a the waliȳ if the guardianship is still open.
3. Guardianship that appointed by the judge. Article 359 of the civil code determines: *"All minderjarige are not under the authority of*

*parents and legally regulated their ward will be appointed a guardian by the court.”<sup>9</sup>*

## **B. Waliȳ in Sufism**

### 1. Understanding of waliȳ in Sufism

According to al-Razi (d. 606 H) the words of *al-walāyah* in field of language, formed from the root word w-l-y which implies close, with the word of means someone close, however, the closeness with God in terms of place and direction is something impossible. The *waliȳ* or *al-walāyah* describe the closeness. Therefore, *waliyullāh* is a very close to God. This closeness can be understood as immersed in ma'rifah in him that had not occurred in the slightest in the heart of a *waliyullāh* something other than Allah. In the circumstances *ma'rifah*, according to al-Razi, a person not to be afraid and do not be sad, because drowning in the light of God are oblivious to anything other than Allah.

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<sup>9</sup>[http://www.academia.edu/17734608/makalah\\_perdata\\_perwalian](http://www.academia.edu/17734608/makalah_perdata_perwalian)

The *waliȳ* are people who believe that have managed to distance himself from sin, both big sins and small sins done continuously. According to Yusuf ibn Isma'il al-Nabhani (d. 1350 H) states that the term *waliyyullāh* in Sufism refers to the two senses. *First*, people who obedience to God takes place continuously without punctuated by disobedience. *Second*, a maintained and guarded by God continuously from all immoral acts and got taufiq and hidayah, is the approval and guidance of God to remain in obedience to Him.

From the above explanation, it is clear that the term of *al-walāyah* or sainthood in Sufism is derived from the Qur'an. In language field, understanding *al-walāyah* in the Qur'an, refers to the meaning of proximity, kinship, friendship, protection, love, fellowship, support, and compassion.<sup>10</sup>

## 2. The division of *al-walāyah* (sainthood)

According to al-Hakim al-Tirmidzi divide *al-walāyah* (sainthood) into two parts:

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<sup>10</sup> Asep Usman Ismail, *Apakah Wali itu ada*, (Jakarta: Rajagrafindo Persada, 2005), p. 67

a. *Al-walayāt al'ammāh* (The general sainthood)

The general sainthood includes all those who believe, work righteousness, and justifies the apostles. The general sainthood by 'Abd al-Fattāh' Abdullah Barakah called *walāyat al-tawḥīd* (sainthood of tawhid), that sainthood people who purifies his belief of associating partners with God to obtain *anwār al-maḥabbah* ( the light of love) caused by *ma'rifah* in God, but his soul is still dominated by a variety of low impulse.

b. *Al-Walayāt al-khāssah* (special of sainthood)

Special of sainthood include *ahbāb Allah* (lovers of God) and *asfiyā' Allah* (God's chosen people), that they were chosen by God for Himself and God was guiding them with his gifts so that they are closer to God. *Al-walayāt al-khāssah* can be achieved by a servant when integrated two aspects, the power of God to a servant and a servant sooth devotion to God.<sup>11</sup>

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<sup>11</sup> Ibid, p. 102

## C. *Waliȳ* in Politics

### 1. Definition the word of *waliȳ* in politics

- a. The term of *waliȳ* in jurisprudence politics implies a person who holds authority and political power of government as *walāyah* (authority) is the head of state to combat dissident (*bughāt*), rioters and vandals security, and *walayat al-quḏlāt* (authority officials Country).<sup>12</sup> In terms of jurisprudence, people who hold political power authorities called *ulul amri*. *Ulul amri* is a term that has a wide connotation. He includes the leaders of the Muslim community which controls and regulates all affairs of life, perhaps a thought leader or literature, scholars, or political leaders, the government, the judge, the commander or the head of the political organizations and the city government and local.<sup>13</sup> It must be descendants of Quraysh, the Prophet Muhammad's ethnic origin. These terms are not found in the Qur'an, but only

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<sup>12</sup> Ibid, p. 19

<sup>13</sup> Abul A'la Al-Maududi, *Sistem Politik Islam*, (Bandung: Mizan, 1990), p. 202

found in some traditions "*imamah*". According to Syiah imamiyah was not merely a political institution, but also religious institutions and spiritual. Imam is not only political authority, but also religious authority and as the successor of the minutes of the Divine or carry forward the sacred mission of the Prophet tasks, for which the priest must be with qualities such as Prophet or approaches the quality of the Prophet. According to Motahhari, the priest has a three position (maqam) that as a community leader or the head of the State, as a waliȳ or holder of the area (in the spiritual sense, which has the abilities supernatural or miracles, and as a absolute mujahid or person rule religion authority which most authoritative in Prophet post.<sup>14</sup> According to Hussein al-Najar Fauzy forward five degree head of the State of Islam, namely:

- a. Khalifah
- b. Amir al-mu'minin
- c. Imam

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<sup>14</sup>Ridwan, *Fiqih Politik*, (Yogyakarta: FH UII Press, 2007), p. 247

d. Waliyyul ummah

e. Aminul ummah<sup>15</sup>

## 2. The requirement's of waliȳ (Head of State)

In the Qur'an and Sunnah, at least eleven terms are found the head of the Islamic State. That is:

b. Must be a Muslim

c. Must be a man

d. Must be an adult

e. Must be fair

f. Must be good at maintaining a trustful and professional

g. Must be strong or physical and mental health, trustworthy, and knowledgeable or have extensive knowledge.

h. Must be a citizen of the Islamic State are domiciled in the territory of the Islamic State.

i. Got to love the truth (Siddiq)

j. Must be able to communicate well to the people, vision, mission, and its programs as well as all sorts of existing legislation honest and transparent manner.

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<sup>15</sup>Mujar dan Khamami, *Fiqih Siyasaah Doktrin dan Politkn Islam*, (Jakarta: Erlangga: 2008), p. 226

- k. Must be smart and have a good memory.
- l. It must be descendants of Quraysh, the Prophet Muhammad's ethnic origin. These terms are not found in the Qur'an, but only found in some *hadits*.<sup>16</sup>

#### **D. Waliȳ and an important figure in the community**

The waliȳ it has an important position in the middle of the community. The degree elevation waliȳ it can be seen from several aspects.

*First*, from the views of experts on the definition walisongo. One of the experts who put forward the notion walisongo is K.H.R. Moh. Adnan, the words *songo* according to a change or ambiguity there the pronunciation of the Arabic word *tsanā'*, which means noble or *maḥmūd* (commendable), so that the correct pronunciation is *walisana* which means waliȳnoble or praiseworthy. Meanwhile, R. Tanojo argues, there is not derived from the words of Arabic *tsanā'*, but it comes from the ancient Arabic language which means place, area, or region. In this sense, *walisana* means the waliȳ for a place, local

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<sup>16</sup> Ibid, p. 263



authorities, or warlords. *Walisana* within the meaning of the ruler often called Sunan, short from *susuhunan* or *sinuhun*. Walisongo because it has a dual function, as preachers or teachers, as well as community leaders accompanied the king, This fact is reinforced by the fact of history that Sunan Gunung Jati very powerful in Cirebon and Banten area and Sunan Giri Giri authority in the region, its influence even extends to Makasar, Hitu, and Ternate.

*Second*, the waliȳ it has a higher impact than the influence of the ruling elite of Java at that time. Because of the influence and power is spiritual waliȳ obtained because of the sanctity of his heart and proximity to God.

*Third*, the waliȳ was respected by the community. Not only at the time of their life, but also after they died. The story of their greatness is still alive in the midst of society, retold, printed in the book, narrated in religious lectures, and made a number of movies that tells the miraculous events as well as their activities in spreading the religion. Stories waliȳ very popular among the people. Many books were printed in order to narrate his life and almost all of them contain miraculous event which is of

course considered strange and unreasonable by scientists and modern people wich thinking rationally.

*Fourth*, the waliȳ graves, including the graves of those who are considered waliy or sacred until now an important place that constantly visited by Muslims in various regions across Indonesia. Tradition religious visit to the graves of the waliȳ, even the habits of the people of Islam throughout the Muslim lands.<sup>17</sup>

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<sup>17</sup>*Apakah Wali itu ada*, op. cit., p. 3