

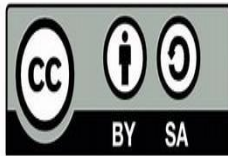
Legal Responsibilities of Extraordinary Members (ALB) as a Substitute Notary in Making Deeds

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Abstract: The position of Extraordinary Members (Anggota Luar Biasa/ALB) of the Indonesian Notary Association (INI) as Substitute Notaries during internship activities carries strategic significance and legal implications. ALBs who have fulfilled the necessary requirements may be appointed to temporarily carry out a notary's duties, offering them valuable experience and skill development. This study seeks to examine the legal standing of ALBs in such roles and how these internship activities are implemented. Employing a normative juridical approach, the research is based on Law Number 2 of 2014 concerning the Position of Notaries and the notary profession's code of ethics. The findings show that although ALBs possess limited authority, they are legally accountable for every deed they produce during their appointment. Each notarial deed must explicitly mention the status of the ALB as a Substitute Notary, in accordance with the applicable legal provisions. Any deviation from proper procedures can lead to the deed being legally defective or declared null and void. Therefore, the role of ALBs as Substitute Notaries must be exercised with caution and adherence to professional ethics. In addition, the position of ALBs in internship activities as Substitute Notaries also influences the violations committed as substitute notaries.

Keywords: Deed; Internship; Substitute Notary.



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I. INTRODUCTION

A notary is a general official appointed by the government to assist the community in drafting agreements that occur in the community. To ensure that written agreements before a notary are legally valid for all parties involved. The position of notary is considered an honor that involves the obligation to comply with the Notary Law, the Notary Code of Ethics, and applicable laws and regulations, with the risk of losing the position if violated.¹

Extraordinary Notary Member is someone who has graduated from Notary Education who has been registered as a member of the Indonesian Notary Association organization. Registration as an extraordinary member of the Indonesian Notary Association as an initial requirement before continuing to the implementation of an internship at a notary's office, The implementation of internships as regulated in the Indonesian Notaries Association regulation number 19/Perkum/INI/2019 concerning Internships, Article 1 explains that internships are divided into 2, namely internships, namely joint internships and internships at notary offices. Internships at notary offices are a practice of implementing the position for prospective notaries at the notary's office receiving internships, the period taken by Extraordinary Notary Members in implementing internships at the notary's office receiving internships is at least 24 consecutive months after graduating from Notary Education and has been registered as an extraordinary member of the Indonesian Notary Association.

The responsibility and ethics of the notary profession are closely related to morals and integrity, so that if a notary does not have good integrity and morals, then the notary cannot be said to have good professional responsibility and ethics.² In the process of making a deed, the Notary involves staff/ALB (Extraordinary Members) of the Notary who are undergoing an internship process at the Notary's office. The involvement of the ALB Notary who is interning in making a Notary deed is done because it is a procedure in the Indonesian Notary Association to prepare prospective notaries in preparation before entering the world of the Notary profession. Internships at the Notary's office as explained in article 1 of the regulations to the Association of Notaries in Indonesia Number 19/Perkum/INI/2019, internships at notary offices are a way for prospective notaries to work at the notary's office they accept.

Article 16 paragraph (1) letter a mandates that prospective notary interns must act in a trustworthy, honest, thorough, independent, and neutral manner. They must also protect the interests of all parties involved in legal matters. In addition to these responsibilities, prospective notaries are also required to keep confidential all

¹ Shofiya Hasna, Abdul Halim Barkatullah, dan Ahmad Syaafi, "Tanggung Jawab Calon Notaris Magang pada Kantor Notaris dalam Prespektif Undang-Undang Jabatan Notaris," *Banua Law Review* 4, no. 1 (2022): 25.

² Eudea Adeli Arsy, Hanif Nur Widhiyanti, dan Patricia Audrey Ruslijanto, "Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 130–40.

information related to the deeds they make and all information obtained in the process of making the deeds. The meaning of Article 16 A paragraph (2) in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of notary can be understood from the perspective of the legislators as stated in the latest academic paper on the law on the position of notary. According to the academic paper, the internship period required to become a notary has been extended from twelve to twenty-four months. The purpose of this internship is to provide prospective notaries with professional, personal, and social competencies that are in accordance with the purpose of the internship, namely the transfer of knowledge and skills. In addition, prospective notaries are required to maintain confidentiality as notaries do when carrying out their official duties.³

The purpose of internships for prospective notaries is to provide them with the skills and knowledge they need to carry out their future work. In order to become a qualified and skilled notary, students must apply the theoretical knowledge learned during the Master of Notary program in real life. The Lawmaker has established the obligation of notaries to assist prospective notaries who wish to do internships or upon the recommendation of notary organizations. Since it is required by law, notaries must fulfill their obligations while carrying out their duties.⁴

Article 16 paragraph (1) letter n of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states that notaries are required to accept ALB internships while carrying out their position. According to Article 16 paragraph (1) letter n, notaries must accept internships from prospective notaries to prepare them to become notaries professionally. Accepting internships from prospective notaries as explained above means notaries.

Article 16A paragraph (2) of the UUJN is an addition between Article 16 and Article 17 of the UUJN. On the one hand, this provision creates a difference because prospective notaries are not required to make deeds during their internship, which is a requirement to become a notary. On the other hand, there is no obligation to make deeds during their internship. However, on the other hand, prospective notaries are required to maintain the confidentiality of all information related to the deeds they make and all information required to make the deeds. This seems to give prospective notaries the authority to make authentic deeds, but also requires them to keep them confidential.⁵

³ Hasna, Barkatullah, dan Ahmad Syaufi, "Tanggung Jawab Calon Notaris Magang pada Kantor Notaris dalam Prespektif Undang-Undang Jabatan Notaris."

⁴ Cut Indah Puti Seruni, "Efektivitas Pelaksanaan Magang Bagi Calon Notaris Di Kantor Notaris Di Kota Banda Aceh", *Premise Law Jurnal*, No. 1, 2019, H. 71–79.

⁵ Rani Yuliani, "Tanggung Jawab Hukum Calon Notaris Yang Sedang Magang Terhadap Kerahasiaan Akta", *Jurnal Jatiswara*, Vol. 33 No. 2, 2018 <https://doi.org/10.29303/Jatiswara.V33i2.170>.

Sometimes at a certain time, a prospective notary in the internship process is proposed to be a substitute notary, this is problematic when viewed in the UUJN regarding a substitute notary, namely someone who is temporarily appointed as a Notary to replace a Notary who is on leave, sick, or temporarily unable to carry out his/her position as a Notary. According to Article 33 of the UUJN, those who can be appointed as substitute notaries are employees who have worked in a notary's office for at least two consecutive years. Therefore, notaries who take leave and appoint substitute notaries are intern members. The association's regulations contain sanctions for interns who commit violations, the sanctions are explained in Article 12 of the regulation, it is explained that for interns who violate the provisions of this Association Regulation, then:

- a. The internship period cannot be recorded and must be repeated according to applicable provisions;
- b. Based on the Decision of the relevant INI Regional Management Meeting, the internship certificate that has been obtained cannot be registered by the Regional Management.

Currently, neither the UUJN nor the Notary Code of Ethics have yet to stipulate sanctions for prospective notaries who violate the provisions in Article 3 letter f and Article 16A of the UUJN, which regulate the responsibilities of prospective notaries. Therefore, sanctions cannot be imposed on ALBs who are interns, because they have not fully complied with the provisions in the notary job regulations, and there are no specific rules governing sanctions for violations by ALBs. Although prospective notaries are not yet bound by the provisions in the UUJN, they can still be subject to criminal or civil sanctions.⁶ From the background description, the problem that will be studied arises, namely the Legal Responsibility of ALB as a Substitute Notary in Making Deeds.

II. METHODS

In this study, The legal research method used is normative juridical. Normative juridical is a type of legal research that goes beyond mere legal knowledge; it is a type of research that utilizes the ability to identify legal problems, conduct legal reasoning, analyze legal problems, and generate solutions.⁷ The problem-solving approaches used in writing this thesis are the statutory approach and the conceptual approach. The statutory approach method is used to examine all laws and regulations relating to the legal issue being studied and to determine whether the laws are consistent and in accordance with other laws.⁸

III. ANALYSIS AND DISCUSSION

⁶ Ida Bagus Nyoman Kartika Yudha, "Tanggung Jawab Caln Notaris Yang Magang Tidak Sebagaimana Mestinya Ida", *Jurnal Kertha Semaya*, Vol. 9 No. 2, 2021, H. 206–221.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2016).

⁸ Mahmud Marzuki.

Legal Implications of Defective Deeds Made by ALB as Substitute Notary

ALB INI is a prospective notary who undergoes an internship as part of the preparation process to become a notary. Under certain conditions, ALB can be appointed as a substitute notary if the notary concerned is temporarily unable to do so for a legitimate reason, such as leave, illness, or other reasons. As a substitute notary, ALB has the authority to make authentic deeds, in accordance with the provisions stipulated in the Notary Law. Article 33 paragraph (2) No. 2 of 2014 explains that a substitute notary has the same obligations in carrying out his/her position based on Article 16 of the UUNJ.

A notary can be responsible for the material truth of a deed in four ways:⁹

1. The notary's civil liability for the material truth of the deeds he has made
2. The notary's criminal liability for the material truth of the deeds he has made
3. The notary's liability based on the Notary Law for the material truth of the deeds he has made
4. The notary's liability in carrying out his duties based on the notary's code of ethics.

As an official who makes authentic deeds, a notary can be subject to sanctions in the form of threats as stipulated by law if the mistake he makes, either intentionally or due to negligence, causes another person to suffer losses as a result of making the deed. The notary's responsibility for the deeds he makes is based on fault (based on fault of liability) so that a notary must be responsible if the deed he makes contains an error or violation that is intentional by the Notary. However, on the other hand, if the error occurs between the parties, then as long as the Notary carries out his authority in accordance with what is regulated in the Law, the Notary concerned cannot be held responsible because the Notary only records all the information he obtains from the parties.

The party who suffers a loss can claim compensation for notary fees, damages, and interest, according to Article 84 of the Notary Law. In Article 41 of the Notary Law, the amendment to the Law determines the existence of civil sanctions. If a Notary commits an unlawful act or violates Articles 38, 39, and 40 of the Amendment to the

Notary Law, then the Notary deed will only have proof as a private deed.¹⁰ An authentic deed that is made changes into a private deed if:

1. A legal act by law is not required to be stated in an authentic deed.
2. If the deed loses its authenticity due to the failure to fulfill the formal requirements referred to in Article 1869 of the Civil Code in conjunction with the UUJN

All parties must sign the private deed. According to Article 1365 of the Civil Code, the notary concerned cannot be held legally responsible if the change or damage to the authentic deed into a private deed does not cause any loss. Due to the fact that they have legal defects, a notary who makes an authentic deed whose contents are fake will lose its status as the strongest evidence. Based on Article 1869 of the Civil Code, a notary does not make a deed properly, so that the deed becomes a private deed.

An authentic deed is a deed made in a form determined by law by or before an authorized public official for that purpose at the place where the deed was made, according to Article 1868 of the Civil Code. In his duties, a notary can commit an unlawful act, namely falsifying an original deed. This falsification can be done both formally and materially, formally if the party issuing the deed is not an authorized party. Material falsification is when the contents of the deed do not correspond to the information of the interested party. Some forms of falsification in deeds include:¹¹

1. Intellectual Falsity

This accusation of intellectual falsity questions the truth of the contents of the deed. Any type of evidence permitted by law can be used to prove the falsity. This accusation of falsity is directed at the contents of the information contained therein, namely:

- a. Contrary to the truth, or;
- b. Not in accordance with the actual situation.

¹⁰ T.Keizerina Devi Azwar Hani Nuanza Uemenina, Budiman Gining, Hasim Purba, "Akibat Hukum Akta Perubahan Yayasan Yang Mengandung Cacat Hukum," *Recital Review* 4, no. 1 (2022): 177.

¹¹ Badar Baraba Vivi Carolin Wijaya, Anita Afriana, "Perlindungan Hukum Secara Keperdataan Bagi Klien Notaris Yang Mengalami Kerugian Akibat Diterbitkannya Akta Autentik Yang Cacat Hukum Oleh Notaris", *Acta Diurnaljurnal Ilmu Hukum Kenotariatan*, Vol. 7 No. 1, 2023, H. 20.

2. Material Falsehood

Very similar to intellectual falsehood. Material falsehood includes not only the falsehood of the content but also the authenticity of the signature. A person can dispute the signature contained in the deed. So material falsehood can include: *Kepalsuan tanda tangan*:

3. Falsehood in form and content with reason:

- a. There is deletion of content;
- b. Contains exchanges and additions;
- c. Statements that are untrue or inappropriate.

Degradation of the deed, the original notarial deed containing forgery or lies can be declared null and void by law. This is because, according to Article 1320 of the Civil Code, it has violated the objective terms of the agreement. If a law is declared null and void by law, the law can be considered to have never existed or never been made, so that it has no legal consequences. If the change or damage to the authentic deed to become a private deed does not cause any loss, the notary concerned cannot be held accountable in accordance with Article 1365 of the Civil Code. An authentic deed made by a notary who does not meet the legal requirements, such as one made with false data or documents, will certainly lose its power as the strongest and most complete evidence.¹²

There are several mistakes made by notaries that can cause replacement notaries to become entangled in criminal, civil and administrative problems, such as:

1. A substitute notary can be charged with a criminal offense of document forgery if the deed made contains false or fabricated information.
2. If an authentic deed is made based on facts or data that do not correspond to the actual situation, the substitute notary can be considered to have falsified the authentic deed.
3. If a legally defective deed harms one or all parties involved, the substitute notary can be sued to pay compensation.

¹² Benny Djaja Wulan Agustini, "Pertanggungjawaban Notaris Terhadap Akta Yang Cacat Hukum", *Presumption Of Law*, Vol. 6 No. 1, 2024, 10.

4. A legally defective deed can be canceled through a court decision if it is proven not to meet the formal and material requirements as stipulated in Article 1868 of the Civil Code.
5. Cancellation of a deed causes the deed to lose its legal force and is considered to have never existed.

Does a Deed of Legal Defect Affect the Membership Status of ALB in the Indonesian Notary Association

Substitute notaries, including Extraordinary Members (ALB) who act as substitute notaries, are fully responsible for the authentic deeds they make. According to Law Number 30 of 2004 concerning the Position of Notary (UUJN), which has been amended by Law Number 2 of 2014, administrative sanctions can be imposed if the deed made is invalid due to violation of procedures, negligence, or deviation from applicable regulations.

The Notary Supervisory Board carries out administrative sanctions against substitute notaries, which function as an instrument to take preventive measures to enforce compliance. The imposition of administrative sanctions consists of supervision and sanction affirmation, both of which function as repressive measures to enforce compliance.¹³ Article 4 paragraph (3) of the UUJN states that the notary organization establishes and enforces a notary code of ethics, which must be adhered to by substitute notaries when carrying out their duties. is a public official who has the authority to make authentic deeds regarding all actions, agreements and determinations required by law or by interested parties who wish to be made in the form of an authentic deed. Supervision carried out by the Notary Supervisory Board includes the behavior of notaries and the implementation of the notary's position, this supervision also applies to substitute notaries based on Article 67 paragraph (6) of the UUJN. In terms of the implementation of sanctions, it is carried out by the regional supervisory board by proposing the imposition of sanctions to the Central Supervisory Board in the form of:

1. Temporary dismissal for 3 (three) months to 6 (six) months; or
2. Dishonorable dismissal.

¹³ Henny Saida Flora, "Tanggung Jawab Notaris Pengganti Dalam Pembuatan Akta", *Kanun Jurnal Ilmu Hukum*, Vol. 14 No. 2, 2012, 196.

If the legally defective deed contains elements of criminal violations (such as document forgery) or civil (such as unlawful acts that harm other parties), the legal implications are more serious. In such cases, ALB may face:

1. Legal Sanctions: Criminal proceedings or civil lawsuits that may affect his/her credibility and status as a notary candidate.
2. Revocation of Membership: If found guilty of a serious violation of the law, INI may recommend revocation of ALB status through the Regional Honorary Council (DKD) or the Central Honorary Council (DKP).

Based on Article 33 Number (2) UUJN, during the notary's leave, the substitute notary may only carry out the authority and responsibilities related to the notary's work.¹⁴ In terms of the liability of a substitute notary for an authentic deed he/she made, the liability for errors in the authentic deed he/she made is fully borne by the substitute notary, whether he/she is still in office or no longer in office. The Replacement Notary must return the protocol and position to the Notary who will replace him after his term of office ends. If a legal error occurs during his term of office, the replacement notary can still be held accountable.

VI. CONCLUSION

The responsibility of the ALB as a replacement notary still attaches to the replacement notary whether the replacement notary is still working or is no longer a replacement notary, full legal responsibility for errors in the authentic deeds he made. The Replacement Notary must return his position and protocol to the Notary who will replace them after his term of office ends, but the Replacement Notary can still be held responsible if there are errors in the deed during his term of office.

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¹⁴ Zakiah Noer And Ahmad Khoirul Khafid, "Tanggungjawab Notaris Pengganti Terhadap Kesalahan Akta Otentik Yang Dibuatnya", *Jurnal Pro Hukum*, Vol. 10 No. 1, 2021, 78.

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