

Limits of Substitute Notary Authority
based on Law on Notary Position and
Notary Ethics Code

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Limits of Substitute Notary Authority based on Law on Notary Position and Notary Ethics Code (Case Study in West Lombok Regency)

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Abstract

This study aims to understand and analyze the limits of authority and the effectiveness of the exercise of authority of substitute notary in West Lombok Regency. This study applies the normative-empirical legal research method since it examines the statutory provisions that govern the substitute notary authority and its implementation. It also employs statute approach, conceptual approach, and legal sociology approach. The results of the study found that the authority of a substitute notary in West Lombok Regency was limited by the management of the Indonesian Notary Association, the Regional Supervisory Council of West Lombok Regency, and other notaries in the form of a prohibition to put up a nameplate, make a deed cover, and make a stamp/seal. The Notary Ethics Code issued by the Indonesian Notary Association also does not impose limits on the authority of a substitute notary public as Article 1 number 2 of the National Energy Policy - Province reiterates that the substitute notary is obliged to obey all provisions of the Notary Ethics Code during his/her position. A statutory regulation or association regulation will not be considered effective when it still causes multiple interpretations. Thus, it raises different sizes regarding the effectiveness of the exercise of substitute notary authority in West Lombok Regency.

Keywords: *Substitute Notary; Authority; Effectiveness*

Introduction

Notary is a public official who is appointed by the state and works in the interest of the state. They are authorized to make an authentic deed as long as it is not reserved for other public officials. Some authentic deed making is required by legislation in order to create legal certainty, order and legal protection (Darus, 2017). Notary carries out one of the functions of the state which is to provide services to the people by providing opportunities for the people to obtain proofs or legal documents relating to civil law (Adjie, 2008).

Law on Notary Position gives such authority to notary. In addition to this large authority, notary obtains the right and has the obligation to carry out the obligations determined by the Law. One of the rights granted by the Law is the right to leave. However, the notary does not

merely obtain the right of leave directly. The right of leave is given to a notary after he/she has served for 2 years as stipulated in Article 25 Law on Notary Position.

A substitute notary may only carry out his/her position as a notary as long as a notary he/she has replaced is unable to carry out the position. Then, all authorities, obligations and prohibitions that apply to the replaced notary also apply to the substitute notary as stipulated in Article 33 paragraph (2) Amendment to Law on Notary Position.

Notary Ethics Code is valid for a substitute notary as long as he/she carries out his/her position. As explained earlier, notary has the same authority, rights and obligations as the notary he/she replaced. However, in practice, substitute notaries are not allowed to carry out some of the provisions required by a notary in carrying out his/her position. One of them is as determined in Article 3 number (9) of Notary Ethics Code.

Referring to Article 33 paragraph (2) of the Amendment to Law on Notary Position and Article 1 number (2) of the Notary Ethics Code, the Law gives a notary substitute for authority attributively to carry all the rights and obligations relating to the implementation of the notary's position. The two articles do not clearly indicate the limits for a substitute notary in carrying out his/her position regarding what is allowed and what is not allowed by a substitute notary. Thus, there is a general blurring of norms in article 33 paragraph (2) of the Amendment to Law on Notary Position because it does not contain authority limits for substitute notaries and raises the pros and cons of notaries in interpreting the intent of the article. Therefore, it caused dissent. If the article statement is seen explicitly, substitute notary has the right to exercise his/her authority based on the provisions of the Law on Notary Position and Notary Ethics Code without any limitation. However, in practice, the authority of substitute notaries in some cases as described above is limited. So, there is a difference between *das sein* and *das sollen*. A research needs to be carried out to examine what may and may not be performed by a notary since there is no article or regulation that prohibits and limits the authority, rights, and obligations of a substitute notary during his/her commission in West Lombok Regency. Currently, there are 40 notaries in office. Thus, it is expected that later on the position of substitute notary finds clarity and certainty of authority.

Research Method

This is a legal research that applies normative and empirical research designs and employs statue approach, conceptual approach, and sociology approach to law. In addition, this study uses primary data obtained from social facts related to the operation of the law faced by researchers in real terms and secondary data obtained from social facts by referring to books, research results, and scientific journals. It is used as result data supporting primary data in the process of discussion and analysis (Mukti Fajar & Achmad, 2010). This research uses several types of legal materials. First is primary legal material which is binding legal material and consists of statutory regulations. Second is secondary legal material that provides an explanation of primary legal materials such as the Draft Law, research results, work from the legal community, and so forth (Soekanto, 2006). Third is tertiary legal material that provides instructions and explanations for primary and secondary legal materials; for instance, legal dictionaries, encyclopedias, cumulative indexes, and so forth.

The following techniques are used in gathering data and legal materials:

1. In normative legal research, data collection is carried out through literature studies on primary legal materials, secondary legal materials, as well as tertiary legal materials and/or non-legal materials. Searching for legal materials can be carried out by reading, seeing, listening to, or searching for legal materials via the internet as is often performed today (Mukti Fajar & Achmad, 2010).
2. In empirical legal research, data collection can be carried out through field studies. There are three field study techniques that are used together or individually. The three techniques include interviews, questionnaires, and observation (Mukti Fajar & Achmad, 2010). Field studies in this study were conducted through in-depth interviews with respondents and informants. Interviews, in this case, are conducting question and answer directly to respondents regarding research problems. Meanwhile, the instrument used to conduct interviews is a guide interview that has been prepared previously by the researcher. In addition, the researchers also use tools such as tape recorders.

Results and Discussion

Substitute Notary Authority in the Law of Notary Position and Notary Ethics Code

Substitute Notary Authority

A substitute notary may only carry out his/her position as a notary as long as the replaced notary is unable to carry out his/her position. Then, all authorities, obligations and prohibitions that apply to the replaced notary also apply to the substitute notary, as provided for in Article 33 paragraph (2) Amendment to Law on Notary Position.

The substitute notary, who has been appointed by the authorized official to replace the notary who is on leave to carry out the position of notary, is required to take an oath/promise as stipulated in Article 4 of the Amendment to Law on Notary Position which also applies to the substitute notary public, the provisions of Article 15 Amendment to Law on Notary Position governing Notary Authority, Article 16 Amendment to Law on Notary Position governing Notary Liability, and Article 17 Amendment to Law on Notary Position governing Prohibition for Notary. Based on Article 33 Paragraph (2), it applies to a substitute notary as long as the person concerned serves as a substitute notary.

Limitation of Authority, Rights and Obligations of Substitute Notary

In notarial practice, there are a number of opinions that give limits to the authority of a substitute notary public during notary's commission because his/her job is not permanent which is only carried out in a matter of months. The authority of a substitute notary is the same as the replaced notary public. In this case, the substitute notary may not put up a nameplate and make a deed cover using the name of the notary

him/herself.¹ Some opinions worry that if a substitute notary puts up a sign, it will eliminate the identity of the replaced notary. Kurniawan argues that a substitute notary may put up a sign with the note that it does not cover the nameplate of the replaced notary and does not remove the identity of the replaced notary.² The substitute notary does not make a cover of the deed using his/her name, but only includes the name and appointment decree as a substitute notary at the beginning of the deed and explains his/her position as a substitute notary of the replaced notary. Substitute notaries are not allowed to put up a signboard because that is their authority since the substitute notary only carries out a temporary position.³

If a substitute notary puts up a nameplate, it can lead to a misunderstanding that the substitute notary takes over the office and the position of the replaced notary.⁴ The authority of a substitute notary is limited to tasks related to notarial matters. In addition, it is not the authority of a substitute notary.⁵ When the replaced notary leave period ends, the substitute notary immediately returns the notary protocol he/she holds during his/her notary position to the replaced notary.⁶ Related to the implementation of a notary commission carried out by a substitute notary, there is a principle of propriety that must be considered by a substitute notary. This principle requires a substitute notary to behave according to the limits that apply in notary organizations and society in general.⁷

¹ Article 33 Paragraph (2) Amendment to Law on Notary Position and Article 1 Number (2) of the National Energy Policy - Province explicitly do not provide specific limits for substitute notaries in exercising authority. The ability to take legal action based on statutory regulations is equivalent to the notary he/she replaces. Then, the article can be analyzed using the method of interpreting the legislation to find certainty to what extent the substitute notary authority. One method of interpretation that is commonly used is the grammatical interpretation method.

Grammatical interpretation is by trying to capture the meaning of a text according to the sound of the words. This can be limited to something automatic that we do unconsciously while reading but can also be more profound. A word has various meanings which in language, law can have other meanings than social language. Trying to find the meaning of words is carried out by searching which words by the legislators are used to regulate such events. We often hear that

¹ Interview with Substitute Notary Nurlaila, S.H., M.Kn at the Notary Office of Ni Nyoman Ridha Widayanti, S.H., M.Kn., on November 14, 2019, at 13:23 Central Indonesia Time.

² Interview with Members of the Notary Regional Supervisory Board of West Nusa Tenggara Province from the Academic Element, Dr. Kurniawan, S.H., M.Hum, at the Faculty of Law, University of Mataram, on November 12, 2017, at 10:00 Central Indonesia Time.

³ Interview with Notary Ahmad Laduni, S.H., M.Kn at the Notary Office of Mulyadi, S.H., M.Kn., on 13 November 2019, at 14.00 Central Indonesia Time.

⁴ Interview with Notary Nani Suryani, S.H., M.Kn at the Notary Office Fitri Susanti, S.H., on November 13, 2019, at 12.00 Central Indonesia Time.

⁵ Interview with Notary Mulyadi, S.H., M.Kn at the Notary Office of Mulyadi, S.H., M.Kn., on 13 November 2019, at 13.00 Central Indonesia Time.

⁶ Interview with Notary Fitri Susanti, S.H. at the Notary Office Fitri Susanti, S.H. on November 13, 2019, at 11:15 Central Indonesia Time.

⁷ Interview with Notary Regional Supervisory Board Member of West Lombok Regency from Government Elementary Ika Pramitha Sharly, at the Regional Office of the Ministry of Law and Human Rights of East Nusa Tenggara, on December 17, 2019, at 08.30 Central Indonesia Time.

when the words are clear, we must not deviate from those words. If so, in clear words, we must not interpret other meanings. In our opinion, as a writer, reading always means interpreting. So, we cannot approve the concept of thought because, in our opinion, the words themselves are never clear but the meaning behind them must be sought. Interpreting words literally is a false picture because 'words literally' are just ink printed on paper. The text of the Law which initially seems clear can become unclear after knowing other articles. Therefore, this is what must be considered: article one, we look for the meaning which is part of the whole legal system and must be seen in relation to the whole (Mertokusumo & Pitlo, 1993).

Literally, the provisions in Article 33 paragraph (2) of the Notary Position Law do not provide limits on the authority obtained by a substitute notary. From the sound of Article 33 paragraph (2) Amendment to Law on Notary Position "Provisions that apply to the notary as referred to in Article 4, Article 15, Article 16, and Article 17 shall apply to substitute notary and temporary notary official, unless this Law determines other". If it is interpreted word for word, the sentence can be translated as follows: The words "provisions that apply to the notary ... apply to the Substitute Notary..." are words that literally indicate that all the authority of the replaced notary is given to the substitute notary. Furthermore, based on the editorial of the article, if we see the words "... unless this Law determines otherwise", it can be interpreted that the provisions in Article 4, Article 15, Article 16 and Article 17 of the Amendment to Law on Notary Position apply substitute notaries may be excluded or restricted if they are listed in Law on Notary Position.

All articles in Law on Notary Position, both Law No. 30 of 2004 concerning the Position of Notary and its amendments namely Law No. 2 of 2014 in force today, there is no single article that limits or excludes the effectiveness of Article 4, Article 15, Article 16, and Article 17 Law on Notary Position for a substitute notary as specified in Article 33 paragraph (2) Amendment to Law on Notary Position. As explained above, from the editor of an oath/promise of office that must be pronounced by a substitute notary in Article 4 requires that the substitute notary obeys the Notary Ethics Code. This obligation is also supported by Article 1 Number (2) of the Notary Ethics Code that the substitute notary is obliged to obey all provisions in the Notary Ethics Code.

As explained above, by analyzing the Law on Notary Position, Notary Ethics Code, and some opinions expressed by the speakers, it can be explained that the substitute notary gets the same authority as the notary who was replaced and there is no any limitation in the authority he/she obtained. That authority includes the rights and obligations in the Law on Notary Position and Notary Ethics Code as specified in Article 33 paragraph (2) of Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 and Article 2 of the Notary Ethics Code. Limitation of authority for substitute notary is only in the practice of notary where the limit is given by notary practitioners especially in West Lombok Regency which is not based on laws and regulations and association rules that have been recognized by the state; in this case, the Indonesian Notary Association. Therefore, the authority limits for substitute notaries need to be included in the Law on Notary Position and Notary Ethics Code because the notary practitioners carry out notary practices based on the laws and regulations and the Notary Ethics Code that is in force today. Without a definite legal basis, the limitations stated by the resource persons cannot be accepted or implemented.

1 *Effectiveness of the Implementation of Substitute Notary Authority in West Lombok Regency*

1. Supervision of the *Effectiveness of the Implementation of Substitute Notary Authority*

In carrying out their position, the notary is institutionally supervised by 3 (three) institutions, based on the Law on Notary Position through the Notary Supervisory Council, and the Notary Honorary Council, and the Notary Honorary Board of the Indonesian Notary Association. The three institutions have different authorities as stated in the legal rules governing them. According to Article 67 of the Amendment to Law on Notary Position, the authority to supervise the notary is exercised by the minister. In carrying out oversight of the notary, the minister forms a supervisory assembly which is an extension of the minister to carry out the task of overseeing the notary's performance in the territory of Indonesia. In addition to the Notary Supervisory Board, the minister also forms a Notary Honorary Council in Article 66A Amendment to Law on Notary Position in the context of carrying out guidance to the notary. For judicial proceedings, investigators, public prosecutors, or judges must obtain the Notary Honorary Council approval to summon a notary to take a photocopy of the minutes of the deed and summon a notary for examination. As an official notary organization, the Indonesian Notary Association established the Notary Honorary Board as an extension or completeness of the organization in upholding the Notary Ethics Code.

2. Factors Affecting the Effectiveness of the Implementation of Substitute Notary Authority

Soerjono Soekanto argued that the factors affecting law enforcement are closely interrelated because it is the essence of law enforcement and is also a benchmark of law enforcement effectiveness, including:

- a. The legal factor itself;
- b. Law enforcement factor which includes those who form or apply the law;
- c. Factors of facilities that help to enforce the law;
- d. Community factor which is the environment in which the law applies and implemented; and
- e. Cultural factor, as a result of work, creativity and taste based on human initiative in the association of life.

Meanwhile, Lawrence M. Friedman put forward three elements that must be considered in law enforcement, the three elements include:

- a. Legal structure;
- b. Legal substance; and
- c. Legal culture.

3. Effectiveness of the Implementation of Substitute Notary Authority

Legislation, which is lower or higher level, aims to ensure that the community and law enforcement officials can implement consistently and without differentiating one community from another. All people are considered equal before the law (equality before the law). However, in reality, the aforementioned laws and regulations are often violated so the rules do not apply effectively. The ineffectiveness of the Law can be caused by the Law being vague or unclear, inconsistent officials and/or the community who do not support the implementation of the Law. If the law is implemented well, it is considered effective. Effective means that the statement of the law is clear and does not require interpretation, the authorities enforce the law consistently and the people affected by the regulation support it.

According to the author, the exercise of authority, which is given to the substitute notary by attribution through Article 33 paragraph (2) Law on Notary Position and Article 1 number (2) Notary Ethics Code, is not considered effective because between the Notary, Indonesian Notary Association Board and the Assembly Supervisors in West Lombok Regency expressed different opinions about the limits of substitute notary authority. A statutory regulation or association regulations will not be considered effective when it still raises multiple interpretations. Thus, it raises different sizes regarding the effectiveness of the exercise of authority by substitute notaries in West Lombok Regency. Therefore, it requires confirmation and sharpening of authority limits for substitute notaries in the Law on Notary Position and association regulations in the form of Notary Ethics Code. The administrators of the Indonesian Notary Association and notaries throughout Indonesia are expected to conduct open discussions to discuss the authority limits for substitute notaries since multiple interpretations of the regulations resulting in substitute notaries unable to exercise their authority effectively.

Conclusions

1. The authority of a substitute notary in West Lombok Regency is limited by the management of the Indonesian Notary Association in West Lombok Regency, the West Lombok Regency Regional Supervisory Board, and other notaries in the form of a prohibition on installing nameplate, making cover deeds, and making stamp/seal. These limitations are not based on the laws and regulations and the rules of the Association of Indonesian Notaries because the authority obtained by a substitute notary in Law No. 30 of 2004 concerning the Position of Notary and its amendments namely Law No. 2 of 2014 in force currently does not contain any single article that limits or excludes the effectiveness of Article 4, Article 15, Article 16, and Article 17 Law on Notary Position for a substitute notary as specified in Article 33 paragraph (2) Amendment to Law on Notary Position. The Notary Ethics Code issued by the Indonesian Notary Association also does not impose limits on the authority of a substitute notary public as Article 1 number 2 of the National Energy Policy - Province reiterates that the substitute notary is obliged to obey all provisions of the Notary Ethics Code during his/her position.
2. In the exercise of authority granted to the substitute notary by attribution through Article 33 paragraph (2) of the Law on Notary Position and Article 1 number (2) of the Notary Ethics

Code is not considered effective because between the notary, the Indonesian Notary Association Board, and the Supervisory Council in Lombok Regency The West expresses different opinions regarding the limits of substitute notary authority. Factors affecting the implementation of substitute notary authority consist of unclear legal substance factors so that it gives rise to multiple interpretations, community that still does not understand the existence of a substitute notary, and legal culture factors. A statutory regulation or association regulation will not be considered effective when it still causes multiple interpretations. Thus, it raises different sizes regarding the effectiveness of the exercise of substitute notary authority in West Lombok Regency.

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Notary Ethics Code. Indonesian Notary Association

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