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In the age of pandemic, Covid-19 had impacts on humans. In relation with the humans has a correlation with the development of law, and thus the committee held the 2020 International Students Colloquium with the topic of "Law and Development During Pandemic Era: Alleviating the Disadvantages to the Law that Affected by Covid-19". The objective of the conference is to acknowledge the participants regarding how the settlement should be the problem and disadvantage caused by the pandemic; to engage the participants to think critically to the polemic issue of law during a pandemic; and as a venue for lecturer, student, and community in responding to poor resolution from each country.

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As the output of the conference, the committee proudly publishes the dissemination issue had discussed in the conference by collecting the student's paper in this proceeding. For this reason, this proceeding may inform the readers about the legal issue, particularly, in Indonesia, South Korea and Malaysia.

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Foreword

Assalamualaikum, wr., wb.,

In the age of pandemic Covid-19 had impacts toward the humans. In relation with the humans has correlation with the development of law, and thus the committee held the 2020 International Students Colloquium with the topic of “Law and Development During Pandemic Era: Alleviating the Disadvantages to the Law that Affected by Covid-19”. The objective of the conference is to acknowledge the participants regarding how the settlement should be the problem and disadvantage that caused by the pandemic; to engage the participants to think critically to the polemic issue of law during pandemic; and as a venue for lecturer, student, and community in respond to poor resolution from each country.

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Wassalamualaikum wr. wb.

Editor in Chief,

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Turning the Substitute Notary Into an Acting Notary Upon the Death of the Notary Public

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Abstract

This research aims to examine the possibility to turn the Substitute Notary into an Acting Notary upon the death of the Public Notary. The study is formulated based on the following research problems, namely, first, Is it possible to turn the status of the Substitute Notary into an Acting Notary upon the death of the Notary Public?, and second, how is the position of a Substitute Notary who changed his status to an Acting Notary in deed formulation? This is a normative legal research, which analyzes problems by way of combining legal materials and supported by primary data obtained from real cases, which have occurred in Kulonprogo Regency. The study was conducted using the statutory and conceptual approach with descriptive-qualitative analysis as a way to answer the predetermined problem formulations through narrative description. The research revealed that, first, the changing status from a Substitute Notary into an Acting Notary as regulated in Article 35 paragraph (3) UUJN-P is of an immediate nature. The study indicated that UUJN does not regulate any provisions regarding certain procedures relevant to this, and second, the Substitute Notary who Acts as the Notary Public has the authority to formulate deeds in his own name on the basis of Acting Notary on Article 35 paragraph (3) and paragraph (4) UUJN-P, which is stated at the beginning of the deed.

Keywords: Substitute Notary Public, Acting Notary, Death of Notary Public

Abstrak

Penelitian ini berjudul “Perubahan Status Notaris Pengganti Menjadi Pejabat Sementara Notaris Ketika Notaris yang Digantikannya Meninggal Dunia” dengan rumusan masalah yaitu *pertama* apakah serta merta Notaris Pengganti dapat berubah status menjadi Pejabat Sementara Notaris pada saat Notaris yang digantikannya meninggal dunia, dan *kedua* bagaimanakah Notaris Pengganti yang berubah status menjadi Pejabat Sementara Notaris dalam memformulasikan akta. Jenis penelitian ini adalah penelitian hukum Normatif yaitu penelitian yang dilakukan dalam menganalisis permasalahan yang dilakukan dengan cara memadukan bahan-bahan hukum serta didukung dengan data primer berupa kasus nyata yang terjadi di Kabupaten Kulonprogo, dengan metode pendekatan Perundang-undangan dan pendekatan konseptual lalu di analisis dengan cara deskriptif-kualitatif sehingga bahan yang diperoleh akan dapat menjawab rumusan masalah yang penulis buat dengan cara memberikan gambaran yang diuraikan dalam bentuk narasi. Hasil penelitian ini yaitu *pertama* perubahan status Notaris Pengganti menjadi Pejabat Sementara Notaris sebagaimana yang diatur pada Pasal 35 ayat (3) UUJN-P adalah bersifat serta merta, karena

berdasarkan kajian yang dilakukan, UUJN tidak mengatur ketentuan mengenai prosedur tertentu, dan *kedua* Pejabat Sementara Notaris berwenang untuk memformulasikan akta atas namanya sendiri dengan dasar bertindak Pasal 35 ayat (3) dan ayat (4) UUJN-P yang dicantumkan pada awal akta.

Kata Kunci: Notaris Pengganti, Pejabat Sementara Notaris, Notaris Meninggal Dunia.

A. RESEARCH BACKGROUND

Notary Public is the only one to execute the duties of notarization for the public. UUJN-P has stipulated that apart from Notary Public, the Acting Notary and Substitute Notaries are also in charge of notarization. The provisions of Article 1 point 3 UUJN-P in conjunction with Article 33 paragraph (2) UUJN-P are intended to regulate the legal position (*rechtpositie*) of a Substitute Notary, as a Notary Public. Such legal position insinuates that the Substitute Notary serves as a public official as referred to in the provisions of Article 1868 of the Civil Code. In other words, the Substitute Notary has the authority of a Notary Public as referring to UUJN-P, namely as an Acting Public Officer who has the authority as a Notary Public. The substitute notary is appointed by the competent authority based on UUJN-P, instead of by the Notary Public who is not allowed to propose or appoint him. Clear legal position of the Substitute Notary is needed not only for the benefit of the Substitute Notary, but also for the public interest, who use the services of the Substitute Notary. Based on the equal legal status between the Substitute Notary and the Notary Public, there is no doubt that the deeds made by the Substitute Notary have the same legal force as the Notary Deeds. In other words, the deeds made by or before the Substitute Notary are authentic and have perfect evidentiary force as referred to in Article 1870 of the Civil Code.¹

The legal relationship between a Notary Public and a Substitute Notary has been debated recently given the significant position of the Substitute Notary to fill the vacancy of a Notary Public who is on leave, sick, or temporarily unable to carry out his position as a Notary to ensure legal certainty of documents for the public. However, there are some differences of authority between Notary Public and Substitute Notary. The limit of authority of the Substitute Notary ends upon the expiry of the service period stated in the decision letter.²

To be appointed as a Substitute Notary, a person has to meet the requirements as explained and specified in Article 33 of the UUJN-P, as follows:

1. To be appointed as Substitute Notary and Acting Notary, someone has to be an Indonesian citizen with a certified Bachelor of Laws and has been employed as an employee of Notary's office for at least 2 (two) consecutive years.
2. Provisions that apply to Notaries as referred to in Article 4, Article 15, Article 16 and Article 17 apply to Substitute Notaries and Acting Notaries, unless the law provides otherwise.

¹ Henny Saida Flora, "Tanggung jawab Notaris Pengganti dalam Pembuatan Akta", (2012), *Kanun Jurnal Ilmu Hukum* Vol. 57, August, No. XIV, 183.

² Habib Adjie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No.30 Tahun 2004 tentang Jabatan Notaris*, (Refika Aditama, Bandung, 2014) 44.

A Notary who is on leave may undergo an immediate accident which results in the Notary's death. To temporarily replace the duties and authorities of a deceased Notary while on leave, the Substitute Notary will act as a Acting Notary as regulated in Article 35 paragraph (3) of the UUJN-P, namely: The Notary is executed by a Substitute Notary as an Acting Notary no later than 30 (thirty) days from the date the Notary's death".

However, UUJN-P does not clearly stipulate about the replacement mechanism from a Substitute Notary to an Acting Notary, but only explains that a Substitute Notary carries out his authority as an Acting Notary starting from the date of the Notary's death.

The mechanism/procedure for the change of status from a Notary Substitute to an Acting Notar remains debatable, whether the replacement can immediately occur as of the death of the Notary as referred to in Article 35 paragraph (3) or must go through a procedure determined by the Regional Supervisory Council, or probably with the issuance of The appointment letter from the Regional Supervisory Council to the appointed Substitute Notary. On this basis, it is necessary to examine the clear mechanism/procedure for changing the status of a Substitute Notary into an Acting Notary.

The next concern is related to the position of the Substitute Notary and the Acting Notary in the making/formulation of the deed. As aforementioned, a Notary Substitute and an Acting Notary are different. The function of a Substitute Notary is resulted from a request for leave, illness or the inability of a Notary to carry out his position as a Notary, while an Acting Notary appears to replace a deceased Notary.

From the provided research background, this study formulates the following research problems to be studied further: *first*, Is it possible to turn the status of the Substitute Notary into an Acting Notary upon the death of the Notary? *Second*, how is the position of a Substitute Notary who changed his status to an Acting Notary in deed formulation?

B. RESEARCH METHOD

This is a normative legal research, which analyzes problems by combining legal materials and supported by primary data derived from real cases that occurred in Kulonprogo Regency. The study was conducted using the Legislative and conceptual approach and with descriptive-qualitative analysis as a way to answer the predetermined research problems through narrative description.

C. RESEARCH RESULTS AND DISCUSSION

1. Submission of Application for Notary Leave

To apply for a leave, a Notary must apply for a Leave Certificate issued by the Minister or an authorized official. Notary can submit an application to the Minister by filling out the form for leave certificates electronically or through the online platform based on the following steps:³

- a. The notary shall access the AHU website page at <http://ahu.go.id/>;
- b. The notary shall click the Notary login menu;

³ Quoted from https://panduan.ahu.go.id/doku.php?id=aplikasi_permohonan_sertifikat_cuti accessed on April 8, 2020

- c. The notary shall enter the Notary account user on the login menu, which consists of a user id and password;
- d. After logging in and accessing the website page, the Notary can choose the option to Request for a Leave, and select the request for a leave certificate;
- e. When the Notary has selected the leave certificate application, the leave certificate application form will appear and the Notary simply fills in the data for the Leave Certificate Application Form;
- f. The notary shall click “send”
- g. After filling out the application for a leave certificate, the Notary must pay a bill of IDR 250,000 (two hundred and fifty thousand rupiah) and wait for Verification from the Verifier who will verify the application for a Notary leave certificate;
- h. Once the payment is made, the list page for the leave certificate application will appear in the form of proof of payment, and the Notary shall download the leave form, leave certificate, and print it;
- i. The leave certificate can only be downloaded 1 (one) time.

To apply for a leave, a Notary must go through an official/formal procedure by making a written leave request containing the identity of the Notary, the reasons for the leave, and the start and end date of the leave or the period of leave and the appointment of a Substitute Notary. To apply for a leave, the Notary must attach the following documents:⁴

- a. Photocopy of the decision on the appointment or transfer of a Notary that has been legalized;
- b. Photocopy of official notary oath/appointment of office that has been legalized;
- c. Letter of appointment of a Substitute Notary;
- d. Original Notary leave certificate.

A Notary who has completed the required documents to apply for a leave shall submit all documents to the Notary Supervisory Council either to MPD (Regional Supervisory Council), MPW (Territorial Supervisory Council) or MPP (Provincial Supervisory Council), depending on the requested period of leave.

In case of leave approval by the MPD, the MPD will issue a leave decree and the appointment of a substitute notary within a maximum period of 14 (fourteen) days from the date of approval of the leave application, and determine the date of the inauguration of the Notary Substitute. This is done on the account that the Substitute Notary must first take an oath before an authorized official. After taking the oath, the Substitute Notary will need to sign the Letter of Appointment to start office as the Substitute Notary and to gain the right to act as a Substitute Notary based on the Appointment Decree. It is also stipulated that prior to taking the leave of office, the Notary concerned has to conduct Notary Protocol by handing over his authority to the Substitute Notary. The Notary Protocol of handover of power is made a Minutes of Handover of Power to be reported to the MPD.⁵

⁴ Interview with Mr. Rio Kustianto Wironegoro, S.H., M.Hum, as a Notary in the Special Region of Yogyakarta on March 17, 2021

⁵ Interview with Mr. Rio Kustianto Wironegoro, S.H., M.Hum, as a Notary in the Special Region of Yogyakarta on March 17, 2021

2. Changes in the status of a Notary Substitute to an Acting Notary upon the Death of the Substituted Notary

The difference between a Substitute Notary and an Acting Notary lies in the event that generates the two positions. Whereas a Substitute Notary is appointed to replace the position of a Notary Public who applies for his leave rights and/or is unable to carry out his position for a while, an Acting Notary by referring to the provisions of Article 1 point 2 UUJN-P is appointed upon the death of the Notary concerned.

To further examine the role of an Acting Notary, this study analyzed real cases or events that occurred in the field as a way to better explore the provisions of Article 35 paragraph (3) UUJN-P. The passage of a Notary on leave once occurred in Kulonprogo Regency. In this case, the Kulonprogo Regency MPD received information about the Notary's death via telephone (land line service), from the Substitute Notary of the deceased Notary. The Substitute Notary is the nephew of the deceased Notary. In other words, the Substitute Notary happened to bear a family relationship with the deceased Notary. After receiving information about the death of the Notary concerned, the Kulonprogo Regency MPD allowed some mourning period for the family to give a proper funeral for the deceased. During this mourning period, the MPD held a meeting, and decided to appoint the Substitute Notary as an Acting Notary. Notification to the Substitute Notary Public regarding his appointment as an Acting Notary is conveyed verbally without any official or formal procedures by the MPD of Kulonprogo Regency, such as issuance of notification letters, appointment letters, appointment decree and/or other similar official letters.⁶

The resource person also explained that the MPD of Kulonprogo Regency only held a small meeting attended by only a few members to make such decision. This condition refers to the provisions in Article 35 paragraph (3) of the UUJN-P that requires that the position of a Notary be carried out by an Acting Notary for a maximum of 30 (thirty)) days from the date of the Notary's death. Thus, from this provision, it will be impossible to conduct formal and official meeting by inviting all members of the MPD organizational structure of Kulonprogo Regency, given the short allotted time of only 30 (thirty) days. In addition, it is impossible for the Substitute Notary who serves as the Acting Notary to settle all the affairs and/or interests of the deceased Notary within this short period of time.⁷

The research informant regarding the death of a Notary who was on leave explained and informed that the appointment of a Substitute Notary to an Acting Notary was based on Article 35 paragraph (3) of the UUJN-P, which stipulates that *"If the Notary dies while on leave, the duties of the Notary Public are executed by a Substitute Notary as an Acting Notary no later than 30 (thirty) days from the death of the Notary."* On this basis, it is clear that the changes referred to are of an immediate nature.

Whereas the emergence of the rule regarding Article 35 paragraph (3) of the UUJN-P, is due to emergency reasons, the event of death is an unpredictable event.

⁶ Interview with Mrs. Sri Rejeki Wulan Sari, S.H., as Chair of the Regional Supervisory Council (MPD) of Kulonprogo Regency, on April 5, 2021

⁷ Interview with Mrs. Sri Rejeki Wulan Sari, S.H., as Chair of the Regional Supervisory Council (MPD) of Kulonprogo Regency, on April 5, 2021

Thus, the law also recognizes the nature of such emergency, and therefore Article 35 paragraph (3) is an emergency article that is required by the legislator.⁸ The researcher believes that the bias interpretations to the provisions of Article 35 paragraph (3) of the UUJN-P which leads to confusing options, whether the change is immediate in nature or must go through a formal procedure, is attributed to unclear stipulation. Moreover, there is no other regulations to clearly describe the procedure of the change in Article 35 paragraph (3), either through laws, ministerial regulations or other related regulations. That said, the decision made by MPD of Kulonprogo Regency by applying UUJN-P to related events is justifiable, and in this case the MPD of Kulonprogo Regency has clearly referred to the stipulation in UUJN-P, by immediately appointing a Substitute Notary to serve as an Acting Notary. The word ‘immediate’ refers to the fact that when the Notary on leave dies, his position automatically and/or, *mutatis mutandis*, changes from a Substitute Notary into an Acting Notary.

3. The legal basis for the changing status of Substitute Notary into an Acting Notary in formulating a deed

UUJN-P regulates that the authority in making authentic deeds is not only limited to Notaries, but also can be made by Substitute Notaries and Acting Notaries. The deed making of Substitute Notaries and Acting Notaries can only be carried out when legally based on certain procedures, since the Substitute Notary and Acting Notary are appointed by the relevant authorities.

The provisions governing the authority of an Acting Notary to make a deed in his own name is regulated in Article 35 paragraph (5) UUJN-P, which states:

“An Acting Notary as referred to in paragraphs (3) and (4) is entitled to make a deed in his own name and to have a Notary Protocol,”

Whereas the provisions that regulate that a Substitute Notary can make a deed in his own name are not strictly regulated as in the Article that regulates Acting Notary, UUJN-P stipulates many articles that regulate and explain that a Substitute Notary can make a deed on his own behalf. This matter is regulated in Article 60 paragraph (1) UUJN-P, which states:

“Deeds drawn up by or before a Substitute Notary are recorded in the list of deeds”

Based on the explanation of the two provided articles, it is clear that the authority in deed making is not only given to the Notary, but also to the Substitute Notary and Acting Notary. The authority of these two positions is only granted when a Notary is taking his leave rights, which generates the appointment of a Substitute Notary, and/or when a Notary who dies either while on leave or while carrying out his duties, which leads to the appointment of an Acting Notary.

When a person obtains or serves as a Substitute Notary and/or an Acting Notary, Article 33 paragraph (2) applies that *“The provisions that apply to Notaries as referred*

⁸ Interview with Mr. Heri Sabto Widodo, S.H., as a Notary in the Special Region of Yogyakarta on March 23, 2021

to in Article 4, Article 15, Article 16, and Article 17 apply to Substitute Notaries and Temporary Officials of Notaries, unless this Law stipulates otherwise”. Based on the stipulation of this Article, all general and special powers possessed by a Notary shall also apply to Substitute Notaries and Acting Notaries.

The change from a Substitute Notary to an Acting Notary in Article 35 paragraph (3) of the UUJN-P which states *“In the event that a Notary dies while on leave, the Notary’s duties are carried out by the Substitute Notary as an Acting Notary for a maximum period of 30 (thirty) days from the date the Notary’s death”*, as well as Article 35 paragraph (5) which states *“An Acting Notary as referred to in paragraphs (3) and (4) is entitled to make a deed in his own name and to have a Notary Protocol”* as abovementioned, it is clear that a Substitute Notary who changes his status to a Acting Notary can make his own deed on the basis contained in Article 35 paragraph (3) and paragraph (5) of the UUJN-P, with the initial preparation of the deed as described below:

“Before me personally appeared, M. DANI FADHLURROHMAN, Bachelor of Law, Master of Notary, Acting Notary, previously Substitute Notary based on the Decree of the Regional/Regional/Central Supervisory Council, Number dated, from Mr. MUHAMMAD AL FATIH, Bachelor of Law, Notary domiciled in the Regency/City, with the area of office of the entire region within the Province of the Special Region of Yogyakarta, who died in the Regency/City on and accordingly, based on Article 35 paragraph (3) and paragraph (4) of the Law on the Position of a Notary, the person is authorized to carry out the Office of the deceased Notary until the date of”.

From the provided example, the deed making of an Acting Notary needs to include the Number, Date and the Official who appointed him at the beginning of the deed, because this information indicates the position of the Acting Notary who was formerly a Substitute Notary. The inclusion of such information in the deed formulation is a way to prevent errors in the deed.

The need to include the Appointment Decree at the beginning of the deed is emphasized by the stipulation of Article 38 paragraph (5) of the UUJN-P which states:

(5) the deed of Substitute Notary and Acting Notary, in addition to containing the provisions as referred to in paragraph (2), paragraph (3), and paragraph (4), also contains the number and date of appointment, as well as the official who appointed it.

The exclusion of Appointment Decree and the Article and/or the legal basis for the action of the Acting Notary will degrade the deed into a private deed, and may harm the parties whose names are listed in the deed. The consequences have been regulated in Article 41 of the UUJN-P, which states:

“Violation of the provisions as referred to in Article 38, Article 39, and Article 40 results in the Deed only having the power of proof as a private deed”.

D. CONCLUSION

The change in the status of a Substitute Notary to an Acting Notary as regulated in Article 35 paragraph (3) of the UUJN-P, which reads *“In the event that a Notary dies*

while on leave, the Notary's duties are carried out by the Substitute Notary as an Acting Notary for a maximum period of 30 (thirty) days from the date the Notary's death", is immediately due. Thus, a change in the status of a Substitute Notary to an Acting Notary as of the Notary Dies is based on the fact that Article 35 paragraph (3) UUN-P contains the word "immediately", which indicates that the establishment of the said Article is intended to or intended for emergency situations and/or events. The legal status of the Substitute Notary in the event that the Notary he replaces dies before the leave period ends, is based on the stipulation that the duties of the Notary will be carried out by the Substitute Notary who serves as an Acting Notary without going through certain mechanisms or procedures, and thus the change in status is immediate in nature.

A Substitute Notary who changes his status to an Acting Notary is entitled to make a deed or formulate a deed. To draw up or formulate a deed, the Acting Notary must state the legal basis for his actions as regulated in Article 35 paragraph (3) and paragraph (5) of the UUN-P with an initial description of the deed, as follows:

"Before me personally appeared, M. DANI FADHLURROHMAN, Bachelor of Law, Master of Notary, Acting Notary, previously Substitute Notary based on the Decree of the Regional/Regional/Central Supervisory Council, Number dated, from Mr. MUHAMMAD AL FATIH, Bachelor of Law, Notary domiciled in the Regency/City, with the area of office of the entire region within the Province of the Special Region of Yogyakarta, who died in the Regency/City on and accordingly, based on Article 35 paragraph (3) and paragraph (4) of the Law on the Position of a Notary, the person is authorized to carry out the Office of the deceased Notary until the date of"

The inclusion of the status and/or capacity of the Acting Notary denotes his position in deed formulation. The exclusion of this status clearly and unequivocally at the beginning of the deed will degrade the deed into a private deed, and can harm all parties whose names are listed in the deed.

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Interview

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