LEGAL PROTECTION FOR DECEASED RECIPIENTS OF NOTARIAL WILLS

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Abstract

The objective of this study is to examine the legal protection provided to the community in relation to the copies of wills created by deceased notaries. This research falls under the category of normative law and adopts both a statutory and case-based approach. The study utilizes primary and secondary data, drawing from various legal sources including primary, secondary, and tertiary legal materials. The findings reveal that the submission of the Notarial Protocol should be completed within 30 days, accompanied by an official report signed by both the submitter (heir) and the recipient (notary). It is not uncommon for the family and heirs of a deceased notary to lack understanding of the rules and procedures pertaining to the transfer of notary protocols. This knowledge gap can be attributed to the insufficient education provided to the notary's family, heirs, employees, as well as the wider community by the notary themselves, notary organizations, and the Ministry of Law and Human Rights. Additionally, there is a legal vacuum in the judicial system concerning potential issues that may arise during the submission process of notary protocols. Therefore, it is imperative to reformulate the regulations governing the submission of notary protocols, including the implementation of sanctions for negligent heirs and temporary notary officials who fail to submit the protocols of deceased notaries. Furthermore, the introduction of electronic-based storage systems for notary protocols should be considered to ensure legal certainty for the public.

Keywords: *Legal Protection, Notaries, Notarial Protocol, Legal Vacuum, Innovations*

1. INTRODUCTION

The state is obliged to guarantee the constitutional rights of every person to obtain recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law as a means of protecting human rights which have truth and justice as their core. According to Van Apeldoorn, legal certainty has two aspects, namely things that can be determined (*beaalbaarheid*) from the law, in concrete matters, and it can also be legal security which protects the parties against arbitrariness by judges (Ali, 2008)vav. In Indonesia, the implementation of supervisory duties over notaries is carried out by the Notary Supervisory Council and the Honorary Council as mandated by Law Number 2 of 2014 concerning the Position of Notaries (UUJN).

UUJN Article 67 Paragraphs (1) and (2) which state that the minister has the authority to supervise notaries and in carrying out his supervision the minister forms a supervisory council. Supervision is aimed at compliance with the Code of Ethics and compliance with carrying out the provisions stipulated by laws and regulations. Notaries in Indonesia have been known for a long time, even before independence. Melchior Kerchem was a secretary of the college van schepenen or also known as City Shipping Affairs and was the first person to be appointed as a notary in Indonesia in 1620. In 1860 the Dutch East Indies Government deemed it necessary to make new regulations regarding Notary Positions in the Netherlands. Indie to be adjusted to the regulations

regarding Notary positions that apply in the Netherlands. After Indonesia became independent, the existence of Notaries in Indonesia was still recognized based on the provisions of Article II of the Transitional Rules (AP) of the 1945 Constitution (Nurmayanti, 2017).

In 2004, Law Number 30 of 2004 concerning the Position of Notaries (UUJN) was promulgated, precisely on October 6 2004. UUJN Article 1 states that a notary is a public official who has the authority to make authentic deeds and other authorities. Notaries are qualified as Public Officials, namely people who carry out some of the public functions of the state, especially in the field of civil law. Notary as a public official is an honorable position given by the state attributively through law to someone who is trusted (Mardiansyah et al., 2020). Notaries as public officials are appointed by the minister, based on Article 2 UUJN, and can carry out their duties freely, without being influenced by executive bodies and other bodies and act neutrally and independently.

Notaries have a role in carrying out the legal profession which cannot be separated from legal issues which are interpreted as rules that regulate all social life. Notaries as legal practitioners must expand their knowledge and intellectual abilities to understand the applicable legal system. It is necessary to understand the legal system of the country where the company is a business partner, in addition to the national legal system where the company is located. In fact, the need for a legal system becomes stronger if there is a dispute with another entrepreneur whose country's legal system is different from the two major legal systems that are often used in dispute resolution, namely Common Law and Civil Law (Budiono, 2015). To meet people's living needs, there are various activities such as buying and selling, renting, exchanging, borrowing and borrowing and so on. These activities are a form of legal action which in its implementation requires guarantees of certainty, order and legal protection.

A notary is a public official who has the authority to make authentic deeds as long as the making of certain authentic deeds is not reserved for other public officials. Making authentic deeds is required by statutory regulations in order to create certainty, order and legal protection. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties as well as for the community overall. An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. The Notary has the obligation to ensure that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed become clear, as well as providing access to information, including access to applicable laws and regulations. related to the parties signing the deed.

The parties can decide freely to agree or disagree with the contents of the Notarial Deed they will sign. As the strongest and most complete (authentic) written evidence, what is stated in the Notarial Deed must be accepted, unless the interested party can prove otherwise satisfactorily before a court hearing. This is an implementation of Article 28 letter d paragraph (1) of the 1945 Constitution which emphasizes that every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. One of them is regarding legal actions in the civil sector, which are carried out by everyone. Legal actions or events in the civil sector are outlined in a deed, made by a public official, who is authorized by the state. This provides an

understanding that legal traffic in people's lives requires evidence that clearly determines the rights and obligations regarding legal subjects in society (Eugeius, 2008).

Notary public officials provide certainty regarding actions carried out by the public in an agreement that is made and included in a deed in the form of an authentic deed, thus the important role of a Notarial deed is to make a deed so that there are no errors that cause the deed to become invalid. Therefore, regulations are needed that regulate the authority of Notaries. Notaries are given legal authority to provide public services to the community, especially in making authentic deeds as perfect evidence regarding legal actions in the civil sector (Hesti, 2015). In Article 2 UUJN it is explained that Notaries are appointed and dismissed by the Minister of Law and Human Rights. After the appointment is made, in order to be able to carry out his position in accordance with the provisions of Article 4 UUJN, the Notary must take an oath/promise according to his religion before the Minister or appointed official as a form of validation of his permission to carry out his position.

As stated in Article 1 number 1 UUJNP. States that a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this law. The authority given will always give rise to a burden of responsibility for the person who is given the authority so that the person given the authority has responsibility for what they do. Notary Protocols that have not been handed over to the Notary Holding the Protocol make it difficult for the public to obtain a copy of the deed made by a Notary who has died. After the notary dies, another notary will be handed over an inheritance protocol. As a public official who represents and acts for and on behalf of the State, a Notary Public, in carrying out his duties of providing services to the general public, is appointed by the State and is then given the authority to exercise some of the State's powers in the field of civil law (Wirastuti & Hartanto, 2017).

When a Notary makes a deed, its authenticity needs to be guaranteed. In carrying out his/her position as a public official, the Notary must submit to and comply with all statutory regulations governing Notaries and other requirements that must be fulfilled by every Notary in carrying out his/her duties. On the other hand, the position of trust held by the Notary is what makes him trusted by the public to express in writing what the wishes of the parties are in a deed that has been determined by law so that in carrying out his duties and authority the Notary must act honestly, carefully, independently. , and regarding legal actions contained in authentic deeds that do not take sides with either party and safeguard the interests of the parties contained in the deed.

The existence of a Notary in exercising authority is important for society and the state. The authority of a notary in making authentic deeds or other deeds cannot be exercised by officials or other legal professions, so that in carrying out their profession Notaries are required to work correctly and professionally. Notary in carrying out his office, one of the Notary's obligations is to make a deed in the form of minutes of deed and save it as part of the Notary Protocol, as regulated in Article 16 paragraph (1) letter b UUJN which explains that the obligation to keep minutes of deed as part of the Notary Protocol, intended to maintain the authenticity of a deed by storing the deed in its original form, so that if a Notary retires or dies, it is still stored through the Notary Protocol. Article 1 number (13) UUJN Amendment states that the Notary Protocol is a collection of documents which constitute State archives which must be kept and maintained by a Notary.

The protocol of a Notary who dies must be handed over to another Notary, or protocol holder. This is regulated in Article 61 and Article 62 UUJN, husband/wife or blood relatives in the straight line of marital descent up to the second degree of the Notary who dies is obliged to notify the Regional Supervisory Council in accordance with Article 35 UUJNP. This is of course a hope (das sollen) in carrying out the office of notary if the notary dies, but in reality this hope is not relevant to reality (das sein). The transfer of Notary protocols from the heirs of a Notary who has died to another Notary appointed by the Regional Supervisory Council as the holder of the Notary's protocol has not been specifically regulated (Sjaifurrachman & Habib Adjie, 2011). However, in practice there are still many Notary heirs who do not notify the notary's death to the regional Supervisory Board and have not submitted the Notary's protocol to another Notary as the holder of the Notary's protocol.

The regulations regarding minutes of deeds and Notary protocols contained in the UUJN and UUJNP are limited to the creation, storage and submission of Notary protocols as well as taking minutes of deeds and summoning Notaries as contained in Articles 58 to Article 66. There are no sanctions aimed at the Notary's heirs if not immediately handing over the Notary protocol to the Notary holding the protocol which makes the legal arrangements regarding the handing over of the protocol of a notary who has died to the holder of the notary protocol not providing legal certainty and legal protection, especially for the public, in this case the recipient of a will whose testamentary deed is kept by a notary who has passed away. The notary's legal responsibility to the public, especially his clients, is to be accountable for the authentic deeds he makes as a form of service to the public, especially his clients (RS Notodisoerjo, 2010).

The requirements for an authentic deed are contained in Article 1320 of the Civil Code, hereinafter referred to as the Civil Code. These four requirements are divided into 2 (two) groups, namely subjective requirements and objective requirements. Subjective terms consist of the legal subject and the parties contained in the deed. Objective terms consist of the object of the agreement. The legal consequence of not fulfilling subjective conditions is that the agreement can be canceled while the non-fulfillment of the objective elements of the agreement is null and void. The purpose of making written agreements in front of or made by a Notary is so that the deed becomes an authentic deed that can be used as strong evidence if one day a dispute occurs between the parties or there is a lawsuit from another party. An authentic deed provides binding and perfect evidence for the parties (along with their heirs) or those who obtain rights from the parties, this is in accordance with the provisions of Article 1870 of the Civil Code which states that a deed is intended to provide between the parties and their heirs or other people. -the person who received this right from them, a perfect proof of what is contained therein.

An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. However, the Notary has the obligation to ensure that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed become clear, as well as providing access to information, including access to statutory regulations. related to the parties signing the deed. Thus, the parties can decide freely to agree or disagree with the contents of the Notarial Deed they will sign. One of the functions of a deed is as evidence, "A deed is written evidence, which is divided into two parts, namely: A letter in the form of a deed; Other documents that are not in the form of deeds. One example of a deed is a will. A will is the gift of an object voluntarily and without

compensation from someone to another person who is still alive to own it. In other words, a testament or will is a statement from someone about what they want after they die,

In the event that a Notary has died, but up to now the Notary does not yet have a Notary protocol holder, so that people who want to make a certificate of inheritance have difficulty and cannot continue making a certificate of Inheritance because before making a certificate of Certificate of Inheritance the community checks the will at the Ministry Law and Human Rights of the Republic of Indonesia and it turns out that there is a will deed made by a Notary who has died, therefore until now the community has not been able to get a copy of the will deed as a basis for making a Certificate of Inheritance deed. Requests for inheritance information are carried out by heirs in general, the family to find out whether there is a will or not in the name of the deceased, requests for inheritance information can be made by a Notary who has access to make requests to the Central Register of Wills.

In the event of a request for a certificate of will, the primary objective of the heirs is typically to secure their inheritance following the passing of an individual. Prior to receiving their inheritance, it is customary to consult the central register of wills to determine whether the deceased individual had drafted a will during their lifetime. If a will was indeed created by the deceased, it is customary for the will to be presented to the heirs in order for them to understand the wishes of the deceased prior to their passing. If the will is accepted by the heirs and they are designated in the will, the Notary will then issue a certificate of will based on the contents of the will. The Notary holds a crucial role in the process of requesting a will certificate, as only a Notary is authorized to request and issue such a certificate.

The deed of will made before a Notary is also the responsibility of the Notary, even though there are no errors or omissions made by the Notary regarding the deed of will, the Notary's responsibility is to read the contents of the will in the future in front of all the heirs. Reading a will is the implementation of the will itself by appointing the heirs designated in the will deed and ensuring that the conditions and circumstances at the time the will is read are safe and well received by all the heirs (Manik, 2021). The public, in this case the client who is the beneficiary of the will which has become a notarial protocol, requires a copy of the will made by a notary who has died and there is no replacement for the notary, resulting in the inheritance deed which was previously made unable to be shown or read to the public. recipient of the will and of course in this case the recipient of the will cannot receive his rights as a client of the notary.

The lack of education to families, heirs of Notaries, employees and the public in general regarding Notary protocols and authentic deeds as evidence causes problems that will result in losses to society, because the heirs of families of Notaries who pass away still keep Notary protocols and have not hand over the Notary protocol to another Notary as the holder of the Notary protocol (Sumaryono, 1995).

2. RESEARCH METHODS

The method used in this research is a qualitative method, using Normative Juridical research which is supported by empirical research, where Normative Juridical research is also called Doctrinal Legal research. In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books). Therefore, some of the data sources are primary data and secondary data. The data used in this research

are primary data and secondary data. Data collection techniques in this research were carried out through literature study and interviews. The data analysis technique used is a qualitative normative analysis technique which describes and interprets the data in sentence form properly and correctly, obtaining short answers which are formulated deductively.

3. RESULTS AND DISCUSSION

a. Legal Arrangements for Storing Copies of Deeds Made by Notaries Who Have Died and Do Not Have a Notary Protocol

One of the public officials who is authorized to provide legal services is a Notary Public. Notary as a public official who has the authority to make authentic deeds and other authorities, as stated in Article 1 UUJN which was later amended by Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Position Currently valid notary in Indonesia. In carrying out legal services, Notaries are required to create products in order to achieve certainty, order and legal protection for the community, this is the foundation of a rule of law as the basic principle of a rule of law, so the legal mobility of society can be clearly proven regarding the rights and obligations that exist. needed in society. This provides an understanding that legal traffic in people's lives requires the existence of evidence that clearly determines the rights and obligations regarding legal subjects in society.

An authentic deed is a writing made in a form determined by law, made by or before a public official authorized to do so in the place where the deed was made. This means that the Notary is given the authority by law to create absolute evidence, in the sense that what is stated in the authentic deed is basically considered to be true. The important role of Notaries in helping to create certainty and protection for the public has a preventive nature, or is preventative of legal problems. Prevention of legal problems is carried out by issuing an authentic deed made in his presence relating to a person's legal status, rights and obligations in law, etc., which functions as the most perfect evidence in court, in the event of a dispute over related rights and obligations. Sjaifurrachman & Habib Adjie, (2011) explain the existence of a Notary in exercising authority is important for society and the state. The authority of a notary in making authentic deeds or other deeds cannot be exercised by officials or other legal professions, so that in carrying out their profession Notaries are required to work correctly and professionally.

Notary in carrying out his office, one of the Notary's obligations is to make a deed in the form of minutes of deed and save it as part of the Notary Protocol, as regulated in Article 16 paragraph (1) letter b UUJN, it is explained that the obligation to keep minutes of deed as part of the Notary Protocol, is intended to maintain the authenticity of a deed by keeping the deed in its original form, so that if a Notary retires or dies, it is still stored through the Notary Protocol (Amsyah, 2003). Notary Protocol is a collection of documents which constitute a State archive which must be stored and maintained, as regulated in statutory regulations. Regarding the Notary's responsibility for his protocols, the Notary is fully obliged and responsible for all the protocols he has, the responsibility is not only limited to the end of a Notary's term of office but the responsibility remains for the life of the Notary, including reporting and archiving (Verdyandika et al., 2021).

The authority of a Notary is not only to make authentic deeds, apart from that, the Notary is also entrusted with maintaining and storing the protocols he makes. Notaries do

not always hold their position as a public official because there are several factors that influence the Notary's cessation of carrying out his office. Notaries also have the authority to keep notary protocols. As part of his authority and responsibility, the Notary has the obligation to keep the protocol and keep it confidential as regulated in Article 16 paragraph (1) letter f UUJN. An effort to maintain the legal age of the notarial deed as perfect evidence for the parties and their heirs regarding everything contained in the deed is by storing the notarial protocol by the notary holding the protocol .

Keeping a Notary's protocol is one of the obligations of a Notary that must be carried out until the end of the term of office of the Notary concerned. So the process of storing the Notary Protocol needs to be carried out carefully, so that the Notary Protocol is not scattered, lost or damaged. As written in Article 1 number 13 UUJN that the Notary protocol is a collection of documents which constitute state archives which must be kept and maintained by the Notary in accordance with statutory regulations. In maintaining and caring for a collection of deeds or Notarial documents, this is done until the age limit determined by law. However, the Notary's protocol is not only kept until the end of his term of office, but it is also mandatory for the Notary (and/or his heirs) to submit the protocol to the Notary appointed by the MPD in the event that the Notary (1) dies; (2) his term of office has ended; (3) Ask for it yourself; (4) Unable spiritually and/or physically to carry out the duties of a Notary position continuously for more than 3 (three) years; (5) Appointed as a state official; (6) Moving office area; (7) Temporarily suspended; or (8) Dismissed dishonorably.

Subekti expressed his opinion regarding the meaning of handover (Subekti, 2021). Handover is often also referred to as "Levering" or "*Overdracht*" which has two meanings, the first is an act in the form of a mere transfer of power (*feitelijke levering*), the second is a legal act aimed at transferring property rights to another person (*juridische levering*) (Safira, 2017). Subekti's opinion is relevant to the practice of handing over the protocols of a deceased Notary, which is a legal act to transfer ownership and responsibility related to the protocols of a deceased Notary to the Notary receiving the Notary's Protocol. By handing over the Notary's protocol to the Notary receiving the protocol, the Notary receiving the protocol has the responsibility to safeguard and store the protocol and has authority over the protocol in accordance with the provisions provided by the Law. The protocol holder is responsible for maintaining the protocol as if it were his own protocol (Oktavia, 2021).

In principle, every time a Notary dies, all files or protocols must be transferred to another Notary as the Notary receiving the Protocol by the heirs of the Notary who has died, as explained in Article 35 of the Notary Position Law on Amendments to the Law. No. 30 of 2004 concerning the Position of Notaries (UUJN), If a Notary dies, the husband/wife or blood relatives in the straight line of marital descent up to the second degree of inheritance are obliged to notify the MPD Notary in the work area of the deceased Notary, no later than 7 (seven) days Work. If a Notary dies while on leave, then the duties of the Notary's position are carried out by the Substitute Notary as a Temporary Acting Notary for a maximum of 30 (thirty) days from the date the Notary dies and the Temporary Acting Notary submits the Notary Protocol of the Notary who died to the Notary. MPD with a maximum period of 60 (sixty) days from the date the Notary dies (Rahman, 2019). The Notary Protocol consists of:

1. Bundle of deed minutes;
2. Protest deed registration book;

3. Will registration book;
4. Register of deeds or repertory book;
5. Authorized handwritten register book;
6. Letter register book under the hand of the person who is recorded;
7. Klapper for register of deeds, and;
8. Klaper for a list of authenticated private letters; as well as
9. Other books that must be made, filled in and kept by a Notary as required by applicable laws and regulations.

In the event that the Notary dies, the Notary's protocol will be handed over to another Notary as the Notary receiving the Notary's Protocol (Article 62 letter a of the Notary's Position Law). Submission of the protocol in the event that the Notary dies, is carried out by the Notary's heirs to another Notary appointed by the Notary MPD (Article 63 paragraph (2) UUJNP). Through this article we can see that the other Notary who will receive the protocol of the Notary who dies is the Notary who has been appointed by the MPD based on a proposal from the heirs. Submission of the protocol is carried out no later than 30 (thirty) days with the preparation of an official report on the submission of the Notarial protocol which is signed by both the person submitting and the recipient of the Notarial protocol (Article 63 paragraph (1) UUJN). Furthermore, if the heir does not submit the notarial protocol within the 30 (thirty) day period as intended in Article 63 paragraph (1) UUJN, then the action that must be taken by the Regional Supervisory Council is to take the Notarial Protocol because this is the authority of the Regional Supervisory Council, as stipulated in Article 63 paragraph (6) UUJN.

Based on the provisions of Article 66 paragraph (1) UUJN states that for the purposes of the judicial process, investigators, public prosecutors or judges with the approval of the Notary Honorary Council are authorized to take photocopies of the Deed Minutes and/or letters attached to the Deed Minutes or Notary Protocol in the Notary's custody. A Notary's responsibilities while in office are also related to storing all Notarial protocols that he or she receives. MPD has a very important role in implementing Notary obligations regarding Notary protocols, including carrying out inspections of Notary protocols periodically once a year or at any time deemed necessary as well as receiving reports from the public regarding alleged violations of the Code of Ethics or violations of provisions in this Law. Notary Protocol is a collection of documents which constitute State archives which must be kept and maintained by a Notary. The obligation to store Notary Protocols is not limited to storing protocols made by and/or in the presence of the Notary himself, but also applies to storing protocols submitted from the Notary, where the Notary who receives the protocol is tasked with keeping the protocol for the protocol that has been submitted. handed over to him.

A notary is obliged to receive, store and maintain protocols from previous notaries that have been determined/appointed by the Regional Supervisory Council. This is none other than because every Notary candidate when registering himself as a Notary with the Ministry of Law and Human Rights, the Notary candidate is first required to sign a statement letter which states that he is willing to accept the Notary Protocol from another Notary, as well as in Article 16 paragraph (1) letter b of the Law on the Position of Notaries states that, in carrying out his office, a Notary is obliged to make a deed in the form of a deed minute and keep it as part of the notarial protocol. This explains that in carrying out his position, a Notary is bound by the UUJN along with the oath of office

and is also bound by the ethics of the notary profession, so that there is no reason for a notary to refuse to accept another notary's protocol, and this is also confirmed in the Notary Appointment Decree .

Basically, keeping minutes of deeds that are part of the Notary's protocol is the obligation of a Notary. However, the problem that will arise is when a Notary refuses to save and accept a protocol from another Notary for the reason that he is afraid of being responsible for the possibility of a dispute arising in the future regarding the Notarial protocol he received. Regarding this refusal, which is the Notary's obligation in carrying out his/her position, if the Notary refuses the obligation to accept the Notary's protocol then this will give rise to legal consequences both for the Notary himself and the parties who have an interest in the Notary's protocol because this can be categorized as as an unlawful act by a Notary in carrying out his office. Against rejection by the Notary which gives rise to legal consequences.

Refusal of the obligation to receive and store Notary protocols carried out by the notary receiving the Notary protocol can be categorized as an act that violates UUJN provisions and a violation of the Notary Code of Ethics. Rejection of a Notary's protocol by a Notary in carrying out his/her office can create legal uncertainty for parties who have an interest in the Notary's protocol. Seeing that an authentic deed is perfect evidence, the deed must be kept and guarded in order to create legal certainty. In terms of legal certainty, Van Apeldoorn stated that the theory of Legal Certainty means that legal certainty is something that can be determined from the law, related to concrete things and legal certainty is security in realizing the law itself (Yanto, 2020). Meanwhile, to supervise the duties and authority of Notaries there is a Regional Notary Supervisory Council (hereinafter referred to as MPD). MPD is tasked with supervising the performance of all notaries in the district or city. MPD is a very important part for the sustainability of the Notary profession. Therefore, the MPD is the spearhead of the Notary Supervisory Council (MPN) which carries out direct supervision of notaries (Trisnomurti, 2017).

MPD is at the forefront in directly supervising notaries because of the authority it has. This is explained in Article 70 UUJN that the MPD has the authority to examine Notary protocols, determine the storage place for Notary protocols that are 25 (twenty five) years old or more, and appoint Notaries to temporarily hold Notary protocols appointed as state officials. Due to the long validity period of an authentic deed, the storage of the protocol needs to be regulated, especially for authentic deeds that are 25 (twenty five) years old since the parties signed them. Regarding this matter, the storage of Notary protocols that are 25 (twenty five) or more is regulated in Article 63 paragraph 5 UUJN in conjunction with Article 70 letter e UUJN. The process of transferring Notary protocols as contained in article 62 UUJN is carried out with the aim of maintaining the confidentiality of the contents of the deed and its existence, so that if one day it is needed for some purpose the deed can be easily searched and found.

Keeping a Notary's protocol has such a big responsibility. Notaries in holding office are limited by biological age to 65 years, and are required to keep a notary protocol. Notary Protocols which must be stored and maintained by the notary, apart from causing accumulation of protocols, can also experience damage caused by the paper being only a few dozen years old, being eaten by termites, or even being lost due to a natural disaster that befell the area where the Notary's office is located. concerned, and in the case of a Notarial protocol which is in the possession of the Notary who receives the protocol, it

does not rule out the possibility of a lawsuit or other form of problem arising or arising in connection with the Notarial protocol whose memorandum is a State document/archive. Apart from the MPD which has the authority and responsibility for Notary Protocols that are 25 years old, the Notary Recipient of the Protocol also has responsibility for Notary Protocols that are 25 years old.

In carrying out his office, a notary has the responsibility to always obey and obey the applicable laws and regulations as stated in his oath of office. In relation to responsibilities, a Notary in carrying out his position has responsibilities such as responsibility for the Notary Protocol. Notaries are required to maintain Notary Protocols because they are State archives and when a Notary is sworn in as a Notary, the Notary must be willing to accept Notary Protocols from other Notaries, such as Protocols that are 25 years old (Utomo & Safi'i, 2019). The Notary's responsibility to maintain Notary Protocols is not only limited to Protocols for deeds he himself has made but also Protocols he receives from other Notaries. Apart from that, the Notary's responsibility to maintain the Protocol is not only limited to physical protection but also to maintain confidentiality. as regulated in Article 16 paragraph (1) point f UUJN which requires Notaries to keep confidential everything regarding the deed they make and all information obtained to make the deed in accordance with their oath/promise of office, unless the law determines otherwise.

The Notary Protocol, which is a State archival document, functions as strong evidence, so it is mandatory for the notary to keep and maintain it. The storage of the Notary's protocol must continue under any circumstances, even if the Notary who owns the protocol is on leave, retires, or dies. The statement of the Notary Protocol as a State Archive as contained in the UUJN is because the Government provides some of its duties as a form of protection to its people by giving some of its authority to the Notary to make evidence in the form of authentic deeds to parties who need their interests and rights protected in order to create legal certainty. , order and legal protection. Article 63 paragraph (1) UUJN states that this must be done no later than 30 days by making a report on the delivery of important notarial documents. Article 63 paragraph (3) states that the handover is carried out by the Notary or his heir to another Notary who has been appointed by the MPD. Meanwhile, article 63 paragraph (5) explains that important Notary documents that are at least 25 (twenty five) years old are handed over by the Notary who receives the protocol from another Notary to the MPD.

The essence of a Notary is reflected in the Notary Protocol. Therefore, it is essential to establish detailed regulations governing the Notary Protocol. This Protocol encompasses the deeds executed by a Notary, serving as perpetual evidence even after the Notary's passing. Consequently, meticulous care is imperative in its safekeeping. The Notary Protocol forms an integral part of the administrative duties of a Notary, playing a crucial role in enabling the Notary to fulfill their responsibilities accurately and effectively. Hence, efforts to impart a comprehensive understanding of this administrative aspect are initiated well in advance of the Notary's appointment, typically during the internship phase. It is common knowledge that the journey to becoming a Notary involves several stages, including a collaborative internship. Prior to the transfer of the Notarial protocol, it is crucial to verify the completeness of all Notarial protocols. The recipient Notary must meticulously inspect and cross-reference the number of deeds, their associated data, and documents with the details outlined in the Notary Protocol Handover Minutes. In the event of the Notary's demise, the transfer of the Notary's protocol can be

overseen by the heirs, interim Notary, or substitute Notary to ensure the completion of all Notary protocols.

Notaries are given legal authority by the Regional Supervisory Council or the Minister to keep protocols from Notaries as referred to in Article 8 and Article 12 UUJN. In accordance with Article 16 paragraph (1) letters b and e UUJN which requires every Notary to keep the minutes of the deed as part of the Notarial protocol and requires every Notary to issue a Grosse deed, a copy of the deed or an excerpt of the deed based on the minutes of the deed at the request of the parties or experts heirs of the parties. The Notary Protocol as defined in Article 1 number 13 UUJN is a state archive. The importance of the Notarial Deed as an Authentic Deed and Notarial Protocol is described in the General Explanation section of the UUJN. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties at the same time, for society as a whole. As stated in the last sentence of the quote above, the Notarial Deed and Notarial Protocol not only maintain certainty, order and legal protection for interested parties alone, but also for society as a whole.

b. Legal Protection for Communities Recipients of Copies of Deeds of Wills Made by Notaries Who Have Died and Who Do Not Have a Notary Protocol Holder

Property is a valuable object owned by humans, because with these assets, humans can obtain whatever they want. These assets can be in the form of objects that move or do not work. There are various ways to obtain this, one of which is from someone's will. A will is a voluntary gift of property rights that is carried out after the giver dies (Beni Ahmad & Syamsul, 2011). In ancient times, the existence of a will was considered a competition to show luxury to others while close relatives were not paid attention to. The greater the wealth bequeathed, the greater a person's honor. Such a will was in effect before the arrival of Islam, namely during the Roman Empire and was also implemented during the Arab Jahiliyah era. This condition then changed after the arrival of Islam which regulates wills and their pillars, conditions and implementation which are carefully regulated for the welfare of the people. Through provisions like this, it is hoped that the next generation of the family or children of one of the deceased (the testator) will be able to obtain the assets inherited from the testator without oppressing or harming the rights of other people.

The definition of a will according to language means a message or messages or ordered to another person, Meanwhile, according to Islamic law, a will is a gift from someone to another person, whether in the form of goods, receivables or benefits to be owned by the person given the will after the person who has the will dies. According to the complete Indonesian dictionary, will is a noun that has two meanings. Firstly, a will means an heirloom or something auspicious. Second, a will means the last message conveyed by the person who died. Regarding will law according to Islamic law, it is divided into five laws, namely obligatory, *sunnah*, *haram*, *makruh* and permissible. The four imams of the *madzhab* and the *Zaidiyah* sect are of the opinion that a will is not an obligation for the testator nor is it an obligation for the parents and relatives of the testator who do not inherit, but the law of the will is different according to the circumstances.

A will is sunnah if it is intended for the benefit of close relatives, poor people, and pious people. A will is prohibited if it harms the heirs, for example a will that exceeds

one third of the inherited assets, especially if it uses up the inherited assets, it is also prohibited if the form of the will is an object that is haram in terms of shape, substance or method of obtaining it. A will becomes *makruh* if the assets left behind by the testator are small and it becomes *makruh* if the testator knows that the recipient of the will will use the items of the will in wicked ways. A will becomes permissible if it is intended for close or distant relatives who do not receive an inheritance or people who live in poverty. In the book on Inheritance Law in Indonesia, a will in Dutch is called a testament, in article 875 BW it is stated that a will (testament) is a deed which contains a person's deed regarding what he wishes after he dies and can be revoked again by the person who stated the will.

In the Civil Code, it is stated that there are two forms of will, namely appointment of heirs (*erfstelling*) and testamentary gift (*legaat*). Appointment of inheritance (*erfstelling*) is a certain part that is adjusted to the inheritance, for example half without mentioning the object being bequeathed, but only mentioning the nominal amount. As for testamentary gifts (*legaat*) it is explained in article 957 of the Civil Code, namely as a special determination where the heir gives to one or several people certain items, for example movable objects, immovable objects, and/or usufructuary rights over an item (Siska Lis Sulistina, 2018). In Article 171 letter 'a' of the Compilation of Islamic Law Book III, inheritance law, what is meant by a will is the gift of an object from the testator to another person or institution that takes effect after the testator dies. These provisions regarding wills are contained in Articles 194-209 which regulate the entire procedure regarding wills.

Wills are one of the absolute authorities of the Religious Courts according to Law Number 7 of 1989 concerning Religious Courts which has been amended by Law Number 3 of 2006, but there is no material law in the form of a law that regulates them, the only one that regulates wills is Book II of the Compilation of Islamic Law (KHI) regarding inheritance, contained in the legal instrument in the form of Presidential Instruction Number 1 of 1991. The Compilation of Islamic Law (KHI) regulates that wills in Articles 194-209 are seen as material law and are enforced in the judiciary within the religious court environment. Article 874 of the Civil Code states that the contents of a statement or form of a will must not conflict with the law. Then in article 1005 of the Civil Code it is stated that the will maker appoints someone to supervise and regulate the implementation of the will and in article 808 of the Civil Code it is explained that the will has the right to determine a reasonable condition (*voorwaarde*) regarding the *erfstelling* or *legaat*, this is done as an anticipation regarding the implementation of the will in the future.

Inheritance by will (*testament acte*) has been known since Roman times. In fact, inheritance using a will (testament deed) is a major thing. At the time of Justinian, Roman law recognized two forms of testament, namely: oral and written. When making a testament, whether written or oral, seven witnesses must be present. In a written testament, the witnesses must also sign the letter containing the last will of the testator. Meanwhile, in an oral testament, the witnesses only need to listen to what the testator explains. A last will or will (testament deed) is generally a statement of a person's will to be carried out after he or she dies. In his service to the community, a Notary is obliged to carry out his position with full responsibility in serving the interests of the community or clients who require his services. As is known, one of the duties of a Notary is to provide counseling and legal advice as well as explanations regarding the Law to the parties concerned.

Legislation clearly and firmly assigns duties to the Notary regarding the validity of a Will, so that the Notary also has an obligation to be the executor of the Will. The notary makes a list of deeds relating to wills in order of when the deeds were made every month. This authority is important to guarantee the protection of the interests of heirs and heirs, who can at any time investigate the veracity of a will that has been made before a Notary. All testamentary deeds made before a notary must be notified to the Central Register of Wills Section, whether open testament, written testament or closed or secret testament. If the will is not notified then the will will not be binding (Ellise T. Sulastini & Aditya Wahyu, 2011). In a written testament (*olographic* testament), if a living person makes a will and submits it to a Notary, the Notary is obliged to first keep the testamentary deed. To notify a will (testament deed), it is required to fulfill the requirements, namely that it must comply with the columns provided by the Central Register of Wills (DPW). If only 1 (one) column is not filled in, the meaning will be unclear.

Notaries are also obliged to report or notify a person's will on 5 (five) days of the first week of each month by post or by coming directly to the counter at the Ministry of Law and Human Rights. However, if no will have been made, the Register of Wills must still be made and reported with the words "ZERO". Registration of this will is then made into a Certificate of Will (SKW). This is considered quite important because it can influence whether or not a will has been registered in the Sub-directorate of Probate of Wills (Andriawan, 2019). Based on a circular issued by the Directorate General of General Legal Administration (Directorate General of General Law) which was announced on June 22 2015 on the website of the Directorate General of General Legal Administration and was followed by the publication of Ministry of Law and Human Rights Regulation No. 60 of 2016 concerning Procedures for Reporting Wills and Applications for the Issuance of Will Certificates Electronically that currently Notaries are required to register and report wills electronically. So, the Central Register of Wills, Sub-directorate of Inheritance Assets, Directorate of Civil Affairs, no longer accepts manual delivery of deed register reports relating to wills.

Notaries have other obligations that must be fulfilled in accordance with applicable regulations. This obligation is the obligation to create a register of deeds or a register of nil relating to wills and report the register electronically on the official website of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights. The Notary's obligation to report the register of will deeds/nil register electronically is contained in Article 3 of the Ministry of Law and Human Rights Regulation No. 60 of 2016. Electronic reporting of wills, which is the obligation of a Notary, is not fully running well according to the Government's plans. There are times when notaries experience obstacles in their journey to report the register of wills electronically. These obstacles arise from the Notary personally or from outside the Notary's personality, including unstable signal or internet network, so that it becomes difficult for the Notary to report electronically which relies on the internet network, errors in filling in the online form for reporting the list of will deeds on the official website of the Directorate General AHU.

Notary's lack of understanding regarding the flow and procedures for reporting the register of will deeds electronically and how to access the official website of the Directorate General of AHU and others. Where the things mentioned above can have an impact on the electronic reporting of will deed registers carried out by Notaries, namely where the data can become inaccurate, or will deeds become unregistered due to the lack

of a stable internet network. The legal consequences that arise if a Notary does not report the register of will deeds electronically, the deed is only binding on the parties who made the will and is not binding on third parties. Because will deeds that are not reported electronically do not fulfill the principle of publicity in submitting reports on will deeds which must be carried out by a notary. If the will is not reported electronically on the official website, then the heirs will make a certificate of inheritance, and the will will not be detected by the Ministry of Law and Human Rights. As a result, the Notary who will make the certificate of inheritance will not include the will, because after checking it at the Ministry of Law and Human Rights an inheritance deed was never made. As a result, the will is not binding on third parties.

The heirs who have been harmed have the right to demand compensation from the Notary who made the will statement because the Notary did not carry out his obligation to report the will electronically on the official website of the Directorate General of AHU. The injured party in this case is the heir. Legal protection for the recipient of a will against a Notary who does not report the list of will deeds made by him electronically can be through a form of preventive legal protection through statutory regulations and through agreements. Preventive legal protection through statutory regulations is legal protection provided by reformulating the articles contained in Permenkumham No. 60 of 2016 which was continued to form new implementing regulations that regulate procedures for reporting the register of wills done electronically. Preventive legal protection through agreements can be carried out by analyzing the clauses contained in the list of will deeds, for example the provisions on the Notary's obligation to report the list of deeds he makes are contained in Article 11 paragraph (1) letter I UUJN which further regulates that reporting of the list of will deeds is carried out electronically. which is contained in Article 3 of Permenkumham No. 60 of 2016.

From the provisions above, it can be concluded that the provisions of a will must be made in writing before a Notary or entrusted/kept by a Notary. A deed of will that is in accordance with the formalities that have been determined according to the Civil Code and other laws can be executed in accordance with the contents of the will, but because it is not registered on the Central Register of Wills of the Ministry of Law and Human Rights of the Republic of Indonesia, this causes The will has no legal certainty (A. Annisa, 2019). The purpose of an authentic deed is to prove it in the future if a dispute occurs. Legally, there are two functions of an authentic deed, namely to state the existence of a legal act and to prove it. According to Ika Hanyani, the power of proof of an authentic deed is regulated in Article 165 HIR, Article 1870 and Article 1871 of the Civil Code, so it can be stated that the power of proof of a notarial deed is perfect evidence, so an authentic deed has all the power of proof whether external, formal or material. Because legally, a will without a notarial deed or a private will does not provide a guarantee of legal certainty because it can be canceled unilaterally.

Hence, So the legal consequences of a will without a notarial deed make the will vulnerable to lawsuits from interested parties because the evidence is not strong enough and there is no legal certainty. However, this Will is still valid and can be implemented until the will is known at a later date because the execution of a will does not expire. The register of testamentary deeds, which is one of the notary's legal products, can be used as evidence so that it has perfect evidentiary power, if all the procedures and procedures for making the deed are fulfilled. If there are procedures in making the deed that are not fulfilled and the procedures that are not fulfilled can be proven, then the register of

testamentary deeds can be declared as a deed that has the power of proof as a private deed, so that if the register of testamentary deeds has such status, then its evidentiary value handed over to the Judge in Court (Safira, 2017).

4. CONCLUSION

Submission of the Notarial Protocol is carried out no later than 30 (thirty) days by making an official report on the submission of the Notarial Protocol which is signed by the person submitting it (the heir) and the person receiving the Notarial Protocol (Notary receiving the Notarial Protocol). Notary protocols are a direct part of the Notary's obligations, however in reality in today's society, not all Notaries understand the procedures for submitting notarial protocols and carry out their obligations to submit notarial protocols to the notary holding the protocol. When a Notary dies, it is not uncommon for the Notary's family and/or heirs not to understand the rules or procedures regarding the transfer of notary protocols. There are many factors that cause obstacles which result in problems resulting in the fact that the handover of the protocol to the Notary Holding the Protocol has not been implemented, which is not appropriate or contradictory, namely the heirs have difficulty getting a Notary Holding the Protocol for a Notary who has passed away. Storing Notarial protocols is an effort to maintain the legal age of Notarial deeds.

UUJN and UUJNP only regulate procedures for transferring Notary protocols, but do not include sanctions for heirs or temporary Notary Officials who are negligent in submitting the Notary's Protocol to those who have died. This is due to the lack of counseling from the MPD and the Notary Association Organization (INI) to active Notaries and family members of Notaries, so that the heirs do not understand and do not have knowledge and understanding of the importance of the Notary Protocol, with a lack of understanding of the protocol. resulting in the Notary Protocol being abandoned or being handed over too late to another Notary, so that the client's rights related to evidence will be difficult or even impossible to fulfill. Storing Notary protocols is very important. Because a notarial deed is authentic evidence that contains the rights and obligations of certain parties as legal subjects. Storing Notarial protocols is an effort to maintain the legal age of Notarial deeds.

Adequate arrangements are needed to ensure that notary protocols are maintained and accessible to people who need them. Reformulation of the arrangements for submitting Notarial Protocols is necessary because the public's need for notarial deeds is increasing, but in reality, there are many problems that threaten the continuity of storage of minutes of deeds contained in notarial protocols. Juridically, there is still a legal vacuum related to problems that may occur during the process of submitting Notary protocols. Reformulation of the arrangements for submitting Notarial Protocols must be carried out to ensure the realization of legal certainty for the public.

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