



Responsibilities of a substitute notary under article 32 of the notary Act

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Abstract

Indonesian Notary Position Regulations are regulated through Law Number 2 of 2014 in conjunction with Law Number 30 of 2004 concerning the Position of Notary (abbreviated UUJN). Article 1 point 3 UUJN, Substitute Notary is someone who is temporarily appointed as a Notary to replace a Notary who is on leave, sick, or temporarily unable to carry out his position as a Notary. In carrying out the duties of his position, the Substitute Notary receives the submission of the Notary Protocol from the Notary being replaced, this is regulated in Article 32 UUJN, namely:

1. Notaries who take leave are required to submit the Notary Protocol to a Substitute Notary.
2. Alternate Notary returns the Notary Protocol to the Notary after the leave ends.
3. The handover as referred to in paragraph (1) and paragraph (2) shall be made into an official report and submitted to the Regional Supervisory Council.
4. Notaries who violate the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) may be subject to sanctions in the form of:
 - a. written warning;
 - b. temporary stop;
 - c. honorable discharge; or
 - d. dishonorable discharge.

The purpose of this research is to find out the responsibility of the substitute notary in holding the replaced notary protocol. The research method used is normative legal research using secondary data or by examining literature. The approach method used is the Statute Approach and the Analytical Approach. The sources of legal materials in this research are primary legal materials, secondary legal materials, and tertiary legal materials relating to the Responsibilities of Substitute Notaries Under Article 32 UUJN. The results of the study found that the Responsibilities of the Substitute Notary were born because of the authority of the delegation given to him, this authority legally and legally entered into force since the Substitute Notary took his oath of office. Based on Article 65 UUJN "Notary, Substitute Notary, and Notary Temporary Officer are responsible for each Deed made even though the Notary Protocol is submitted or transferred to the repository of the Notary Protocol." Based on this Article, Substitute Notary has the same responsibility as a Notary in making authentic deed as well as in issuing a copy of the protocol it holds. Regarding the functions possessed by a substitute Notary, there is no difference in terms of authority and responsibility as a Notary, because based on Article 33 paragraph (2) UUJN, a Substitute Notary only replaces a Notary during the Notary's absence. The limit of responsibility of a Substitute Notary can be requested as long as they are still authorized to carry out their duties and positions or mistakes made in carrying out their duties, or mistakes made in carrying out their duties and the sanctions that can be imposed on a Notary can be imposed as long as a Substitute Notary still authorized to carry out his duties. With the construction of accountability as mentioned above, there will be no Substitute Notary to be held accountable again after the person concerned has resigned from his duties and position as a Notary. or mistakes made in carrying out the duties of his office and sanctions that can be imposed on a Notary can be imposed as long as the Substitute Notary is still authorized to carry out his office duties. With the construction of accountability as mentioned above, there will be no Substitute Notary to be held accountable again after the person concerned has resigned from his duties and position as a Notary. or mistakes made in carrying out the duties of his office and sanctions that can be imposed on a Notary can be imposed as long as the Substitute Notary is still authorized to carry out his office duties. With the construction of accountability as mentioned above, there will be no Substitute Notary to be held accountable again after the person concerned has resigned from his duties and position as a Notary.

Keywords: responsibilities of notary substitute, notary protocol article 32 UUJN

Introduction

Background

Regulations for Notary Position in Indonesia are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (abbreviated UUJN). Based on Article 1 number 3 UUJN, namely "A Substitute Notary is someone who is temporarily appointed as a Notary to replace a Notary who is on leave,

sick, or temporarily unable to carry out his position as a Notary".

In practice, a Notary may appoint a Substitute Notary as stipulated in Article 32 UUJN, namely:

1. Notaries who take leave are required to submit the Notary Protocol to a Substitute Notary.
2. Alternate Notary returns the Notary Protocol to the Notary after the leave ends.

3. The handover as referred to in paragraph (1) and paragraph (2) shall be made into an official report and submitted to the Regional Supervisory Council.
4. Notaries who violate the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) may be subject to sanctions in the form of:
 - a. written warning;
 - b. temporary stop;
 - c. honorable discharge; or
 - d. dishonorable discharge.

A new Substitute Notary can become a substitute Notary if he meets the requirements as stipulated in Article 33 UUJN paragraph (1), namely, an Indonesian citizen who has a law degree and has worked as a Notary employee for at least 2 (two) consecutive years, as this is also regulated in Article 27 paragraph (3) letter c of Regulation of the Minister of Law and Human Rights Number 19 of 2019 concerning Requirements and Procedures for Appointment, Leave, Transfer, Dismissal and Extension of the Notary's Term of Office. The elucidation of Article 29 paragraph (1) letter c UUJN also explains the documents supporting the Substitute Notary are as follows:

1. photocopy of the lowest degree of law degree approved by the university concerned;
2. photocopy of identity card legalized by a Notary;
3. photocopy of birth certificate legalized by a Notary;
4. photocopy of marriage certificate for those who are married legalized by a Notary;
5. health certificate from a government doctor;
6. 4 (four) recent passport size photographs of 3 x 4 cm; and
7. Curriculum Vitae.

Substitute Notary before carrying out his position must take an oath/pledge according to his religion before the Minister or appointed official, this is regulated in Article 4 UUJN. Substitute Notaries can only carry out their duties after the minutes are made and submitted to the MPW as stipulated in Article 32 paragraph (3) UUJN, even though the Notary's leave has ended and the Protocol has been submitted to the Notary, but the Substitute Notary remains responsible for every deed he makes.

In submitting the Protocol to a Substitute Notary, the Notary must make an official report and record it in the repertory when carrying out the handover. After the Notary's leave period ends, in handing back the Notary Protocol from the Substitute Notary to the Notary, also make an official report and record it in the repertorium. Repertorium is a Notary's activity in recording all deeds made by or before him either in the minutes of the deed or in the original by including the serial number, monthly number, date, nature of the deed and the names of the appearers, as well as a series of Notary activities in handing over the Notary Protocol and reporting each month by the Notary to the MPD in accordance with the Notary's Work Area.

Based on the background above, this discussion will focus on "Responsibility of a Notary Substitute Under Article 32 of the Notary Office Law". As for the formulation of the problem is:

1. What are the responsibilities of the Substitute Notary Public in holding the Replaced Notary Protocol?

Based on the formulation of the problem that has been mentioned, the purpose of this study is to find out the responsibility of the substitute notary in holding the replaced notary protocol.

Research methods

The research method used is normative legal research using secondary data or by examining literature. The approach method used is the Statute Approach and the Analytical Approach. The sources of legal materials in this research are primary legal materials, secondary legal materials, and tertiary legal materials relating to the Responsibilities of Substitute Notaries Under Article 32 UUJN.

Results and Discussion

a. General review About Substitute Notary

1. Definition of Substitute Notary

Substitute Notary is a person temporarily appointed as a Notary to replace a Notary who is on leave, sick, or temporarily unable to carry out his position as a Notary. Based on Article 1 number 3 in conjunction with Article 33 paragraph (2) UUJN is intended to regulate the legal position (*rechtpositie*) of a Substitute Notary, namely as a Notary.

Substitute Notary Public is appointed by an authorized official based on UUJN, not by a Notary who proposes or appoints him. This confirmation regarding the legal position of a Substitute Notary is required not only for the interests of a Substitute Notary, but especially for the public interest that uses the services of a Substitute Notary.

2. Substitute Notary Legal Basis

The connection regarding Substitute Notaries is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (abbreviated UUJN). In addition to the law, substitute notaries are also regulated in the Regulation of the Minister of Law and Human Rights Number 19 of 2019 concerning Terms and Procedures for Appointment, Leave, Transfer, Dismissal and Extension of the Notary's Term of Office. The 2005 Notary Code of Ethics and the amendments to the 2015 Notary Code of Ethics.

3. Requirements to Become a Substitute Notary

Based on Article 33 point 1 UUJN, the requirements to serve as a Substitute Notary are: "The conditions for being appointed as a Substitute Notary and Temporary Notary are Indonesian citizens with a degree in law and have worked as an employee of a Notary's office for at least 2 (two) consecutive years -row". The elucidation of article 29 paragraph 1 letter c UUJN explains that the documents supporting a Substitute Notary are:

1. Photocopy of the lowest degree of law degree approved by the university concerned;
2. Photocopy of identity card legalized by a Notary;
3. Photocopy of birth certificate legalized by a Notary;
4. Photocopy of marriage certificate for those who are married legalized by a Notary;
5. Certificate of good behavior from the local police;
6. Health certificate from a government doctor;
7. 4 (four) recent color photographs of size 3x4 cm; and
8. Curriculum Vitae.

4. Duties and Functions of Substitute Notary Public

Substitute Notary has the same position, duties and functions as the Notary being replaced, for this reason the Substitute Notary is also obliged and responsible as well as a Notary in general as a public official in carrying out his duties must always be based on Article 15 in conjunction with Article 51 UUJN Year 2014. As for Substitute Notary's duties are:

- a. Sharpen the signature and determine the certainty of the letter under the hand by registering it in a special book (waarmerking);
- b. Book private letters by registering in a special book;
- c. Make a copy of the original hand-held letter in the form of a copy containing the description as written and described in the letter concerned;
- d. Verify the compatibility of the photocopy with the original letter (legalized);
- e. Providing legal counseling in connection with making deeds;
- f. Making deeds related to land;
- g. Make a deed of minutes of auction; and
- h. Correcting written errors and/or typographical errors contained in the signed minutes of the deed, by making an official report and providing a note about this in the original minutes of the deed stating the date and number of the minutes of correction, and the copy is sent to the parties.

The obligations regarding Notaries also apply to Substitute Notaries regulated in Article 16 UUJN, that in carrying out his position he must:

1. In carrying out his position, the Notary is obliged to:
 - a. act reliably, honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions;
 - b. make a Deed in the form of Minutes of Deed and save it as part of the Notary Protocol;
 - c. attaching letters and documents as well as the fingerprints of the person appearing on the Minutes of Deed;
 - d. issue a grosse deed, a copy of the deed, or a quotation of the deed based on the minutes of the deed;
 - e. provide services in accordance with the provisions of this Law, unless there is reason to refuse it;
 - f. keep everything confidential regarding the deed he made and all information obtained in order to draw up the deed in accordance with the oath/pledge of office, unless the law determines otherwise;
 - g. bind the Deeds made within 1 (one) month into books containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds can be bound into more than one book, and record the number of Minutes of Deeds, month, and year of manufacture on the cover of each book;
 - h. make a list of the Deed of protest against non-payment or non-receipt of securities;
 - i. make a list of deeds relating to the will according to the order in which the deed was drawn up every month;
 - j. send the list of deeds referred to in letter i or the list of nil relating to the will to the center of the list of wills at the 13 ministries that carry out government affairs in the field of law within 5 (five) days in the first week of each month thereafter;

- k. record in the repertorium the date of sending the testament list at the end of each month;
1. have a stamp or stamp containing the state symbol of the Republic of Indonesia and in the space encircling it the name, position and domicile of the person concerned is written;
- m. read the Deed before the appearers attended by at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, and signed at the same time by the appearers, witnesses and Notary; and
- n. accept notary candidate apprentices.
2. Keeping the Minutes of the Deed as referred to in paragraph (1) letter b is not valid, if the Notary issues the deed in the original form;
3. The original deed as referred to in paragraph (2) is a deed:
 - a. payment of rent, interest, and pensions;
 - b. cash payment offers;
 - c. protest against non-payment or non-receipt of securities;
 - d. power of attorney;
 - e. ownership statement; or
 - f. other deeds based on statutory regulations.
4. The original deed as referred to in paragraph (2) can be made in more than 1 (one) copy, signed at the same time, form and content, provided that each deed is written with the words "applies as satay and one applies to all".
5. The original deed containing the power of attorney which has not been filled in with the name of the power of attorney can only be made in 1 (one) copy.
6. The shape and size of the seal/stamp as referred to in paragraph (1) letter k shall be stipulated by a Ministerial Regulation.
7. The reading of the deed as referred to in paragraph (1) letter l is not required, if the appearer wants the deed not to be read because the appearer has read it himself, knows and understands its contents, provided that this is stated in the cover of the deed and initials on each page of the deed by appearers, witnesses, and notaries.
8. If one of the conditions referred to in paragraph (1) letter l and paragraph (7) is not met, the deed concerned only has the power of proof as a private deed.
9. The provisions referred to in paragraph (8) do not apply to making wills.

The explanation above also applies to Substitute Notaries. Substitute Notary Public has the same obligations and authority to the Notary who appointed him.

5. Appointment and Dismissal of Substitute Notary

A new Substitute Notary can be appointed if the Notary who is on leave or unable to carry out his duties within a certain time appoints a Substitute Notary. The name of the Substitute Notary is submitted by the Notary to the MPD or MPW or MPP, which proposal is at the same time as the Notary's request for leave. The appointment of a Substitute Notary is also regulated in article 21 letter c of the Minister of Law and Human Rights Number 19 of 2019.

Before carrying out his position, the Substitute Notary is obliged to take an oath/pledge according to his religion before the Minister or the appointed official who pronounces the oath/pledge as referred to in Article 12 paragraph (4) in accordance with the provisions of the laws

and regulations. The official in question is the Head of the Regional Office of the Ministry of Law and Human Rights.

b. Overview of Notary Protocols

The Notary Protocol is regulated in Article 1 Number 13 UUJN, namely "Notary Protocol is a collection of documents which are state archives that must be stored and maintained by a Notary in accordance with statutory provisions". The Notary Protocol consists of:

1. Minuta deed bundle;
2. List of deeds or Repotory
3. Register Book for private letters legalized and signed in the presence of a notary or legalization
4. Register Book for private letters which are booked or waarmedking
5. Book List of Protests against non-payment or non-receipt of securities
6. Testament Book
7. Klaper List for appearers;
8. Klaper list for private letters legalized and signed in the presence of a notary or legalization
9. Klaper list for underhanded letters recorded as waarmedking
10. List of other letters required by the Notary Office Law

c. An Overview of the Responsibilities of the Substitute Notary in Holding the Protocol of the Replaced Notary

Responsibilities of a Notary as a public official, according to GHS Lumban Tobing, a Notary must be responsible for the deed he made, if there are reasons as follows:

1. In matters that are expressly determined by the Notary's Position Regulations;
2. If a deed, because it does not meet the requirements regarding its form (gebrek in the vorm), is canceled before a court, or is considered to only apply as a deed under the hand;
3. In all cases, where according to the provisions contained in Article 1365 of the Civil Code regarding liability with an element of error (intentional and negligent), Article 1366 of the Civil Code regarding responsibility with an element of error, especially negligence, and Article 1367 of the Civil Code regarding absolute responsibility (without fault) there is an obligation to pay compensation, meaning that all of these things must go through a balanced proving process.

Responsibilities owned by a notary/substitute notary adheres to the principle of responsibility based on fault (based on fault of liability), in making authentic deeds the notary/substitute notary must be responsible if the deed made contains an error or intentional violation by the notary. Conversely, if the element of error or violation occurs from the parties appearing, then as long as the Notary/Alternate Notary performs his authority in accordance with the regulations. The Notary/Alternate Notary concerned cannot be held accountable, because it only records what was submitted by the parties to be included in the deed. False statements submitted by the parties are the responsibility of the parties.

Seth ends the term of office of the Substitute Notary, all forms of responsibility for the deeds drawn up before him or in issuing copies based on the Notary Protocol that he holds

become his personal responsibility if problems arise that cause losses to other parties in the future. This accountability can still be requested even though the Substitute Notary is no longer in office.

Substitute Notaryi can be held accountable if there is an element of error he made and it is necessary to provide proof of the elements of the mistake he made, which includes:

1. Day, date, month, and year facing;
2. Time (at) facing; and
3. The signature listed in the minutes of the deed.

The responsibility of a Substitute Notary as a profession is born because of the authority of the delegation given to him, this authority is legally and bound to take effect since the Substitute Notary takes his oath of office. Based on Article 65 UUJN "Notary, Substitute Notary, and Notary Temporary Officials are responsible for every deed they make even though the Notary Protocol is submitted or transferred to the Notary Protocol repository."

Based on Article 65 UUJN, Substitute Notaries have the same responsibility as Notaries in making authentic deeds and in issuing copies of the protocols they hold. Regarding the functions possessed by a substitute Notary, there is no difference in terms of authority and responsibility as a Notary, because based on Article 33 paragraph (2) UUJN, a Substitute Notary only replaces a Notary during the Notary's absence.

If the Notary in carrying out their duties is not based on the applicable provisions and commits a violation, the Notary concerned may be subject to sanctions. Based on the provisions of Articles 84 and 85 UUJN, a Notary who is proven to have committed a violation can be subject to two sanctions, namely administrative sanctions and civil sanctions. Administrative responsibilities in question are:

1. Violating the provisions of Article 7, within thirty days from the date of taking the oath/pledge of office, the Notary shall not:
 - a. Carry out his position in a real way;
 - b. Delivering the minutes of the Notary's oath/pledge to the Minister, Notary Organization, MPD;
 - c. Delivering the office address, sample signature and initials, as well as the impression of the Notary's position stamp/stamp in red to the minister, other officials responsible for agrarian/land affairs, notary organizations, chairman of the District Court, MPD, and the Regent/Mayor where the notary is appointed.
2. Violating the prohibition as referred to in Article 17 namely:
 - a. Violating the position outside the area of office
 - b. Leaving the territory of office for more than seven consecutive working days without a valid reason
 - c. Also as a civil servant
 - d. Concurrent positions as state officials
 - e. Concurrent position as an advocate
 - f. Concurrent positions as leaders or employees of state-owned enterprises, regionally-owned enterprises
 - g. Concurrent position as an official making land deeds outside the Notary's area of office
 - h. Become a substitute notary
 - i. Violating other work that is contrary to religious norms, decency, or decency.
3. Violating the provisions of Article 20, namely in forming a civil union or notary association has acted

independently and there is partiality in carrying out their position or in running the joint office.

4. Violating the provisions of Article 27, namely submitting an application for leave, does not fulfill the requirements that the leave must be submitted in writing accompanied by the appointment of a substitute notary, and the application shall be submitted to:
 - a. Regional Supervisory Council, if the leave period is not more than six months;
 - b. Regional Supervisory Council, if the leave period is more than six months up to one year with a copy to the Central Supervisory Council;
 - c. Central Supervisory Council, if the leave period is more than one year with copies to the Regional Supervisory Council and Regional Supervisory Council.
5. Violating the provisions of Article 32, namely the Notary who is on leave does not submit the Notary Protocol to the Substitute Notary, and the Substitute Notary returns the Protocol to the Notary after the leave ends, the handover of this matter is made into an official report and submitted to the Regional Supervisory Board.
6. Violating the provisions of Article 54, namely the notary has given, shown or notified the contents of the deed, grosse deed, copy of the deed or excerpt of the deed, to people who have no interest in the deed, heirs or people who obtain rights, unless otherwise stipulated by laws and regulations.
7. Violating the provisions of Article 58 concerning not making a list of deeds, a list of privately made documents that are legalized, a list of privately made documents that are recorded, not issuing a deed in original form in duplicate.
8. Violating the provisions of Article 59, the Notary does not make a list of klapper for the list of legalized private deeds and documents as referred to in Article 58 arranged alphabetically and done every month. For violations as stated above, sanctions will be imposed.

For violations as mentioned above, they are subject to sanctions according to Article 85 UUJN which are internal sanctions, namely:

1. Oral teguan
2. Written warning
3. Temporary suspension
4. Honorable discharge
5. Dishonorable discharge

The notary regarding his oath promises to maintain his attitude, behavior and will carry out his obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a notary.

References

1. Habib Adjie, Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik, (Bandung: Refika Aditama), 2009.
2. Sunaryati Hartono, Penelitian Hukum di Indonesia Pada Akhir Abad ke-20, (Bandung: Alumni), 1994.
3. Undang-undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-undang Nomor 30 tahun 2004 tentang Jabatan Notaris, (Jakarta), 2014.
4. Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 19 Tahun 2019, Tentang Syarat dan Tata Cara Pengangkatan, Cuti, Perpindahan,

Pemberhentian dan Perpanjangan Masa Jabatan Notaris, (Jakarta), 2019.