

Werda Notary's Responsibility for the Loss of Minutes of the Deed He Made

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Abstarct. *This study aims to analyze: 1) The legal responsibility of notaries for the loss of minutes of deeds they have made. 2) Legal protection of notaries related to the deeds they have made. The approach method used in this study is the normative legal approach. This type of research is included in the scope of normative legal research. The type and source of data in this study are secondary data obtained from literature studies. The analysis in this study is qualitative. The results of the study concluded: 1) The legal responsibility of notaries for the loss of minutes of deeds they have made, namely that notaries are not responsible for the loss of minutes of deeds after the handover of the protocol to the notary receiving the protocol. Notaries are only responsible for minutes that are lost when the notary is still in office. This is because there is no obligation for notaries to remake minutes of deeds that are lost or damaged due not to the negligence of the notary providing the protocol or the notary who is in office. But this responsibility has been transferred to the recipient of the notary protocol. Therefore, the responsibility is transferred because the loss or damage of the deed is due to the negligence of the protocol holder. Notary protocol or commonly called minutes of deed if lost later. 2) Legal protection of notary's assistant related to the deed made, namely in the Notary Law there is no specific regulation regarding legal protection for notary's assistant. The form of protection required is through the existence of statutory regulations and protection from the Indonesian Notary Association (INI). The Indonesian Notary Association (INI) has a protection field, one of the tasks of which is to accompany notaries and notary assistants, within the framework of the profession with the approval of the Supervisory Board, when summoned by investigators, prosecutors or judges. There is no clarity on the time limit for notary's assistant's responsibility for the deed made, so special legal protection is needed for Notaries, especially for notaries who are no longer in office (notary assistant).*

Keywords: Deed; Legal; Responsibility; Werda.

1. Introduction

Notary as a position is a field of work or task for which legal regulations are deliberately created for certain purposes and functions (certain authorities) and is continuous as a permanent work environment.¹ Notaries in helping to create legal certainty and protection for the community, are more preventive in nature or have the nature of preventing legal problems from occurring, by regulating authentic deeds made before them related to the legal status, rights and obligations of a person in law and so on, which function as the most perfect evidence in court, in the event of a dispute over related rights and obligations.²

The Notary Law stipulates that when a Notary is proven to have committed a violation in carrying out his/her duties, the Notary may be subject to or given sanctions, in the form of a warning and dismissal, whether temporary, honorable or dishonorable.³ According to Article 1 Paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary, amending Law No. 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), a notary is a public official who has the authority to make authentic deeds and has other authority as referred to in this law or based on other laws.⁴

Notaries are required to store the deeds they make in a collection of bound documents based on the deed number called the deed minutes, while those issued to the parties in the deed are in the form of copies of the deed that are exactly the same as the deed minutes stored in the Notary's office. The difference between the deed minutes and the deed copies lies at the end of the deed, in the deed minutes there are signatures of the parties, witnesses and the Notary, while in the deed copies at the end of the deed there is only the Notary's signature. Notarial deeds stored in the deed minutes or Notary protocols, are one of the state archive documents that must be stored for a long period of time and their confidentiality maintained. Storage of deeds or/documents is regulated in UUJN-P Article 1 number 13 which reads: "Notary Protocol is a collection of documents that are State archives that must be stored and maintained by a Notary in accordance with the provisions of laws and regulations".

¹ Denny Saputra, Wahyuningsih, 2017, The Principle of Caution for Notaries/Ppat in Carrying Out Their Duties and Functions in Efforts to Prevent Criminalization Based on the Code of Ethics, *Deed Journal*, Volume 4 Number 3, p. 348.

² Sjaifurrachman and Habib Adjie, 2011, Aspects of Notary Accountability in Making Deeds, Mandar Maju, Bandung, p. 7

³ Sri Yuniati and Sri Endah Wahyuningsih, 2017, Mechanism for Imposing Sanctions on Notaries Who Violate the Notary's Code of Ethics, *Jurnal Akta*, volume 4, number 4, page 589

⁴ Caesar Faturahman, 2021, Responsibility of Notary Werda for the Loss of Minutes of Deed, *Officium Notarium*, Number. 2 Volume 1, p. 271

Notaries are required to keep minutes of deeds as stated in Article 16 paragraph (1) letter b of the Notary Law, which states that one of the obligations of a notary is to make deeds in the form of minutes of deeds and keep them as part of the notary protocol. Minutes of deeds are the original deed which includes the signatures of the parties, witnesses and the notary. Minutes of deeds, registers and supporting documents for making these deeds are kept as part of the notary protocol. This is stated in the Notary Law.⁵ The deed made by a Notary in the form of an original deed (deed of minutes) is a state document and is authentic. In making a notarial deed of agreement, the notary needs to pay attention to matters in making the agreement, for that the Notary must use the principle of caution in making the Notarial deed of agreement. The Notary in making a notarial deed of agreement can minimize errors in the future by paying attention to important matters in making the notarial deed.⁶ Authentic deeds can be used as written evidence, the strongest and fulfilled in trials and dispute resolutions that occur. And Notaries must be able to provide legal certainty for the community using Notary services.⁷

The destruction or loss of minutes of a deed can occur due to negligence in carrying out obligations or due to the lack of the principle of caution carried out by the notary or his employees in storing notarial deeds. When the minutes of a notarial deed are lost or damaged, which results in losses for the parties who have an interest, it can be said that the notary ignored the obligation to store the minutes of the deed and guarantee the condition of the minutes of the deed in good condition which is charged to the notary. So that the notary must be responsible for the damage, loss and destruction of the notarial protocol. Notaries who have retired must still be responsible for the deeds they make in accordance with the explanation in Article 65 of the UUJNP, but there is no legal protection for them. The Notary Law does not specifically regulate legal protection for Notaries who have retired, so in this case there is a lack of clarity of norms.

2. Research Methods

The approach method used in this study is the normative legal approach. This type of research is included in the scope of normative legal research. The type and source of data in this study are secondary data. obtained from literature studies. The analysis in this study is qualitative.

⁵R. Soegondo Notodisoerjo, 1993, Notary Law in Indonesia, Raja Grafindo Persada, Jakarta, p.176.

⁶YogiHanapiah and Wahyuningsih, 2018, Matter. -Matter. What a Notary Needs to Pay Attention to When Making a Notarial Deed of Agreement, Journal of Deeds, Volume 5 Number 1, page 116.

⁷H. Salim. Hs and H. Abdullah, 2007, Contract and MoU Design, Sinar Grafika, Jakarta, p.102.

3. Results and Discussion

3.1. Legal Responsibility of Notary Public for the Loss of Minutes of Deeds He Made

One of the obligations of a Notary that must always be carried out as stated in Article 16 paragraph (1) letter b is that the notary must make a deed in the form of a deed minute and store it as a notary protocol. The deed minute is a state archive that will be needed at some point if there is a case in the future. Although the deeds made by the notary are varied and even numerous, the deed minute must be stored. The deed minute or minute is the original deed signed by the person appearing, witnesses and notary and stored in the notary's archive (not a copy or extract and also not grosse)". All deed minutes, repertorium and klapper must be stored by the notary because they are all important documents that must be archived and stored by the notary.⁸

Notaries who have retired must still be responsible for the deeds they have made in accordance with the explanation in Article 65 of the UUJNP. Notary werda, regarding its meaning, is not found in the UUJN or the notary code of ethics. The definition of notary werda can be seen in the ADRT INI which is contained in Article 2 letter b that what is meant by notary werda is every notary who has stopped performing/carrying out his/her job duties. The position of notary werda for the INI institution as an ordinary member includes, first, being dismissed because they have reached the age of 65 (sixty-five) years and can be extended to the age of 67 (sixty-seven) years or resigning at their own request. The position of notary werda in the INI organization as an ordinary member. Notary werda in the INI organization plays a role in providing suggestions, experience and knowledge in every activity organized by INI. Notary Werda and Notary in the INI organization have the same rights and obligations in the association, only that the Notary still holds the notary protocol and holds the notary protocol, while the notary werda has ended his term of office and no longer holds the notary protocol.⁹

The end of a Notary's term of office does not end the Notary's responsibility for the deeds he/she has made. Provisions related to the Notary's responsibility for the deeds he/she has made are stated in Article 65 of the UUJNP. The end of a Notary's term of office (retirement/wirda) does not end the Notary's responsibility for the deeds he/she has made, this provision is related to the Notary's responsibility for the deeds he/she has made as stated in Article 65 of

⁸Budiono, Herlien. 2013, Basic Techniques for Making Notarial Deeds, Citra Adiyta Bakti, Bandung, p.81

⁹Silvyana Dwi, 2021, Legal Protection for Notary Werda in the Indonesian Notary Association Organization for Deeds They Make, LAW JOURNAL of MAI WANDEU, Volume 1 Issue 2, p.126

the UUJNP which states that: Notaries, Substitute Notaries and Temporary Notary Officials are responsible for every deed he/she has made even though the Notary Protocol has been submitted or transferred to the party keeping the Notary Protocol.¹⁰Article 65 UUJN, Notaries are responsible for deeds that have been made even though the Notary's protocol has been submitted to the party keeping the protocol, but Article 65 UUJN raises unclear legal implications, because Article 65 UUJN does not specifically explain the time limit for the responsibility of a Notary who has retired or whose term of office has ended, Article 65 UUJN does not clearly determine until when a Notary must be responsible for deeds that have been made.¹¹

Regarding the Notary's responsibility, which ends at the end of the Notary's term of office, this does not cause the deed he or she makes to be of no value or binding on the parties involved. An authentic deed made before a Notary remains valid as perfect evidence even though the Notary who made the deed has ended his term of office.¹²To be able to know until when an authentic deed is legally void and can be held accountable by the parties who feel aggrieved, it can be seen from the expiration of the deed. Western law recognizes the concept of expiration. In the fourth book of the Civil Code, among other things, it is regulated regarding expiration:

1. As for what causes someone to be released from an obligation or what causes someone's right to sue to be lost, *praescriptio* (Latin) and *extinctieve verjaring* (Dutch)
2. As for what causes someone to obtain a certain right. This expiration requires good faith from the person who will obtain the right, *usucapio* (Latin) and *acquistieve verjaring* (Dutch).¹³

Article 1967 of the Civil Code states that all legal claims, whether of a material or personal nature, are extinguished by a statute of limitations with the passage of thirty years, while anyone who shows that the statute of limitations does not need to show a legal basis, moreover no objection can be raised against him based on his bad faith.

¹⁰Ibid., p. 126

¹¹Rico Andriansyah, Legal Responsibility of Notaries for Deeds Made After the End of Their Term of Office Reviewed from Article 65 of Law Number 30 of 2004 Concerning Notary Positions, *Scientific Journal of Notary Law, Repertorium* Vol.5 Issue 2, p. 80

¹²Selly Masdalia, 2014, Notary's Responsibility for Authentic Deeds Which Are Void by Law at the End of His Term of Office, Postgraduate Thesis, Udayana University, Denpasar, p.127

¹³Retnowulan Sutantio and Iskandar Oeripkartawinata, 2005, *Civil Procedure Law in Theory and Practice*, Mandar Maju, Bandung, p.205.

A person cannot obtain a right because of a statute of limitations if the time has not yet come, but a person can relinquish a right that he has obtained because of a statute of limitations.¹⁴Waiver of statute of limitations can be done in two ways, namely waiver of statute of limitations which is done explicitly and waiver of statute of limitations which is done secretly. Waiver of statute of limitations is regulated in Article 1948 paragraph (2) of the Civil Code, namely: "Waiver of statute of limitations is concluded from an act which gives rise to the suspicion that a person is not entitled to use a right which he has obtained". According to CST Kansil, the institution of statute of limitations can be distinguished as follows:¹⁵

1. Time to acquire ownership. In property law, an honest bezitter of an immovable object can gradually acquire ownership of the object. If he can show a legitimate title, then after the lapse of twenty years since he began to possess the object, he becomes the legitimate owner of the object.
2. Time to be released from a claim. By law it is stipulated that with the lapse of thirty years, every person is released from all collections or legal claims. This means that if someone is sued to pay a debt that is more than thirty years old, he can reject the lawsuit by simply stating that he has never received the claim or lawsuit for thirty years.

The statute of limitations is also known in criminal law. In criminal law, if a crime is investigated for a relatively long time, the public will no longer remember it so that its benefits are not felt. This makes it a minor crime, namely a class of violations in their entirety and a class of crimes that are threatened with imprisonment, especially fines. The importance of the statute of limitations can provide legal certainty for the suspect, in addition, if the investigation is not carried out, it will be increasingly difficult to obtain sufficient evidence if the defendant denies his guilt.¹⁶

The statute of limitations in criminal law is regulated in Article 78 paragraph (1) of the Criminal Code. The authority to demand criminal penalties is removed due to the statute of limitations being regulated in Article 78 paragraph (1) of the Criminal Code which reads as follows:

1. Regarding all violations and crimes committed with printing after one year.

¹⁴Darwan Prinst, 2002, *Strategy for Preparing and Handling Civil Lawsuits*, Citra Aditya Bakti, Bandung, p. 73.

¹⁵CS T Kansil, 2006, *Civil Law Module*, Pradnya Paramita, Jakarta, p. 257.

¹⁶Wirjono Prodjodikoro, 2003, *Principles of Criminal Law in Indonesia*, Refika Aditama, Bandung, p. 167.

2. Regarding crimes that are punishable by a fine, imprisonment or a maximum of three years' imprisonment, after six years.
3. Regarding crimes punishable by imprisonment for more than three years, after twelve years.
4. Regarding crimes punishable by death or life imprisonment, after eighteen years.

Based on the explanation regarding the expiration, it can be concluded that the expiration based on civil law is thirty years while the expiration based on criminal law is twelve years. If an authentic deed made before a Notary has been proven to be null and void and detrimental to the parties, the Notary can be held accountable even though the Notary's term of office has ended. This can be done by the parties as long as the period of the null and void authentic deed still exists, namely within a period of thirty years. The expiration of the deed is calculated from the date the deed was made.

The Notary's responsibility for deeds made after his term of office ends (retirement) is related to several matters contained in Article 65 of the Notary Law, including the Notary's responsibility for deeds made depending on the statute of limitations for prosecution in criminal and civil law, namely:

1. Violation of criminal provisions related to falsifying letters or forged letters where based on the provisions of Article 263 and Article 264 of the Criminal Code the threat of punishment is at least 6 years, then the statute of limitations for prosecution is linked to the provisions of Article 78 paragraph (1) number 3 of the Criminal Code which states that criminal charges will be dropped after 12 years for criminal acts that are subject to a prison sentence of more than 3 years. So, from this provision it can be understood that after the Notary is 77 years old, he can no longer be held accountable. Assuming that the Notary ends his term of office at the age of 65 plus 12 years of the statute of limitations for prosecution.
2. Violation of civil provisions associated with the provisions of the civil lawsuit statute of limitations in Article 1967 of the Civil Code, which states that the lawsuit statute of limitations will end after a grace period of 30 years. So, after the age of 95, the Notary can no longer be held accountable for the authentic deeds he has made. Assuming that the Notary's term of office has ended at the age of 65 plus the statute of limitations of 30 years. Considering the provisions of legal protection as stipulated in the Notary Law above, it applies when the Notary still holds a position as a public official. After the end of his term of office, there are no provisions in the

Notary Law that explain the legal protection of Notaries whose term of office has ended.

3. In terms of accountability, it is clearly stated in Article 65 of the Notary Law, that Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Officials are responsible for every deed they make even though the Notary protocol is submitted or transferred to the party keeping the protocol. This shows that the provisions of the law determine that the responsibility of a Notary does not end with the end of his term of office, but in terms of protection in relation to such non-ending liability, there is no explanation in the laws and regulations.

Based on the description above, it is concluded that a notary who has retired remains responsible for every deed he/she makes, even though the notary protocol has been transferred to the party who keeps the notary protocol. The Minutes of Deed are the original Deed that includes the signatures of the parties, witnesses, and Notary, which are stored as part of the Notary Protocol. A notary protocol that has been lost or damaged after being transferred from the protocol provider to the protocol holder is no longer the responsibility of the protocol provider or the retired Notary. This is because there is no obligation for a notary to re-make the minutes of a deed that is lost or damaged due to negligence not due to the negligence of the notary who gave the protocol or the retired Notary. However, this responsibility has been transferred to the recipient of the notary protocol. Therefore, the responsibility is transferred because the loss or damage of the deed is due to the negligence of the protocol holder.

3.2. Legal Protection for Notary's Werda Regarding the Deeds He Made

The importance of legal protection for notaries is to maintain the dignity and honor of their position, including when giving testimony and processing in examinations and trials, keeping the information in the deed confidential in order to protect the interests of the parties involved in the deed, maintaining the minutes or letters attached to the minutes of the deed, and the notary protocol in its storage. Thus, it will be more guaranteed if all actions of summons, examinations and detentions are carried out after permission from the professional organization that examines it first, so that in the end legal certainty will be created for the community in accordance with the principle of trust that underlies the authority of a notary.

Although legal protection for notary retirees is not specifically regulated in the Notary Law, legal protection is still needed for notaries whose term of office has ended, namely the law that protects notaries in carrying out their duties, namely the provisions in the Notary Law, the Civil Code and other laws and regulations. Legal protection from regulations/laws is the principle of *lex specialist derogate*

legi generali (special law wins over general law) so that the Notary Law which clearly regulates specifically for notaries should win over the Criminal Code (which is a generally applicable law) but in practice this is not the case.

Legal protection for notaries to protect themselves must comply with the rules in Article 15 paragraph (2) to letter c and Article 16 paragraph (1) letter a of the Notary Law. The unclear regulation regarding the limits of notary responsibility for authentic deeds made by them in Article 65 of the Notary Law will give rise to multi-interpretive understandings of how long the burden of responsibility must be borne by the notary. In relation to this, there are three forms of interpretation of the provisions contained in Article 65 of the Notary Law, including the notary's responsibility for deeds made by them depending on the statute of limitations for prosecution in criminal and civil law. Violations of criminal provisions relating to falsifying documents or false documents where based on the provisions of Article 263 and Article 264 of the Criminal Code the threat of punishment is at least 6 years, then the statute of limitations for prosecution is linked to the provisions of Article 78 paragraph (1) number 3 of the Criminal Code which states that criminal charges will be dropped after 12 years for criminal acts which are threatened with a prison sentence of more than 3 years.

So, from this provision it can be understood that after the notary is 77 years old, he can no longer be held accountable. Assuming that the notary's term of office ends at the age of 65 plus a 12-year statute of limitations for prosecution. Violation of civil provisions associated with the provisions of the statute of limitations for civil prosecution in Article 1967 of the Civil Code which states that the statute of limitations for prosecution will end after a grace period of 30 years. So, after the age of 95, the notary can no longer be held accountable for the authentic deeds he has made. Assuming that the notary has ended his term of office at the age of 65 plus a statute of limitations of 30 years.

Considering the provisions of the Notary Law, that the notary's responsibility is not for the contents of the deed he made, but only for the procedures and methods of making the deed. Therefore, in connection with the provisions of Article 63 paragraph (5) of the Notary Law that the notary protocol that is 25 years old or more is submitted to the Regional Supervisory Council (MPD), the notary's responsibility for the deed that has been submitted to the MPD should be under the protection of the MPD. In this case, the MDP provides protection for notaries, especially after the end of their term of office, because the deed that they have made has been submitted to the MPD. This still needs to be studied in depth, because it concerns various provisions and related laws and regulations.

In the Notary Law, there is no specific regulation on legal protection for notary widows. The form of protection required is through the existence of statutory

regulations and protection from the Indonesian Notary Association (INI). The Indonesian Notary Association (INI) has a protection sector, one of the tasks of which is to accompany notaries and notary widows, within the framework of the profession with the approval of the Supervisory Board, when summoned by investigators, prosecutors or judges. The lack of clarity on the time limit for notary widows' accountability for the deeds they have made requires special legal protection for notaries, especially for notaries who are no longer in office (notary widows). The importance of legal protection for notaries and notary widows is to maintain the dignity and honor of their position, including when giving testimony and processing in examinations and trials, keeping the information on the deed confidential in order to protect the interests of the parties involved in the deed, and maintaining the minutes or letters attached to the minutes of the deed, as well as the notary protocol in its storage.¹⁷

The Indonesian Notary Association as the only association for notaries should carry out and improve its role optimally and there should be no difference related to voting rights in the association so that synergy and harmony are created between retired notaries as members of the organization and the Indonesian Notary Association organization. Considering that it has not been clearly regulated in the Notary Law, it is necessary to make regulations regarding the legal protection of retired notaries for deeds made after the end of their term of office by considering the provisions of other regulations and laws, so as to provide legal certainty for retired notaries.

4. Conclusion

The legal responsibility of the notary's assistant for the loss of the minutes of the deed he made is that the notary's assistant is not responsible for the loss of the minutes of the deed after the handover of the protocol to the notary receiving the protocol. The notary's assistant is only responsible for the minutes that are lost when the notary is still in office. This is because there is no obligation for the notary to remake the minutes of the deed that are lost or damaged due not to the negligence of the notary who gave the protocol or the notary who is in office. But the responsibility has been transferred to the recipient of the notary's protocol. Therefore, the responsibility is transferred because the loss or damage of the deed is due to the negligence of the protocol holder. The notary's protocol or commonly called the minutes of the deed if it is lost which then causes losses to the client, then the notary should give full responsibility to the client. Sanctions for Notaries who are negligent in keeping the minutes of the deed they made can be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal and dishonorable dismissal. Legal protection for the notary's assistant related to the deeds they make,

¹⁷Silvyana Dwi, Op.cit., p.135

namely in the Notary Position Law, there is no specific regulation regarding legal protection for the notary's assistant. The form of protection required is through the existence of regulations and protection from the Indonesian Notary Association (INI). The Indonesian Notary Association (INI) has a protection field, one of the tasks of which is to accompany notaries and notary assistants, within the framework of the profession with the approval of the Supervisory Board, when summoned by investigators, prosecutors or judges. The lack of clarity on the time limit for notary assistants' accountability for the deeds they have made requires special legal protection for notaries, especially for notaries who are no longer in office (notary assistants).

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