



Regulatory Reform of the Storage of Notary Protocols as a National Archive in Indonesia

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ABSTRAK

Pancasila serves as a foundational source of legal and moral norms in Indonesia, guiding both state governance and national identity. Ethical principles embedded within Pancasila are fundamental to the administration of the state. Notaries, appointed by the state, hold significant responsibilities and legal authority to serve the public in civil matters. Their roles and duties are defined in the law, particularly in the Criminal Code's Fourth Book on evidence and validity, where authenticated documents serve as compelling evidence, with Notary Deeds recognized as the strongest and most comprehensive proof. This normative legal research explores the preservation of Notary protocols by their holders to ensure the legal validity of deeds as enduring evidence for parties or their successors. Considered akin to State Archives, Notary protocols constitute a collection of deeds documenting rights and obligations, possessing robust evidentiary value.

Keywords: Reform, Notary, National Archives

INTRODUCTION

The State of Indonesia is a State of Law, as stated in the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 (Tibaka & Rosdian, 2017). According to the preamble of the 1945 Constitution, the primary aim of the Republic of Indonesia is to safeguard the nation's entirety and the sacrifices made for its independence, advance public welfare, nurture national life, and contribute to establishing a global order founded on independence, enduring peace, and social justice. The main components must be fulfilled in order to realize the welfare of citizens in order to achieve legal certainty and meet the needs for goods and services (Widyawati, 2020).

Pancasila is a source of legal order values, a source of moral norms for the implementation of the law, as well as a source of moral norms for the implementation of the law in Indonesia in the implementation of the state and nationality (Huda, 2018). Ethical norms and moral norms as contained in Pancasila must be the basis for the implementation and administration of the state (Asroni, 2023).

The Republic of Indonesia as a legal state based on Pancasila and the Constitution of the Republic of Indonesia of 1945 guarantees certainty, order, and legal protection for every citizen, for this reason authentic written evidence is needed regarding acts, agreements, determinations, and legal events made before or by authorized officials. To obtain certainty, justice and legal benefits effectively, of course, it is necessary to have adequate law enforcement organs. In the field of civil law, one of the most decisive pieces of evidence to obtain legal certainty is especially the evidence of letters (Mueller, Kirkpatrick, & Richter, 2023).

Notaries play a crucial role in ensuring legal certainty and safeguarding the community, primarily through the proactive prevention of legal issues (Diana & Gunardi, 2023). They achieve

this by officially documenting deeds that clarify individuals' legal status, rights, obligations, and more (Pistor, 2019). These documents serve as indisputable evidence in court during disputes concerning these matters.

The need for authentic deeds to ensure certainty and legal protection for the community who enters into an agreement or legal act (Eddy & Sudiro, 2022). The regulation of authentic deeds is regulated in the Civil Code (KUHPdt). Article 1868 of the Criminal Code states that an authentic deed is a deed made in a form that has been determined by law and made by or in the presence of an authorized public official in the place where the deed is made (Aulia, 2024).

A Notary is an official appointed by the state with specific duties and authorities to provide civil services to the public (Adjie, 2023). Their role, stipulated in the Criminal Code, particularly in the Fourth Book concerning Evidence and Conclusion, emphasizes the authoritative nature of notarial deeds. These deeds serve as the most robust form of written evidence, ensuring legal certainty and preventing disputes due to their completeness and reliability.

The realm of Notaries is a dynamic sphere encompassing their daily engagements and diverse responsibilities, all geared toward delivering optimal service to clients and parties (Dover, 2016). The role of a Notary is mandated by legal principles, aimed at assisting the community in obtaining credible written proof of events, legal acts, or situations. Hence, those entrusted with this role must embody a strong commitment to public service, as the essence of being a Notary is defined by public demand and necessity (Supanji & Adjie, 2024).

Notaries must adhere to the regulatory standards outlined in Law Number 30 of 2004 on the Notary Position (referred to as UUJN) and its 2014 amendment (referred to as the Amendment Law) while performing their duties and exercising their authority. The primary responsibility of a Notary is to create authentic deeds, which serve as concrete expressions of their obligation to uphold the law (Alfiana, Aprilianda, & Susilo, 2023). By issuing authentic deeds that precisely delineate the rights and responsibilities of each party involved, it is anticipated that legal certainty can be guaranteed and potential disputes minimized.

The Notary's act constitutes conclusive and flawless evidence, as stipulated under Article 1 number 1 of Law Number 2 of 2014, which designates the Notary as a Public Official. The authenticity of a Notary's deed derives not merely from legal provisions, but from its execution by a public official. Such deeds, characterized as authentic, carry indisputable evidentiary weight in judicial proceedings, pursuant to Article 1870 of the Criminal Code. The authority to issue authentic deeds resides with designated officials, including Notaries who serve as Public Officials (Utama, Kusriyah, & Handoko, 2021).

Notaries possess the authority to authenticate deeds and also bear administrative responsibilities akin to those of a company (Pungus & Gunardi, 2023). The management of a Notary's office encompasses various written tasks, such as compiling lists of deeds, legalized letters, booked letters, alphabetically arranged Klapper lists, protest lists, Wills Register Book, and Limited Liability Company Register Book. These duties are mandated under Article 58 paragraph (2) of the Law on Notary Positions (UUJN), which stipulates that Notaries must meticulously record all deeds without any gaps, with each month's entries closed off distinctly. The deed list book serves as a tally of daily transactions conducted by the Notary. Moreover, the obligation to create a deed minuta as part of the Notary Protocol is articulated in Article 16 paragraph (1) letter b of the amended law, requiring Notaries to meticulously draft and maintain these original deeds containing signatures of witnesses and parties involved. According to Article 1 point 13 of Notary Position Law Number 30 of 2004, the Notary Protocol constitutes a set of state archive documents

that Notaries are obligated to preserve and manage in compliance with relevant laws and regulations.

The administrative tasks of the Notary are closely linked to their managerial skills in handling filing procedures. Managing the filing system within the Notary's office is an integral part of their administrative duties (Rosenbloom, Kravchuk, & Clerkin, 2022). Additionally, the Notary is responsible for the proper storage of minuta and original deeds, ensuring the maintenance and preservation of state archives in a diligent manner.

The Notary's responsibility to maintain the Notary Protocol extends beyond their lifetime. Even in cases where the Notary is unable to fulfill these duties or passes away, the law mandates that the Notary Protocol be preserved and transferred to another Notary. This ensures legal certainty, which is crucial for citizens and serves as a cornerstone of notarial duties. Notaries play a significant role in facilitating and ensuring legal certainty in various transactions that cater to the evolving needs of society. As societal interactions grow in complexity and intensity, there is an increasing demand for legal protection and clarity of rights and obligations among legal entities.

Effective enforcement of laws ensures safety, predictability, and legal order, preventing potential legal flaws that could harm both society and legal entities. The careful storage of Notary protocols is crucial to avoid their dispersal, loss, or damage. According to regulations, Notaries must retain these protocols for up to 25 years before submitting them to the Regional Supervisory Council (MPD) within their jurisdiction. However, the extensive documentation handled by Notaries often poses storage challenges, especially considering corporate documents which must be kept for a minimum of 30 years. Due to inadequate storage facilities, the Regional Supervisory Council faces difficulties managing thousands of Notary protocols older than 25 years, necessitating their retention in Notary offices instead. Consequently, compliance with Article 63(5) of Law Number 2 of 2014 becomes impractical under current circumstances.

Due to the crucial role of authentic deeds handled by Notaries, the preservation of these deeds within the Notary protocol is vital. Considerations include the substantial storage space required for the Notary protocol, as well as risks such as fire, rodent damage, insects, and flooding. Article 16 paragraph (1) letter b of Law Number 2 of 2014 outlines the Notary's obligation to create deed minuta and store them in their original form as part of the Notary protocol. This ensures the authenticity of deeds, facilitating prompt detection of forgery or misuse of copies or excerpts against the original, as detailed in Article 1 number 8 of the UUJN. Additionally, Article 1 number 13 of the UUJN defines the Notary Protocol as a collection of state archives that Notaries are mandated to preserve and uphold.

According to Article 1, Section 2 of Law Number 43 of 2009 on Archives, it defines archives as records of activities or events in various forms and media, developed in line with information and communication technology, created and acknowledged by governmental bodies, regional administrations, educational institutions, companies, political organizations, community groups, and individuals in support of community, national, and state life. "State-owned archives" refer specifically to archives originating from governmental bodies, local administrations, state educational institutions, state-owned enterprises (BUMNs), and archives resulting from activities funded by state resources. Article 7, Clause g defines "protection and rescue of archives" as the state's responsibility to safeguard and recover archives designated as state-owned, whether located within or outside Indonesia's national territory, against potential loss or damage due to natural, biological, physical, or intentional factors like terrorism, espionage, sabotage, war, or vandalism. These protective measures encompass both preventive and remedial actions.

Based on the provided description, there seems to be uncertainty surrounding whether notary protocols should be classified as state archives. Therefore, the research titled "REFORMING REGULATIONS ON THE STORAGE OF NOTARY PROTOCOLS AS NATIONAL ARCHIVES IN INDONESIA" aims to investigate this issue. This background motivates the researcher to articulate a problem focusing on the need for clearer and more rigorous regulations governing the classification of notary protocols as state archives within the National Archives of the Republic of Indonesia.

RESEARCH METHODS

This study employs normative legal research, which involves identifying legal rules, principles, and doctrines to address legal issues. The research utilizes both statutory and conceptual approaches. The statutory approach entails scrutinizing all relevant laws and regulations pertaining to the discussed legal matters. Meanwhile, the conceptual approach draws from established viewpoints and doctrines in legal scholarship to elucidate the legal understanding and concept concerning the Notary Protocol, which functions as a state archive under ANRI's jurisdiction for storing Notary Protocols.

Data sources and types

The study utilizes secondary data sources, which are derived from literature materials. These encompass primary legal materials such as laws and regulations (specifically, the Law on Notary Position Number 2 of 2014, amending the Law on Notary Position Number 30 of 2004, and Law Number 43 of 2009 concerning Archives). Additionally, secondary legal materials, consisting of books or literature on notary documents and national archive storage, along with previous legal scholars' research findings, are employed in the writing of this article.

Data collection and analysis techniques

The study gathered data through a comprehensive review of existing literature. This method involves extracting relevant information from scholarly sources and pertinent regulations related to the topic under investigation. The collected data is subsequently organized into a coherent and systematic framework, followed by qualitative analysis aimed at achieving clarity in addressing the issues at hand, and finally drawing conclusions based on this analysis.

RESULTS AND DISCUSSION

The notarial protocol, a crucial duty of notaries, must be safeguarded and upheld because it constitutes a state document and an integral part of notarial office management. Notaries wield not only authority but also shoulder administrative responsibilities akin to those of corporations (Merwick, 2018). Managing a notarial office involves activities that are predominantly clerical or administrative in nature.

Notaries are public officials who are authorized to make authentic deeds, as long as the provisions for making certain deeds are not specifically intended for other officials. The creation of authentic deeds is required by laws and regulations in order to create certainty, order and legal protection Article 1 number 13 of the Amendment Law defines the Notary Protocol as a collection

of documents that are state archives that must be kept and maintained by the Notary in accordance with the provisions of laws and regulations.

A notary deed is a state document that can be used as written evidence to prove in court. Therefore, the notary deed must be kept and maintained properly by the notary (Nadhiro, 2019). As explained by Haris, if the deed meets the requirements stipulated in Article 1868 of the Civil Code and Law Number 2 of 2014 concerning the Notary Position, then it is an authentic deed and therefore the Notary in carrying out his duties must be carried out with strict discipline, professionalism and moral integrity should not be doubted, including what is stated in the beginning to the end of the deed.

The storage of the Notary protocol by the Notary holder is an effort made to maintain the juridical age of the Notary deed as written evidence for the parties or their heirs regarding everything contained in the deed (Toruan, 2022). A copy of the Notary Deed if kept by the person concerned will forever exist, the Notary Deed in the form of minuta will also exist forever, either kept by the Notary himself or kept by the Notary who holds the protocol or kept by the Regional Supervisory Council. Notary deeds must remain forever because they have a juridical age, If following the provisions of the regulations on company documents, then the storage period of these archives is at least 30 years, while the juridical age of the notary deed exceeds the biological age of the Notary himself. Therefore, if a notary who holds the protocol dies, the notary protocol must be handed over to a replacement notary to be kept with him (Isnaini & Utomo, 2019).

The storage of notary protocols in its implementation, until now is still carried out in written form (based on paper). With such a short period of time, the storage of notary protocols must be very much because it is related to the work, duties and authority of notaries, how wide and large the space is needed for the storage of protocol archives (Datau, Mayana, & Amirulloh, 2023). Notary offices generally have limited storage space, so the accumulated notary books can be at risk of being damaged or lost. In addition, an unorganized warkah structuring and storage system can make searching for warkah difficult and time-consuming.

Law Number 2 of 2014 concerning the Notary Position, in article 16 paragraph (1b) stipulates that in carrying out his position, the Notary is obliged to make a Deed in the form of a Deed Minuta and keep it as part of the Notary Protocol. In this article, it is also explained that the notary is obliged to keep the minuta deed, copy deed, and other documents related to the making of the deed (Delafare, Suhartono, & Prasetyawati, 2023). Therefore, notaries need a large space as a place to store notary protocols safely.

The Notary protocol should be submitted to the Regional Supervisory Council which has been clearly regulated in Article 63 Paragraph (5) of the Notary Position Law. However, this provision cannot run so that it requires a notary protocol that is 25 years old to be held by the Notary who receives the Notary Protocol at the notary office appointed as the Protocol holder.

Holding a Notary Protocol that is 25 years old or older is not an easy thing and is a burden for notaries appointed as Notary Protocol holders. The obstacles faced are, of course, in terms of storing so many protocols and the 25-year-old Notary Protocol requires special attention. And the

Regional Supervisory Council has responsibility for the abandoned notary protocol because the notary who receives the protocol appointed by the Regional Supervisory Council does not want to accept the protocol from another notary.

Article 1 number 13 of the UUJN stipulates that the Notary Protocol is a collection of documents that are State archives that must be kept and maintained by the Notary. According to Article 1 number 2 of Law Number 43 of 2009 concerning Archives states that. "Archives are recordings of activities or events in various forms and media in accordance with the development of information and communication technology made and received by State institutions, local governments, educational institutions, companies, political organizations, community organizations, and individuals in the implementation of society, nation, and state life".

based on these two Laws, it turns out that the Notary Position Law states that the Notary Protocol is a collection of documents as the State Archives and that Law Number 43 of 2009 concerning Archives does not have a single article that states that the Notary Protocol is the State Archives.

Based on the synchronization of the management aspects between Article 40 paragraph (2) of the Archives Law and the management aspects of the Notary Position Law and also the classification of archives based on their functions, the archives in the Notary Position Law are called special preserved vital archives (Notary Position Law). Awakened means a Notary Protocol related to the existence and survival of the nation and state that must be maintained in its integrity, security, and safety (Olha, 2020).

To form a vital archive, it is necessary to analyze each element in Article 1 number 4 of the Archives Law which states: "Vital archives are archives whose existence is a basic requirement for the operational continuity of the archive creator, cannot be renewed, and is irreplaceable if damaged or lost." then if it is linked to Article 40 and Article 41 of Government Regulation Number 28 of 2012 concerning the Implementation of the Archives Law, Among others: The purpose of dynamic archive maintenance is to maintain the authenticity, integrity and safety of the archive. Dynamic archive maintenance includes vital archives, active archives related to archive maintenance in UUJN (Djumardin, 2021). The maintenance of dynamic archives is carried out through activities, among others: active archive filing which is carried out through archiving and archive storage activities

The Notary Protocol, governed by the Notary Position Law and the Archives Law, constitutes a crucial state archive that requires special protection. It is vital to the nation and state, emphasizing the need for its integrity, security, and safety. Therefore, assigning the responsibility of safeguarding the Notary Protocol to the National Archives of the Republic of Indonesia would enhance its effectiveness.

In Article 61 of Law 2 of 2014 amending Law Number 30 of 2004 regarding Notary Positions, it is stated that expired notary protocols should be sent to the National Archives of the Republic of Indonesia or a specified institution. However, this regulation has not been effectively

enforced due to insufficient guidelines regarding the submission of notary protocol storage to the National Archives of the Republic of Indonesia (ANRI).

CONCLUSION

The Notary Protocol can be qualified as a State Archive, because the notary protocol is a collection of deeds that contain the rights and obligations of the parties and has perfect evidentiary power, a Notary is obliged to maintain, maintain, store and maintain the confidentiality of the deed. The Notary Protocol is a closed Vital Dynamic State Archive, meaning that the Notary Protocol is related to the existence and survival of the nation and state that must be maintained in its integrity, security, and safety. So it will be more effective if the person who holds the authority for its storage is ANRI centrally. Basically, Article 61 of the Constitution has stipulated that notary protocols that have expired must be submitted to the National Archives of the Republic of Indonesia or a designated institution. However, in its implementation, this has not yet taken effect because there is no regulation that specifically regulates how article 61 of the UUJN is implemented.

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