

Effectiveness of the Supervisory Board of Notaries (Mpdn) Supervisory Board Supervisory Board (Mpdn) on Violations of the Code of Ethics for the Notaries Office in Pandeglang Regency

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Abstract. *Supervision by the Regional Notary Supervisory Council (MPDN) is not only the implementation of the duties and positions of Notaries to comply with the provisions of the Notary Law, but also supervision of the behavior of Notaries that can harm the dignity of the Notary's position. This study aims to determine and analyze the Effectiveness of MPDN Supervision of Violations of the Notary Code of Ethics in Pandeglang Regency; and to determine and analyze the obstacles and solutions in MPDN Supervision of the implementation of the duties and positions of Notaries in Pandeglang Regency. The approach method used in this study is empirical legal research using primary data as the main data and secondary data as library data. This study uses a qualitative analysis approach. Based on the research results, it can be seen that MPDN is still not effective in supervising Notaries in Pandeglang Regency in carrying out their duties and authorities. In its implementation, related to the authority of MPDN to receive reports, MPDN then holds a hearing to examine any alleged violations of the implementation of the notary's position, but MPDN is not given the authority to impose any sanctions. MPDN is only authorized to report the results of the hearing and examination to the Notary Regional Supervisory Board (MPWN) with a copy to the reporting party, the notary concerned, the Central Supervisory Board, and the notary organization.*

Keywords: *Notary; Position; Supervisory; Violations.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) firmly stipulates that the Republic of Indonesia is a state of law. The principle of a state of law guarantees certainty, order, and legal protection based on truth and

justice.

Notaries have long been known in Indonesia, even long before Indonesia's independence, namely during the Dutch colonial government. Initially, the existence of notaries was a necessity for Europeans in Indonesia in an effort to create authentic deeds. The existence of notaries is increasingly needed in creating authentic written evidence of a legal act carried out by the community. Several laws and regulations require certain legal acts to be made in an authentic deed. Notaries and their deed products can be interpreted as the state's efforts to create legal certainty and protection for members of society.

A notary is a public official who has the authority to make authentic deeds and other authorities as referred to in Article 1 paragraph (1) of Law Number 30 of 2004 after the amendment to the new law, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

The definition of a public official is explained in Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, namely that a Notary is the only public official who has the authority to make authentic deeds as long as the making of authentic deeds is not specifically for other public officials and other authorities as referred to in the law.

A notary is a public official who is authorized to make authentic deeds as long as the making of certain authentic deeds is not specifically for other public officials. An authentic deed essentially contains formal truth in accordance with what the parties have notified the notary. However, the notary has an obligation to include that what is contained in the notarial deed has been truly understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the notarial deed are clear and providing access to information, including access to related laws and regulations for the parties signing the deed.

The profession of Notary is very important, because the nature and essence of the Notary's work is very oriented towards legalization, so that it can become the main legal foundation regarding the status of property, rights, and obligations of the parties involved. In making a Notarial deed, it must contain the wishes or desires of the parties which are stated in the contents of the agreement (deed). This is regulated in Article 15 paragraph (1) of Law Number 2 of 2014: "Notaries are authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or regulations and/or desired by

"who has an interest in being stated in an authentic deed, guaranteeing the certainty of making the deed, keeping the deed, providing grosses, copies and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law."

According to Liliana Tedjasaputra, there are 4 (four) things that notaries must pay attention to, namely:¹:

- 1) In carrying out his professional duties, a notary must have solid moral integrity. In this case, all moral considerations must underlie the implementation of his professional duties. Although he will receive high service rewards, anything that is contrary to good morals must be avoided.
- 2) A notary must be honest, not only to his clients, but also to himself. He must know the limits of his abilities, not make promises just to please his clients, or so that the clients will continue to use his services. All of that is a measure of the level of intellectual honesty of a notary.
- 3) A notary must be aware of the limits of his authority. He must obey the applicable legal provisions regarding how far he can act and what is and is not allowed to be done. It is contrary to professional behavior if a notary is domiciled and resides outside his place of office as a notary. Or puts up a sign and has an office in his place of office, but his place of residence is elsewhere. A notary is also prohibited from carrying out his office outside his area of office. If these provisions are violated, the deed in question will lose its authentic power.
- 4) Even though a person's expertise can be used as a straightforward effort to earn money, in carrying out his professional duties he is not solely driven by monetary considerations. A Pancasilaist notary must remain steadfast to a true sense of justice, not be influenced by the amount of money, and not merely create formal evidence in pursuit of legal certainty, but ignore the sense of justice.

Notary is a profession that has special expertise.

requires extensive knowledge, as well as heavy responsibility to serve the public interest and the core of the notary's duties is to regulate in writing and authentically the legal relations between parties who mutually request the services of a notary.

Notaries in carrying out their duties:²

- 1) Notaries are required to make deeds properly and correctly. This means that the deeds made fulfill the legal requirements and requests of the interested parties because of their position.

¹Liliana Tedjasaputra, *Professional Ethics and Legal Profession, Various Sciences*, Semarang, 2006, p. 86.

²Nico, *Notary's Responsibilities as Public Officials*,: Center for Documentation and Studies of Business Law, Yogyakarta, 2003, p. 260.

2) Notaries are required to produce quality deeds. This means that the deeds they make are in accordance with the rules of law and the wishes of the parties concerned in the true sense, not made up. Notaries must explain to the parties concerned the truth of the contents and products of the deeds they make.

3) It has a positive impact, meaning that anyone will acknowledge that the notarial deed has perfect evidential force.

With the new provisions, namely Law Number 2 of 2014 concerning the Position of Notary, Guidance by the Notary Honorary Council is regulated in Article 66A, while supervision is carried out by the Regional Supervisory Council which is regulated in Article 67. The Notary Honorary Council can impose sanctions on notaries, while the Regional Supervisory Council cannot, both at the regional and central levels when a notary violates the code of ethics of the notary profession in accordance with the guidelines made by the professional organization that applies to all members of the Indonesian Notary Association and other people who hold and carry out

The authority of a Notary is always related to the community who use legal services or those related to the creation of evidence in the form of authentic deeds. Therefore, the Notary's position is a position of trust from the community and for the implementation of his/her duties, supervision of the Notary is required. Supervision of the Notary is a preventive and curative activity carried out by the Notary Supervisory Board for the notary.

Supervision carried out by the Notary Supervisory Board is not only the implementation of the duties and position of the Notary to be in accordance with the provisions of the Notary Law, but also supervision of the actions or behavior of the Notary's life that can harm the dignity of the Notary's position. Supervision of the Notary Board (Article 67 paragraph (5) of the Notary Law) has a broad scope of supervision, supervision of Notaries with definite measurements in the Notary Law. Supervision aims to ensure that all provisions of the Notary Law that regulate the implementation of the Notary's position are complied with by the Notary and if a violation occurs, the Supervisory Board can impose sanctions on the Notary concerned.³.

2. Research Methods

Research methods in general can be said to be a general approach to the phenomenon chosen by the researcher to be investigated or a guideline to direct the research. The essence of the research is also a discovery of information through a certain procedure or through a standardized procedure. With a certain procedure, it is expected that others can follow, repeat or test the validity and

³Ibid, p. 144

reliability of the information being studied.⁴ Validity according to Sunaryati Hartono, concerns the issue of whether a measuring instrument has accurately measured data that is relevant to the research problem in question.⁵ Soerjono Soekanto and Sri Mahmudji said that in its implementation, research requires and determines the tools, the time period required for the writing process, and the methods that can be taken if difficulties are encountered in the research process.⁶ The preparation of this thesis began with a study intended to obtain data to be used as material for discussion and analysis so that it can be trusted and accounted for.

3. Results and Discussion

3.1. Effectiveness of Supervision of the Regional Notary Supervisory Board (MPDN) Against Violations of the Notary Code of Ethics in Pandeglang Regency

The total area of Banten Province is 9,352.77 km², which administratively consists of 8 regencies/cities. Lebak and Pandeglang Regencies are the 2 (two) regencies with the largest areas in Banten Province, where the area of Lebak Regency is 3,312.18 km² reaching 35.41% and Pandeglang Regency is 2,771.41 km² reaching 29.63%, so that the area of the two regencies when combined is almost two-thirds of the entire area of Banten Province.⁷

Formally, in the Decree on the Establishment of the Pandeglang and Lebak MPD, it is only referred to as the Pandeglang MPD, whose working area also includes Lebak Regency. To further emphasize that the Pandeglang MPD covers the areas of Pandeglang and Lebak regencies, the name used by the Banten MPW is called the Pandeglang and Lebak Regency MPD both in administration and in official letters.⁸

In carrying out the guidance and supervision of notaries in Banten Province, 6 (six) Notary MPDs have been formed, namely the Tangerang City Notary MPD, the Tangerang Regency Notary MPD, the South Tangerang City Notary MPD, the Serang Regency and Cilegon City Notary MPD, the Serang City Notary MPD, and the Pandeglang Regency and Lebak Regency Notary MPD.⁹

⁴Sunaryati Hartono, Op., Cit., p. 110.

⁵Ibid, p. 113.

⁶Soerjono Soekanto and Sri Mahmudji, Normative Legal Research, Radja Grafindo Persada, Jakarta, 2001, p. 22.

⁷Central Statistics Agency of Banten Province, Area by Regency/City in Banten Province, 2020-2022, <https://banten.bps.go.id/id/statistics-table/2/NDUwIzI=/lebar-region-according-to-district-city-in-banten-province.html> accessed on January 3, 2025

⁸Public Relations of Banten Regional Office, Website: <https://persepsi.co.id/admin>, accessed on January 4, 2025.

⁹Public Relations of Banten Regional Office, Website: <https://persepsi.co.id/admin>, accessed on January 4, 2025

The community that requires the services of a Notary in Pandeglang Regency generally still relies on the need for deeds required by laws and regulations, especially Credit Agreement Deeds and Collateral Bindings and Land Registration and Encumbrances. Other things such as Inheritance Deeds, Child Adoption and others, as in traditional communities in general, are still very rarely done with Notarial Deeds. Regarding the community's need for Credit Agreement Deeds and Encumbrances, it is supported by the existence of a number of banks, namely in Pandeglang Regency¹⁰.

The duties and authorities of a notary are to provide legal services to the community, so that the notary has a high responsibility and maintains its dignity and honor. Notaries must treat all parties honestly and fairly in carrying out their duties. Not intended for the personal interests of notaries, but also for the interests of the community¹¹.

The presence of a Notary position is required by legal regulations with the aim of helping and serving people who need authentic written evidence regarding circumstances, events or legal actions.¹² On that basis, those who are appointed as Notaries must have the spirit to serve the community and for that service the community that has been served by the Notary in accordance with the authority and duties of his position, provides an honorarium to the Notary. Therefore, a Notary does not mean anything if the community does not need him.¹³

Notaries as public officials who are authorized to make authentic deeds have an important role in the life of society so that Notaries as public officials who make authentic deeds are required to have a good personality, work hard, be independent, honest, impartial (fair) and full of responsibility. Notaries are also required to have skills or mastery in the field of law that is their competence. The demand for skills in providing services in the field of civil law, Notaries are also required to provide legal counseling (legal advisor) to their clients to avoid legal errors and know their rights and obligations.

Thus, which aspects will be proven in reverse by the MPD when examining a Notary? Then the MPD is burdened with proof as regulated in Article 138 HIR (Article 164 Rbg, 148 Rv)., before deciding whether the Notary being examined has violated one or all three aspects.

¹⁰Ibid

¹¹Bachrudin, *Notary Law, Techniques for Making Deeds and Language of Deeds*, Refika Aditama, Bandung, 2019, p. 21

¹²Substantively, a notarial deed can be: (1) a condition, event or legal act that the parties wish to be stated in the form of an authentic deed to be used as evidence; (2) based on statutory regulations that certain legal acts must be made in the form of an authentic deed.

¹³Herlien Budiono, "Notaries and Their Code of Ethics", Presented at the National Upgrading and Refreshing Course of the Notary Association

The three aspects above are the perfection of a Notarial deed as evidence. So that anyone (judge, prosecutor, police, notary and MPD itself) is bound to accept the Notarial deed "as is", and no one can interpret it otherwise or add/request other evidence to support the Notarial deed, because if the Notarial deed is not considered as perfect evidence, it will be useless for the law to appoint a Notary as a Public Official to make an authentic deed as perfect evidence, if it turns out that anyone can do it as they please and arbitrarily or without

a clear legal basis sets aside a Notarial deed as a perfect evidence. Therefore, if fellow Notaries blame each other or denigrate deeds made by other Notaries, this shows that the Notary concerned does not understand the meaning of a Notarial deed as a perfect evidence.

If the MPD members who come from Notaries understand correctly the implementation of the duties of the Notary office according to UUJN, then they will understand to place the focus of the Notary examination with the object of the Notary deed. If the MPD members who come from Notaries understand correctly the notary institution will certainly maintain the Notary office as a position of trust.

The notary supervisory board is given functions based on statutory regulations in carrying out its authority. Namely, conducting inspections of violations of notary behavior and office as well as periodic inspections.

3.2. Obstacles and Solutions in the Supervision of the Regional Notary Supervisory Board (MPDN) of Violations of the Notary Code of Ethics in Pandeglang Regency

Appointment of Members, Dismissal of Members, Organizational Structure, Working Procedures and Examination Procedures of the Notary Supervisory Board, that, receives reports from the public regarding alleged violations of the Notary Code of Ethics or violations of provisions in the law.

Looking at the description of the duties of the MPN above, it is not clearly stated whether there are any preventive efforts made by the MPN to prevent violations of office by Notaries.

Second, in imposing sanctions for violations of the code of ethics committed by a Notary, the Notary Honorary Council, hereinafter referred to as DKN, as regulated in Article 8 of the Code of Ethics of the Indonesian Notary Association, states that the Honorary Council is a tool of the Association that has the authority to examine violations of the code of ethics and impose sanctions on violators in accordance with their respective authorities.

If we look at it further, there is an overlap in the assignments that are the authority of the MPN and DKN, namely the absence of clear regulations

regarding preventive efforts carried out by the MPN to prevent violations of office by Notaries and the overlapping authority between the MPN and DKN as described above.

Behavior Notary ethics can be influenced by many factors. De Vos argues that in reality each person's awareness is limited, no one has a pure awareness of morality, often awareness is lost, no one stands alone in moral conflicts and in contemplation about it.¹⁴ Many things can influence an individual's actions in behaving. Everyone is essentially free, but in choosing a behavior, in this case choosing to act ethically, it is certainly influenced by many specific factors. Jay B. Barney & Ricky W Griffin as quoted by Rafik Issa Beekun introduces individual ethical determinants. Individual ethical determinants include legal interpretation, organizational factors and individual factors. The individual factors can be divided into: (1) Stage of moral development; (2) Personal values and personality; (3) Family influence; (4) Peer influence; (5) Experience alive; and (6) Factorsituational. Meanwhile, Sumaryono as quoted by Abdulkadir Muhammad put forward 3 (three) factors determining the morality of human actions, which include: (1) Motivation; (2) Goals Finally, and (3) Environment of action. This opinion is an opinion within the framework of explaining things that influence the ethical behavior of notaries. In this case, the author places the factors of legal interpretation, stages of moral development, personal values and personality, motivation and final goals as internal factors, while the author places the rest in external factors.

The classification of the two factors that influence ethical behavior as internal and external factors in this case is not intended to create a dichotomy, but the mention of external and internal is done simply to make it easier, because there is a close relationship and mutual influence between the two. Internal factors in this case emphasize the internal side of the notary's psychology in carrying out an ethical act, while external factors emphasize external influences that have implications for the notary's ethical behavior. In relation to this, the author details the internal factors because the scope of the discussion can be divided, while the author briefly describes the external factors because in essence they are the surrounding environment and can vary.

However, the reality in the field shows that the implementation of the code of ethics, many obstacles are faced by the Supervisory Board and the Honorary Council. The obstacles that are often encountered are generally because the system that has been formed cannot run properly. This system cannot run because of the low/lack of implementation of sanctions. So far, the sanctions given are only in the form of moral sanctions such as reprimands and warnings. For temporary dismissal (schorsing), it has never even been done. From this it can be seen that the sanctions have not been firmly implemented because the

¹⁴De Vos, op. cit., p. 15.

Honorary Council feels 'reluctant' or 'hesitant' to give sanctions in the form of dismissal to their colleagues, notaries. Even according to the source, it is unethical to have to fire colleagues.

In reality, the system is influenced by the application of unclear sanctions given by the Honorary Council. The reason often put forward by the honorary council is the psychological factor, namely that they are colleagues, so that if someone makes a mistake, they are only reprimanded once. From this condition, it can be seen that the sanctions given in the notary code of ethics are still very weak. The sanctions given to notaries who violate are considered weak because they are only in the form of reprimands and temporary dismissal and dishonorable dismissal from the association, not dismissal from their position, and those who complain are colleagues, so the psychological factor here is very influential.

Based on the research conducted, it can be seen that the rules that have been prepared in the form of a notary's code of ethics should be binding on all notaries, but so far the existence of the code of ethics is not binding on all notaries, because there are several notary organizations that are considered professional organizations, even though the only organization recognized by the government is the Indonesian Notary Association (INI), so that the code of ethics prepared by the Indonesian Notary Association (INI) is considered to only apply to members of the Indonesian Notary Association (INI). In addition, the sanctions given for violations of the code of ethics are limited to verbal warnings. There is no further action from the assembly

honor of the Indonesian Notary Association (INI), for the implementation of the sanctions. As a result, the existence of this code of ethics is not implemented effectively.

Furthermore, the author briefly describes the obstacles to the effectiveness of supervision by the Regional Notary Supervisory Board (MPDN) regarding violations of the Notary Code of Ethics in Pandeglang Regency, including the following:

- 1) there are differences in notary data between the MPDN and the regional office,
- 2) MPDN has not been performing its duties optimally in accordance with applicable laws and regulations;
- 3) MPDN has not conducted regular inspections of Notary Behavior and Position violations;
- 4) MPDN has not actively carried out routine supervision of notaries in Pandeglang and Lebak Regencies;
- 5) MPDN has not/does not dare to conduct an inspection if there is a notary

report that is problematic, an inspection is not carried out at the regional level first but the inspection is often directly handed over to MPNW;

6) In every notary protocol examination, the MPD has not informed notaries to comply with the implementation of PMPJ or GoAML reports on suspicious financial transactions (PPATK);

7) MPD is not/has not been able to make periodic reports to MPW regarding the examination of notary protocols;

8) MPD has not/has not reported to MPW notaries who are difficult to audit.

In overcoming these obstacles, the author tries to provide

solutions, namely:

1) synchronize notary data in their respective regions until all data is the same and must not differ so that there are no more differences in notary data between the MPDN and regional offices;

2) MPDN must be active in responding to public reports;

3) MPDN must be more active and brave in carrying out its duties in accordance with applicable laws and regulations and carry out routine supervision of notaries in Pandeglang and Lebak Regencies;

4) MPDN conducts an inspection if there is a notary report that is problematic, do not immediately submit it to MPNW but conduct an inspection at the regional level first;

5) MPD can make periodic reports to MPW regarding the examination of notary protocols;

6) MPD must report to MPW notaries who are difficult to examine. Later, MPD and MPW can carry out joint examinations;

7) In carrying out its authority, the Notary Supervisory Board is given the function based on statutory regulations to carry out

examination of violations of Notary Conduct and Position, conducting periodic examinations;

8) In every notary protocol examination, the MPDN must also inform notaries to comply with the implementation of PMPJ or GoAML reports on suspicious financial transactions (PPATK).

4. Conclusion

The Effectiveness of Supervision of the Regional Notary Supervisory Board

(MPDN) on Violations of the Notary Code of Ethics in Pandeglang Regency, that in handling or resolving a case, members of the Supervisory Board must continue to respect and uphold the dignity of the member concerned, always maintain a family atmosphere and keep everything they find confidential. MPDN has the authority to impose sanctions on notaries. These sanctions are mentioned or regulated in the UUJN, also mentioned again and added in the decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004. With such regulations, there are regulations on sanctions that are not mentioned in the UUJN but are actually regulated or mentioned in the decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004. The implementation of these sanctions does not immediately apply, but there must be a process of proof carried out in a general court, and there is a decision from the court through a lawsuit, that the notarial deed has the power of proof as a deed under hand or is null and void by law. Although Thus, in its implementation related to the authority of the MPDN to receive reports from the public and from other notaries, which then holds a hearing to examine any alleged violations of the implementation of the notary's position, but the MPDN is not given the authority to impose any sanctions. In this case, the MPDN is only authorized to report the results of the hearing and examination to the MPWN with a copy to the reporting party, the notary concerned, the Central Supervisory Board, and the notary organization.

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