



Liability of Substitute Notary in Deed Correction

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Abstract

A notary who is taking leave must hand over his/ her notary protocol to substitute notary. Thus, the substitute notary will be liable to the protocol of the notary that he/ she replaced. When a substitute notary holds a position, in addition to new jobs, there are still jobs that have not been completed by the notary that he/ she replaced. In carrying out the notarial practices, a notary may type incorrect information on a deed. Errors in typing a notary deed are not deliberate intention but merely negligence or carelessness of the notary. Therefore, the information written on a notary deed does not match the actual information that should be included in the deed. These thesis problems include: first is about the form of the liability of substitute notary in deed correction and the second is about the legal consequences of corrected deed by substitute notary. This research was conducted using normative juridical research methods. The results of the research showed that the form of liability of substitute notary is classified into four points, which include: the first is civil liability of substitute notary on the deed that he/ she made, second is the criminal liability of substitute notary on the deed that he/ she made, third is the liability of substitute notary based on Law on Notary Position on the deed that he/ she made, and fourth is liability of substitute notary in carrying out his/ her position based on a code of ethics. The liability of substitute notary is only limited to the deed that he/ she made. The liability for the deed ends since he/ she has stopped serving as substitute notary. Regarding legal consequences of the deed corrected by substitute notary, if it violates the provisions in Article 51 Law on Notary Position, it only has the power of proof as private deed. In this case, the party experiencing the loss has a reason to demand reimbursement, compensation, and interest to the notary.

Keywords: Deed Correction; Liability; Substitute Notary

Introduction

The function of a notary in people's lives is vital, especially in making authentic deed that is used as evidence. Deed is a letter made as evidence for legal action. The letter is divided into authentic and private deeds (Hamzah, 1986). An authentic deed is a letter of official proof made according to the applicable regulations, witnessed before and authorized by a notary or an authorized government official. A notary is one of the officials who has the authority to make authentic deeds.

A deed will have an authentic character if it has the power of proof between the parties and the third party. Then, the actions or statements stated in the deed will provide a proof that cannot be eliminated (Dinaryanti, 2013). Notary deed is the strongest and most perfect written proof (*volledig*) in the field of civil law. It is similar to the deed made by or before a notary. In this case, the existence of the deed no longer requires other evidence to prove something else.

In notarial practices, a notary may type incorrect information on a deed. Errors in typing a notary deed are not deliberate intentions but merely negligence or carelessness of the notary. Therefore, the information is written on a notary deed which does not match actual information that should be included in the deed.

Typographical errors in the notary deed can be substantive or non-substantive (Diana, 2015). Non-substantive typographical error means that the error does not cause a significant difference in meaning in the substance of the deed, but in the context of the sentence, it cannot be interpreted differently than what is actually meant; for instance, misspelling of words. Conversely, substantive typographical errors cause differences in meaning or significant differences in the substance of the deed; thus, the substance of the deed does not match to what is actually intended to be included in the deed by the appearers.

If the typographical errors, substantive and non-substantive, are known before the original deed is signed, changes or *renvooi* can be made in the manner referred to in Article 48, Article 49 and Article 50 Law on Notary Position. It becomes a problem when the error is found in the original deed while it has been signed, the copy of the deed has been issued, the appearers have left.

In carrying out the duties and authority of the position, sometimes a notary gets excuse in which he/ she gets the right of leave which can be used after the notary has run his/ her position for 2 (two) years (Adjie, 2009). The total amount of leave that can be taken by a notary is not more than 12 (twelve) years, which is stipulated in Article 25 Law on Notary Position. In accordance with the character of the notary position, it must be continuous as long as the notary is still holding a position in which the notary is obliged to determine the period for his/ her term and is required to appoint substitute notary (Adjie, 2009). It means that the existence of a substitute notary is the result of a notary who is taking leave due to illness, serving as a state official, and/ or being unable to temporarily take up his/ her position as a notary (Adjie, 2009).

During taking leave, the notary must appoint a substitute notary by submitting a letter of application to the Notary Central Supervisory Board (Regulation of the Minister of Law and Human Rights No. M.01-HT.03.01 of 2006 Article 37) (Sulihandri & Rifiani, 2013: 69). In this case, substitute notary is someone who is temporarily appointed to be a notary to replace a notary who is taking leave due to illness or unable to temporarily run his/ her position as a notary public, as stated in Article 1 point 3 Law on Notary Position. Furthermore, Article 33 paragraph 1 of Law on Notary Position mentions several conditions that must be fulfilled so that a person can be appointed as a substitute notary. He/ she must be an Indonesian citizen who has a Bachelor of Law degree and has worked as an employee in the notary's office for at least 2 (two) consecutive years.

The notary will hand over the notary protocol to the substitute notary. Thus, substitute notary is liable for mastery of the protocol from the notary he/ she replaces and the protocol covering the deeds he/ she made him/ herself. When a substitute notary holds office, there are still works that have not been completed by the notary that he/ she replaced and there are also new jobs. Moreover, in carrying out the position, there are obstacles faced by substitute notary. For instance, there is no clear regulation regarding the implementation of the position of substitute notary.

Regulations concerning substitute notary and notary leave are only regulated thoroughly in Article 11 and Article 32 Law on Notary Position. Then, it is also regulated in the Regulation of the Minister of Law and Human Rights No. 25 of 2014 as amended by Regulation of the Minister of Law and Human Rights No. 62 of 2016 concerning the terms and conditions for appointment, transfer, termination and extension of the notary's term of office. The regulation does not specifically explain the limits of authority of a substitute notary to the notary protocol that has not been completed and has been completed. So, there are no regulatory guidelines for implementing this position. This ambiguity has the potential to lead to different interpretations of the task and function of the substitute notary so that it has the opportunity to cause legal problems in the future.

Research Method

Regarding the research method, this study applies a normative juridical approach to find the truth using normative legal logic. Science in normative law is based on scientific disciplines that use law as its object. It uses primary legal materials, secondary legal materials and tertiary legal materials. In addition, the data collection techniques in this study are library research and document studies.

In this article, the data obtained after the research was processed through the editing and coding processes. Editing is the process of re-researching records, files, and information collected by data seekers. It was expected to be able to improve the quality of reliability of data that would be analyzed. After the editing process was complete, the next was the coding process. It was carried out to clarify the answers of the respondents according to the criteria or types that had been set (Sunggono, 2010). It utilized qualitative data analysis in the form of a description of the data. It was analyzed based on the laws and regulations and opinions of experts which were then presented with sentences that had previously been analyzed. Then the data was interpreted and conclusions were drawn according to the problems under the discussion.

Research Results and Discussion

1. Form of Liability of Substitute Notary to Deed Correction

Liability in the notary profession arises from the obligation and authority that has been given to him/ her. These obligation and authority are legally and bound to come into force since the notary public takes his/ her oath of office as a notary. In principle, the substance of the deed made by and or before a notary must be made perfect, complete and contain no changes due to replacement, addition, deletion or insertion. As a deed maker, a notable is fully liable for changes to the contents of the deed. However, an obstacle arises when a deed requires a change and the notary maker of the deed experiences or takes a period of leave for a considerable period of time. The parties bound by the deed certainly expect that changes to the contents of the deed will be carried out as soon as possible. Correction of original deed is intended to correct errors that include written errors or typos in the original deed. Deed correction can be performed by authorized officials; in this case, the notary. Errors of typing on the notary deed are as follows (Adjie, 2009):

- a. Non-substantive errors of typing on the deed do not cause significant differences in meaning to the substance of the deed. When differences in word meanings occur, in the context of sentences, they cannot be interpreted differently than what is intended.

- b. Substantive errors of typing result in differences in meaning or significant differences in the substance of the deed. In this case, it no longer matches what is really intended to be included in the deed by the appearers or notary.

Every mistake is considered as a type of error (*culpa*) which then demands liability for mistakes and errors. Then, Roscoe Pound divides the form and type of liability into 3 (three) consisting of: liability for intentional loss, liability for loss due to negligence or accident, and, in certain cases, liability for losses not due to accidental negligence (Flora, 2012).

2. *Civil Liability of Substitute Notary for the Deed That He/ She Made*

Juridical construction, which is used in the civil liability of the material truth of a deed made by a notary that also applies to a substitute notary that has been given authority, is a construction of an illegal act (Article 1365 of the Civil Code). These acts against the law are active and passive.

Active means doing an act that causes harm to another party; in this case, intentionally taking an action. Thus, acting against the law is an active act. On the other hand, passive act means not doing an act which is actually an obligation for them. In other words, a person does not do a certain act which is a necessity which causes the other party to suffer a loss.

This element of unlawful conduct creates an act against the law, errors and losses. Due to the development of legal institutions that deal with contemporary laws, acts against the law are illegal in the broadest sense. In more detail, acts against the law in the broadest sense are if the action:

- a. violates the rights of others
- b. is contrary to the legal obligations of the offender
- c. is contrary to decency
- d. is contrary to propriety in paying attention to the self-interests and property of others in the daily life.

The explanation of Law on Notary Position shows that substitute notary, as well as a notary, is only a liable to the formality of an authentic deed and not to the authentic deed material. This requires the notary to be neutral, impartial, and provide legal advice to clients who request legal guidance. In line with this, substitute notary can be liable for the material truth of a deed if the legal advice he provides turns out to be a mistake in the future.

Reviewing Article 1365 of the Civil Code, the liability of substitute notary can be subject to civil sanctions regarding the agreement he made between him/ her as a service provider and his/ her client (parties/ appearers) as service users. The agreement must meet the legal requirements of an agreement based on Article 1320 of the Civil Code. It includes an agreement between substitute notary and his/ her client or an agreement that occurs between the parties who will bind themselves to an authentic deed made by substitute notary.

3. *Criminal Liability of the Substitute Notary for the Deed That He/ She Made*

Criminal provisions are not regulated in Law on Notary Position. However, a notary and substitute notary will be subject to criminal liability if they commit a criminal act. The Law on Notary Position only regulates sanctions for violations committed by the notary public and substitute notary

against Law on Notary Position. Such sanctions for example are that the deed made by a notary does not have authentic power or only has the power as a private deed. Notary or substitute notary themselves can be given sanctions in the form of reprimand to dismissal with disrespect.

Article 1 paragraph (1) of the Criminal Code confirms that an act cannot be punished except for the strength of the criminal rules in the legislation that existed before the act was committed. Thus, from Article 1 paragraph (1) of the Criminal Code, we can find out the Criminal Code articles which can be applied to substitute notary if he/ she makes a mistake; as a liability for the implementation of the position which, among others, is regulated in Article 55, 224, 242 263, 264, 266, 310, 322, 378, 415, and 416 of the Criminal Code.

The criminal liability of substitute notary, against the material truths in the deed that he/ she made, can be traced from the understanding of the deed. In this case, authentic deeds in particular and especially are notary deeds issued and created on the basis of requests or desired by interested parties so that their legal actions are stated or mentioned in the form of authentic deeds. In addition to requests or desired by those concerned, it is also because the law stipulates that certain legal actions are absolute and must be made in the form of authentic deeds.

Thus, the substitute notary is subject to criminal acts of forgery of letters as stated in Article 263 of the Criminal Code. In this case, a substitute notary is accused of committing a criminal act of falsification in which he/ she is an intellectual actor and planner of that matter.

Based on the foregoing, as a public official, criminal liability against substitute notary is that he/ she can be sentenced to imprisonment if the act fulfills the elements of the actions listed in Articles in the case of letter forgery (Mowoka, 2014).

4. Liability of Substitute Notary based on Law on Notary Position

Law on Notary Position is regulations relating to the notary profession in Indonesia. The regulation governing notaries in Indonesia is Law No. 2 of 2004 concerning amendment to Law No. 30 of 2004 concerning Notary Position.

The notary liability is clearly stated in Article 65 Law on Notary Position which states that notaries, substitute notaries, and notary temporary officials are liable for each deed they make even though the notary protocol has been submitted or transferred to another notary protocol keeper. Sanctions imposed on a notary or substitute notary as a person according to Article 85 Law on Notary Position can be in the form of:

- a. verbal reprimand;
- b. written reprimand;
- c. temporary dismissal;
- d. respectful dismissal;
- e. disrespectful dismissal.

5. The Liability of the Substitute Notary in Performing a Position based on the Notary Code of Ethics

Generally, the liability of substitute notary in carrying out office duties based on a notary code of ethics includes 2 (two) aspects consisting of a liability of substitute notary to a notary code of ethics

and a liability of substitute notary to Law on Notary Position, as stated in Article 4 Law on Notary Position regarding notary oaths and promises.

Enforcement of a notary code of ethics for violating a code of ethics is defined as a punishment. It is intended as effort and means of compelling obedience and notary discipline which also applies equally to substitute notary. Sanctions in the notary code of ethics are contained in Article 6 stating that sanctions for members who violate the code of ethics can be reprimand, warning, suspension (temporary dismissal) from membership, *onzetting* (dismissal) from membership in disrespectful associations and dismissals from association membership.

Based on the description above, every action taken by a notary, substitute notary, or a temporary notary official has legal certainty for each action because there are already laws and regulations regarding the implementation of the notary profession.

According to Kelsen, law is a norm system. Norms are statements that emphasize the “supposed” aspect or *das sollen* by including some rules about what to do. Norms are products and deliberative human actions.

The law which contains general rules becomes a guideline for individuals to behave in the community in their individual relationships and relations with the community. These rules become a limitation for the community in overloading or taking action against individuals. The existence of these rules and the implementation of these rules lead to legal certainty (Marzuki, 2008).

In practice, each authentic deed made by a notary or substitute notary can be seen at the beginning of the deed, date of month and year of the making, as well as information on the making before a notary or substitute notary. If an error or change to the deed occurs but the original deed has been signed by the appearers, witnesses and notaries, then the Correction Report must be made. Making a deed of correction report, as a personal notary statement to correct typographical errors on the original deed, must be made before the appearers and witnesses (Adjie, 2009). Due to error on the original deed where a copy of the deed has been given to the appearers and signed by the notary concerned, then the correction must be carried out by the notary concerned.

Meanwhile, the liability of substitute notary limits is listed in Article 65 Law on Notary Position, as follows:

“Notaries, substitute notaries and temporary notary officials are liable for every deed they make even though the notary protocol has been submitted or transferred to another notary protocol keeper.”

Habib Adjie considered that there is confusion regarding the liability of substitute notary limit based on Article 65 Law on Notary Position above. Although all deeds made by a substitute notary have been submitted or transferred to the notary protocol keeper, the substitute notary must still be liable until the last breath. Thus, if a notary, substitute notary, special substitute notary, and temporary notary official no longer hold office, they cannot be asked for any liability in any form even though the person concerned is still alive. In addition, the notary of protocol keeper must show or provide copies of original deed that are in accordance with the original by the protocol notary or by the Regional Supervisory Board (MPD) for the notary protocol that is 25 (twenty five) years or more (Article 63 paragraph (5) Law on Notary Position) (Adjie, 2009).

Meanwhile, the liability substitute notary limit with the notary that is replaced can be requested as long as they are still authorized to carry out their assignment as a notary, or mistakes made in carrying

out their duties as a notary. In addition, sanctions that may be imposed on a notary can be dropped during the substitute notary is still authorized to carry out office duties as a notary. With the construction of the liability mentioned above, there will no longer be substitute notary requested for its liability after the concerned has quit his/ her job as a notary.

6. *Legal Consequences of a Deed Corrected by Substitute Notary*

Substitute notary, as well as notary, “makes every effort not to experience defects or make mistakes in making deeds”. “However, it is understandable when humans make mistakes in making the deed. So, it is a human thing if the notary makes a mistake”. “Moreover, the addition or deletion of the deed will cause problems”. “Therefore, Article 48 Law on Notary Position states that the contents of the deed may not be changed or added, in the form of writing, overlapping, insertion, write-off or deletion, and replacement with others”.

“Changes to deeds in the form of additions, replacements or deletions in the deed are only valid if the changes are initialed or given other endorsements by appearers, witnesses and notaries”. “In relation, Article 49 of Law on Notary Position states that any changes to the deed are made on the left side of the deed. If there is a change, at the end of the deed before closing, it is written by pointing to the changed part or by inserting an additional sheet”. “Therefore, changes that are made without designating the part that has been changed resulting in the deed being canceled”.

Regarding the write-off in the notary deed, “Article 50 of Law on Notary Position stipulates that if a deed requires the deletion of words, letters, or numbers, this is carried aiming that it can still be read in accordance with what was originally stated. Then, the number of words, letters, or numbers crossed out are stated on the left side of the deed”. “The write-off was declared valid after it was initialed or given another sign of ratification by appearers, witnesses and notaries”. “Therefore, if there are other changes to the deed, the change is made on the side of the deed in accordance with the provisions of Article 49 Law on Notary Position”.

Thus “the number of changes, deletions, and additions is stated in the closing of each deed. In addition, Article 51 of the Law on Notary Position regulates the authority of the notary in correcting written errors on a deed”. “The provisions in Article 51 Law on Notary Position state that the Notary is authorized to correct errors and/ or typos found on the original deed that he/ she has signed”. “Therefore, correction can be performed by making a report and providing a note about it on the original deed by stating the date and deed number on the correction report”.

Substitute notary, as well as notary, “in making authentic deeds, makes every effort not to experience defects or make mistakes in making deeds”. “However, it is understandable when humans make mistakes in making the deed. Thus, it is a human thing if the notary makes a mistake”. “In addition, the addition or deletion of the deed will cause problems”. “Therefore, Article 48 Law on Notary Position states that the contents of the deed may not be changed or added, in the form of writing, overlapping, insertion, write-off, or deletion and replacement with others”.

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Regarding the write-off of the notary deed, “Article 50 of Law on Notary Position stipulates that if a deed requires the deletion of words, letters, or numbers, this is carried out aiming that it can still be read in accordance with what was originally stated. Then, the number of words, letters, or numbers crossed out are stated on the left side of the deed”. “The write-off was declared valid after it was initialed or given another sign of ratification by appearers, witnesses and notaries”. “Therefore, if there are other changes to the deed, the change is made on the side of the deed in accordance with the provisions of Article 49 Law on Notary Position”. Thus “the number of changes, deletions, and additions is stated on the closing of each deed.”

If the errors of typing (on the contents of the deed), substantive or no substantive, are known before the draft deed is signed, the errors can be corrected by making changes or *renvooi* as referred to in Article 48-50 Law on Notary Position. It is a problem when an original deed error is found while the deed was signed and became an original deed and the appearers had left, and a copy of the deed was issued. Article 51 of Law on Notary Position gives authority to the notary to make corrections to the original deed that has been signed. Article 51 of the Law on Notary Position explains that:

- a. notary is authorized to correct errors in writing and/ or errors in typing found on the original deed that have been signed.
- b. correction, as referred to in paragraph 1, is performed before the appearers, witnesses and notaries recorded in the report. It is performed by giving a note about it on the original deed by stating the date and deed number in the correction report.
- c. a copy of the report deed, as referred to in paragraph 2, must be submitted to the parties.
- d. violation of the provisions referred to in paragraph (2) resulting in a deed having the power of proof as a private deed and it can be a reason for the party suffering losses to demand reimbursement, compensation, and interest to the notary.

The substitute notary has the authority to correct errors if it is found in original deed. In addition, “Article 51 of the Law on Notary Position regulates the authority of a notary in correcting written errors on a deed”. “The provisions in Article 51 of Law on Notary Position state that the Notary is authorized to correct written and/ or typing errors found in the original deed that have been signed”. “Therefore, correction can be done by making a report and providing a note about it on the original deed by stating the date and deed number on the correction report”.

At least, “in carrying out its duties, the notary holds the basic principle to assess a deed referred to as the legal presumption principle or better known as the *presumptio iustae causa*. It means that the deed made by a notary must be considered valid until there is a party that states that the deed is invalid. In addition, in making a deed, the notary does not investigate the truth of the letters submitted by the party making the deed”. It means that as a public servant, the notary can act quickly and accurately. And, if fraud occurs, the notary may state that the failure of a letter is not the authority of the notary. So, the notary only checks the administrative requirements to make a deed. As we know, the deeds generally are divided into:

- a. private deed is writing made privately without the mediation of a public employee (Article 1874 of the Civil Code).
- b. authentic deed is a deed which form is determined by the Law, made by or before the general employees in power for that in the place where the deed was made (Article 1868 of the Civil Code).

The differences between authentic deed and private deed are as follows:

- a. authentic deed has a definite date that guarantees the certainty of the date, while it does not always apply this to the date of the deed that was made privately.
- b. the *grosse* of an authentic deed in some respects has executorial power, while the deed that is privately made has never had executive power.

It is likely that the loss of deeds privately made is greater than the authentic deed (Tobing, 1999). Authentic deeds can be classified into two as follows:

- a. deed made by a notary or commonly referred to as a *relaas deed* or original deed.
- b. deed made before a notary or commonly referred to as a party deed or *partij deed* (Adjie, 2009).

The deeds are made on the request of the parties/ appearers. “Without the request of the parties, the deed will certainly not be made by a notary”. *Relaas deed* is a deed made by a notary at the request of the parties, so that the notary records or writes everything related to legal actions or other actions discussed and carried out by the parties, so that the action is made or included in a notary deed. In making these deeds, the notary is authorized to provide legal counseling based on Article 15 paragraph (2) letter e Law on Notary Position or legal advice to these parties. When the advice is accepted and agreed to by the parties, it is then included in the deed. In this case, the suggestions must be assessed as statements or information of the parties themselves.

The deeds “made by or before a notary must be in accordance with the prescribed form” based on Article 38 of Law on Notary Position and procedures (ordinances) that have been determined based on Article 39 to 53 of Law on Notary Position.

The notary has the authority to make authentic deeds. “In addition, the notary is also authorized to ratify a deed made by the appearers as proof of a legal relationship”. Authentic certificates must meet the following requirements:

- a. The deed must be made “by” or “before” a public official.
- b. The deed must be made in the form specified by the Law.
- c. The general officer, or before whom the deed is made, must have the authority to make the deed.

“The provisions above show that even if someone holds a deed, if the deed has no authority specified by the Law, then it does not have perfect legal force.”

“Deed, made by or before a public official appointed by the Law, has the power of authentic deed not because of the stipulation of the Law but because it is made by or before a public official” (Tobing, 1999).

As mentioned above, it is explained that authentic deeds can be divided into:

- a. Deed made by officials; and
- b. Deed made before an official by the parties who need the deed.

“Deed made by officials or *relaas deed* is a deed made by an official, while the deeds of the parties are made by the parties before an official, or the parties request the assistance of officials to make the deed they want”. “The deeds of the parties contain information that is desired by the parties who make or order the deed, while the certificate contains written information from the official who made the deed itself”. The truth of the *relaas deed* cannot be contested, “except by filing allegations that the deed is false, while the truth of the contents of the deeds of the parties can be sued without accusing the falsehood of the deed”.

Correction of errors in the original official deed can be performed by substitute notary by:

- a. appealing to shareholders to rectify the final decision of the General Meeting of Shareholders that containing errors by conducting a repeat General Meeting of Shareholders or by taking secular decisions
- b. make a correction report deed and carry out the procedure referred to in Article 51 of Law on Notary Position.

Meanwhile, substitute notary corrects errors of typing in the original of *partij deed* as follow:

- a. In the statement at the beginning of the deed, the efforts that can be made by substitute notary are as follow:
 - 1) appeal to the appearers to make a cancellation deed against the deed containing errors in typing, afterwards it is proceeded with making a new deed.
 - 2) make a correction report deed and perform the procedure referred to in Article 51 of Law on Notary Position.
- b. In the identity of the appearers, the efforts that can be made by substitute notary are as follow:
 - 1) appeal to the appearers to make a cancellation deed against the deed containing errors in typing, afterwards it is proceeded with making a new deed.
 - 2) appeal to the appearers to make a correction deed against the deed containing errors in typing.
 - 3) make a correction report deed and perform the procedure referred to in Article 51 of Law on Notary Position.
- c. In the contents of the deed which is the will of the appearers, the efforts that can be made by substitute notary are as follow:
 - 1) appeal to the appearers to make a cancellation deed against the deed containing errors in typing, afterwards it is proceeded with making a new deed.
 - 2) appeal to the appearers to make a correction deed against the deed containing errors in typing.
 - 3) make a correction report deed and perform the procedure referred to in Article 51 of Law on Notary Position (Adjie, 2015:128-129)

Violations committed by the substitute notary against the correction procedure for errors as referred to in Article 51 of the Law on Notary Position give rise to sanctions. “It means that a deed only has the power of proof as a private deed, which can be a reason for those who suffer losses to demand reimbursement, compensation, and interest to the notary.”

Conclusions

Based on the description of the chapters above concerning the authority of substitute notary in conducting *renvoi* on original deed, the following conclusions can be drawn:

1. The form of the liability of substitute notary to the deed correction is the same as the liability of the notary that he/ she replaced. The substitute notary must be liable in a civil, criminal, liable manner to the notary office rules and also to the notary code of ethics. As a public official who is given trust, the notary must cling not only to the laws and regulations but also to the professional code of ethics so that the notary profession's dignity is maintained properly. Then, after his/ her term of office has expired, the liability of substitute notary on the deed he/ she made will also end because any legal action to be taken by the substitute notary is inseparable from the consideration and direction of the notary that he/ she has replaced.
2. The legal effect of the deed corrected by substitute notary is that if the correction made by substitute notary is not in accordance with the procedures of Article 51 Law on Notary Position, the deed will only have proof of authority as a private deed and that could be the reason in demanding reimbursement of costs, compensation, and interest to the notary.

Suggestions

1. It is recommended to make regulations regarding the limits of authority and limitations of the liability of substitute notary clearly because the profession is only temporary.
2. It is recommended to provide training to prospective substitute notary on a regular basis in making authentic deeds as well as understanding tasks and also the liability of substitute notary. Thus, substitute notary can carry out his/ her duties and liabilities to the maximum in accordance with applicable laws and regulations.

It is recommended to increase the standard of appointment as a substitute notary to a graduate of master's degree which previously was only a graduate of bachelor's degree in law. A graduate of master's degree in notary has learned the basics and scope of the notary's position. Thus, graduates of master's degree have more opportunity to undergo pre-practice internships in the notary's office.

References

Books

- Adjie, H. (2009). *Meneropong khazanah notaris dan PPAT Indonesia: kumpulan tulisan tentang notaris dan PPAT*. Citra Aditya Bakti.
- Diana, P. V. P., Mertha, I. K., & Artha, I. G. (2015). *Pertanggung Jawaban Notaris Dalam Pembuatan Akta Berdasarkan Pemalsuan Surat Oleh Para Pihak*. *Acta Comitas: Jurnal Hukum Kenotariatan*, 161-172.
- Dinaryanti, A. R. (2013). *Tinjauan Yuridis Legalisasi Akta Di Bawah Tangan Oleh Notaris*. *Legal Opinion*, 1(3).

- Flora, H. S. (2012). Tanggung Jawab Notaris Pengganti dalam Pembuatan Akta. *Kanun: Jurnal Ilmu Hukum*, 14(2), 179-199.
- Hamzah, A. (1986). Sistem Pidana dan Pemidanaan Indonesia dari retribusi ke reformasi. Pradnya Paramita.
- Marzuki, P. M. (2008). Pengantar ilmu hukum. Jakarta: Kencana.
- Mowoka, V. P. (2014). Pelaksanaan Tanggung Jawab Notaris terhadap Akta yang Dibuatnya. *Lex Et Societatis*, 2(4).
- Sulihandari, H., & Rifiani, N. (2013). Prinsip-Prinsip Dasar Profesi Notaris. Dunia Cerdas, Jakarta.
- Sunggono, B. (2010). Metode Penelitian Hukum, Jakarta. PT Raja Grafindo Persada.
- Tobing, R. L. (1999). Perkembangan pembangunan hukum nasional tentang hukum dirgantara. Badan Pembinaan Hukum Nasioonal [ie Nasional], Departemen Kehakiman.

Legislations

Law No. 30 of 2004 concerning Notary Position.

Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position.

Ministerial Regulation No. 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Dismissal, and Extension of Term of Office of Notary.

Ministerial Regulation No. 62 of 2016 concerning Amendment to Regulation of the Minister of Law and Human Rights No. 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Dismissal, and Extension of Term of Office of Notaries.

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