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## Legal Implications of Transferring Notary Legal Counseling Duties to a Substitute Notary or Temporary Notary in the Preparation of Deeds of Release of Rights to Customary Land

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**Abstract:** This study examines the legal implications of transferring notary legal counseling duties to a substitute notary or acting official in the preparation of deeds of granting traditional land rights. The primary areas of focus are the legality of the deed, the legal responsibilities of the substitute notary, and the defense of indigenous peoples' rights. By examining Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 2 of 2014 concerning the Position of Notary, and putting provisions like Government Regulation Number 24 of 1997 concerning Land Registration into effect, the research method is normative juridical through a statutory approach. The results of the study indicate that the validity of the deed of release of customary land rights can only be guaranteed if the appointment of the substitute notary or acting official meets formal and substantial requirements, including the inclusion of the position status on the minutes and a copy of the deed. Non-compliance has the potential to give rise to customary land disputes and the risk of nullity, particularly when the principle of recognizing The rights of indigenous peoples are not being upheld under Article 18B, paragraph (2) of the 1945 Constitution and Constitutional Court Decision Number 35/PUU-X/2012. In accordance with Civil Code Article 1365, acting officials or substitute notaries are nonetheless subject to civil culpability, administrative sanctions under Articles 85–88 of the Notary Law, and the obligation to maintain professional ethics. This study recommends strengthening legal counseling procedures, harmonizing land regulations and notary positions, and establishing national guidelines to ensure the protection of indigenous peoples' rights and legal certainty in every process of releasing customary land rights.

**Keyword:** Substitute Notary, Customary Land, Deed of Release of Rights, Legal Implications, Protection of Indigenous Peoples.

### INTRODUCTION

The primary law controlling Indonesia's land law system is The Basic Agrarian Regulations Law Number 5 of 1960 (UUPA). As long as it does not interfere with national

interests, this law confirms that land is a state-controlled asset that can be held or managed by people or communities governed by customary law. (Patahuddin, 2023) Article 2 of the UUPA states that land rights must be recognized and respected, both for land rights held by individuals and the customary rights of indigenous communities. (Ningtyas, 2023) Thus, land regulations in Indonesia recognize the existence of the traditional rights of indigenous communities, although in practice these often overlap with the interests of the state or other parties. (Pramesti, 2024)

Since notaries serve as public officials with the authority to issue genuine deeds as legitimate legal proof, their job is extremely strategic in this context. Notaries are authorized to offer legal consultations in accordance with Law Number 2 of 2014 respecting the Position of Notaries, issue certain deeds, and ensure that all transactions comply with applicable laws and regulations. (Melinda, 2021) Article 15, paragraph (1) of the Notary Law emphasizes that every deed drawn up by a notary has strong evidentiary force (*kracht van gewijsde*) as long as it is prepared according to procedure, including deeds of release of customary land rights. (Abady, 2023)

Notary legal consultation is crucial in transactions involving the release of customary land rights because indigenous peoples often do not understand the legal implications of relinquishing their rights. Notaries are responsible for explaining the contents of the deed, the rights and obligations of the parties, and ensuring that consent is made consciously and without coercion. (Rizky, 2023) Furthermore, notaries must also examine the land status and ensure that no third-party rights are neglected, as stipulated in Article 15 paragraph (2) of the Notary Law, which emphasizes the notary's obligation to act honestly, carefully, and responsibly. (Jaya, 2022) This is crucial for preventing future disputes and protecting the rights of indigenous peoples through formal legal means.

A notary's legal responsibility is not limited to civil matters but also encompasses administrative, criminal, and professional ethics sanctions. Article 1365 of the Civil Code stipulates that a notary can be held civilly liable if they cause losses due to negligence or unlawful acts. (Fatriansyah, 2023) Meanwhile, Articles 85–88 of the Notary Law regulate administrative sanctions for notaries who violate legal provisions or codes of ethics, including revocation of their practice licenses or administrative fines. Thus, notaries have a dual obligation to protect the legal interests of clients while maintaining the integrity and professionalism of their profession. (Damayanti, 2024)

In practice, the role of a notary becomes increasingly complex when duties are transferred to a substitute notary or acting official. To guarantee that the deed of release of customary land rights is still enforceable and legitimate, this procedure needs to be completed formally and substantively. Recording the status of the substitute in the minutes, including a copy of the deed, and fulfilling administrative procedures are absolute requirements. Failure to comply with these procedures can lead to the risk of the deed being invalidated and legal disputes, particularly when the rights of indigenous communities are not recognized or ignored. (Nurjanah, 2023)

In notarial practice, certain situations require the transfer of duties to a substitute or acting notary. This situation can arise due to the notary's inability to attend, taking leave, experiencing a conflict of interest, or other emergency situations that prevent the principal notary from carrying out their duties. This transfer of duties is essential to ensure the deed preparation process continues without disrupting legal certainty, especially in agreements that release customary land rights, which significantly affect the interests of connected parties and indigenous groups. (Yana, 2025)

The mechanism for appointing a substitute notary or acting official is regulated in Law Number 2 of 2014 concerning Notary Positions and related implementing regulations. The appointment process must be conducted officially through a clear letter of appointment,

recording the substitute's official status in the minutes, and notification to each of the transaction's parties. As stated in Article 15 paragraph (1) of the Notary Law, this regulation attempts to guarantee that every deed prepared by a substitute notary has legal effect, which affirms that notarial deeds are authentic and have full evidentiary force as long as they are prepared in accordance with procedures. (Luciana, 2022)

For a deed prepared by a substitute notary to remain valid and legally binding, certain formal and substantive requirements must be met. Formally, the substitute's official status must be stated in the minutes, accompanied by a copy of the deed and complete documentation regarding the identities of the parties and the object of the transaction. Substantively, the substitute notary remains obligated to provide comprehensive legal consultation, ensure that the parties' consent is made consciously and without coercion, and investigate the land status and related indigenous community rights, in accordance with Article 15 paragraph (2) of the Notary Law. Fulfillment of these two aspects is an absolute requirement to guarantee the validity of the deed and prevent future disputes. (Mahadewi, 2021)

Failure to comply with the notary's transfer procedures has the potential to create various legal risks. The validity of the deed can be questioned if the appointment of a replacement does not comply with the formalities or substance stipulated by law, thus increasing the potential for customary land disputes. When the rights of indigenous peoples are disregarded or not acknowledged, these risks become more complicated and may violate the principle of recognizing indigenous peoples' customary rights as outlined in Article 18B paragraph (2) of the 1945 Constitution and upheld by Constitutional Court Decision No. 35/PUU-X/2012. This legal impact is not only civil in nature but can also trigger social conflict and broader legal uncertainty. (Klau, 2024)

Furthermore, there are differences in responsibilities between permanent notaries and replacement notaries. Although substitute notaries have the authority to draw up deeds, their legal responsibilities remain, both civilly under Article 1365 of the Civil Code, administratively under Articles 85–88 of the Notary Law, and under professional ethics. However, due to time constraints or a lack of understanding of local conditions, substitute notaries can face challenges in ensuring all procedures are fully fulfilled. This situation demands high professionalism and clear coordination between the principal notary, the substitute notary, and the parties involved in the transaction. (Maharani, 2023)

The absence of regulatory harmonization between the Notary Law and the Land Law also contributes to legal confusion. Land proceedings are governed by Government Regulation No. 24 of 1997 and Basic Agrarian Law No. 5 of 1960, while the Notary Law emphasizes the authority and procedures for drawing up deeds. The differences in focus and mechanisms between these two regulations can lead to differing interpretations in practice, particularly regarding the transfer of notary duties in customary land rights transfer transactions. Therefore, strengthening legal mechanisms, harmonizing regulations, and ensuring procedural compliance are crucial steps to ensure legal certainty, protect the rights of indigenous peoples, and prevent future disputes.

Given the frequent occurrence of disputes resulting from indigenous peoples' ignorance of formal legal procedures and the potential negligence of notaries in assigning duties to temporary officials or substitute notaries, the urgency of this research lies in the significance of protecting indigenous peoples' rights while guaranteeing legal certainty in every process of releasing customary land rights. This research is crucial because it identifies the legal risks that arise if formal and substantive procedures are not followed, including the possibility of deed cancellation, neglect of indigenous peoples' rights, and legal conflicts between land regulations and notary office provisions. Furthermore, this research contributes to strengthening legal consultation procedures by notaries, refining the mechanism for

appointing substitute notaries, and harmonizing regulations between the Notary Law No. 20 of 2000, Law No. 2 of 2014, To create legal clarity, protect indigenous peoples' rights, and maintain the integrity of the notary position in the practice of releasing rights to customary land, Government Regulation No. 24 of 1997 and the Basic Agrarian Law No. 5 of 1960 were implemented.

## **METHOD**

The goal of this study's normative juridical research methodology, which combines Examining the transfer of notary duties in drafting instruments of release of customary A statutory and conceptual method is used to examine land rights from the standpoint of the relevant legislation and underlying legal principles. Law Number 5 of 1960 about Agrarian Principles, Government Regulation Number 24 of 1997 concerned Land Registration, Law Number 2 of 2014 regarding the Position of Notary, and the relevant Constitutional Court decisions are reviewed and analyzed in order to implement the statutory approach, while the conceptual approach is used to understand the concept of authenticity of deeds, legal responsibilities of notaries, and defense of indigenous peoples' rights. Laws, government rules, and rulings from the Constitutional Court serve as primary sources for this study's data, while books, journals, scientific papers, and other relevant legal documents serve as secondary sources. Techniques for gathering data are done through literature reviews. (library research) and documentation, by reviewing regulations, deed documents, and opinions of relevant legal experts. Data analysis was carried out qualitatively using a descriptive method, namely describing and analyzing regulations, legal concepts, and substitute notary practices, then drawing legal conclusions regarding the validity of deeds, notary responsibilities, and protection of indigenous peoples' rights based on applicable statutory provisions and legal principles.

## **RESULTS AND DISCUSSION**

### **Validity of the Deed of Release of Rights to Customary Land by a Substitute or Temporary Notary**

Law Number 2 of 2014 regulating the Office of Notaries (Notary Law) serves as the foundation for the legality of deeds prepared by a substitute notary. Every deed prepared by a notary has strong evidentiary power (*kracht van gewijsde*), according to Article 15, paragraph (1) of the Notary Law, provided that it is prepared in compliance with legislative provisions. (Cahayani, 2024) Consequently, as long as the substitute notary is appointed in a proper and systematic manner, deeds prepared by the substitute notary maintain their legal validity, and the entire deed-making process follows the standards established by the Notary Law.

In addition to the Notary Law, implementing regulations regarding the appointment of substitute notaries also serve as an important legal basis. A substitute notary must be officially appointed through a valid letter of appointment from the absent notary or an authorized official. This appointment must be recorded and reported as part of the minutes, so that the relevant parties are officially aware of the status of the substitute notary authorized to draw up deeds. This principle ensures that there is no doubt regarding the legitimacy of the substitute notary in exercising their authority. (Pati, 2025)

The principle of authenticity of notarial deeds and their evidentiary force also serves as an important legal basis. Notarial deeds are authentic and have full evidentiary force, as stipulated in Article 1868 of the Civil Code, which states that an authentic deed is the strongest form of evidence. (FR, 2021) Therefore, a deed prepared by a substitute notary, if it meets the formal and substantial requirements, retains the same legal force as a deed prepared by a permanent notary. This principle emphasizes the importance of formal procedures in maintaining the validity and authenticity of the deed. (Noer, 2021)

The first formal requirement that must be met is the inclusion of the substitute notary's status in the minutes. The minutes must clearly state the name of the substitute notary, the basis for their appointment, and the authority granted to prepare a particular deed. This is crucial to ensure transparency and avoid future disputes regarding the party authorized to prepare the deed. The inclusion also complies with Article 15 paragraph (2) of the Notary Law, which stipulates that notaries are required to explain all formal aspects of the deed's preparation.

The inclusion of a copy of the deed and supporting documents is a mandatory formal requirement. The replacement notary must attach a copy of the deed, the parties' identity documents, and documents related to the transaction, such as a land certificate or proof of land ownership. According to Article 15 paragraphs (1) and (2) of the Notary Law, this requirement serves both administrative and legal reasons by enhancing the deed's standing as legitimate evidence in the eyes of the law.

Compliance with administrative procedures and deed registration in accordance with Government Regulation Number 24 of 1997 concerning Land Registration is also a crucial requirement. Every deed of release of land rights, including those drawn up by a substitute notary, must be registered to be legally binding against third parties. This procedure includes recording the deed at the land office and maintaining official archives, thereby ensuring legal certainty regarding land rights. Compliance with these procedures ensures that the deed drawn up by the substitute notary is valid, protected, and legally accountable.

The substantial requirements for the drafting of a deed by a substitute notary emphasize the importance of comprehensive legal consultation with the parties. The parties' rights and obligations, the legal ramifications of the transaction, and the substance of the deed must all be explained by the substitute notary. It complies with Law Number 2 of 2014 governing the Office of Notaries, Article 15, paragraph (2), which highlights the notary's duty to behave honorably, cautiously, and responsibly. Adequate legal consultation ensures that the parties understand the contents of the deed and that consent is given consciously, so that the deed has legal force.

In addition, the substitute notary is also obliged to verify the land status and related rights. This verification includes examining ownership documents, land registration records, and identifying potential third-party rights. This process is crucial to prevent future legal conflicts and to ensure that the deed complies with the principle of acknowledging Article 18B, paragraph (2) of the 1945 Constitution, which guarantees indigenous peoples' rights, and Constitutional Court Decision No. 35/PUU-X/2012. By conducting substantial verification, the substitute notary ensures that the deed does not violate anyone's rights and has full legal legitimacy.

Ensuring that the parties' consent is made consciously and without coercion is also part of the substantial requirements. The substitute notary is obliged to ensure that each party signs the deed voluntarily, understands the legal implications, and is not under pressure from any other party. This provision aligns with the principles of prudence and professional responsibility stipulated in Article 15, paragraph (2) of the Notary Law and the Notary Code of Ethics. Fulfilling this principle not only protects the parties but also strengthens the legal validity of the deed, so that it can be used as authentic evidence in court.

The procedure for appointing a replacement notary or acting official must be carried out officially through a legal mechanism. A letter of appointment from a permanent notary or authorized official serves as the primary document, accompanied by a clear recording of the authority granted in the minutes. This mechanism is crucial to ensure transparency and avoid disputes regarding the legitimacy of the replacement notary, as stipulated in Article 15, paragraph (1) of the Notary Law. Coordination with the permanent notary and relevant

parties is also essential to ensure the deed creation process runs smoothly and according to procedure.

Supporting documents that must be prepared include the letter of appointment, minutes, a copy of the deed, the identities of the parties, and documents related to the land. The availability of these documents serves as proof that formal and substantive procedures have been met and strengthens the legal force of the deed. Preparing complete documents in accordance with legal certainty is maintained by In addition to ensuring that the deed can be registered at the land office and has legal effect against third parties, Government Regulation No. 24 of 1997 Governing Land Registration.

Failure to comply with formal and substantive procedures has the potential to create various legal risks. The deed's validity can be questioned or even invalidated by law if the requirements are not met, increasing the potential for disputes related to the release of customary land rights. This impact underscores the need to adhere to strict procedures, both formal and substantive, to ensure that the deed prepared by the substitute notary remains valid, legally protected, and does not harm any party. It ensures legal certainty and the legitimacy of the transaction, while minimizing the risk of future conflict.

### **Legal Responsibilities of Substitute Notaries and Protection of Indigenous Peoples' Rights**

A substitute notary public has a crucial civil responsibility in every deed-making process. Any anyone, including a substitute notary public, who conducts an illegal act that harms another party is required to make amends for that loss in accordance with Article 1365 of the Civil Code (KUHPerdata). If the substitute notary is careless or makes a mistake during the deed-making process, it could render the deed invalid or cause injury to the parties involved in a deed of release of customary land rights., the substitute notary public can be held civilly liable. This responsibility emphasizes the principles of prudence and professionalism that must be maintained in the practice of notarial practice.

A concrete example of a substitute notary's civil responsibility occurs when a deed of release of land rights is drawn up without specifying the substitute's status or without verifying valid land documents. The validity of such a deed can be challenged in court, allowing the injured party to sue for any material and immaterial losses incurred. It demonstrates that even though a substitute notary public has the authority to draw up deeds, even the slightest negligence can directly impact civil liability and demands a high standard of professionalism in carrying out their duties.

According to Articles 85 to 88 of Law No. 2 of 2014 respecting the Position of Notaries, substitute notaries are also subject to administrative duties in addition to civil culpability. These articles govern the administrative penalties that notaries who disobey statutory requirements may face, including revocation of their practice licenses, written warnings, and administrative fines. Substitute notaries who fail to comply with deed preparation procedures or neglect their professional obligations are subject to these sanctions, emphasizing the importance of full compliance with applicable regulations.

Beyond administrative aspects, professional ethics is a key pillar of the substitute notary's responsibilities. The obligation to maintain integrity, confidentiality, honesty, and professionalism in carrying out their duties is stipulated in Articles 16 and 17 of the Notary Law. In practice, these professional ethics require substitute notaries to provide proper legal consultation, act fairly towards all parties, and ensure that all formal and substantive procedures are met. Failure to adhere to professional ethics can undermine public trust in notaries and impact the validity of the deeds they produce.

Protecting indigenous populations' rights is a crucial part of the replacement notary's responsibilities. In accordance with the 1945 Constitution's Article 18B, paragraph (2), as

confirmed by Constitutional Court Decision No. 35/PUU-X/2012, the state acknowledges the customary rights of indigenous peoples. It is necessary for substitute notaries to make sure that permission is given deliberately and willingly and that the deed of release of customary land rights does not ignore the traditional rights of indigenous peoples. Because of this, substitute notaries play a crucial role in upholding legal certainty and indigenous peoples' constitutional rights.

The function of substitute notaries in protecting indigenous peoples' rights includes verifying documents, recording land status, and providing legal explanations to indigenous peoples so they understand the implications of relinquishing their rights. Thus, substitute notaries act not only as officials who draw up deeds, but also as guardians of the legal interests of indigenous peoples, ensuring their rights are respected and protected. Compliance with formal, substantial procedures and professional ethics is a key prerequisite for valid deeds and the protection of indigenous peoples' rights.

The protection of the rights of indigenous peoples is directly tied to the legality of deeds prepared by substitute notaries. The formal and substantive procedures undertaken by substitute notaries, from noting their status in the minutes to comprehensive legal consultations, are crucial to ensuring that indigenous peoples' rights are not neglected. The concept of deed authenticity found in Article 1868 of the Civil Code and Article 15 paragraphs (1) and (2) of Law No. 2 of 2014 governing the Office of Notaries, which declares that authentic deeds have full evidentiary power, is in accordance with following these formal and substantive procedures. Failure to comply with these procedures can question the validity of the deed, potentially leading to neglect or violation of indigenous peoples' rights.

Legal risks arise when indigenous peoples' rights are not considered during the deed-making process. For example, a deed relinquishing customary land rights can be rendered null and void if the indigenous peoples' consent is given without adequate explanation or under pressure from other parties. It not only results in civil losses for indigenous peoples but can also lead to protracted legal disputes. Constitutional Court Decision No. Decree No. 35/PUU-X/2012 emphasizes the importance of recognizing the customary rights of indigenous communities. Any negligence by a substitute notary in the procedure can seriously impact legal certainty and the protection of the constitutional rights of indigenous communities.

Coordination between the substitute notary and the permanent notary, the indigenous community, and the land agency is a crucial strategy for preventing disputes. The substitute notary must communicate clearly regarding their authority, explain the contents of the deed to all parties, and ensure all documents and administrative requirements are complete. This approach aligns with the principles of transparency and prudence as outlined in Article 15, paragraph (2) of the Notary Law, which requires notaries to act honestly, carefully, and responsibly. With good coordination, the risk of accidents or procedural errors can be minimized.

Dispute prevention can also be achieved through comprehensive documentation and systematic legal consultation. The substitute notary must record all stages of the deed preparation process, from document collection and land status verification to the parties' agreement. This documentation serves as valid evidence that formal and substantial procedures have been followed in accordance with legal provisions. This step not only protects the rights of indigenous communities but also strengthens the position of substitute notaries in dealing with potential future disputes.

Harmonizing regulations between the Land Law (Law No. 5/1960 and Government Regulation No. 24/1997) and the Notary Law No. 2/2014 is key to strengthening the protection of indigenous communities' rights. Regulatory inconsistencies can create legal uncertainty, for example, when land procedures differ from the mechanisms for creating

notarial deeds, leading to confusion in determining the legitimacy of the deed. This harmonization is crucial to ensure that every transaction relinquishing customary land rights meets formal and substantial requirements and does not harm any party.

The implications of regulatory inconsistencies for the responsibilities of substitute notaries are also significant. If regulations are not harmonized, substitute notaries risk civil, administrative, and professional ethics sanctions, while indigenous communities potentially lose their rights. Therefore, a thorough understanding of the provisions of the Land Law and the Notary Law, the implementation of appropriate procedures, and coordination with all relevant parties are essential steps to ensure that deeds are valid, the rights of indigenous peoples are protected, and legal certainty of transactions is guaranteed.

## CONCLUSION

In conclusion, the validity of a deed of release of customary land rights drawn up by a substitute notary or acting official depends heavily on the fulfillment of formal and substantial requirements in accordance with Legislation that acknowledges indigenous peoples' rights as stated in Article 18B, paragraph (2) of the 1945 Constitution and supported by Government Regulation No. 24 of 1997 on Land Registration, Constitutional Court Decision No. 35/PUU-X/2012, and Law No. 2 of 2014 regulating Notary Positions. The substitute notary must carry out the obligation of complete legal consultation, verify the land status, include the status of the position in the minutes, and ensure that the parties' agreement is made consciously and voluntarily. Failure to comply with these procedures can risk the cancellation of the deed, land disputes, and the disregard for the rights of indigenous peoples, even if the notary still has administrative, professional, and civil duties. Legal clarity and the defense of the rights of indigenous peoples depend on the Land Law and Notary Law laws being in harmony. Based on the research findings, it is recommended that the procedures for transferring notary duties and issuing deeds of release of customary land rights be strengthened through outreach and clear national guidelines. Replacement notaries must consistently coordinate with permanent notaries, indigenous communities, and relevant agencies to prevent potential disputes. Furthermore, policymakers need to harmonize land regulations and notary position requirements to ensure consistent compliance with formal and substantive procedures, ensuring legal certainty in transactions and protecting the rights of indigenous communities. Implementing strict standards and clear procedures will enhance notary professionalism while strengthening legal protection for indigenous communities in every land release process.

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