

Ibu Kandung dan Wali Nikah: Pengalaman Opresi Perempuan Kepala Keluarga sebagai Pertimbangan dan Koreksi Atas Illah Al-Hukm Fiqh = Biological Mothers and Marriage Guardians: Oppression of Female Heads of Families for the Reconsideration and Correction of Illah Al-Hukm Fiqh

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Abstrak

Perempuan ibu kandung kepala keluarga tidak pernah diperhitungkan sebagai wali nikah dalam fikih mainstream dan Kompilasi Hukum Islam di Indonesia. Perwalian yang termaktub dalam bingkai hukum Islam di Indonesia hanya memberikan otoritas penuh pada ayah atau kerabat dari garis ayah. Permasalahannya adalah pada kasus ibu tunggal yang menghidupi anaknya seorang diri, ia harus tereliminasi daripada perwalian anaknya. Berdasarkan hal ini tentu perlu adanya peninjauan ulang, dengan melihat kembali pengalaman ibu kepala keluarga yang selama ini sosoknya tereliminasi dari peran perwalian. Penelitian kualitatif ini menggunakan metode studi kasus dengan perspektif feminis. Penelitian ini menggunakan kajian kepustakaan, wawancara mendalam serta observasi partisipatif untuk menelusuri tiga subjek utama wawancara yang memiliki pengalaman ibu kepala keluarga pada kasus perwalian pernikahan anak perempuan. Penelitian ini menghasilkan tiga hal, pertama, pelaksanaan atas illat (alasan hukum) perwalian memposisikan ketidaksetaraan terhadap perempuan khususnya ibu kepala keluarga, kedua, melalui penelusuran penghayatan pengalaman ibu kepala keluarga proses pengalaman perwalian pernikahan berdampak terjadinya berbagai tindak kekerasan dan kerentanan pada ibu serta anak perempuan, ketiga, pengalaman penghidupan perempuan ibu kepala keluarga sangat ideal untuk direfleksikan menjadi illat hukum fikih alternatif.

.....The biological mother of the head of the family is never considered as a marriage guardian in mainstream jurisprudence and the Compilation of Islamic Law in Indonesia. Guardianship as stipulated in the framework of Islamic law in Indonesia only gives full authority to the father or relatives from the father's line. The problem is that in the case of a single mother who supports her daughter alone, she must be eliminated from the guardianship of her daughter. Based on this, of course, there needs to be a review, by looking back at the experience of the head of the family whose figure has so far been eliminated from the role of guardianship. This qualitative research uses a case study method with a feminist perspective. This research uses a literature review, in-depth interviews, and participant observation to explore the three main interview subjects who have experiences of mothers as heads of families in cases of guardianship over daughters' marriages. This research produces three things, first, the implementation of illat (legal reasons) for guardianship positions inequality towards women, especially mothers who are heads of families, second, through tracing the appreciation of the experiences of mothers who are heads of families, the process of marital guardianship experiences results in various acts of violence and vulnerability for mothers and daughters. , thirdly, the livelihood experiences of women heads of families are ideal to be reflected into alternative legal jurisprudence.