

The Affidavit of Support Legally Enforceable For Foreign Citizens in Indonesia

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Abstract

This study aims to assess authorize of a notary in making affidavit deeds regard to inheritance rights for foreign citizens. Focus this study to discuss the application affidavit as evidence in court based on the dispute case of Chung Jung as a foreign citizen who demands his rights as heirs. The purpose of the discussion is to answer the problem that Indonesia has not specifically regulated affidavits which used to evidence in court. This study using the statute approach and case approach to investigate the regulations and the case related to the issues discussed. As a result, the affidavit deed made by the Indonesian Notary does not have the power to resolve dispute, it is used as complementary evidence. Claims using affidavit deed as single evidence have no legal strength power in court.

Keywords: Affidavit; Authentic Deed; Notary; Civil Cases; Foreign Citizens.

Abstrak

Artikel ini bertujuan untuk membahas mengenai kewenangan notaris dalam membuat akta affidavit berkaitan dengan hak waris bagi warga negara asing. Fokus dalam penelitian ini membahas mengenai penggunaan affidavit sebagai pembuktian di pengadilan dalam kasus sengketa Chung Jung sebagai warga negara asing yang menuntut haknya sebagai ahli waris. Pembahasan selanjutnya digunakan untuk menjawab permasalahan bahwa dalam kenyataannya belum ada regulasi khusus yang mengatur affidavit yang digunakan untuk pembuktian di pengadilan. Penelitian menggabungkan statute approach dan case approach untuk menelaah regulasi dan kasus yang berkaitan dengan isu yang dibahas. Hasilnya, akta affidavit yang dibuat oleh notaris di Indonesia tidak bisa menjadi alat bukti kuat untuk menyelesaikan kasus sengketa sebab hanya bisa digunakan sebagai alat bukti pelengkap. Tuntutan dengan bukti tunggal akta affidavit tidak memiliki kekuatan hukum yang kuat dalam pengadilan.

Kata kunci: Surat Pernyataan; Akta Otentik; Notaris; Kasus Perdata; Warga Negara Asing.

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Introduction

The task of the notary is to combine the legal relationship between the parties in a written form and a certain format, called an authentic deed. He is the author of the document that has strong power as a legal process (Adjie, 2008). The duties and authority of a notary from Regulation Notary are to create a deed, legalized deed, and create an authentic deed. In practice, the notary has also legal discovery experts and legal counsel (Hendra, 2012). One form of deeds made by a notary is an affidavit, based on one of the Notary Public authorities for judicial needs. (Marbun, 2012).

The contents of the affidavit contain witness statements related to what he saw and knew about a case or incident. However, an affidavit cannot be categorized as witness statements because according to the Supreme Court Decision Dated January 10, 1958, No. 38 K/Sip/1954 explain that the witness oath on written

statements cannot be equated with witness oath in front of the Judge. An Affidavit is not classified as evidence in court because it is direct evidence.

This is in line with the Yu Chun Jung dispute case which used affidavit No. 3 Dated April 14, 2015, made by Notary Tumonggor, SH as evidence - stating that Yu Chun Jung is Cheng Hsiung adopted son who has the right to the object of dispute. Yu Chun Jung repeatedly brought this disputed case to court, it starting from the lawsuit against Telly Liong (first defendant) through the Palu District Court with case No. 45/Pdt.G/2017/PN.Pal which was completely rejected. Chung Jung then appeals made pursuant through Decision No. 88/PDT/2019/PT PAL was finally granted his claim partially.

Yu Chun Jung's mistake has submitted a lawsuit to the defendant and co-defendants regarding Wang Cheng Hsiung owned shares and company assets at Formosindo Wangi Abadi Corporate (second defendant), Formosa Mamboro Pesona Permai Corporate (third defendant), Alisindo Mamboro Permai Corporate (fourth defendant), and Wang Cheng Hsiung salary at Formosa Mamboro Permai Corporate (third defendant) - which should an internal matter of the company through the general meeting of Shareholders. Supposedly Plaintiff filed a lawsuit against the defendants separately based on the Supreme Court Decision No. 415K/Sip/1975 Dated June 20, 1979. Therefore, the defendant exception is legally grounded and accepted.

The use of an affidavit shows that the deed was not a court product - it does not support the plaintiff's claims. It leads to the rejection of the claims against the defendant who is the unofficial wife of Wang Cheng Hsiung and other shareholders.

This case required further study on how a foreign is rejected by the court with an affidavit as evidence, which clearly shows that the plaintiff is the heir of Cheng Hsiung wealth accompanied by witnesses therein. How affidavit deed capable of being a legal basis to protect the rights of foreign citizens.

In this study, an affidavit deed is not widely known in the service of a notary deed, so the authors are interested to investigate the strength of affidavit deed for foreign citizens in Indonesia. This research was used to expand the knowledge of the authority in affidavit deed of inheritance for foreign nationals in terms of the Constitution about Notary.

Research Problems

Based on the background description above, a problem research taken as follows:

1. How is the authority of a notary in a deed notary's affidavit of inheritance for foreign citizens in Indonesia?

2. How is the legal power of affidavit deed for foreign citizens in Indonesia?

Research Method

This study based on normative juridical research used legal positivism, that the laws sustainable to the written rules created by institutions or authorities. The approach used in this research is a statute approach and case approach. Statute approach taken to assess all laws and regulations related to the legal issues being discussed. The case approach is carried out by examining cases related to the issue - which has become judicial decisions that have legal force (Soekanto, 2010).

There are 3 types of legal materials used, that is primary legal materials consisting of statutory regulations, official notes, and judicial decisions. Then, secondary legal material consists of books about the law and the classical views of high qualification scholars. Last, tertiary legal material to give clarifications based on primary and secondary material (Soekanto, 2010). In this study, tertiary legal materials used KBBI, Law Dictionary, and Encyclopedia.

Legal materials analyze in a qualitative normative, by interpreting data based on the theories of jurisprudence (Soemitro, 1983). In this study, I try to assess a rule of discretion in explanation the legislation or the constituent texts. Furthermore, conclusions are a response to problems studied.

The analytical method used in this study is the normative qualitative. Obtain data presented in the form of normative qualitative – the descriptions arranged systematically. Data I used are statutory rules, explanatory sentences, and theories collected from literature or books, legal documents, and other laws. Analyzed data is important to arrive at conclusions.

Discussion

Legal Basis of the Affidavit

Black's Law Dictionary explains that an affidavit is a written or printed declaration or statements of facts, made voluntarily, and confirmed written by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath (Black, 1968). According to the article 1866 Civil Law about types of evidence - describe that affidavit classified as written evidence, because it has physical form.

The legal system in Indonesia has regulated affidavits in Law Constitution No. 12, 2006, about citizenship, Government Regulation No. 2, 2017, and Ministerial Regulation of Justice and Human Rights Ministry No. M.01-HL.03.01, 2006, as an immigration facility provided for children was born from marriages between Indonesian citizens and foreigners who are not yet 18 years old or unmarried.

If the child is using the passports of foreign nationals, then the child will be given an affidavit deed to explain that he is the subject of the Constitution concerning Citizenship. The affidavit is used when the child visits and lives in Indonesia for a certain time as a limited Indonesian citizen. This affidavit is only valid for one visit. Affidavit documents legalized by the notary, in practice can be accepted in the country concerned.

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Chronology of the Case

Yu Chun Jung is the adopted son of Wang Cheng Hsiung who is a foreign national of Taiwan, the Republic of China, and chooses a place to live on Teluk Palu Street BTN Palu Bay, D 1 No. 08 Ex. Mantikulore, East Palu City of Palu, Central of Sulawesi. According to the study of Handar Subhandi Bakhtiar (2017) the adoption by an unmarried person is also allowed or called with a single adoption, provided that the adoptive parent has a job and a steady income.

Then, Wang Cheng Hsiung married Telly Liong unofficially as an Indonesian citizen and lived together from 1989 to 2011 and of the marriage did not have children. After getting married, the two of them decided to stay in Indonesia to set up a company and run it, namely Formosindo Wangi Corporate and Formosa Mambaro Pesona Permai Corporate. In its effort, finally successful and acquire assets/plots of land were later disputed.

Based on the agreement letter made by Wang Cheng Shiung and Telly Liong – witnessed by the plaintiff, there was an agreement to sell assets. Afterward, Wang Cheng Hsiung had a stroke for 5 years and was treated by Yu Chun Jung until he died in 2016.

Furthermore, based on the Death Certificate, Wang Cheng Hsiung appointed the plaintiff as executor testament his assets – it is still controlled by the defendant/Telly Liong.

Yu Chun Jung demanding part of the proceeds selling of Wang Cheng Hsiung assets based on the Notary Deed made by Tumonggor about the inheritance grant that has been given. Yu Chun Jung/Plaintiff is an adopted son from Wang Cheng Hsiung since 1970 – the plaintiff was a child that day. Wang Cheng Hsiung appointed Yu Chun Jung as his heir and attended by several witnesses. Yu Chun Jung was appointed to manage and control the property owned by Wang Cheng Hsiung in Indonesia. He is entitled to receive for the sale of the company's wealth of Formosa Mamboro Pesona Permai Corporate and all the land assets (immovable property). He is entitled to receive for the sale of the company's wealth of Formosa Mamboro Pesona Permai Corporate and all the land assets (immovable property). Transfer of holdings must depend on the deed signed by the Plaintiff to represent Wang Cheng Hsiung as the heir.

In my opinion, a law in Indonesia – especially the Constitution about the Position of Notary Public has not specifically regulated the Notary's authority in making affidavit deeds for foreign citizens in Indonesia.

In conclusion, an affidavit deed is written evidence that it has elements of other evidence in the form of witness and oath. The authority to take oaths is the jurisdiction of the court.

1. The Authority of Notary in Making Affidavit of Inheritance For Foreigners in Indonesia

The notary is a public official authorized to make authentic deeds as stated in Article 1868 Civil Law. Notary handled of State authority in the field of civil law to serve the interests of the people who need legal documents recognized by the country. Authenticity notary deed not only a paper but the deed made in front of him as a public official who has the power to make it. In the other words, the deed made by a notary is authentic not because of regulations - but the deed made by or in front of him (Adjie, 2014). The notary is a symbol of a civil legal guarantee (Budiono, 2015).

According to the study of Endah Puspita Sari et al, says that to prove the existence of legal act that has occurred needs strong evidence of proof. Analyzed from the theory of authentic deed proof, a statement made by a notary containing witness statements who describe about a thing or event that occur related to the disputed event without an oath and being used as evidence in

court. Then, fulfills the requirements for the strength of authentic deed evidence, namely the strength of evidence.

The use of authentic deeds in dispute cases is still decided based on the authority of the judge. It takes a variety of compatibility between the evidence with one another to be able to arrive at a decision. It supported by various regulations that apply in Indonesia.

In Indonesia, making an affidavit deed has not been regulated in positive law. Constitution No. 2, 2014 - Amendments of Constitution No.30, 2004 about position notary has not specifically regulated authority of his in making an affidavit of inheritance for foreign citizens in Indonesia. The regulations only explain that notary has the authority to make an authentic deed of actions, agreements, and stipulations required by regulations.

Affidavit deed is written evidence included elements evidence on it namely witnesses and oaths. This statement a weakness of the notary in making the affidavit because he does not have the authority to take an oath – it only taken by the court. If people ask the notary to make an affidavit, he does not yet have the authority. It will be written statements explaining some events that are known by the people called witnesses.

2. Legal Power of Foreign Citizen Inheritance Affidavit Deed in Indonesia

Article 164 of HIR explains that the regulations to determine the evidence as a civil case settlement process must consist of written evidence, witness evidence, suspicion, confession, oath, local examination, and expert witness. The power to bind the evidence is different because some evidence has the power to bind the judge and other evidence is left entirely to the authority of the judge.

Before determining the strength of an affidavit deed of inheritance for foreign citizens, I try to examine the form and the content - whether the affidavit deed is included as evidence or not. If it is not, then an affidavit in the category of evidence which. This is important to unravel the legal force of the foreign citizens in Decision No. 9/PDT/2019/PT PAL.

The most important evidence in civil cases is written evidence or letters. If there is no written evidence, then people must prove the event through a witness who has seen or knows the event themselves. If it is impossible to present witnesses, must prove with other events that have a close relationship with the previous event, then the judge will conclude. It is called conjecture, proof with suspicion called indirect evidence because that is no physical proof.

Article 1866 Civil Law about types of evidence means that affidavits are classified as written evidence. The affidavit contains witness statements related to what he saw and knew about a thing or event. The statements take with an oath and fact from a witness. The affidavit must contain common-sense truth.

Affidavit deed No. 3 Dated April 14, 2015, made by Notary Tumonggor, SH explains that Yu Chun Jung as the plaintiff is the adopted son of Wang Cheng Hsiung who has the right to inherit Cheng Hsiung's inheritance. It also explains that Yu Chun Jung has legally adopted son since 1970 when he was a child. It is attended by several witnesses who reveal that Yu Chun Jung has a right to manage and control the whole of property (both movable and immovable) owned by Wang Cheng Hsiung residing in Indonesia. Yu Chun Jung was also asked to be held civil and criminal under the applicable laws.

In civil procedural law, written evidence is important compared to others. Especially at this time, whole legal actions are recorded and written in various forms of letters which are deliberately made for that (Harahap, 2005). According to Article 1866 Paragraph 1, Civil Law placed written evidence at the top. It explains the importance of written evidence in proving civil cases and itself has become evidence. Achmad Ali and Wiwie Heryani explained that the evidence was an important thing before being brought to trial. For example, Notary Deed although it has not been submitted to the court, is already evidence (Ali and Heryani, 2013).

The affidavit deed is the testimony from the witness under oath, thus whether the evidence used affidavit deed automatically becomes evidence of the oath. Oaths can be divided into three namely suppletioir oath, appraisal oath, and decisoir oath. Article 158 Paragraph 2 of HIR stipulates that an additional oath and a severing oath can only be taken in front of the opposite side or after the opposite has been properly summoned but he is not present. This is supposed to do because of the importance of oath with the intention that the opposition knows it was done (Sutantio, 2009).

Affidavit deed as Exhibit P-6 never stands alone as a legal basis. The Panel of Judges of the High Court stated that this situation was strengthened by Grant Deed No. 4 Dated 18/09/2014 which appointed the Plaintiff as the testament heir and at the same time as the Testament Executor (Exhibit P-1), this is an alternative in case affidavit still weakness to be declared an adopted son (Exhibit P-6), also authorized to sell and manage assets (Exhibit P-8), was even authorized by Telly Liong to sell assets (Exhibit P-11).

Existence of Deed No. 3 Dated April 14, 2015, made by Notary Tumonggor, SH being basis to declared that Yu Chun Jung is the adopted son and also as

Testament Heir and Executor appointed by Wang Cheng Hsiung during his life. Therefore, as an adopted son and testamentary heir claiming his rights to assets left behind. It included five disputed objects controlled by Defendant and Co-Defendants. Meanwhile, Defendant and Co-Defendants denied Plaintiff's arguments and rejected the lawsuit. They claimed that five objects of the dispute were their property and not related to Wang Cheng Hsiung or the plaintiff.

In Joyce C. Vialet (1997) study, says that the affidavit of support is a legally binding contract, and the sponsored immigrant and any public agencies dispensing means-tested benefits to the immigrant can sue the sponsor for failure to meet the obligations assumed under it. Forms I-864 (affidavit) signed by household members are also legally enforceable contracts, and sponsors can sue to enforce those contracts.

In this case, Wang Cheng Hsiung married Telly Liong unofficially because he was an Indonesian citizen to facilitate development of his assets here. Meanwhile, the citizenship status of himself and his adopted child has not changed.

As an adoption child, the affidavit deed is the basis of Chung Jung's position as heir. Heirs are people who are entitled to receive an inheritance. According to Article 832 Civil Law, heirs are people who have blood relations, both legal by law and outside of marriage as long as they are recognized, it also people who have marital ties with the testator. However, if the testator wishes people who are not related by blood or marriage ties can also being the heir.

In line with Rahmadika Safitra Edithafitri's (2017) which states that the transfer of rights from the holder to another party can occur due to a legal event, namely the death of the holder - the transfer of rights through inheritance, or because of a legal act carried out by the holder of the right with other parties.

Exhibit P-1 on Grant Deed No. 4 Dated 18/09/2014 explain that Wang Cheng Hsiung as the owner sixteen included factories, hotels, house, and land. He appointed Yu Chun Jung as heir testamentary and executor. Based on Article 875 Civil Law in conjunction with Article 938 and 939 Civil Law, Exhibit P-1 is the Openbaar Testament which containing the willingness of the giver when he later dies and the process has attended by two witnesses who known the content. If Exhibit P-1 does not revoke, it will valid until the giver die. So that Exhibit P-1 proves that Wang Cheng Hsiung owns sixteen assets either individually or in conjunction with Telly Liong. Then appointed Yu Chun Jung as testamentary heir and at the same time as executor of his assets are entitled to Yu Chun Jung later when he died.

Then completed with Exhibit P-7 in the form of Notarial Deed No. 2 Dated 11/05/2014 concerning the power to manage and sell sixteen assets included factories, hotels, houses, and land which partly or wholly owned by Wang Cheng Hsiung to Chung Jung as the Authorized Person. This is by following the opinion of R Abdul Djamali that the Openbaar Testament is a testament made by the notary in the presence of two witnesses (Djamali, 2013).

The legal strength of the Affidavit Inheritance Deed of foreign citizens in Decisions No. 88/PDT/2019/PT PAL is complementary evidence to explain a fact related to a thing or an event that occurred. An affidavit cannot stand alone to prove in court, must be assisted with other evidence. Affidavit No. 3 Dated 03/04/2015 by Tumonggor, SH explains that Plaintiff is materially and in real conditions as an adopted son of Wang Cheng Hsiung, so he is the heir who has the right to inherit Wang Cheng Hsiung's inheritance. Affidavit of Inheritance for foreign citizens in Decisions No. 88/PDT/2019/PT PAL as complementary evidence explains that Plaintiff as testament heir as well as testament executor in accordance Grant Deed No. 4 Dated 18/09/2014, it also supported by the power to manage and sell on Deed No. 2 Dated 5/11/2014 and Deed No. 2 Dated 04/06/2015 which is an authentic deed made by Notary.

Deed No. 2 Dated 04/06/2015 can prove validity as an authentic deed. If viewed from the outside, authentic deed - by following the legal rules that have been valid until proven otherwise. It means there must be people to prove that the deed is not authentic. In this case, the burden of proof is that there are parties who deny the authenticity of the deed.

On other hand, the affidavit deed of inheritance for foreign citizens in Decision No. 9/PDT/2019/PT PAL as complementary evidence explains that the Plaintiff is the testamentary heir and executor by following Grant Deed No. 4 Dated 18/09/2014. It is also supported by the power to manage and sell through Deed No. 2 Dated 05/11/2014 and Authorization to Sell through Deed No. 2 Dated 04/06/2015 which is an authentic deed made by a notary.

The implications of the Affidavit Deed of Inheritance for foreign citizens in Decisions No.9/PDT/2019/PT PAL are in the form of written Statement Deed/Affidavit No. 3 Dated 03/04/2015 made by Notary Tumonggor, SH cannot be implemented without the Grand Deed No. 4 Dated 18/09/2014. Also supported Authorization to Managing and Sell by Deed No. 2 Dated 05/11/2014 and Authorization to Sell by Deed No. 2 Dated 04/06/2015 which is an authentic deed made by Notary.

This is in line with Rifai Achmad (2020) opinion that the judge put an obligation to prove all the arguments filed by the plaintiff in a lawsuit to

determine his claim will be granted or rejected. Furthermore, if the plaintiff can only prove partially, then his claim is also partially granted. In this case, the plaintiff has only proved his claim through written statements made by Notary who had no authority to take an oath.

According to study of Greg McLawsen (2014), INA (Immigration and Nationality Act of 1952) mandates creation of the document that became the I-864 (affidavit form), which replaced the unenforceable I-134. The court's reasoning is essentially, "the I-864 could not have been unenforceable if the government accepted it, the government did accept it, therefore the Form must be enforceable". This syllogism is perhaps a bit formalist. The deeper question is whether the parties rights are fundamentally statutory or contractual in nature. The Shah court in Australia found that it would "undermine the purpose of the statute" to allow beneficiaries to waive support, but a vague reference to statutory purpose does not explain why an individual cannot waive her own private contractual rights.

If a country only focus on contractual, then the law will be weak in power as a legal basis. However, sometimes the courts are still not clear in implementing the law in determining decisions. In this case, the use of affidavit was rejected in court, affidavits are more contractual in nature - based on an agreement between the parties involved. Meanwhile, the disputed assets are in the of Telly Liong who is an Indonesian citizen.

The notary is only authorized to make an authentic deed but not to take an oath. According to Ni Kadek Ditha Angreni and I Nyoman Bagiastra (2020), that the authority to take an oath is the authority of the court. Thus making the affidavit is the authority of the District Court, taken under party to case an at least 2 (two) witnesses come to the District Court to take an oath in front of the judge. After that, the court issues the minutes of oath and affidavit. Affidavits contain facts and statements of the witness which these facts are concrete and logical, so the affidavit must contain common sense truths about an event.

The notary is only authorized to legalizes a document after the minutes of the oath from the court are issued. This is used to strengthening affidavits that has been through the process of taking an oath form the court for further processing and can be used as strong evidence in civil cases.

In line with Alan Sullivan QC (2015), that Affidavits have been around for centuries. They were the traditional means in courts of equity for the evidence in chief of a witness to be given. The Affidavit would be prepared, with due observance to the rules of evidence, then signed and either sworn or affirmed

by the witness. When the case came on for hearing (either final or interlocutory) the Affidavit would be read.

In Indonesia, the notaries are basically not oath-taking officials, so the evidence from affidavits can only serve as complementary evidence.

Conclusion

Based on the dispute case of Chung Jung who used the affidavit deed as the single piece of evidence - I noticed that the affidavit only as complementary evidence to explain some facts related to a case or an event that occurred. The affidavit cannot stand alone as evidence in court. Therefore, should be assisted by other evidence or called partial proof.

Affidavit deed by Notary shall have power if it had other evidence such witnesses and oaths. Although a notary has the authority to make authentic deeds but does not have the authority to take an oath - it is only the authority of the court. Furthermore, a notary can only make a statement that explains an event or incident that is known by other parties or a statement of a witness. The constitution regarding the authority of a notary in Indonesia has not specifically outlined in an affidavit deed of inheritance for foreign nationals in Indonesia, it only explains about immigration facilities provided.

Suggestions

The weakness in making an affidavit deed – viewed from the meaning of word affidavit, this deed is written evidence in which it has elements of other evidence, it is witnesses and oaths. Notaries do not have the authority to take an oath. The authority to take an oath is the jurisdiction of the court. If people ask the notary to make an affidavit, the notary does not yet have the authority. He can only make a statement containing a thing or event that is known by the people who asked him – called witness testimony. The notary should not make an affidavit deed because it must be done by oath and the only one who can take an oath in the court.

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