

Responsibilities of a Substitute in the Event the Notary Who is Replaced Dies Before the Leave Ends

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Abstract

The objectives of this research are a. To find out the legal status of the Substitute Notary due to death before the leave ends. b. To understand the administrative settlement mechanism for a Substitute Notary due to death before the leave ends. This research method uses normative juridical and descriptive which is supported by primary data, secondary data, and tertiary data. The research results are based on article 35 paragraph 3 UUJN-P, that the legal status of a substitute Notary Public if the Notary being replaced dies before the leave ends, then the duties of the position will be carried out by the Substitute Notary as a Temporary Acting Notary and there is no need to reappoint him as a Substitute Notary as an Acting While Notary. Therefore, the Temporary Notary Officer can carry out his authority within 30 days from the date the Notary dies and can make a deed in his name and have a Notary protocol. Substitute Notary Public Within 60 days from the notary's death, all Notary Protocols must have been prepared and a Minute of Submission of the Notary Protocol must be made. Then all Protocols are handed over to the Notary Recipient of the protocol. Notary, Notary receiving the protocol, and Regional Supervisory Council.

Keywords: Responsibility, Substitute Notary, Death

1. Introduction

If a notary is sick or leaves for Hajj or Umrah for a certain time and is unable to carry out his duties and obligations, he can apply for leave and this is the Notary's right in accordance with Article 25 paragraph (1) of Law Number 2 of 2014, concerning amendments to Law Number 30 of 2004, concerning the public position of Notaries - UUJN-P, namely that Notaries have the right to take leave. And it can be given if the Notary has carried out his duties and position for 2 years and if less than 2 years then the Notary may not take leave.

Applications for leave for notaries can be submitted one month in advance, the application also depends on the length of leave for each Notary in accordance with Article 27 paragraphs (1) and (2) concerning Law Number 30 of 2004, as well as regarding the position of UUJN Notary, namely: (1). A notary can submit a request for leave in writing and name a replacement notary. (2). Application for leave in accordance with paragraph (1), submitted to the appointed official, namely: a. to the Supervisory Board if the leave period is less than 6 months. b. to the Supervisory Board if leave exceeds 6 months - 1 year. c. to the Central Supervisory Board if the leave exceeds 1 year. When submitting a Notary leave application, you must follow the appointment of a Substitute Notary to carry out his/her duties and position. The Notary concerned determines the time for leave and is obliged to appoint a replacement Notary. (3). Appointing a replacement Notary may only be employees who have worked or are interns who are deemed capable of replacing them according to the Notary's assessment.

In reality, when the Notary who is on leave dies, it is his replacement Notary who notifies the MPD, either in writing, verbally, or via electronic media. The death of the Notary who was on leave gave rise to a different legal status for the Substitute Notary, regarding his duties, responsibilities, and authority in serving the community. In this case, there is a legal vacuum between the Substitute Notary and the Notary who has died before the leave ends, regarding the duties of his/her position in carrying out/transferring the legal actions of the parties into the form of a deed, can they use the name of the Substitute Notary even though there is no longer a Notary to be replaced, or use the name of the Notary? Temporary officials. Therefore, the author is interested in researching and discussing in depth the responsibilities of a Substitute Notary if the Notary being replaced dies before the leave ends.

2. Research Methods

This research uses a normative juridical approach supported by primary data. As well as tertiary data. Legal research based on predetermined legal logic. Describe an overview of the problems at the research location. This research is about the analysis of regulations and legislation related to the responsibilities of a substitute notary in case of death before the end of leave.

2.1. Data collection technique

- a. Primary Data Primary Data is in the form of interviews conducted with sources to obtain direct and in-depth information by asking questions directly to the sources who have been determined.
- b. Secondary Data The technique for collecting materials using library research is searching for legal materials by reading, viewing, or via the internet.

2.2. Data analysis

This research will describe the problem with qualitative descriptive analysis by examining in-depth and comprehensively (broad and complete) the related regulations. The legal material obtained will be sorted and grouped and then analyzed so that it can be described or described what the responsibilities of the Substitute Notary are if the Notary who is replaced dies and what the mechanism for completing the Protocol is.

3. Results and Discussion

3.1. Notary Rights, Obligations, and Notary Leave

Notaris mempunyai hak untuk memotong sesuai Pasal 25 UUJN. Notaris diperbolehkan memotong dan jugatidak mengambil hak pemotongan. Sebelum Notaris Cut terlebih dahulu mengajukan permohonan Cuti, dan mengajukan sertifikat untuk Cuti kepada kantor Direktorat AHU, melalui online yaitu sebagai berikut:

- a. Klik masuk ke Website AHU
- b. Klik menu AHU, terus login Notaris
- c. Tuliskan user dan password pada akun Notaris

- d. Pilih untuk pengajuan potongan, dan pilih sertifikat untuk potongan
- e. Menulis permohonan untuk sertifikat cuti
- f. Untuk transaksi Notaris, dapat dibayar melalui sistem Your All Payment
- g. Melakukan transaksi dan menerima notifikasi
- h. Aturan penggunaan YAP telah ditentukan, tanggal 27/12/2017 dan diterapkan pada tahun 2018.

Provisions regarding Notary leave are regulated in Article 25-32 UUJN, where before taking leave a Notary has obligations as conditions that must be fulfilled, namely the obligation of a Notary to carry out his or her position for 2 consecutive years and effectively. When going on leave, appoint a substitute Notary Public to replace his/her position duties in serving the community, especially in Notarial law. In appointing a Substitute Notary, on average, they only take employees who have met the requirements by Article 33 UUJN-P and are deemed capable of making decisions on each deed they will make, applying for a leave certificate first as mentioned above, after the Notary has fulfilled his obligations. then the Notary can take his leave rights.

At the start of the leave, the Notary must submit the Protocol to the Substitute Notary by making an official report on the Submission of the Protocol, and vice versa, this is done 1 (one) day after the leave ends.

3.2. Legal status of a Substitute Notary if the Notary being replaced dies before the leave ends.

The requirements to become a Substitute Notary as stated in Article 33 UUJN-P are: an Indonesian citizen who has a law degree and has worked as a Notary office employee for at least 2 (two) consecutive years. Then the Prospective Substitute Notary must complete supporting documents including:

- a. Photocopy of the minimum law degree certificate approved by the relevant university.
- b. Photocopy of Identity Card legalized by a Notary.
- c. Photocopy of birth certificate authenticated by a Notary.
- d. Photocopy of Marriage Certificate for those who are already married and legalized by a Notary.
- e. Certificate of Good Conduct from the local police.
- f. Health certificate from a government doctor.
- g. Recent color photographs measuring 3x4 = 4 (four) pieces
- h. Curriculum Vitae

A notary as a public official, whose duties, authority and obligations are related to him, is being able to make authentic deeds. The inherent authority of a temporary substitute notary is as stated in Article 33 paragraph (2), regulations and laws on the position of notary, namely: It is already valid that the Notary is in accordance with Articles 4, 15, 16 and 17. That the temporary substitute notary has been determined that the Substitute Notary in carrying out his duties, obligations and authority, in accordance with the limitations of the Notary's position, is entitled to make authentic deeds, in the name of the Substitute Notary.

Based on Article 35 paragraph 3 UUJN-P, a Substitute Notary as Temporary Acting Notary has a unified meaning where when the Notary on leave dies, his or her position

automatically becomes Substitute Notary as Temporary Acting Notary. Head of the Regional Supervisory Council, Mr. Haryanto, said that the Regional Office of the Ministry of Law and Human Rights, Yogyakarta Special Region 101, had never appointed a Temporary Notary Public Officer.

In this case, this means that for the Sleman Regency area, especially regarding the legal status of a Substitute Notary, there will be no further appointments and the Substitute Notary will automatically become a Temporary Acting Notary. Regarding the legal status of the Substitute Notary, it remains intact and he/she still has the right to make deeds for 30 days after the Notary being replaced dies before the leave ends as stated in Article 35 paragraph (3) UUJN-P.

3.3. Mechanism/order for completing the administration of the Substitute Notary Protocol if the Notary being replaced dies before the leave ends.

That the Regional Supervisory Board carries out supervision of notaries in accordance with its level of authority, namely district and city, in accordance with the applicable Article 70-UUJN, namely:

- a. Can hold an examination hearing for violations of the Code of Ethics in the position and authority of a Notary.
- b. Can carry out inspections of Notary Protocols, routinely and periodically, annually or simultaneously if necessary. done
- c. Can grant permission for leave with a time limit of six months
- d. Can appoint a replacement notary with a recommendation to the notary concerned.
- e. Can determine the storage of the Notarial Deed, and if at the time it is handed over the Notarial Deed is twenty-five years old or more.
- f. Can appoint a Notary as a temporary office holder who is appointed as a state official in accordance with Article 11 paragraph (4).
- g. Can receive public reports regarding alleged violations of the Notary's Code of Ethics and other provisions and regulations.
- h. Can submit and make reports in accordance with letters A, b, c, d, e, f, g to the Regional Supervisory Board.

The formed at the district or city level, has the authority as stated in Article 70 UUJN, one of which is point d, namely: To determine a replacement notary by taking into account the recommendation of the notary concerned.

The heirs can nominate a Notary Holding the Protocol and the MPD appoints the Notary as the recipient of the protocol or the MPD appoints the Notary receiving the protocol for 14 (fourteen) days, the temporary Notary. Submission of the appointment of another Notary as protocol holder by the MPD by attaching the following:

- a. Application letter
- b. Photocopy of the decision to appoint a Substitute Notary which has been legalized
- c. Photocopy of death certificate/death certificate that has been legalized
- d. Original letter of appointment of another Notary as Protocol holder and
- e. Photocopy of certificate of heirs and Notary or authorized official and has been legalized, if the Notary who dies has heirs.

With information regarding the death of the Notary, the MPD will immediately negotiate with its members regarding which Notary will be able to accept the Protocol from the deceased Notary and his Replacement Notary, taking into account the storage location of the State document archive in a safe place because the Notary's deed is one of the state archives. Notary Protocol in the explanation of Article 62 UUJN, states that the Notary Protocol consists of:

- a. Minutes of the Deed The minutes of the deed are the original notarial deed, where the minutes of this deed consist of (attached) the personal data of the parties and other documents required to make the deed. Every month the deed minutes must always be bound into one book containing no more than 50 deeds. On the cover of each book, the number of minutes of the deed, and the month and year of its creation are recorded.
- b. Deed register book or Repertorium In this Repertorium, every day the Notary records all deeds made by or before him, either in the form of minutes of deeds or originals.
- c. A book registering private deeds whose signing is carried out before a Notary or registered private deeds.
- d. The book registering names of presenters or Klapper Notaries are required to make a Klapper list which is arranged alphabetically and done every month, where the names of all persons/parties appearing, the nature and number of the deed are included.
- e. Protest register book Every month the Notary submits a Register of Protest Deeds and if there is none.

A Notary who dies while on leave will be respectfully dismissed from his/her position and the heir/Substitute Notary will notify the MPD of the death of the Notary being replaced, either manually or electronically, no later than 7 days from the Notary's death. Notification of the Notary's death also includes supporting documents including:

- a. Photocopy of the Decree on the appointment of a Substitute Notary that has been legalized
- b. Photocopy of the death certificate/death certificate that has been legalized
- c. Original letter of proposal to appoint another Notary as Protocol Holder.

4. Conclusions and Suggestions

4.1. Conclusion

Based on the results obtained and the discussion, several conclusions can be drawn, namely as follows:

- a. In accordance with Article 35 paragraph 3 UUJN-P which states that if a Notary dies, his/her duties and position can be carried out by a replacement Notary within a maximum of thirty working days, starting from the Notary's death. So the legal status of a substitute Notary Public, and if the person being replaced dies before the leave ends, the duties and positions can be carried out by the Substitute Notary Public. Temporary Notary Officials can exercise their authority for 30 days starting from the Notary's death, a replacement Notary can make an authentic deed in the name of the Notary Protocol..
- b. Mechanism/order for completing the administration of the Substitute Notary Protocol if the Notary being replaced dies before the leave ends, namely, the Substitute Notary as Temporary Acting Notary has expired. The Regional Supervisory Council, then within a period of no later than 14 (fourteen) days from the end of the temporary Notary

Official's term of office, is required to appoint a Notary as the recipient of the Notary's protocol. Substitute Notary as Temporary Acting Notary Public prepares and tidies up all protocols and their places/cupboards as intended in the explanation of Article 62 UUJN-P. Based on Article 35 paragraph (4) UUJN-P that "A Substitute Notary as a Temporary Acting Notary has a period for submitting the Notary Protocol and the Substitute Notary is no later than 60 days from the Notary's death", but in practice this often does not comply with the time limit given due to several factors, one of which is because the number of minutes of the deed is so large, there are still some that have not been bound, there is a lack of signatures from witnesses.

4.2. Suggestion

Based on several conclusions, several recommendations can be given, including the following:

- a. To ensure legal certainty for the Substitute Notary Public, there should be a re-inauguration as a Temporary Acting Notary Public. There are different points of view regarding whether or not it is necessary to appoint a Substitute Notary as a Temporary Acting Notary. According to the view from the academic side, a Substitute Notary as a Temporary Acting Notary must be appointed again as a temporary official to replace a Notary who dies while on leave. However, in terms of implementation, in this case, the Minister represented by the Regional Office is the one who inaugurated, so there is no need for re-inauguration because the Substitute Notary as Temporary Acting Notary has become one unit. Therefore, it is necessary to synchronize the understanding of these rules to ensure legal certainty for the parties and guarantee legal protection for Substitute Notaries as Temporary Acting Notaries.
- b. The Regional Supervisory Council should be present at the time of handing over the Notary Protocol to the recipient of the Notary Protocol to synchronize the number of deeds submitted by the minutes of handing over the protocol signed by them, to avoid discrepancies in the data that constitutes the State archives.

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