



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> ✉ dinasti.info@gmail.com ☎ +62 811 7404 455DOI: <https://doi.org/10.38035/jlph>
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Juridical Review of Notary's Liability for Storage and Force Majeure of Deed Minute in Notary Office

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Abstract: This research examines the responsibilities of Notaries regarding the storage and force majeure of the minutes of deeds at the Notary's office. Notaries are obliged to make and keep the minutes of deeds as part of the notary protocol according to the Notary Deed of Office. However, the lack of specific regulations regarding retention poses a risk of damage or loss of documents, especially in force majeure situations. Although the digital age offers alternatives to mitigate these risks, Indonesian positive law has yet to recognize digital storage as a legitimate solution. This research uses a normative legal approach to identify the relevant issues and concludes that clearer regulations are needed to protect the integrity and viability of notarial deeds in the future.

Keyword: Notary, Deed Minutes, Storage, Force Majeure.

INTRODUCTION

Notary is an official authorized to make authentic deeds, in accordance with Article 1 point 1 of Law Number 2 of 2014 on the Amendment to Law Number 2 of 2004 on the Position of Notary (JNP Law). According to this law, a Notary is a public official authorized to make authentic deeds and carry out other duties stipulated in the law relating to the office of Notary. The presence of a Notary is very important because people need authentic deeds as written evidence that is valid under civil law. The provisions regarding authentic deeds are also regulated in Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form prescribed by law by or before an authorized public official at the place where the deed is made. (Edy Sumarno et al ,2024).

Notaries not only have the authority to make deeds but also bear the responsibility of carrying out their duties. One of the obligations that must be fulfilled by a Notary is the storage of copies of deeds (minuta akta). Article 16 paragraph (1) letter b of the JNP Law stipulates that "Notaries are obliged to make deeds in the form of deed minutes and keep them as part of the notary protocol." Minute of deed is the original first copy that contains the signatures of the parties involved in the deed, the witnesses present at the time of making the deed, and the signature of

the Notary who reads and certifies the deed. This deed must be kept by the notary as part of the notary protocol in accordance with the applicable laws and regulations. (Prawira, I.B.P., Setiabudhi, I.K.R & Rudy 2023).

Keeping the minutes of the deed aims to provide strong evidence of the occurrence of an authentic deed. However, this method of storage also has risks because the minutes of deeds are only sheets of paper which are then combined with the case file and stored at the Notary's office. In certain circumstances, such as force majeure (natural disasters, earthquakes, or other uncontrollable events), the notarial deed minutes can be damaged or lost. (Noer & Fajriyah, 2021).

The absence of specific regulations regarding the storage of minutes in the Notary Law results in the absence of standard procedures that must be followed by Notaries. As a result, notary protocols in the form of deed minutes are vulnerable to the risk of damage or loss. If the state archives kept by the notary are damaged or lost, the notary is responsible for the incident. In the absence of clear guidelines, the notary must assume full responsibility for the security and integrity of the documents he keeps.

The importance of properly maintaining deed minutes is obvious to prevent the risk of damage and loss due to unpredictable force majeure. To avoid such scenarios, we need to keep up with the increasing development of the digital era. However, in Indonesian positive law, digital electronic minutes storage has not been recognized as a legitimate alternative. The digital era provides an opportunity for Notaries to protect important documents and deed minutes from the risk of damage or loss that may occur due to force majeure. This is becoming increasingly important considering that Indonesia often faces force majeure situations that can threaten the existence of important documents. Therefore, regulations regarding digital storage of deed minutes must be immediately addressed in positive law to protect the integrity and continuity of these documents. (Ifan Alfian 2020).

So far, the Notary Position Law (UU JNP) has not specifically regulated the responsibilities of Notaries regarding the storage of deed minutes and other important documents. Although Article 16 paragraph (1) letter b of the JNP Law stipulates that Notaries are obliged to make deeds in the form of deed minutes and keep them as part of the Notary Protocol, this provision does not provide sufficient guidelines to protect the deed minutes from the risk of loss and damage.

This normative gap creates uncertainty regarding the actions a Notary must take to prevent or overcome force majeure situations that may threaten the integrity of the deed minutes and other important documents. The responsibility of a Notary in carrying out their duties as the creator of authentic deeds is enormous, and unpredictable force majeure situations present challenges that are difficult to avoid. Therefore, clearer and more comprehensive regulations are needed to address the responsibilities of Notaries in dealing with force majeure situations that can jeopardize the sustainability of the important documents they manage. (Fitriasari, 2022).

The problems arising from this research include the absence of clear regulations related to the responsibilities of Notaries in the storage and protection of deed minutes and other important documents. The Notary Position Law (UU JNP) does not specifically regulate this matter, so notaries often face uncertainty regarding the actions that must be taken to prevent or overcome force majeure situations that can threaten the integrity of the deeds. The conventional way of storing deed minutes also poses a risk of damage or loss, especially in force majeure situations such as natural disasters. Although the digital era provides an opportunity for Notaries to protect important documents and deed minutes from the risk of damage or loss, the digital storage of minutes is not yet recognized as a valid alternative in Indonesian positive law. Protecting the integrity of important documents is crucial for the continuity of civil law and the public interest. Therefore, clearer and more comprehensive regulations are needed to address

the responsibilities of Notaries in the face of force majeure circumstances that may jeopardize the continuity of the important documents they manage.

Based on the explanation above, the author is interested in further researching and delving deeper into the storage of deed minutes. Therefore, the author focuses on the following topics: (1) the form of Notary's responsibility if the deed minutes are damaged or lost due to force majeure; (2) the importance of updating or the urgency of thinking about the legal impact of keeping the deed minutes by Notary.

METHOD

This research uses a normative legal approach based on normative gaps. This research was conducted due to the absence of provisions governing damage or loss in the storage of deed minutes by Notary, which is actually one of the obligations in carrying out their duties. The primary research source is the JNP Law, while the secondary sources are several scientific journal articles that discuss related topics. This research refers to the laws and regulations related to the storage of deed minutes based on the JNP Law. The research method used is a document study by collecting legal materials, which are then analyzed using a deductive reasoning approach.

RESULTS AND DISCUSSION

In the context of force majeure risk, the role of Notarial Deed becomes very important because it plays an important role in proving the validity of a transaction or agreement. A Notarial Deed is an official deed made and signed by a Notary who has the legal authority to carry out this task. This deed serves as strong written evidence of the occurrence of a transaction or agreement. In the case of force majeure risks, where unforeseen events such as natural disasters or political events can affect the execution of a contract, a notarial deed can be important evidence to prove that the contract or transaction is valid and enforceable. (Taslim, 2021).

A notarial deed also plays a role in determining the rights and obligations of the parties involved in a transaction or agreement. In the context of force majeure risks, the provisions set out in a notarial deed can help determine how such risks will be handled and how responsibilities will be shared between the parties involved. For example, a notarial deed may contain clauses that address what happens in the event of force majeure, whether the deed relieves a party of its obligations or sets out the procedures to be followed in dealing with the situation. (Amalia, Musakkir, and Muchtar 2021)..

A notarial deed also ensures that a transaction or agreement is in compliance with the applicable legal provisions. Notaries usually have in-depth knowledge of the legal regulations pertaining to certain types of transactions or agreements, and they are responsible for ensuring that all legal requirements are met in the creation of the deed. This can help prevent future legal disputes regarding the validity of a transaction or agreement. Thus, a notarial deed does not merely state the facts of a transaction or agreement, but also serves as an important tool in protecting the rights and obligations of the parties and ensuring that legal provisions are adhered to. In the context of force majeure risks, the presence of a notarial deed can provide legal certainty and protection for the parties involved.

The discussion on the demands of keeping the minutes of notarial deeds covers several important aspects in maintaining the integrity and security of these documents. The storage of notarial deed minutes must meet certain standards set by the authorized official. These include standards related to the storage environment, such as temperature, humidity, and protection from fire or other natural disasters. Standards may also include technical requirements for digital formats and storage where applicable. Notarized documents should be stored with high security to prevent unauthorized access or manipulation. This may involve the use of physical security systems such as safes or secure rooms, as well as digital security measures such as

data encryption and strict access control. These security demands aim to protect documents from theft, misuse or destruction.

While documents must be kept securely, they must also be easily accessible when needed. Therefore, demands on the storage of notarial deed minutes also include adequate accessibility for interested parties, such as lawyers, notaries, or parties involved in the transactions or agreements recorded in the deed. This may involve efficient search procedures and a good document management system. The demands may also include the maintenance of notarized documents for a certain period of time in accordance with legal requirements. This includes the need for regular care and maintenance of the documents to keep them in good condition, as well as compliance with regulations regarding document retention. The notarial deed minutes storage system can also be subject to periodic audits and supervision to ensure that the storage process meets the set standards and the documents remain safe and secure. (Arsy, Widhiyanti, and Ruslijanto, 2021).

Efforts to expand the regulations related to the retention of notarial deed minutes in order to face the risk of force majeure may include several steps and changes to laws and regulations aimed at strengthening the security and integrity of notarial deeds. The government or supervisory body may consider amending or supplementing the regulations governing the retention of notarial deed minutes. This may include increased requirements regarding storage standards, security and accessibility of documents. For example, new regulations may require notaries to use more secure storage technology or implement additional measures to protect documents from the risk of loss or damage.

The government or regulatory body may set higher security standards for the storage of notarial deed minutes. This may include requirements related to the physical storage infrastructure, such as building or storage room security, as well as information technology security requirements for digital document storage. These standards should be designed to protect documents from unauthorized access, manipulation or damage. Changes to the legal regulations governing the roles and responsibilities of Notaries in document retention may be necessary. This may include clarification of the Notary's obligation to maintain the security and integrity of documents, as well as sanctions that will be imposed if the Notary does not fulfill document retention requirements. This strengthening of the legal basis will provide a stronger foundation in enforcing notarial deed retention standards.

With the advancement of technology, there may be efforts to further regulate the digital storage of notarial deed minutes. This includes requirements related to data security, encryption, backup and validation of electronic documents. The government or regulatory bodies may introduce regulations that facilitate the use of digital technology in the storage of notarial documents while ensuring their security and integrity. Efforts to expand regulations may also include increased examination and supervision of notarial minutes retention practices. This can be done through periodic audits, inspections, or surveillance by the supervisory body or an independent party to ensure that notaries comply with the established document retention requirements. (Marbun, 2023).

Efforts to expand the regulation must be based on an in-depth study of the needs and challenges in dealing with force majeure risks, as well as considering the latest developments in technology and notarial practices. The aim is to strengthen the security, integrity and accessibility of notarial documents so that they can be relied upon in situations facing such risks. Regulations regarding the expansion of regulations related to the retention of notarial deed minutes in the face of force majeure risks may vary based on the legal jurisdiction of each country. (Ballan, 2022).

The laws and regulations governing the notary profession are often the basis for regulations relating to the retention of notarial deed minutes. Changes or amendments to notarial laws and regulations may expand the obligations and responsibilities of notaries regarding the retention

of deeds, including in the context of force majeure risks. In addition to statutory regulations, implementing regulations issued by regulatory bodies or relevant legal authorities may also regulate specific requirements related to the retention of notarial deed minutes. These regulations may include technical details on storage standards, security, accessibility and maintenance of documents.

Professional bodies or notary associations can also issue guidelines or codes of conduct that regulate best practices regarding the storage of notarial deeds. These guidelines may provide guidance on how notaries should store and manage their documents in the face of force majeure risks. In some jurisdictions, regulations governing information security and data protection may also be relevant in the context of notarial deed minutes retention, especially if the documents are stored digitally. Changes or amendments to information security regulations may strengthen the protection of notarial documents from cyber-attacks or unauthorized access. In reviewing and expanding regulations related to the retention of notarial deed minutes in the face of force majeure risks, it is important to consider the existing legal framework, practical needs, as well as recent developments in technology and risk management. These measures should be designed to ensure the security, integrity and accessibility of notarial documents, and provide legal certainty for all parties involved.

In Indonesia, regulations related to the notary profession and the retention of notarial deed minutes are regulated in Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on the Notary Position, abbreviated as the Notary Position Law (UU Jabatan Notaris). Several derivative regulations related to the retention of notarial deed minutes have also been issued to provide further details regarding notarial practices. Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Position of Notary provides a comprehensive legal framework for the notary profession in Indonesia. It covers various aspects related to notary practice, including the process of making, signing, and storing notarial deeds. (Thea Farina, 2021).

Regulation of the Minister of Law and Human Rights Number 2 Year 2015 on the Code of Ethics and Code of Conduct for Notaries regulates the code of ethics and code of conduct that must be followed by Notaries in carrying out their duties. Although not directly related to the storage of notarial deed minutes, this code of ethics can contain the responsibilities of Notaries related to the storage and security of deeds. Regulation of the Minister of Law and Human Rights No. 5/2015 on Procedures for Revocation of Notary Position License regulates the procedures for revocation of Notary position license, including those related to document storage and data deletion for Notary whose license is revoked.

Regulation of the Minister of Law and Human Rights Number 3 of 2016 concerning Registration and Storage of Authentic Deeds regulates provisions related to the registration and storage of authentic deeds, which include procedures for registration and storage of documents and technical requirements for digital document storage. Regulation of the Minister of Law and Human Rights Number 1 of 2018 concerning Procedures for the Selection and Appointment of Notaries regulates the procedures for selecting and appointing Notaries, which may also include requirements related to the fulfillment of document storage standards. (Putra, 2021). These regulations together constitute the legal framework governing notary practice in Indonesia, including requirements and standards related to the storage of notarial deed minutes. The aim is to ensure the security, integrity, and accessibility of notarial documents, as well as to provide legal certainty for all parties involved in transactions or agreements recorded in these documents.

The implementation of expanded regulations regarding notary practice and business in general may have a significant impact on various aspects, including operational procedures, costs, and legal responsibilities. Notaries may need to adjust their procedures to comply with the broader regulations. This may include additional steps in the document or identity verification process,

as well as improved reporting and documentation. Businesses will also need to adjust their operational procedures, especially if the new regulations impact legal, compliance, or data management aspects.

Changes in operational procedures and increased legal responsibilities may incur additional costs for notaries. These may include additional training costs, investments in information security technology, or higher professional liability insurance premiums. Businesses may also face increased costs to comply with new regulations, such as the cost of developing systems to ensure compliance or consulting with legal experts. The expansion of regulations may increase the legal responsibilities of notaries in terms of compliance, data management, and professional misconduct. They may be expected to ensure that all transactions they handle comply with the standards set by the new regulations. Businesses may also face increased legal responsibilities regarding compliance with the expanded regulations. They may need to ensure that they not only comply with existing regulations but can also prove their compliance in legal situations. Notaries must ensure full compliance with the expanded regulations and be prepared to face enforcement in case of violations. Businesses must also ensure their compliance with the new regulations and be prepared to face legal consequences if they fail to comply. (Mallolongan & Noor, 2023).

In dealing with force majeure risks that may affect the retention of notarial deed minutes, there are several steps that can be taken by policy makers, legal practitioners, and other relevant parties to strengthen the relevant regulations. Develop specific guidelines that provide clear instructions to notaries on the steps to be taken in the face of force majeure circumstances that may affect the retention of notarial deeds. These guidelines should include procedures to protect sensitive documents and recovery strategies after a force majeure event.

Encourage Notaries to improve their compliance with document retention regulations. This can be done through additional training, regular audits, or increased sanctions for Notaries who violate the deed retention rules. Encourage notaries to invest in a robust security infrastructure for both electronic and physical storage of deed minutes. (Anggriani, Firdaus, and Suherlan, 2023). This may include the use of secure data storage systems, physical protection against natural disasters, and strong cybersecurity. Encourage the use of the latest technologies in document storage, such as blockchain technology or secure content management systems. These technologies can help ensure document integrity and security in force majeure situations. (Halim 2022).

Encourage Notaries to make backup copies of Notarial deed minutes and keep them in a safe and separate place. This will ensure that the documents remain accessible in an emergency or force majeure situation. Encourage collaboration between notaries, regulatory bodies, and other external parties, such as data storage service providers or disaster experts, to develop effective strategies for dealing with force majeure risks. Update existing regulations to strengthen document retention requirements in response to force majeure risks. Regulations should reflect new challenges emerging in the digital age and environmental changes that may affect document retention. By implementing these measures, policy makers, legal practitioners and other relevant parties can strengthen regulations related to the retention of notarial deed minutes and reduce the impact of force majeure risks on the integrity of these documents.

CONCLUSION

The expansion of regulations regarding the retention of notarial deed minutes in the face of force majeure risks shows that additional measures are needed to ensure the security, integrity and accessibility of these important documents in emergency situations. The expanded regulations emphasize the importance of strict compliance with document retention rules. Notaries and other relevant parties must meticulously comply with retention requirements to ensure these documents remain protected. Dealing with force majeure risks requires investment

in a robust security infrastructure, both in electronic and physical storage. The latest technology and best practices in risk management should be applied to protect notarial deed minutes from damage or loss. Collaboration between notaries, regulatory bodies, service providers and disaster experts is essential to develop an effective strategy for dealing with force majeure risks. A coordinated and integrated approach is required to ensure a quick and appropriate response in emergency situations. Regulations should be updated regularly to accommodate environmental and technological changes that may affect document retention. These updates should reflect new challenges, including force majeure risks, and strengthen security and compliance requirements. Preparedness and recovery measures should be prioritized in the expanded regulations. Notaries and related parties should have a clear contingency plan for storing backup copies of documents, as well as an effective recovery strategy if documents are damaged or lost due to force majeure. Thus, the main takeaway is that the expanded regulation emphasizes the need for additional measures to ensure the security and accessibility of notarial minutes in the face of force majeure risks. Collaboration, compliance, investment in security, and regulatory updates are key to effectively meeting this challenge.

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