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Analysis of Supervision of Notary Positions by MPN Based on Law Number 2 of 2014 in Tangerang Regency

Abstract

Notary is a position that carries out some of the public functions of the state in the field of private law and carries out a role in making authentic deeds. Supervision is carried out to prevent irregularities and protect the public from possible legal violations. The aim of this research is to assess how the Regional Notary Supervisory Council in Tangerang Regency has implemented notary supervision. The findings of this research show how important the supervision of the Regional Notary Supervisory Council is in maintaining the integrity of the notary profession. However, there are obstacles to the inspection process, such as the large number of Notaries and the need to organize an effective supervision schedule. Additionally, inadequate funding is another element that reduces the effectiveness of supervision. The Regional Notary Supervisory Council carries out supervision through routine reports and periodic supervision, as well as receiving complaints from the public. Despite facing challenges, such as a slow complaint process and a lack of understanding by Notaries, the assembly remains committed to carrying out its duties. This research aims to increase our understanding of notary supervision and expand public understanding of the process.

Keywords: Regional Supervisory Council, Notary, Deeds, Laws.

I. Introduction

Based on the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which clearly states that the Unitary State of the Republic of Indonesia is a state of law, Indonesia is a unitary state with a republican system of government. The fundamental elements of justice and truth are contained in the rule of law which can provide protection, order, and legal certainty. Therefore, the law must also be based on benefits for human happiness (Yanto, 2020). Evidence that can clearly identify a person's rights and obligations as a legal subject in society is needed for legal traffic to maintain certainty, order, and legal protection (Anjarwati et al., 2023). Especially nowadays, the role of notaries in the development process has a very important position (Pakpahan et al., 2020).

The position of a notary is one of the things that requires protection and guarantees to achieve legal certainty (Lesmana, 2019). The rules relating to this post are found at:

1. the 1945 Constitution;
2. Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 as an amendment to Law No. 30 of 2004 concerning the Notary Position (UUJN).
3. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. M.02.PR08.10 of 2004 concerning Procedures for the Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures and Procedures for the Examination of the Notary Supervisory Council.

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4. Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M.39-PW.07.10 of 2004 concerning Guidelines for the Implementation of the Duties of the Notary Supervisory Council.
5. Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M.01-HT.03.01 of 2006 concerning Terms and Procedures for the Appointment, Transfer and Dismissal of Notaries.
6. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. M.03-HT.03.10 of 2007 concerning the Taking of Deed Minuta and the Summoning of Notary.

A deed is a proof letter that makes a statement (statement, confession, decision, and so on) regarding a legal event made in accordance with applicable laws and regulations (Rahmadhani, 2020). What is meant here is land, banking, business relations, and other legal relationships in the community, as well as other communities related to the making of authentic deeds. In order to ensure legal clarity and ultimately become an instrument that can facilitate the settlement of a case, an authentic deed that can accurately explain rights and obligations is needed, in addition to being quick and easy which will then be felt by the community itself. Therefore, an authentic deed is part of the form of written evidence, so the parties must accept unequivocally all statements made in an authentic deed, regardless of the format.

In essence, an authentic deed contains formal truth based on what the parties tell the notary (Mubarak et al., 2020). However, the notary has the obligation to enter that what is contained in the notary deed has really been understood and in accordance with the will of the parties, namely by reading it so that the contents of the notary deed become clear, as well as providing access to information, including access to relevant laws and regulations for the parties signing the deed. Thus, the parties can freely determine whether to approve or disagree with the contents of the notary deed that they will sign (Listiana, 2020). Notary organizations, sections whose duties and responsibilities are related to notary work, and academic experts are all involved in the supervision of notaries by the Regional Supervisory Council (MPD). The UUJN as a whole also regulates the function of notaries both inside and outside the making of authentic deeds.

The notary MPD in each district and each city is generally formed with the intention that there are no irregularities in exercising the authority of their positions, especially irregularities that can ultimately harm the community who have been using notary services, so that material losses to the community can be avoided. In addition, the Supervisory Board must also be able to increase the effectiveness of notaries in providing legal protection and services to the wider community (Yusuf et al., 2024). In order for all supervisory functions to run as expected with maximum results, all the devices that are the legal basis must first be determined in order to regulate the duties (Lesmana & Latif, 2024; Meriza, 2018; Pratama, 2021), authorities and obligations of the notary MPD regulated in the UUJN, and other implementing regulations that have been mentioned earlier. In this case, the MPD was formed not only to crack down on people, "but also for performance and to assess the code of ethics" (Adjie & Sesung, 2020).

Previous research related to the supervision of notary positions has previously been carried out as in the following study. Research by Irma Mulia Fitri, Ilyas Ismail, and Suhaimi with the title Supervision and Development of the Regional Supervisory Council Against Notaries Who Commit Violations in East Aceh Regency (Fitri et al., 2019). Then the research conducted by Yurist Firdaus Muhammad and Budi Santoso with the title Application of Sanctions and Supervision of the Notary Code of Ethics by the Honorary Council (Muhammad & Santoso, 2023). Finally, the research by Ratna Madyastuti with the title The Authority of the Notary Supervisory Council in Preventing Violations of the Authority and Duties of the Notary Position (Riwanto et al., 2019).

The difference between previous research and the research carried out by the researcher is in the scope of the area and the focus of the analysis. A significant difference from the research

conducted by the researcher is that this research is more focused on the implementation of supervision of notary positions in Tangerang Regency, which includes the implementation of the UUJN specifically in Tangerang Regency. In addition, this study also provides an analysis of local practices in Tangerang, highlighting the challenges and effectiveness of supervision carried out by MPD, as well as technical aspects and local constraints that may differ from research in other regions.

II. Research Method

Research methods are very important in this research, because research methods can determine the steps of a research. The research method used is descriptive analysis research, which is research that clearly and carefully describes the things in question. The nature of the research used is descriptive analysis. The analysis is used to obtain an overview of the problems faced to further inventory the problems, especially those related to the subject matter, and from the results of the analysis, a conclusion is drawn. This research is an empirical legal research, where the collection of legal materials is carried out through literature reviews and interviews related to notary supervision based on the laws and regulations mentioned in the introduction (Marzuki, 2017).

III. Result and Discussion

MPD aims to create notaries who are dedicated and understand their duties and obligations. As public officials, not just a profession, they must ensure that the services provided by notaries do not endanger the people who receive the services. The authority of the MPD includes several aspects, such as holding hearings to investigate alleged violations of the notary code of ethics, examining deeds made by notaries, granting leave permits, selecting replacement notaries, ensuring the retention of deeds for notaries aged 25 years and above, notifying notaries who will serve as state officials, receiving reports from the public, and sending reports to the MPD.

The authority also includes recording the date of the examination, deed number, and other personal documents, preparing reports, maintaining data confidentiality, obtaining official copies, and processing public complaints within a period of 30 days. The chairman, vice chairman, and one of the members of the Notary Regional Supervisory Board exercise administrative authority through a general meeting, which includes granting leave permits, electing a replacement Notary, storing Notary deeds, receiving community reports, and making and signing the list, with the submission of copies of the list done within 15 calendar days. Administrative sanctions can be imposed on Notaries who violate laws and regulations. "Regulation of the Minister of Law and Human Rights No. 61 of 2016" regulates these sanctions, which include written reprimands, temporary dismissals, respectful dismissals, or dishonorable dismissals. In addition, administrative sanctions against notaries in making deeds are regulated in several articles of the UUJN.

1. Notary Supervision Authority by MPD

The following are the authority of MPD as stated in several laws and regulations, including:

Authority and Obligations of Notary Regional Supervisors According to the UUJN

Article 70 of the UUJN regulates the authority of the MPD, including examining violations of the Notary Code of Ethics, conducting annual inspections, granting leave, selecting replacements, appointing temporary officials, receiving public reports on alleged violations, and submitting reports to the council. This article also regulates leave, replacement, storage location, and appointment of temporary Notary. Then Article 71 of the UUJN outlines the responsibilities of the Regional Notary Supervisory Board, including entering the date of the examination, deed number, and private deed, making minutes, maintaining confidentiality,

obtaining a copy of the deed that has been ratified, and reviewing public reports to the notary. These tasks are important to maintain the integrity of the Notary Protocol and ensure transparency.

- a. Authority, Obligations, and Organizational Structure of Notary MPD in Accordance with the “Regulation of the Minister of Law and Human Rights of 2004”

MPD, which consists of the chairman, vice chairman, and one member, has administrative authority. They can give leave, appoint a replacement notary, choose a place to store notary deeds, obtain information from the public, and affix paraphrasing and signing a list of deeds, personal letters, and other letters. The Tribunals can make decisions regarding the administration of notaria, such as appointing state officials, appointing notaries who have passed away, and approving judicial proceedings. The notary may also be called to check on the deed or protocol. The decision of the assembly is based on Article 14 of the “Regulation of the Minister of Law and Human Rights of the Republic of Indonesia”.

- b. Authority of MPD Based on the “Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. M.39-PW.07.10 of 2004”

The authority and duties of MPD based on “Decree No. M.39-PW.07.10 of 2004”, as explained in Part III number 1.2, are as follows:

- 1) Explaining the reluctance to accept the leave decision, in this case the MPD has the authority to provide clarification to the Regional Supervisory Council (MPW) regarding their rejection of the proposed leave decision. This means that the MPD is responsible for explaining the reasons behind the decision, if there is a disagreement in accepting leave requests.
 - 2) Notify other MPDs of their authority. This means that the MPD is authorized to notify about the implementation of duties related to notary supervision that has been stipulated in the Decree of the Minister of Law and Human Rights. This includes explaining the existence of criminal elements related to the duties of the notary, checking leave permits, approving deeds and special protocol books, receiving minutes of the submission of notary protocols, and submitting periodic reports to the MPW every six months, namely in July and January.
- c. Authority of MPD According to the “Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. M.03-HT.03.10 of 2007 concerning the Taking of Deed Minuta and Summoning Notaries,”

The authority of the MPD is related to the summoning of a notary by an investigator, public prosecutor, or judge to request the deed and related documents:

- 1) Investigators, public prosecutors, or judges can ask the notary to bring a notary deed or protocol for legal proceedings. However, such requests must be made in writing.
- 2) The MPD has the authority to grant permission to investigators, public prosecutors, or judges to access the Minuta Deed or documents in the Notary Protocol, especially if the notary is in custody.

Some of the conditions that allow the granting of permits include the alleged criminal act involving these documents, the right to sue has not expired, the signatures of the parties are considered valid, there is a change or reduction in the minutes of the deed, and the alleged delay in the date of making the deed by the notary.

- 1) After the application is submitted, MPD will consider within 14 days to give approval or denial regarding access to the document. In this case, the MPD must be neutral in the examination and decision-making process.
- 2) In addition, MPD is also tasked with involving experts, academics, and government agencies to ensure that all procedures are carried out appropriately in accordance with

applicable laws.

The statement submitted by the Notary is approved by the Regional Notary Supervisory Council (MPD) after consideration. After approval is given, the investigator, public prosecutor, or judge can request the Minuta Deed and related documents within 14 days, with the MPD giving a decision in the form of approval or rejection based on the available evidence. In carrying out its duties, MPD must maintain neutrality when conducting examinations or collecting information from Notaries. The deed made by the Notary, which contains the statements and agreements of the parties, is not the personal property of the Notary. Formal procedures must be followed, and they are used as guidelines in every examination. MPD consists of various groups, including legal experts, academics, government agencies, and organizations related to notary positions.

2. Implementation of Notary Supervision in Tangerang Regency by MPD in Tangerang Regency

Notary supervision by MPD is needed so that notaries do not violate the law and notary ethics. People who use notary services can avoid losses because MPD can identify and overcome these anomalies early through strict supervision. In addition, this supervision also ensures that notaries carry out their responsibilities in accordance with applicable protocols, thus protecting them from unfounded allegations (Lesmana & Husna, 2020). Based on the data that has been obtained previously, when there are complaints from the public about Notaries it takes a long time because to form a special inspection team to examine the reported cases, the MPD must hold a meeting first. The inconvenience of supervision work in the settlement of violations allegedly committed by the Notary.

Based on the theory of legal certainty, the guarantee of legal justice applies to anyone (Lesmana, 2024; Lesmana & Husna, 2020; Sudrajat et al., 2023). In accordance with notary ethics in helping someone get legal justice by not discriminating against people, in order to obtain legal certainty, it is necessary to have the basics of legal balance to determine whether or not a person needs to get certainty and justice in accordance with what is contained in the laws and regulations (Budiyanto et al., 2024; Herawati, 2021; Satya Wibowo et al., 2022).

From the results of the interview with the MPD in Tangerang Regency, Mr. Dr. H. Sukhebi Mofea, S.H., M.H., it can be seen that the Tangerang Regency MPD plays an important role in supervising the role of notaries, as regulated in the UUJN. MPD is tasked with ensuring that notaries in their area carry out their duties in accordance with laws and regulations, uphold integrity, and serve the community well. In addition, MPD also functions as an institution that protects the public from potential abuse of authority by notaries. MPD is in charge of supervising compliance with the notary profession's code of ethics and providing sanctions for notaries who violate the provisions. This includes maintaining public trust in the notary profession and ensuring that notaries comply with administrative obligations, such as managing and storing notary protocols and making deeds in accordance with the provisions of the law.

In ensuring that notaries carry out their duties in accordance with applicable laws and regulations, MPD conducts routine monitoring, investigates public complaints, summons notaries to provide clarifications, and may impose sanctions, such as warnings or revocation of practice licenses, depending on the severity of the violation. This approach aims to maintain the integrity and professionalism of notaries while protecting the rights and interests of the public. Notaries face challenges in carrying out MPD supervision due to limited time and busyness serving clients. In fact, this process is very important to maintain the integrity of the notary profession and provide legal certainty to the community. Good supervision helps maintain public trust, and supports the quality of services provided to clients.

Meanwhile, the results of an interview with the notary Anita Rohmah S.H., M.Kn., in the Tangerang Regency area regarding the notary's view of the supervision carried out by the MPD

in Tangerang Regency is that in general the supervision carried out by the MPD has gone quite well. MPD routinely checks the protocol book and supervises the implementation of notary duties, which helps maintain standards of professionalism and integrity in carrying out duties as a notary. Better communication will help resolve potential problems or misunderstandings more quickly and effectively, as well as build a better working relationship between MPDs and notaries. This can be done through regular discussion forums or providing constructive feedback after the monitoring process has been carried out.

Regarding the direct experience obtained by the notary on the direct supervision of the MPD, that is the representative of the MPD come to the office to check the protocol book and other documents. The process went smoothly and professionally. In addition, usually notaries are given some input that is very useful and helps in improving the quality of service to clients. This input is invaluable, especially in terms of ensuring that all administrations and procedures are carried out in accordance with relevant laws and regulations, so as to offer a more organized and superior service.

The obstacle that the notary feels in facing supervision from the MPD is the limitation of time, especially because supervision is often carried out in the midst of busy serving clients. The supervision process can interfere with daily activities, considering the busy schedule of notaries. Nonetheless, the notary is fully aware that this oversight is essential to ensure that the notary works in accordance with the applicable legal provisions. Although sometimes annoying, notaries understand that this process aims to maintain the integrity of the notary profession and provide legal certainty to the public. Therefore, notaries should strive to remain cooperative and comply with every procedure that has been established.

3. Supervision Obstacles by Tangerang Regency MPD

In carrying out the supervisory function carried out, MPD in Tangerang Regency faces various obstacles that hinder its performance. As an institution tasked with ensuring that notaries carry out their duties and obligations in accordance with applicable regulations, MPD must adapt to the dynamics that arise in the field. These obstacles include aspects of the complaint process, the number of notaries to be supervised, budget limitations, and a lack of understanding among notaries regarding their obligations. Therefore, a deep understanding of these obstacles is important to increase the effectiveness of supervision and create public trust in the notary profession in Tangerang Regency. The following is a description of the obstacles faced by MPD in carrying out supervision, namely:

- a. Complicated complaint process, one of the main obstacles faced by MPD is when receiving complaints from the public. Each complaint requires a rigorous verification process, where the MPD must first hold a meeting to form a special team of inspectors. This procedure takes a long time, and often people feel impatient to wait for the results. This creates challenges for MPD in carrying out supervisory functions efficiently, as well as reducing public trust in MPD performance.
- b. Large number of notaries, with 133 notaries to be supervised in Tangerang Regency, the MPD must be good at managing the supervision schedule so as not to clash with the duties of Assembly members from various backgrounds, including the government, notary organizations, and academics. The inability to manage time and resources effectively can result in less than optimal supervision.
- c. Budget limitations, inadequate budget is a significant obstacle to MPD performance. Ideally, supervisory activities should be supported by a sufficient budget from the Tangerang Regency APBD. However, the lack of attention from the government in supporting the budget needs for notary supervision shows that the supervisory function is considered to be less of a priority, which in turn has an impact on the effectiveness and efficiency of supervision.

d. Lack of understanding of obligations among notaries, there are still notaries who do not fully understand their obligations in accordance with the UUJN. A total of 24 notaries in Tangerang Regency did not submit monthly reports that were their obligation. This indicates a lack of awareness of professional responsibility among notaries, which can disrupt the oversight process and create the impression that the MPD is not performing its functions properly.

4. Sanctions Against Notaries Who Do Not Carry Out Their Obligations

In Article 16 of the UUJN, it is stated that a notary has the obligation to carry out his duties with trust, honesty, thoroughness, independence, impartiality, and safeguarding the interests of the parties involved in a legal action. Notaries are required to provide services based on morality, integrity, humanitarian concerns, and their legal expertise. It also includes the obligation to provide free services to underprivileged communities. With obedience to the law and code of ethics, public trust in Notaries will increase, and this will be the foundation for success and happiness in carrying out the profession. Regarding the sanctions applied to notaries who violate their obligations, there are two main types of sanctions:

a. Notary Code of Ethics Sanctions

Sanctions imposed based on the Notary Code of Ethics can be in the form of reprimands, warnings, suspensions, and dismissals, either temporarily or permanently. The sanction is given based on the level of seriousness of the violation. Prohibited acts in the code of ethics include having more than one office, installing a signboard outside the office, excessive publication or self-promotion, cooperating with third parties to find clients, signing deeds prepared by other parties, and sending minuta to clients for signature.

b. Administrative Sanctions

Administrative sanctions are imposed by authorized officials in accordance with violations committed by notaries. Based on the Regulation of the Minister of Law and Human Rights No. 61 of 2016, administrative sanctions include written warnings, temporary dismissals, respectful dismissals, or dishonorable dismissals. This administrative sanction is imposed for violations regulated in various articles in the UUJN, such as Article 7 paragraph 2, Article 16 paragraphs 11 and 13, Article 17 paragraph 2, Article 19 paragraph 4, Article 32 paragraph 4, Article 37 paragraph 2, Article 54 paragraph 2, and Article 65A. Thus, sanctions for notaries who violate can be in the form of moral sanctions (code of ethics) or legal sanctions (administrative), which aim to maintain professionalism and public trust in the notary profession.

IV. Conclusion

The results of the research on the implementation of notary supervision by MPD in Tangerang Regency show that although MPD has carried out supervision, its implementation has not been fully in accordance with the provisions of the law, as stated in the Regulation of the Minister of Law and Human Rights No. 16 of 2021. The obstacles faced by the Tangerang Regency MPD include schedule conflicts, budget limitations, and internal human resource problems. In addition, with the number of 133 notaries that need to be evaluated and the existing budget limitations, the Tangerang Regency MPD is not able to carry out its supervisory duties optimally. Nevertheless, the Tangerang Regency MPD continues to carry out its duties by upholding the mandate carried out. The Notary Supervisory Board should focus more attention on socialization related to the rules of notary duties to prevent violations that can harm the notary itself, the association, and the community. In addition, the Regional Supervisory Board should not conduct an investigation into alleged ethical violations, because the notary organization already has its own institution. The MPD and the Honorary Council have the authority to enforce ethical provisions.

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