



## Limitations of Liability for Heirs of a Notary Public Regarding Notary Protocol Reporting

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### **Abstract**

One of the reasons why a person's position as a notary ends is that the notary concerned has died. With the death of a notary, all his responsibilities end, and the notary's protocols must be immediately submitted to the Regional Supervisory Council (MPD) through his heirs to be kept by the notary holding the protocol who has been appointed. By the provisions of Article 63 of Law No. 2/2014 in conjunction with Law No. 30/2004, only the deadline for submission is regulated; however, there is no legal certainty regarding the procedure for submitting protocols that are carried out beyond the deadline, there are no regulations related to the legal consequences of notary protocols if submitted beyond the deadline, and there are no sanctions for heirs for missing the deadline for submitting the notary protocol. This research method uses normative legal research using a statutory approach due to the absence of norms. Based on the research results, it was found that there is no legal certainty regarding regulations related to the legal consequences of notary protocols if submitted beyond the deadline, and there are no sanctions for heirs for missing the deadline for submitting the notary protocol. The purpose of this study is to further investigate and analyze the legal consequences of a notary's protocol if it is submitted more than 30 days after the notary's death, as well as the sanctions for heirs if the protocol is not submitted to the notary receiving it. Therefore, regulations regarding sanctions for notary heirs are needed to ensure clear legal certainty. Imposing sanctions will facilitate the enforcement of these norms or laws, which will ultimately be beneficial for legal certainty and accountability for notary protocols.

**Keywords:** *Notary; Notary Heirs; Notary Protocol*

### **Introduction**

A notary is an official who is authorized to make authentic deeds to serve the needs of the wider community. In carrying out his/her duties, a notary has one of the obligations explained in Article 16, paragraph (1), letter b of the UUJNP, namely, making a deed in the form of a deed minute and storing it

as part of the notary protocol. The definition of a notary protocol is explained in Article 1, number 13 of the UUJNP, which explains that a notary protocol is a collection of documents that constitute state archives that must be stored and maintained by a notary by the provisions of laws and regulations.

An authentic deed consists of minutes of the deed and a copy of the deed. The minutes of the deed will be kept and maintained by the notary because it is included in the notary protocol that must be maintained (state document). Article 1, number 8 of the Notary Law states as follows: an authentic deed kept as a notary protocol is the minutes of the deed, namely the original deed that includes the signatures of the parties, witnesses, and the notary, which is kept as part of the notary protocol. Furthermore, Article 1, number 13 of the Notary Law states that the notary protocol is a collection of documents that constitute state archives that must be kept and maintained by the notary by the provisions of laws and regulations (Salim H. S., 2019).

The storage of a notary protocol by the notary holding the protocol is a means of maintaining the legal age of a notarial deed as perfect evidence for the parties or heirs regarding the matters stated in the deed. A copy of the notarial deed will always be available as long as it is kept by the owner, and the deed in the form of a deed of minutes will remain safe because it is kept by the notary who made the deed, the notary holding the protocol, or the Regional Supervisory Board. A notarial deed has a legal age that is longer than the biological age of the notary, even though it is known that the notary who made the deed has died (Adjie, 2014). The position of notary is not always attached to a person with the position of notary; this is because there is an age limit on the position of notary. Similar to civil servants, the position of notary also recognizes a maximum age limit in carrying out his position as a notary, as stated in Article 62 of the Notary Position Law, Article 30 of 2004, which states that a notary resigns or is dismissed from his position with honor due to death, the end of his term of office, his request, being unable spiritually or physically to carry out the duties of a notary position continuously for more than 3 (three) years, being appointed as a state official, changing his position area, being temporarily dismissed, and being dismissed dishonorably.

With Article 62 above, if a notary has died, the notarial protocol must be immediately submitted to another notary. This regulation is contained in Article 63, paragraph (2), which states, "If a notary dies, the submission of the notarial protocol is carried out by the notary's heirs to another notary appointed by the Regional Supervisory Council." Thus, it can be concluded that if a notary has died, the submission of the protocol becomes the responsibility of the heirs to submit it to another notary or the supervisory council (Rafly et al., 2024).

The resignation of a notary does not mean the termination or release of responsibility for the deeds (protocols) that have been made during his term of office. The notary protocol must be immediately given to another notary who is still in office and willing to accept the notary protocol whose term of office has ended. One of the reasons for the termination of a person's position as a notary is that the notary concerned has died. With the death of a notary, all his responsibilities end, and the notary protocols concerned must be immediately submitted to the Regional Supervisory Council (hereinafter referred to as MPD) through his heirs to then be kept by the notary holding the protocol who has been appointed. This statement is confirmed in Article 63 paragraph (2) of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014, namely, "In the event of an occurrence as referred to in Article 62 letter a, the submission of the Notary Protocol is carried out by the Notary's heirs to another Notary appointed by the Regional Supervisory Council."

If Law Number 30 of 2004 in conjunction with the 2014 Notary Public Law concerning Notary Public Positions in Article 63 paragraph (2) only regulates the submission of notary protocols by the notary's heirs to another notary appointed by the supervisory board but does not regulate what should be done if the protocol is not submitted, of course this article will give rise to many interpretations. There is

no continuation of the article explaining that the notary's heirs who do not submit the protocol of the deceased notary will be subject to sanctions; there is not even an article that states that when the notary dies and the heirs do not immediately submit the protocol, the protocol is entirely the responsibility of the heirs regarding the loss or destruction of the protocol (Trisnawati & Suteki, 2019).

Article 63, mentioned above in the notary's job regulations, gives rise to many interpretations, whether the heirs are obliged to submit or the heirs are responsible for protocols that have not been submitted, and there are no sanctions for the heirs if the protocol is lost or destroyed. If the protocol of a deceased notary is not stored properly, it will one day cause problems and many losses for several parties related to those in the protocol. Article 63, paragraph (2) of the UUJN, does not mention the element of obligation for the heirs, whether they are responsible or not for the protocol. The Notary Law does not regulate sanctions for heirs regarding protocols that are not submitted when the notary dies.

Based on the existing background of the problem, this study will analyze in more depth the provisions regarding the heirs of a deceased notary regarding the submission of notarial protocols and the responsibilities of the heirs of a deceased notary if they do not submit the notarial protocol. The protocol of a deceased notary must be submitted to another notary through his heirs. In terms of the submission of the notarial protocol by his heirs, of course, it cannot be separated from the role and responsibility, starting from the process of appointing the notarial protocol by the heirs who are submitted to the Regional Supervisory Council (MPD), up to the submission of the notarial protocol to the notary who has been appointed by the MPD. Based on these facts, it is deemed necessary to review it to find a match between the regulations that have been implemented and actual practice.

### ***Research Method***

The type of research used for this paper is normative legal research, which examines existing provisions or norms. It can also be defined as research conducted by technically observing secondary data or library materials. The approach used is the conceptual approach, which derives from various doctrines and perspectives within legal science (Irwansyah, 2020).

### ***Result and Discussion***

#### **Responsibility of the Heirs of a Deceased Notary for Submission of Notarial Protocols**

In principle, every time a notary dies, all of his/her archives or protocols must be transferred to another notary as the notary receiving the protocol by the heirs of the deceased notary, as explained in Article 35 of the Notary Public Law Amendment to Law No. 30 of 2004 concerning the Notary Public (UUJN). If a notary dies, the husband/wife or blood relatives in the direct line of marriage up to the second degree of his/her heirs are required to notify the Notary Public MPD in the area where the deceased notary works, no later than 7 (seven) working days. If the notary dies before submitting the protocol, the submission is carried out by his/her heirs. This is expressly regulated in Article 63, paragraph (2) of Law No. 2 of 2014, which states that if a notary dies, the heirs are required to submit the protocol to the receiving notary who has been appointed by the Regional Supervisory Council (Wirastuti, 2018).

According to Alexander, S.H., M.Kn., from the deceased notary, there are two differences in the protocol submission process. The first process: if a notary dies, the heirs submit a notary who receives the protocol to the MPD, which process includes: First, the heirs are required to notify manually or electronically the MPD in the area of the office of the deceased notary regarding the death of a notary within a maximum period of 7 (seven) days from the date of the notary's death (Article 35 paragraph (2)).

UUJNP, while Article 39 of the Minister of Law and Human Rights Regulation number 25 of 2014 states, "If a notary dies, the heirs are required to notify manually or electronically MPD in the area of the office of the deceased notary within a maximum period of 30 (thirty) days. Second, with the death of a notary, the heirs or notary employees appoint a temporary notary official addressed to the MPD and forwarded to the Ministry of Law and Human Rights of the Republic of Indonesia. Based on the recommendation from the heirs or employees of the notary, the MPD appoints a temporary notary public within a maximum of 14 days from the date of notification. If the protocol is not submitted by the heirs or employees of the notary to the MPD notary, the MPD will still submit a temporary notary public (Pjs. Notaris) to the Ministry of Law and Human Rights of the Republic of Indonesia. After the submission of the Temporary Notary Public (Pjs. Notaris) by the MPD, the Ministry of Law and Human Rights will issue a Decree regarding the appointment of the Temporary Notary Public (Pjs. Notaris) within a maximum of 30 (thirty) days from the submission by the MPD to the Minister of Law and Human Rights (Mulia et al., 2022).

The heirs asserted that their ignorance of the notary protocol necessitated immediate submission to the receiving notary appointed by the MPD (Kartikasari et al., 2021). Because of this, the process of submitting the notary protocol was slow due to ignorance and a lack of socialization from the notary, MPD, and the Indonesian Notary Association (INI) for the wider community, especially for the notary's family regarding the heirs' understanding and knowledge of the importance of the notary protocol. However, regarding the lack of explicit regulation regarding the form of accountability of the heirs for their actions in Law No. 30/2004 and Law No. 2/2014 in conjunction with Law No. 30/2014 because both laws only regulate the main points regarding the position of notary, it does not mean that the heirs can be free from responsibility and forget the mistakes they made and cannot be subject to sanctions.

Since 1919, unlawful acts have been broadly interpreted, including (Munir, 2013):

1. Acts that violate the rights of others;
2. Acts that violate one's legal obligations;
3. Acts that violate morality;
4. Acts that violate prudence or the requirements of good social interaction.

Based on the meaning of the phrase unlawful act above, heirs who have not/are late in submitting the notary protocol have committed an act that is contrary to their legal obligations as regulated in Article 63, paragraphs (1) and (2), of Law No. 2/2014 in conjunction with Law No. 30/2004. Furthermore, if reviewed in the provisions of the Republic of Indonesia Law Number 43 of 2009 concerning Archives (hereinafter referred to as Law No. 43/2009). In line with the previous discussion, the notary protocol is not a state archive as referred to in Law No. 43/2009, so that all provisions and sanctions regulated in Law No. 43/2009 cannot be applied to the mistakes of heirs who have not/are late in submitting the notary protocol.

Considering all the rights and obligations inherent in an heir, especially when the heir is a notary, it's clear that they can't shirk their responsibilities. Heirs have the right to manage all matters related to the testator's legacy, including important documents. Notary protocols, which contain minutes of deeds and other official documents, should be considered part of the testator's estate. Therefore, when an inheritance occurs, the notary protocol is automatically included in the list of matters that must be handled and is also the responsibility of the heir.

## **Legal Consequences If the Heirs of a Deceased Notary Do Not Submit the Notarial Protocol**

Based on applicable laws and regulations, the submission of the protocol of a notary appointed by the MPD (Regional Notary Agency). Article 63 of Law No. 2/2014, in conjunction with Law No. 30/2004, states that the notary's protocol must be submitted within 30 (thirty) days at the latest, and the minutes of submission must be signed by both the person submitting and the person receiving the notary's protocol. If the MPD has not appointed a notary to receive the protocol and the statutory deadline has passed, this will result in several legal consequences. The following are some of the legal consequences of missing the deadline:

1. Regarding the responsibility to protect the protocol of a deceased notary, the protocol should be properly stored, as it is a state document. The fact that the notary's protocol has not been submitted to the person receiving the protocol raises doubt and uncertainty regarding who is authorized to store the notary's protocol.
2. There is uncertainty regarding who is responsible for potential loss or damage to the notary's protocol. A notarial protocol is a state document, so its confidentiality must be maintained, and its contents cannot be altered so that it can be used as evidence that a civil legal act has occurred between the parties.
3. Another potential consequence of using a notary's services is that the parties using the notary's services may not be able to obtain a copy of the deed if a dispute arises between them or if there are other interests related to the deed. Notarial protocols that have not been submitted to the recipient of the protocol create uncertainty regarding who is authorized and responsible to issue or make a copy of the notarial deed in question.

The provisions in Article 63 paragraph (2) of Law Number 2 of 2014 do indeed stipulate that in the event of a notary's death, the protocol of his office is handed over by the heirs to another notary appointed by the Regional Supervisory Council. However, this norm does not explicitly provide clarity as to whether the obligation to hand over is carried out by the heirs or can also be carried out by another party on behalf of the heirs, or whether the heirs are burdened with full legal responsibility if the protocol is not handed over to the recipient of the protocol as it should be. This ambiguity gives rise to problems in practice, especially when there is negligence or refusal on the part of the heirs to hand over the protocol. In this context, the ambiguity regarding the legal position and responsibility of the heirs regarding the notary protocol can give rise to normative uncertainty, both for the heirs and for parties interested in the protocol, and opens up the possibility of a regulatory vacuum that can be detrimental to the legal interests of the community (Suardiyati & Rustam, 2022).

The main problem that arises in the application of Article 63 paragraph (2) of Law Number 2 of 2014 concerning the Position of Notary is the absence of a normative element that indicates the existence of an obligation or legal requirement for heirs to submit the protocol of a deceased notary. The article only stipulates that the submission is carried out "by the heirs," without explaining the legal consequences if the submission is not carried out. The phrase "by" in the article does not contain an imperative meaning that creates a legal obligation, but can be interpreted only as a factual designation of the subject.

Based on the above provisions, the relevance of imposing sanctions on heirs can be requested directly by parties who feel disadvantaged by the passing of the protocol submission deadline. According to Yudi Ansyah, the notary's heirs can be sanctioned if it can be proven with evidence of transactions that are adjusted to the notary's protocol, and in general, the sanctions given are in the form of reimbursement of the costs of losses suffered by the parties. This is due to the absence of norms regarding sanctions for passing the protocol submission deadline to the notary receiving the protocol, with the absence of regulatory provisions regarding the obligation of the notary's heirs to submit more than 30 (thirty) days. As stipulated in Article 63, the role of the MPD must be proactive in taking the notary's protocol, which is

then immediately submitted to the notary who has been appointed by the MPD to record the minutes of the submission of the notary's protocol, and the appointed notary is obliged to accept the protocol submitted (Aruan, 2022).

### **Conclusion**

The procedure for submitting the protocol of a deceased notary is regulated in Article 35, Article 62, and Article 63 of the UUJN and Article 39 of the Minister of Law and Human Rights Regulation Number 25 of 2014. In essence, it states that the heirs of a notary, as the holder of the Notary Protocol who has died/passed away, are required to notify the MPD no later than 7 (seven) days and submit it to another notary no later than 30 (thirty) days. Normatively, there are no regulations regarding the requirements/criteria for a notary who is worthy to be appointed by the MPD as the recipient of the Notary Protocol who has died/passed away. The notary's heirs must notify the MPD and submit the notary's protocol if the notary who holds the notary protocol dies/passes away. Regarding the responsibility of the heirs who do not carry out their obligations, the notary's heirs cannot be held accountable because the Notary Supervisory Board does not have the authority to hold the notary's heirs accountable. Furthermore, the UUJN or other laws and regulations do not regulate sanctions against the heirs of notaries. Sanctions are necessary for the heirs of deceased notaries as a means of enforcing statutory provisions, as in a norm containing prohibitions, commands, and/or obligations. Imposing sanctions will facilitate the enforcement of these norms and, in turn, will demonstrate the effectiveness of these laws and regulations. Sanctions can be imposed on heirs for negligence that causes harm to the parties. Sanctions can provide legal certainty and accountability for notarial protocols. Heirs who violate the provisions have the right to demand accountability and be subject to sanctions in the form of administrative, civil, and criminal sanctions.

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