

THE TRANSFER OF NOTARY LEGAL RESPONSIBILITIES THROUGH LEGAL LIABILITY INSURANCE AS A FORM OF LEGAL PROTECTION FOR NOTARIES

Rilawadi Sahputra
Anis Mashdurohatusun¹
Gunarto

ABSTRACT

In carrying out his duties, the Notary is required to act meticulously, thoroughly and independently and must always adhere to the Notary Position and Notary Code of Ethics. However, in carrying out his duties, a Notary may be subject to a legal case and can end up in a lawsuit in the court process. The unpreparedness of the Notary, especially from an economic standpoint to deal with the case handling process in court, will potentially result in a Notary falling into an economically difficult situation. So as to prevent this, it is necessary to look for other legal protections aside from the legal protection that has been regulated in the Notary Position Law. The writing of this article used a normative juridical method in which legal analysis was based on the study of literature.

Keywords: Notary, Legal Protection

A. Introduction

1. Background

Risk is an event that cannot be ascertained its occurrence. Moreover, when it occurs, it can cause economic losses for people, their families or other people who have an interest in a person². Risk can also be interpreted as uncertainty about losses and contains two concepts, namely uncertainty and loss³. This risk can be in the form of ordinary events or legal events such as death, both natural and accidental, the risk of disability either due to illness or accident, the risk of old age resulting in the ability to work or income to decrease or disappear altogether. Furthermore, James L. Athearn stated that the risks are: ⁴

1. The possibility of loss;
2. The possibility of unfavorable, deviation, from expectation because any unfavorable from expectation is loss.

Risks can be divided into 3 (three) types, namely Personal Risks. It is risk that will affect a person's income ability, for example the risk of having to be hospitalized due to serious illness or the risk of being considered too old to work. Property Risks (risk faced by someone's property), namely the risk faced by a person if someone has an object that might be lost, stolen or damaged. The last is liability risk (the risk of legal responsibility), namely the risk that can be suffered by someone because they must be legally responsible his actions caused losses suffered by others, for example because his negligence in driving caused other people to be hit and had to replace the cost of treatment and other costs of the victim⁵. Therefore, one of the human endeavors to divert its own risk is by entering into a contract (contract) of transferring risk with another party. Such an agreement is commonly referred to as an insurance or insurance agreement. The insurance or insurance has a purpose first of all is to divert the risk caused by events that cannot be expected to occur to other parties who take the risk to compensate. ⁶

To overcome the risks mentioned above, some people take action by having an insurance policy with various types of insurance policies. This system of binding yourself with insurance is more useful and helpful, not only to face an uncertain future, but most importantly to deal with risks that may come at any time that will cause harm to yourself and your family. The choice of taking an insurance policy is the right thing to do, because insurance is a human endeavor to overcome the risk of losses that come unexpectedly before, which befall someone by combining a large number of people to face the same risks and they pay a substantial fee to cover possible losses befall one of them. ⁷

¹ Corresponding Authors

² Yayasan Dharma Bumiputera, 1995, *Peran dan Fungsi Asuransi Jiwa*, Jakarta, page1.

³ A. Hasymi Ali, 1993, *Pengantar Asuransi*, Jakarta: Bumi Aksara, page22.

⁴ James L. Athearn, 1977, *Risk and Insurance*, West Publishing Company, page.3.

⁵ Agus Prawoto, 1995, *Hukum Asuransi dan Kesehatan Perusahaan Asuransi*, Yogyakarta: BPF, page 13, sebagaimana telah dikutip dari : Jeff Woodward, 1986, *Insurance Principle*, Santa Monica: The Merit Company CA, page3.

⁶ Emmy Pangaribuan Simanjuntak, 1980, *Hukum Pertanggungan: Pokok-pokok Pertanggungan Kerugian, Kebakaran dan Jiwa*, Yogyakarta: Seksi Hukum Dagang Fakultas Hukum Universitas Gajah Mada, page5.

⁷ Amiruddin A. Wahab, 1998, *Diktat: Hukum Asuransi*, Banda Aceh: Fakultas Hukum Univeristas Syiah Kuala Darussalam, page4-5.

Sri Redjeki Hartono stated that one of the functions of the insurance institution is, "he offers protection services to those who need it so he can be positioned as an institution that provides themselves in certain circumstances to accept the risks of other parties, specifically economic risks".⁸ As an institution, insurance has a working mechanism so that every possible insured as an insurance participant suffers a loss that can be fixed and quickly overcome.⁹ According to Dinsdale, W.A., as quoted by Afzalur Rahman, mentioning the insurance function in general, can be classified into primary functions, secondary functions and indirect functions:

1. The primary function of insurance is to guarantee the security of an individual against certain hazards so that financial losses together are borne by many people. The risk assessed and the amount of the contribution depends on the number of members per year;
2. Secondary functions, namely insurance has made commercial businesses, industries and many other large businesses and operate on a large scale that is not possible without insurance business;
3. Indirect functions, where very large insurance funds are invested in development and some in the industry indirectly provide financial assistance to local and industrial governments.¹⁰

From the descriptions and quotations above, it can be known that insurance institutions are one of the institutions in an effort to overcome or minimize and transfer the risks faced by some members of the community, as well as one of the ways to collect public funds, so that they play a role in advancing public welfare and in turn benefits the community and the country in general.

To be bound, the parties to the insurance agreement must be made in the form of a deed, as specified in Article 255 of the KUHD which confirms, "An insurance must be made in writing in a deed called a policy". And the insurance policy is agreed on the rights and obligations of the parties. Based on the description above, it can be seen from the legal aspect that insurance is a form of agreement between the policy holder as the insured with the insurance company as the guarantor, and the contents of the agreement are set forth in a deed called an insurance policy and an insurance policy is a proof that an insurance agreement has occurred.

Although the functions and objectives of the insurance institution are so good, in reality there are still some community members who have not been able to utilize the institution. This can be caused by the low income level of the community, insufficient knowledge in the field of insurance so that awareness of insurance is not an important requirement. In connection with the insurance problem in its development Notary is a profession that has an important position, it is because the state (government) gives part of its authority in the civil field to the Notary in making authentic written evidence (deed) to ensure certainty, order and legal protection regarding a certain act, determination and legal event that is required or requested by every citizen in Indonesia.

The parties (people or some people) come to the Notary for their own awareness and express their wishes before the Notary, who then Notary constricts and constructs the wishes of the adherents in the form of Notary deeds in accordance with the applicable law, and a matter that is not possible for the Notary to make a deed without any request from anyone. As long as the Notary carries out his duties pursuant to the Act of Notary Position, and has fulfilled all formal procedures and requirements in making the deed and the deed concerned also in accordance with the wishes of the parties, then a lawsuit (civil) and (criminal) claim should be submitted to a Notary is actually impossible to do.

In the Notary Position and Notary Code of Ethics Act, it is actually very strict and rigid (standard) to regulate the procedure for Notaries to carry out their duties in making deeds and other authorities. Even some articles in the Notary Position Act stipulate provisions on sanctions for violations the Notary who causes a degraded deed from the strength of the authentic deed to a deed has only the strength of proof as a deed under hand or a deed is null and void can be the reason for the party suffering loss to demand compensation and interest to the Notary concerned.¹¹ In practice, although the Notary has carried out his duties according to the Notary Position Code and Notary Ethics Code and other related laws, they still have legal risk that can be sued and be held as a defendant in a civil case because it is deemed by the plaintiff that due to deed issued by a Notary harms the interests of the plaintiff. In addition, in practice, there is also the fact that the Notary is at risk of being prosecuted in a criminal case because he is considered to have participated in or assisted in a criminal act related to a deed made by a Notary.

Legal risks that can befall a Notary in carrying out their duties due to the "concept of responsibility of a Notary according to law" to his client or another party (third party) who may feel aggrieved by a deed issued by a Notary or on another legal product produced by a Notary Public. So from the description above, it can be said that the profession of notary position on one side is a noble and honorable legal position, but on the other hand a legal position full of legal risks. When a Notary is faced with the risk of his job duties and must follow the legal process, whether it is a civil suit or criminal prosecution, and must go back and forth to the court and or fulfill the call of investigators, public prosecutors and judges, of course this will confiscate not only time and

⁸ Sri Redjeki Hartono, 1992, *Hukum Asuransi dan Perusahaan Asuransi*, Jakarta: Sinar Grafika, page 11.

⁹ *Ibid.*

¹⁰ Afzalur Rahman, 1995, *Doktrin Ekonomi Islam Jilid IV*, Terjemahan Soeroyo Nastangin, Editor H.M. Sonhadji, Jakarta: Dana Bhakti Wakaf, page 95-96.

¹¹ These articles are Article 16 paragraph (9) paragraph (12), Article 4, Article 44 paragraph (5), article 48 paragraph (3), Article 49 paragraph (4), Article 50 paragraph (5), Article 51 paragraph (4), Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position and Article 52 paragraph (3) of Law Number 30 of 2004 concerning Notary Position.

Notary's thoughts but also economic costs that arise and unpredictable costs that must be incurred such as paying attorneys' fees, litigation costs in court and other costs due to being sued in a civil or criminal prosecution.

Referring to the provisions in Article 1 point (1) of Law Number 40 year 2014 concerning Insurance, there is a fragment of the phrase in the Article which states that "... legal liability to third parties that may be suffered by the insured or policyholder due to an event that is uncertain ...". Based on the aforementioned norms, the legal basis is found that "legal responsibility" includes objects that can be insured. Therefore the legal responsibility of a Notary can also be insured.

Based on the various explanations available, it is important in this article to explore and discuss further about the "**The Transfer of Notary Legal Responsibilities through Legal Liability Insurance as a Form of Legal Protection for Notaries.**"

2. Problem Formulation

Based on the various explanations above, the issues discussed in this article covered the issue of notary accountability in carrying out their duties related to insurance issues currently, issues related to legal protection for notaries who are carrying out their duties related to insurance matters and the last is the issue of the ideal construction of responsibility transfer. Notary law through legal liability insurance is as a form of protection based on the value of justice, legal benefits and certainty.

3. Research Methods

The method used to analyze and describe the problem in this article was the normative juridical method. Normative juridical research is carried out by inventorying and researching library materials and legislation as well as rules of ethics relating to Notaries and statutory regulations and the contents of legal liability insurance policies. Furthermore, the nature of the research used to write this article is analytical descriptive, namely research that describes the applicable legal regulations and then associated with legal theories and in the practice of implementing positive law relating to problems as described previously.

4. Discussion

a. Accountability of a Notary in an Insurance Case

If you look at the various legal provisions that relate directly or indirectly to the inheritance profession in Indonesia, it can be concluded that the issue of notary accountability if there is a lawsuit against him can be seen in terms of:

1) Administrative Accountability

Based on administrative law sanctions stipulated in Law No. 30 year 2004 jo. Law Number 2 year 2014 concerning Notary Position and its implementing regulations, it appears that the notary can be given administrative sanctions if s/he commits an illegal act, as for the sanctions in the form of sanctions for Oral Warning until the heaviest sanctions, namely disrespect Dismissal, as stipulated in Article 7 paragraph (2), Article 9 paragraph (1), Article 16 paragraph (11) and paragraph (13), Article 17 paragraph (2), Article 19 paragraph (4), Article 32 paragraph (4), Article 37 paragraph (2), Article 54 paragraph (2) and Article 65 A of the Notary Amendment Act; and Article 85 of the Act of Notary Position.

2) Criminal Liability

Furthermore, in addition to administrative sanctions, in carrying out their duties and responsibilities a notary is also at risk of being caught in criminal sanctions if deemed to have committed an act deemed a criminal offense. According to the Criminal Code a notary which is considered to have committed a criminal offense can be subject to Article Counterfeiting (Article 263, 264 and 266 KUHP), Darkening (Article 372 and 374 KUHP) and or Fraud (Article 378 KUHP), and jo criminal participation (Articles 55 and 56 of the Criminal Code) even now the articles in the Corruption Act (Article 2 paragraph (1) and Article 3 of Law No.31 of 1999 concerning Eradication of Corruption Crimes, as amended by Law No.20 2001), or money laundering crime (Article 10 of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering).

3) Civil Liability

In addition to administrative and criminal sanctions, a notary who is deemed to have committed an unlawful act can also be demanded civilly. Based on the Civil Code, a notary who is considered to have committed an unlawful act can be sued on the basis of "Default" or "Act Against Law" which harms another person (Article 1365 of the Civil Code) while in Law Number 30 of 2004 jo. Law Number 2 Year 2014, the legal basis for civil sanctions against Notaries is regulated in Article 16 paragraph (12), Article 41, Article 44 paragraph (5), Article 48 paragraph (3), Article 49 paragraph (4), Article 50 paragraph (5), Article 51 paragraph (4) and Article 52 paragraph (3).

4) Ethical Accountability

Furthermore, in addition to the sanctions as described above, a notary who is deemed to have committed an unlawful act can also be threatened with ethical sanctions namely ethical responsibility based on the Notary Code of Ethics; and ideological and philosophical responsibilities based on Pancasila values, namely vertically as religious people and believing in God Almighty, a sense of responsibility is always cultivated to God Almighty.

b. Legal Protection for Notaries in Performing their Responsibilities

As stipulated in Article 1 number 1 of Act Number 2 year 2014 concerning Amendments to Law Number 30 year 2004 concerning Notary Position, formulated: "that Notary is a general official authorized to make authentic deeds and other authorities as referred to in Notary Position Law. Other authorities related to this provision are the authority to make authentic deeds regarding all actions, agreements and provisions required by laws and/or desired by those concerned to be stated in an authentic deed, guaranteeing certainty of date of deed creation, storing deed, giving *grosse*, copy and quotation of the deed, all of them as long as the deeds are not also affirmed or excluded from other officials stipulated by the law. Starting from the above provisions, indicating that the existence of a Notary can be seen as a very important and needed position of the public, because the information contained in the Notary deed must be trustworthy, reliable can guarantee as a strong evidence and can provide legal certainty, realizing legal order and legal protection for parties who need evidence in the form of authentic deed in the future.¹²

As a consequence of the principle of the rule of law which guarantees certainty, order and legal protection. It is based on truth and justice based on Pancasila, in the legal traffic, community, national and state life requires evidence that can clearly determine the rights and obligations of a person or legal entity as a subject of law in society. Therefore, authentic deeds made by/before the Notary become the strongest and most fulfilling evidence and have an important role in every legal relationship in the life of society.¹³ Notary as a general official, which means that the Notary is given and equipped with the authority or general authority concerning the public (*openbaar gezag*)¹⁴, as a general official, the Notary is appointed by the state, meaning that the Notary is an arm of the state, the Notary carries out some state duties in the field of law civil. The state in order to provide legal protection in the field of civil to the citizens has delegated part of its authority to the Notary to make an authentic deed, therefore when carrying out his duties, the Notary must be positioned as a public official who carries out the duties of the state, like judges, prosecutors, police, ambassadors big, regent/mayor and so on. The difference is that the Notary does not get a salary and other physical facilities from the state, the Notary only gets a Decree from the state (government) to carry out his authority and is justified by law to get honorarium as a counter-achievement to the public. The amount of the honorarium has also been determined by law, it cannot at will, so the Notary must be recognized as a service to the interests of the state and society.

In providing services of public interest, in the sense of the service sector of making a deed and other duties charged to the Notary, it is attached to the title as a general official within the scope of duties and authority of the Notary. The service of public interest is the essence of the task of the field of government which is based on the principle of providing and guaranteeing a sense of legal certainty for members of the community. In certain fields the task is given by law and entrusted to the Notary, so that the public must also believe that the Notary deed issued or issued provides a guarantee of legal certainty for the citizens. The authority given by the law and trust from the community served is the basis of the duty and function of the Notary in legal traffic. As a logical consequence, then along with the existence of these beliefs, supervision must be guaranteed so that the Notary's duty is always in accordance with the legal rules that underlie his authority, in order to avoid misuse of authority or trust given. Therefore, the main objective of supervision is that all the rights and authorities and obligations given to the Notary in carrying out their duties as provided by the basic rules in question are always carried out above the established legal corridor, not only on a legal basis but also on moral grounds. and professional ethics to ensure legal protection and legal certainty for the community. Because the position of Notary is a position of service to the interests of the state and society, supervision, especially the examination of the Notary must prioritize the respect and respect for fellow state officials.¹⁵

The other side of supervision of a Notary is the aspect of legal protection for a Notary in carrying out his duties as a general official, in other words how legal protection is given to a Notary in carrying out duties and functions that are given and entrusted to him by law. Notaries as ordinary human beings can naturally make mistakes both personal and professional in carrying out their duties. UUN has placed a Notary as a general official who runs a legal profession¹⁶ in the form of a Notary position,

¹² Abdul Bari Azed, *Kebijakan Penguatan Fungsi Kelembagaan Majelis Pengawas Notaris*, this Paper was presented in the briefing and refreshment of knowledge for members of the Indonesian Notary Association at the XX Congress, January 28, 2009, in Surabaya.

¹³ General Explanation of the Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position, State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number: 4432.

¹⁴ R. Sugondo Notodisoerjo, 1993, *Hukum Notariat di Indonesia suatu penjelasan*, Jakarta, Raja Grafindo Persada, page44.

¹⁵ *Jati Diri Notaris Indonesia, Dulu, Sekarang dan Yang Akan Datang*, Pengurus Pusat INI, Jakarta, 2008, page238.

¹⁶ Profession as a job based on certain skills acquired through formal education, experiences and trainings and people who run the profession must be professional, while professional organizations are a group of people who run a particular profession. The form of legal protection for a Notary profession is marked by the existence of professional organizations, the rules of professional ethics established by professional organizations, imposition of sanctions, revocation of professional licenses carried out by professional organizations and no interference from the executive, judicial or legislative towards the profession. own. Therefore, the Notary is not a profession that is "pure profession", because the granting of permission and revocation of the license of Notary practice is still the authority of the government (executive) in this case

because it is necessary to obtain legal protection is a Notary as a noble occupation profession, not a Notary as a person. Legal protection in this case must be interpreted as protection by using legal facilities or protection of the implementation of the duties assigned by law.¹⁷ The protection provided by law is the protection of the rights of a Notary which is the result of transformation of interests carried out through a legislative process in a legal establishment institution or parliament, so that the rights of a Notary can be respected, protected and obeyed. In order for legal protection against Notaries to be carried out effectively, it is necessary to provide legal remedies, which include non-judicial legal remedies, namely by doing things that the rules are justified to do as well as legal efforts through judicial channels or through the general court.¹⁸ Non-judicial law efforts include preventive or preventive legal remedies so that violations of the rights of Notaries can be avoided, which is carried out by giving warnings, reprimands, summons, objections, complaints to executive officers. Whereas if a violation of law has taken place, then legal remedies are no longer preventive, but become corrective because the aim is to make corrections to the consequences that occur due to actions committed by rights violators. Corrective legal remedies can be non-judicial because they involve non-judicial institutions, such as state administration officials. While the other is corrective legal remedies carried out by the judicial institution so that it has entered the law enforcement process¹⁹. Notary Position Act, namely Law Number 2 of 2014 concerning Amendments to Act Number 30 of 2004 concerning Notary Position (hereinafter referred to as UUJN Amendment), has regulated the form of legal protection that can be given to Notaries in the execution of their duties to avoid arbitrariness of the legal apparatus or criminalization of office, this matter is regulated in Article 66 of the UUJN formulated:

- (1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized:
 - a. Take a copy of Original Master of deed and/or letters attached to Original Master of deed or Notary Protocol in the deposit of Notary; and
 - b. Calling a Notary to attend the examination related to Notary Deed or Protocol which is in the Notary's deposit.

In the sense of the Notary listed in Article 66 of the UUJN this amendment includes temporary Notary officials, Substitute Notaries and Special Substitute Notaries, both when they are still carrying out their duties and who are no longer running their positions. Upon taking the Original Master of deed photocopy of deed and/or letters as described above, the minutes of submission must be made, except that the UUJN does not provide an explanation of who is obliged to make and sign the minutes, in the opinion of the most appropriate writer to make and sign the minutes the submission is a Notary who submits together with the party receiving the submission. The Notary Position Act has provided a special procedure in law enforcement against Notaries as stipulated in Article 66 of the UUJN Amendment, namely:

- (1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized:
 - a. Calling the Notary to attend the examination relating to the Deed or Notary Protocol which is in the Notary's deposit.
 - b. Calling a Notary to attend the examination related to Notary Deed or Protocol which is in the Notary's deposit.
- (2) Taking a copy of Original Master of deed or letters as referred to in paragraph (1) letter a, a minute of submission is made.
- (3) Notary Honorary Council within a period of 30 (thirty) working days after the receipt of the request for approval as referred to in paragraph (1) must notify the answer of accepting or rejecting the request for approval.
- (4) In the event that the Notary Honorary Assembly does not give an answer within the period referred to in paragraph (3), the Notary Honorary Assembly is deemed to have received an approval request.

Through the organic regulations as implementing the provisions of UUJN above, the Minister of Law and Human Rights of the Republic of Indonesia Regulation Number: M.03.HT03.10 of 2007 concerning the Collection of Original Master of deed and Calling of Notaries, the substance of Article 66 of the UUJN extended including the taking of original master of deed and/or letters attached to the notary deed and/or protocol in the deposit of a Notary. Taking original Master of deed and/or letters attached to the minutes of the Notary deed and/or protocol in the deposit of a Notary, is not intended to be taken over by

the Minister of Law and Human Rights of the Republic of Indonesia, meaning that there is still interference from the executive, different from the legal profession of Advocates, in which the granting of legal practice permits and revocation of licenses is the authority of advocate organizations as professional organizations.

In addition, it is unfortunate that the UUJN has mixed up between the terms position and profession, position and profession, are two terms that differ in understanding, and with different substances, Notary is a position, because in carrying out his duties he obtains direct authority from the state based on law invitations to carry out some of the state's authority in the field of civil law, namely to make authentic deeds that cannot be carried out by the state itself so that they are delegated to the position of Notary (attributive authority), so that the Notary uses the state symbol (eagle) in his official stamp. Whereas the profession is not to carry out the duties or authority of the state power, but the profession is born from the intersection of various interests in society so that it gives birth to a particular profession or profession as a work based on certain expertise as previously written.

¹⁷ Harjono, *Op.Cit.*, page385.

¹⁸ *Ibid.*, page386.

¹⁹ *Ibid.*, page 386.

investigators, prosecutors or judges, but only temporarily borrowed for examination purposes at the National Police Forensic Laboratory Center, in order to check the validity of the signature and/or thumbprint stamped on the Original Master of deed, if the Minuta examination of the deed and/or letters attached to the minutes of the Notary's deed and/or protocol in the deposit of the Notary has been completed, then the minutes of the deed and letters it is returned to the Notary concerned.²⁰ The Criminal Procedure Code (KUHAP) regulates the calling of witnesses or suspects and confiscation of written evidence or letters stored by a Notary in its protocol. The summons to the Notary for the purpose of the investigation, without special procedures and for the Notary must present to the investigator,²¹ for confiscation of letters or other writings including original Master of deed, letters attached to the notary deed and protocol that must be kept and kept confidential by the Notary, only carried out with special permission from the local Chief Justice.²²

With the enactment of Article 66 of the UUJN Amendment as a *lex specialist*, the provisions of Article 112 of the Criminal Code can only be applied to a Notary after the approval of the Notary Honorary Assembly, in the form of a decision by the Chair of the Notary Honorary Assembly based on the decision of the plenary meeting of the Notary Honorary Assembly and final and binding for the investigator, while the confiscation of the Original Master of deed, the letters attached to the Minutes of Notarial deed and protocol in the deposit of the Notary no longer require court approval and only the approval of the Notary Honorary Assembly in the form of a decision of the Chair of the Notary Honorary Assembly based on the plenary meeting of the Notary Honorary Assembly which is final and binding.²³ Relating to the position of the Land Deed Making Officer (PPAT) which in practice is held in conjunction with the position of Notary, because the position of PPAT is regulated in other regulations, namely Government Regulation Number 24 of 2016 concerning Amendment to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Maker Officer, then if the PPAT who is called as a witness or suspect is imposed by the provisions of Article 112 of the Criminal Procedure Code, while the seizure of original master of PPAT deed and the registration can only be done with special permission of the Head of the local District Court based on Article 43 of the Criminal Procedure Code. The government should immediately also make a new PPAT Position Law in which regulates the norms of law enforcement against PPAT which are the same as the norms in the UUJN (harmonization) because in practice these two different positions are carried by one person and the scope of authority in making mutual deeds related to each other. The sound of Article 66 of the UUJN Amendment only explains or mentions the word "Notary", and does not mention the word "Substitute Notary, Special Substitute Notary, and *werda* Notary"²⁴, text Article 66 UUJN Amendment to the Notary's call for examination purposes, does not mention the position of witness or suspect and/or arrest and/or detention. Text Article 66 UUJN Amendment does not mention taking original Master of deed or letters attached to the notarial deed and/or protocol in the deposit. Understanding the text Article 66 of the UUJN Amendment must be linked to other articles in the UUJN and other laws and regulations as a legal system. Notary as a general official is burdened with the obligation to maintain the confidentiality of the contents of the deed and information given in relation to the deeds made under Article 4 paragraph (2) of the UUJN concerning the oath of office which reads: "That I will keep the contents of the deed confidential and information obtained in the execution of the position I". Furthermore, the provisions of Article 16 paragraph (1) letter f of the Amendment UUJN are formulated: "In carrying out his position the Notary is obliged to keep everything confidential regarding the deed he made and all information obtained in order to make a deed in accordance with the oath/promise of office, unless the law determines otherwise". Furthermore, Article 54 of the UUJN is formulated: "Notaries can only provide, show or notify the contents of the deed, *grosse* deed, copy of deed or certificate of deed, to the person with direct interest in the deed, heirs, or person who obtains the rights, unless otherwise stipulated by regulation. Therefore, the Notary Substitute and the Notary Acting Officials are the people who are appointed to temporarily carry out the position of Notary and therefore the provisions regarding the secret of the

²⁰ Even so it does not mean that the Honorary Council of Notaries can arbitrarily approve the taking of minuta deed, given that the document in the form of Minuta of Notary deed is a state document that must be maintained, cared for and protected, especially for the interests of interested parties, including heirs and people who receive their rights.

²¹ Article 112 of the Criminal Procedure Code, requires that someone who is called by the investigator for the purpose of the examination must come to the investigator. For witnesses who did not come to the investigator without a valid reason, they could be convicted under the provisions of Article 224 of the Criminal Code, with a maximum sentence of 9 months..

²² See Article 43 of the Criminal Procedure Code which states that confiscation of letters or other writings from those who are obliged according to the law to keep secret (in this case a Notary), as long as it does not involve state secrets, can only be done with their consent or with special permission from the local District Court Chief, unless the law determines otherwise.

²³ Relations Article 112 of the Criminal Procedure Code and Article 66 of the UUJN must be understood using the legal principle of *lex specialist derogat lex generalis* which means that the law is specific to the exclusion of general laws. The main requirements that must be fulfilled are the similarity in the level of legislation in force, such as the law with the law. Then the legal principle of *lex posteriori derogat lex priori* means that the new law disregards the old law, the conditions that must be fulfilled, namely the level / degree of legislation must be the same and the substance must be the same. Based on these two legal principles, the provisions of Article 112 of the Criminal Code can only be applied if the approval of the Notary Honorary Council can be fulfilled as referred to in Article 66 of the UUJN Amendment.

²⁴ *Werda* Notary means retired Notary who has ended his term of office.

position that apply to the Notary apply also to the Substitute Notary and Temporary Notary Official, unless the law stipulates otherwise (Article 33 paragraph (2) UUJN Amendment). Article 322 paragraph (1) of the Criminal Code formulates that:

- (1) Anyone who deliberately opens a secret, according to his position or occupation, both current and former, is obliged to keep it, sentenced to a maximum of nine months in prison or a maximum fine of Rp. 9,000,-

Based on some of the provisions above, it can be concluded that the Substitute Notary and the Notary Acting Officer or Notary by Article 322 paragraph (1) of the Criminal Code are still obliged to keep the contents of the deed and information obtained related to the deeds made confidential. UUJN does not clearly regulate whether the Substitute Notary, Notary Official and Notary during his tenure or if he is no longer in office, the approval of the Notary Honorary Council is still required as referred to in Article 66 UUJN Amendment, is the Article 66 UUJN only valid for Notaries, Substitute Notaries and the Notary Acting Officer while in office, if Article 66 of the Amendment Law is understood by relating the provisions of Article 4 paragraph (2) UUJN Jo. Article 16 paragraph (1) letter f of the Amendment UUJN Jo Article 54 of the Amendment UUJN Jo Article 33 paragraph (2) of the UUJN Amendment and Article 322 of the Criminal Code, the Notary must be interpreted as well as those who are still in office or who are no longer running the Notary's office, in relation to the deeds that they have made but require approval from the Notary Honorary Council as which referred to in Article 66 of the UUJN Amendment. Interpretation as mentioned above is needed to realize one of the objectives of the law, namely legal certainty and disappearing doubt over the application of Article 66 of the UUJN Amendment which if interpreted narrowly can lead to legal uncertainty for anyone who has been a Substitute Notary, Temporary Notary Officer and Notary Public.

A common thing is valid and becomes the principle of public law that a public official, before being able to run his position legally, must first take an oath or take an oath, as long as this has not been done, then the position may not and cannot be carried out legally. For the position of Notary, this principle is stated in Article 4 of the UUJN, which basically determines that: "before carrying out his position, the Notary is obliged to make an oath/promise according to his religion before the minister or appointed official". Furthermore regarding the sound of the oath of office of Notary, including Substitute Notary and Temporary Notary Officer, based on the provisions of Article 4 paragraph (2) UUJN, notary oath of office consists of two parts, first, called oath or promise of *belovende eed* or also called *politieke eed* and second, named *zuiveringseed* or also called *beroepseed*. In the first part the Notary oath/promises to be obedient and loyal to the State of the Republic of Indonesia, the Pancasila and the Indonesian Constitution of 1945, the Act of Notary Position and other legislation; while the second part of the Notary oath/promises to carry out the position with trustworthy, honest, thorough, independent and impartial and maintains the attitude, behavior and will carry out the obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a Notary "and will keep the contents confidential deed and information obtained in the execution of office". If you pay attention to the contents of the oath of office of a Notary, it is necessary to emphasize how far the secret of the Notary's office is, this is important considering the secret of the position of Notary has a close relationship with the denial rights (*verschoningrecht*) of the Notary, especially in determining the matters in which the Notary must use the right his break. In the oath of office the Notary stated that, the Notary vowed to keep the contents of the deed secret and information obtained in the execution of office and would comply with the UUJN specifically Article 54 UUJN, which states that Notary can only provide, show, or notify the contents of the deed, *grosse deed*, copy of deed or a certificate of deed to a person who has a direct interest in the deed, heir or person who obtains the right, unless otherwise stipulated by law. Understanding of the confidentiality of the contents of the deed and information obtained in carrying out the position, not only not to notify or divulge the contents of the deed, but also not to give *grosse deed*, copy of deed or deed and also not show the contents of the deed as mentioned in Article 54 of the UUJN, except for those who are directly interested, heirs and recipients of their rights.

Notary position is a position of trust (*vertrouwens ambt*) and therefore someone is willing to entrust something to the Notary as a trustee. Notary is obliged to keep everything that is notified to him as a Notary even though there are some that are not included in the deed, Notary is not free to tell what is notified by the client as the Notary when the discussion is held as preparation for the deed, although not all the item discussed is stated in the deed. The obligation to keep it a secret, apart from being required by law as well as by the Notary itself from the ethical and moral framework. A Notary who cannot withstand and limit himself to always keep the information secret provided by his client (the adversary) will experience the consequences in practice, he will lose public trust and he is no longer considered as someone who deserves trust.

The Notary's position as a position of trust automatically creates that obligation, the obligation will end if there is an obligation according to the law to speak, namely if someone is called to give testimony before the court both civil proceedings and criminal proceedings. Even so, the obligation of the Notary can still keep it a secret by using the rights granted to him under the provisions of Article 1909 paragraph (2) number 3e of the Civil Code²⁵ and Article 170 of the Criminal Procedure Code²⁶ and

²⁵ Article 1909 of the Civil Code paragraph (1) and paragraph (2) confirms that all persons who are capable of being witnesses are required to give testimony before a judge. But it can be requested to be released from its obligation to give testimony: 1e. Who is the kinship of the blood in the side line in the second degree or the one with a party; 2e. Who is related to blood in an infinite straight line in the side line in the second degree with the husband or wife of one of the parties; 3e. Every time who is due to his position, job or position according to the law, it is obligatory to keep something confidential, but only solely on matters whose knowledge is entrusted to him.

²⁶ Article 170 paragraph (1) and paragraph (2) of Law Number 8 of 1981 concerning Criminal Procedure Law affirms that those who because of their work, dignity or position are required to keep secrets, can be

ask to resign as a witness if they use their right of refusal. Denial rights are an exception to the general provisions which states that every person who is capable of giving witnesses is obliged to give testimony before the court, both in the civil justice process and in the criminal justice process. Regarding the denial rights of this Notary, the important thing that needs to be discussed is whether this right of denial is a right not to speak or an obligation not to speak. This is important to know in connection with various applicable law provisions, among others, in relation to the provisions of Article 1909 paragraph (1) of the Civil Code and Article 322 of the Criminal Code and Article 4 paragraph (2) Jo Article 19 paragraph (1) letter f UUJN Amendment and Article 54 UUJN Amendment.

c. Implementation of Legal Liability Insurance as an Alternative in Notary Professional Legal Risk Issues

From the results of the research in practice for this type of Professional Indemnity Insurance has been followed by Directors or Commissioners in limited liability companies that have gone public, medical practitioners such as doctors and legal practitioners such as lawyers and legal consultants²⁷, and no Insurance Products Professional Indemnity Insurance offered for Notary / PPAT professions. But the Professional Indemnity Insurance for doctors and lawyers / legal consultants can be a reference for Notaries if they want to enter the legal liability insurance protection program. According to Erman Rajagukguk once said that one of the safeguards from the threat of a former client's anger was to insure legal opinions (legal opinions) of legal consultants. This event became a momentum for advocates engaged in business legal consultations to insure the legal opinion of the company to the insurance company to prevent losses arising in the future due to their former client's lawsuit.²⁸

In practice, this legal liability insurance can be grouped as follows:²⁹

1) Personal Liability Insurance

In this type, the insurer will provide compensation to the insured in connection with his responsibilities according to law to the person or persons or other parties with regard to bodily injury (bodily injury) or damage to property (loss of damage to property) arising due to negligence of the insured.

2) General Liability Insurance

This General Liability Insurance is further divided into 3 (three) types:

- a) Public Liability, guarantees the risks that occur in the insured company, so the guaranteed risk is the risk of activities carried out in the premises of the insured company. Therefore public liability guarantees premises risks namely the dangers that exist in the parcel (area) of the insured and which results in damage or loss to the environment and people, except those suffered by the insured's own workforce. Premises can be in the form of factories, buildings, restaurants, shops and so on.
 - b) Product Liability, guarantees the insured (company or employer) against the risk of being sued by a third party (consumer of the product) due to bodily injury or property damage due to the use of his production which is already out of his control, namely the production already circulating in the market.
 - c) Employer's Liability, this insurance is also called Employer Liability Insurance, if the worker is injured while performing his duties, the employer must be responsible for this injury, then the worker must be able to prove that the accident was caused by negligence from the employer in providing facilities for the worker's safety. The employer's responsibility for accidents experienced by these workers is usually also regulated in the legislation in the field of labor.
- #### 3) Professional Liability Insurance or Professional Indemnity Insurance

This insurance provides compensation to the insured in connection with its responsibilities according to law to people or other parties with regard to bodily injury or loss of damage to property arising from the insured's own professional negligence or due to the negligence of his employees. Professionals may be faced with a very serious legal process in connection with their duties and obligations, therefore professionals really need protection from this Professional Indemnity Insurance.

Based on various explanations, it is clear that each notary needs to insure his legal responsibility so that he is not caught up in various legal issues that ultimately have a negative impact on the notary himself.

5. Conclusion

a. Summary

Based on various explanations, it can be concluded several things, namely:

1. Accountability of a Notary in carrying out his duties can be divided into 2 (two), namely external responsibilities and internal responsibilities.
2. Notary legal protection in carrying out his duties requires serious attention because of the importance of the position of Notary in legal traffic where the Notary as a public official authorized to make authentic deeds as perfect evidence

requested to be released from the obligation to provide information as witnesses, namely about entrusted to them. The judge determines whether the reasons for the request are valid or not.

²⁷ Interview results with PT. Asuransi Allianz Medan Branch, 05 April 2017.

²⁸ <http://m.hukumonline.com/berita/baca/lt52690e19e5dd8/dinilai-malpraktik-firma-hukum-digugat-ke-pengadilan>, diakses 02 Juli 2016

²⁹ Interview results with PT. Bumida Insurance Medan Branch, 03 April 2017.

- according to the Indonesian legal system to ensure certainty, order and legal protection of every act laws, agreements, legal decisions and events that occur and are needed by the community.
3. If the legal protection of the Notary as regulated in the UUJN and outside the UUJN or in the KUHP and the Civil Code and jurisprudence is felt to be insufficient to protect the Notary, then the Notary can take wise steps by transferring the risk of legal responsibility to the insurer (insurance company) through a legal liability insurance agreement as a form of other protection based on justice, benefit and certainty as outlined in a legal liability insurance policy that can provide benefits to both parties.

b. Suggestion

It should be understood that insurance that is a professional liability insurance in a decade has been in insurance practices in Indonesia and has been used by professionals such as directors/commissioners in limited companies, medical professionals in the world of medicine and lawyers/legal consultants.

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Rilawadi Sahputra

rilawadi_shmkn@yahoo.co.id

The Student of Law Doctoral Programme UNISSULA

Anis Mashdurohatun³⁰

Lecturers Of Faculty Of Law, UNISSULA, Semarang

Email: anism@unissula.ac.id

Gunarto

gunarto@unissula.ac.id

Lecturers Of Faculty Of Law, UNISSULA, Semarang

³⁰ Corresponding Authors