



Authority and responsibilities of substitute notaries regarding errors in creating authentic deeds

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Abstract

In carrying out their duties, a Notary may be replaced by a substitute Notary in accordance with Article 1 paragraph (3) of Law Number 2 of 2014 concerning the Notary Position. Both the Notary and the substitute Notary are susceptible to errors or negligence. Based on the decision in the State Court of Makassar Number 65/Pdt.G/2017/PN.MKS, there was a substitute Notary who made mistakes in drafting deeds and was deemed to have committed an unlawful act. The purpose of this research is to analyze and explain the responsibilities of the substitute Notary in the application of authority and to analyze and clarify the authority and responsibilities of the substitute Notary regarding errors in the drafting of authentic deeds.

Keywords: Authority, responsibility, substitute notary

Introduction

In carrying out their duties, a Notary can be replaced by a substitute Notary in accordance with Article 1 paragraph (3) of the Notary Law (UUJN). Article 1 paragraph (3) of the UUJN explains that a substitute Notary is a person temporarily replacing the duties or position of a Notary on leave, sick, or temporarily unable or hindered to perform their duties as a Notary. Article 11 paragraph (3) of the UUJN states that in such circumstances, a substitute Notary must be appointed. Both the Notary and the substitute Notary are susceptible to errors or negligence, which can impact both themselves and cause losses to the parties involved. Errors or mistakes can occur with both the Notary and the substitute Notary. The substitute Notary serves temporarily for the duration of the leave of the replaced Notary. The UUJN grants the Notary the authority to document all acts, agreements, and determinations desired by parties intentionally appearing before the Notary to request the recording of their statements in an authentic deed, providing it with perfect evidentiary strength.

According to Article 33 paragraph (2) of the UUJN, the authority of the substitute Notary is the same as the provisions governing the authority of the Notary, as regulated in Article 15 of the UUJN. The presence of a substitute Notary aims to meet the needs of the community in the creation of deeds. However, a substitute Notary is only temporary, filling in for a Notary on leave, sick, or temporarily unable to perform their duties as intended, ensuring that the service for creating authentic deeds is not disrupted and proceeds as usual.

Both the substitute Notary and the replaced Notary are legally responsible. This is because not all deeds created by the Notary are flawless; sometimes, they contain formal and material defects due to the inadvertent actions of the substitute Notary in drafting the deeds for the parties involved.

A Notary can take leave after serving in their position for 2 (two) years. However, during the leave, the Notary must appoint a substitute Notary who will receive the Notary's protocol and carry out the duties of the Notary position. Article 1 number 3 of the UUJN defines a substitute Notary

as someone temporarily appointed as a Notary to replace a Notary on leave, sick, or temporarily unable to perform their duties as a Notary.

The presence of a substitute Notary is crucial in filling the vacancy of a Notary position, ensuring the continuity of services and legal certainty for the community as applicants. Both the Notary and the Substitute Notary are not exempt from the potential of making authentic deeds with formal and material defects. This has legal implications for the liability of the Substitute Notary, whether in criminal or civil terms.

As an illustrative case, based on the decision in the State Court of Makassar Number 65/Pdt.G/2017/PN.MKS, the Higher Education Foundation Karya Dharma Institute (hereinafter referred to as YPTKD Makassar) as the Plaintiff filed a lawsuit against the Higher Education Foundation Karya Dharma Institute (hereinafter referred to as YPTKD Makassar), Fauziah, SH as the Intervening Defendant I, and Notary Rusni Buhaerah, SH. MKn as the Intervening Defendant II.

In this case, YPTKD Makassar filed a lawsuit against YPTKD Makassar, Fauziah, SH (Intervening Defendant I), and Notary Rusni Buhaerah, SH. MKn (Intervening Defendant II), as stated in the decision of the State Court of Makassar Number 65/Pdt.G/2017/PN.MKS. The Plaintiff, originally named the Higher Education Foundation Legiun Veteran Republic of Indonesia, established the University of Veteran Republic of Indonesia (UVRI) Makassar on November 10, 1962.

On the other hand, the Defendant is a Foundation established on November 29, 2011, with an establishment deed without clauses connecting it to the Higher Education Foundation Legiun Veteran RI. The Defendant then applied for the establishment of a university, obtained permission from the Minister of Research, Technology, and Higher Education of the Republic of Indonesia, acquired UVRI Makassar, and changed its name to the University of the Republic of Indonesia Fighter (UPRI).

The dispute between the Plaintiff and the Defendant revolves around the validity of the change in the status of UVRI Makassar to UPRI by the Defendant. The Court ruled

that the Defendant was a newly established Foundation, without a historical connection to the Higher Education Foundation Legiun Veteran RI. This decision was upheld by the High Court of Makassar and the Supreme Court, declaring that the Defendant's actions were illegal. Thus, the Plaintiff won the lawsuit, stating that the Higher Education Foundation Karya Dharma (YPTKD) Makassar is the legitimate party as the manager of UVRI Makassar.

Research Method

This research employs the juridical normative research method, which involves a systematic analysis and interpretation of legal norms, principles, and doctrines. The study focuses on examining relevant statutes, regulations, case law, and legal literature to derive conclusions and insights regarding the specified legal issue or topic. Through a comprehensive review and synthesis of legal materials, the research aims to contribute to a deeper understanding of legal principles and their implications in the context of the subject under investigation.

Research Finding

Responsibility of the Substitute Notary in Exercising Authority

The substitute Notary holds full responsibility for the deeds drafted during their term. Despite being an independent official appointed before assuming their duties, the substitute Notary must exercise caution and professionalism. Professionalism involves extensive and profound knowledge of deed drafting. If negligence leads to errors, the substitute Notary is accountable for the deed in question.

The Notary's responsibility as a profession arises from the obligations and authority bestowed upon them since taking the oath of office. This oath should act as a guiding principle for the Notary's actions in performing their duties. The Notary's responsibility may arise in cases of fraud or deception originating from the Notary themselves, such as understating prices in a sales deed.

Nico distinguishes the Notary's responsibility into four types, involving civil, criminal, Notary Office Regulations, and Notary Code of Ethics aspects. Article 91B of the Notary Law (UUJN) repeals previous regulations, establishing the UUJN as the primary guideline for Notary duties. Article 65 of the UUJN explicitly states the substitute Notary's responsibility for the deeds they create.

Applying sanctions to a Notary is a form of accountability, where the term "liability" refers to legal responsibility, while "responsibility" indicates political accountability. Legal responsibility involves penalties for legal violations, while political responsibility includes obligations regarding decisions, skills, competence, compliance, and adherence to the law.

Analysis of the Authority and Responsibility of the Substitute Notary Regarding Errors in Creating Authentic Deeds

The Substitute Notary plays a crucial role in creating authentic deeds as the basis for legal actions. In the decision of the State Court of Makassar Number 65/Pdt.G/2017/PN/MKS, legal actions were deemed unlawful by the Substitute Notary in the creation of the Record of Meeting Deed on October 12, 2015. They declared the Defendant as a Foundation with Articles of Association that, in fact, had no historical or legal

connection with the Higher Education Foundation Legiun Veteran Republic of Indonesia, causing harm to the Plaintiff through the takeover of the university. The Substitute Notary's authority is to ensure the accuracy of information in the deed, and if intentional or negligent misinformation is certified, they can be legally responsible. In this case, the actions of the Substitute Notary were considered unlawful, potentially leading to document forgery and an unauthorized takeover of UVRI Makassar. Therefore, they can be held accountable and subject to legal sanctions as per applicable regulations, with errors in the deed serving as the basis for the court to determine the Defendant's actions as an unlawful and invalid act.

Conclusion

The responsibility of the Substitute Notary is a crucial aspect in the exercise of their authority. Despite being independent officials, Substitute Notaries must operate with caution and professionalism. This responsibility involves extensive and profound knowledge of deed drafting, and they can be held accountable for any potential errors. Furthermore, the Notary's responsibility encompasses civil, criminal, Notary Office Regulations, and ethical aspects, regulated by the Notary Law (UUJN).

In the analysis of the authority and responsibility of the Substitute Notary, it is evident that their role is highly significant in creating authentic deeds, which serve as the basis for legal actions. In a specific case, the Substitute Notary's mistake in including incorrect information in the deed resulted in an unauthorized takeover of the university. Their authority to ensure the accuracy of information in the deed carries legal responsibility, and such errors can lead to legal sanctions in accordance with applicable regulations. Thus, the caution and professionalism of the Substitute Notary have direct implications for the validity of legal actions involving documents they create.

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