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The Legal Status of Wills in Islamic Law: A Juridical Analysis

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Abstrak

The article discusses the scope of wills, the legal basis for wills, types of wills, the pillars of a will, the requirements for the validity of a will, wills to heirs, limitations on wills, the number of wills, the cancellation and invalidation of a will, the revocation of a will, and the procedures involved. It then addresses the Islamic legal perspective on the execution of a will. This research uses a qualitative approach with literature study as the main data collection method. The conclusion is that the legal status of a will differs from one person to another depending on the circumstances, namely it is obligatory for someone if it is feared that the property left behind will be squandered. It is considered sunnah if the will is for charitable purposes, such as a will to relatives, the construction of mosques, schools, or other public interests. It is haram if the will can harm the heirs. This study provides both theoretical and practical contributions to the field of Islamic law, particularly in the area of fiqh al-wasiyyah (Islamic jurisprudence on wills). Using a qualitative approach and literature study as the primary data collection method, the article offers a comprehensive analysis of various aspects of testamentary wills, including their legal basis, types, pillars and validity requirements, limitations, revocation procedures, and execution mechanisms.

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1. Introduction

Humans, in their journey in the world, experience three important events, namely: when he is born, when they marry, and when they die. When a person is born, they take on new duties within their family. Thus, in a sociological sense, he becomes the bearer of rights and obligations. Then, as he matures, he marries. He meets his life partner to build and fulfil his dharmabakti, namely the continuation of offspring. In the field of marriage law, this is a very important thing because two creatures of God will then become a family. The meeting of two people, each of whom becomes the bearer of the rights and

obligations in the marriage relationship, has consequences in the field of law. Then, humans will one day leave the world.[1]

Allah SWT made human beings to be the caliphs of the Earth, as He repeatedly states in the Qur'an. The idea of the creation of human beings was put forward by Allah earlier in front of the angels, who responded with their concern about the destruction and bloodshed on Earth. But Allah SWT said in QS. Al-Baqarah/2:30: "*I know better what you do not know.*" To anticipate and minimize the possibility of what the angels were worried about, Allah set the rules of the game for human life in this world.

The rules of life are expressed in the form of Allah's command or will about the actions or deeds that humans can and cannot do in their lives. All these rules are intended for the good of humanity itself and to avoid the destruction and bloodshed that the angels were worried about before. This principle means that as long as humans in their lives on this Earth follow the rules set by Allah, damage and bloodshed will not occur.[2] Allah's rules about human behaviour are called sharia or shari'a law, which is currently called Islamic law. Islamic law covers all aspects of human life in the world, both to realize happiness in this world and to seek happiness in the hereafter. Some of these laws do not contain sanctions, and some contain sanctions but only demand obedience. Others contain sanctions that are felt in this world, like legal sanctions in general. However, some sanctions are not felt in this world but will be inflicted in the hereafter in the form of sin and retribution for this sin.[3]

The aspect of human life is inseparable from the nature of its occurrence as a human being. In humans, as living beings, two instincts are also found in other living things, namely the instinct to survive and the instinct to continue life. For the fulfilment of these two instincts, Allah created in every human being two passions, namely, appetite and lust. Appetite has the potential to fulfil the instinct to survive, and therefore, every human being needs something to eat. From here comes the human tendency to acquire and own property. Lust has the potential to fulfil the instinct to continue life, and for that, every human being needs the opposite sex to channel their lust.

As intelligent beings, humans need something to be able to maintain and improve their intellectual power. As a religious being, man needs something to be able to maintain and perfect his religion. Thus, five things are a requirement for human life, namely religion, reason, soul, property and offspring. These five things are called daruriyatul al-khamsa (the five basic needs) in every human being. [4] The aspects of human life that Allah regulates can be grouped into two groups. First: matters relating to man's external relationship with God, his Creator. The rules on this matter are called the laws of worship.

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[1] N. H. A. Siregar, N., & Nasution, "Legal Review of Children Born Out of Wedlock Based on Islamic Inheritance Law and Civil Law," *International Journal of Educational Research Excellence (IJERE)* 2, no. 2 (2023): 139–144.

[2] Muhammad Iqbal, "Konsep Kehidupan Menurut Perspektif Al-Quran," *Jurnal MUDARRISUNA: Media Kajian Pendidikan Agama Islam* 12, no. 3 (2022): 573, https://doi.org/10.22373/jm.v12i3.15147.

[3] Amir Syarifudin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2004).

[4] Suswanto dan Firmansyah, "Potensi Akal Manusia Dalam Al-Qur'an Dan Relevansinya Dengan Pendidikan Islam," *Attaqwa: Jurnal Ilmu Pendidikan Islam* 17, no. 2 (2021): 120–31.

The aim is to maintain the relationship or rope between Allah and His servant, which is also called hablun min Allah. Second, relating to the relationship between humans and the surrounding nature. The rules on this matter are called 'muamalat law'. The aim is to maintain the relationship between humans and nature, or what is called hablun min annas. Both relationships must be maintained so that humans are free from humiliation, poverty and the anger of Allah, as stated by Allah in QS. Ali 'Imran/3:112.

One of the rules governing human relations established by Allah is the rule of inheritance and wills, namely property and ownership arising as a result of a death. The property left behind by someone who has died requires arrangements about who is entitled to receive it, how much and how to get it.[5] Allah determines the rules regarding inheritance and wills through His words contained in the Qur'an. Basically, Allah's provisions regarding inheritance and wills are clear in their intent and direction. Various things that still require explanation, either confirming or detailing, are conveyed by the Prophet Muhammad through his hadith. However, its application still raises the discourse of thought and discussion among Islamic law experts, which is then formulated in the form of normative teachings. The rules are then written and enshrined in the pages of the fiqh book and become a guide for Muslims in solving problems related to inheritance and wills.[6]

The issue of inheritance and wills often causes problems in everyday life. This problem often arises because one of the heirs is dissatisfied with the distribution of the inheritance he receives. This issue arises from the greedy nature of the man who always wants to get more than what he has earned. Likewise, with the will, although in the view of Islamic law, the will has an important position and always takes precedence in its implementation, it does not rule out the possibility of problems or disputes, both from the willing recipient and the heirs of the inheritor.[7] To get the inheritance in accordance with the amount they want, the heirs take all the ways that can be done to achieve their goals, either through legal means or against the law. If the acquisition of inherited property is carried out against the law, of course, legal sanctions are awaiting the parties who committed the act. However, if the acquisition of inherited property is carried out in accordance with the law, then there will be no legal sanctions given. The problem that arises is whether the legal path taken fulfils the principles of justice for all litigants. Especially in matters of inheritance and wills, often, a decision that is fair to one party is not necessarily considered fair by the other party.[8]

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[5] A Iftikhar, "Interpretive Possibilities in Islamic Inheritance Law: Rethinking Daughters' Shares," *African Journal of Gender and Religion* 28, no. 1 (2022): 88–97.

[6] Muhammad Zubair et al., "The Laws of Inheritance in Islam," *J. Basic. Appl. Sci. Res* 4, no. 8 (2014): 84–89.

[7] Siti Soliha Chairani Harahap, "Analisis Yuridis Terhadap Kedudukan Wasiat Yang Didaftarkan (Warmaking) Dan Disengketakan Oleh Pra Ahli Waris," *Otentik's: Jurnal Hukum Kenotariatan* 2, no. 2 (2020): 146–59.

[8] A. R. Puspita, M., & Meidina, "Historicity of Islamic Inheritance Law in Indonesia and Turkey," *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 1 (2023): 27–36.

For Indonesian Muslims, Allah's rules on inheritance and wills have become positive laws used in religious courts in deciding cases of division and disputes regarding inheritance and will problems. This problem can later lead to the emergence of several problems, so the author is interested in discussing "Analysis of Islamic Law on the Position of a Will".

2. Method

The research uses a qualitative approach with the literature study method as the main technique in data collection. The qualitative approach was chosen because the main focus of this research is on a deep understanding of the process, not on quantitative results. In this case, the method used is descriptive and analytical, which describes the phenomena studied systematically and then analyses them based on relevant theories.[9] The literature study was conducted by reviewing various kinds of literature, both in the form of books, scientific journals, and other reliable sources that support the study of research topics. The data obtained was then analyzed qualitatively to find patterns, meanings, and relationships between concepts that are the focus of the research.[10]

Qualitative research is also known as a naturalistic method because it is conducted in natural conditions and based on the context of the situation of the subject under study. In this approach, the researcher plays an important role as the main instrument, where the subjectivity of the researcher becomes an integral part of interpreting the data and drawing conclusions.[11] Therefore, the theoretical basis used in this research also considers the researcher's personal experience, intuition, and interpretation of the sources studied.

3. Results and Discussion

A. Scope of a Will

The principle of the word will come from the Arabic language, and the word will come from the word "washshaitu ash-shia, uushii, meaning aushaltuhu (I convey something). The definition given by legal scholars is: "A will is a voluntary gift of a right that is linked to the afterlife, whether it is spoken in words or not.".[12] Sayid Sabiq defines it as follows: "The will is a gift from one person to another in the form of goods, receivables, or benefits to be owned by the person who is given a will after the

[9] Wahyudin Darmalaksana, "Metode Penelitian Kualitatif Studi Pustaka Dan Studi Lapangan Wahyudin," *Pre-Print Digital Library UIN Sunan Gunung Djati Bandung, 2020*, 2020, 1–6, https://doi.org/10.1145/1658192.1658193.

[10] Primadi Candra Susanto et al., "Qualitative Method Concepts: Literature Review, Focus Group Discussion, Ethnography and Grounded Theory," *Siber Journal of Advanced Multidisciplinary* 2, no. 2 (September 2024): 262–75, https://doi.org/10.38035/sjam.v2i2.207.

[11] Hannah Snyder, "Literature Review as a Research Methodology: An Overview and Guidelines," *Journal of Business Research* 104 (November 2019): 333–39, https://doi.org/10.1016/j.jbusres.2019.07.039.

[12] Ahmad Faqihudin, "Wasiat Presfektif Al-Qur'an Dan Hadits," *Ulumul Qur'an: Jurnal Kajian Ilmu Al-Qur'an Dan Tafsir* 1, no. 2 (October 2021): 85–92, https://doi.org/10.58404/uq.v1i2.77.

testator dies. Meanwhile, the definition of a will is: A will or in other words called a testament, is a deed containing a person's statement about what will happen after he dies, and which can be withdrawn by him. Thus, a testament is a deed, a statement made as evidence with the intervention of an authorized official, and which the maker can withdraw (Article 875, Civil Code). As with grants, the will is also a unilateral act. In other words, there is no contract of performance on the part of the recipient. From the definition stated above, it is clear what the main difference is between the act of granting and this will, which is that, apart from being carried out voluntarily (as is the case with grants), the implementation or transfer of rights is carried out after the grantor dies.

1. **Legal Basis of a Will / Testament**

   The legal bases of a will or testament are Al-Kitab, As-Sunnah, Al-Ijma' and logic (reason) are:

   a) Al-Kitab / Al-Qur'an, which are: In QS. Al-Baqarah/2:180, with the meaning: "*It is obligatory upon you, when one of you dies, if he leaves behind any property (that he makes) a will for his parents and his relatives in a good way (this is) for those who are devoted (to God)*". QS. Al-Maidah/5:106, Allah says: "*O you who believe, when one of you dies, and he makes a will, let it be witnessed by two just men among you, or by two men of different religions from your own if you are travelling on the earth and you are in danger of death.*".

   b) Sunnah of the Prophet. The definition of Sunnah in language is the path taken, tradition, and praiseworthy. Hadith scholars give the meaning of Sunnah as follows: It means: "*Everything that is narrated from the Prophet SAW".* Either in the form of words, actions, taqrirnya or other than that". So according to this understanding, the Sunnah includes the biography of the Prophet, the characteristics of the Prophet both in physical form, for example, regarding his body, hair and so on, as well as those regarding the psychic and moral character of the Prophet in everyday circumstances, either before or after the bi'tsah (being appointed) as a Messenger. In the As-Sunnah, we find a narration by Saad bin Abi Waqq, which means as follows: The Messenger of Allah (SAW) came to visit me in the year of the Farewell Hajj when I was suffering from severe illness, then I asked: "O Messenger of Allah, I am very ill, what do you think, I am a wealthy person, and no one can inherit my property except a daughter. Should I bequeath two-thirds of my wealth?" "No," replied the Messenger of Allah. "Half, O Messenger of Allah," I said. "No," replied the Messenger of Allah. "One-third," I said again. The Messenger of Allah replied: "One third. Because one third is already a lot and great, because if you leave heirs in a sufficient state is better than leaving them in a poor state that begs the people "(Sayid Sabiq, 1988: 214). While in the Sunnah of the Prophet Muhammad, others can be found in the hadith, among others,

which means as follows: It has been narrated by Al-Bukhari and Muslim from Ibn Umar r.a., said: The Messenger of Allah (SAW) said: The right of a Muslim who has something to be bequeathed, after staying for two nights, is nothing other than his will is written in his good deeds ". Ibn Umar said: I have not spent a single night since I heard the Messenger of Allah (SAW) say this hadith except that my will has always been by my side.

c) The third legal basis is Al-Ijma' because Muslims from the Prophet until now have made many wills, and apparently, it has never been denied by anyone. This legal basis shows that there is an agreement (ijma') among Muslims.

d) Based on common sense (logic), humans always aspire the end their lives with deeds (amaliyah) of virtue to add to the existing charity and to get closer to Allah. Human conscience always whispers so, and this is in accordance with the words of the Prophet Muhammad, which means as follows: “Verily Allah commands charity to you a third of the treasure to increase your deeds, so spend it according to your ability or according to your liking” (HR. Bukhari).

2. The Law of Wills

From the provisions of the Qur'an and hadith mentioned above, Islamic jurists have differed on the ruling of this will for someone about to die[13]:

a) Islamic jurists Az-Zuhri and Abu Mijlaz are of the opinion that a will is obligatory for every Muslim who is about to die and leaves the property, whether the property is large or small.

b) The view of Masruq, Iyas, Qatadah, Ibn Jarir and Az-Zuhri is that the will is obligatory only for parents and close relatives who, for some reason, do not have ownership of it (in Islamic Inheritance Law, such relatives are termed dzawil arham, namely people who still have an affectionate relationship with the testator, but he is not an heir, for example, grandsons or granddaughters of daughters, pets, adopted children and others).

c) Ibn Hazm is of the view that making a will is fardlu'ain, based on QS. An-Nisā/4:11 mentioned above. The verse states that the estate can only be distributed to the heirs after the will has been executed and the debts of the deceased have been paid.

d) The majority of jurists and Shi'a Zaidiyah jurists are of the view that making a will to one's parents and close relatives is not fardlu'ain or obligatory, as Ibn Hazm and Abu Daud and other salaf scholars are of the view, for the following reasons:

1) The Prophet Muhammad never mentioned it, and he did not make a will concerning his estate.

[13] A. M. F. Moechthar, O., Sekarmadji, A., & Katherina, “A Juridical Study of Granting Wills to Heirs in the Perspective of Islamic Inheritance Law,” *Yuridika* 37, no. 3 (2022): 411–430.

2) Most of the Prophet's companions did not make wills, and none of them denied it (ijma' sukuti).
3) A will is a gift that does not have to be handed over while the testator is still alive. It is also not obligatory to carry it out after he dies.
4) The ruling on a will varies from one person to another depending on their circumstances, viz; it may be obligatory for a person if there is a fear that the wealth to be left behind will be wasted, for example, if they still owe zakah. It can also be sunnat if the will is intended for virtue, such as a will to a close relative, the construction of a mosque, the construction of a madrasa or other public interest in accordance with religious orders. It may also be haram if the will is to the detriment of the heirs or even null and void. It can also be makruh if the person who makes a will has a small amount of wealth, while the heirs left behind are many and are in dire need of that wealth.[14,15]

3. Types of Wills

In his book, Ali Afandi, according to the content, there are two kinds of wills, namely[16]:

a) A will containing "refuelling" or a will of appointment of inheritance A will of appointment of inheritance is a will in which the person who wills gives to one or more than one, all or part of his property if he dies.
b) A will containing a grant or legatee: A bequest is a special provision in a testament by which the testator grants to one or more persons:
    1) Certain goods
    2) Go\ods of a certain kind
    3) The right to use the proceeds of all or part of his estate.

When viewed from the recipient, lafaz and property that is bequeathed in detail, then the will is divided into four types, namely absolute will, conditional will, will am, and typical will. [17]

1) Absolute Wasiat: It is a will that is made freely or is not bound by certain conditions imposed on the bequeathed property that the testator may place.
2) Conditional Wasiat: A will that contains certain conditions imposed by the testator.
3) Charitable Will
4) Specific Will

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[14] Muhammad Syafiq, "Tinjauan Hukum Wasiat Kepada Ahli Waris," *Tarbawi : Jurnal Pendidikan Dan Keagamaan* 9, no. 1 (2020).

[15] Chairuman Pasaribu and Surahwadi K.Lubis, *Hukum Perjanjian Dalam Islam* (Medan: Pustaka SInar Grafika, 1994).

[16] Ali Afandi, *Hukum Waris, Hukum Keluarga, Hukum Pembuktian* (Jakarta: Bina Aksara, 1986).

[17] Afandi.

4. The Pillars and Conditions of a Valid Will

The pillars of a will or testament are:

a) The existence of the grantor of the will: The grantor of the will must fulfil the following conditions:
   1) Reasonable
   2) Baliq
   3) Independent
   4) Do not have debts that spend the property
   5) The testator in a state of voluntary

b) The existence of the recipient of the will: In the case of the recipient of the will, it must be a legal subject, namely whether it is personal (individual) or reach person (legal entity). The conditions that the recipient of the will must meet are as follows:
   1) The testamentary beneficiary already exists at the time of the testation.
   2) The testamentary beneficiary is a person or legal entity
   3) The testamentary beneficiary is not the killer of the testator
   4) The testamentary beneficiary is not a body that manages the disobedience
   5) The testamentary beneficiary is not an heir of the testator.

c) The existence of what is willed: The existence of what is willed means the object or object/item that is willed. Regarding the object that is mandated, it must fulfil several conditions, namely:
   1) The object belongs to the testator
   2) The object is useful and can be used as an object of transaction
   3) The object mandated existed at the time of the testation
   4) The amount mandated must not exceed one-third of the total assets of the testator.

d) Implementation of Wasiat: In practice today, to avoid undesirable things happening in the future, often the testamentary statement is made notarially, whether in the form of being made before a notary or kept in a notary protocol. The Compilation of Indonesian Islamic Law in Book II Chapter V, articles 194 and 195 mentions the requirements that must be met in the implementation of the testament as follows (Article 195 KHI):
   1) The testator must be a person who is 21 years old, of sound mind and based on his voluntariness.
   2) The willed property must be the right of the testator.
   3) The transfer of rights to the object/goods that are willed is after the testator dies.

The requirements that must be met in the implementation of the testament are (Article 195 KHI)[18]:

1) If the testament is done orally or in writing, it should be in the presence of two witnesses or before a notary.
2) The will is only allowed a maximum of one-third of the inheritance, unless there is consent of all heirs.
3) The will to the heirs is only valid if approved by all heirs.
4) The statement of consent in points b and c can be done orally or in writing in the presence of two witnesses or made in front of a notary.

5. Testament to the Heirs

Regarding the testament to the heirs, there are differences of opinion among the scholars, among others[19]:

a) Ibn Hazm and the Maaliki jurists are of the view that it is not permissible to make a will at all to a beneficiary of the estate, whether the other beneficiaries consent or not.
b) 2) The Shia Imamiyah jurists are of the view that it is permissible to make a will even if there is no permission from the other heirs, in accordance with QS. Al-Baqarah/2:180 mentioned above.
c) The Shafi'iyah and Maaliki scholars are of the view that a bequest to a beneficiary who is capable of receiving the inheritance is permissible and valid with the permission of the other heirs.
d) The Hanafis are of the view that it is not permissible to make a will to an heir who has received a small amount of inheritance unless there is permission from the other heirs. The reason is almost the same as the Shafi'iyah Fuqaha, and the difference lies in that the permission is expressed after the person who testifies dies. Whereas according to the Shafi'iyah, the permission can be before or after death.3) The existence of the willed

The existence of the willed means the object or object/item that is willed. Regarding the object that is mandated, it must fulfil several conditions, namely[20]:

a) The object belongs to the testator
b) The object is useful and can be used as an object of transaction
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[18] Hasballah Thaib, *Hukum Benda Menurut Islam* (Medan: Fakultas Hukum Universitas Dharmawangsa, 1992).

[19] L. H Razy, "Islamic Inheritance Law in The Modern Era: Contemporary Aspects and Applications," *AN NUR: Jurnal Studi Islam* 15, no. 2 (2023): 287–299.

[20] R. Bachri, S., Sudirman, S., Zuhriah, E., & Ramadhita, "Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 7, no. 2 (2023): 150–165.

6. Implementation of Wasiat

In practice today, to avoid undesirable things happening in the future, often the testamentary statement is made notarially, whether in the form of being made before a notary or kept in a notary protocol. [21] The Indonesian Compilation of Islamic Law in Book II Chapter V, articles 194 and 195 mention the requirements that must be met in the implementation of the testament as follows (Article 195 KHI):

a) The testator must be a person who is 21 years old, of sound mind and based on his voluntariness.
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b) The will is only allowed a maximum of one-third of the inheritance, unless there is consent of all heirs.
c) The will to the heirs is only valid if approved by all heirs.
d) The statement of consent in points b and c can be done orally or in writing in the presence of two witnesses or made in front of a notary.

7. Limit on the Amount of Requested Assets

The person who receives the will is sometimes among the heirs and sometimes not among the heirs. If the person who receives the will is not among the heirs, then the implementation does not need to wait for permission from the heirs as long as the bequest must not exceed one-third of the inherited property. If the will exceeds one-third, the consent of the heirs must be obtained. If it is more than one-third, the consent of the heirs is required; if they do not agree, then only that which is more than one-third is void, and the one-third remains valid and enforceable. If the will is given to an heir, it cannot be executed until the consent of the other heirs is obtained, even if the amount is less than one-third.[22]

8. Cancellation and Invalidation of Wills

Because the will is based on the voluntariness of the testator, it can automatically be cancelled by the testator again; the statement of the will does not mean the transfer of rights to the recipient of the will because the transfer of rights can only occur if the testator has died. In this regard, Sayid Sabiq

[21] A. S. Zaman, J. Q., Sholeh, A. K., Fadil, F., Salam, N., & Binti Ros Azman, "The Influence of Positivism and Empirism in The Enforcement of Islamic Inheritance Law in Indonesia," *Substantive Justice International Journal of Law* 7, no. 1 (2024): 48–69.

[22] Ridwan, "Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur's Thought," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 2 (2022): 181–192.

states as follows: "A will is one of the permissible agreements in which the testator may change his will, or withdraw what he wishes from his will, or withdraw what he has willed". The procedure for the cancellation of this will can be done by a statement of withdrawal of the will, neither in oral form nor in written form, or it can also be withdrawn by action; for example, the A willed the land to be given to the B. The A sold the land back to another party.

In the Compilation of Islamic Law, the cancellation of the will is regulated in Article 197, which is as follows:

a) Based on a judge's decision that has permanent legal force, the will becomes void if the prospective recipient of the will is convicted of:
   1) Being blamed for killing or attempting to kill or severely persecute the testator.
   2) Being blamed for slanderously filing a complaint that the testator has committed a crime punishable by five years imprisonment or a heavier penalty.
   3) Being blamed by force or threat of preventing the testator from revoking or changing the will for the benefit of the prospective recipient of the will.
   4) Being blamed for embezzling, damaging or falsifying the will of the testator.
b) A will becomes void if the person appointed to receive the will:
   1) Does not know of the existence of the will until he dies before the death of the testator.
   2) Knows of the existence of the will, but he refuses to accept it.
   3) Knows of the existence of the will, but he never declares acceptance or refusal until he dies before the death of the testator.
c) A will becomes void if the thing bequeathed is destroyed.

9. Revocation of a Will and Its Procedure

The revocation of a will is inherent to the nature of the will as the testator's final statement. What has been stated in a will at one time must be revoked or changed later, and this latter will apply as the most recent will. Furthermore, the revocation of the will can be done expressly or tacitly[23]. According to the Compilation of Islamic Law Article 199, the procedure for revoking a will is as follows:

a) The testator can revoke his will as long as the prospective recipient of the will has not expressed his approval or has expressed his approval but then withdraws it.

[23] A Siradjuddin, "Implementation of Inheritance Law in the Community of Metro City, Lampung," *Indonesian Journal of Interdisciplinary Islamic Studies (IJIIS)* 2, no. 2 (2019): 101–19, https://journal.uii.ac.id/IJIIS/article/view/27150.

b) Revocation of the will can be done orally witnessed by two witnesses or in writing witnessed by two witnesses or based on a notarial deed if the previous will was made orally.
c) If the will is made in writing, it can only be revoked in writing, witnessed by two witnesses or based on a notarial deed.
d) If a notarial deed makes the will, it can only be revoked by a notarial deed.

B. A Will in Islamic Law

The previous chapter discussed what a will is, especially a will in Islam. The definition of a will, in general, is the last message spoken or written by a person who is about to die regarding property and so on. In language, will means to order. The word will is mentioned in the Qur'an nine times. In the form of a verb, will is mentioned fourteen times, and in the form of a noun is mentioned twice. Altogether, in the Qur'an, will is mentioned twenty-five times. In use, the word will mean to order, to stipulate, to command (QS.Al-An'am, 6:151,152,153, An-Nisa', 4:131), to obligate (QS.Al-Ankabut, 29:8, Luqman, 31:14, Ash-Shura, 42:13, Al-Ahqaf, 46:15), and to prescribe (An-Nisa', 4:11).

Some scholars say that when a will comes from Allah, it is a command as an obligation that must be obeyed and carried out. In terms of terms, Sayid Sabiq states: The gift of one person to another in the form of an object, debt or benefit, so that the recipient owns the gift after the testator dies. Another opinion suggests that the will is the ownership that is relied upon after the death of the testator by way of tabarru' (kindness without demanding compensation). This definition is to distinguish between wills and grants. If a bequest takes effect when the grantor gives the gift and the recipient accepts it, then a will takes effect after the grantor dies. This principle is in line with the definition of the Hanafiyah Fuqaha' presented by Abdullah Al-Rahim: A will is the act of a person giving a will to another person to own something either in the form of objects or benefits voluntarily (tabarru') whose implementation is deferred after the death of the person giving the will.[24]

The Compilation of Islamic Law defines a will as follows: "The giving of an object from the testator to another person or institution that will take effect after the testator dies (Article 171 letter f KHI). In the terminology of positive civil law, it is often referred to as a testament. The Compilation tries to take a middle ground, namely that although the will is a tabarru' transaction, in order for its implementation to have legal force, it needs to be organized in such a way as to obtain order and legal certainty.

The definition of a will is: “A will or, in other words, a testament is a deed that contains a person's statement about what will happen after he dies, and which can be withdrawn by him”. Thus, a testament is a deed, a statement made as evidence with the intervention of an authorized official, and which the maker can withdraw (Article 875,

[24] Nada Putri Rohana, “Wasiat Wajibah Dalam Perspektif Hukum Di Indonesia,” *Jurnal Hukum Ekonomi* 7, no. 1 (2021): 141–42.

Civil Code). In the author's analysis, there are differences of opinion among experts in defining the meaning of the testament. But here, the author will try to reveal what a testament is according to Islamic law.[25]

A will is an act of a person to hand over or transfer something in the form of objects, rights or benefits voluntarily to another person whose implementation is postponed after the death of the testator. Meanwhile, what is meant by a will or what is called a testament in civil law, is a deed made by a person, either orally or in writing before the person dies, which contains a person's statement about what will happen after he dies which can be withdrawn, which is made in the presence of two witnesses or before an authorized official or notary.[26] Wasiat arises in accordance with the nature of man who always expects that his deeds in the world provide salvation to him in the hereafter, humans always try to do good deeds while he is still alive. One of these good deeds is to make a will during his lifetime so that some of his assets are used for the needs of others. A person can make a will with respect to tangible assets, with respect to assets that are still vague, or with respect to assets that are still to come into existence.

Real property can be a house, a piece of land with certain boundaries and so on. Meanwhile, assets that are still vague, such as fish in a pond, or company profits that have not been divided. The definition of vague here is the amount of the object of the will that does not yet have roundness in the count. Meanwhile, assets that will still exist are like plants that have not yet produced or borne fruit. So, the will is an act of a person to transfer his property or rights voluntarily after he dies. In contrast, the will is a deed made by the testator which is used as proof that he has given, transferred or handed over his property or rights after he dies so that the will has legal force and can be accepted by all parties, both from among the heirs and from the person who receives the will or testament. It is intended that the property of the testator or testator can later be used for the benefit of humankind and to avoid division, damage or bloodshed among the heirs and those who receive the will and can create justice for the parties.

4. Conclusion

After the description of the discussion of the problem, which is the core of this legal writing with the title analysis of the position of the will according to Islamic law, the following conclusions can be drawn: A will in Islam is the act of a person giving the right to another person to own something in the form of objects or benefits voluntarily (tabarru') whose implementation is deferred after the death of the person who gave the will.

The legal position of a will varies from one person to another depending on the circumstances, viz: It can be obligatory for a person if it is feared that the property to be left behind will be wasted. For example, he still has a zakat debt. It can also be sunnat if the will is intended for virtue, such as wills to relatives, building mosques, building madrasas or other public interests in accordance with religious orders. In addition, it can also be haram if the will that is carried out can harm the heirs, even

[25] Paula Franciska, "Wasiat Kepada Ahli Waris Menurut Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata," *Notarius* 11, no. 1 (2018): 115, https://doi.org/10.14710/nts.v11i1.23129.

[26] M Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 1–20, https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/8852.

if void by law. It can also be makruh if the person who makes a will has a small amount of wealth, while the heirs left behind are many and are in dire need of that wealth.

This study is limited to a literature review using a normative approach, without empirical data or fieldwork. It focuses solely on the perspective of Islamic law, and does not address the application of wills in positive law or their social practice in the community.

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