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Heirs Responsibility for a Notaries Unfinished Act Upon the Notaries Demise

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Abstract: A Notary who dies during their tenure inevitably leaves behind unfinished work. This unfinished work specifically pertains to deeds drafted by the Notary in their capacity as the maker of an authentic instrument. Juridically, such deeds are not yet valid as authentic instruments and can be classified as unfinished Notary work at the time of death. This situation becomes the root of a legal issue because the draft deed that has not been signed is not categorized as a notary protocol. It is understood that a vacuum of norm exists in the Law on Notary concerning the responsibility for completing this unfinished work. This research aims to analyze the form of legal certainty for the completion of unfinished deed-making work when a Notary passes away. The research method used is normative-juridical, with a statutory and conceptual approach. The results show that when a Notary dies during the drafting process of a deed, where the formalization of the deed has not yet been executed, this implies that the deed remains a private agreement and does not qualify as a deed. Consequently, it is not qualified as a notary protocol. Therefore, any items entrusted by the appearers to the deceased Notary are merely limited to the rights and obligations between the parties and the Notary. This raises the question of whether the heirs are obligated to provide compensation to the appearers, especially since the heirs have limited information and knowledge about the notary office's management, which could lead to losses for them under certain conditions. The form of legal protection for the parties involves a receipt for the deposit of certificates and payment of advance fees, affixed with the notary office's stamp as a form of office management, which can facilitate the Heirs with the assistance of the office staff.

Keywords: Notary; Dies; Legal Certainty.

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I. INTRODUCTION

The profession of a Notary is a noble profession (*nobile officium*), as it is closely related to humanity, particularly in the drafting and formalization of written and authentic evidentiary instruments in the field of civil law.[1] Thus, as a legal professional, a Notary is obliged to provide legal services to guarantee legal certainty, order, and protection for the public.

A Notary is authorized as a public official to create authentic instruments, as stipulated in Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as UUJN-P). This article states that a Notary is a public official authorized to create authentic instruments and has other authorities as provided for in this or other laws. Therefore, the institution of notaries holds a trusted position, and a Notary automatically carries the value of trust that the public expects from their deeds. This is because a deed created by a Notary possesses legal certainty and has *prima facie* evidentiary value. [2]

Article 16 of the UUJN-P regulates the duties of a Notary as a form of respect for the high office they hold as a public official authorized to create authentic instruments. One mandatory duty of a Notary is to store the deed they create in the form of a *deed* kept as a notary protocol, as stipulated in Article 16 paragraph (1) letter b of the UUJN-P. The obligation to keep the *deed* as part of the Notary Protocol is intended to maintain the authenticity of the deed by storing its original form.[3]

A Notary must maintain the notary protocol with full responsibility. The notary protocol is not always held and stored by the Notary concerned; there are certain conditions that necessitate the transfer of the notary protocol, as regulated in Article 62 of the UUJN-P, which mandates that the notary protocol must be handed over to another Notary appointed by the Regional Supervisory Council. Article 63 of the UUJN-P further explains that when such an event occurs, the notary protocol must be handed over to the Notary holding the protocol, as appointed by the Regional Supervisory Council, after the Notary officially ceases to hold office. In the event of a Notary's death, the heirs are obliged to report the death of their family member serving as a Notary to the Regional Supervisory Council, as stipulated in Article 35 paragraph (1) of the UUJN-P.

A Notary who dies during their tenure inevitably leaves behind unfinished work. This unfinished work specifically pertains to deeds drafted by the Notary in their capacity as the maker of an authentic instrument. A Notary deed that has not yet

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[1] Habib Adjie, *Hukum Notaris Indonesia* (Bandung: Refika Aditama, 2008), 15.

[2] Endang Purwaningsih, "Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum," *ADIL: Jurnal Hukum* 2, no. 3 (2011): 323–36, https://doi.org/10.33476/AJL.V2I3.846.

[3] Ida Bagus Kade Wahyu Sudhyatmika and Swardhana Gde Made, "Akibat Hukum Protokol Notaris Yang Telah Meninggal Dunia Yang Belum Diserahkan Oleh Ahli Waris," *Acta Comitas : Jurnal Hukum Kenotariatan* 7, no. 2 (2022): 304–14, https://doi.org/10.24843/AC.2022.v07.i02.p11.

been ratified, is not yet legally valid as an authentic instrument, and can be classified as unfinished Notary work at the time of death. This situation becomes the root of a legal issue, because the deed that has not been signed is not included in the category of a notary protocol, as further explained in the Elucidation of Article 62 of the UUJN-P. Based on this issue, it is understood that there is a vacuum of norm in the UUJN-P regarding who is authorized and responsible for resolving this issue upon the Notary's death. If a solution is not immediately found for this regulatory gap, it will certainly cause material loss to the appearers, thus requiring legal certainty for the appearers regarding this legal issue. This research aims to analyze the form of legal certainty for the completion of unfinished deed-making work when a Notary passes away.

II. METHODS

This research utilizes a normative-juridical type, which involves reviewing formal regulations such as legislation, as well as theoretical literature, which is then related to the discussed issue.[4] The approaches used are the Statutory Approach and the Conceptual Approach. In this research, the author used the library study method for collecting legal materials, by reviewing and understanding library materials and conducting in-depth searches through internet media related to the topic. A deductive analysis method was employed to analyze the legal materials. This method involves identifying general problems and then applying them to explain more specific matters systematically, based on the collected legal materials.

III. ANALYSIS AND DISCUSSION

Legal Status of a Notary's Unfinished Work Upon the Notary's Demise

The Notary profession is a noble profession (*nobile officium*), as it is closely connected to humanity.[5] The designation of a Notary as a Public Official is essential and is linked to the definition of an authentic instrument provided in Article 1868 of the Civil Code . An authentic instrument is a deed made in the form determined by law, by or before a public official authorized to do so, at the place where the deed is drawn up.[6] This aligns with the view of N.G. Yudara, regarding the position of a public official, as a state organ vested with public authority (*met openbaar gezag bekleed*). This official is authorized to exercise a portion of the state's power, particularly in the creation and formalization of authentic evidentiary instruments in the field of civil law, as per Article 1868 of the Civil Code.[7]

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[4] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007).,194.

[5] *Ibid*, 10.

[6] Jozan Adolf and Widhi Handoko, "Eksistensi Wewenang Notaris Dalam Pembuatan Akta Bidang Pertanahan," *Notarius* 13, no. 1 (2020): 181–92, https://doi.org/10.14710/NTS.V13I1.29313.

[7] Dwi Kusumo Wardhani, Agung Saputra Arafat, and Erni Anggraeni, "Relevansi Asas Tabellionis Officium Fideliter Exercebo Terhadap Kewenangan Sertifikasi Transaksi Elektronik (Cyber Notary) Di Era Digital," *Rechtsregel : Jurnal Ilmu Hukum* 5, no. 2 (2022): 161–72, https://doi.org/10.32493/RJIH.V5I2.27683.

A Notary is appointed to serve the interests of individuals undertaking legal acts, to be present as a witness to the legal acts they perform, and to record what is witnessed. As a public official appointed and dismissed by the government, they are granted the authority and obligation to provide services to the public by assisting in the creation of agreements and the drafting of deeds.[8] A Notary must uphold the dignity of their office by avoiding regulatory violations and professional misconduct, as the deed they create can establish the legal status of property, rights, and obligations of a person. An error in a Notary deed can result in the revocation of a person's rights concerning an obligation.

In essence, a Notary is authorized to create a deed as long as the parties desire it, or if required by law to be made in the form of an authentic instrument. The creation of such a deed must be based on legal rules related to the Notary deed drafting procedure. The procedure and form for creating a Notary Deed are regulated in Article 1 Point 7 of UUJN-P, which states that it "is an authentic instrument made by or before a Notary according to the form and procedure stipulated in the Law on Notary Position". Thus, it is understood that a deed created by a Notary has characteristics in terms of both its substance and form, as both elements are interconnected with the deed's authenticity.[9]

The authenticity of a Notary deed lies not in the paper but in its concept: the deed is created before the Notary as a Public Official with all their authorities, not merely because the law stipulates it, but because the deed is made by or before a Public Official.

An authentic instrument serves as perfect evidence. Evidence in procedural law has a juridical meaning, signifying that it only applies to the parties involved in the case or those who acquire rights from them. The purpose of this evidence is to provide the Judge with certainty about the existence of specific events. In other words, the substance of the authentic instrument is considered true as long as its falsity cannot be proven. The evidentiary quality of an authentic instrument is not compulsory (*dwingend*) or conclusive (*belslisend*), and counter-evidence may be presented against it.

The degree of proof of an authentic instrument only reaches the level of perfect and binding, but it is not compelling or conclusive. Therefore, its evidentiary value is not imperative and can still be countered with opposing evidence. If counter-evidence is presented against it, its quality level diminishes to initial written evidence. In such a case, the authentic instrument cannot stand alone to meet the minimal standard of proof but must be supported by other evidence.[10] The

[8] Abdul Ghofur Anshori, *Lembaga Notaris Indonesia* (Yogyakarta: UII Press, 2009). 25.
[9] GHS Lumban Tobing, *Peraturan Jabatan Notaris* (Jakarta: Erlangga, 1999). 31.
[10] Yahya Harahap, *Hukum Acara Perdata, Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017). 556.

evidentiary power inherent in an authentic instrument consists of three types of evidentiary power:[11]

1. *Uitwendige bewijskracht*),
2. *Formele Bewijskracht*), and
3. *Materiele Bewijskracht*.

Therefore, such an authentic deed provides certainty regarding its contents and serves as valid evidence among the parties, heirs, and recipients of rights, with the understanding that the deed is considered sufficient in court, and the judge is not permitted.

An authentic deed is binding evidence, meaning the truth of the matters written in the deed must be acknowledged by the judge; the deed is presumed true unless proven otherwise by another party.[12] Conversely, a private deed can serve as perfect evidence against the signatory, their heirs, and those who derive rights from it, but only if the signatures on the private deed are acknowledged by the parties involved. There are three elements that must be fulfilled in an authentic deed, namely:

1. Principle: An act must be made "by" (*door*) or "in the presence of" (*ten overstaan*) a public official.
2. Specification: The act must be prepared in the form and format mandated by law.
3. Location: The act is to be made at the place where the public official is empowered to act or at the official's legal jurisdiction.

The three elements must be fulfilled cumulatively; if any one of these conditions is not met, the evidentiary strength of the deed is not authentic and only has evidentiary value as a private deed. Regarding the perfection of a notarial deed as evidence, the deed should be regarded as it is and should not be assessed or interpreted beyond what is written in the deed.[13]

The source of authenticity of a deed is related to the *First*, a deed that is drawn up by (*door*) or in the presence of (*ten overstaan*) a Public Official. The difference between the phrases drawn up "by" and "in the presence of" is that a deed drawn up "by" a Notary in Notary practice is called a Minute Deed or Official Deed, which contains a description of an event witnessed and observed by the Notary himself at the request of the parties, so that the action or act performed by the parties is put into the form of a Notarial Deed. Whereas a deed drawn up "in the presence of" a Notary in Notary practice is called a Partij Deed, which contains a description or statement/declaration of the parties given or narrated in the presence of the Notary, and the Notary records or ascertains the will of the parties into the form of a Notarial Deed.

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[11] *Ibid*, 302.

[12] Husni Thamrin and M. Khoidin, *Hukum Notariat Dan Pertanahan, Kewenangan Notaris Dan PPAT Membuat Akta Pertanahan* (Yogyakarta: Laksbang Justitia, 2023). 30.

[13] Habib Adjie, *Sanksi Perdata Dan Administrasi Terhadap Notaris Sebagai Pejabat Publik* (Bandung: Refika Aditama, 2009). 86

The drawing up of a Notarial Deed, whether it is a Relaas Deed or a Partij Deed, is fundamentally based on the need for the desire or will (*wisvorming*) and request of the parties. If the parties' desire and request are absent, the Notary will not draw up the intended deed. To fulfill the parties' desire and request, the Notary may offer advice while remaining grounded in legal regulations. When the Notary's advice is followed by the parties and subsequently put into the Notarial Deed, this is interpreted as still being the desire and request of the parties, not the Notary's will, and the content of the deed remains the act of the parties, not the act or action of the Notary.[14]

Secondly, the deed must be drawn up in the form prescribed by law. The legal status of a Notarial Deed is regulated in greater detail by the statutory determination of its form, which is stipulated in Article 38 of the UUJN-P. This article serves as the guideline for Notaries when drawing up a Notarial Deed.

Thirdly, the Public Official by and/or in the presence of whom the deed is drawn up, must have the authority to create that deed. Related to the Notary's authority in carrying out their office, it covers four (4) matters, namely:[15]

1. The Notary must have competence regarding the deed that must be drawn up.
2. The Notary must have competence regarding the person (or persons) for whose benefit the deed is drawn up.
3. The Notary must have competence regarding the place where the deed is drawn up.
4. The Notary must have competence regarding the time of the deed's execution

Based on Article 16 of the UUJN-P, the obligations of a Notary are regulated as a form of respect for the noble position held as a public official authorized to draw up authentic deeds. One of the obligations that a Notary must fulfill is to store the deeds they have drawn up in the form of minute deeds which are kept as the Notarial Protocol, as stipulated in Article 16 paragraph (1) letter b of the UUJN-P. The obligation to store the minute deeds as part of the Notarial Protocol is intended to safeguard the authenticity of a deed by keeping the original form of the deed.[16]

A Notary is obliged to maintain the Notary's protocol with full responsibility. The Notary's protocol is not always held and stored by the Notary concerned; there are certain conditions that require the transfer of the Notary's protocol, as stipulated in Article 62 of the UUJN-P, which states that the Notary's protocol must be submitted to another Notary appointed by the Regional Supervisory Council. Based on Article 63 of the UUJN-P, it is explained that when a situation described above

[14] *Ibid,* 159.

[15] Habib Adjie, *Pemahaman Terhadap Bentuk Surat Kuasa Membebankan Hak Tanggungan* (Bandung: Mandar Maju, 2019). 20.

[16] Sudhyatmika and Made, "Akibat Hukum Protokol Notaris Yang Telah Meninggal Dunia Yang Belum Diserahkan Oleh Ahli Waris.", 310.

occurs, the Notary's protocol must be submitted to the Notary holding the protocol who has been appointed by the Regional Supervisory Council after the Notary has officially ceased to hold office. Based on Article 1 point 3 of the Notary Law, the Notary's Protocol is defined as a collection of documents that constitute state archives, which must be kept and maintained by a Notary in accordance with the provisions of the laws and regulations. The Notary's protocol functions as an official record that includes all legal actions carried out by a Notary in fulfilling their responsibilities.[17]

The notarial protocol, as a state archive, holds significant historical and administrative value within the context of a country's legal system.[18] The notarial protocol provides legal certainty in terms of written evidence. The documents within the notarial protocol constitute valid evidence that can be used in court proceedings or for resolving legal disputes. The Notary documents agreements, deeds, acknowledgements, and other legal acts that have been carried out in the Notary's presence. The existence of the notarial protocol helps ensure transparency, validity, and integrity within the legal process.

The importance of the Notary Protocol's position as a state archive or document has implications for the heavy responsibility borne by the heirs when the Notary passes away, with the obligation to report to the Notary Supervisory Council for the subsequent execution of the security procedure for the said Notary Protocol. Therefore, it can be concluded that the arrangement for the security procedure of Notary Protocols of retired Notaries already provides significant legal certainty. However, the connection to the Notary's unfinished work at the time of their death needs to be examined.

A Notary who passes away during their term of office will surely leave behind unfinished work, which constitutes work performed by the Notary in their capacity as the maker of authentic deeds. This naturally raises an interesting question regarding the status of this unfinished work: does it constitute part of the Notarial Protocol, which is considered a state archive, or is it merely limited to the rights and obligations between the appearing parties and the Notary, given the absence of a completed minute of the deed, which is the defining element of the Notarial Protocol.

The procedure for drawing up a Notarial Deed, which refers to the UUJN-P, contains specific concepts: the concept of appearance, the concept of drafting the deed, and the concept of formal authentication of the deed. The primary goal of the concept of appearance is to ascertain the will and identity of the appearers. The main principle here is to individually identify the appearer in a unique way that distinguishes them from any other person, through a process compliant with the prevailing laws and regulations. The Notary can identify the appearer by reviewing

[17] Fauzan Adi Putra, "Tanggung Jawab Terhadap Protokol Notaris Sebagai Akibat Ditetapkannya Notaris Menjadi Pejabat Negara," *UNES Law Review* 5, no. 4 (June 2, 2023): 1458–70, https://doi.org/10.31933/unesrev.v5i4.466.

[18] Ibid., 1459

the identity documents previously submitted to the Notary in accordance with Law No. 23 of 2006 on Population Administration or through 2 (two) identifying witnesses or 2 (two) other appearers.

In the concept of drafting a deed, the main principle is to draft the deed based on Article 38 of the UUJN-P. The Notary records or ascertains the will of the parties into a deed by observing the applicable provisions and accommodating all the desires of the parties in performing a legal act, which can accommodate the obligations and rights of each party who binds themselves in an agreement.

On the concept of the formalization of a deed, which includes the reading of the deed and the signing of the deed, the main principle is that the Notary reads the deed in the presence of (visible and audible to) the appearing parties, with the attendance of at least 2 (two) instrumental witnesses. Subsequently, the appearing parties declare their agreement with the contents of the notarial deed, which is signed as desired; the witnesses declare their agreement that the contents of the deed align with what was read by the Notary; and the Notary declares that the deed was truly drawn up in their presence or by them, by affixing their signature to the deed—a signature that can characteristically individualize the signatory.

The execution of drafting this deed requires a considerable amount of time. Consequently, it is not uncommon that after the parties appear to convey their desire to perform a certain legal act and provide the necessary documents for the deed's composition, the Notary does not immediately formalize the deed but requires time for its drafting. In the event that the Notary passes away during this drafting process, a compelling question arises: Is the deed, which is still under preparation, considered part of the minute deed, or is it merely a private agreement. This has legal implications concerning the party responsible for the creation of the deed regarding the legal act agreed upon by the appearing parties.

As exemplified by a case involving a Notary in Banyuwangi Regency, the appearing parties intended to execute a sale and purchase agreement, depositing the certificate of ownership and having already paid a down payment for the deed preparation. The deed preparation was still in the process of drafting the minute deed (minuta akta) and had not yet been assigned a deed number or date, nor had it been signed by the appearing parties and the Notary. The next day, Notary X passed away. In this situation, the Notary X's Heirs are obliged to report the death of Notary X to the Regional Notary Supervisory Council to initiate the procedure for securing the notary protocol. This ensures that appearing parties who require copies or excerpts of deeds previously drawn up by or in the presence of Notary X can have them issued. The Notary X's Protocol was ultimately submitted to Notary Y, who had been appointed by the Regional Supervisory Council to be the Notary Protocol Recipient for Notary X's official records.

Based on the description of the case above, it is known that concerning a Sale and Purchase Agreement to be executed before a Notary, the appearers (parties) had conveyed their intention and purpose to perform the sale and purchase agreement for a plot of land. Following this intention and purpose, the Notary accepted the deposit of the seller's Certificate of Ownership so that the deed drafting process could be

carried out. During this process, the parties also deposited a down payment for the deed with the Notary. However, during the deed drafting process, the Notary passed away. Regarding the status of this agreement, the deed that was to be drawn up had not yet undergone the Verlijden Akta (Deed Formalization), which is the process of officially authenticating the deed by the Notary, requiring the Notary's presence to validate it. This process is crucial to ensure the deed's validity and strong evidentiary force.

The Notary's obligation to read the deed aloud in the presence of the appearers, witnessed by at least 2 (two) witnesses, and signed immediately at that time by the appearers, witnesses, and the Notary is regulated in the provisions of Article 16 paragraph (1) letter l of the UUJN-P (Notary Office Law - Amendment). This provision is further reaffirmed in Article 44 of the UUJN (Notary Office Law), which states that immediately after the deed is read, it must be signed by every appearer, witness, and the Notary, unless there is an appearer who is unable to affix their signature, with the reason for such inability being stated. The provisions for reading and signing constitute a single integral part of the officialization of the deed (*verlijden*).

The non-execution of the verlidjen (signing/finalization) of the deed results in the legal consequence that the deed intended to be drawn up by the parties still holds the status of a private agreement (*onderhands*), and is not an authentic deed. Therefore, this agreement does not have a deed minute which would be included in the Notary's protocol that transfers to the protocol-receiving Notary (*successor Notary*). Thus, based on this explanation, it is understood that the binding sale and purchase agreement of the appearing parties is classified as unfinished work of the Notary when the Notary passed away. Work of this nature does not constitute a Notary's protocol, so all matters that have been entrusted by the appearing parties to the deceased Notary are limited only to the rights and obligations between the parties and the Notary, which are not related to the transfer of the Notary's protocol to the protocol-receiving Notary.

Legal Certainty Regarding Unfinished Notarial Work When the Notary Dies

A Notary must be professional in providing legal services, which means that in carrying out their office, they must be responsible for all the legal actions they take. Furthermore, a notary in carrying out their duties must also be trustworthy, honest, meticulous, independent, and impartial.[19] By performing all their duties professionally, the notary participates in preserving the dignity and integrity of the notariat in the eyes of the public. Every service provided by a notary must be done

[19] A.A. Andi Prajitno, *Pengetahuan Praktis Tentang Apa Dan Siapa Notaris Di Indonesia* (Surabaya: Perwira Media Nusantara, 2015). 12.

as well as possible, without differentiating between paid and free services, and must produce quality service that has a positive impact on the community.[20]

The service provided is not purely profit-driven, but rather a form of dedication to the public. Good, quality service that has a positive impact on society can only be achieved by fulfilling all the provisions contained in the statutory regulations, especially the UUJN-P, and also by adhering to the Notary Code of Ethics that has been agreed upon by the Notary Organization.[21] When a constituent appears before a Notary to have a deed drawn up, it is natural for that person to desire the deed prepared by the Notary to be an authentic deed, given the critical evidentiary power of such a document.[22]

Lon Fuller n his book The Morality of Law, Lon Fuller discusses the principles of good law. Fuller mentions there are two types of legal morality: internal morality and external morality. External morality (the external morality of law) concerns issues related to justice, human rights, solidarity, and empathy for the disadvantaged, whereas internal morality (the internal morality of law) speaks to the principles of good law.[23] The internal morality referred to by Fuller contains eight (8) principles, which are as follows:

1. A legal system must contain standard rules and must not contain or consist solely of ad hoc decisions.
2. The rules that have been established must be promulgated so that people are aware of the norms and can use them as a guide for conduct.
3. There must be no retroactive rules, as these would undermine the integrity of rules intended to apply to future conduct.
4. A rule must be formulated in terms that are understandable or easily understood.
5. A legal system must not contain rules that contradict one another.
6. Rules must not contain demands that exceed what can be done. That is, they must not demand conduct beyond the capacity of the regulated parties.
7. There must be no practice of frequently changing the rules, as this will cause people to lose orientation.
8. There must be congruence between the rules as enacted and their day-to-day implementation or their enforcement in actual cases.[24]

[20] Gladys Natalie Aurielle Sirait and Benny Djaja, "Liability of Notarial Deeds as Authentic Deeds in Accordance with the Notary Office Law," *UNES Law Review* 5, no. 4 (2023): 3363–78, https://doi.org/10.31933/UNESREV.V5I4.641.

[21] Elok Sunaringtyas Mahanani and Iswi Hariyani, "The Urgency of The Indonesian Notary Association (INI) In Development And Supervision Of Notary," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 14–24, https://doi.org/10.19184/jik.v4i1.38764.

[22] Sirait and Djaja, "Liability of Notarial Deeds as Authentic Deeds in Accordance with the Notary Office Law.", 40.

[23] *Ibid*., 36.

[24] *Ibid*.

The eight principles according to Fuller mentioned above are affirmative in nature, meaning that the making of law must comply with these eight principles.[25] It is these eight principles that enable law to be law. The law becomes valid if these principles are accommodated within it. The indicator of the existence of legal certainty in a country is the presence of clear laws and regulations, and that these laws and regulations are properly applied by judges and other legal officers.

The death of a Notary while still holding office has legal implications for the heirs. Based on the provisions of Article 35 paragraph (2) of the UUJN-P, the notification mentioned in paragraph (1) must be submitted within a maximum period of 7 (seven) working days. Based on this provision, the heirs have a legal obligation as a form of responsibility to settle matters concerning the inheritance. In accordance with Asyhadie's opinion, the heirs are responsible for immediately settling the inheritance affairs after they have received the inheritance. The heirs' responsibility is not limited to merely accepting the inheritance but also settling all the interests of the deceased, specifically concerning the notification to the Regional Supervisory Council regarding the Notary's death, because the deceased held the position of a Notary.[26]

The responsibility of the heir constitutes a proactive measure, which is to inform the Regional Supervisory Council of the notaries death. Thus, the heir must submit the official documents related to the Notary Protocol that are still in their custody. The Notary Protocol includes all documents that constitute state archives that must be kept and maintained by the Notary, consisting of bound minute-deeds, the repertorium, the list of authentication of privately signed letters, and the book of protest registers kept by the notary as state archives.[27]

The heir has a legal obligation to notify the Regional Supervisory Council, as regulated in Article 35 paragraph (1) of the UUJN-P, to carry out and complete the existing obligations left behind by the deceased. The heir's fulfillment of the responsibility to notify the Regional Supervisory Council is to ensure that the rights and interests of all involved parties are legally protected and fulfilled. Therefore, the heir's notification to the Regional Supervisory Council is an essential step in maintaining the transparency and continuity of the abandoned notary practice.

In relation to the notary's unfinished work at the time of death, as elaborated in the case described, such work is not qualified as part of the Notary Protocol that transfers to the protocol-receiving notary. The status of this work is limited to the rights and obligations between the Notary and the Parties Appearing. Consequently, the heir is the one responsible to the relevant parties for that unfinished work.

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[25] Petrus C.K.L, *Hukum & Moralitas Tinjauan Filsafat Hukum* (Jakarta: Erlangga, 2012).

[26] Rumi Suwardiyati and Riky Rustam, "Urgensi Reformulasi Pengaturan Penyerahan Protokol Notaris Untuk Mewujudkan Kepastian Hukum," *Peradaban Journal of Law and Society* 1, no. 2 (2022): 119–32, https://doi.org/10.59001/pjls.v1i2.40.

[27] Yunizcha Mohamad Putri Limbanadi, "Penyerahan Protokol Notaris Yang Telah Meninggal Dunia Kepada Notaris Penerima Protokol Serta Prakteknya Di Indonesia," *Officium Notarium* 4, no. 1 (May 28, 2024): 50–63, https://doi.org/10.20885/JON.vol4.iss1.art4.

The obligations of heirs generally, according to an in-depth study of the Civil Code, also include the rights and duties attached to the inheritance. Syarif's opinion[28] states that heirs are responsible for:

1. Maintaining the integrity of the inherited property before it is divided.
2. Determining the method of division in accordance with the law, and other matters.
3. Paying off the testator's debts if the testator left any.
4. Executing the will, if one exists.

The juristic responsibility of heirs is based on Article 833 of the KUH Perdata, which reads as follows: "The heirs, automatically acquire ownership rights over all assets, rights, and debts of the deceased party." This provision asserts that the heirs automatically acquire ownership rights over the deceased's assets, rights, and debts. Consequently, the heirs, as the legal owners, are obliged to maintain the integrity of the inheritance, follow appropriate methods of division, settle the deceased's debts, and execute any existing will. Therefore, the heirs' duty is to supervise, manage, and administer the inheritance responsibly in accordance with the prevailing laws and regulations.

Based on the substance of Article 833 of the KUH Perdata, as interpreted by Prawirohhamidjojo, it would be more appropriate for the law to explicitly state that heirs naturally possess these rights, including the right of ownership over their assets and debts. It is generally understood that this responsibility immediately transfers upon the death of the testator. [29] This opinion underscores the importance of clear and explicit legislation in regulating the rights and obligations of heirs in the context of inheritance.

The obligations existing within the inheritance automatically and directly transfer to the heirs upon the testator's death. Thus, the heirs do not merely obtain property rights; they are also responsible for carrying out the existing obligations related to the inheritance, such as paying debts or executing existing agreements. Prawirohamidjojo emphasizes the importance of having clear and explicit provisions in the law to provide legal certainty for heirs in managing the inheritance they receive.[30]

The ownership rights granted by Article 833 of the Civil Code apply to all lawful heirs as determined by the prevailing legal provisions, such as rules regarding inheritance based on marriage, family relations, or a valid will. Thus, the heirs

[28] Muhamad Syaifullah et al., "Pengalihan Atas Harta Warisan Di Indonesia," *Dih: Jurnal Ilmu Hukum* 16, no. 2 (2020): 372757, https://www.neliti.com/publications/372757/.

[29] Bayu Indra Permana, Dominikus Rato, and Dyah Ochtorina Susanti, "Kedudukan Pembagian Hak Bersama Waris Sebagai Peralihan Harta Yang Dibebaskan Pajak Penghasilan," *MIMBAR YUSTITIA : Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 1 (2023): 44–62, https://doi.org/10.52166/MIMBAR.V7I1.4193.

[30] Ni Made Deby Anita Sari, I Nyoman Bagiastra, and I Made Arya Utama, "Reformulasi Definisi Anak Sebagai Ahli Waris Pensiunan Pegawai Negeri Sipil," *Jurnal Komunikasi Hukum (JKH)* 10, no. 2 (September 4, 2024): 130–40, https://doi.org/10.23887/jkh.v10i2.84763.

acquire the right to own, manage, and transfer the assets and rights they inherit in accordance with the applicable legal provisions. According to Palayukan's view, an heir, without taking any action, automatically or by law replaces the position of the testator in the field of property law, so the rights and obligations of the testator automatically become the rights and obligations of the heir, even if the heir is unaware of the inheritance.

Based on the aforementioned opinion, it is interesting that an heir legally replaces the position of the testator in the field of law. However, when correlated with the position of a Notary's heir regarding the handover of the Notary's protocol, a legal vacuum arises. This is because there are no explicit legal provisions strictly regulating the responsibility of the heir in handing over the Notary's protocol. Although the Notary's heir may not have direct responsibility, a moral obligation arises to maintain the integrity and properly store the Notary's protocol.

Asyhadie's opinion regarding the heir's legal responsibility, when linked to the issue of the heir and the Notary's protocol, posits that a legal responsibility is inherently attached to the heir to complete the testator's interests. However, in such a case, the heir has limited information in understanding the work performed by their deceased relative. In an actual case, the heir of Notary X in Banyuwangi was completely unaware of the certificates entrusted to Notary X during their lifetime, nor of the down payments given to Notary X. This certainly causes material and immaterial losses for the appearing parties, as there is no legal umbrella in the UUJN-P regarding this unfinished work—who should be held responsible. In a legal context, it should certainly be the heirs, based on Article 833 of the Civil Code, but the Notary's heir has limited information on the Notary office's management. Therefore, this normative vacuum creates legal uncertainty for the public users of Notary services.

Based on Radbruch's concept related to the meaning of legal certainty that[31], firstly, law is positive, prevailing legislation. In this context, the lack of clear and detailed legal regulation concerning the obligation to complete Notary work that is not yet included in the draft deed (minuta akta) leads to legal uncertainty. When there is a shortcoming in regulation, such as the absence of specific provisions regarding the heir's obligation to resolve this issue, it can result in ambiguity regarding the responsibilities and obligations that must be fulfilled by the heir.

Consequently, legal uncertainty arises concerning the steps that should be taken by the heirs. This legal uncertainty can raise questions about whether the heirs are obligated to provide compensation to the appearing parties, even though, on the other hand, the heirs have limited information and knowledge about the Notary office's management, which could certainly cause losses to the heirs under certain conditions. This lack of regulation can be difficult for both the heirs and the appearing

[31] Limbanadi, "Penyerahan Protokol Notaris Yang Telah Meninggal Dunia Kepada Notaris Penerima Protokol Serta Prakteknya Di Indonesia."

parties and hinders the creation of certainty. Therefore, it is important to clearly and explicitly regulate the heir's obligation to hand over the Notary's protocol. This would avoid doubts and ambiguities and provide clear guidance for the heirs in performing their duties.

An unlawful act can be defined as any act that violates the law and causes harm to another person, obligating the person who caused the harm through their fault to compensate for the loss.[32] Causality or the cause-and-effect relationship occurs when a certain act can be called the cause of a particular event. The cause or *causa efficiens* itself is something whose operation brings about a change that leads to a consequence. The existence of a causal relationship is an important requirement in proving an unlawful act because the proof requires a causal framework between the act committed and the loss suffered, so that the perpetrator can be held accountable.[33] Based on the researcher's study of the UUJN-P, it is quite clear that it does not explicitly regulate unfinished Notary work when the Notary dies. As a result, even in the case of the Notary's death, the heirs can still be considered responsible if claims arise from a party who feels disadvantaged.

Legal certainty regarding the regulation of a norm contained in the law can juristically ensure that the law functions and is obeyed by the public. Guaranteeing that the law is consistently applied and obeyed by the public is very important, as it is well known that Indonesia adheres to the concept of a rule of law state, which is stipulated in the constitution and implies that every element of community life must be regulated by law. As explained by Gustav Radbruch, there are three elements of the ideal of law that must exist proportionally: legal certainty (*rechtssicherkeit*), justice (*gerechtigkeit*), and utility (*zweckmasigkeit*). When linked to the theory of law enforcement, all three principles must be met.[34] Therefore, besides legal certainty, the aspects of utility and justice are also important values that must be guaranteed by a law.

However, the existing legal uncertainty in the UUJN-P regulations must not disregard the legal protection that must be afforded to the appearing parties, as their rights have been harmed in this matter. This form of legal protection is certainly aimed at protecting and guaranteeing the interests of every person, especially those who intend to create an authentic deed.[35] Everyone certainly expects legal certainty,

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[32] Karnita Putri Luciana, Muh. Risnain, and Amiruddin, "Kedudukan Dan Pertanggung Jawaban Hukum Notaris Pengganti Dalam Menjalankan Tugas Notaris Yang Diangkat Menjadi Pejabat Negara," *Unizar Law Review (ULR)* 5, no. 1 (2022): 1–23, https://doi.org/10.53726/ULR.V5I1.591.

[33] *Ibid.*,183.

[34] Tiyas Putri Megawati, Faizah Nur Fahmida, and Aulia Dwi Ramadhanti, "Tanggung Jawab Para Pihak Setelah Pelaksanaan Lelang Tanah Kas Desa: Studi Kasus Di Desa Cangaan Kabupaten Bojonegoro," *Acten Journal Law Review* 1, no. 1 (August 31, 2024): 17–38, https://doi.org/10.71087/AJLR.V1I1.5.

[35] Kadek Indra Prayoga Dinata and I Gede Agus Kurniawan, "Keabsahan Akta Relaas Yang Dibuat Dengan Video Conference Berbasis Cyber Notary (Studi Putusan Pengadilan Tinggi: Nomor

especially when they come with the intent to create a deed that has perfect evidentiary power. Therefore, legal protection is formed to prevent arbitrary actions and ensure an orderly society.[36] The enforcement and implementation of the law are expected to provide utility to the community, and with the formation of legal protection, the community also desires justice in the implementation and enforcement of the law.[37]

Legal protection, according to Isnaeni, is defined as an action aimed at providing protection, for example, protecting people in need, such as those who can be categorized as weak. Law, on the other hand, is defined as a collection of rules composed of prohibitions and commands that regulate order and must be obeyed by the public.[38] The purpose of forming the law is to ultimately create a safe and orderly society and to provide protection so that exploitation does not occur against segments of society in a weak position, who, given their position, would naturally find it very difficult to obtain self-protection through the formation of an agreement. Legal protection can also originate externally, in this case, created by the authorities through various non-partisan laws and regulations, so that protection can be equally felt by the entire community.[39]

Based on the view conveyed by Isnaeni, the external protection for the parties is lacking because there is no specific regulation in the UUJN-P regarding the legal status of unfinished Notary work upon the Notary's death. This leaves a gap/normative vacuum in the regulation of this matter, meaning there is no legal umbrella in the UUJN-P for this issue. However, the internal protection that can be provided is through the existence of receipts for the deposit of certificates and payment of down payments stamped by the Notary's office, as a form of office management carried out by the Notary. This can help the Heir, with the assistance of staff employees who act as witnesses when the appearing parties come and express their will, as well as in providing receipts to the appearing parties. Based on these two documents, it can be stated and proven that the parties and the deceased Notary had a relationship regarding the future creation of a deed, and a legal relationship arose between the parties and the Notary at that time.

35/Pdt/2021/PT KDI)," *Jurnal Pembangunan Hukum Indonesia* 6, no. 3 (2024): 328–51, https://doi.org/https://doi.org/10.14710/jphi.v6i3.328-351.

[36] Daniyah Fadhilah Hasyan and Fifiana Wisnaeni, "Pemanfaatan Kecerdasan Buatan Dan Blockchain Dalam Pembuatan Akta Notaris Di Indonesia," *Notarius* 17, no. 1 (2024): 432–45, https://doi.org/10.14710/NTS.V17I1.43939.

[37] Diya Ul Akmal, Hanif Fitriansyah, and Fauzziyyah Azhar Ramadhan, "Reformasi Hukum Pertanahan: Perlindungan Hukum Hak Atas Tanah Terhadap Pengalihan Hak Secara Melawan Hukum," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 14, no. 2 (2024): 193–214, https://doi.org/10.22212/JNH.V14I2.3964.

[38] Nandita Mentari Nasution and Lutfina Mustafi Nadia HAM, "Tanggung Jawab Majelis Pengawas Daerah Terhadap Penyerahan Penyimpanan Protokol Notaris Yang Berumur Lebih Dari 25 Tahun," *Jurnal Ilmu Kenotariatan* 5, no. 2 (2024): 138–49, https://doi.org/10.19184/jik.v5i2.47358.

[39] Andi Widjaja, Agus Salim, and Belly Isnaeni, "Pemenuhan Hak Kepemilikan Penerima Fidusia Terhadap Pemberi Fidusia Yang Melakukan Wanprestasi Berdasarkan Akta Jaminan Fidusia," *J-CEKI : Jurnal Cendekia Ilmiah* 3, no. 5 (2024): 4278–95, https://doi.org/10.56799/JCEKI.V3I5.4831.

VI. CONCLUSION

The procedure for drawing up a notarial deed, which refers to the UUJN-P, contains distinct concepts: the concept of appearance, the concept of drafting the deed, and the concept of formalizing the deed. When a Notary dies during the drafting process of a deed, where the concept of formalization has not yet been executed, this implies that the deed is still considered a private agreement and is not yet a deed minute. Therefore, it cannot be classified as a Notary Protocol. Consequently, anything that had been entrusted by the appearing parties to the deceased Notary is limited only to the rights and obligations between the parties and the Notary, which is not related to the transfer of the Notary Protocol to the receiving Notary.

The vacuum of Norm in the legal regulation concerning the obligation to complete the Notary's work that is not yet included in the deed minute creates legal uncertainty. As a result, it raises the question of whether the heirs are obliged to provide compensation to the appearing parties. However, on the other hand, the heirs have limited information and knowledge regarding the Notary's office management, which could certainly lead to losses for the heirs under certain conditions. Despite the legal uncertainty, the legal protection for the appearing parties must not be ignored. This form of legal protection is certainly aimed at protecting and ensuring the interests of every individual, particularly the parties. External protection for the parties is not yet specifically regulated in the UUJN-P. However, in terms of internal protection that can be provided, the existence of a receipt for the deposit of certificates and down payment receipts bearing the Notary's office stamp, as a form of office management, can help facilitate the Heirs, assisted by the office staff. Based on these two documents, it can be stated and proven that the parties and the deceased Notary had a relationship regarding the future drawing up of a deed, and a legal relationship had arisen between those parties and the Notary at that time.

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