



Implementation of the Transition of the Notary Protocol Who Died Based on the Notary Position Law (Case Study in Pariaman)

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Abstract

Notary is as an official authorized to make an authentic deed, as provided in Article 15 of Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Notary. When a notary passes away, the position as notary ends, but the deed he has made will remain recognized forever and to maintain the continuity of the protocol his responsibility is attached for life to the deed he made while he still an active notary. If it is linked to Article 62 of the UUJN, the Article explains that one of the reasons for submitting the Notary Protocol is a notary public who has passed away. The problem, namely 1. How is the process of submitting a notary protocol based on the law of the notary department 2. How is the protocol transfer that does not comply with the rules of the legislation? Methods used in this research is an empirical juridical approach, an approach to a problem that is through research by seeing applicable norms or provisions. Based on the research result, the heirs of the dead notary were responsible for submitting the notary protocol to the tribunal regional inspectorate. Thus by transferring the notary protocol to a notary can provide a wider scope of the parties in searching the legal certainty.

Keywords: *Notary; Notary Protocol; Heirs*

Introduction

In Article 1 of Law no. 2 of 2014 concerning the Position of a Notary, number 13 states that a notary protocol is a collection of documents which are state archives that must be stored and maintained by a notary. Meanwhile, in Article 62 of the Law on Notary Positions No. 30 of 2004 concerning the Position of a Notary, it is stated that "submission of a notary protocol in the case of a notary:

1. Died
2. Term of office has ended
3. Own requests
4. Incapable spiritually and or physically to carry out the duties of a position as a notary continuously for more than 3 (three) years
5. Appointed as state official

6. Moving office area
7. Temporarily suspended, or
8. Disrespectful discharge

A notary who dies will be honorably dismissed from his position as regulated in Article 8 paragraph (1) of UUJN No. 30 of 2004, while the submission of a notary protocol is regulated in Article 63 of Law no. 2 of 2014 namely:

1. The submission of the protocol as referred to in article 62 is carried out no later than 30 (thirty) days with the preparation of an official report on the submission of the notary protocol signed by the heirs who submit and those who receive the notary protocol.
2. In the case as referred to in Article 62 letter a, the submission of the Notary Protocol is carried out by the heirs of the Notary to another Notary appointed by the Regional Supervisory Council.
3. In the case as referred to in Article 62 letter g, the submission of the Notary Protocol is carried out by a Notary to another appointed Notary by the Regional Supervisory Council if the temporary suspension is more than 3 (three) months.
4. In the case as referred to in Article 62 letter b, letter c, letter d, letter f, or letter h, the submission of the Notary Protocol is carried out by a Notary Public to another Notary appointed by the Minister at the suggestion of the Regional Supervisory Council.
5. The Notary Protocol from another Notary who at the time of submission is 25 (twenty five) years old or more is submitted by the Notary receiving the Notary Protocol to the Regional Supervisory Council.
6. In the event that the Notary Protocol is not submitted within 30 (thirty) days as referred to in paragraph (1), the Regional Supervisory Council is authorized to take the Notary Protocol.

Notaries are directly obligated to the Notary protocol, but in reality what is happening in society today is that not all Notaries can understand the procedure for submitting a Notary protocol, especially their heirs in the process of carrying out their obligations to submit the protocol of a Notary who has died to a Notary who has been appointed by the Supervisory Council. Area. This causes confusion in the community that requires protocols that should be stored and submitted to a Notary appointed by the Regional Supervisory Council. Indirectly it can be fatal and can even cause material losses that is very large for the community who will or still need the deed contained in the Notary protocol for the purposes of legal certainty.

Notary protocols that have not been submitted by their heirs to other Notaries in this case can be categorized as unlawful acts. Acts against the law here are broadly defined, namely an act that not only violates the law but also violates propriety, decency or the rights of others and causes harm. However, there is no rule that regulates sanctions for heirs who have died for negligence in the process of submitting a notary protocol.

As regulated in article 62 and article 63 of Law no. 2 of 2014 only explains what causes the protocol to be submitted and the timeframe for the submission of the notary protocol, but there is no certainty about the submission of the notary protocol that has passed the time as regulated by law, and there is also no certainty of responsibility to heirs who do not submit or provide information related to the notary protocol to the regional supervisory board.

As has also happened in the Padang Pariaman city work area, where the heirs of the Notary RY who died in 2012 have not submitted the protocol about 2 years, so that the MPD takes action on the Notary protocol to be able to appoint and submit it to others Notary as protocol holders. Finally in 2014 it was transferred to a notary RW.

Cases of protocol transfer from a notary to another notary have often occurred, but whether the transfer of a notary protocol is in accordance with the provisions contained in Article 63 of the Law on Notary Positions No. 2 of 2014. But in reality what is happening to society today is still the heirs of the deceased notary who still do not understand the procedure for submitting the protocol and are willing to carry out their obligations to submit the notary protocol to other notaries.

Research Method

In conducting this research, the author uses a juridical empirical approach which relies on primary data or results from field research and secondary data. The juridical approach, namely in making an approach, the principles and regulations that are still in effect are used in reviewing and seeing and analyzing the problems that are the object of research, starting from the analysis of the laws and regulations, namely Regulation of the Minister of Law and Human Rights Number 10 of 2013 concerning Electronic Fiduciary Registration Procedures and Government Regulation Number 21 of 2015 concerning Procedures Registration of Fiduciary

While the definition of empirical approach is an approach arising from patterns of thinking in society and then obtained a truth which must be proven through real experiences in the community. This method is used by considering that the problems studied range in the legislation that is the relation of the regulations with other regulations with its application in practice.

Result of Research

Cases of protocol transfer from a notary to another notary in the city of Pariaman, have often occurred, but whether the transfer of the notary protocol was in accordance with the provisions contained in Article 63 of the Law on Notary Positions No. 2 of 2014. But in reality what happened to the community Currently, there are still notaries who do not understand the procedure for submitting protocols and are willing to carry out their obligations to submit notary protocols to other Notaries

From the search, the author found that the protocol transfer from a notary to another in the city of Pariaman still does not follow the rules in the legislation, which the author discusses here is not a submission process but parties who are not entitled to submit and those who are not entitled to receive it

Continuing the previous discussion, where the notary RW as the holder of the protocol from the notary RY who had died handed over the notary protocol to his heirs in 2019 who happened to have been appointed as a notary in Pariaman city, all submission processes are known and facilitated by the MPD Kota Pariaman who is now independent, where previously the city of Pariaman MPD was still under the city of Padang.

Based on the results of the author's research after reviewing the regulations regarding who and for what reasons the protocol can be submitted by a notary and accepted by a notary, based on article 62 UUJN Number 30 of 2004, among notaries, both the notary who submits and the notary who receives are both not included in the one who can submit and receive the protocol, because the two notaries are not included in the criteria stated in the regulations per legislation.

Until the writing of this thesis, the author still has not received any data regarding the relationship between late submission of the RY protocol to the RW notary by his heirs, which was never carried out within 2 years with the wishes of his heirs when he became a notary to receive the protocol. When notary RY died, his heirs were still studying notary at Andalas University

Based on the results of interviews with Notary M who was formerly the heir of notary RY, because there were too many protocols submitted by notary RY to notary RW in 2016 and seeing the condition of the place or office of notary RW, so it took up space for protocol storage so notary M accommodated the protocol it returns.

According to notary M, the protocol does not contain economic value, he only accepts it because there is a sense of responsibility and incidentally still has a large storage area in the hope that the protocol can be maintained so that continuity is maintained which one day can be used by the parties in the contract.

Deeds which are notary protocols must be maintained even though the notary concerned has died. The regulations have provided a way for notaries to maintain the authenticity of the protocols that have been made during their tenure. For protocols of a notary who has died, it must be submitted to another notary as the holder of a notary protocol.

According to the author's analysis, although the reason is about humanity or about the sustainability of the notary protocol, it cannot be justified as long as there are no rules in the legislation that regulates it, how do we talk about legal certainty for the parties who need the protocol or about humanity, while the transfer of the protocol itself has violated the laws and regulations

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