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Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam

- Hak Kekayaan Intelektual (HKI) sebagai Objek Jaminan Pembiayaan dalam Perspektif Hukum Ekonomi Syariah
- Peran Istri sebagai Pencari Nafkah dan Dampaknya terhadap Keutuhan Rumah Tangga Perspektif Islam
- Konsep Nabawi dalam Membangun Keharmonisan Rumah Tangga
- Implementation of The Wakalah Bil Ujroh Contract in Financing Products at Islamic Financial Institutions
- Deconstructing Mu'asyarah Bi Al-Ma'ruf: Toward A Gender-Just Framework of Islamic Family Law
- Eksistensi dan Perkembangan Kelembagaan Hukum Islam di Indonesia
- From Formal Validity to Ethical Accountability: Good Faith in Sharia Electronic Contracts Under Indonesian Law
- Legal Protection for Parties When MPD Fails to Collect Notarial Protocols
- Review of Islamic Law and Law no. 1 of 1974 and Constitutional Court Decision no. 46/PUU-VII/2019 Concerning Siri Marriage Law: The Position of Wives, Children And Property
- Sharia Economic Law on The Growth of Micro, Small, And Medium Enterprises (UMKM) In The Digital Era
- Konsep Kafa'ah dalam Prespektif Imam Malik dan Imam Syafi'i: Analisis Metodologi Ushul Fikih
- Implikasi Normatif dan Sosial Perjanjian Pra-Nikah Perspektif Hukum Keluarga Islam di Indonesia
- The Boycott of Israeli Products From The Perspective Of Sadz Al-Dzarai': A Normative Analysis Within Islamic Law
- Analysis of Legal Policy Implementation Against Perpetrators of Child Bullying
- Kafa'ah dalam Perkawinan Perspektif Maqasid Al-Syari'ah (Studi Kasus pada Pesantren Darul Ma'sum dan Yayasan Darussalam Kabupaten Probolinggo)
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- Juridical Review of Marriage Contracts For Pregnant Women In Islamic Law And National Law

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LEGAL PROTECTION FOR PARTIES WHEN MPD FAILS TO COLLECT NOTARIAL PROTOCOLS

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ABSTRACT

The failure of the MPD to take the Notary protocol as stipulated in Article 63 paragraph (6) of the 2014 UUJN has legal consequences that could be detrimental to the parties. There are no further provisions regarding the mechanism for saving the protocol when the MPD does not take the Notary protocol, even though the Notary protocol is a collection of state archive documents that must always be stored and maintained. The UUJN only regulates the submission of the Notary protocol. The absence of complete regulations regarding the Notary protocol raises a legal issue, namely legal incompleteness. The method used is normative legal research. The results of the research are that the legal consequences of the MPD not taking the Notary protocol are 1. the loss of the rights of interested parties to obtain a grosse, copy, or excerpt of the deed. 2. the Notary protocol becomes neglected and is at risk of being damaged or lost. There are two types of legal protection provided to interested parties, namely preventive and repressive legal protection. Preventive legal protection refers to the MPD immediately taking the Notary protocol from the heirs who did not submit the protocol to the recipient so that the protocol remains stored and well maintained. Repressive legal protection refers to filing a complaint with the MPD so that the Notary protocol is immediately taken from the heirs and submitted to the Notary who received the protocol.

Keywords : *Legal Protection, Notary Protocol, Regional Supervisory Council, Heirs.*

ABSTRAK

Tidak diambilnya protokol Notaris oleh MPD sebagaimana yang tercantum dalam pasal 63 ayat (6) UUJN Tahun 2014 menimbulkan akibat hukum yang dapat merugikan para pihak. Tidak terdapat ketentuan lanjutan mengenai mekanisme penyelamatan protokol ketika MPD tidak mengambil protokol Notaris, padahal protokol Notaris merupakan kumpulan dokumen arsip negara yang harus selalu disimpan dan dipelihara, UUJN hanya mengatur terkait penyerahan protokol Notarisnya saja. Tidak adanya aturan yang lengkap terkait protokol Notaris ini menimbulkan isu hukum yakni ketidaklengkapan hukum. Metode yang digunakan adalah penelitian hukum normatif. Hasil penelitian adalah akibat hukum dari tidak diambilnya protokol Notaris oleh MPD adalah 1. hilangnya hak para pihak yang berkepentingan untuk memperoleh grosse, salinan, maupun kutipan akta. 2. protokol Notaris menjadi terbengkalai dan terancam rusak maupun hilang. Perlindungan hukum yang diberikan kepada para pihak yang berkepentingan ada dua jenis yakni perlindungan hukum preventif dan juga represif. Perlindungan hukum preventif yang dimaksud adalah dengan MPD yang segera mengambil protokol Notaris dari ahli waris yang tidak menyerahkan protokol ke Penerima sehingga protokol tetap tersimpan dan terpelihara dengan baik. Perlindungan hukum represif yang dimaksud adalah dengan membuat pengaduan kepada MPD agar protokol Notaris segera diambil dari ahli waris dan diserahkan ke Notaris penerima protokol.

Kata Kunci: *Perlindungan Hukum, Protokol Notaris, Majelis Pengawas Daerah, Ahli waris.*

INTRODUCTION

A person can be appointed as a Notary based on a Decree of the Minister of Law and Human Rights of the Republic of Indonesia (hereinafter referred to as the Minister of Law and Human Rights). In carrying out their duties, Notaries are bound by legal provisions, namely the Notary Position Law and the Notary Code of Ethics, as well as other regulations related to Notaries.¹ Notary is a public official authorized to draw up authentic deeds relating to agreements, decisions, or actions in accordance with the wishes of the parties concerned or as stipulated in laws and regulations that require authentic deeds to be drawn up, to guarantee the certainty of the date of the authentic deed, to provide copies, excerpts, or gross copies of authentic deeds, as long as the work of the authentic deed is not assigned to another official. The definition of a Public Official is a person who has special duties and authority to serve the public interest in certain matters.²

The product of a notary is called an authentic deed. An authentic deed is a legal document that serves to record certain legal actions such as lease agreements, PPJBs, establishment of a company, creation of a will, and so on. Notaries must ensure that the parties involved in the legal action are aware of the legal implications of their actions and agree based on the wishes of each parties.³ There are two types of deeds drawn up by a notary, namely party deeds and relaas deeds. In short, a party deed is a deed drawn up in the presence of a notary that contains the actions and statements of the parties who appeared before the notary at that time. Examples of party deeds are: cooperation agreement deeds, grant deeds, credit agreement deeds, and so on. Meanwhile, a relaas deed is a deed drawn up by a Notary that contains an explanation of an event experienced, seen, and witnessed by the Notary. Examples of relaas deeds include: minutes of a General Meeting of Shareholders (RUPS).⁴

Notaries have a very important function in legal transactions, especially in civil law, because Notaries are public officials who are authorized to draw up deeds related to legal

¹ N Huda, "Peran Notaris/Pejabat Pembuat Akta Tanah Dalam Proses Pemungutan Bea Perolehan Hak Atas Tanah Dan Atau Bangunan (BPHTB) Secara Online Di Kota Padang," *Jurnal Notarius* 1, no. 2 (2022): 272.

² S Latifa, Khairani, and S Syofyan, "Penegakan Hukum Terhadap Notaris Yang Melanggar Undang-Undang Jabatan Notaris (Studi Kasus Di Kota Padang)," *Unes Journal of Swara Justisia* 9, no. 1 (2025): 93–106, <https://doi.org/10.31933/5s2e4b11>.

³ A Sholikhah, "Tanggung Jawab PPAT Penerima Protokol Terhadap Akta PPAT Pemberi Protokol Yang Digugat Di Pengadilan," *Jurnal Hukum Tora* 8, no. 4 (2022): 330.

⁴ R U Hably and G Djajaputra, "Kewenangan Notaris Dalam Hal Membuat Akta Partij (Contoh Kasus Putusan Mahkamah Agung Nomor: 1003 K/PID/2015)," *Jurnal Hukum Adigama* 2, no. 2 (2019): 482, <https://doi.org/10.24912/adigama.v2i2.6562>.

actions, and the deeds they draw up have legal certainty and validity.⁵ Notary must also be thorough when verifying the identities of the parties and must check the identities of all parties involved in the legal agreement. This is because notaries are responsible for ensuring that the parties entering into the agreement are indeed the authorized and legitimate parties. Notary must also be observant in assessing their clients, whether the identities provided by their clients are indeed the same as those appearing before the notary. This is because it is possible that the parties who come before the notary do not match the identities provided to the notary. This is because notaries must guarantee that the legal agreements made before them are made legally, appropriately, and in accordance with applicable laws.⁶

According to Tan Thong Kie, the Notary Protocol does not belong to the Notary who drew up the deed, but to the community as the party with an interest in the deed drawn up for the legal action taken. This view emphasizes that the Notary only acts as a temporary custodian and guardian of the authenticity of the legal document. The Notary Protocol serves as an official state archive that has evidentiary value and must be preserved for the legal interests of the parties. It contains various important documents that reflect the legal activities carried out through a notary. The Notary Protocol includes, among other things, deed minutes, a book of registered handwritten letters (*waarmerking*), and a book of handwritten letters legalized before a notary (*legalization*). In addition, the Notarial Protocol also includes a list of deeds (*repertorium*), a register of wills, a register of protests, and a register of the names of the parties. Thus, the Notarial Protocol is an important instrument in ensuring certainty, order, and legal protection for the community.⁷

The handover of Notary Protocols aims to maintain the existence and confidentiality of deeds, so that if at any time the deed is needed for a particular purpose, it will still exist and the Notary can easily find the deed. The maximum period for submitting the protocol to the recipient of the Notary Protocol is 30 (thirty) days by making a report of the submission of the Notary Protocol signed by the heir as the party submitting and the recipient as the party receiving the Notary Protocol. The MPD has the right to appoint the recipient of the Notary Protocol, and if the Notary Protocol is not submitted by the heir to the recipient within 30 (thirty) days, the MPD has the authority to take the Notary Protocol from the heir.

⁵ G H S L Tobing, *Peraturan Jabatan Notaris* (Erlangga, 1996).

⁶ K Andasmita, *Notaris Selayang Pandang* (Bandung: Alumni, 1983).

⁷ H Adjie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris* (Refika Aditama, 2007).

Article 63 paragraph (6) of the 2014 UUJN states that the MPD has the “authority” to do so, which means that the MPD is not obliged to take the Notarial Protocol, so the MPD has the option not to take the Protocol from heirs who do not submit the protocol to the recipient of the Notarial Protocol. Therefore, the MPD’s failure to take the Protocol may result in a legal problem, namely legal incompleteness when a certain legal situation arises, in this case when the MPD does not take the Notary Protocol from the heir who does not submit the protocol to the recipient. This is because the Notary Position Law does not regulate the legal consequences of the MPD not taking the Notary Protocol. This legal incompleteness has the potential to cause material and immaterial losses to parties who have an interest in the Notary Protocol.

The failure of the Regional Supervisory Council (MPD) to obtain the Notary Protocol from the heirs of a notary who has died or is no longer in office raises serious legal issues regarding the continuity of responsibility for the storage of these state documents. Based on the provisions of Article 63 of the Notary Law (UUJN), the Notary Protocol is a state archive that must be immediately submitted to the recipient of the protocol designated by the MPD. If this handover does not take place, there will be a legal vacuum regarding the storage of these documents, which could lead to the loss, damage, or misuse of minutes of deeds and other important documents that have legal evidentiary value. This situation also indicates administrative negligence on the part of both the heirs and the Supervisory Council, which has direct supervisory authority.

The legal consequence of the MPD not taking the Notary Protocol is the disruption of the legal protection function for the community who need copies or evidence from the deeds contained in the protocol. Without clarity on who is responsible for the storage and management of the protocol, interested parties—such as those involved in the deed or their heirs—may lose access to valid documents. In the context of administrative law, this may also give rise to moral and legal liability for the MPD for failing to carry out its supervisory duties as mandated by law.

To provide arguments for conducting research, there are three comparisons with previous studies that serve as references in finding new research. The first study is a study conducted by Rohmat Esa Hasan (Hasan, 2024), which also discusses Notary Protocols. However, the focus of the study is different. Rohmat Esa’s thesis contains a study of recipients of Notary Protocols who continue to issue copies of deeds to be given to the parties even though the deeds have not been signed by the parties, which of course means

that the deeds are actually invalid and the Notary has violated his obligation to always act honestly, which ultimately means that the Notary can be given criminal sanctions for committing forgery. Meanwhile, the researcher focuses on the legal consequences and legal protection for the parties when the MPD does not take the Notary Protocol from the heirs who do not submit the Notary Protocol to the protocol recipient. Both Rohmat Esa's thesis and the researcher use normative research, and there is also one difference in the theory used. Rohmat Esa uses the theory of responsibility and legal certainty, while the researcher uses the theory of legal consequences and legal protection.

Further research was conducted by Rosi Wardani and Agung Irianto⁸ which was also a normative study and discussed the Notarial Protocol. The difference is that Rosi and Agung's research focuses on the deviation committed by the MPD by submitting the protocol to the protocol recipient not in accordance with the period stipulated by the UUJN, which is a maximum of thirty days, whereas in Rosi and Agung's research, the protocol was submitted to the recipient five months after the previous notary had passed away. As a result, the position of the protocol recipient was declared invalid. Meanwhile, the researchers focused on the legal consequences of the MPD not taking the Notary Protocol from the heirs who did not submit the Notary Protocol to the Protocol recipient and also the legal protection for parties who have an interest in the Notary Protocol.

The next study is by Ega Gustian⁹, which uses the same normative research method and also discusses the Notary Protocol, but with a different focus. The difference is that Ega's research focuses on Notary protocols stored digitally or electronically. It turns out that electronic archiving of Notary protocols can be done, but only as a backup, not an obligation. This is because there are still no specific regulations governing Notary protocols that can be stored digitally. If a Notary is proven to have committed an unlawful act or violated their Notary protocol, the Notary is obliged to take responsibility by accepting administrative, civil, or even criminal sanctions. Another responsibility that must be carried out by the protocol holder is to always maintain the confidentiality of the deed from the protocol they receive. Meanwhile, the research conducted by the researcher focuses on the legal consequences of the MPD not taking the Notary protocol from the heirs who did not submit

⁸ R Wardani and A Irianto, "Penyimpanan Yang Dilakukan Majelis Pengawas Daerah Terkait Penyerahan Protokol Notaris Yang Berakibat Tidak Diserahkannya Protokol Notaris (Studi Kasus UM.MPDN DEPOK.17.154)" (Universitas Pancasila, 2021).

⁹ E Gustian, "Kepastian Hukum Atas Penyimpanan Protokol Notaris Secara Digital (Suatu Urgensi Politik Hukum Kenotariatan)" (Universitas Andalas, 2022).

the Notary protocol to the protocol recipient, as well as legal protection for parties who have an interest in the Notary protocol.

This study confirms the existence of a legal gap between the MPD's obligation to obtain the Notarial Protocol as mandated by Articles 63–65 of the UUJN and the practice in the field, where the MPD often does not obtain the protocol from heirs who do not submit it to the Notary Receiving the Protocol. Unlike Rohmat Esa's research, which uses the theory of responsibility and legal certainty and focuses on the late submission of protocols, for example in the case of Rosi and Agung, where the protocol was only submitted five months after the notary's death, rendering the position of the protocol recipient invalid, this study uses the theory of legal consequences and legal protection to examine the impact of the MPD's failure to collect protocols. The MPD's non-compliance with the 30-day deadline set by the UUJN not only creates a legal vacuum regarding the validity of the protocol recipient but also has legal consequences for parties who need the deed minutes and eliminates the legal protection that should be provided by the state through the MPD as a supervisory body.

Based on the above explanation, this research will discuss the topic "Legal Protection For Parties When Mpd Fails To Collect Notarial Protocols". Based on the above explanation, this study will be discussed using two problem formulations: How are the legal consequences of the Regional Supervisory Council not taking the Notary protocol from the heirs who did not submit the protocol to the recipient of the Notary protocol? And How is legal protection provided to the parties who have an interest in the notary protocol?

RESEARCH METHOD

The research to be used in this study is a normative legal approach. The normative legal research method is a legal research approach that focuses on the analysis of laws and regulations and legal doctrines in order to gain an understanding of applicable legal principles.

According to Satjipto Rahardjo's view, normative legal research is an effort to understand legal norms by investigating laws and regulations, court decisions, and existing legal doctrine concepts. Normative legal research can also be carried out by analyzing legal concepts, legal systems, and applicable legal principles.¹⁰

The type of research used by researchers is normative legal research. Normative legal research can also be referred to as legal literature research. From a normative legal

¹⁰ S Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti, 2012).

perspective, law has the concept of rules or norms that serve as a reference for human behavior in society.¹¹ This normative legal research is used to examine the rules governing the role of the MPD in safeguarding the protocols of deceased notaries and to provide solutions on how the rules should protect the parties involved in securing the protocols of deceased notaries.

The legal analysis technique used is a descriptive qualitative analysis technique, which accurately and systematically explains the principles, rules, and legal doctrines related to the legal issues researched by the researcher. This qualitative analysis technique is carried out using grammatical and systematic interpretation methods. Grammatical interpretation is used to examine the legal language of the rules in everyday language, and systematic interpretation is used to interpret a legal provision in relation to other interrelated articles.

FINDINGS AND DISCUSSION

Legal Consequences of the Regional Supervisory Council's Inaction in Notarial Protocol Transfer

Notarial protocols are state documents that have authentic evidentiary value and serve as official archives to maintain certainty, order, and legal protection for the community. After the notary's death, the UUJN stipulates that the authority and obligation to supervise and secure notarial protocols lies with the Regional Supervisory Council (MPD). This includes the MPD's obligation to take over the protocols from the heirs and then hand them over to the designated Protocol Receiving Notary.¹² The existence and management of these protocols are indicators of the transparency and validity of legal processes carried out by notaries. Based on the provisions of Law No. 30 of 2004 concerning the Position of Notary, the protocol must be stored securely and must be submitted to the competent authorities, including the recipient of the protocol after the notary's death. In the context of inheritance, heirs have a legal obligation to submit the protocol to the rightful recipient in order to avoid legal losses and maintain the continuity of these vital archives. If the heirs refuse or even deliberately fail to submit the protocol, this action can be considered a violation of the legal obligations stipulated in the Civil Code and other relevant regulations, which can lead to serious legal consequences.¹³

¹¹ S Soekanto and S Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Raja Grafindo, 2001).

¹² G Anand, *Karakteristik Jabatan Notaris Di Indonesia* (Prenadamedia Grup, 2018).

¹³ A A A Prajitno, *Apa Dan Siapa Notaris Di Indonesia* (Putra Media Nusantara, 2018).

The heirs' failure to submit the notarial protocol may be considered an unlawful act involving negligence or even intent to harm another party. Article 1365 of the Civil Code states that any act that violates the law and causes harm to another person may give rise to civil liability.¹⁴ When the MPD fails to fulfill these obligations, legal consequences arise for the MPD, the heirs, and the continuity of state functions in the management of these authentic archives. Failure to adopt the protocol not only has an impact on administrative aspects, but also raises the potential for violations of laws and regulations governing the administration of notarial offices and the management of state archives.

In the context of Indonesian positive law, notarial protocols have an important position as part of the state archives. This is because notarial protocols contain authentic deeds made by public officials, namely notaries, in exercising their public authority. These authentic deeds have high legal force and serve as authentic evidence of certain legal events, making them very important in Indonesia's documentation and law enforcement systems. Therefore, notarial protocols function not only as administrative documents but also as archives with strategic legal status.

In line with this position, the regulations regarding notarial protocols are not only sourced from Law Number 2 of 2014 concerning Amendments to the Notary Position Law (UUJN), but are also reinforced by Law Number 43 of 2009 concerning Archives and Government Regulation Number 28 of 2012 as its implementing regulation. These provisions explicitly classify notarial protocols as state archives because they are produced by public officials in the course of providing public services. Therefore, notarial protocols must be managed, protected, and preserved in accordance with the standards for managing state archives as stipulated in Articles 40 to 48 of Law 43/2009, which requires the preservation of archives from damage, loss, and unauthorized control. Thus, notarial protocols must not only comply with the administrative provisions of the UUJN, but also be managed based on national archival principles, so that their integrity is maintained, their existence is guaranteed, and public access to them can still be carried out in accordance with the provisions of the applicable laws and regulations. The state's role in managing these authentic archives. Failure to take protocols not only has an impact on administrative aspects

¹⁴ T Aryawardhana, "Tanggung Jawab Penyimpanan Arsip Protokol Notaris Dari Notaris Lain Yang Waktu Penyerahan Berumur Lebih Dari 25 Tahun Yang Ditolak Oleh Majelis Pengawas Daerah Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Undang-Undang Nomor 30 Tahun 2004," *Jurnal Penelitian Hukum Galunggung* 2, no. 1 (2025).

but also raises the potential for violations of laws and regulations governing the administration of notarial positions and the management of state archives.

For further explanation, attached is a table regarding the articles that regulate the obligation of the MPD to take over the protocols of a deceased notary:

Aspect	Regulation	Description
MPD Obligations	<ul style="list-style-type: none"> - UUJN (Law 2/2014): Article 63 paragraph (1) (supervision), 64 letter c (Protocol security), 65 paragraph (5) (obligation to take the Protocol). - Government Regulation 24/2016 in conjunction with Government Regulation 37/1998: Article 62 paragraph (3) (maximum 30 days for submission), Article 61 paragraph (1) (protocols must be secured). - Law 43/2009 on Archives: Article 3 letter c (protection of state archives), Article 40 paragraph (2) (transfer of archives to the competent authority). 	<ol style="list-style-type: none"> 1. Take the Notary Protocol from the heirs/replacement notary since the notary died or is unable to perform their duties. 2. Submit the protocol to the Receiving Notary within 30 days. 3. Rescue, examine, and ensure that the protocol is in the hands of the competent authority. 4. Prevent damage, loss, or misuse of the protocol as a state archive.
Heirs' Rights	<ul style="list-style-type: none"> - PP 24/2016 jo. PP 37/1998: Article 62 paragraph (1) (authority of heirs to submit the Protocol). - Civil Code Article 833 (rights and authority of heirs over inheritance). - Law 43/2009 Article 48 paragraph (2) (the public's right to access state archives). 	<ol style="list-style-type: none"> 1. Obtain legal certainty regarding the transfer of protocols to the MPD. 2. Be free from the burden of responsibility for storing state archives that are not their authority. 3. Obtain legal protection from the risk of lawsuits or potential misuse of protocols that are not their responsibility. 4. Be served quickly, simply, and in accordance with procedures by the MPD.
Potential Violations if the MPD Does Not Act	<ul style="list-style-type: none"> - UUJN: Violation of Articles 63–65 (MPD obligations). - Law 43/2009: Violation of Article 53 paragraph (1) (negligence in the management of state archives). - PP 28/2012 on the Implementation of the Archives Law: Article 26 (obligation to preserve archives), Article 47 (prohibition on leaving state archives in the hands of unauthorized parties). 	<ol style="list-style-type: none"> 1. Violation of Articles 63–65 of the UUJN (obligation to supervise and retrieve protocols). 2. Violation of the archiving regime by leaving state archives in the hands of unauthorized parties. 3. Legal losses for the community due to inability to access the minutes of the deed. 4. Maladministration or abuse of authority by the MPD.

		5. Invalidity of the handover of protocols and administrative defects for the recipients of the protocols.
Legal Protection Mechanisms	<ul style="list-style-type: none"> - UUJN: Articles 70–73 (authority of MPW and MPP for investigation and administrative sanctions). - Law 43/2009: Articles 60–64 (legal protection of state archives), Article 86 (sanctions for negligence). - PP 28/2012: Articles 55–59 (supervision of archive management). - Civil Code: Article 1365 (civil liability for unlawful acts). 	<ul style="list-style-type: none"> 1. Administrative measures for MPD negligence based on the Government Administration Law (objections, reports of maladministration). 2. Complaints to the Indonesian Ombudsman regarding alleged maladministration by the MPD. 3. Administrative court lawsuits if the actions or negligence of the MPD harm the legal interests of the public or heirs. 4. Reporting of archive violations to the archival institution in accordance with Law 43/2009. 5. Restoration of public rights through the Receiving Notary after the protocol has been legally transferred.

According to Miriam Budiardjo, power is the ability of a person or group of people to influence the behavior of another person or group in such a way that the behavior is in accordance with the desires and objectives of the person or state.¹⁵ In order for power to be exercised, a ruler or organ is needed so that the state is conceptualized as a collection of positions where those positions are filled by a number of officials who support certain rights and obligations based on the construction of subject-obligations.

The phrase “authorized” in Article 63 paragraph (3) of Law No. 2 of 2014 concerning Notary Positions confirms that the Regional Supervisory Council (MPD) is authorized to take notary protocols from substitute notaries, holders, or heirs. Because this authority is granted directly by law, it is attributive in nature. In the doctrine of administrative law, attributive authority always contains an element of duty to act, especially when the object being managed concerns the public interest.

Article 67 paragraph (1) of Law 2/2014 also states that the MPD supervises the implementation of notarial duties.¹⁶ This means that the seizure of protocols is an integral

¹⁵ M Merdekawati, “Pelaksanaan Kewajiban Majelis Pengawas Daerah Gabungan Kabupaten Pengandaran, Kota Banjar, Kabupaten Ciamis Dalam Pemeriksaan Laporan Pengaduan Masyarakat,” *Recital* 5, no. 2 (2023).

¹⁶ E S Kombo, F Baftim, and A E Gerungan, “Kewenangan Majelis Pengawas Notaris Dan Pengawasan Notaris Menurut Undang-Undang Nomor 2 Tahun 2014,” *Lex Privatum* 11, no. 5 (2023).

part of this supervisory function. This authority should not be understood as a passive right, but as an active obligation to maintain the continuity of notarial administration.

If the phrase “authorized” is interpreted as merely discretionary authority, then the MPD may choose not to act.¹⁷ This interpretation contradicts Article 53 paragraph (1) of the Government Administration Law (Law 30/2014), which states that officials who are given authority must use their authority in accordance with the purpose of the authority granted by law. Thus, the MPD’s inaction (omission) can actually be classified as a form of maladministration.

The obligation to act is even clearer because notarial protocols are documents with high legal consequences. Article 1 point 13 of Law 2/2014 emphasizes that notarial protocols are a collection of documents that must be kept by notaries in the performance of their duties. When a notary dies, falls ill, or is unable to perform their duties, the protocol may be in the hands of parties who do not understand the procedures for its storage. This is where the MPD’s authority must be actively used to protect the legal interests of the community.

If the MPD does not take the protocol from the heirs who have neglected to hand it over, there will be a risk of losing the minute of the deed, which is an authentic piece of evidence. Article 1868 of the Civil Code stipulates that a notarial deed is an authentic deed that has full probative force. The loss of the protocol means the loss of state evidence, and this is detrimental to the public who need proof of their legal relationships.

In addition, there is a much stronger basis: notarial protocols are part of the state archives. Article 1 paragraph 2 of Law 43/2009 on Archives states that state archives are archives produced by state institutions, including public officials. Notaries are public officials, so the protocols they produce are classified as state archives that must be protected by the state.

Furthermore, Article 40 paragraph (1) of Law 43/2009 requires every creator of archives (including public officials) to protect archives from the risk of damage, loss, and misuse. Because when the notary is unable to do so, the archives are in the hands of the heirs, the obligation to protect them is transferred to the authorized body, namely the MPD. This is reinforced by Article 48 paragraph (1) of Law 43/2009, which states that the preservation of static archives is carried out by the authorized institution.

¹⁷ A Witasari, “MPD Bukan Advokat Para Notaris Berdasarkan Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris,” *Jurnal Hukum* 28, no. 2 (2012).

Government Regulation 28/2012 on the Implementation of the Archives Law, Article 5 paragraph (1) emphasizes that every state archive must be maintained in terms of authenticity, integrity, and availability. The MPD, as the primary supervisor of notaries, is the institution closest to ensuring this. Therefore, the use of the authority to take protocols is not merely a right, but an obligation to fulfill the principles of availability and accountability.

From a constitutional law perspective, Article 18 paragraph (3) of Law 30/2014 states that administrative officials are obliged to use their authority to protect the public interest. The protection of notarial protocols, which are state archives as well as public evidence, clearly falls under the category of public interest. Thus, the MPD cannot be passive; the use of the authority to seize protocols is part of the constitutional obligation to protect legal certainty for the community.

Thus, the phrase “authorized” in Article 63 paragraph (3) of Law 2/2014 must be interpreted as both legal authority and obligation. The MPD is not only given the right, but also the responsibility to ensure that notarial protocols, which are state archives under Law 43/2009, remain secure, preserved, and accessible. If this authority is not exercised, the MPD has the potential to violate the UUJN, the Government Administration Law, and the Archives Law, as well as cause losses to the community and the loss of state documents of high legal value.

Failure by the MPD to retrieve the protocols may result in a burden of responsibility for the heirs. Heirs basically do not have the legal capacity, technical knowledge, or job responsibilities to store notarial protocols. Article 1 point 13 of Law 2/2014 stipulates that protocols may only be stored by notaries or designated supervisory institutions. If the MPD does not immediately retrieve the protocols, the heirs may be considered as parties who control state documents without a legal basis, thus potentially causing administrative and psychological pressure on them.

In addition, heirs may face legal risks if the documents in the minutes are damaged, lost, or misused by other parties while in their possession. This is contrary to the principle of legal protection for citizens as stipulated in Article 28D paragraph (1) of the 1945 Constitution, which guarantees fair legal certainty for everyone. When the MPD fails to take action, heirs may be subject to lawsuits or claims from parties who feel aggrieved by the unavailability of the minute of deed. In fact, heirs have no legal or professional obligation to safeguard these state archives.

The MPD's failure to act also leaves heirs vulnerable to potential criminalization, particularly in relation to Articles 55 and 56 of the Criminal Code concerning participation in or allowing criminal acts to occur if the protocol is misused by other parties. Even if the heirs have no intention of breaking the law, their ignorance of the protocol's management can lead to adverse legal consequences. In fact, if the MPD immediately exercises its authority, these risks can be completely avoided.

Therefore, the retrieval of protocols by the MPD is not only in the interests of notarial administration, but also for the maximum legal protection of the heirs. From an administrative protection perspective, Article 29 of Law 30/2014 on Government Administration stipulates that government officials are obliged to prevent losses that may be incurred by citizens due to the negligence of officials. By acting quickly to take the protocol, the MPD ensures that the heirs are free from disproportionate legal liability, protected from the risk of document misuse, and avoid potential legal conflicts with third parties.

The obligation of the Regional Supervisory Council (MPD) to supervise and secure notarial protocols is a direct mandate from Articles 63 to 65 of Law Number 2 of 2014 concerning Amendments to the Notarial Position Law. This provision confirms that the MPD has the authority and obligation to take administrative action to ensure that protocols remain under the control of the competent authorities. Thus, neglecting this authority can be classified as a violation of the legal obligations established by the legislature.

Article 63 paragraph (3) of the UUJN explicitly states that the MPD has the authority to take the protocols from a substitute notary, temporary notary, or heir in the event of certain legal events such as the death or incapacity of a notary. Because the phrase "authorized" is an attribution of authority from the law, the organ given the authority cannot be passive. The absence of action can result in negligence (omission) that is contrary to the purpose of supervision as stated in Article 67 paragraph (1) of the UUJN.

If the MPD does not exercise its authority to retrieve the protocol, there is a potential that the notary protocol will remain in the hands of an unauthorized party, particularly heirs who do not have the legal capacity to store such state archives. Protocols left in the hands of unauthorized parties open up the possibility of loss, damage, physical alteration, or misuse of the protocol's contents by certain parties. This condition is contrary to the principle of archive protection as stipulated in Article 40 paragraph (1) of Law 43/2009 on Archives.

If notarial protocols are not secured by the MPD, there is a risk of violating the national archiving legal regime. Article 48 of Law 43/2009 stipulates that state archives must

be preserved and transferred to authorized institutions or officials to ensure their authenticity, integrity, and accessibility. Because notaries are public officials, the protocols they produce are classified as state archives, so the MPD's failure to retrieve the protocols can be considered a neglect of its obligation to preserve archives as mandated by law.

The MPD's failure to retrieve the protocols also has the potential to harm the public who need access to the minutes of deeds as evidence in legal and administrative proceedings. Notarial authentic deeds have full evidentiary force as stipulated in Article 1868 of the Civil Code. By not securing the protocols, the MPD could cause the public to lose access to evidentiary documents that should be protected by the state, thereby creating legal uncertainty that is contrary to Article 28D paragraph (1) of the 1945 Constitution.

In addition to causing losses to the public, the failure to secure the protocol can be classified as an administrative violation by the MPD. Articles 17 and 18 of Law 30/2014 on Government Administration require government officials to use their authority in accordance with the objectives of the granting of authority by law. The MPD's inaction can be considered a form of abuse of authority in the form of *detournement de pouvoir* or abuse of authority for failing to carry out its mandatory duties.

The MPD's negligence also has the potential to give rise to administrative liability as stipulated in Articles 80 to 82 of Law 30/2014, because the MPD has failed to carry out mandatory public services, namely ensuring that the protocol is in lawful possession. This inaction can be assessed as an act of maladministration in the form of neglecting legal obligations that should be carried out by government officials.

The failure to retrieve the protocol may also hinder the process of submitting the protocol to the Receiving Notary as stipulated in Article 63A of the Notary Law and technical provisions in the Minister of Law and Human Rights Regulation concerning the procedure for transferring protocols. Delays in submitting protocols have direct implications for the smooth running of public services provided by the Receiving Notary to members of the public who need proof of deeds.

From a legal certainty perspective, the failure of the MPD to act can cause stagnation in the notarial administration process. Protocols that are not immediately transferred to the Receiving Notary will be left hanging and inaccessible. This contradicts the principles of fast, simple, and legal certainty services as stated in Article 5 of Law 30/2014, which must be fulfilled by every government official.

Thus, the MPD's failure to collect notarial protocols is not only a violation of the UUJN, but also has implications for violations of the Archives Law and the Government Administration Law. The impacts include the potential for misuse of state archives, losses to the community, obstacles to public services, and administrative accountability for the MPD. Therefore, the MPD's authority to retrieve protocols must be interpreted as a legal obligation that must be carried out in order to maintain legal certainty, protect state archives, and ensure maximum protection for the community and heirs.

Legal Protection for Parties with an Interest in Notarial Protocols

Legal protection for parties with an interest in notarial protocols is an important aspect that must be fulfilled in order to protect their rights and ensure that the document management process is carried out fairly.¹⁸ In this context, the applicable laws and regulations have explicitly regulated the rights and obligations of parties related to notarial protocols, thereby creating legal certainty that supports the orderly functioning of notaries. One of the legal bases for this is Article 1 point 13 and Article 65 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN). These provisions explain that notarial protocols are a collection of documents that constitute state archives, and the notary receiving the protocols is fully responsible for the maintenance and security of these documents. Furthermore, Article 65 of the UUJN also emphasizes that the storage and management of protocols must be carried out in an orderly and secure manner, and must be handed over to the competent authorities if the notary resigns, is dismissed, or dies.¹⁹ Thus, this regulation provides clear legal guarantees for parties to obtain access to protocols related to their legal interests, while ensuring the continuity of legal protection for authentic documents stored by notaries.

Notarial protocols are a collection of documents that have high legal value, as they contain minutes of deeds and supporting documents that form the authentic basis for the legal actions of the parties. Based on Article 62 paragraph (1) of Law Number 2 of 2014 concerning the Notary Position (UUJN), notary protocols must be submitted to another notary appointed by the Regional Supervisory Council (MPD) if the notary dies, resigns, is

¹⁸ Y Yetniwati, T Yahya, and D Amir, "Perlindungan Hukum Terhadap Notaris Penerima Protokol: Bentuk Dan Batasan," *Undang: Jurnal Hukum* 4, no. 1 (2021): 213–44, <https://doi.org/10.22437/ujh.4.1.213-244>.

¹⁹ D Listyarini, "Pertanggungjawaban Para Pihak Terhadap Protokol Notaris Sebagai Arsip Negara," *Ayy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 53, no. 2 (2019): 446–61, <https://doi.org/10.14421/ajish.v53i2.598>.

dismissed, or is no longer able to carry out their duties.²⁰ This provision aims to ensure legal certainty and continuity for parties with an interest in the deed, even though the notary is no longer active.

Legal protection for interested parties basically covers two dimensions, namely preventive protection and repressive protection.²¹ Preventive protection is provided through clear regulations in legislation, which aim to prevent disputes or violations of the civil rights of people who depend on authentic deeds. Meanwhile, repressive protection is provided when violations have occurred, such as negligence in the submission or management of notarial protocols, thereby causing legal losses to the parties. In this context, the Regional Supervisory Council (MPD) has a central role as the first-level supervisory agency, as stipulated in Article 67 paragraphs (1) and (2) of Law Number 2 of 2014, which states that the MPD has the authority to provide guidance and supervision of the implementation of notarial duties, including the management of protocols. In addition, Article 65 of the UUJN emphasizes that notaries who receive protocols are fully responsible for the maintenance, security, and availability of protocols, so that the MPD is obliged to ensure that all notary protocols are under lawful control and in accordance with legal procedures. Thus, the existence of the MPD and the provisions in the UUJN provide comprehensive legal protection for the parties so that they can still obtain copies of deeds or valid legal evidence, even if the notary in question is replaced or resigns.

In situations where the protocol is not submitted by the heirs or is stored unlawfully, the parties have the legal right to seek protection through administrative and civil mechanisms.²² Based on Article 1365 of the Civil Code, any act that violates the law and causes harm to others can result in civil liability. On this basis, aggrieved parties can file a lawsuit against the party that failed to submit the protocol (including heirs or supervisory agencies) to obtain compensation or an order for the submission of documents through a court decision.

In addition, legal protection can also be provided through a tiered supervisory mechanism between the MPD, the Regional Supervisory Council (MPW), and the Central Supervisory Council (MPP). Based on Regulation of the Minister of Law and Human Rights

²⁰ Latifa, Khairani, and Syofyan, "Penegakan Hukum Terhadap Notaris Yang Melanggar Undang-Undang Jabatan Notaris (Studi Kasus Di Kota Padang)."

²¹ E Purwito, "Konsep Perlindungan Hukum Konsumen Dan Tanggung Jawab Hukum Pelaku Usaha Terhadap Produk Gula Pasir Kadaluarsa Di Kota Surabaya," *Jurnal Magister Ilmu Hukum* 13, no. 1 (2023): 109–29, <https://doi.org/10.56943/dekrit.v13n1.152>.

²² R S Notodisoerjo, *Hukum Notariat Di Indonesia: Suatu Penjelasan* (PT Raja Grafindo Persada, 1993).

Number 40 of 2015, if the MPD fails to carry out its obligations in retrieving or securing notarial protocols, the MPW can intervene to conduct an investigation and take administrative measures. This multi-layered supervision is designed to ensure that there is no legal vacuum regarding notarial documents that concern the interests of the community.

Within the framework of preventive legal protection,²³ the main solution that can be applied is to strengthen the supervisory system and digitize notarial protocol archives. The Ministry of Law and Human Rights, through the Directorate General of AHU, can develop an electronic database system that contains a list of each notary's protocols, including their physical storage location and submission status. With this system in place, the public or interested parties can easily trace the official location of protocols without being hampered by administrative problems caused by individual negligence.

Furthermore, it is also necessary to implement strict administrative sanctions for parties who neglect to submit or secure protocols. Based on Article 85 of the UUJN, violations of notary duties can be subject to sanctions in the form of written warnings, temporary dismissal, or permanent dismissal. The MPD can expand the application of administrative sanctions to heirs or notaries who receive protocols that do not comply with legal provisions, as a form of indirect protection for parties with an interest in the deed.

From a repressive perspective hadjon,²⁴ legal protection can be provided through the intervention of the court or law enforcement agencies. If a notary protocol is concealed or misused, such actions can be categorized as unlawful acts or even criminal offenses if there is an element of intent to harm another party. In this case, the court can issue a decree ordering the handover of the protocol to the MPD or the official notary receiving the protocol, in order to ensure that the legal rights of the parties remain protected.

In addition to protection through regulations and sanctions, it is also important to develop legal education and guidance for notary heirs and notaries receiving protocols. Continuous dissemination by the MPD and MPW regarding the importance of notarial protocols as state documents needs to be encouraged so that parties with legal responsibilities understand the consequences of their actions or negligence.²⁵ Thus, legal awareness becomes an integral part of preventive legal protection for the community.

²³ P M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (PT. Bina Ilmu, 1987).

²⁴ Hadjon.

²⁵ A K Khairunnisa, "Urgensi Peraturan Protokol Notaris Yang Menolak Serah Terima Protokol Dari Notaris Lain," *RIO LAW JURNAL* 1, no. 2 (2024).

Considering all these aspects, it can be concluded that legal protection for parties with an interest in notarial protocols must be realized through a combination of administrative law enforcement, the application of civil liability principles, and transparent tiered supervision. The ideal solution is to develop a digital-based protocol management system and impose strict legal sanctions on violators. In this way, the rights of parties to authentic documents remain guaranteed, and public trust in the notary profession and its supervisory institutions can be maintained.

Article 63 paragraph (5) of Law Number 2 of 2014 concerning the Notary Profession (UUJN) states that “the Regional Supervisory Council has the authority to appoint a notary to receive protocols from notaries who have died, resigned, or been dismissed.” Although this norm uses the term “authorized,” in administrative law practice, public supervisory authority over the notarial profession cannot be interpreted merely as a discretionary right, but rather as a legal obligation (*rechtsplicht*) to act.²⁶ Thus, “authorized” in this context must be understood as “obligated to carry out,” not merely having the option to act or not.

This interpretation is in line with the principle of state oversight of public office. Notaries are public officials who carry out some of the state’s functions in the field of civil law, and notarial protocols are state archives as stipulated in Article 65 paragraph (1) of the UUJN. Because protocols are public and belong to the state, the MPD, as the representative of the Ministry of Law and Human Rights at the regional level, has a positive legal obligation to ensure that protocols are not in the hands of unauthorized parties, including heirs. If the MPD only considers this authority to be passive, then there will be a legal vacuum of responsibility for documents that have high evidentiary value for the community.

According to Sudikno, the theory of legal protection stems from the idea that the state has an obligation to provide guarantees of certainty, justice, and the benefits of law for the community that has an interest in a legal relationship. Legal protection is not only provided after a violation has occurred (repressive), but must also be realized in the form of preventive actions by the authorized state institutions. In the context of the notary profession, the existence of the Regional Supervisory Council (MPD) is a manifestation of the state’s preventive function to ensure that the notary profession is carried out in accordance with the law and to protect the public interest in authentic documents.

²⁶ R Sesung et al., *Hukum Dan Politik Hukum Jabatan Notaris* (R.A.De.Rozarie, 2017).

Article 63 paragraph (5) of Law Number 2 of 2014 concerning the Notary Profession (UUJN) only states that the MPD “has the authority to appoint a notary to receive the protocol from a notary who has died, resigned, or been dismissed.” However, within the framework of legal protection theory according to Sudikno Mertokusumo, this authority cannot be interpreted passively. The authority of the MPD must be interpreted as an active legal obligation to protect the interests of the parties related to the deeds in the notary protocol. If the MPD does not take over the protocol from the heirs, there will be a vacuum in legal protection for the community who need access to authentic deeds as valid evidence.

According to Sudikno Mertokusumo,²⁷ the theory of legal protection departs from the principle that the law must be able to provide a sense of security, certainty, and justice to every individual who has an interest in a legal relationship. Legal protection is not only provided after a violation has occurred (repressive), but must also be realized in the form of preventive actions by the authorized institutions. In the context of the notary profession, the existence of the Regional Supervisory Council (MPD) is a state instrument to ensure that the performance of notary duties and the management of protocols do not cause legal uncertainty for the community.

Article 63 paragraph (5) of Law Number 2 of 2014 concerning the Notary Position (UUJN) states that the MPD “has the authority to appoint a notary to receive protocols from notaries who have died, resigned, or been dismissed.” However, the use of the word “authorized” in this article gives rise to multiple interpretations, as it does not explicitly state the MPD’s obligation to take over the protocols from the heirs. From the perspective of legal protection theory according to Sudikno Mertokusumo, the ambiguity of this norm has the potential to create a legal protection vacuum for the public who need access to authentic documents as legal evidence.

Sudikno Mertokusumo emphasizes that legal protection must be comprehensive and operational, which means that the law should not stop at passive normative regulations. Therefore, to ensure effective legal protection, amendments to Article 63 of the UUJN are very important. The amendment should emphasize that the MPD not only has the authority but also the obligation to actively take over the protocol from the heirs if the notary in

²⁷ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, 4th ed. (Yogyakarta: Liberty, 1993).

question has died or is no longer in the position of notary.²⁸ Thus, the law can provide clear, firm, and fair protection for parties who have an interest in notarial protocols.

In addition to providing legal certainty, this amendment is also in line with the function of the rule of law (*rechtstaat*) as explained in Sudikno Mertokusumo's theory, namely that the state must guarantee legal security and justice for all citizens. The MPD, as the government's representative in the field of notary supervision, has the responsibility to ensure that state archives in the form of notarial protocols are preserved and accessible to the public who are entitled to them. With the explicit norm in Article 63 of the Notary Law stating the MPD's obligation to take over the protocols, the potential for misuse, loss, or neglect of important documents can be minimized.

Thus, based on Sudikno Mertokusumo's theory of legal protection, it can be concluded that the revision of Article 63 of the UUJN is an urgent necessity in order to make legal protection of notarial protocols more concrete and operational. Provisions that only emphasize "authority" without emphasizing "obligation" have the potential to cause uncertainty and weaken the supervisory function. This revision will clarify the responsibilities of the MPD as a supervisory agency and strengthen the legal position of the community that has an interest in the documents in the notary protocol. Thus, the law not only functions as a written norm but also as a means of real protection for all parties involved in civil law transactions.

CONCLUSION

MPD that do not execute their authority, which is to take the Notary protocol from heirs who do not submit the Notary protocol to the recipient of the protocol, may result in legal consequences. The legal consequences are that the Notary protocol is at risk of being lost and destroyed; the loss of the rights of the parties to obtain copies, gross copies, or excerpts of deeds, protocols; the Notary protocol has the potential to be misused; and if the heir or MPD is proven to have committed a violation, they may be subject to sanctions in the form of a verbal warning, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

There are two types of legal protection, which are preventive legal protection and repressive legal protection. Preventive legal protection takes the form of a legal guarantee in

²⁸ Kaligis Fainnadya Shanvieta Britney, D F Aling, and R R Lembong, "Aspek Perlindungan Hukum Bagi Notaris Terhadap Malpraktek Dalam Pembuatan Akta," *LEX ADMINISTRATUM* 2, no. 1 (2022).

Article 63 paragraph (6) of the UUJN-P that the MPD has the authority to take the Notary protocol from heirs who do not submit the Notary protocol to the protocol recipient within a maximum period of 30 (thirty) days. This article should be the basis for the MPD to take active measures to safeguard the existence of notarial protocols, which are state archives that must always be stored and maintained. Meanwhile, repressive protection takes the form of sanctions imposed on heirs and the MPD if they are proven to have violated the provisions of Article 63 of the 2014 UUJN, as well as complaints to the MPD office requesting that the notarial protocol be immediately submitted to the recipient notary.

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