

AUTHENTIC EVIDENCE AGAINST INBETWEEN LAND RIGHTS DUE TO INHERITANCE OF PROPERTY

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ABSTRACT

This article aims to find out and analyze the position of the law over legal certainty of authentic Evidence against Inbetween land rights due to inheritance of property. This article is an article of law or doctrinal dogmatik, or juridical normative method. Approach to analyze or harmonise the clauses in the legislation and regulations implementing good local regulations or decisions of the Minister. Legal materials analysis techniques used in this article is with the method of reasoning deduction. The method of reasoning deduction is used for drawing conclusions from things that are commonly headed into special incidental who then pulled into a conclusion. The results of this article shows that the legal position over the publication of the deed of Death towards the transition of land rights property rights because inheritance is the authentic deed recorded and issued by the Office of civil registration population and City/County. From the evidence it is a party that is very valuable to prove, that is called a certificate. A deed is a piece of writing that is deliberately made to be used as evidence of an event and signed. Evidence that there is a group which has a special evidentiary force that is called authentic deed. Article Act 1868 book of the Civil Code states that "an authentic deed is a deed which is made in the form prescribed by law or before the public officer authorized to act in place of that was made." As an employee of the public meant above applies a notary public, a judge, a Court interpreter at a sita, an officer of the civil registry, and so on. Thus the deed-a deed made by officers of the authentic deed has the power of proof.

Keyword: Authentic Evidence, The Transition Of Land Rights, Property Rights, Inheritance

A. INTRODUCTION

Indonesia is a country based on law, so the words in the explanation of the Basic Law (UUD). In practice, our thoughts in General then jumped to the rule of law. That is, the formula in the Constitution and we are praktikkan with the doctrine and the principle of the rule of law. It looks like it is already properly and be (only) how to practice "State based on the law", which is true. The position of the country in Indonesia in law also requires attention, because it is quite different with the figure and the country's presence in the mind of a liberal rule of law. There the society and the State face to face in a confrontational position, and therefore, must be contrived fence-fence to protect people (Satjipto Rahardjo, 2006:11).

Law enforcement has 3 items should always note that is an element of Justice, legal certainty, and elements of the benefit. The third element is the aspired goal of the law itself. One of the principle in the law of State administration to know Basic Principle of Legality (legal certainty) that the principle requires the dihormatinya right which had been procured a person based on the decision of the agency or official of the State administration. The principle tells us that the birth of the decision of the agency or official of the State Administration be legal procedural legal basis of legal events and legal consequences thereof.

Mastery of the rights over the land in the Principal Agrarian laws regulated and defined such as the rights of the individual or individuals who have civil aspects. The rights of the individual, including the individual rights over State land, Agrarian Staple Act determines that the rights over the land consists of property rights, use rights, use rights, Buildings usage rights, the right of rental, rights of Open Land, the right to glean forest products, and Other rights that are not included in the above rights include the right of management of the Individual or individuals, a right is a right which gives authority to the rightsholders (individuals, groups, people together, legal entity) to wear in the sense of controlled, using and/or take advantage of certain plots of land. Individual rights over the land in the form of land rights, the Waqf land property rights, rights of dependants and property rights over units of flats (Urip Santoso, 2005:82).

Land rights certificate serves as proof of a powerful tool in the proof of possession. Certificate of guarantee legal certainty regarding the man as the holders of land rights, legal certainty regarding the location of the land, as well as vast a field limit of the land, and legal certainty regarding rights over his property. With such legal certainty can be given legal protection to people listed by name in the certificate against the interference of others and avoid disputes with another party (Adrian Sutedi, 2006:23).

Something that can move the legislation effectively demonstrated its potential to regulate so-called legal events. This legal events is an event in the community that drives a specific legal regulation, so that the provisions contained therein can be realized. A rule governing law of inheritance because death would remain the formulation of words that silent until there was a dead and raises the issue of inheritance. Legal heirs is one part of the civil law as a whole and is the smallest part of family law (Eman Suparman, 2007:1).

The death of the person is a legal event. In further detail we can say that when an event has occurred in the community, are the events that correspond to the represented in legal regulations, then the rule of law that may be subject to such events. Article 44 paragraph (1) and (2) the Law Number 24 year 2013 about Residency Administration explained that any mandatory death reported by certain parties who were in the domicile population to the civil registry Agency recorded in the Register of Deed Death and published Excerpts this Act of death. The Death certificate in the transition of land rights property rights because of inheritance used as evidence and base the determination of heirs in an estate are Affidavits corroborated by the Camat and known by the Head or made by the notary.

Act No. 5 of the year 1960 about the basic rules of agrarian issues Article 23 tells us that property rights in any transition, hapusnya and pembebanannya with other rights must be registered as it is a strong evidentiary tool about hapusnya property rights as well as transitional and legitimate the imposition of those rights. Different is the case in Article 42 paragraph (1) the Government Regulation Number 24 year 1997 regarding Land Registration transitional registration entitlements explains that because of succession regarding land rights that are already listed and property rights over units of flats as required according to the provisions referred to in Article 36, mandatory by a received land rights or property rights over units of flats concerned as a legacy to the Office of the land, the certificate of entitlement is concerned, letters the death of the person whose name is recorded as rightsholders and proof as the beneficiary.

The procedures in annex II Regulation the head of national land Agency of the Republic of Indonesia number 1 2010 Year of standard service and the arrangement of land that the terms in the transition of land rights property rights due to inheritance or probate is not lists the death certificate or a death Certificate. Other things found in practice that the Land Office Karanganyar Regency receive a death certificate that is created by the village head and signed as one tool evidence and terms of application the transition of land rights property rights due to inheritance.

Act No. 6 of the year 2014 of the village does not regulate the powers, rights, and responsibilities of the head of the village to make the death certificate of a person as one tool evidence especially in the transition of land rights property rights due to inheritance. Therefore, the head of the village that makes a person's death certificate does not have the authority and responsibility by law. The rules between the two to Act No. 24-year Administration of 2013 population and law number 6 Year 2014 of the village became the legal basis legal issues mortality events prove a person as one tool evidence in the transition of land rights property rights due to inheritance.

Based on the exposure that has been elaborated by the author above, this article wants to discuss about how the position of a legal Instrument in authentic Evidence against inbetween land rights due to inheritance of property.

B. RESEARCH METHODS

The research in this article is the doctrinal legal research or dogmatik, or normative juridical method or also called as legal research library. Doctrinal legal research is research that uses the approach of law and is carried out by means of researching library materials consisting of primary law and secondary law materials. Approach to analyze or harmonise the clauses in the legislation.

Legal materials analysis techniques used in this research is with the method of reasoning deduction. The method of reasoning deduction is used for drawing conclusions from things that are commonly headed into special incidental who then pulled into a conclusion.

C. RESULTS OF THE RESEARCH AND THE DISCUSSION

The death certificate is a product of the State Administrative Decisions issued by the civil registry Agencies where it has been regulated in the legislation. In the implementation of article 17 of Regulation Number 37 Year 2007 on the implementation of Act No. 23 of 2006 Year Population Administration explained that the County Government/City liable and responsible organizing the Affairs of the Settlement Administration, conducted by the bupati/walikota with authority include:

- a) Coordination of the administrative organization of the Population);
- b) Establishment of the implementing agencies) the tasks and functions in the field of the administration of the Settlement;
- c) The technical organization of the Administrative Arrangements) of residence in accordance with the provisions of the Legislation;
- d) Coaching and socialization of organizing the administration of population;
- e) Implementation activities of community service in the field of the administration of the Settlement;
- f) Assignment to the village or the another name for organizing some paperwork on population based on the principle of task pembantuan;
- g) Management and presentation of Data on population scale of County/City; and
- h) Coordination of the supervision over the administrative conduct of the Population.

Article 2 paragraph 2 law number 6 Year 2014 of the village explained that in carrying out the tasks referred to in paragraph (1), the head of the village authorities:

- a. The lead organization of the Government of the village;
- b. Appoint and dismiss Councilor;

- c. Hold power financial management and assets of the village;
- d. Set the rules of the village;
- e. Set a budget of revenue and Expenditure of the village;
- f. Foster village community life;
- g. Foster peace and order the villagers;
- h. Foster and boost the economy of the village as well as integrating it in order to achieve the economy of scale is the most productive for the prosperity of the community of the village;

The regulations could be ranked in a kind of pyramid, from the regulations that the rate low to high. When rules conflict, higher control regulation regulation is lower. In a system of constitutional, constitutional regulations have validity higher than ordinary legislation regulations. A law in turn have a higher authority than an ordination of the city or an administrative regulation. Typically, the higher the validity does not mean that the regulation is more morally perfect, but only that those who make it stand higher in the pyramid Government (Lawrence m. Friedman, 2009:52).

The type and the hierarchy of legislation described in article 7 of the Act No. 12 Year 2011 about the formation of Legislation that:

- 1) Types and the hierarchy of legislation are as follows:
 - a) The Constitution of the Republic of Indonesia Year 1945;
 - b) Statutes, people's Consultative Assembly;
 - c) The legislation or regulations of the Government of the Successor legislation;
 - d) Government regulations;
 - e) presidential regulation;
 - f) Regulatory regions of the province; and
 - g) applicable local County or city.
- 2) The force of law and regulations in accordance with the hierarchy referred to in paragraph (1).

The deeds of the law State Administrative Officials is governed by Legislation which has legal consequences of an event. In administrative law matters is the Act of a Government that belongs to legal action (*rechtshandelingen*). As for the actions of a Government that belongs to legal action (*rechtshandelingen*), i.e. (T Quarter Point and Ismu Gunadi Widodo, 2011:308):

- a. Actions according to private law.
- b. Actions according to public law.

The decisions of State Administrative Law is a written assignment issued by agencies or officials of the State based on top (r. Tjakranegara, Soegijatno 2000:4):

- 1) Legislation in force;
- 2) Are concrete;
- 3) Individually; and
- 4) Final.

Article Act 1865 book of the Civil Code says that "any person claiming to have a right, or designate an event to establish its rights or to refute other people's rights, obligatory rights to prove it or the incident expressed it." Evidentiary privileges intended in the article addressed to every person who had a right in doing an act of law and have legal consequences which is named legal events. According to section 1866 book of law civil law or article 164 RIB (article 283 RDS) tools in the case of civil evidence consists of:

1. Proof of writing;
2. Proof by witnesses;
3. Assumptions;
4. Confession; and
5. The oath.

The evidence of the tools mentioned above it can be seen that in a civil lawsuit evidence (proof tools) was writing. From the evidence it is a party that is very valuable to prove, that is called a certificate. A deed is a piece of writing that is deliberately made to be used as evidence of an event and signed. Evidence that there is a group that has a force of special pembuktia that is called authentic deed.

The crimes regarding forgery is a crime which contains the elements of a State of the untruth or false over an object that things it looked from the outside as if true existence when in fact contrary to the in fact, while faking the deed is a deed is changed in any way by people who are not entitled to a letter which resulted in some or all of the contents into another or different with the contents of the original letter (Adami, 2001: Chazawi 97).

- a) The deed is a forgery can be classified in a group of crime of fraud so that not all deeds are forgeries. The deed is a forgery fraud crime groups pertained when one gives an overview of the top picture of the goods as if something genuine or true, while indeed the truth or not, because the description of this data another person has been tricked and mempercaya that the circumstances described above goods/letters/the data is correct or original (Chazawi Adami, 2001:97).
- b) Forgery against writing or data occur if its content or its data is not correct. Crime of counterfeiting a letter (*valschheid in geschriften*) is set out in Chapter XII of the PENAL CODE, book II of Article 263 up to Article 276 which can be differentiated into 7 different crimes of forgery of a letter, namely:

- a. Forgery of a letter, the principal form of forgery of a letter (article 263)
- b. A planned letter forgery (article 264)
- c. Sent false information to enter in the authentic deed (article 266)
- d. Falsification of the doctor affidavits (section 267 and article 268)
- e. Falsification of certain letters (article 269, 270, Chapter and section 271)
- f. Forgery affidavits officials concerning property rights (article 274)
- g. Storing the materials or objects to the forgery of a letter (article 275)

Article Act 1868 book of the Civil Code states that "an authentic deed is a deed which is made in the form prescribed by law or before the public officer authorized to act in place of that was made." As an employee of the public meant above applies a notary public, a judge, a Court interpreter at a sita, an officer of the civil registry, and so on. Thus the deed-a deed made by officers of the authentic deed has the power of proof.

Based on the substance of article 1868 book of civil law legislation, there are 3 terms of an authentic deed, (Eddy O.S. Hiariej, 2012:48):

1. Created by or in front of the public servants of the ruling (officials public authorities). E.g. a deed made by notaries, auction officials, deed official civil registry, and so on. It is issued by the authorized official is the trusted and recognized shall have appropriate laws (rechtmatig).
2. The Format of the certificate or form determined by law.
3. Deed was made in place of that authorized public officials or in the seat of the public officer's law.

These three conditions must be met cumulatively. If one is not met, the power of proof certificate was authentic and just have the power under the act as proof of the hand. The terms of an authentic deed it became very important in the realm of the law of proof because of an authentic deed that has the power of proof that is full and perfectly (probatio plena), proof against the authentic deed that no longer requires other evidence, In addition to authentic certificate itself, as well as the authentic deed should remain true as long as there has been no proof that can prove the deed autentisitas (Eddy O.S. Hiariej, 2012:49).

Similar to Section 1870 book of law civil law explains that "for the interested parties along with the heir or for people who get the rights from them, an authentic deed gives a proof that perfect about what is contained therein. " An authentic deed there are three kinds of power, namely (r. Subekti, 2007:29):

- a. Prove between the parties, that they've already explained what was written in the deed of yesteryear (the power of proof formyl);
- b. Prove among the parties concerned that the earnest events mentioned there has occurred (the power of evidentiary material or which we call the power of proof "binding");
- c. Prove not only between the parties concerned but also to third parties, that on that date in deed the parties are already facing public employees in advance (notaries) and explains what is written in the certificate. The second strength is that, as already explained above, called the force of law that substantially aims to establish the position between the parties to each other in a position of teruraikan in the deed.

There are several factors that become the main requirements of the socialization of land management at the Ministry of land, so that the socialization running success later in applying the management of land, although there are still many other aspects It needs to be discussed, these factors include the following (Prosperous Supriyatno, 2014:93):

- 1) The legality of the whole organization in the dissemination efforts;
- 2) Mechanisms and procedures are adequate to managerial decision making process and supervision;
- 3) Regulation for the creation of accountability;
- 4) Includes the whole participant in the implementation stage of decision making.

The granting of autonomy to the region in the areas of land as one of the areas of Government that must be exercised by district/city based on Article 14 of the Law Number 32 Year 2004 about local governance authority of that field as a whole be dikabupaten/city. The power that lies in the County/City on land which is limited to the locality, and there are nationwide.

The granting of autonomy in the frame of the unitary State, the freedom to organize and take care of the land areas will still be done within the framework of the basic policy and fine points of law provisions applicable to national land as a expressed from the words "appropriate legislation". In connection with it, are clearly not of autonomy interpreted as a surrender arrangement and management of all facets of the problem of land entirely to the district and the city respectively, but there is an authority-the authority settings of the things that are principal and General, and the construction on the Central Government's response to the implementation of the autonomy authority by local governments respectively. Thus, although the region will indeed have to look at the interests and aspirations of its people, but will still be assured of the nonprofit national harmony (Arie Sukanti Hutagalung and mark Gunawan, 2009:58).

Land deed official authority according to article 3 of the regulation Pemerintah Number 37 Year 1998 of Regulations Office of the land deed official is:

- a. Create an authentic deed concerning all deeds of the law regarding land rights and ownership rights over units of flats located in the works.

- b. For Special Land deed official authorized only to make legal deeds about certificate referred to specifically in his appointment.

In fact that Orderly Settlement Document or the Orderly administration of the Population, not just surveillance against procurement blangko-blanko required in publishing documents, but should have to persist, concrete and pragmatic. That means easy to understand by the residents and are believed to be legally meaningful function of protecting, recognizing or validating vital event or residency status (vital events) experienced by the population, so needed by the inhabitants because it can facilitate or launch his dealings in everyday life. In other words the residency documents have the incentive or benefit for the holder of the document or the population. Such efforts, it is the duty of the State or the Government as a public servant, and became a mandatory affair. To that end, the strategic factors that have to be arranged and prepared in order to make the task of functioning and effective through the aspects of the legal basis.

Structuring and support the preparation of legislation in the service documents of legal value-laden population, is a very fundamental, because it is related to the existence of the country (SO) as the values that are contained in the Constitution of UUD 1945. In addition it should guarantee protection as well as a sense of comfort for the residents to obtain legal certainty in the area SO in accessing their rights both as citizens and as the population of Indonesia. The required legislation, must not discriminatory, clear (not multi-level interpretive), are not contradictory (should be synergistic) and other legislation within the public service, so that it can be used as an instrument of controlling the population, as well as the works encourage the realization of administrative service of population.

The recording of the population means that data as residents noted. But if you want "civil registration" i.e. the civil status recorded, due to changes in a person. For example, logging over birth, meaning that over his status changes from that previously did not exist in the world but as a result of his birth he became status and entitled to his civil rights. Similarly for the recording of marriage is a person who because of his status changes from mating status becomes lajan bring legal consequences because of it. Instead of recording the divorce, he changed the mating status of being divorced or widowed status also carry legal consequences. Including the recording of death, will bring a result in the legal relationship between the dies with the children, husband or wife with the parents as well as his brothers, in this case often cited as his heir will receive all legacy both positive or negative.

Article 44 paragraph 1 of Act No. 24-year 2013 about Residency Administration explained that "any mandatory death reported by the Chair or other name Jiran in domicile population to local Implementing Agencies at least 30 (three twenty) days from the date of death." Next Article 44 paragraph 2 Law Number 24 year 2013 about Residency Administration explained that "on the basis of the report referred to in subsection (1) officials of the civil registry records the Death Certificate on the Register and publish excerpts Deed Of Death."

The article above explains that any mandatory death reported to the civil registry Agencies to published Excerpts this Act of death. The Death certificate is useful as a basis for determination of heirs in particular in the transition of land rights as the basis of the Affidavits. The existence of provisions in the Law Number 24 year 2013 about Residency Administration became a necessity and obligation for citizens of Indonesia to report any legal events in particular the events of the death of a person.

The lack of application of sanctions legislation against the highly influential legal protection rights owners over land and society in General, since by reference to the concepts of the theory of criminalization specifically related to the purpose of the law criminal meant that any criminal act aimed at tackling crime for the sake of the welfare of society and its members, as well as the determination of acts that are not desired in the concept of criminalization intended must comply with the criteria of works which make losses on the citizens of msyarakat and deed that resulted in adnya the victims of other people including the author (Hambali Talib, 2009:153).

The fall of the land to heirs, there was a shared ownership of land property rights if the soil only. However, if the heir has the land in accordance with the number of heirs and have made a will, the land question has become the property of the respective beneficiary. To acquire the land from the evidentiary force of the results of inheritance, then the certificate is needed besides the heir as the basis for registration of land. However, to date, to acquire the inheritance certificate, the applicable law for CITIZENS still vary (Adrian Sutedi, 2014:102).

D. CONCLUSION

Based on the theory of type and hierarchy of legislation consist of: State constitution of the Republic of Indonesia year 1945; The provisions of the People's Consultative Assembly; Law/Government regulation of the substitute law; Government regulation; Presidential regulation; Provincial regional regulations; and District/City regulation. The law is the highest rule after implementing regulations that must be obeyed by Indonesian citizens. The legal position of the Death Act is an authentic deed made by the authorized officer and governed in article 44 of law number 24 year 2013 on the population administration. This is contrary to the implementing regulations, namely article 42 paragraph (1) of government Regulation number 24 year 1997 on land registration. In the two rules, there is a vertical receipt related to the Act and/or death letter made by the competent official but by proving the death certificate is an authentic deed that has a perfect proof both in court and in In the Code of Criminal law.

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