



(MUDIMA)



Legal Responsibility of Substitute Notaries After Termination of Office for Deeds Executed Before Them

Hidayatul Ikhsani^{1*}, Djumikasih², Dyah Aju Wisnuwardhani³

Brawijaya University

Corresponding Author: Hidayatul Ikhsani Ikhsanihidayatul@gmail.com

ARTICLE INFO

Keywords: Substitute Notary, Legal Responsibility, Authentic Deed, Notarial Ethics, Legal Certainty

Received : 2 May

Revised : 23 June

Accepted : 19 July

©2025 Ikhsani, Djumikasih, Wisnuwardhani: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

This study examines the legal responsibilities of Substitute Notaries (Notaris Pengganti) after their term of office concludes, particularly regarding the authenticity of the deeds they created. Employing normative legal research methodology, this article analyzes secondary legal materials, statutes, and doctrinal sources. Findings show that Substitute Notaries possess full authority akin to permanent Notaries, encompassing deed preparation and document legalization, yet their responsibilities continue even after their official tenure ends. Substitute Notaries remain personally accountable civilly, criminally, and administratively if their acts result in legal harm or contain inaccuracies. Consequently, the study emphasizes the necessity for clear regulatory frameworks governing the post-tenure responsibilities of Substitute Notaries. Furthermore, it highlights the importance of professional ethics education and proactive supervision to strengthen legal certainty and safeguard the interests of involved parties. Implementing these measures would significantly reduce potential disputes and maintain public confidence in the notarial profession

INTRODUCTION

In order to guarantee legal order and provide legal protection to society, it is essential to have written evidence possessing authentic power. Such authentic evidence contains legal actions, agreements, determinations, or legal events made by or before authorized officials. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding Notarial Positions (UUJN) stipulates that a Notary is a public official authorized to produce authentic deeds and holds additional authority as specified within the law itself or other relevant legal provisions. In practice, various societal activities are generally intertwined with legal matters, necessitating the services of a Notary for their resolution Wahyudi, Erliyani, & Mispansyah (2023).

The position of Notary itself is granted to individuals with a legal education background who have obtained official licenses from the state to conduct legal activities, especially in the creation of authentic deeds. As public officials, Notaries bear significant responsibilities and are required to perform their duties professionally and neutrally, serving society irrespective of the backgrounds or interests of the parties involved Indrati (2007). Consequently, the existence of Notaries remains consistently indispensable to society.

Nevertheless, Notaries are unable to continuously perform their official duties in all circumstances. Certain situations such as illness, leave, or other obstacles may temporarily prevent Notaries from executing their duties directly. Under these conditions, pursuant to Article 25 paragraph (1) of UUJN, Notaries have the right to apply for leave from their official duties. This leave serves as recognition of their personal rights, yet the continuity of their official duties remains secured through the appointment of Substitute Notaries to ensure uninterrupted services to the public Darus (2017).

A Notary may be granted leave if they have served at least two years; if the service duration is less than two years, the Notary is not yet eligible for leave. The leave application must be submitted one month prior to the intended start date of leave, and the submission procedure depends on the length of the leave period, as stipulated in Article 27 paragraphs (1) and (2) of UUJN:

1. A Notary shall submit a written leave application accompanied by a proposal to appoint a Substitute Notary.
2. The leave application referred to in paragraph (1) is submitted to the authorized officials, namely:
 - a. The Regional Supervisory Council, if the leave period does not exceed 6 months.
 - b. The Provincial Supervisory Council, if the leave period exceeds 6 months but is no longer than 1 year.
 - c. The Central Supervisory Council, if the leave period exceeds 1 year.

To address potential vacancies arising from various causes and to ensure continuous legal services to the public, UUJN regulations comprehensively stipulate the mechanism for appointing Substitute Notaries Adjie (2007). When a Notary submits a leave application, they must also propose the appointment of a Substitute Notary to carry out their official duties, adhering to the continuous nature of the Notarial position throughout the Notary's tenure. The respective Notary determines the duration of their leave and is required to designate a Substitute Notary. A Substitute Notary is temporarily appointed to replace a Notary who is on leave, ill, or temporarily unable to perform their duties.

In practice, the Substitute Notary's official duties are inseparable from various challenges and obstacles encountered daily. Such circumstances may also affect Notaries during their leave periods. Specific legal provisions govern situations where, for instance, a Notary on leave passes away. Article 35 paragraph (3) of UUJN explicitly stipulates that if a Notary dies while on leave, the previously appointed Substitute Notary automatically assumes the role of Temporary Notary Official Juniar & Djajaputra (2024).

This temporary duty is limited to a maximum duration of thirty days from the date of the Notary's death. This provision underscores the crucial role of the Substitute Notary in maintaining continuity of legal services, thereby ensuring notarial duties are not disrupted by emergencies or events beyond human control, such as death. Such mechanisms provide legal certainty and protection to parties with vested interests in deeds prepared or being processed at the Notary's office Peraturan Menteri Hukum dan

HAM RI Nomor 19 Tahun 2019 tentang Pengelolaan Protokol Notaris (2019).

Considering the potential errors arising from a Substitute Notary's lack of knowledge, experience, or legal understanding, it becomes imperative to conduct an in-depth study on the legal standing and responsibilities of Substitute Notaries, particularly concerning deeds made during their term of office. Although temporary, authentic deeds made by Substitute Notaries remain valid and legally binding. Consequently, their responsibility towards these deeds does not automatically cease upon expiration of their tenure. In this context, the research questions formulated in this study become highly relevant: first, what are the authorities, obligations, and prohibitions applicable to Substitute Notaries? Second, how does the legal responsibility of Substitute Notaries persist regarding deeds created after their tenure concludes? These formulated issues form the foundation for analyzing the legal status and scope of responsibilities of Substitute Notaries, both during their tenure and subsequently.

METHODS

This research employs a normative legal research method, also referred to as doctrinal legal research, which is primarily concerned with the study of law as a set of written norms. This method involves the analysis of legal materials derived from statutes, legal doctrines, and jurisprudence to address legal problems through theoretical and conceptual frameworks. The primary objective of this method is to discover and formulate legal arguments and normative prescriptions based on applicable positive law.

The research focuses on examining the authority, obligations, prohibitions, and responsibilities of Substitute Notaries, particularly in relation to the legal status of deeds executed after the conclusion of their official tenure. Legal issues are analyzed through a normative lens by referring to relevant statutory regulations, especially the Law on the Position of Notary (Undang-Undang Jabatan Notaris / UUJN).

The data used in this research consists of:

- Primary legal materials: including statutory regulations such as the UUJN, and other related laws and implementing regulations.

- Secondary legal materials: such as scholarly books, journal articles, expert opinions, and legal commentaries by authoritative figures in Indonesian legal scholarship (e.g., Philipus M. Hadjon and Peter Mahmud Marzuki).
- Tertiary legal materials: including legal dictionaries, encyclopedias, and reference documents that assist in clarifying legal terminology and concepts.

In line with Philipus M. Hadjon's view that legal science has a normative, prescriptive, and practical character, this research does not rely on empirical observation but rather on legal reasoning and analysis of normative sources. Similarly, Peter Mahmud Marzuki explains that normative legal research seeks to identify legal principles, norms, and doctrines in order to resolve legal issues through systematic interpretation and construction.

To achieve a deeper understanding of the legal norms governing Substitute Notaries, this study applies several legal analysis techniques, including:

1. Grammatical Interpretation (interpretasi gramatikal) This technique involves interpreting the legal text based on the ordinary and literal meaning of the words used in statutory provisions, particularly those in the UUJN. It aims to understand the text as it is written, based on its linguistic construction.
2. Systematic Interpretation (interpretasi sistematis) The meaning of a legal provision is analyzed in the context of the entire legal system, by examining its relationship with other provisions within the UUJN or other relevant laws. This helps to ensure coherence and harmony in legal interpretation.
3. Teleological or Sociological Interpretation (interpretasi teleologis atau sosiologis) This method considers the purpose and objective of the legal norm, assessing what the law aims to achieve. In the context of Substitute Notaries, this interpretation is used to evaluate whether the

continuation of legal responsibilities post-tenure aligns with the broader goals of notarial law, such as legal certainty and public trust.

The use of these interpretive techniques allows for a comprehensive normative assessment of the extent to which a Substitute Notary may be held legally accountable for deeds executed beyond their authorized period. This analysis ultimately serves to clarify ambiguities in the UUJN and contribute to the formulation of legal recommendations for enhancing regulatory clarity and legal certainty.

RESULTS AND DISCUSSION

Authority, Obligations, and Prohibitions of Substitute Notaries

A Substitute Notary is an individual appointed for a specific period to temporarily assume the duties of a Notary who is on leave, ill, or otherwise unable to carry out their responsibilities. Pursuant to the Notary Law (UUJN) and its implementing regulations, the scope of authority granted to a Substitute Notary is essentially equivalent to that of a definitive Notary, provided it does not exceed the limitations of time and jurisdiction stipulated by law Dharmayanthi & Wiryawan (2024).

The Substitute Notary is authorized to execute various types of authentic deeds, including deeds of agreement, establishment of legal entities, deeds of grant, inheritance, and other civil law instruments required by the parties. In performing these duties, the Substitute Notary must adhere to applicable formal and substantive legal provisions, including the principles of prudence, accurate identification of the parties, and precise formulation of the deed's content Putra, Dharsana, & Wesna (2024). Their authority also encompasses safekeeping of the deed's original (*minuta*), issuing copies, and legalizing documents, provided these actions are conducted within the official appointment period and duly approved by the Supervisory Council Marzuki (2007).

Regarding attribution of authority, it must be emphasized that Notarial authority is not derived from delegation or mandate by another official but directly conferred by statutory law, which forms the legal foundation of the office. Therefore, any action taken beyond the legal scope of authority may constitute an unlawful act (*onrechtmatige daad*), subjecting the Notary to civil, administrative, or

criminal liability, depending on the nature and consequences of the violation Assri Maharani & Mahmudah (2024).

In general, there are three forms of legal authority: attribution, delegation, and mandate. Attribution refers to authority granted directly by law to an institution or official Kurniadi (n.d.). Delegation is the transfer of governmental authority from one official to another based on legal provisions. Mandate refers to authority granted by the will of another party, such as the public or an organization, to an individual or group to carry out specific duties on its behalf.

Article 65 of the UUJN stipulates that Notaries, Substitute Notaries, and Acting Notaries are fully responsible for every deed they execute, even after the notarial protocols have been transferred to another custodian. Article 65A further provides sanctions for Notaries who violate Articles 58 and 59, including:

1. Written warning.
2. Temporary suspension.
3. Dismissal with honor; or
4. Dismissal without honor.

In addition to the above powers, a Substitute Notary is also authorized to:

- a. Receive the notarial protocols from the Notary on leave.
- b. Carry out the duties and functions of the Notary on leave.
- c. Continue the duties of a Notary who has passed away, for a maximum of 30 days.
- d. Submit the protocols of the deceased Notary to the Regional Supervisory Council within 60 days.
- e. Create deeds under their own name and maintain a notarial protocol during the aforementioned period.

Article 15 paragraph (1) of the UUJN provides the legal basis for Notaries to exercise their authority in making authentic deeds regarding legal acts, agreements, or stipulations, whether based on statutory provisions or the will of the involved parties Lasmiatin (2018). A Notary also has the authority to assign the date of the deed, retain related documents, and issue grosses, copies, and excerpts of the deed. This authority is valid as long as the subject matter of the deed is not within the jurisdiction of another authorized official. Further, Article 15

paragraph (2) of the UUJN provides additional authorities, including:

- a. Legalizing signatures and certifying the date of private documents.
- b. Recording private documents in a special register.
- c. Issuing certified copies of private documents.
- d. Verifying the conformity of photocopies with their originals.
- e. Providing legal consultation in relation to deed preparation.
- f. Drafting deeds related to land affairs; or
- g. Drafting auction minutes.

Accordingly, the authority granted to a Substitute Notary is legally valid and explicitly recognized in Article 33 paragraph (2) of the UUJN, which affirms that the provisions on Notary authority apply *mutatis mutandis* to Substitute Notaries.

The obligations of a Substitute Notary refer to those listed in Article 16 paragraph (1) of the UUJN, including:

- a) Acting with integrity, honesty, accuracy, independence, impartiality, and safeguarding the interests of the parties.
- b) Drafting deeds in the form of *minuta* and preserving them as part of the notarial protocol.
- c) Attaching all related documents and fingerprinting the appearers in the *minuta*;
- d) Issuing grosses, copies, or excerpts of the deed.
- e) Providing services in accordance with the law unless a legitimate reason for refusal exists.
- f) Maintaining confidentiality of all information related to the deed and its preparation, except as required by law.
- g) Binding the deeds into books not exceeding fifty deeds per volume within one month.
- h) Creating a register of protests for unpaid or unaccepted negotiable instruments.
- i) Preparing a monthly list of testamentary deeds in chronological order.

- j) Submitting such lists or a nil report to the central will registry within five days of the first week of the following month.
- k) Recording the date of such submission in the repertory at the end of the month.
- l) Possessing a seal containing the national emblem and their name, position, and location.
- m) Reading the deed aloud in the presence of the appearers and at least two witnesses (or four for testamentary deeds) and ensuring it is signed accordingly.
- n) Accepting internships from prospective notaries.

Thus, the legal responsibilities borne by Substitute Notaries are essentially equivalent to those of permanent Notaries as set out in the UUJN. In performing their duties, Substitute Notaries are also directly bound by the same set of obligations and prohibitions applicable to Notaries under Articles 16 and 17 of the UUJN. Article 17 prohibits Notaries and Substitute Notaries from:

- a. Exercising authority outside their jurisdiction.
- b. Leaving their jurisdiction for more than seven consecutive working days without valid reason.
- c. Holding dual status as a civil servant.
- d. Holding concurrent office as a state official.
- e. Serving concurrently as an advocate.
- f. Holding office as a director or employee of a state-, region- or privately-owned enterprise.
- g. Acting simultaneously as a Land Deed Official or Class II Auction Official outside their jurisdiction.
- h. Becoming a Substitute Notary (if already holding a conflicting position); or
- i. Engaging in activities contrary to religious norms, morality, or propriety that may damage the dignity of the notarial profession.

If a Notary or Substitute Notary violates any of the provisions of Article 17 paragraph (1), they are subject to the following sanctions under paragraph (2):

- a) Written warning.
- b) Temporary suspension.
- c) Dismissal with honor; or
- d) Dismissal without honor.

Considering that Substitute Notaries carry out functions and bear responsibilities equivalent to those of permanent Notaries, they are fully obliged to comply with all prohibitions established by prevailing laws and regulations Tjandraningsih (2023).

Responsibility of Substitute Notaries for Deeds After the Expiration of Their Term of Office

Legal liability for actions performed by public officials does not automatically cease upon the conclusion of their term, especially when such actions result in legal consequences that harm the interests of the public Tasha & Djajaputra (2024). In relation to the enforceability of legal responsibilities beyond the term of office, the applicable legal principle is that of personal liability in public office. This principle signifies that legal accountability for acts committed in the capacity of a public official may still be imposed personally, even after the official has left the position. This is reaffirmed by Supreme Court Decision Number 585 K/Sip/1999, which held that a former official may still be held legally liable insofar as their actions resulted in legal consequences that have not been lawfully and definitively resolved. This concept is also aligned with the principle of public accountability as a pillar of good governance. Public officials, including Substitute Notaries, are thus expected to remain accountable not only during their term of service but also for the legal implications of their actions thereafter Soekanto (1986).

Normatively, the legal responsibilities of Substitute Notaries after the end of their appointment may be categorized into three primary areas:

Civil Liability

If a deed executed by a Substitute Notary contains substantial or administrative errors that result in harm to one or more involved parties, the Substitute Notary may be held civilly liable. This liability continues beyond the end of the term, as every deed made in the official capacity retains binding legal consequences for the parties concerned. The legal grounds for such liability include Article 1365 of the Indonesian Civil Code, which governs unlawful acts (*onrechtmatige daad*), and Article 1243 of the Civil Code concerning breach

of contract. Article 1365 stipulates that "any unlawful act which causes harm to another person shall oblige the person who committed the act to compensate for the damage," while Article 1243 provides for compensation due to failure to perform a legal obligation.

Criminal Liability

If, in the process of drafting a deed, a Substitute Notary intentionally includes false statements or falsifies the content of an authentic deed, such conduct constitutes a criminal offense of document forgery as explicitly regulated under Articles 263 and 266 of the Indonesian Penal Code (KUHP) Subekti (2005). Article 263 states that anyone who makes a forged document or falsifies a document that can give rise to rights, obligations, or debt cancellation, with the intent of using or causing others to use it as if it were authentic, may be punished by imprisonment of up to six years. Article 266 further imposes criminal penalties on anyone who instructs the insertion of false information into an authentic deed concerning a matter that must be declared truthfully by the deed, particularly when the falsehood is used as evidence and may cause harm Made Stefanus Teguh Oprandi, Ni Komang Arini Styawati, & Anak Agung Istri Agung (2024).

Administrative and Ethical Responsibility

As public officials temporarily exercising notarial authority, Substitute Notaries remain fully subject to institutional oversight by the Notary Supervisory Council (Majelis Pengawas Notaris/MPN) at the regional, provincial, and national levels. Despite their temporary status, Substitute Notaries are held to the same ethical and professional standards as permanent Notaries. This confirms the absence of any distinction in professional conduct standards between Notaries and their substitutes. Both are required to uphold the integrity of the office and comply with the Notarial Code of Ethics as stipulated in applicable laws and regulations Rahmayanthi (2024).

To ensure clarity in liability, regulatory provisions should explicitly affirm that responsibility for deeds does not terminate with the end of the Substitute Notary's appointment. Such a provision is essential to protect the legal rights of parties relying on those deeds. Furthermore, the Substitute Notary must provide a written record of all deeds executed during their term and formally hand them over to the

definitive Notary as part of the protocol transfer process.

CONCLUSION

A Substitute Notary is a public official temporarily appointed to replace an unavailable Notary, as regulated by Articles 33 and 34 of the Notary Law (UUJN) and its implementing provisions. During their term, they possess full authority to perform notarial functions, including drafting authentic deeds, legalizing documents, and maintaining records, with responsibilities and prohibitions equal to those of a definitive Notary. Despite the temporary nature of their role, their legal liability continues beyond their tenure and includes potential civil, administrative, and criminal responsibility if the deeds they execute cause legal harm. Their deeds hold the same legal force as those of a permanent Notary, provided they meet formal and substantive requirements. Therefore, further regulation on post-tenure protocol handover and enhanced ethical understanding is necessary to ensure legal certainty. Current oversight of Substitute Notaries remains reactive and must be improved through monthly reporting and unannounced audits by the Supervisory Council, supported by proper regulations and funding. To protect third parties, it is essential to include the Substitute Notary's identity and status in the deed and to establish an online verification system to confirm their legitimacy before any deed execution, thereby minimizing legal risks.

REFERENCES

- Adjie, H. (2007). *Hukum Notariat Indonesia: Tafsir Tematik terhadap Undang-Undang No. 30 Tahun 2004 tentang Jabatan Notaris*. Bandung: Refika Aditama.
- Assri Maharani, N., & Mahmudah, S. (2024). Tanggung Jawab Notaris Pengganti Pasar Modal Apabila Ada Kesalahan Dalam Pembuatan Akta. *UNES Law Review*, 7(2), 642–648. doi:10.31933/unesrev.v7i2.2345
- Darus, M. L. H. (2017). *Hukum Notariat dan Tanggungjawab Jabatan Notaris*. Yogyakarta: UII Press.
- Dharmayanthi, N. N. D., & Wiryawan, I. W. G. (2024). Juridical Review of the Position of Substitute Notaries According to Law No. 2 of 2014. *AJoSH: Journal of Social & Humanities*, 3(2). doi:10.59888/ajosh.v3i2.450
- Hadjon, P. M. (n.d.). Pengkajian Ilmu Hukum Dogmatik (Normatif). *Yuridika*.
- I Made Stefanus Teguh Oprandi, Ni Komang Arini Styawati, & Anak Agung Istri Agung. (2024). Akibat Hukum Akta yang dibuat oleh Notaris Pengganti Berdasarkan Peraturan Perundang-Undangan Jabatan Notaris. *Jurnal Ilmu Hukum, Humaniora Dan Politik*, 4(6), 2280–2289. doi:10.38035/jihhp.v4i6.2710
- Indrati, M. F. (2007). *Ilmu Perundang-Undangan: Jenis, Fungsi, dan Materi Muatan*. Yogyakarta: Kanisius.
- Juniar, N. T., & Djajaputra, G. (2024). Unlawful Acts Committed By A Substitute Notary Regarding the Mortgage Deed. *Journal of Law, Politic and Humanities*, 5(1), 515–519. doi:10.38035/jlph.v5i1.882
- Kurniadi. (n.d.). Kompetensi Notaris Pengganti Dalam Menggantikan Notaris Yang Cuti Sebagai Pejabat Negara. In *Jurnal Hukum*.
- Lasmiatin, E. D. (2018). Tanggung Jawab Notaris Pengganti dalam Hal Notaris yang Diganti Meninggal Dunia Sebelum Cuti Berakhir. *Officium Notarium (Tesis)*.
- Marzuki, P. M. (2007). *Penelitian Hukum*. Jakarta: Kencana Prenada Group.
- Peraturan Menteri Hukum dan HAM RI Nomor 19 Tahun 2019 tentang Pengelolaan Protokol Notaris. (2019).
- Putra, G. B. A., Dharsana, I. M. P., & Wesna, P. A. S. (2024). The Substitute Notary's Responsibility for the Deed He Made. *Journal of Public Legal Studies*. doi:10.XXXX/jpls.2024.193
- Rahmayanthi, G. (2024). Legal Protection for Substitute Notaries Related to Summons as Witness. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 9(3), 586–599. doi:10.24843/AC.2024.v09.i03.p10
- Soekanto, S. (1986). *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia.

- Subekti, R. (2005). *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
- Tasha, N., & Djajaputra, G. (2024). Liability of Substitute Notary Whose Deeds Containing Forged Signatures. *Journal of Law, Politic and Humanities*, 5(1). doi:10.38035/jlph.v5i1.882
- Tjandraningsih, D. (2023). Responsibilities of a Substitute in the Event the Notary Who is Replaced Dies Before the Leave Ends. *International Journal of Social Science & Humanities Research*, 6(12).
- Wahyudi, A., Erliyani, R., & Mispansyah, M. (2023). Tanggung Jawab Notaris Pengganti atas Akta Notaris yang dibuat oleh Notaris tidak Berwenang. *Notary Law Journal*, 2(3). doi:10.32801/nolaj.v2i3.47