



## Responsibility for Transition of the Dead Notary Protocol Because Minutes of Deed Are Missing in Padang

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<http://dx.doi.org/10.18415/ijmmu.v7i1.1356>

### **Abstract**

The death of a Notary Public causes his authority and responsibility as a public official to cease, in particular obligations in Article 16 Paragraph (1) Letter b. To maintain the authenticity of the deed made by the deceased Notary, the Notary protocol is transferred to the Notary recipient of the protocol, if the notarial deed minutes are lost in the transitional process and are detrimental to the parties, then the burden of the responsibility of the Notary recipient of the protocol for the loss of the deed minutes is not yet regulated in UUJN and other laws and regulations. The problem raised is how the transition process and the form of responsibility of the recipient of the Notary protocol to the notary protocol that died where the minutes of the deed were lost? By using an empirical juridical approach. With regard to the process of transferring the protocol of the notary who died in which the minutes of the deed were lost in Padang exceeding the time period stipulated by UUJN, the transfer of the protocol without passing the minutes of handover. The recipient of the notary protocol is civilly liable for the transference of the deceased Notary protocol in which the minutes of the deed are lost if it is found to be negligent in the loss of the minutes of the deed and is found guilty by the MPN and the court. Carefulness and caution in matching the hard copy of the protocol with the number of protocols outlined in the minutes of handover are needed to minimize the problems arising from the protocol transition. The appointment of Temporary Notary Officer by the MPD is expected to be carried out every time the transfer of the Notary protocol as a result of the death of a Notary is carried out, it is very useful when problems arise with the protocol of the deceased Notary in the future, such as the minutes of the deed being lost and causing losses to the parties.

**Keywords:** *Responsibility; Notary Public; Notary Protocol; Minutes Deed*

### **Introduction**

Notary Public is a public official who is appointed by the State, works also in the interest of the State, however, the Notary is not an employee as referred to in Article 1 Letter a of Law Number 8 of 1974 in conjunction with Law Number 43 of 1999 concerning Personnel Principles, hereinafter referred to as Personnel Law, namely:

"Civil Servants are those who after fulfilling the conditions specified in the applicable laws and regulations, to be appointed by an authorized official and entrusted with duties in a state office or delegated duties of another State which are determined based on a statutory regulation and are paid according to the applicable laws and regulations; "

That was due to the Notary not receiving salary, he only receives honoraria or fees from clients and it can be said that the Notary is a government employee without receiving a salary from the government, the Notary is retired by the government, but does not receive a pension from the government.

Article 1 Number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, hereinafter referred to as the Law of Notary Position and Acting Officer for Land Deed, Article 1 Number 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 40 of 2015 concerning the Organizational Structure, Procedure for Appointing Members, Dismissing Members and Working Procedures of the Supervisory Board, hereinafter referred to as Permenkumham No. 40 of 2015 and Article 1 Number 1 of the Minister of Law and Human Rights Regulation of the Republic of Indonesia No. 19 of 2019 concerning Terms and Procedures for Appointment, Leave, Dismissal of Dismissal and Extension of Term of Office of the Notary, hereinafter referred to as Permenkumham No. 19 of 2019, means that the Notary Public is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other Laws."

The position of the Notary is held or his presence is desired by the rule of law with a view to assisting and serving the public who need authentic written evidence regarding the situation, legal events or actions such as in making agreements, guaranteeing the certainty of the date, keep the deed and give the grosse, copy and quote, all along the making of the deed by a general rule is also not assigned or excluded to officials or others [Article 15 Paragraph (1) of the Act of Notary Position and Acting Officer for Land Deed.

In addition, the presence of a Notary is also desired by the community in terms of obtaining legal certainty from the agreements they make which are realized in a strong evidence that is in the form of an authentic deed, because the authentic deed drawn up by a Notary can really be accepted as perfect evidence between the parties that made the agreement, as 3 (three) authentic deed functions that Salim HS explained in his book to the parties that made them, as follows:

As proof that the parties concerned have entered into certain agreements;

As evidence for the parties that what is written in the agreement is the aim and desire of the parties;

As proof to third parties that on certain dates, unless specified otherwise the parties have entered into an agreement and that the contents of the agreement are in accordance with the wishes of the parties. Meanwhile what is said with the authentic deed itself is a deed drawn up by or before a Notary according to the form and procedure stipulated in the Notary Position Act and the Notary Position Act of the Acting Officer for Land Deed (Article 1 Number 8 of the Position Act Notary and Act of Notary Position of Acting Officer for Land Deed). The form and procedure referred to are as follows:

Deed made by a (door) Notary or what is called a voluntary deed or official deed (*ambtelijke deed*) is a deed made by an official who is authorized to do so, where officials explain what they see and what they do, so the initiative does not come from the person / party whose name is explained in the deed. The special feature of this deed is that there is no comparison and the Notary is fully responsible for the deed making.

Deed made before (ten overstaan) Notary or called partij-deed (partij-acteri) is deed made before officials who are authorized for it and the deed was made at the request of the parties concerned. A distinctive feature of this deed is the existence of a comparator that explains the authority of the parties facing the Notary to make the deed.

The importance of the role of a Notary Public in helping to create legal certainty and protection for the community, is more preventive, or has the nature of preventing legal problems, by controlling authentic deeds made before him related to the legal status, rights and obligations of someone in law, and so forth.

Based on the provisions of the legislation. One of them is a limited liability company register book, which records when the establishment and with the number deed and what date, Amendments to the Articles of Association or Changes in the composition of the Directors, Commissioners or Shareholders.

Deed made by a Notary basically has the power of proof. In contrast to the underhand deed made by the parties concerned without the help of public officials. Authentic deed is a notary product that is needed by the community for the creation of a legal certainty. Authentic deed as the strongest and most complete evidence, has an important role in legal relations in society, good business relations/cooperation, activities in the field of land, banking, social activities and in other living needs.

### ***Research Method***

The problem approach that the author uses in this research is the juridical empirical method of approaching problems through legal research in which the results of data collection and discovery through information on literature studies on the basic assumptions or assumptions used in answering problems in this thesis research, then conducted an inductive-verification test on the latest facts contained in the community. Thus the truth in a study has been declared reliable without having to go through the process of rationalization.

### ***Result and Discussion***

The notary is personally responsible for the truth of the material in the deed he made, in other words the deed he made does not conflict with the laws and regulations. Endang Sri Kawuryan in Anang Ade Irawan's Journal, A. Rachmad Budiono, Herlin Wijayati, stated that regarding the burden of responsibility from a notary public, where the heirs of the Notary could be carried over. In a situation where a claim arises by a party that feels disadvantaged to a notary due to the deed he made. If the claim period does not exceed the expiry date in a civil law and as long as the claim has permanent legal force, then the obligation to replace the loss of the party as a contact in making a notarial deed can be transferred to his heirs.

The civil liability referred to above is related to the authority of the Notary set forth in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 (Article 84 of the Notary Position Law). Violation of the aforementioned articles results in a deed having only the power of proof as a deed under the hand or a deed being null and void by law, especially as a form of formal proof (formele bewijskracht).

Violations committed by the notary public may become a reason for the party suffering losses to demand compensation, compensation and interest to the notary public, this is where civil liability arises from a notary, where the notary must pay compensation for the losses suffered by the parties for the

violations committed, after the notary has been found guilty by the court or by the State Revenue Module. The type of violation committed by the Notary is classified as one of the acts against the law, which is stated in Article 1365 of the Civil Code, the act in question is "Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to replace the loss." The statement was corroborated by Article 1366 of the Civil Code with the following sound:

"Everyone is responsible not only for the loss caused by the damage, but also for the loss due to negligence or carelessness."

Munir Fuady, classified the elements included in unlawful acts, as regulated in Article 1365 of the Civil Code mentioned above into several sections, namely:

### *An Act*

An act against the law begins with an act of the culprit. Generally accepted the assumption that the action here is intended, either do something (in the active sense) or not do (in the passive sense), for example not doing anything, even though he has a legal obligation to make it, which obligation arises from the applicable law (because there are also obligations arising from a contract. Therefore, for acts against the law, there is no element of "agreement or agreement" and there is also no element of "causa allowed" as contained in the contract.

### *The Act Against the Law*

These acts must be against the law. Since 1919, the element of violating this law is interpreted in the broadest sense, which includes the following matters:

#### *Acts that violate applicable law.*

That violates the rights of others guaranteed by law, or  
 Actions that are contrary to the legal obligations of the offender, or  
 Actions that are contrary to decency (goede zeden), or  
 Actions that are contrary to good attitude in society to pay attention to the interests of others (indruist tegen de zorgvuldigheid, welkw in het maatschap-pelijk verkeer betaamt ten aanzien van anders persoon of goed).

#### *There Is an Error of the Perpetrator*

In order to be subject to Article 1365 regarding acts against the law, the law and jurisprudence require that the perpetrators must contain an element of error (schuldelement) in carrying out the act. The intended elements are as follows:

There is an element of intent, or  
 There is an element of negligence (negligence, culpa), and  
 There is no justification or reason for forgiveness (recht vaardingsgrond), such as the state of overmacht, self-defense, insane and others.

Even if in certain cases the responsibility is imposed without error (strict liability), it is not based on Article 1365 of the Civil Code, but based on other laws.

*There are losses for the victim*

The existence of a loss (schalde) for the victim is also a requirement for a lawsuit under Article 1365 of the Civil Code that can be used. In contrast to losses due to defaults that are only about material losses, then losses due to unlawful acts aside from material losses, jurisprudence also recognizes the concept of immaterial losses, which will also be valued in money.

*The existence of a Causal Relationship Between Actions and Losses*

The causal relationship between an act committed and the loss incurred is also a condition of an act against the law. In more detail illegal acts in the broadest sense are explained by Abdul Ghofur Anshori in his book as follows:

Violate the rights of others;

Unlawful acts related to the violation of the rights of others. Rights in this case are subjective rights (subjectief recht). The subject of recht basically refers to a right given by law to someone to protect their interests.

Contrary to the legal obligations of the perpetrators;

Actors' legal obligation means that the perpetrator has a legal obligation to act or not act according to law. So that the purpose of conflicting with the legal obligations of the offender is to do or not do that violates an obligation governed by law.

Contradicting decency;

Decency in this case is a prescriptive norm that is recognized in everyday social life. Moral norms are norms that are relative in meaning to a particular time and place. What is deemed appropriate at this time in this place may be different or become inappropriate in the future or elsewhere. Contrary to propriety in paying attention to self-interest and the property of others in the association of daily life.

An action can be said as an act that is contrary to propriety if a person in an act ignores the interests of others and let other people's interests be violated. This is an improper act and is therefore an illegal act.

Specifically for the obligations of a Notary Public contained in Article 16 Paragraph (1) Letter b of the Act on the Notary Position and the Acting Officer for Land Deed, namely: the obligation to make Deed in the form of Deed Minutes and keep it as part of the Notary Protocol, " the obligation is aimed at maintaining the authenticity of the deed made by the Notary public is maintained, even until the Notary died, as confirmed in the explanation of Article 16 Paragraph (1) Letter b of the Act of Notary Public and Official Acting on Land Deed, with the following sound:

"The obligation in this provision is intended to maintain the authenticity of a Deed by storing the Deed in its original form, so that if there is falsification or misuse of the gross, copy, or quote, it can be immediately known by matching it to the original. "

The notary obligation required in the explanation of Article 16 Paragraph (1) Letter b raises the burden of responsibility for the Notary in terms of maintaining the authenticity of a Deed he made by storing the Deed in its original form, such responsibilities as confirmed in Article 65 of the Position Law Notary and Land Deed Making Official, with the following sounds:

"Notary, Substitute Notary, and Temporary Notary Official shall be responsible for each Deed made even though the Notary Protocol has been submitted or transferred to the depositor of the Notary Protocol."

In practice the Notary's obligation to make a Deed in the form of a Minute Deed and keep it as part of the Notary Protocol required by Article 16 Paragraph (1) Letter b of the Act of the Notary and the Acting Actor are often violated, this is caused by various things, including as explained by Dian Sutari Widiyani in her research, that due to insufficient space to accommodate the protocol that must be accepted by a notary recipient of the protocol, the notary protocol is vulnerable to damage and destruction, so that the notary protocol is not uncommon found scattered in the office and at the protocol recipient's home.

If the notary violation referred to in Article 16 Paragraph (1) Letter b of the Act on the Notary Position and the Actor of the Land Deed Maker causes losses to the parties, then the Notary may be subject to civil sanctions in the form of compensation compensation to the parties, where the act of Notary is classified as negligence, as referred to in Article 1365 of the Civil Code.

As explained by Alexander, Bachelor of Laws, Masters of Notary, as academics and Notary / Land Deed Makers in Padang City in the thesis of Jovi Putra Darupa, he explained, that the form of responsibility of Notary recipient of protocols to other Notary protocols that have been transferred to him is merely limited to providing information and helping to provide photocopies and show the minutes of the notary deed he has kept for certain purposes, but will not be prosecuted for errors in the deed, but if the Protocol Recipient Notary omits the minutes of the deed or the documents it receives, then the notary recipient of the protocol can be sued. This loss can be caused by intentional or negligence of the Notary in storing the Protocol.

Likewise Doctor. Beatrix Benni, Bachelor of Laws, Masters in Education, Masters in Notary, as academics and Notary / Land Deed Making Officials in the City of Padang, in Rahmadona's thesis, has the same opinions and views as Alexander, Law Scholar, Magister Notary, as an academic and Notary / Land Deed Making Official in Padang City, then he grouped the forms of responsibility of the recipient of the Notary protocol into several sections, namely:

Provide information to interested parties with the deed which is part of the accepted protocol. If there is a party with an interest in the deed that is kept by the Notary, requires information about the deed, then the protocol recipient Notary is responsible for explaining and providing information to that party. It's the same as giving a copy or quote and showing the minutes of deed, providing information regarding the contents of the deed may only be given to interested parties and their heirs by previously showing proof that they are the authorized persons for it.

*Take out the second copy or copy collatione.*

Maintain and maintain the Notary protocol as a State document correctly in accordance with the Archiving Law.

*Refuse other unauthorized parties.*

If the client comes to the protocol recipient Notary and asks for a copy or quote to be made or asks to show minuta deed while he is not a party to the deed and is unable to prove that he is the heir of the party, then the recipient of the protocol must be brave and firmly reject the person.

Administer (record) and store the received protocol properly.

It is different if the violation of Article 16 Paragraph (1) Letter b of the Act on the Notary Position and the Actor of Making Land Deed is done by a notary recipient of the protocol from a notary who has died, where the arrangements for the forms of responsibility and sanctions for violations have not been regulated in the Notary Position Act and the Notary Position Act and the Land Drafting Officer, however the notary recipient of the protocol can be liable with civil liability, where the violation is classified as negligence which causes harm to the parties.

As of this writing, the writer concludes, according to Desmawita, Bachelor of Law, The Deputy of the Regional Supervisory Board of Padang City Regional Supervisory Board has not received any complaints from the parties for the losses suffered by the parties due to the loss of the minutes of deed from a notary who had died by a notary who received the protocol specifically in Padang, He added that the reporting that entered the Regional Supervisory Board Regional Supervisory Board regarding the minutes of the deeds that were lost, destroyed and damaged in the form of minutes that were lost, destroyed and damaged in the past 2009 as a result of the earthquake that struck the City of Padang at that time, was not a few Notary offices / Land Deed Makers Officers in Padang City were destroyed and burned due to the incident.

However (LD), one of the employees of a notary who died in Padang City, , explained that some time after the death of the deceased, the parties (RS) came to the Office of the Deceased to request a copy of the deed of establishment along with the Decree of the Comanditer Company (CV).

(LD) can not provide a copy of the deed of establishment along with the endorsement decree of the Komanditer Company (CV), which is due to the protocol of the deceased and the minutes of the establishment deed of the Komanditer Company (CV) (RS) has been transferred to (HPR), as a Notary protocol receiver.

Soft Copy of the articles of association of a limited partnership company (CV) the property (RS) is kept by the deceased, due to the workmanship of establishing a limited partnership company (CV) The property (RS) is handled directly by the deceased, (LD) said that (RS) suffered a loss in terms of time and cost for the discovery minuta deed together Decree of ratification of the establishment of his limited partnership company (CV).

In line with (LD), (HPR) said that the deceased's protocol had been properly transferred to him, but the minutes of deed along with the legalization of the establishment of a limited partnership company (CV) property (RS) is not in him.

If the minutes of deed along with the decree ratification of the establishment of a limited partnership company (CV) property (RS) is lost when the deceased protocol has been transferred to

(HPR), then (HPR) can be held liable for the loss of the minutes of the deed together Decree on the legalization of the establishment of a limited partnership company (CV) the property (RS), because the action (HPR) is classified as negligence, as the contents of Article 1366 of the Civil Code reads as follows: "Everyone is responsible not only for the loss caused by the damage, but also for the loss due to negligence or carelessness." Regarding the problem, Desmawita, Bachelor of Law, Deputy of the Padang City Regional Supervisory Board gave his views:

"Regarding the burden of the responsibility of the Notary recipient of the protocol for the loss of the notary deed that has died, can be seen from the Minutes of Handover of the Notary protocol from the Notary who has died to the Notary recipient of the protocol when the protocol handover from the Notary heir who has died to the Notary recipient of the protocol is carried out. Whether in the Minutes of Handover of the protocol, is there the sound of the missing deed minuta or not in it, if in the Minutes of Handover of the Protocols the minuta deeds that are missing are sounded inside, then the Notary recipient of the Notary protocol may be liable for the loss of the minutes of the deed, but if the minutes of the missing deed are not sounded in the Minutes of Handover of the protocol, the Notary of the recipient of the protocol cannot be held liable for the loss of the minutes of the deed. "

Siska, as a Member of the Padang City Regional Supervisory Council, shared the same opinion with Desmawita, a Bachelor of Laws, He added that in addition to the Notary recipient of the protocol, the heirs of the notary who had died could also be held liable for the impact caused by the loss of the deed of the parties notary of the deceased Notary, as the theory of responsibility put forward by fautes personnelles from Kranenburg and Vegtig, in the form of losses to third parties charged to officials, because their actions have caused losses.

The statement from Siska is contrary to the results of research from Anang Ade Irawan, A. Rachmad Budiono and Herlin Wijayati, they say that the responsibility of a notary public ends when he passed away and cannot be passed on to his heir or charged to the Notary Public Notary protocol holder, where based on the theory of inheritance that the object of inheritance is wealth. Acts against the law as a result of the position of heir are wrong actions committed by individuals, so they cannot be passed on to their heirs. The object that can be inherited is only in the form of assets in assets and liabilities.

Regarding the above case, Dasman, Law Scholar, Notary Master, Academics and Notary / Land Deed Making Officials in Padang City, give his view, he said that a Notary must be more careful in the process of handover the Notary protocol, especially the notary protocol that has passed away, in which the procedure for the transition refers to as much as possible the Act of Notary Position, Law of Notary Position and Acting Officer for Land Deed and other statutory regulations. If there is a party claiming to be the parties in the deed and requesting a copy of the deed from the notary who has passed away from the notary receiving the protocol, Notary recipient of the protocol can not just believe it, where the Notary recipient of the protocol must prove the truth of the matter first, by looking at the evidence of the party's self-righteousness indeed as the parties in the deed, because in practice many Notaries have problems resulting from giving a copy of the deed to the wrong party.

Furthermore, Dasman, Bachelor of Laws, Masters in Notary, Academics and Notary / Land Deed Making Officials in Padang City, said that the protocol recipient Notary may refuse to provide information including copies of the deed to parties deemed unauthorized with the deed, where this is in accordance with the contents of Article 16 Paragraph (1) Letter f, The Notary Position Act and Land Deed Making Officials as one of the Notary's obligations in keeping everything about the Deed he made and all information obtained for making the Deed in accordance with the oath / promise of office, unless the law stipulates otherwise, violation of that Article, a Notary Public will receive administrative sanctions, as stated in Article 16 Paragraph (11) of the Act of Notary Position and Acting Officer for Land Deed, namely: a written warning, a temporary dismissal, a respectful dismissal and a dishonorable discharge.



Besides that, Dasman, Bachelor of Laws, Masters of Notary, Academics and Notaries / Acting Author of Land Deed in Padang City said that the parties that were harmed by the loss of the minutes of deed from the notary who had died must get adequate compensation for the loss he suffered, as the theory of corrective justice put forward by Aristotle is justice focused on the correction of something wrong, where if an offense is violated or an error is made, then in accordance with corrective justice, adequate compensation is given to the injured party, where the Notary deed of the protocol recipient falls into the category stated in Article 1365 of the Civil Code, then based on Article 1366 of the Civil Code Notary Public Protocol recipient can charge civil liability, the form of the tagging answer consists of providing compensation for damages suffered by the parties.

Based on some of the statements above regarding the form of responsibility and the burden of civil liability for negligence of the loss of the notary deed of a notary who has died by a Notary recipient of the protocol, according to the opinion of the author, Notary recipient of the protocol is not appropriate to be liable for civil liability for losses suffered by the parties resulting from the loss of the deed of notaries of the notary who died at the time the protocol was in the process of transition or has fully transferred to the notary recipient of the protocol, where the Notary recipient of the protocol is only the executor of the tasks of the notary who has died in terms of maintaining the authenticity and biological age of the protocol.

The burden of civil liability should also be borne by the heirs of the notary who have died, where the heirs have received and enjoyed the inheritance from the notary who has died, including having accepted all costs incurred by the parties for an agreement or legal act made by or before a notary who has died during his lifetime.

## **Conclusion**

From the results of the research and discussion in the previous chapters, it can be concluded as follows:

The process of transfer of the notary protocol that has passed away where the minutes of the deed was lost to the Notary recipient of the protocol in Padang passed the time period stipulated by the Law of the Notary Position and the Actor of Making Land Deed, the transfer of protocol is carried out without passing the minutes of protocol handover, this violates the provisions of Article 63 Paragraph (1) of the Law of Notary Position and Acting Officer for Land Deed, the appointment of the Acting Notary Public is not carried out by the Regional Supervisory Council, as the recipient of a temporary protocol from a notary who has died, The recipient of the notary protocol may be subject to administrative sanctions as stipulated in Article 65 of the Notary Position Act for violations of Article 63 Paragraph (1) of the Notary Position Act of the Actor of Making Land Deed.

Accountability of the recipient of the Notary protocol to the transference of the deceased Notary protocol in which minuta deed was lost in Padang City. Notary recipients of the protocol can be charged with civil liability, if it is proven negligent in removing the minutes of the deed when the handover of the Notary protocol from the notary who has died, evidenced by the content or sound of the Official protocol handover at the time the handover of the notary protocol takes place. mismatching the physical number and numbering of the Notary protocol with the Minutes of Handover of the protocol is one of the reasons for the burden of the Notary recipient of the protocol with a civil liability, the discrepancy is the result of the non-checking and the non-matching of the protocol of the deceased Notary to the contents or sound of the protocol Minutes of Handover of the protocol by the recipient of the Notary at the time the protocol handover takes place.

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### *Interview*

Interview, Dasman, as Academician and Notary / Land Deed Makers Officer in Padang City.

Interview, Desmawita, Deputy of the Padang City Regional Supervisory Council.

Interview, Siska, Member of the Padang City Regional Supervisory Board.

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