

The Meaning of the Phrase "Temporary Absent" Performing His Position as a Notary

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Abstract. *This paper analyses the meaning of the phrase of being temporary unable to carry out his position as a Notary. The focus of the study in this paper is regarding the phrase unable to carry out his position as a notary as referred to in Article 1 point 3 UUJN jo. UUJN-P. The method used is a normative legal writing method, using a statutory approach, a case approach, and a conceptual approach that is also supported by a factual approach. As an analytical tool for the legal issues studied, the author uses the theory of legal certainty and the theory of hermeneutics. These two theories are used because this paper aims to analyse clearly the meaning of the phrase unable to carry out his position as a notary, so that it does not cause multiple interpretations. The legal materials used are primary legal materials in the form of legislation related to the Notary Position, which is complemented by secondary legal materials in the form of reputable journals and the latest literature. Based on the results of the analysis, it can be found that the meaning of the phrase temporary absent can be interpreted as a form of leave granted by UUJN and UUJN-P with a maximum of 12 years, except for a notary who is appointed as a state official. Serving as a state official, and should not be interpreted as a temporary dismissal. The purpose of this analysis is to provide legal certainty over the meaning of the phrase unable to carry out his position as a notary.*

Keywords: Absence Phrases; Certainty; Running.

1. INTRODUCTION

The position of a Notary has a very important role in legal traffic, especially in the field of civil law, because a Notary is a public official who is given the authority to provide public services to the community in terms of making authentic deeds as perfect

evidence.¹ In carrying out their positions, Notaries are specifically regulated in the Act No. 30 of 2004 concerning the Position of Notaries, hereinafter referred to as UUJN jo. Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, hereinafter referred to as UUJN-P. Based on Article 1 point 1 UUJN jo. UUJN-P, it is stated that: "*Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws.*"

On that basis, notaries have the authority to provide legal certainty and protection in the civil sector, especially in the field of legal evidence through the making of authentic deeds.² In addition to the Notary, the Substitute Notary is also regulated, namely a person who is temporary appointed as a Notary to replace a Notary who is on leave, sick, or temporary unable to carry out his position as a Notary, as regulated in Article 1 point 3 UUJN jo. UUJN-P. However, the phrase "temporary unable to carry out his position as a Notary" has given rise to multiple interpretations of the meaning of the said absent phrase; because in Article 1 point 3 UUJN jo. UUJN-P does not provide a detailed explanation, even in its implementing regulations there is no explanation related to being temporary absent so that it becomes unclear and has the potential to cause various interpretations that are vague norms.³

Furthermore, that the UUJN does not explain what things can be categorized as temporary unable to carry out his position as a Notary, what is meant by temporary absence can be in the form of being appointed as a state official, performing Hajj, *Umrah*, vacation, illness, currently undergoing a period of detention due to being suspected of being involved in a criminal act or for whatever reason the Notary applies leave for him is a form of temporary absence from carrying out his position. According to the Big Indonesian Dictionary, the phrase unable to mean that there is an obstacle (so that a plan is not carried out).⁴ However, in the provisions of Article 1 point 3 UUJN in conjunction with UUJN-P there are no special criteria, while in the explanation it is stated quite clearly so that there is a need for benchmarks for a Notary to be categorized as unable to carry out his position as a Notary temporary to be replaced by a Substitute Notary. During carrying out his office, the Notary has the right to leave as stipulated in Article 25 paragraph (1) of the UUJN, and the right to leave can be taken after the Notary has held office for 2 (two) years with a maximum total leave of 12 (twelve) years. During the leave, the Notary is obliged to appoint a Substitute Notary by submitting an application letter to the Notary Supervisory Board.⁵

¹ Salim HS, 2016, *Teknik Pembuatan Akta Satu (Konsep Teoritis, Kewenangan Notaris, Bentuk & Minuta Akta)*, PT RajaGrafindo Persada, Jakarta, p. 2.

² Putu Ayuk Sapta Agustini, dkk, 2021, "Authenticity Of Declared Notary Activities By Using The Photo Document Minuta Signing Of Asset", *Jurnal Notariil*, (online), Vol. 6, No. 1, (<https://ejournal.warmadewa.id/index.php/notariil/article/download/3611/2433>), accessed on 11 May 2022, p. 46.

³ I Gusti Ayu Ria Rahmawati, dkk, 2020, "Tanggung Jawab Notaris Terhadap Akta Otentik Yang Dibuatnya Terkait Jangka Waktu Pensiun", *Jurnal Konstruksi Hukum*, Vol. 1, No. 2, (<https://www.ejournal.warmadewa.ac.id/index.php/jukonhum/article/download/2555/1862>), accessed on 10 May 2022), p. 330.

⁴ Suharso & Ana Retnoningsih, (2022), *Kamus Besar Bahasa Indonesia Edisi Lux*, Widya Karya, Semarang, p. 161.

⁵ Habib Adjie, (2018), *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*, Refika Aditama, Bandung, p. 102.

Therefore, it is necessary to have legal certainty so that the formulation of legal norms is clear and does not have multiple interpretations, applied in accordance with the *similia-similibus principle* (the same legal rules are applied to the same case).⁶ According to Sudikno Mertokusumo, legal certainty is basically the implementation of the law according to its sound so that the public can ensure that the law is implemented.⁷ So with the blurring of the meaning of Article 1 point 3 UUJN jo. UUJN-P can cause legal uncertainty. Based on the description above, this paper will analyze in depth the limitation of the phrase "temporary unable to carry out his position as a Notary".

2. RESEARCH METHODS

This paper is written using a normative legal research method, which examines law from an internal perspective with the object of research being legal norms.⁸ The normative characteristics of this paper are as stated by Irwansyah, namely this paper uses sources of legal material (formal) and is used with the aim of analyzing the applicable law, which consists of primary legal materials, secondary legal materials, and tertiary legal materials.⁹ The type of approach used is a statutory approach, a case approach, and a conceptual approach which is also supported by a factual approach. The legal materials used in this paper were collected through literature study¹⁰ namely by examining primary legal materials in the form of laws and regulations related to Notaries in carrying out their positions, secondary legal materials in the form of journals and literatures and tertiary legal materials in the form of the Big Indonesian Dictionary. Direct interview techniques are also used to complete the analysis of this writing. The analytical techniques used in this paper are description techniques, interpretation techniques and argumentation techniques. After all the materials have been collected, then the legal materials are analyzed with relevant theories and then conclusions are drawn to answer the problem.

3. RESULT AND DISCUSSION

Based on Article 1 point 3 UUJN-P Substitute Notary is a person who is temporary appointed as a Notary to replace a Notary who is on leave, sick, or temporary unable to carry out his position as a Notary. A Notary who is temporary unable to carry out his position as a Notary, is obliged for him to appoint a Substitute Notary, meaning that a Notary Substitute exists because the Notary is on leave, due to illness, is serving as a state official or based on certain reasons justified in the law cannot carry out his position as a Notary Public.¹¹ The Substitute Notary has the authority as a Notary

⁶ I Dewa Gede Atmadja & I Nyoman Putu Budiarta, (2018), *Teori-Teori Hukum*, Setara Press, Malang, p. 206.

⁷ Margono, (2019), *Asas Keadilan Kemanfaatan & Kepastian Hukum dalam Putusan Hakim*, Sinar Grafika, Jakarta, p. 115.

⁸ I Made Pasek Diantha, (2019), *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan ke-3, Prenada Media, Jakarta, p. 12.

⁹ Irwansyah, (2021), *Penelitian Hukum Pilihan Metode&Praktik Penulisan Artikel*, edisi revisi, Mirra Buana Media, Yogyakarta, p. 103.

¹⁰ Amiruddin & Zainal Asikin, (2016), *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, p. 68.

¹¹ Habib Adjie, (2009), *Sekilas Dunia Notaris & PPAT di Indonesia (Kumpulan Tulisan)*, Mandar Maju, Bandung, p. 73.

under the provisions of Article 33 paragraph (2) UUJN-P The replaced Notary Public is unable to carry out his duties and positions.¹² In addition, the substitute Notary is charged with responsibility in accordance with Article 65 of the UUJN, so that the act of violating the authority of the Substitute Notary is not linked to the Notary Officer he replaces.¹³

The discussion on the meaning of the phrase is temporary unable to carry out his position as a Notary in Article 1 point 3 UUJN jo. UUJN-P is intended to find a legal norm that can be used as a reference for every Notary in the context of taking leave rights as a Notary because the ambiguity of the norms in this article could potentially result in the rejection of the request for leave by the Regional Supervisory Council, Regional Supervisory Council, and Central Supervisory Council. To get an answer to the meaning of the phrase "absence" is not possible without an interpretation activity. Legal interpretation/interpretation is an intellectual activity to give the right meaning or meaning to the contents of legal norms/rules.¹⁴

Legal studies related to the need for legal interpretation/interpretation always intersect with the study of the conception of legal hermeneutics.¹⁵ The study of legal hermeneutics has two meanings, namely first, as a method of interpretation of legal texts (Constitution or the Book of Law) or understanding normative texts which must always be related to the content (legal rules), either express or implied or between the sound of the law and spirit of the law.¹⁶ Second, hermeneutics has a great influence or relevance to the theory of legal discovery, which methods and methods of finding law are through legal interpretation methods and legal construction methods.¹⁷ The interpretation method is carried out in terms of the existing regulations, but it is not clear that they can be applied to concrete events, while the legal construction method is carried out in the case that the regulations do not exist.¹⁸

In this paper, grammatical interpretation and historical interpretation are used. Grammatical interpretation is a method that interprets words in the law in accordance with the rules of language and legal rules of grammar or everyday use.¹⁹ Therefore, the phrase temporary absent in the Big Indonesian Dictionary can be interpreted as

¹² Ni Nyoman Candra Krisnayanti, dkk, (2020), "Tanggung Jawab Notaris Pengganti Dalam Hal Notaris Yang Diganti Meninggal Dunia Sebelum Cuti Berakhir", *Jurnal Interpretasi Hukum*, (online), Vol. 1, No. 1, (<https://www.ejournal.warmadewa.ac.id/index.php/juinhum/article/download/2218/1615/>), accessed on 09 May 2022, p. 237.

¹³ I Gusti Agung Ika Laksmi Mahadewi & I Wayan Novy Purwanto, 2021, "Tanggung Jawab Notaris Pengganti yang Melakukan Perbuatan Melawan Hukum dalam Pembuatan Akta Autentik", *Acta Comitatus Jurnal Hukum Kenotariatan*, (online), Vol. 06, No. 02, (<https://ojs.unud.ac.id/index.php/ActaComitatus/article/view/72252/40146>), accessed on 09 May 2022, p. 455.

¹⁴ I Dewa Gede Atmadja & I Nyoman Putu Budiarta, 2019, *Sistematika Filsafat Hukum Perspektif Persoalan-Persoalan Pokok*, Setara Press, Malang, p. 76.

¹⁵ Peter Mahmud Marzuki, (2019), *Penelitian Hukum Edisi Revisi*, Prenadamedia Group, Jakarta, p.109.

¹⁶ Jazim Hamidi, (2017), *Hermeneutika Hukum Sejarah-Filsafat & Metode Tafsir*, UB Press, Malang, p. 97.

¹⁷ *Ibid*, p. 98.

¹⁸ Jazim Hamidi, *op.cit*, p. 102.

¹⁹ Achmad Ali, *op.cit*, p. 140.

follows: (1) Temporary means for some time; not forever; not forever.²⁰ (2) absent /*ber'ha'lang'an*/ means that there are obstacles (so that a plan is not carried out). Obstacles / obstacles / things that are the cause of not carrying out a plan (intention, desire) or stopping a job.²¹ Based on the grammatical interpretation, what is meant by being absent is still very broad and general in scope so that it is not sufficient to provide clear qualifications regarding what is meant by the phrase temporary absent in Article 1 point 3 UUJN.

In this regard, to obtain a clearer meaning, a historical interpretation is carried out, namely by examining the history of law or studying the making of a law, the meaning of a term being studied will be found.²² Prior to the promulgation of the UUJN and its amendments, in 1860, the Dutch notarial regulation (Notary Wet) took effect in the Dutch East Indies with the stipulation of Reglement op Het Notary Arnbt in Nederlands Indie (Staatblad Year 1860 Number 3) or known as the Regulation of Notary Position (hereinafter referred to as PJN).²³ Regarding the phrase that he is temporary unable to carry out his position as a Notary, Article 6b of the PJN, stipulates that:

"If a Notary is temporary unable to carry out his duties, at the written request of the Notary himself, his wife, his family by blood or by marriage or by position, he is given leave.

If, the obstacle is only regarding the actions of one or more deeds, the District Court, in the event that such a body exists at the residence of the Notary and in other cases by the Head of the Regional Government, is appointed a substitute, who is authorized to draw up the deed or deeds called in the appointment decree. In this case, the Notary remains authorized to make other deeds than those stated in the decree. The provisions regarding the handover of the protocol set out in these regulations do not apply in this case."

Meanwhile, according to Article 6b PJN Paragraph (1) a Notary who is temporary unable to carry out his duties is given leave, either at his own request/willingness or he is given leave because of his position (not of his own volition).²⁴ Giving leave due to position in the event that the Notary is unable to carry out his duties, but the Notary himself cannot ask for it in writing and the people referred to in the first paragraph of Article 6b of PJN are absent (for example, because the Notary is not married or has no blood family and so on) or keep quiet.²⁵ As far as the granting of leave is concerned, it is customary to grant leave at your own request, while the granting of leave in office (*ambtshalve*) is generally an exception that can be granted by the competent authority (*ambtshalve*).²⁶

²⁰ Badan Pengembangan & Pembinaan Bahasa, Kementerian Pendidikan, Kebudayaan, Riset, & Teknologi Republik Indonesia, 2016, KBBI Daring, (*online*), (<https://kbbi.kemdikbud.go.id/entri/sementara>, accessed on 10 May 2022).

²¹ Suharso & Ana Retnoningsih, *loc.cit.*

²² Jazim Hamidi, *op.cit.*, p.103.

²³ Ghansam Anand, (2018), *Karakteristik Jabatan Notaris di Indonesia*, Prenadamedia Group, Jakarta, p. 7.

²⁴ G.H.S Lumban Tobing, 1991, *Peraturan Jabatan Notaris*, Gelora Aksara Pratama, Jakarta, p. 79.

²⁵ *Ibid.*

²⁶ G.H.S Lumban Tobing, *op.cit.*, p. 83-84.

So, it can be concluded that based on the PJJ, the temporary absence is referred to in the event that the Notary is unable to carry out his position, which is then temporarily replaced by a Substitute Notary, then the absence is due to leave at the request of the Notary himself (illness or other causes which are at the will of the Notary Public) and leave due to position (not of his own volition).²⁷ PJJ itself was later replaced with UUJN and its amendments. In UUJN and UUJN-P unable to as referred to in Article 1 point 3 UUJN jo. UUJN-P, limitatively has been regulated in several articles, namely Article 11 UUJN-P where a Notary is obliged to take leave in the event that he is appointed as a state official to avoid concurrent positions, Article 28 of the UUJN which determines in an urgent situation the husband/wife or blood family in line directly from the Notary can apply for leave to the Supervisory Board. According to Nurochman,²⁸ that an urgent situation is a situation that cannot be avoided by a Notary, for example an illness that requires intensive care or an accident.

The meaning of the phrase "temporary unable to carry out his position as a Notary" in Article 1 point 3, is also related to the issue of the period of time for submitting an application for leave. Based on Article 27 paragraph (2) of the UUJN, the application for Notary leave is submitted to the authorized official, namely the Regional Supervisory Council, in the event that the leave period is not more than 6 (six) months; Regional Supervisory Council, if the leave period is more than 6 (six) months to 1 (one) year; Central Supervisory Council, within a leave period of more than 1 (one) year.²⁹

Article 26 of the UUJN determine that during the term of office of a Notary the maximum period of time is 12 (twelve) years. So, any Article to fulfill the requirements as referred to in the legislation, namely Article 25, Article 27 paragraph (2), Article 21, Article 24, Article 25, Article 30 Regulation of the Minister of Law and Human Rights Number 19 of 2019 Terms and Procedure for Appointment, Leave, Transfer, Dismissal, and Extension of Notary Term, hereinafter referred to as PERMEN 19/2019.³⁰

According to Agus Isya Narapraja, the first category, being absent includes leave that has been regulated by UUJN with a maximum leave of 12 (twelve) years, in which leave in this form can be planned, such as vacations, lectures, visits outside the region or abroad, going *Umrah* or *Hajj* and the second category of absence is if the Notary is sick, for example having an accident or stroke so that he is unable to carry out his position for a while, which can be submitted by the Notary himself if he is able to do it himself or submitted by his family.³¹

In general, the word of absence can be caused by a Notary who wants it and because of circumstances that are not liked by the Notary. Inability based on the wishes of the Notary due to internal factors or the Notary's own interests, such as holidays, studying abroad, *umrah*, being appointed as state officials and other similar activities. The key of this absence is a situation where a Notary who need more than 7 (seven) consecutive days to leaves his office area must take leave, so that there is no violation of the position, laws and Notary code of ethics due to other activities that require him to leave the office. Meanwhile, being unable to attend due to external influences,

²⁷ Ibid, p. 79.

²⁸ Nurokhman, 2018, "Pengajuan Cuti dalam Keadaan Mendesak Bagi Notaris Berdasarkan Undang-Undang Jabatan Notaris", *Tesis*, Program Magister Kenotariatan, Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta, p. 91.

²⁹ Interview with the Chairman of the MPD of Badung Regency, Mr. Dr. I Ketut Sukawati Lanang Putra Perbawa, S.H., M.Hum on March 28, 2022.

³⁰ Ibid.

³¹ Interview with the Head of the Sub-Sector for the Advancement of Human Rights and the Secretary of the MPW of the Province of Bali Mr. Agus Isya Narapraja on April 5, 2022.

namely a Notary who is currently in detention because it is not in the Notary's interest to be detained, but is a legal interest because it related to a criminal act. In this case the Notary must be temporary dismissed from his position as regulated in Article 9 paragraph (1) letter e UUJN-P jo. Article 86 letter e of Ministerial Regulation 19/2019 because he is undergoing a period of detention, therefore it cannot be replaced by a Substitute Notary, but the Notary protocol is submitted to another Notary as a Notary Holder of the Protocol. If you only pay attention to the provisions of Article 1 point 3 UUJN, then being temporary absent can be categorized as being temporary dismissed, but in reading the law, it must be linked to other statutory regulations, so the law must be seen as a unified whole and cannot stand alone to see why legal reasoning is made that way and is linked to the implementing regulations.³²

In the event that a Notary is appointed as a State Official as regulated in Article 11 paragraph (2), the leave is valid as long as the Notary holds office as a state official, which means that the length of the Notary's leave is dependent on the length of time the Notary has served as a state official, so the leave exceeds 12 (twelve) years as the maximum notary general leave according to Article 26 UUJN can be done because the interests of the state are prioritized. For example, a Notary who is appointed to the parliament (*DPR*) up to 3 (three) periods, which in total carries out his position as a state official for 15 (fifteen) years, which means that it exceeds the maximum accumulated Notary leave time. While the maximum accumulation of 12 (twelve) years is intended for the personal interest of the Notary, such as holidays, studying abroad, pilgrimage or *umrah*, illness and other similar needs.³³

On April 2, 2019 Bali Provincial Supervisory Council hereinafter referred to as MPP, submitted a proposal for leave and temporary suspension of a Notary named Ketut Neli Asih, a Notary in Badung Regency who at that time was experiencing legal problems and had been detained at the Class IIA Denpasar Women's Correctional Institution as a suspect and appointed a Notary Substitute named Gede Prasetia Adnyana, as the holder of the Notary protocol so that public services related to notaries can run well, taking into Article 1 point 3 UUJN-P. However, MPP rejected the proposal because she was unable to do so as referred to in Article 1 point 3 is different from the situation by Notary Ketut Neli Asih. The difference is that the detention by the Notary has been regulated differently in the legislation, namely Article 86 of PERMEN 19/2019.

From the point of view of legal certainty theory, where the law has the task of creating legal certainty that aims to produce order and protection for public, the phrase "temporary unable to carry out his position as a Notary" must be interpreted clearly in order to achieve legal certainty in carrying out the duties of a Notary, and achieved legal protection to the public, especially notary service users and the notary itself. According to Peter Mahmud Marzuki related to the definition of legal certainty, he stated that first, the existence of general rules makes individuals know what actions may or may not be carried out, and secondly in the form of legal security for individuals from government arbitrariness because the existence of general legal rules. Individuals can find out what the state may charge or do to individuals.³⁴

³² Interview with Badung Regency Notary, Mr. Dr. I Made Hendra Kusuma, S.H., Sp.N., on April 26, 2022.

³³ Ibid.

³⁴ Peter Mahmud Marzuki, 2008, Marzuki, *Pengantar Ilmu Hukum, Kencana Pranada Media Group*, Jakarta, p. 158.

Basically, legal certainty is the implementation of law based on applicable laws and regulations, so that the law can be implemented properly because it is related to law enforcement,³⁵ those who are unable to do can be interpreted in terms of the Notary taking leave based on his own free wishes (internal factors) as provided by UUJN with a maximum of 12 years, which can be in the form of vacations, lectures, *hajj*, *umrah*, illness and other activities similar to this and appointed as state officials, as regulated in Article 11 UUJN-P.

4. CONCLUSION

The meaning of the phrase temporary absent can be interpreted as a form of leave granted by UUJN and UUJN-P with a maximum 12 years, except for a notary who is appointed as a state official. The meaning of the phrase absent is interpreted as a period of time unable to carry out a position while serving as a state official, and should not be interpreted as a temporary dismissal.

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³⁵ Ni Putu Eni Sulistiyawati, 2021, "Pemaknaan Frasa Segera dalam Pasal 44 ayat (1) UUJN jo. UUJN-P dalam Penandatanganan Minuta Akta Notaris", *Tesis*, Program Studi Magister Kenotariatan Program Pascasarjana Universitas Warmadewa, p. 33.

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