

The Enforcement of the Notary Code of Ethics Based on the Law on Notary Positions in Theory and Practice

Abdi Tonglo^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: abditonglo@gmail.com

Abstract. *In accordance with the provisions of Act No. 2 of 2014 junto Act No. 30 of 2004, the enforcement of the Notary Code of Ethics is carried out by the government through the Notary Supervisory Council and notary professional organizations (INI). This has an impact on the existence of two institutions that are authorized to enforce the Notary Code of Ethics. The affirmation of the authority of the two institutions in question needs to be examined normatively and empirically. This study uses a juridical-empirical research type. This method is carried out through a literature study that examines secondary data, in the form of books, journals, and laws and regulations complemented by data collection and interviews with the Kendari City Notary Regional Supervisory Board and the Kendari City Indonesian Notary Association Regional Board. In practice, the Enforcement of the Notary Code of Ethics in Kendari City is mostly carried out by the Notary Supervisory Board. Indonesian Notary Association through the Notary Honorary Council is more on resolving complaints of internal notary violations.*

Keywords: Enforcement, Ethics; Notary.

1. Introduction

The existence of a Notary is especially needed to support business activities in banking, large-scale trading, land, and other business activities. In some cases, the existence of a Notary is also needed in social activities in order to provide guarantees of certainty, order and legal protection that determines the limits of rights and obligations for the parties. The rights and obligations of the parties referred to are generally set forth in a written document, either in the form of a private deed or in the form of an authentic deed.

Conceptually, a notary only helps express the wishes of the parties in an authentic deed. However, in carrying out the duties of a Notary, of course there is the potential for abuse of office authority. Therefore it is necessary to have instruments of supervision and guidance for Notaries. In Act No. 2 of 2014 junto Act No. 30 of 2004 supervision and development of notaries is carried out by

notary professional organizations (INI) and the government through the Supervisory Board of Notary Public.

In accordance with the provisions of Article 70 of Act No. 2 of 2014 juncto Act No. 30 of 2004, the Notary Regional Supervisory Council, among other things, has the authority to hold hearings for. examine any alleged violations of the Notary's Code of Ethics and receive reports from the public regarding alleged violations of the Notary's Code of Ethics. Furthermore, Article 83 paragraph (1) states that the Notary Organization stipulates and enforces the Notary Code of Ethics.

Based on data from the Kendari City Regional Notary Supervisory Council, in the period 2018 to August 12, 2022, 8 (eight) Notaries¹ were suspected of violating the Notary Code of Ethics and the Notary Office Law. Meanwhile, data from the Kendari City Regional Notary Honorary Board during the same period, no notaries were examined because of alleged violations of the Notary Code of Ethics. Based on an empirical juridical approach, the author will describe the Enforcement of the Notary's Code of Ethics Based on the Notary's Position Law in Theory and Practice in Kendari.

2. Research Methods

This research used qualitative research with literature study. The specification of this research is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations. Data sources and data collection methods use primary data obtained by interviewing informants who are considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic.

3. Result and Discussion

3.1. Enforcement of the Notary's Code of Ethics based on the Perspective of the Notary's Position Law in Theory and Practice

In the following *das sollen* and *das sein* frameworks, we will describe the flow of normative enforcement of the Notary's Code of Ethics (*das sollen*) and will be followed by a description in practice (*das sein*).

A1. Flow of Notary Code of Ethics Enforcement

In accordance with the Notary Office Law, there are two institutions that have the authority to enforce the Notary Code of Ethics, namely the Notary Supervisory Council and the Indonesian Notary Association.

In accordance with the provisions of Article 68 of the Notary Office Law, the Notary Supervisory Council consists of Regional Supervisory Councils; Regional Supervisory Council; and Central Supervisory Council. Furthermore, in Article 70 of the Notary Office Law, the authority of the Regional Supervisory Council is emphasized, including receiving reports from the public regarding allegations of violation of the Notary's code of ethics or violation of the provisions in the Law on Notary Position. The Regional Supervisory Council is also authorized to hold hearings to examine allegations of violations of the notary's code of ethics or violations of the performance of the Notary's office.

Following up on Article 81 of the Notary Office Law, the Ministry of Law and Human Rights has also stipulated Permenkumham Number 15 of 2020 concerning Procedures for Examination by the Supervisory Board of Notaries.

Article 2 of the Minister of Law and Human Rights Regulation a quo reaffirms the authority of the Supervisory Council to supervise and supervise notaries and to conduct examinations of alleged violations of behavior and implementation of the notary's position. Furthermore, in Article 4 it is emphasized that the Supervisory Council in carrying out examinations of alleged violations of behavior and the implementation of the Notary's office forms an Examining Council consisting of 3 (three) people from elements of: Government; Notary Public; and c. academics and assisted by 1 (one) secretary.

Before the examination session is carried out, the Chairperson of the Notary Regional Supervisory Board holds a case meeting which is attended by the Supervisory Board. Examination by the Regional Examination Board is closed to the public.

The examination is stated in the Minutes of Examination and recommendations on the results of the examination (Article 20) signed by the chairman and secretary of the Examining Council (Article 23 paragraph (1)).

The report on the results of the examination is submitted to the Regional Supervisory Council with a cover letter copied to the complainant, the reported party, the Central Supervisory Board, and the Regional Management of the Indonesian Notary Association no later than thirty working days from the time the report is recorded in the case register book.

Following up on the report on the results of the inspection, the Regional Supervisory Council formed the Regional Examination Council. The Regional Examining Council then also summoned the Rapporteur and the Reported Party to hear their statements as set forth in the inspection minutes.

The decision of the Regional Supervisory Council is read out in a session that is

open to the public. This decision is signed by the Chairman, Members, and Secretary of the Regional Examination Council. This decision is submitted to the Reporting Party, the Reported Party, the Regional Supervisory Council, the Central Supervisory Council, and the Central Board of the Indonesian Notary Association (Article 27)

In accordance with the provisions of Article 83 paragraph (1) of Act No. 30 of 2004, the Indonesian Notary Association is given the responsibility to establishing and enforcing the Notary Code of Ethics. Based on the mandate referred to in Article 83 paragraph (1), the Indonesian Notary Association through an Extraordinary Congress in 2005 has established a Code of Ethics for the Indonesian Notary Association. In its development, the Code of Ethics of the Indonesian Notary Association underwent changes through the Extraordinary Congress of the Indonesian Notary Association in 2015 in Banten.

Procedures for Enforcing the Code of Ethics are regulated in Chapter V of the Code of Ethics of the Indonesian Notary Association. Supervision of the implementation of the Code of Ethics is carried out by: Regional Administrators and Regional Ethics Council at the Regency/City level; Regional Administrators and Regional Honorary Councils at the Provincial level; and the Central Executive and the Central Honorary Council at the National level 3 . It is also determined that violations or acceptance of complaints that have been previously examined by an Honorary Council may no longer be examined by an Honorary Council. others.

A2. Notary Code of Ethics Enforcement Practices

In the following description, the author will describe the practice (*das sein*) of enforcing the Notary's Code of Ethics, both implemented by the Assembly Regional Notary Superintendent of Kendari City and Kendari City Notary Regional Honor Council.

Kendari City Notary MPD Secretary, Mim Nasrah Rasyid, SH in an interview on 12 August 2022 obtained information, there were 8 (eight) cases of complaints against Notaries who entered the Kendari City Notary MPD, starting from 2018 to 12 August 2022.

In accordance with the provisions, complaints about alleged violations of the Notary's code of ethics are submitted to the Notary Regional Supervisory Board, but based on available data, complaints of alleged violations of the code of ethics are generally addressed to the Regional Office of the Ministry of Law and Human Rights in Southeast Sulawesi. Regarding this phenomenon, Ahmad Syahrir, SH, MH, a Kendari City MPD member, in an interview on 11 August 2022 stated that the Regional Office of the Southeast Sulawesi Ministry of Law and Human Rights

often receives reports/complaints from the public regarding alleged violations committed by Notaries. At the Secretariat, complaint letters are checked for administrative completeness by the MPD Secretary, usually accompanied by a direct interview with the complainant. Administrative documents needed are:

1. Reporter's KTP;
2. Complaint letter complete with complaint chronology;
3. Supporting data related to the main case; and
4. Power of attorney if the complainant is represented by a legal representative

If the administrative completeness of the complaint has been declared complete, the complaint will be recorded in the register book for further review within a maximum period of 5 days after being recorded in the register book.

After being declared complete, the Secretary reports to the Chairperson of the MDP to ask for directions regarding the schedule for holding cases and the appointment of a team of examiners. Furthermore, the Chairperson of the Kendari City MPD invited all members of the Kendari City MPD to attend the case to discuss the subject matter of the complaint and the strategy to be taken by the Kendari City MPD.

The appointed examining team then determines the schedule for the examination session of the complainant and the reported party. In practice, the determination of the trial schedule is communicated in advance by the MPD Secretariat with the Team of Examiners, Reporters and Reported Notaries. Invitation letters to the Examining Team and Summons to the Complainant and the Reported Notary, are usually sent via WhatsApp or email, no longer via registered mail.

If the entire series of inspections at the MPD has been completed, the inspection team will report to the chairman of the MPD by attaching a recommendation. The chairman of the MPD invited all members for a plenary meeting to discuss the results of the examination carried out by the examining team. Ordered the Secretary to put down all the agreements resulting from the plenary meeting and recommendations which were accompanied by minutes of inspection by mentioning the provisions that were violated or not complied with by the reported or examined along with recommendations for sanctions to be imposed by the examining team accompanied by an introduction from the chairman of the MPD. In several cases, the Rapporteur and the Reported Notary agreed to reconcile with the MPD Notary Kendari City facilitating them.

Recommendations on the inspection results and their supporting documents are submitted to the Southeast Sulawesi Notary Regional Supervisory Council (MPW). According to Andi Wahyudin Said, Secretary of the Southeast Sulawesi Notary MPW, during an interview on 15 August 2022, the recommendation letter for the results of the MPD inspection was checked for completeness by the Secretariat of the Southeast Sulawesi Notary MPW. If it meets the requirements, it is recorded in the MPW registration book. If it does not meet the requirements, the MPD is asked to complete it.

MPW then scheduled an examination hearing against the complainant and the notary. Based on the results of the examination, the Southeast Sulawesi Notary MPW has the authority to impose sanctions on verbal warnings and written warnings. If the sanction to be imposed is in the form of temporary dismissal and dishonorable dismissal, MPW makes recommendations to MPP Notary.

Overall, the examination process for complaints of violations of the notary's code of ethics is carried out in an examination which is attended directly by the complainant and the reported party. But in some cases, the presence of the reporter and the reported is virtually.

Sudirman, SH, M.Kn., Chair of the Kendari City Indonesian Notary Association Regional Board, said that many violations of the notary's code of ethics were processed in the Notary Supervisory Council. The Regional Administrators and the Regional Honorary Council, as of 2019 until now, have never received reports of alleged violations of the Notary's Code of Ethics.

Furthermore, according to Sudirman, SH, M.Kn., who is also a member of the Kendari City Regional Notary Supervisory Board, reports of alleged violations of the notary's code of ethics were submitted to the Supervisory Council because generally the complainants were the public or the parties to the deed drawn up by a notary. Meanwhile, the Regional Board of the Kendari City Indonesian Notary Association and the Regional Honorary Council of Kendari City Notaries will only accept complaints of alleged violations of the code of ethics from internal notaries.

3.2. Obstacles and Solutions to Law Enforcement Notary Code of Ethics

The law enforcement process is influenced by several factors. In a lot of legal literature, it is often referred to as factors that influence the effectiveness of law enforcement.

In the following description, the author will describe the obstacles to enforcing the notary's code of ethics using the framework of Lawrence M. Friedman.

B1. Obstacle

Based on direct observations and interviews with the Kendari City Notary Regional Supervisory Board, Southeast Sulawesi Province Notary Regional Supervisory Board, and Kendari City Indonesian Notary Association Regional Board, the following will describe some of the obstacles to enforcing the notary's code of ethics:

a. Legal substance.

Several obstacles to enforcing the notary's code of ethics from the aspect of legal substance:

- 1) Duality of enforcement of the notary's code of ethics, between the Notary Supervisory Board and the Indonesian Notary Association. The Notary Office Law and the organizational rules of the Indonesian Notary Association do not limit the authority of these two institutions.
- 2) The administrative process for the Appointment of the Notary Regional Supervisory Board takes time so that sometimes there is a vacancy in the completeness of the Regional Supervisory Board

b. Legal structure/legal institution (legal structure).

The legal structure is related to the enforcement of the notary's code of ethics related to the Notary Supervisory Board and the Secretariat of the Council. Some of the obstacles related to the legal structure are:

- 1) There are limited academics from the Faculty of Law who have a notary scientific background so that academics who are members of the MPD do not have a notary scientific background.
- 2) The MPD secretary does not have a notary scientific background.

On the other hand, the MPD Secretary did not receive special education related to notary affairs.

- 3) Limited supporting facilities for the secretariat. There is no special room for the MPD Secretariat, supporting instruments for supervising and examining notaries using shared facilities for other office activities.

c. Legal culture.

Legal culture in relation to obstacles in enforcing the notary's code of ethics based on the author's review:

- 1) Awareness of the parties to the agreement to read and understand well the agreement they agreed to and set it down in the notarial deed. In some cases it was found that the parties signed without understanding the contents of the deed and it became a problem later when the parties no longer got the rights they wanted.
- 2) Awareness of the parties to understand the flow and process of enforcing the notary's code of ethics.
- 3) The notary's awareness to comply with the Notary Office Law and its derivatives as well as the notary's code of ethics, especially related to the position of the Notary Supervisory Board in enforcing the Notary Office Law and the notary's code of ethics.

B2. Solution

The following will describe the solutions that the author offers by using Lawrence M. Friedman's framework of law enforcement effectiveness.

a. Legal substance.

Regarding obstacles in the field of legal substance, the authors propose a solution:

- 1) The duality of enforcing the notary's code of ethics, between the Notary Supervisory Board and the Indonesian Notary Association can be resolved by emphasizing the authority of the Supervisory Board to handle complaints of notary violations originating from external sources while the Honorary Council is to handle complaints of violations of the code of ethics originating from internal notaries. Affirmation of authority can be carried out through amendments to Act No. 3 of 2004 concerning the Office of a Notary. Affirmation of authority can also be made through amendments to the Code of Ethics of the Indonesian Notary Association.
- 2) Regarding the obstacle to the vacancy of the Notary Regional Supervisory Council, it can be resolved through: first a letter of appointment of the Notary Regional Supervisory Council added a dictum until a new Notary Supervisory Council is formed; secondly the inauguration of the Notary

Regional Supervisory Council by the Director General of General Legal Administration can be done virtually.

3) Legal structure/legal institution (legal structure).

Some of the solutions related to the legal structure are:

- 1) The priority of MPD members from academia came from the corporate law, contract law, and similar disciplines. In addition, it is necessary to hold routine capacity building activities for MPD members through training.
- 2) Procurement of Ministry of Law and Human Rights employees with Masters of Notary qualifications, employee scholarships for college Masters notary, and/or training special about notary.
- 3) Procurement of a secretariat and its supporting facilities that are separate from the use of other official activities.

b. Legal culture.

Solutions related to legal culture in relation to enforcing the notary's code of ethics based on the author's review

4. Conclusion

Education and preparation of procedures for making deeds that are displayed in each notary's office, so that parties who need notary services can read their rights and obligations. Educating the public to understand the flow and process of enforcing the notary's code of ethics. Periodic education by the Ministry of Law and Human Rights and the Indonesian Notary Association so that Notaries understand the Notary Office Law and its derivatives as well as the notary's code of ethics. Related to this education, it can be mandatory for every Notary and becomes a condition for activating a Notary's account at the Directorate General of General Legal Administration.

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