

Position and Responsibilities of a Substitute Notary for a Notary Who Has Died

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Abstract. *This study aims to understand and analyze the position and responsibility of a Substitute Notary towards a Notary who has died and its legal consequences. This type of research uses normative juridical and the analytical tools in this study are the theory of legal objectives and the theory of legal responsibility. The results of the research and discussion show that a substitute Notary is tasked with replacing or taking over all obligations of a notary who is taking leave within a specified period of time. A Substitute Notary has the same obligations and authorities as a regular Notary. This is in accordance with the provisions in Article 33 paragraph (2) of the Notary Law which stipulates that the provisions in Article 4, Article 15, Article 16 and Article 17 of the Notary Law apply and are also binding on Substitute Notaries, as long as it is not specified otherwise. Substitute Notaries have the same responsibility in carrying out their duties, in accordance with the provisions of Article 65 of the UUJN. As a result of the legal position and responsibility of the Substitute Notary towards the Notary who is replaced who dies, the heirs can propose that the Notary Holding the Protocol and the MPD appoint a Notary as the recipient of the protocol or the MPD appoints a Notary who receives the protocol for a period of 14 (fourteen) days from the end of the term of office of the Temporary Notary.*

Keywords: Legal; Notary; Protection; Refusal; Right.

1. Introduction

The Unitary State of the Republic of Indonesia (NKRI) as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every citizen. To guarantee order and legal protection, authentic written evidence is needed regarding acts, agreements, determinations and legal events made before or by authorized officials.

The legal relationship between a Notary and a Substitute Notary has only emerged because the existence of a Substitute Notary is a necessity and is very important in order to fill the vacancy of a Notary who is on leave, sick, or temporarily unable to carry out his/her position as a Notary, in order to continue to guarantee legal certainty for the community. The limits of the authority of a Notary and a Substitute Notary are different. The limits of the authority of a Substitute Notary end when the limits stated in his/her decision letter have expired.¹

While the notary is on leave, the notary protocol must be submitted to the replacement notary. After the notary concerned has completed the leave period, the notary protocol is returned to the notary concerned. While the replacement notary is carrying out his/her duties, there is always the possibility of errors in making the deed, so that the deed made causes problems. If the problem is known at the time or during the replacement notary's term of office, it will not cause problems because it can be corrected properly.²

Article 35 Paragraph (1) states that if a Notary dies, then the blood relatives in the same line of descent or one of them has an obligation to notify the Regional Supervisory Council (MPD) of the Notary's death. The word obligatory in this article has the meaning that requires blood relatives in the same line of descent or one of them to convey the sad news to the MPD. The UUJN-P does not explain more clearly regarding the mechanism for changing from a Substitute Notary to a Temporary Notary, but only explains that the Substitute Notary exercises authority as a Temporary Notary starting from the date the Notary dies.

The mechanism/procedure for changing a Substitute Notary to become a Temporary Notary is still something that needs to be questioned, whether this can immediately occur as of the death of the Notary as in Article 35 paragraph (3) or must go through a procedure determined by the Regional Supervisory Board, perhaps by issuing a Letter of Appointment from the Regional Supervisory Board to the appointed Substitute Notary, so according to the author there needs to be an explanation regarding the mechanism/procedure for changing a Substitute Notary to become a Temporary Notary.

2. Research Methods

Normative research is legal research that places law as a building of normative systems. The normative system in question is about the principles, norms, rules of laws, court decisions, agreements and doctrines (teachings).³ The approach methods used in this research are the legislative approach, the legal approach and

¹Habib Adjie, 2014, Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary, Refika Aditama, Bandung, p. 44.

²Habib Adjie, 2009, Observing the Treasury of Indonesian Notaries and PPATs, Citra Aditya Bakti, Bandung, p. 48

³Mukti Fajar Nur Dewa and Yulianto Achmad, 2015, Dualism of Normative & Empirical Legal Research, 3rd ed., Pustaka Pelajar, Yogyakarta, p. 34

the conceptual approach.⁴ The research specifications used in this study are descriptive analysis.⁵

3. Result and Discussion

3.1. Position and Responsibility of Substitute Notary to the Notary Who Has Been Replaced and Died

A Substitute Notary has the same obligations and authorities as a regular Notary. This is in accordance with the provisions in Article 33 paragraph (2) of the Notary Law which stipulates that the provisions in Article 4, Article 15, Article 16 and Article 17 of the Notary Law apply and are also binding on a Substitute Notary, as long as it is not specified otherwise. The obligations of a Substitute Notary also refer to the obligations of a regular Notary as stated in Article 16 paragraph (1) of the UUJN.

Regarding the authority of the Substitute Notary, it also refers to the same authority held by the Notary as given in the Notary Law. Authority itself is a legal act carried out by a certain profession based on the provisions/rules of the law that legally regulate the profession.⁸ According to Philipus M. Hadjon, authority (*bevoegdheid*) is defined as legal power (*rechtsmacht*) which when viewed from a public law perspective is related to power.⁶

The authority of the Substitute Notary itself is an attributive authority because it is granted by statutory regulations. In the provisions of Article 15 paragraph (1) of the Notary Law, the Notary is given the authority to make legal products in the form of authentic deeds for both acts, agreements, and determinations in accordance with applicable legal provisions or those desired by the parties, determine the provisions of the date the deed was made, store the deed documents, provide grosse, copies and extracts of the deed, which are carried out as long as the deed does not become the authority of an official or other party determined by statutory provisions. Furthermore, in Article 15 paragraph (2) of the Notary Law.

Other authorities of the Notary are to validate signatures and determine the certainty of the date of private letters by registering them in a special book (*legalization*). As a Substitute Notary, he has the right to carry out *legalization*, which means confirming that the parties listed in the deed have signed the private letter before the Substitute Notary. In practice, there are several Substitute Notaries who want to *legalize*, but only one is present before the Notary. This can happen because of close friends who ignore existing regulations. Then, other authorities are to validate the suitability of the photocopy with the original letter.

⁴Peter Mahmud Marzuki, 2011, *Legal Research Methods*, Kencana Prenada Media Group, Jakarta, p.93

⁵Bambang Sunggono, 2013, *Legal Research Methods*, Rajawali Press, Jakarta, p. 36.

⁶Doly D., 2016, "Notary's Authority in Making Deeds Related to Land", *Jurnal Negara Hukum*, Vol. 2, No. 2, p. 275.

In practice, cases like this are called legalization. In legalizing the original document, the Notary still carries out the legalization and until now there have been no problems related to legalization.⁷

The duties and responsibilities of a substitute notary have been born since the inauguration of the substitute notary at the Ministry of Law and Human Rights so that all duties and responsibilities have been transferred to the substitute notary.⁸

The special characteristics that must be instilled in a Substitute Notary that can form a person's personal character in carrying out his/her position are independence, good and correct, and professional in all matters.⁹

Accountability is an obligation to provide an answer which is a calculation of all things done to bear all consequences arising from an act. Therefore, the Substitute Notary has responsibility for every task given to him.¹⁰

Notaries and Substitute Notaries have the same responsibility in carrying out their duties, in accordance with the provisions of Article 65 of the UUJN, namely: "Notaries, Substitute Notaries, and Temporary Notary Officials are responsible for every Deed they make even though the Notary Protocol has been submitted or transferred to the party keeping the Notary Protocol." This provision places Temporary Notary Officials and Substitute Notaries with the same responsibility as Notaries.

A Substitute Notary can be held legally responsible. This is in line with the applicable principle that anyone who is harmed has the right to file a claim or lawsuit. A lawsuit against a Substitute Notary can occur if the authentic deed he made is not in accordance with the procedure, resulting in a loss. In fact, if an authentic deed is legally invalid, then the Substitute Notary concerned can be held legally responsible.

The profession of Substitute Notary has responsibilities regarding the extraordinary trust given to him. The scope of the responsibilities of a substitute notary includes:

- 1) Responsibility in carrying out the position

The Notary Law has given authority to a Substitute Notary, when this authority is misused, there will be legal consequences. A substitute notary may not refuse to provide services if requested by an interested party as long as it does not violate applicable regulations. A notary in carrying out his duties and office is personally responsible for all legal actions taken and for deeds made before him if later there

⁷Results of an interview with Notary-PPAT Wahyu Hermawati, SH, M.Kn., on November 17, 2024

⁸Results of an interview with Notary-PPAT Wahyu Hermawati, SH, M.Kn., on November 17, 2024

⁹AA Andi Prajitno, 2010, Practical Knowledge About What and Who Notaries Are in Indonesia, Putra Media Nusantara, Surabaya, p.92

¹⁰Results of an interview with Notary-PPAT Wahyu Hermawati, SH, M.Kn., on November 17, 2024

is a problem that results in losses to another party, the substitute notary must be ready to be responsible for paying compensation in any form for the losses experienced by the party.

Based on Article 84 UUJN, any act that violates the provisions of UUJN which results in an authentic deed only having the power of proof under hand or an authentic deed is null and void by law can cause the parties to suffer losses to demand compensation in the form of material losses or immaterial losses. Losses in the form of material are losses whose amount can be calculated in the form of reimbursement of costs to the parties and immaterial losses are losses whose amount cannot be calculated, for example defamation and causing death.

2) Civil liability

The civil responsibility of a substitute notary can be seen from the legal relationship between the substitute notary as a service provider and the parties as service recipients in an engagement where the engagement must comply with the provisions of Article 1320 of the Civil Code, both the engagement between the substitute notary and his client and the engagement between the parties. which will be stated in an authentic deed made by a Substitute Notary. The nature and principles adhered to by the law of agreements that are born out of an agreement, that the law is only possible and can be changed or declared invalid only by the parties who made the agreement, meaning that the agreement of both parties as outlined in an authentic deed will bind both parties. as binding by law.¹¹

Regarding the Substitute Notary who is asked to be held civilly responsible based on a claim of an unlawful act committed by the Substitute Notary, if the Substitute Notary carries out his duties in accordance with applicable regulations, then the Substitute Notary concerned cannot be held responsible because the Substitute Notary only records the information submitted by the parties concerned and then sets it out in an authentic deed. Identity errors or false information disclosed by the parties are the responsibility of the parties concerned.

3) Criminal liability

The criminal liability of a Substitute Notary is related to the responsibility for carrying out his/her position as stipulated in the Criminal Code (KUHP). A Substitute Notary can be held criminally responsible if he/she makes a deed with false information and regulations related to Article 263 paragraph (1), 264 paragraph (1) ke 1, or Article 266 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code, while the UUJN does not regulate criminal acts committed by a Notary.

¹¹Kunni Afifah, 2017, "Responsibility and Legal Protection for Notaries in Civil Law Against the Deeds They Make", Thesis, Master of Notary, Islamic University of Indonesia, p. 76

According to Raden Soegondo Notodisoerjo, what can be held accountable by a Notary is if he/she commits fraud originating from the Substitute Notary himself/herself. For example, in making a deed of establishment of a Limited Liability Company, the Notary falsifies data to facilitate the process in the deed.¹²

In addition, the Substitute Notary can be held criminally responsible if there is no excuse. In the case of making a deed based on false information allegedly involving a notary, if no excuse is found from the Substitute Notary concerned, then he can be held criminally responsible.

4) Responsibility for the Notary's code of ethics

A Substitute Notary may be held accountable for the Notary's code of ethics if it is proven that there has been a violation of the code of ethics committed by him/her in carrying out his/her duties. In this case, the Honorary Council will follow up and impose sanctions as accountability for the behavior of the Substitute Notary who has violated one of the Notary's Code of Ethics.

Dishonorable dismissal if the violation committed is very fatal and cannot maintain his position as a Substitute Notary even though his term of office has not expired, a Substitute Notary will still be dismissed from his position.

3.2. Legal Consequences of the Position and Responsibilities of a Substitute Notary to the Death of the Replaced Notary

The Acting Notary must submit the Notary Protocol of the deceased Notary to the Regional Supervisory Board no later than 60 days from the date of the Notary's death. There is no impact on the delay in submitting the Notary and Substitute Notary protocols even though the submission of the protocol does not actually occur within the specified time period or can even be longer.¹³

Before the protocol is submitted, it must be ensured that all Notary Protocols are complete. The Substitute Notary must also calculate the number of deeds which are then stated and made in the minutes of the handover of the Notary Protocol. The Substitute Notary has a time limit to complete all of these Protocols, which is 60 days from the time the Notary dies. The Substitute Notary no longer has a position and authority in terms of making authentic deeds.

All Notary Protocols must be complete before the protocol is submitted. The number of deeds that are then recorded and made in the minutes of the handover of the Notary Protocol must also be calculated by the replacement notary. For all these Protocols, the replacement notary has 60 days from the date of the notary's death to complete them. In the case of making authentic deeds, the position and authority of the replacement notary no longer have the authority.

¹²Raden Soegondo Notodisoerjo, *Notary Law in Indonesia: An Explanation*, (Jakarta: Raja Grafindo Persada, Second Printing, 1993), p. 229.

¹³Siti Nurjanah and Ana Silviana, 2023, "Changes in the Position of a Substitute Notary When the Replaced Notary Dies Based on Law Number 2 of 2014", *Al-Manhaj: Journal of Islamic Law and Social Institutions*, Vol. 5 No. 2, p.1468

A notary who dies while on leave is honorably dismissed from his/her position, and no later than seven days after the notary dies, his/her heirs or replacement notary must notify the MPD of his/her death manually or electronically. Supporting documentation is also included, including: 1) A photocopy of the Decision on the appointment of a Replacement Notary that has been legalized. 2) A photocopy of the extract of the death certificate/death certificate that has been legalized. 3) The original letter of proposal for the appointment of another Notary as the Protocol Holder.

The submission of the Protocol as referred to in Article 62 of the UUJN-P shall be carried out within a maximum of 60 days by making a report on the submission of the Notary Protocol which is signed by the Substitute Notary as the Temporary Notary, the Notary receiving the Notary Protocol and the Chairperson of the Regional Supervisory Board.

The submission of the Protocol as referred to in Article 62 of the UUJN-P must be made no later than 60 days after the submission of the Notary Protocol and signed by the Chairperson of the Regional Supervisory Board, the Substitute Notary as a temporary official, and the Notary who received the Notary Protocol.

4. Conclusion

A substitute notary is tasked with replacing or taking over all obligations of a notary who is taking leave for a specified period of time. A substitute notary has the same obligations and authorities as a regular notary. This is in accordance with the provisions of Article 33 paragraph (2) of the Notary Law which stipulates that the provisions of Article 4, Article 15, Article 16 and Article 17 of the Notary Law apply and are also binding on a substitute notary, as long as it is not specified otherwise. A substitute notary has the same responsibility in carrying out his/her duties, in accordance with the provisions of Article 65 of the UUJN. As a result of the legal position and responsibility of a substitute notary towards a notary who has died, the heirs can propose a notary holding the protocol and the MPD can appoint a notary as the recipient of the protocol or the MPD can appoint a notary to receive the protocol for a period of 14 (fourteen) days from the end of the term of office of the temporary notary. Information from the death of the notary means that the MPD will immediately negotiate with its members regarding which notary will be able to receive the protocol from the deceased notary and the substitute notary.

5. References

Books:

- AA Andi Prajitno, 2010, Practical Knowledge About What and Who Notaries Are in Indonesia, Putra Media Nusantara, Surabaya.
- Bambang Sunggono, 2013, Legal Research Methods, Rajawali Press, Jakarta.
- Habib Adjie, 2009, Observing the Treasury of Indonesian Notaries and PPATs, Citra Aditya Bakti, Bandung.

Habib Adjie, 2014, Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary, Refika Aditama, Bandung.

Mukti Fajar Nur Dewa and Yulianto Achmad, 2015, Dualism of Normative & Empirical Legal Research, 3rd ed., Pustaka Pelajar, Yogyakarta.

Peter Mahmud Marzuki, 2011, Legal Research Methods, Kencana Prenada Media Group, Jakarta.

Raden Soegondo Notodisoerjo, Notary Law in Indonesia: An Explanation, Second Printing, Raja Grafindo Persada, Jakarta, 1993.

Journal/Scientific Articles:

Doly D., 2016, "Notary's Authority in Making Deeds Related to Land", Jurnal Negara Hukum, Vol. 2, No. 2.

Kunni Afifah, 2017, "Responsibility and Legal Protection for Notaries in Civil Law Regarding the Deeds They Make", Thesis, Master of Notary, Islamic University of Indonesia.

Siti Nurjanah and Ana Silviana, 2023, "Changes in the Position of a Substitute Notary When the Replaced Notary Dies Based on Law Number 2 of 2014", Al-Manhaj: Journal of Islamic Law and Social Institutions, Vol. 5 No. 2.