

## Legal Protection for Substitute Notaries in Civil Court Proceedings

**Yeremia Obrien Kaawoan**

Email: [obrienkaawoan@gmail.com](mailto:obrienkaawoan@gmail.com)

Faculty of Law, Brawijaya University Malang, Indonesia

**Dyah Aju Wisnuwardhani**

Email: [Diah.aju@unmer.ac.id](mailto:Diah.aju@unmer.ac.id)

Faculty of Law, Brawijaya University Malang, Indonesia

**Hanif Nur Widhiyanti**

Email: [hanif.nur@ub.ac.id](mailto:hanif.nur@ub.ac.id)

Faculty of Law, Brawijaya University Malang, Indonesia

**Abstract:** This study explores the legal responsibilities of Substitute Notaries based on Article 65 of Law Number 2 of 2014 concerning the Position of Notary. Substitute Notaries are held accountable for every deed they create, even after transferring the Notary Protocol. The research highlights the authority of the Notary Honor Council, which provides legal protection by granting approval for judicial processes involving notaries, as mandated by Article 66 paragraph 1. Using the Normative Juridical research method, the study reveals a legal gap in regulating Substitute Notaries within civil court proceedings. The findings emphasize the importance of protecting the dignity of the Notary Profession while addressing this regulatory gap.

**Keywords:** *Substitute Notary; Notary Honor Council; Legal responsibility*

### INTRODUCTION

Land is an increasing human need because people's lives continue to grow and multiply every day. To fulfill the needs and residence of the community, everyone needs land that can be used as a place of residence, a place of business or for other purposes. The more rapid the growth of society,



the more areas and land for people's lives<sup>1</sup>. In addition to meeting all basic needs for humans, land is also something that must be considered clear ownership. Because in this case, when the ownership of land and territory is not clear, it can lead to disputes and other problems that will arise. Certainty of order and legal protection according to legal traffic in the life of the Community requires evidence that clearly determines the rights and obligations of a person as a legal subject in the Community. Notaries in this case are authorized to carry out the duties and functions of the state in the scope of private law, namely by serving the needs of the Community in making authentic evidence.

Notary which is an extension of the State, the State gives trust to the Notary to carry out some of the affairs or duties of the state, especially in the civil field in carrying out his position as a public official to make authentic deeds. The Notary profession is an honorable profession because its duties and positions are to serve the interests of the community, especially in the field of civil law. So that those who hold the position of Notary will have the responsibility to always maintain the dignity and honor of the profession.<sup>2</sup> Based on the Notary Position Law, it explains that a Notary is a Public Official who is authorized to make authentic deeds and other authorities as referred to in the Law. Notaries as public officials have the authority to make authentic deeds as written evidence. The position of Notary is very important in supporting law enforcement through the implementation of his position as a public official who is authorized to make a legal product, namely an authentic deed that has perfect evidentiary power to help create legal certainty for the community.

Notaries in carrying out their profession act as public servants, thus the Notary profession is a noble legal profession, therefore the Notary profession is a noble profession (*officium nobile*), called *officium nobile* because the Notary profession is closely related to professions related to humanity. Authentic deeds as the strongest and fullest evidence have an

---

<sup>1</sup> Arifah Nur Khoirunnisa, "Analisis Terhadap Penggelapan Dana Titipan Pembayaran Pajak Bumi Bangunan Oleh Notaris/PPAT Dan Tanggung Jawabnya Dalam Sudut Pandang Kode Etik Notaris," *Jurnal Locus Penelitian Dan Pengabdian* 3, no. 3 (May 7, 2024): 275–81, <https://doi.org/10.58344/locus.v3i3.2555>.

<sup>2</sup> Eka Putri Tanjung Sari, "Penegakan Hukum Terhadap Pelanggaran Rahasia Jabatan Notaris = Law Enforcement against for Violations of the Notary Secret," *Universitas Indonesia Library*, 2012, 1, <https://lib.ui.ac.id>.



important role in every legal relationship in people's lives. In various business relationships in the fields of banking, land, social activities and others, the need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relationships. Through an authentic deed that clearly determines rights and obligations, guarantees legal certainty, and at the same time is also expected to be avoided in the dispute resolution process. An authentic deed which is the strongest and fullest written evidence makes a real contribution as evidence for the settlement of a case.<sup>3</sup>

Notaries are not only public officials, but notaries are also ordinary human beings who have other human lives such as illness or inability to carry out their responsibilities due to other matters. For this reason, in carrying out other obligations as ordinary human beings, notaries are also entitled to temporarily not perform their duties or leave as public officials. In this case, the notary is obliged to appoint a substitute notary to temporarily carry out his duties and positions. Based on Article 1 paragraph (3) of the Notary Office Law, a substitute notary is a person who is temporarily appointed as a notary to replace a notary who is on leave, sick, or temporarily unable to carry out his/her duties as a notary. A substitute notary appointed by an authorized official only serves temporarily in accordance with the period of leave of the notary being replaced.

Thus, a Notary who is on leave is obliged to appoint a substitute Notary, this is in accordance with the provisions of Article 32 paragraph (1) of the UUJN, namely a Notary who is on leave is obliged to submit the Notary Protocol to a Substitute Notary. The requirements to be appointed as a Substitute Notary are regulated in Article 33 paragraph (1) of the UUJN that the requirements to be appointed as a Substitute Notary and Temporary Notary Officer are Indonesian citizens with a law degree and have worked as an employee of the Notary's office for at least 2 (two) consecutive years. If the Notary does not appoint a Substitute Notary, then the Regional Supervisory Council appoints another Notary to receive the Notary Protocol whose jurisdiction covers the domicile of the Notary who is appointed as a State Official.

The duties and responsibilities of a substitute notary arise from the authority and obligations given by the law to the substitute notary to carry out

---

<sup>3</sup> Henny Saida Flora, "Tanggung Jawab Notaris Pengganti Dalam Pembuatan Akta," *Kanun Jurnal Ilmu Hukum* 14, no. 2 (2012): 180.



his responsibilities with trust. The responsibility is based on the delegation of authority by the notary to the substitute notary. Power or authority derived from legislation can be obtained through three stages, including attribution, delegation and mandate which will be explained below:

- (a) Is the granting of government authority (executive) by the legislator (legislature) to government agencies or government organs, the authority of attribution can be interpreted as a division of power given by the state to parties entitled to such authority based on the Constitution. According to Lutfi Effendi, attributive authority or original authority is authority that is not shared with anyone, attributive authority is carried out by the official himself and has existing basic regulations. Regarding responsibility and accountability, it lies with the official or agency as stated in the basic rules.
- (b) Delegation is the granting of authority from one government agency to another government agency, regarding its responsibility and accountability is fully given to those delegated the authority
- (c) Authority or mandate can be exercised if a government agency gives authority to another agency to carry out activities on behalf of the State. The authority or mandate is certainly sourced on the basis of delegations given from higher agencies to lower agencies.<sup>4</sup>

Before carrying out his position as a substitute notary, the substitute notary is first appointed by the Minister of Law and Human Rights who then takes an oath to become a promise or pledge in a substitute notary to carry out his profession with trust. In carrying out his duties, the substitute notary must be guided by the laws and regulations of the notary office and other laws and regulations relating to his profession so that no mistakes occur.<sup>5</sup> The duty period of the substitute Notary ends when the Notary's leave period is over, so the substitute Notary hands back the Notary protocol to the Notary, 1 (one) day after the leave ends. The handover of the Notary protocol must be made an official report submitted to the regional supervisory assembly (MPD),

---

<sup>4</sup> Lutfi Effendi, *Pokok pokok hukum administrasi* (Bayumedia Publishing, 2004), 77.

<sup>5</sup> Dedi Yansyah, "Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Pengganti Terhadap Akta Otentik Yang Pernah Di Buatnya" (masters, Semarang, Universitas Islam Sultan Agung Semarang, 2023), 4, <https://repository.unissula.ac.id/32389/>.



regional supervisory assembly (MPW), and central supervisory assembly (MPP).

The end of the term of office of a substitute notary does not end the responsibility for the deed he has made. The provisions for the responsibility of notaries and substitute notaries for the deeds they make are regulated in Article 65 of 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 keeper of the notary protocol. In carrying out its authority, the substitute notary must refer to the Law on the Office of Notary, the substitute notary is given the same authority as a notary in making authentic deeds as stipulated in Article 33 paragraph (2) of UUJN, because all provisions stipulated in Article 4, Article 15, Article 16, and Article 17 also apply to the substitute notary. In carrying out his/her duties as a Substitute Notary, the obligation becomes something that must be carried out as written in the law because it is the basis for carrying out a responsibility.

Notaries and substitute Notaries based on the provisions in the UUJN can be seen to have the same great responsibility in exercising their authority. The magnitude of the responsibilities that bind the substitute Notary in carrying out his duties and responsibilities is considered necessary for the protection of the law to the substitute Notary considering that the provisions of Article 33 paragraph 2 which reads. The provisions applicable to Notaries as referred to in Article 4, Article 15, Article 16, and Article 17 shall apply to Substitute Notaries and Temporary Notary Officials, unless this Law determines otherwise. Based on the provisions of Article 65 of Law Number 2 of 2014 concerning the Position of Notary which states that Notaries, Substitute Notaries, and Temporary Notary Officers are responsible for every deed they make even though the Notary Protocol has been submitted or transferred to the depositary of the Notary Protocol. that the Substitute Notary must be legally responsible related to the deed he made in the judicial process. Because the deed made by the substitute Notary is an authentic deed made by an authorized official and has evidentiary power in court.

In carrying out his duties as a substitute notary to make authentic deeds, it is possible that there will be problems regarding the deed he made so that the substitute notary must be caught in legal problems. Looking at the phenomena that occur today such as the problems found by the author where based on the ruling in the South Jakarta District Court Decision Number



395/Pdt.G/2011/PN.Jkt.Sel, Merisa Herawati together with the Notary who replaced her, namely Notary / PPAT Harun Kamil, both as Co-Defendants, were declared to have committed illegal acts. Furthermore, the Deed of Mortgage (AHT) made by and before the Notary/PPAT and the Deed of Power of Attorney to Enforce Mortgage (SKMHT) made by and before the Substitute Notary were invalid and null and void, and jointly and severally punished to pay material damages to the Plaintiff in the amount of Rp.2,000,000,000, (two billion rupiah). In the main case, the Plaintiff and her husband never appeared before the Notary/PPAT (Defendant IV) and the Substitute Notary (Defendant V) to make and sign the AHT and SKMHT, to the detriment of the Plaintiff due to the issuance of a Debt Collection Letter and a letter from the State Auction Office regarding a request for an auction of land and buildings owned by the Plaintiff and her husband. The deeds made by the substitute Notary contained material and formal defects resulting in legal consequences.<sup>6</sup>

A substitute notary in a judicial process is likely to be a witness, co-defendant or even a defendant in a civil case. The examination of the substitute Notary conducted by the Court through the Judge is based on a lawsuit from the plaintiff to the substitute Notary. The Notary Honor Council as a body that exercises the authority to conduct guidance to Notaries and has the obligation to approve Notaries in the judicial process. The obligation to give approval from the Notary Honor Council to the Notary is a form of legal protection to the Notary based on the provisions of Article 66 paragraph 1 of the Notary Office Law. where the protection of the law to Notaries aims to maintain the dignity of the Notary Profession and safeguard the interests of the parties who perform legal acts in the deed.

The urgency in this problem is in Article 66 paragraph 1 of the Notary Position Law that the Notary Honor Council has the authority to give approval to Investigators, Public Prosecutors, and Judges to carry out the process of examining and taking the deed Minute to the Notary due to the obligation of the Notary to keep the deed he made confidential. However, the legal problems found by the author in Article 66 paragraph 1 do not regulate the approval process of the Notary Honor Council to the Substitute Notary in the

---

<sup>6</sup> Utari Utari, Titin Titin, and Tuti Astuti, "Akta Notaris Pengganti Yang Mengandung Cacat Formil Dan Materil (Studi Kasus Putusan Pengadilan Negeri Jakarta Selatan Nomor 395/PDT.G/2011/PN.JKT.SEL)" (magister, Palembang, Sriwijaya University, 2021), 5, <https://repository.unsri.ac.id/54801/>.



judicial process, based on the Article only regulates the approval process of the Notary Honor Council (MKN) to the Notary for approval in the judicial process and the collection of deed minutes from investigators, public prosecutors and courts, as has also happened in the Notary Honor Council of the DKI Jakarta Province where the DKI Jakarta Regional Notary Honor Council states that approval of summons by Substitute Notaries is not under its authority.<sup>7</sup>

The authority of the Notary Honor Council as stipulated in Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Notary Position and Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment, Dismissal, Notary Honor Council, Organizational Structure, Work Procedures, and Budget of the Notary Honor Council which provides guidance and approval to Notaries in relation to the examination process carried out by law enforcement officials against Notaries and approval for the taking of photocopies of deed minutes and letters and or Notary protocols in the Notary's storage. Bekenan with this matter, legal protection needs to exist to the replacement Notary as a manifestation of constitutional rights in Article 28D paragraph (1) of the 1945 Constitution which reads that everyone is entitled to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law. And the achievement of legal objectives, namely justice, expediency and certainty of law. Based on the description of the problem above, the author argues that there is a legal vacuum regarding the regulation of legal protection for substitute notaries in relation to the approval process and guidance to substitute notaries in the judicial process.

## THEORETICAL BASIS

In general, a theory is a system of abstract concepts that indicates the relationship between these concepts that help us understand a phenomenon. In essence, a theory explains a phenomenon or is a process or product of

---

<sup>7</sup> Amelia Meynanda Puspitasari and Aan Efendi, "Perlindungan Hukum Notaris Pengganti Dalam Pemeriksaan Sebagai Saksi Di Pengadilan Berdasarkan Rahasia Jabatan Notaris," *Jurnal Kajian Konstitusi* 2, no. 2 (December 30, 2022): 128, <https://doi.org/10.19184/jkk.v2i2.33974>.



activity or is a system.<sup>8</sup> In particular, a theory is a set of concepts, constructs, definitions and propositions that attempt to explain the systematic relationship of a phenomenon, by detailing the cause-and-effect relationships that occur. The theoretical framework in legal research is needed to make legal values up to its philosophical foundation. The theories that underlie this research include Legal Certainty Theory and Legal Protection Theory. Both theories will be used as an analytical knife in the discussion.

### **Legal Certainty Theory**

Certainty comes from the word "certain", which means certain, fixed, cannot be not, a thing that is certain. The theory of legal certainty according to Sudikno Martokusumo in his book entitled *Knowing the law* says in Law Enforcement there are several elements that must be considered, namely Justice, Benefit, and Legal Certainty. Legal certainty is a protection for justice seekers against arbitrary actions which means that someone will be able to get something that is expected in certain circumstances. The community expects legal certainty because with legal certainty the community will be more orderly.<sup>9</sup> According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the State can impose or do to individuals.<sup>10</sup>

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multi-interpretation) and logical. Clear in the sense that it becomes a system of norms with other norms so that it does not clash or does not cause norm conflicts. Legal certainty refers to clear, fixed and consistent legal enforcement whose implementation cannot be influenced by subjective circumstances.<sup>11</sup> From the understanding of legal certainty that has been explained above, it can be concluded that in legal certainty there must be written laws and regulations to regulate and guarantee the rights of citizens and there is clarity from these regulations, so that they cannot cause contradictions or cause uncertainty or multiple interpretations in a law and

---

<sup>8</sup> Salim H.S., *Perkembangan Teori Dalam Ilmu Hukum* (Jakarta: Raja Grafindo Persada, 2010), 1.

<sup>9</sup> H.S., *Perkembangan Teori Dalam Ilmu Hukum*, 145.

<sup>10</sup> Riduan Syahrani, *Rangkuman intisari ilmu hukum* (Citra Aditya Bakti, 2008), 23.

<sup>11</sup> C.S.T Kansil et al., *Kamus Istilah Aneka Hukum* (Jakarta: Jala Permata, 2009), 385.



the law can be implemented so that it can regulate the life of every existing society. As for ensuring legal certainty, of course there must be a role for the government and courts that have the authority to realize legal certainty. The government must not issue implementing regulations without a legal basis that regulates in advance in the laws and regulations or contradicts other laws and regulations.<sup>12</sup> In the research written by the author, he uses the theory of legal certainty to analyze the position of a substitute notary based on Article 66 paragraph (1) regarding the summoning process of the Notary Honor Council.

### **Legal Protection Theory**

Legal protection is a form of characteristics of the rule of law. In general, legal protection for every Indonesian citizen without exception can be found in the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), for this reason every product produced by the legislature must always be able to provide guarantees of legal protection for all people, and must even be able to capture the aspirations of law and justice that develop in society. This can be seen from the provisions governing the existence of equal legal standing for every citizen.

There are two forms of legal protection, namely preventive legal protection and repressive legal protection, namely preventive and repressive legal protection. Preventive legal protection which is essentially preventive in nature is called prevention. Preventive legal protection is very important for state activities based on the freedom of action derived from legal protection. Because it is preventive, the government is asked to pay attention to it in its application. The form of application of preventive legal protection is contained in the law because the law will regulate the boundaries in exercising a right and obligation of each community. Repressive legal protection functions for legal resolution of legal problems that arise due to violations. Repressive legal protection refers more to the final protection of a person in the form of sanctions against violations that have been committed.

Legal protection aims to provide protection for human rights that have been harmed by other parties. The purpose of this protection is to ensure that people can enjoy all the rights that have been granted by law. According to Fitzgerald, referring to the concept of Legal protection theory taken from

---

<sup>12</sup> Jan Michiel Otto, *Kepastian hukum di negara berkembang* (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2003), 138.



Salmond, where the main objective is to unite and coordinate the various interests that exist in society, the protection of a particular interest can only be achieved by limiting the interests of other interests.<sup>13</sup> Furthermore, one of the legal experts in Indonesia, Satjipto Rahardjo, emphasized that the law is present in society to integrate and coordinate interests that can conflict with each other. Coordinating these interests is done by limiting and protecting these interests. Based on the description above, it can be seen that legal protection is all forms of efforts to protect human dignity and recognition of human rights in the field of law. The principle of legal protection for the people of Indonesia is based on Pancasila and the concept of the rule of law, both sources prioritize recognition and respect for human dignity. There are two forms of legal protection, namely preventive and repressive means of legal protection.

This legal protection theory is used by the author to analyze the problems in the author's second problem formulation, because in Law Number 2 of 2014 concerning the Office of Notary, the regulation does not regulate the legal protection of substitute notaries in the judicial process, where Article 61 paragraph 1 of the UJUN only regulates the summoning process by the Notary. This is an unconstitutional action because there is no fulfillment of rights in the Constitution because every citizen is entitled to legal protection in accordance with Article 28D (1) of the 1945 Constitution of the Republic of Indonesia and in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the existence of equal rights in the eyes of the law. And furthermore, Permenkumham Number 25 of 2020 does not accommodate legal protection for substitute notaries in carrying out their duties and responsibilities as substitute officials who make authentic deeds. So that researchers are interested in examining the Legal Protection for Substitute Notaries in the Judicial Process. And using the Legal Protection Theory as an analytical knife to analyze the second problem formulation in this study.

## RESEARCH METHODS

The research method used in this study is normative juridical research. Referring to the scientific research method used to find the truth based on the

---

<sup>13</sup> Nazili Abdul Azis, "Perlindungan Hukum Terhadap Notaris Pengganti Dalam Proses Penyidikan Tekait Pemanggilan Notaris Pengganti," *Otentik's: Jurnal Hukum Kenotariatan* 2, no. 1 (March 18, 2021): 66, <https://doi.org/10.35814/otentik.v2i1.2107>.



logic of legal science from its normative aspect.<sup>14</sup> Normative legal research is a study by analyzing laws and regulations based on dogmatic law, legal theory, and legal philosophy.<sup>15</sup> so that in this writing using the normative juridical research method, because to identify problems related to the form of legal protection for substitute Notaries in the judicial process, because the Law on Notary Position (UUJN) has not regulated the approval process by the Honorary Council in the judicial process based on the provisions in Article 66 paragraph 1, and will be analyzed based on legislation and library research.

## RESULT AND DISCUSSION

### **The position of the Substitute Notary in the summoning process by the Notary Honor Council in the civil court process based on the Arrangement of Article 66 paragraph 1 of Law Number 2 of 2014 concerning the Notary's Office**

Almost all human activities related to an agreement require legality or legal certainty to achieve a legal goal that is beneficial to society. In the course of community activities, a person must take actions that always require valid written evidence according to applicable regulations in every legal action he makes. Notary is a public official who has the authority to make authentic deeds based on the provisions of Law Number 30 of 2004 concerning Notary Position as amended by Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position (UUJN). Law No. 30 of 2004 concerning the Office of Notary and Jo Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Office of Notary, as a legal basis for Notaries in carrying out every authority delegated to them in making authentic deeds, in the Law on Notary Position not only Notaries are given the authority to make authentic deeds, but there are Substitute Notaries and Temporary Notary Officers.

The regulation of Notaries and Substitute Notaries in Indonesia is actually a legitimization of the existence of the Notary and Substitute Notary profession which is given the mandate to legalize an agreement into an authentic deed as the basis for an agreement from the parties concerned. Furthermore, the regulatory arrangements related to Notaries and Notary Substitutes are regulated in the Minister of Law and Human Rights

---

<sup>14</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 1, 2020): 23, <https://doi.org/10.14710/gk.2020.7504>.

<sup>15</sup> Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2012), 57.



Regulation, the Notary Code of Ethics Regulation and the Rules of the Notary Association by explaining how the Notary or Notary Substitute exercises its authority. Based on what has been mandated through the Notary Office Law, those who have the authority to make authentic deeds are not only Notaries but there are substitute Notaries, a substitute Notary is a person who is appointed or appointed to be a temporary Notary for a while so that they can help the community by making deeds. According to this understanding, public services related to deed making should not be disrupted. A person can be made a substitute Notary if the Notary is sick, on leave, or temporarily unable to carry out his duties as a Notary.

The Substitute Notary only replaces the Notary during the absence of the Notary, there are several parties who are authorized to appoint or inaugurate a Substitute Notary based on the length of time the Notary takes leave. The criteria are:

- 1) Leaves of less than 6 (six) months will be inaugurated by the Regional Supervisory Council (MPD), District / City level.
- 2) Taking leave for 6 (six) months to 1 (one) year will be inaugurated by the Regional Supervisory Council (MPW), Provincial level.
- 3) Taking leave for more than one (1) year will be appointed by the Central Supervisory Council (MPP), National level.

A Notary can apply for leave based on the Minister of Law and Human Rights Regulation Number 19 of 2019 concerning Conditions and Procedures for Appointment, Transfer, Dismissal, and Extension of the Term of Office of Notary. with the following conditions: (1) Has served a term of office for 2 (two) years; (2) Has not fulfilled the total amount of leave time for a maximum of 12 (twelve) years and; (3) Appoints a substitute notary.

The purpose of making requirements for a substitute Notary is a form of ensuring that a prospective substitute Notary has the ability in the field of law and is able to carry out the duties of the Notary being replaced. The requirements to become a substitute Notary based on Article 33 of the Notary Office Law include; (1) Indonesian Citizens; (2) Bachelor's degree in Law and; (3) Has worked as an employee in a Notary office for at least 2 (two) consecutive years. The appointment of a substitute notary must be accompanied by supporting documents:

- 1) Legalized copy of undergraduate law degree
- 2) Legalized copy of identity card



- 3) Original local police record certificate
- 4) Original physical health certificate from a hospital doctor and original spiritual health certificate from a hospital psychiatrist
- 5) Color passport size 3 x 4 cm as many as 4 (four) sheets
- 6) Curriculum vitae; and
- 7) Certificate of having worked as an employee of a Notary office for at least 24 (twenty-four) consecutive months.

In the event that the application for leave is approved, the Regional Supervisory Council, Regional Supervisory Council, or Central Supervisory Council shall issue a letter stipulating the leave and appointment of a substitute notary within a maximum period of 14 (fourteen) days from the date the application is received. The substitute notary is required before exercising the authority granted to him/her to take an oath/pledge according to his/her religion before the Minister or a designated official with the same memorization of the oath/pledge conveyed by the Notary, because these two professions are professions that have high dignity and special honor to realize justice, legal certainty and benefit for the community.

Based on the description described above, it can be seen and concluded that there are differences in the requirements and procedures for appointment for Notaries and Substitute Notaries to become a Notary and substitute Notary based on the Notary Position Law. where the requirements to become a Notary refer to the provisions of article 3 and for the requirements to become a Substitute Notary refer to the provisions of article 33. And for the appointment procedure where the Notary is appointed by the Minister, and for the Substitute Notary is appointed by the Supervisory Council, where the two professions are different and have their respective requirements and procedures for appointment which are regulated in the provisions of the Notary Position Law and the Minister of Law and Human Rights Regulation.

#### **The Right of Leave Held by Notaries and the Existence of Substitute Notaries**

The right to leave is the right to be absent temporarily or specifically without information from the party concerned.<sup>16</sup> Notaries as public officials who carry out the profession in providing legal services to the public are deemed necessary to have the right to apply for leave based on the provisions

---

<sup>16</sup> Garda Yustisia Pambudi and Fatma Ulfatun Najicha, "Tinjauan Yuridis Hak Cuti Bagi Pekerja Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Gema Keadilan* 9, no. 1 (October 10, 2022): 72, <https://doi.org/10.14710/gk.2022.16153>.



in the Notary Position Law. because Notaries have the right to leave, the Notary is required to appoint a Substitute Notary to temporarily replace his duties and responsibilities in making authentic deeds. The right to leave as described in the provisions of Article 25 paragraph (2) of Law Number 30 of 2004 concerning the Position of Notary, which states that a Notary may take leave after serving his/her position for 2 (two) years. In the process of working as a public official, the provisions of the law provide leave rights for Notaries, which are regulated in Article 25 paragraph (1) of the Notary Law. Some types of leave allowed by the Notary Law to Notaries include sick leave as mentioned in Article 1 Point 3 of the Notary Law, temporary leave for inability to carry out the position as a Notary which is also regulated in Article 1 Point 3 of the Notary Law and annual leave which is regulated in Article 26 paragraph (1) of the Notary Law.

The provision of leave stipulated in the Notary Office Law is a model of rights for Notaries, as stated in Article 25 paragraph (1) of the Notary Office Law which states, "Notaries have the right to leave", and also the opportunity for Notaries to obtain leave is also regulated in Article 25 paragraph (2) of the Notary Law, which also states, "The right to leave as referred to in paragraph (1) can be taken after the Notary has been in office for 2 (two) years". In addition to the provision of leave as a right, Notaries are also charged with the obligation to take leave. This can be seen from Article 11 paragraph (1) of the Notary Law which states that Notaries who are appointed as state officials are obliged to take leave. However, the way to distinguish between a Notary taking leave as a right on the one hand and taking leave as an obligation on the other, is by looking at the legal cause of the Notary. First, leave as a right for Notary is caused by illness as stipulated in Article 1 Point 3 of the Notary Law, even with the will to take annual leave, as stipulated in Article 26 paragraph (1) of the Notary Law. Second, leave as an obligation for Notary when the Notary is appointed as a state official, as also regulated in Article 1 Point and Article 11 paragraph (1) of the Notary Law.

After discussing the differences between the leave model as a right on the one hand and leave as an obligation on the other, there are also similarities in the application of the two leave models, which both in conditions of sick leave or temporarily unable to carry out the position as a state official<sup>17</sup> must appoint a substitute Notary, as mandated by Article 1 Point 3 of the Notary

---

<sup>17</sup> Republik Indonesia, *Pasal 1 Angka 3 Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, 2014.



Law (sick leave) and Article 27 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 19 of 2019 concerning Conditions and Procedures for Appointment, Leave, Transfer, Dismissal, and Extension of the Term of Office of Notaries (leave for being unable and appointed as a state official). In the work of a Notary as a Public Official, it is not uncommon for legal issues to arise that are directly or indirectly related to the authentic deed made by him. Of course, when talking about deed problems, it can lead to a judicial process. In order to protect the Notary profession, the Notary Law provides legal protection for Notary legal products that are to be used in the process of investigation, prosecution and even in court. Based on Article 66 paragraph (1) of the Notary Law.

In the interest of the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary Honor Council, are authorized to take photocopies of the Deed Minute and/or documents attached to the Deed Minute or Notary Protocol in the Notary's custody, and summon the Notary for examination related to the deed or Notary Protocol under their care. The role of the Notary Honor Council in granting approval to law enforcement officers is crucial, as outlined in Article 19 of the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 7 of 2016 concerning the Notary Honor Council. The Council is assisted by the Secretariat and is authorized to grant temporary approval in summoning Notaries for criminal case examinations when allegations involve issues like the validity of signatures, alterations in the Deed Minute, or backdating. Before granting or rejecting approval, the Notary Honor Council conducts its examination, led by a panel of three members from the Regional Honor Council, to ensure due process. The Notary must personally attend the summons, and failure to appear after two consecutive legal summonses allows the panel to make decisions at the request of investigators, prosecutors, or judges. Additionally, the Notary Honor Council may accompany the Notary during criminal case examinations, providing passive support to boost the Notary's confidence when dealing with law enforcement.

### **The Authority and Position of a Substitute Notary in Making an Authentic Deed Which Becomes Evidence in the Trial**

In the large Indonesian dictionary, "kewenangan" is defined as the right and power to act, such as making decisions, ordering, and assigning responsibilities to others. In accordance with applicable regulations, an official



or organization has the right to exercise their authority.<sup>18</sup> authority also includes the ability to perform legal actions that can be performed formally. Thus, authority is the formal power possessed by an official or institution. The authority possessed by Notaries and Substitute Notaries is actually obtained because of the mandate of a legislative regulation which is regulated in Law Number 30 of 2004 concerning the Position of Notary Jo Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. The existence of this authority is to ensure legal certainty for parties who use the services of Notaries and Substitute Notaries in making agreements.

The authority possessed by Notary is also attached to Substitute Notaries and Temporary Notary officials because the provisions of Article 33 paragraph 2 state that Substitute Notaries must comply with Article 4 of the Notary Position Law regarding the Notary oath of office, Article 15 of the Notary Position Law regarding Notary authority, Article 16 of the Notary Position Law regarding Notary obligations, and Article 17 of the Notary Position Law regarding Notary prohibitions. Based on these provisions, it can be concluded that substitute notaries must comply with these provisions. The authority of Notaries and Substitute Notaries as stipulated in the Notary Position Law is regulated in Article 15 paragraph 1, namely, "Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide a grosse, copy and quotation of the Deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law."

It can be concluded that Notaries and Substitute Notaries have the authority to make authentic deeds covering various acts, agreements, and stipulations required by law or desired by interested parties. In addition, Notaries and Substitute Notaries are responsible for ensuring the certainty of the date of making the deed, keeping the deed, and providing grosse, copy, and quotation of the deed, as long as the making of the deed is not transferred or excluded to other officials or persons based on the Law. Notary and Notary Substitute deeds must meet the requirements of material and formal perfection thus, the Notary is responsible for the documents he makes. If the deed made is not in accordance with the provisions stipulated in the law, then the

---

<sup>18</sup> M. Kamal Hidjaz, *The effectiveness of the exercise of authority in the local government system in Indonesia* (Makasar: Pustaka Refleksi, 2010), 35.



deed is juridically defective, which means that the deed is degraded into a deed under the hand which does not have perfect evidentiary power. Thus, resulting in the Notary can be sued for mistakes made that are detrimental to the parties.<sup>19</sup>

Notaries and Substitute Notaries in carrying out their duties and responsibilities as a legal profession that certifies an agreement into an authentic document or authentic deed according to the Law on Jabtan Notary have restrictions that must be obeyed with the aim of maintaining or ensuring that Notaries and Substitute Notaries carry out their duties with full integrity, professionalism and compliance with the law and professional ethics. Thus, the regulations regarding the authority, obligations and prohibitions stipulated in the Notary Office Law also apply to substitute Notaries in carrying out the authority given to them. These provisions must be carried out properly with the aim of ensuring that Notaries perform their duties with integrity, professionalism, and in accordance with applicable legal principles. With this regulation, Notaries and Substitute Notaries have the official authority to make authentic deeds that have legal force, as well as ensure the validity and legal certainty of the documents made. Notary obligations, such as maintaining confidentiality and acting impartially, are designed to protect the rights and interests of all parties involved and ensure the authenticity of the deeds created.

Just like Notaries, Substitute Notaries are also authorized to make authentic deeds as previously explained, namely with the enactment of Article 57 and Article 65 of the Notary Law to make authentic deeds. However, an authentic deed made by a substitute notary cannot pass the approval process of the Notary Honor Council for investigators, public prosecutors, or judges in the process of judicial examination. In the arrangement of Article 66 paragraph (1) of the Notary Law, only Notaries and Protocols are legal subjects to be summoned in the examination process related to the deeds they make that are in the Notary's storage. This situation displays a legal vacuum regarding the position of the Substitute Notary and the deed he made which is not a party that can be summoned in the examination process by the Notary Honor Council. With this situation, the deed made by the Substitute Notary can be directly examined through the investigation, prosecution and trial process in the court.

---

<sup>19</sup> Tengku Erwinsyahbana and Melinda Melinda, "The Authority and Responsibility of a Substitute Notary After the Performance of Duties and Position Ends," *Lentera Hukum* 5, no. 2 (July 31, 2018): 326, <https://doi.org/10.19184/ejllh.v5i2.7339>.



In fact, the authority possessed by a Substitute Notary is no different from a Notary. The authority of the Substitute Notary in terms of making authentic deeds is no different from the authority also given to Notaries. Based on Article 57 of the Notary Law, it states that Grosse Deed, Deed Copy, Notary Deed Excerpt, or attestation of a letter under the hand attached to a deed kept in the Notary Protocol, can only be issued by the Notary who made it, the Substitute Notary, or the authorized holder of the Notary Protocol. After being given the authority to make authentic deeds, the Substitute Notary is also responsible for every deed made, as stipulated in Article 65 of the Notary Law, namely "Notaries, Substitute Notaries, and Temporary Notary Officers are responsible for every deed they make even though the Notary Protocol has been submitted or transferred to the keeper of the Notary Protocol".

### CONCLUSION

The authority of Notaries and Substitute Notaries is mandated by Law Number 30 of 2004 concerning Notary Positions, as amended by Law Number 2 of 2014. Both have the same authority in creating authentic deeds, as outlined in Article 33 paragraph 2. A Substitute Notary is appointed when a Notary takes leave, temporarily assuming their duties and responsibilities. However, based on Article 66 paragraph 1, the Notary Honor Council's role in civil judicial processes lacks clarity regarding approval for the retrieval of photocopies of the Deed Minute or related documents, and the summoning of Substitute Notaries for examinations. This reveals a legal vacuum in the regulation of Substitute Notaries in civil court proceedings.

### BIBLIOGRAPHY

- Azis, Nazili Abdul. "Perlindungan Hukum Terhadap Notaris Pengganti Dalam Proses Penyidikan Tekait Pemanggilan Notaris Pengganti." *Otentik's : Jurnal Hukum Kenotariatan* 2, no. 1 (March 18, 2021): 61-85. <https://doi.org/10.35814/otentik.v2i1.2107>.
- Benuf, Kornelius, and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (April 1, 2020): 20-33. <https://doi.org/10.14710/gk.2020.7504>.
- Effendi, Lutfi. *Pokok pokok hukum administrasi*. Bayumedia Publishing, 2004.
- Eka Putri Tanjung Sari, Author. "Penegakan Hukum Terhadap Pelanggaran Rahasia Jabatan Notaris = Law Enforcement against for Violations of



- the Notary Secret." Universitas Indonesia Library, 2012.  
<https://lib.ui.ac.id>.
- Erwinsyahbana, Tengku, and Melinda Melinda. "Kewenangan Dan Tanggung Jawab Notaris Pengganti Setelah Pelaksanaan Tugas Dan Jabatan Berakhir." *Lentera Hukum* 5, no. 2 (July 31, 2018): 305.  
<https://doi.org/10.19184/ejhl.v5i2.7339>.
- Flora, Henny Saida. "Tanggung Jawab Notaris Pengganti Dalam Pembuatan Akta." *Kanun Jurnal Ilmu Hukum* 14, no. 2 (2012): 179-99.
- Hidjaz, M. Kamal. *Efektivitas penyelenggaraan kewenangan dalam sistem pemerintahan daerah di Indonesia*. Makasar: Pustaka Refleksi, 2010.
- H.S., Salim. *Perkembangan Teori Dalam Ilmu Hukum*. Jakarta: Raja Grafindo Persada, 2010.
- Ibrahim, Johnny. *Teori Dan Metode Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2012.
- Kansil, C.S.T, Christine S.T. Kansil, Engelen R, Palandeng, and Godlieb N Mamahit. *Kamus Istilah Aneka Hukum*. Jakarta: Jala Permata, 2009.
- Nur Khoirunnisa, Arifah. "Analisis Terhadap Penggelapan Dana Titipan Pembayaran Pajak Bumi Bangunan Oleh Notaris/PPAT Dan Tanggung Jawabnya Dalam Sudut Pandang Kode Etik Notaris." *Jurnal Locus Penelitian Dan Pengabdian* 3, no. 3 (May 7, 2024): 275-81.  
<https://doi.org/10.58344/locus.v3i3.2555>.
- Otto, Jan Michiel. *Kepastian hukum di negara berkembang*. Jakarta: Komisi Hukum Nasional Republik Indonesia, 2003.
- Pambudi, Garda Yustisia, and Fatma Ulfatun Najicha. "Tinjauan Yuridis Hak Cuti Bagi Pekerja Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja." *Gema Keadilan* 9, no. 1 (October 10, 2022): 70-80. <https://doi.org/10.14710/gk.2022.16153>.
- Puspitasari, Amelia Meynanda, and Aan Efendi. "Perlindungan Hukum Notaris Pengganti Dalam Pemeriksaan Sebagai Saksi Di Pengadilan Berdasarkan Rahasia Jabatan Notaris." *Jurnal Kajian Konstitusi* 2, no. 2 (December 30, 2022): 124-56.  
<https://doi.org/10.19184/jkk.v2i2.33974>.
- Republik Indonesia. *Pasal 1 Angka 3 Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, 2014.
- Syahrani, Riduan. *Rangkuman intisari ilmu hukum*. Citra Aditya Bakti, 2008.



- Utari, Utari, Titin Titin, and Tuti Astuti. "Akta Notaris Pengganti Yang Mengandung Cacat Formil Dan Materil (Studi Kasus Putusan Pengadilan Negeri Jakarta Selatan Nomor 395/PDT.G/2011/PN.JKT.SEL)." Magister, Sriwijaya University, 2021. <https://repository.unsri.ac.id/54801/>.
- Yansyah, Dedi. "Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Pengganti Terhadap Akta Otentik Yang Pernah Di Buatnya." Masters, Universitas Islam Sultan Agung Semarang, 2023. <https://repository.unissula.ac.id/32389/>.

