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Legal Protection for Prospective Notaries Against Unfinished Notary Obligations When the Notary Dies

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Abstract: The death of a notary before completing their duties presents significant legal challenges, primarily because unsigned deeds are not included in the notary protocol, as stipulated by the Explanation of Article 62 of UUJN-P. This omission jeopardizes the rights of prospective notaries, who may have already provided advance payments and submitted crucial documents. Despite the provisions of UUJN-P, which outline the appointment of temporary notary officials in the event of a notary's leave, there is a distinct lack of regulation addressing the scenario where a notary dies while still performing their duties. Specifically, Article 35 paragraph (1) of UUJN-P mandates only that the notary's heirs report the death to the MPD, without any legal obligation to finalize the uncompleted deeds. This normative gap creates a legal vacuum, potentially leading to material losses for the prospective notaries. This study adopts a normative juridical research method, examining the relevant formal regulations and theoretical literature to address the issue of legal protection for prospective notaries in such situations. The findings underscore the necessity for legal mechanisms that ensure the protection of prospective notaries' rights. One potential solution is the implementation of a written agreement between the notary and the prospective notary, serving as proof of document submission and advance payment.

Keywords: *Legal protection; Notary obligation; Notary protocol*

INTRODUCTION

The profession of a notary is considered noble (nobile officium) due to its deep connection with civil law and humanity, particularly in the creation and formalization of authentic and written evidence. As a legal professional, a notary is entrusted with the responsibility of ensuring legal certainty, order, and protection for the public. According to Article 1 point 1 of Law Number 2 of 2014 (Amendment of Law Number 30 of 2004) concerning Notary Position (UUJN-P), a notary is a public official authorized to create authentic deeds, which are recognized as prima facie evidence with inherent legal certainty.[1] Notaries, upon taking an oath as stipulated in Article 4 of UUJN-P, must fulfill their duties with integrity and submit necessary information such as office address, signature sample, and seal to relevant authorities, as mandated by Article 7 of UUJN-P. [2]

Previous studies have discussed the role and responsibilities of notaries, particularly focusing on the legal implications of their actions in creating authentic deeds. However, there has been limited exploration of the legal gaps that arise when a notary dies before completing their duties. Most research highlights the regulatory framework governing notarial duties but does not address the normative void concerning unfinished deeds when a notary passes away unexpectedly.[3] This study identifies a significant gap in the existing literature by examining the legal implications and the absence of clear regulatory guidelines in UUJN-P regarding this issue.

The death of a notary in the midst of their duties creates a significant legal conundrum, particularly concerning the continuity and completion of notarial acts that remain unfinished at the time of death. In the current legal framework, as outlined by UUJN-P (Law Number 2 of 2014, Amendment of

[1] Endang Purwaningsih, "Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum," *ADIL: Jurnal Hukum* 2, no. 3 (May 17, 2019): 330, https://doi.org/10.33476/ajl.v2i3.846.

[2] Habib Adjie, *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*, Cet. 1 (Bandung: Refika Aditama, 2008), 15.

[3] Yetty Komalasari Dewi, "The Need to Adopt a Limited Liability Partnership for the Legal Profession in the Partnership Law: A Critical Review from Indonesia's Perspective," ed. Richard Meissner, *Cogent Social Sciences* 7, no. 1 (January 1, 2021): 1999005, https://doi.org/10.1080/23311886.2021.1999005.

Law Number 30 of 2004 concerning Notary Position), there is a noticeable gap in regulation regarding the procedures and responsibilities for handling such unfinished deeds. This gap is critical because it directly affects the rights and interests of prospective notaries and their clients, who may have already made substantial commitments, including the submission of important documents and advance payments.Without clear guidelines, the death of a notary can lead to various complications.[4] For example, deeds that are in progress but remain unsigned are not considered part of the notary protocol, as per the Explanation of Article 62 of UUJN-P. This means that these deeds lack legal standing and cannot be enforced, which could result in financial losses for clients who were relying on the completion of these transactions.[5] Additionally, the absence of regulations means that there is no defined process for transferring the responsibility of these unfinished deeds to another notary or authority, further exacerbating the risk of disputes and legal challenges.

This research focuses on the legal issues arising from the death of a notary while they are in the process of creating an authentic deed. Specifically, it examines the responsibilities and obligations of the heirs and the Regional Supervisory Council (MPD) in such situations, as well as the legal status of the unfinished deeds. The study also addresses the gap in UUJN-P concerning the continuation or completion of these deeds, which are not currently classified as part of the notary protocol.

The objective of this research is to propose solutions for the normative void identified in UUJN-P concerning the completion of notarial duties when a notary dies. It aims to develop legal protections for prospective notaries and their clients, ensuring that their rights are safeguarded even in the absence of explicit regulations. Additionally, the research seeks to contribute to the ongoing discourse on improving the legal framework governing notarial practices in Indonesia.

[4] Satrio Abdillah, Norhasliza Ghapa, and Maheran Makhtar, "A Comparative Study Between Indonesia and Malaysia on the Role of Notaries and Advocates," *JURNAL USM LAW REVIEW* 6, no. 3 (November 12, 2023): 943, https://doi.org/10.26623/julr.v6i3.7853.

[5] Iqbal Pandu Satrio, "Authorities and Responsibilities of Notaries Regarding the Implementation of Cyber Notary in Indonesia," *Authentica* 5, no. 1 (August 15, 2022): 46–72, https://doi.org/10.20884/1.atc.2022.5.1.198.

THEORETICAL BASIS

1. Legal Protection Theory

Legal protection is an evolution of the concept of recognition and protection of human rights. The functions of law in Indonesia include providing order, a sense of justice, certainty, peace, and benefits, along with the entitlement to legal protection. According to Satjipto Rahardjo, legal protection is an effort to organize various interests within society to prevent conflicts between those interests, ensuring that all individuals can enjoy the rights granted by law.[6] This organization is achieved by limiting certain interests and granting power to others in a measured and balanced manner.[7]

Moch. Isnaeni further categorizes legal protection into two types: internal legal protection and external legal protection. Internal legal protection is created through agreements made by the parties involved. In this context, the parties themselves design the terms of the agreement, which can provide legal protection to those bound by the agreement, ensuring that the interests of both parties are accommodated based on mutual consent. External legal protection, on the other hand, is established by authorities through the creation of regulations aimed at safeguarding the interests of weaker parties.[8] This type of protection is designed to prevent arbitrary actions that could harm the interests of these weaker parties.

Based on the aforementioned theories, the relevant theory that will be utilized in this study is the legal protection theory as proposed by M. Isnaeni, specifically focusing on internal and external legal protection. This legal protection is directed toward the parties involved concerning the unfinished

[6] Yoserwan, "Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?," *Cogent Social Sciences* 10, no. 1 (December 31, 2024): 2289599, https://doi.org/10.1080/23311886.2023.2289599.

[7] Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2104710, https://doi.org/10.1080/23311886.2022.2104710.

[8] Erwin Wahyu Saputra and Diana Tantri Cahyaningsih, "Analisis Bentuk Perlindungan Hukum Terhadap Konsumen Atas Pembelian Mobil Toyota Avanza Generasi Ketiga Akibat Adanya Cacat Produksi," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 2 (March 21, 2024): 139–46, https://doi.org/10.62383/amandemen.v1i2.147.

duties of the notary at the time of the notary's death, serving as a legal umbrella that safeguards the interests of these parties.

2. Legal Justice Theory

Theo Huijbers explains justice according to Aristotle in addition to general virtues, also justice as a special moral virtue, which relates to human attitudes in a particular field, namely determining good relations between people, and balance between two parties, the measure of this balance is numerical and proportional equality[9]. This is because Aristotle understood justice in terms of equality. In numerical equality, every human being is equalized in one unit. For example, all people are equal before the law. Then proportional equality is giving each person what he is entitled to, according to his abilities and achievements[10].

According to Thomas Hobbes, justice is an act that can be said to be fair if it is based on an agreed agreement[11]. From this statement, it can be concluded that justice or a sense of fairness can only be achieved when there is an agreement between two parties who promise. Agreement here is interpreted in a broad form not only limited to the agreement of two parties who are entering into a business contract, lease, and others. But the agreement here is also an agreement on the verdict between the judge and the defendant, laws and regulations that do not favor one party but prioritize the interests and welfare of the public.

So, in the problem that the author discusses, the author uses the theory of justice, and legal justice means that it should not take sides and sympathize with others subjectively. The law should be a judge who is not neutral, but always takes sides, namely partiality to the truth and justice is used to examine the justice caused by the grant annulment case to be fair to the disputing parties, especially to protect their respective rights.

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[9] Syaharie Jaang, "Analisis Perlindungan Hukum Terhadap Konsumen Berdasarkan Prinsip Keadilan," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 05 (May 31, 2023): 349–57, https://doi.org/10.58812/jhhws.v2i05.303.

[10] Rudri Musdianto Saputro, "Penegakan Hukum Lingkungan Di Indonesia Ditinjau Dari Teori Keadilan Aristoteles," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 1 (January 3, 2023), https://doi.org/10.58258/jisip.v7i1.3970.

[11] Daya Negri Wijaya, "Kontrak Sosial Menurut Thomas Hobbes Dan John Locke," *Jurnal Sosiologi Pendidikan Humanis* 1, no. 2 (December 1, 2016): 183–93, https://doi.org/10.17977/um021v1i22016p183.

3. Theory of Legal Liability

Hans Kelsen's theory of responsibility in law is closely tied to the concept of legal obligation, positing that a person is legally responsible for an act if they can be subjected to a sanction in the event of an opposing or wrongful act. Kelsen divides liability into four distinct categories: fault-based liability, absolute liability, individual responsibility, and collective responsibility.[12]

Fault-based liability refers to situations where an individual is held accountable for an offense that was committed intentionally or foreseeably, with the intent to cause harm. This form of liability is predicated on the presence of fault, aligning with the principle that there is no liability without fault. Absolute liability, by contrast, imposes legal responsibility regardless of intent or foreseeability; it holds an individual accountable for an offense even when it was committed unintentionally and unforeseeably, emphasizing a strict liability framework where fault is irrelevant.

Individual responsibility emphasizes that each person is accountable for their own actions. This concept is fundamental in ensuring that liability is personal and not transferable based on the actions of others. On the other hand, collective responsibility assigns liability to an individual for offenses committed by another person within a collective group. This concept is more complex, often applied in scenarios where responsibility is shared or where the actions of one person are seen as representative of the group.

In the context of tort law, as outlined in the Civil Code, these models of responsibility are reflected in various forms: liability that involves fault (whether intentional or through negligence), liability particularly tied to negligence, and absolute liability, which applies in a more restricted sense. Strict liability is particularly noteworthy as it imposes legal responsibility on the actor regardless of fault, meaning that a person can be held liable even if the action was unintentional and lacked negligence, carelessness, or impropriety.

[12] Hans Kelsen, *Teori Umum Tentang Hukum Dan Negara* (Bandung: Nusa media, 2015), 42.

Responsibility, in a broader sense, is the acceptance of the consequences of one's actions. This concept is integral to legal theory, especially concerning professional duties such as those of a notary. A notary is responsible for every deed they execute, and this responsibility extends indefinitely—even after retirement or in the event of the notary's death. If a notary passes away, their heirs may inherit the responsibility, particularly regarding unresolved obligations.

Kelsen's theory of legal responsibility will be employed in this research as an analytical tool to explore the nature of responsibility for a notary's unfinished duties at the time of their death.[13] The research will examine whether this responsibility falls on the heirs of the deceased notary or if it should be transferred to the notary who receives the notary protocol. This exploration seeks to clarify the extent and limits of legal responsibility in these circumstances, providing a clearer understanding of how responsibility is managed when a notary's duties remain incomplete.

RESEARCH METHODS

This research adopts a normative juridical approach, focusing on a thorough examination of formal regulations, including legislation and theoretical literature, to address the specific legal issues under consideration.[14] The purpose of legal research in this context is to systematically identify and interpret legal rules, principles, and doctrines that can be applied to resolve pertinent legal questions. The selection of a normative juridical method is particularly apt for this study due to the pressing need to clarify legal uncertainties within the regulatory framework governing notarial duties, especially when a notary passes away before completing their tasks. A key area of investigation is the legal status of unsigned deed minutes at the time of a notary's death, exploring whether these documents are part of the notary protocol that should be transferred to another notary as per Article 62 of

[13] Hans Kelsen, "What Is the Pure Theory of Law?," in *Law and Morality* (Routledge, 2017), 101.

[14] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2014), 51.

UUJN-P, or whether they fall under the responsibilities of a temporary notary official as outlined in Article 1, point 2 of UUJN-P.[15]

The research process begins with the identification and collection of relevant laws and regulations that govern notarial duties, specifically those addressing the scenarios where notaries are unable to complete their tasks due to death. This is followed by a detailed analysis of the content within these legal texts to comprehend their scope, intent, and any existing gaps, particularly regarding the completion or transfer of a notary's unfinished tasks. Simultaneously, a comprehensive review of theoretical literature will be conducted to support and enhance the legal analysis. This review will delve into relevant legal theories, such as those concerning legal protection, legal certainty, and legal responsibility, while also examining the conceptual foundations related to the notary position and the handling of notary protocols.

The synthesis of findings from both the analysis of legal texts and the theoretical literature will then form the basis for drawing conclusions. These conclusions will provide insights into the legal obligations and protections that apply to notaries, their clients, and other related parties when a notary dies before completing their duties.

While the primary data collection method involves the review of documents, including legislation and scholarly writings, the research may also incorporate interviews with legal experts and practicing notaries. These interviews, if conducted, would serve to complement the document analysis by offering practical insights and validating the theoretical findings. Such qualitative data could help illuminate how the current legal framework is interpreted and applied in practice, highlighting any challenges or ambiguities encountered by professionals in the field.

To maintain a focused and manageable scope, the research centers on the specific issue of legal protection for clients in the event of a notary's death before the completion of a deed. It also addresses the responsibilities of heirs or temporary notary officials in finalizing the notary's unfinished tasks. The study is confined to the Indonesian legal framework, particularly examining

[15] Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021), 32.

current practices under the UUJN-P, and aims to shed light on how these laws are applied in contemporary settings.

This approach provides a structured pathway for resolving the legal uncertainties surrounding the duties of notaries who pass away before completing their tasks, ultimately contributing to the development of clearer legal guidelines and protections within Indonesia's legal system.

RESULT AND DISCUSSION

Legal Protection for Prospective Notaries Against Unfinished Notary Obligations When the Notary Dies

Legal protection is the development of the concept of recognition and protection of human rights. The functions of law in Indonesia include providing order, a sense of justice, certainty, peace and benefits and are entitled to legal protection[16]. According to Satjipto Raharjo, legal protection is an effort to organize various interests in society so that there are no collisions between interests and can enjoy all the rights granted by law. Organizing is done by limiting a certain interest and giving power to others in a measured manner[17]. Soerjono Soekanto in his book states that legal protection is to provide assistance and fulfillment of rights to witnesses and / or victims to provide a sense of security such as providing restitution, medical services, compensation and legal assistance[18].

Moch. Isnaeni explained that legal protection is divided into two types, namely internal legal protection and external legal protection[19]. Internal legal protection is legal protection created through an agreement made by each party[20]. The faces themselves design the contents of the agreement that can

[16] Arif Hidayat, "Perlindungan Hukum Terhadap Notaris Pengganti Yang Aktanya Bermasalah Ditinjau Dari Undang- Undang Nomor 30 Tahun 2007 Juncto Undang- Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris," *Jurnal Minuta* 1, no. 1 (April 24, 2019): 23, https://doi.org/10.24123/jmta.v1i1.1840.

[17] Sri Utami, Hari Purwadi, and Adi Sulistiyono, "Perlindungan Hukum terhadap Notaris dalam Proses Peradilan Pidana Menurut Undang-undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris," *Repertorium* (Journal:eArticle, Universitas Sebelas Maret, 2015), 89, https://www.neliti.com/id/publications/213042/.

[18] Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2011), 180.

[19] Moch Isnaeni, *Hukum Jaminan Kebendaan: Eksistensi, Fungsi, Dan Pengaturan* (Yogyakarta: Laksbang justisia, 2016), 110.

[20] Melita Trisnawati and Suteki Suteki, "Perlindungan Hukum Terhadap Notaris Penerima Protokol Dalam Hal Terjadi Pelanggaran Akta Notaris Oleh Notaris Pemberi

give birth to legal protection for the faces bound by the agreement, where when packaging the contents of the agreement both parties want their interests to be accommodated on the basis of mutual agreement[21]. External legal protection is legal protection created by the authorities through the formation of regulations aimed at the interests of weak parties. External legal protection is made as a form of prevention of arbitrariness against the interests of other parties and the disadvantage of weak parties[22].

Notaries who die during their term of office must have left unfinished official duties, where these unfinished official duties are official duties carried out by Notaries as authentic deed makers. When the Notary dies and the matter as described above has not been resolved, this will be the root of legal problems, because the deed that will be made has not been signed and is not included in the notary protocol category as described in the Explanation of Article 62 of UUJN-P. As the interview that the author has conducted, that the prospective confrontant comes to the Notary to have his/her wishes confirmed into an authentic deed, so that with the death of the Notary and has not completed his/her duties, this can be a threat to the rights of the prospective confrontant, in this case, namely to the down payment and important documents that have been submitted to the Notary[23].

Notarial protocols have important historical and administrative value in a legal context, so notaries are responsible for storing and maintaining them properly, maintaining the confidentiality, integrity, and accessibility of these documents. In addition, notary protocols are strong written evidence of legal acts involving notaries and provide legal certainty to the parties. In addition, the heirs of the notary in good faith surrendering the rights of prospective faces that have been deposited with the Notary is a form of official responsibility which must protect the interests and rights of prospective faces.

Protokol Yang Telah Meninggal," *Jurnal Notarius* 12, no. 1 (June 8, 2019): 11, https://doi.org/10.14710/nts.v12i1.23760.

[21] Trisnawati and Suteki, "Perlindungan Hukum Terhadap Notaris Penerima Protokol Dalam Hal Terjadi Pelanggaran Akta Notaris Oleh Notaris Pemberi Protokol Yang Telah Meninggal."

[22] Nabila Mazaya Putri, "Perlindungan Hukum Bagi Notaris Pemegang Protokol Terhadap Pelanggaran Pembuatan Akta Oleh Notaris Pemberi Protokol," *Kertha Semaya : Journal Ilmu Hukum* 10, no. 3 (January 29, 2022): 9, https://doi.org/10.24843/KS.2022.v10.i03.p03.

[23] Sekretaris Majelis Pengawas Daerah Jember-Bondowoso, Wawancara dengan Sekretaris Majelis Pengawas Daerah Jember-Bondowoso, January 30, 2024.

So that it becomes important for the heirs to know and understand the procedure of the Notary's office when he dies, the authority of the MPD, the notary receiving the protocol and the legal consequences for the heirs who do not submit the protocol of the deceased notary.

The Notary Protocol is a collection of documents that constitute a state archive where according to Yuhana, the notary protocol must be kept and maintained under any circumstances, even though the Notary who issued and owned the Notary Protocol has retired or passed away[24]. This is in accordance with Article 65 of the Notary Position Law which reads: "*Notaries, Substitute Notaries, and Temporary Notary Officers are responsible for every Deed they make even though the Notary Protocol has been handed over or transferred to the keeper of the Notary Protocol.*"

The substance of the article stipulates that Notaries have full obligations and responsibilities for all protocols they have. This responsibility does not only apply until the end of a Notary's term of office, but is attached throughout the life of the Notary. The submission of the Protocol of a Notary who has passed away is a legal action to transfer the responsibility related to the Protocol to the Notary receiving the protocol, so that the Notary receiving the protocol has the responsibility to maintain and maintain the protocol, and has authority over the protocol in accordance with the regulations stipulated in the law[25]. If the protocol of the deceased Notary has not been handed over to the Notary receiving the protocol, then the responsibilities related to the Notary Protocol are still the responsibility of the deceased Notary where in this case the responsibility is also attached to the inheritance received by the heirs. So that the heirs are responsible for carrying out the responsibilities of the deceased Notary as stated in the Notary Position Law.

In principle, whenever a Notary dies, all of his/her archives and protocols must be transferred to another Notary as the recipient of the Notary Protocol by the heirs of the deceased Notary in accordance with the provisions

[24] Dian Ayu Yuhana, "Peran Majelis Pengawas Daerah Dan Notaris Penerima Protokol Terhadap Penyimpanan Protokol Notaris Yang Telah Berumur 25 Tahun," *Jurnal Officium Notarium* 1, no. 1 (April 1, 2021): 56, https://doi.org/10.20885/JON.vol1.iss1.art6.

[25] Ida Bagus Kade Wahyu Sudhyatmika and Gde Made Swardhana, "Akibat Hukum Protokol Notaris Yang Telah Meninggal Dunia Yang Belum Diserahkan Oleh Ahli Waris," *Jurnal Acta Comitas* 7, no. 2 (2022): 311, https://doi.org/10.24843/AC.2022.v07.i02.p11.

of Article 35 of the Notary Law. The principles in the transfer of the Notary Protocol are[26]:

(1) This obligation applies to spouses, blood relatives, or blood relatives in a straight line up to the second degree, who are required to inform the local Office of the Ministry of Law and Human Rights (MPD) in the area where the deceased Notary resides, within 7 (seven) working days after the Notary passes away.
(2) If the Notary passes away, the Notary protocol will be transferred to another Notary who is appointed as the recipient of the Notary Protocol.
(3) The protocol granting in the condition of Notary's death is executed by the Notary's heirs to another Notary appointed by MPD.
(4) The protocol transfer process is expected to be completed within 30 (thirty) days, and must be corroborated by the creation of an official report regarding the transfer of the Notary protocol signed by the party submitting and the party receiving the Notary protocol.
(5) If a Notary dies while on leave, the duties of the Notary position will be taken over by a Substitute Notary as a Temporary Notary Official for a maximum of 30 (thirty) days from the date of death of the Notary.
(6) The Temporary Notary Officer is responsible for submitting the Notary protocol of the deceased Notary to the MPD within 60 (sixty) days from the date of the Notary's death.

The provisions of Article 35 of the Notary Office Law above, the general steps in the handover of the Notary Protocol and the responsibilities of each party involved in the handover of the Notary Protocol are known. The parties involved in the handover of the Notary Protocol include the heirs of the deceased Notary, the notary receiving the Notary Protocol from the heirs appointed by the local MPD, the Temporary Notary Officer, and the MPD. So that a legal event related to death in this case due to the death of a notary, it can be emphasized that it creates an obligation for the heirs to save, store and submit the Protocol to the MPD or the appointed Notary. The stage of handing over the Notary Protocol from the heirs to the Notary receiving the protocol appointed by the local MPD is carried out no later than 30 (thirty) days, and the Substitute Notary is required to submit the Notary Protocol to the local MPD no later than 60 (sixty) days.

[26] Eko Permana Putra, Yuliandri Yuliandri, and Azmi Fendri, "Kedudukan Dan Tanggung Jawab Notaris Penerima Protokol Notaris Yang Meninggal Dunia," *Al Hurriyah : Jurnal Hukum Islam* 5, no. 1 (July 14, 2020): 63, https://doi.org/10.30983/alhurriyah.v5i1.2608.

The heirs in practice submit a protocol recipient Notary to the local MPD if the Notary dies. Notaries in carrying out their obligations are supervised by the Minister who is delegated to the MPD to carry out their supervisory functions. The purpose of this supervision is so that Notaries in carrying out their duties fulfill all the requirements related to the office of Notary, for the security of the interests of the community because Notaries are actually appointed not for their own interests but for the interests of the community, they serve[27]. Article 67 paragraph (3) of the Notary Position Law has stated that the MPD consists of 9 (nine) people with the following elements: 1). Government as many as 3 (three) people; 2). Notary Organization as many as 3 (three) people; and 3). Expert or Academic as many as 3 (three) people. The authority of MPD is actually a delegation of power obtained by the Ministry of Law and Human Rights, related to the duties and obligations in supervising and fostering the Notary Position domiciled in the district / city. Therefore, the position of MPD can be said to be the spearhead in supervising and fostering Notaries in the regions.

MPD members from the Notary element are internal supervision carried out by fellow notaries, while the expert or academic element is an external element where this combination is expected to provide a synergy of objective supervision and examination, so that every supervisory action is carried out based on applicable legal rules and provides an external internal dual supervisory function so that Notaries do not deviate from the duties of their position. The authority of MPD in supervising Notaries is regulated in Article 70 of the Notary Law, then MPD has obligations that must be carried out as regulated in Article 71 of the Notary Law. Based on these obligations and authorities, MPD plays a role in maintaining and protecting the public's interest in Notary deeds, where the deed is part of the Notary Protocol and acts as the strongest and fulfilled written evidence[28].

The authority of the Central MPP based on Article 77 of the Notary Position Law is limited to the authority to temporarily dismiss and propose the sanction of dishonorable dismissal to the minister. Article 78 of the Notary Position Law states that the hearing by the MPP in terms of denial of leave and

[27] Tobing Lumban G.H.S, *Peraturan Jabatan Notaris* (Jakarta: Erlangga, 1981), 301.

[28] Ria Trisnomurti and Gusti Bagus suryawan, "Tugas Dan Fungsi Majelis Pengawas Daerah Dalam Menyelenggarakan Pengawasan, Pemeriksaan, Dan Penjatuhan Sanksi Terhadap Notaris," *Jurnal Notariil* 2, no. 2 (2017): 127–40, https://doi.org/10.22225/jn.2.2.353.127-140.

imposition of sanctions is open to the public, and the Notary is given the opportunity to defend himself in the hearing examination by the MPP that sanctions him. The MPP, MPW and MPD do not have the written authority to impose warnings or specific sanctions on the heirs to the submission of the protocol of the deceased notary. Although the Notary Position Law has normed that the heirs are responsible for submitting the protocol of a deceased notary, there are no definite sanctions that can be imposed by the Supervisory Council. The authority of the MPD if there is a Notary Protocol that is not submitted by the heirs is regulated in Article 63 paragraph 6 of the Notary Position Law which reads: "*In the event that the Notary Protocol is not submitted within the period of 30 (thirty) days as referred to in paragraph (1), the Regional Supervisory Council is authorized to take the Notary Protocol.*"

The legal provisions added in Article 63 paragraph 6 of the Notary Position Law authorize MPD to take the Notary Protocol that is not submitted within a period of no later than 30 (thirty) days by the heirs of the deceased Notary. So that when MPD finds out about the death of a Notary, MPD has the authority to take action to take the protocol of a notary who has died but has not been submitted to the Notary receiving the Notary Protocol or MPD. However, MPD must first ascertain the truth regarding the death of the Notary holding the notarial protocol to then take steps against the notarial protocol that has not been submitted. The expanded authority of MPD states that MPD has no responsibility or can be held accountable as long as the family has not made a notification report of the death of the Notary to MPD. The role performed by the Supervisory Council begins when it receives a report regarding the death of a Notary, and based on the report it only follows up on the report. And without the authority to sanction the heirs who do not submit the notary protocol.

The absence of warnings or sanctions for heirs who do not submit notary protocols results in a legal vacuum, where the submission of notary protocols by heirs is a form of legal obligation but is not included regarding warnings or sanctions. This legal vacuum is the gap that causes violations committed by heirs who do not submit the protocol of the deceased notary to the MPD or Notary receiving the notary protocol. An example of a case that occurred shows that MPD received notification of the death of a Notary from a colleague. Based on this information, MPD writes to the heirs to immediately report and show the death certificate of the deceased Notary, after the heirs notify and complete the file regarding the death of the Notary, MPD can

appoint a Notary receiving the protocol[29].The situation where the heirs do not notify or even submit the notary protocol can be categorized as a violation because indirectly the heirs are affiliated parties. By not reporting to MPD and submitting the protocol to the Notary receiving the protocol, it will hamper the interests of the community. In fact, the heirs will not benefit from controlling the notary protocol because it is not part of the inheritance property which can then be categorized as property rights.

The concept of authority expressed by H.D. Stouth in Ridwan HB has relevance to the definition and authority of notaries as stipulated in the Notary Public Office Law. Authority refers to the rules governing how a government or public law subject obtains and exercises its authority. The authority of a notary to carry out the duties and functions of a notary, namely the authority of a notary in the submission of the Notary Protocol based on Article 16 paragraph (1) letter b of the Notary Position Law states that notaries are required to make deeds in the form of deed minutes and keep them as part of the Notary Protocol. In addition, Article 16 paragraph (1) letter d of the Notary Position Law states that a notary is obliged to issue a Grosse Deed, Deed Copy, or Deed Quotation based on the Deed Minute. Therefore, the submission of the Notary Protocol is important to know who has the authority to issue a Deed Copy, Deed Quotation, and/or Deed Grosse when a notary ceases to hold office. Legal uncertainty regarding notarial protocols in laws and regulations has not been regulated in detail and clearly.

The regulation of Article 63 paragraph (2) of the Notary Public Office Law does not explain in detail whether the heirs of a notary are obliged to submit the protocol of a deceased notary. The substance of Article 63 paragraph (2) does not explain whether the heirs of the deceased notary are responsible for the protocol if the submission deadline has passed and does not even clearly regulate that the heirs are fully responsible for the protocol that has not been submitted. Based on Radbruch's thoughts related to the meaning of legal certainty, first, law is positively applicable legislation. In the context of notarial protocols, the lack of clear and detailed legal arrangements in Article 63 paragraph (2) of the Notary Public Office Law regarding the obligation of heirs to submit notarial protocols can lead to legal uncertainty.

[29] Meyssalina Manuria Isabella Aruan, "Akibat Hukum Protokol Notaris Yang Tidak Diserahkan Oleh Ahli Waris Kepada Notaris Lain (Studi Pada Majelis Pengawas Daerah Kabupaten Deli Serdang)," *Jurnal Notarius* 1, no. 2 (2022): 249, https://jurnal.umsu.ac.id/index.php/notarius/article/view/13986.

When there are shortcomings in arrangements such as the absence of specific provisions regarding the obligation of heirs to submit notarial protocols, this can result in uncertainty regarding the responsibilities and obligations that must be fulfilled by the heirs.

As a result, there is legal uncertainty regarding the steps that must be taken by the heirs, the legal uncertainty can raise questions whether the heirs are obliged to submit the notary protocol, and within what period of time the submission must be made, and what are the legal consequences if the heirs do not fulfill their obligations. This lack of regulation can make it difficult for heirs and hinder the creation of certainty, therefore, it is important to clearly and in detail formulate the obligations of heirs in submitting notary protocols so as to avoid doubts and uncertainty, and provide clear guidelines for heirs in carrying out their responsibilities regarding notary protocols. Based on Radbruch's thinking that when there is a lack of clarity or deficiency in legal arrangements in Article 63 paragraph (2) which does not explain whether the heirs of the deceased notary are responsible for the protocol if the submission limit has passed and does not even clearly regulate that the heirs are fully responsible for the protocol that has not been submitted, it will affect the responsibilities and legal obligations of the heirs, this can cause errors in understanding and implementation of the law. Referring to the cases that have been mentioned, there is uncertainty regarding whether notary heirs have an obligation to submit notarial protocols that have not been regulated in detail, which can lead to a variety of different interpretations and interpretations.

Errors in interpretation will have an impact on its implementation, causing legal uncertainty, because the heirs involved in the case cannot be certain about the obligations and responsibilities that should be fulfilled. This uncertainty can hinder justice, certainty, and benefit. From the criminal side, when the heirs do not submit the notarial protocol, they can be punished based on the provisions of Article 81 of the Archives Law that every person who intentionally controls and/or possesses state archives for their own or other people's unauthorized interests shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 250,000,000.00 (two hundred and fifty million rupiah). According to this provision, any person who intentionally controls and/or possesses state archives for his/her own interests or those of other persons who are not entitled, may be subject to criminal sanctions.

Heirs who do not submit notarial protocols should be subject to the concept of state archives, as such actions can be considered a violation of the provisions of Article 81 of the Archives Law. Heirs can be considered deliberately controlling and/or possessing state archives for their own or other people's unauthorized interests. For heirs who do not submit notarial protocols as state archives based on the principles of authenticity and trustworthiness in organizing archives must adhere to the principle of maintaining the authenticity and trustworthiness of archives so that they can be used as evidence and accountability materials in archives Article 4 letter (b) of the Archives Law so that heirs who do not submit notarial protocols as state archives, heirs violate the principles of authenticity and trustworthiness because they do not maintain the authenticity and integrity of these documents.

If it causes interpretations and meanings that are not in accordance with the laws and regulations, it can jeopardize the reliability of evidence and can raise doubts about the validity and trust in the information contained in the notary protocol which must guarantee the security of the archive from the possibility of leakage and misuse of information by unauthorized users. The principle of authenticity and trustworthiness in the organization of archives has the aim of maintaining the integrity and validity of archives as a reliable source of information. Therefore, if the heir is qualified as an archival subject, the heir has an obligation to maintain the authenticity and trustworthiness of the notarial protocol by submitting it to the MPD. The action of the heirs of the deceased Notary who did not report the death of the Notary to the MPD and/or did not submit the Protocol of the deceased Notary to the Notary receiving the Notary Protocol can be categorized as an unlawful act. Article 1365 of the Civil Code states: "every unlawful act which causes loss to another person, obliges the person who causes the loss through his fault to compensate for the loss."

Based on the substance of the article, there are elements, namely the existence of a case, against the law, the existence of a fault, the existence of a loss, and the existence of a causal relationship between the act committed or not committed and the loss caused. These elements must be fulfilled cumulatively, which means that all elements must be fulfilled as a whole where if one of the elements is not fulfilled, an act cannot be said to be against the law. Unlawful acts can be defined as any unlawful act that causes damage to another person, obliging the person who caused the damage through his

fault to compensate for the damage[30].Based on the results of the research conducted, the actions of the heirs of the deceased Notary who did not report the death of the Notary to the MPD and/or did not submit the Protocol of the deceased Notary to the Notary receiving the protocol can be called a tort because:

(1) Such actions violate the rights of others, namely clients who have rights to the deed in the Protocol that Notary died, to obtain their rights as stated in the Notary Law to utilize, obtain information, and process the deed.
(2) The act occurs because of a mistake made by the heir, whether done intentionally or not, causing legal consequences, i.e., the claimant must pay compensation for the loss suffered by the person caused by the unlawful act committed because of the mistake.
(3) The act causes harm to the party who has the deed in the protocol that Notary died, can experience material loss (*vermoggenschade*) or moral loss. The existence of materil and immaterial losses that are caused to the pirak pembaker of the deed between lain pirak pembaker of the deed can not bisa meminta salinan minuta deed because ahli waris who do not know the existence of Protokol Notaris and ahli waris also do not authorize Protokol Notaris.
(4) The action is a cause (*causa efficiens*) that causes harm to others, namely the party who owns the deed whose protocol is from the deceased Notary but does not report it to the MPD and does not submit it to the Notary receiving the protocol. This condition causes the deceased Notary to be categorized as violating the rights of the parties to utilize, obtain information, and process the deed because since he died, his responsibility shifted to the heirs.

Actions carried out by the heirs by not reporting the death of a Notary to the MPD and/or not submitting the notary protocol to the appointed protocol recipient notary can be considered as an unlawful act, so that the aggrieved party has the right to file a civil lawsuit. Based on the researcher's review of the Notary Law, it is very clear that it does not strictly regulate the responsibility or the time period for the heirs to submit the notary protocol. As a result, even in the case of a notary's death, the heirs can still be held liable if claims arise from aggrieved parties. Article 16 of the Notarial Position Law

[30] Setiawan, *Aneka Masalah Hukum Dan Hukum Acara Perdata* (Bandung: Alumni, 1992), 247.

does not provide an explicit explanation of the responsibilities of a Notary after their term of office ends or after they pass away in relation to the official documents they produce. However, in practice, although Article 35 of the Notary Law only regulates the procedure for the transfer of the Notary Protocol, there are no provisions regarding sanctions for either the heirs or temporary officials of a Notary who fail to submit the Protocol of a deceased Notary.

Based on the explanation above, the theory that the author will use to analyze problem formulation 1 is the theory of legal protection according to M. Isnaeni, which is related to internal legal protection and external legal protection. Legal protection for prospective faces when the Notary dies but the duties of his office have not been completed, namely in this case the protection of the rights of prospective faces that have been submitted to the Notary. Legal protection is a legal umbrella for everyone as a legal subject to their rights and obligations. According to Isnaeni, legal protection is categorized into 2 parts, internal legal protection and external legal protection.

Internal legal protection for prospective faces in this case, according to the author's opinion, is the existence of a written agreement between the Notary and the prospective faces made before the deed is made. This agreement is related to when there are documents or down payments that have been deposited by prospective faces to the Notary, so that the sound of the agreement is to explain everything that has been done by prospective faces and Notaries before the deed is made, be it the submission of important documents, or related to down payments in making the deed desired by prospective faces. This agreement also serves as evidence that the prospective confrontants have provided or deposited certain documents and advances to the Notary.

External legal protection for prospective notaries in the case of the above problem is as stipulated in Article 35 paragraph (1) of UUJN-P that the heirs inform the MPD about the death of the notary to then appoint a protocol recipient Notary. However, with regard to the unresolved duties of the office of Notary over the wishes of prospective confrontants to make a deed, it is still not regulated in the UUJN-P. In order to guarantee the interests of prospective confrontants for their rights that have been submitted to the Notary, so it is necessary to have a regulation that protects the interests of prospective confrontants for the restoration of their rights, in this case as an example is the return of important documents belonging to prospective confrontants or in the

form of a return of advances that have been paid by prospective confrontants to the previous Notary.

CONCLUSION

Legal protection for prospective faces when the Notary dies but the duties of his office have not been completed, namely in this case the protection of the rights of prospective faces that have been submitted to the Notary. Legal protection is a legal umbrella for everyone as a legal subject to their rights and obligations. Internal legal protection for prospective faces in this case is the existence of a written agreement between the Notary and the prospective faces made before the deed is made. This agreement also serves as evidence that the prospective confrontant has provided or deposited certain documents and down payments to the Notary. External legal protection for prospective notaries is in Article 35 paragraph (1) of UUJN-P that the heirs inform the MPD about the death of the notary to then appoint a protocol recipient Notary. In order to guarantee the interests of prospective confronters for their rights that have been submitted to the Notary, it is necessary to have a regulation that protects the interests of prospective confronters for the restoration of their rights.

Heirs are individuals who have the right to inherit based on the provisions and provisions of the relevant laws and regulations. The inheritance left by the testator, namely all assets and liabilities owned by the testator during his lifetime. So that the death of the testator does not necessarily eliminate the rights and obligations of the testator, but becomes the responsibility of the heirs. In relation to the death of a Notary, based on Article 35 paragraph (1) of UUJN-P, the heirs are obliged to notify the MPD of the death of their relative who is a Notary. Thus, based on Article 35 paragraph (1) of UUJN-P, the heirs are only responsible for reporting the death of the notary to the MPD. Meanwhile, with regard to the unfinished duties of the Notary position, it is not further regulated in the UUJN-P.

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