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THE AUTHORITY OF THE REGIONAL SUPERVISORY COUNCIL IN TAKING NOTARIAL PROTOCOLS WITH A 25-YEAR TERM

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Abstract

This doctrinal legal research aims to analyze the authority of the Regional Supervisory Council (Majelis Pengawas Daerah/MPD) in retrieving notarial protocols that are 25 years old or older, as regulated under Article 63 paragraphs (5) and (6) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary. The study employs a statutory and conceptual approach, analyzed through legal interpretation and deductive syllogism methods. The findings indicate a normative ambiguity in Article 63 paragraph (5) regarding the authorized recipient of such protocols and a disharmony between this provision and Article 30 letter c of the Minister of Law and Human Rights Regulation Number 24 of 2020. The latter merely authorizes MPD to determine the storage location of the protocols without explicitly granting the authority to retrieve them. This discrepancy potentially weakens MPD's supervisory function and creates a legal vacuum concerning the responsibility for the preservation of notarial archives. Therefore, regulatory reform through harmonization of implementing regulations is necessary to ensure consistency with the legislative mandate, thereby safeguarding the legal protection, continuity, and security of state documents in the form of notarial protocols.

Keywords: ***Legal Disharmony, Regional Supervisory Council, Normative Ambiguity, Notary.***

INTRODUCTION

The Republic of Indonesia is a democratic state based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Karsayuda et al., 2023). Over time, the law in general and notarial law in particular have developed and progressed towards improvement in line with the democratic concept of the state. Its role is none other than to provide legal certainty, order, and protection (Fadli & Hadi, 2023). Therefore, this legal state aims to uphold the supremacy of the law based on the truth and justice prevailing within society (Thontowi et al., 2012).

In line with the duties of the state, namely legal certainty and order, issues related to notaries also present many challenges. It is important to first understand that a Notary can be considered as "a title" endowed with two existential positions, namely the individual Notary as a holder of a public office or public official, and the individual Notary as a citizen (Adjie, 2009). As a holder of a public office, the Notary bears rights and obligations that are governed by Indonesian state law, specifically Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Notary Position. Meanwhile, as a citizen, the Notary holds rights and obligations that are local in nature within the scope of the Republic of Indonesia, which are derived from the 1945 Constitution of the Republic of Indonesia, as well as universal human rights within the international scope (Parihin, 2023).

Therefore, a Notary inherently bears two sides of rights and obligations within themselves: the rights and obligations as a holder of a public office or public official, and as an individual citizen. As a public official, a Notary has rights and obligations as a representative of the state in certain civil matters. A Notary is a public official authorized to create authentic deeds and possesses other powers as stipulated in Law Number 30 of 2004 on the Notary Position (hereinafter referred to as the Notary Position Law 30/2004), some of which have been amended by Law Number 2 of 2014 on the Notary Position (hereinafter referred to as the Notary Position Law 2/2014). Furthermore, Article 1, Number 13 of Law 2/2014 defines "notarial protocol as a collection of documents that are state archives which must be stored and maintained by the Notary in accordance with the provisions of laws and regulations." Based on this definition, the notarial protocol is considered a state archive. Additionally, the Notary Position Law 2/2014 provides the following provision in Article 63, paragraph (5): "The notarial protocol of another Notary, which is 25 (twenty-five) years or older at the time of its submission, shall be handed over by

the Notary receiving the notarial protocol to the Regional Supervisory Council." This requires that the Notary receiving the protocol, which is 25 years or older, submit the notarial protocol to the Regional Supervisory Council (MPD), a requirement that is unrealistic and difficult to implement. This obligation is established because, under Article 63, paragraph (6) of the Notary Position Law 2/2014, if the notarial protocol is not handed over within 30 (thirty) days as mentioned in paragraph (1), the Regional Supervisory Council is authorized to take the notarial protocol (imanungkalit, 2019).

However, in practice, Notaries receiving the protocol often fail to comply with the provision of handing over the protocol to the Regional Supervisory Council (MPD) due to the lack of supporting infrastructure and facilities (Verdyandika et al., 2021). Previous researchers have also identified that due to the absence of proper storage facilities for notarial protocols, Notaries receiving protocols that are 25 years or older cannot fulfill their obligations (Sunaryanto, 2019). Furthermore, examining the provisions of Article 70, letter e of Law 30/2004 on the Notary Position, it explicitly states that one of the powers of the MPD is to "determine the place of storage for Notarial Protocols that are 25 (twenty-five) years or older at the time of their handover." This provision indicates that the role of the MPD is not merely administrative but also includes responsibility for ensuring that the storage of notarial protocols is conducted in accordance with the applicable regulations. The transfer of notarial protocols to the MPD is thus not merely an administrative matter but also an indicator that the state plays an active role in safeguarding and ensuring the security of legal archives that are of significant importance to public interests. Therefore, this study is focused on how the regulatory framework for the authority of the Regional Supervisory Council in taking notarial protocols with a 25-year term is structured.

LITERATURE REVIEW

In the study by Rahmadona (Rahmadona, 2017), the similarity found is that both studies focus on the notarial protocol that is 25 years or older at the time of its handover as one of the objects (variables) being researched. Both studies still recognize that the regulation on the handover of notarial protocols from the receiving Notary to the MPD still leaves legal issues unresolved. The clear difference lies in the type and approach in addressing the issues surrounding the handover of notarial protocols with a 25-year term. Rahmadona's research primarily uses a socio-legal (empirical) research type with a qualitative approach and specific location determination, while this study is conducted with a doctrinal research type, which tends to be normative, through legislative and conceptual approaches.

The study conducted by (Trinando, 2021) shares a similarity in determining one of its independent variables, namely the notarial protocol with a 25-year term or more at the time of its handover from the receiving notary to the MPD, as well as proposing a solution to store notarial protocols in an electronic (digital) format. The difference lies in the identified issues. Frenki's research examines the problems related to the provisions of Article 63, paragraph (5) of Law 30/2004 based solely on the implementation aspect (effectiveness), while this study considers that the fundamental problem lies in the norm that contradicts the principles of AAUPB (problems of legal principles);

Furthermore, the study by (Sirait, 2021) shares a similarity in the independent variable of the notarial protocol with a 25-year term or more at the time of its handover. The differences can then be analyzed in three aspects: the issues, the methods, and the research findings.

Based on the research problems outlined above, this study is crucial to undertake. As mentioned at the beginning of the background, notarial protocols are state archives, and their storage is managed by the MPD. These state archives cannot be destroyed because notarial protocols can be permanently stored. This can be seen in Article 51, paragraph (1) of Law Number 43 of 2009 on Archiving, which states that the destruction of archives is carried out on archives that:

a. Do not have any utility value;
b. Have exceeded their retention period and are to be destroyed based on the Record Retention Schedule (JRA) (the Record Retention Schedule is a list that contains at least the storage or retention period, the type of archive, and information on recommendations regarding the classification of an archive to be destroyed, re-evaluated, or permanently stored, and is used as a guideline for the reduction and preservation of archives);
c. There is no regulation prohibiting it; and
d. Are not related to the resolution of a legal case.

The notarial protocol, as a substantive archive, is a legal product that is categorized as a type of substantive archive, with its retention period determined according to its utility value and used as a guideline for the reduction of substantive archives.

. Based on this regulation, the potential for injustice for both Notaries and the MPD due to the normative nature of the article is marked by legal ambiguity within the regulation itself. The ambiguity of the norm in Article 63, paragraph (5) of the Notary Position Law 2/2014, concerning the protocol as a state archive, creates legal uncertainty. As mentioned at the beginning of this paper, when referring to the objective of legal certainty to protect legal subjects from the potential abuse of power by the government in the process of lawmaking, discovery, and application, legal certainty includes certainty about rules, procedures or mechanisms, time, and institutions (Maulana, Fadli, Herlindah, et al., 2024). Legal certainty requires that the law must be positivized, restrictions on rights must be regulated by specific laws, must be announced, not retroactive, predictable, stable, uniform in interpretation methods, clear, general, complete, coherent, consistent, with a definite purpose, clear division of authority and responsibility, and certainty regarding enforcement procedures (Maulana, Fadli, Herlinda, et al., 2024).

The purpose of legal certainty is to protect legal subjects from the potential abuse of power by the government in the process of lawmaking, discovery, and application (Fadli et al., 2024). This aligns with the function of law as an instrument to limit the authority of the government in making, applying, and enforcing the law. With the existence of clear law, its goal is to provide protection to notaries and the MPD, particularly those bound by the Notarial Protocol as a state archive.

METHOD

This study can be classified as doctrinal legal research (Marzuki, 2019). This is commonly understood, considering that the legal issue addressed in this research is the ambiguity of the norm. Doctrinal legal research thus becomes a research approach that helps systematically explain the research problem, explore its relevance, and analyze its opportunities and challenges ahead (Muhaimin, 2020). Specifically, this study is a normative juridical research based on the variable being examined, which is the norm in legislation with the benchmark of relevant legal principles (Efendi & Ibrahim, 2018). The problem approach used in this research is the statute approach and the conceptual approach. These two approaches are used to examine and analyze the issues, allowing the study to address the problems presented.

Primary legal materials are authoritative legal materials, meaning that these materials have binding power due to their authority and can be accounted for as regulations or court decisions, namely:

1. *Burgerlijk Wetboek Staatsblad Number 23 of 1847 (BW);*
2. Law Number 28 of 1999 on State Administrators Free from Corruption, Collusion, and Nepotism (State Gazette of the Republic of Indonesia 1999 Number 75, Supplement to the State Gazette of the Republic of Indonesia Number 3851)
3. Law Number 30 of 2004 on the Notary Position (State Gazette of the Republic of Indonesia 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432);
4. Law Number 43 of 2009 on Archiving (State Gazette of the Republic of Indonesia 2009 Number 152, Supplement to the State Gazette of the Republic of Indonesia Number 5071);
5. Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 on the Notary Position (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491);
6. Minister of Law and Human Rights Regulation Number 16 of 2021 on the Organizational Structure and Work Procedures, Appointment and Dismissal Procedures, and Budget of the Notary Supervisory Council (State Gazette of 2020 Number 1048).

Secondary legal materials are sourced from literature, including books, articles from legal magazines and the internet, scholarly works on law, and other readings considered relevant to the topic under study. The role of secondary legal materials is also to explain or elaborate on the primary legal materials that have been established.

These legal materials are then analyzed as a method to find alternative systems between research variables, and to explore their meaning, working mechanisms, and relevance. The analytical process begins with legal interpretation, using grammatical, systematic, historical, authentic, restrictive, extensive, and futuristic interpretations. Specifically, this research will use grammatical interpretation, which refers to a descriptive approach involving the interpretation of words in legislation while adhering to applicable rules. Systematic interpretation, meanwhile, is an analytical technique that involves understanding the law as a cohesive whole. If

these interpretative efforts are still insufficient to guide the analysis results, legal reconstruction techniques will be employed, such as argumentum a contrario, argumentum per analogia, and rechtsverfijning.

In addition to interpretation and reconstruction techniques, the analysis will also be conducted through legal reasoning in the form of syllogism, a method commonly used by judges when making decisions in legal cases. This involves using legal principles as the major premise and relating them to the regulation of the authority to take notarial protocols with a 25-year term or more at the time of transfer, ultimately drawing a conclusion.

RESULTS AND DISCUSSION.

Regulation of the Authority of the MPD in Taking Notarial Protocols with a Term of 25 Years or More

The legislation that addresses the position, role, and functions of the MPD can be inventoried as follows:

1. *Reglement op het Notaris-ambt in Indonesie Staatsblad* 1860-3;
2. Law Number 30 of 2004 on the Notary Position (State Gazette of the Republic of Indonesia 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432);
3. Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 on the Notary Position (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491); dan
4. Regulation of the Minister of Law and Human Rights Number 24 of 2020 on the Organizational Structure and Work Procedures, Appointment and Dismissal Procedures, and the Budget of the Notary Supervisory Council.

Before delving into the explanation of the position of the MPD as outlined in various legislations above, it is important to first clarify the meaning of the term "position" in a theoretical sense. Grammatically, the term "position" and lexically, according to the Indonesian Dictionary (KBBI), it can be understood as condition, status, location, place of residence, or dignity. The most appropriate context in this case is "status," which also refers to one's condition in relation to their social environment.

Prato et al., in interpreting the term "position," which also means status in a social context, provide a classification into three categories: assigned status, achieved status, and ascribed status. Based on these three types of status, it is evident that "position" is a nomenclature assigned either by oneself or others, and even a nomenclature that is commonly understood within society, to which the individual then strives to attain.

The position of the MPD is reflected in the provisions of Article 1, paragraph 6 of Law No. 2 of 2014, which is part of the MPN as the body responsible for the guidance and supervision of notaries. The term "supervision" itself, according to Article 1, paragraph 4 of the Minister of Law and Human Rights Regulation No. 24 of 2020, refers to "activities that are preventive and curative in nature, including guidance activities carried out by the Notary Supervisory Council toward notaries."

Supervision activities are essentially intended as described in the authentic interpretation of Article 67, paragraph (1) of the Notary Position Act (UUJN) as actions, including guidance, conducted by the Minister of Law and Human Rights (Menkumham) toward notaries (Notodisoerjo, 1993). This provision changes the previous concept of supervision over notaries, which was carried out by the district courts through the prosecutor's office, to the authority of the Minister of Law and Human Rights. Additionally, the supervision outlined in Article 50 of the *Reglement op het Notaris-ambt in Indonesie Staatsblad 1860-3*, as explained by Soegondo Notodisoerjo, was purely curative in nature (Notodisoerjo, 1993).

The change in the concept of supervision, originally held by the district courts and now under the authority of the Ministry of Law and Human Rights, signals a shift from the theoretical concept of external supervision to internal supervision (Maya, 2017). Baswir, as cited by Jefirston, Fellyanus, and Terttiaavini, explains that internal supervision is a model of oversight conducted by a government body within the institution it oversees, while external supervision is a model of oversight coming from outside the executive circle (Riwukore et al., 2022).

Baswir, in Ira Halidayati's work, elaborates on the types of internal supervision into two classifications: narrow internal supervision and broad internal supervision. In relation to the first nomenclature, narrow internal supervision occurs when the supervisory apparatus consists of the internal environment of the institution performing the oversight without forming a new supervisory organization. On the other hand, broad internal supervision involves a supervisory apparatus consisting of a specially established internal organization tasked with performing the oversight (Halidayati, 2014).

The shift in the concept of supervising notaries as public officials can at least be identified through the provisions on the supervision of public services as outlined in Article 35 of Law Number 25 of 2009 on Public Services (Public Service Law), which explains that public service supervision is conducted both internally and externally. Paragraph (2) of Article 35 provides that internal supervision is carried out by direct superiors or functional supervisors (Rahman, 2019). Meanwhile, Article 35, paragraph (3) of the Public Service Law explains that external supervision may be carried out through the public, the Ombudsman, or the People's Representative Council/Regional Representative Council.

External supervision of notaries, based on Article 35, paragraph (3) of the Public Service Law, is connected to the provisions in Article 70, letter (g) of the Notary Position Act (UUJN), which states that the Majelis Pengawas Daerah (MPD) has the right to receive public reports regarding alleged violations of the code of ethics by notaries (Pratiwi et al., 2022). This sufficiently clarifies that external supervision of notaries remains applicable. Meanwhile, internal supervision of notaries is carried out by the Ministry of Law and Human Rights (Menkumham) in accordance with the provisions of Article 67 of the UUJN, by establishing the Majelis Pengawas Notaris (MPN) (Maharani, 2022).

The Notary Supervisory Board (Majelis Pengawas Notaris) has a structure divided into three levels: the Central Supervisory Board (Majelis Pengawas Pusat, MPP), the Regional Supervisory Board (Majelis Pengawas Wilayah, MPW), and the District Supervisory Board (Majelis Pengawas Daerah, MPD) (Mulia et al., 2022). In relation to the relevance of this discussion, the supervisory functions of the MPN, as outlined in Article 27 of the Regulation of the Minister of Law and Human Rights Number 24 of 2020 (Permenkumham 24/2020), are implemented in four areas:

(1) Guidance and supervision of notaries, as well as the examination of allegations of violations of notary duties;
(2) The performance of administrative duties that do not require the approval of the Supervisory Board meeting;
(3) The performance of administrative duties that require the approval of the Supervisory Board meeting; and
(4) The performance of routine inspections.

Based on the four supervisory tasks of the Majelis Pengawas, specifically the MPD, above, the tasks of the MPD can be classified into two categories: administrative and substantive. More specifically, administrative tasks are divided into two scopes: administrative tasks that require the approval of the Supervisory Board meeting and those that do not require the approval of the Supervisory Board meeting:

Table of Classification of Duties and Authorities of the Regional Supervisory Council

Classification of Duties	**Authority**	
Substantive	Training, supervision, and examination of alleged notary misconduct	
	Routine examination	
Administrative	Without requiring a supervisory council meeting	Article 29 (MPD), 31 (MPW), and 33 (MPP) of the Minister of Law and Human Rights Regulation No. 24/2020
	Requires a supervisory council meeting	Article 30 (MPD), 32 (MPW), and 34 (MPP) of the Minister of Law and Human Rights Regulation No. 24/2020

Source: *Minister of Law and Human Rights Regulation No. 24/2020*

Based on the table above, it can be seen that the aforementioned regulation does not provide a specific normative framework for the substantive tasks as systematically and authentically interpreted in Articles 27(a) and (d) of the Regulation of the Minister of Law and Human Rights Number 24 of 2020 (Permenkumham 24/2020). Only the administrative tasks are elaborated systematically in several derivative articles, particularly in relation to the approval of the Supervisory Board meeting. Article 35 of Permenkumham 24/2020 states that the Supervisory Board meeting is the forum for making the highest decisions within the MPD.

Based on the understanding of the Supervisory Board meeting above, it can be seen that every task falling under the execution of administrative authority, requiring the approval of the Supervisory Board meeting, is considered an administrative act of higher priority. To clarify various tasks indicating administrative authority that does not require the approval of the Supervisory Board meeting in the MPD, refer to Article 29 of Permenkumham 24/2020.

Conceptual Comparison of the Authority of the MPD in the Taking of Notary Protocols with a Retention Period of 25 Years or More in Relevant Legislation

Comparing the concept of administrative authority between the provisions of Permenkumham 24/2020 and the previous Permenkumham 40/2015, it can be observed that: First, according to Article 23 paragraph (1) letter c of Permenkumham 40/2015, the MPD exercises administrative authority without the approval of the MPD meeting in the case of "receiving and determining the place of storage of Notary Protocols that, at the time of transfer, have been in existence for 25 (twenty-five) years or more." Second, on the other hand, Article 23 paragraph (2) letter c stipulates that the MPD exercises administrative authority with the approval of the MPD meeting when a notary protocol with a 25-year retention period is to be issued as a copy of the deed by the interested party, as indicated in Article 54 of Law No. 30 of 2004.

From the perspective of whether or not the MPD needs to hold a meeting for approval, it is clear that the provisions of Article 23 paragraph (1) letter c of Permenkumham 40/2015 are purely technical in nature. With this, anyone—provided they are granted authority based on a meeting decision—can carry out the reception and determination of the place for the storage of notary protocols with a 25-year retention period. This indicates that, in particular, the determination of the storage place for the notary protocols involves two possibilities: either a permanent storage place already exists, or, in the absence of one, the protocol is required to be stored (again) by the recipient of the protocol (Ponira et al., 2019).

This is completely different from the new provision in Permenkumham 24/2020—specifically regulated in Article 30 letter c, which explicitly outlines the administrative authority of the MPD and the requirement for the approval of the Regional Supervisory Board (Rapat MPD) to determine the place of storage for notary protocols with a retention period of 25 years or more. The wording used, which differs, is in Article 23 paragraph (1) letter c of Permenkumham 40/2015, where the MPD 'receives and determines' the storage place for notary protocols with a 25-year retention period or more, whereas in Article 30 letter c of Permenkumham 24/2020, the MPD's authority is limited to 'determining' the storage place only.

Based on the reading of the table above, it appears that there is a reduction in both the quantity and quality of the tasks assigned to the notary for the delivery of protocols with a retention period of 25 years or more. By quantity, this refers to the MPD’s authority, which was initially to receive and determine the storage place, now limited to only determining the place of storage. By quality, this refers to the reduced responsibility for receiving the protocols (Al-azizi et al., 2022). In relation to this, the regulation in Article 63 paragraph (5) and paragraph (6) of Law No. 2/2014 becomes increasingly questionable, as it clearly states:

(5) A Notary Protocol from another Notary that is 25 (twenty-five) years old or older at the time of its delivery shall be handed over by the receiving Notary to the Regional Supervisory Council.

(6) In the event that the Notary Protocol is not delivered within 30 (thirty) days as referred to in paragraph (1), the Regional Supervisory Council has the authority to take the Notary Protocol.

Looking at the provisions of Article 63, paragraphs (5) and (6) above, the argumentum a contrario that should be understood is that the MPD must receive the notarial protocol with a retention period of 25 years or more from the receiving notary, and if the notary does not deliver it within 30 days, then the MPD has the right to carry out the retrieval. In reality, if referring to the derivative regulation in Article 30, letter c of the Minister of Law and Human Rights Regulation No. 24/2020, the provisions of Article 63, paragraph (5) of Law No. 2/2014 appear to be degraded, as the act of receiving the notarial protocol with a retention period of 25 years or more does not seem to be addressed at all. Ministerial Regulation No. 24/2020 actually implies that the MPD is to determine the storage location for the notarial protocol with a retention period of 25 years or more (Sudhyatmika & Swardhana, 2022).

Regarding the placement of the notarial protocol with a retention period of 25 years or more, which falls within the scope of administrative authority with the approval of the MPD meeting, and then contextualized with Rosenbloom's opinion, which explains that policy-making is part of the planning phase, it is evident that from the outset, the MPD has already determined where the notarial protocol with a retention period of 25 years or more will be stored (Rosenbloom et al., 2022). This contrasts with the provision in Article 23, paragraph (1) of the Minister of Law and Human Rights Regulation No. 40/2015, which mentions "receiving and determining" the placement of the notarial protocol with a retention period of 25 years or more (Wardani & Iriantoro, 2021).

The submission of notarial protocols with a retention period of 25 years or more, according to Melita as cited by Ayu Yuhana, is an effort to preserve the existence and confidentiality of notarial protocols. Yuhana emphasizes that, as a document or archive owned by the state, it is only appropriate for the government—specifically the Ministry of Law and Human Rights (Menkumham), whose oversight is delegated to the MPN, and subsequently to the MPD—to act proactively in safeguarding it (Yuhana, 2020). It is not an exaggeration to state

that Article 63, paragraphs (5) and (6) seem proactive in receiving and, if necessary, retrieving notarial protocols with a retention period of 25 years or more.

The regulation on the MPD's administrative authority to receive and retrieve notarial protocols with a retention period of 25 years or more is therefore more passive, thus it can be regarded as the state's effort to maintain and protect notarial protocols (state archives) in all conditions of existing deficiencies. This situation may initially appear to be merely an effort at contextualizing the provisions of Article 63, paragraphs (5) and (6), but upon closer inspection, this could be seen as what L.M. Gandhi referred to as legal disharmony.

Legal disharmony, in Gandhi's perspective, takes various forms, one of which is the conflict between regulations in the form of laws and implementing regulations (Gandhi, 1995). The Ministry of Law and Human Rights' Publication Media for Legislation and Legal Information outlines that there are four consequences of a disharmonious legal situation:

1. Conflict between interpretation and implementation;
2. Emergence of legal uncertainty;
3. Ineffectiveness and inefficiency of legislation; and
4. Dysfunction of law as a standard of conduct, social control, and resolution of societal problems.

In connection with the consequences of legislative disharmony outlined above, it can be indicated that Article 63, paragraphs (5) and (6) suffer from a difference between interpretation and implementation. This can be seen from the imperative language of Article 63, paragraph (5) of Law No. 2 of 2014, which clearly states that the notarial protocol with a retention period of 25 years or more "... shall be handed over by the notary receiving the protocol to the Regional Supervisory Council." However, if the MPD has already applied the provisions of Article 30 letter c of Permenkumham 24/2020, which grants the MPD the authority to "determine the place of storage of the notarial protocol...", and the determined place is the office of the respective notary, then a discrepancy between interpretation and implementation clearly occurs.

A grammatical interpretation shows that the word 'handed over' in Article 63, paragraph (5) of Law No. 2/2014 means to entrust or surrender. This is entirely different from the term 'determine' in Article 30, letter c of Permenkumham 24/2020, which means to make certain, ensure, or establish. When the meaning of the term 'determine' is scrutinized, it will be understood to contradict the intent of Law No. 2/2014. The aforementioned law clearly specifies that the place where the notarial protocol with a 25-year or more retention period should be stored is with the MPD, but Permenkumham 24/2020 instead suggests that the MPD must again determine the storage location of the protocol.

Regarding the ineffectiveness of the law, this also appears as a consequence of the disharmony between the provisions of Article 63, paragraph (6) of Law No. 2/2014 and Article 30, letter c of Permenkumham 24/2020. The Regional Supervisory Council, which was originally granted the authority to retrieve notarial protocols with a retention period of 25 years or more if not handed over by the notary within 30 days, ultimately cannot apply this authority at all. This is because, from the outset, according to Permenkumham 24/2020, the MPD is tasked with determining the place of storage for the protocol, not receiving and designating the storage place for the protocol.

Regarding legal dysfunction, based on the provisions of Article 30, letter c of Permenkumham 24/2020, the MPD ultimately cannot fulfill the purpose of receiving notarial protocols with a retention period of 25 years or more. Initially, the MPD, as the implementer of the Ministry of Law and Human Rights, was expected to actively contribute to safeguarding and maintaining notarial protocols. However, now, due to constraints in infrastructure and facilities, the MPD has lost this role (Aditya & Winata, 2018).

CONCLUSION

The regulation regarding the authority of the Regional Supervisory Council (MPD) in the retrieval and storage of notarial protocols with a retention period of 25 years or more demonstrates a disharmony between the laws (Law No. 2/2014) and its implementing regulation (Permenkumham 24/2020). Normatively, Articles 63, paragraphs (5) and (6) of Law No. 2/2014 grant the MPD the authority to receive and even retrieve the notarial protocol if it is not handed over within 30 days. This provision reflects the active role of the MPD in ensuring the security and continuity of state archives, specifically the notarial protocol. However, Permenkumham 24/2020, through Article 30, letter c, simplifies the MPD's authority to only "determine the storage location," without explicitly providing for the function of receiving or retrieving the protocol. This leads to a shift in both quantity (a reduction in the type of authority) and quality (a decrease in the direct responsibility of the MPD in securing the protocol). As a result, there is a misalignment between legal interpretation and implementation, which potentially gives rise to legal uncertainty, regulatory inefficiency, and legal dysfunction. The MPD, as part of the internal

supervisory system within the Ministry of Law and Human Rights, appears to have lost its substantive role in protecting the notarial protocol, which has now become a state archive.

Therefore, this study recommends that a legal reform be carried out by the legislators – the House of Representatives (DPR) together with the president – to amend Law No. 2/2014 and for the Minister of Law and Human Rights to revise the implementing regulation of Law No. 2/2014. The primary focus of the reform should be the provisions of Article 63, paragraph (5) of Law No. 2/2014 and Article 30, letter c of Permenkumham 24/2020, with the addition of regulations for the digitalization of the storage of notarial protocols based on data integration.

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