

Pembatalan Akta Wasiat Yang Dibuat Di Hadapan Notaris Bagi Pewaris Beragama Islam (Studi Putusan Pengadilan Tinggi Agama DKI Jakarta Nomor 161/PDT.G/2019/PTA.JK) = The Revocation of a Testament Made in The Presence of a Notary by a Muslim Heir (Study The Decision of DKI Jakarta High Religious Court Number 161/Pdt.G/2019/ PTA.JK)

Fatimah Az-Zahra Firdaus, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920555691&lokasi=lokal>

Abstrak

Notaris sebagai pejabat umum yang berwenang membuat akta wasiat bagi seseorang sebelum meninggal hendaknya memperhatikan ketentuan pembuatan akta wasiat berdasarkan sistem hukum kewarisan yang berlaku bagi pemohon sesuai agamanya. Dalam kasus yang diteliti, Notaris dalam membuat akta wasiat bagi pemohon yang beragama Islam tidak memperhatikan ketentuan hukum kewarisan Islam, sehingga hakim memutuskan akta yang dibuat cacat hukum. Permasalahan dalam penelitian ini mengenai pertimbangan hukum Hakim yang membatalkan akta wasiat yang dibuat dihadapan Notaris oleh pewaris yang beragama Islam berdasarkan Putusan Pengadilan Tinggi Agama DKI Jakarta Nomor 161/PDT.G/2019/PTA.JK dalam perspektif hukum kewarisan Islam dan mengenai tanggung jawab Notaris selaku pejabat umum atas akta yang dibuatnya yang menjadi cacat. Dalam menjawab permasalahan tersebut digunakan metode penelitian hukum yuridis normatif dengan tipe penelitian eksplanatoris, untuk menganalisis permasalahan pembatalan akta wasiat yang dibuat di hadapan Notaris dikaitkan pada norma hukum serta fakta hukum dalam perspektif hukum kewarisan Islam. Hasil penelitian adalah pertimbangan hukum hakim tidak sesuai dengan peraturan perundang-undangan. Guna memberikan kepastian dalam putusan, seharusnya Hakim memberikan solusi dalam pertimbangannya berdasarkan Pasal 195 ayat (2) dan 201 Kompilasi Hukum Islam (KHI), bahwa wasiat tetap dapat dilaksanakan sebesar sepertiga bagian menjadi harta pusaka keluarga yang manfaatnya tetap dapat diterima ahli waris sesuai bagiannya. Terkait objek wasiat masih merupakan harta bersama, maka berdasarkan Pasal 26 ayat (1) KHI setengah dari harta bersama adalah hak dari pasangan yang hidup lebih lama. Notaris dalam membuat akta wasiat yang cacat hukum, dapat dimintakan pertanggungjawaban sanksi administratif berupa pemberhentian sementara dan sanksi perdata berupa penggantian biaya, ganti rugi, dan bunga.

.....Notary as a public official who is authorized to make a testament for a person before death should pay attention to the provisions of making a testament based on the legal system of inheritance that applies to the applicant according to his religion. In the studied case, the Notary in making a testament for a Muslim applicant did not pay attention to the provisions of Islamic inheritance law, so the judge decided that the deed was legally defective. The problem in this studied case is about the legal considerations of Judges who canceled a testament made before a Notary by a Muslim heir based on the Decision of the Religious High Court of DKI Jakarta Number 161/PDT.G/2019/PTA.JK in the perspective of Islamic inheritance law and on the responsibility of Notary as a public official on the deed he made which became defective. To answer these problems used normative juridical law research methods with the type of explanatory research, to analyze the problem of cancellation of testament made in the presence of a Notary linked to legal norms and legal facts in the perspective of Islamic inheritance law. The result of the research is that the judge's legal

considerations are not in accordance with the legislation. In order to provide certainty in the decision, the Judge should provide a solution in his consideration based on Article 195 paragraph (2) and 201 of the Compilation of Islamic Law (KHI), that the testament can still be executed as much as one-third of the inherited property into family property whose benefits can still be received by the heirs accordingly to their parts. Regarding to the object of the testament it is still a joint marriage property, then based on Article 26 paragraph (1) KHI half of the joint marriage property is the right of the spouse who lives longer. Notary in making a legally defected testament, can be held accountable for administrative sanctions in the form of temporary termination and civil sanctions in the form of reimbursement of costs, compensation, and interest.