



Journal Homepage: www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI:10.21474/IJAR01/16112
DOI URL: <http://dx.doi.org/10.21474/IJAR01/16112>



RESEARCH ARTICLE

AUTHORITY OF NOTARY IN MAKING RECOGNITION DEED OF A CHILD BORN OUT OF WEDLOCK (DETERMINATION ANALYSIS OF NUMBER: 36/PDT.P/2018/PN BMS)

Angela Ester Rini¹, Tri Lisiani Prihatinah², Sulistyandari³ and Sri Wahyu Handayani⁴

1. Master Student, Faculty of Law, Jenderal Soedirman University, Indonesia.
2. Associate Professor, Faculty of Law, Jenderal Soedirman University, Indonesia.
3. Senior Lecturer, Faculty of Law, Jenderal Soedirman University, Indonesia.
4. Senior Lecturer, Faculty of Law, Jenderal Soedirman University, Indonesia.

Manuscript Info

Manuscript History

Received: 30 November 2022

Final Accepted: 31 December 2022

Published: January 2023

Key words:-

Position, Deed Of Recognition Of
Children Out Of Wedlock, Notary

Abstract

Law number 2 of 2014 concerning the Office of a Notary states that a notary has the authority to make authentic deeds. In addition, Article 281 of the Indonesian Civil Code states that the recognition of an illegitimate child can be made in the form of an authentic deed. These two rules are interconnected so that an interpretation arises that a notary has the authority to make a deed of recognition of children out of wedlock. However, this does not necessarily mean that the deed of recognition of children out of wedlock by a notary can be registered directly to Department of Population and Civil Registration. Based on the stipulation number 36/Pdt.P/2018/PN Bms, the Department of Population and Civil Registration rejected the deed of recognition of illegitimate children made by a notary and required a court order. Denial of the Department of Population and Civil Registration on this matter makes the notary's authority in terms of making a deed of recognition of children out of wedlock becomes blurred. The purpose of this study is to analyze the authority of a notary in making a deed of recognition of children out of wedlock. The research method used is normative juridical, using secondary data obtained from library research which includes primary, secondary, and tertiary legal sources. The implementation of the theory of authority affects the authority of a notary in making authentic deeds, especially the recognition of children out of wedlock. Meanwhile, the meaning of an authentic deed is a deed made by an authorized official, but the authority to make an authentic deed is not only in the notary.

Copy Right, IJAR, 2023,. All rights reserved.

Introduction:-

The position of a Notary is regulated by a law, namely, Law Number 2 of 2014 amendment to Law Number 30 of 2004 concerning the Position of a Notary hereinafter referred to as UUJN. This law is a comprehensive renewal and rearrangement in one law governing the position of a Notary Public so that a unified law can be created that applies to all residents throughout the territory of the Republic of Indonesia. Based on the moral and ethical values of a Notary, the position of a Notary is serving the community (clients) independently and impartially in the notary field whose development as a calling in life is rooted in the spirit of service to fellow human beings for the public interest,

Corresponding Author:- Angela Ester Rini

Address:- Master Student, Faculty of Law, Jenderal Soedirman University, Indonesia.

and is rooted in respect for human dignity in general and the dignity of Notaries in particular [1]. Based on article 1870 of the Civil Code, "For interested parties and their heirs or for people who get rights from them, an authentic deed provides a perfect proof of what is contained therein". A notary deed is a perfect, strongest and full proof tool so that apart from being able to guarantee legal certainty, a notary deed can also avoid disputes.

There are two types of children out of wedlock. If one or both parents are bound in a marriage, the child born is a child of adultery. If both the mother and father are still single, then the child born is a child out of wedlock. The difference is that a child of adultery cannot be recognized by his biological parents, while a child out of wedlock whose father and mother are still single (not married) and if they later marry, an acknowledgment (erkenen) can be stated in the marriage certificate on the margins of the marriage certificate [2]. As is the case with decision number 36/Pdt.P/2018/PN Bms.

In the determination of number 36/Pdt.P/2018/PN Bms, in the petition by Petitioner I, namely Riko Tegar Wibowo and Petitioner II, namely Anggit Trimaryani, an Islamic marriage was held. As a result of this Islamic marriage, a daughter was born on May 12 2014 named Fezya Athaila Shareen Wibowo at the Restu Ibu Maternity Hospital in Purwokerto. After the birth of the child, Petitioner I and Petitioner II officially married on March 8 2015 at the Office of Religious Affairs (KUA), Sokaraja District, Banyumas Regency. In March 2016, Petitioner I as the head of the household wanted to apply for a Family Card (KK), but considering the marriage that took place in 2015 while the daughter was born in 2014, in the Birth Certificate Number: 3302-LT-28032016-0027 recorded as the child of a mother named Anggit Trimaryani (Petitioner II).

Based on the foregoing, Petitioner I took the initiative to draw up a Deed of Recognition of a Child Out of Wedlock on March 15, 2015 before Notary Arief Rachmanto. However, the Department of Population and Civil Registry refuses to change the child's legal status on the Family Card (KK) and Birth Certificate, arguing that a court decision is required.

Based on the legal regulations above, if it is related to the role of a notary in making a child's recognition certificate, a notary has the authority to recognize a child out of wedlock who does not yet have a birth certificate. Based on article 281 of the Civil Code and Article 15 paragraph 1 of Law Number 2 of 2014 concerning the Office of a Notary, these two regulations are interconnected so that the authority of a notary arises. However, this authority does not necessarily mean that the recognition certificate can be used as the basis for making a birth certificate by Department of Population and Civil Registration Referring to decision number 36/Pdt.P/2018/PN Bms, it is emphasized that there must be a court ruling on the certificate of recognition of children out of wedlock, both authentic and private certificates as the basis for issuing birth certificates.

According to the author, looking at article 281 of the Criminal Procedure Code, Article 49 of Law Number 24 of 2013 concerning Population Administration and Article 15 paragraph 1 of the Notary Office Law regarding the authority and position of a notary deed, in its implementation there is legal disharmony. This is because without going through a court order, the authority and position of a notarial deed should be sufficient to become the basis for issuing a birth certificate for a child out of wedlock which has been recognized by both parents. Therefore, the problems studied in this study are formulated as follows. First, what is the authority of a notary in making a deed of recognition of children out of wedlock according to the Civil Code and the Notary Office Act? Second, what is the status of the deed of recognition of illegitimate children drawn up by a notary based on decision number: 36/Pdt.P/2018/PN Bms?

Research Method:-

This research was conducted using normative juridical methods, namely research focused on examining the application of the rules and regulations in positive law. In this study, there are three problem approaches, including Statute Approach, Conceptual Approach and Case Approach.

The collection of legal materials in this study uses secondary data. The methods used in data collection are library research, scientific article review, thesis and dissertation scientific work review, internet browsing, and document study. This study uses a qualitative normative data analysis method. In this study, the authors analyze the data using sentences that are orderly, coherent, logical, effective, and do not overlap. Then, a discussion is carried out that is connected with the theory of legal interpretation. Inductive conclusions from the results of the discussion are taken as answers to the problems studied.

Results and Discussion:-

The authority of a notary in making a deed of recognition of children out of wedlock according to the Civil Code and the Notary Office Act

A notary is an official appointed by the government to serve the public's need for valid legal documents. In Article 15 paragraph (1) UUJN, it is stated that a notary is a public official authorized to make authentic deeds regarding all actions, agreements and provisions required by laws and regulations and/or what is desired by interested parties to be stated in an authentic deed to guarantee certainty. the date of making the deed, keeping the deed, providing grosse, copy and quotation of the deed. All of this as long as the making of the deeds is not also assigned or excluded to other officials determined by law [3].

Based on Article 281 of the Indonesian Civil Code, the recognition of an illegitimate child must be made in the form of an authentic deed. This has a correlation with Article 15 paragraph (1) UUJN which states that a notary is a public official authorized to make authentic deeds as determined by law. These two articles provide an interpretation that a notary has the authority to make a deed of recognition of children out of wedlock.

The relationship between a notary and an illegitimate child which refers to the notion of "child" in the eyes of Indonesian positive law is commonly interpreted as an immature person (*minderjarigheid/inferiority*) or often also referred to as a child under the supervision of a guardian (*minderjarige ondervoordij*). So, starting from the aspects mentioned above, it turns out that Indonesia's positive law (*ius constitutum/ius operatum*) does not regulate the existence of a standard legal unification and applies universally to determine the age limit criteria for a child [4]

Child acknowledgment is an acknowledgment made by the father of a child born out of wedlock. Child recognition can be made by the mother or father of a child born out of wedlock. However, based on Law number 1 of 1974 concerning Marriage in Article 43, it is stated that children born out of wedlock only have civil relations with their mothers and their mothers' families. So it can be concluded that the civil relationship of a child out of wedlock and his mother arises by itself naturally. A child out of wedlock can have a civil relationship with his father only if the father acknowledges the child.

The above is used as a basis by the author regarding the recognition of children born out of wedlock, and how the authority of a notary in making a deed of recognition of children out of wedlock according to the Civil Code and the Notary Office Act. So, this is relevant to secondary research data regarding the Deed of Recognition of Out of Wedlock Children in the Determination Decision Number 36/Pdt.P/2018/PN Bms.

The problem of point 9 of the Determination Number 36/Pdt.P/2018/PN Bms is that Petitioner I took the initiative to draw up a Deed of Recognition of a Child Out of Wedlock before Notary Arief Rachmanto, SH Notary in Purwokerto. In essence, he wanted to explain and acknowledge a daughter born out of wedlock named Feyza Athaila Shareen Wibowo as the biological child of Petitioner I. However, verbally the Department of Population and Civil Registration could not change the child's legal status on the Family Card except on the basis of a Court Order. .

Furthermore, in the judge's consideration in Determination Number 36/Pdt.P/018/PN Bms in point 2:

After Petitioner I and Petitioner II had children, the parents of Petitioner I only gave their blessing to Petitioner I and Petitioner II to carry out the marriage officially. In 2015, Petitioner I and Petitioner II entered into an official marriage and were registered at the Office of Religious Affairs (KUA) of Sokaraja District. In March 2016, when Petitioner I was about to apply for the Family Card and Birth Certificate for their child, bearing in mind that the proof of marriage registration was made after the birth of their child, the child's status on the family card and birth certificate was recorded as the mother's child. Petitioner I took the initiative to draw up a Deed of Recognition of a Child out of Wedlock at Notary Arief Rachmanto, SH, Notary in Purwokerto, which essentially explained and acknowledged that a daughter born out of wedlock named Feyza Athaila Shareen Wibowo was the biological child of Applicant I.

The authority to make a deed of recognition of children out of wedlock refers to the Civil Code and the Notary Office Act.

Article 281 of the Civil Code:

Acknowledgment of a child out of wedlock, if this has been done in the child's birth certificate or at the time the marriage took place, can be done with each authentic certificate. Such acknowledgment can also be made by means of a deed drawn up by a civil registry employee and recorded in the birth register according to the date of the birth. This acknowledgment must be recorded on the birth certificate.

If the acknowledgment is made with another authentic deed, then each party concerned has the right to demand that the acknowledgment be recorded on the child's birth certificate. However, how can it not be something that negligence in recording the confession is blamed on the child who is recognized, for disputing the position obtained.

Furthermore, based on Law Number 2 of 2014 concerning the Position of Notary Public Article 15 paragraph 1:

The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copies and quotations of the deed. All of this as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.

Whereas based on the legal regulations above, there is a notary's role in making a deed of recognition of illegitimate children, because a notary has the authority to make authentic deeds. Field facts based on primary data in addition to those carried out by the author during an interview observation with Mr. Hidayat Head of Coordinating Sub-Division, Marriage, Divorce, Change in Child Status and Citizenship of the Population and Civil Registry Office of Banyumas Regency, regarding one of the questions "is a notary deed still needed to make a child's confession? out of wedlock in Department of Population and Civil Registration?". The answer obtained was "No need, because it can be done in a faster way, namely directly using a court order and can be registered directly to Department of Population and Civil Registration."

Based on Article 49 of Law Number 24 of 2013 concerning Population Administration and Article 51 paragraph 1 of the Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Resident Registration and Civil Registration, child recognition must go through a court order as the basis for a child's recognition deed. The nature of the court's decision is a first and final level decision so that an appeal cannot be made against the decision. Because the decision handed down against the petition cannot be appealed, the legal remedies that can be taken are cassation based on Article 43 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court.

Based on the results of the research, the Department of Population and Civil Registration of Banyumas Regency bases the court's decision as the basis for issuing a child recognition certificate, because it implements the Presidential Regulation of the Republic of Indonesia Number 96 of 2018 Concerning Requirements and Procedures for Population Registration and Civil Registration, Article 51 paragraph 1, namely :

(1) Registration of recognition of children of residents in the territory of the Unitary State of the Republic of Indonesia who were born outside of a legal marriage according to religious law or belief in God Almighty is carried out based on a court order.

According to the author's analysis, the authority referred to in Article 281 of the Civil Code and UUJN only mentions the authority of the deed of recognition of illegitimate children made with authentic deed. One of them is made by a notary. Field facts based on primary data in addition to those carried out by the author during interview observations with Mr. Hidayat, Head of Coordinating Sub-Division, Marriage, Divorce, Change of Child Status and Citizenship of the Department of Population and Civil Registration office of Banyumas Regency, regarding one of the questions whether a notary deed is still needed in making recognition of an outsider child married at Department of Population and Civil Registration? The answer was "Not needed, because it can be done in a faster way, namely directly using a court order". Next, the author examines the research results of Presidential Regulation of the Republic of Indonesia Number 96 of 2018 Concerning Requirements and Procedures for Population Registration and Civil Registration (hereinafter referred to as Presidential Decree No. 96 of 2018), Article 51 paragraph 1 which specifically states that making a deed of recognition of children out of wedlock must

be made by court order. So, Article 51 paragraph 1 of Presidential Decree No. 96 of 2018 closes the authority of a notary in making a deed of acknowledging children out of wedlock.

The Status of the Deed of Recognition of Children Out of Wedlock Made by a Notary

The provisions in the Civil Code Article 1870 explain that an authentic deed gives the parties, heirs and other parties who have rights from them a perfect proof of everything contained in the deed. In relation to the status of a notarial deed, Article 1868 of the Civil Code is the main source for the birth of an authentic deed and implicitly contains an order to legislators to enact a law governing public officials and the form of an authentic deed. This can be seen from the formulation of the article which states that an authentic deed is a deed made in the form determined by law by/or before the authorized public official where the deed was made.

Based on Article 1868 of the Civil Code, an authentic deed is a deed drawn up in a form determined by law by or before an authorized public official at the place where the deed was made. An authentic deed recognizes the principle of *actapublicaprobantseseipsa*, which means a deed that appears as a deed and fulfills the specified conditions, then the deed is valid or considered an authentic deed. This means that the official's signature is considered the original, until there is evidence to the contrary [5]. Notary deed as an authentic deed, when connected with the theory of legal certainty according to HerlienBudiono, namely legal certainty, is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty value will lose meaning because it cannot be used as a guideline for behavior for everyone.

Based on Article 1868 of the Civil Code, the limitations or elements referred to as an authentic deed according to C.A. Kraan as quoted by HerlienBudiono has the following characteristics [6]:

1. A writing, deliberately made solely to be used as evidence or evidence of the circumstances as stated in the writing, is made and declared by an authorized official. The writing is also signed by/or only signed by the official concerned;
2. A writing until there is evidence to the contrary is deemed to have come from an authorized official;
3. Statutory provisions that must be met; the provision regulates the procedure for making it (at least contains provisions regarding the date, place where a deed of writing was made, name and position/position of the official who made it, where data can be found regarding these matters;
4. An official who is appointed by the state and has the nature and work of being independent (*onafhankelijk-independence*) and impartial (*onpartijdigimpartial*) in carrying out his position;
5. Statements of facts or actions mentioned by officials are legal relations in the field of private law.

Based on this, the deed of recognition of children out of wedlock above concludes that the position of the deed is a notarial deed, because it contains the following elements:

- a. Deed drawn up by an authorized notary, namely by Notary AriefRachmanto, S.H.
- b. There is a definite date.
- c. There is certainty about who signed it (legality of party identity).
- d. The notary deed must be kept confidential by the notary.

The position of the deed of recognition of children made by a notary is not authentic because the notary is not authorized to make a deed of recognition of children out of wedlock based on Presidential Decree No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, Article 51 paragraph 1 which states that making a deed of recognition of illegitimate children must be made with a court order, and based on court order number: 36/Pdt.P/2018/PN Bms, that the position of the notarial deed is only as an administrative introduction as a supporting document for court decisions.

Conclusion:-

Presidential Regulation of the Republic of Indonesia Number 96 of 2018 Concerning Requirements and Procedures for Population Registration and Civil Registration (hereinafter referred to as Presidential Decree No. 96 of 2018) Article 51 paragraph 1 specifically states that making a deed of recognition of illegitimate children must be made with a court order. This closes the interpretation in Article 281 of the Civil Code and Article 15 UUJN that the notary has the authority to make authentic deeds, especially the deed of recognition of children out of wedlock. Based on Article 51 paragraph 1 of Presidential Decree No. 96 of 2018, making a deed of recognition of children out of wedlock must be made with a court order so that it closes the authority of a notary.

The position of the deed of recognition of children made by a notary is not authentic because the notary is not authorized to make a deed of recognition of children out of wedlock based on Presidential Decree No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration; Article 51 paragraph 1 states that making a deed of recognition of children out of wedlock must be made with a court order.

Suggestion:-

The authority of a notary based on Article 281 of the Civil Code needs to be reviewed because it creates an interpretation that a notary has the authority to make a deed of recognition of illegitimate children because based on Presidential Decree No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. Article 51 paragraph 1 states that making a deed of recognition of children out of wedlock must be made with a court order and closing the authority of a notary in making a deed of recognizing children out of wedlock.

Acknowledgment:-

The authors thank those who have helped and supported to compile of this journal. Moreover, special thanks are addressed to the lecturers of the Faculty of Law at Jenderal Soedirman University who have supported in finishing this article.

References:-

1. Adjie, Habib, Hukum Notaris Indonesia Tafsir Tematik Berdasarkan UU No. 2 Tahun 2014 tentang Perubahan Atas UU No. 30 Tahun 2004 Tentang Jabatan Notaris, Refika Aditama, Bandung, 2017.
2. Hatta, Sri Gambir Melati, Anak Luar Kawin, Hukum Dan Pembangunan, vol.7 Nomor 1, 1995
3. Adjie, Habib Bernas–Bernas Pemikiran Di Bidang Notaris dan PPAT, Mandar Maju, Bandung, 2010.
4. Mulyadi, Lilik, Pengadilan Anak Indonesia (Teori, Praktik dan Permasalahannya), Mandar Maju, Bandung, 2005.
5. Arkhang, Tri Yanty Sukanty, Kedudukan Akta Notaris sebagai Alat Bukti dalam Proses Pemeriksaan Perkara Pidana, Keadilan Progresif, Volume 2 Nomor 2, September 2011.
6. Budiono, Herlien, Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan, Cet-ke III, Citra Aditya Bakti, Bandung, 2012.