

Aspek hukum terhadap pembuatan surat keterangan waris bagi golongan Tionghoa (analisa surat keterangan waris almarhum Tuan Khouw Kie Djin alias Umardani) = Legal aspects of making inheritance affidavit for chinese descendant in indonesia analysis inheritance affidavit of MR Khouw Kie Djin Namely Umardani

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Abstrak

[ABSTRAK

Tesis ini membahas Surat Keterangan Waris bagi golongan Tionghoa di Indonesia. Surat Keterangan Waris yang dibuat oleh Notaris merupakan akta di bawah tangan yang tidak diatur dalam peraturan perundang-undangan di Indonesia, akan tetapi keterangan ini telah mendapat kepercayaan penuh dari masyarakat, instansi-instansi pemerintah maupun swasta. Notaris sebagai pejabat umum yang menjalankan profesi dalam memberikan jasa hukum kepada masyarakat dipahami sebagai pihak ketiga terpercaya yang dapat memberikan jaminan atas keautentikan informasi yang tertera dalam Surat Keterangan Waris. Hal tersebut memberi dampak bahwa Notaris tidak dapat melepaskan tanggung jawab dalam pembuatannya, karena isi dari Surat Keterangan Waris adalah opini hukum Notaris yang didasarkan pada fakta-fakta hukum yang sebenarnya. Sehingga menarik untuk diteliti mengenai Surat Keterangan Waris yang dibuat berdasarkan pada surat pernyataan yang dilegalisasi oleh Notaris bahwa pewaris telah menikah secara adat/agama dan karenanya ahli waris menurut hukum adalah isteri dan anaknya. Adapun pokok permasalahan dalam penelitian ini adalah bagaimanakah kekuatan suatu surat pernyataan yang telah dilegalisasi Notaris sebagai dasar pembuatan Surat Keterangan Waris, serta bagaimanakah pembuatan Surat Keterangan Waris serta pembagian waris bagi Pewaris yang melakukan perkawinan secara adat/agama dan tidak dicatatkan di Kantor Catatan Sipil. Melalui penelitian hukum normatif yang bersifat analitis preskriptif ini, penulis dengan menggunakan data sekunder berusaha mencari cara pembuatan Surat Keterangan Waris serta mencari solusi bagi golongan Tionghoa yang perkawinannya dilakukan secara adat dan tidak pernah dicatatkan di Kantor Catatan Sipil agar mendapatkan perlindungan hukum yang sama sebagaimana layaknya sebuah keluarga menurut hukum keluarga dan hukum waris yang berlaku. Simpulannya adalah surat pernyataan yang telah dilegalisasi oleh Notaris tidak dapat dijadikan dasar pembuatan Surat Keterangan Waris dan ketiadaan penetapan pengadilan mengakibatkan yang berhak sebagai ahli waris adalah saudara-saudara dari Pewaris.

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ABSTRACT

This thesis discuss about Inheritance Affidavit for Chinese descendant in Indonesia. The Inheritance Affidavit that made by Notary is a private deed, however this affidavit has gained public's credibility. Notary as a public official which the sole purpose is to serve the public by providing legal services, being know as a third trusted party who can provide assurance of the authenticity of the information contained in The Inheritance Affidavit. Its impact that Notary take a full responsibility in the making of affidavit, because the contents of the Inheritance Affidavit is a Notary legal opinion based on the legal facts. Therefore, it is interesting to analyze The Inheritance Affidavit being made based on the written statement made by the testator then legalized by Notary. The written statement will declare that there had been a marriage of the

testator according to the religion or customary law. Legal issues of this thesis are: how a written statement that legalized by a Notary can be legal basis of making Inheritance Affidavit and how the making of Inheritance Affidavit for Chinese descendant in Indonesia that marriage by religion or customary law. Through normative legal research and analytical prescriptive type of research, the author tried to define the construction of Inheritance Affidavit in the structure of Indonesian family law, and to find solutions for the Chinese descendant in Indonesia to have the same legal protection as the native in the family law and inheritance. As a resume, the written statement that legalized by a Notary can't be legal basis of making Inheritance Affidavit and without Court's Enactment regarding customary marriages, the appropriate heir is testator's sibling.

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