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## Evidence Legitimacy of Intern Certification Before Primary Consideration in Law Issuance by Judge Within Private Dispute

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### ABSTRACT

A Custom in society about completing Transaction deals or agreements are confirmed in many ways (oral, written or noted) and somehow proved with piece of paper (Receipt) for transaction as receiver accepts goods or services without cordage of notary / Property officials, in verse 5, act number 5 1960 about Essences of Agriculture determines that; "Agriculture Law upon lands, water, and air are customized act unless limited within nation affair ..... etc, Supreme Court Jurisprudence Number 126K/Sip/1973, dated May Fourth 1976 which stated that ; " The Legitimacy of Property Purchasing is not merely absolute confirmed in supervision of Property officials ", read also Supreme Court Jurisprudence Number 665K/Sip/1979, dated July twenty second 1980, as follows : " as The Transaction occurred between Marketer and Customer supervised by authorized chief attended by two witnesses and cost is accepted by the marketer, therefore the purchasing is absolutely legal before the law even not committed in a supervision of Property Officialls. It is alike to Surabaya State Court Issuance Number: 451/Pdt.G/2008/PN.Sby, dated April seventh 2009 with fixed Law Issuance states; "Property transaction is legal as long as completing conditions of act 1320 BW". Judge Law Consideration about Supremacy or value of Intern Certificate Evidence for one private case among others are frequently occurred in Legitimacy of Internal Certification, therefore there are Evidence Isuance Misperceptions about its supremacy by some Judges (as Supreme Court Issuance Number. 537K/Pdt/1985, but there are some Judge Considerations confirmed as Internal Certification is renowned verification it equals to authentic one (as confirmed by Issuance of Supreme Court number. 4434K/Pdt/1986). However, any Judges stated as the evidence for the certification is created as a primary written record (Stated by Supreme Court Issuance Number. 167K/PDT).

**Keywords:** legitimacy; intern certification; signature legitimacy

### INTRODUCTION

The Significant level for Private case Investigation is a part of Evidences, because Judge in Court requires investigating, issuing, and completing all cases based on evidences. And the ways to presume evidences in private cases attached in act 164 HIR, 284 RBG and 1866 BW are noted, witnesses, prejudices, Testifies, and sworn Confession. Besides 5 evidences in act 164, there are still available local evidences as ruled in act 153 HIR act 180 RBG, act 211 RV, and evidences of expert witness in 154 HIR, act 181 RBG, act 215 RV. Among above evidences, in this research, researcher only discusses written record / letter. Spesifically Intern Certificate as Special Discussion from other written records required for comparisons.

Either Written Authentic Record or Intern Writing Record Evidences (act 1867 BW), In this case we observe about Written Record Intern Certificate provided in arbitrary form unconditioned by acts, without connectors or without supervisor of Authorized Property Offocials (act 1874 BW). Authentic act or Intern Certificate created to be way of Evidences. In reality, there is a note created not to be evidence but it may be. When this thing happens, as it is valuable, the writing should be related and supported to other evidences.

Authority of Intern Certificate requires Supremacy as the officials accept it without denies from one side. This is based on Issuance Supreme Court of Republic Indonesia number 4434K/Pdt.1986, it is stated that; Based on Single Issuance of Defendant December Seventeenth 1981 explained clearly about the amount of Debth from Defendant and finally the letter has been frankly denied by Supplicant therefore the certificate provides inviolable evidence.

Menwhile, when The Contains and Signature attached on certificate are denied, so that the evidences are less functioned of law to propose. This is based on Supreme Court Issuance Number 537K/Pdt/1985, stated that; "Evidences of Supplicant is Evidence Letter Number, Although the evidences are firmly denied and canceled by Defendant by any means", therefore The Evidence Letter is void at all for proposal. As Proposed Witnesses of Defendant are not in direct view of the procedures of the letter, because the witnesses sign it in separating condition without under supervision of officials."

From the Description it means , when the officials accept it, The Certificate has a Perfect Evidence same as authentic ones (act 1875 BW; 'When one side denies The Certificate and Value under The Evidence is proposed

to Judge based on 1877 BW'). Either Intern Certificate or Authentic Evidences must be rendered to a Rule of Agreement Legitimacy based on act 1320 BW.

The Consideration of Judge Issuance about Supremacy or Value Evidence Intern Certificate between private case to other frequently happens regarding power of value Evidence of the certificate as a result consideration of Law for Consideration Issuance as follow the Issuance number 537K/Pdt/1985, but there is also Issuance states that Intern Certificate has renowned Evidence as well as Authentic one as declared in Supreme Court Number 4434K/Pdt/1986. Even There is another Law Issuance declares that Intern Certificate states Value of it as a primary Writing Record , as noted by Supreme Court Issuance Number 167K/Pdt/1959.

Regarding about explanation above, it is interesting to discuss about the power of Intern Certificate Evidence, because the research is specifically designed by Researcher to analyze Surabaya State High Court Juridically in Private Case Number 451/Pdt.G/2008/PN.Sby dated April Seventh, 2009 which has Fixed Law Legitimation as follow, its Law Consideration that denotes legalisation for Land Purchasing with Intern Certificate to Receipt as a prove and even in Judge Law Issuance describes that the Supplicant (Buyer) is about to do transaction property dispute under supervision to its officials instead of attendance of Defendant.

Based on description above, so the statement of the problem is: "How is legitimacy of intern certification value applied"?

## METHODS

Problem solving based on explanation above is used normative method or approach of acts and rules either from literary study or case study by analyzing issuance of law regarding to legitimation of intern certificate evidence.

## RESULTS AND DISCUSSION

### Legitimacy of Intern Certificate Evidence

#### Evidence Based on Private Law

Evidence in Law is different to Evidence in Exact Science which must be logical, absolute and described in General, Meanwhile in Law Evidence can not be preceded in fix way in general but it is relative. The Evidence in Law is presence if there are some Disputes or Tendency Clashes which must be completed in Court.

"The ways must be proved are only ways of disputes, it is described as one proposes it but another one denies it or canceled by another side."<sup>(1)</sup>

"Judge is not allowed taking decision without Evidences. The Point for accepting or Canceling Accustion meanwhile the sources are from facts proposed from officials, Evidences are absolutely declared based on Supporting Facts"<sup>(2)</sup>

Based on Retnowulan Sutantio and Iskandar Oriepkartawinata, the definition of to Prove Evidence is " a way in convincing Judge about The Truth of Fundaments as can be a primary of accusation applied to deny Rival Truth Fundaments"<sup>(3)</sup>

R. Soepomo states to Prove Evidence in broad meaning is "Relating Law Connection, for Example if the Judge accept accusation of Supplicant, this acceptance defines that Judge takes conclusion as what proposed by Supplicant as Law Connection between Supplicant and Defendant is valid"<sup>(4)</sup>

According to M. Yahya Harahap "In process of Private Court, The searched truth as Judge Issues it can be enough for general from Judge feeling without any tendency"

Same Explanation is also described by Retnowulan dan Oriep Iskandar that state ;" In Private Law to win a case, it is not necessary of Judge Conviction , The Important Things are legalized materials and from the materials are legal and from them Judge would decide issuance who will claim and surrender, By anyb means in privat law , it just takes General Truth"

In Evidence based on Yahya Harahap states that; "Essentially, The Investigation within cases are then over if one confesses entirely for object law materials. The confession before the judge claims a perfect evidence for one who did it in self committance or with connections for the specific reasons". In this matter R. Subekti argues that; "Judge must admit confessed fundaments as acceptance and grant (take) any claims and accusations referred to the fundaments"<sup>(1)</sup>

Based on Teguh Samudera states that; "Evidence in Law Science can not be rendered in absolute and illogical"<sup>(5)</sup> Same argument is explained by M. Yahya Harahap as states that; "Verivication evidence in Law is not so as logic as Exact Science"<sup>(2)</sup> In this matter concludes that however Evidences with strong truth are not yet eligible 100% (one hundred percent) or absolute claiming that all the evidences are actually true, this may

be an opportunity a fact of, even perhaps lies or deceits. But however Judge can not argue with logical and fixed evidences from the disputers as proven like science is.

Referred from M. Yahya Harahap; "Not all facts should be proven. The concentrations of Evidences are determined for event at object law connection within disputed materials based on the fundamentals accused in one side and claimed in contrary".<sup>(2)</sup>

Therefore from the conclusions, we need to understand Principal Regulations of Privat Law in giving evidence for this case as determined in acts 163 HIR and 1865 BW. 163 HIR states that; "For those proclaiming in possession of Right or claiming committance to strengthen the right, or denying one right so The Supplicant must do for evidence of the right or the related events."

In the Law of giving Evidences for The Disputers must prove the truth regarding to related events and admit the unconditional Law affair. As The Law Evidence is not required to verify by disputers, this is stated from act 178 (1) HIR, Due that Judge as his or her postion while having Discussion is neccesarry to complete any Law arguments not explained by the Disputers. This is also similar attached to act 16 (1) regulation number 4 year 2004 about Authority of Law that; " Court is not allowed for refusing to investigate, preceed and issue any cases in reasons that there are no obvious Law Fundaments as that is necessary for court to investigate and preceed it". Judge is assumed to understand the Law (Ius curia novit).

In The Law of Evidence "All Evidences can be denied within rival provides it".<sup>(2)</sup> The Issuance of Supreme Court Number 3360K/Sip/1983 as follow stated that ; "It is truth as stated by act 1870 Case Regulation of Privat Law or act 314 RBG, value of power Evidence authentic points is eligible. But this matter is still being available unless there are no Rival Evidences proposed.

Therefore its Eligibility is not merely determined or insisted. Its Eligibility can be void due that rival Denials. Menwhile Rival can not tak down the Evidences with 'Seperated Confession', this is stated by act 1929 Case Regulation for Civil Law and act 155 HIR.

#### The Legitimation of Intern Certificate

In this Concern, It is important to Introduce Theories about "The Legitimation of Intern Certificate". In this case there are two arguments anything insisted verivication within Intern Certificate. The Theories are:

**First Theory**, as proven for this insistence is only Law Committance (Rechtshandeling), that any Deals for gaining a purpose to create Law Implications (Rechtsgevolgen).

This argument is firstly stated by Mr. Anema.

**Second Theory**, followed by Mr. F.G. Scheltema proposes that all kind of Certificates can verify Evidences well and bounded all of Law Deals referred to its essence inside, so that any non Law Commitances, like people confession that he or she threw stone into the window of neighbor or Husband Confession to his wife as he had had a sex to another couple told to his wife."<sup>(6)</sup>

From both Theories, Researcher has agreed to Mr. Anema (First Argument), because Intern Certificate is completed to prove any Law events or Law Committance or just activity. The connections or commitances proposed just to gain Law Implications.

Intern Certificate is not regulated to legitimate commitances or relations but just to verify that The Commitances, Connectionts or Events are true, this argument we can comprehend from Regulation of Burgerlijk Wetboek and Rehtreglement Buitengenwesten and on Staatsblad 1867 Number 29 has not actually regulated about purpose for Intern Certificate but just managed about the Legitimation of the certificate in Fixed Guarantee in court after created and proposed for it.

"Intern Certificate is a letter signed and preceded in purpose as evidence from any Law Committance".<sup>(4)</sup>

Based on act 1874 (1) BW, and Staatsblad 1867 Number 29 also act 286 RBG, in a same way based on R. Soepomo also, therefore M. Yahya Harahap explained that from scopes of Law about Evidence Verification, In order that thec writing can be a Certificate, there are required some objects as follow :

1. The letter must be signed;
2. The essence of this letter contains Law Committance or its Connections
3. Intended to precede as Law Essence Evidences for its Commitances .<sup>(2)</sup>

The Authority of its Evidences of Intern Certificate is pointed from its signature. So those, for many Disputers only have two opportunities, Confessing or Denying the Written Signature below the Certificate.

Confessing Signature in a letter takes a Juridical Confession. It means that one who confesses the signature same as confessing Essence and purpose of the letter. Meaning also The Intern Certificate has had inviolable Legitimation same as Authentic one. This is based on 1875 BW, act 1 b Staatsblad year 1867 Number 29 also act 288 RBG because Evidence Legitimation of The Certificate is same to aunthentic one.

When The Signature and the text are guaranteed Intern Certificate consequently, The Certificate has a well Evidence either to signer for inheritor or those gaining privilege from the owner of the Certificate.

When the signature is denied or unconfirmed as the signatures have not been signed by them and or denied their agreements to other sides in written in this certificate, So that the certificate is meant with no Law Supremacy in Evidence, Therefore Judge must manage it as the truth from the text or signature Confirmed upon Legitimacy of Court (Act 1877 BW).

Beside The Truth of Signature, one as Judge is to investigate in Court is a truth of materials or questions given in a certificate under signature as confessed or denied, This matter is based on regulation act 1877 BW. Therefore, in a court, Judge is able to similiarize between Legalisation act with its original, all the text word per word contained in the certificate are analyzed. If eventhough only one word is not reliable to its original, so that the certificate is untrustworthy in Law Legitimation and therefore it must be claimed for cancelation for law, Therefore The Law Materials like that should be ignored, meaning it is not considered any longer as Law Issuance because having no Legitimation or value to prove anything.

If The Intern Certificate Signer confesses there is a signature below the document his pr her sign, but declining statements and agreements to another side as explained of signature in certificate. Therefore The Intern Certificate is assumed as a primary evidence to just prove it in letter form, The statement is stated in act 1878 BW. The Regulation takes Juridical Cnsequence that this act is Insisted as evidence, therefore it can be a primary consideration for Judge and therev must be supports to claim it.

Therefore Judge should Interviere reasons why they decline or refuse the essence of the signed form, by giving objective Evidences for those who decline the form of Intern Certificate, if one can not prove it anyway the validity of the reasons in declining it, so The Certificate can have a Bounded Law Legitimacy as it can be an Issuance of Law. But if in contrast, it can verify the claim about The Legitimacy of The Certificate, so the letter can not be a Fundament as Law Issuance. This Fundament is eligible to Supreme Court Number 167K/Sip/1959, June Twentieth 1959 stated that ; "The Proposed Evidence Materials can not reach maximum ring in reason, Although Evidence ol Loan Issuance signed by defendant but the amount is declined by the person, so The material is qualified as Primary Written Record'.

### **CONCLUSION**

The Power of Intern Certificate Evidence points for the existence of valid signature, if signature and essence are confessed, so The Certificate has a Perfect Legitimacy, same as authentic, Therefore Intern Certificate be a Fundament of Law Issuance Consideration, This is stated in act 1875 BW and act 288 RBG, Read also Supreme Court Issuance Number 3394K/Sip/1983, It is stressed that Defendant accepted Essence and Signature as Legitimated but the text is declined, So The Power of Evidence of The Intern Certificate becomes Primary Written Evidence, and comparation to Supreme Court Issuance Number 1043K/Sip/1971, The Confession of Signature is assumed Inclusive trusting the text explained of Intern Certificate. Meanwhile if the Signature and Text are declined, So The Power of The Certificate is then paralyzed, even more if there are no more Supporting Truth Evidences, Therefore The Evidences are then ignored by Judghe within Law Issuance Consideration. In a Court Confession or Denial Prochedure before Signature in Intern Certificate must be strictly preceded as stated by 1876 BW.

### **SUGGESTION**

Any Tenders in order that having Legitimation of gaining Perfect Evidence should be done in a Real Authentic Document, Therefore it may lead for Law Assurance in Quaranty.

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