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# Position of Deed Made by a Retired Notary in Court Proceedings in Banda Aceh

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## *Abstract*

Article 65 of Law No. 2 of 2014 concerning Notarial Department states "Notary, Substitute Notary and Notary Acting Officer are responsible for any deed made even though the Notary Protocol has been submitted or transferred to the notary protocol depository." In practice, it often occurs when the Protocol Deed is transferred to the Notary protocol holder of the party harmed by the existence of the deed to a lawsuit involving a retired notary public. This is as happened in the case in the Banda Aceh District Court. This relates to the summoning of witnesses who must obtain approval from the Notary Honorary Assembly in accordance with Article 66 paragraph 1 of the UUJN. This research aims to explain the position of the Deed made by a retired Notary who is sued to the Court and the liability of the Notary Protocol Holder if the Deed of Protocol held in question in the Court and to know the need for approval from the Notary Honorary Assembly if the retired notary is called as a witness in a court case. The research method used is normative research method. The data used is primary data. The results showed that: A retired notary (werda) the position of the deed that he made as a deed of protocol submitted to the Notary protocol holder. If the deed of protocol is questioned to the court, then the retired notary is responsible for the deed he made. The notary of the Protocol holder cannot be held liable for the Deed of Protocol he holds if it is in question in the Court. If there is a problem with the deed then the responsible person remains the notary concerned and not the notary protocol holder. The summons of a retired Notary does not require permission from the Notary Honorary Assembly (MKN).

***Keywords:*** *Notarial Deed; Notary Pension; Judicial Process*

## *Introduction*

In every relationship in the community, a form of agreement is required that governs the rights and obligations of members of the community. Agreements made by members of the community are required a form of legal recognition, so that the agreement has the force of law and becomes a powerful tool of evidence for interested members of the community. Under the agreement, the law has governed the state officials authorized by law to ratify any agreement made, the Official of that state is a notary public.

Article 1 number (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notarial Positions (hereinafter referred to as UUJN) states that "A notary public official is

authorized to make authentic deed and has other authority as referred to in this Law or under other laws".

The existence of notariat institutions in Indonesia is required by the rule of law with a view to serving the public who need authentic written evidence about the circumstances, events or legal actions. Notary public works with special expertise and demand broad knowledge, as well as a heavy responsibility to serve the public interest and the essence of the notary duty is to govern in writing and authentic legal relationships between the Parties.[1]

In carrying out its duties, the notary is the only public official authorized to make an authentic deed of all acts, agreements and determinations required by a general regulation or by the interested one is required to be stated in an authentic deed[2] Notary public also serves in ensuring the certainty of the date of an agreement, keeping its deed and providing grosse, copies and quotations, all as long as the making of the deed by a general regulation is neither assigned nor excluded to officials or others[3]

When viewed in terms of authority, Notary public officials have attribution authority given by legislators through UUJN. The authority was created and granted by uujn itself. Notary General Authority stipulated in Article 15 paragraph (1) of uujn which specifies that the Notary is authorized to make an Authentic Deed concerning all acts, treaties, and determinations required by the laws and/or desired by the interested to be stated in the authentic deed, guaranteeing certainty.

Article 15 paragraph (2) of the Law on Notary Public Office also stipulates that in addition to the notary authority stipulated in Article 15 paragraph (1) then the Notary is also authorized to:

a. Validate the signature and establish the certainty of the date of the letter under hand by registering in a special book;

b. Book a letter under your hand by registering in a special book;

c. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter in question;

d. Confirm the match of the photocopy with the original letter;

e. Provide legal counseling in connection with the creation of the Act;

f. Make a Deed relating to land; or

g. Make a deed of minutes of auction.

Based on these provisions, notaries are authorized to legalize the deed under the hands made by the parties for the purposes of proof of a cooperation contract and legal relationship.[4] To carry out its duties based on Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions, notaries have a basic principle held in assessing a deed that is the principle of valid presumption or better known by the name of presumption iustae causa, meaning that the deed made by a notary public must be considered valid until there is a party that declares the deed invalid.[5]

[1] Muhammad Haris,"Kewenangan Notaris sebagai Pejabat Lelang Kelas II dalam Memberikan Penyuluhan Hukum atas Akta Risalah Lelang yang Dibuatnya", *Jurnal Syariah: Jurnal Ilmu Hukum dan Pemikiran*, Vol 17, Nomor 1 Juni 2017, hlm.54.

[2] Whenahyu Teguh Puspa, "Tanggungjawab Notaris Terhadap Kebenaran Akta Dibawah Tangan Yang Dilegalisasi Oleh Notaris" *Jurnal Repertorium* Volume III No. 2 Juli-Desember 2016, hlm.157.

[3] Cut Era Fitriyeni, "Tanggung Jawab Notaris Terhadap Penyimpanan Minuta Akta Sebagai Bagian Dari Protokol Notaris", *Kanun Jurnal Ilmu Hukum* No. 58, Th. XIV (Desember, 2012), hlm.392.

[4] Komar Andasasmita, Notaris I, Bandung: Ikatan Notaris Indonesia, 2010, hlm.12.

[5] Endang Purwaningsih, 'Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum' (2011) 2 *Jurnal Adil*, hlm.328.

In addition, notaries in making deed do not investigate the truth of the letter submitted by the party who made the deed. It is intended that notaries as public servants can act quickly and appropriately, as well as stating the validity or invalidity of a letter in case of forgery. Notary positions that are so central to the various authorities granted by law, should be exercised with care in order to avoid various mistakes. If the notary fails to perform his/her position and violates the provisions of the law, then the notary may be held liable for his/her mistake. This led to many notaries being sued in court by the parties for committing an act against the law. The lawsuit against the notary was not only made when he was a notary public, but also when he had retired and/or ended his term.

In the event that the term of notary public ends is stipulated in Article 8 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notarial Positions which specifies that:

1) The notary ceases or is dismissed from his/her position with respect because:
   a. Died;
   b. He was 65 (sixty-five) years old;
   c. Own request;
   d. Not being able spiritually and/or physically to perform notarial duties continuously for more than 3 (three) years;
   e. Concurrently position as stipulated in article 3 letter g.
2) The age provisions as referred to in paragraph (1) letter b may be extended until the age of 67 (sixty-seven) years with consideration of the health in question.

In the provision of Article 62 letter b uujn which states that if the notary has ended his term of office because he is 65 (sixty-five) years old, then the notary protocol is handed over to the notary protocol holder. The expiration of a notary public's term does not end the notary's responsibility for the deed he/she makes. It is as stated in Article 65 of the UUJNP which states that: "Notary, Substitute Notary and Notary Acting officer are responsible for every deed made even though the Notary Protocol has been submitted or transferred to the notary protocol depository."

If the notary commits an error in the making of the authentic deed and is not in accordance with the provisions of the Notary Department Law resulting in losses for the parties to the making of the deed, then the notary may be sued to the court on the basis of unlawful acts that cause harm to others[6].

This often happens in practice, when a Notary retires and the Protocol Deed is handed over to the Notary protocol holder, then the parties harmed by the existence of the deed make a lawsuit to the court. This is as happened in a civil case in the Banda Aceh District Court. In a civil case with a lawsuit, the plaintiff is the holder of property rights to the land and buildings. The defendant is a Notary Protocular holder of a Notary Public who issued a Deed of Recognition No. 60 dated May 27, 1980. In the Deed of Recognition it is stated that all rights to The Act No. 60 and the buildings and plants on it is a joint right between the Plaintiff together with the plaintiff's brother.

The plaintiff never faced/made a Deed of Recognition to a Notary Public in Banda Aceh on May 27, 1980 as mentioned in the Deed of Recognition No. 60 dated May 27, 1980. Therefore, the plaintiff asked the panel of judges to declare the Deed of Confession No. 60 dated May 27, 1980 issued by the

[6] Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, Bandung: Refika Aditama, 2009, hlm.37.

Defendant is a legal defect from the beginning and there is no legal force. Therefore, the plaintiff filed a lawsuit to the Banda Aceh District Court on June 21, 2017 in the Case Register No. 36/Pdt.G/2017/PN Bna.

In another case, teuku fakinah foundation dispute where the plaintiff is a former director of Teuku Fakinah Hospital. The defendants are one of them notary holders of the Protocol Act. The lawsuit against the Notary protocol deed holder because the previous Notary who had issued the Deed of Protocol made a change in the Deed of Establishment of Teungku Fakinah Foundation at the request of someone who is not recorded as part of the organ of Teungku Fakinah Foundation. Amendment to deed of establishment No. 01 dated 09 April 2011 is not legally valid because the one facing to make changes to the deed of establishment against Teungku Fakinah Foundation is not included in the Foundation Organ. Therefore, the plaintiff filed a lawsuit dated July 22, 2019 to the Banda Aceh District Court with the lawsuit number No. 36/Pdt.G/2019/PN Bna.

In addition to the problems in some of these cases, against the retired notary (werda emeritus), problems also occur in the event that he is called as a witness in a criminal case related to the deed he made. According to the provisions of UUJN, notaries called as witnesses in court must obtain approval from the Notary Honorary Assembly (MKN). Article 66 paragraph 1 uujn which states that: If required law enforcement in the judicial process, namely investigators, public prosecutors or judges can submit a letter of request for approval in order to make a summons to a notary public. The letter was submitted to the Notary Honorary Assembly.

The provision is due to the obligation of the notary to keep everything about the deed made, as well as the information obtained from the parties in the process of making the deed. However, the provision does not regulate the retired notary public, so there is a problem about the obligation for the retired notary to obtain permission from the Notary Honorary Assembly if called as a witness in court in a criminal case, while the provisions of the law do not regulate it.

Based on this, there is an uncertain circumstance against the notary deed made by a retired notary public in connection with the matter in court filed by the aggrieved party of the notary deed and in the process of calling as a witness by the investigator, besides being an obstacle in the case of a notary call that has retired as a witness in court to obtain permission from the notary honor mejelis because it is no longer an an members of the notary public so this needs further research.

## *Methodology*

The type of research used is normative legal research. Research with normative hukun has the characteristic of studying the object of legal research in the form of legal principles, legal rules, in the sense of value (norm), concrete legal regulations, in the form of doctrines, laws and regulations, and the legal system or das sollen.

## *Result and Discussion*

### *Position of Retired Notarial Deed in Court Proceedings*

The existence of a Notary Public is so central in providing legitimacy to the civil legal relationship between the parties through the deed made by him and before him. Notary public plays an important role in providing legal certainty of an agreement formulated by the parties. Therefore, because of its central function, Notary public is faced with various complex issues related to the agreement or legalization of a letter. There is a complexity of problems experienced in business and civil relations. Such complexity relates to conflicts of interest between parties who do not have good faith in a legal relationship. Bad faith in civil law can occur by utilizing legal instruments as a tool to legitimize its

actions against the rights of others in an agreement.

The existence of various complexities of the problem in akhinya involving other parties authorized by the law to participate in the legal relationship. The involvement of the Notary public as an official authorized to issue authentic deed is inesmpible. This is because the notary function is directly related to the interests of the parties. In the construction of notary law one of the notary duties is to formulate the wishes, actions of the face and the face in the form of an authentic deed by paying attention to the rule of law. In carrying out its duties the notary is obliged to explain that what is contained in the notarial deed has been fully understood and understood and in accordance with the will of the parties, namely by reading it so that the contents of the deed are clear to the parties.

This action must be done in carrying out its authority in making all types of deed. Therefore, the parties may decide freely whether or not to approve the contents of the deed to be signed. Although notaries only follow the will of the Notary parties also have a prohibition and dis authoritation of Notary Public to make a deed, Article 52 paragraph (1) and Article 53 UUJN assert in certain circumstances Notary is prohibited from making a deed, this prohibition only exists on the legal subject of the face, if the legal subject is prohibited, then the substance of the deed (his actions) is not allowed to be made. Duties and obligations based on legitimate authority both sourced in the law and from the agreement can give rise to responsibility on the executor of obligations because every authority given must always be followed by obligations or responsibilities[7]

Notarial deed as a means of authentic evidence is a strong proof for those who file in a trial, because the authentic bukt tool is a binding and perfect evidence, then in a case if one of the parties submits an authentic proof tool, for example a certificate of property rights on the land can be suspected that he is the party that will win in the case as long as there is no denial or proof otherwise from the opposing party.

Against the existence of authentic deed applies the principle of acta publica probant sese ipsa. The basic purpose is a deed that appears to be born as a deed and meets the conditions that have been determined, then the deed applies or is considered as an authentic deed, this means the signature of the official is considered as the original, until there is proof otherwise.[8]

Regarding the position of a notary in the settlement of civil disputes, it can be seen from the context whether the notary did something wrong so that it can be qualified to commit acts against the law, based on Article 1365 of the Civil Code, so that in this case the notary must be made as a Defendant because it has committed errors outside its code of conduct and it harms others. Beyond that, the notary may also be a Defendant or witness at the trial[9]

Notary public may err on the content of the deed due to incorrect information from the parties, but the error cannot be accounted to the notary because the contents of the deed have been confirmed to the parties. Minuta deed must be made notary and in it there is a signature of the face which is the approval of the face to the contents of the notarial deed.

In the correct state of notary law concerning Notarial and Notary deed, if a Notarial deed is in question by the parties, then:

a. The parties come back to the Notary public to make a deed of cancellation of the deed, and thus the deed that is canceled is no longer binding on the parties, and the parties bear all the consequences of

[7] Endah Pertiwi, "Tanggung Jawab Notaris Akibat Pembuatan Akta *Nominee* Yang Mengandung Perbuatan Melawan Hukum Oleh Para Pihak", *Jurnal IUS* | Vol VI | Nomor 2 Agustus 2018, hlm. 252.

[8] Tri Yanty Sukanty Arkiang, "Kedudukan Akta Notaris Sebagai Alat Bukti Dalam Proses Pemeriksaan Perkara Pidana", *Jurnal Keadilan Progresif* Volume 197 2 Nomor 2 September 2011, hlm. 200.

[9] Anita Afriana, "Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Di Indonesia Terkait Akta Yang Dibuatnya", *Jurnal Poros Hukum* Padjadjaran Volume 1, Nomor 2, Mei 2020, hlm. 248.

such restrictions.

b. If the parties do not agree the deed in question to be annulled, either party may sue the other party, with a claim to degrade the notarial deed into a deed under the hands. Once degraded, the judge examining the lawsuit can give its own interpretation of the deed of Notary Deed that has been degraded, whether it remains binding on the parties or canceled. It depends on the judge's evidentiary and judgment.

If in the other position, namely one of the parties feel harmed from the deed made by a Notary Public, then the party who feels harmed can file a lawsuit in the form of a claim for compensation to the notary concerned, with the obligation of the plaintiff, namely in the lawsuit must be proven that the loss is a direct result of the notarial deed. In both positions, the plaintiff must be able to prove anything violated by the Notary Public, from the outward aspects, formal aspects and material aspects of the Notarial deed.94 Notary Public/PPAT in carrying out its duties and positions as a public official authorized to make an authentic deed is burdened with responsibility for his/her actions. The responsibility is as his willingness to carry out his obligations which include material truth to the deed he made.

Notary / PPAT is responsible for the negligence and error of the contents of the deed made before him, but notary / PPAT is only responsible for the formal form of authentic deed as stipulated by the Law. Responsibilities relating to material truth. Material error is the error of the material / content of the deed that originally made the deed has been in accordance with the law and the content of the deed has been agreed by the parties but there is a default or unlawful act from one of the parties that resulted in the deed does not have the power to prove the authentic deed and in this case the notary can not be blamed because the notary has made the deed in accordance with the prevailing laws and regulations[10]

Material error is the error of the contents of the deed due to the existence of parties who smuggle unlawful acts that result in the deed does not have the power of material proof even though outwardly and formally it is in accordance with the provisions that have been determined by the law then the deed that has one of the elements of the error can immediately be null and void.

From the explanation of material errors above can be concluded the criteria of notarial deed as an authentic deed that has material errors are:

a. Errors in the Contents of notarial deed Errors that occur in the content of the deed can occur if the parties provide information that at the time of making the deed is considered correct, but after that it later turns out to be incorrect.

b. Because of the Defect of the Will of the Agreement born of the agreement of the meeting of the offer and acceptance, under normal circumstances is the agreement between the will and the statement. Nevertheless, it does not close the possibility that the deal was formed by the existence of a flawed element of wilsgebreke will. Agreements whose formation process is influenced by the defective element of the will have the effect of the law can be annulled vernietigbaar. In the Civil Code there are 3 things that can be used as the reason for the cancellation of the agreement based on defects in will, namely:

1) Error or error (dwaling) 14 There is error or error, this is related to the nature of the object or person and the opposing party must know or at least know that the nature or circumstances that cause error for the other party is very decisive, related to the condition can be recognized or known.

2) Coercion (dwang) 15 Coercion arises when a person is moved to close an agreement or give an

[10] Lidya Christina Wardhani, "Tanggung Jawab Notaris/PPAT terhadap Akta yang Dibatalkan oleh Pengadilan", Jurnal Lex Renaissance No. 1 Vol. 2 Januari 2017: hlm.58.

agreement under threat of being unlawful.

3) Fraud (bedrog) 16 Fraud is a form of error that is predicted. The purpose of being quantified means that there is a misdirection of one party, but this error is deliberate by the other party. So the similarity between error and deception is the existence of a misguided party while the difference lies in the element of deliberateness to mislead on fraud.

Akta notaris juga dapat digugat ke pengadilan karena Perbuatan Melawan Hukum *(Onrechtmatige Daad).* Konstruksi yuridis yang digunakan dalam tanggung jawab perdata terhadap kebenaran materiil terhadap akta yang dibuat oleh Notaris adalah konstruksi perbuatan melawan hukum Pasal 1365 KUH Perdata). Adapun yang disebut dengan perbuatan melawan hukum memiliki sifat aktif maupun pasif. Aktif dalam artian melakukan suatu perbuatan yang menimbulkan kerugian pada pihak lain,maka dengan demikian perbuatan melawan hukum merupakan suatu perbuatan yang aktif. Pasif dalam artian tidak melakukan suatu perbuatan tertentu atau suatu keharusan, maka pihak lain dapat menderita suatu kerugian. Unsur dari perbuatan melawan hukum ini meliputi adanya suatu perbuatan melawan hukum, adanya kesalahan dan adanya kerugian yang ditimbulkan.

The formulation of Article 1365 of the Civil Code is "any act against the law, which brings harm to another person, obliges the person who for his fault to issue the loss, indemnify the damages". Unlawful conduct is more defined as an act of injury than a breach of contract. Moreover, lawsuits against the law are generally not based on the existence of contractual legal relationships. The responsibility of unlawful acts is present to protect one's rights.

The law in unlawful acts outlines the rights and obligations when a person commits a good deed of wrongdoing or negligence or injures another person and the act causes harm to others. Illegal acts in Indonesia normatively always refer to the provisions of Article 1365 of the Civil Code. Article 1365 of the Civil Code specifies that any unlawful act that results in harm to another person requires the person who committed the act to indemnify.

In the case of civil disputes that occurred in the city of Banda Aceh where notary protocol holder was made as a defendant because of the deed of protocol that is in his power. The plaintiff filed a lawsuit to the Banda Aceh District Court on June 21, 2017 in The Register of Cases No. 36/Pdt.G/2017/PN Bna. This happens in a civil lawsuit with a lawsuit against the plaintiff who is the holder of property rights to land and buildings.

The defendant is a Notary Public protocol holder of a Notary Public who issued a Deed of Recognition No. 60 dated May 27, 1980. In the Deed of Recognition it is stated that all rights to The Act No. 60 and the buildings and plants on it is a joint right between the Plaintiff together with the plaintiff's brother. That the capacity of Defendants as Notaries in Banda Aceh is based on decree. Menkeh No.C.350.HT.03.01-TH.1998 dated October 12, 1998 as the Protocular holder of Notary Haji Rustam Effendi Rasyid, a Legal Scholar who was then a Notary in Banda Aceh. The plaintiff never faced/made a Deed of Recognition to a Notary Public in Banda Aceh on May 27, 1980 as mentioned in the Deed of Recognition No. 60 dated May 27, 1980.

The Deed is issued without plaintiff's knowledge and is contrary to the provisions of the law and has no legal force. The act was flawed from the beginning and had no legal force. Therefore, the plaintiff asked the panel of judges to declare the Deed of Confession No. 60 dated May 27, 1980 issued by the Defendant is a legal defect from the beginning and there is no legal force. Notary protocol holder as defendant considers that the lawsuit is misaddressed. This is because the Act of Recognition was made before a Notary Public in Banda Aceh. At the time when the Plaintiff makes the Deed of Plaintiff No. 60, dated May 27, 1980 the defendant's position has not become a Notary public so does not have any authority to make a Notarial Deed (authentic deed).

The defendant's legal action issued a second copy of The Deed of Recognition No. 60 dated May

27, 1980 as Notary Notary Holder of Notary Protocol is not an act against the law but rather a act ordered / authorized by Law No. 30 of 2004, namely the Law of Notary Department. Based on the provisions of article 64 paragraph (2) of Law No. 30 of 2004 concerning Notarial Department which states that "Notary Notary Notary Protocol Holder as referred to in paragraph (1) is authorized to issue Grosse Deed, Copy of Deed or deed quotation". It is thus clear that the Defendant provided a second Copy of the Deed of Confession No. 60, dated May 27, 1980 made before the Notary public who issued the Deed of Confession is not an act against the law.

Against the case, the banda aceh district court judge decided through the decision No. 36 /Pdt.G/2017/PN Bna on the case with several considerations including the following. First, based on the overall consideration of the subject of the plaintiff's lawsuit, then with the lack of carefulness of the plaintiff's lawsuit that does not include the Notary who made the Deed Of Claim No. 60 dated May 27, 1980 which is used as an object in this case, then the Panel of Judges can draw the conclusion that the plaintiff's lawsuit is thus categorized as a lawsuit less party (plurium litis consortium) and with the discientation of the plaintiff's lawsuit that does not include the Notary who made the Deed of Recognition and the plaintiff's father's heirs in this case. Because the plaintiff's claim is declared unacceptable, the other evidence in the plaintiff's lawsuit is entirely in the subject matter which is the core of the dispute that becomes the substance of the case does not need to be considered and given another legal judgment.

In another case, teuku fakinah foundation dispute where the plaintiff is a former director of Teuku Fakinah Hospital. The defendants are one of them Notary Who holds the Deed of Protocol. The lawsuit against the Notary protocol deed holder because the previous Notary who had issued the Deed of Protocol made a change in the Deed of Establishment of Teungku Fakinah Foundation at the request of someone who is not recorded as part of the organ of Teungku Fakinah Foundation. Amendment to deed of establishment No. 01 dated 09 April 2011 is not legally valid because the one facing to make changes to the deed of establishment against Teungku Fakinah Foundation is not included in the Foundation Organ. Therefore, the plaintiff filed a lawsuit dated July 22, 2019 to the Banda Aceh District Court with the lawsuit number No. 36/Pdt.G/2019/PN Bna.

In the evidence of his lawsuit, the plaintiff stated that the objection to the Amendment to the Deed of Establishment, because Mrs. D as the face explained based on the Deed dated February 17, 2011 Number: 30 has established the Teungku Fakinah Foundation, when in fact in the Deed Number: 30 dated February 17, 2011 there was never a name Mrs. D and in deed Number: 30 dated February 17, 2011 listed the name of the Plaintiff as the Founder of the Foundation Teungku Fakinah. So Mrs. D's name has never been in the two Deed as an Organ of the Foundation, either in Deed No. 30 dated February 17, 2011 or in the Amendment to deed of Establishment No. 01 dated April 9, 2011.

In the exception of Notary Public as defendant states that the plaintiff's lawsuit is lacking the parties. The plaintiff in posita postulated Mrs. D as a party that has faced Notary Sabaruddin, S.H., SpN., to make changes to the Deed of Establishment of Teungku Fakinah Foundation No. 30 dated February 11, 2011 so that changes have been made as a deed No. 1 dated April 9, 2011 made before Notary Sabaruddin, S.H., SpN.

The plaintiff postulated Mrs. D as an unlisted party either as the founder or as an administrator in the foundation organ in the Deed of Establishment of Teungku Fakinah Foundation No. 30 dated February 17, 2011 and Deed No. 01 dated April 9, 2011 so that Mrs. D is not entitled/ does not have the capacity to amend the Deed of Establishment of Teungku Fakinah Foundation No. 30 dated February 17, 2011. Thus, plaintiff should withdraw Mrs. D as Defendant in the lawsuit a quo because the actions of Mrs. D made changes to the Deed of Establishment of Teungku Fakinah Foundation before Sabaruddin, S.H., SpN., without rights is an unlawful act.

In its ruling No. 36 /Pdt-G/2019/PN-Bna, the banda aceh district court judge stated that the party that has requested changes to the deed of foundation establishment should be withdrawn as defendants. Because the plaintiff does not withdraw the party that made changes to the deed of establishment of the foundation as a defendant, then the lawsuit can be said to be a lawsuit that is less party (plurium litis

consortium). In its ruling, the panel of judges also declared the plaintiff's lawsuit unacceptable and sentenced plaintiffs to pay the costs of the lawsuit.

Against the lawsuit against the Notarial Deed concerning the change of deed of establishment of the foundation where the lawsuit made after the Notary retired, shows that the Notarial Deed as an authentic deed that states the legality of a legal entity can not guarantee that the process of making the deed does not cause harm to other parties. Notary in making a deed does not have an obligation to check the legality of the parties who are entitled to make the deed. As long as the parties who make the deed meet the requirements as stipulated by law, then they have the right to make a deed. In the process of making a deed, there are witnesses known as instrumentair witnesses and identifying witnesses.

Instrumenter witnesses are witnesses who participate in the making of deed (instrument). The witness is required by law to be present at the making of a Notarial deed. They by way of affixing their signatures, testifying of the truth of the existence of the done and the fulfilling of the formalities required by Article 38 uujn-P, mentioned in the deed. Usually, the witness of this instrumentair is a notary employee itself. The witness known is the identifying witness who introduced the face to the Notary. The witness consists of two people who are at least 18 years of age or have been married and capable of committing legal acts.[11]

It is these witnesses who witness and see for themselves the events of the law. Witnesses who witness whether in the making of a deed made by or before a Notary public have been conducted in accordance with the conditions of validity of an authentic deed is an instrumentary witness, namely a witness whose names are listed in the Notarial deed. The existence of Instrumenter Witnesses in addition to being intended as evidence can also help a Notary public's position to be safe in the event that a notarial deed is litigated by one of the parties in the deed or a third party.

In the event of checking the identity of the complainant against the authenticity of the deed, the Notary shall request the necessary documents or letters to be set forth in the deed. Documents that must be requested by a Notary public to be attached a copy in the Minuta Akta (original Notarial Deed) is an id card or Identity Card (KTP)[12] The notary must ensure that the face uses the original identity in the deed to be made. In addition, there are several requirements that must be met by the face in the making of the deed, namely the face at least 18 (eighteen) years old or married and capable of doing legal acts, the Face must be known by a Notary or introduced to him by 2 (two) witnesses who are at least 18 (eighteen) years old or have been married and capable of doing legal acts or introduced by 2 (two) other confronters , and the introduction is expressly stated in the deed of.

In the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning the Application of The Principle of Service Users for Notaries explains that Notaries are obliged to be more thorough and careful in knowing the confronters, either checking the completeness and authenticity of the documents shown, Notaries must also be careful of transactions that will be made before the Notary is the result of money laundering or not. Notary public must identify and verify the data of service users thoroughly, namely until the material truth. The obligation to apply thoroughness and caution to the face is carried out when the Notary doubts the correctness of the identity and information reported by the face.

In such cases, the presence of the party who makes the deed as a witness and the witnesses both intrumentair witnesses and identifying witnesses are necessary to determine the truth of the contents of the deed and the truth of the confronters who make a deed. As for attracting a notary of the protocol apprentice as a defendant is a mistake, given that the notary protocol holder is only the party given the responsibility of holding the deed of protocol without knowing the truth of the contents of the notary protocol.

[11] Anisah Aini Romadhon, "Peranan Saksi Instrumenter Dan Akibat Hukumnya Terhadap Kerahasiaan Dalam Pembuatan Akta Notarii", *Tesis Program Magister Kenotariatan* Program Pascasarjana Fakultas Hukum Universitas Islam Indonesia, 2018, hlm.8.

[12] Dea Perika, " Fungsi Notaris Dalam Pemeriksaan Identitas Penghadap Terhadap Autentisitas Akta Dihubungkan Dengan Asas Kehati-Hatian", *Syiar Hukum Jurnal Ilmu Hukum* | Volume 18 Nomor 2, hlm. 178.

### *Notary Responsibility of Protocol Holder for Protocol Deed Lawsuit in Court*

The responsibilities and ethics of the profession are closely related to integrity and morals, if they do not have integrity and good morals then a notary can not be expected to have responsibilities and good professional ethics as well. Professional ethics arise as a result of interactions among fellow members of the community who were born developed or created by the community itself. Theoretically and technically the notary profession must have ethics and professional responsibilities, therefore a notary public must be responsible for the deed he has made, even if the notary has ended his term of office.

Responsibility is born as a result of the authority owned by the community. Authority is a legal action that is regulated and given to a position based on the prevailing laws and regulations governing the relevant position. Each authority has its limits, as stated in the laws and regulations governing it.

The authority held by a position in administrative law is usually obtained by attribution, delegation, or mandate. The authority owned by a notary public is the authority of attribution, which is the authority attached to a position. The authority owned by the notary is a result of the position he held. Notary public as a position, and every office in the Country has its own authority. Every authority must have a clear legal basis. If an official commits an act beyond his authority, it is referred to as an unlawful act. An authority does not appear simply, but an authority must be expressly stated in the relevant laws and regulations.

Prohibition for notary public is an act that is prohibited by a notary public, and if this is violated then to the notary concerned may be penalized. Notary has a regional area of one province and has a position in one city or one district of the region. Notaries are prohibited from leaving the notary position for more than 7 (seven) working days, and notaries are not authorized to regularly perform positions outside their positions.

Against notary protocol, the responsibility remains with the notary deed maker and not on the notary recipient and the protocol depositor, except in the provision of a copy of the deed by the notary recipient and the notary protocol depositor there is a difference between the minuta deed and the copy of the deed then it becomes the responsibility of the notary recipient and the depository protocol. The provisions contained in Article 65 of uujn-P stated that the notary shall be responsible for any deed he makes even though the notary protocol has been submitted or transferred to another notary public. The provision provides a multi-interpretation understanding because in the clause the article is not explicitly mentioned about the time limit a notary must account for the deed he has made.

In principle, whenever a Notary dies, based on Article 35 of Law No. 30 of 2004 concerning Notarial Position, the family must notify the Notary MPD no later than 7 (seven) working days. If the Notary dies while on leave, the notary position duties are carried out by the Substitute Notary as a Notary Acting Notary no later than 30 (thirty) days from the date the Notary dies. The Notary Provisional Officer submits the notary protocol of the deceased Notary to the MPD no later than 60 (sixty) days from the date the Notary dies. In the event that a notary dies, the notary protocol will be handed over to another notary who will replace him as based on the provisions in Article 62 letter a UUJN. Based on this article it is said that another notary who will receive the protocol of the deceased notary is the designated notary.

In relation to notary responsibility as mentioned in Article 65 uujn states that the notary is responsible for every deed he makes, even though the notary protocol has been submitted or transferred to the notary protocol depository. Provisions that indicate that formil notary is responsible for the validity of the authentic deed he made and if it turns out that there is a legal defect so that the deed loses its authority and harms the interested parties then the notary can be required to reimburse costs, compensation and interest. Based on the provisions of Article 65 of the UUJN relating to notary responsibility for its protocols, notary public is obliged and fully responsible for all protocols.

Not only limited to the end of his term of office but his responsibility is attached for the lifetime of the Notary terms of administrative, notary responsibility in relation to the storage and holding of the physical form of each deed made which is a Notary protocol has ended in conjunction with the end of the

term of office of the notary concerned. From both opinions the notary's responsibility for the storage of deed may end but the accountability for the existence of sengke ta or which then arises from the deed he made must be held accountable for life.

Notary responsibility occurs in relation to the implementation of duties and obligations imposed on notaries based on the authority granted by law. Notary responsibility arises because of mistakes made by notaries in carrying out their duties, so that from the error arises losses for parties who request notary services. Consequences arising for the notary as a public official authorized in the making of an authentic deed, then it must be responsible and if there is a violation or deviation of the requirements of the making of the deed he made, it will bring consequences to the invalidity of the deed made by the notary.

Through this article we can see that the Notary who will receive the protocol of the deceased Notary public is a Notary Appointed by the Regional Supervisory Assembly (MPD). The submission of the protocol shall be carried out no later than 30 (thirty) days by making a news event submission of notary protocol signed by the submitter and who receives the Notary protocol.

In carrying out its position, the notary shall be obliged one of them is to make a deed in the form of a deed minuta and keep it as part of the notarial protocol as stipulated in Article 16 paragraph (1) letter b of the Notary Department Law, and in the explanation of the article, it is explained that the obligation in storing the deed minuta part of the notary protocol, is intended to maintain the authenticity of a deed by keeping the deed in its original form , so that if there is forgery or misuse grosse, copies, or citations can be immediately known easily by matching it with the original. However, the provisions of the Notary Department law do not explain how to store it.

Notary who dies and or notary who is permanently dismissed, there is no need for a Notary Acting Officer, because the Notary who dies and is dismissed permanently no longer has authority means that the Notary Position he held has stopped and will not be returned or reappointed as a notary public official. UUJN only regulates and explains how the standards and procedures for storing the minuta deed but does not regulate the storage of the deed minuta.

When the Notary has ended his term of office due to retirement and the deed of protocol is handed over to another Notary Public, then a problem arises if the deed of protocol is sued to the court. This situation gives rise to a discourse on liability for the occurrence of errors in the deed both formil and materil. This relates to the legal liability for the performance of the duties, functions and authorities of state officials.

In legal science there are 5 (five) forms of accountability principles, namely as follows:

a. The principle of liability based on fault, which is the principle that states that a person can only be held legally liable if there is an element of wrongdoing committed.

b. The principle of presumption of liability, which is the principle that states the defendant is always held responsible until he can prove, that he is innocent, so the burden of proof is on the defendant.

c. The principle of presumption of nonliability, i.e. this principle is the opposite of the principle of presumption to always be responsible, where the defendant is always considered irresponsible until proven, that he is guilty.

d. The principle of strict liability, in this principle sets the error not as a determining factor, but there are exceptions that allow to be relieved of responsibility, such as force majeur circumstances.

e. The principle of responsibility with limitation of liability with the principle of responsibility, the perpetrator must not unilaterally determine the adverse calusula, including limiting the maximum

responsibility. If there are restrictions, it must be based on applicable laws and regulations[13]

If it refers to some of the principles of legal responsibility, then the principle of responsibility that is most relevant to the need for notary responsibility of the protocol apprentice if there is an error in the deed based on the court's decision is the principle of liability based on fault. Based on the principle of responsibility, the notary protocol holder cannot be held liable for the deed of error of the protocol deed that he holds. This is because the Notary of the protocol holder is not involved either directly or indirectly in the process of making the deed. If the deed of protocol causes harm to other parties or contains criminal elements in the process of making it, then the notary should be held accountable for making the deed, even if the notary is no longer in office. This is because the notary's responsibility for the deed is valid for life.

Therefore, the decision of the Banda Aceh District Court that rejected the plaintiff's claim against the notary protocol holder on the basis of unlawful acts was the right decision, considering the relationship between the process of making the deed and the involvement of notary protocol holders in the making of the deed. In addition, a notary in making a deed must pay attention to the principles of prudence by examining the parties to determine its legality as a qualified party to make a deed and pay attention to the clauses of the deed to determine the material truth of the deed.

### *Summons of a Retired Notary as a Witness in a Court Case*

Notary public is a profession or a job with special skills that demands extensive knowledge, as well as a heavy responsibility to serve the public interest and the core of the notary's duty is to regulate in writing and authentic legal relationships between the parties who agreed to request notary services. Notary public should pay attention to the so-called professional behavior that has elements, namely notarial deed containing information and statements of the parties, made on the will or request of the parties to further notary make it in a form that has been determined according to the law.

Law No. 2 of 2014 which is a change from Law No. 30 of 2004 concerning Notarial Position on January 15, 2014, Article 66 paragraph (1) of the Notarial Department Law on the re-inclusion of a new institution, namely the Notary Honorary Assembly (MKN) authorized to give permission for the taking of copies of the deed minuta and the summoning of Notary Public Changes article 66 of the Notarial Department Law into the Interests of judicial process, Investigators, Public Prosecutors, or Judges With The Approval of the Notary Honorary Assembly Authorized to take a photocopy of the Minuta Deed and / or letters attached to the Minuta Deed or Notary Protocol in the storage of Notary Public and call the Notary to attend the examination related to the deed he made or the Notary Protocol that is in storage.

However, some provisions in the Notary Department Law require several implementing regulations such as 66A of Law No. 2 of 2014 concerning Notarial Positions which expressly states that further concerning the duties and functions, terms and procedures of appointment and dismissal, organizational structure and appointment procedures and budget of the Notary Honorary Assembly are regulated by the Ministerial Regulation.Therefore, a Regulation of the Minister of Law and Human Rights No. 7 of 2016 on Notary Honorary Assembly. Since the enactment of Permenkumham No. 7 of 2016 the implementation of the duties and functions of the Notary Honorary Assembly, especially the Notary Regional Honorary Assembly has been running in accordance with the proper corridors.

However, there are still some obstacles in its implementation both from the aspect of the rule of law and from the technical implementation in the field. The presence of mkn is expected to provide a form of optimal legal protection for Notary Public and can provide preventive and curative guidance in the enforcement of UUJN in carrying out its duties as a public official.

There are various tasks owned by MKN. Article 18 permenkumham No. 7 year 2016 states that:

[13] Shidarta, Hukum Perlindungan Konsumen Indonesia, Jakarta: PT. Grasindo, 2000, hlm.58.

a. The Honorary Assembly of the Regional Notary has the duties of: (examine the application submitted by investigators, prosecutors, and judges; and give approval or rejection of the request for approval of the notary summons to be present in the investigation, prosecution, and judicial process)

b. In carrying out the duties as referred to in paragraph (1), the Honorary Assembly of the Regional Notary has the function of conducting construction in the framework of: (maintain the dignity and honor of notary public in carrying out their profession; and provide protection to notary public in relation to the obligation of notary public to keep the contents of the Deed confidential)

In addition, the call of a notary witness cannot be taken for granted. According to the provisions of Article 66 uujn the summons of a notary public must obtain the approval of the Honorary Assembly of the Notary Region. The need for approval of the Notary Honorary Assembly of this Region considering the notary as a public official who jib keep the contents of the deed secret and all information obtained in the implementation of his/her position.

This is in line with the oath of office spoken before the notary carries out his position, as affirmed in Article 4 Paragraph 2 uujn. Notary public cannot freely disclose or divulge the secret of his office to anyone unless there is another law that allows him to open his office secret, the oath of office is affirmed as one of the notary obligations stipulated in Article 16 Paragraph (1) letter f UUJN which states in carrying out his office, notary is obliged to keep everything about the deed he made and all information obtained for the making of the deed in accordance with the oath / promise of office, unless the law specifies otherwise.

In the event of examination of criminal cases allegedly conducted by notaries, investigators, public prosecutors or judges must seek approval from the Honorary Panel of Notary Regions by submitting a written application in The Indonesian Language to the Honorary Notary General of the Territory in accordance with the working area of the Notary concerned, whose copy is submitted to the Notary Public. In Article 24 Permenkumham No. 7 of 2016 it is stipulated that in conducting the examination, the panel is authorized to make a summons against a notary based on the request of the investigator, public prosecutor or judge. Therefore, the notary must be present to bring a deed / letter attached to the deed minuta and the deed list book, and / or other letter related to the deed that becomes the subject matter and in the process of examination to be shown to the Regional Court.

The Examiner's Panel is authorized to examine and give approval or rejection or application is not acceptable or the application is returned to the request of investigators, public prosecutors or judges related to the taking of copies of deed minuta and letters attached to the deed minuta and / or notary protocol in the storage of notary public and notarized summons. The Panel of Examiners gives approval or rejection or the application is not acceptable or the application is returned after hearing the information directly from the notary concerned.

The application for investigation can also be rejected by the Notary Honorary Panel by giving clear reasons for its refusal to law enforcement. Not explained in uujn restrictions on acceptance and rejection that can be done by mkn ilayah, so it can be possible if there are alleged crimes committed by notaries then MKN itself that conducts coaching against rogue notaries with the aim of maintaining the good name of notary organization.

The mechanism of handling the application for approval of notarized examination or taking a photocopy of the deed minuta by investigators, public prosecutors or judges for the purposes of judicial process is only the authority of the Regional Court that is not tiered or tiered and is final, there is no appeal.

The Central MKN only has the task and function of providing coachings to mkn region in the implementation of its duties and functions with the approval of the Central MKN. Based on the provisions in Article 23 Permenkumham No. 7 of 2016 contains that the application for approval of taking minuta

deed or notary protocol and notary summons submitted by the Investigator, Public Prosecutor or Judge to attend the examination related to the deed or notary protocol that is in the notary storage submitted to the Chairman of the Regional Court in accordance with the notary work area concerned. The application is submitted in writing in Indonesian and the copy is submitted to the notary concerned.

The application must contain at least the notary name, notary office address, deed number and/or letter attached to the notarial deed or protocol minuta in the notary depository and the subject matter alleged. The letter is submitted and received by MKN Region through the secretariat and given a sign and date of receipt. The Chairman of MKN Wilayah shall provide an answer in the form of approval or rejection of the application letter within a period of no later than 30 working days from the date of receipt of the application, and if the period of 30 days is exceeded, then mkn Wilayah is considered to receive a request for approval.

Based on the application no later than 5 days after the letter is received held a meeting mkn Region to determine against the application must be followed up or not. If the result of the meeting decision considers it unnecessary to be followed up, then the Regional Court must notify the investigator, public prosecutor or judge who submitted the application as follows for the reason. Summonses to ordinary people to be examined as witnesses or suspects in just 1 (one) week, and if not coming will be recalled and can be a temporary forced attempt for a notary call by the investigator must wait a month which makes the proceedings run too which is while in the Criminal Procedure Law the proceedings must be fast and costs are light.

If the notary summons in a court case relating to the deed he made, then the discurus arises in connection with the summons against the notary who has retired to the court in connection with the deed he made. The summons of a retired notary public raises a question of the need for approval from MKN as a notary who has not retired. Against the discourse, it is necessary to first look at the position of the retired notary and the liability for the deed he made. In the event that a Notary public has ended his term of office in accordance with article 8 paragraph (1) letter d and paragraph (2) of UUJN No. 30 of 2004 Jo UUJN No. 2 of 2014 the relevant Notary protocol will be taken over by the holder of notary protocol either appointed by the Notary itself or by the Regional Supervisory Assembly (MPD) or the Minister.

The obligation of the Notary public to retire is to notify the MPD in writing about the end of his term of office as well as propose another Notary as the holder of the protocol within 180 (one hundred and eighty) days or no later than 90 (ninety) days before the Notary reaches the age of 65 years. Although the retired Notary Protocol has been handed over to another Notary Public, the responsibility for the Notary Protocol remains with the retired Notary Public. There is also a view that a retired Notary public cannot be held accountable for the deed he has made, so that the one who should be held accountable is the Notary of the protocol holder. If there is a criminal offence that occurs in the process of making deed such as fraud and forgery, then the notary even though he has retired can still be held accountable[14]

So the responsibility of the retired Notary public is only limited to civil and criminal liability if there is an element of wrongdoing in it. This is different from an active Notary Public whose responsibilities are not only civil and criminal but also administrative responsibilities that are tested based on the notary code of ethics.

Notary public who has ended his term of office and experienced criminal legal problems, then the investigator and public prosecutor will call him as a witness related to criminal acts on the deed he made. Notary summons both as a witness, as well as a suspect by investigators, public prosecutors and judges must obtain approval from the Notary Honorary Panel (MKN) and any collection of documents under the storage of the Notary holder must also obtain approval from the Notary Honorary Tribunal so that the public prosecutor and judge investigators in calling notaries both as witnesses and as suspects in the Court can not be arbitrary g call the Notary

[14] Nur Aisah, "Tanggung Jawab Notaris Setelah Berakhir Masa Jabatannya Terhadap Akta Yang Dibuat Oleh/Dihadapannya", *Tesis Program Magister Kenotariatan* Pasca Sarjana Universitas Islam Indonesia, 2018, hlm.102.

This is as stipulated in Article 66 of the Notary Department Law which states that:

a. For the purposes of judicial proceedings, investigators, public prosecutors, or judges with the approval of the Notary Honorary Panel are authorized: take a photocopy of the Minuta Deed and/or letters attached to the Minuta Deed or Notary Protocol in the storage of Notary Public; and call the Notary to be present in the examination related to the Deed or Notarial Protocol located in the storage of notary public.

b. The taking of a photocopy of the Minuta Deed or the letters as referred to in paragraph (1) letter a, made news of the submission event.

c. The Notary honorary assembly within a maximum of 30 (thirty) working days from the receipt of the letter of request for approval as referred to in paragraph (1) shall provide an answer to accept or reject the request for approval.

d. In the event that the notary's honorary assembly does not provide an answer within the period as referred to in paragraph (3), the notary's honorary tribunal shall be deemed to accept the request for approval.

The provision is a legal protection of the provision because law enforcement, especially police investigators can not easily for the sake of the criminal justice process to take authentic deed and or documents stored notary and call a notary public to come meet the call of examination related to documents that are his responsibility in the manufacture, without the approval of mpd. So the protection of the notary lies in the permit that must be obtained from the MPD if you want to make a call and / or notary examination. The provisions of Article 61 paragraph (1) uujn have been conducted material tests to the constitutional court because it is considered to impede the judicial process even there are parties who feel harmed by the provision, namely Kant Kamal who filed a material test against the article. Law enforcement is in principle a process in order to realize the purpose of the law itself, ideas or ideas of the law in order to become a reality.[15]

With the decision of the Constitutional Court Article 66 paragraph (1) of the Law of notary positions has changed so that the provisions of the phrase in the article become "For the purposes of the process, investigators, public prosecutors, or authorized judges (without the permission of MPD):

a. Take a photocopy of the deed and/or letter placed in the Minuta Akta or Notary Protocol held by the notary; and

b. Call for Notary Public to be present for examination related to deed that is responsible in the manufacture or Protocol of Notary Public stored by Notary Public.

This material test is submitted against the provisions governing the approval of MPD related to or related to the examination of the legal process is considered detrimental to the applicant because of the reported case there is a notary that has been done SP3, although the Police Of Metro Jaya Police has conducted a witness examination regarding the creation of an authentic deed by a notary public. The constitutional court in its ruling granted the applicant's application by revoking the phrase "with mpd approval" which is contrary to Article 27 (1) of the 1945 Constitution which outlines that all citizens have equal standing before the law and government and must uphold the law and government without

[15] Irawan Arif Firmansyah, "Peran Notaris Sebagai Saksi dalam Proses Peradilan Pidana", *Jurnal Akta*, Vol. 4 No. 3 September 2017, hlm. 383.

exception. Development in the field of substance / legal material that until now continues to be carried out is an effort to update indonesia's material criminal law (Criminal Code).

Based on the provisions of the court's decision that the summons of a Notary by investigators and public prosecutors in a court case including criminal cases does not need to obtain permission from the Regional Supervisory Assembly. Thus, this provision also applies to retired Notaries, where the summons against him also does not need to get permission from the MPD. Notaries who have retired institutionally are no longer part of the Notary profession, so institutionally it is no longer bound by the Notary Code of Ethics and also the institutions that enforce the code of conduct including the supervisory panel. Various provisions of the notary code of conduct that have been stipulated in the law only apply when they still hold the position of notary public, so that the juridical kosekuensinya notary honorary assembly and notary supervisory panel are no longer bound by notary public who no longer hold their positions.

## *Conclusion*

A retired notary (werda) of the position of the deed that he made as a deed of protocol submitted to the Notary protocol holder. If the deed of protocol is questioned to the court, then the retired notary is responsible for the deed he made both civil, criminal, and administrative responsibilities of the State. The notary of the Protocol holder cannot be held liable for the Deed of Protocol he holds if it is in question in the Court. Notary protocol holders only accept and store protolol-protocols from previous notaries. If there is a problem with the deed then the responsible person remains the notary concerned and not the notary protocol holder. Notary protocol holder is not a deed maker, his responsibility is only limited to administrative use of the rights and obligations of the deed and the Notary Supervisory Assembly that determines the place of storage of notary protocol. The summons of a retired Notary does not require permission from the Notary Honorary Assembly (MKN). That is because the retired Notary public is no longer part of the Notary profession, so institutionally it is no longer bound by the Notary Code of Ethics and also the institutions that enforce the code of conduct including the supervisory panel. Various provisions of the notary code of conduct that have been stipulated in the law only apply when they still hold the position of notary public, so that the juridical kosekuensinya notary honorary assembly and notary supervisory panel are no longer bound by notary public who no longer hold their positions.

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