

Position and Legal Consequences of Deed of Recognition of Illegitimate Children Made by a Notary

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Abstract. *This research aims to analyze: 1) The legal position of deeds of recognition of illegitimate children made by Notaries. 2) Legal consequences of the deed of recognition of illegitimate children made by a Notary. This type of research is descriptive research. The approach method used in this research is the statutory approach. This type of research falls within the scope of normative legal research. The type and source of data in this research is secondary data. obtained by literature study. The analysis in this research is prescriptive. The results of the research concluded: 1) The legal position of the deed of recognition of illegitimate children made by a notary is that the notary's position as a public official is an honorable position given by the state attributively through law to someone who is trusted. Based on Article 281 of the Civil Code which states that recognition of illegitimate children can be done with an authentic deed, if it has not been contained in the birth certificate or at the time of the marriage. However, the legal position of the deed of recognition of illegitimate children made by a notary based on Article 281 of the Civil Code is ambiguous. after the publication of Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Population Registration, which in Article 51 states that the registration of recognition of children of residents in the territory of the Unitary State of the Republic of Indonesia who are born outside of a valid marriage according to religious law or belief in God Almighty , carried out based on a court order. 2) The legal consequences of the deed of recognition of illegitimate children made by a Notary, namely the deed of recognition of illegitimate children made by a notary has important legal consequences regarding legal proof, granting children's rights, official identity of children, legal obligations of children and legal protection to child. However, based on Presidential Decree Number 96 of 2018, the deed of recognizing a child made by*

a notary is not authentic because the notary does not have the authority to make a deed recognizing an illegitimate child because the determination is made based on a court order.

Keywords: Children; Deed; Illegitimate; Status.

1. Introduction

From birth, a child has a legal status that is related to the marital status of his parents. According to positive law in Indonesia, the status of children is differentiated between legitimate descendants and illegitimate descendants. Legitimate descent is based on the existence of a valid marriage, meaning that one is a descendant of another based on birth in or as a result of a valid marriage, such children are called legitimate children. Meanwhile, illegitimate offspring are offspring that are not based on a valid marriage. People call such children illegitimate children.¹

Regarding illegitimate children, according to the Civil Code (BW), there are two types of illegitimate children, namely children born to a father and mother between people where there is no prohibition against marriage, and children born to a father and mothers who are prohibited from marrying, for reasons determined by law or if one of the fathers or mothers is married to another person. Second, children of adultery, namely children born out of wedlock, need to be recognized by their father or mother so that there is a legal relationship. Because if there is no recognition then there is no legal relationship. So even if a child is clearly born to the mother, the mother must firmly acknowledge the child. Otherwise there is no legal relationship between mother and child.²

Article 1868 of the Civil Code requires that in order for a deed to have the power of authentic evidence, it must be made by an authorized public official. So not everyone can or may make an authentic deed, but only public officials are authorized by law to make authentic deeds.³ A deed made before a notary is called a notarial deed, or authentic, or authentic deed. The existence of Notarial deeds in legal countries, especially Indonesia, has a crucial function. The

¹J. Satrio, 2000, Family Law Concerning the Position of Children in the Law, Citra Aditya Bakti, Bandung, p. 5.

²Ali Afandi, 1997, Inheritance Law, Family Law, Evidence Law, Reneka Cipta, Jakarta, p.145

³Maslikan, Sukarmi, Notary's Authority in Making Authentic Deeds Relating to Cooperation Contracts, Journal of Deeds, Volume 5 Number 2 March 2018, p.15

recognition of Notarial deeds as deeds that have perfect evidentiary power makes the position of Notarial deeds the first and foremost means of evidence in civil evidentiary law, so that their existence also needs to be regulated in such a way so that the evidentiary power of the notarial deed does not become a bomboerang for the parties who made it.⁴

A notary is a state official who is given authority by the state to provide servicestocommunity in the field of civil law, especially in matters of entering into agreements, and matters relating to the issuance of notarial deeds which are authentic deeds.⁵ The journey of notaries in Indonesia has developed in accordance with the development of the Indonesian state and nation. Contemporary Indonesian history records that in the reform era there were quite significant changes in notarial institutions. This change was marked by the success of the Reform Order government in promulgating Law Number 30 of 2004 concerning the Position of Notaries (UUJN), which was then updated with Law Number 2 of 2014.⁶ Based on UUJN, Notaries are intended to help and serve people who need authentic written evidence regarding circumstances, events or legal actions. Notaries as public officials have the authority to make authentic deeds, including regarding all deeds and agreements as regulated in Article 15 UUJN.⁷

Constitutional Court Decision Number 46/PUU-VIII/2010, is a form of the state's presence in protecting the position of illegitimate children, so that they can obtain civil rights from their parents. The role of a notary in making a deed of recognition of an illegitimate child is based on Article 281 of the Civil Code which states that recognition of an illegitimate child can be done with an authentic deed, if it has not been included in the birth certificate or at the time of the marriage. The role of the Notary regarding deeds of recognition of illegitimate children can be seen that the Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws contained in article 1 paragraph (1) of the Law Number 2 of 2014 concerning Notary Positions. The role of the notary in making deeds of

⁴Nawaaf Abdullah, Munsyarif Abdul Chalim, Position and Authority of Notaries in Making Authentic Deeds, *Journal of Deeds*, Volume 4 Number 4 December 2017, p.657

⁵GHS Lumban Tobing, 2001, *Notary Position Regulations*, Erlangga, Jakarta, p.2.

⁶Rita Permanasari, Akhmad Khisni, Legal Immunity for Notaries Who Reveal Secrets, *Position, Deed Journal*, Volume 5 Number 2 March 2018, p.26

⁷Dicky Ardiansyah, Anis Mashdurohatun, and Munsharif Abdul Chalim, Making an Authentic Deed of Distribution of Land Inheritance by a Notary, *Journal of Deeds*, Volume 8 Number 1, March 2021 p.27

recognition of illegitimate children has become confused with the issuance of Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Population Registration, which in Article 51 states that Registration of recognition of children of residents in the territory of the Unitary State of the Republic of Indonesia who are born outside a valid marriage according to religious law or belief in God Almighty, is carried out based on a court order. This condition indicates the importance of clearly understanding the position and legal consequences of a deed of recognition of an illegitimate child issued by a notary.

2. Research Methods

The approach method used in this research is the statutory approach. This type of research falls within the scope of normative legal research. The type and source of data in this research is secondary data. obtained by literature study. The analysis in this research is prescriptive.

3. Results and Discussion

3.1. Legal Position of Deed of Recognition of Illegitimate Children Made by a Notary

In carrying out his office, a notary must act as a guide in the field of law and be able to provide useful instructions for people who have an interest in him. Notaries are not subject to regulations from the authorities regarding civil servants, however, in carrying out their position, notaries must always be based on high moral integrity and honesty, because deeds made by notaries are state documents that must be maintained and are very important in implementing the law. proof, namely as authentic evidence that concerns the interests of justice seekers. A notary is usually considered an official from whom one can obtain reliable advice. Everything written and stated is true. A notary is a powerful document maker in a legal process.⁸

The position of a notary as a public official is an honorable position given by the state attributively through law to someone it trusts. As a public official, a notary is appointed by the minister, based on Article 2 UUJN, by appointing a notary he can carry out his duties freely, without being influenced by executive bodies and

⁸Tan Thong Kie, 2001, *Miscellaneous Notary Practice*, Ichtiar Baru, Jakarta, p.30

other bodies and can act neutrally and independently. The task of a notary is to carry out some of the public functions of the state and work to serve the public interest, especially in the field of civil law, even though the notary is not a civil servant who receives a salary from the state.⁹

The role of the Notary is very preventive regarding legal problems that occur in society, therefore by making an authentic deed which has legal certainty, we hope to provide the best legal services for the community. With this, the public will also return to the need for other legal certainty.¹⁰ The presence of a Notary plays an important role in legal traffic, especially in relation to the production of authentic written evidence. This aims to guarantee justice, legal certainty, order and legal protection needed by the community regarding written evidence that has an authentic nature regarding circumstances, events or legal acts as mandated in Article 1868 of the Civil Code, namely an authentic deed, namely an a deed made in the form prescribed by law by or before a public official authorized to do so in the place where the deed was made.¹¹

Based on Philipus M. Hadjon's theory of authority, the authority of a Notary in carrying out his duties as a public official is authority obtained by attribution and is normatively regulated in the UUJN. The authority of a Notary does not come from other government institutions, but rather authority is based on and granted by law. Therefore, the authority possessed by a Notary is attribution authority. This can be seen in Article 2 UUJN which states that: "Notaries are appointed and dismissed by the Minister." The Minister in question is the Minister who carries out government affairs in legal matters. A notary is a public official who is given authority by the State in the form of UUJN to make authentic deeds as evidence that has perfect evidentiary power through legal regulations to serve the public in providing legal certainty and protection, especially in the field of Civil Law which is specifically regulated in UUJN.¹²

⁹Rizki Nurmayanti, Akhmad Khisni, Roles and Responsibilities of Notaries in the Implementation of Cooperative Deeds, *Deed Journal*, Vol. 4 No. 4 December 2017, p.611

¹⁰Anak Agung Istri Intan Argyanti Nariswari, Putu Tuni Cakabawa Landra, The Role of Notaries in Obtaining Recognition of Limited Liability Company Legal Entities Through the Legal Entity Administration System (SABH), *Journal of Notarial Law*, Vol. 5 No. 3 December 2020, p.604

¹¹Lumaria, Legal Protection for Notaries After the Enactment of Law Number 2 of 2014, *Student Scientific Journal*, University of Surabaya Vol.4 No.1 (2015), p.2

¹²Siska Novista, Notary-PPAT Responsibilities in Issuing Covernotes, *Legal Thesis*, Indonesian Islamic University Yogyakarta 2018, p. 13

One of the powers of a notary in making authentic deeds is based on Article 281 of the Civil Code which states that recognition of illegitimate children can be done with an authentic deed, if it has not been included in the birth certificate or at the time of the marriage. The role of the Notary regarding deeds of recognition of illegitimate children can be seen that the Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws contained in article 1 paragraph (1) of the Law Number 2 of 2014 concerning Notary Positions.

The term illegitimate child or natural child (*natuurlyke kinderen*), is used in two meanings, namely the broad meaning and the narrow meaning. In a broad sense, illegitimate children include adulterous (*overspelige kinderen*) or incestuous (*bloedschennige kinderen*) children, while in a narrow sense it does not include adulterous and incestuous children.¹³The term illegitimate child is not explicitly mentioned in Marriage Law No. 1 of 1974. Article 42 only emphasizes the status of a legitimate child. So in this context the logic (*argumentum a contrario*) is used that illegitimate children are children who were not born in or as a result of a valid marriage.

Based on Article 281 of the Civil Code which states that recognition of illegitimate children can be done with an authentic certificate, if it has not been provided in the birth certificate or at the time of the marriage. The role of the Notary regarding deeds of recognition of illegitimate children can be seen that the Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws contained in article 1 paragraph (1) of the Law Number 2 of 2014 concerning Notary Positions.

An illegitimate child can experience a change in status from illegitimate to legitimate through recognition and validation. Recognition of illegitimate children is the recognition of children resulting from relationships outside of marriage legally by the father. The recognition of the child can be stated in a Notarial Deed or in a Birth Certificate or a Deed made by a civil registry official or it is also possible in the marriage certificate itself. As stated in the Civil Code, illegitimate children can be recognized in two ways, namely voluntarily and by force. If it has been legalized, apart from the legal relationship with the person who legalized it, the child also has a legal relationship with the family who

¹³Martiman Prodjohamidjojo, 2002, Indonesian Marriage Law, PT. Immortal, Cet. I, Jakarta, p. 57-58

validated it. Legalizing the child is a legal effort (rechts middle) to give the child the position (status) of a legitimate child.

However, the legal position of the deed of recognition of an illegitimate child made by a notary based on Article 281 of the Civil Code has become ambiguous after the issuance of Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Resident Registration, which in Article 51 states that the registration of recognition of Resident children in the territory of the State Unity of the Republic of Indonesia which is born outside a valid marriage according to religious law or belief in God Almighty, is carried out based on a court decision. Article 50 paragraph (1) of Presidential Decree Number 96 of 2018 states that the registration of child validation for Indonesian citizens in the territory of the Unitary State of the Republic of Indonesia must meet the following requirements:

1. Birth certificate excerpt.
2. Excerpt from the marriage certificate which explains that the event of a religious marriage or belief in the Almighty God occurred before the birth of the child.
3. Sis parents.
4. E-KTP.

The general procedure for obtaining a court order is to submit an application to the local District Court accompanied by supporting evidence and pay a certain amount of money as a down payment for court costs. Next, the court will schedule a trial, the trial will be presided over by a single judge. The trial is relatively shorter, where the first trial is the reading of the petition, the second trial is evidence of letters and witnesses (at least 2 people), the third trial is the conclusion, and the fourth trial is the reading of the determination.

Based on Presidential Decree Number 96 of 2018, the status of child recognition deeds made by notaries is not authentic because notaries are not authorized to make recognition deeds of illegitimate children based on Presidential Decree Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, Article 51 paragraph 1 that Making a deed recognizing an illegitimate child must be made with a court order.

3.2. Legal Consequences of the Deed of Recognition of Illegitimate Children Made by a Notary

The problem of illegitimate children is an issue that is still very important and controversial in the life of Indonesian society. The lack of understanding regarding the meaning of illegitimate children has created confusion among the legal community, especially amidst the proliferation of information circulating in various media, especially online media, which could possibly trigger unrest.¹⁴

Regarding children out of wedlock, according to the Civil Code (BW), there are two types of children out of wedlock, namely the first are children born to a father and mother between people where there is no prohibition against marriage, and children born to father and mother who are prohibited from marrying, for reasons determined by law or if one of the father or mother is married to another person. Second, children of adultery, namely children born out of wedlock, need to be recognized by their father or mother so that there is a legal relationship. Because if there is no recognition then there is no legal relationship. So even if a child is clearly born to the mother, the mother must firmly acknowledge the child. Otherwise there is no legal relationship between mother and child.¹⁵

The legal strength of the birth certificate of an illegitimate child is that the birth certificate of an illegitimate child only includes the name of the mother so that the child can have the same legal status as a legitimate child, hence there is recognition and validation. Recognition of illegitimate children is the recognition of children resulting from relationships outside of marriage legally by the father. This can be done by both the mother and father. However, recognition is not the same as endorsement. Children resulting from relationships outside marriage will not immediately become legitimate children just through recognition. It can be declared valid if the marriage between the two parents can be consummated. Then the child can be recognized legally or through the marriage certificate itself. The implementation of this recognition can be assisted by a deed that has been prepared by an employee of the Population and Civil Registration Office which must then be made a note in the child's birth certificate. With someone's

¹⁴Muhammad Sidiq and Akhmad Khisni, *The Role of the Notary in the Distribution of Inheritance to Illegitimate Children Seen from Property and Inheritance Law and Western Inheritance Law*, *Journal of Deeds*, Volume 4 Number 2, p.213

¹⁵Sandra Bowontari, 2019, *Recognition and Legalization of Children Out of Wedlock and Their Legal Consequences*, *Lex Privatum*, Volume VII, Number 4, p.6

recognition of an illegitimate child, a civil legal relationship with the illegitimate child arises. However, not all illegitimate children can be recognized by their father or mother. Children born as a result of adultery with indiscriminate funds cannot possibly be recognized because it is contrary to morality (Article 283 of the Civil Code). However, there is an exception to this in Article 273 of the Civil Code which states that the legalization of the status of a discordant child can be achieved through acknowledgment in the marriage certificate of both parents that dispensation from the President has been obtained for the marriage (Article 283 in conjunction with 273 of the Civil Code).¹⁶

The deed of recognition of an illegitimate child made by a notary has important legal consequences:

1. Legal Proof

The deed is legal evidence that recognizes the relationship between parents and children born outside of marriage. This can be used as legal evidence to strengthen the recognition of the relationship between parents and children in the eyes of the law.

2. Granting Rights

This document becomes the administrative basis that allows children to obtain certain rights such as inheritance rights, education, health care and social assistance that should be had by recognized children.

3. Official Identification

The Deed of Recognition of Illegitimate Children helps in establishing the child's official identity in the eyes of the law. This plays an important role in obtaining official documents such as a birth certificate that lists the parents who acknowledge the child.

4. Legal Obligations

¹⁶Dewa Ayu, 2021, Legal Strength of the Birth Certificate of an Illegitimate Child, *Journal of Legal Interpretation*, Volume 2 Number 3, p.499

Recognition of illegitimate children also carries legal obligations for the recognizing parents. For example, the obligation to provide financial support and protection to the child.

5. Legal protection

This document provides legal protection to children regarding family relationships and their rights related to parental recognition. However, if a dispute or conflict arises regarding such recognition, legal proceedings may be required to resolve the issue.

As stated in the Civil Code, illegitimate children can be recognized in two ways, namely voluntarily and by force. Voluntary recognition means that a person is the father and mother of an illegitimate child or is recognized by the mother by law even though the child is still a minor and the father must be at least 19 years old and approved by the mother as long as the mother is still alive as stated in Article 282 paragraph (2) Civil Code. In contrast to voluntary confessions, a judge's decision which is determined as a result of the birth of a child born out of wedlock is classified as a forced confession. After the acknowledgment is made, the next action is validation. With legalization, the child not only has a legal relationship with the person who legalized it, but the child also has a legal relationship with the family who legalized it. Legalization of an illegitimate child is a legal effort (*rechts middle*) to give the child the position (status) of a legitimate child. Legalization occurs with the marriage of the child's parents or with a "letter of validation", after the child is first recognized by both parents). Legalization can be done through the marriage of the parents, the child concerned or by means of letters of validation based on prior acknowledgment by the parents concerned. On the other hand, illegitimate children who cannot be recognized are adulterous children and incestuous children (article 283 of the Civil Code). Validation of illegitimate children is not possible for adulterous children, while adulterous children can do so if their parents obtain dispensation from the President to marry.

The legal consequence of a deed recognizing an illegitimate child is that a civil relationship arises between the child and the father or mother who acknowledges him. With the emergence of this civil relationship, the status of an illegitimate child changes to a recognized illegitimate child, whose position is much better than an unrecognized illegitimate child. Furthermore, after the recognition process, there is a validation process which aims to provide a legal

remedy so that the child has the status (status) of a legitimate child. The legal consequences of validation in the event that the parents are married and the validation occurs because of the marriage or because of a letter of validation from the Minister of Justice , then for those who are legalized the same provisions of the law apply, as if the child were born in marriage, which means that the child has the same position as children born during the marriage. These children obtain the status of legitimate children, not only towards their parents but also towards those parents' relatives.¹⁷

4. Conclusion

The legal consequences of a deed of recognition of an illegitimate child made by a notary, namely a deed of recognition of an illegitimate child made by a notary, has important legal consequences regarding legal proof, granting children's rights, the child's official identity, the child's legal obligations and legal protection for children. However, based on Presidential Decree Number 96 of 2018, the position of a child recognition deed made by a notary is not authentic because the notary is not authorized to make a recognition deed of an illegitimate child based on Presidential Decree Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, namely in Article 51 Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Population Registration, states that the registration of recognition of children of residents in the territory of the Unitary State of the Republic of Indonesia who are born outside of a valid marriage according to religious law or belief in God Almighty, is carried out based on a court decision.

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¹⁷J. Satrio, 2005, Family Law concerning the Position of Children in Law, Citra Aditya Bakti, Bandung, p. 184

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