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Reconstruction of Substitute Notary Authority under Article 33 of Law Number 2 of 2014 to Ensure Legal Certainty

Rekonstruksi Kewenangan Jabatan Notaris Pengganti dalam Pasal 33 Undang-Undang Nomor 2 Tahun 2014 untuk Mewujudkan Kepastian Hukum

Muhammad Rosa Sya'roni[1], Ngesti Dwi Prasetyo[2], Novitasari Dian Phra Harini[3]

[1]Corresponding author: ronidozer5@student.ub.ac.id
[123]Faculty of Law, Brawijaya University, Malang
East Java, Indonesia – 65145

Abstract: The regulation of Substitute Notary authority under Article 33 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Position of Notary raises a problem of legal certainty because Article 33(2) applies the provisions on authority, obligations, and prohibitions of permanent Notaries to Substitute Notaries without expressly defining the substantive limits attached to the temporary nature of the office. This study aims to analyze the legal implications of this regulatory structure and formulate a reconstruction of Substitute Notary authority capable of providing greater legal certainty. The study employs normative legal research using statutory and conceptual approaches. Primary and secondary legal materials are analyzed through grammatical, systematic, and constructive interpretation. The findings reveal that the principal problem is not the absence of authority, since Substitute Notaries obtain statutory authority through Article 33(2), but the incomplete normative relationship between their temporary legal status, different appointment requirements, scope of authority, validity of notarial acts, and allocation of legal responsibility. This regulatory incompleteness may generate different interpretations concerning the boundaries of authority and responsibility, particularly where a notarial process is initiated by a permanent Notary and continued by a Substitute Notary. The study proposes an integrated reconstruction of Article 1 point 3, Article 33(2), and Article 65 of the Notary Office Law by expressly positioning the Substitute Notary as a temporary public official, clarifying the temporal, territorial, substantive, and functional limits of authority, and allocating responsibility proportionally according to the legal acts performed by each office holder. This reconstruction is intended to strengthen normative clarity, regulatory consistency, predictability, and legal protection in Indonesian notarial practice.

Keywords: Authentic Deed; Authority; Legal Certainty; Notary Law; Substitute Notary

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INTRODUCTION

The legal significance of a notarial deed is inseparable from the authority of the public official who creates it. Under Article 1868 of the Indonesian Civil Code, an authentic deed derives its status not merely from compliance with a prescribed form, but also from the authority of the

public official before whom or by whom the deed is drawn up. Law Number 30 of 2004 concerning the Position of Notary, as amended by Law Number 2 of 2014 (hereinafter referred to as the Notary Office Law), places the Notary in this position by conferring authority to create authentic deeds and exercise other powers provided by legislation. The function of a Notary therefore extends beyond recording private legal transactions; the office provides a formal legal framework through which the rights, obligations, and legal relations of the parties acquire evidentiary certainty. For this reason, the exercise of notarial authority and compliance with the statutory requirements governing the creation of authentic deeds remain closely connected to legal protection for parties relying on those deeds (Budiono et al., 2023).

The continuity of notarial services, however, cannot always depend on the presence of the Notary who permanently holds the office. A Notary may take leave, become ill, or temporarily be unable to perform the duties of office. Indonesian notarial law addresses this situation through the institution of the Substitute Notary. Article 1 point 3 of the Notary Office Law defines a Substitute Notary as a person temporarily appointed as a Notary to replace a Notary who is on leave, ill, or temporarily unable to perform the office. This position is further connected with Article 25, which requires the appointment of a Substitute Notary during a Notary's leave, and Article 32, which requires the transfer of the Notary Protocol during that period. The Substitute Notary consequently performs a public function intended to prevent an interruption of notarial services, although the appointment exists only for a limited period and because the permanent Notary is temporarily unable to act. Previous scholarship has nevertheless recognized that, during the period of appointment, a Substitute Notary exercises statutory notarial authority and bears legal responsibility for acts performed in that capacity (Erwinsyahbana & Melinda, 2018).

A more difficult normative issue arises from the relationship between paragraphs (1) and (2) of Article 33 of the Notary Office Law. Article 33(1) requires a Substitute Notary to be an Indonesian citizen, hold a bachelor's degree in law, and have worked as an employee of a notarial office for at least two consecutive years. These requirements are also reflected in Minister of Law Regulation Number 22 of 2025 concerning Requirements and Procedures for Appointment, Leave, Transfer of Office, Dismissal, and Extension of Notary Tenure. By comparison, the appointment of a permanent Notary under Article 3 of the Notary Office Law requires, among other qualifications, a bachelor's degree in law, completion of a master's degree in notarial law, and the prescribed period of professional internship or actual work in a notarial office. Despite this difference in qualifications and professional preparation, Article 33(2) expressly provides that Articles 4, 15, 16, and 17 governing the oath, authority, obligations, and prohibitions of a

Notary also apply to a Substitute Notary unless otherwise provided by law. The resulting structure places materially different appointment requirements alongside a substantially equivalent statutory framework of authority. Recent research has identified this disparity as a regulatory problem because differences in professional qualifications are not accompanied by an equally clear differentiation in the authority conferred upon the two positions (Mahyuddin & Saleh, 2025).

The problem does not lie in the absence of a legal basis for the Substitute Notary. Article 33(2) itself provides that legal basis. The difficulty arises because the provision does not further define whether the temporary nature of the office affects the substantive extent of the authority exercised under Article 15. Minister of Law Regulation Number 22 of 2025 has updated the administrative framework governing appointment, leave, transfer, dismissal, and tenure of Notaries and confirms the requirements applicable to a Substitute Notary, but it does not reconstruct the substantive limits of the authority incorporated through Article 33(2). The regulation has been in force since 12 June 2025 and replaced Minister of Law and Human Rights Regulation Number 19 of 2019. The significance of this regulatory issue can also be observed in more specific areas of notarial practice. Research concerning Substitute Notaries acting in the establishment of cooperatives, for example, has found that the general application of notarial authority may encounter more specific regulatory requirements for which the legal position of the Substitute Notary is not expressly determined, giving rise to the need for clearer limits of authority (Magdaline & Aminah, 2025).

The absence of an explicit boundary becomes particularly important because authority is directly connected with the legal status of an authentic deed and the responsibility attached to its creation. An authentic deed is expected to provide a high degree of evidentiary certainty, but that function presupposes that the person drawing up the deed acts within the authority granted by law. At the same time, the existence of different qualification requirements does not by itself mean that deeds created by a Substitute Notary lack authenticity, since Article 33(2) expressly extends the provisions on notarial authority to the Substitute Notary. Studies of deeds prepared by Substitute Notaries have in fact emphasized that the legal consequences must be assessed according to the authority held at the time the deed was created and compliance with the formal requirements governing the exercise of the office (Riekayanti et al., 2020). The relevant problem is therefore more precise: when the law grants broadly equivalent authority but does not expressly determine its substantive limits in relation to the temporary character of the office, uncertainty may arise in identifying the proper scope of authority and assessing acts performed

beyond the period or conditions of appointment. Similar concerns have arisen in studies concerning deeds executed by Substitute Notaries after the substitution period and the continuing responsibility attached to deeds made during their appointment (Oprandi et al., 2024).

This issue also extends to the allocation of legal responsibility. Article 65 of the Notary Office Law provides that a Notary, Substitute Notary, and Interim Notary remain responsible for every deed they create even after the Notary Protocol has been transferred to another protocol holder. The provision confirms that the exercise of notarial authority carries continuing responsibility, but it does not expressly address situations in which a notarial process is initiated by the permanent Notary and completed during the period of substitution, or conversely when the relevant acts are divided between the permanent and Substitute Notary. Earlier scholarship has examined the authority and continuing responsibility of Substitute Notaries after the completion of their duties and concluded that responsibility remains attached to the legal acts performed during the period of office (Erwinsyahbana & Melinda, 2018). This leaves a further regulatory question concerning how responsibility should be allocated where the notarial process involves acts undertaken by more than one holder of the office at different stages.

Previous studies have approached the position of Substitute Notaries from several directions. Research on the authority and responsibility of Substitute Notaries has established that the Substitute Notary exercises notarial authority during the period of substitution and remains accountable for deeds made while carrying out those duties (Erwinsyahbana & Melinda, 2018). Other research has concentrated on the legal consequences and evidentiary position of deeds prepared by Substitute Notaries, including questions arising when the exercise of the office exceeds its temporal boundaries (Oprandi et al., 2024). More recent scholarship has shifted attention to the disparity between the appointment requirements for permanent and Substitute Notaries and has proposed greater harmonization of professional standards (Mahyuddin & Saleh, 2025). Another line of research has demonstrated the need for restrictions in particular fields of notarial practice, especially where additional sectoral qualifications apply (Magdaline & Aminah, 2025). These studies provide an important foundation, but they tend to examine qualifications, authority, deed validity, or responsibility as separate legal problems.

The remaining issue concerns the internal structure of the regulation itself. The Notary Office Law already recognizes the Substitute Notary, establishes requirements for appointment, and extends the principal provisions on notarial authority to the position. The problem is that the regulatory scheme does not fully articulate the relationship between the temporary status of the

office, the qualifications required for appointment, the substantive scope of authority, and the distribution of responsibility. This type of problem is more appropriately understood as an incomplete norm rather than a complete absence of regulation. Pistor and Xu explain that statutory law may remain incomplete even when a field has been regulated if the applicable rule does not clearly cover relevant situations or sufficiently delineate the boundaries of its application (Pistor & Xu, 2003). Applied to Article 33, the relevant question is not whether the Substitute Notary possesses authority at all, but whether the law has provided a sufficiently coherent framework for determining the boundaries and consequences of that authority.

The novelty of this study lies in reconstructing the regulation of Substitute Notary authority as an integrated legal framework rather than treating Article 33(2) in isolation. The reconstruction connects three elements that are presently regulated separately: the legal status of the Substitute Notary under Article 1 point 3, the scope of authority under Article 33(2), and legal responsibility under Article 65. The proposed approach clarifies the Substitute Notary as a temporary public official, defines the scope of authority in accordance with the temporary purpose of the appointment, and allocates responsibility proportionally to the notarial acts performed by the permanent Notary and the Substitute Notary. Such a formulation seeks to preserve the continuity of notarial services without detaching the exercise of public authority from the qualifications, temporal limits, and responsibility that justify its legal legitimacy. The reconstruction also responds to the broader requirement of legal certainty, which depends not only on the existence of written rules but on their capacity to provide a coherent and predictable basis for legal action and institutional implementation (Otto, 2009).

Based on these problems, this study addresses two principal issues. First, it analyzes the legal implications of the regulation of Substitute Notary authority under Article 33(2) of the Notary Office Law for legal certainty, particularly in relation to legal status, the scope of authority, authentic deeds, and legal responsibility. Second, it formulates a reconstruction of Substitute Notary authority under Article 33 by integrating the legal status, substantive limits of authority, and proportional allocation of responsibility in order to establish greater normative clarity and consistency within Indonesian notarial law. Rather than questioning the statutory existence of the Substitute Notary, the analysis examines whether the present configuration of the office provides sufficient legal certainty for Notaries, Substitute Notaries, supervisory institutions, and members of the public who rely on notarial services.

This study employs normative legal research using statutory and conceptual approaches. Normative legal research is appropriate for examining inconsistencies, incompleteness, and

relationships among legal norms through systematic legal reasoning directed toward the resolution of a specific legal issue (Negara, 2023). The statutory approach examines the Indonesian Civil Code, Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary, Minister of Law Regulation Number 22 of 2025, and other regulations relevant to the authority and responsibility of Substitute Notaries. The conceptual approach examines the concepts of legal authority, incomplete law, legal reconstruction, and legal certainty as the analytical basis for evaluating the existing regulatory structure. Primary, secondary, and supporting legal materials are identified and systematized through literature-based legal research, while the analysis applies grammatical, systematic, and constructive interpretation to determine the relationship among the relevant provisions and formulate the proposed legal reconstruction. This form of doctrinal inquiry is directed toward identifying, interpreting, and systematizing legal rules and concepts in order to produce a reasoned legal prescription (Hutchinson & Duncan, 2012).

RESULTS AND DISCUSSION

Legal Implications of Substitute Notary Authority under Article 33 of the Notary Office Law for Legal Certainty

The institution of the Substitute Notary is part of the statutory mechanism designed to maintain the continuity of notarial services when a Notary is temporarily unable to perform the duties of office. Its existence cannot be separated from the sequence established by Articles 25, 32, and 33 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary (Notary Office Law). Article 25 recognizes a Notary's right to take leave and requires the appointment of a Substitute Notary during that period. Article 32 requires the transfer of the Notary Protocol to the Substitute Notary, while Article 33 establishes both the appointment requirements and the statutory provisions applicable during the substitution period. Read systematically, these provisions indicate that the Substitute Notary does not occupy an independent permanent office. The position arises because a Notary who already holds public authority is temporarily unable to exercise it and the continuity of public notarial services must nevertheless be maintained. The structure of the Notary Office Law itself is intended to protect legal certainty, order, and the availability of authentic written evidence created by or before an authorized public official.

The temporary nature of the position does not mean that the Substitute Notary merely performs administrative functions. Article 33(2) expressly provides that Articles 4, 15, 16, and 17 of the Notary Office Law also apply to Substitute Notaries and Interim Notaries unless otherwise

stipulated by law. Article 15 contains the principal authority to create authentic deeds, determine the certainty of dates, retain deeds, issue grosses, copies, and extracts, as well as exercise other statutory notarial powers. Articles 16 and 17 establish obligations and prohibitions accompanying the exercise of that authority. Earlier scholarship has similarly recognized that Substitute Notaries exercise substantially the same statutory authority during their appointment, notwithstanding differences in the requirements applicable to their appointment (Harnum, 2017).

The difficulty appears when this extension of authority is read together with Article 33(1). A permanent Notary must satisfy the requirements stipulated in Article 3, including completion of legal education and a master's degree in notarial law, the prescribed period of internship or actual work in a notarial office, and other statutory conditions. A Substitute Notary, by contrast, is required under Article 33(1) to be an Indonesian citizen, hold a bachelor's degree in law, and have worked continuously as an employee of a notarial office for at least two years. Minister of Law Regulation Number 22 of 2025 retains the regulatory framework governing appointments, leave, transfers, dismissal, and extension of notarial tenure and has replaced the previous Ministerial Regulation Number 19 of 2019 since 12 June 2025. The difference in professional qualifications would not in itself constitute a legal defect if the law clearly determined how the temporary status and purpose of substitution affected the exercise of authority. The normative difficulty lies precisely in the fact that Article 33(2) incorporates Article 15 without simultaneously specifying a substantive differentiation in the scope of that authority.

Table 1. Normative Comparison between a Notary and a Substitute Notary

Aspect	Notary	Substitute Notary	Normative Implication
Legal basis of position	Article 1 point 1 and Article 3 of the Notary Office Law	Article 1 point 3 and Article 33 of the Notary Office Law	Both operate within the statutory notarial system, but the latter exists temporarily
Educational qualification	Bachelor of Law and Master of Notarial Law	Bachelor of Law	Different levels of formal professional preparation
Professional experience	Internship/actual work as prescribed by Article 3	At least two consecutive years as an employee of a notarial office	Different statutory qualification structures
Nature of office	Exercised throughout the statutory term of office	Exercised only while replacing an absent Notary	Different temporal character of authority
Authority to create authentic deeds	Article 15	Article 15 applies through Article 33(2)	Substantially equivalent statutory authority
Obligations	Article 16	Article 16 applies through Article 33(2)	Equivalent statutory duties during substitution
Prohibitions	Article 17	Article 17 applies through Article 33(2)	Equivalent restrictions during substitution
Notary Protocol	Held as part of the permanent office	Temporarily received under Article 32	Temporary control follows the substitution period

Responsibility for deeds	Article 65	Article 65 also applies	Responsibility remains attached to the act or deed made
Express substantive limit of authority	General limits provided by the Notary Office Law	No separate detailed substantive limitation in Article 33(2)	Creates the principal regulatory issue examined in this study

Source: Authors' analysis based on Articles 1, 3, 15, 16, 17, 25, 32, 33, and 65 of the Notary Office Law and Minister of Law Regulation Number 22 of 2025.

The comparison does not support the proposition that a Substitute Notary lacks authority merely because the educational requirements are different. Such a conclusion would contradict the text of Article 33(2), which expressly applies Article 15 to the Substitute Notary. Research concerning the evidentiary force of deeds made by Substitute Notaries also concludes that a deed made by a lawfully appointed Substitute Notary, within the applicable authority and formal requirements, may possess the same evidentiary character as a deed made by the Notary being replaced (Gangga & Putra, 2023). The relevant legal problem is narrower: the Notary Office Law establishes a different qualification and temporary status but does not clearly explain whether those differences require a distinct substantive boundary in the exercise of Article 15 authority.

This distinction is important because the terms *temporary* and *substitute* describe more than the duration of appointment. They identify the institutional purpose for which the position exists. The Substitute Notary is appointed because a particular Notary is temporarily unable to perform the office, not because a new permanent notarial office has been created. The transfer of the Notary Protocol under Article 32 reinforces this connection. The protocol is transferred so that notarial services associated with the office can continue during the period of absence and is returned when the substitution ends. The statutory arrangement consequently contains a functional relationship between the reason for appointment, the duration of authority, and the services that must remain available. Scholarship on Substitute Notaries has long emphasized that certainty regarding their legal position is necessary not only for the office holder but also for members of the public who rely on notarial services (Flora, 2012).

The current formulation of Article 33(2), however, regulates the activation of authority more clearly than its substantive boundaries. It specifies which provisions applicable to Notaries are also applicable to Substitute Notaries, but it does not separately determine how the temporary function affects the material scope of particular notarial acts. This is especially relevant because Article 15 is broad. It covers the making of authentic deeds concerning legal acts, agreements, and determinations requested by interested parties or required by legislation, alongside a range of additional functions. The absence of a distinct boundary does not nullify the authority granted by Article 33(2), but it creates room for different understandings of whether all forms of notarial

services may be initiated and completed by a Substitute Notary in exactly the same manner as by the permanent holder of the office.

The issue becomes clearer when authority is separated into its material, temporal, and institutional dimensions. Temporally, the Substitute Notary can act only during the valid period of appointment. Institutionally, the position exists in connection with the Notary being replaced and the protocol temporarily transferred. Materially, however, Article 33(2) does not distinguish between notarial matters already in process before the Notary takes leave and entirely new matters initiated during the substitution period. Earlier research has noted that the authority exercised by a Substitute Notary must remain within the statutory boundaries of appointment because the temporary holder of the office is not legally interchangeable with the permanent Notary outside the period and conditions established by law (Wahyudi et al., 2023). The problem in Article 33 is that the temporal boundary is identifiable, whereas the material boundary remains considerably less explicit.

This regulatory incompleteness has its first implication for the legal position of the Substitute Notary. Article 1 point 3 defines a Substitute Notary as a person temporarily appointed as a Notary to replace a Notary who is on leave, ill, or temporarily unable to perform the office. The wording establishes the temporary character of the appointment but does not expressly formulate the institutional status of the Substitute Notary in the same terms used for a permanent Notary under Article 1 point 1. Article 33(2) then places the Substitute Notary under the principal provisions concerning authority, obligations, and prohibitions. The two provisions must consequently be read together: Article 1 point 3 explains why and for how long the position exists, whereas Article 33(2) explains which statutory powers accompany it. Treating Article 33(2) independently from the temporary character stated in Article 1 point 3 risks construing equivalent authority as equivalent institutional status.

The second implication concerns the exercise of notarial authority itself. Legal authority must provide a sufficiently ascertainable basis for deciding whether an official act was performed *intra vires* or exceeded the authorization granted by law. The distinction is particularly significant in notarial law because the authenticity of a deed is closely connected with the competence of the public official, the prescribed form, territorial competence, and the time at which the authority is exercised. Harnum's study identified the unusual configuration in which Notaries and Substitute Notaries are subject to different appointment requirements despite the extensive authority exercised during the substitution period (Harnum, 2017). The concern raised by that difference should not be transformed into an assumption that Substitute Notaries are inherently less

capable; its legal relevance lies in asking whether the legislature has adequately connected the requirements for entering a temporary office with the breadth of public authority attached to it.

The third implication relates to the authenticity and evidentiary status of deeds. Article 1868 of the Civil Code requires an authentic deed to be made in the form prescribed by law by or before a public official who has authority to do so at the place where the deed is made. The element of official authority is therefore part of the legal architecture of authenticity. Yet the validity of a deed made by a Substitute Notary cannot be questioned solely because the deed was not made by the permanent Notary. Once lawfully appointed and acting within the valid period of substitution, the Substitute Notary derives the power to create authentic deeds from the Notary Office Law itself. Studies examining such deeds confirm that their evidentiary value does not inherently differ merely because they are produced during a substitution period (Gangga & Putra, 2023).

A different issue arises when the appointment is legally defective or the act is performed outside the applicable authority. Research based on a case involving an invalid Substitute Notary appointment found that defects in the legal capacity of the substitute office holder may affect the evidentiary status of the deed and expose the parties to losses requiring legal protection (Arsawan & Cahyono, 2021). This distinction is central to the present study. The risk to authentic deeds does not arise automatically from differences in academic qualifications. It arises when uncertainty about the legal boundaries of the temporary authority makes it difficult to determine whether a particular notarial act was carried out by an official acting within the powers legally attached to the office.

The fourth implication concerns legal responsibility. Authority and responsibility form corresponding components of the exercise of a public office. Article 65 of the Notary Office Law provides that a Notary, Substitute Notary, and Interim Notary remain responsible for every deed they make even after the Notary Protocol has been transferred to another protocol holder. Research on unlawful acts committed by Substitute Notaries similarly places responsibility on the Substitute Notary for acts personally performed during the appointment, including the possible consequences in civil, administrative, professional, or criminal law where the relevant legal requirements are satisfied (Mahadewi & Purwanto, 2021). More recent research likewise emphasizes that responsibility for defective deeds remains attached to the Substitute Notary when the defect results from acts or omissions attributable to the substitute during the period of office (Putriane, 2026).

Article 65 is relatively clear when a deed is entirely prepared and executed by a single office holder. Greater difficulty occurs when a notarial process extends across the transition between the permanent Notary and the Substitute Notary. A legal transaction may have entered the preparatory stage before the Notary takes leave, while verification, drafting, appearance of the parties, reading, signing, or completion takes place after the protocol has been transferred. The present formulation does not expressly allocate responsibility for a process in which material notarial acts are divided between two office holders. Treating responsibility solely according to who eventually signs the deed may overlook legally relevant conduct carried out at an earlier stage; attributing the entire process to the permanent Notary may equally disregard the independent statutory responsibility attached to the Substitute Notary's acts. The continuing personal nature of notarial responsibility makes this regulatory boundary significant rather than merely administrative.

The fifth implication concerns the consistency of supervision and legal assessment. A clear boundary of authority is needed not only by the Notary and Substitute Notary but also by supervisory bodies and courts assessing contested deeds. Where the statutory framework does not provide a sufficiently differentiated standard, comparable conduct may be understood differently depending on whether Article 33(2) is interpreted principally from the breadth of Article 15 or from the temporary purpose reflected in Articles 1 point 3, 25, and 32. The risk is not necessarily that each interpretation is legally untenable. The more fundamental problem is the absence of a common normative criterion for choosing between them. Research on Substitute Notaries acting beyond their legally defined authority illustrates that a departure from the limits attached to the office may generate consequences both for the deed and for the personal responsibility of the substitute office holder (Simangunsong & Simamora, 2025).

Measured against the legal-certainty framework adopted in this study, the regulatory problem is located first at the level of normative clarity. A person reading Article 33 can determine who may be appointed as a Substitute Notary and can identify the principal provisions governing the performance of the office. It is less certain how the temporary and substitutive character of the position is intended to operate as a substantive limitation on those powers. This does not amount to the absence of law. It reflects an incomplete regulatory relationship between several provisions that individually have clear objects but do not completely resolve their interaction.

The second aspect concerns consistency of application. A norm can provide formal authority while still generating uncertainty when officials and institutions lack a common

parameter for determining its limits. In the present regulatory structure, one interpretation may place dominant weight on Article 33(2) and regard the entire authority under Article 15 as applicable without material differentiation during the valid term of substitution. Another may emphasize Articles 1 point 3, 25, and 32 and construe the authority more narrowly according to the temporary purpose of replacing an absent Notary. Both positions begin from provisions within the same statute. The possibility of such divergent constructions indicates that legal certainty depends on more than the formal existence of Article 33; it requires coherence between status, qualifications, powers, duration, and responsibility.

The third aspect concerns predictability for users of notarial services. Members of the public are not expected to resolve internal doctrinal questions regarding the source or limits of notarial authority before relying on an authentic deed. Their legitimate expectation is that the officer before whom the legal act is formalized possesses clearly identifiable authority and that the resulting deed will retain the evidentiary status promised by law. A legal regime that leaves significant uncertainty over the boundary of the temporary office transfers a regulatory risk from the legislature to parties who have little capacity to assess it. Research concerning legal protection for clients of improperly appointed Substitute Notaries illustrates the practical importance of ensuring that the authority of the person creating the deed can be established without ambiguity (Arsawan & Cahyono, 2021).

Article 33(2) consequently produces a paradox within the current regulation. Its purpose is to preserve continuity: the absence of a permanent Notary should not suspend access to notarial services. Its broad incorporation of Articles 4, 15, 16, and 17 provides the Substitute Notary with the legal capacity necessary to achieve that objective. Yet continuity is not the only value protected by the notarial system. The same legislation is also structured around competence, accountability, authenticity, and legal certainty. When broad statutory authority is given to a temporary office without a sufficiently articulated relationship between these elements, the provision succeeds in preventing an interruption of services but does not fully resolve the legal consequences arising from the exercise of that substitute authority.

The legal implication of Article 33(2) is therefore not that every deed made by a Substitute Notary is legally uncertain, nor that a difference in educational qualifications automatically invalidates the exercise of statutory authority. The more precise conclusion is that the current scheme leaves an incomplete normative connection between the temporary legal position of the Substitute Notary, the different requirements for appointment, the substantive breadth of Article 15 authority, and the allocation of responsibility under Article 65. This incompleteness creates

potential differences in interpretation concerning the boundaries of the office, complicates the assessment of responsibility when notarial processes overlap between office holders, and may eventually affect predictability regarding the legal status of notarial acts. The deficiency is systemic rather than merely terminological. It is this relationship among status, authority, and responsibility that provides the basis for reconstructing the relevant provisions of the Notary Office Law in the second part of the discussion.

Reconstruction of Substitute Notary Authority to Ensure Legal Certainty

The legal implications identified in the preceding discussion indicate that the principal weakness of Article 33 of the Notary Office Law does not arise from the absence of authority vested in a Substitute Notary. The provision expressly extends Articles 4, 15, 16, and 17 to the substitute office and thereby establishes a statutory basis for performing notarial functions. The problem lies in the regulatory relationship between the temporary character of the office, the different requirements for appointment, the breadth of the authority conferred, and the responsibility that follows its exercise. Reform limited to clarifying one of these elements would leave the remaining inconsistencies unresolved. The reconstruction proposed in this study therefore treats the regulation of Substitute Notaries as a connected normative structure involving legal status, authority, the legal consequences of official acts, and responsibility.

This systemic approach is particularly necessary because the current regulation distributes those elements across different provisions. Article 1 point 3 determines who a Substitute Notary is; Article 33 determines the requirements for appointment and activates the principal powers, obligations, and prohibitions of the office; Article 65 governs continuing responsibility for deeds. Each provision can be read independently, but the uncertainty identified in this study emerges from their interaction. Regulatory synchronization in notarial law is important because inconsistencies among provisions concerning form, authority, and legal consequences may eventually undermine the certainty attached to notarial acts themselves (Wishal & Mahfud, 2026). The reconstruction must consequently operate horizontally across these provisions rather than merely adding an explanatory phrase to Article 33(2).

The first component concerns the legal status of the Substitute Notary. Article 1 point 1 expressly defines a Notary as a public official authorized to create authentic deeds and exercise other authority provided by legislation. Article 1 point 3, however, defines a Substitute Notary as "a person temporarily appointed as a Notary" to replace a Notary who is on leave, ill, or temporarily unable to perform the office. The wording identifies the temporary character of the

appointment but leaves the institutional status of the substitute implicit. Indonesian scholarship on the status of Notaries has emphasized the importance of maintaining conceptual precision regarding their character as public officials because the classification of the office has consequences for the legal acts and public authority exercised through it (Aisyiah & Wisnuwardhani, 2022).

The proposed reconstruction makes that status explicit by describing the Substitute Notary as a temporary public official. The addition is not intended to create a new category of state office or detach the Substitute Notary from the existing Notary Office Law. Its function is narrower: to explain that the substitute temporarily performs a public office and possesses statutory authority only for the duration and purpose of the substitution. This formulation connects status with temporality from the outset. The expression "temporary public official" also avoids an interpretation in which the phrase "temporarily appointed as a Notary" is treated as complete institutional equivalence between the permanent and substitute offices.

The reformulation proposed for Article 1 point 3 may therefore be expressed as follows: "A Substitute Notary is a temporary public official appointed to replace a Notary who is on leave, ill, or temporarily unable to perform the duties of office, with authority limited in accordance with this Law." This formulation retains the original basis of appointment but adds two elements absent from the existing provision: the character of the office and an express reference to limitations on authority. The proposal follows the central construction developed in the original research, which places temporary public-official status as the starting point for defining the authority that follows.

The second component concerns the scope of authority under Article 33(2). A regulatory response to the disparity between permanent and Substitute Notaries could theoretically proceed by equalizing qualification requirements or by differentiating the authority attached to each office. This study adopts the latter approach because the purpose of the Substitute Notary is not to establish an alternative permanent pathway into notarial office, but to preserve the continuity of services during a temporary absence. Recent research addressing Article 33 has similarly found that the existing qualification regime does not provide sufficiently clear competency parameters and has recommended clearer standards and limitations on Substitute Notary authority as part of improving legal certainty (Pati & Primananda, 2025).

The proposed limitation does not eliminate Article 15 authority in its entirety. It distinguishes between the initiation of a new deed-making process and the continuation of a notarial process that began before the permanent Notary took leave, became ill, or was

temporarily unable to act. Under this model, the Substitute Notary may complete the preparation and execution of a deed whose legal and factual requirements have already entered the notarial process before the substitution period. The original research also allows ancillary services under Article 15 that do not require the initiation of a new deed-making process, such as legalization of signatures, registration of private documents, certification of copies, and legal counselling connected with notarial services. The limitation is directed principally at the initiation of a new authentic deed requiring an independent substantive assessment from the beginning.

Such differentiation provides a clearer connection between the purpose of substitution and the powers exercised during it. The Substitute Notary remains capable of preventing interruption in ongoing notarial services, while the temporary appointment is not automatically treated as institutionally identical to the permanent office for every form of new legal transaction. This structure also addresses the qualification issue without transforming educational differences into an assumption of incapacity. The concern is not that a person holding only the statutory qualification under Article 33(1) is legally incapable of exercising authority. The concern is whether the legislature has designed the extent of that authority consistently with the temporary purpose for which the office exists.

The proposed formulation of Article 33(2) accordingly provides that Articles 4, 15, 16, and 17 remain applicable, but their exercise by a Substitute Notary is connected to the continuation of the deed-making process or notarial services initiated before the permanent Notary's temporary absence. A further paragraph should define the temporal, territorial, and material boundaries of that authority. The original proposal identifies these dimensions simultaneously: authority may be exercised only during the valid appointment, within the territorial jurisdiction of the Notary being replaced, and within the prescribed scope of substitute services. Such a formulation makes the boundary ascertainable before a disputed deed reaches supervisory or judicial examination.

The third component concerns the legal status of deeds completed during the substitution. A reconstruction that restricts authority should not create a presumption that deeds made by Substitute Notaries are inherently inferior to those made by permanent Notaries. Existing literature recognizes that a lawfully appointed Substitute Notary exercises statutory notarial authority and that an authentic deed made within that authority retains the evidentiary character attached to an authentic deed (Klau et al., 2024). The reconstruction proposed here works from the same premise: authenticity depends on compliance with the requirements governing the

official, the procedure, and the form of the deed, rather than merely on whether the office holder is permanent or temporary.

For this reason, the proposed amendment should regulate acts beyond authority, not automatically downgrade every deed completed by a Substitute Notary. The study proposes an additional provision stating that authentic deeds or official acts performed outside the limits specified in Article 33 are subject to the legal consequences prescribed by applicable legislation. This drafting choice is significant. It avoids predetermining one uniform consequence for every breach because the juridical effect may depend on the character of the violation. A territorial violation, expiration of the appointment period, procedural defect, or excess of substantive authority may not necessarily produce identical consequences. The provision instead creates a clear normative gateway through which the appropriate consequence can be assessed under the Civil Code and the Notary Office Law.

The fourth component is the reconstruction of responsibility under Article 65. The current provision states that a Notary, Substitute Notary, and Interim Notary remain responsible for every deed they make even after the Notary Protocol has been transferred to another protocol holder. This rule provides an important foundation for personal responsibility, but it is formulated primarily around the final deed. It is less explicit where a single notarial process is carried out sequentially by the permanent Notary and the Substitute Notary. The thesis specifically identifies this as a normative weakness because the preparatory assessment may have been conducted by one office holder while later procedural acts and execution are performed by another.

Continuing responsibility after the substitution period remains necessary. Recent research on the protection of former Substitute Notaries confirms that responsibility for deeds made while holding the office does not disappear merely because the appointment has ended, which also explains the continuing relevance of institutional protection when the former substitute is subsequently involved in legal proceedings (Siregar et al., 2026). The problem addressed by the reconstruction is therefore not whether responsibility continues, but which act and which office holder provide the juridical basis for that responsibility.

The proposed model moves from deed-based attribution alone toward act-based proportional responsibility. A permanent Notary remains responsible for the legal assessment, verification, drafting process, or other official acts personally performed before the leave or temporary absence. The Substitute Notary bears responsibility for acts personally undertaken during the valid substitution period. Where the deed-making process crosses the transition

between both office holders, responsibility follows the relevant conduct of each rather than being placed exclusively on the person whose signature appears at the final stage. This construction is more consistent with the relationship between authority and responsibility because legal accountability is attached to the exercise of authority that actually produced the relevant legal consequence.

The approach also avoids the opposite problem of treating the permanent Notary as automatically responsible for every act undertaken by the Substitute Notary merely because the protocol or permanent office belongs to the former. The Substitute Notary is not an assistant acting without independent statutory responsibility. During the appointment, the substitute exercises public authority conferred by law. Legal protection for Substitute Notaries consequently requires both protection from inappropriate external intervention and clear limits regarding the acts for which they can legitimately be held accountable (Chrismanti & Simanjuntak, 2025). A proportional model preserves that independence while recognizing that some notarial processes may involve legally significant acts undertaken before the substitution began. The relationship among the three reconstructed provisions can be summarized as follows.

Table 2. Proposed Reconstruction of the Regulatory Framework for Substitute Notaries

Provision	Existing Regulatory Problem	Proposed Reconstruction	Legal Function
Article 1 point 3	Defines the Substitute Notary as a person temporarily appointed as Notary but does not expressly state the institutional status and limited character of the office	"A Substitute Notary is a **temporary public official** appointed to replace a Notary who is on leave, ill, or temporarily unable to perform the duties of office, with authority limited in accordance with this Law."	Clarifies legal status and connects temporary appointment with limited authority
Article 33(2)	Articles 4, 15, 16, and 17 apply without an express substantive distinction in the exercise of substitute authority	Retain the application of Articles 4, 15, 16, and 17, while specifying that Substitute Notary authority is exercised to continue deed-making processes or notarial services initiated before the Notary's temporary absence	Establishes the material purpose of substitute authority
Proposed Article 33(2a)	No integrated formulation of temporal, territorial, and substantive limits	Substitute authority is exercised only during the appointment, within the jurisdiction of the Notary being replaced, and within the permitted scope of continuation of existing notarial processes	Establishes identifiable boundaries of authority
Proposed Article 33(2b)	No specific bridge between excess of substitute authority and the legal consequences of the act	Authentic deeds and/or official acts performed outside the prescribed limits are subject to legal consequences under applicable legislation	Avoids automatic invalidity while providing a basis for legal assessment

Article 65(1)	Current provision focuses on responsibility for deeds without expressly addressing processes initiated before leave	Permanent Notary remains responsible for deeds and legally relevant stages of deed preparation performed before leave, illness, or temporary absence	Preserves responsibility for acts personally performed before substitution
Article 65(2)	No express allocation where one deed-making process involves both office holders	Substitute Notary is responsible for acts performed during the valid appointment; permanent Notary remains proportionally responsible for acts and stages performed before temporary absence	Establishes act-based and proportional allocation of responsibility

Source: Authors' reconstruction based on Articles 1 point 3, 33, and 65 of the Notary Office Law and the normative formulation developed in the research.

The table reflects the central feature of the proposed *ius constituendum*: the three provisions perform different but connected functions. Article 1 point 3 answers who the Substitute Notary is; Article 33 answers what the Substitute Notary may do and within what limits; Article 65 answers who bears responsibility for the acts performed. This sequence prevents the reform from reproducing the current problem in which authority can be identified but its relationship with temporary status and responsibility requires further interpretation. The exact reconstruction of Article 65 proposed in the thesis likewise separates the permanent Notary's responsibility for processes initiated before leave from the Substitute Notary's responsibility for acts undertaken during appointment.

One technical distinction should nevertheless be preserved in the legislative drafting stage. Article 33(2) currently refers simultaneously to Substitute Notaries and Interim Notaries, whereas this study addresses the former. Their legal circumstances are not entirely interchangeable, particularly because Article 35 regulates an Interim Notary in circumstances following the death of a Notary and grants specific powers associated with that position. A future amendment should therefore place the proposed substantive restriction specifically on Substitute Notaries or provide a separate formulation for Interim Notaries. This technical separation does not change the reconstruction developed in the study; it prevents a reform aimed at Article 33 from unintentionally altering the special legal regime applicable to another office.

The normative value of this reconstruction can first be assessed through clarity. Legal certainty requires more than a rule that formally exists. A legal subject should be able to identify the content of the rule and anticipate the legal consequences of conduct with reasonable confidence. Paunio distinguishes the predictable dimension of legal certainty through requirements of clarity, stability, and intelligibility, allowing affected parties to calculate the

consequences of legal action with sufficient accuracy (Paunio, 2009). The proposed formulation makes the status, period, territorial scope, material authority, and responsibility of the Substitute Notary visible within the statutory text rather than leaving their relationship to be constructed after a dispute arises.

The second value is consistency. The reconstruction creates a closer relationship between Article 3, which establishes the qualifications for a permanent Notary; Article 15, which establishes general notarial authority; Article 33, which governs Substitute Notaries; and Article 65, which governs responsibility. It does not require the legislature to treat the two positions as identical, nor does it remove the statutory authority necessary for temporary notarial service. The objective is to make differences in status and appointment legally intelligible through corresponding rules on authority. This form of regulatory coherence is particularly relevant because recent analysis of substitute-notary requirements has also identified the need to clarify competency standards and the limits of authority rather than relying solely on the present broad incorporation of Article 15 (Pati & Primananda, 2025).

The third value concerns legal protection. Clear limits protect the public because parties can identify whether the person formalizing their transaction is acting within lawful authority. They also protect the Substitute Notary by preventing responsibility from extending to matters outside the legally defined scope of the temporary office. The permanent Notary benefits from the same structure because responsibility for a process completed during leave is no longer presumed to disappear upon transfer of the protocol or, conversely, to remain entirely attached to the permanent office irrespective of who performed the relevant act. The reconstruction changes the question from "who finally signed the deed?" to "which legally relevant official act was performed by whom and under what authority?"

The final value is predictability of institutional responses. Majelis Pengawas Notaris, Majelis Kehormatan Notaris, courts, Notaries, Substitute Notaries, and service users require a common normative point of reference when evaluating a disputed act. Legal certainty has a rule-of-law function precisely because it allows individuals to anticipate not only the consequences of their own conduct but also the likely institutional response of public authorities (Lifante-Vidal, 2020). A clearer distribution of status, authority, and responsibility reduces the need for supervisory and judicial bodies to fill gaps that should have been addressed by legislation.

The proposed reconstruction consequently does not remove the institution of the Substitute Notary or question the legality of deeds already made under the existing Article 33. Its orientation is prospective. The aim is to reorganize the statutory relationship among Article 1 point 3, Article

33, and Article 65 so that future exercise of substitute authority can be assessed through a common legal standard. The model preserves continuity of notarial services but subjects that continuity to identifiable limits concerning the purpose, duration, territory, and substance of the temporary office. Legal certainty is then produced not merely by recognizing the existence of a Substitute Notary, but by making the consequences of that recognition predictable for the office holder, the permanent Notary, supervisory institutions, courts, and members of the public.

CONCLUSION

Article 33(2) of the Notary Office Law has implications for legal certainty because it extends Articles 4, 15, 16, and 17 to Substitute Notaries without clearly defining the substantive limits of authority associated with the temporary nature of the office and the different appointment requirements. The issue is not the absence of authority or the automatic invalidity of deeds made by Substitute Notaries, but the incomplete relationship between legal status, scope of authority, validity of notarial acts, and responsibility, particularly when a notarial process involves both the permanent Notary and the Substitute Notary. To address this problem, the authority of Substitute Notaries should be reconstructed through an integrated reformulation of Article 1 point 3, Article 33(2), and Article 65 by expressly defining the Substitute Notary as a temporary public official, clarifying the temporal, territorial, substantive, and functional limits of authority, and allocating responsibility proportionally according to the legal acts performed by each office holder. This formulation would provide a more coherent relationship between status, authority, and responsibility while strengthening normative clarity, predictability, and legal protection in Indonesian notarial practice.

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