

The Urgency of Regulations on the Time Limit for Storing Notarial Protocols as State Archives

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Abstrak: A notarial protocol is a collection of documents that are considered State Archives and must be stored and maintained by the Notary in accordance with the provisions of applicable laws and regulations. Based on Article 15 paragraph (1), Article 16 paragraph (1) letter b, Article 58, Article 59, and Article 63 of the Notary Law (UUJN/UUJN-P), a Notary is responsible for storing the deeds and Notarial Protocols throughout their term of office, and these will be passed on to another Notary or their successor. The responsibility of the Notary holding the protocol is also to maintain the confidentiality of the personal data of the parties involved in legal actions reflected in the authentic deed. The lack of regulations governing the digital storage of the Notarial Protocol has created a legal gap. As a result, the digital storage of Notarial Protocols can only function as backup data.

Keywords : Notary, Notarial Deed, Notarial Protocol

INTRODUCTION

The Notary position is granted by the state to provide legal services to the public, particularly in the area of private law. A Notary is a public official who, in carrying out their duties and authority, must adhere to Law Number 30 of 2004 concerning the Notary Position (hereinafter referred to as UUJN) and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Notary Position (hereinafter referred to as UUJN(P)).

Article 15 paragraph (1) of the UUJN means that a Notary is granted authority and responsibility by the state to create authentic deeds for all acts, agreements, and decisions that are required by law and/or desired by the parties to be stated in an authentic deed. This includes ensuring the certainty and accuracy of the date of the deed's creation, storing and preserving the deed, and providing the grosse deed, a copy, and a collated copy of the deed,

all of which are to be carried out unless the creation of the deed is assigned or excluded by law to another official or person.

When fully understood, the Notary profession involves very heavy responsibilities, especially when considering the duties, obligations, and responsibilities involved. The Notary's role is a noble one, as it carries the trust and mandate of the public and the state.¹

One of the duties of a Notary in carrying out their role is to store all documents related to the creation of authentic deeds and various other supporting documents, commonly referred to as the Notarial Protocol. The Notarial Protocol is the property of the state, not the Notary who creates the deeds, nor the Notary who is assigned/designated by the Minister of Justice to store it. A person who stores documents in the Notarial Protocol generally knows that these protocols are secure in the hands of a Notary.² In the UUJN(P), the definition of Notarial Protocol is found in.

¹ A.A. Andi Prajitno, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, Cetakan ke-2, Selaras, Malang, 2013, hlm.5

² Tan Thong Kie, *Studi Notariat: Serba-serbi Praktek Notaris*, Ichtiar Baru Van Hoeve, Jakarta, 2002, hlm.545

Article 1, number (13). The Notarial Protocol is a collection of documents that are considered state archives and must be stored and maintained by the Notary in accordance with the provisions of applicable laws and regulations. This contains two meanings as follows.³

1. The Notary is required to protect, maintain, and preserve the Notarial Protocol physically (by storing it in a proper and safe place to prevent damage).
2. The Notary is required to protect, maintain, and preserve the Notarial Protocol non-physically (by providing copies/duplicates/excerpts if requested and facing legal action if sued or reported).

The Notarial Protocol exists in two conditions as follows.⁴

1. Originating from the Notary in question (while carrying out their duties as a Notary).
2. As the holder of the protocol (Notary Holding/Keeping the Protocol (NPP) from another Notary who has retired or ceased their duties as a Notary for certain reasons, or from a Substitute Notary or Interim Notary).

According to the Explanation of Article 62 of the UUJN, the Notarial Protocol consists of:

- a. The minute of the deed
- b. The deed registry book or repertory
- c. The registry book for deeds under private signature that were signed in the presence of the Notary or registered private deeds
- d. The registry book of names of the parties or "klapper"
- e. The protest registry book
- f. The will registry book
- g. Any other registry book that must be kept by the Notary in accordance with legal provisions.

In addition to these seven types, the Notarial Protocol may also include bundles of minutes, repertories, legalization registry books, "waarmerking" books, protest registry books, will registry books, "klapper" lists for parties, "klapper" lists for legalization, "klapper" lists for "waarmerking," and any other registry books required by the UUJN.⁵

When a Notary faces one of the conditions as stated in Article 62 of the Notary Law (UUJN), they are required to hand over their notarial protocol to the receiving notary (NPP) appointed by the Minister or upon the recommendation of the Regional Supervisory Council (MPD), no later than 30 (thirty) days, with the creation of a protocol handover report signed by both the transferor and the recipient of the Notary Protocol. Furthermore, Article 63, paragraph (5) of the Notary Law (UUJN-P) states that:

"The Notary Protocol from another Notary, when handed over and aged 25 (twenty-five) years or older, shall be handed over by the receiving Notary to the Regional Supervisory Council."

Regarding the procedure for the handover, storage, and maintenance of the Notary Protocol, various issues have arisen in its implementation that remain unresolved until today. Several general issues resulting from the continuous handover of protocols will be discussed in the following paragraph.

In the Archival Law, there is no regulation concerning the Notary Protocol, which is a special state archive regulated by the Notary Law (UUJN-P).⁶ Since the Notarial Protocol is a state archive, the legal principle *Lex specialis derogat legi generali* applies, meaning that Law Number 43 of 2009 on Archiving (hereinafter referred to as the Archiving Law) governs the Notarial Protocol.

The potential for disorganization in the archive management system within a Notary's office administration will increase due to legal uncertainty in the management of the Notarial Protocol. This is because there are no established standards and regulations regarding

³ Habib Adjie dan Muhammad Hafidh, "Hukum Protokol Notaris", Cet.1, PT.Refika Aditama, Bandung, 2023, hlm.4

⁴ *Ibid*

⁵ Habib Adjie dan Muhammad Hafidh, *Op Cit*, hlm. 6

⁶ Habib Adjie dan Muhammad Hafidh, *Op Cit*, hlm.3

governance based on the aspects of archival activities, including policy, archival development, and archive management within a national archiving system supported by human resources, infrastructure, and other resources. Additionally, there is no synchronization of a credible database of Notarial Protocol holders that can provide information services to the public regarding the existence of authentic deeds previously created before a Notary.

Currently, most notary offices still store archive documents conventionally. This means that the Notarial Protocol is stored in paper form, whether in archive rooms, file cabinets, or safes. Paper documents are highly susceptible to being lost, misplaced, or damaged. A Notary's responsibility will remain throughout their lifetime in accordance with Article 65 of the UUJN(P). This means that the Notarial Protocol must be preserved continuously. The legal relationship regarding a Notary's responsibility for their Protocol, in connection with the Archiving Law, relates to the limitation of the responsibilities of a public official, and as a state archive, the regulation of the storage period for Notarial Protocols can be based on the Archiving Law to ensure legal certainty in national archiving management as stipulated in Article 2 of the Archiving Law.

The National Archives of the Republic of Indonesia (ANRI), as the organizer of the national archiving system, is responsible for managing national archives, including Notarial Protocols, which includes establishing policies, archival development, and archive management, as outlined in Article 6, paragraph 5 of the Archiving Law.

One important aspect of archive management is the implementation of the retention schedule (JRA). The retention period for archives, such as the Notarial Protocol, is determined based on the utility value of each file. To maintain objectivity in determining this utility value, the retention schedule is prepared by a committee consisting of officials who truly understand archiving (Archivists), as well as the functions and activities of their respective offices or organizations. This retention schedule is necessary as a guide for archive disposal management, serving as a tool for controlling the archives that are created.

Among the general issues in the regulation of Notarial Protocols outlined above, the particular focus of this study is to analyze how the Notarial Protocol relates to the implementation of the Deed Retention Schedule (JRA) under the Archiving Law and whether the regulation of the storage period for Notarial Protocols in the UUJN is coherent with the statute of limitations for prosecution under the Civil Code (KUH Perdata) and the Criminal Code (KUH Pidana). This is important because the legal issue regarding the regulation of Notarial Protocols is the lack of legal certainty in its management and the limitations of responsibility for Notarial Protocols, whether before or after they have been in existence for 25 years or more.

METODOLOGI

The type of research is Normative Juridical, according to Mukti Fajar ND and Yuliato Ahmad, which is "legal research that places law as a system of norms. The system of norms referred to includes the principles, norms, rules of legislation, court decisions, agreements, and doctrines." This research employs legal research methods. The explanation above serves as the basis for the author to examine and analyze the regulation of the storage of Notary protocols according to positive law in Indonesia, the responsibility of Notaries in storing Notary protocols in Indonesia, and the legal certainty regarding the storage of Notary protocols.

The approach used in this research is the statutory approach and the conceptual approach.

RESULTS AND DISCUSSION

The Notarial Protocol is a state archive/document consisting of the following:

1. Bundle of deed minutes.
2. Deed registry (repertory), regulated in Article 58 paragraph (1) of the UUJN.
3. Registry book for private documents that are authenticated and signed in the presence of a Notary (legalization), regulated in Article 58 paragraph (1) of the UUJN.

4. Registry book for private documents that are recorded (waarmerking), regulated in Article 58 paragraph (1) of the UUJN.
5. Registry book for protests against non-payment or non-acceptance of securities, regulated in Article 16 paragraph (1) letter g of the UUJN.
6. Registry book for wills, regulated in Article 16 paragraph (1) letter h of the UUJN.
7. "Klapper" registry for the parties involved.
8. "Klapper" registry for private documents authenticated and signed in the presence of a Notary (legalization), regulated in Article 59 paragraph (1) of the UUJN.
9. "Klapper" registry for private documents that are recorded (waarmerking), regulated in Article 59 paragraph (1) of the UUJN.
10. Registry for other documents required by the UUJN, regulated in Article 58 paragraph (1) of the UUJN.

In carrying out their duties, one of the responsibilities of a Notary in the administrative field is to store and preserve all documents, including the collection of deeds and other supporting documents, commonly referred to as the Notarial Protocol. According to Article 1, number 13 of the UUJN-P, the Notarial Protocol is a collection of documents that are state archives and must be stored and maintained by the Notary in accordance with the provisions of the UUJN.

The storage of the Notarial Protocol by the Notary holding the protocol is an effort to preserve the legal lifespan of the Notarial Deed as a valid piece of evidence for the parties or their heirs regarding everything contained in the deed. A Notarial Deed in the form of a copy will always exist if stored by the Notary or in the form of minutes, which will also always be preserved if stored by the Notary, the Notary holding the protocol, or the Notary's successor.

Therefore, the Notarial Deed has a legal lifespan, meaning it remains valid and binding on the parties named in the deed, even after the Notary who executed it has ceased their duties. Notaries are limited by their biological lifespan, but the legal lifespan of a Notarial Deed can be perpetual, as long as the laws governing the Notary's position remain in effect.

Archives have a retention period. The regulation of the retention period for archives, as stipulated in the Archiving Law, must be based on an archive retention schedule. This retention schedule involves assessing whether an archive should be transferred to an archive institution, destroyed, or permanently retained. Based on the retention schedule, it can be determined that archives which have reached the end of their retention period and are no longer of value can be destroyed. However, the Notarial Protocol, without requiring evaluation, must always be stored and preserved by the Notary, the Notary's successor, the Interim Notary, the Notary holding the protocol, or the MPD (Notary Protocol Keeper). Therefore, the retention period for the Notarial Protocol is indefinite as long as the protocol is needed by the relevant parties.

Another regulation governing the storage of the Notarial Protocol as a state archive is found in the Archiving Law. According to Article 1, number 2 of the Archiving Law, administratively, the regulation of state archives is governed by Law Number 43 of 2009 on Archiving (the Archiving Law). More specifically, the regulation of electronic archiving is covered in the National Archives Regulation Number 6 of 2021 on Electronic Archive Management. From the explanation above, it is still evident that the regulation of Notarial Protocol storage is done conventionally and has not yet utilized technological advancements in data storage.

CONCLUSION

The regulation regarding state archives has been outlined in Law Number 43 of 2009 concerning Archiving (Archiving Law). More specifically, the regulation concerning electronic archiving is governed by the National Archives Regulation Number 6 of 2021 on the Management of Electronic Archives. The

urgency of the time limits referred to in this research shows that it is entirely the responsibility of the notary until the end of their term of office. However, to this day, paper-based archives are more at risk of damage or loss, so they must be supported by electronic media in order to better ensure easy access and security.

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