

## Legal Protection Of Notary Recipients Of The Protocol For Deeds Which Allegedly Is Related To Legal Problems In Semarang City

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Abstract. The purpose of this study is: 1) To analyze and assess the extent of legal protection for notary deed recipients of the alleged deed related to legal issues in the Semarang city. 2) To analyze and examine the obstacles in legal protection to the notary recipient of the deed protocol allegedly related to legal issues in the Semarang city. 3) To formulate legal protection for notary deed recipients of the deed protocol allegedly related to future legal problems. Juridical sociological research approach. The data in this study are primary data and secondary data. The data were then analyzed qualitatively.

Notary recipient and depositary of the notary protocol is not responsible for the substance or contents of the deed for the protocol it receives. The enactment of UUJN is not without obstacles in its implementation. This is especially related to legal protection of notaries. These obstacles include the lack of implementation of the Implementing Regulations for the UUJN Amendment and the Role of THIS to disseminate information about the UUJN Amendments in certain regions. Legal protection that should be given to the notary recipients of the deed protocol must be in accordance with the Law of Notary Position Article 66 paragraph (1) of Act No. 2 of 2004 on Amendments to the Law of the Republic of Indonesia Number 30 of 2004 on Notary Position.

Keywords: Deed; Legal Issues; Notary; Legal Protection; Protocol.

### 1. Introduction

In essence the notary position is as a public official (private notary) who is assigned by the public authority to serve the needs of the community for authentic evidence that provides certainty in civil law. So as long as authentic evidence is still needed by the State's legal system, the position of Notary will still be required for its existence in the midst of society. Based on history, a Notary is a State Official to carry out the duties of the State in the service of the community for the sake of creating legal certainty as an official of an authentic deed in civil matters.<sup>4</sup>

A Notary is appointed and dismissed by a public authority in this case the Government, namely the Minister of Law and Human Rights of the Republic of Indonesia, in this thesis called the Minister, the notary's existence is the implementation of the evidentiary law.<sup>5</sup>

The appointment of the Notary Public as the holder and depositary of the Notary Protocol is obliged to accept the delegation of protocols, because at the beginning of carrying out his position, each Notary is required to make a statement about his willingness to accommodate the Notary Protocol that moves, stops, or dies.<sup>6</sup>

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<sup>4</sup> Hartati Sulihandari, 2013, *Prinsip-Prinsip Dasar Profesi Notaris*, Dunia Cerdas, Jakarta, p.4

<sup>5</sup>Herlien Budiono, 2013, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua*, Citra Aditya Bakti, Bandung, p. 220.

<sup>6</sup> Muhammad Faisal Nasution, *Tanggungjawab Pemberi dan Penerima Protokol Notaris Terhadap Protokol Notaris yang Hilang atau Rusak*, in North Sumatra University article, 2017,

As a protocol holder, besides being able to learn a lot, there are also consequences that he receives, if the deed has legal problems, the protocol holder also participates as a defendant or is summoned by the investigator to bring the deed to the notary of the protocol holder. However, this has become a legal obligation of the Notary Public.<sup>7</sup>

Notary in carrying out his position as Acting Notary Protocol is regulated in Article 1 number (13) UUJN, is a collection of documents that are state archives, which must be kept and maintained by a notary in accordance with statutory regulations, as explained in Article 62 of the UUJN.

The notary protocol must be treated as a State document which must be kept and kept authentic. Thus the notary protocol as a collection of documents must always be stored and maintained under any circumstances even though the notary owner of the protocol is on leave or dies. If the Notary does not maintain and maintain the Notary Protocol properly, resulting in damage and loss of the Notary Protocol, based on Article 85 UUJN, the Notary Public may be subject to sanctions.

Pursuant to Article 65 of the UUJN, that Notary, Substitute Notary and Acting Notary Public are responsible for any Deed that is made even though the Notary Protocol has been submitted or transferred to the depositor of the Notary Protocol. The provision states that a Notary is responsible for each deed he makes, even though the Notary Protocol has been submitted to the depositor of the Notary Protocol.<sup>8</sup>

This means that even though he has resigned his position and all deeds made by a Notary have been submitted or transferred to the depositor of the Notary Protocol, the Notary concerned must remain responsible for the deed he made. Notary Protocol which is a collection of documents and as an archive of the State has a very important meaning for the notary in carrying out his position. Therefore the obligation to prepare a Notary Protocol is a must or absolute.<sup>9</sup>

Based on background that has been described, so the writer tries to analyze it deeply form research by title "Legal Protection Of Notary Recipients Of The Protocol For Deeds Which Allegedly Is Related To Legal Problems In Semarang City".

The formulation of the problem in this study are: How is the legal protection of the notary recipient of the deed protocol allegedly related to legal issues in the Semarang city ?; What are the obstacles in the legal protection of notary deed recipient of the deed protocol allegedly related to legal issues in the Semarang city ?; How should the legal protection of notary deed recipients of the deed protocol allegedly related to legal issues in the Semarang city?

## Research Methods

The method of approach that the author uses in the preparation of writing this legal research is the juridical-sociological legal approach. This research is analytic descriptive. The data in this study are primary data obtained from the field by interview and secondary data. The data were then analyzed qualitatively.

## 2. Results and Discussion

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<https://jurnal.usu.ac.id/index.php/premise/article/download/20521/8775> accessed on 30 October 2019 at 23.12 WIB.

<sup>7</sup>*Ibid.*, p.10.

<sup>8</sup>Habieb Adjie, Menopopong Khasanah Notary and PPAT Indonesia, PT. Citra Aditya Bakti, Bandung, 2009, p. 43.

<sup>9</sup>Ngadino, *Tugas dan Tanggungjawab Jabatan Notaris di Indonesia*, PGRI University Semarang press, 2019, p. 129.

## **2.1. Legal Protection Of Notary Deed Recipients Allegedly Related To Legal Issues In The Semarang City**

Notary deed has perfect proof of strength in a civil lawsuit, but if it violates certain provisions, the evidentiary value will be degraded to have the power of proof as a deed under the hand. Notary who is proven to have made a mistake resulting in the deed he made only has the power of proof as a deed under the hand or the deed becomes null and void by law will cause harm to the client or other parties. Therefore, the notary can be held accountable for his mistakes and required to provide compensation, costs, and interest to the parties suffering losses.

It is not impossible that a notary public can make mistakes that result in violations of his position. Associated with notary errors, then what is used is *beroepsfout*. *Beroepsfout* is a special term that refers to mistakes, mistakes made by professionals with special positions. These mistakes are made in carrying out a position. But the term error in this case is objective in the sense of the term error in the context of operating outfits aimed at professionals in carrying out their positions.

Basically, storing the minutes of the deed is the obligation of a notary public, so the notary should keep the notary protocol itself (which contains the minutes of the deed) and not let the notary protocol be held by his employees. This is because the notary protocol is a collection of documents which is a state archive that must be stored and maintained by a notary public. But the problem is when a notary dies and the protocol is transferred to another notary, what if a dispute involving the deed arises. One reason a notary does not want to accept protocols from other notaries is because they feel "bothered". Especially if it is known that the notary who has passed away is a notary who seems less thorough, inadvertent and labeled problematic by other notaries. They are reluctant to accept the protocol for fear of many disputes or problems arising from the deeds, so that in the end they as the notary recipient of the protocol will be bothered with the interests of investigation, investigation, even though only requested information as a witness. In practice, problems regarding the degradation of authentic deeds can occur due to negligence and / or lack of accuracy, there is a carelessness of a notary public that causes the deed he made to experience the degradation of the force of proof or null and void by law.

These legal problems can arise at that time, or can arise after a few years later when the minutes of the deed have been saved in another notary protocol. Therefore, many notaries who tend to be afraid to accept protocols from other notaries especially those notaries have died. When a notary doesn't take office again, it's not because of death, of course, information can be asked for the deed he made, because civil law and criminal law do not know the age limit as long as the person feels capable of taking responsibility for their actions. However, if a notary takes office again due to death, then a notary who accepts the protocol must be willing to be questioned, even though he is not the notary who made the deed.

Notary recipients of protocols are only asked for information in accordance with their position as notaries of protocol recipients from notaries who have passed away. Under Article 65 of the UUJN, a Notary Public, Substitute Notary, Special Substitute Notary, and Temporary Notary Officer is responsible for any deed he makes even though the Notary Protocol has been submitted or transferred to the depositor of the Notary Protocol.

Based on this provision, a notary of a protocol recipient cannot be held responsible for the deed he did not make. The responsibility of a Notary, Substitute Notary, Special Substitute Notary, and Notary Acting Officer as the deed maker is attached to himself. Notaries who

violate the provisions on the administration of notary protocol recording as outlined in Article 58 and Article 59 of the UUJN may be subject to sanctions in the form of: written warning; temporary stop; dismissal with respect; or dismissal with no respect. But it becomes difficult if the notary who commits a violation is a notary who has died. Notarial deed makers can not be asked for information on the deed he made, of course no compensation can be requested if there is an error on the deed he made. So the obligation to provide information was transferred to the notary who accepted the protocol and the parties who were witnesses in the deed. Notary recipients of the protocol will still be called in to be asked for information if there are problems related to the existing protocol in their mastery, this is one of the responsibilities of the notary protocol recipient.<sup>10</sup>

Legal issues such as those described above allow the notary to deal with legal liability in a civil manner. The summoning of the notary recipient of the protocol by the investigator, public prosecutor, and judge to attend the examination of a civil case must require the approval of the Notary Honorary Council, because at this time the MKN is a legal protection institution for the notary when there is a notary who is suspected of making a mistake or violation in terms of deed making. Thus it will be more secure if all the summons, examination and detention are carried out after permission from a professional organization checks it first, so that in the end it will create legal certainty for the community in accordance with the principles of trust that underlie the notary authority.

Based on an interview with Mr. Hafidh as a Notary in the Semarang city, he explained that the right to conduct disciplinary action on a Notary who violated the code of ethics was the Notary Honorary Council, while the Notary who violated the position was MKN. Whereas in Semarang there had never been a violation that caused the revocation of the Decree and it was prosecuted. If the Notary is called by the competent authority, THIS will accompany the Notary.<sup>11</sup>

Based on the above matters, it can be seen that the legal protection of a notary of the deeds in the deposit related to the notary responsibility of the recipient of the protocol is not a civil liability. However, the summon of the notary recipient of the protocol by the investigator, the public prosecutor and the judge regarding the protocol in his control must still be carried out with the MKN's approval.

## **2.2. Obstacles In The Legal Protection Of Notary Deed Recipients Of Alleged Deeds Related To Legal Issues In The Semarang City**

Notaries in carrying out their duties do not rule out the possibility of intersecting with legal issues, even though in carrying out their office duties have been careful and in accordance with statutory provisions. This is because a notary is still an ordinary human being who is not free from mistakes.

Based on interviews with Mr. Hafidh, other parties both plaintiffs, reporters and others assume the protocol holder understands the process of making the deed, while the actual Notary of the protocol holder does not know and the Notary of the protocol holder cannot be sued over the matter, so only as witnesses. Notary protocol holders only have the duty to save the Deed.<sup>12</sup>

The enactment of UUJN is not without obstacles in its implementation. This is especially related to legal protection of notaries. These obstacles include:

- The UUJN Implementing Regulations have not been formed yet  
The obstacle in this rule of law is that there has not yet been a regulation on the

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<sup>10</sup> Based on interviews with Mr. M.Hafidh, SH, M.Kn, on March 10, 2020

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

implementation of the Amended UUJN as mandated in Article 91B of the Amended UUJN, so that the investigation mechanism against the Notary still refers to the old UUJN. Even though the old UUJN was rectified by the Constitutional Court Decision Number 49 / PUU-X / 2013 which revoked Article 66 paragraph (1), especially on the phrase about the obligation to obtain approval from the Regional Supervisory Council (MPD). This in turn also relates to the invalidation of the provisions in Article 14 paragraph (1) of the Regulation of the Minister of Law and Human Rights Republic of Indonesia Number M.03HT.0310 2007 which regulates MPD. In addition, in the Amendment Law there are several provisions stipulated in a new article that can lead to multiple interpretations in practice in the field, because the regulations for implementation have not yet been formed. One such article is the existence of an obligation for the Notary to attach fingerprints as regulated in Article 16 paragraph (1) letter c. In practice, many cause unrest among notary clients including banks, financial institutions, and others. The client asks for a more detailed legal umbrella not only based on the provisions of Article 16 paragraph 1 letter c and has legal force.

- This role is to disseminate information on UUJN Amendments in certain regions. Socialization activities are important to be carried out in view of the need for a deep understanding of some changes from the UUJN which have been enacted since 2014. Basically, the socialization activities of the changes to the UUJN are carried out as a form of unifying views in practice for Notaries. However, the role of INI to carry out socialization activities regarding the amendment of this Law in certain regions is still lacking.

### **2.3. Legal Protection That Should Be Given To Notary Deed Recipients Of Alleged Deed Related To Legal Issues In The Semarang City**

Before the promulgation of the Law of Notary Position in 2004 which has now been amended with the enactment of Act No. 2 of 2004 on Amendments to the Law of the Republic of Indonesia Number 30 of 2004 on the Position of Notary Public, the Notary oversight body at that time was at the Court. As a supervisory body for Notaries, the court seeks to provide adequate legal protection, assistance and escort so that the Notary can carry out his position properly.

Legal protection that should be given to the notary recipients of the deed protocol must be in accordance with the Law of Notary Position Article 66 paragraph (1) of Act No. 2 of 2004 on Amendments to the Law of the Republic of Indonesia Number 30 of 2004 on Notary Position stipulates that for the interests of the judicial process, investigators, public prosecutors, or judges with prior approval of the Notary Honorary Council. Thus it will be more secure if all the summons, examination and detention are carried out after permission from a professional organization checks it first, so that in the end it will create legal certainty for the community in accordance with the principles of trust that underlie the notary authority.

Based on an interview with Mr. Hafidh, the Notarial legislation must clarify how the obligations and duties of the Notary holder of the protocol, because basically the Notary holder of the protocol does not know anything about the deed.<sup>13</sup>

Legal protection is also given from the Indonesian Notary Association (INI) as an organization for the Notary Public with the field of protection that also provides legal advice and consultation for notaries.

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<sup>13</sup> *Ibid.*

### 3. Closing

#### 3.1. Conclusion

- Notary recipient and depositary of the notary protocol is not responsible for the substance or contents of the deed for the protocol it receives. Notary recipient and depositary of the notary protocol serves the summons from the police and the court of the dispute of the parties related to the minutes of the deed that are part of the protocol that is in storage with the approval of the Notary Honorary Council.
- The enactment of UUJN is not without obstacles in its implementation. This is especially related to legal protection of notaries. These obstacles include the lack of implementation of the Implementing Regulations for the UUJN Amendment and the Role of THIS to disseminate information about the UUJN Amendments in certain regions.
- Legal protection that should be given to the notary recipients of the deed protocol must be in accordance with the Law of Notary Position Article 66 paragraph (1) of Act No. 2 of 2004 on Amendments to the Law of the Republic of Indonesia Number 30 of 2004 on Notary Position stipulates that for the interests of the judicial process, investigators, public prosecutors, or judges with prior approval of the Notary Honorary Council. Thus it will be more secure if all the summons, examination and detention are carried out after permission from a professional organization checks it first, so that in the end it will create legal certainty for the community in accordance with the principles of trust that underlie the notary authority.

#### 3.2. Suggestion

- The notary who submits the protocol should provide facilities that can be in the form of storage cabinets so that the protocols have adequate space
- It is better in the future to save the minutes of the deed in addition to in the form of volumes of the deed also in the form of soft copy so that the storage of the minutes of the deed in digital form is expected to be more practical and efficient.
- In the framework of legal protection efforts for Notaries relating to Article 66 paragraph 1 of Act No. 2 of 2004 on Amendments to the Law of the Republic of Indonesia Number 30 of 2004 on Notary Position, the Government should immediately regulate the duties and obligations of Notary holders of protocol.

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