

Normative Study against Limitation of Liability Notary Deed in Lieu In Making Based Act No. 2 of 2014 on Notary

Isman¹, Ahmadi² and Gunarto³

Abstract. The purpose of this study was to analyze: 1) the role of the Notary Deed in Lieu in manufacturing. 2) Limitation of liability in the manufacture Substitute Notary Deed. 3) Barriers and solutions for Substitute Notary in carrying out its responsibilities in the manufacture of Deeds pursuant to Act No. 2 of 2014 On Notary.

This research is normative juridical approach, with specification of descriptive analysis. The collection of primary and secondary data obtained by interview and literature.

The research results are: 1) Substitute Notary important role in meeting the needs of the people in deed, Substitute Notary is only temporary, as it replaces the notaries who are on leave, sick or absent or unable to perform its functions properly. So that the public service to create an authentic deed is not disturbed and running as it. 2) Limitation Substitute Notary Responsibility and authority is not affected by age restrictions as well as Notary, despite all the deed made by Notary Substitute, has been assigned or transferred to the depositary Protocol Notary, this means that although already quit or retired as a Notary, the Notary still be responsible for the deed he made. 3) Barriers for Substitute Notary in carrying out its responsibilities in the manufacture of Deed is the lack of experience of the notary, limited capacity and their doubts about the substitute notary office. Solutions that can be done is to provide socialization and guidance of the MPD to the Notary Substitute related to the duties and responsibilities as a Substitute Notary.

Keywords: Responsibility Notaries; Notary Substitute Deed.

1. Introduction

The relationship between the legal subject either per person or legal entity, which is often a legal relationship, will give rise to legal action. Legal actions that took place between the legal subject is an effort to realize the interests of the legal subjects that for the purpose of aligning the interests of the order in accordance with the will of the necessary legal subject rules mutually agreed upon and set forth in an agreement.⁴

Along with expanding the public's understanding of the act, and the protection of act guarantee of the interests, rights and obligations under an agreement they had agreed to be very important, especially if it turns out later on that agreement is disputed and disputed in court. In order to guarantee the protection and legal certainty in the interests of making the agreement, one of which is by pouring the material the treaty in a deed otenic he made before or Notary Public Officials.⁵

¹ Student Master of Notary Program, Faculty of Law, Sultan Agung Islamic University Semarang, Email: ismanhk25@gmail.com

² Student of Master of Law Program, Faculty of Law, Universitas Islam Sultan Agung email ahmadi060172@gmail.com

³ Lecturer of Faculty of Law, Sultan Agung Islamic University Semarang

⁴ Achmad Sulchan, Sukarmi, Ari Widiyanto, 2017, *Akta Notaris Menggunakan Media Elektronik*, SINT Publishing, Semarang, p. 1

⁵ Ibid, p. 3

Notary is a public official authorized to make an authentic deed and have more authority as referred to in this Act or under any other acts.⁶ The authority of the notary key is to make authentic act on all deeds, agreements and statutes that are required by legislation and / or desired by the stakeholders to be stated in an authentic deed, guaranteeing the creation date of the deed, saving certificates, giving gorsse, copy and official copies, all of it along a deed that is not also assigned or excluded to other officials or any other person specified by the Act.⁷At the notary must be accountable for the deed that has been made, then the explanation of the legal basis of the contents aktanya charge must be given by the notary. Besides this, the notary warrant to truth, righteousness both formal and truth to the material. The notary must master the Act of the Republic of Indonesia Number 2 Of 2014 on Concerning the Amendment to Act Number 30 of 2004 on concerning Notary (UUJN), as well as all legislation related mainly civil act material is basic, general teaching, as well as the principles that must be considered in preparing authentic deed.⁸

To make an authentic deed a Notary must follow the rules set out in legislation. These steps are (among others heard the parties express their will, next read out the contents of the deed to the attentio, signed the act and others) is specifically held act makers to ensure that what is written in the deed it does contain what is desired the parties.⁹

Rapid social developments also caused the legal relations developments in society, the role of the Notary to be very complex and often very different to the prevailing regulations. Thus it seems difficult to fully define the tasks and jobs Notary.¹⁰Every notary has the right to take leave. This is in accordance with the provisions of Article 25 paragraph (1) of Act No. 30 of 2004 concerning Notary Thus, if a notary leave, obliged him appoint a substitute notary. During the notary leave, the protocol must be submitted to the notary public notary replacement. After completing the notary of the leave, returned to the notary notarized protocol concerned. The problem is that if the substitute notary deed made the problems and the problem was only discovered later after the replacement has been completed notary tenure,¹¹ Based on the background mentioned above, taken the title "Normative Study Against the Limitation of Liability in Making Substitute Notary Deed Under Act No. 2 Of 2014 On Notary".

This study tried to answer the question about the role of the Notary Deed in Lieu in the manufacture of liability limitations in the manufacturing Substitute Notary Deed, barriers and solutions for Substitute Notary in carrying out its responsibilities in the manufacture of Deed pursuant to Act No. 2 of 2014 concerning Notary

⁶ Article 1 (1) of Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 on Concerning Notary.

⁷ Ibid, Article 15

⁸ Herlien Boediono, 2013, *Dasat Teknik Pembuatan Akta Notaris*, Citra Aditya Bakti, Bandung, p.2

⁹ Tan Khong Kie (b), 2000, *Buku II Studi Notariat Serba Serbi Praktek Notaris*, edition 1, New Endeavor Van Hoeve, Jakarta, p. 261

¹⁰ Habib Adjie 2003, *Tebaran Pemikiran Dalam Dunia Notaris dan PPAT, "Penegakan Etika Profesi Notaris Dari Perspektif Pendekatan System,"* the Institute for Notary and PPAT Indonesia, Surabaya, p. 27

¹¹ Habib Adjie 2009, *Meneropong Khazanah Notaris dan PPAT Indonesia*, Citra Aditya Bakti, Bandung, p. 48.

Research methods

The method used in this research is normative juridical approach. Specification The research was analytic descriptive describes the applicable acts and regulations associated with the act theories and practice implementation.¹² Primary and secondary data sources obtained by interview and review of the literature. The data have been collected either from field research and literature research will be analyzed with descriptive analysis method

2. Results and Discussion

3.1. Substitute Notary role in making Deed pursuant to Act No. 2 of 2014 On Notary

Notary is a profession that run partly as the State authorities in the field of act private and have an important role in creating an authentic deed that has the strength of evidence is perfect and therefore positions are positions of trust Notary, the Notary must have a good behavior.¹³

Act No. 2 of 2014 concerning Notary Notary not only regulate, but also regulates the Substitute Notary. In Article 1 of Act No. 2 of 2014 concerning Notary, the Notary Substitute is one who is temporarily appointed to replace Notary Public Notary who is on leave, sick or temporarily unable to carry out his position as a Notary. The provisions of this Article to maintain continuity throughout the authority of Notary Public Notary office is still attached to the Notary replaced.¹⁴

The requirements to become a Substitute Notary described in Article 33 of Act No. 2 of 2014 Amendment Act No. 30 of 2004 concerning Notary, namely:

- Requirements to be appointed as Substitute and Acting Notary Public Notary is an Indonesian citizen who qualified actyer and has worked as an employee of the Notary office at least two (2) consecutive ofs;
- Provisions applicable to the Notary as referred to in Article 4, Article 15, Article 16 and Article 17 shall apply for the Substitute Notary and Acting Notary, unless this Act specify otherwise.

Notary served only temporary replacement in accordance with the period of leave of the notary who replaced. UUJN give authority to the Notary to pour all deeds, agreements, and determination desired by those who accidentally come before to ask the Notary that statement poured into an authentic act so as to have the strength of evidence is perfect.¹⁵

Substitute Notary role similar to that performed by a Notary, meaning not only limited to Article 33 UUJN, but all substance UUJN apply for a replacement Notary. Therefore, it is too simple requirement for Notary substitute, should the terms applicable in the appointment of Notaries, can be added as well as a requirement to be shown as a Substitute Notary, among others:

- Devoted to God Almighty
- Loyal to *Pancasila* and the Constitution of the Republic of Indonesia Of 1945.

¹² Sumardi Suryabrata, 1993, *Metodologi Penelitian*, Rajawali, Jakarta, p.19

¹³ Article 15 (6) of Act 4 of 1996 on Mortgage of Land along Museums Relating to Land.

¹⁴ Ibid, p. 42

¹⁵ Article 15 (1) of the Act of the Republic of Indonesia Number 2 of 2014 on the Amendment of Act No. 30 of 2004 on Concerning Notary.

- Healthy Physical evidenced by a health certificate from a doctor government hospital or private hospital.
- Healthy spiritual / soul as evidenced by a certificate of a day of psychologists government or private hospitals.
- Minimum age of 27 (twenty seven) of
- Never involved in criminal acts stated by a certificate from the Indonesian National Police.

The institutions authorized officer or any different to appoint Notaries, Notary Substitute as defined in Article 2 UUJN. Therefore with the differences in the appointment or the conditions to be a Notary or Notary Substitute there should be differences and limitations in respect of the authority and responsibility of the Notary substitute, because of the requirements and criteria in terms of the appointment are set UUJN, there are fundamental differences, on the basis legislation also authority and responsibility Substitute Notary should have special rules related to the mandate or the authority which he received.¹⁶

As a Notary, the Notary substitute also instrumental in executing some tasks of the state in the field of civil act, and to qualify as a Notary Public officials who are authorized to make an authentic deed, and the deed is formulation desire or whim (*wilsvorming*) the parties as outlined in Notary deed made before or by the Notary, and other authorities referred to in UUJN.

3.2. Limitation of Liability in Making Substitute Notary Deed pursuant to Act No. 2 of 2014 On Notary

In the Complete Indonesian Dictionary, the definition of responsibility is the state ought to bear everything, if there are things, we may be required, blame, allowed and so on.¹⁷ Notaries in running the office should be based on the thoroughness, accuracy and precision. Three elements of a personal nature should receive special attention that make up the characters in positions operate are honest with ourselves, good and true, professional.¹⁸ Notary in making such deed should be based on legal regulations or ordinances procedure deed, so the notary is required to be more observant and careful in making deed.

Regarding the responsibility of the Notary as a public official, according to GHS Lumban Tobing, a notary must be responsible for the deed he had done, if there are reasons as follows:

- In the matters expressly provided by Rule Notary.
- If a deed because it does not fulfill the terms of the form (*gebrek in the vorm*), canceled in court, or be considered valid only as a deed under hand.
- In any case, where, according to the provisions contained in Article 1365 of the responsibilities of the element of fault (intentional and negligence), Article 1366 of the responsibilities of the error element in particular negligence, and Article 1367 of the Civil Code regarding absolute liability (no error) there the obligation to make restitution, that is to say all these things to go through the process of proving that balance.¹⁹

¹⁶ Lutfi Effendi, 2003, *Pokok-Pokok Hukum Administrasi*, Bayu Media publishing, Malang, p. 77

¹⁷ Revelation Baskoro 2005, *Kamus Lengkap Bahasa Indonesia*, Faithful friend, Jakarta, p. 785.

¹⁸ AA Andi Prajitno 2010, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, Crown Media Nusantara in Surabaya, p. 92

¹⁹ Munir Fuady 2005, *Profesi Mulia (Etika Profesi Hukum bagi Hakim, Jaksa, Advokat, Notaris, Kurator, dan Pengurus)*, PT. Citra Aditya Bakti, Bandung, p. 4

Substitute Notary essentially have the same responsibilities and authority to the notary, as mentioned in Article 15 of Act No. 2 Of 2014 On Notary (UUJN), the obligation as mentioned in Article 16 UUJN and restrictions as referred to in Article 17 UUJN. Notaries in performing his respective duties limited by age notary is concerned, so in terms of accountability to the deed made in the presence and by the notary. Notaries, Notary Substitute temporary Acting Special Substitute Notary Public Notary or have time constraints in carrying out his duties. For Notary as mentioned in Article 8 (1) and (2) UUJN namely:

- (1) Notary quit or be removed from office with the respect due to:
 - a. Die;
 - b. It has been over 65 (sixty-five) ofs;
 - c. Own request;
 - d. Not being able to spiritually and / or physically to carry out the task of the notary office continuously more than 3 (three) ofs;
 - e. Concurrent position as referred to in Article 3 letter g.
- (2) Age provisions referred to in paragraph (1) letter b can be extended up to the age of 67 (sixty seven) ofs by considering health is concerned.

Notary restrictions on age or for other reasons mentioned above is the limit for Notary've been unable to do any authority. The age limit or for other reasons are not valid for the Acting Notary, the Notary Substitutes and Special Substitute Notary. This is associated with the notion of Acting Notary (Article 1 paragraph 2), Substitute Notary (Article 1 paragraph 3) and the Special Substitute Notary (Article 1 paragraph 4 UUJN).

Notary authorized limits, Acting Notary, the Notary Substitutes and Special Substitute Notary different. Acting on authority limits Substitute Notary Notary and ends when the limit specified in the decision have been exhausted, and the Special Substitute Notary deed shall end when he made the appropriate decree was completed.²⁰ Notary accountability stipulated in Act No. 2 of 2014 concerning Notary, namely:

- In the Civil Liability Notary if such actions violate the rights of others, contrary to the legal obligations of the perpetrator, contrary to morality, contrary to propriety in regard to the interests of self and property of others in everyday social life. In the event of typographical errors in the minutes of the deed was done at a notary who is in a period of leave, but a substitute notary deed minuta make a correction because the attentio feel aggrieved with the minutes of the occurrence of errors. So in this case to make any corrections minuta substitute notary deed, so that the deed could be null and void or degraded to a deed under hand. Because the substitute notary perform an act in terms that are non-substantive, so in this case does not cause any harm to the parties. However, mistakes made by a notary public should not substitute the responsibility to do.
- Responsibilities of the Notary In Administration, as in Article 85 of Act No. 2 of 2014 concerning Notary, will be disqualified lisen reprimand, written reprimand, suspension, dismissal with respect and dishonorable discharge.
- Notary By Criminal Responsibility as in the case of a replacement Notary basically can not replace the responsibility of the notary who made the deed, but if it is done it can be given a substitute notary criminal liability.²¹Substitute Notary Public Notary

²⁰ Habib Adjie, *Tanggung jawab Notaris, Notaris Pengganti Khusus dan Pejabat Sementara Notaris Sampai Hembusan Nafas Terakhir..?* Renvoi Journal, No. 26 Th.III, July 3rd, 2005.

²¹ Ibid

and is responsible for every deed made. This is in accordance with the provisions of Article 65 UUJN, namely:²²

Notaries, Notary Substitute, and Acting Notary responsible for any deed that is made despite the Protocol notary has been assigned or transferred to the depositary notary Protocol.

Based on the substance of Article 65 UUJN, as if the Substitute Notary Notary and there is never a limit in accountability, it is seen from the sentence: "... even though Notaries protocol has been assigned or transferred to the Notary protocol storage", or in other words Notary and the Notary substitute for accountability until the last breath or shortly before his death and there is no limitation of responsibility.

There is confusion regarding the liability limits Notaries, Notary Substitute Substitute Notary Special and Acting Notary pursuant to Article 65 of Act No. 2 of 2014 concerning Notary, because despite all the deed made by Notary or Notary Substitute, has been assigned or transferred to the depositary Notary protocols, this means that although already quit or retired as a Notary or still to be responsible until the last breath. So logical that if a Notary or Notary Substitute is not served anymore though he is still alive, it can not be asked again to account in any form, and Notary storage protocol shall demonstrate or provide photocopies of the minutes of the deed is known in accordance with the original by a Notary storage protocol or by the Board of Trustees of Regions (MPD) to the protocol notaries who have turned 25 (twenty five) ofs or more (Article 63 paragraph (5) UUNJ). Based on such understanding, the existence of Article 65 UUJN is not in accordance with the meaning that the Notary deed as authentic deeds that have perfect probative value.

Construction of such accountability is in accordance with the spirit of Article 1870 Kita Civil Act Act, that: "An authentic act provides, among all the parties and their respective heirs, or those who have the right than they are, a perfect evidence about what is contained in it."

Notary Public Notary storage protocol is a protocol holders anything effort to keep the age juridical Notary deed as evidence perfect for parties or heirs on all matters contained in the deed. Notary deed in the form of a copy will always exist if it is kept by the person concerned, and in the form minuta will also forever is stored by itself or by a Notary Public Notary protocols holder or by the Regional Supervisory Council. Notary died, but the notary deed will remain that have a juridical age and biological age notary exceeds his own. Thus Substitute Notary liability as long as they have the authority to carry out duties as Notary office.

Being a substitute notary is not solely responsible for serving into a substitute notary, but a responsibility that will remain attached over the deed made by a substitute notary is still used and a substitute notary is still alive, so that the post of substitute notary can not be used as a venue for can make the deed as much as possible without regard to the rule of act, mechanisms, terms in making a deed. Notary substitute there is no limitation in a deed while it is within the act and not contrary to the acts and regulations that could harm the client, or other parties related to the deed he made.

²² Article 65 of Act No. 2 of 2014 on Concerning Notary (UUJN)

3.3. Barriers and Solutions to Implement Share Substitute Notary Deed responsibilities in the Making by Act No. 2 of 2014 On Notary

Common barriers or obstacles that are often encountered in the execution of its responsibilities substitute notary in the manufacture of a notarial deed notary is a lack of experience, lack of capacity and their doubts about the substitute notary office. Solutions that can be done to overcome the constraints mentioned is to take some remedial action by way of a Notary appoint a replacement who has long worked in the notary's office, so he had to understand all the associated responsibilities to be performed by him, so a substitute notary shall not be doubt- hesitate in carrying out its responsibilities as a substitute notary. As for other possible solutions related to the constraints experienced by the substitute Notary in the running of their office is to provide socialization and guidance of the Regional Supervisory Council (MPD) to the Notary substitute associated with duties and responsibilities as a substitute notary. MPD important role in reducing the risk of errors made by the Notary substitute. The presence of a Notary to meet the needs of people who require legal documents (authentic deed) in the field of civil act, so that the Notary has the responsibility to serve the community that can be sued civilly, demanding indemnity costs and interest if it turns out the deed was made not in accordance with the rule of act come into force. This is a form of accountability to the public Notary.²³

3. Closing

3.1. Conclusion

Based on the description above, the conclusions in this thesis are:

- The role of Substitute Notary in making Deed pursuant to Act No. 2 of 2014 was Notary substitute an important role in meeting the needs of the community in making authentic deeds, notary replacement is only temporary, as it replaces the notaries who are on leave, sick or not able to function properly substitute Notary role similar to that performed by a Notary, meaning not only limited to article 33 UUJN, but all substance UUJN apply for a replacement Notary.
- Limitation of liability in the manufacture Substitute Notary Deed pursuant to Act No. 2 of 2014 are not affected by age restrictions as well as the Notary. In terms of authority, authority Substitute Notary ends when the limit specified in the decision have been exhausted, and ends when the Special Substitute Notary deed. Based on the substance of Article 65 UUJN, as if the Substitute Notary Notary and there is never a limit. According to Article 65 of Act No. 2 of 2014 concerning Notary, despite all the deed made by Notary Substitute, has been assigned or transferred to the depositary Protocol Notary, this means that although already quit or retired as a Notary, the Notary still be responsible to gusts last breath.
- Substitute Notary obstacle to his responsibilities in making Deed is the lack of experience of the notary, limited capacity and their doubts about the substitute notary office. The solution could be related to the constraints experienced by the substitute Notary in the running of their office is to provide socialization and guidance of the Regional Supervisory Council (MPD) to the Notary substitute

²³ Habib Adjie, 2013, *Sanksi perdata dan Administratif Terhadap Notaris sebagai Pejabat Publik*, Refika Aditama, Bandung, p.36

associated with duties and responsibilities as a Substitute Notary. MPD important role in reducing the risk of errors made by the Substitute Notary.

3.2. Suggestion

- Substitute Notary appointments should be done taking into account the ability and experience in the field of notaries, in order to minimize errors in deed.
- Substitute notary must be thorough and careful in making authentic act as a substitute notary responsibilities together with the notary replaces.
- MPD should frequently conduct training and socialization to the notary, especially Notary substitute, in order to more optimally in making authority and responsibilities.

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