INTRODUCTION

Indonesia is a legal state guided by Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945) to ensure certainty, order (benefit), and justice as legal protection in all fields. Article 28D (1) of the 1945 Constitution asserts that "Every person..."
has the right to recognition, guarantees, and fair legal certainty as well as equal treatment before the law.” In connection with the role of a Notary in assisting in creating certainty and legal protection for the community, it is preventiv

The Notary profession, which is a public official, is empowered by law and appointed by the authorized institution to carry out tasks not delegated to other officials related to the creating of public deeds or agreements (Achmad Arif Kurniawan, 2016). Deeds made by a notary are authentic deeds that have perfect evidentiary power. The concept of an authentic deed refers to a deed created by a public official with the authority to record and explain an event or action witnessed by the public official who creates the deed. What is contained in a notarial deed includes the interests of the parties, thus a notarial deed is able to guarantee the civil rights of an individual as a legal subject. (Boty, 2017) Performing the duties as a notary indirectly entails responsibility regarding the evidence that can clearly establish the rights and obligations of legal subjects. (Eko, 2019)

A notary, in carrying out their duties and responsibilities, is obliged to normatively adhere to legal regulations related to all actions to be recorded in a deed. (Soesanto, 1982) Acting in accordance with the applicable legal rules will certainly provide legal certainty to the parties, indicating that the deeds made before or by a notary are in compliance with the regulations. Therefore, if any issues arise, the notarial deed can serve as a guide for the parties involved. (Otodisoerjo & Soegondo, 1993)

Integrated services. Examples include the Electronic Mortgage Rights service, Online Single Submission (OSS), and electronic fiduciary. However, the storage of notarial deed minutes as state archives is still done conventionally and has not been utilized electronically. Based on Article 1 number 5 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), electronic systems are defined as: "Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, send, and/or disseminate Electronic Information”. (Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Infromasi Elektronik Dan Trnsaksi Elektronik,” n.d.)

The conventional storage of notarial deed minutes requires high caution to prevent damage, loss, and/or misplacement, considering that notarial deed minutes are a part of the protocol, which constitutes state archives. The current archival practices conducted by notaries still utilize conventional paper-based methods and are stored manually. Consequently, physical storage over an extended period poses risks of loss and damage. (Nisa, 2020)

In reality, the Law on Notary Position does not regulate the resolution of issues related to damaged or lost notarial deed minutes due to natural disasters or other factors. There are also no provisions on how to address such problems in the or other legislation. This is a weakness in the UUJN as it does not consider the possibility of disasters occurring in the future, leaving notaries without legal certainty regarding such situations. Regulations regarding notarial deed minutes and notary protocols found in the Notary Position Law only cover the creation, storage, and delivery of notary protocols, as well as the retrieval of
notarial deed minutes and the summoning of notaries (Pasal 58-66 Undang-Undang Jabatan Notaris).

Although the law does not regulate such matters, to prevent future difficulties and as a precautionary measure, there are several efforts that notaries can undertake in storing archives, documents, or notary protocols. This can be done by keeping things simple in electronic documents, which may include scanned versions of notarial deed minutes, emails, and photographic documentation during the signing of deeds. These electronic documents can be stored by notaries in digital formats, CDs, flash drives, or microfilm. Alternatively, the utilization of Internet technology, which is highly influential in the era of the fourth industrial revolution, has a significant impact on various aspects of human work. Storing data electronically through the Internet proves to be space-efficient compared to conventional storage methods. This approach also reduces the risk associated with events such as fires, floods, earthquakes, tsunamis, liquefaction, and termite infestations. The ongoing development of digitization makes every task more manageable. Data storage in electronic formats can be achieved through platforms like Google Drive, Cloud, and others, with access limited to the respective notary.

The problem lies in the absence of legal regulations regarding the storage of notarial deed minutes. This results in notaries lacking standardized procedures when fulfilling their obligation to store these state archives. When notarial deed minutes are lost or damaged, causing losses to the parties involved, it can be said that the notary neglects their duty to store deed minutes and ensure their proper condition, a responsibility imposed on the notary. Therefore, the notary is obligated to be responsible for any damage, loss, or destruction of the notarial deed minutes.

The destruction of notarial deed minutes can occur due to negligence in fulfilling duties or the lack of caution exercised by notaries or their employees in storing notarial deeds. The issues arising from the examples and illustrations above are due to the absence of clear provisions to anticipate such incidents. This situation can lead to losses or problems for parties with interests in the deeds when they need copies or excerpts. On the other hand, notaries, as parties responsible for storing notarial protocols, cannot issue copies or excerpts of deeds without having the notarial deed minutes as a reference. As stated in the explanation of Article 16 paragraph (1) letter b of the Notary Position Law, the obligation to store notarial deed minutes as part of the notarial protocol is intended to preserve the authenticity of a deed by storing it in its original form. If there is forgery or misuse of the gross, copy, or excerpt, it can be easily detected by comparing it with the original. Copies or excerpts of deeds made must be in accordance with the notarial deed minutes stored by the notary. In the process of creating copies or excerpts, the notary requires the original notarial deed minutes as a reference.

However, what makes this research so captivating is the further exploration of a concrete case—the destruction of deed minutes. A case that holds mysteries behind how fragile legal documents can be when faced with unforeseen circumstances. In this legal narrative, the researcher thoroughly dissects the role of a notary, a responsibility-laden official, who must confront this challenge. The novelty in this research is not only found in theoretical concepts but also in its focus on "THE CASE OF THE DESTRUCTION OF DEED MINUTES." In this context, the researcher attempts to unravel the mystery, revealing how a notary is accountable amidst unforeseen destruction. Through a case study approach, this
research details how a notary can respond to the demands of force majeure that damage deed minutes. The discussion covers the notary’s accountability for the loss or destruction of notarial deed minutes due to force majeure by relating it based on civil and administrative responsibility. Based on the above description, this indicates a legal vacuum in the events that occur for the parties involved. The importance of transferring state archives, in the form of notarial deed minutes, into electronic format is emphasized, along with examining the notary's accountability.

METHODS RESEARCH

This research employs a normative juridical method, also known as doctrinal research, which uses a legislative approach and a conceptual approach. In writing, the author utilizes normative law, starting from normative vacuum. The study of normative vacuum is caused by the absence of regulations regarding the damage or loss in storing notarial deed minutes by a Notary, which is an obligation in carrying out their duties. The research sources include primary legal sources examining the Notary Position Law (UU JNP) and secondary legal sources involving various literature, such as official documents, law textbooks, legal journals, and opinions of legal experts relevant to the legal issues discussed.

Tertiary legal materials consist of books, journals, theses, as well as non-legal websites that are still related to the topic of this research. (Nurcholis et al., 2022) This research refers to legislation regarding the storage of notarial deed minutes based on the Notary Position Law (UU JNP). The writing technique used is through document study, employing the collection of legal materials and analyzing legal issues through deductive reasoning. Additionally, the legal sources used include primary legal materials consisting of norms, legal principles, and regulations that are in line with the responsibilities of a Notary in preserving and protecting deeds or authentic documents made in accordance with the legal regulations.

RESULTS AND DISCUSSION

Responsibility of A Notary for The Authentic Deeds Minutes Destroyed Due to Force Majeure

There are civil legal actions regulated by legislation in the form of authentic deeds, aimed at creating legal certainty, order, and legal protection. (Sjaifurrachman & Habib Adjie, 2011) An authentic deed is one form of written evidence whose format is determined by the law, created by or in the presence of a public official authorized for such matters, at the location where the deed is made. (Herlien Budiono, 2015) Whether with or without the assistance of interested parties, it records what is requested by the interested parties to be included in it or contains the statements of the official explaining what was done or witnessed in their presence. An authentic deed provides, among the parties and their heirs or those who acquire rights from them, perfect evidence of what is contained in it. (Subekti & Tjitrosudibio, 2014)

The official authorized to create such authentic deeds is a Notary. Referring to Article 1, Number 1 of Law Number 2 of 2014 Regarding Amendments to Law Number 2 of 2004 on the Position of Notary (hereinafter referred to as the Notary Law), it stipulates that "A Notary is a public official who has the authority to create authentic deeds and other
authorities regulated by the Notary Law and other laws. The presence of a Notary is due to the community’s need for authentic deeds, which serve as evidence of written documents in civil law. Authentic deeds are also regulated in Article 1868 of the Civil Code (hereinafter referred to as KUH Per) which stipulates that “An authentic deed is a deed made in the form specified by the law by or in the presence of a public official authorized for that purpose at the location where the deed is made.” (Prawira et al., 2023)

The explanation also specifies that an authentic deed has strong evidentiary power, as referred to in Article 1970 of the Civil Code, which states that “For the interested parties and their heirs or for those who acquire rights from them, an authentic deed provides perfect evidence of what is contained in it.” Thus, in this regard, the community trusts and will always need strong legal proof that is protected in an authentic deed. (Tjukup et al., 2016)

In addition to the authority of a Notary in creating deeds, the Notary also has obligations in carrying out their duties. One of the obligations that a Notary must fulfill is the storage of deed minutes. Referring to Article 16 paragraph (1) letter b of the Notary Position Law (UU JNP), it stipulates that “Creating deeds in the form of deed minutes and storing them as part of the Notary Protocol.” In this case, deed minutes can be interpreted as the original first deed containing the signatures of the parties involved in the deed, witnesses to the occurrence of the deed, and the Notary who reads and authenticates the deed. This deed must then be stored by the Notary as part of the Notary Protocol and as a document for the needs in creating the deed, as stipulated by the provisions of the Notary Position Law explained earlier.(Heriawanto, 2018)

The Notary must adhere to the principle of caution in carrying out their duties. Regarding the juridical aspect of safeguarding the storage of deed minutes, it is not explicitly stated in the Notary Position Law (UU JNP), and it only mentions that storage is part of the Notary Protocol. This storage is carried out after the signing by the parties involved, witnesses, and the Notary. Deed minutes are crucial as they represent the will of the parties, and the signatures signify the agreement, turning it into an authentic deed. The deed also includes the signature of the Notary for the authentication of the deed. (Karuniawan & Budhivaya, 2018)

The storage of deed minutes serves to provide strong evidence in the occurrence of an authentic deed. However, the storage of deed minutes also poses risks, as these are essentially sheets of paper that will be compiled into a document and stored in the Notary’s office where they carry out their duties. Looking more deeply into this, if unforeseen events such as force majeure (natural disasters, earthquakes, and other unexpected disasters) occur, it can lead to damage and loss of Notary deed minutes in these unavoidable situations. (Arifaid, 2017)

Unexpected disasters raise questions about what a Notary can do if their deed minutes are damaged or lost due to force majeure. This is because, until now, normatively, the Notary Position Law (UU JNP) has not regulated the responsibilities of a Notary in such situations. It only provides an explanation for Article 16 paragraph (1) letter b of the Notary Position Law, which stipulates, “Creating deeds in the form of deed minutes and storing them as part of the Notary Protocol.” This regulation leaves a normative vacuum concerning the storage of Notary deeds, loss, and damage to deed minutes, and what actions a Notary should take to prevent force majeure on deed minutes and other essential documents. While the responsibilities of a Notary are challenging and significant in carrying out their duties.
as creators of authentic deeds, on the other hand, in situations of compulsion or force majeure, it is unpredictable and beyond the control of any human, including a Notary.

Force majeure is a circumstance that cannot be predicted by humans, especially natural disasters. If this occurs, involving the Notary's Office, it will create problems, especially regarding the storage of minute deeds, leading to damage or loss of the minute deeds. In this regard, the Notary still has to take responsibility for the damage or loss of the minute deeds, even though the Notary Law (UU JNP) and other regulations have not yet addressed the resolution and role in handling damaged or lost minute deeds.

Force majeure, or circumstances of necessity, is a situation in which the performance cannot be carried out, fulfilling the obligation is impossible, or it hinders the Notary from fulfilling the obligation due to circumstances or events that were unforeseeable or not anticipated at the time of the agreement. The occurrence of these circumstances or events is not due to fault (intentional or negligent), and the Notary is not acting in bad faith, while making reasonable efforts to fulfill their obligations before being declared in default.

The existence of legal certainty allows everyone to anticipate what will happen if they take a legal action. Certainty is crucial for achieving justice. Certainty is an inherent characteristic of the law, especially for written legal norms. Law without certainty would lose its meaning as it cannot serve as a guide for the behavior of individuals. Clear in the sense of not causing doubt (multiple interpretations) and logical in the sense of being a system of norms that aligns with other norms, preventing conflicts. Clarity in the law refers to the enforcement of laws that are clear, precise, consistent, and consequential, where implementation is not influenced by subjectively biased circumstances. legal certainty indeed has more of a juridical dimension. However, Otto provides a further definition of legal certainty as the possibility that in specific situations, namely: (Jan Michel Otto, 2006)

a. Clear (transparent), consistent, and easily accessible rules are available.
b. Governing bodies (government agencies) consistently apply these legal rules and are also subject to and comply with them.
c. Civilian individuals adjust their behavior according to these rules.
d. Independent and impartial judges apply these legal rules consistently when resolving legal disputes.
e. Concrete court decisions are enforced

The law enforced by law enforcement agencies assigned for that purpose must ensure "Legal Certainty" for the establishment of order and justice in society. legal certainty is an assurance that the law must be implemented in a proper manner. Legal certainty requires the legal regulation efforts in legislation made by competent and authoritative parties so that the rules have juridical aspects that can guarantee certainty that the law functions as a regulation to be obeyed. (Asikin Zainal, 2012)

In the case of a Notary, who is a public official authorized to create authentic deeds with perfect evidentiary power, Notarial deeds must be made in a form specified by the law. This is one of the characteristics of Notarial deeds. If a Notarial deed complies with the existing provisions, it provides legal certainty and protection to the parties involved regarding the agreements made. By adhering to this, a Notary exercises part of the State's authority in civil law to serve the interests of the community in need of documentary evidence in the form of authentic deeds that provide legal certainty in the event of disputes. (Habib Adjie, 2009)

In terms of the possibility of implementation, force majeure is distinguished into two
types: absolute force majeure and relative force majeure. Absolute force majeure is a situation in which the performance of the contract is entirely impossible. For example, if the object of the contract is destroyed. In this case, the contract is impossible to perform. On the other hand, relative force majeure is a situation where the fulfillment of the obligation under normal circumstances is not possible, but under abnormal circumstances, it is still possible to perform. (Nugraha & Poernomo, 2021)

Before determining the accountability of a notary for a force majeure event, whether it is a result of the notary’s negligence or not, and to determine if the act falls under the notary’s fault, it is necessary to understand the difference between fault and negligence:

a. Mistake

Error in the legal context refers to intentional or willful actions. This means that someone consciously and deliberately engages in actions that violate the law or prevailing regulations. Errors often involve elements of intent or malicious intent in committing actions that violate the law.

b. Carelessness

Negligence in law refers to carelessness or failure to exercise due diligence in actions. It occurs when someone fails to comply with reasonable duty or care standards, resulting in harm or injury to others. In cases of negligence, actions that should have been taken are neglected or performed with less care, even though there is no malicious intent.

In terms of accountability, there are two terms, namely: liability (the state of being liable) and responsibility (the state or fact of being responsible).

1. Liability is a broad legal term that encompasses various meanings, including the most comprehensive sense, covering almost every aspect of risk or responsibility, whether certain, contingent, or potential. Liability is defined to refer to all the characteristics of rights and obligations. In addition, liability is also; a condition subject to actual or potential obligations; a condition responsible for actual or possible things such as losses, threats, crimes, costs, or burdens; a condition that creates a duty to comply with the law promptly or in the future.

2. Responsibility means (something can be accounted for a duty, and includes decisions, skills, abilities, and capabilities). Responsibility also means, the obligation to be responsible for the law carried out, and to remedy or otherwise compensate for any damage it has caused Responsibility, in the moral sense, is defined as the moral attitude to fulfill one's duties, while responsibility in the sense of liability is the legal stance to be accountable for a breach of duty or a violation of the rights of others (Ridwan HR, 2016)

Responsibility, based on the definition provided, is the obligation to be accountable for the law it enforces and to rectify any damage it causes. The responsibility imposed on a Notary, according to the author, is appropriate to use the term "responsibility" here. Responsibility has a meaning that refers to the Notary's responsibility to carry out their duties under the law, and the Notary is also responsible for compensating for any errors made if those errors cause harm to the parties dealing with the Notary or other relevant parties. (Zainal asikin & dkk, 2016)

Proof is the act of proving. Proving means providing or showing evidence, demonstrating something as the truth, executing, signifying, witnessing, and convincing. (Soedirjo, 1985) According to R. Subekti, proving is convincing the judge about the truth of the arguments or evidence presented in a dispute. (R. Subekti, 2008)
The Legal Proof Theory in this study is employed due to the occurrence of the destruction of Notarial Deed Minutes as the Notary Protocol in the issuance of Deed Copies. The Notary is obligated to store and maintain Notarial Deed Minutes as the Notary Protocol (Article 16 paragraph (1) letter b of Law No. 2/2014). Notarial Deed Minutes as the Notary Protocol serve as a guarantee of authenticity, an original deed with perfect evidentiary power and binding force, as well as a guide for the creation of Deed Copies. The destruction of Notarial Deed Minutes as the Notary Protocol may have consequences for Deed Copies, Notarial Deed Minutes, stakeholders, and the Notary.

Notaries, in carrying out their duties, are not immune to errors, whether intentional or unintentional. Therefore, if a Notary makes mistakes or is negligent in performing their duties and functions in their capacity as a public official responsible for creating authentic deeds with an obligation to maintain the confidentiality of all matters related to the deeds made, in accordance with the law, the Notary personally needs to bear responsibility with moral, ethical, and legal obligations to society. There is a possibility that a Notary with mistakes may have legal liability in civil law.

Referring to the explanation, it is indeed appropriate for the government to consider further clarification regarding the electronic storage of minute minutes. The urgency of legal reforms that align with the times is expected to be implemented to maintain the archive of electronic minute minutes storage. In this current era of digitization, technology is advancing, applying increasingly sophisticated systems to help facilitate human work activities. An example of technology-based implementation in the Notary field is the Cyber Notary. The Cyber Notary can replace the conventional system with an electronic system. While Cyber Notary has been widely implemented in other countries, in Indonesia, it has not been fully applied. Referring to Article 15 paragraph (3) of the Notary Law (UU JNP), it stipulates that "In addition to other authorities under the laws and regulations, one of them is to certify electronic transactions."

Thus, regarding the position of storing Notary minute minutes due to force majeure in Cyber Notary, this is not valid because the Notary Law (UU JNP) does not provide any rules or explanations regarding the position of electronic storage of minute minutes. This leads to a normative vacuum in the procedures for storing deeds and important documents in Notary deeds. However, if the storage of minute minutes can be done electronically, it would provide good security and protection for both the parties involved and the Notary in carrying out their duties. Legislation in a legal state serves as protection and provides legal certainty for society.

From the explanation above, it is clear that safeguarding deed minutes by storing them properly is crucial to prevent all risks of damage and loss due to force majeure, which cannot be predicted. Similarly, to prevent such occurrences, with the digital advancements of today, Notaries can store minutes digitally, but this has not been implemented in the positive law of Indonesia.(Mulia et al., 2022)

The Law on Notary Position is expected to accommodate the electronic storage of deed minutes to strengthen and maintain the validity of storing deed minutes as electronic backup data, eliminating the need to demonstrate their authenticity. Notaries, in performing their duties, would be safer and more efficient in terms of time, and they would no longer need to report damage or loss of deeds to the relevant authorities due to force majeure. (Fitriasari, 2022). The provision of legal certainty in this regulation not only provides security
and protection for the parties involved but also offers protection to the Notary. Notaries would be safeguarded from disputes related to this authentic deed. Cyber Notary provides significant benefits in offering electronic storage backup for deed minutes in the future.

CONCLUSION

The Notary Law (UU JNP) does not specifically regulate electronic storage of deed minutes, resulting in a normative gap. This gap arises from the absence of regulations regarding damage or loss in the storage of deed minutes by a Notary, which is an obligation in carrying out their duties. The legal protection for the storage of deed minutes is not outlined in the Notary Law, and it only mentions that storage is part of the Notary's protocol. Force majeure represents unforeseeable circumstances, especially natural disasters. In cases where the storage of deed minutes could lead to damage or loss, the Notary is still responsible, even though the Notary Law and other regulations have not accommodated solutions and roles in addressing damaged or lost deed minutes. The urgency of an update for the storage of deed minutes and data is to ensure protection against force majeure by implementing electronic archiving with the concept of Cyber Notary.

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