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Problems of the Legal Position of Notarial Wills in Legal Practice in Indonesia

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ABSTRACT
This study aims to analyze and examine the extent of the legal position and force of notarial wills in the Compilation of Islamic Law in Indonesia. A will as one of the legal tools or instruments in the system of inheritance of position is very important because in addition to containing a juridical aspect, it also contains a religious aspect. In the prevailing legal system in Indonesia, Notaries as public officials have the authority to make authentic deeds, including testamentary deeds, as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary. However, in Islamic law, the making of a will must be in accordance with the provisions of the sharia, especially regarding the limit on the amount of property bequeathed, the recipient of the will and the validity of the contents of the will itself. The results of the study show that a notary will deed provides legal certainty with a higher position and has greater power in proving as an authentic deed in the eyes of positive law. However, there are also challenges, where the applicability of the substance is not in line with the principles of Islamic law. Thus, there is still a lack of harmony, especially between positive law and Islamic law in the implementation of wills in Indonesia, so that it can meet the principles of legal certainty, usefulness, and justice.

Keywords: *Deeds, Wills, Notaries, Position, Legal Force.*

1. Introduction

The inheritance law system in Indonesia is the result of a meeting between three major legal systems, namely *Western civil law*, *Islamic law*, and *customary law* (Eric 2019). The three have historically grown together and are then enforced in a pluralistic social context. One of the important instruments in inheritance law is a will, which is a statement of a person's will regarding his or her property after he or she dies (Natania and Lesmana 2024). In Indonesia's positive legal framework, wills are comprehensively regulated in the Civil Code (KUHPerdata), a relic of the Dutch colonial legal system that is still used today. Regulations regarding wills are displayed in Articles 875 to 940 of the Civil Code, including the form, procedures for making them, to the mechanism for cancellation and revocation (Ismail 2025). Article 875 emphasizes that a will is a deed that contains a statement of a person's will regarding his or her estate after his death, and can be revoked at any time. The existence of this rule confirms that Indonesia's positive law provides a clear juridical basis regarding the formal validity of a will. As the community's need for legal certainty and orderly distribution of inheritance develops, the role of wills becomes increasingly significant, especially when notaries are involved as officials authorized to make authentic deeds (Ramadan 2018).

For the Muslim community in Indonesia, the execution of wills is not only subject to the Civil Code, but also to the Compilation of Islamic Law (KHI) which functions as *a lex specialis* in resolving inheritance cases in the religious court environment (Wajim, J. P., Djaja, B., & Sudirman 2025). From the perspective of Islamic law, wills have a moral as well as a spiritual position. Etymologically, the word *will* comes from the Arabic term *washa* which means a statement of will or message to be executed after the heir dies. The normative basis of wills in Islam is derived from the Qur'an, Sunnah, and ijma' ulama. For example, Surah Al-Baqarah verse 180 affirms the recommendation for a person to make a will for his relatives. In the Indonesian context, the KHI regulates wills in Articles 194–214. Article 194 defines a will as the gift of an object from the heir to another party that takes effect after the heir dies. However, substantially, KHI provides strict restrictions, such as limiting the maximum number of wills to only one-third of the assets, as stipulated in Article 195 paragraph (1), unless there is the consent of all heirs. The rule emphasizes that although Islam recognizes a person's freedom to make a will, this freedom is still limited so as not to reduce the rights of heirs that have been determined by the sharia. On the other hand, notaries as public officials are authorized to make notarial wills, which legally have external, formal, and material evidentiary

power. This position raises an interesting situation: a notarial will is valid according to a positive legal form, but it must still be in harmony with the substance of sharia as stipulated in KHI (Pratama 2024).

This situation of legal dualism raises a number of problems that require more in-depth academic study. First, there is a question about the legal status of a notarial will deed for Muslim heirs, whether its legal force is the same as the provisions of the Civil Code, or whether it remains bound by sharia restrictions as stipulated in the KHI. Second, there is the issue of the material validity of a notarial will deed: even if it meets the formal requirements according to the Law on Notary Offices and the Civil Code, whether the substance in the deed can be immediately considered valid according to Islamic law. Third, there are often cases of conflict between the heirs and the beneficiaries of the will because the amount of the bequeathed property exceeds the limit of one-third of the share, or because the will deed is addressed to the heirs without the consent of the other heirs. This condition shows the tension between the principle of formal certainty in positive law and the principle of substantial justice in Islamic law. Another problem arises when notaries as public officials are considered only formally responsible, while the public expects notaries to also understand the substantive limits of sharia related to the will of Muslims. Thus, in-depth research is needed to unravel the normative position of notarial wills in the relationship between positive law and Islamic law, as well as its implications in resolving inheritance disputes in religious courts (Sukowati, R., Purwaningsih, E., & Santosa 2010).

Various studies on wills, Islamic inheritance law, and the role of notaries have been conducted before. A number of studies examine the validity of wills from the perspective of the Civil Code, focusing on the procedure for making deeds and their evidentiary power. Other research focuses on the study of wills according to KHI, especially regarding the limitation of one-third of property, the validity of the will to the heirs, and the process of its implementation in the religious justice environment. There is also research that discusses the role of notaries in making wills, including the obligation to keep the contents of the deed confidential and legal protection for heirs. However, the majority of research is still sectoral: positive law-oriented research rarely addresses the legal side of Islam comprehensively; on the contrary, research that focuses on Islamic law often lacks to integrate the formalistic aspects of notary. In addition, research on *the disharmony* between notarial wills and KHI provisions is still limited and more normative descriptive without offering a systematic analysis of the legal position of the two instruments in the national legal structure.

Previous studies have similarities, namely both recognize the importance of wills as a legal instrument in regulating the distribution of inheritances. However, there are differences in approach and scope. Research that focuses on the Civil Code generally emphasizes aspects of legal formalism, such as the validity of deeds, the legal requirements of the statement of will, and the authority of a notary. Meanwhile, research based on Islamic law highlights moral aspects and sharia provisions such as the limit of one-thirds, the prohibition of making a will to heirs without consent, and the principle of justice in the distribution of wealth. Some studies position notaries only as administrative parties, while others place notaries as important actors in ensuring alignment between positive law and Islamic law. However, there has not been much research that explicitly compares these two legal systems in the context of notarial wills. This shows that there is a methodological gap, where the comparison between the concepts of formal validity (positivism) and substantial validity (sharia) has not been fully integrated into a solid theoretical framework.

From a review of the literature, it appears that research on the position of notarial wills in the Indonesian legal system still leaves important blank spaces that have not been answered by previous research. First, there has not been a comprehensive analysis that harmonizes two legal regimes at once, namely the Civil Code (with a Western legal basis) and the Civil Code (with a sharia basis), to see how notarial wills are positioned when the heirs are Muslim. Second, there is still a lack of research that critically examines the material strength of a notarial will deed if its substance is contrary to sharia principles, for example, a will exceeds one-third or is given to the heirs without consent. Third, there has been no research that examines the role of notaries in ensuring that the substance of sharia is fulfilled, even though notaries play a central role in making deeds. Fourth, previous research has not used a theoretical framework that links Gustav Radbruch's theory of legal certainty with the principle of substantive justice in Islamic law. This absence of theoretical integration makes previous research partial and has not offered a solution to regulatory disharmonization. Therefore, studies that combine normative perspectives, legal certainty theory, and sharia principles are needed to answer the debate about the legal position of notarial wills for Muslims.

This research aims to provide a comprehensive and in-depth understanding of the legal position of notarial wills in the Indonesian legal system, especially for Muslim heirs. The first purpose is to analyze the formal validity of a notarial will deed based on the Civil Code and the Notary Position Law, including its external, formal, and

material strength. Second, this study aims to examine the substantial provisions of wills in KHI, especially sharia restrictions that affect the implementation of wills for Muslims. Third, this study intends to compare and harmonize the two legal systems to see whether notarial wills can be fully recognized in the KHI or only formally recognized but limited in substance. Fourth, this research aims to identify legal implications for notaries, heirs, and beneficiaries of wills in resolving inheritance disputes. Through this analysis, this research is expected to contribute to the development of Indonesian inheritance law, especially in building harmony between formal legal certainty and substantial justice in accordance with sharia principles.

2. Method Research

This research uses normative legal research methods (Rosidi, Zainuddin, and Arifiana 2024), which is a method that focuses on the study of legal principles, legal norms, and provisions of laws and regulations relevant to the issue of wills in positive law and Islamic law (Nasadi and Akdaji 2025). This approach was chosen because the research aims to analyze the normative construction that governs notarial wills and their conformity with sharia principles as stated in the Compilation of Islamic Law. Through normative research, the study is focused on the legal text as the main object, so that it can be examined in depth about the formal and substantial validity of the will for Muslims.

In addition, this study also uses a conceptual approach, which is an approach that examines basic concepts in inheritance law, will law, notary authority, and the principle of legal certainty in legal theories (Sahar et al. 2025). This approach helps to provide a more comprehensive theoretical understanding of the normative underpinnings of notarial wills and how the concept is positioned in Indonesia's pluralistic legal system.

To complete the analysis, this study applies a case approach (Boli and M 2025) related to will disputes in the religious court environment and cases involving notarial wills. This approach is carried out to see how legal norms are applied concretely, as well as how judges interpret and weigh the rules in the Civil Code, the Notary Position Law, and the provisions in the KHI.

The data collection technique is carried out through library research by reading, studying, and recording various legal sources such as the Civil Code, KHI, the Notary Position Law, court decisions, scientific journals, textbooks, and other academic literature relevant to research problems. This method ensures that the analysis is based on legal foundations and authoritative scientific references.

3. Results and Discussion

3.1 Legal Position of Notarial Will Deeds in KHI.

The findings of this study confirm that notarial will deeds occupy a very strong position within the Indonesian civil law system as authentic deeds. This strength derives from Article 1868 of the Civil Code, which embodies the principle of **freedom of contract and freedom of disposition**, allowing individuals to express their will regarding property distribution through a formally valid instrument made before an authorized public official. From this perspective, a notarial will deed is presumed to be legally valid and binding in its entirety, enjoying external, formal, and material evidentiary force. Consequently, civil law places primary emphasis on **formal legality and individual autonomy**, providing broad protection for the testator's declared intentions.

However, a clear **normative disharmony** arises when the testator is a Muslim, as the application of the Compilation of Islamic Law (KHI) introduces substantive limitations that directly restrict this civil-law freedom. Article 195 paragraph (1) of the KHI limits the execution of a will to a maximum of one-third of the inheritance, unless all heirs consent, while paragraph (2) invalidates a will made in favor of heirs without such consent. These provisions reflect an Islamic legal principle that rejects absolute freedom in testamentary disposition in order to protect mandatory heirs and ensure distributive justice. As a result, a notarial will that is fully valid under the Civil Code may become **substantively unenforceable** under Islamic inheritance law, not because of a defect in form, but due to incompatibility with sharia-based material norms.

This tension demonstrates a direct collision between two normative regimes: the **individualistic and formalistic orientation of civil law** versus the **communitarian and restrictive orientation of Islamic inheritance law**. In practice, Religious Courts tend to reconcile this disharmony by recognizing the notarial will as authentic evidence while simultaneously limiting or nullifying its execution insofar as it violates KHI provisions. Judicial decisions analyzed in this study show that wills exceeding the one-third limit or favoring certain heirs without consent are declared formally valid but materially ineffective. This confirms that, for Muslim testators, KHI functions as a substantive corrective to civil law, subordinating the principle of freedom of testation to the principles of fairness and protection of heirs under Islamic law. Thus, the disharmony does not negate the validity of the notarial deed

itself, but significantly constrains its legal effect, highlighting the unresolved dualism between civil and Islamic inheritance norms in the Indonesian legal system.

Table 1. Number and Types of Notarial Will Dispute Cases in Indonesia (2018–2024)

No	Decision Number	Year	Court	Types of Problems	Results of the Decision	Information
1	368 K/AG/2018	2018	Supreme Court	A will exceeds 1/3 of the property and is given to the heirs without the consent of the other heirs	Will deed annulled	Contrary to Article 195 of the KHI
2	255/Pdt.G/2018/PTA.JKT	2018	Jakarta High Court of Religion	Dispute over the power of proof of a notarial deed	The act is formally declared valid	No formal defects found
3	895/Pdt.G/2019/PA.Yk	2019	Yogyakarta Religious Court	Will under hands without a notary	Declared valid with witness evidence and documents	Demonstrate the flexibility of the judge
4	201/Pdt.G/2021/PTA.Mks	2021	Makassar High Court of Religion	Will written under hand	Declared invalid	Does not have the power of an authentic deed
5	123 K/AG/2022	2022	Supreme Court	The entire property is bequeathed to one child without the consent of the other heirs	Will deed annulled	Violation of the principle of justice of Islamic heirs

Source: Data Diolah Penulis dari Direktori Putusan Mahkamah Agung RI (2024)

Table 1. shows the dynamics of notarial will deed disputes in Indonesia throughout 2018–2024 with a total of five decisions that have been successfully identified at various levels of religious courts and the Supreme Court. From the overall case, it can be seen that three wills were canceled because their substance was contrary to the principles of wills in the Compilation of Islamic Law (KHI), especially related to the exceedance of the maximum limit of one-third of assets without the consent of the heirs or the disproportionate granting of the will to the detriment of other heirs. The other two decisions state that the deed or will is valid, either because the notarial deed meets the formal requirements and because the will under hand is considered valid based on the suitability of the evidence and the judge's consideration. This pattern indicates that the validity of the will deed is not only determined by the form of a notarial deed as a strong legal instrument, but is highly determined by the conformity of the substance of the will with the provisions of the sharia regulated in the KHI, thus emphasizing the importance of harmonization between formal and material aspects in inheritance practices for Muslims.

Table 2. Recapitulation

Description	Sum
Total Identified Cases 2018–2024	5 cases
Key Verdict	3 cancelled, 2 declared valid

This study also found that the role of notaries is very important in the context of this legal dualism. Notaries have the responsibility to ensure that the deed made is not only legally valid but also in accordance with the substance of the law applicable to the heirs. In many cases, the findings of the study show that notaries do not always provide adequate legal advice regarding the provisions of the KHI. As a result, deeds that have been made correctly according to the Civil Code cannot be implemented. Therefore, notaries are required to understand the provisions of the will in the KHI when dealing with Muslim clients. Although the law does not require notaries to master Islamic law in depth, professional practice requires notaries to provide complete and correct information to the heirs in order for the deed made to be fully executed.

Furthermore, this study also shows that the legal dualism that applies in Indonesia is actually an effort to harmonize positive law and Islamic law. In this context, Gustav Radbruch's theory of legal certainty becomes very relevant. According to Radbruch, the law must meet three basic values, namely certainty, justice, and utility. A notarial deed provides legal certainty, while KHI provides substantive justice because it ensures that the rights of all heirs are not defeated by the heir's unilateral will. On the other hand, the existence of a notarial deed and KHI at the same time also presents benefits, because the two legal instruments work in complement each other to ensure that no party is harmed. Thus, legal dualism in the implementation of wills for Muslims is not a form of disharmony, but a form of integration that provides space for the fulfillment of legal values more comprehensively.

In the context of implementation, research shows that a notarial will must still be considered valid and strong as long as it meets formal and substantial provisions. However, for Muslim heirs, the sharia limits have a higher position in determining the implementation of the contents of the will. Thus, a notarial deed can be seen as an administrative instrument that clarifies the will of the heir, but its implementation is still subject to sharia principles. The recognition of these two legal systems is part of a national legal politics that accommodates legal pluralism. It also shows that the state is trying to provide land for Muslims to implement sharia provisions in inheritance matters, without negating the importance of formal instruments such as notarial deeds.

Finally, this discussion emphasizes that the position of a notarial will deed for Muslim heirs is complementary. The deed provides legal certainty and strong formal evidence, but the substance must still be in line with the provisions of the KHI. If there is a conflict between the content of the deed and the sharia, then the religious court will adjust its implementation based on the principles of Islamic law. Thus, this study concludes that the implementation of notarial will deeds for Muslims is a clear example of integration between national law and Islamic law in the Indonesian legal system. This integration needs to be maintained and strengthened, including through increasing notaries' understanding of Islamic law, improving regulations, and increasing public legal awareness regarding the limits of wills according to sharia. With these measures, a notarial will deed not only provides formal legal certainty, but also guarantees substantive justice for heirs and heirs in accordance with the principles of Islamic law.

3.2 Legal Strength of Notarial Will Deeds According to the Compilation of Islamic Law

The position of a notarial will deed for Muslim heirs is one of the important issues in the practice of inheritance law in Indonesia, considering the applicability of the dual legal system that regulates wills. On the one hand, a notarial deed is a formal legal instrument that has perfect evidentiary power as stipulated in the Civil Code and the Law on Notary Positions (UUJN). On the other hand, the substance of a will for Muslims is normatively regulated in the Compilation of Islamic Law (KHI) which sets certain limits according to sharia principles, such as the maximum limit of one-third of property and the prohibition of giving a will to the heirs without the consent of the other heirs. Therefore, the legal force of a notarial will deed must be analyzed through two main dimensions, namely formal power and material power, in order to comprehensively understand the relationship between Islamic law and national law in inheritance practice.

Formal Power of Notarial Will Deed

Formally, a notary will deed is an authentic deed made by an authorized public official, namely a notary. Article 1868 of the Civil Code expressly defines an authentic deed as a deed made by or in the presence of a public official authorized for it, in the form prescribed by law. This provision is strengthened by Article 1 number 1 and Article 15 of the Notary Position Law which affirms that notaries have the authority to make authentic deeds, including will deeds. Thus, from the perspective of the KHN and the Notary Law, a will made before a notary has a perfect evidentiary value, so it occupies an important position in proving in court.

In the context of proof, an authentic deed can only be refuted through *tegenbewijs* or counter-evidence that shows that the content or process of making the deed contains legal defects, such as the existence of an element of coercion, unclear will of the heir, or the absence of witnesses who are required in the process of making the deed. However, in practice, almost all notarial will deeds are considered formally valid by the court because they have met administrative and procedural provisions. Therefore, the formal power of a notarial deed provides a guarantee of procedural certainty for the heir in stating his will and for the heirs in understanding the distribution of inheritance property.

The Material Power of a Notarial Will Deed According to the Compilation of Islamic Law

In contrast to formal power, the material power of a notary will deed must meet the provisions of Islamic law as formulated in the KHI. Article 195 paragraph (1) of the KHI states that a person can only bequeath a maximum of one-third of the entire inheritance, unless all heirs give mutual consent. This provision is an implementation of the fiqh rules regarding the limitation of wills to prevent injustice in the distribution of inheritance.

In addition, Article 195 paragraph (2) of the KHI emphasizes the prohibition of giving a will to the heirs, unless all other heirs express their consent. Thus, when a Muslim makes a will through a notarial deed, the substance of the will must be adjusted to all articles in the KHI so that it can be declared materially valid.

If the substance of the will violates the provisions of the KHI, for example giving all the property to one of the children without the consent of the other heirs, then materially the will deed can be partially or completely canceled by the religious court judge. This is the important point that distinguishes between formally valid and materially valid: a deed can be formally perfect but still materially invalid according to Islamic law.

Jurisprudence Analysis Regarding Notarial Will Deeds

The court's jurisprudence shows that religious courts place KHI as the main legal source in assessing the material validity of notarial will deeds. The 2018–2024 case table shows that of the five main decisions, three notarial wills were canceled and two were declared valid. Cancellation generally occurs when the substance of the will violates the provisions of Article 195 of the KHI, either because it exceeds one-third of the inheritance without the consent of the heirs, or because it is given to an unqualified heir.

For example, in the Supreme Court Decision Number 368 K/AG/2018, the will deed was canceled because the heir bequeathed more than one-third of the estate without the consent of other heirs. The ruling explicitly referred to the KHI as the legal basis for annulment, thus recognizing the applicability of sharia norms in the inheritance of Muslims even though the will was authentically made before a notary.

On the contrary, in the Decision of the Jakarta High Court of Religion Number 255/Pdt.G/2018/PTA. JKT, the notarial deed was declared formally valid because no procedural defects were found in its creation, although the court still assessed its substance based on the provisions of Islamic inheritance. This shows that the court does not reject the validity of the notarial deed, but ensures that the content of the deed is in accordance with the provisions of sharia.

In some other cases, the court also leaves room for a will under hand as long as the substance is in accordance with the KHI. This fact shows the flexibility of judges in exploring the value of justice even if formal procedures are not met.

The Role of Notaries in the Harmonization of National Law and Islamic Law

Notaries have an important role as mediators between the civil law system and the Islamic legal system. In the practice of making a will deed for Muslim heirs, notaries are obliged to inquire about the religion of the heir to ensure that the will does not contradict the provisions of the KHI. In addition, notaries have an ethical obligation to provide legal counseling regarding the limits and provisions of wills for Muslims, such as:

1. The maximum limit of one-third of property,
2. Prohibition of giving a will to the heirs without the consent of the other heirs,
3. The need for the consent of the heirs if the will exceeds the provisions of sharia.

This role of the notary is in line with the theory of legal responsibility which asserts that public officials are not only administratively responsible, but also morally responsible to ensure that the deeds they make do not cause injustice. Thus, notaries have a strategic responsibility to maintain harmonization between Islamic law and national law in the context of inheritance.

In addition, notaries play a role in creating legal certainty through formal documentation of the heir's will. A notarial deed not only strengthens the proof of the heir's will, but can also prevent disputes in the future by ensuring that the contents of the will meet the provisions of laws and regulations and sharia provisions.

Implications for Legal Certainty

The harmonization between Islamic law and national law through the existence of a notarial will deed has important implications for legal certainty. Legal certainty in this context includes two dimensions:

1. Formal certainty, which is the procedural certainty provided by an authentic deed as an official document guaranteed by the state. A notarial deed ensures that the will is made by following a lawful procedure, thus strengthening the probative power.
2. Material certainty, namely the certainty that the substance of the will is in accordance with the provisions of Islamic law as stipulated in the KHI. Material certainty ensures that the distribution of inheritance does not violate the principles of justice and religious provisions.

Procedural certainty alone is not enough if the substance of the deed is contrary to Islamic law. Therefore, the harmonization of these two certainties is the main foundation for the implementation of wills for Muslims in Indonesia. In this context, a notarial deed cannot stand alone without fulfilling the provisions of sharia.

Thus, the existence of a notarial will deed in accordance with KHI can minimize potential disputes, provide legal protection to heirs, and create justice in the distribution of inheritance. This shows that the Indonesian legal system has accommodated the needs of Muslims through an integrative approach between sharia law and national law.

3.3. Conceptual Novelty in Solving the Problem of the Legal Validity of Notarial Will Deeds According to the Compilation of Islamic LaW

The issue of the legal force of notarial wills for Muslim heirs continues to be an important issue in Indonesian legal practice, given the wedge between the national legal system (which is derived from the civil law tradition) and Islamic law codified through the Compilation of Islamic Law (KHI). Although the two legal systems have long coexisted, there are still a number of practical problems that arise in dispute, especially when the substance of a notarial deed conflicts with the provisions of the will according to sharia, such as limiting 1/3 of the property or giving a will to the heirs without the consent of the other heirs.

In this context, there is an urgent need to present conceptual novelty, a new approach that not only solves normative problems, but also rearranges the relationship between national law and Islamic law in the field of inheritance. The following description describes the idea of novelty as an offer of a more comprehensive, systematic, and adaptive solution to the needs of the Indonesian Muslim community.

Reconstruction of the Concept of Formal and Material Power of Notarial Will Deeds

So far, the debate about notarial wills still focuses on the dichotomy between formal validity and material validity. Formal strength is understood as compliance with the Notary Position Law (UUJN), while material strength refers to the conformity of the content of the will with the provisions of the KHI. However, this approach has not been able to completely eliminate the overlap that occurs in practice, as the two legal systems work in parallel and are not always harmonious.

The first conceptual novelty is to encourage the reconstruction of the relationship between the two through the concept *of integrated dual validity*, which is the reinterpretation that the validity of a will deed for Muslim heirs is not divided into two separate components (formal and material), but must be assessed as an interdependent normative unit.

In the framework *of integrated dual validity*, a notarial deed is not just formal evidence of the heir's will, but is an integral part of the religious system that must reflect the limits of sharia. On the contrary, KHI is not only a

material guideline that assesses the content of a will, but also part of the legal drafting process that must be considered from the beginning in making the deed.

With this approach, the two-dimensional division, formal and material, is not removed, but positioned in an integrative relationship so that a mistake in one of them is considered a failure of the whole. This provides a new standard for notaries and judges in evaluating will deeds.

The Concept of Proactive Harmonization between Islamic Law and National Law

So far, the harmonization between Islamic law and national law has been reactive: testing the conformity of the content of the deed is carried out after a dispute has occurred in a religious court. Notaries only formally ensure that the deed is made in accordance with laws and regulations, not to ensure material conformity with Islamic law, even though KHI is a positive law for Muslims. The second conceptual novelty is to introduce the concept *of proactive jurisprudential harmonization*, which is a harmonization mechanism carried out before a conflict arises, through the following steps:

1. Notaries are obliged to implement religious compliance check standards. Notaries are not only required to record the religion of the heir, but are obliged to assess whether the contents of the will are in accordance with the provisions of Islamic law.
2. KHI is made an explicit part of the notarial drafting procedureFor example, the UUJN needs to be strengthened with the provision that in making a will deed for Muslim heirs, the notary is obliged to refer to Articles 195, 194, and 199 of the KHI.
3. The preparation of a national SOP that is binding for all notariesSOP includes:
    a. Will Limitation of a maximum of 1/3,
    b. The Mechanism for Checking the Consent of the Heirs (Dalil Ijma'),
    c. prohibition of giving a will to heirs without consent,
    d. Format of standardization of sharia clauses in the act.

Synchronization between the National Legal Development Agency (BPHN), the Indonesian Ulema Council (MUI), and the Indonesian Notary Association (INI) This ensures that notary coaching follows the principles of harmony of sharia and national law. With this concept, harmonization no longer depends on the judicial process, but becomes part of the practice of notary from the beginning so that the risk of disputes can be significantly reduced.

To date, the harmonization between Islamic law and national law in the context of notarial wills has largely been **reactive in nature**, as the conformity of a will's substance with Islamic law is typically examined only after a dispute arises before the Religious Court. In practice, notaries tend to limit their role to ensuring formal legality in accordance with statutory regulations, without substantively assessing compliance with Islamic inheritance norms, despite the Compilation of Islamic Law (KHI) constituting positive law for Muslims. This condition perpetuates normative tension and places the burden of harmonization on the judiciary rather than on preventive legal mechanisms.

This study proposes a **second conceptual novelty**, namely the introduction of **proactive jurisprudential harmonization**, a preventive model of harmonization implemented prior to the emergence of legal disputes. This model is operationalized through several integrated mechanisms. First, notaries should be obliged to apply **religious compliance check standards**, requiring them not only to identify the testator's religion but also to assess the conformity of the will's substance with Islamic law. Second, the KHI should be explicitly incorporated into the notarial drafting procedure, particularly by strengthening the Law on the Notary Office (UUJN) to mandate reference to Articles 194, 195, and 199 of the KHI when drafting wills for Muslim testators. Third, a **nationally binding Standard Operating Procedure (SOP)** for notaries should be established, encompassing limitations on testamentary disposition to a maximum of one-third of the estate, mechanisms for verifying heirs' consent (ijmāʿ-based approval), prohibitions on bequests to heirs without consent, and standardized sharia-compliant clauses in notarial deeds. Finally, institutional synchronization among the National Legal Development Agency (BPHN), the Indonesian Ulema Council (MUI), and the Indonesian Notary Association (INI) is essential to ensure consistent notarial guidance grounded in both national law and Islamic legal principles.

By repositioning harmonization at the **pre-emptive stage of legal drafting**, this concept shifts dispute resolution from a judicially driven model to a preventive professional practice. Consequently, it not only reduces the risk of inheritance disputes but also strengthens legal certainty, substantive justice, and coherence within

Indonesia's plural legal system. This proactive approach demonstrates how legal writing and doctrinal innovation can function as instruments for advancing legal science and improving normative integration in practice.

4. Conclusion

A notarial will has an important position in national law as an authentic deed that provides formal legal certainty, but for Muslim heirs its validity is still limited by the provisions of the Compilation of Islamic Law (KHI). KHI emphasized that the validity of a will is not only determined through notarial procedures, but especially by the conformity of its content with sharia principles, including the limitation of one-third of property and the prohibition of giving a will to heirs without the consent of other heirs. A study of the legal force of a notarial will deed shows that the deed only has full force if two aspects are fulfilled simultaneously, namely formal validity based on the Notary Position Law and material validity based on KHI. Analysis of judicial practice proves that religious courts tend to invalidate notarial deeds that are materially contrary to Islamic provisions, even though they are formally valid. Therefore, conceptual novelty is needed to overcome this disharmony, through the idea of formal-material integration of legitimacy, proactive harmonization between notaries and sharia principles, the role of notaries as normative mediators, structured judge assessment models, and guarantees of legal protection for heirs. These concepts affirm that legal certainty must go hand in hand with substantive justice in the execution of wills for Muslims.

Regulatory and institutional measures are needed to strengthen harmonization between national law and Islamic law in the making of notarial wills. The government together with notary professional organizations need to develop operational guidelines that require verification of the conformity of the contents of the will with the provisions of the KHI for Muslim heirs, including the heir's approval mechanism and the limitation of one-third of the property. Notaries need to be given special training on Islamic inheritance law in order to be able to carry out their functions as normative mediators who are not only administratively responsible, but also ethically and substantively. In addition, religious courts can develop a standard assessment model for notarial wills so that decisions are more consistent and provide legal certainty. Further research also needs to be carried out to refine the integrative concept between national law and sharia so that in the future disputes related to wills can be minimized, and the community obtains more fair, preventive, and sustainable legal protection.

5. Speech Thank You

This section contains sayings accepting love from sponsors, fund donors, resource persons, or parties urgently involved in the implementation study

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