



Legal Protection of Notary as Protocol Holders When a Legal Act Issued to the
Saved Protocol Deed (Case Study of State Court Decision Number
152/PDT.G /2013/PN.PDG)

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Abstract

In carrying out his duties, one of the obligations of a notary in the field of administration is to store and maintain all documents, including a collection of deeds and various other documents commonly known as a notary protocol. The emergence of a lawsuit against the protocol of a notary who has died addressed to the notary who holds the protocol. Based on the Decision of the Class IA Padang District Court Number: 152/Pdt.G/2013/PN/PDG dated May 20, 2014 which has permanent legal force, the court stated that the act committed by a Notary was an unlawful act that could have a negative impact, in the form of the emergence of stigma that not good for the image of the notary profession, such as the decline in public confidence in the notary profession. Therefore, this thesis takes the title Legal Protection Against Notaries as Protocol Keepers When There is a Lawsuit Against the Stored Protocol (Case Study of District Court Decisions No. 152/Pdt.G/2013/PN.Pdg). The type of research in the preparation of this thesis is normative juridical research, namely the systematic compilation of data, assessment, then concluding on the relationship to the problems studied with a statute approach. The results of this study are (1) The Responsibilities of the Notary Recipient of the Protocol when a lawsuit occurs against the deed he keeps, the perfection of proof of the authentic deed has guaranteed legal certainty for the parties mentioned in the deed, so this should be able to prevent and provide legal protection for Notary Recipient of the Protocol to be sued or held accountable for the deed he never made. (2) Legal Protection Against Notaries Who Are Appointed As Protocol Recipients When There Is A Lawsuit Against the Protocol Deed He Saves, legal protection for this notary, of course, the government must immediately make a new legal instrument or improve the existing laws and regulations that can provide clarity for legal protection and guarantees for Notaries in order to create justice for Notaries in carrying out their profession, and Procedures for Solving Problems or Obstacles Faced by Protocol Recipients, namely by asking the Notary Regional Supervisory Council where the notary recipient of the protocol is located, and waiting for approval from the Notary Honorary Council. The upper area is permitted or not to fulfill the summons of law enforcement from the level of investigation to court proceedings.

Keywords: *Legal Protection; Notary; Protocol Deed*

Research Background

Legal protection is defined as all efforts or efforts given or carried out by the government in terms of guaranteeing legal certainty in order to provide protection to all citizens. The goal is that a person's rights as a citizen are not violated, and if there is a violation, there will be consequences in the form of sanctions in accordance with applicable regulations.

Based on the statements of these experts, the State of Indonesia as a state of law also has an obligation to provide legal protection to every citizen without distinguishing between one another, where the effort to provide legal protection is a form of fulfillment of basic rights inherent and protected by the constitution referring to Article 28 D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Without exception, the state also provides legal protection to Notary, which legal protection is provided through the existence of rules governing the position and obligations of the notary itself.

The rules related to the position of a notary are regulated in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of a notary as referred to as UUJN. The content of the substance of this UUJN is a legislative policy on regulations related to the position of a notary, and which is the basis and background for the issuance of the policy because Indonesia is a country that is based on law. Where there is a guarantee of certainty, order, legal protection based on truth and justice. In connection with this statement, of course, the community as recipients of services provided by a notary has an expectation that the service received really has good value and quality and is reliable.

In accordance with the previous statement regarding the presence of a notary position, it is established and its presence is required by the rule of law with the aim of assisting and providing services to the public who need authentic written evidence regarding legal conditions, events and actions. The position of a notary is also interpreted as a public official, where the authority is not given to other officials, as long as the authority is not also the authority of other officials.

In connection with these provisions, the notary is the only official authorized to make an authentic deed regarding all acts, agreements and stipulations required by a general regulation or by those with an interest, of course it is also desired to be stated in an authentic deed. This statement was further emphasized through Soegondo Notodisoerjo's statement as follows "that to be able to make an authentic deed, one must have the position of a public official"

The scope of the notary's authority is to make evidence desired by the parties in a certain legal action, where the evidence is at the level of civil law. Where in making the deed is based on a request from the party facing. Furthermore, the notary makes the deed used as evidence, information, or statements of the parties stated or explained and shown to or before the notary, and then it will be assembled by the notary outwardly, formally, and materially in the form of output in the form of a notarial deed by sticking to it. on the legal rules, procedures, or procedures for making a deed related to the legal action in question which is then stated in the deed.

The written agreements called deeds are regulated in Article 7 of the UUJN which states that a notarial deed is an authentic deed made by and before a notary according to the forms and procedures established by law. The intended authentic deed is an authentic deed in accordance with the policies in Article 1868 of the Civil Code (KUHPperdata) as follows;

"An authentic deed is a deed which, in the form determined by law, is made by or before public officials in power for that purpose at the place where the deed was made". The authentic deed referred to as the notary's authority is made that is useful for people who need a deed such as the deed of establishment of a Limited Liability Company (PT), will deed, power of attorney, and so on which are legal certainty tools for engagements made by the community. In other words, the deed is strong evidence if one day there is a dispute between the parties, or if one day there is a lawsuit from another party.

Regarding the position of the power attached to the authentic deed, namely perfect (volledig bewijskracht) and binding (bindende bewijskracht), which means that if the proposed deed meets the formal and material requirements and the opposing evidence presented by the defendant does not reduce its existence, it is at the same time attached to the power of perfect and perfect proof. binding (volledig en bindende bewijskracht). That way the truth of the contents and statements contained therein is perfect and binding on the parties regarding what is stated in the deed.

In carrying out his duties, one of the obligations of a notary in the field of administration is to store and maintain all documents, including a collection of deeds and various other documents commonly known as a notary protocol. According to the provisions of Article 1 Paragraph (13) of the UUJN, it is stated that the Notary Protocol is a collection of documents which are state archives that must be stored and maintained by a Notary. Notaries in carrying out their positions as General Officials are limited by their biological age, which is up to 65 years, this of course will also have an impact on the Notary protocol they keep.

Besides that, a notary protocol that has been stored can of course be damaged due to the age of the paper which is only a few dozen years old, eaten by termites, or even lost due to a natural disaster that befalls the area where the notary's office is concerned, considering the responsibilities of the notary as stipulated in the law. regulated in UUJN, the notary protocol must be kept even if the notary takes leave, the notary changes work area, or even the notary has died.

Based on the policy through UUJN in Articles 58 to 65, it has been regulated regarding the creation, storage and rules regarding the submission of notary protocols. In relation to this rule, further Article 62 regulates the submission of a notary protocol caused by several situations, for example in the event that the notary concerned dies, his term of office has ended and other factors.

The writing of this journal focuses on legal issues that occur over the protocol deed of a Notary who has died, namely Notary Asmawel Amin, SH, whose Notary protocol is then given and kept by Notary Desrizal Indrus Hakimi, Notary in Padang City, who is appointed by MPD as notary holder the transitional protocol of the Asmawel Amin, SH. The legal problem that occurred was in the form of a civil lawsuit on the sale and purchase deed made by Notary Asmawel Amin, SH. and the process of changing the name of the land title certificate Number 312 of 1978. In the Decision of the Class IA Padang District Court Number: 152/Pdt.G/2013/PN/PDG dated May 20, 2014 which has permanent legal force, where one of the decisions reads "declare The actions of Defendant I, namely Asmawel Amin, SH, who was replaced by Defendant III, namely Desrizal Idrus Hakimi, SH and Defendant IV, namely the National Land Agency of Padang City, made Property Rights Number 312 of 1978 from Idin to be on behalf of Nurliati an unlawful act".

With this decision, the court declares that the actions committed by the Notary are unlawful acts that can have a negative impact, in the form of the emergence of a stigma that is not good for the image of the Notary profession, such as decreasing public trust in the Notary profession. Everything that is done by a Notary is protected and regulated by laws and related regulations, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions and Government Regulation Number 24 of 2016 Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials, so that the statement "acts against the law" can be interpreted as a "defamation" for the Notary owner and recipient of the protocol.

Based on these descriptions and phenomena, the authors are interested in studying and understanding further through a journal entitled: **“Legal Protection Against Notaries as Protocol Keepers When a Lawsuit Occurs Against the Protocols they Keep (Case Study of District Court Decisions No. 152/Pdt.G/2013/PN .pdg)”**

Research Methods

As a normative science, jurisprudence has a unique *sui generis* method. This research is a legal research (juridical research) which has a method that is different from other research. The legal research method is a systematic way of conducting research. In order not to get caught up in the mistakes that generally occur in legal research by imposing the use of empirical research formats in social science on normative research (juridical-normative), it is very important to know and find the type of research as a component of research methods. Because, accuracy in research methods will greatly affect the process and results of a legal research.

Research Result

Legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. Legal protection is a legal function or function, with protection the legal function can be carried out, namely providing justice, order, certainty, benefit and peace in social life.

Legal protection can also be interpreted as providing guarantees or certainty that someone will get what is their rights and obligations or protection of their interests so that they are safe. Legal protection is defined as a guarantee of protection of rights granted by law to those who are normatively entitled according to the provisions of a legal regulation. The limitation of legal parties to the rights of legal subjects only as long as it is indeed regulated, otherwise the context of the protection in question is outside the law.

Notaries as public officials who carry out the profession in providing legal services to the public, need to get protection and guarantees in order to achieve legal certainty. The Republic of Indonesia is a state based on Pancasila and the 1945 Constitution which guarantees certainty, order and legal protection for every citizen. Provisions regarding the position of a notary are regulated in Number 30 of 2004 concerning the position of a notary which was later amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as UUJN).

Notary as a public official only mengkonstartir the will of the interested parties as outlined in the form of an authentic deed, the Notary is not contained in the deed. If what is conveyed is not true then the Notary should be irresponsible, but based on Article 65 of the Amendment UUJN it states, "Notaries, Substitute Notaries, and Temporary Notary Officials are responsible for every deed made even though the Notary Protocol has been submitted or transferred to the depositary of the Notary Protocol."

Based on the provisions in UUJN, legal protection is more internal/administrative. The UUJN institutions that are violated by a Notary are a standard measure of professionalism that should be obeyed by all Notaries as bearers of State authority in making authentic deeds. In this area, the protection of notaries from administrative decisions, aims to provide a guarantee for a notary to be able to defend himself and defend his right to work as a notary.

In UUJN there is no article that specifically regulates the legal protection of the Notary receiving or protocol holder. Basically the legal protection is only implied in Article 67 concerning Supervision of Notaries which aims to provide legal protection for Notaries in carrying out their duties and positions as Public Officials, such supervision is very necessary so that in carrying out their duties and positions the Notary is obliged to uphold the dignity of his position.

Notaries as public officials in carrying out their positions need to be given legal protection, among others, firstly to maintain the overall dignity of their positions, including when giving testimony and proceeding in examinations and trials. Second, keep the deed of information obtained for making the

deed secret and third, keep the minutes or letters attached to the minutes of the deed or the Notary Protocol in the Notary's depository.

These three things are the basis for Article 66 of the UUN in the case of summoning a Notary for judicial proceedings, investigations, public prosecutors, or judges with the approval of the Notary Honorary Council. With this agreement, it means that in the absence of agreement, this cannot be done.

The coaching functions carried out by the Notary Honorary Council as stated in Article 24 Paragraph 2 letters a and b are:

- a. Maintain the dignity and honor of the Notary in carrying out his profession; and
- b. Provide protection to the Notary in relation to the Notary's obligation to keep the contents of the deed confidential.

Furthermore, based on Article 66 Paragraph (3), it is stated that within a period of 30 working days from the receipt of the request for approval of the summons of a notary, it is obligatory to provide an answer to accept or reject the request for approval, and Paragraph (4) states that in the event that the Honorary Council of Notaries does not provide an answer within the period as referred to in paragraph (3), the notarial honorary assembly is deemed to have accepted the request for approval. This means that the notary is not completely immune from all forms of summons by law enforcers for the sake of law enforcement.

Thus, the establishment of the Notary Honorary Council aims to save the interests of the community from losses caused by irresponsible Notaries while at the same time maintaining the image and authority of the Notary Institution and protecting the good name of the Notary profession group as well as a form of legal protection for Notaries given by the state.

In the case of a notary protocol being sued after switching from the protocol provider to the protocol holder. In this case, the giver of the protocol has died and therefore the Notary cannot be held responsible for the minutes of the deed being sued. But the responsibility has shifted to the recipient of the protocol. Because the responsibility shifts because the lawsuit arises or occurs when the notary protocol is under the control of the protocol holder.

To provide legal protection to this notary, of course, the government must immediately develop a new legal instrument or improve the existing laws and regulations that can provide clarity for legal protection and guarantees to notaries in order to create justice for notaries in carrying out their profession, therefore it can be interpreted that the fulfillment of the Theory of Justice used in the theoretical basis in this thesis has not been achieved.

From the explanation above, when viewed from the fulfillment of the theory of responsibility used in the theoretical basis in this thesis, it should have been fulfilled because if a problem occurs, namely in the form of a lawsuit or lawsuit on the protocol deed of a notary who has died, then the responsibility of the notary who receives the protocol is only limited to providing explanations and assistance to present the minutes of the deed that is demanded or sued without having to provide any explanation and clarification about the deed because the Notary Recipient of the protocol is not responsible for the contents of the deed made by the notary owner of the deceased protocol.

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