

Juridical Review On Notarical Testament In The Perspectives Of Islamic Inheritance Law

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Abstract. Most of Indonesian is aware of law in aspects of life, including inheritance distribution. Every parent with children does not want to let his heirs disagreed or conflicted in terms of inheritance after he passed away. Thus a testament is made to fairly distribute inheritance. Among reasons to compile testament deed are testator intentions to make his property useful for better purposes, i.e. to get closer to Allah SWT The Most Merciful. He also expects himself to perceive true faith and devotion to God, as well as to open fortune door to all recipients. However there may occur obstacle in distributing inheritance. Since civil law regarding testament is different from Islamic faraid law in some aspect.

Keywords: Testament; Notary; Inheritance.

1. Introduction

Inheritance law is closely related to scope of human life. Every human being will experience a significant moment in his life, which is also a legal and common event, namely death. In term of legal happening, the loss of a loved one may cause consequence; as it is mentioned in law of Allah SWT (*sunatullah*), on continuation of obligation and rights passed onto heirs of a dying person. Settlement and management of obligation and rights as result of a legal event due to death of a person, is governed by Law of Inheritance. Therefore, it represents "a set of legal rules which administer heir or other legal entity to look after obligation and rights of a deceased person."³

Inheritance law has a complex problem. In practice, Indonesia has 3 (three) inheritance systems, i.e. Islamic inheritance law, Civil Code of inheritance and customary inheritance law. These three laws differ in term of inheritance arrangement, eventhough similarity can be found in some aspects. Generally all three laws outline common perspective on testator or person inheriting his treasure and property, heirs or recipient entitled to receive inheritance, inheritance or treasure, requirements, barrier, provision of heirs, grant, testament and so forth.

Matters governed by inheritance law in practice are not simple; such as dissimilar percentage of inheritance distribution arranged among three laws. Testament (n) in English is derived from Latin "*testamentum*" which means a last will, publication of property. While in Javanese customary law, it is derived from the word "weling" which means message. Here, the author focuses the discussion on testament set forth in Islamic law and its implementation on Islamic society.

Islamic community does not necessarily conduct practice of testament under concern and provision of Islam law. As it is mentioned in the Holy Qur'an, Islam regulates law of inheritance. Provision of testament is clearly arranged in *Surah Al-Baqarah* Verse 180 and *Surah Al-Maidah* Verse 106.⁴

Q.S. *Al-Baqarah* Verse 180, mentions:

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³ M. Idris Ramulyo 2008 Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-Undang Hukum Perdata (BW) Cetakan Pertama Sinar Grafika Jakarta p. 2-3.

⁴ Moh. Muhibbin Abdul Wahid 2009 Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif Di Indonesia First Edition Sinar Grafika Jakarta p. 145.

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ
وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ١٨٠

"Prescribed for you when death approaches (any) one of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous."

Implementation of the provision, is further forth set in *Surah Al-Baqarah* verse 240 and *Surah Al-Maidah* verse 106. ⁵ QS. *Al-Baqarah* Verse 240, mentions:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَّعًا إِلَى الْحَوْلِ غَيْرِ إِخْرَاجٍ
فَإِن خَرَجْنَ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنْفُسِهِنَّ مِنْ مَّعْرُوفٍ وَاللَّهُ
عَزِيزٌ حَكِيمٌ ٢٤٠

"And those who are taken in death among you and leave wives behind - for their wives is a bequest: maintenance for one year without turning (them) out. But if they leave (of their own accord), then there is no blame upon you for what they do with themselves in an acceptable way. And Allah is Exalted in Might and Wise."

QS. *Al-Maidah* Verse 106, mentions:

"O you who have believed, testimony (should be taken among you when death approaches one of you at the time of bequest - (that of) two just men from among you or two others from outside if you are traveling through the land and the disaster of death should strike you. Detain them after the prayer and let them both swear by Allah if you doubt (their testimony, saying), "We will not exchange our oath for a price, even if he should be a near relative, and we will not withhold the testimony of Allah. Indeed, we would then be of the sinful."

Research Methods

Research is the ultimate way to solve problems. Research can also be used to discover, develop and test a truth. In order to start solving problems, a research requires systematic data collection. Research planning subsequently takes appropriate methodology, the underlying logic of scientific research. Therefore a researcher must pay attention to his mother of science.⁶

To obtain scientifically results, it takes proper method. Research method necessarily provides guidance and direction in studying and understanding an object. Thus, research will run well and smoothly in accordance with established plan.⁷

In a legal research, investigator refers to field of law as foundational science. According to Serjono Soekanto, legal research is a scientific activity based on certain method, system, and way of thinking which aims to study a specific or everything about laws by analyzing them.⁸

⁵ Suhrawardi K. Lubis Komis Simanjuntak 2004 *Hukum Waris Islam (Lengkap & Praktis)* Fourth Edition Sinar Grafika Jakarta p. 42.

⁶ Ronny Hanintjo Soemitro 1998 *Metode Penelitian Hukum dan Jurumetri* Ghalia Indonesia Jakarta p.9.

⁷ Komarudin 2000 *Metode Penuisan Skripsi dan Tesis* Remaja Rosdakarya Bandung: Remaja p.27.

⁸ Ronny Hanintjo Soemitro *Op.Cit.* p.9.

This research belongs to normative law study, which is investigation on systematic law of certain legislation or notation. This study focuses on Compilation of Islamic Law regarding Testament.

2. Discussion

2.1. Notarial Testament according to Islamic inheritance law

Testament is identical to treasure of a deceased person. In Indonesian Dictionary, it means statement or deed on property or wealth which need to be executed (be given to recipients/heirs) after the will maker passed away⁹. Testament shall be recorded into a deed or notation, whether it is made under the counter (*superscriptie*) or with the presence of designated notary when the testament maker is alive, therefore his intent and purpose be well transmitted.

Testament ("*wasiat*" in Indonesian lng.) comes from Arabic language, al-"wasjiyah" (plural of "washaya") which means message, command, and advice. As many fiqh scholars define or interpret, it refers to delivery of one's property to another party on a voluntary basis, under condition that the testament maker passed away.¹⁰

The foremost element of testament is voluntarily. Thus, there is no compulsion, nor it is set by judge.¹¹

By letting heirs inherit his property, testator want to make them be utilized for better purposes, i.e. to get closer to Allah SWT The Most Merciful. He expects himself to perceive true faith and devotion to God, as well as to open fortune door to all recipients.¹²

2.2. Testament cancellation and revocation

In case of follow-up, heir or recipient can be nullified under certain circumstances. Reason for the cancellation and revocation of testament is described in Article 197 on Islamic law compilation, as follows:

- Testament is void if heir/ recipient receives a verdict with permanent legal power, as it is proven by law that he is:
 - Indicted for killing or attempted murder of the testator.
 - Indicted for slandering or defamation of testator, action against the law which may resulted in over 5 (five) years imprisonment threat.
 - Indicted for threatening testator to make or to alter will contents for his own benefit.
 - Indicted for damage or modified will contents.¹³
- Testament is void due to heir's:
 - Not knowing that he had received it until he passed away, before the testator died.
 - Refusal on will content(s), when he already knew the testament.
 - Absence during will verdict, whether he accept or reject will content until he passed away before the death of testator.
- Property or object of testament is lost or destroyed, thus it cancels the will.

Testator may also nullify his prior pronouncement due to reasons, as follows:

⁹ <https://kbbi.web.id/surat>. accessed on 06 October 2017 at 00.01 wib.

¹⁰ Mardani 2014 *Hukum Kewarisan Islam di Indonesia* Jakarta: PT Raja Grafindo Persada p. 107

¹¹ Muhibbin and Abdul Wahid 2009 *Hukum Kewarisan Islam* Jakarta Sinar Grafika first edition p. 147

¹² *Ibid.* p.112

¹³ <https://pandidikan.blogspot.co.id/2010/10/batalnya-wasiat-dan-pencabutan.html>

- When recipients/heirs have not immediately declared whether to accept or reject the will, or has returned the will.
- Withdrawal of will is made before 2 (two) witnesses, either written or oral, or by notarial deed if it is made before a notary public.
- To revoke written will needs written revocation, in the presence of two witnesses or by notarial deed.
- If the will is made before a notary public, then the cancellation also takes a notarial deed.

3. Closing

3.1. Conclusion

Judicial review upon compilation of testament by a notary in regard to Islamic perspective of inheritance has resulted in the following conclusions:

- A will need to be recorded in form of written document, both notarized or under the counter, in the presence of at least two witnesses. Compilation of testament by a notary must be aligned with Islamic law if the testator is a Muslim.
- Heir or recipient of a testament may be void or revoked if he is proven by law murdered the testator. Testament can also be withdrawn by testator before such action occurs.

3.2. Suggestion

- A notary who record testament of a Muslim must has thorough understanding in Islamic law of inheritance to avoid making mistake.
- A notary must know and understand what constitutes an agreement, or will deed. He must also understand what is contained in Article 197, compilation of Islamic law regarding cancellation or revocation of testament.

4. References

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