



## Liability of Heirs from Notary Who Passed Away toward the Transfer of Notarial Protocol in Padang City

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### **Abstract**

The notary authority is to make an authentic deed which is one part of the notarial protocol. This protocol will be safeguarded and submitted to the Regional Supervisory Board (MPD) if the Notary passes away. In this paper, the author applies empirical juridical research methods, uses primary data, and applies data collection techniques in the form of interviews with parties related to this study. Based on the results of the study, in the event that the Notary retires due to death, the protocol will be transferred to another notary of protocol holder. In order to guarantee legal certainty and avoid the abandonment of a Deed, through a proposal from an heir or Notary employee, the MPD appoints a Temporary Notary Officer in accordance with Article 40 of the Regulation of the Minister of Law and Human Rights No. 25 of 2014. Appointment of Temporary Notary Officials is expected not to break all matters related to the management of authentic certificates and the parties, that bind the agreement of the authentic deed, receive legal certainty. When a Notary passes away, Article 35 paragraph (1) of the Law on Notary Position Amendment states that a husband/ wife or family of blood in a straight line of descent to the second degree must notify MPD. Subsequently, the MPD makes a Decision Letter on the dismissal of a Notary addressed to the Ministry of Law and Human Rights. After the letter is issued, MPD conducts the process of making a notarial protocol transfer report, which is later transferred to another Notary of Protocol Holder.

**Keywords:** Heirs; Notary; Notarial Protocol

### **Introduction**

Indonesia is a State of Law and it is stated in Article 1 paragraph (3) of the amendment to the Constitution of the Unitary Republic of Indonesia in the third. It means that the State of the Republic of Indonesia places the law on the highest position which at the same time becomes the basic principle that governs the life of the people of the nation and state.<sup>1</sup> The 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1) states that there is a guarantee of legal certainty, legal order and legal protection which emphasizes the values of truth and justice for Indonesian citizens. One result of the implementation of law that reflects legal certainty is the existence of an evidence in every legal activity. Guaranteeing certainty, order and legal protection, which has the essence of truth and justice in legal

<sup>1</sup> Ikhsan Rosyada Parluhutan Daulay, *Constitutional Court: Understanding its Existence in the State Administration System of the Republic of Indonesia*, PT Rineka Cipta, Jakarta, 2006, page 1.

traffic, generally requires evidence that clearly determines the rights and obligations of a person as a subject of law in society.<sup>2</sup>

Proof of evidence to ensure legal certainty can be done in writing. The existence of written evidence can be in the form of an authentic deed or a private deed which will later determine legally the rights and obligations of a person and become a benchmark in terms of legal certainty. In addition, the deed is expected to minimize disputes in legal traffic as well as legal relations between the legal subject parties.

The main difference between the authentic deed and the private deed is the method of making or making the deed. An authentic deed is a deed made in the form prescribed by the Law by or before an authorized public official for it (such as a Notary, Judge, Registrar, Bailiff, Civil Registrar) at the place of deed made (Article 1868 Civil Code, Article 165 of *Herziene Indonesisch Reglemen* (HIR), and Article 285 of *Buitengewesten Rechtsreglement* (RBg)). The method of making or the occurrence of a private deed is not carried out by and or before a public employee official. It is enough to be made before the interested parties, which is in accordance with Article 1874 of the Civil Code.

In accordance with the people's demand for the need for legal certainty on the importance of an authentic deed, a position that handles this is formed which is then called a Notary. Notary positions are formed because their presence is desired by the rule of law with the intention of helping and serving the public who need authentic written evidence of legal circumstances, events or actions.<sup>3</sup> The notary is the only official authorized to make certain deeds.

Legal developments occurring in Indonesia caused a dynamic movement including the Notary Position Regulations. Along with the increasing number of community needs for Notaries, it causes new problems to arise in Law No. 30 of 2004 concerning Notary Position. The philosophical foundation of the stipulation of the Law on Notary Position is the realization of legal certainty, order and legal protection with the essence of truth, and justice through the deed made, Notaries must be able to provide legal certainty to the public using Notary services.<sup>4</sup>

In 2014, the House of Representatives and the President of the Republic of Indonesia ratified a new Law that regulates the needs of the community and the Notary itself which has not been regulated in Law on Notary Position. Law on Notary Position was finally replaced with Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Position (hereinafter referred to as Law on Notary Position Amendment). Changes in several Articles in the Law should be a new reference for Notaries in carrying out their positions. Significant changes can be seen in Article 1 number 2 of Act No. 30 of 2004 concerning Notary Position stating that a Notary Temporary Officer is someone who temporarily serves as a Notary and carries out a position from a Notary who passes away, is dismissed, or is temporarily dismissed. However, in Law on Notary Position Amendment, the regulation of Notary Acting Officers changed to someone who temporarily served as a Notary to carry out the position of a Notary who passed away.

Law on Notary Position Amendment narrows the regulations for Notary Temporary Position. Initially, the Temporary Officer of the Notary can replace the temporary position of a Notary who passes away, is dismissed, and is temporarily dismissed. Then, the Notary Temporary Officer can only replace the position of a Notary who passes away. The regulation is explained in more detail in Article 35 paragraph (1) stating that if the Notary passes away, the husband/ wife or family of blood in a straight-line descent to the second line must notify MPD. Then, Article 35 paragraph (4) states that the Notary Temporary Official transfers notarial protocol from a Notary who passes away to MPD no later than 60 (sixty) days from the date the Notary passes away. Then, Article 35 paragraph (5) states that a Notary can

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<sup>2</sup> *Ibid*, page 7.

<sup>3</sup> Habib Adjie, *Indonesian Notary Law*, Refika Aditama, Bandung, 2008, page 14.

<sup>4</sup> H. Salim HS. & H. Abdullah, *Contract Design and MOU*, Sinar Grafika, Jakarta, 2007, page 101-102.

make a deed in his own name and has a notarial protocol. Notarial protocol is a collection of documents that are state archives that must be stored and maintained by a Notary.<sup>5</sup>

Regulations concerning Temporary Notary Officials are also regulated in the Minister of Law and Human Rights Regulation No. 25 of 2014. Article 39 paragraph (1) explains that in relation to a Notary who retires due to death in carrying out their position, heirs must notify them manually or electrically to the MPD within a maximum period of 30 (thirty) days from the Notary's death. Article 40 paragraph (1) Regulation of the Minister of Law and Human Rights No. 25 of 2014 explains that heirs or Notary employees propose a Temporary Notary Officer. Then, MPD appoints a Temporary Notary Officer within a maximum period of 14 (fourteen) days from the date of notification that the Notary passes away. In Article 42 paragraph (4), if the heir or employee does not give a proposal, the MPD must appoint another Notary as the protocol holder to the Minister within a maximum period of 14 (fourteen) days after the Notary's death notice has been exceeded.

The procedure for the appointment of a Temporary Notary Officer, in the case of a Notary passed away, is an obligatory thing to do to avoid the legal vacuum from the deceased Notary to the Notary who accepts the protocol. The task of the Notary is to constrict the legal relationship between the parties in a written form and a certain format so that it becomes an authentic deed. A notary is a strong document maker in a legal process.<sup>6</sup> In addition, if a notarial protocol from a deceased notary is not temporarily transferred to a Temporary Notary Officer, it will cause delays in various matters in the process of giving a copy of the deed to a third party if the original deed has been signed by the deceased Notary. In this case, the third party will later not get legal certainty about giving a copy of the deed. In practice, not all implementation of the protocol for substituting Notary death for the Temporary Notary Officer is carried out properly and according to the deadline set out in the Legislation. The procedure for notarial protocol transfers to MPD is indeed mandatory. However, the legislation does not explain who is responsible for taking care of the protocol left by the Notary.

An example of this issue can be seen in an interview with one of the MPD members in Padang City, Mr. Dasman S.H, M.Kn. One of the "X" Notaries in Padang City, passed away on Saturday, February 10, 2018. However, until Monday, March 19, 2018 there was no arrangement for the transfer of protocols from the deceased Notary by the MPD to the Temporary Notary Officer designated.<sup>7</sup> Article 39 paragraph (1) Regulation of the Minister of Law and Human Rights No. 25 of 2014 explained that in relation to the Notary who retired because he/she passed away in carrying out his/her position, the heirs must notify manually or electrically to the MPD within a maximum period of 30 (thirty) days as of the death of the Notary. In this case, the responsibility for managing the notarial protocol left by the deceased Notary is carried out by the Notary employee concerned. Since it is not regulated about who will be responsible for the notarial protocol and Notary notification who passed away by the heirs and how the procedure for notarial protocol transfer to the Notary Acting Officer by MPD, then on this issue, the author would like to examine further how liability of heirs and employees of Notary who passed away toward the notarial protocol.

Based on the description of the above background, it formulates a number of problems that the researcher will discuss which include: (1) What is the procedure for the transfer of notarial protocols of the notary who passed away to the Temporary Notary Officer in Padang City? (2) What is the role of the heirs and employees of Notary who passed away toward the notarial protocol in Padang City?

### **Research Method**

Based on the problems raised, this study will use an empirical juridical approach. This research will look at how the legal aspects are positive and see how the application of legislation in the field and in

<sup>5</sup> Andi Junianto, *Notary and Notarial Protocol*, Eresco, Bandung, 2007, page 12.

<sup>6</sup> Tan Thong Kie, *Notary Studies: All About the Practice of Notaries*, First Print. Ichtiar Baru Van Hoeve, Jakarta, 2000, page 159.

<sup>7</sup> Interview with Resource Person, on March 17, 2018.

the community. This will examine secondary data which will then also conduct research on the primary data in the field; i.e, research on the parties involved in matters of the practice of appointing a Temporary Notary Officer if a Notary passes away.

## **Results and Discussion**

### **1. Procedure for Transfer of Notarial Protocol Owned by a Notary Who Passed Away to a Temporary Notary Officer**

Article 16 paragraph (1) letter b Law on Notary Position Amendment explains that the obligation of a Notary is to keep original deed as part of a notarial protocol. Making a notarial deed aims to obtain a legal certainty against a legal event that occurs between the parties. Notarial deed, as a product that has the power of the law, allows the community to do a proof of violation easier if one of the parties to the deed does so. The community or parties that bind themselves in a deed can use the authentic deed of the Notary as a proof because the process of making the Deed is approved and signed by both parties.

In the practice of the proof process, the truth according to the judge can be determined which can guarantee the protection of the rights of the parties involved in a case in a balanced manner. Deed is the most important written evidence in a civil case. It is a signed letter, containing information about events or things that are the basis of an agreement. In other words, a deed is an article that states a legal act. There are two types of deeds consisting of authentic and private deeds.<sup>8</sup>

Based on the above explanation, the definition of deed, in accordance with Article 1868 of the Civil Code, is a deed made in the form determined by the Law by or before the authorized official for that matter at the place where the deed was made. Meanwhile, the private deed also contains records or legal actions but it is not made before public officials and does not have the strength of strong evidence such as authentic deeds.

As a public official, Notaries are given the authority to make authentic deeds and other authorities. Regarding the authority, the Notary has a liability to the notarial protocol. The liability to the notarial protocol is to store and/ or transfer the protocol to the recipient of the Notarial protocol if a Notary retires.

The obligation to maintain a notarial protocol has been regulated in Article 65 Law on Notary Position Amendment. Notarial protocol is a collection of documents that are state records and must be stored and maintained. The liability of a Notary for this protocol is not only limited to when the Notary runs his/her position. Maintaining a notary protocol is the responsibility of a Notary for life.

In the case of a deceased Notary, a notarial protocol will be given to the recipient of the notarial protocol. By transferring the protocol to the recipient of the notarial protocol, the Notary has a new liability, i.e. storing the notarial protocol of the deceased Notary. In addition to being responsible for storing these protocols, the protocol notary holder also has authority over the notarial protocol in accordance with applicable laws and regulations.

Article 35 paragraph (1) of the Law on Notary Position Amendment explains that if a Notary passes away, the husband/ wife or family in the bloodline to the second degree must notify MPD Notary in the deceased Notary's work area no later than 7 (seven) working days. Based on the Article, a Notary who passes away later will leave the notarial protocol. After reporting on the death of a Notary to the MPD, the notarial protocol will later be transferred to another Notary of protocol holder through MPD.

Temporary Notary Officer, who will be appointed by MPD later, must fulfill the requirements which include: Indonesian citizens, certified law graduates, and have worked as employees of a Notary's

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<sup>8</sup> Ghita Aprillia Tulenan, "Position and Function of Private Deed Legalized by Notary" (2014) 2:2, *Jurnal Lex Administratum*, page 126.

office for a minimum of 24 (twenty-four) consecutive months. It is expressly stated in Article 40 paragraph (2) of the Regulation of the Minister of Law and Human Rights No. 25 of 2014. In order to ensure legal certainty and avoid the abandonment of a deed left by a Notary who has passed away, MPD cannot linger to appoint a Temporary Notary Officer. The urgency of the appointment of Temporary Notary Officer aims that the management of the Authentic Deed is unbroken and the parties bound to the agreement of the authentic deed have legal certainty.

The position as a Temporary Notary Officer will not be given immediately when the heir or Notary employee gives a proposal to the MPD because it is MPD who appoints someone to replace the deceased Notary to become a Temporary Notary Officer. The oath or promise of a Notary position in accordance with Article 8 paragraph (4) of the Law on Notary Position Amendment becomes one of the important points of a position for officials who later replace the deceased Notary.

As is the case with the responsibility of a Notary, a Temporary Notary Officer in civil terms has a legal relationship in an agreement between a Temporary Notary Officer who provides services with the parties using the service. They must also fulfill all the legal requirements and conditions of an agreement in accordance with Article 1320 of the Civil Code. The relationship between the Temporary Notary Officer and the parties will be realized in an authentic deed because Article 35 paragraph (5) of the Law on Notary Position Amendment states that the Temporary Notary Officer has the authority to make deed in his/her own name and has a notarial protocol. In carrying out his/her position, a Temporary Notary Officer who will replace the deceased Notary is also obliged to pay attention to the code of ethics stipulated in Article 83 Law on Notary Position which states that the Notary organization determines and enforces the Notary code of ethics.

Notary Iwan Maulana, as a Notary of Protocol Holder belonging to the late Notary Dasrizal explained that before the process of appointing Temporary Notary Officer, the heirs first informed of the news of the death of a Notary to MPD. If the news of the death of a Notary has been reported to the MPD by the heir, MPD will carry out the process of making a Decree of the Dismissal of a Notary to the Ministry of Law and Human Rights. After the letter was issued by the Ministry of Law and Human Rights, MPD carried out the process of making a notarial protocol transfer report. Later, the report will be transferred to the notary of protocol holder witnessed by the heirs and Notary employees.

Notary Iwan Maulana stated that the appointment of a Temporary Notary Officer should be done because not all heirs understand the procedures that must be passed against the notarial protocol. However, Notary Iwan Maulana, as one of the Notary Holders of the Protocol, did not go through the process, because the heirs had entrusted everything to the employees of the Notary who had passed away.

According to Notary Iwan Maulana, in the implementation of notarial matters in Padang city itself, when a Notary passed away, the appointment of a Temporary Notary Officer had never been done. The reason is because the heirs entrust all office management to Notary employees. Notary Iwan Maulana was appointed as the Notary Holder of the Protocol at the suggestion of the heirs of the late Notary Dasrizal in which the notarial protocol management was carried out by Notary employees. MPD, as an institution that provides proposals for the appointment of Notary Holders of the Protocol, gives the heirs the right to appoint the Notary of Protocol Holder.<sup>9</sup>

In the notarial protocol transfer process of the deceased notary, Diana Siska as MPD member from the Government element explained that after the heirs reported the death of the Notary, the MPD processed the proposed dismissal of the Notary. The obstacle faced by the MPD is the process of issuing a statement of dismissal of the Notary by the Central Supervisory Board; so, the appointment procedure will be delayed. According to Siska, MPD has so far never appointed a Temporary Notary Officer on the grounds that there is no obligation for the MPD to appoint a Temporary Notary Officer.<sup>10</sup>

<sup>9</sup> Interview with Iwan Maulana Maulana S.H, MK.n (Notary/ Conveyancer of Padang City), on April 18, 2019.

<sup>10</sup> Interview and discussion with Diana Siska (Member of the Regional Supervisory Board from Government element), on May 27, 2019.

Based on the information given by Siska, MPD with all its authority, does not take anticipatory actions against legal vacancies that occur between the time lags in making a decree for dismissal of a deceased Notary and the appointment of Notary of the protocol holders which may be attributed to appointment of Temporary Notary Officer. MPD only coordinates with the Central Supervisory Board to expedite the issuance of the decree for the dismissal of the Notary who passed away.

In this case, the appointment of a Temporary Notary Officer for the transfer of notarial protocol of a notary who passes away is not an obligation. The heirs of the Notary who passed away entrust all notary management to the concerned Notary employee. The Notary employee will compile the existing documents and submit them to MPD. In the notarial protocol collection process of the deceased notary, the MPD gives the employee and heirs the right to propose the name of the Notary of Protocol Holder.

In notarial protocol transfer, Article 62 Law on Notary Position Amendment explains that notarial protocol transfer is carried out no later than 60 (sixty) days as of the Notary making deed has passed away. In addition, the preparation of a notarial protocol transfer report was signed by the recipient of the notarial protocol, the parties submitted the notarial protocol and the Chairperson of the Notary MPD.<sup>11</sup>

## 2. *Role of Heirs and Employees of the Notary Who Passed Away toward Notarial Protocol*

Notaries are officials who make authentic deeds. The deed has perfect proof and is a Notary product that is needed by the community for the sake of legal certainty. It is different from private deeds that are made by the parties concerned without the help of public officials. The important role of this authentic deed is the strongest and most complete evidence that has an important role in legal relations in society.

Appointment of a Notary indirectly aims to provide legal certainty in the community. The responsibility of a Notary is not explained in detail in Article 65 Law on Notary Position Amendment. The scope of the notary's responsibility covers the material truth of the deed he/she made. Liability of a Notary, which relates to material truth, is divided into four points: civil liability of a Notary to the material truth of the deed he/she made, criminal liability of a Notary to material truth in the deed he/she made, liability of a Notary based on Law on Notary Position on material truth in the Deed he made, and the liability of the Notary in carrying out his/her office duties based on the Notary code of ethics.<sup>12</sup>

The deceased notary still has responsibility when a claim arises from the party who feels disadvantaged. Law on Notary Position does not explain in detail about the Notary's liability after the termination of his/her position due to dismissal or death. The provisions of Article 65 Law on Notary Position related to the liability time limit are still unclear. It is because Article 65 Law on Notary Position No. 30 of 2004 jo. Law on Notary Position No. 2 of 2014 does not explain it explicitly. So that, until now, the notary has interpreted that he/she is liable for the deeds he/she made and that he/she must be liable for life even though he/she has stopped serving.<sup>13</sup> The need for regulations that explain how the Notary's liability becomes a confusion even though the authentic deed has been transferred to another notarial protocol holder.

In the process of transferring all the obligations of a Notary who has passed away, the role of the heir becomes an important matter. Liability for each Deed that has been made by the Notary must be transferred to the Temporary Notary Officer or to the Notary holder of another protocol through MPD. The heir is only obliged to notify the death of the Notary because the heirs are not the party who will replace the deceased Notary in relation to his/her rights and obligations, they are only entitled to demand the transfer of objects or the exercise of the rights granted to them.

<sup>11</sup> Interview with Iwan Maulana Maulana S.H, MK.n (Notary/ Conveyancer of Padang City), on April 18, 2019.

<sup>12</sup> Abdul Ghofur, *Indonesian Notary Society: Legal and Ethical Perspectives*, UII Press, Yogyakarta, 2009, page 34.

<sup>13</sup> Anang Ade Irawan, A. Rachmad Budiono dan Herlin Wijayati, "Liability of Notary Heirs as General Officers of Notarial Deed Causing Losses to Parties", (2018) 5:2, *Jurnal Lentera Hukum*, page 334

Notary who quit his/her position because he/she passed away later must report the news of his death through heirs or Notary employees. In its implementation, a concern arises that there is not enough education from the Notary to his/her heirs. In this case, the heirs do not understand the reporting procedures for the Notary who passed away. Worry will also arise if the Notary who has passed away does not keep the notarial protocol. Therefore, no one will be liable for the Deed made by the Notary; especially if the Deed owned by the Notary is a problem Deed or the parties that are in the Deed are involved in a dispute. In the case of notarial protocol transfer, the Temporary Notary Officer or notarial protocol holder will then be obliged to liable against the notarial protocol in accordance with the directives of the MPD.

In the inheritance system regulated in the Civil Code or Islamic Law, the object of inheritance is goods or property. According to Soepomo that "inheritance law" contains regulations that regulate the process of continuing and passing goods and property items that are not tangible objects from a human generation to their heirs.<sup>14</sup>

Endang Sri Kawuryan stated that there was no clarity regarding the obligation of the heir to complete all unresolved tasks belonging to a Notary who passed away. Regarding this limitation of responsibility, the risk of a Notary's work becomes heavier. If it is involved in criminal matters, a notary will be overshadowed by criminal sanctions to death. Meanwhile, for civil liability, the heirs of Notaries can also be involved in liability.<sup>15</sup>

In practice, according to the Notary Iwan Maulana Maulana, if a Notary passes away, the obligation of the heir is to notify the death of the Notary to MPD. Furthermore, notarial protocol left by a deceased Notary is managed by a Notary employee who indirectly understands all arrangements for the Notarial Deed and the parties concerned in the Notarial Deed.<sup>16</sup> The Law on Notary Position does not specifically explain the arrangement of responsibilities of Notary employees in managing all files and documents left by the Notary who passed away.

According to Yofi Permana R, one of the former employees of the late Notary Ja'afar, the responsibilities of Notary employees who passes away were not regulated in legislation. Thus, employees of the deceased Notary filed all notarial protocols who passes away on the basis of moral burden as long as they had worked with the Notary concerned. The burden of notarial protocol is not imposed on the heirs, based on the principle of Notarial Deed which must be kept confidential in accordance with Article 16 Paragraph (1) letter f Law on Notary Position Amendment. Thus, the filing of all notarial protocols is not carried out by heirs who do not know and do not understand the Notary Deed.

Administration process conducted by Notary employees aims to minimize the overwhelming heirs to the transfer of protocols which will later be given to another Notary of Protocol Holder. However, Yofi Permana said that the absence of legislation that regulates the responsibilities of heirs and Notary employees regarding administration process, raises a concern about notarial deed lost since the loss of an authentic deed is not the responsibility of Notary employees who conducts the administration process toward notarial protocol left by a notary.<sup>17</sup>

The heirs of the notary who passed away sometimes do not know the procedures for notarial protocol transfer. It is because the lack of socialization of notarial protocols from Notaries to their families, Notaries to their employees, MPD and Notary organizations to Notaries and from MPD and Notary organizations to the public.<sup>18</sup>

<sup>14</sup> Laila Rahmawati, *Rights and Obligations of Heirs (Comparative Study of Islamic Law and Civil Code)*, Fakultas IAIN Walisongo, Semarang, 2018, page 35.

<sup>15</sup> Anang Ade Irawan, A. Rachmad Budiono and Herlin Wijayati, *Op. Cit.*, page 335

<sup>16</sup> Interview with Iwan Maulana Maulana S.H, MK.n (Notary/ Conveyancer of Padang City), on April 18, 2019.

<sup>17</sup> Interview and discussion with Yofi Permana S.H, M.Kn, on April 8, 2019.

<sup>18</sup> Agus Purwanto, *Liability of Notary Heirs and MPD to the Notarial Protocol of the Notary Who Passed Away*, Thesis for Graduate Program in Notary, Sebelas Maret University, Surakarta, 2018.

Lack of socialization provided to Notaries who died and Notary heirs on the importance of notarial protocol transfer caused confusion for the parties involved in the notarial deed. That resulted in a loss for the parties who still needed a deed or file contained in the notarial protocol of the deceased notary.

Article 63 Law on Notary Position Amendment does not clearly regulate the responsibilities and steps that must be taken by the heir as the party responsible for submitting the notarial protocol to another Notary. The lack of socialization resulted in the heirs fully surrendering to Notary employees who, according to the heirs, understood the notarial protocol transfer procedures that had passed away. In practice, the notarial protocol transfer procedure by heirs to another Notary of Protocol Holder still has many obstacles. It is due to ignorance of the heirs to the importance of the notarial protocol. The same thing also applies to the liabilities of Notary employees who carry out administration process of notarial protocol which is only based on moral burden since they are not regulated in detail in the applicable Law.

MPD with its authority is responsible for the notarial protocol left by the Notary who passed away. Confusion over the arrangement of responsibilities of Notary employees for filing notarial protocols can be carried out by the appointment of a Temporary Notary Officer whose authority is carried out attribute to the Notary's own employees. So, Notary employees, who serve as Temporary Notary Officials no later than 30 (thirty) days from the day the Notary passes away, have the authority and responsibility stipulated in the laws and regulations.

Law on Notary Position and Law on Notary Position Amendment only regulates the making, storing, and transfer of notarial protocols contained in Articles 58 to 66. Arranging sanctions, if the heirs do not immediately submit the protocol and legal protection of Notary employees who conduct administration process and find some of the Notarial Deeds are lost, are not regulated at all.

### ***Conclusion***

The authority of the Notary is to make an authentic deed. The authority that is attributively given by the Minister of Law and Human Rights allows the Notary to make an authentic Deed. One of the obligations of the Notary is to keep the original deed from being damaged or even lost. The original deed is one part of the notarial protocol.

This protocol will be safeguarded and will be transferred to MPD if a Notary dies. Notification of the deceased Notary and the transfer of the notarial protocol cannot be separated from the role of the heir. In the notarial protocol notification and transfer process, heirs have a large responsibility because it has been regulated in Law on Notary Position Amendment and Regulation of the Minister of Law and Human Rights No. 25 of 2014. The procedure for transfer of the notarial protocol is through reporting to MPD that a Notary has passed away. MPD then proposes a Decision on Dismissal of Notaries to the Central Supervisory Board (MPP) within the period of issuance of the Decree. MPD distributes a Temporary Notary Officer who will be carried out by a Notary employee for 30 (thirty) days after notification that the Notary has passed away. After the Decree related to the dismissal of the deceased Notary is received back by the MPD, MPD then makes a notarial protocol transfer report to the Notary Holder of the Protocol proposed by the heir or the Notary employee concerned.

After a Notary dies, all notarial protocols will be submitted to the Notary Holder of another Protocol. However, there are concerns that the notarial protocol has not been transferred properly even though the Notary Holder of other Protocols has been appointed by MPD. This may be because the notarial protocol is problematic, missing, or another Notary has refused because it has no place to save it. Then, a Temporary Notary Officer is needed to resolve at least the issue of concern and to fill the legal vacuum in order to provide legal certainty for the parties in a Deed. However, in practice, the appointment of Temporary Notary Officer was not carried out because the filing process had been carried out by Notary employees. Heirs who later submit notarial protocols have also given confidence to Notary



employees. Thus, the appointment of Temporary Notary Officer is not a necessity because all management of notarial protocols has been carried out by Notary employees.

## References

### Books

Abdul Ghofur, *Indonesian Notary Society: Legal and Ethical Perspectives*, UII Press, Yogyakarta, 2009, page 34.

Agus Purwanto, *Liability of Notary Heirs and MPD to the Notarial Protocol of the Notary Who Passed Away*, Thesis for Graduate Program in Notary, Sebelas Maret University, Surakarta, 2018.

Anang Ade Irawan, A. Rachmad Budiono and Herlin Wijayati, *Op. Cit.*, page 335.

Andi Junianto, *Notary and Notarial Protocol*, Eresco, Bandung, 2007, page 12.

H. Salim HS. & H. Abdullah, *Contract Design and MOU*, Sinar Grafika, Jakarta, 2007, page 101-102.

Habib Adjie, *Indonesian Notary Law*, Refika Aditama, Bandung, 2008, page 14.

Ikhsan Rosyada Parluhutan Daulay, *Constitutional Court: Understanding its Existence in the State Administration System of the Republic of Indonesia*, PT Rineka Cipta, Jakarta, 2006, page 1.

Laila Rahmawati, *Rights and Obligations of Heirs (Comparative Study of Islamic Law and Civil Code)*, Fakultas IAIN Walisongo, Semarang, 2018, page 35.

### Journals

Anang Ade Irawan, A. Rachmad Budiono dan Herlin Wijayati, "Liability of Notary Heirs as General Officers of Notarial Deed Causing Losses to Parties", (2018) 5:2, *Jurnal Lentera Hukum*, page 334.

Tan Thong Kie, *Notary Studies: All About the Practice of Notaries*, First Print. Ichtiar Baru Van Hoeve, Jakarta, 2000, page 159. Ghita Aprillia Tulenan, "Position and Function of Private Deed Legalized by Notary" (2014) 2:2, *Jurnal Lex Administratum*, page 126.

### Legislations

Constitution of the Republic of Indonesia 1945.

Civil Code.

Law No. 30 of 2004 concerning Notary Position.

Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Position.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Dismissal, and Extension of Term of Office of Notaries.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 40 of 2015 concerning Organizational Structure, Procedures for Appointment of Members, Dismissal of Members, and Procedures of the Supervisory Board.

*Interviews*

Interview with resource person: Mr. Dasman S.H, M.Kn.

Interview with resource person: Mr. Iwan Maulana S.H, M.Kn.

Interview with resource person: Mr. Yofi Permana S.H, M.Kn.

Interview with resource person: Ms. Diana Siska, S.H.

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