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Regulatory system for executing wills according to the compilation of Islamic law (KHI) and the Jumhur Ulama

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Abstract
This study aims to determine and understand the Will Management System according to the Complications of Islamic Law and Jumhur Ulama. The method used in this study is an empirical juridical research method. Empirical juridical law is legal research regarding the application of normative legal provisions (codification, laws or contracts) in action on every legal event that occurs in society. Based on the results of the research, it is known that the regulation regarding wills has been clearly regulated in positive law in Indonesia as stated in the Compilation of Islamic Law (KHI) and also the opinions of scholars regarding wills and procedures. Compilation of Islamic law and the opinion of the majority of scholars have the same arrangement, namely the will may be carried out orally, in writing, or the majority of scholars call it ijab. To avoid conflicts in the future, the Compilation of Islamic Law and Jumhur Ulama also have something in common, namely a will which is carried out orally or in writing, must be witnessed by 2 (two) witnesses or before a Notary.

Keywords: wills law, testament, compilation of Islamic law (KHI)

Introduction

Humans are creatures created by God with temporary properties, which means humans are not eternal things. The process of human life since he was born into the world naturally will lead to a phase of death. Events of death which are commonplace but can cause certain legal consequences, because death that occurs according to law is a legal event. Even though it ends in a death, in human life, humans will try to survive, grow and develop comfortably so that humans make various efforts for survival.

In addition to meeting the needs of human life, they also have a desire to increase their wealth and property. Humans think that wealth can be a symbol of success, raising social status, dignity and worth for someone who owns it, but that does not mean that the property can be owned by humans eternally. Usually the property that has been collected during his lifetime will be given to the heirs, namely family and close relatives in the hope that their offspring can live more properly or even make a will for the state and the public interest.

The property owned by a person makes a person wish that later his wealth if he dies can be useful for the heirs left behind. In giving the property to another person or heir, there is usually a final message or desire in the process of dividing the estate of the heir to be in accordance with justice according to the heir. Legal acts that give this last message in Islam are known as "wills" in people's lives, this is a common thing.

Wasiat (الْوَصِيَّةُ) is adopted from the word wasaitu, ash-syaia, hi, which means auṣaltuhu (I convey something). The person who wills is called al-mushi. The word will in the Qur'an and its cognate has several meanings, including meaning to determine, as stated in the chapter al-An'am verse 144 (لَّهُ أَمْ) means to command, and in Surah Lugman verse 14 (الِدَيْهِ الْإِنْسَانَ ا) and Maryam verse 31 means to prescribe (stipulate), as in Surah An-Nisa' verse 12 (اللّ) (Directorate General of Islamic Institutional Development, 1998).

The definition of a will is partly defined as the gift of a person to another person, such as in the form of goods, receivables, or benefits to be owned by the person who was given a will after the person in the will dies. Hasbi as-Shiddieqy defines a will as something tasharruf to the property left behind which is carried out after the person who made the will dies (Khairuddin & Zakiul Fuadi, 2014) [12].

A will in Arabic means washiyyat and the plural form is washaayaa,, the same as the word hadiyyah which has a plural form, namely hadaayaa. A will in a syara' meaning is a special agreement that is put forward in the time after death, and sometimes accompanied by a voluntary gift. Al Azhari said the word washiyyah (will) is the origin of the sentence 'washaitu ash-syai'a or aushaitu ash-syai'a, it means I connect something. It is said to be a will, because after death, the person who dies can continue what was there when he lived with the will. Wills in the Shari'a are words that contain prohibitions on prohibited things and recommendations for things that are ordered (Shaykh Abdul Aziz Abdullah bin Baz, 2010).

Wills are part of inheritance law. The definition of a will is a statement of will by a person regarding what will be done to his property after death (Sajuti Talib, 2017) [18]. The initiative to make a will is usually one-sided, meaning that the will to give assets, release debts or provide benefits from an item comes from the testator. In

line with the view of legal science, that a will is a one-sided legal act (it is a unilateral statement), so a will may be carried out without the presence of the beneficiary (Surhrawardi K. Lubis and Komis Simanjuntak, 2012) [27].
In the Compilation of Islamic Law (KHI), a will is the gift of an object from the heir to another person or institution which will take effect after the testator dies. A will (Ar: al-washiyyah) means a person's message or promise to another person to do a good deed while the person who made the will is still alive or after death). A will is a form of mutual assistance between fellow Muslims, both material and beneficial (Abdul Manan, 2006).
Islamic jurists argue that a will is ownership based on a person who declares a will dies with goodness without demanding compensation or taboo'. Based on some of the explanations above, it can be concluded that a will is an act done or given by someone before he dies and can be carried out after he dies. The granting of a will from a deceased person to a person who receives a will can be known by the beneficiary before the person dies or after he dies. A will can contain orders, prohibitions, debts, debts, giving property, or ordering the beneficiary to do something. The granting of a will is intended so that the will or wishes of the deceased can be carried out even though he is no longer alive.
Article 195 paragraphs 2 and 3 of the Compilation of Islamic Law (KHI) granting wills to heirs is permissible as long as it does not exceed one third (1/3) of the inheritance and has permission from other heirs. The purpose of making Article 195 KHI there are two, namely express and implied. The explicit purpose refers to the provisions that already exist in Article 195 of the KHI while the implicit goal is to unite various schools of thought and legal views in order to facilitate understanding of the contents of Article 195 of the KHI. The formulation of the problem in this article is how to regulate the Implementation of Wills according to the Complications of Islamic Law (KHI) and Jumhur Ulama.

Materials and Methods

In this study is an empirical juridical research method. Empirical juridical law is legal research regarding the application of normative legal provisions (codification, laws or contracts) in action on every legal event that occurs in society (Muhammad Abdul Kadir, 2014). Empirical legal research or known by other terms is also known as sociological legal research or also called field research, empirical legal research is based on primary/basic data, namely data obtained directly from the community as the first source through research. field, namely by conducting interviews (Joenaedi Effendi, 2014).

Results and Discussion

Arrangements for the Implementation of Wills according to the Compilation of Islamic Law (KHI) and Jumhur Ulama

The word will is taken from the word *waṣaitu, ash-syaia, uṣihi*, which means *auṣaltuhu* (I convey something). So the *muṣiy* (the person who wills) is the person who conveys the message while he is alive to be carried out after he dies (Sayyid Sabiq, 1987). In terms of *syara*', a will is the gift of a person to another person in the form of goods, receivables or benefits to be owned by the person who was given the will after the person who made the will dies (Ibnu Rusy, 2007).
According to the fuqaha, a will is a permissible contract in the sense that the will can be canceled at any time by one of the parties. And in this case it is by the testator based on the agreement of the fuqaha. Namely that the testator can revoke the property that has been willed, except for the servant *Mudabbar*, because the fuqaha are disputing it. There are two kinds of wills, *tamlikiyyah wills*, such as a person making a will with a portion of the property to be given to someone after his death. And ahdiyah wills, such as wills relating to the handling of a person's corpse and wills for carrying out worship on his behalf after he died (Muhammad Jawad Mughniyah, 2005).
Heirs are those who are entitled to receive the inheritance of the testator due to kinship or marriage ties. With an heir who is still alive at the time the testator dies, the ownership rights of the heir can be transferred to the heir. The arrival of Islam did not abolish and annul the will institution which was generally accepted by the people at that time. Islam accepts this long-running institution by providing necessary corrections and improvements, so that the will remains a necessary institution in which the rights of relatives need to be considered (Helmi Karim, 1997).
Regarding the will to the heirs of Allah SWT says in the chapter Al-Baqarah verse 180 which means: "It is obligatory on you, when one of you comes (signs) of death, if he leaves a lot of wealth, the will is for his parents and close friends. his relatives ma'ruf. (This is) an obligation on those who are pious. This verse has been written down by the verse on the division of inheritance with the revelation of the chapter Al-Nisa verses 11-14 which means:

"Allah has prescribed for you regarding (the distribution of inheritance for) your children. Namely: the share of a son is equal to the share of two daughters; and if the children are more than two daughters, then for them two thirds of the property left behind; If the daughter is alone, then she gets half the property. and for two parents, for each one-sixth of the property left behind, if the deceased has children; if the person who dies has no children and he is inherited by his parents (only), then his mother gets a third; If the deceased has several siblings, then his mother gets one-sixth. (The distributions mentioned above) after the will has been fulfilled or (and) after the debt has been paid. (About) your parents and your children, you do not know which of them is

closer to (many) benefits to you. this is a decree from Allah. Verily, Allah is Knowing, Wise." (Surah Al-Nisa ':11) ".

"And for you (husbands) half of the property left by your wives, if they do not have children. if your wives have children, then you will get a quarter of the property left by them after their will has been fulfilled or (and) the debt has been paid. Wives get a quarter of what you leave if you have no children. if you have children, then the wives get one-eighth of the property that you leave after your will has been fulfilled or (and) after your debts have been paid. If a person dies, both male and female, who does not leave father and child, but has a brother (one mother only) or a sister (one mother only), then for each of the two types of brothers one sixth treasure. but if the brothers are more than one mother, then they are partners in the third one, after fulfilling the will made by him or after paying the debt by not giving harm (to the heirs). (God established that as) the true Shari'ah from Allah, and Allah is All-Knowing, Most Forbearing. (Surat al-Nisa': 12)".

"(Those laws) are the provisions of Allah. Whoever obeys Allah and His Messenger, Allah will surely admit him to paradise where rivers flow, while they live in it forever; and that's a big win. (Surat al-Nisa': 13). and whoever disobeys Allah and His Messenger and violates His provisions, Allah will surely put him in the fire of hell while he abides in it; and for him a humiliating torment." (Surat al-Nisa': 14)".

The birth of the Compilation of Islamic Law (KHI) as a form for the benefit of Indonesian Muslims. The pattern of reform of the Compilation of Islamic Law (KHI) is basically inseparable from the patterns of ijtihad developed by fiqh scholars which are contained in doctrinal terms, codification and legislation (Ahmad Kuzani, 1996). From a doctrinal point of view, the Compilation of Islamic Law (KHI) refers to the main sources, namely the Qur'an and Hadith. In this case, the Formulator of the Compilation of Islamic Law (KHI) always pays attention to the asbab al-nuzul of a verse and the asbab al-wurud of a hadith.

In terms of codification, the formulators of the Compilation of Islamic Law (KHI) took their sources from the reasoning of the fuqaha contained in the fiqh books studied by these scholars through the Qur'an and Hadith. In terms of legislation, it can be seen in the efforts of the government and community leaders in formulating, compiling and ratifying in the form of a Presidential Instruction (Inpres). This stage is a step in formulating the lines of Islamic law which is poured into the language of legislation.

The effort to compile the Compilation of Islamic Law (KHI) is part of an effort to find patterns of fiqh that are unique to Indonesia or contextual fiqh, so this process has been going on for a long time in line with the development of Islamic law in Indonesia or at least in line with the emergence of new ideas. in Indonesian Islamic legal thought as pioneered by Hazairin, Hasby ash-Shiddiqy and so on. The idea to hold a Compilation of Islamic Law (KHI) in Indonesia was first announced by the Indonesian Minister of Religion, Munawir Sadzali in February 1985 (Abdurrahman, 2010).

The compilation of the Islamic Law Compilation (KHI) can be seen as a process of transforming Islamic law in an unwritten form into statutory regulations. In its preparation can be detailed in two stages. First, the stage of collecting excavated raw materials and various sources, both written and unwritten. Second, the formulation stage is based on applicable laws and regulations and sources of Islamic law (al-Qur'an and hadith) (Cik Hasan Bisri, 1999).

The implementation of KHI was carried out with careful and careful planning although it still had to be completed within two years as stated in the Joint Decree (SKB) of the Chief Justice of the Supreme Court and the Minister of Religion in March 1985 in Yogyakarta. During these two years, things were prepared that would lead to the formation of legal awareness of the Muslim community so that they were ready to accept the final result of the KHI as a true and fair law. This is very important because public legal awareness is the third pillar that supports the enforcement and enforcement of law in a society.

From this assertion, it appears that the first background to the establishment of the KHI was due to the confusion of decisions and sharp differences of opinion on issues of Islamic law. According to him, there are several reasons behind the holding of the Compilation of Islamic Law (KHI). The state of non-uniform perception of the shari'ah has led to the following:

1. Inconsistency in determining what is called Islamic law;
2. The lack of clarity on how to implement Islamic sharia;
3. A further consequence is that we are unable to use the roads and tools that have been provided for in the 1945 Constitution and other laws.

The factor of scholars, especially fiqh scholars is very decisive. It is impossible to foster and develop Islamic law without the participation of the scholars. A KHI cannot be valid if it is only made and given from above (Government, Supreme Court), without the participation of ulama. The scholars still play a decisive role in religious matters. Therefore, in terms of Islamic law, the fiqh scholars still play a decisive role. And in the planning and implementation of KHI, the ulama, umara and zuama are really joined.

In addition, there are other factors that must be carefully considered in the planning and implementation of KHI. These factors include the historical factors of Islamic law, the psychological factors of Muslims who really love and love the country where Islam was revealed and the factor of fiqh books from schools which are indeed the charity and services of previous mujtahid scholars. Finally, the decisions of the religious courts in Indonesia

from the earliest times are also considered, because indeed this factor should not be completely ignored. The Religious Courts have existed for hundreds of years and during that time have given legal decisions which are laws that live and are lived by the Indonesian Muslims.

The Compilation of Islamic Law (KHI) is one of the material laws used in the Religious Courts. The Compilation of Islamic Law (KHI) appears when the various decisions of the Religious Courts, between one Religious Court and another are different, even in the same case the decisions are also different. This is due to the large number of reference books used by Religious Judges in adjudicating the case which are still raw in the yellow book. Therefore, based on the circular chapter of the Religious Courts bureau no. 45 of 1957 concerning the establishment of the Religious Courts/Shari'ah Courts, it is recommended that the 13 yellow books be used as guidelines in decision making (Abdurrahman, 2010).

Meanwhile, according to Article 195 paragraphs 2 and 3 of the Compilation of Islamic Law (KHI) granting a will to an heir is permissible as long as it does not exceed one third (1/3) of the inheritance and has permission from the other heirs. The purpose of making Article 195 KHI there are two, namely express and implied. The explicit purpose refers to the provisions that already exist in Article 195 of the KHI while the implicit goal is to unite various schools of thought and legal views in order to facilitate understanding of the contents of Article 195 of the KHI.

That the Compilation of Islamic Law (KHI), especially regarding wills to heirs, has basically agreed with the opinion held by the majority of scholars and the Shafi'i school. This is due to the existence of the Syafi'i school which dominates in Indonesia so that its Islamic legal thinking also affects the Indonesian people. While overall Hazairin's opinion feels closer or in line with the opinion of the Ja'fariyah School of the four schools, namely the Hanafi, Maliki, Hanbali, and Shafi'I schools (Abdul Ghofur Anshori, 2010).

The existence of the Islamic Law Compilation (KHI) in this case specifically the position of will to heirs is that they can still protect the Indonesian Islamic community as long as it is approved by other heirs and does not exceed one third (1/3) of the entire inheritance. In this case, if there is a case submitted to the Religious Courts (PA) relating to wills to heirs, the judge must be able to decide the case based on the Compilation of Islamic Law (KHI) regarding wills to heirs, so that there is no debate because it has not there are other laws that regulate it because in the nature of law enforcement there are normative and functional ones as long as there is no new law.

Arrangements regarding wills in the Compilation of Islamic Law (KHI) are regulated in articles 194 to 209 contained in Chapter V on wills. In the articles of the Compilation of Islamic Law (KHI) it is regulated both regarding people who are entitled to a will (subject of a will), forms of wills, types of wills, cancellation and revocation of wills, and other matters relating to wills.

There are two cumulative conditions and one additional condition for a person who has the right to inherit part of his property as contained in the provisions of Article 194 paragraph (1) of the Compilation of Islamic Law, which stipulates that: "A person who is at least 21 years of age, is of sound mind and without any coercion." can bequeath part of his property to another person or institution. So from the provisions of Article 194 paragraph (1), we can know that the cumulative requirement for a person with a will is to be at least 21 years old and of sound mind, while the additional requirement for a person who has a will is without coercion. Apparently the Compilation of Islamic Law (KHI) uses measures containing legal certainty to determine whether a person is capable or not capable of carrying out legal acts, but uses the age limit of at least 21 years.

Regarding wills to heirs, it is stated in the Compilation of Islamic Law (KHI) article 195 which reads: (1) Wills are made orally before two witnesses, or in writing before two witnesses, or before a notary; (2) A will is only allowed as much as one third of the inheritance unless all heirs agree; (3) The will to the heirs is valid if it is approved by all the heirs; (4) The statement of approval in paragraphs (2) and (3) of this article is made orally before two witnesses or in writing before two witnesses before a notary.

Actually, the will to the heirs does not apply if they or the other heirs do not approve of it, but if the other heirs agree to grant inheritance to the heirs then it is legal to do so with a maximum limit of one third of the inheritance in accordance with what has been explained in the provisions of the KHI article 195 paragraph (3) which states "A will to heirs is only valid if it is approved by all heirs".

The intended heir approval is to avoid things that are not desirable. The philosophical basis for the formation of Article 195 of the KHI is based on the Hadith History of Al-Dar Quthny which means: "From Umar bin Kharijah, the Messenger of Allah said: It is not permissible to testify for heirs, unless desired by (other) heirs". (History of al-Dar Qutny).

Willing to heirs according to the provisions of Article 195 KHI which is written is a will that is made orally before two witnesses, or in writing before two witnesses, or before a notary, a will is only allowed as much as one third of the inheritance unless all heirs agree, a will to the heirs applies if approved by all heirs, the statement of approval in paragraphs (2) and (3) of this article is made orally before two witnesses or in writing before two witnesses before a notary because as we know before Islamic law was compiled there were various differences of opinion among the fuqaha. Meanwhile, the implied provisions of Article 195 are to unite the views of schools and to unify legal views so that they can be used as a guideline, namely the Compilation of Islamic Law (KHI) (Abdurrahman, 2010). The form of will according to the KHI is contained in article 195, which can be done by:

1. Oral, that a will or private deed must be made in the presence of two witnesses.
2. It is written that a written will can be in the form of a private deed and an authentic deed. If the will is shown to the heirs or other heirs it can be made orally or in writing. Verbal or written approval which is not an authentic deed must be made before two witnesses or before a notary.

In this case, two witnesses are very much needed because considering the very important position of a will to one's inheritance, a will if you want to be strengthened with evidence that can prevent it from happening in the future. If it is stated verbally, then it is said before witnesses who can be trusted and have no interest in the inheritance, such as RT, RW, Lurah, or parties located in the community. In addition, it must be stated explicitly and clearly who or whom or what institution will be appointed to receive the property in the will (Article 196 KHI). A written will will be more perfect if it is written on stamped paper, a written will can only be revoked in writing and witnessed by two witnesses or based on a notary deed (Article 199 paragraph (3) KHI). And so as not to cause doubts about a will, it is better to carry out a will before a notary. A will made based on a notary deed, can only be revoked based on a notary deed.

In a chapter, whether in writing or orally, it must be explained clearly and unequivocally who, or which institution is appointed to receive the inherited property. In the case of a will with an heir, there are often differences of opinion in the same case, this is based on the opinion of the scholars who have an opinion on the opinion of the heir. In overcoming this, the will of the heirs according to article 195 KHI is to agree to agree with the heirs and at the same time this becomes the legal basis in deciding will cases to the heirs. If the other heirs agree, then the agreement is valid and if it is not approved by the other heirs, then there is no will for the heirs.

And the will to heirs in this article is also one of the basic references for judges to decide cases of will to heirs. In this case, if there is a case that is submitted to the Court environment Religion related to the will to the heirs, then the judge can decide the case based on the Compilation of Islamic Law (KHI) regarding the will to the heirs. So there is no debate because there is no other law regulating it, because in the nature of law enforcement, there are normative and functional ones as long as there is no new law (A. Rachmad Budiono, 2012).

As for the argument about sanctions and the existence of a notary, it is in Surah Al-Nisa verse 135 which means: "O you who believe, be you who are truly enforcers of justice, be witnesses for Allah even if it is against yourself or your parents and your relatives. if he. Rich or poor, then Allah knows better the benefit. So do not follow your lust because you want to deviate from the truth. and if you twist (words) or refuse to be witnesses, then verily Allah is All-Knowing of all that you do."

Conclusions

Regulations regarding wills have been clearly regulated in positive law in Indonesia as stated in the Compilation of Islamic Law (KHI) and also the opinions of scholars regarding wills and their procedures. Compilation of Islamic law and the opinion of the majority of scholars have the same arrangement, namely the will may be carried out orally, in writing, or the majority of scholars call it ijab. To avoid conflicts in the future, the Compilation of Islamic Law and Jumhur Ulama also have something in common, namely a will which is carried out orally or in writing, must be witnessed by 2 (two) witnesses or before a Notary.

Even though they already have strong regulations in compiling Islamic law (KHI) and the opinions of the majority of scholars, the Muslim community, who should believe in and obey Islamic rules, still has obstacles in the implementation of wills. Will law is still not fully effective in the community. A will that can only be executed after the testator dies often creates conflicts or is not enforced.

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