

Legal Uncertainty in Legal Protection for Notaries Who Hold Protocols from Notaries Who Create Protocols Who Have Deceased in Tegal City

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Abstract. *Notaries in carrying out their duties as Notaries holding protocols often receive criminal and civil lawsuits and complaints to the MPD due to protocol defects made by other Notaries who are Notaries who make protocols. The type of research used in this article is a type of sociological or empirical legal research that includes legal identification and legal effectiveness, empirical legal research is legal research where data is obtained through primary legal data or data obtained directly in the community. Based on the study in this paper, it is understood that legal protection for Notaries holding protocols from Notaries who have died in Tegal City has not been optimally realized, this is indicated by the fact that some people still file criminal and civil lawsuits against Notaries holding protocols when the protocol made by the Notary who made the protocol who has died is known to be problematic.*

Keywords: *Law; Notary; Protection; Protocol.*

1. Introduction

Notary In carrying out his/her position as a notary, a notary also has obligations. One of them is in Article 16 paragraph (1) letter b of the UUJN, namely: making a Deed in the form of Minutes of Deed and storing it as part of the Notary Protocol. "Making a Deed in the form of Minutes of Deed and storing it as part of the Notary Protocol" continued with letter g regarding the binding of the deeds, letter i regarding the list of deeds regarding wills, and recording its repertory. The definition of a notary protocol in Article 1 number 13 of the UUJN is "a collection of documents which are state archives which must be stored and maintained by a Notary in accordance with the provisions of laws and regulations." This article explains that a notary protocol is all the completeness that must be completed and owned in carrying out the position of a notary. Articles 58 to 65 of the UUJN discuss further regarding the making, storage and submission of notary protocols.

Article 62 of the UUJN states that notary protocols must be submitted in several situations, including in the event of a notary's death. After a certain period of time, the notary protocol must be submitted to the government, in this case the Regional Supervisory Council in accordance with the provisions of Article 63 of the UUJN.¹Notary protocols are submitted to maintain the confidentiality of the contents of the deed and its existence, so that if at some point it is needed for a purpose, the deed can be easily searched for and found.²Based on Article 64 paragraph (1) of the UUJN, the Regional Supervisory Council appoints a notary who receives the notary protocol. The notary who receives the protocol is authorized to issue a grosse deed, a copy of the deed, or an extract of the deed in accordance with Article 64 paragraph (2) of the UUJN, and is responsible for storing the protocol properly. The notary who receives the protocol in exercising his authority regarding the Notary protocol does not always run smoothly. The case of damage to documents stored by the Notary also occurred at the office of "Notary Ardian Permana in early 2019, whose office was domiciled in Tegal, his office caught fire due to an electrical short circuit and the client files stored in his office were burned down."³

The Notary Law does not regulate the procedures for storing Notary protocols, which should be the case if the Notary protocol is a State Archive, then it is only right that the Notary protocol be stored properly as stated in the regulations on archiving that all documents must be stored in a safe, airtight and fireproof place.⁴Based on the case above, if someone is harmed by the actions of another person, while there has been a legal relationship between them under an agreement, in this case the Notary is not a party to the Deed but has an obligation to keep the Notary's protocol in his position.⁵Notaries who then experience damage and even destruction of the Notary protocol so that losses are suffered, then the provisions of Article 1365 of the Civil Code apply, which states that every act that causes loss to another person, requires the person who caused the loss to compensate for the loss for his actions.⁶The Notary Law states

¹Dewi Oktavia, "Responsibility of Notary Protocol Holders for Deeds That Are Void by Law", *Recital Review*, Vol. 3, No. 1, 2021, pp. 150-151.

²Putu Bellania Ariawan, "Legal Certainty of the Territorial Office of a Notary as the Holder of a Notary Protocol Whose Term of Office Has Ended", *Journal of Notary Law*, Vol. 3, 2018, p. 327.

³Othman Ballan, "Notary's Responsibility for Damage to Minutes of Deeds Kept by Notary", *Wacana Paramarta Journal of Legal Studies*, Vol 21, No 1, 2022, p. 58.

⁴Melita Trisnawati and Suteki, "Legal Protection for Notaries Receiving Protocols in the Event of Violation of Notarial Deeds by Notaries Providing Protocols Who Have Died", *Notarius*, Volume 12, Number 1, 2019, pp. 24-25.

⁵Mohamat Riza Kuswanto and Hari Purwadi, "The Urgency of Storing Notary Protocols in Electronic Form and Its Legal Certainty in Indonesia", *Jurnal Repertorium*, Volume IV, No. 2, 2017, p. 63.

⁶Zakiah Noer and Yuli Fajriyah, "Notary's Accountability for Notary Protocols as State Archives", *Jurnal Pro Hukum: Journal of Legal Research*, University of Gresik, Volume 10, Number 2, 2021, pp. 82-83.

that Notaries, Substitute Notaries and Temporary Notary Officials are responsible for every deed they make even though the notary protocol has been submitted or transferred to the notary protocol storage party, which in the Article is contained in Article 65 does not specifically explain the time limit for the notary's responsibility for authentic deeds, so it is also clear about the responsibility for the damaged Notary protocol and the one they made so that the Article causes a lack of clarity in the norm which gives rise to multi-interpretive understanding among notaries. It is difficult for notaries to prove the damaged Notary protocol that they have made because the description in Article 16 paragraph 1 letter b of the Notary Law describes the absolute obligation to the notary, so the legal consequences will also apply equally.⁷

2. Research Methods

The type of research used in this article is a type of sociological or empirical legal research that includes legal identification and legal effectiveness. Empirical legal research is legal research where data is obtained through primary legal data or data obtained directly in society.⁸

3. Results and Discussion

3.1. Role and Responsibilities of Notary Public Notary Protocol Holder

The 2 (two) obligations of the Notary holding the protocol are as follows:

- a. Provide copies/quotes/grosses when requested in accordance with the provisions of Article 54 of the UUJN.
 1. A notary may only provide, show or notify the contents of a deed, grosse deed, copy of deed or extract of deed, to persons who have a direct interest in the deed, heirs or persons who obtain rights, unless otherwise determined by statutory regulations.
 2. Notaries who violate the provisions referred to in paragraph (1) may be subject to sanctions in the form of:
 - a) Written warning;
 - b) Temporary suspension;
 - c) Honorable discharge; or
 - d) Dishonorable discharge.
- b. Store and maintain it in a proper place

⁷Ida Bagus Yoga Raditya and I Wayan Novy Purwanto, "The Authority of Notaries to Store Technology-Based Protocols (Repository) in the Development of the Cyber Notary Concept", *Kertha Semaya Journal*, Vol. 10, No. 12, pp. 2756-2757.

⁸Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Legal Research: Normative and Empirical*, Pustaka Pelajar, Yogyakarta, pp. 153-154.

Come and attend the trial if there is a lawsuit (civil or criminal) against the Notary who made it, which is addressed to the Notary holding the protocol as a fact witness with the permission of the Notary Honorary Council (hereinafter referred to as MKN) to show the bundle of minutes of the deed. Even if you come without permission (of your own free will) then it is the responsibility of the Notary concerned.

The presence of a Notary institution is a policy of the state with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public compiled as evidence that the state in providing services to the people, especially in making authentic evidence recognized by the state. When a Notary applies for appointment as a Notary, he is always asked to be willing to accept another Notary's protocol. This has become a legal obligation to accept it and it is the Notary's responsibility to store and maintain the Notary's protocol. Wirjono Prodjodikoro stated that responsibility for a person's actions only exists if the person commits an act that is not permitted and most of such acts are acts that in the Civil Code are called unlawful acts.⁹

Notaries in carrying out their roles and obligations often also commit Unlawful Acts. Article 1365 of the Civil Code states that every unlawful act that therefore causes loss to another person, requires the person whose fault caused the loss, to compensate for the loss. Based on Article 1365 of the Civil Code, the elements of unlawful acts formulated by the article according to JH Nieuwenhuis, namely:¹⁰

- a. The act that causes the loss is unlawful because it is contrary to the rights of others, morality, and the legal obligations of the perpetrator.
- b. Losses arising as a result of these actions.
- c. The perpetrator is guilty.
- d. Norms that are violated have "strekking" (general nature) to compensate for losses.

Regarding the Notary's responsibility for his/her protocols as stated in Article 65 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the Notary is obliged and fully responsible for all protocols that are stored. From an administrative perspective, the Notary's responsibility in relation to storing and holding the

⁹Abdul Ghofur Anshori, 2010, Indonesian Notary Institution, Legal and Ethical Perspectives, UII Press, Yogyakarta, pp. 38-39.

¹⁰JH Nieuwenhuis, 1985, Principles of Contract Law, translated by Djasadin Saragih, Dictate, unpublished, Surabaya, p. 118.

physical form of each deed that he/she has made which is the Notary's protocol has ended along with the end of the Notary's term of office.

A notary as an official in carrying out his duties has a time limit as regulated in the UUJN. Based on Article 8 paragraph (1) and (2) it states that:

- a. A notary resigns or is honorably dismissed from his position due to death,
- b. Has been 65 years old,
- c. Own request,
- d. Unable spiritually and physically to carry out his duties,
- e. Holding positions that are prohibited by law.

Regarding the notary's responsibility for the deed he made, there is no provision regarding the time limit. Therefore, based on Article 63 of the UUJN, the notary protocol must be transferred to another notary who is then called the recipient of the protocol so that the notary protocol remains stored and maintained properly. The procedure for submitting the protocol to the Protocol holder is regulated in Article 63 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

In accordance with the provisions of Article 63 of the UUJN, it regulates the submission of protocols carried out by notaries, namely:

- a. The submission of the protocol as referred to in Article 62 shall be carried out within a maximum of 30 (thirty) days by making a report on the submission of the Notary Protocol which is signed by the person submitting and the person receiving the Notary Protocol.
- b. In the event of an occurrence as referred to in Article 62 letter a, the submission of the Notary Protocol is carried out by the Notary's heir to another Notary appointed by the Regional Supervisory Board.
- c. In the event of an occurrence as referred to in Article 62 letter g, the submission of the Notary Protocol shall be carried out by the Notary to another Notary appointed by the Regional Supervisory Board if the temporary suspension is more than 3 (three) months.
- d. In the event of an occurrence as referred to in Article 62 letter b, letter c, letter d, letter f, or letter h, the submission of the Notarial Protocol is carried out by the Notary to another Notary appointed by the Minister upon the recommendation of the Regional Supervisory Council.

Based on the various narratives above, it can be seen that in the event of a notary's death, the notary's protocol will be submitted to another notary, the submission of the protocol in the event of a notary's death, is carried out by the

notary's heirs to another notary appointed by the MPD. The notary's protocol is submitted to maintain the confidentiality of the contents of the deed and its existence, so that if at some point it is needed for a purpose, the deed can be easily searched for and found.

Article 64 paragraph (1) UUJN, MPD appoints a notary who receives the notary protocol. The notary who receives the protocol has the authority in accordance with Article 64 paragraph (2) UUJN, and has the responsibility to store the protocol properly. This includes the protocol submitted by the heirs of the notary who made the protocol who has died.

The urgency of a retired Notary's responsibility for the deeds he/she has made is for life, because authentic deeds including Notary protocols made by Notaries have strong and perfect evidentiary power. Notaries still have the responsibility to submit the Notary Protocol to the MPD. By transferring the Notary Protocol to another Notary, it can provide a wider scope for the parties in the deed to obtain justice, so that legal certainty is created, where the judge can make a decision from a legal event that enters the realm of trial through a deed as authentic and perfect evidence. This does not apply to Notaries who have died and retired. However, the administrative responsibility of a Notary who has retired cannot be held accountable anymore, because he/she is no longer under the supervision and guidance of the MPD, but in civil and criminal matters, a Notary who has retired as a citizen has the same position before the law.

3.2. Legal Protection for Notaries Who Hold Protocols from Notaries Who Create Protocols Who Have Deceased in Tegal City Currently

Even though the Notary holding the protocol is required to be responsible for storing the Notary protocol made by the Notary who made the Notary protocol, in reality there are no regulations governing the protection of Notaries holding Notary Protocols. This has resulted in many Notaries holding Notary Protocols being sued by the parties who made the Notary Protocols, this problem also occurs in Tegal City. According to Sisri Yoko as one of the Notaries/PPAT who is also a member of the Tegal City Regional Supervisory Board, in 2022 there were around 37 Notaries holding Notary Protocols who were subject to civil and criminal lawsuits, 15 people were subject to criminal lawsuits, while 20 people were subject to civil lawsuits, while 2 people were subject to ethical complaints to the Tegal City MPD. Sisri then added that in 2023, lawsuits and complaints against Notaries Holding Notary Protocols in Tegal City experienced a not very high increase, there were 64 Notaries holding Notary Protocols who were subject to lawsuits and complaints by the public, 30 people were subject to criminal

lawsuits, 32 people were subject to civil lawsuits, and 2 people were subject to ethical complaints to the MPD.¹¹

Table: Number of Cases Involving Notaries Holding Protocols in Tegal City in 2022-2023

Types of Notary Protocol Holders	Legal Cases	Amount In 2022	Amount In 2023
Criminal Lawsuit		15 People	30 People
Civil Lawsuit		20 People	32 People
Complaint to MPD		2 persons	2 persons
Total number		37 People	64 People

Based on the whole case, the problem that is the source of the problem is the existence of fraudulent acts in the Notary protocol in the form of the absence of clear regulations on the protection of the rights of the parties conducting the sale and purchase of land. There is a discrepancy between the deed and the grosse deed which is ultimately contained in one Notary protocol binder and is detrimental to one of the parties who entered into a debt guarantee agreement.¹²

Hertanti Pindayani as a Notary in Tegal City explained in a personal interview with the author, that filing a civil or criminal lawsuit against a Notary holding a Protocol cannot be justified, this is because the Notary holding the protocol did not make the protocol, and the parties who appeared for the benefit of making the Notary protocol did not really provide information before the Notary holding the protocol. So that the Notary holding the protocol does not know for sure and in depth about the protocol given to him. Hertanti added that the absence of regulations regarding protection for Notaries holding protocols in the UUJN, is the main cause of the vulnerability of Notaries holding protocols to become parties who can be subject to legal cases over protocols made by other Notaries who are Notaries who make the protocol. According to him, this becomes even more complicated when the Notary who makes the protocol has died. This is

¹¹Personal Interview with Sisri Yoko as Notary/PPAT and member of the Tegal City MPD, on May 12, 2023.

¹²Personal Interview with Sisri Yoko as Notary/PPAT and member of the Tegal City MPD, on May 12, 2023.

because the responsibility of a Notary who has died administratively cannot be held accountable anymore.¹³

This reality is different from a Notary who has retired. A Notary who has retired is still responsible civilly and criminally for the products he made before retiring. A Notary who has retired as a citizen has the same position before the law.¹⁴The absence of protection regulations for Notaries holding protocols will be a source of problems for Notaries holding protocols, because a defective Notary protocol from a Notary who made the protocol who has died can result in his criminal liability being transferred to the Notary holding the protocol due to the lack of legal certainty regarding the Limits of liability that can be imposed on Notaries holding the protocol. In addition, the absence of protection regulations for Notaries holding protocols will also make their position increasingly weak and at risk of experiencing legal problems due to the protocol they hold.

3.3. Legal Uncertainty in the Implementation of the Role and Responsibilities of Notaries in the Protection of Notary Protocols in Tegal City Currently from the Perspective of Apeldoorn's Legal Certainty Theory

The absence of regulations regarding legal protection for Notaries holding protocols when there is a problem with a Notary protocol that is defective due to an error by the Notary who created the protocol who has died, shows that there has been legal uncertainty regarding the legal protection of Notaries holding protocols in carrying out their roles and responsibilities.

According to Apeldoorn, legal certainty has two aspects, first regarding the issue of the ability to form (*bepaalbaarheid*) law in concrete matters. This means that parties seeking justice want to know the law in specific matters before starting a case. Second, legal certainty means legal security. This means protection for the parties against legal arbitrariness.¹⁵

Based on Apeldoorn's thinking, it is clear that the Notary holding the protocol does not have clear access to know the limits of his/her responsibility that can be accounted for in terms of implementing the role and responsibility as a Notary holding the protocol made by another Notary who has died. In addition, the Notary holding the protocol is also vulnerable to legal arbitrariness as a result of legal uncertainty in the regulation of protection for Notaries holding the protocol.

¹³Interview with Hertanti Pidayani as Notary/PPAT in Tegal City on January 12, 2024.

¹⁴Interview with Hertanti Pidayani as Notary/PPAT in Tegal City on January 12, 2024.

¹⁵Shidarta, 2006, *Morality of the Legal Profession: An Offering of a Framework for Thinking*, PT. REVIKA Aditama, Bandung, pp. 82-83.

This automatically violates Article 28D paragraph (1) of the 1945 NRI Constitution regarding equality before the law.

3.4. Reflecting on the Issue of Protection of Notaries Who Hold Protocols from the Perspective of Legal Protection Theory

The presence of law in society is to integrate and coordinate interests that are usually in conflict with each other. Therefore, the law must be able to integrate it so that the clash of The term "law" in English can be called law or legal.

In this sub-chapter, the definition of law will be discussed in terms of linguistic terminology that refers to the definition in several dictionaries and the definition of law that refers to several opinions or theories conveyed by experts. The discussion of law here does not intend to create a definite limitation regarding the meaning of law because according to Immanuel Kant, the definition or meaning of law is something that is still difficult to find because of the wide scope and various fields that are used as sources for the discovery of law. Conflicts of interest can be minimized as much as possible.

The definition of legal terminology in Indonesian according to KBBI is regulations or customs that are officially considered binding, which are confirmed by the authorities or government, laws, regulations, and so on to regulate social interactions, benchmarks or rules regarding certain natural events, decisions or considerations determined by a judge in court, or verdicts.

The opinion regarding the definition of understanding the meaning of law stated by R. Soeroso, SH is that law is a collection of regulations made by those in authority with the aim of regulating the order of social life which has the characteristics of ordering and prohibiting and has a coercive nature by imposing sanctions for those who violate it.

According to Mochtar Kusumaatmadja, an adequate understanding of law must not only view the law as a set of rules and principles that regulate human life in society, but must also include institutions or institutions in the processes needed to realize the law in reality.

According to JCT Simorangkir and Woerjono Sastropranoto, law is a set of coercive regulations that determine human behavior in the social environment, made by authorized official bodies.

According to Soedjono Dirdjosisworo, the definition of law can be seen from eight meanings, namely law in the sense of rulers, law in the sense of officers, law in the sense of attitudes and actions, law in the sense of a system of rules, law in the sense of a network of values, law in the sense of legal order, law in the

sense of legal science, law in the sense of legal discipline. Several meanings of law from various perspectives put forward by Soedjono Dirdjosisworo illustrate that law is not merely written regulations and law enforcement officers as has been understood by the general public who do not know about law. But law also includes things that are actually already alive in social interactions.¹⁶

In terms of understanding the law there is a concept of legal construction. There are three types or three kinds of legal construction, namely, first, legal construction by way of opposition. The intention is to interpret the law between the rules in the legislation with the case or problem faced. Second, the narrowing legal construction is to limit the process of interpreting the law in the legislation with the actual situation. Third, the expanding legal construction is a construction that interprets the law by expanding the meaning faced so that a problem can be ensnared in a legislation.

According to Hans Kelsen, law is a normative science and not a natural science.¹⁷ Hans Kelsen further explained that law is a social technique for regulating people's behavior.¹⁸

In terms of language, the word protection in English is called protection. The term protection according to KBBI can be equated with the term protection, which means the process or act of protecting, while according to Black's Law Dictionary, protection is the act of protecting.¹⁹

In general, protection means protecting something from dangerous things, something that can be an interest or an object or goods. In addition, protection also contains the meaning of protection given by someone to a weaker person. Thus, legal protection can be interpreted as all government efforts to ensure legal certainty to provide protection to its citizens so that their rights as citizens are not violated, and those who violate them can be subject to sanctions according to applicable regulations.²⁰

The definition of protection is a place of refuge, things (actions and so on) that protect. In the KBBI, what is meant by protection is the method, process and act of protecting. Meanwhile, law is a regulation made by the government or which applies to everyone in society (state).

¹⁶ Soedjono Dirdjosisworo, *Introduction to Legal Science*, (Jakarta: PT. Raja Grafindo Persada, 2008), pp. 25-43.

¹⁷ Jimly Asshiddiqie and M. Ali Safa'at, *Hans Kelsen's Theory of Law*, (Jakarta: Sekretariat General and Registrar's Office of the Constitutional Court of the Republic of Indonesia, 2006), p. 12.

¹⁸ Hans Kelsen, *Basics of Normative Law*, (Jakarta: Nusamedia, 2009), p. 343

¹⁹ Bryan A. Garner, *Black's Law Dictionary*, ninth edition, (St. Paul: West, 2009), p1343.

²⁰ "Patent Holders Need Legal Protection", *Republika*, 24 May 2004

The definition of legal protection is protection provided to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten.²¹In other words, legal protection is a depiction of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.²²

Muchsin also stated that legal protection is something that protects legal subjects through applicable laws and regulations and enforces its implementation with sanctions. Legal protection can be divided into two, namely:²³

a. Preventive Legal Protection

Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing violations and providing guidelines or limitations in carrying out an obligation.

b. Repressive Legal Protection

Repressive legal protection is final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed.

The absence of regulations regarding legal protection for Notaries holding protocols when there is a problem with a Notary protocol that is defective due to an error by the Notary who created the protocol who has died, shows that there has been legal uncertainty regarding the legal protection of Notaries holding protocols in carrying out their roles and responsibilities. This also shows that the absence of legal protection regulations for Notaries holding protocols also eliminates the guarantee of legal protection for Notaries holding protocols both in the preventive legal protection dimension where in this case legal protection is realized as an effort to prevent violations of the law that can take away someone's rights, in this case it can be analogized as actions that are efforts to prevent errors in determining Notaries holding protocols as parties who must be held accountable for protocol defects, which can be known to be not their actions, then violations of the rights of Notaries holding protocols from errors by Notaries making protocols through clear sanctions for Notaries making protocols

²¹Urip Santoso, "Dispute Resolution in Land Acquisition for Public Interest," *Perspektif Journal*, Vol. 21, No. 3, 2016, Airlangga University, Accessed on Academia.edu, May 12, 2019.

²²Rahayu, 2009, *Transportation of People*, etd.eprints.ums.ac.id. Government Regulation of the Republic of Indonesia, Number 2 of 2002 Concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations Law of the Republic of Indonesia, Number 23 of 2004 Concerning the Elimination of Domestic Violence.

²³Location, cit.

who are defective while in office and are still alive, so that if there are protocol defects, Notaries in protocols can feel safe due to the existence of legal sanctions for Notaries making protocols so that they have a deterrent effect and a high level of caution and full responsibility for the protocols they make and submit to Notaries holding protocols.

4. Conclusion

Legal protection for Notaries holding protocols from Notaries who have made the protocol who have died in Tegal City has not been optimally realized, this is indicated by the fact that some people still file criminal and civil lawsuits against Notaries holding the protocol when the protocol made by the Notary who has made the protocol who has died is known to be problematic.

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