

ORIGINAL ARTICLE



Legal Analysis of the Burden of Transferring Notarial Protocols and Alternative Solutions through Digitalization

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Abstract

The notarial protocol is legally positioned as a state archive, yet the burden of its storage and maintenance is shifted to the receiving notary without financial support, adequate facilities, or clear limits of liability. This study analyses the legal position and regulation of notarial protocol transfer, examines whether such a burden reflects the principles of justice, proportionality, and legal protection for the receiving notary, and formulates digitalization as an alternative resolution. It employs normative legal research with statutory, conceptual, and case approaches, analysed prescriptively through the theories of legal certainty, legal responsibility, justice, proportionality, and legal protection. The findings show that the Law on the Position of Notary and its implementing regulations provide a basis for the transfer but fail to govern financing, storage standards, the limits of liability, and digitalization, producing a paradox between the state-archive status and the private bearing of the burden. This unilateral imposition is disproportionate and contrary to distributive justice because it externalises public costs to individuals without compensation. Digitalization of the protocol through an integrated electronic system may redistribute the burden, clarify the limits of liability through electronic traceability, and strengthen legal certainty and protection. The study recommends reforming the Law on the Position of Notary and enacting specific implementing regulations that link the state-archive status with the state's financing responsibility through a secure and confidential national electronic protocol system.

1. Introduction

A notary is a public official vested by the state with the authority to draw up authentic deeds and other authorities determined by law. The Indonesian notariat is not an indigenous institution: it descends, through the concordance principle applied in the Netherlands Indies, from the Dutch civil-law notariat, and it belongs accordingly to the Latin notarial tradition, in which the officeholder is at once a private practitioner bearing his own costs and the holder of a delegated public function. The principal product of this office, the authentic deed, possesses perfect evidentiary force insofar as it satisfies the prescribed form and procedure and therefore occupies a central position in guaranteeing legal certainty over the civil relations of society [1]. The evidentiary force inherent in such deeds derives from Article 1868 of the Civil Code, which defines an authentic deed as one drawn up by or before an authorized public official. The governing statute, referred to throughout as the Law on the Position of Notary, is Law Number 30 of 2004 as amended by Law Number 2 of 2014; the later instrument is an amending Act operating upon the earlier one rather than a replacement of it, so that provisions the 2014 amendment left untouched remain in force in their original form.

A consequence of this authority is that the notary bears the obligation to store and maintain the collection of documents known as the notarial protocol. The protocol is not the notary's private property but a state archive (*arsip negara*), as affirmed in Article 1 point 13 of the Law on the Position of Notary. It comprises, among others, the original deeds (*minuta*), the register of deeds (*repertorium*), the register of private deeds, the list of appearers (*klapper*), the register of protests, and the register of wills. The *minuta* occupies a distinct position within that collection, and the distinction carries much of the weight of the argument advanced here. A *minuta* is the sole original instrument, signed by the appearers, the witnesses, and the notary, and retained permanently by the notary; the parties never receive it, but only copies, extracts, or *grosse* issued from it. Its loss therefore extinguishes the evidentiary source itself, which is not true of an ordinary archival document that merely records a transaction evidenced elsewhere. Because of that status, the continued storage of the protocol is a public interest that must be safeguarded even after the notary concerned has ceased to hold office [2,3].

When a notary dies, relocates his jurisdiction, is dismissed, or completes his term, the protocol he holds must be transferred to another notary. This mechanism is governed by Articles 62 through 68 of the Law on the Position of Notary. Article 63 paragraph (1) requires surrender within thirty days at the latest, recorded in a hand-over report signed by the party surrendering and the party receiving; where the notary has died, paragraph (2) directs the heirs to surrender the protocol to another notary designated by the Regional Supervisory Board, and paragraph (6) empowers that Board to take the protocol if the period expires without surrender. The Regional Supervisory Board (*Majelis Pengawas Daerah*) is the first-instance organ of a three-tier supervisory structure ascending through the Regional Board to the Provincial and Central Boards. It is constituted at the regency or municipal level and composed in equal thirds of representatives of the government, of the notarial organization, and of experts or academics. It is worth being exact at this point about what statute does and does not attach to a refusal, because the answer shapes the whole of the argument that follows. The Law on the Position of Notary enumerates the provisions that carry administrative sanctions, and the designation provisions are not among them: Article 91A lists Articles 7, 16, 17, 19, 32, 37, 54, and 65A as the sanction-bearing articles, and Article 65A itself reaches only breaches of Articles 58 and 59 concerning the keeping of registers. Article 64, to which a sanction for refusal is sometimes attributed, does no such work: it concerns the protocol of a notary appointed to state office and the authority of the holder to issue *grosse*, copies, and extracts. The current ministerial regulation on appointment, leave, transfer of region, dismissal, and extension of term does not supply one either. A notary designated to receive a protocol who declines to accept it thus faces no stipulated consequence.

That normative framework appears procedurally complete, yet practice reveals recurring problems. In Sleman Regency, a notary refused a transfer, citing limited storage space and concern over liability for deeds he did not draw up [4]. A similar refusal occurred in Bandung, grounded on a small office and inadequate facilities to accommodate a large volume of protocols [5].

In Banjarmasin, the protocol of a deceased notary was kept in the heirs' home for more than two years because no notary was willing to accept it. This sequence discloses a fundamental paradox: the protocol is declared a state archive, yet the burden of its storage and maintenance is borne entirely and privately by the receiving notary without compensation from the state, and, as the preceding paragraph shows, without any mechanism by which the designation can be enforced against him.

This problem has received only partial attention in prior scholarship. Zalfa Ayu Pramesta addresses the accountability of a notary who refuses a protocol but stops there, offering no structural resolution [4]. Angie Athalia Kusuma examines the protection of the protocols of deceased notaries in Temanggung Regency, but the study is an empirical account of document

rescue rather than an analysis of how the burden of custody is distributed [6]. Muhammad Abyan studies the use of blockchain for the storage of original deeds and emphasizes the technical aspect of storage [7]. Closest to the present concern is Riky Rustam, who observes that the protocol is a state archive under the Law on the Position of Notary yet does not answer to the criteria of an archive under the Archives Law; that observation is made in the course of an inquiry into the liability of heirs for a lost *minuta*, and its consequences for the financing of storage are not pursued [8]. Within the Indonesian-language notarial literature, which is small enough to be surveyed exhaustively, no study frames the burden of protocol transfer as a problem of justice and proportionality, or positions digitalization not merely as a technical-administrative solution but as a prescriptive instrument for restoring justice and strengthening legal protection for the receiving notary. It is here that the novelty of this research is located.

A weaker but deliberately distinct claim can be made about the international literature. European scholarship and practice on notarial digitalization is substantial, but it approaches the electronic archive predominantly as a problem of archival modernization, concerned with preserving evidentiary value across time, media migration, and the obsolescence of cryptographic methods, rather than as a redistribution of burden between the state and the individual officeholder. The German legislation establishing the *Elektronisches Urkundenarchiv* is framed in those terms, as is the French decree governing the central electronic register of authentic instruments; and the Dutch statute, which comes closest to the Indonesian problem in conferring a ministerial power to designate a successor holder of the protocol, addresses the mechanics of designation and hand-over rather than the cost the designated notary must bear. The distributive question raised here is therefore not answered by the comparative material, although, that material bears directly on the institutional feasibility of the solution proposed.

On this basis, the study answers three questions. First, what is the legal position and regulation of notarial protocol transfer in the Indonesian notarial system? Second, does the transfer reflect the principles of justice, proportionality, and legal protection for the receiving notary? Third, what alternative resolution exists for the problem of the burden of transfer? The objectives are to analyze the position and regulation of the transfer, to assess the burden through justice and proportionality, and to formulate digitalization as a way out. The contribution is theoretical, in enriching the study of notarial law, and practical, as input for fairer and more certain norms.

2. Methods

This is normative legal research examining the operation of positive legal norms relating to the transfer of notarial protocols. Normative legal research treats law as a system of norms concerning principles, rules, and doctrine, so that its analysis is directed at finding coherence and synchronization among the applicable norms [9].

The approach is plural. The statutory approach examines the Law on the Position of Notary together with its implementing regulations and related rules. The conceptual approach explores the meaning of the state archive, the responsibility of the notary, and document digitalization. The case approach examines the incidents of protocol refusal in several regions so that the analysis of norms is not divorced from practical reality [10]. The first is membership of the Latin notariat, from which follows the functional equivalence of the protocol-custody duty: in each system the notary retains the original instrument and issues copies from it, so that the question of what becomes of that collection when the officeholder leaves office arises in the same form as in Indonesia. The second is recent reform of electronic notarial archiving, which makes these three jurisdictions instructive rather than merely available.

Primary legal materials comprise the Civil Code, Law Number 2 of 2014 on the Position of Notary, Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 1 of 2024, Law Number 43 of 2009 on Archives, Government Regulation Number 28 of 2012, Presidential Regulation Number 95 of 2018 on the Electronic-Based Government

System, and the ministerial regulations governing the management and transfer of notarial protocols. Secondary materials comprise books, journals, and research findings; tertiary materials comprise legal dictionaries and encyclopedias [11].

The materials were collected through literature study and analyzed prescriptively using systematic interpretation and legal reasoning to assess the conformity of the norms with the principles that ought to govern them. The analysis is framed by the theory of legal certainty as developed by Gustav Radbruch, Hans Kelsen, Lon Fuller, and Sudikno Mertokusumo; the theory of legal responsibility; Aristotle's theory of justice; Aharon Barak's theory of proportionality; and the theory of legal protection of Philipus M. Hadjon and Satjipto Rahardjo [12–15]. This framework is the measure for assessing the burden of transfer and formulating an alternative resolution.

3. Results and Discussion

3.1 *The Legal Position and Regulation of Notarial Protocol Transfer*

The position of the notarial protocol must be understood from its function as the foundation of a deed's authenticity. As a collection of original deeds and official documents, the protocol is the source from which copies, extracts, and grosse of deeds are issued whenever the parties require them as evidence. Storage of the protocol is therefore not a mere administrative matter but a means of preserving the continued evidentiary force of the authentic deed that forms the backbone of civil legal certainty [16].

Affirming the protocol as a state archive carries an important conceptual consequence — at least on the reading the Law on the Position of Notary invites, which is tested against the Archives Law below. On that reading a state archive is a document born from the exercise of a public function, whose integrity and availability the state must therefore guarantee, the notary being merely the party entrusted with storage as an extension of the state's function rather than an owner bearing the burden privately [2]. Within state administrative law, the authority to draw up authentic deeds derives from statutory attribution, so that the notary's position cannot be separated from the public-service function that ought to be supported by the state [17].

The regulation of protocol transfer is designed to preserve continuity of storage. Article 62 specifies the circumstances requiring surrender: the notary's death, expiry of term, resignation, physical or mental incapacity, dismissal, appointment to state office, relocation of jurisdiction, temporary dismissal, or dishonorable discharge. Article 63 governs the procedure. Paragraph (1) sets the thirty-day limit and requires a hand-over report; paragraphs (2) to (4) identify who surrenders to whom in each of the circumstances listed in Article 62, the designation being made by the Regional Supervisory Board or, in certain cases, by the Minister on that Board's proposal; paragraph (5) requires the receiving notary to pass to the Regional Supervisory Board any protocol that is twenty-five years old or more at the time of surrender; and paragraph (6) empowers the Board to take a protocol that has not been surrendered within the period.

The role of the Regional Supervisory Board is central in determining the recipient notary and witnessing the hand-over report. What the Board does not possess is any means of making its designation effective. As shown in the Introduction, no provision of the Law on the Position of Notary attaches a sanction to a designated notary's refusal to accept a protocol, and Article 64, to which such a sanction is sometimes attributed, addresses an unrelated matter. The design is therefore incomplete at both ends it neither compels the recipient nor supports him. A regulator that had genuinely chosen compliance through threat would at least have rendered the obligation enforceable; the actual position is a designation power exercised over a party who remains free to decline, which explains why refusals recur rather than being disciplined out of existence. Article 63 paragraph (5) might have relieved the pressure by absorbing the oldest and bulkiest material into the Board itself, but it presupposes storage capacity, archival

management, trained personnel, and a budget that no instrument provides.

Herein lies the most fundamental problem. The Law on the Position of Notary and its implementing regulations do not govern several matters that in fact determine the reasonableness of the burden: the financing of storage, technical storage standards, the limits of the recipient notary's liability for deeds he did not draw up, mechanisms of legal protection, the possibility of digitalization, and post-transfer supervision. A demonstration of silence is a finding only if the search is displayed, and two of these items can be traced instrument by instrument. On financing, the Law on the Position of Notary contains no provision at all: Articles 62 to 68 allocate custody without allocating cost, and the provisions delegating matters to ministerial regulation reach the procedure for imposing sanctions and the making of implementing regulations generally, not the funding of storage. The current ministerial regulation on appointment, leave, transfer of region, dismissal, and extension of term regulates the occasions on which a protocol changes hands but not the cost of holding it. Recourse to the archival legislation does not close the gap so much as explain it. The Archives Law does provide for financing, but Article 38 allocates it to the national archival institution, state institutions, state universities, and specified archival activities of regional government, met from the state or the regional budget, while Article 32 paragraph (1) requires creators of archives and archival institutions to provide facilities to archival standards out of their own resources. The Government Regulation implementing that Law carries the same architecture forward without extending it to private officeholders. The asymmetry is itself part of the finding: financing exists in Indonesian archival law, but it is directed at state bodies, and the notary is not one. Radbruch's requirement that law satisfy the value of certainty alongside justice and expediency, and that certainty demand clear and predictable norms, is not met by a scheme that imposes a permanent duty and leaves its cost unaddressed in every instrument that might have addressed it [15].

That uncertainty appears most acutely at the limit of liability, and here the statute supplies the beginning of an answer that the manuscript's earlier draft passed over. A firm distinction must be drawn between the custodial obligation of storage and responsibility for the substance of the deed. Article 65 provides that a notary, a substitute notary, and a temporary official notary remain responsible for every deed they have made even after the protocol has been surrendered or transferred to the party who stores it. Responsibility for content therefore stays with the maker, and by negative implication what passes to the recipient is custody alone. Habib Adjie reaches the same conclusion doctrinally, holding that the liability of the recipient notary extends only to the storage of documents and not to the material truth of deeds formerly drawn up by another notary [18]. The difficulty is that Article 65 states the rule from the maker's side and never states the corresponding limit from the recipient's side, and it fixes no outer time limit on the maker's responsibility. Practice accordingly tends to broaden the interpretation, so that the recipient notary may be drawn into disputes over deeds he never made. This is not merely a technical gap but a source of injustice inherent in the design of the norm: an inference available to a careful reader is not the same thing as a stated limit on which a defendant can rely.

The premise on which the whole argument rests, that the protocol is a state archive, has so far been taken from the Law on the Position of Notary alone. It must also be tested against the general archival regime, and the test yields a disjunction rather than a smooth fit. The Archives Law does use the term *arsip negara*, but not as a category within its own taxonomy, which divides archives into dynamic archives, comprising vital, active, and inactive archives, and static archives. Its operative concept is the state-owned archive of Article 33, which declares as such archives created from the activities of state institutions and from activities using state funds; the elucidation of that Article confirms the reading, listing state institutions, regional government, state educational institutions, and state enterprises, together with archives produced by parties financed from state sources. The notarial protocol satisfies neither limb. A notary is not a state institution, and the deeds in his protocol are drawn up on the instructions of private parties and

paid for by them rather than out of the state budget. The status the Law on the Position of Notary confers is thus a designation without a corresponding place in the general archival regime, a conclusion Rustam had already reached from a different starting point [8].

Where, then, does the notary stand under the Archives Law? The better view is that he is a creator of archives (*pencipta arsip*), which Article 1 point 19 defines as a party possessing independence and authority in the exercise of the function, task, and responsibility of managing dynamic archives, and that the protocol is the dynamic archive he creates and manages, Article 9 paragraph (3) placing that management on the creator while paragraph (4) reserves static archives to archival institutions. Two features of the Law support the reading. The first is that the definition fits: independence and authority over his own records are defining marks of the notarial office. The second is that the Law expressly contemplates material of exactly this kind in a creator's hands, since Article 44 paragraph (1) letter g permits a creator to close access to archives whose disclosure would reveal the contents of a personal authentic deed or a person's last will. The alternative reading, that the protocol is a state-owned archive merely held by a non-state custodian, has the attraction of supporting the financing claim directly, but it cannot be reconciled with Article 33, and an argument obliged to contradict the governing text in order to reach its conclusion does not earn that conclusion.

Adopting the creator reading complicates this study's argument, and the complication is better stated than concealed. If the notary is a creator of archives, then Article 32 paragraph (1) directs him to provide archival facilities to standard, and the financing provisions of Article 38 do not reach him; the burden would rest on him not through legislative oversight but through the ordinary operation of archival law. What answers this is Article 57, which specifies the creators on whom the dynamic-archive obligations fall, namely state institutions, regional government, state universities, and state enterprises, extending them to private companies and private universities only for archives created from activities financed by the state budget or by foreign aid. The notary appears nowhere on that list. The position that emerges is accordingly neither of the two readings with which this discussion began, but a third: one statute treats the protocol as a state archive for the purpose of imposing a permanent custodial duty, while the statute that actually governs archives neither classifies it as state-owned, nor places its holder within the regime of obligations, nor extends to him the financing that regime carries. The claim for state support cannot be derived from an existing funding provision, and this study does not assert that it can. It rests instead on the state's own designation and on the public function the custody serves: having declared the protocol a state archive and required its indefinite retention, the state cannot consistently disclaim the cost of what it has declared. That is an argument about the law as it ought to be, and it is the sharper for resting on a demonstrated incoherence rather than on a misread provision.

From the perspective of the law as it ought to be, the status of state archive should give rise to a positive obligation on the state to provide the means and financing of storage. As the preceding paragraphs establish, that is not an obligation the present archival legislation already imposes; it is what consistency requires of a state that has declared the protocol a state archive and compelled its indefinite retention. When the state assigns custody of documents it has claimed as public to a private officeholder without support, it shifts the cost of administering a public function onto an individual. Such a unilateral shift is difficult to sustain against the principle of proportionality, because the aim of safeguarding the state archive is imposed entirely on the party in the weakest position within that relationship [19].

3.2 The Burden of Transfer Examined Through Justice, Proportionality, and Legal Protection

The burden borne by the recipient notary can be mapped into three layers. The first is administrative and financial. Storing a protocol demands adequate archival space, storage cabinets, humidity control, protection against fire and flood, and administrative personnel to

arrange and maintain the documents. All these costs are borne by the recipient notary from his own pocket, even though the documents maintained belong to the state [20].

The second is the burden of legal liability. The recipient notary may be required to issue copies or provide statements concerning original deeds he did not draw up. When such an old deed is disputed, he is in a vulnerable position because he does not know the process by which the deed was made yet holds the document. The absence of a firm limit of liability in the law opens a damaging space for conflicting interpretations, since the recipient notary may be drawn into an accountability that ought not to be his burden.

The third is the burden on the effectiveness of the office. The more protocols that must be managed, the greater the notary's resources absorbed by storage, potentially lowering the quality of public service. The accumulation of these three burdens explains why refusals keep recurring. Such refusal is not mere reluctance but a rational reaction to a lopsided design of burden [21].

Tested against Aristotle's theory of justice, this burden fails to satisfy distributive justice, which demands that burdens and benefits be apportioned proportionally according to the position and contribution of each party [22]. The state benefits from the preservation of the state archive, whereas the recipient notary bears the entire burden without compensation. When obligation is severed from commensurate rights and facilities, the distribution of burden becomes lopsided and contrary to justice.

Tested against Aharon Barak's principle of proportionality, this burden also fails, and the test is worth running in full rather than at the single stage of necessity. The purpose is legitimate: the continuity and integrity of the evidentiary record are public goods of a high order, and no argument to the contrary is available. The rational connection between means and end is weaker than it first appears. Directing an individual notary to take custody does secure continuity where he complies, but the mechanism contains no compulsion: as Section 3.1 has shown, refusal carries no sanction, so the arrangement depends upon the goodwill of the very person on whom the burden falls. A means that operates only when the burdened party consents are connected to its end contingently rather than rationally. On necessity, less onerous alternatives plainly exist, among them centralised storage, collectively or publicly financed facilities, and electronic custody, and none has been adopted; imposing unlimited cost, risk, and liability on a single officeholder exceeds what the purpose requires.

It is at the fourth stage, proportionality in the narrow sense, that the argument carries its real weight. The marginal gain in archival continuity obtained by directing an unwilling custodian to receive a protocol is small, because the mechanism fails at precisely the point where it is needed: the incidents recounted in the Introduction are cases in which designation produced no custody at all, and a protocol left in an heir's house for two years is no more secure for having been formally assigned. Against that modest gain stands a cost unlimited in duration, since the obligation continues for as long as the documents exist; undefined in extent, since no storage standard fixes what compliance requires; and unbounded in liability, since no provision states where the recipient's responsibility stops. A burden of indeterminate scope imposed upon one person for a benefit that accrues to the public, and that the mechanism frequently fails to deliver in any event, cannot survive the balancing stage. The conclusion of this section is therefore not merely that the arrangement is unnecessary but that it is disproportionate on the balance of gain against cost, and the firmer wording of the Conclusion is earned accordingly.

Tested against Philipus M. Hadjon's theory of legal protection, the existing regulation fails to provide balanced protection. Hadjon distinguishes preventive legal protection, which prevents disputes from arising, from repressive legal protection, which resolves disputes that have already occurred [12]. The transfer regulation emphasizes obligation and sanction but provides almost no preventive protection through clarity over the limit of liability and support of facilities,

and no repressive protection through a clear mechanism where the protocol is damaged, lost, or becomes the object of a dispute that is not the recipient notary's fault.

From these three tests one core argument follows. The burden of protocol transfer is in essence a shifting of public cost to an individual without compensation. The state, as the party benefiting from the preservation of the state archive, ought to bear or subsidize that burden. So long as it is shifted unilaterally, refusals will continue, and every refusal threatens the continuity of storage, which in turn weakens the legal certainty of the authentic deeds stored within [23].

The legal certainty meant here is not merely textual but certainty that operates. Sudikno Mertokusumo affirms that legal certainty demands that rules be implemented consistently so that society can predict the legal consequences of its acts [14]. When the deeds stored in a protocol are threatened with inaccessibility because no notary is willing to store them, the legal certainty promised by the authentic deed itself becomes fragile. The problem of burden is thus not only a matter of justice for the notary but also of protecting the interests of the parties and the public who rely on those deeds [13].

3.3 Digitalization of the Notarial Protocol as an Alternative Resolution

Building on the above analysis, digitalization of the notarial protocol is offered not merely as technical modernization but as an instrument for restoring justice, satisfying proportionality, and strengthening legal protection. Its urgency is rooted in the limitations of physical storage, which demands large space, is vulnerable to damage and loss, and continually swells as the volume of protocols grows year after year.

The juridical basis for digitalization already exists, though still partial. The Law on Electronic Information and Transactions recognizes electronic documents and information as valid evidence, as affirmed in Articles 5 and 6. The Law on Archives permits creators of archives and archival institutions to create archives in various forms and to convert them to other media, electronic media included, subject to requirements of authenticity to be laid down by government regulation, so that electronic storage of the protocol is not foreclosed by archival law. The Presidential Regulation on the Electronic-Based Government System provides policy direction for integrating public services into a secure and unified electronic system. Moreover, Article 15 paragraph (3) of the Law on the Position of Notary has opened room for the concept of the cyber notary, its elucidation naming the certification of electronically conducted transactions among the other authorities to which that paragraph refers.

Comparative experience establishes that centralised electronic custody is institutionally workable, and that the form it has taken elsewhere differs instructively from what is proposed here. In Germany, the Federal Chamber of Notaries operates a central electronic archive, the *Elektronisches Urkundenarchiv*, created by the Act of 1 June 2017 and in operation since 1 January 2022, in which notaries keep the electronic collection of instruments together with the associated registers. The Chamber acts as archival authority under the legal supervision of the federal justice ministry, and the statute obliges it to guarantee the availability, integrity, authenticity, confidentiality, and transparency of the stored documents for the whole of the retention period, and to preserve their evidentiary value over time without requiring the notary to sign them afresh. Two features of the German design meet objections that arise immediately in the Indonesian setting: the Chamber has no access to the contents of the instruments it stores, the notary remaining the point of contact for copies; and the retention period for the paper originals has been shortened, so that the electronic archive relieves the physical storage burden instead of duplicating it. In France, a notarial deed drawn up on an electronic medium is registered for conservation in a central register from the moment of its establishment, the instrumenting notary or the notary who holds it retaining exclusive access, and that register is established and controlled by the Conseil supérieur du notariat; the successive operations required for conservation, migration among them, do not deprive the instrument of its character

as an original. In the Netherlands, whose statute presents the Indonesian problem in its closest European form, the Minister, having heard the professional organisation, designates a notary to take over the protocol of a notary who dies, leaves office, or moves out of the district, the designated notary succeeding by operation of law; the mechanics of hand-over are prescribed by a professional regulation, and the physical protocol must be kept at the office and protected against fire and other hazards.

The comparison should not be made to prove more than it can. In none of the three systems is central custody financed from the state budget: the German archive is operated by the notaries' own chamber and funded by fees, and the French register is established and controlled by the profession's national council. What the comparators establish is therefore the feasibility of collectivising a burden that Indonesia continues to individualise, of moving custody from whichever officeholder happens to be designated to a central body under public-law supervision, rather than the proposition that the state must pay. The distinction matters for the reform proposed below, which is compatible with either financing model so long as the burden ceases to fall upon the individual recipient. The French arrangement adds a further point of contrast: electronic instruments are held centrally for a long fixed period and then pass into the public archives, so that the system has a defined terminal point at which the state assumes custody. Indonesian law gestures at such a point in Article 63 paragraph (5), which routes protocols of twenty-five years or more to the Regional Supervisory Board, but equips that Board with no facility, standard, or budget with which to receive them, so that the terminal point exists on paper and not in fact.

Conceptually, this accords with Edmon Makarim's thought on the shift of notarial services from a manual to an electronic system. Makarim stresses that the use of technology must be directed at strengthening the reliability and security of documents, not merely at transposing form [24]. Implementation may proceed through scanning original deeds into electronic copies stored as backups, building an integrated national database under the ministry administering legal affairs, and applying safeguards such as encryption, authentication, and periodic backup to preserve confidentiality and integrity.

The value of legal protection from digitalization can be seen in three targets. For the recipient notary, digitalization reduces the physical and financial burden because storage no longer depends entirely on private space and facilities, while clarifying the limit of liability through an electronic trail recording the identity of the notary who made the deed, the time of its making, and the document's history. This electronic trail becomes a dividing wall that prevents the broadening of the recipient notary's liability over the substance of deeds he did not draw up.

For the parties, digitalization guarantees the authenticity and integrity of documents through encryption and audit trails, accelerates access to required copies, and provides backups that prevent the loss of evidence should physical documents be damaged. For the state archive, it rescues documents from disaster risk, strengthens oversight by the Supervisory Boards and the ministry, and guarantees continuity of storage no longer dependent on the willingness of any notary [25].

Viewed through Satjipto Rahardjo's progressive legal thought, digitalization is a manifestation of law adaptive to social and technological change. Rahardjo affirms that law must be able to side with humanity and must not be imprisoned by obsolete text [7]. Within this framework, digitalization is an instrument for redistributing the burden from the recipient notary to an integrated state storage system. Through that redistribution, distributive justice is restored because the benefiting party, the state shares in bearing the burden of administration, and proportionality is satisfied because the means of limiting the notary's right is replaced by a far less onerous alternative.

Nonetheless, digitalization must not proceed without a framework of safeguards. The shift to

an electronic system gives rise to new risks of data breach, unauthorized access, and system disruption that may threaten the confidentiality of deeds. The framework governing those risks is not a matter for future legislation but present law: Law Number 27 of 2022 on Personal Data Protection applies to the processing of the personal data that any protocol necessarily contains, and a national electronic protocol system would have to be designed to comply with it. Digitalization must therefore be accompanied by adequate regulatory reform: revision of the Law on the Position of Notary to recognize electronic storage of protocols, and enactment of specific implementing regulations setting standards of security, confidentiality, interoperability, and management responsibility, consistent both with the personal data protection regime and with the duty of secrecy the notarial office already bears. The German arrangement, under which the operating body holds the instruments without access to their contents, shows that centralisation and confidentiality are not in tension where the architecture separates custody from readability. Without such a framework, digitalization risks merely relocating the old problem into a new form; with the right framework, it becomes the meeting point of certainty, justice, and expediency as demanded by the aims of law [8].

This chain of analysis leads to a normative proposition that constitutes the novelty of this research: the status of the protocol as a state archive must be firmly linked to the state's financing responsibility through a national electronic protocol system. This linkage closes the persisting paradox, while positioning digitalization as a bridge uniting protection for the recipient notary, protection for the parties, and rescue of the state archive within a single coherent framework.

4. Conclusions

This study has shown that the notarial protocol occupies a paradoxical position under Indonesian law. Articles 62 to 68 of the Law on the Position of Notary treat the protocol as a state archive entrusted to the notary as an extension of a public function, yet say nothing about financing, storage standards, liability limits, or digitalization. The result is a state archive maintained at private expense, an arrangement that offends distributive justice by shifting public costs onto an individual without compensation, is disproportionate in exposing the recipient notary to unlimited cost and risk for uncertain benefit, and offers only weak protection, since the obligation is stated but neither enforced nor supported. Digitalizing the protocol through an integrated electronic system offers a fairer alternative: it would redistribute the custodial burden, create a clear electronic trail for liability, and strengthen legal certainty for all parties, provided data security and confidentiality are safeguarded. On this basis, the legislature should revise the Law on the Position of Notary to limit the recipient notary's liability to custody, provide financing support for storage, and recognize electronic storage as valid. The government should issue implementing regulations tying state-archive status to a settled financing arrangement, whether through the state budget or a fee-funded body under public-law supervision, following the German and French models, and should build a national electronic protocol database with clear security and interoperability standards. The Notary Supervisory Boards and notarial organizations should strengthen post-transfer supervision and build the capacity needed for this transition.

These conclusions should be read with the study's limitations in mind. As a normative inquiry, it does not measure the actual cost of protocol storage or the true rate of refusal; the incidents cited illustrate recurrence, not frequency, and the comparative discussion of Germany and France relies on legislation and documentation rather than operational evaluation. Three directions for further research follow: an empirical costing of protocol storage under Indonesian conditions, an operational review of the German electronic archive now that it has matured, and a full compliance analysis of any proposed national system against Law Number 27 of 2022 on Personal Data Protection.

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