

THE MAKING OF A WILL CONTENTS IN THE PRESENCE OF A NOTARY PUBLIC IN THE PERSPECTIVE OF ISLAMIC LAW

Tubus

Lawyer, Semarang, Center Java, Indonesia
tubus999@yahoo.com

Abstract

This paper aims to examine the contents of a will making which was examined from the partial point of view of Islamic Law, the practice in the reality life of the community much yet heed Basmallah as the opening in the contents of a will for adherents of Islamic. In this study, the juridical sociological method, where the primary data was obtained directly from the research field, while the secondary data was obtained from libraries. The results showed that the way of making the contents of wills and legal awareness of the existence of the community that has not been optimized for making the contents of the wills that comply with Islamic Law. Then there were still weaknesses in the making and the implementation of the contents of a will at the moment, whereas a will was done verbally, namely: the unimplemented of the holy intentions or the people who desired to make a will sublime the intentions must not have to happen; not provided the recipient's rights will, in case of the problems from the heirs of the people who desired to make a will at a later date; evidentiary difficulties occurred in the event of the absence of witnesses, while already litigated bequest in front of the court. The renewal of the law in the making of the contents of a will before a notary in the perspective of Islamic Law were: the reconstruction of its value, the form of the ideal of making a will, probate was done in writing and witnessed by two witnesses in the presence of a notary. Construction of Ideal Format Making the Contents of the Wills. The wills were witnessed by two witnesses or in the form of a will or deed of notary deed. At the head of a will or Probate or deed of the notary deed specified sentence "Basmala".

Keywords: *The content of a will, Notary, Islamic Law*

A. Introduction

Making a will is one part of the legal community on the needs within the scope of the law of inheritance which is set out in the applicable legislation rules contained in laws written and unwritten laws within the scope of civil law in Indonesian.

Life in the world is not immortal. In time people will die. If so, how the fate of the families left behind, how did the treasures left behind earned for life? Who has the right to take care of and have such treasures? Certainly, the wealth of people who have died in the right family left alive called inheritance. In the legal beneficiary subject matter is located on inheritance, not on the liability of the heir. If the principal problem is inherited, then surely there are treasures left by the heir apparent and there is a person who is entitled to inherit. The question that arises is what causes people who abandoned its inherit

or are entitled to have the treasures left behind an heir?

A legal heir on one side rooted in the family and on the other hand is rooted in the wealthy. Seen from the side first, then the person is entitled to inherit as it has the marriage relationship, such as the relationship of blood (descent) and heir; or if the marital relationship and has no blood relations, but at the time was still alive, the heir to the heir to hold the deeds of the law regarding the property when he died and had a particular person as being entitled to a portion of through property law of wills deeds last a last will and Testament (the testament).

In Islamic law the provisions of the enactment of the deeds of probate law contained in the Qur'an, Al Sunnah, consensus and logic.¹ In

¹ Wahbah Al Zuhaily (I), Dr., Al Fiqhu al Islam wa Adillatuhu Jilid III (Damsyik-Syiria :Daarul Fikri, Cet. III, 1989), p. 10.

syara ' is a definition that be interpreted as granting a person of its wills to others either goods or benefits to be given by the person who owned a will after the person whom she talked, has passed away.² It could be explained that the provisions of the law of wills in the compilation of the enactment of Islamic law (KHI) have been formulated in articles in the compilation of Islamic law contained in the chapter V, Article 194 to 209 to article KHI. Arrangements regarding the Testament, covered in Book II: the law of Inheritance. While the basic juridical compilation of Islamic law (KHI), based on the instructions of the President of REPUBLIC of INDONESIA. Number 1 Year 1991, dated June 10, 1991; then the existence of a decision of the Minister of religious affairs RI. Number 154 Years 1991 22 July 1991 on the implementation of PRESIDENTIAL INSTRUCTION No. 1 of year 1991 June 10, 1991.³

In the compilation of Islamic law is in the article 171 letters (f) mentioned: Probate is the awarding of an object from the heir apparent to other people or institutions that will take effect after the heiress died. Elementary Introduction of probate law, according to the book of the law of civil law (KUH Perdata) formal, legally have been formulated 2 (two) chapter. I.e. Chapter XIII and chapter XIV that consisting from 148 Article; i.e. ranging from 874 to Article to article 1022 KUH Perdata. As for calling a will or testament according to section 875 KUH Perdata, is a deed that contains a statement about what he wants will happen after he died, and by him can be revoked again.⁴ It can be explained that the deeds of the law making the contents of a will in probate law, containing the law of "Dhul-wajhain"; that is double. It means when someone is doing the deed, then the probate law; probate law that's inherent with concurrent law itself "ta'abbudi" and the law "amaly". Ta'abbudi is intended as

a form of slave obedience to God Almighty, for the sake of adding charitable benevolence and expect the permission with sincere and rid yourself of the rust-rust of sin. While the intended with amaly is entered in mu'amalah term, which concerns the legal deed our fellow human beings, that serves also as a source of funds for his fellow gave the easiness to who are passing. In the field of it, Islam mu'amalah always maintaining the harmony of the relations between the two sides, always avoid the crime from one party to the other party. Islamic law guarantees a smooth relationship in harmony; good in the field, nor in maddiyah mu'amalah field mu'amalah adabiyah, because Islamic law always avoided everything that shake the balance.⁵

Next in line with understanding and relation to the intensity of this dissertation research about "Making the contents of a will before a notary in the perspective of Islamic law" actually when it was noted in the Islamic law about deeds's law will, a will that it would be witnessed done verbally by two witnesses, may, in writing and witnessed by two witnesses and can with the notary deed, as a manifestation of the flexibility of the nature of Islamic law. As indicated in the compilation of Islamic law (KHI) Article 195, reads:

- (1) A will is done verbally in the presence of two witnesses, or written in the presence of two witnesses, or before a notary.
- (2) A will is only allowed as many one-third of the estate unless all heirs agree.
- (3) A testament to heirs is valid only if approved by all beneficiaries.
- (4) A statement of agreement on paragraph (2) and (3) of this article is made orally in the presence of two witnesses or written in the presence of two witnesses or before a notary.⁶

Under article 195 paragraph (1) of the wills, where KHI was done orally, in this day and age is not relevant anymore, because it was not

² Sayyid Saabiq, *Fiqhu al-Sunnah* Jilid III, (Beirut : Daarul Kutub Araby, Cet. VII, 1985) p. 583.

³ Wahyu Widiyana, H., Drs, MA., *Himpunan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama*, Jakarta , Dirbinbagais, Cet.,, Th.2001, p. 313 - 316.,

⁴ R. Subeksi, Prof., SH., & R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*, Jakarta, Pradnya Paramita, Cet. 18, 1984, p. 216

⁵ Prof. Dr. T .M. Hasbi Ash Shiddieqy (I), *Falsafah Hukum Islam*, Jakarta, Bulan Bintang, Cet. V, 1993, p. 109.

⁶ Dr. Abdul Gani Abdullah, SH., *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*, Jakarata, Gema Insani Press, Cet. I, 1994, p. 136.

in accordance with the objectives and spirit of Islamic law. The Article therefore needs to be reconstructed. In Islamic law when examined about the making of a will, the companions have been constructed that a will was written, and at the head of the wills specified sentence "Basmala" before pouring the contents of his will, as indicated Hadith/Reports of friends it means:

"Has been issued by Abdul Razak with a Saheeh isnaad that Anas-Zubair said: the companions of the writing at the beginning of a will as follows: Bismillahirrahmanirrahim (with the name of Allah most gracious most Merciful again). This is the will given by the Polan bin Polan; that he testified that there is no God but Allah alone, no ally for him, that Muhammad is his servant and Messenger, that the day of judgement it will surely come, there's no doubt him, and that God will resurrect those who in Tomb. She talked, to her family she left, so they devoted to God, improve relations that exist between them, obey Allah and his Messenger when they are truly believers; and he would give the will with a will that has been carried out by Ibrahim and Ya'kub to his grandson: "Honestly, God has chosen this religion to you, then you shall not die except in Islam".⁷

It could be explained that according to the provisions of Islamic law as stated in the articles of the compilation of Islamic law (KHI) and also according to the provisions of the civil code contained in clauses in the statute book of the civil code (KUH Civil), and also contained in the Law Office of Notary (UUJN) regarding the contents about the making of a will, the researchers assumed the role of the Office of notary public was very dominant in the realization of the creation of the contents of a will; because the notary as a Public Officer who is authorized by law to effect authentic proof of *keperdataan*, including when asked for the making of wills from the client.

⁷ Sayyid Saabiq, *Op Cit*, p. 538.

The paradigm of the making of the contents of a will in probate law under Islamic law and had been set up in the applicable legal regulations in the country of the Republic of Indonesia, need to be reconstructed, ideally in order to become a legal Handbook for communities The majority Moslem Indonesia in General, and for the notary Moslem and Moslem, in particular, in the realization of authentic evidence of the civil in the duty Office, as Public Officials were reserved in the making of a will or Deed A will in the form of a notary deed.

The creation and implementation of the contents of a will are currently in compliance with Islamic law, as well as how the reconstruction efforts of making Wills according to Islamic law. Research approaches the socio legal research. First, the legal aspects of research, with the object of research remains in the corridors of the law in the sense of "norm" legislation. Second, socio aspects, namely used research methods and theory of social science of law to help researchers in conducting the analysis.⁸ This approach remains in the realm of law, just a different perspective. This approach was conducted to understand the law in context, that is, the context of their society.⁹

This research through the interaction between and fellow informant and observation object with method of hermeneutics approach. Hermeneutics approach is the approach to understand objects (the products of human behavior that interact or communicate with each other), from a behavioral action-interaction (so-called actor) itself. This approach invites legal experts in order also explore and examine the meanings of the law from the perspective of the users of the service and/or the seekers of Justice.¹⁰

B. Discussion

1. The Factors of Affecting of the Making a Will Content which Inappropriate with Islamic Law

a. The form of Probate Law Acts;

1. An oral will (the case of position 1)

⁸ Zamroni, *Pengembangan Pengantar Teori Sosial*, (Yogyakarta : Tiara Yoga, 1992), p. 80 – 81.

⁹ Soerjono Soekanto, *Pendekatan Sosiologi Terhadap Hukum*, (Jakarta : Bina Aksara, 1988), p. 9.

¹⁰ Soetandyo Wignjosoebroto (I), *Op Cit*, p. 105.

2. The last will and Testament in writing in the form of the hand (the case of position 3);
 3. The last will and Testament in writing in the form of a notary deed (cases 2 and 4 positions);
- b. Types of the contents of Probate Law Acts;**
1. Wills which contains the people who desired to make a will messages in order to perform any act of kindness or deeds of worship (position 1 case);
 2. Containing the designation of the executor's will and Testament (case of 2 positions);
 3. Probate property to heirs (the case of position 3);
 4. Wills which contains about Division of property inheritance (position 4 cases);

It could be explained that the results of the findings in this study, a will made in writing in the form of a letter under his hands and a will made in the form of a notary deed, yet there were listed the sentence "the Basmalah (bismillahirrahmanirrahim)" on head his (the case of positions 2, 3, 4);¹¹

- c. The Quantity of content and the Provision of a will**
1. Contents Quantity exceeded 1/3 's will treasure relics, but in terms of a will must not be more than 1/3 the treasure relics, except reasonable law;
 2. Wills which contains about the Division of the inheritance to the beneficiaries.

¹¹ The condition of the contents of the contents of the contents of wills today, has never been contained the phrase "Basmalah (Bismillahirrahmanirrahim)" on each head of wills, is in accordance with the results of interviews with several notary writers, namely Dr. Ngadino, SH, MH (Notary of Semarang City), dated March 17, 2015. Mochamad Rizqi Zia ul'haq, SH. MKn (Notaris Kab. Semarang) tanggal 17 Maret 2015. Dan Dr. Sugiyanto, SH, M.KN (Notaris Kudus) tanggal 5 Mei 2015.

The case could be expressed that based on some formula results, as has been expressed above, that it was due to several factors, among others:

- 1) The factors making a will that did not use the legal services of a notary public

In the development of the community, including the fulfillment of legal requirements, it was possible will take an effect on the high public awareness of the law, including in the terms of making wills; the community should be motivated to use the legal services of the notary public in publishing authentic civil evidence of she/he did. Notary public officials, as well as a social institution and the institution of the law, was one of the organs of State are authorized to provide legal services to the community, in the manufacture of the authentic Certificate as evidence.¹²

Legal services required by the Public Notary, the notary must therefore in carrying out tasks of professional Office, prosecuted as well to maintain the integrity and moral rectitude over his personality, making it Notarized, legal services would be able to meet the needs of the legal community, including in terms of the making of wills from the client who needed it.

- 2) The factors of understanding about the magnitude of a will that was not uniformed

It could be explained that a will was valid only within the limits of one third of the inheritance if there were heirs who inherit. If the magnitude of the wills that exceeded one third of the

¹² Habib Adjie, Op Cit, p. 26.

estate, experts of Islamic law in all sects agree that it must have the permission of the heirs. If all the heirs were allowed, then a will the heir to that legitimate, but if they refuse, then a will it cancel.

The jurists of Islam among the Hanafi, Shaafa'i and Hanbali rejection stating that the permit was only valid after the people who desired to make a will died. If their member permission the third month she was still alive, then turned his mind and refused to make a will, after she talked, people who died, they were entitled to do that anytime, whether they gave it permissions at a time when the person who was given a will was healthy or in a State of pain. Legal experts among Maliki said that if they had when the giver's would be in a State of pain, then they shouldn't do it. But if they gave permission when he was healthy, then the excess of one-third of it removed from their inheritance, and they should not reject it.¹³

In practice in many religious courts found the lawsuit related to probate by the seekers of justice by reason of a will have exceeded one-third of the heir.¹⁴ Therefore, according to the author, so the saving arises the question of law: Why the creation of the contents of a will was not in accordance with Islamic law and not law-based progressive, then the tendency of the answer was, because:

- 1) It has not been understood in a comprehensive manner about the science of making the contents of a will;

¹³ Abdul Manan, Beberapa Masalah nHukum Tentang Wasiat Dan Permasalahannya Dalam Konteks Kewenangan Peradilan Agama, Mimbar Hukum No. 38 Thn Ix 1998, p. 28.

¹⁴ Ibid, p. 31.

- 2) Yet the existence of adequately socialized of relevant agencies in terms of making the contents of a will;
- 3) There has been no awareness of law society optimally, for the deeds of the law making the contents of the wills that comply with Islamic law.

2. Negative Effect the Making of the Will Content which not Based on Islamic Law

1. The Fariative form in the making of a will among the public

In terms of making a will, could utilize the services of a notary public law for authentic evidence of her effort, whereas desired by the parties concerned, as the authority was protected by the applicable legal regulations, both were set in law a law written or not written on the container a unitary State of the Republic of Indonesia.

Indonesia is a country that the majority of the population converted to Islam. Indonesia is a country that has an ideology of Pancasila, as "local wisdom", as stated in the Preamble to the Alenia 4 1945.

It could be expressed that the findings related to the research dissertation in deed law making the contents of a will among the public today in the form of the making of a will are still fariative, namely:

- a. A will made in orally;
- b. A will made in writing in the form of the hand;
- c. Wills made in writing in the form of a notary deed.

In article 195 paragraph (1) compilation of Islamic law mentioned that "a will was done orally, before two witnesses, or written in the presence of two witnesses, or before a notary".¹⁵

¹⁵ Wahyu Widiana, Op Cit, p.365.

The form of the making of a will orally as mentioned in section 195 paragraph (1) the KHI in modern times right now, according to the author, saving was not relevant anymore, so 195 Article paragraph (1) the KHI needed to reconstruct.

The deeds of the law making a will that still happened orally among the people nowadays, although wills allowed orally according to law and legislation, if associated with the proof, whereas the dispute were exposed to The Court, then it would happen in its own problems regarding the burden of proof in terms of presenting witnesses; so it was not rare and noble intent the intent of the makers of wills was not achieved.

In terms of deeds of probate law, Islam strongly recommends that wills it to be written. As indicated the hadeeth narrated by Al-Bukhaari and Muslim from Ibn ' Umar r. a, which means: "the Prophet Has said: the right for a Moslem who has something to be making a will, after an overnight stay for two nights there is no other his will was written, the Samurai. "Ibn ' Umar said: do not pass me one night ever since I heard the Messenger of Allah, says it except my will have always been on my side."¹⁶

The meaning of the above Hadith, that a will written and always be on the side of people who make, constitute "a carefulness"; because the people who make it likely to die suddenly; anyway when a will was written, it would be useful to prove later on to those concerned.

Therefore the potential negative impact of making the contents of a will that was not based with Islamic law, whereas a will was made orally, are among others:

- Not done and there was a forgetfulness toward the intention

- of sublime and sacred intention the people who made a will that they should not have to happen;
- Not provided the rights of recipients will, in case of problems arising from the heirs of the people who made a will;
- Possibility of difficult proving in terms of the absence of witnesses already, whereas things of Testament it faced up to the Court; No benefit of the Muslims to achieve the goals of Islamic law or the spirit of Islamic law;

3. The Ideal Reconstruction the Making of the Will Content in front of the Notary Based on Islamic Law

The reconstruction or renewal law that were expected with the use of a broader perspective of Islamic law, namely on the basis of:

1. The content of a will based on the Qur'an and Hadith.

In general the word Testament was mentioned in the Qur'an as much as 9 times, in the form of the verb was known as much as 14 times, in the form of a noun called twice, the entire relating matters of wills in this was known in the Qur'an as many as 25 times. In terms of etymology, a will had some meanings i.e., make, put, saying he sent love and connect something with something else.¹⁷

2. Making the contents of the Wills In the perspective of Islamic law.

It could be explained that the issue of writing (letter) as authentic evidence on the next day, the Qur'an has been given its stimulation in surooh Al-Baqarah verse 282 of the following meaning: "... and not enough writing down (the deeds of the law), both so little and large (small) until the deadline for its implementation ..."¹⁸

¹⁶ Sayyid Saabiq, Op Cit, p. 232.

¹⁷ Abdul Manan, Aneka Masalah Hukum Materiel Dalam Praktek Peradilan Agama,(Jakarta : Pustaka Bangsa, Cet., 2003), p. 196.

¹⁸ Al Qur'an Surat Al Baqarah ayat 282.

The Hanafi Madhhab was not essentially rely on the writing and not had to carry out in practice, but after it turned out that people generally use the documents and letters written in the lingua Franca of the law and make it general as the backrest, then scholars Mutaakhhirin gave their fatwa on the basis of "Istihsan" to accept written evidence and do so in practice the courts as evidence.¹⁹

The Islamic view of the authentic Certificate letter against the magnitude of perfect and powerful officials was aligned too. This was in the accordance with the guidelines which was piloted by the Bureau of religious courts RI of figuratively as outlined by Shaikh Usman Ibn Yahya, in the book "Qawaanin Al-Syar'iyah page 173, others from the" Mukhtasar Fatwa of Ibn Hajar "which means:" the writings of officials or "authentic" Certificate is trusted more to prove in the present and the future ".²⁰

It could be explained that when observed in the Islamic law about the making of a will, although it was permissible to verbally and witnessed by two witnesses as a fair witness certainly meant in Surooh Al-Maidah verse 106; that Islam strongly recommends that a will was written; referred to the oracles of the Prophet Muhammad SAW narrated by Al-Bukhaari, meaning: "for a Moslem, it's best for him about something he already will for two nights be written and placed it into the content".²¹

As for the construction of an ideal format on making the contents of the wills in the perspective of Islamic

law, was as the construction format, making the contents of a will made by friends, that for them who make a will for some of their fortunes to make yourself closer to the God. They also had written the wills for heirs after them.

It could be explained that the Act was a law of probate law, because it contained some kindness and benefit. In the terms of legal deeds containing the kindness and benefit to this, Islam recommends that the beginning of the deeds of the law with the phrase "Basmala", with no hope of breaking of the grace of God Almighty. As indicated in a Hadith of the Prophet Muhammad SAW narrated by Abdul Qadir Al Rahawy in the Arbain of Abi Ghurairah reads meaning meaning: Every affair (the Act) contains the good that did not start with "Basmala" then breaking the grace of Almighty God ".²²

The suggestion of writing the word "Basmala" in a letter, of course including the writing of the Basmalah "in making the contents of a will, because the contained values was a very sublime philosophy, as indicated Hadith Prophet Muhammad which means:" When the servant (someone) write بسم الله الرحمن الرحيم (Bismillahir rahmanir rahiim--), in Slate or in books, then take note of the angels of the reward for him and pray for forgiveness to God, as long as the sentence was still there in Slate or in the book "²³

Based on the meaning of some of the above, it was understood and taken legal grip that how the ancestor's value of philosophy was contained in a will, whereas a bequest made

¹⁹ Sobhi Mahmassani, *Falsafah al-Tasyri' fi al-Islam*, Terj. Ahmad Sudjono, SH, (Bandung : Al Ma'arif, Cet. I' 1971), p. 276.

²⁰ H. Moch. Djunaidi, *Biro Peradilan Agama RI (Jakarta : 2 Juli 1957)* p. 95.

²¹ Zaenuddin Ahmad Al – Zubaidi, *Tajridu al-Sharih li –Ahaaditsi al-Jami' al-Shahih*, Terj. Muhammad Zuhri ,(Semarang : Toha Putra, 1986), p. 53.

²² Al Suyuthi, *Op Cit*, p. 92.

²³ Imam Al-Huda Naser bin Muhammad bin Ahmad bin Ibrahim Al-Samarqandi, *Pensyarah Muhammad Nawawi bin Umar Al –Syafi'i Al-Jawi*, Qatrul Ghait, Penerjemah : HM. Fadlil Said An-Nadwi, (Surabaya : Al-Hidayah, Cet., Th.,) p. viii.

was written the phrase of “Basmala” on head a will or Testament was in Deed in the form of Chief notary deed; where the angels recorded the reward for writing, and prayed for forgiveness to God for the sentence “Basmala” is still inscribed on a will that has been made, because the deed probated law a person to cover in it, that contained legal ta’abbudi (Ilahiyyah values) and law amaly (Insaniyyah values).

This could be expressed that, although making a will allowed to orally and witnessed by two witnesses, in normal conditions for the maker of a will, according to the author, the making of a will saving orally at this modern age is not relevant anymore. Therefore, according to the author of saving the contents of a will making format constructions were written, witnessed by two witnesses and at the head of the wills specified sentence “Basmala”.

Based on some explanations as presented, when the maker of a will was under normal conditions and healthy, whereas in the making of a will were still verbally in modern times right now according to the frugal author was not relevant anymore. The construction of the Ideal of making the contents of the wills in the perspective of Islamic law was making a will in writing witnessed by two witnesses and in the presence of a notary public, at the head of a will or deed of notary public specified sentence “Basmala” (Bismillahir rahmanirrahiim). Therefore the will and Testament settings contained in the articles in a particular compilation of Islamic law and article – article in the Law Office of Notary (UUJN), this needs to be reconstructed.

Based on the theory of “al-Shari’ah Trends”, every law should be oriented to the needs of dhoruriyah, hajjiah

and tahsiniyah. Therefore, in deed probate law was closely related to the conditions and the place where probate was made. This was in line with the intent of the rule of Islamic law to mean: “As a legal dependent situation, conditions, time, and place”.

a. Magnitude of the contents of a will for Pewasiat who have heirs:

1) The magnitude of the maximum content of Probate 1/3 treasure relics. In the event that the people who makes a will had heirs, then the maximum limit allowed is 1/3 of her treasure relics. A will be allowed to exceed the 1/3 treasure relics, if approved by the heirs.

2) Magnitude of the contents of a will of the people who makes a will who have no Heirs. People who make it sometimes has an heir and occasionally had no heir, Mahli. For the people who makes a will that has no heirs, then allowed her will exceed 1/3 of the treasure relics. Therefore, the setting of the magnitude of the contents of the wills 195 in the acts (2) KHI was needed to be reconstructed.

b. A will contain about Division of property remains.

According to H. Satria Effendi M. Zen,²⁴ others opinion of Dr. Mustafa Al-Siba’i and Dr. Abdurrahman Al-Shabuni in his book Al-Ahwal Al-Syakhshiyah argued that there was a form of their lesser-known by the society or community, i.e. “: wills estates subdivision “. Basically dividing the price of legacy was

²⁴ H. Satria Effendi M. Zen, Analisis Yurisprudensi Tentang Wasiat, (Jakarta : Yurisprudensi Peradilan Agama & Analisa, Yayasan Al Hikmah, Dirbinbapera Islam Departemen Agama, 1995) p. 652 -653.

the authority of the beneficiary heir, left when it became the property inheritance. However, under certain conditions, parents with good intentions, justified his sort out for each beneficiary in accordance with the provisions of the law of faraidh, and gave a will so that the provisions were being careful of his children after his death.

Probate Division of inheritance could be recognized and must be careful by the heirs, when the property was divided in accordance with the law, honestly faraidh, not intentionally harm one party among the heirs. Thus, each beneficiary received it right as it should be. The motivation of why a will was done, because it was driven by a sense of responsibility of parents who were so high that the parents didn't want her to be a source of dispute among his sons behind today.

- c. Limit the competence of the people she talked.

According to a compilation of Islamic law (KHI) aspects of the age that was considered qualified to make a will, when a person had reached the age of 21 in full (article 194 paragraph (1) KHI), whereas in the fact there was a variation on the limit of age in Islamic law for could carry out the Act of law; as allowed 16 year old woman marries and 19-year-old man (article 7 paragraph (1) of law number 1 Year 1974).

According to the book of the law of civil law a person who had reached the age of 18 was authorized to make a will, although he was yet to mature according to law, because the law gave rights and acknowledge the deeds of the law making a will (section 897

KUH Perdata) and according to the provisions of article 330 of the civil code a person immature KUH (underjarig) are not yet 21 years old and had never mated. If someone was already 21 years old before mating, then divorced, he was back again in an immature.

Based on some fact that age limit provisions of the vareatif, according to the authors of saving that limit the competence of age make someone to do was at least 18 years of age, or have ever been married before age 18 years. Therefore, according to the frugal writer about the limits of age she talked, consecrated in article 194 paragraph (1) compilation of Islamic law needed to be reconstructed.

C. Conclusion

It can be concluded that the creation and implementation of the content of the letter of the referee were currently in compliance with Islamic law and the spirit of the progressive law, because he saw in the comprehension of the science and the ways of making the content of the will as well as yet of the existence of consciousness the law society, which was optimized for making the contents of the wills that comply with Islamic law. Continually, there were still weaknesses the making and implementation of the contents of a will at the moment, whereas a will was done verbally is: not sure Holy intentions or the people who wanted to make a will sublime intentions must not have to happen; not provided the recipient's rights will, in case of problems from the heirs of the people who wanted to make a will at a later date; evidentiary difficulties occur in the event of the absence of witnesses, while already litigated bequest in front of the Court. The renewal of the law in making the contents of a will before a notary in the perspective of Islamic law was: reconstruction of its value, the form of the Ideal of making a will, probate was done in writing and witnessed by two witnesses in the presence of a notary. Construction Of

Ideal Format Making The Contents Of The Wills. The wills were witnessed by two witnesses or in the form of a will or deed of notary deed. At the head of a will or Probate/deed of notary deed specified sentence "Basmala".

For every Moslem who desired to make a will, so that his will was done not orally; but it's will should be made in writing or in the form of a will or deed of notary deed; in

order to be provided the sacred intention or intent of sublime the people who is making a will and provided the legal certainty for the recipient will. For every Moslem to make a will and to apply to the making of a will to a notary, should be a will or deed of a will that noted the sentence "the Basmalah" in his head, as a form of adherence to the teachings of the The Religion Of Islam.

BIBLIOGRAPHY

- Abdul Gani Abdullah. 1994. *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*, Gema Insani Press. Jakarta.
- Abdul Manan. 2003. Beberapa Masalah Hukum Tentang Wasiat Dan Peermasalahannya Dalam Konteks Kewenangan Peradilan Agama, *Mimbar Hukum* No. 38 Thn Ix Abdul Manan, *Aneka Masalah Hukum Materiel Dalam Praktek Peradilan Agama*, Pustaka Bangsa. Jakarta.
- Imam Al-Huda Naser bin Muhammad bin Ahmad bin Ibrahim Al-Samarqandi, 1998. Pensyarah Muhammad Nawawi bin Umar Al-Syafi'i Al-Jawi, *Qatrul Ghait*s, Penerjemah : HM. Fadlil Said An-Nadwi, Al-Hidayah. Surabaya.
- Moch. Djunaidi. 1957. *Biro Peradilan Agama RI* . Jakarta : 2 Juli)
- R. Subeksi, Prof., SH., & R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*, Pradnya Paramita. Jakarta.
- Satria Effendi M. Zen, *Analisis Yurisprudensi Tentang Wasiat*, 1995. Yurisprudensi Peradilan Agama & Analisa, Yayasan Al Hikmah, Dirbinbapera Islam Departemen Agama. Jakarta.
- Sayyid Saabiq, 1985. *Fiqhu al-Sunnah Jilid III*, Daarul Kutub Arab. Beirut Arab.
- Sobhi Mahmassani. 1971. *Falsafah al-Tasyri' fi al Islam*, Terj. Ahmad Sudjono. Al Ma'arif. Bandung.
- Soerjono Soekanto. 1988. *Pendekatan Sosiologi Terhadap Hukum*. Bina Aksara. Jakarta.
- Soetandyo Wignjosoebroto. 2002. *Hukum Paradigma, Metode dan Dinamika Masalahnya*, Huma. Jakarta.
- T .M. Hasbi Ash Shiddieqy (I). 1993. *Falsafah Hukum Islam*, Bulan Bintang. Jakarta.
- Wahbah Al Zuhaily (I). 1989. *Al Fiqhu al Islam wa Adillatuhu Jilid III* . Daarul Fikri. Damsyik-Syiria.
- Wahyu Widiyana, 2001. *Himpunan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama*, Dirbinbagais. Jakarta.
- Zaenuddin Ahmad Al – Zubaidi. 1986. *Tajridu al-Sharih li –Ahaaditsi al-Jami' al-Shahih*, Terj. Muhammad Zuhri. Toha Putra. Semarang.
- Zamroni. 1992. *Pengembangan Pengantar Teori Sosial*. Tiara Yoga. Yogyakarta.