

Notary Role In Determining Acceptance Or Cancellation Will The Provided In Article 194-209 Islamic Law Compilation

Jita Zahara¹, Ade Christian Manapa² and Arief Cholil

Abstract. The purpose of this study was to: 1) To understand how the role of the Notary in determining acceptance or cancellation will set out in articles 194 to 209 Compilation of Islamic Law. 2) In order to understand what are the reasons that make a person could fail to get a will, and how the notary in dividing section will treasure for the recipient. 3) To understand what are the barriers and solutions notary role in determining the acceptance and cancellation will. The data used in this study are primary data, secondary data and data that can support tertiary study, which was then analyzed by descriptive analytical method.

Based on the results of data analysis concluded that: 1) the role of the notary in determining the acceptance and cancellation will have to go through the will of the testator in which it was agreed between the parties involved, and should be included / dionlinekan in the Minister of Law and Human Rights No. 60 of 2016 on Procedures for Reporting Wills and Testament Application Issuance of Electronic. Because if not then the deed will be listed online does not have a strong legal force. 2) the reasons that make a person could be canceled in the will because a person or institution authorized a treasure will be, but he refused, unable to take advantage of the treasure will as possible, or other things that make him blame and convicted criminal who belong in Article 197 compilation of Islamic Law. 3) barriers and solutions in the division will was that the heirs who assumed that he did not get the part of the will so many of them impede the course of a will, and the solutions that are required in the making of a will should be through consensus among family testator with parties associated therein, which aims to avoid things that sustainable in the future.

Keywords: Wills; Cancellation; Reception.

1. Introduction

Testament is one act that has long been known before Islam. In Arab society at the time of ignorance, many testaments given to another person who has no family relationship with the person who intestate, because at that time the person who gives most of his possessions show people who are very wealthy and getting compliments from everyone.³ Heritage in the form of testamentary deed (*acte testament*) also known since Roman times, even inheritance by using the deed will be a major thing. In a will (testament) have two forms orally and in writing. At the time of making a will, whether written or oral, must be present in front of two witnesses or a notary stated in Article 195 Paragraph (1) Compilation of Islamic Law. In making a written testament, the witness must be co-signed letter containing the last will of the testator. While the oral testaments, the witnesses just listen to just what is explained by the testator. Testament under Article 875 of the Civil Code is: "A person's deeds that make statements about what he wanted to happen after he died, and that by it can be withdrawn again."

Notary as Public Official authorized to make an authentic deed as stated in Article 15

¹ Students of Master of Notarial Law, Faculty Of Law, Universitas Islam Sultan Agung and Parliament Office Staff, Pekalongan e-mail jitazaharaa@gmail.com

² Students of Master of Law, Faculty Of Law, Universitas Islam Sultan Agung email chrismanapa73@gmail.com

³ Wahbah Az-Zuhaili. 2011. *Fiqih Islam Wa Adillatuhu*. Jilid 10. Gema Insani. Jakarta. p. 154.

Paragraph (1) of Act No. 2 of 2014 concerning Notary, in a letter stating their obligations will, the notary must be able to ensure that it can be ascertained testator died. In general, people make a will before a Notary, which will each deed must be shaped in order to obtain legal certainty as an authentic deed. In that case the deed will then be formed if made before a notary. Thus today, to avoid things that are not desired in the future it will be made in the form of notarial authentic deed made by or before a notary or stored by a notary protocol.

Deed testament classified into groups deed made before (*teeroverstaan*) Notary or the so-called "*Partij deed*". Before a Notary Deed (*Deed Partij*) may contain a story of what happened because of acts committed by the other party before a Notary. That is explained or told by the other parties to the notary in the line of duty and position, for the purposes of the other party had come before a Notary and provide information or perform the act before the order information or action was dikonstantir by notary in an authentic deed.⁴

Provision will also be canceled in receiver, wherein if the prospective recipient will based on the judge's decision does have legal force remain unpunished, under Article 197 Paragraph (1), (2), (3) Compilation of Islamic Law, on the cancellation will be also be canceled if the testator cancel testament he had ever made, because in that case the will is absolute will of the testator. While there are temporary arrangements that will present only in Islamic Law Compilation (KHI) contained in the legal instrument in the form of Indonesian Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law. Testamentary arrangements in Article 194 to Article 209 Compilation of Islamic Law is seen as a law material.

In terms of making a will, until now still be treated and there are many among the people who do not understand and comprehend the existence of a will that can be canceled or accepted in practice. Thus, in this study aims to allow the reader to understand, and be able to learn about the rules and regulations that will apply in the Compilation of Islamic Law, which is where the predominantly Muslim Indonesian society, and to avoid the prolonged conflict over the inheritance. This is understandable because in general the heir to the (testator) do not want wealth legacy enjoyed by parties who are not responsible.

So this research will discuss about: 1) the role of the Notary in determining acceptance or cancellation will set out in articles 194 to 209 Compilation of Islamic Law. 2) what are the reasons that make a person could fail to get a will, and how the notary in dividing section will treasure for the recipient. 3) What are the barriers and solutions notary role in determining the acceptance and cancellation will.

Research methods

In this study the authors use empirical research methods juridical methods / sociological that has the sense of a legal research analyze and review the operation of law in society.⁵ Research conducted using descriptive analytical writer. Interpreted as a descriptive analytical research trying to describe the handling problems in the law, and studying it or analyze it according to the needs of the research conducted, the authors provide significant understanding of objectives according the research conducted.

Sources of primary data obtained from the original sources of the data obtained. The original source here is the ultimate source from which the data were obtained. This data was obtained from primary data through interviews conducted in Tegal District

⁴ Suharjono.1995. *Sekilas Tinjauan Akta Menurut Hukum*. Varia Peradilan 123. p. 23.

⁵ Ronny Hanitijo Soemitro. 1990. *Metodelogi Penelitian Hukum Dan Jurimetri*. Jakarta. Ghalia Indonesia. p.106

Notary Office, that establish the rules of cancellation and acceptance of the will in the community, and obtained from the rules in Book II of the Compilation of Islamic Law Inheritance.

Secondary data that the author did, in preparing this study using data that already exists under review through research that originates in the laws, and other sources that are interconnected with the title in the problems to be created.

Methods Primary data obtained by conducting interviews, conducted by way of question and answer directly to the respondents related to research and interview guide was used as the literature questions before the interview so as not to deviate from the issues examined in the study.

After the data collected sourced from (primary data and secondary data), it will be analyzed the data by connecting to the problems that will be addressed in the research conducted by the author, with data collected, this study can be accounted for, the source of this data using empirical methods / sociological conducted by way of interviews from the original source associated with the studies reviewed, and the analysis will be conducted into the normative qualitative.

The data obtained and presented in this study, conducted qualitative descriptive analysis. Analyzing data is done in order to give meaning to the study. The existence of the data obtained is the basis to gain rapport and connection problems. Analyzing the data is used to provide a much richer picture of the phenomenon and the phenomenon under study and obtain the data as required.

2. Results And Discussion

2.1. Role In Determining Notary Acceptance Or Cancellation Testament Specified In Article 194 Up to 204 Compilation of Islamic Law

In accordance with article 4 of Act No. 30 of 2004 concerning Notary of the oath of office were made before the Minister or his representative. Where the Notary's role as a public official in charge of representing the country to provide services to people who need their services, by giving sole responsibility according to the profession as a Notary Public. In this testament Notary serves to execute a will, keep the contents of a will that has been made by the applicant (client), determining the admission cancellation of wills, and help determine the distribution of a given client testament to the recipient will have been made.

That which will basically have the meaning that is, a property or objects that are given freely to someone heir or outside the designated heir and the will of the giver's will itself, in the Compilation of Islamic Law asserts that the will either be made in writing or orally should be mentioned and explained firmly, figure out who stated in a will or an appointed agency will receive testament property, which is governed by article 196 Compilation of Islamic Law. Where in it to prevent people who claim to have the will, but not listed in the names of the GCC to get a will. While the testament division that is intended to be utilized as well as possible from the inheritance testament, where the will can help the recipient's life for the better testament, which get the rights of a given testament testator. And will only be done if the provider will process has certainly died. In the process, a testament to one of the heirs to be realized, which should be with the consent of all the heirs, if a grantor's will (the applicant) give some wealth will that testament to one of the heirs, then it should be with the knowledge and consent of the heirs the other, which is stipulated in article 195 paragraph (3) Compilation of Islamic Law, which aims to avoid the problem in future. So sesuai with such article Notary's role in the process of running a will need to provide the leadership and ask for approval of the parties that one of the heirs of the heirs will get part of the testator.

As specified in Act No. 2 of Article 1 of 2014 concerning Notary, the Notary that one of the authorities is to make an authentic deed, where authentic deed is a deed that can make perfect evidence in law. But basically Notary can also do a deed under the hand, which is where a person who comes before the Notary but has made an agreement outside the workspace Notary, and will be signed before a Notary Public, the deed is called a deed under hand, the deed under the hand is also a a valid certificate in law, but in its implementation did not have perfect properties in the proof in the law.

In Article 195 Compilation of Islamic Law explains that, in the making of a will made by a person (testator) can also be done in front of two (2) witnesses only, where it does not need to be done before the Notary. Compared to deed the will, which was made in accordance with Article 932-940 the book of the Law of Civil Law which explains that wills involving notary and must be in front of two (2) witnesses. It can be concluded that the regulation Kompulasi Islamic Law (KHI) an act done in making a will can be done before the Notary, or not before the Notary, but mandatory front of two witnesses, whereas in the manufacturing regulations in the Civil Code will be made before the Notary.

Notary well as deed or deed as a day care. Furthermore, in the running position, a notary is obliged to make a list of the relevant documentation to the will chronologically deed every month. Listed in Article 16, paragraph 1, letter (i) Act No. 2 of 2014 concerning Notary. In carrying out his post, a notary shall perform their duties with full responsibility.

Meanwhile, in the Minister of Human Rights of the Republic of Indonesia Number 60 of 2016 article 11 paragraph (6) on Procedures for Reporting Wills and Testament Issuance Request and Request Issuance Testament Electronic covering:

- Giver will.
- Recipients will.
- Authorized proxy, or a notary public as referred to in paragraph (1), shall store: Deed Testament; Proof of Delivery Reporting Testament; Proof of payment of the cost of non-tax revenue.

While in the process of making a will (testament), a Notary has the authority along with liability cover several things:

- Inquire about the will, the desire, or the willingness of the applicant (client).
- Provide guidance and consideration to the applicant against his desire, which is based on the applicable law on kewasiatan in the Compilation of Islamic Law.
- Ask for proof of ownership yourself (the applicant) on the property included in the inheritance, which will testament.
- Requests your applicant (client) is complete and correct.
- Ask for the correct data on recipients of inheritance.
- Requesting approval to the husband / wife of the applicant (client) if still alive, about the desire or willingness of clients to make a will.
- Creating a testament concepts that will be made, and checks back to the person concerned before being made as a deed.
- Presenting two (2) witnesses, who where not among the heirs.
- Make a will shaped Notary deed.
- Storage deed of wills and letters that have anything to do about a will is made, at the Notary.

So that the subject in making a will (testament), notary acts as the party does not show partiality to anyone, and must consider the interests of all parties involved, in order to provide certainty and legal guarantees, and Notary is obliged to provide services to clients (the applicant) sebiak possible and responsible the deed made.

While the division will, by the Notary in the process of performing its duties should be concerned about the provisions made in the will, and does not violate the absolute section (*legitime portie*) of the heirs who have absolute section (*legitimar*) or not. And if it violates the absolute part will have to be cut by a shortage of the essential part owned by the heirs. But if the will does not violate any part of the heirs, then what is listed in the will be provided to the beneficiaries will in accordance with section testament of him.

The stages prior to the division of property / heritage items that testament to approval from the family of testator, wherein if a will is destined to one's heirs. While the process will cancel the stage to do that is by consent deed will be aborted by the parties that would invalidate the will. Similarly, the reception will have to go through the approval of all parties concerned. And if the will has been approved by all parties involved, the next step should be onlinekan first⁶, Which basically rules now have to go through the online registration set forth in Regulation of the Minister of Law and Human Rights No. 60 of 2016 on Procedures for Reporting Wills and Application for Issuance Testament Electronically, this can not be equated with the case grants only PPAT deed registered. Because the deed testament testaments made or canceled, if it is not registered online then these will not have a strong legal force, despite being made officially certificate if there is a dispute or lawsuit will come a time when that becomes a problem as a Notary Public.

According to the regulations in Article 16, paragraph 1 (j) Act No. 30 of 2004 concerning Notary Jo Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary determined that a Notary is obliged: " submitting a list of certificate referred to in subparagraph (i) or register zero with respect to the will to testament register at the ministry center that held government affairs in the field of law within five (5) days of the first week of next month ".

Given that the List Center for Testament Sub-Directorate of Heritage Directorate of Civil administratively simply record every report list deed will that by law are required to be reported by a notary within a certain time period, then the impact of the law due to the notary is not fulfilling its obligations is the responsibility of the notary, if future day raises legal issues.

So that the provisions mentioned above, a testament in the acceptance or cancellation will very influential will be the registration certificate will be online, and the effect will be an agreement among the family (heirs) who makes a will to avoid the occurrence of continuity or dispute which led to a unwanted things in the future.

However, in the case of revocation or canceling a will written and oral must be witnessed by two witnesses, and conducted using a notary deed, which will be done prior to the notarial deed. And when will be based on the notarial deed should be canceled or revoked by notarial deed also, that which is described in Article 199 Compilation of Islamic Law. So in this case the notary to do the deed cancellations made earlier wills, using notarization, in accordance with the provisions of this Article. Which is where the majority of Indonesian people are Muslims, so that the division of inheritance guided by the laws of inheritance in Islamic Law Compilation.

2.2. Reasons That Make Someone to Clear Getting Testament, And How Notary In Wealth Divide Testament For The recipients

In the study the authors in Notary H. Miftahudin Khusnul Khuluq, SH., MKn in Tegal regency on May 4, 2019, that basically will be accepted or canceled by the party who

⁶ The result of research interviews with Notary H. Miftahudin Khusnul Khuluq, SH.. MKn in Tegal District Notary Office. on May 4. 2019.

gave the will was alone at the time testator still alive, but it will really irrevocable which gives a testament it is said to be dead, so that with the decision to grant a testament treasure given by the testator can not be tampered with by anyone. Actually, the division of property will not exist in the implementation process, in contrast to the division of inheritance that actually exist in the receiving process to all heirs. Because a will be given the rights of the grantor's will on the basis of the applicant itself that the contents of the will in accordance with the will of the testator.⁷

One thing that may invalidate a will, which is given to the recipient sehubungan with people who were given will not be able to take advantage of as well as possible and as closely as possible in the use of part of the results of the giver property / objects the will, as well as the grant can be withdrawn if it can not put to good use. But will also be canceled automatically where the receiver will not want a testament to him. While a will also be canceled if the recipient will belong to in Article 197 Compilation of Islamic Law which states that the recipient will have committed acts that make it condemned and imposed criminal penalties, or something that can be detrimental to the parties gave testament. Which is basically in the will that does not give the right to someone who does something which is beyond reproach where it is like attempted murder, slander, falsifying the will that has been made, forcing the person (testator) to give a portion to him, in which case the recipient will do a things that hurt or misconduct then it will be deemed void.

There is also another reason that one can fail to get a will, because of which the testator at the time of making a will belong to the state less healthy in the sense of unhealthy physically and spiritually, crazy, or ill amnesia, which is where the testator did not aware of what he did. So that the will is said to be invalid and null and void, because basically people who are less healthy birth and his inner say incompetent by law, where proficiency in making the will must be aged 21 years, and a sensible set forth in article 194 paragraph 1 Law Compilation Islam. Meanwhile, where a person in making wills, previously healthy mind and his thoughts but in future such person lost his mind was already said by doctors that yes insane, then in that case it will once he made, still said to be valid by law.

The division of property testament to someone who ditujuh or desired person giving testament including heirs or outside heir, conducted on the basis of the wishes of the testator without any interference from the other party, but in the implementation, if the wife / husband testator is alive , it must be with the consent of the husband / wife where the testator which aims to prevent the problem or dispute at a time when the future.⁸

The division will not be less than 1/3 will treasure, The Prophet said: "Verily, the will was third, while the third is a lot."But in reality, the division will still lots of people (testator) that provides more than one third part testament inheritance, then the implementation of the provision of the will treasure not allowed to exceed 1/3 of the inheritance testament, if in accordance with the word of Prophet. However, in Article 195, paragraph 2 Compilation of Islamic Law that the division of property will if it exceeds 1/3 of inheritance testament, it must be with the consent of the heirs testator, if heirs agree to the division of property that will exceed that part of the existing regulations can be done, but if the heirs do not agree then it can only be done giving 1/3 testament inheritance which is contained in article 202 Compilation of Islamic Law. The heir blocked, it could get a piece of property left by the way was borrowed,

⁷ The result of research interviews with Notary H. Miftahudin Khusnul Khuluq, SH.. MKn in Tegal District Notary Office. on May 4. 2019.

⁸ Notary H. Interview Results Miftahudin Khusnul Khuluq. SH.. MKn on May 4. 2019.

where testament is intended by the heirs or relatives who do not acquire part of the estate of a deceased, so it was borrowed replace the acquisition of the division, nor in the division will that do to the relatives or heirs religion other than Islam, then it can only be made was borrowed.

So the role of the Notary in giving inheritance testament with the regulations, must not violate the essential part of the other heirs, in which an heir may not make a will exceed the absolute section must be received by heirs legitimaris. There is testament that it infringes legitime portie⁹ heir for the making of the will, the will of the testator notary records only and do not include the entire wealth. To legitime portie must be demanded by the heirs legitimaris for testamentary will remain valid if the heir does not demand its own absolute section. It was explained that the notary has a very important role in deed the will, not only as a deed alone but the notary must understand the laws that apply to each segment of the population as well as the part that will be accepted, lest deed made by the notary could harm other.¹⁰ But in the will or grant (schenking) violates any part of the testator's heirs legitimaris absolute, it must be done inkorting or reduction. And the making of a will through a notary to others so that the final will be secured by recourse to the Notary.

In the division of the will, the adoptive parents who do not get a piece of it can be given testament was borrowed as much as 1/3 of the adoptive child will treasure, and so did not get a foster child will then be given a third part was borrowed by the treasures of adoptive parents. To meet the needs and overcome the difficulties that occur in the community then enacted regulations regarding law was borrowed for fostering relations put in Compilation of Islamic law which is the legal basis for Muslims in Indonesia.

In the case of loans made by testator must be completed first, before the completion of the division of inheritance testament on the basis of testator. These settlements do heir is paying obligations that must be repaid. Issuing additional testament is doing good. Because it pays obligation would take precedence over its implementation.¹¹

2.3. Barriers and Solutions of Notary Role In Determining Acceptance and Cancellation of Testament

Notary role in the determination of the provision of a will or testament to an individual cancellation heir or not the beneficiary, should the will of the testator, with the knowledge and consent of the donor family will. Due to prevent disputes or continuity between the parties were given the will and the heirs of the testator.

In a study conducted at the Notary writer H. Miftahudin Khusnul Khuluq, SH., MKn in Tegal, stating that the barriers in society to make a will to be treated normally, because of the families who do not agree on the division or cancellation of a will.¹² Where it happens because, there will be a cancellation for someone who was once listed in the division of the will, but the will is canceled, so that a person does not consent to such cancellation of the will. In such case resulted in the existence of a dispute or disagreement between the parties concerned. And there are also barriers that exist in the problem of cancellation will, that they believe not get a share of the

⁹R.Subekti dan Tjitrosudibio. 2001. *Kitab Undang-Undang Hukum Perdata*. Burgerlijk Wetboek. Pradnya Paramitha. Jakarta

¹⁰ Irma Devita Purnamasari. 2014. *KiatKiat Cerdas, Mudah, dan Bijak Memahami Masalah Hukum Waris*. Penerbit Kaifa. Bandung. p. 64-65.

¹¹ Thalib Sajuti. 1981. *Hukum Kewarisan Islam Indonesia*. Sinar Grafika. Jakarta. p. 110.

¹² The result of research interviews with Notary H. Miftahudin Khusnul Khuluq, SH., MKn in Tegal District Notary Office. on May 4. 2019.

treasure will and testament given thought that was a little bit so he does not approve it, then in that case may make bottlenecks in the process of making a will.

So the solution to handle or remove obstacles in the implementation of the will is there, then it should be consensus together with all related parties (providers will and testament receiver). With the exception of the giver will have died then it will not be canceled by anyone, so that the will must be executed in accordance with the contents of the will were there, and can not be tampered with by any party.

3. Closing

3.1 Conclusion

- To determine the recipient and cancellation testament to a person or institution that will be given in accordance with the authority of the testator, which basically will only be granted to a person / institution of the will of the testator. In the role and duties of a notary a deed will need to register the deed will be online, so that the will deed can be said to be perfect proof before the law.
- Probate can be invalidated, where it was canceled immediately by the testator on the rights of the testator. The other reason the receiver will perform acts that belong in Article 197 Compilation of Islamic law and probate administration may not exceed one third will treasure.
- Obstacles will occur from the families who do not agree will be the division of the will, a solution in that regard in implementing a consensus will have to be held, in order to avoid unwanted things in future.

4.2. Suggestion

- Notaries are advised to educate / dissemination to the public who do not understand about the will in the Compilation of Islamic Law, which covers cancellation and acceptance of a testament, in which that ordinary people can understand and learn about the existence of it.
- For the public to be more careful and thorough, if will make a will that will be able to run properly without any hindrance of any.
- For testator, it is advisable to conduct intestate must first family council consideration, in order to avoid disputes in the future.

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