

RELATIONSHIP BETWEEN THE RESPONSIBILITY OF A NOTARY ON LEAVE AND THE REPLACEMENT NOTARY

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Abstract

The appointment of a substitute notary during the notary's leave period is a provision regulated in Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 (UUJN). This provision is intended to ensure the continuity of notarial services legally and uninterruptedly. However, in its implementation, the legal relationship between a notary on leave and a substitute notary often causes ambiguity, especially regarding the limits of authority, forms of responsibility, and legal consequences for errors that may occur during the replacement period. First Research Results: The legal relationship between a notary on leave and a substitute notary is based on UUJN. The main focus of the discussion includes the mechanism for appointing a substitute notary by the Regional Supervisory Board, the form of legal relationship established between the two parties, and the limits of the authority of the substitute notary in carrying out his/her duties. In this case, it is emphasized that the relationship between a notary on leave and a substitute notary is not a command or subordinate relationship, but rather a functional relationship that is individual and stands alone in terms of legal responsibility. Second: Specifically the form of responsibility of the substitute notary during the replacement period, especially if there is an error or negligence in making the deed. The substitute notary is fully responsible for every deed made during his/her term of office, without being able to transfer the responsibility to the notary he/she replaces. The responsibility covers three legal aspects, namely civil responsibility for losses incurred by the parties, criminal responsibility if there is an element of violation of the law or forgery, and administrative responsibility which can be in the form of reprimands, warnings, to temporary suspension. This discussion also describes the factors causing errors, starting from personal aspects such as lack of caution, to structural aspects such as weak supervision.

Keywords: Notary, Substitute Notary, Leave of Absence, Legal Relationship, Legal Responsibility

INTRODUCTION

In everyday life, people often require valid evidence to prove significant events, actions, or agreements. Initially, testimonies from witnesses were considered the main form of proof. Over time, however, legal evidence evolved, along with society's trust in different forms of it. In earlier times, witnesses those physically present during a legal act or event served as the most natural source of evidence. These individuals were called upon to recount what they saw, heard, or experienced directly. As legal needs grew more complex, the demand for written, formal documentation increased, prompting the emergence of notarial services to fulfill this necessity.

The role of a notary became essential in serving the public's need for written, authentic legal documentation. The authority of a notary is detailed in Article 15 of Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning the Notary Office. This law outlines eleven specific duties notaries are allowed to perform, such as drafting authentic deeds, ensuring the date of creation, archiving deeds, and providing copies or certified extracts. Notaries also have the right to legalize private deeds, perform "waarmerking," verify document copies against originals, and provide legal counseling. To exercise these powers, notaries must follow strict legal requirements, such as obtaining signatures from all parties involved, ensuring all parties are legally competent, reading the deed aloud, and refraining from holding multiple public positions.

Notaries function as public officials with a unique legal standing, responsible for upholding trust and legal certainty through the preparation of authentic deeds. These deeds carry high evidentiary value in legal proceedings. A notary's credibility relies on integrity and professional conduct, as any involvement in criminal acts could damage both individual and institutional trust. The notary's responsibility is regulated not only by the Law on the Notary Office (UUJN) but also by the Notary Code of Ethics, which ensures that notarial acts are carried out properly and provide legal protection to the parties involved. The authentic deed is crucial because it ensures legal certainty and is considered the strongest form of written evidence in court.

Given the notary's critical role, it is important that the position be performed consistently, even when the notary is temporarily unavailable. When a notary needs rest, travels for religious purposes such as Umrah, or becomes ill, they are entitled to take a leave of absence—referred to as *notary leave* (in Dutch, *notarisverlof*). According to Article 25(1) of Law Number 2 of 2014, notaries have the right to request leave after serving for two years. The request must be submitted one month in advance and must include a proposal for a substitute notary. Article 27 further specifies that leave requests should be submitted to the appropriate supervisory council depending on the duration: the Regional Supervisory Council (up to 6 months), the Provincial Supervisory Council (6 months to 1 year), or the Central Supervisory Council (over 1 year). The notary must also appoint a temporary substitute to ensure the continuity of services, reflecting the nature of notarial duties as uninterrupted and service-oriented (Adjie, 2007).

The position of a notary as a public official carries significant legal weight in ensuring certainty, order, and protection for the public through the creation of authentic deeds. While a notary is expected to perform their duties with professionalism and continuous presence, certain circumstances such as illness, leave, or other limitations may hinder them from fulfilling their role. To prevent any interruption in legal services, Article 33 of Law Number 30 of 2004, as amended by Law Number 2 of 2014 on the Notary Office, outlines the rules concerning notarial leave. This provision includes the types and duration of leave, along with the process of appointing a substitute notary who will temporarily take over the notary's responsibilities (Salim HS, 2018).

The substitute notary, as regulated in Article 1(3) of the amended Notary Law (UUJN-P), is appointed to act on behalf of a notary who is temporarily unavailable due to leave or other

justifiable reasons. This role is commonly given to an experienced staff member who has interned and worked for at least two consecutive years in the notary's office, and who holds a law degree. The substitute is officially appointed and sworn in by the Ministry of Law and Human Rights, through the regional office. The appointment must follow procedures outlined in Ministerial Regulation No. M.01-HT.03.01 of 2006, specifically Article 37, which details the qualifications and the swearing-in process for substitute notaries. Despite these regulations, many substitute notaries today still fail to meet the procedural requirements, even as public demand for authentic deeds continues to increase.

The substitute notary operates under the same legal obligations and ethical responsibilities as a permanent notary during their term. All deeds created must comply with formal, material, and evidentiary standards, and are considered legally binding. A substitute notary is accountable for the deeds they issue, and any legal dispute regarding their validity will depend on whether the substitute acted according to legal standards. If a notary on leave passes away, Article 35(3) of the amended Notary Law states that the substitute will act as a temporary official for up to 30 days. Notification of the death must be made by the deceased notary's family to the Regional Supervisory Council (MPD) as per Article 35(1). In reality, the substitute notary often takes the initiative to inform the authorities, raising legal questions regarding their role once there is no notary to replace.

Given the temporary nature of their appointment, substitute notaries must act cautiously, as they assume full legal and ethical responsibility for their actions. Although their tenure is limited, the legal force of their deeds is equal to that of permanent notaries provided all legal criteria are met. If a deed they issue is later declared legally flawed or void, the substitute notary can be held personally liable under civil law for any unlawful conduct. Therefore, they must uphold high standards of professionalism and diligence, ensuring that every deed they create contributes to legal certainty in society. Their role, although temporary, plays a crucial part in maintaining uninterrupted legal services and reinforcing public trust in the legal system (Batubara, 2011).

In accordance with the background of the problem and the formulation of the problem, the objectives of writing this thesis are as follows: 1) To study and analyze the legal relationship between a notary on leave and a substitute notary in carrying out the duties of a notary based on UUJN, and; 2) To analyze and describe the form of Responsibility of a Substitute Notary in carrying out his/her position during the replacement period.

RESEARCH METHODS

This thesis adopts normative legal research, which focuses on the study of legal norms and principles governing the duties and responsibilities of notaries. Normative legal research involves the analysis of statutory regulations, legal doctrines, and scholarly commentary to answer specific legal problems. The central issue addressed in this research is the legal relationship between the notary on leave and the substitute notary, particularly in terms of responsibility and authority during the leave period. The research combines conceptual and legislative approaches to examine the proper interpretation and application of legal provisions that ensure uninterrupted and lawful notarial services. As stated by Soerjono Soekanto, normative legal research aims to provide logical legal arguments based on prevailing laws, helping to clarify legal norms and assess whether notarial practices align with core legal principles. This research is descriptive in nature and supported by primary legal data to offer a thorough understanding of the topic.

To carry out this research, a combination of statute and conceptual approaches was used. The statute approach analyzes the relevant laws and regulations such as the Law Number 30 of 2004, as amended by Law Number 2 of 2014, along with related ministerial and government regulations governing the notary profession. The conceptual approach helps define the

responsibilities of substitute notaries and avoid ambiguous interpretations of their legal position. The research materials consist of primary legal sources (such as constitutions, civil and criminal codes, UUJN, and ministerial regulations), secondary sources (including legal books, journals, and expert commentary), and tertiary sources (such as legal dictionaries and encyclopedias). These sources were systematically collected through both printed and digital literature reviews. The analysis was conducted qualitatively using descriptive-analytical methods, with legal materials categorized based on their relevance. According to Johnny Ibrahim, this method allows researchers to construct legal reasoning that connects the responsibilities of a notary on leave with the authority legally vested in the substitute notary. The ultimate goal is to ensure a clear, lawful delegation of duties during the notary's absence (Ibrahim, 2006).

RESULT AND DISCUSSION

A. Legal Relationship Between A Notary On Leave And A Substitute Notary In Carrying Out The Duties Of The Office Of A Notary Based On The Law On The Office Of Notaries

The legal relationship between a notary on leave and a substitute notary is defined as a conditional delegation, rather than a permanent transfer of authority. According to Article 33 of the Indonesian Notary Law (UUJN), substitute notaries are appointed to carry out notarial duties for a limited time during the official leave of the principal notary. This arrangement is administrative in nature, supported by regulatory mechanisms such as those outlined in the Ministry of Law and Human Rights Regulation No. 19 of 2019, which governs the procedures for appointment and obligations of substitute notaries. The responsibilities of the notary on leave continue for acts and protocols executed before the leave, especially in terms of safeguarding the authenticity, storage, and confidentiality of notarial documents. On the other hand, the substitute notary is fully accountable for all legal instruments produced during the substitution period. This legal structure ensures continuity of public service without interrupting the legal safeguards offered by authentic deeds. As noted in Article 33 paragraph (4) of the UUJN, the substitute notary carries the same legal authority as the original notary, as long as it aligns with statutory regulations.

Substantively, this relationship is not contractual but arises from public administrative law, reflecting state-delegated authority. The substitute notary does not enter into an employment contract with the notary on leave but receives a legal mandate through formal appointment by the Regional Supervisory Council. Ethical obligations are equally stringent: the substitute must act independently, uphold confidentiality, and maintain professional conduct in accordance with the Notary Code of Ethics. Failure to adhere to these boundaries may lead to administrative penalties under Article 84 of the UUJN or even criminal liability under Article 52 of the Indonesian Penal Code. As **Van Apeldoorn** stated, legal certainty requires clarity in legal norms and protection for those seeking justice. Thus, while substitute notaries are essential for ensuring access to legal services during a notary's absence, it remains crucial that their role is tightly regulated and transparent. Notaries on leave must formally hand over responsibilities, including protocol documentation, and the substitute notary assumes full legal responsibility for all acts performed during the substitution, without transferring liability to the notary on leave. The UUJN ensures that such delegation is limited, professional, and executed under the full supervision of the competent authorities to safeguard the integrity of public trust in notarial services (Waldany, 2018).

The current legal framework regarding substitute notaries in Indonesia, as outlined in the Law on Notary Office (UUJN) and related ministerial regulations, still leaves several critical gaps. One of the most pressing issues is the absence of clear qualification standards for becoming a substitute notary. Without such criteria, the appointment process is vulnerable to

nepotism and may involve individuals lacking the necessary competence or ethical grounding. There is a strong need for technical requirements such as minimum years of experience as a notary apprentice, formal ethical training, or even a brief certification process. The current system also lacks a dedicated code of conduct tailored to substitute notaries, potentially leading to ethical breaches or conflicts of interest during their temporary tenure.

Moreover, supervision of substitute notaries remains weak and inconsistent across regions. Not all Regional or District Supervisory Councils (MPW or MPD) carry out active oversight, despite the fact that substitute notaries produce legally binding acts equivalent to those of permanent notaries. A structured and mandatory reporting system, coupled with periodic audits, would improve transparency and accountability. In many cases, there is also no formal written agreement between the notary on leave and the substitute, which leaves room for ambiguity in responsibilities, working duration, and administrative protocols. Instituting a formal written agreement—outlining the scope of authority, legal liabilities, and specific start and end dates—is vital to avoid misunderstandings or legal disputes.

The Indonesian Notary Association's Code of Ethics, while emphasizing professional conduct and moral responsibility, does not currently require written agreements or clear accountability mechanisms between a notary and their substitute. This regulatory gap has serious implications, particularly in cases where a substitute acts beyond their legal mandate. Adding provisions to the UUJN or Ministry regulations that mandate a formal agreement and detailed reporting obligations would clarify roles and prevent abuses. These regulations should also include clauses on confidentiality obligations, document handling procedures, and explicit prohibitions on conflicts of interest to align with the broader public service role of the notarial profession.

From a legal and ethical perspective, even temporary appointments must be exercised with the same level of integrity and diligence as permanent ones. Substitute notaries must respect the protocols, formalities, and personal accountability associated with authentic deeds. Their acts must comply with formal requirements under Article 38 of the UUJN, and they must uphold the standards set forth in Article 16, which includes acting honestly and impartially. The state must ensure that these temporary positions do not undermine public trust in notaries. Strengthening the legal framework, supervision mechanisms, and ethical guidelines for substitute notaries is not only necessary for legal certainty but also to preserve the credibility of the profession.

B. Form Of Responsibility Of A Substitute Notary In Carrying Out His Office During The Replacement Period For Errors Or Negligence In Making A Deed

The role of a substitute notary is fundamentally crucial in ensuring the continuity of notarial services when the primary notary is unable to carry out their duties. However, practical implementation often exposes several shortcomings. Although administrative requirements such as completion of notarial education and internship are prerequisites, these do not guarantee sufficient practical competence. Without extensive experience, substitute notaries may struggle to assess legal risks accurately, interpret the legal positions of parties involved, or take necessary preventive actions. This limitation can seriously compromise the quality and validity of notarial deeds.

The legal complications between the notary on leave and the substitute notary often stem from a lack of clarity regarding their respective responsibilities and authority. Article 33 of Law No. 30 of 2004, as amended by Law No. 2 of 2014, only outlines the administrative process of appointing a substitute notary. It does not provide any detailed guidance on the division of liability for deeds made during the substitution period. This ambiguity may lead to disputes, especially when formal or material defects arise in a deed raising the question of whether the responsibility lies entirely with the substitute or if the notary on leave shares some

ethical or administrative burden.

Uncertainty surrounding authority boundaries, particularly as regulated under Article 33A(1) of the Notary Law, increases the likelihood of mistakes. This article limits a substitute notary strictly to the duties of the notary they replace. Nevertheless, misunderstandings in practice can result in substitutes overstepping their legal authority, such as drafting complex agreements beyond their scope. Such violations could render deeds null and void. Additionally, the heavy workload placed on substitute notaries, who often work alone or with limited assistance, creates cognitive strain. According to the cognitive load theory, an overload of mental tasks raises the risk of errors an issue that is especially critical in notarial work, where even small mistakes like a miswritten name can have legal consequences.

In many instances, substitute notaries also face external pressures, such as pushy clients demanding rushed documentation or interference from the principal notary despite being on leave. This dual pressure can lead to conflicts of interest and the temptation to cut corners, which directly violates the prudential principle that governs notarial integrity. Weak oversight from supervisory bodies, despite the formal existence of regional and central notary supervisory councils, leaves such risks unchecked. Moreover, inadequate office facilities, including outdated computer systems or lack of administrative staff, further hinder the substitute notary's ability to perform efficiently. These challenges reflect that negligence is often not a personal flaw, but a structural issue requiring systemic reform. As Hans Kelsen emphasized, legal responsibility arises when one's actions contradict expected standards, and it is unjust for others to suffer the consequences. Strengthening training, clearly limiting the scope of duties, improving supervision, and providing necessary tools are essential measures to uphold both legal accountability and public trust in substitute notaries (Pratama, 2021).

The legal responsibility of a substitute notary is formally rooted in statutory provisions that define the procedures and legal grounds for accountability in case of errors or negligence while performing duties. While acting as a temporary replacement, a substitute notary is subject to the same legal norms as the principal notary, given their formal status as a public official authorized to draft authentic deeds. Their legal liability encompasses civil, criminal, and administrative dimensions. Civil responsibility arises when there is a wrongful act (*onrechtmatige daad*) or contractual breach (*wanprestasi*), especially if the mistake harms parties involved in the deed. Articles 1365 and 1234 of the Indonesian Civil Code affirm that any act that causes harm to another obligates the responsible party to compensate for the loss. This liability also finds backing in Article 84(1) of the Notary Law (UUJN), which clearly states that notaries including substitutes are responsible for any deed they produce. In cases where the aggrieved party files a lawsuit due to an unlawful act or breach of contract, the court examines whether the notary's actions caused legal harm, such as a misstatement in a deed or failure to verify identities.

Criminal liability may be imposed if the substitute notary engages in actions with criminal elements such as forgery or deliberate misinformation. Under Article 263 and 266 of the Criminal Code, acts involving falsified information in official documents or inciting false statements in authentic deeds can lead to criminal prosecution. Article 52 of the Notary Law further prohibits notaries from drafting false deeds, whether due to deliberate manipulation or negligence. If a substitute notary knowingly accepts false declarations or contributes to a fabricated deed, criminal sanctions may follow after police investigation and prosecution. In addition to civil and criminal consequences, substitute notaries are also subject to administrative penalties. Violations of ethical codes, procedural standards, or administrative rules can result in disciplinary measures from the Notary Supervisory Council (MPN), as outlined in Article 85 of the Notary Law and further regulated by the Minister of Law and Human Rights Regulation No. 7 of 2016. Reports of misconduct trigger preliminary examinations by the MPN, which may lead to warnings, suspensions, or dismissals. As a legally appointed official, the substitute

notary bears full responsibility for all deeds created during their term, and any legal disputes stemming from those deeds fall under their personal accountability. Practical challenges such as lack of administrative readiness, limited familiarity with the office environment, and unclear division of responsibility often complicate their execution of duties. These issues highlight the need for ongoing supervision and clear operational guidelines to uphold professional integrity and legal compliance (Putri, 2021).

The leave request submitted by a notary must include supporting documents such as the notary's identity, appointment or transfer decree, the official record of oath-taking, and a letter designating a substitute notary. This application is addressed to the Notary Supervisory Council (Majelis Pengawas Notaris/MPN) and adjusted to the duration of the leave. If the leave is less than six months, it is submitted to the Regional Supervisory Council (MPD); if it is between six months and one year, it goes to the Provincial Supervisory Council (MPW); and for leave exceeding one year, it is handled by the Central Supervisory Council (MPP) of the Ministry of Law and Human Rights (Permenkumham No. 19 of 2019). Once the request is approved, a leave certificate containing the leave details is issued, and the information is recorded in the notary's leave register. Within a maximum of 14 days from the receipt of the request, MPN will also issue a decree on the leave and the appointment of a substitute notary. Before assuming the role, the substitute notary must be officially sworn in before the Minister or an appointed official, in accordance with Article 12 paragraph (4) of the Ministerial Regulation. This formal induction ensures the substitute notary carries the same legal obligations and professional standards as the notary being replaced.

The substitute notary's legal accountability, particularly in cases of malpractice, can be analyzed using five variables from Donald S. Van Meter and Carl E. Van Horn's implementation theory (Subarsono, 2005): policy standards and objectives, organizational resources, inter-organizational communication, disposition of implementers, and external conditions. Infractions are categorized into light, moderate, and severe violations, each carrying corresponding sanctions. Minor violations may result in verbal or written warnings issued by MPW after a preliminary examination by MPD. Moderate offenses can lead to written warnings or temporary suspension, and continued misconduct could warrant MPW's recommendation to MPP for formal suspension. Severe violations may result in permanent dismissal based on MPP's assessment and ministerial decision. In addition to professional sanctions, civil liability may arise if the substitute notary causes material or immaterial harm due to negligent deed drafting, as stated in Article 1365 of the Civil Code. Moreover, criminal liability under Article 264 of the Penal Code may apply if the act involves document forgery or deliberate misrepresentation. The implications of such acts extend to the legal validity of the deed itself—if the deed lacks formal or substantive compliance, its evidentiary value may be downgraded to a private deed or declared void by law. Even though a substitute notary acts temporarily, they bear full legal responsibility for the authenticity and procedural correctness of the deeds they produce. Mistakes in verifying parties' presence or identity, or technical errors in contract clauses, can damage the legal certainty and rights of involved parties, placing the substitute notary at risk of civil claims (Risnati, 2021).

CONCLUSIONS

The legal relationship between a notary on leave and a substitute notary is functional, legal formal, and non-hierarchical, where the substitute notary acts independently on the basis of an official appointment from the Minister of Law and Human Rights upon the proposal of the MPD, and is fully responsible for all legal acts and deeds made during the period of his/her replacement. There is no joint or several liability between the two, because the substitute notary is a legal subject who has his/her own standing with the obligation to comply with the UUJN, code of ethics, and its implementing regulations. This liability includes civil aspects if losses

occur due to negligence (Article 1365 of the Civil Code), criminal if there is an element of forgery or violation of the law, and administrative if proven to have violated the code of ethics, which can be subject to sanctions by the Supervisory Board. Thus, the substitute notary is obliged to maintain integrity, accuracy, and caution in every action, because all legal consequences of the deeds made are entirely his/her personal responsibility.

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