

Form of Supervision and Development of Notaries By The Regional Supervisory Council (Mpd) Regarding Notaries Who Are Not Accepting Their Offices

Elis Setiyowati ¹⁾ & Umar Ma'ruf ²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: elisnazahra484@gmail.com

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: umarma'ruf@unissula.ac.id

Abstract. *This study aims to determine and analyze the form of supervision and guidance of notaries by the regional supervisory board (MPD) towards notaries who carry out their duties to prevent violations of the authority of the notary's office and to determine and analyze the sanctions given by the regional supervisory board (MPD) to notaries who do not carry out their duties properly. The approach method in this study is the normative legal approach method. The research specification used is descriptive analytical research. The type of data uses secondary data. Data collection with the library study method. The data analysis method used is qualitative descriptive analysis. The results of the research and discussion in this study are: The form related to the supervision and guidance carried out by the Regional Supervisory Board (MPD) towards notaries is very important in preventing violations of the authority of the office and increasing the professionalism of Notaries. The purpose of supervision is to maintain the integrity of the notary profession, protect public interests, and ensure compliance with applicable laws, so that the notary profession remains trusted as an institution that plays a role in maintaining legal certainty in society. Finally, the implementation of supervision and guidance of notaries by the Sukabumi regional supervisory board (MPD) has been quite good and optimal with the condition of the MPD, namely that good cooperation is needed between the Sukabumi MPD and Notaries in Sukabumi. Implementation of Notary Supervision and Guidance Sanctions by the Regional Supervisory Council (MPD) through supervision (repressive) and guidance (preventive). Furthermore, if there is a Notary who violates Article 7 paragraph (1) letter a UUJN and is proven, a written warning will be given a maximum of 3 times. However, if the Notary who has been warned still has not improved his performance in accordance with the advice of the Regional Supervisory Council (MPD), this violation case can be continued to the*

Regional Supervisory Council (MPW) level to be given heavier sanctions. Finally, guidance actions (preventive) to prevent the recurrence of violations. Guidance actions taken can be in the form of socialization activities or counseling related regulations that are routinely scheduled for Notaries.

Keywords: *Supervision and Guidance, Regional Supervisory Board, Notary.*

1. Introduction

Indonesia as a country of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every citizen. To guarantee order and legal protection, authentic written evidence is needed regarding acts, agreements, determinations and legal events made before or by authorized officials.¹ Notary is a position of trust. This has the meaning that those who carry out the duties of the position can be trusted and because the position of Notary is a position of trust so that the position of Notary is a position of trust and the person who carries out the duties of the position can also be trusted, both of which support each other.²

The deed made by a Notary, namely the authentic deed, has perfect evidentiary power whose legal force is different from a private deed. A private deed is a deed made by the interested parties themselves without the assistance of a public official. While an authentic deed is a Notary product that is greatly needed by the community in order to create legal certainty.³ Legal protection for victims of cases resulting from abuse of power can be carried out through civil liability. The injured party (victim) can demand that their rights be repaid, in addition it can be done through legal protection through criminal liability. This criminal liability can be carried out by applying (penal) punishment and non-penal (not with punishment) for example by applying Article 14 c of the Criminal Code (KUHP), namely with a conditional payment system in criminal land compensation.⁴

With the duties and responsibilities held by a Notary, it is reasonable that a Notary is also under supervision, which acts as a Notary supervisor, namely the Notary Supervisory Board. The Notary Supervisory Board is a body that has the

¹M. Luthfan Hadi Darus, 2017, Notary Law and Notary's Responsibilities, Uii Press, Yogyakarta. Page 1.

²Habib Adjie, 2014, Weaving Thoughts in the World of Notaries & Ppat, Pt. Citra Aditya Bakti, 2nd Printing, Bandung, Page 12.

³Andi.AAPrajitno, 2010, What and Who is a Notary in Indonesia?, Citra Aditya Bakti, Surabaya, p. 51.

⁴Bernhard Limbong, 2015, Land Acquisition for Development, Margaretha Pustaka. South Jakarta, p. 14.

authority and obligation to supervise and provide guidance to Notaries. The main task of supervision is so that all rights, authorities and obligations given to a Notary in carrying out their duties as provided by the relevant basic regulations are always carried out on the path that has been determined, not only the legal path but also on the basis of morals and professional ethics in order to ensure legal protection and legal certainty for the community. Thus, there needs to be a continuous supervision mechanism for Notaries in carrying out their duties, both preventive and curative in nature, towards the implementation of Notary duties.

Supervision and examination of Notaries carried out by the Supervisory Board which includes Notary elements, thus at least Notaries are supervised and examined by members of the Supervisory Board who understand the world of Notaries. A means carried out by fellow Notaries who understand the world of Notaries inside and out, while the other elements are external elements representing the academic world, government and society. The combination of the membership of the Supervisory Board is expected to provide objective supervision and examination synergy, so that each supervision is carried out based on applicable legal regulations and Notaries in carrying out their duties do not deviate from the UUN because they are supervised internally and externally. The Notary Supervisory Board not only supervises and examines Notaries, but also has the authority to impose certain sanctions on Notaries who have been proven to have committed violations in carrying out their Notary duties, the members of the Supervisory Board from Notaries are internal supervision.⁵As a logical consequence, along with the Notary's responsibility to the community, continuous supervision and guidance must be guaranteed so that the Notary's duties are always in accordance with the legal principles underlying his authority and can avoid abuse of authority or trust given. A Notary in carrying out his duties and obligations must be in accordance with the applicable Laws and Regulations. One of the Notary's obligations in carrying out his position is regulated in Article 7 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary.

The authority of a Notary, as based on Article 15 paragraph (1) of Law No. 2 of 2014 stipulates that: "A Notary is authorized to make an authentic Deed regarding all acts, agreements and determinations required by laws and/or desired by the interested party to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide a grosse, copy and extract of the Deed, all of which as long as the making of the Deed is not also assigned or excluded to another official or other person determined by law." Based on the description above, it was then made in the form of a thesis entitled "Form of Supervision and Guidance of Notaries by the Regional Supervisory Council (MPD) Regarding Notaries Who Do Not Carry Out Their Position.

⁵Ibid, Habib Adjie, p. 5.

2. Research Methods

In the research, the author applies a normative legal rule of law research method, meaning that the research views law as a basic framework in creating legal norms. This normative research applies an approach through legislation (the statute approach) based on the hierarchy of legislation and a case approach (the case approach). The research specification used is analytical descriptive research. The type of data uses secondary data. Data collection with a literature study method. The data analysis method used is qualitative descriptive analysis.

3. Results and Discussion

3.1. Form of Supervision and Guidance of Notaries by the Regional Supervisory Council (MPD) for Notaries Carrying Out Their Positions to Prevent Violations of the Authority of the Notary Position

Notaries in carrying out their duties and positions are required to submit to and obey all regulations set out in the UUJN, the Code of Ethics of the Indonesian Notary Association and other laws relating to the duties of a Notary. Supervision of Notaries is carried out by the Notary Supervisory Board in a hierarchical manner.⁶

In the effort to foster and enforce the law in Indonesia, a set of laws and regulations and enforcement tools are needed. In addition, there are also known community institutions that contribute to maintaining and implementing the law properly by members of society, so that it is expected to create order and security in the midst of society.⁷

The function and role of Notaries in the increasingly complex national development movement today are certainly increasingly broad and developing, because the smoothness and certainty of law carried out by all parties are increasingly numerous and extensive, and this is certainly inseparable from the services and legal products produced by Notaries. The government and the wider community certainly have hopes that the services provided by Notaries to them truly have value and weight that can be accounted for. Given the very important role and authority of Notaries for legal traffic in community life, the behavior and actions of Notaries in carrying out their authority functions are susceptible to abuse that can cause losses to the community, so that the institution for fostering and supervising Notaries needs to be made effective. Provisions governing supervision for Notaries are regulated in Law Number 2 of 2014

⁶Johnny Ibrahim, 2008, *Theory and Methodology of Normative Legal Research*, Fourth Edition, Banyumedia, Jakarta, p. 321.

⁷Dwikky bagus Wibisono, Umar Ma'ruf, 2018, *The Role of the Regional Supervisory Council (MPD) in Supervising the Implementation of Notary Positions in Tegal Regency*, *Jurnal Akta*, Vol.5 No.1, Page 179.

concerning the Position of Notaries. This provision is one of the efforts to anticipate weaknesses and deficiencies in the supervision system for Notaries, so that it is hoped that in carrying out their profession, Notaries can further improve the quality of service to the community.⁸

Another objective of supervision of Notaries is to ensure the protection of public interests against Notaries who carry out their duties irresponsibly and do not respect ethical values and standards and neglect the dignity and duties of their office.⁹Based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.02.PR.08.10 of 2004 concerning the Procedures for Appointing Members, Dismissing Members of the Organizational Structure, Working Procedures and Examination Procedures of the Notary Supervisory Board Article 1 number 5 defines the meaning of supervision which reads, Supervision is an activity that is preventive and curative in nature including coaching activities carried out by the Supervisory Board for Notaries. Basically, the one who has the authority to supervise and examine Notaries is the Minister of Law and Human Rights of the Republic of Indonesia, in the implementation of which the Minister forms the Notary Supervisory Board. The Minister of Law and Human Rights has the task of assisting the president in carrying out part of the government's affairs in the field of law and human rights. Thus, the authority to supervise Notaries lies with the government, so that it is related to how the government obtains the authority to supervise.

The authority to supervise Notaries lies with the Minister of Law and Human Rights. However, in practice, the minister delegates this authority to the Notary Supervisory Board that he has formed. UUJN emphasizes that the minister supervises Notaries and the authority of the minister to carry out this supervision by UUJN is given in the form of a delegative delegation to the minister to form the Notary Supervisory Board, not to carry out the functions of the Notary Supervisory Board that have been explicitly determined to be the authority of the Notary Supervisory Board.

To supervise the actions of Notaries in providing good and optimal services in providing legal services to the public in accordance with laws and regulations, the Government has formed a Notary Supervisory Board. Based on Article 1 number 6 of the UUJN, it is stated that the Notary Supervisory Board, hereinafter referred to as the Supervisory Board, is a body that has the authority and obligation to carry out guidance and supervision of Notaries. The nomenclature with the same formulation is also found in Article 1 number 2 of Permenkumham No. 15 of 2020 and Article 1 number 1 of Permenkumham No. 16 of 2021. Regarding the definition of Notary Protocol, it is regulated in Article 1 number 13

⁸Ibid. p.180.

⁹Yogi Priyambodo, Gunarto, 2017, Review of Violations of the Code of Ethics of the Notary Position in Purbalingga Regency, *Jurnal Akta*, Vol. 4 No. 3, p. 332.

of the UUJN, which states that the Notary Protocol is a collection of documents which are state archives that must be stored and maintained by Notaries in accordance with the provisions of laws and regulations. The nomenclature with the same formulation is also found in Article 1 number 11 of Permenkumham No. 15 of 2020 and Article 1 number 5 of Permenkumham No. 16 of 2021.

If there is a party who feels disadvantaged, due to an alleged violation of the code of ethics or violation of the notary's position, they can submit a written report to the Regional Supervisory Board. The report will be followed up immediately, starting with the Chairperson of the Regional Supervisory Board forming an Examining Board, consisting of 3 people taken from each element of the Regional Supervisory Board, and assisted by a secretary. This is stipulated in Article 20 paragraph (1). Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004. However, in this case, the Examining Board does not have the authority to impose sanctions on the reported notary. Paragraph (2) stipulates that the Regional Examining Board and the Central Examining Board have the authority to examine and decide on reports received. While in Article 21 paragraph (3) and paragraph (4) stipulates that reports regarding alleged violations of the code of ethics or violations of the implementation of the Notary's position are submitted to the Regional Supervisory Board. While reports other than that are submitted to the Regional Supervisory Board. In Article (5) and Article (6) it is stipulated that if the report is submitted to the Regional Supervisory Board or the Central Supervisory Board, the report is forwarded to the Regional Supervisory Board.¹⁰ For this reason, according to the Author, the form of implementation of the form of supervision and guidance of notaries by the regional supervisory board (MPD) towards notaries who carry out their duties to prevent violations of the authority of the notary's office. This can be studied using the theory of legal responsibility put forward by Peter Salim where there are 3, namely Accountability, Responsibility and Liability. Where the form of responsibility for the notary's self enters the form of Responsibility responsibility where when the legal product made by the notary is blamed by the parties in the future, the Notary will also bear the burden of the consequences of an act in other words, he is obliged to bear everything if anything happens, he can be blamed, sued, threatened with punishment by law enforcement in court, accept the burden of the consequences of his own actions or those of others.

The form of supervision and guidance carried out by the Regional Supervisory Council (MPD) towards notaries is very important to maintain the smoothness and integrity of the notary profession. Through careful supervision, continuous guidance, and the imposition of appropriate sanctions, the MPD can prevent

¹⁰Putri Sagung ME Purwani, 2016, Notary Supervision by the Regional Notary Supervisory Board After the Decision of MKNo. 49/Puu-X/2012, Udayana Master of Law Journal, Vol. 5 No. 4 of 2016, Postgraduate Program of Udayana University, pp. 98-99.

violations of the authority of the notary's position and ensure that notaries carry out their duties properly and professionally. Supervision and guidance of notaries by the Regional Supervisory Council (MPD) plays a very strategic role in ensuring that notaries carry out their positions in accordance with applicable legal provisions and maintain the integrity and credibility of the notary profession. The authority held by notaries as public officials who are tasked with making authentic deeds has major implications for the law and the lives of the community, so that effective supervision by the MPD is a non-negotiable need.

Supervision and guidance carried out by the Regional Supervisory Council (MPD) towards notaries are very important in preventing violations of official authority and increasing the professionalism of notaries in Indonesia. With a clear legal basis through Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary, Law Number 30 of 2014 concerning Government Administration, and the Notary Code of Ethics, MPD, Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning the Regulation of the Position of Notary has the authority to supervise, provide guidance, and impose administrative sanctions on notaries who do not carry out their duties in accordance with applicable provisions. The purpose of this supervision is to maintain the integrity of the notary profession, protect the public interest, and ensure compliance with applicable laws, so that the notary profession remains trusted as an institution that plays a role in maintaining legal certainty in society.

3.2. Sanctions Imposed by the Regional Supervisory Board (MPD) Against Notaries Who Do Not Carry Out Their Position Properly

In carrying out their duties, notaries are required to always be guided by the laws and regulations in force in Indonesia and notaries are also obliged to carry out their duties in accordance with the ethics that have been mutually agreed upon in the form of a Code of Ethics.¹¹As the bearer of the mandate and trust of the community, a Notary as a public official should receive legal protection in carrying out his/her position. A Notary who is suspected of violating the code of ethics must first be heard and given the opportunity to defend himself/herself before the Central Honorary Council submits a proposal for temporary dismissal to the Central Management. In handling or resolving a case, members of the Central Honorary Council must continue to respect and uphold the dignity of the member concerned, always maintain a family atmosphere and keep everything they find confidential. A Notary who is suspected of violating the code of ethics should be given advocacy or assistance by the association while still upholding the principle of the presumption of innocence. Regarding the imposition of sanctions in the form of temporary dismissal (*schorsing*) or dismissal (*onzetting*) from membership of the association, the Regional Honorary Council must first

¹¹Ira Koesmawati and Yunirman Rijan, 2009, *Going to a Notary, Achieving the Hope of Success*, Jakarta, p. 49.

consult with its Regional Management and a Notary who has been given sanctions in the form of temporary dismissal (*schorsing*) or dismissal (*onzetting*) from membership of the association can file/appeal by registered letter or sent directly to the regional honorary council and copies to the central honorary council, central management, regional management, and regional management. After the appeal application is received, no later than within seven working days the regional honorary council will summon the member who appealed, to have his statement heard and be given the opportunity to defend himself in a regional honorary council hearing and within thirty working days, the regional honorary council will issue a decision at the appeal level through its hearing, even if the member who was summoned does not attend the regional honorary council will still issue a decision within the specified time.

Based on this, according to the Author above, the sanctions given by the regional supervisory council (MPD) to notaries who do not carry out their duties properly are in line with Prajudi Atmosudirdjo's Theory of Authority where power over a certain group of people or power over a certain area of government (or field of affairs) is complete. Where Notaries have a role in carrying out the legal profession that cannot be separated from fundamental issues related to the function and role of the law itself, where law is interpreted as the rules that regulate all aspects of community life. The responsibility of Notaries related to the legal profession cannot be separated from the opinion that in carrying out their duties they cannot be separated from the majesty of the law itself, so that Notaries are expected to act to reflect it in their services to the community. The position of Notary is an institution created by the state. Placing a Notary as a position is a field of work or task that is deliberately made a legal rule for certain needs and functions (certain authorities) and is continuous as a permanent work environment.

The imposition of sanctions as outlined above against members who violate the Code of Ethics is adjusted to the quantity and quality of violations committed by the member. The highest decision of the Supervisory Board is in the hands of the MPP, as regulated in Article 77 point a of the UUJN which states that the MPP has the authority to hold a hearing to examine and make a decision at the appeal level against the imposition of sanctions and refusal of leave. However, this does not mean that there are no other legal remedies that can be taken by Notaries who feel disadvantaged by the decision of the MPP. Based on the provisions of Article 35 paragraph (2) of Ministerial Regulation number M.02.PR.08.10 of 2004, the decision of the MPP is not final. Such a decision of the MPP can be submitted to the State Administrative Court (PTUN) to be tested by an institution that has no interest whatsoever in the Notary concerned, except for the interests of law and justice alone. This needs to be done as an effort, that the UUJN and the Ministerial Decree and the Ministerial Regulation are not something that is closed, and treated as a holy book or sanctified, but are always open to

interpretation, criticism, so that clarity can be obtained.¹²Sanctions or legal consequences are an important part of every rule. The imposition of sanctions is not only in the form of a Law but can be in the form of other regulations such as ministerial decisions or other laws under the Law. The inclusion of sanctions in various legal regulations is like an obligation that must be included in every legal regulation. If a legal regulation is determined to anyone who violates the legal regulation will be subject to criminal, civil and administrative sanctions.¹³Sanctions aimed at Notaries are also a form of awareness that Notaries in carrying out their duties have violated the provisions regarding the implementation of Notary duties as stated in the UUJN and to return the actions of Notaries in carrying out their duties to be orderly in accordance with the UUJN in addition to imposing sanctions on Notaries to protect the public from Notary actions that can harm the public, for example making a deed that does not protect the rights of the person concerned as stated in the Notary deed.

Sanctions against Notaries are regulated in Article 84 and Article 85 of the UUJN as:

1. As stipulated in the sanctions provisions in Article 84 of the UUJN, acts of violation committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letters i, k, Article 41, Article 44, Article 49, Article 50, Article 51 or Article 52 which result in a deed only having evidentiary force as a private deed or a deed being null and void by law can be grounds for the party suffering a loss to demand costs, compensation and interest from the Notary.
2. Provisions of Article 85 violations of the provisions as referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63 may be subject to sanctions in the form of: a. Verbal warning; b. Written warning; c. Temporary dismissal; d. Honorable dismissal or; e. Dishonorable dismissal.

Given the very important role and authority of Notaries for legal traffic in community life, the behavior and actions of Notaries in carrying out their authority functions are susceptible to abuse that can cause losses to the

¹²<http://www.hukumonline.com/berita/baca/hol14093/majelis-pengawas-notaris-pusatbataskan-perkara-pertama.komentarhabibadije> 25 Dec 2005, Accessed on 11 September 2024 at 17.30 WIB.

¹³Philupus M. Hadjon, Enforcement of Administrative Law in Relation to the Provisions of Article 20 Paragraph (3) and (4) of Law No. 4 of 1982 Concerning the Main Provisions for Environmental Grouping, Juridika, Faculty of Law, Airlangga University, Surabaya, 1966, p. 1.

community, so that the institution for fostering and supervising Notaries needs to be made effective. Provisions governing supervision for Notaries are regulated in Law Number 2 of 2014 concerning the Position of Notaries. This provision is one of the efforts to anticipate weaknesses and deficiencies in the supervision system for Notaries, so that it is hoped that in carrying out their profession, Notaries can further improve the quality of service to the community. The role of the Notary Supervisory Board is to supervise Notaries, so that in carrying out their duties they do not deviate from their authority and do not violate applicable laws and regulations, in addition to also supervising, examining and imposing sanctions on Notaries, while the function of the Notary Supervisory Board is so that all rights and authorities as well as obligations given to Notaries in carrying out their duties as provided by applicable laws and regulations, are always carried out on the path that has been determined, not only the legal path, but also on the basis of morals and ethics in order to guarantee legal protection and legal certainty for those who need it. No less important is the role of the community to supervise and always report the actions of Notaries who in carrying out their duties are not in accordance with applicable legal regulations to the local Notary Supervisory Board. With reports like this, it can eliminate Notary actions that are not in accordance with the legal regulations for carrying out Notary duties.

Authority of the Sukabumi Regional Supervisory Board in Supervising the Implementation of the Notary Code of Ethics. Talking about violations of the Notary's position or violations of the Notary Code of Ethics, when a Notary makes mistakes concerning his professionalism, the only institution authorized to examine and try him is the Notary Professional Court, which is run by the Notary Supervisory Board in stages, this is to provide legal guarantees for the Notary profession, especially to avoid interference from any party. The imposition of sanctions for violations by Notaries who do not carry out their duties in real terms (Notaries who do not improve their performance after being given a maximum of 3 MPD warnings) is guided by Article 5 paragraph (1) Regarding Notaries which reads: letter a, paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions.

The authority of the Sukabumi Regional Supervisory Council is limited to conducting examinations, coaching, supervision and summoning of Notaries who commit violations and providing reports in the form of minutes of the report that will be given to the Regional Supervisory Council regarding violations committed by Notaries that are contrary to statutory provisions. The Central Supervisory Council has the authority to propose sanctions to the Central Supervisory Council (MPP) in the form of temporary suspension for 3 (three) months to 6 (six) months and dishonorable discharge. The imposition of sanctions by the Regional

Supervisory Council (MPW) as a form of follow-up to the report of the Regional Supervisory Council (MPD) is guided by Article 5 paragraph (1) letter a, paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions.

4. Conclusion

1. The form of supervision and guidance carried out by the Regional Supervisory Council (MPD) towards notaries is very important in preventing violations of official authority and increasing the professionalism of notaries in Indonesia. With a clear legal basis through the Notary Law and the Notary Code of Ethics, the MPD has the authority to supervise, provide guidance, and impose administrative sanctions on notaries who do not carry out their duties in accordance with applicable provisions. The purpose of this supervision is to maintain the integrity of the notary profession, protect public interests, and ensure compliance with applicable laws, so that the notary profession remains trusted as an institution that plays a role in maintaining legal certainty in society.

2. Implementation of Notary Supervision and Guidance Sanctions by the Regional Supervisory Council (MPD) through supervision (repressive) and guidance (preventive). Furthermore, if there is a Notary who violates Article 7 paragraph (1) letter a UUJN and is proven, a written warning will be given a maximum of 3 times. However, if the Notary who has been warned still has not improved his performance in accordance with the advice of the Regional Supervisory Council (MPD), this violation case can be continued to the Regional Supervisory Council (MPW) level to be given heavier sanctions. Finally, guidance actions (preventive) to prevent the recurrence of violations. Guidance actions taken can be in the form of socialization activities or counseling related regulations that are routinely scheduled for Notaries.

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