

**DASAR PERTIMBANGAN HAKIM DALAM MENETAPKAN PEMBERIAN
WASIAT YANG MELEBIHI SEPERTIGA DARI HARTAWARISAN KEPADA
LEMBAGA KEAGAMAAN KETIKA TERDAPAT
AHLI WARIS *DZAWIL ARHAM***

**(Studi Putusan Nomor 329/Pdt.G/2020/PA.Batg Jo. Putusan Nomor
82/Pdt.G/2021/PTA.Mks Jo. Putusan Nomor 34K/Pdt.G/2022)**

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INTISARI

Tujuan penelitian ini adalah untuk menganalisis kedudukan ahli waris *dzawil arham* dalam hukum kewarisan Islam, dan untuk menganalisis kesesuaian pertimbangan hakim Pengadilan Agama Bantaeng Nomor: 329/Pdt.G/2020 Jo Pengadilan Tinggi Agama Makassar Nomor: 82/Pdt.G/2021/PTA.Mks Jo Putusan Mahkamah Agung Nomor 32K/Pdt.G/2022 dalam memutus pemberian wasiat yang melebihi sepertiga dari harta warisan kepada lembaga keagamaan ditinjau berdasarkan Kompilasi Hukum Islam, Yurisprudensi dan fikih.

Penelitian ini merupakan penelitian hukum yuridis normatif, data yang digunakan berasal dari data sekunder. Pengumpulan data dilakukan melalui penelitian kepustakaan dan wawancara kepada narasumber. Setelah data terkumpul diolah dan dianalisis dengan cara metode kualitatif. Data tersebut selanjutnya ditarik kesimpulan dengan metode deskriptif dari rumusan masalah yang ada.

Berdasarkan penelitian yang telah dilakukan, penulis menyimpulkan bahwa kedudukan ahli waris *dzawil arham* sebagai berikut, dalam KHI dan Buku II MA tidak diatur secara jelas mengenai siapa ahli waris *dzawil arham*, berapa bagiannya dan siapa ahli waris yang menghibahnya. Beberapa ahli waris dalam Pasal 175 masuk dalam klasifikasi *dzawil arham* menurut ketentuan fikih. Hal ini berbeda apabila dikaji dari putusan pengadilan dan fikih yang mengatur secara jelas siapa ahli waris *dzawil arham*, berapa bagiannya dan siapa ahli waris yang menghibahnya. Pertimbangan hakim dalam memutus pemberian wasiat yang melebihi sepertiga dari harta warisan kepada lembaga keagamaan tidak sesuai dengan ketentuan Pasal 201 Kompilasi Hukum Islam.

Kata Kunci: *Dzawil Arham*, Lembaga Keagamaan, Wasiat

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**A TESTAMENT IN WHICH MORE THAN A THIRD OF THE
INHERITANCE IS FOR A RELIGIOUS ORGANIZATION WHEN
THERE IS A *DZAWIL ARHAM* HEIRS**

**(A study of Decree Number 329/Pdt.G/2020/PA.Batg *juncto* Decree Number
82/Pdt.G/2021/PTA.Mks *juncto* Decree Number 34K/Pdt.G/2022)**

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ABSTRACT

The goal of this study is to analyse the position of *Dzawil Arham* heirs in Islamic Law of Inheritance and to analyse the appropriateness of the Bantaeng Religious (Islamic) Court judge's consideration Number 329/Pdt.G/2020 *juncto* Makassar Religious High Court Number 82/Pdt.G/2021/PTA.Mks *juncto* Supreme Court Decree Number 32K/Pdt.G/2022 in a verdict of grant of probate that is more than a third of the inheritance for a religious organization viewed in accordance with Islamic Law Compilation, jurisprudence and Fiqh.

This study is a normative legal study. The data used derive from secondary data. Data collection is done through a library research and interviews with resource persons. After data is collected, it is processed and analysed by qualitative method. Then it is concluded using descriptive method from the formulation of existing problems.

Based on the study which has been done, author concludes that the position of *dzawil arham* heirs is as follows: in KHI and second book of MA, there are no clear rules about who *dzawil arham* heirs are, how much their share of inheritance are, and who are heirs preventing them from inheritance. Some of the heirs in article 175 are included in the *dzawil arham* classification according to the provisions of fiqh. This situation is different from the point of view of religious court decision and Fiqh, where it is regulated clearly who *dzawil arham* heirs are, how much their share of inheritance are, and who are heirs preventing them from inheritance. Judge's consideration in ruling the grant of probate that contains a testament in which more than a third of the inheritance to a religious organization is not in accordance with the provision of Article 201 of Islamic Law Compilation.

Keywords: *Dzawil Arham*, Religious Organization, Testament

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