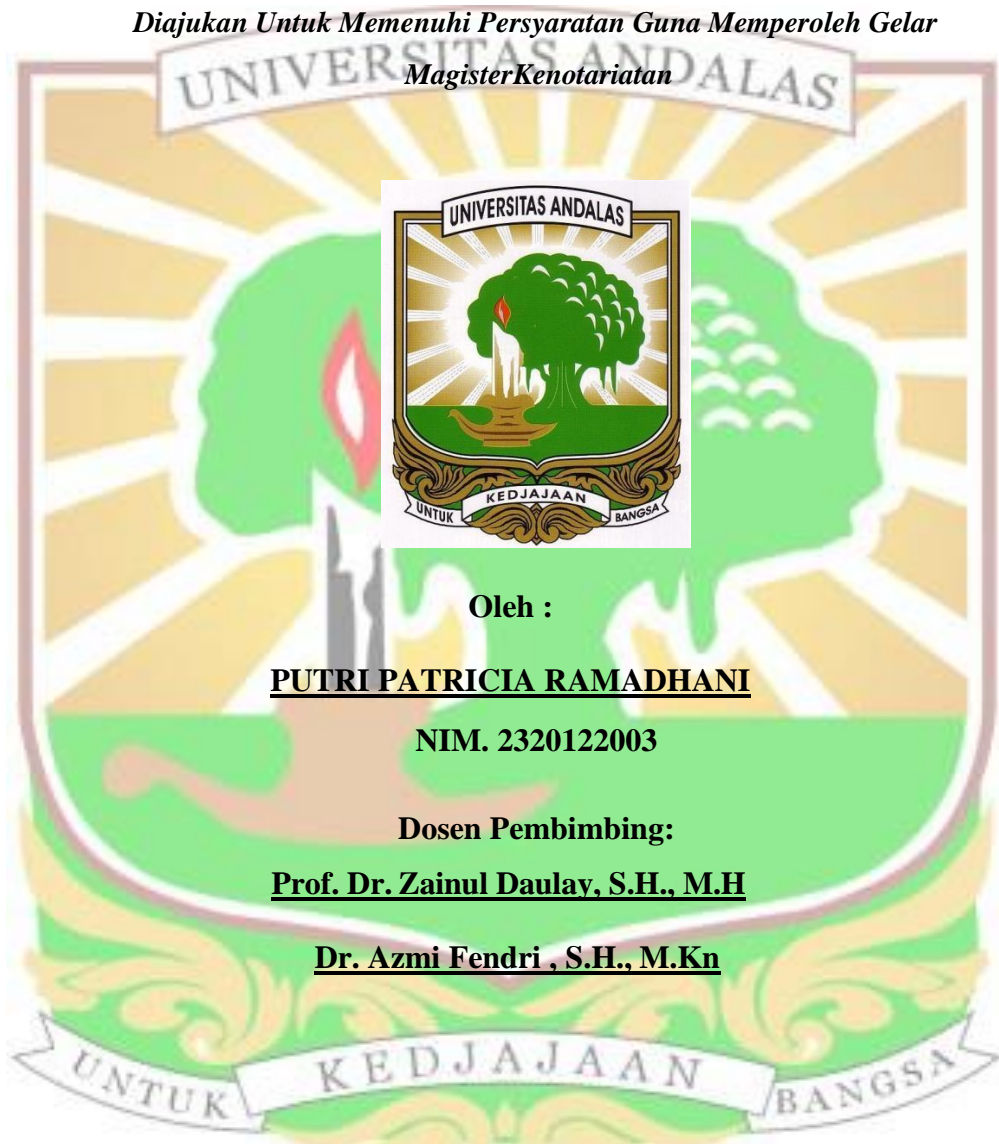


TESIS

**KEPASTIAN HUKUM WASIAT LISAN DALAM HUKUM ISLAM
(Studi Berdasarkan Putusan Nomor 196/Pdt.G/2016/PA.Tkl Dan Putusan
Nomor 111/Pdt.G/2017/PTA.Mks)**

*Diajukan Untuk Memenuhi Persyaratan Guna Memperoleh Gelar
Magister Kenotariatan*



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ABSTRAK

Wasiat Lisan Dalam Perspektif Hukum Islam memiliki kedudukan hukum yang sah sepanjang memenuhi rukun dan syarat syar'i. Namun, keberlakuannya kerap menimbulkan permasalahan akibat ketidakjelasan identitas penerima, ketidakpastian keaslian ucapan pewasiat, serta lemahnya kekuatan pembuktian saksi, sehingga memunculkan ketidakpastian hukum dan menimbulkan Akibat hukum. pada prinsipnya akibat hukum berupa berpindahkannya hak atas harta yang diwasiatkan kepada pihak yang ditunjuk yang memenuhi syarat, unsur-unsur syar'i terbukti secara sah atau tidaknya wasiat lisan. Rumusan masalah dalam penelitian ini adalah: 1. Bagaimanakah Kedudukan Hukum Wasiat Lisan Dalam Hukum Islam, 2. Bagaimanakah Akibat Hukum Wasiat Lisan Dalam Hukum Islam? Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan peraturan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa KHI memberikan ruang bagi keberlakuan wasiat lisan sepanjang memenuhi syarat-syarat syar'i, seperti kejelasan pihak yang berwasiat, objek wasiat, penerima, serta adanya saksi. Namun demikian, aspek pembuktian menjadi faktor penentu yang sering menimbulkan ketidakpastian hukum dalam praktik peradilan. Putusan tingkat pertama menolak keberadaan wasiat lisan karena dianggap tidak memenuhi unsur kejelasan penerima, sedangkan putusan tingkat banding menerima wasiat tersebut setelah menilai bahwa maksud pewasiat dapat dipahami melalui syarat yang digantungkan (ta'liq) dan terbukti dilaksanakan oleh penggugat **keberlakuan akibat hukum dari wasiat lisan sangat ditentukan oleh kekuatan pembuktian serta kesesuaian dengan prinsip keadilan dan kemaslahatan.** Penelitian ini menyimpulkan bahwa ketidakseragaman penilaian pembuktian wasiat lisan berpotensi menimbulkan ketidakpastian hukum dan akibat hukum bagi ahli waris. karena itu, penggunaan akta otentik dipandang sebagai instrumen penting untuk menjamin kepastian dan perlindungan hukum, serta meminimalisir sengketa waris di kemudian hari.

Kata kunci: Wasiat lisan, Kepastian hukum, Akibat Hukum, Hukum Islam

ABSTRACT

LEGAL CERTAINTY OF ORAL WILLS IN ISLAMIC LAW (STUDY BASED ON DECISION NUMBER 196/PDT.G/2016/PA.TKL AND DECISION NUMBER 111/PDT.G/2017/PTA.MKS)

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Oral Wills in the Perspective of Islamic Law have a valid legal standing as long as they fulfill the pillars and requirements of sharia. However, their validity often causes problems due to the unclear identity of the recipient, the uncertainty of the authenticity of the testator's statement, and the weak strength of the witness's evidence, thus giving rise to legal uncertainty and giving rise to legal consequences. In principle, the legal consequences are in the form of the transfer of rights to the assets bequeathed to the designated party who fulfills the requirements, the elements of sharia are proven legally or not the oral will. The formulation of the problem in this study is: 1. What is the Legal Position of Oral Wills in Islamic Law, 2. What are the Legal Consequences of Oral Wills in Islamic Law? This study uses a normative juridical research method with a statutory regulatory approach, a case approach, and a conceptual approach. The results of the study indicate that the KHI provides space for the validity of oral wills as long as they fulfill the sharia requirements, such as the clarity of the willed party, the object of the will, the recipient, and the presence of witnesses. However, the evidentiary aspect is a determining factor that often creates legal uncertainty in judicial practice. First-instance decisions reject the existence of oral wills because they are deemed not to fulfill the element of clarity of recipients, while appellate decisions accept the will after assessing that the will's intent can be understood through the conditions imposed (ta'liq) and proven to be implemented by the plaintiff. The validity of the legal consequences of oral wills is largely determined by the strength of the evidence and its compliance with the principles of justice and welfare. This study concludes that the lack of uniformity in the assessment of the evidentiary value of oral wills has the potential to create legal uncertainty and legal consequences for heirs. Therefore, the use of authentic deeds is seen as an important instrument to ensure legal certainty and protection, as well as minimize future inheritance disputes.

Keywords: *Oral wills, legal certainty, legal consequences, Islamic law*