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## Liability of Substitute Notary Whose Deeds Containing Forge Signatures

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**Abstract:** Given that Indonesia is a country based on legal principles where nearly everything is intertwined to government agencies or the law, the role of Notaries in Indonesia become very necessary. Many people find it difficult to process documents or deeds, so in this case the role of a notary becomes crucial for the community. This causes notaries to become busy and get sick or tired, causing notaries request to take leave. During their leave, the Notary shall appoint a Substitute Notary as stated in the Law of The Republic of Indonesia Number 30 of 2004 on Office of Notary Public (Law on the Rules of Notary Profession). Substitute Notary is responsible in carrying out the duties and obligations of the Notary who is on leave. In carrying out their obligations Substitute Notary must obey the laws and regulations in Indonesia. However in verdict number: 395/Pdt.G/2011/PN.JKT.Sel a deed by Substitute Notary contains a forge signature which lead to question about the liability of Substitute Notary in the case. The research used a normative juridical research method and using secondary data sources. The results of this research proves that the Substitute Notary is indeed committed an unlawful act against the Plaintiff. This research is aims to find the liability of Substitute Notary whose deeds containing forge signatures.

**Keyword:** Substitute Notary, Deed, Forge Signatures.

### INTRODUCTION

As a public official vested with the authority to execute authentic deeds and perform other duties stipulated in the Law on the Rules of Notary Profession or other relevant legislation, being a Notary is a demanding profession. This is due to the significant responsibilities associated with authenticating deeds. Considering Indonesia's legal framework where every action is governed by law, the role of notaries is indispensable in society. This workload often leads to fatigue or a need for breaks among Notaries. According to Law Number 30 of 2004, as amended by Law Number 2 of 2014 (Law on the Rules of Notary Profession), specifically Article 11, paragraph (1), Notaries appointed as state officials are mandated to take leave.<sup>1</sup> When availing leave, Notaries are legally

<sup>1</sup> Article 11 paragraph (1), Law Number 30 of 2004 on the rules Notary Profession as amended by Law Number 2 of 2014

required to follow a set of procedures. Requests for notarial leave should be submitted in writing to:<sup>2</sup>

1. The District Supervisory Council if the leave does not exceed a period of 6 (six) months;
2. The Provincial Supervisory Council if the leave exceeds the period of 6 (six) months; or
3. The Central Supervisory Council if the leave exceeds the period of 1 (one) year.

When applying for leave as outlined above, Notaries must provide essential documents, including:<sup>3</sup>

1. Photocopy of the Decree on the Appointment or Transfer of a Notary with legalized authentication;
2. Photocopy of the minutes of Notary's oath/pledge of office with legalized authentication;
3. Letter of appointment for a Substitute Notary; and
4. Original Notary leave certificate.

As outlined above, according to the Law on the Rules of Notary Profession, a Notary intending to take leave must complete a series of procedures beforehand. This includes appointing a Substitute Notary who will temporarily assume the Notary's duties during their absence. A Substitute Notary is a temporary appointment made to fill in for a Notary on leave, sick, or temporarily unable to fulfil their duties.

When assuming the responsibilities of a Notary, the Substitute Notary must adhere to the relevant laws and regulations governing Notaries, notably the Rules of Notary Profession Law. Consequently, in fulfilling the role a Substitute Notary must pay attention that the Notary is authorized to create Authentic Deeds pertaining to deeds, agreements, and render decisions based on regulations as well as per the wishes of the involved parties. Should express interest in being acknowledged in an Authentic Deed, guarantee the accuracy of the deed's date, store the deed, furnish originals, copies, and excerpts of the deed.<sup>4</sup>

In verdict Number: 395/Pdt.G/2011/PN.JKT.Sel, a Substitute Notary in this instance was sued by Mrs. Dian Susanty Gunawan (Plaintiff), who suffered losses due to a Mortgage Deed containing a fake signature, executed by Substitute Notary Merisa Herawati (Defendant V). The Plaintiff incurred a loss of approximately Rp. 6,000,000,000 (six billion rupiah) as a result of these actions. A Notary, in fulfilling their obligations, must comply with the relevant laws and regulations, including the Notary Position Law, and also adhere to the Indonesian Civil Code. However, in this case, Defendant V, the Substitute Notary, failed to fulfil their obligations under the law, resulting in losses for other parties.

## **METHOD**

The writing method employed in this study is a normative juridical research method, involving the examination and study of statutory regulations and relevant legal theories. In this instance, the theories utilized include the theory of unlawful acts and the theory of liability. The legal materials referenced consist of primary legal sources, such as laws and regulations pertinent to the author's topic, as well as secondary legal sources, including books or journals relevant to the field of law.

## **RESULTS AND DISCUSSION**

Based on the Rules of Notary Profession Law, specifically in Article 33 paragraph (1), a person can be appointed as a Substitute Notary or Temporary Acting Notary if they meet certain requirements, namely:

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<sup>2</sup> Article 24 paragraph (1) Law Number 30 of 2004 on the rules Notary Profession as amended by Law Number 2 of 2014

<sup>3</sup> Article 24 paragraph (2) Law Number 30 of 2004 on the rules Notary Profession as amended by Law Number 2 of 2014

<sup>4</sup> Article 15 paragraph (1), Law Number 30 of 2004 on the rules Notary Profession as amended by Law Number 2 of 2014

1. Indonesian citizenship
2. Holding a law degree
3. Having worked as an employee at a Notary's office for at least 2 (two) consecutive years.

In carrying out their position, a Substitute Notary has the same obligations as a Notary in general, as outlined in Article 15 of the Rules of Notary Profession Law. This includes having the authority to create Authentic Deeds relating to deeds, agreements, and stipulations required by statutory regulations and/or desired by the parties who have an interest in being stated in the Authentic Deed. Additionally, they must ensure the certainty of the date the Deed was made, store the Deed, provide a gross, a copy, and a quotation of the Deed. All of these responsibilities remain with the Substitute Notary until the assignment is transferred to another official or person, as determined by statutory regulations. A Substitute Notary also holds the same authority as a Notary, which includes:

1. Validating signatures and determining the certainty of the date of the letter under hand through registration in a special book.
2. Maintaining personal bookkeeping by registering in a special book.
3. Photocopying the original letter under hand, in the form of a copy which contains a description as written and illustrated in a related letter.
4. Validating the accuracy of the photocopy compared to the original letter.
5. Providing legal counseling related to the making of a Deed.
6. Creating a Deed of auction minutes.

Substitute Notaries also have a series of obligations that must be fulfilled in accordance with Article 16, paragraph (1) of the Law on the Rules of Notary Profession, namely:<sup>5</sup>

1. Carry out actions that are trustworthy, honest, thorough, independent, impartial, and safeguard the needs of parties related to legal actions;
2. Make Deeds in the form of Deed Minutes and store them as part of the Notarial Protocol;
3. Attach letters, documents, and fingerprints to the Deed Minutes;
4. Issue Grosse Aka, Copies of Deeds, or Deed Quotes based on the Minutes of Deeds;
5. Provide services in accordance with these laws and regulations, unless there is a reason for refusal;
6. Keep confidential all matters relating to Deeds that have been made, as well as all information obtained in order to make a Deed, in accordance with the oath/promise of office, unless otherwise regulated by statutory regulations;
7. Bind the Deeds made within 1 (one) month into a book containing 50 (fifty) deeds, and if the number of Deeds cannot be contained in one book, bind the Deeds into more than one book, noting the number of Minutes of the Deed, month, and year of creation on each cover of the book;
8. Make a register of Deeds of protest regarding non-payment or receipt of securities;
9. Make a list of Deeds related to wills, sequenced according to the time of making each Deed, every month;
10. Send the list of Deeds described in letter i or the nil list relating to wills to the center of the will register in the ministry responsible for legal affairs within a period of 5 (five) days in the first week of each following month;
11. Record the repertory of the date of delivery of the list of wills at the end of each month;
12. Have a seal or stamp containing the state symbol of the Republic of Indonesia, with the name, position, and place of domicile of the relevant party written in the circled space;
13. Read the Deed in front of an audience attended by at least 2 (two) witnesses, or 4 (four) special witnesses for a private Deed of Will, and sign it at the same time by the audience, witnesses, and notary; and

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<sup>5</sup> Article 16 paragraph (1) Law Number 30 of 2004 on the rules Notary Profession as amended by Law Number 2 of 2014

#### 14. Accept internships for Notary candidates.

According to the Law on the Rules of Notary Profession, a Substitute Notary has the same obligations, authority, and liability and responsibility as a Notary as stated above. In this context, liability can be understood as an inherent quality, meaning that liability is an integral part of human life. Every individual has responsibilities that must be fulfilled, resulting from their actions.<sup>6</sup> A person has legal liability for actions that deviate from applicable laws and regulations.<sup>7</sup> According to the law, liability arises from actions related to ethics or morals.<sup>8</sup> According to Hans Kelsen, liability is divided into 4 (four) categories:<sup>9</sup>

1. Individual liability: A person is responsible for a mistake or violation they themselves committed.
2. Collective liability: A person has responsibility for the actions of someone who committed the violation.
3. Liability based on a wrongful act: A person can be held responsible for an offense committed intentionally with the aim of causing harm.
4. Absolute liability: A person is responsible for a violation that was neither committed intentionally nor foreseeable.

Based on this, the actions of Merisa Herawati, Defendant V in Verdict 395/Pdt.G/2011/PN.JKT.Sel, where the Deed of Mortgage Rights she created contained elements of a forged signature, resulted in significant losses to the Plaintiff. It is important to emphasize that in her role as a Substitute Notary, the Defendant must adhere to the Law on the Rules of Notary Profession and the Notary Code of Ethics. According to Article 16 paragraph (1) letter a of the the Law on the Rules of Notary Profession, the Defendant is obligated to perform her duties with trust and honesty. The Defendant's act of affixing a forged signature from the Plaintiff clearly violates her obligations as a Substitute Notary and can be categorized as an unlawful act. In this case, the Defendant is obligated to be responsible for losses incurred as a result of their actions, whether those actions were intentional or due to negligence.

Legally, responsibility is divided into 2 (two) categories: liability (legal responsibility resulting from an error committed by a legal subject) and responsibility (which refers to political responsibility). The theory of legal responsibility adheres to the principle that responsibility arises because it is regulated by statutory provisions, and thus this theory is called liability. Meanwhile, responsibility is a condition in which a person assumes the obligation to bear responsibility for their actions if an unexpected event arises that can be prosecuted, sued, and blamed.<sup>10</sup>

The liability that must be assumed by the Substitute Notary in the event of an act causing a loss, such as a deed containing a forged signature, can take the form of compensation for losses. This is also regulated in Article 1365 of the Indonesian Civil Code, which states that a person is obliged to compensate for actions that violate the law and cause loss to another party.<sup>11</sup>

## CONCLUSION

In carrying out their obligations and authority as Substitute Notaries, they must adhere to the Law on the Rules of Notary Profession and the Notary Code of Ethics. If an unlawful

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<sup>6</sup> Julista Mustamu., "Pertanggungjawaban Hukum Pemerintah (Kajian Tentang Ruang Lingkup dan Hubungan Dengan Diskresi)", *Jurnal Sasi*, Vol. 20 No. 2 Tahun 2014, hal. 22.

<sup>7</sup> Hans Kelsen, *Teori Umum tentang Hukum dan Negara*, (PT Raja Grafindo Persada Bandung, 2006), hal. 95.

<sup>8</sup> Soekidjo Notoatmojo, *Etika dan Hukum Kesehatan*, (Rineka Cipta Jakarta, 2010), hal. 62

<sup>9</sup> Hans Kelsen, *Teori Hukum Murni*, (Nusa Media Nuansa, 2006), hal. 140.

<sup>10</sup> Azheri, *Corporate Social Responsibility: dari Voluntari Menjadi Mandatory*, (PT Raja Grafindo Persada, 2011), hal. 54.

<sup>11</sup> Article 1365, Indonesian Civil Code

act or other action arises causing loss to another party or client related to a Deed made by a Substitute Notary in the course of their duties, the Substitute Notary should be held accountable for their actions, whether civil or criminal.

Substitute Notaries have the same responsibilities as Notaries in performing their roles, and therefore, they are expected to be meticulous and thorough in their duties. It is hoped that the Indonesian government will regulate the obligations of Substitute Notaries more comprehensively in the Notary Position Law.

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