

The Acknowledgement of Corporation's Register Maintained by the Ministry of Law and Human Rights as Authentic Evidence in Court of Law

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Abstract— Authentic evidence in civil law case and procedure is evidence that provides the most legitimate fact that cannot be denied by the parties, unless such evidence is declared false or forged by criminal court verdict. Law No.40 Year 2007 introduces Corporation's register, which is maintained by Ministry of Law and Human Rights that provided information about all corporations established in Indonesia before and after the enforcement of the Law No.40 Year 2007. The research tries to examine as whether the Corporation's register can be classified as Authentic evidence. This research is a normative legal research, which uses secondary data, such as primary legal sources and secondary legal sources. Data will be analysis using qualitative approach. Discussion proves that the Corporation's register fulfills the terms of an authentic documents and therefore should be acknowledged as Authentic evidence and therefore can be used as legitimate evidence in court of law.

Keywords: *Authentic evidence, Corporation's register, Corporate Information*

I. INTRODUCTION

Evidences are the most important part in a court of law proceeding. Theories and concepts stipulated in the claim as well as in the answer or reply must be supported by clear and strong evidences. There are at least five types of evidences which were acknowledged by Indonesian Civil Code, however there are at least two prominent evidences that were used in court of law. They are written evidence and witnesses. With respect to the written evidence, Indonesian Civil Code and Indonesian Civil Procedural Law distinguish authentic (written) evidence from underhanded (written) evidence [1] [2].

In 2007, the House of Representative and the Government of the Republic Indonesia has agreed to promulgate Law No.40 Year 2007 regarding Corporation ("Law of Corporation"). There were many things that are new in the Law of Corporation. One of them was the introduction of Corporation's register that is maintained by the Ministry of Law and Human Rights. The Corporation's register itself is part of Legal Entity Administration System (*Sistem Administrasi Badan Hukum = Sisminbakum*) developed by the Ministry of Law and Human Rights in order to keep tracks and records of all corporations ever been established in Indonesia based on

each prevailing laws and regulations. This research aims to discuss and find out whether the Corporation's register can be classified as authentic evidence according to the Indonesian Civil Code and Indonesian Civil Procedural Law.

II. DATA AND METHOD

A. Data

Data use in this research are secondary data. Data are collected through literature review. For the purpose of this research, researcher focused on primary legal sources, that consisted of law and other prevailing governmental regulations. The main regulations used in this research are Indonesian Civil Code, laws and regulations on corporations, including Law of Corporation and its implementation regulations. Secondary legal sources consist of text books written by its experts in its fields.

B. Method

This research is a normative legal research that tries to make legal logic deduction by matching certain facts to fit into certain given laws and regulations. This research will analyse the Corporation's register under *Sisminbakum* that is maintained by Ministry of Law and Human Rights, as whether it can used as authentic evidence in court of law. Analysis of the data are conducted through qualitative approach with the emphasis on legal reasoning.

III. RESULT AND DISCUSSION

A. Authentic Evidence

As mentioned previously, there are two kinds of written evidences that can be used in the court of law. They consist of authentic evidence and underhanded evidence. Authentic evidence, by definition, is an evidence that must be made in writing, in a form of a deed, with the format determined by the law, by or in front of an authorized public officials, at the place where the deed is made and signed. All those components become the terms/ requirements of a deed to be called an authentic evidence. If there is a deed, which is made

without fulfilling the requirements as determined, either because of the in-competency of the public official or the inconformity of the deed with the format as determined by the law, then the deed shall be treated as underhanded document if the document was signed by the parties mentioned in the document. If it was not signed, then the document cannot be used as evidence at all. Other documents which are not made by or in front of a public official are the underhanded documents [3] ; [4].

A. Corporation's Register

The history of corporation in Indonesia, since it was first regulated in Indonesian Commercial Code, showed that even though the existence of legal entity of a corporation begins when the article of association of the corporation was legalized by the Ministry of Justice at that time (in lieu of Governor General), the deed of incorporation (establishment) and the legalization must be registered at First Instance Court and then announced in the State News [5], [6]. Even though the deed and the legalization must be registered in the First Instance Court, the court never do the "maintenance" of the record keeping of all the documents of each corporation. The Court only stated that the corporation was indeed registered in the court.

The first total amendment to the Indonesian Commercial Code was made in 1995, in which Law No.1 Year 2005 regarding Corporation was promulgated. The effective date of the law itself was determined one year later. With respect to the amendment, the registration of the corporation at the First Instance Court was removed. Corporation was not obliged to register at the court anymore. The obligation to conduct registration based on Law No.3 Year 1982 regarding Company Compulsory Registration is still applicable. The Law No.3 Year 1982 itself does not specifically regulate the obligation for corporation to register, but the obligation to register belongs to any and all kind of companies, which may include partnerships and commercial firms [7].

Following the enforcement of Law of Corporation in 2007, the Ministry of Law and Human Rights issued Regulation No.M-01.HT.01.01 Year 2008. The Regulation introduced *Sisminbakum* as an electronic system that will provide services for public with respect to the legalization of corporation legal entity by the Ministry, the approval of certain amendments to the articles of association of the corporation by the Ministry, and the acceptance of other informations of the corporation that must be submitted to the Ministry. All those corporation records were maintained by the Ministry in forms of Corporation's register that is open for public and become public information. This Corporation's register which was one of the product of *Sisminbakum* provides all data/ information pertaining all corporations duly existed in Indonesia and established in accordance with either Indonesian Commercial Code, the Law No.1 Year 2005 and the Law of Corporation. All data/ information available in the Corporation's register are official information. They have all reliable data/ information with respect to the corporations that can be trusted by public.

For the purpose of maintaining and providing information to the public, the Minister delegated General Director of General Legal Administration to appoint public official as the authorized person. The regulation was then replaced by Regulation No.M.HH- 03.AH.01.01 Year 2009.

For the purpose of obtaining the data/ information, the Ministry of Law and Human Rights issued Regulation No.4 Year 2104 regarding The Procedure to Request the Legal Entity Legalization, the Approval for Amendment of Articles of Association, the Submission of Report pertaining Amendment of Articles of Association and the Notification of Changes in Corporate Information. The Regulation itself was partially amended by Regulation No.1 Year 2016. The regulations required that all communications pertaining to the legalization, approval, report and notification shall be done through *Sisminbakum* using electronic submission.

Based on the Regulation No.M.HH-03.AH.01.01 Year 2009, the Corporation's Register shall provide up-dated data/ information from time to time. The data/ information consist of: the name and domicile of the corporation, purpose, term, capital structure, full and complete address and domicile, phone and fax number of the corporations; number and date of deed of establishment of the corporations, including the legalization document's date and number; number and date of deed amending the articles of association of the corporations, including the number and date of approval from and the report made to the Ministry; number and date of deed, including the number and date of the notification sent to the Ministry of other changes in corporate information; name and domicile of the public notary who made the deed(s); full name and complete address of all shareholders, member of Board of Directors and Commissioners; and all other information as may be required by the Law of Corporation, including the dissolution of the corporation, whenever applicable [8]. Based on the above facts given by the laws and its prevailing implementation regulations, it is clear that all data/ information contained in the Corporation's register are data/ information made, kept, maintained and provided by public officials (in this research is public notary) as referred to in the Indonesian Civil Code and Indonesian Civil Procedural Law. Besides the data/ information in the Corporation's register itself are kept, organized and maintained by public officials appointed by General Director of General Legal Administration as delegated by the Minister according to the Law of Corporation, which made the data/ information reliable for public and public must take the data/ information as true. Any challenge made against the data/ information in the Corporation's register must be proven in the court of law. This means that since all data/ information contained in the Corporation's register are valid, made, kept and maintained by public officials, the Corporation's register shall be acknowledged and treated as an authentic evidence if the register is submitted in the court of law.

IV. CONCLUSION

Corporation's register is an authentic evidence and therefore it must be taken as true and perfect evidence in the court of law proceeding unless there is a final and binding court of law verdict stated differently. In such a case the data/information contained in the Corporation's register must be adjusted accordingly, so it can and will always be used as the authentic evidence for other cases in court of law.

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