

The Effectiveness of the Implementation of Supervision of the Regional Supervisory Council (MPD) on the Implementation of Notary Positions

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Abstract. *This research aims to determine and analyze the effectiveness of the implementation of supervision by the regional supervisory council (MPD) on the implementation of notary positions in Semarang district. The method used in this research is a qualitative approach, because problems related to humans fundamentally depend on observation. The qualitative approach is an approach where there is an event where the researcher becomes the key instrument in the research which is carried out completely on the research subject, then the results of this approach are described in the form of words written on the empirical data that has been obtained. The type of data used in this research is primary and secondary data. The type of primary data is data in the form of information in oral form obtained directly by researchers through original sources. The primary data used is: The 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 2 of 2004 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. Meanwhile, secondary data is written data. Some of the secondary data used in writing this thesis include: Results of Scientific Work of Scholars, Legal Journals, Research Results of Tertiary Legal Materials: Legal Dictionaries, Encyclopedias, Print and Electronic Media. The results of the research are that at the level of correct legal rules, the Regional Supervisory Council (MPD) must place the Notary's deed as an object, because the Notary in carrying out his official duties is related to making legal documents, in the form of a deed as written evidence which is within the scope of civil law. so that placing a deed as an object must be assessed based on the legal rules relating to the making of the deed, and if it is proven that there is a violation, sanctions will be imposed as stated in Articles 84 and 85 UJUN.*

Keywords: Council; Effectiveness; Regional; Supervisory.

1. Introduction

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 situations, events or legal actions. On this basis, a person who has been appointed as a Notary must serve the community and for this service, the community who 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 society does not need it. Related to this, there is an increasing need for Notary services. Notaries have the task of serving the public in the civil sector, especially in terms of making authentic deeds.¹Meanwhile, Article 1 point (7) of Law Number 30 of 2004 concerning the Position of Notaries states that: "A Notarial Deed is an authentic deed made by or before a Notary in accordance with the form and procedures stipulated in this law."²

This supervision aims to ensure that Notaries carry out the authority and obligations that have been given to them in the relevant basic regulations on the basis of professional morals and ethics in order to guarantee legal protection and legal certainty for the public. In this way, Notaries need supervision in carrying out their duties and positions, both preventing and curing if there are irregularities committed by the Notary.

Provisions governing supervision of Notaries are regulated in Chapter IX Article 67 to Article 81 of Law Number 30 of 2004 concerning the Position of Notaries and Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.39-PW.07.10 of 2004 concerning Implementation Guidelines The duties of the Notary Supervisory Board are its implementing regulations. These provisions are an effort to anticipate weaknesses and shortcomings in the supervision system for Notaries, so that it is hoped that in carrying out their professional position, Notaries can improve the quality of service to the public.³

Supervision of Notaries as regulated in the Law on Notary Positions Article 67 is carried out by the Minister. However, in carrying out supervision, the Minister formed a Supervisory Council: MPD (Regional Supervisory Council), MPW (Regional Supervisory Council), MPPN (Central Notary Supervisory Council).⁴MPN members consist of 9 (nine) people, 3 (three) each from: government elements, notary elements and academic elements. Even though the MPN has been

¹Haposan Siallagan. 2016. "Application of the Principles of the Rule of Law in Indonesia", Sociohumaniora. Vol. 18.No. 2. Pg. 132.

²Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Positions.

³Article 1868 Civil Code

⁴Article 1 number (7) Law Number 30 of 2004 concerning Notary Positions

established, in practice there are still various legal violations committed by Notaries. Of these three elements, the one that plays a role in determining the results of the examination is the Notary element. So, the resulting decision was insipid because the notarial element sided with the notary being examined. Likewise, if a Notary wants to be questioned by law enforcement, they must obtain approval from the MKN (Honorary Council of Notaries) before the Notary can be examined.⁵

The Notary Supervisory Council has the role of carrying out supervision of Notaries so that they carry out their official duties as determined by the applicable laws and regulations. The Supervisory Council as referred to above consists of the Regional Supervisory Council, Regional Supervisory Council and Central Supervisory Council, each of which has different duties and authorities, but there are similarities, namely supervising notaries in relation to their duties and positions.

2. Research Methods

The research approach used in this thesis is a qualitative approach, because problems related to humans fundamentally depend on observation. The qualitative approach is an approach where there is an event where the researcher becomes the key instrument in the research which is carried out completely on the research subject, then the results of this approach are described in the form of words written on the empirical data that has been obtained.

3. Results and Discussion

3.1. How the Regional Supervisory Council Supervises the Behavior of Notaries in Semarang Regency

The implementation of supervision carried out by the Regional Supervisory Council or commonly known as (MPD) regarding the behavior of Notaries must be based on Law Number 2 of 2014 concerning the Position of Notaries regarding the duties and authority of the Regional Supervisory Council (MPD) where when a Notary commits an act that violates the provisions Notary Public Position Act. The violations referred to in Article 9 of Law Number 2 of 2014 concerning Notary Positions are:⁶ 1.) In the bankruptcy process or postponement of debt payment obligations, 2.) Being under guardianship, 3.) Committing a disgraceful

⁵Desela Sahra Annisa Rangkuti, 2022, "Implementation of the Office of a Notary Who Has Authority from the State to Make Authentic Evidence", Jurnal Kertha Semaya, Vol. 1, No. 5, Pg. 1207.

⁶Article 9 Law Number 2 of 2014 concerning Notary Positions

act, 4.) Violating the obligations and prohibitions of office as well as the notary's code of ethics, 5.) While undergoing detention.

Based on an interview with the Chair of the Semarang Regency Regional Supervisory Council, the Regional Supervisory Council has the authority to supervise Notaries and provide guidance to Notaries if there are people who report, however the Regional Supervisory Council will regularly visit to supervise the performance of the Notary's office once a month.

Based on the decree of the Head of the Central Java Regional Office of the Ministry of Law and Human Rights Number W13.2754.KP12.25 of 2021 dated December 20 2021, the Regional Supervisory Council of Notaries of Semarang Regency has 9 members, consisting of: Triyono, SH, M.Kn. , Adhi Budi Susilo, SH, MH, Dr. Rochmani, SH, M.Hum., Listina Aryani, SH, MM, Agus Heryanto, Bc.IP., SH, MH, Moot, SH, Asharinuha, SH, M.Kn., Rika Budi Antawati, SH, M.Kn ., MM, Nani Ekawati Darmadi Silvia, SH, M.Kn.

Meanwhile, Article 68 of the Notary Position Law states that the Supervisory Council as referred to in Article 67 paragraph (2) consists of: Regional Supervisory Council, Regional Supervisory Council, Central Supervisory Council.⁷

Based on an interview with the Chair of the Semarang Regency Regional Supervisory Council, in Central Java Province there are 26 Regional Supervisory Councils, and to become members of the Regional Supervisory Council they can be appointed by the Ministry of Law and Human Rights, Notary organizations, or academic activists.⁸

Based on an interview with the Chair of the Regional Supervisory Council of Semarang Regency, currently the public still does not fully know that notaries who commit violations should be reported to the Regional Supervisory Council, so there are still people who report it directly to the authorities.⁹

The Regional Supervisory Council (MPD) has special authority that the MPW and MPP do not have, namely as stated in Article 66 UUJN, that the MPD has the authority to examine Notaries in connection with requests from investigators, public prosecutors or judges to take photocopies of minutes or other documents. attached to the minutes or in the Notary's protocol in the Notary's custody, as

⁷Article 68 Law on Notary Positions

⁸Interview with Mr Triyono, Chairman of the Regional Supervisory Council of Semarang Regency, 24 July 2023.

⁹Interview with Mr Triyono, Chairman of the Regional Supervisory Council of Semarang Regency, 24 July 2023.

well as the Notary's summons relating to the deed he or she has made or in the Notary's protocol in the Notary's custody.

The final results of the examination by the Regional Supervisory Council (MPD) are outlined in the form of a Decree, containing the ability to give approval or reject requests from investigators, public prosecutors or judges. When UUJN is promulgated, Notaries hope to receive proportional protection for Notaries when carrying out their official duties as Notaries, at least or one of them through or based on the provisions or implementation mechanisms of Article 66 UUJN carried out by the Regional Supervisory Council (MPD), also at least have a fair, transparent, ethical and scientific examination when the Regional Supervisory Council (MPD) examines the Notary at the party's request others (police, prosecutor's office, court), but this is very difficult to implement, because the MPD members consist of different elements, namely 3 (three) Notaries, 3 (three) academics and 3 (three) bureaucrats (Article 67 paragraph (3) UUJN), who come from different backgrounds, so there is no same perception when examining Notaries.

The Chairman of the Semarang Regency Regional Supervisory Council stated that deeds made by Notaries who have committed violations or been given sanctions remain valid as long as the deed is made in accordance with the provisions of the law.

At the level of correct legal regulations, the Regional Supervisory Council (MPD) must place the Notary's deed as an object, because the Notary in carrying out his official duties is related to making legal documents, in the form of a deed as written evidence which is within the scope of civil law, thus placing the deed as The object must be assessed based on the legal rules relating to the making of deeds, and if it is proven that there is a violation, sanctions will be imposed as stated in Articles 84 and 85 UUJN. Thus, it is not within the authority of the Regional Supervisory Council (MPD) to carry out its duties to look for (criminal) elements to persuade Notaries with qualifications to participate in or assist in carrying out a criminal act or deed.

If it turns out that the Regional Supervisory Council (MPD) decides based on a Decree made by the Regional Supervisory Council (MPD) to authorize a Notary to be examined by investigators, prosecutors or in court, as an implementation of Article 66 UUJN, there is no possibility of submitting an objection to the examination. to a higher council agency, such as the Regional Audit Council (MPW) or the Central Audit Council (MPP), because such a mechanism specifically for the implementation of Article 66 UUJN is not specified or there is no legal remedy for objection or appeal.

However, if the Notary is approved by the Regional Supervisory Council (MPD), then the Notary concerned can submit legal action to the State Administrative Court (PTUN) with the object of the lawsuit being a letter from the Regional Supervisory Council (MPD) which passed the Notary, this will become a dispute state Administration. This can be done because the Regional Supervisory Council (MPD) acts as a body or Business Position Country (TUN) and has issue a decision as a State Administrative Decree.

Based on the description above, it is very inappropriate if the Regional Supervisory Council (MPD), which is a State Administrative Body, has its authority castrated by time limits as stated in Articles 6 and 12 of the Ministerial Regulation, because if a Notary should feel objections and does not get transparent examination from the Regional Supervisory Council (MPD), and based on the decision of the Regional Supervisory Council (MPD) can be used as the object of State administrative disputes in the State Administrative Court, but in the Ministerial Regulation, the rights of Notaries have been removed, and this is contrary to Law Number 5 of 1986, concerning the State Administrative Court in conjunction with Law of the Republic of Indonesia Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court.

Based on the results of interviews with the Chair of the Semarang Regency Regional Supervisory Council and members of the Central Java Province Regional Supervisory Council, it can be concluded that Notary Behavior is supervised by the Regional Supervisory Council, Regional Supervisory Council and Central Supervisory Council. In Central Java there are a total of 26 Regional Supervisory Councils. Apart from supervising Notaries who have been complained about by the public, the Regional Supervisory Council also provides guidance to Notaries once a month. People who are dissatisfied with the Notary's performance or who know that the Notary has committed a violation should report it to the Regional Supervisory Council so that the Regional Supervisory Council can carry out an inspection of the Notary.

Thus, the action of the Regional Supervisory Council (MPD) which decides to allow a Notary to be examined by another party as an implementation of Article 66 UUJN, if it is not satisfactory to the Notary or the Notary concerned objects for reasons known to the Notary himself, then the Notary concerned can sue the Supervisory Council Regional (MPD) to the State Administrative Court. The Regional Supervisory Council (MPD) Decree is the object of a lawsuit at the State Administrative Court so that the Notary receives legal protection and legal certainty. What is meant is that they must obtain legal protection and legal certainty in accordance with the 1945 Constitution of the Republic of Indonesia Article 28D number (1) which regulates that every person has the right to

recognition, guarantees,¹⁰ and according to Sudikno Mertokusumo in his book entitled *Knowing the Law*, he said "In enforcing the law there are three elements that must be taken into account, namely legal certainty, expediency and justice." Legal certainty is the basis for a country in implementing applicable laws or regulations. Sudikno Mertokusumo interprets: "Legal certainty is protection for justice seekers against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances."¹¹

3.2. How Effective is the Implementation of Supervision of the Regional Supervisory Council on Notary Behavior in Semarang Regency

The aim of supervising Notaries is to fulfill the requirements and carry out their duties in accordance with the provisions of the applicable laws in order to safeguard the interests of the general public, because Notaries are brought in to serve the interests of the public who require evidence in the form of Authentic Deeds as requested by the Notary. So without a community that needs a Notary, a Notary is useless. However, this does not mean that by changing agencies that supervise notaries there will be no violations committed by notaries, because no matter how strict the supervision carried out by the Notary Supervisory Council, it is not easy to carry out such supervision.¹² Meanwhile, the main task of Notary supervision is to ensure that all rights, authorities and obligations given to Notaries in carrying out their duties as provided by the relevant basic regulations, are always carried out on predetermined paths, not only legal paths but also on moral and ethical grounds.

The ongoing monitoring mechanism for Notaries in carrying out their duties and positions is implemented based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN), and the Regulation of the Minister of Law and Human Rights of the Republic Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointing Members, Dismissing Members, Organizational Structure, Work Procedures, and Procedures for Examination of the Supervisory Board. In the UUJN provisions, there are many changes regarding the authority of the Regional Supervisory Council in supervising and coaching Notaries.

Periodic inspections are carried out by an Audit Team consisting of 3 (three) members from each element formed by the Regional Supervisory Council assisted by 1 (one) secretary. The Examining Team is obliged to refuse to

¹⁰Setiono. Loc. Cit. Pg 3

¹¹Sudikno Mertokusumo. loc. Cit. p. 145

¹²Habib Adjie, 2008, *Civil and Administrative Sanctions Against Notaries as Public Officials*, PT. Refika Aditama, Bandung, Pg. 129.

examine Notaries who are related by marriage or blood relationship in a straight line upwards or downwards without limitation of degree, and in a straight line to the side up to the third degree with the Notary. In the event that the Audit Team has this relationship, the Chair of the Regional Supervisory Council appoints a replacement.

The results of the Examination Team's examination as intended in Article 15 are stated in the examination report signed by the Chair of the Examination Team and the Notary being examined. Minutes of the inspection are submitted to the local Regional Supervisory Council with a copy to the Notary concerned, the Regional Management of the Indonesian Notary Association, and the Central Supervisory Council.

Based on the results of an interview with the Chair of the Semarang Regency Regional Supervisory Council:

"The effectiveness of supervision carried out by the Regional Supervisory Council regarding the behavior of Notaries in Semarang Regency needs to be further improved. In this case, based on the results of research that I obtained in the field, the Regional Supervisory Council of Semarang Regency has not been effective in supervising and imposing sanctions on Notaries who violate the Code of Ethics. Because the data for the last three years should be when there is a change in the new management who is given responsibility for supervising the performance of Notaries, the entirety of which should be given to the new management. However, what happened in Semarang Regency was that the data provided by the old management was only data from the last year, where the data provided was data for 2022. So the new Regional Supervisory Council does not know whether Notaries who violated the Code of Ethics in 2020 and 2021 have been processed or not, so the data I get in the field is only data for 2022. With Examination Minutes Number: UM.MPDN. Regency. Semarang.01.22-45 2022.

So based on the description above, the Regional Supervisory Council of Semarang Regency as mandated in article 70 of Law Number 34 of 2004 concerning the Position of Notary Public is not yet fully effective because from 2020 to 2022, based on the data I obtained in the field, it has only implemented one authority, namely notary inspection. which has permanent legal force. And from 2020 to 2021 there are no clear provisions regarding whether there were violations of the code of ethics committed by Notaries in the year in question, and if in those two years it turns out that there were violations committed by Notaries in carrying out their profession, this could have a negative impact on the community. feel disadvantaged by unscrupulous Notaries who are not obedient and careful in carrying out their profession as Notaries.

So in this case, people who feel disadvantaged must receive legal protection from this problem which is caused by the actions of Notaries and the Regional Supervisory Council who are not observant in carrying out their profession and supervising Notaries in Semarang Regency. In accordance with Article 28D paragraph (1) of the Constitution of the Republic of Indonesia, "everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law", and this is reinforced according to expert Setiono. Legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.

4. Conclusion

The implementation of supervision by the Regional Supervisory Council on the behavior of Notaries in Semarang Regency is based on the results of research that the supervision mechanism carried out by the Regional Supervisory Council of Semarang Regency on the implementation of the duties and positions of Notaries is preventive and repressive and refers to Ministerial Regulations, Ministerial Decrees and also UUJN as the basis for its actions. The implementation of supervision by the Regional Supervisory Council regarding the behavior of Notaries is in accordance with statutory regulations, but the public still does not fully understand that if they encounter a Notary who commits a violation, where to report it, so there are still those who report it directly to the police. The effectiveness of the implementation of supervision carried out by the Regional Supervisory Council of Semarang Regency so far has not been effective because there is no overflow of cases that have been followed up in the management from 2020 to 2022, where the new management only receives reports from 2022. This affects the effectiveness of the Regional Supervisory Council Semarang Regency where there was no reduction in cases carried out by the Semarang Regency Regional Supervisory Council. Second, for Notaries who violate the Code of Ethics, the Honorary Council in coordination with the Regional Supervisory Council will carry out an examination of the violation and can impose sanctions on the violators, sanctions imposed on members of the Indonesian Notary Association who violate the Code of Ethics, according to Article 6 of the Notary Code of Ethics, namely in the form of: 1. Reprimand; 2. Warning; 3. Schorzing (temporary dismissal) from association membership; 4. Onzetting (dismissal) from association membership; 5. Dishonorable dismissal from association membership.

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