

History of Article

Submitted: July 21, 2022

Revised: August 28, 2022

Accepted: October 15, 2022

Available Online since: October 31, 2022

VOLUME 3 ISSUE 4, OCTOBER 2022

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How to cite:

Setiawan, Nurwanti, and Nynda Fatmawati Octarina. "Legal Uncertainty Over Notary Protocols in Law Number 43 of 2009". *Journal of Law and Legal Reform* 3, No. 4 (2022): 543-566. <https://doi.org/10.15294/jllr.v3i4.58654>

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Type: **Review Article**

Legal Uncertainty Over Notary Protocols in Law Number 43 of 2009

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ABSTRACT

The storage and maintenance Minutes of Notary Deed is the responsibility of the notary as mandated in Article 1 Number 13 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. Law Number 43 of 2009 concerning Archives does not regulate the implementation of protocol archives as state archives, so that in this case it creates legal uncertainty for notaries in storing and maintaining. This research was conducted to find out whether the digitization system can be applied in the notary protocol and how the form of the notary's accountability to the notary protocol as a state archive. This research is normative research with analytical descriptive nature. It can be concluded

that the digitalization system for storing minutes of deeds with electronic media explicitly does not have any statutory provisions that regulate it. The existence of this norm vacuum has resulted in the legality of the activity of making and storing minutes of deed electronically doubtful if it is applied because it is considered not in accordance with the function and purpose of an authentic deed. As for the form of the notary's accountability to the notary protocol as a state archive, in this case, it is linked based on the expiration time limit of the prosecution, which will ensure legal certainty until when a notary must be responsible for the deed he made, both accountability in criminal law and in civil law.

Keywords: *Legal Certainty, Electroni Digitalization, Notary Protocol, Archives Act*

INTRODUCTION

Notary is a public official who is authorized to make an authentic deed regarding all actions, agreements and provisions required by legislation and/or interested parties to be stated in an authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, provides grosse, copy and deed quotations, all of which as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.¹

The position of a notary as a public official means that a notary is one of the state organs that receives a mandate from some of the duties and authorities of the state, namely in the form of duties, obligations, authorities, and responsibilities in the context of providing services to the public in the civil sector. One of the obligations of a Notary as regulated in Article 16 of Law Number 30 of 2004 as amended by Law Number 2 of 2014

¹ Indonesia. Undang-Undang tentang Jabatan Notaris, Undang-Undang Nomor 30 Tahun 2004. LN No. 117 Tahun 2004, TLN No. 4432, Pasal 1 Juncto Pasal 15.

concerning Notary Positions (UUJN) is to make a deed in the form of a minutes of deed and save it as part of the notary protocol. Notary protocol is a collection of documents which are state archives that must be stored and maintained by a notary in accordance with statutory provisions. The requirement to keep and maintain a notary protocol aims to maintain the authenticity of a deed by keeping the deed in its original form. An authentic deed has perfect evidentiary power, so that the deed must be seen as it is, it does not need to be assessed or interpreted other than what is written in the deed.²

Minutes of Notary Deed are state archives that must be maintained carefully in order to maintain the quality and quality as perfect and strongest evidence. The storage and maintenance of the deed is the responsibility of the notary as mandated in Article 1 Number 13 of Law Number 30 of 2004 concerning Notary Positions as amended by Law Number 2 of 2014 (hereinafter referred to as UUJN). This means that as long as the minutes of the deed are kept and maintained by the notary, all consequences that arise are the responsibility of the notary concerned. However, juridically, the deed is not only kept by a notary, but there are also several provisions in the UUJN that require the minutes of the deed to be kept by the Regional Supervisory Council. Based on Article 63 Paragraph (5) of the UUJN, minutes of deed that are more than 25 years old can be submitted to the MPD for safekeeping. However, in practice, MPD has not been able to store and maintain thousands of minutes of deed because it does not have a special space to store the archives. So that the deposit is still returned to the notary to be kept until his term of office ends (retirement).³

In the digital era, electronic archive management has become a trend as well as the focus of management development in many institutions. Paper-based archive management, which was previously a concentration

² Habib Adjie. 2009. *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*. Cet. 2, Bandung: Refika Aditama, p. 48.

³ Nailly Zahrotun Nisa. Aspek Legalitas Penyimpanan Minuta Akta Notaris Secara Elektronik. *Jurnal Civic Hukum*, Volume 5, Nomor 2, November 2020, p. 205.

was soon replaced by electronic formats. Along with the modernization process, electronic archives are considered more in line with the needs of the times that demand convenience in storing, managing and minimizing damage to archives. Archives that are still in the form of paper result in a large volume of paper archives that cause various problems related to storage, maintenance costs, management personnel, facilities, or other factors that can cause archive damage. So that there is a trend of digitizing information in electronic form. The emergence or trend of digitization is unavoidable as part of the modernization process in the digital era. This includes archive storage. This is also supported by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and Law Number 43 of 2009 concerning Archives (hereinafter as Archives Law) which allows archives to be stored in electronic form. The Archives Law is supported by the National Archives Institute (Archives Nasional Republic Indonesia hereinafter referred as ANRI) as the organizer of the National Archives, especially in terms of fostering archives and storing archives electronically. Based on the provisions of Article 68 of the Archives Law, it is possible to create archives in various forms and/or transfer media including electronic media and/or other media so that based on this, electronic archive storage can be carried out.⁴

Based on Article 1 Number 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter as UU ITE), information technology is a technique for collecting, preparing, storing, processing, announcing, analyzing and/or disseminating information. The rapid development of information technology has influenced the practice of notary in Indonesia. This influence can be seen in the explanation of Article 15 Paragraph (3) UUJN changes with the term cyber notary. However, UUJN has not regulated the development of information technology-based notary protocol storage. The provisions of Article 16

⁴ Widiatmoko Adi Putranto. 2017. *Pengelolaan Arsip di Era Digital: Mempertimbangkan Kembali Sudut Pandang Pengguna*. *Jurnal Diplomantik*, Vol. 1, No. 1 September, Universitas Gadjah Mada, Yogyakarta, pp. 4-5.

Paragraph (1) letter b of the UUJN amendments along with their explanations only stipulate the obligations of a notary in carrying out his position, namely to make a deed and keep it as part of the notary protocol in its original form to maintain the authenticity of a deed so that if there is a forgery or misuse of grosse, a copy or quotation thereof can be immediately identified easily by matching it with the original.⁵

From the description of the background of the problem above, it can be drawn a formulation of the problem, *first*, can the digitization system be implemented in a notary protocol?, and *second* what is the form of the Notary's responsibility to the notary protocol as a state archive?

METHOD

Research is a basic tool in the development of science and technology. Research is a scientific activity related to analysis and construction which is carried out methodologically, systematically, and consistently. The methodology in research serves to provide guidelines for scientists on how to study, analyze and understand the environment they face. Methodology is an absolute element that must exist in scientific research and development. This research is normative research with analytical descriptive nature, which is to describe, examine and explain and analyze the applicable laws and regulations based on general legal theory.⁶

⁵ Desy Rosatawati, I Made Arya Utama, and Desak Putu Dewi Kasih. 2017. Penyimpanan Protokol Notaris secara Elektronik dalam Kaitan Cyber Notary. *Jurnal Ilmiah Prodi Magister Kenotariatan*, 2017-2018 Universitas Udayana, Acta Comunitas (2017) 2, hlm. 173.

⁶ Bambang Sunggono. 2003. *Metodologi Penelitian Hukum Suatu Pengantar*. Jakarta: Raja Grafindo Persada, p. 10.

THEORETICAL FOUNDATION

I. A REVIEW OF THE NOTARY PROTOCOL

Article 1 Number 13 of the Law on Notary Positions, that a notary protocol is a collection of documents which are state archives that must be stored and maintained by a notary in accordance with the provisions of the legislation. In the explanation of Article 62 of the UUJN it is stated that the notary protocol consists of:

1. Minuta deed, is the original notarial deed, which in the minutes of this deed consists of (attached) data from the appearers and other documents required for the making of the deed. Every month the minutes of deed must always be bound into one book containing no more than 50 deeds. On the cover of each book, note the number of minutes of the deed, month and year of manufacture.
2. Register of deeds or repertoire. In this repertoire, each notary records all deeds drawn up by or before him, both in the form of minutes of deed and original by including the serial number, monthly number, date, nature of the deed and names of the appearers.
3. Book of registered deeds under the hands of which the signing is carried out before a notary or registered deeds under the hand. This means that the notary must record the letters under the hand, both legalized and recorded by including the serial number, date, nature of the letter and the names of all parties.
4. List of names of the appearers or klapper. Notaries are required to make a list of clappers arranged in alphabetical order and carried out every month, which includes the names of all persons/parties who appear, the nature and number of the deed.
5. Protest register. Every month the notary submits a list of protest deeds and if there is none, it must still be made with the words NIHIL.
6. Book of wills. The notary must record the will he made in the will register book. In addition, no later than the 5th of each month. Notaries are required to make and report a list of wills for the wills

made in the previous month. If no will have been made, the will still must be made and reported with the words NIHIL.

7. Another register book must be kept by a notary. Based on statutory provisions, one of which is a limited liability company register which records when it was established and with the word number and date, changes to the articles of association or changes in the composition of the members of the board of directors, members of the board of commissioners or shareholders.⁷

Submission of a notary protocol can be done in the event that:

1. Die.
2. His term of office has ended.
3. Ask yourself.
4. Incapable spiritually and or physically to carry out the duties of a position as a notary continuously for more than 3 (three) years.
5. Appointed as a state official.
6. Change area of office.
7. Temporarily suspended.
8. Disrespectfully dismissed.⁸

II. OVERVIEW OF THE ARCHIVES

The term archive comes from the word archive from Dutch. In the Dutch sense, archives are divided into two types, namely dynamic archives and statistice archives, which in Indonesian are known as dynamic archives and static archives. Meanwhile, according to English, it is called dynamic archive which is defined as records and statisch archive is defined as archives.⁹ An archive is a collection of documents that are stored systematically because they have a use so that whenever they are needed, they can be quickly retrieved. Zulkifli Amsyah stated that an archive is

⁷ Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (UUJN).

⁸ Pasal 62 Undang-Undang Jabatan Notaris.

⁹ Sulistyso Basuki. 2005. *Kamus Istilah Kearsipan*. Yogyakarta: Kanisius, P. 7.

every written, printed or typed record, in the form of letters, numbers or pictures, which has a specific meaning or purpose as information communication material, which is recorded on paper (cards/forms), film paper (slides, films, etc.) -strip, microfilm), computer media (tape, tape, disk, recording, diskette), photocopy paper and others.¹⁰

Article 1 number 2 of Law Number 43 of 2009 concerning Archives, states that archives are matters relating to archives while archives are recordings of activities or events in various forms and media in accordance with developments in information and communication technology created and accepted by the Institute. State, Regional Government, Educational Institutions, companies, political organizations, community organizations and individuals in the implementation of social, national and state life.

The purpose of archiving is to ensure the safety of the material for national accountability regarding the planning, implementation and implementation of national life and to provide material for such accountability for Government activities (Article 3 of Law Number 7 of 1971 concerning Basic Provisions for Archiving), which will then be perfected for the purpose of organizing archives. back in Law Number 43 of 2009 concerning Archives as regulated in Article 3, namely:

1. Ensure the creation of archives from activities carried out by State institutions, local governments, educational institutions, companies, political organizations, community organizations, and individuals, as well as ANRI as the organizer of the national archives.
2. Ensuring the availability of authentic and reliable archives as legal evidence.
3. Ensuring the realization of reliable archive management and archive utilization in accordance with the provisions of the legislation.
4. Ensuring the protection of the interests of the state and the civil rights of the people through the management and use of authentic and reliable archives.

¹⁰ Zulkifli Amsyah. 2001. *Manajemen Kearsipan*, Cet. Ke-9. Jakarta: PT. Gramedia Pustaka Utama, p. 3.

5. Dynamically organizing the national archives as a comprehensive and integrated system.
6. Ensuring the safety and security of archives as evidence of accountability in the life of society, nation and state.
7. Ensuring the safety of national assets in the economic, social, political, cultural, defense and security fields as national identity and identity.
8. Improving the quality of public services in the management and utilization of authentic and reliable archives.¹¹

IV. LEGAL CERTAINTY THEORY

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Legal certainty means that every material contained in laws and regulations must be able to create order in society through guarantees of legal certainty. According to Gustav Radbruch as quoted by Achmad Ali, the law has a goal that is oriented to 3 (three) things, namely legal certainty, justice and expediency. The theory of legal certainty states that the applicable law is basically not allowed to deviate. This is known as *fiat Justitia et pereat mundus* (even if the world falls, the law must be upheld). Legal certainty is a justifiable protection against arbitrary actions, which means that a person will be able to obtain something that is expected under certain circumstances.¹² The theory of legal certainty contains 2 (two) meanings, namely:

1. The existence of general rules makes individuals know what actions can or cannot be done.
2. In the form of legal security for individuals from government arbitrariness because of the general rule of law, individuals can know what the State may charge or do to individuals. Legal certainty is only in the form of articles in the law but also consistency in the judge's

¹¹ Undang-Undang Nomor 43 Tahun 2009 tentang Kearsipan.

¹² Achmad Ali. 2012. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)*. Jakarta: Kencana Prenanda Media Group, p. 287.

decision between the decisions of one judge and the decisions of other judges for similar cases that have been decided.¹³

RESULTS & DISCUSSION

I. APPLICATION OF THE DIGITIZATION SYSTEM IN THE NOTARY PROTOCOL

Recognition of the notary protocol as a state archive, namely a state document because the notary protocol is a document or archive containing the legal status, rights and obligations of parties or the community which of course must be stored and maintained properly for the sake of legal certainty, order and legal protection to parties who need. According to Law Number 7 of 1971 concerning the main provisions of archives, manuscripts or documents that are included in archives are as follows:

1. Manuscripts that have been prepared and accepted by state institutions and government materials in any form, either singly or in groups, in the context of implementing government activities.
2. Manuscripts that have been prepared and accepted by private bodies and individuals in any form, either singly or in groups in the context of implementing national life.¹⁴

The obligation of a notary to make a deed in the original form of a deed (*minuta deed*) based on Article 16 Paragraph (1) letter b of the Notary Position Act (UUJN) changes in carrying out his position, that a notary is obliged to make a deed in the form of a *minuta deed* and keep it as part of the protocol. Notary Public. Technology offers a more practical, efficient, inexpensive and secure way of storing notary protocols, namely through storage in electronic form. With so many deed archives (*minutes*) that must

¹³ Peter Mahmud Marzuki. 2009. *Pengantar Ilmu Hukum*. Cet. 2, Jakarta: Kencana Prenada Media Group, P. 158.

¹⁴ Ghansham Anand. 2018. *Karakteristik Jabatan Notaris di Indonesia*. Jakarta: Prenada Media Group, P. 68.

be kept and guarded by a Notary, this has created a separate problem for Notaries, not only Notaries who are still in their tenure but also up to the next successor Notary.

Notary protocols in the form of paper can be damaged due to the length of time the documents are stored in the vault or due to other factors such as the negligence of the notary himself in storing the document or the negligence of the notary employee who was given the task by the notary to store the documents in the protocol. Notary protocols in paper form are also very vulnerable to damage by unforeseen events (*force majeure*) such as fires, floods, and earthquakes.¹⁵

The regulations that support the implementation of the transfer of a notary protocol in electronic form in Indonesia are:

1. In the Law on Technology and Information Article 5 and Article 6 recognizes electronic documents as legal evidence.
2. In Law Number 43 of 2009 concerning Archives.
3. In Law No. 8/1997 on Company Documents.
4. Article 15 Paragraph (3) of the Law on Notary Positions means that a notary has other powers as regulated in the laws and regulations.

Evidence is the most important part in the process of resolving civil disputes in court because through the proof stage, the truth of an event and the existence of a right can be declared proven or not before the trial. In essence, by proving the parties try to convince the judge of the truth of the existence of an event or right by using evidence. Through evidence, the judge will obtain the basis for making a decision in resolving a dispute. Basically, there are 2 (two) kinds of proof systems, namely the formal proof system and the material proof system. The civil procedural law applicable in Indonesia adheres to a formal evidentiary system based on formal evidence submitted by the disputing parties in court, and only seeks formal truth. Formal truth is the truth that is based on what was put forward or

¹⁵ Mohammad Riza Kuswanto and Hari Purwadi. 2017. Urgensi Penyimpanan Protokol Notaris dalam Bantuk Elektronik dan Kepastian Hukumnya di Indonesia. *Jurnal Repertorium*, Volume IV, No. 2, p. 65.

postulated by the parties before the Court so that the judge is not free to determine the formal truth but is bound by what is stated by the parties.¹⁶

Electronic notary protocol storage can be initiated through the transfer of archive media. Based on PP Number 28 of 2012 concerning the Implementation of Law Number 43 of 2009 concerning Archives, the transfer of archival media is carried out in any form and media in accordance with advances in information and communication technology based on the provisions of laws and regulations. Archival media experts are carried out in the context of maintaining dynamic archives and are intended to maintain the security, safety and integrity of the archives transferred to the media. Transfer of archival media carried out by a notary must pay attention to the condition of the archive and the value of the information contained therein. And the archives that have been transferred to the media are still kept for legal purposes as mandated in the laws and regulations. However, in terms of proof, that basically electronic evidence is formally in the provisions of civil procedures, it will be difficult for judges to resolve and decide disputes if the parties submit electronic documents as evidence because until now there has been no clear regulation regarding the strength of evidence. electronic evidence which is equivalent to an authentic deed. This cannot be used as an excuse by the judge not to accept and examine and decide on the case submitted to him, eventhough on the pretext that the law is not clear or there is no regulation. In other words, the strength of electronic evidence as a guide is highly dependent on the conviction of the judge as the case breaker.¹⁷

Regarding the manufacture and storage of minutes of deed using electronic media, there are no explicit statutory provisions that regulate it. The existence of this norm vacuum has resulted in the legality of the activity of making and storing minutes of deed electronically doubtful if it is applied because it is considered not in accordance with the function and purpose of an authentic deed. This can affect the authenticity of the

¹⁶ Sudikno Mertokusumo. 2002. *Hukum Acara Perdata Indonesia*. Edisi Keenam. Yogyakarta: Liberty, P. 216.

¹⁷ Mohammad Riza Kuswanto and Hari Purwadi. *Op.Cit.*, p. 67.

minutes of the deed which is only equivalent to an underhand deed and the loss of perfect proof of strength like an authentic deed. However, the storage of electronic documents has also been regulated in the Archives Law. The term storage is better known as archiving. The Archives Act distinguishes archives into two types, namely authentic archives and trusted archives. This is contrary to the authentic meaning in terms of technique and law as described above. That an authentic document is a trusted document because it has gone through a process of checking, checking the integrity of the data compared to a copy of the original document from which the document originates. In the electronic filing process, there are guidelines that are used as a reference, namely in the form of Regulation of the Head of ANRI Number 20 of 2011 concerning Guidelines for Authentication of Electronic Archives. Authentication here is defined as the process of giving a sign and/or written statement or other sign showing that the authenticated file is original data or original copy.¹⁸

Notaries in carrying out the process of filing the minutes of deed with electronic media must pay attention to security and prudence aspects. Both aspects can be applied by a notary by using storage media in the form of magnetic tape such as tape on a cassette tape, magnetic disk in the form of a disk, optical disk that can accommodate more data than diskettes, UFD (USB Flash Disk) which is a data storage device shaped like a pen. and memory cards commonly used in digital cameras, cell phones, PDAs, microfilm or microfiche. Storage through electronic media has been recognized in the criminal procedure law through the Supreme Court's letter to the Minister of Health Number 39/TU/88/102/Pid dated January 14, 1988 which explains that microfilm or microfiche can be used as legal evidence and can be used as a substitute for documentary evidence

¹⁸ Kadek Setiadewi. 2020. Legalitas Akta Notaris Berbasis Cyber Notary sebagai Akta Otentik. *Jurnal Komunikasi Hukum (JKH)*, Universitas Pendidikan Ganesha, Vol. 6 (2), p. 128.

provided that The authenticity of the microfilm has been guaranteed by conducting a search from the registration and official report.¹⁹

From the description above, the harmonization between the administration of electronic documents and their regulations can provide direction and views to the government and notaries that it is possible to apply the minutes of electronic deeds and guarantee their authenticity as regulated in the ITE Law and EU Regulation 9910/2014 concerning e-identification and trust. service.

The minutes of the deed that have been stored electronically, legally do not meet the power of proof as a conventional notarial deed because it does not meet the authenticity requirements as regulated in Article 1 Paragraph (1) of the UUJN and Article 1868 of the Civil Code. This has an impact on its legal power which can only function as a back-up and not as a copy. So, it's necessary to renew the substance of the UUJN and Article 1868 of the Civil Code.

Referring to the substance of Article 6 of the ITE Law, that the minutes of deed in the form of electronic documents are considered valid if:

1. Accessible means that the minutes of the deed made digitally can be found and accessed by electronic systems.
2. Can be displayed, meaning that the minutes of the deed can be displayed by the electronic system.
3. Its integrity is maintained, meaning that the integrity of the contents of the minutes of the deed can be guaranteed through a process of checking, checking and stripping (analysis).
4. Accountable means that things obtained from the process of making the deed to storage and if there is a process of sending/reporting, for example to MPD, their authenticity can be guaranteed.²⁰

¹⁹ Insan Pribadi. 2018. Legalitas Alat Bukti Elektronik dalam Sistem Peradilan Pidana. *Jurnal Lex Renaissance*, Vol. 3 (1), p. 113.

²⁰ Edmon Makarim. 2013. *Buku Seri Hukum Telematika: Notaris dan Transaksi Elektronik*. Jakarta: Raja Grafindo Persada, pp. 27-28.

II. A FORM OF NOTARY ACCOUNTABILITY TO THE NOTARY PROTOCOL AS A STATE ARCHIVE

The term responsibility, or in Dutch it is called *verantwoordug*, shows that every human activity in social life is always bound by a sense of responsibility. In essence, responsibilities and professional ethics have a close relationship with integrity and morals. Without integrity and good morals, it is impossible to expect from a notary that professional responsibilities and ethics must in turn be based on good integrity and morals, as theoretical and technical skills in the notary profession must be supported by professional responsibilities and ethics, so that a notary must be responsible for the deeds made.

Notaries in carrying out their positions as public officials are limited by their biological age, which is up to 65 years, this of course will also have an impact on the notary protocol they keep. However, considering the responsibilities of a notary as regulated in Law Number 30 of 2004 concerning Notary Positions, that the notary protocol must be kept even though the notary takes leave, the notary enters the age of 65 years or even the notary has died.

Notary protocols are state archives whose management must comply with Law Number 43 of 2009 which is a special rule (*lex specialist*) that regulates archives, but archival arrangements as in the Archives Law do not regulate notary protocols as stipulated in the Act Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary even though the notary protocol is a state archive. However, the notary protocol as a state archive is also not regulated in detail in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. This creates legal uncertainty for notaries in storing and maintaining notary protocols.²¹

²¹ Habib Adjie. 2007. *Hukum Notaris Indonesia, Tafsir Tematik terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*. Surabaya: Refika Aditama, hlm. 13

The notary's responsibility in carrying out his duties for violations of the position of a notary may be subject to administrative, civil and criminal liability. Here's the explanation:

1. Administrative accountability is regulated in detail in the UUJN. Notaries are assigned and responsible for registering and ratifying (waarmerking and legislation) letters/deeds made under the hand. If these provisions are not stated, it can have legal consequences, the deed made by a notary can become an underhand deed and the deed can be canceled or null and void by law.
2. Civil liability in the form of demands for reimbursement of costs, compensation and interest against a notary, is not based on the position of the evidence that has changed because it has violated the provisions of the UUJN but is based on the legal relationship that occurs between the notary and the parties who appear before the notary. Even though the notary has retired, the notary must be civilly responsible for the deed he has made.
3. Criminal liability that in practice, it is often found that if there is a notarial deed that is disputed by the parties or other parties, the notary is often withdrawn as a party who participates in committing or assisting in committing a crime, namely providing false information in the notary deed. Criminal liability against a notary can be requested if the above conditions are met collectively, meaning that on the one hand the notary fulfills the element of having committed a violation of the Criminal Code and on the other hand the notary also violates the UUJN.²²

From the description of the responsibility above, it can be concluded that the responsibility of the notary adheres to the principle of responsibility based on fault (based on fault of liability), in making an authentic deed, the notary must be responsible if the deed made there is an error or intentional violation by the notary. In resolving disputes in court, in civil disputes, a notary may act as a party, including the defendant if it

²² Habib Adjie. *Op.Cit.*, p. 24.

is felt that he has committed an unlawful act to the detriment of another party. As a co-defendant or witness. The notary's responsibility depends on his position in dispute resolution, but in essence he is responsible for his actions, whether civil, criminal or administrative.

According to Peter Tamba Simbolon, the responsibility of a notary in carrying out his professional duties, a notary is a public official whose main task is in making authentic deeds. If the notary in carrying out his duties in accordance with the Law on Notary Positions (UUJN), the Law on Amendments to the UUJN and the laws and regulations in the making of the deed, then materially in a formal atmosphere he has fulfilled the requirements and carried out his duties properly. For example, if the parties request the making of a deed, the statement submitted by the notary is that the notary only needs to confirm in a deed. The notary is responsible for what is conveyed or given information by the person concerned but is not responsible for the truth of the material submitted.²³

From the description of the opinion above, the author himself is of the opinion that the notary does not only ratify or stamp the agreement deed but takes part in fulfilling and making according to the actual reality of the will of the parties who need it and regulates it so as not to violate/contradict the law. It should be remembered and understood that regulating here means that a notary may not help parties or parties find a way out or a solution in making deeds that do not seem to violate by making deeds that are not in accordance with the actual reality.

A notary as an official making an authentic deed, if an error occurs, whether intentional or due to negligence, which results in other people (due to the making of the deed) suffering losses, which means the notary has committed an unlawful act. If an error made by a notary can be proven, the notary can be subject to sanctions in the form of threats as determined by Article 84 of the Law on the Position of a Notary, which stipulates that it can be a reason for parties who suffer losses to demand reimbursement

²³ Anita Afriana. 2020. *Kedudukan dan Tanggungjawab Notaris sebagai Pihak dalam Penyelesaian Sengketa Perdata di Indonesia terkait Akta yang Dibuatnya*. Jurnal Poros Hukum Padjajaran, Vol.1, No.2, hlm. 1-2.

of costs, compensation and interest to Notary Public. Compensation or the basis for unlawful acts in civil law is regulated in Article 1365 of the Civil Code which stipulates that every unlawful act that causes harm to another person, obliges the person who because of his mistake to issue the loss, replaces the loss. If you pay attention to the provisions of Article 1365 of the Civil Code, it contains elements, First, unlawful acts. Second, there must be an error. Third, there must be losses incurred. Fourth, there is a causal relationship between actions and losses.

A notarial deed that is null and void cannot be requested to provide reimbursement of costs, compensation, and interest. Compensation of costs, compensation and interest can be sued against a notary based on the legal relationship of the notary with the parties who appear before the notary. If there are parties who feel aggrieved from the deed made by the notary, then the person concerned can directly file a civil claim against the notary so that the notary can be held civilly responsible for the deed he made. The claim for reimbursement of costs, compensation and interest against a notary is not based on the position of the evidence that has changed due to violating the provisions of the UUJN but is based on the legal relationship that occurs between the notary and the parties who appear before the notary, even though the notary has retired. The notary must be civilly responsible for the deed he has made.²⁴

Based on the things mentioned above, the parties should be obliged to prove it. UUJNP states that if there is a notary who is suspected of being involved in legal problems related to the deed made by or before him, the investigator, public prosecutor, or judge when summoning the notary must obtain prior approval from the MKN. as contained in Article 66 Paragraph (1) of the UUJNP, namely for the benefit of the judicial process, investigators, public prosecutors, or judges with the approval of the notary honorary panel are authorized to replace photocopies of the minutes of deed and/or documents placed in the minutes of deed and/or notary

²⁴ Wahid Ashari Mahaputera. 2021. *Perlindungan Hukum dan Pertanggungjawaban Bagi Notaris yang Menjadi Turut Tergugat terhadap Akta yang Telah Dibuatnya. Jurnal Indonesian Notary*, Vol. 3, No. 2, pp. 669-670.

protocols in storage. a notary and summon a notary to attend the examination related to the notary deed or protocol that is in the notary's storage.²⁵

Notaries have limited authority to carry out their duties in accordance with the provisions of Article 15 of the UUJN and also have limitations on authority based on certain circumstances. So that in the notary profession, it is known that there is an honorable discharge from his position. However, in general, every existing position must have a time limit for both its authority and responsibility, namely as long as the person concerned is still holding the position and when the position held has ended, all responsibilities and authorities will also end.

According to Sjaifurrachman, in Indonesia, absolute responsibilities are not known without a time limit, so there is no position whose responsibilities are indefinite. Therefore, as a result of the limitation of authority and time in carrying out his position, the responsibility that must be borne by that person is also limited. This means that any limitation of authority will have an impact on the limitation of liability. There are limitations in the notary's liability because both in criminal law and civil law there are limitations in prosecution. Article 1967 of the Civil Code explains that claims in civil law will be deleted after passing the 30-year time limit. Meanwhile, if it is based on the provisions of Article 78 Paragraph (1) Number 3 of the Criminal Code that the charges in a criminal case will be removed after the 12 year time limit has passed.²⁶

From the description above, it can be concluded that Article 65 of the UUJN has regulated and determined the responsibilities of a notary. The article stipulates that the notary is responsible for every deed he makes even though the notary protocol has been submitted or transferred to the party who keeps the protocol. During carrying out his position, the notary is responsible for being able to make a deed properly and correctly. This

²⁵ R. Soegondo Notodisoerjo. 1993. *Hukum Notariat di Indonesia Suatu Penjelasan*. Jakarta: Raja Grafindo Persada, pp. 90-92.

²⁶ Sjaifurrachman. 2011. *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Surabaya: CV. Mandar Maju, pp. 192-193.

means that the deed made fulfills the legal will and the request of the interested parties. The explanation of Article 65 of the UUJN here contains a vagueness of norms related to the time limit for accountability for notaries who are no longer in office. The article does not explain specifically about the expiration date of the notary's accountability for the deeds that have been made, so that the article does not have legal certainty.

Sanctions are punitive measures to force individuals to comply with agreements or to comply with statutory provisions. Every rule of law that applies, there is always a sanction that accompanies it at the end of the rule of law. In essence, the imposition of sanctions is a form of coercion that is useful to make the public or parties aware that the actions they have taken have violated the provisions of the applicable legal rules. Likewise, sanctions are directed at a notary, this is solely as a form of awareness to a notary that in carrying out his position, a notary must refer to the applicable legal provisions. The imposition of sanctions against a notary is also an effort to protect the public from harmful notary actions. The sanction also has a function to maintain the dignity of the notary institution as an institution of trust because public trust can decrease if the notary commits a violation.

CONCLUSION

From the description of the results of the discussion and analysis above, it can be concluded that: Regarding the manufacture and storage of minutes of deed using electronic media, there are no explicit statutory provisions that regulate it. The existence of this norm vacuum has resulted in the legality of the activity of making and storing minutes of deed electronically doubtful if it is applied because it is considered not in accordance with the function and purpose of an authentic deed. This can affect the authenticity of the minutes of the deed which is only equivalent to an underhand deed and the loss of perfect proof of strength like an authentic deed. Electronic notary protocol storage can be initiated through the transfer of archive

media. Transfer of archive media carried out by a notary must pay attention to the condition of the archive and the value of the information contained therein. And the archives that have been transferred to the media are still stored for legal purposes as mandated in the legislation. The notary is responsible for every deed he makes even though the notary protocol has been submitted or transferred to the party who keeps the protocol. During carrying out his position, the notary is responsible for being able to make a deed properly and correctly. This means that the deed made fulfills the legal will and the request of the interested parties. The explanation of Article 65 of the UJN here contains a vagueness of norms related to the time limit for accountability for notaries who are no longer in office. The article does not explain specifically about the expiration date of the notary's accountability for the deeds that have been made, so that the article does not have legal certainty. The notary's accountability to the notary protocol, in this case, is linked based on the expiration date of the prosecution, which will ensure legal certainty for how long a notary must be responsible for the deed he made. The time limit for liability can be based on the expiration date in criminal or civil prosecution, where in the provisions of Article 78 Paragraph (1) number 3 criminal prosecution the expiration time limit is 12 (twelve) years while the provisions of Article 1967 the expiration time limit in civil prosecution is 30 (three) years. twenty) years.

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Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

The authors stated that there is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

The authors stated and declared that all sources cited in this work adhere to the fundamental norms of scientific quotation, and that this work is entirely original and has never been published in any format or media or been accepted for publication in any journal.

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