

## Effectiveness of Notary Supervision by The Notary Supervision Council to Prevent Malpractice in Carrying Out Notary Practice in Banyumas Regency

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**Abstract.** *This study aims to analyze in depth the effectiveness of supervision carried out by the Notary Supervisory Board (MPN) in Banyumas Regency to prevent malpractice in carrying out notary duties. The main problem studied is how the MPN's supervision is implemented in Banyumas Regency and what factors hinder the effectiveness of such supervision, both from internal and external aspects. The research method used is empirical juridical with a sociological legal approach. The research location was determined in Banyumas Regency, involving informants from the Regional Supervisory Board (MPD) and notary practitioners. The results of the study indicate that supervision has not reached the optimal level of effectiveness as mandated by the Notary Law (UUJN). The main obstacles include limited human resources, minimal operational budget allocation, and psychological obstacles in the form of excessive corps solidarity (ewuh-pakewuh) among fellow notaries. Philosophically-theologically, this supervisory function is a manifestation of the Hisbah concept in Islamic law, where the MPN acts as Muhtasib to ensure that the notary as Al-Katib carries out his duties honestly, transparently and responsibly for the benefit of the people.*

**Keywords:** *Banyumas Regency; Effectiveness of Supervision; Islamic Law; Job Malpractice; Notary Supervisory Board.*

### 1. Introduction

The existence of Notaries in the Indonesian legal system occupies a very strategic and crucial position. As public officials authorized by the state to create authentic

deeds, Notaries are the main pillar in creating legal certainty in the realm of civil law. Philosophically, authentic deeds made by or before a Notary have perfect evidentiary force (*volledig bewijskracht*) and are binding (*dwingende bewijskracht*). This is as emphasized in Article 1870 of the Civil Code (KUHPer) and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries (UUJN-P). This power provides assurance to the parties that what is stated in the deed is true, executed before an authorized official, and at the right time.<sup>1</sup>

However, in sociological reality, the dignity of the Notary office often faces complex integrity challenges. The position of authentic deeds as the "highest caste of evidence" in Indonesia's evidentiary legal system has become a loophole prone to exploitation. The phenomenon of malpractice in the Notary profession today is no longer merely an administrative issue, but has expanded into the realm of organized crime, such as involvement in land mafia syndicates, falsification of deed information, and neglect of formal legal counseling procedures for the parties. This malpractice not only harms the public materially, but also degrades public trust in the Notary institution and disrupts the stability of the national legal system.<sup>2</sup>

Banyumas Regency, as one of the centers of economic growth in the southern part of Central Java, is an interesting area to study. The dynamics of economic transactions, infrastructure development, and high property asset turnover in Banyumas are directly proportional to the high demand for notary legal services. The rapid growth in the number of notaries in Banyumas Regency over the past decade has created a climate of intense professional competition. While this provides easy access for the public, unhealthy competition has the potential to trigger ethical violations and malpractice in pursuit of office profitability targets.<sup>3</sup>

In response to these risks, the state has established a supervisory instrument through the Notary Supervisory Council (MPN), which at the regional level is implemented by the Regional Supervisory Council (MPD). Normatively, the MPD has the authority to provide guidance and supervision over the behavior and implementation of notary offices within its jurisdiction. However, the effectiveness of this oversight remains a major question mark among legal academics and practitioners. Routine supervision, generally conducted once a year, often falls into mere administrative formalities—such as protocol checks, deed binding, and monthly reporting—without addressing the substantive aspects of morality and procedural compliance in the field.<sup>4</sup>

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<sup>1</sup> Adjie, Habib, 2014, *Indonesian Notary Law: Thematic Interpretation of Law No. 2 of 2014 concerning the Position of Notary*, Jakarta: Refika Aditama, pp. 15-18

<sup>2</sup> HS, Salim, 2018, *One Deed Making Technique (Theoretical Concept, Notary Authority, Form and Procedure for Making Deeds)*, Jakarta: RajaGrafindo Persada, pp. 42-45.

<sup>3</sup> Central Statistics Agency of Banyumas Regency, 2023, *Banyumas Regency in Figures 2023*, Purwokerto: BPS Banyumas Regency, pp. 15-18.

<sup>4</sup> Article 67 paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary

The fundamental question that arises is: Why does malpractice continue to occur and even tend to increase in Banyumas Regency, even though the supervisory structure has been arranged in a tiered manner from the Regional to the Central level? Referring to Soerjono Soekanto's thoughts on legal effectiveness, a legal rule will not be effective if the law enforcement factors have subjective obstacles, minimal supporting facilities, or the legal culture of the community is not supportive. In Banyumas, there are psychological-sociological obstacles in the form of a culture of *ewuh pakewuh* (reticence) among fellow Notaries who sit in the ranks of the MPD, which often blunts the fangs of the supervisory itself.<sup>5</sup>

Furthermore, supervision based solely on formal secular regulations has proven incapable of fully fortifying the morality of notaries. Therefore, a breakthrough in thinking is needed through the reconstruction of supervisory values. Sultan Agung Islamic University (UNISSULA), through its *Khaira Ummah* vision, offers a paradigm that every public office, including notaries, should be viewed as a form of devotion to God (worship). *Khaira Ummah*'s values, which include *Shiddiq* (honesty), *Amanah* (trustworthiness), *Tablig* (transparency), and *Fathanah* (professional/intelligent), serve as the antithesis to malpractice behavior.<sup>6</sup>

Without an effective oversight system based on strong moral values, the position of Notary in Banyumas Regency is feared to lose its dignity as a "gatekeeper" of legal certainty and instead turn into an instrument of legitimacy for unlawful acts. The research in this draft article aims to conduct a critical evaluation of the performance of the MPD in Banyumas Regency through the lens of the Theory of Legal Effectiveness, while simultaneously formulating an ideal oversight formulation by integrating religious values to prevent future malpractice.<sup>7</sup>

Through this in-depth analysis, it is hoped that weaknesses in the current supervisory system can be identified and constructive recommendations can be provided for stakeholders, both at the regional level of the Ministry of Law and Human Rights and professional organizations, to realize notarial practices that are clean, have integrity, and provide benefits to the wider community.

## 2. Research Methods

This study employs a socio-legal research approach with a qualitative descriptive-analytical approach. The juridical approach is used to examine the legal norms in Law Number 2 of 2014 concerning the Position of Notary (UUJN-P) and the Notary Code of Ethics related to the supervisory function. Meanwhile, an empirical approach is applied to analyze the implementation and effectiveness of

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<sup>5</sup> Soerjono Soekanto, 2012, *Factors Influencing Law Enforcement*, Jakarta: PT. RajaGrafindo Persada, p. 8

<sup>6</sup> Anis Mashduqi and M. Abdul Qadir, 2021, *Reconstruction of Islamic Higher Education Based on Khaira Ummah*, Semarang: Unissula Press, p. 45

<sup>7</sup> Lawrence M. Friedman, 2018, *Legal Systems: A Social Science Perspective*, Bandung: Nusa Media, pp. 12-15

supervision by the Regional Supervisory Council (MPD) of Notaries in Banyumas Regency in mitigating malpractice in the field.

The research location focuses on Banyumas Regency, with the main study objects being the Banyumas Regency MPD, local notary offices, and related law enforcement agencies (Banyumas Police and Purwokerto District Court). Primary data was obtained through in-depth interviews with several key informants, including MPD members (government, academic, and professional organizations), the Banyumas Regional Indonesian Notary Association (INI) administrators, and police investigators. Secondary data includes primary legal materials (regulations), secondary legal materials (literature).<sup>8</sup>scientific), and official documents in the form of annual reports and minutes of MPD inspections.

The data collection technique used triangulation, namely literature study, interviews, and document/archive study. The collected data were then analyzed using the Miles and Huberman interactive model, which includes data reduction, narrative data presentation, and drawing conclusions through cross-verification with legal effectiveness theory and oversight theory. To ensure the validity of the findings, the researcher applied source triangulation techniques by comparing information from various sources and related documents to ensure the objectivity of the research data.

### **3. Results and Discussion**

#### **3.1. Description of the Implementation of the Supervisory Function of the Regional Supervisory Council (MPD) of Notaries in Banyumas Regency**

The implementation of the supervisory function for the Notary position is a constitutional mandate stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN). In Banyumas Regency, this function is carried out by the Regional Supervisory Council (MPD), which holds a strategic position as the vanguard in maintaining the dignity and honor of the Notary position in the jurisdiction.

Theoretically, the supervision carried out by the Banyumas Regional People's Representative Council (MPD) is rooted in the Theory of Authority. The MPD's authority is attributive, granted by law to the Minister of Law and Human Rights, which is then delegated to the Supervisory Board in a hierarchical manner. In Banyumas Regency, this supervision is not only interpreted as<sup>9</sup>administrative control, but also as an instrument of legal protection for the community using notary services.

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<sup>8</sup> Soekanto, Soerjono and Mamudji, Sri, 2015, Normative Legal Research: A Brief Review, Jakarta: Rajawali Pers, p. 13.

<sup>9</sup> Philipus M. Hadjon, 2011, Introduction to Indonesian Administrative Law, Yogyakarta: Gadjah Mada University Press, p. 245

The Banyumas Regency MPD divides its supervisory operations into two large dimensions:

a. Preventive Surveillance (Prevention)

This supervision is an ex-ante step that aims to ensure that every deed produced by a Notary in Banyumas has perfect evidentiary power and is not legally flawed.

1) Periodic Protocol Inspection:

The Banyumas MPD routinely forms an audit team representing the Tripartite (Government, Notaries, and Academics) elements. This audit is not merely a formality, but rather a comprehensive audit of the Repertoire, Klapper Book, and Protest Register. The team ensures that Notaries comply with their monthly reporting obligations through the AHU Online system.

2) Physical Verification and Office Standardization:

In accordance with Article 19 of the UUJN, the Regional Representative Council (MPD) inspects supporting facilities for official duties. In Banyumas, the focus is on the security of the Minutes of Deed (such as the use of fireproof cabinets) and the privacy of the signing room to maintain official confidentiality.

3) Educational and Socialization Function:

The MPD acts as a supervisor. In protocol audit findings, the MPD often provides marginal notes as an early warning of administrative inaccuracies before they develop into detrimental malpractice.<sup>10</sup>

b. Curative Supervision (Action/Repressive)

This function is carried out when there are indications of violations received through public reports or special findings.

1) Receiving Complaints: MPD is the official channel for Banyumas residents who feel they have suffered civil losses due to the actions of a Notary.

2) Council Hearing: The MPD has the authority to conduct an examination hearing against the reported Notary. In this context, the Banyumas MPD applies the principle of Audi Et Alteram Partem (listening to both parties) to maintain objectivity.

### 3.1.1. Technical Procedures and Dynamics of the Tripartite Team

The strength of oversight in Banyumas lies in the diversity of perspectives within the audit team. Academics (such as from Unsoed or the UMP) provide a theoretical and normative foundation, government officials (Kemenkumham) ensure compliance with national regulations, and notaries (INI) provide practical perspectives on the technicalities of deed preparation. However, synchronization between these three elements often faces challenges due to the schedules and

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<sup>10</sup> HS, Salim, 2018, One Deed Making Technique (Theoretical Concept, Notary Authority, Deed Form and Minutes), Jakarta: PT RajaGrafindo Persada, p. 112

busy schedules of each member, given the ex-officio nature of duties within the MPD.<sup>11</sup>

### **3.1.2. Analysis of the Malpractice Case of Notary PR, SH in Banyumas and the Summons Permit Process**

The case of Notary PR, SH (Case Number: LP/B/186/X/2022/SPKT/POLRESTA BANYUMAS) represents a significant turning point for notarial oversight in Banyumas. This case involves a property transaction in the Villa Melati Mas Cluster, Baturraden, which resulted in alleged fraud and embezzlement (Article 378 in conjunction with Article 372 of the Indonesian Criminal Code).

Based on the analysis of the existing facts, PR, S.Hn.'s malpractice can be categorized as Gross Negligence (gross negligence) bordering on abuse of power.

#### **a. Violation of the Principle of Presence (Physical Presence):**

The main findings show that the signing of the PPJB deed was carried out without the physical presence of the parties appearing before the Notary at the same time. This violates Article 16 paragraph (1) letter m of the UUJN.

#### **b. Backdating and Time Mismatch:**

There are indications that the recording of the deed date does not correspond to the actual event, which aims to speed up the process of transferring rights illegally.

#### **c. Verification Failure (Identification Failure):**

The notary failed to verify the authenticity of the supporting documents and the identities of the parties, thus facilitating the occurrence of material losses to the home buyer.

Theoretically, the deed made by PR, SH experiences a Degradation of Evidential Power. Based on Article 1869 of the Civil Code, an authentic deed that does not meet the requirements for the presence of public officials and the parties<sup>12</sup> loses its "authentic" character and has only the force of a private deed. For the people of Banyumas, this means a loss of legal certainty, as the deed no longer has the enforceable power inherent in an authentic deed.

In accordance with Article 66 of the UUJN and following MK Decision No. 16/PUU-X/2012, APH investigators must obtain approval from the Honorary/Supervisory Council before examining a Notary.

#### **a. The Dilemma of Protection vs. Law Enforcement:**

The Banyumas MPD faces the challenge of not becoming a "fortress" for guilty individuals, but still protecting the confidentiality of the Notary's office.

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<sup>11</sup> Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN).

<sup>12</sup> GHS Lumban Tobing, 1999, Regulations on the Position of Notary, Jakarta: Erlangga, pp. 55-57.

b. 30 Day Procedure:

The MPD has 30 days to respond to the APH's request. In the PR, SH case, the MPD's speed of response is crucial to the smooth running of the investigation at the Banyumas Police. If the MPD is slow to act, this could be perceived as an attempt to obstruct justice.

**3.1.3. Analysis of the Effectiveness of Supervision by the Regional Supervisory Council (MPD) of Notaries**

Using Soerjono Soekanto's Theory of Legal Effectiveness, the effectiveness of Banyumas MPD supervision can be measured through five main pillars:<sup>13</sup>

a. Legal Factors (Legislation)

The regulations in the UUJN are quite comprehensive, but there are gaps in the norms regarding the boundary between administrative violations and criminal acts. Furthermore, the MPD's authority, which only extends to the level of "sanction recommendations" (for severe sanctions), is often considered insufficient to provide an immediate deterrent effect.

b. Law Enforcement Factors (Assembly Integrity)

The success of oversight depends heavily on the integrity of MPD members. In Banyumas, the biggest challenge is breaking the chain of Esprit de Corps, or excessive corps solidarity, within the Notary sector. Effectiveness increases when academics and government officials are able to be objective and firm in assessing the performance of their colleagues.

c. Facilities and Amenities Factors

Budgetary support from the Ministry of Law and Human Rights is often limited to routine activities. The lack of facilities for investigative audits (such as fingerprint verification or digital forensic audits) means the Banyumas MPD is limited to superficial oversight (certificate formalities).

d. Community Factors (Legal Literacy)

Banyumas residents tend to prefer criminal proceedings (reporting to the police) over administrative ones (reporting to the MPD). This is due to a lack of public awareness of the MPD's role as a supervisory body. Legal effectiveness can only be achieved if the public actively acts as an external monitor through quality complaints.<sup>14</sup>

e. Cultural Factors (Ewuh-Pakewuh Culture)

In the sociological environment of Banyumas, where politeness is strongly prevalent, the "sege" (ewuh-pakewuh) attitude is a significant non-structural obstacle. This often hinders the in-depth examination process due to the

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<sup>13</sup> Soerjono Soekanto, 2014, *Factors Influencing Law Enforcement*, Jakarta: PT RajaGrafindo Persada, p. 8.

<sup>14</sup> Soekanto, Sarjono, 1982, *Legal Awareness and Legal Compliance*, Jakarta: CV Rajawali, pp. 154-160

discomfort of criticizing senior colleagues or peers within a professional organization.

### **3.2. Identification of Structural and Non-Structural Constraints**

#### **a. Structural Constraints**

##### **1) Segmented Authority:**

The MPD can only issue verbal or written warnings. Temporary or permanent suspensions are passed to the MPW or MPP. This multi-step process often takes months, allowing problematic notaries to continue operating and potentially incurring further losses.

##### **2) Digital Audit System Attendance:**

In the era of Cyber Notary, the Banyumas Regional People's Representative Council (MPD) is still stuck with physical paper inspections. Yet, much current malpractice involves manipulation of the electronic registration system (SABH), which is invisible to the MPD during routine inspections.

#### **b. Non-Structural Constraints**

##### **1) Competency Gap:**

Not all MPD members thoroughly understand the Anti-Money Laundering (TPPU) regime and PMPJ obligations. As a result, audits of beneficial owners are often skipped.

##### **2) Conflict of Interest:**

Because MPD members from the Notary element are still practicing, there is a hidden fear that they will...<sup>15</sup>being too harsh, they will be treated the same when it is their turn to be questioned.

### **3.2.1. Strengthening Strategy and Recommendations**

#### **a. Strengthening Substantive Supervision**

The Banyumas Regional People's Representative Council (MPD) must shift from merely "document inspectors" to "behavioral inspectors." This can be achieved by conducting random interviews with witnesses or parties to confirm the veracity of the deed signing process.

#### **b. Information Technology Integration**

A digital reporting system is needed that allows the MPD to monitor the frequency of deed issuance in real time. If there is an unusual spike in the number of deeds issued by a single notary, the MPD can conduct a "Special Inspection" without waiting for the routine annual schedule.

#### **c. Independence of the Assembly**

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<sup>15</sup> M. Hadjon, Philipus, 1987, Legal Protection for the People in Indonesia, Surabaya: Bina Ilmu, pp. 72-75

In order to overcome sociological obstacles, it is recommended that the Notary elements in the MPD not only come from the same legal area, but can be crossed with neighboring areas in order to minimize personal conflicts of interest.

#### d. Sustainable Community Education

The Banyumas MPD needs to improve its branding so the public knows where to turn to for complaints before issues snowball into the criminal realm. Protecting the public is the ultimate goal of effective oversight.

The effectiveness of the MPD Notary oversight in Banyumas Regency is largely determined by the synergy between strong regulations, the integrity of law enforcement free from collegial bias, and active public participation. The PR, SH case should be a catalyst for improving the oversight system to ensure legal certainty and protect authentic deeds in Banyumas Regency.

## 4. Conclusion

The implementation of the supervisory function by the Banyumas Regency Regional Supervisory Council (MPD) has undergone a paradigm shift. Supervision is no longer merely a routine administrative audit of notary protocols, but has transformed into a to be at the forefront in enforcing the User Recognition Principles (PMPJ) regime as mandated in the Minister of Law and Human Rights Regulation Number 9 of 2017. Based on the analysis of the effectiveness of the law, several crucial points were found: a. Transformation of Supervision Methodology: The Banyumas Regional Development Planning Agency (MPD) has begun adopting a risk-based approach. This is reflected in the Assembly's efforts to identify the risk profiles of service users who transact with Notaries. However, empirically, this effectiveness remains at the "procedural-formal" level rather than the "substantial-investigative" level. Notaries in Banyumas generally provide PMPJ (CDD/EDD) forms, but verification of the accuracy of beneficial owner data often escapes in-depth MPD oversight due to limited field audit instruments. b. Prevention of Occupational Malpractice: In specific cases, such as that of Notary PR, SH, it was found that malpractice occurred due to a disregard for the principles of physical presence and material truth. MPD supervision has proven effective in imposing administrative sanctions after the incident (ex-post), but the preventive function (ex-ante) through annual protocol checks has not been able to detect backdating practices or underhand signing of deeds in real time. Legal effectiveness is hampered because the MPD acts more as a "firefighter" than an "early detection system." c. Relevance of Soerjono Soekanto's Theory: When measured using Soerjono Soekanto's legal effectiveness indicator, MPD supervision in Banyumas shows moderate performance in legal (regulatory) factors, but weak in infrastructure and facilities. PMPJ supervision requires information technology support integrated with population databases and banking systems, which the regional MPD currently lacks or does not fully access. This study identified two main clusters of obstacles that caused supervision to not reach the optimal point in preventing

malpractice absolutely: a. Structural Constraints (Institutional and Normative) These constraints are rooted in the institutional design and limited authority granted by the Notary Law (UUJN): 1) Limitations of Executive Authority: The MPD is limited in imposing final and binding sanctions for serious violations. The bureaucratic oversight chain, which must go through the Regional Supervisory Council (MPW) and the Central Supervisory Council (MPP), often creates a time lag that unscrupulous notaries exploit to cover their tracks or continue malpractice. 2) Budget and Facility Inequality: In Banyumas Regency, the MPD's operations still rely on limited budget allocations from regional offices. The lack of dedicated funding for investigative audits, such as the use of IT experts or document forensics experts in cases of alleged forged deeds, means the MPD can only conduct visual inspections (formalities). 3) Digital Divide: The lack of full integration between the Notary's monthly reporting system and the MPD online monitoring system has resulted in delays in detecting irregularities in the number of deeds (over-capacity) which is usually an early indicator of malpractice. b. Non-Structural Constraints (Sociological and Psychological) This obstacle is related to the behavior of law enforcers and legal culture in the Banyumas notary environment: 1) Collegiality and Ewuh-Pakewuh Factors: As a region that upholds the values of politeness and social relations, there is a psychological barrier in the form of a feeling of "shyness" or reluctance among members of the Assembly (especially Notaries) to provide objective assessments of their colleagues. This often softens findings of minor violations, preventing them from issuing strong, educational reprimands. 2) Multidisciplinary Competency Gap: Notary malpractice has now evolved into complex white-collar crimes, including money laundering (TPPU) and terrorism financing. Not all MPD members have adequate background knowledge of the latest money laundering typologies or suspicious financial transaction schemes, so oversight of mandatory reporting to the Financial Transaction Reports and Analysis Center (PPATK) is often neglected. 3) Community Legal Culture: The low level of public legal awareness regarding reporting suspected malpractice to the MPD has rendered its oversight function passive. The public is more likely to resort to criminal prosecution directly with the police, which indirectly undermines the MPD's role as a professional development and oversight body.

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