

THE NOTARY AUTHORITY IN THE RATIFICATION OF AN ORIGINAL BIRTH CERTIFICATE PHOTOCOPY

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ABSTRACT

The purpose of this study is to analyze the notary authority in validating Birth Certificate photocopies. This research is a normative legal research using a conceptual approach. Sources of legal research materials include primary legal materials and secondary legal materials. The legal material analysis technique uses a prescriptive analysis using deduction. The results of this study show that a notary is not authorized to ratify a Birth Certificate photocopy, because there are regulations that specifically regulate the authorization authority, namely Regulation of the Minister of Home Affairs No. 104 of 2019 concerning Documentation of Population Administration. In addition, notary should not certify photocopies of birth certificate excerpts because of the authority stipulated in Article 15 Paragraph (2) letter d UUJN. The authority stipulated in the article does not include photocopies of birth certificate citations, it is caused by the notary's inability to verify facts and original birth certificate data or documents which will have an impact on the possibility of a fake Birth Certificate Quotation appearing.

Keywords: Authority, Notary, and Photocopy of Birth Certificate

INTRODUCTION

A notary is a public official authorized to make deeds and other authorities as stated in Article 1 number (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary, hereinafter referred to as (UUJN). Article 15 UUJN, explains that the authority of a Notary as an elaboration of Article 1 number (1) includes the authority to make a deed, guarantee the certainty of the date of making the deed, save the deed, provide the grosse of the deed, provide copies of the deed, provide quotations of the deed, authorize signatures and determine the certainty of the date of the letter under the hand by registering in a special legalized book, recording private letters by registering in a special book, making a copy of the original private letter in the form of a copy containing the description as written and described in the letter concerned, making a photocopy of the agreement with the original letter, conduct legal counseling, and make a deed of minutes of an auction. Notaries are obliged to act honestly, thoroughly, independently, and impartially, and protect the interests of related parties in legal actions so that the deed they make must provide legal certainty.

The community needs legal certainty in public services due to the increasing public demand for services, which affects the increase in notary services. The function of a notary as an official who is given state authority to serve the public in the civil field, is making authentic deeds. Notary is an official who is authorized to make deeds in the field of civil law and whose legal certainty is guaranteed. Notary is a public official who is authorized to make written evidence as reflected in the provisions of Article 1868 of the Civil Code. The duties of a notary include making deeds and contracts to give strength and validation (legalization) to the deed, establishing and confirming the date, keeping the original minutes and issuing the grosse, and providing a valid and correct copy (Tobing, 1993).

Notaries cannot have the initiative to make authentic deeds without requests from parties who want their legal actions to be included in authentic deeds (Umbas, 2017). The legal action in a notary deed is not a legal act of a notary but an act of the party making the deed who wants their legal action to be contained in an authentic deed so that the parties in the deed made by the notary are bound by the contents of the authentic deed so that all parties are obliged to fulfill the material of what was agreed because the other party can sue if it does not fulfill the legal actions contained in the notarial deed.

One of the authentic certificates is a birth certificate. Birth certificates have an important position in proving a legal event that occurs in society. Excerpt of Birth Certificate becomes an identity for every child which is part of civil and political rights as a citizen. Excerpts from birth certificates are part of the Civil Registration Deed as a determinant of a person's legal status and are used as strong evidence before a judge and provide certainty about events concerning a person's birth (Salim, 2016). Article 27 paragraph (1) and (2) of Law Number 23 of 2014 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, the deadline states that every birth must be reported by residents to the implementing agency according to the domicile of the population no later than 60 (sixty) days since birth, and based on the report referred to in paragraph (1), the Civil Registration Officer records it on the Birth Certificate Register and issues a Birth Certificate Excerpt. Excerpts of Birth Certificates are a product of the Population Administration which are regulated in Article 1 paragraph 1 of Law no. 23 of 2006 concerning Population Administration. Birth certificates as part of the population administration at this time, their designation still requires legalization for those who have not signed electronically, especially for people who want to register as candidates for Indonesian police/ Indonesian soldier member's. They need birth certificates as authentic certificates. Thus, a notary has the authority to legalize them. The results of preliminary observations at a Notary Office stated that they had legalized birth certificates from the community. The notary believes that the formulation of the provisions of Article 15 Paragraph (2) letter d is claimed as the basis for the notary's authority to validate the copy of the Birth Certificate and/or Civil Registration Deed which should be carried out by the Implementing Agency as the Agency which has the authority to issue Population Documents. Therefore, it can be said that there are overlapping regulations between the UUJN, the laws, and regulations governing population administration. Ratification of conformity of photocopies with the original letter by notary results in unclear/blurred norms (vague normen) regarding the authority of a notary. Thus, the legal norms in the provisions of Article 15 paragraph (2) paragraph d UUJN give rise to multiple

interpretations, so the meaning contained in this article (what is meant by original letter) is not defined exactly. Consequently, the scope is not clear. The UUJN explanation itself does not explain the limitations regarding what documents can be ratified by a notary, while the elucidation of the article only states that it is quite clear.

RESEARCH METHOD

This research is normative legal research. The approach used in this study is conceptual. The legal materials used in this study are primary legal materials and secondary legal materials. The legal material analysis technique uses a prescriptive analysis using deduction.

DISCUSSION

A notary is a public official who carries out some governmental tasks, especially in the field of private law. As a general official, the position of a Notary is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 about the position of a Notary (hereinafter referred to as UUJN). The philosophical basis for UUJN birth is to guarantee certainty, order, and legal protection for authentic written evidence regarding actions, agreements, stipulations, and legal events made before or by authorized officials. Notaries as public officials carry out the profession of providing legal services to the public as stipulated in Article 15 UUJN. Based on that, notaries are authorized 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 gross 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 stipulated by law. Article 15 Paragraph (2) letter d of the UUJN, namely that a Notary has the authority to verify the compatibility of the photocopy with the original letter. One of the authentic deeds is a Birth Certificate Excerpt.

The community needs validation of a Birth Certificate photocopy that can be used as a form of recognition by the state regarding individual, civil, and citizenship status, as a legal document/proof of personal identity, as a reference for determining identity in other documents, for example, a diploma, as one of the requirements for entering Kindergarten school up to university, as one of the requirements for applying for a job, for making KTP (residence identification card), KK (family card), NIK (identity number), passport, for arranging family allowances, employee pensions, for registering marriages, for adopting children, and for administering scholarships. This validation is very easy to implement, namely by making a photocopy of the Birth Certificate and then applying for approval to the Office of Population and Civil Registration which is authorized to carry out validation of the Birth Certificate photocopy. However, a discourse (debate) arose when it was a Notary who validated the photocopy of the Birth Certificate Excerpt. The question that arose was whether the notary had the authority to certify the photocopy of the Birth Certificate Excerpt. Notaries are not authorized to ratify birth certificate excerpts, let alone used to apply for jobs and continue their education, this is because there are already other more specific regulations, namely Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 104 of 2019 concerning Documentation of Population Administration. The core tasks of a Notary are only five, namely making deeds, legalizing, waarmaking, fiduciary, and wills.

The authority of the notary specifically, namely to validate the suitability of the photocopy of the Birth Certificate by the original letter. Basically, it does not guarantee legal certainty in the practice of applying legal norms in the provisions of Article 15 paragraph (2) letter d UUJN, because on the one hand, it provides opportunities for abuse of authority by validating photocopies according to the original letter by a notary without checking the material correctness of the letters issued from the agency concerned. For example, a notary legalizes legal acts committed by appearers, as one of the conditions for legalization is a Birth Certificate, while an agency that has the material truth of the birth certificate is in the Office of the Population and Civil Registration Service. So, material truth has not been achieved with the limited authorization of photocopies in accordance with the original letter by a notary. Thus, validation of the suitability of a Birth Certificate photocopy according to the original letter by a notary can pose a risk if it is not checked beforehand by the agency that issued the document in question. Therefore, the legal norms in the provisions of Article 15 paragraph (2) letter d UUJN have not provided guarantees of legal certainty and benefits, both for related parties in connection with legal actions carried out by the notary concerned. Therefore, the evidentiary value of the legal actions carried out by the appearer cannot be used as authentic evidence. If there are parties who are harmed by legal actions carried out by the appearer, of course, it is not only the notary who is harmed, but the notary will also lose public confidence in the existence of a notary institution.

Notaries are not at all authorized to validate photocopies of birth certificate because they cannot verify the truth of the original birth certificate documents. Thus, doubts and concerns will arise from the agency/institution that requires the use of birth certificates, for example registering to continue their education to a higher level or other functions. Validation of a photocopy of a birth certificate by a notary can actually endanger the work and the notary himself because irresponsible persons can use it, so it would be better if the notary is not authorized to validate the photocopy of the birth certificate. Notaries are not authorized to validate photocopies of birth certificate excerpts, both from a theoretical standpoint and from a written legal norm standpoint. Notaries will be questioned for their actions if they carry out validation while they are unable to account for the correctness of the original document of the Birth Certificate Excerpt. Based on the theory that the granting of authority is an elaboration of the rule of law, this authority must be accompanied by accountability. The recipient of the authority must be able to account for the authority given, so from this perspective, the notary will certainly be questioned for their actions if they continue to validate the photocopy of the Excerpt of the Birth Certificate, while they are unable to account for the correctness of the original document of the Excerpt of the Birth Certificate. This inability to be responsible makes the notary not authorized to certify the photocopy of the Birth Certificate Excerpt. Although there is Article 15 Paragraph (2) letter d UUJN which stipulates that a Notary has the authority to validate a photocopy by matching the original letter, the letter in question is not a Birth Certificate Excerpt, because a Birth Certificate Excerpt does not include a letter, but an acknowledgment document where the validation of photocopies and excerpts of birth certificates themselves has been regulated separately in several regulations. Regulations of the Minister of Home Affairs as a *lex specialist* and are

implementing rules of the Population Administration Law. This is what makes a Notary's authority to validate a photocopy of a Birth Certificate Excerpt.

Based on this, the authors interpret that the Notary is not authorized to validate the photocopy of the Birth Certificate, this is because there are regulations that specifically regulate the authorization authority, namely PMDN No. 104 of 2019. It is advisable for a notary not to authorize a photocopy of a birth certificate because it is based on the authority stipulated in Article 15 paragraph (2) letter d UUJN to be given confirmation that the authority stipulated in the article does not include a photocopy of a birth certificate, given the notary's inability to carry out verification according to facts and data or original documents Birth Certificate which will have an impact on the possibility of a fake birth certificate appearing.

Based on this phenomenon and description of the facts, the author tries to build logic and legal constructions that actually a notary, in validating the conformity of a photocopy of a letter according to the original, means that he is using his power or authority granted by law by way of attribution (Article 15 Paragraph (2) letter d UUJN), where the substance of Article 15 Paragraph (2) letter d is "a copy of the Letter is the same as the original", but does not include a Birth Certificate because it is contradictory or not in line with Article 19 Paragraph (2) to (5) Regulation of the Minister of Home Affairs Number 104 of 2019 concerning Documentation of Population Administration so that if it remains under the authority of a Notary, it will become an authority that risks large losses and is very vulnerable to the emergence of fake birth certificates by irresponsible persons who use the services of a Notary. Regarding the debate over the authority of a Notary in validating photocopies of Birth Certificates and whether Birth Certificates are included in the category of letters whose photocopies may be legalized or not. The authority of a Notary to certify the suitability of a photocopy of a Birth Certificate basically uses the authority granted by normative law, in this case, UUJN. This is based on the redaction of Article 15 which uses the "phrase of authority" in the three paragraphs contained in Article 15 Paragraphs (1) and (2) UUJN, but legalizing a photocopy of a Birth Certificate Excerpt is certainly an exception from the authority to ratify a photocopy of a letter by a Notary because there is no authority without accountability to certain officials. Then, it is clear that the actions of a Notary who validates a photocopy of a Birth Certificate Excerpt are an act that cannot be accounted for because the Notary does not have the right or authority to check or examine the authenticity and correctness of the Birth Certificate. Therefore, there is a mistake in interpreting the authority of Article 15 Paragraph (2) letter d UUJN by a notary who has the authority to verify the compatibility of photocopies according to the original letter but is not authorized to ratify the compatibility of photocopies of Birth Certificate because the Notary does not have the right or authority to check the authenticity and correctness of the Birth Certificate. It is also because the data or information is the right/authority of the Population and Civil Registration Service.

The legal implications that might occur if a Notary validates a photocopy of a Birth Certificate Excerpt include 1) Opening up opportunities for action or acts of making fake Birth Certificate because the Notary apart from not having the authority to check the authenticity of the Birth Certificate, the Notary also does not have the method or tools to check the authenticity of the Birth Certificate brought to be legalized. 2) There is a rejection of the ratification by interested agencies, and institutions, meaning that the results of the ratification cannot be used 3) Notaries cannot guarantee the truth of what they legalize, but the ratification seems to say it is true, so who guarantees the truth/validity of the ratification photocopy of the birth certificate. The legal implications that will arise if a Notary validates a photocopy of a Birth Certificate Excerpt can also lead to rejection from the interested agency/company. A notary can be a medium to present a fake birth certificate that appears to be genuine by an irresponsible person due to the notary's inability to check and verify the truth of facts and data or the original document of the Birth Certificate Excerpt.

CONCLUSION

Notaries are not authorized to validate photocopies of birth certificate excerpts, because there are regulations that specifically regulate the authorization authority, namely Regulation of the Minister of Home Affairs No. 104 of 2019. It is advisable for a notary not to authorize a photocopy of a birth certificate, because of authority stipulated in Article 15 paragraph (2) letter d UUJN. It gives confirmation that the authority stipulated in the article does not include a photocopy of a birth certificate. It also confirms about the notary's inability to carry out verification in accordance with the facts and data or the original document of the Birth Certificate Excerpt which will have an impact on the possibility of a fake birth certificate appearing. Therefore, the government should revise the UUJN in particular Article 15 Paragraph (2) letter d by providing confirmation that birth certificates are not included in the notary authority to validate photocopies or at least the article is asked for a firm interpretation of the Constitutional Court with the interpretation that the ratification of a photocopy of the Excerpt of the Birth Deed is not included in the authority of the Notary as referred to in Article 15 Paragraph (2) letter d UUJN.

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