

# Legal Protection toward a Deed Registered By Notary Due to Migrated Territory

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**Abstract:** *In carrying out his position a Notary has a place of position/territory appointed to him. The place of residence for the Notary is not forever. a Notary who wishes to relocate his / her domicile is possible since it was the right. However, Notary is obliged to keep the deeds he/she has made as part of the Protocol. This research discussed on the responsibility of Notary who moved the position of office to the deed he made, as well as the form of legal protection for Notary who has moved the position area. This research uses normative juridical research type, with approach method that is by the approach of law, concept approach. The results of this study are: First, the form of responsibility of a Notary who moved the territory of office to the deed he made is essentially the same as the Notary who still runs the position and Notary who has terminated his / her term, that is when the Notary in conducting his / her position proves to be a violation, the Notary shall be responsible in accordance with acts he performs both responsibilities in terms of Administrative Law, Civil Law, and Criminal Law. second, the form of legal protection for a Notary who moves to office is through MKN. The legal protection granted to the Notary aims to avoid the arbitrary actions of the investigator who wishes to call the Notary in the hearing.*

**Keywords:** Legal Protection, Liability of Notary, occupies of Notary, Registered deed

## 1. Introduction

Notary is a public official appointed by the Government to help the public society in terms of making agreements in the community. The necessity of such written agreements made in the presence of a Notary is to ensure the legal certainty for the parties who make the agreement. Written agreements made in the presence of a Notary are called deeds. The purpose is to make the deed used as strong evidence if there is a dispute between the parties or a claim from another party.

Notary deed is an authentic deed which has a legal force as the guarantee of legal certainty, as perfect written evidence (volledigbewijs), does not need any additional verification, and the judge is attached by it (Prajitno, 2010: 51). Authentic deed is a notary product that is needed by the public for the creation of a legal certainty. Authentic deed as the strongest evidence and have an important role in every legal relationship in society, either business or cooperation relationships, activities in the field of land, banking, social activities and other life necessities.

As the time to implement his/her duty, a notary has a designated position or territory for him/her. The place position of notary as regulated in article 18 on Notary law (UUJN) is in ranged within regency or city, whereas notary territory covers all province from the position.

The job office position for a notary is not forever. A notary who wants to move the position of one position office is possible since it was his/her right. A notary who wants to move the territory of one position must fulfill the requirements as regulated in article 23 UUJN, which is:

- 1) A notary may apply to move the position of Notary in a written letter to the Minister.
- 2) The requirement of official territory moving as referred to in paragraph (1) is after 3 years of implementing the duty in a certain regency or city in which the notary's position is fixed.

- 3) The application as referred to in paragraph (1) submitted after obtaining the recommendation from notary organization.
- 4) The time as referred to in paragraph (2) not include leave that has been implemented by notary involved.
- 5) The provisions concern with the application procedure for moving the position of notary official regulated in the minister's regulation.

The deed made by the notary is an authentic deed which has authenticity persists, even the notary is dead (Nico, 2003: 3). Therefore, there is a notary obligation to keep the deeds which has been made as a part of protocol, even though the notary involved has passed away.

The notary obligated to keep the deed or protocol during occupy as a notary. However, in certain cases, notary protocol must be submitted to the notary protocol recipient. As stated in article 62 UUJN, if the notary involved:

- a) Passed away;
- b) Has expired the official term;
- c) Own request;
- d) unable to mentally or physically to carry out the duties of Notary's office continuously more than 3 years;
- e) Appointed to as state officer;
- f) Office Migration;
- g) Temporary fired; or
- h) Disrespectful fired.

Article 63 paragraph (4) on notary law change states that: as referred to in article 62 letter b, letter c, letter d, letter f, or letter h, the submitting notary protocol conducted by notary to other notary appointed by minister at the instance of Regional Supervisory Board (hereinafter referred to as MPD).

Regard to the Notary Protocol, there is a problem about the notary's responsibility toward the deed made have a dispute after the notary has moved to the position of the notary, where the Notary Protocol has been submitted to the Notary

who is receiving the protocol appointed by the Regional Supervisory Board.

For example, Notary A has served in Sidoarjo regency office for five years, during his duty in Sidoarjo regency, notary A has made many agreement deeds, in the sixth year of Notary A moved to Semarang, and A notary protocol was handed over to notary D who is appointed by the MPD of Sidoarjo regency. Five years later, after Notary A has moved to the position of the office, emerge a claim requiring authentic deed as the evidence to support the claim, but to ask the deed from the authentic deed is not in the protocol bundle which is held by notary D as the recipient Protocol.

The provision article 65 notary office law change (UUJNP) mentioned that: Notary, Successor Notary, and Temporary Official Notary should be responsible for each deed made although a notary protocol has been submitted to the notary protocol depositor. What kind of responsibilities are referred to in that article so that the notary who moves the position still asked the accountability due to the deed he made, besides, how the legal protection for a notary who has moved the position of office to the deed he made which of course notary protocol is not under the supervision of a notary of the deed maker but has been submitted to the notary who is the protocol receiver.

Based on the background above, the problem of this research as follows: First, how the responsibilities form of the notary who moves hir/her territorial office due to the deed he/she made? Second, what is the form of legal protection for notary moved the official territory?

The purpose of this research as follows: First, to analyze the responsibility form of the notary who moved the position of office to the deed he made. Secondly, to analyze the form of legal protection for Notary moved the official territory.

## 2. Research Methods

This research uses normative juridical research, with approach method that is by approach of law, concept approach, that is research which is focused to analyze various laws and regulations in the field of law of agreement, form of responsibility of Notary who moved the office territory to the deed he made, and the form of legal protection for Notary who has moved the office territory.

In collecting the data, this research is focusing on Sidoarjo regency as its subject of study. The data was collected by marking the notary with an initial of letters. This order is along with the principality of research method stated that, in collecting data the subject name must not be stated in research. Although, the subject is willing to be written, but, in the name of research method principality, it must be left unknown by the people as the article will be published later.

## 3. Result and Discussion

### 3.1. Limitation of Notary Responsibility Time toward the Deed Created

Limitation is always present to everyone who carries or assumes a certain position in any field as the implementation of a state structure, government or organization. There is a limit in terms of authority, there is also in terms of time, it means that the expired deadline of an official which carried by a person must be fixed.

Each kind official has a limitation time of responsibility, that is, as long as the person is in office because if the position held by a person who has expired, the relevant must cease his accountability in the position he has ever held.

Notary's office is one of the officials which is appointed by the government to carry out the duty in civil law, especially in documenting of authentic deeds. The process of an authentic deed is required by law and regulation in the framework of legal certainty, orderliness, and legal protection to the people who need it. Based on this, it is clear that a notary is required to professional with a burden of accountability either morally or by law.

Article 1 No 1 of UUJN reveals the Notary's understanding is an authorized public official to make authentic deeds and other authorities as referred to in this law. The UUJN explanation explains that authentic deeds as the strongest evidence and most fulfilled evidence have an important role in the legal relationship in people's lives. Authentic deeds clearly determine rights and obligations, ensure legal certainty and at the same time it is hoped can be avoided the occurrence of disputes.

As an officer, the notary's authority is limited by age, so the notary has a time limit in implementation the job duties. This is accordance with Article 8 UUJN which reads:

- 1) Notary is terminated or dismissed from his position with due respect for:
  - a) Passed away;
  - b) 65 years old;
  - c) Own request;
  - d) Unable in mental or physical condition to carry out the duties of Notary's office continuously for more than 3 years;
  - e) Concurrent position as referred to in Article 3 letter g.
- 2) The age stipulation as referred to in paragraph (1) letter b may be extended to the age 67 years by considering the health of the person concerned.

Based on the provisions of Article 8 UUJN above, the conditions as mentioned in paragraph 1 letter a, b, d and e and paragraph 2 are mandatory because the notary stops or is dismissed from the position as determined by the laws and regulations. While the conditions as mentioned in paragraph 1 letter c, the notary stops voluntarily at the initiative of the Notary itself.

However, accordance with the provisions of the deadline in implementation the duty of his position is not explained

regarding the deadline of notary responsibility to the deed he made. As stated in Article 65 UUJN that is:

“Notary, Successor Notary, Special Successor Notary, and Temporary Notary should be responsible for each deed made although a notary protocol has been submitted to the notary protocol depositor”.

The provisions of article 65 UUJN No. 30 of 2004 addition UUJN No. 2 of 2014 is clearly related to the deadline of notary's responsibility because the notary's responsibility is until the notary is passed away. Although in article 65 UUJN No. 30 of 2004 addition UUJN No. 2 of 2014 does not show the deadline for liability, the notary must remain liable until passed away toward the deed he has ever made.

Regarding the time limitation of the notary's responsibility to the deed, it shall be based on the expiration provision. Western law recognizes the expiration definition. In the 4th book of BW, among others regulated expiration (Sutantio & Oeripkartawinata, 2005: 205):

- 1) Which causes a person to be freed from an obligation or that causes the right to sue a person become cancelled, *praescriptio* and *extinctieverjaring*.
- 2) Which causes a person to gain a certain right, this expiration requires the goodwill of the person to obtain the right, *usucapio* and *acquisitieverjaring*.

The expiration (*verjaring*) or over time is a tool for obtaining something or being freed from any engagement with the passage of a certain time and on the requirements which regulated by (Article 1946 Civil Code hereinafter referred to as the Civil Code). A person cannot get a right due to expiration when the time has not yet arrived. However, a person can give up something he/she has acquired due to expiration (Prinst, 2002: 73).

The provision for expiration in civil law (article 1967 civil code) is for thirty years and in criminal law (article 78 addition 79 KUHP) is twelve years old. The parties may hold the Notary's responsibility to the juridical defective deed until the expiration even if the Notary concerned has retired or cease from the position as a Notary. However, after its expiry date, the parties cannot ask the responsibility to the notary concerned.

This case will provide the legal certainty for the Notary regarding his accountability to the notary deed he/she has made. This means that after the expiration, although the Notary is still alive, then all legal consequences that occur from the deed he made can no longer be held accountable.

### **3.2. Legal Protection For Migrated Notary regardto The IncompleteDeed**

Firstly, the protection for migrated notary was done by MPD. But, after the decision of the supreme court (MK) is applied No. 49/PUU-X/2012 which stated that MPD has no longer authority and it does not possess law legality anymore. Within that time, there is no exact law that will protect the migrated notary. Thus, if on that lawless time, there is a notary who breaks a certain order of the deed that he/she has been made, the police would have full authority

to invite and examine the notary without any permission of MPD.

In order to overcome this situation, the government directly apply the change on UUJN (UUJN-P) by funding a new legal protective person for the notary, that is Honorary Board Of Notaries (MKN). This institution has a duty to guard and protect the notary as they are the state general officer.

Concerning the deed registered by the migrated notary, for the importance of investigation and the court, the examiner, general prosecutor, and the judges who love to invite and make a call the notary into the court, they must first gain permission from the MKN.

MKN is the legal institution who had a charge in examining the notary which have been suspended to break the rule in the certificating process. They have right to reject or allow the prosecutor to bring and examine the notary into the court.

In addition, if it was found a case estimating the notary to break the order of the law done by this migrating notary, the notary, in this case, create an authentic deed that would result in unbalanced justification. There will be several stages that must be followed by both prosecutor and the MKN in the name of protection of law for all stake holders:

- 1) Investigator, Prosecutor or the judges could possess the photo copy of Minuta Akta and/or any documents attached or any Notary protocols in the notary save by demanding written letter to MKNW. This demand letter is also forwarded to the notary (Paragraph 23 number (2) Government Rule of Law and Civil Right)
- 2) MKNW have absolute authority in examining the corresponding Notary which have been reported in violating the certificating process (paragraph 18 number (1)).
- 3) MKNW could give the authority to the examiner, general prosecutor, and the judges, if in any case, the notary is proved to break the rule of the law certification.
- 4) If MKNW could not find any prove for the Notary to break any rule, thus the MKNW would not grant permission for another state to call or examine the notary.
- 5) The expired time for MKNW to give a written whether the notary is clean or not is within 30 (thirty) days started from the report was received by MKN from the examiner (paragraph 66 number (3) UUJN-P). Although MKN does not send any letter to answer the deed, MKN is considered as approved to give the permission (paragraph 66 number (4) UUJN-P).

According to the information above, within the protection from the MKN, it is expected o give a true protection for any migrated notary. This occasion would also have an expectation to grant a solid permission for the existence of MKN itself. So that, this overcoming problem will protect the notary from any legal attack that tries to weaken them within the deed that was published by them.

### **4. Conclusion**

In conclusion, the status of thenotary who is migrating his/her official territory is the same as normal notary and

also the notary which the expired time of his/her profession has reached its limit. It means that when this migrating notary make a mistake when doing his job, the penalty will be the same as the normal one. They must be responsible for what they have broken in their job. Although, the legal protection for this special notary is different. They will be protected by MKN. On its basic concept, the function of MKN is as same as MPD does as the protection of the law for Notary position. The protection given to notary is to repel any arrogant action from people who have intense to violate their work which will bring the notary into court level.

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