

The Role of The Supervisory Council of The Regional Notary (MPD) in The Notary Code Enforcement Under Act No. 2 of 2014 in Subang

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Abstract. The purpose of this research is to know and understand the role of the Notary Supervisory Council of Regions (MPD) Based on Act No. 2 of 2014, and to know and understand the code of ethics enforcement practices notary office in Subang.

Based on the results of data analysis is concluded, that obtained a description of some of the measures that will be implemented by the Council of Regional Supervising Notary Subang district, in addition to the authority in accordance with the rules of the existing Assembly Regional Supervising Notary Subang district also did sosialisasi to the parties associated with the profession of Notary among other elements of society, academic elements, the Indonesian National Police. Regarding the agencies that supervise the Notary prior to the enactment UUJN conducted by the District Court results are not optimal this is due to a lack of understanding Supervisory Judge of the profession Notary, while supervision and examination of the Notary conducted by the Council of Trustees, in which there are elements of Notaries, thus at least Notary supervised and examined by the Supervisory Council members are definitely better understand the world Notary.

Keywords: Notary Supervisory Council of Regions; Code; Notary.

1. Introduction

Notary as a public official, is one of the organs of the state which is equipped with the legal authority to provide public services, especially in the manufacture of authentic deeds as perfect evidence with regard to actions in the field of civil law.³ Authentic deed made by the notary is evidence which clearly define the rights and obligations of a person as a subject of law, in order to ensure certainty, order, and legal protection.

Article 83 paragraph (1) Notary Act states that "Notary Organization establish and enforce Notary Code". The provision is followed by the provision of Article 13 paragraph (1) of the Articles of Association of Indonesian Notary Association states:

"To maintain the honor and dignity of office of Notary, associations have the Notary Code enacted by Congress and the moral rules that must be obeyed by every member of the Association".

Notary Code is based on the fact that notaries as one of the bearers of the legal profession are people who have the expertise and knowledge in the field of notaries, so as to meet the needs of people who require services in the field of notaries. Spirit Notary Code is respect for human dignity in general and in particular the dignity of the notary, the notarial profession bearers discrete, independent and impartial; does not refer strings attached; rationality in the sense refers to the objective truth; Functional specificity and solidarity among fellow peers.

As a notary public officials was not solely for the benefit of private notary self itself, but for

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³ N.G. Yudara, "*Notaris dan Permasalahannya (Pokok-Pokok Pemikiran di Seputar Kedudukan dan Fungsi Notaris serta Akta Notaris Menurut Sistem Hukum Indonesia)*", paper presented in the framework INI Congress in Jakarta, Renvoi Magazine No. 10.34.III, Issue 3 March 2006, p.72.

the sake of the legal community to be served.⁴Notary personally responsible for the quality of services that it provides. Hence the importance of the role and services of a notary in the field of traffic law, particularly for legal acts in the field of civil notary law in the life of society, it is necessary to supervise the notary performing his respective duties.⁵

Monitoring carried out against the notary at the time of entry into force of Regulation Notary (PjN) are on the Supervisory Judge appointed by the District Court to conduct supervision of the notary profession, such supervision includes supervision of the notary office including a notary's own behavior as a public official. Over time, to improve the quality and quantity of the notary then was issued a new rule that applies to the Notary, the Notary Act.

With the enactment of Notary law, then the authority of the District Court as notaries ended supervisor who was then replaced by a new Supervisory Authority called the Notary Supervisory Council (MPN). Since then, the date of the enactment of Notary law, in principle authorized to conduct surveillance

and guidance to the Notary, is the Minister who is currently the Minister of Law and Human Rights (HAM Menkum). The authority was mandated to the Notary Supervisory Council (MPN).

One of the most important positive side the most important and strategic born Notary Act, is the creation of Notary Profession Justice run by the Supervisory Council of Notaries are tiered in accordance with the duties and authority of each. Assembly Supervisor Notary may be cited as the Judicial Professions Notary, because in principle Council of Trustees Notary has the authority, which is to organize the trial, examination, and decision-making as well as sanctions disiplinair against a Notary who commits an offense against Notary law and Notary Code ,

The existence of the Assembly of Trustees Notary may also be categorized in the justice non-formal, since its formation is set in the Law on Notary and is not included in the pillars of the Judicial Authority composed of the General Courts, Religious Courts, Military Courts, Administrative Courts, all culminating in the Court Great.⁶

Notary has a very specific nature and position, so it is difficult to define what and how the profession of notary. However, noting the legislation regarding the authority of the Supervisory Council of Notaries (MPN), more or less have a better understanding and overview of the Notarial Profession. Implementation Supervisory Council the authority to give an overview of the position and function of a notary, as well as the deed made by or before him.⁷

There are at least four (4) authorizes the MPN are directly related to the community notary, namely, the authority for carrying out checks on making copies of minutes of the deed, carrying out checks on the calling notaries in the judicial process, carrying out checks on reports from the public about the alleged violation of the Code of Professional Ethics or Law on notary, and conduct an examination of notary protocols.⁸

Research Methods

The method used is normative, with specification of the study is a descriptive analysis through the stages of the research literature and field research with engineering collecting

⁴Henricus Subekti, *Tugas Notaris (Perlu) Diawasi*, Renvoi Magazine No. 11.35.III, Edition 3 April 2006, p. 40.

⁵ *Ibid.*

⁶ Article 2 of Act No. 48 of 2009 on Judicial Power.

⁷Machmud Fauzi, "Kewenangan Majelis Pengawas Cerminkan Kelembagaan Notaris", Magazine Renvoi 8.56.V number, edition January 2008, p. 56.

⁸*Ibid.*, p. 57.

data through literature studies and interviews, then analyzed the data using the method of analysis of normative qualitative without using mathematical formulas and figures.

2. Results and Discussion

Inclusion of the name of the notary and the signature of the notary on the deed often means that the notary as a party to the deed, so when the contents of the deed in question notaries are often placed as a co-defendant or as a witness or even a suspect for in Article 38 (2) d Act notary determines that: at the beginning or head of the deed containing the full name and domicile of the notary, and Article 44 paragraph (1) of Notary law deed shall be disclosed at the end of a notary signature.

Placement of the notary as a co-defendant or witness as it can be inferred been misplaced or certain parties that do not understand or do not understand the position of the notary in the national legal system.⁹ Given deed made by or in the presence of a notary must be kept confidential in accordance with their oath of office, unless the law otherwise provides.¹⁰

Based on these descriptions, then a notary because his given right of refusal (*verschoningsrecht*) and obligation negative (*verschoningsplicht*) which is the right to be freed to provide information related to a deed made and obligation to refuse to testify. Therefore, the notary is a man in running position is not subject to the principle of equality before the law,¹¹ along in implementing office has followed the procedures prescribed in the Law on Notary.

This is confirmed in Article 1909 paragraph (3) of the Civil Code which determine: "Everybody competent to be a witness, is required to testify before a judge. However, it can be released from its obligations requested to give testimony to all who because of his position, job or office according to law, are required to keep a secret, but was solely on matters which knowledge entrusted to him as such".

Article 322 of the Criminal Code determines:

- "(1) Whoever deliberately kept open secret that required for office or search both current and former, threatened with a maximum imprisonment of nine months or a maximum fine of nine thousand rupiah.
- (2) If the offense is committed against a specific person, the act could only be prosecuted on a complaint by it".

Thus, a notary organization and not those who run the notary profession, those who run the office of a notary and required no code of ethics code of ethics but rather notary notary office. Notaries in carrying out his duties also must hold fast to the code of conduct notary office because without the dignity and worth of professionalism will disappear altogether.

The code of ethics is essentially the norms of behavior that has been deemed correct or already established and will certainly be even more effective if the behavior norms

⁹Habib Adjie, 2014, *Merajut Pikiran dalam Dunia Notaris & PPAT*, Citra Aditya Bakti, Bandung, p. 29.

¹⁰ Article 4 (2) and Article 16 (1) f of Notary law.

¹¹According to Mohammad Taufik Makarao, equality before the law is the equal treatment of every person before the law. Article 5 (1) of the Law on Judicial Power determines that the trial judge according to the law with no respecter of persons. A common explanation point 3a the draft Criminal Law (Criminal Code) determines that the equal treatment of every person before the law by not holding differences of treatment. See Mohammad Taufik Makarao and Suhasril, 2010, *Hukum Acara Pidana dalam Teori dan Praktek*, Gahlia Indonesia, Bogor, p. 3.

formulated so well, so as to satisfy the parties concerned. Professional code of ethics is a behavior that is considered right according to public opinion because the interests of the profession under consideration is concerned. Code of conduct to prevent misunderstandings and conflict, which is otherwise useful to the good name of the profession reflection material.

A notary who served shall comply with such laws and adhering to the code of conduct notary. The relationship between the regulation and codes of conduct notary office notary is located on the provisions of the code of conduct is lifted from the notary office of the notary and regulations and sanctioning violators of both.¹²

To oversee the implementation of the code of conduct and execution of the notary office, then UUJN have established assembly supervisor who has the authority and obligation to implement the guidance and supervision of a notary. The existence of the supervisory council is expected to make a notary public notary always uphold the truths of law as its foundation when serving the public so as not to cause mistake or oversight are detrimental to society.¹³

The case of loss to be borne either or both parties because notary deed made, then the aggrieved parties can notify the matter to the Regional Supervisory Council (MPD) Indonesian Notary Association (INI) local. So that the position of the supervisory council as a bridge if someone requests submitted by the investigator, prosecutor or judge to take a copy of minutes of the deed and / or call the notary can be approved or not.

Initially foreclosure copy of minutes of a notary deed should be done with the consent of the chairman of the district court, because the supervision of a notary performed by the General Court and the Supreme Court as referred to in Article 54 of Act No. 8 of 2004 on the General Court and the appointment of a notary by the Minister of Justice (now by Minister of Law and Human rights), it is understandable because at that time there was the judicial authority of the judiciary department.¹⁴

1999 to 2001, to amend the Constitution of 1945 (1945), with the amendment has also revamp the judicial power. As a follow up of the changes made to Act No. 48 of 2009 regarding Judicial Power which in Article 2 is emphasized that the implementation of judicial authority by a Supreme Court and judicial bodies underneath.

Based on these laws, the Supreme Court has the authority in the field of justice alone. Since the transfer of authority, a notary appointed by the Minister of Law and Human Rights is not appropriate if the supervision is done by other agencies in this case the judiciary, because the minister had no authority whatsoever to the judiciary.

In 2004 legislature enacted Act No. 30 of 2004 concerning Notary. With the enforcement of the provisions regarding controls UUJN notary set forth in Article 54 of Act No. 8 of 2004 is revoked. So for the first time, Indonesia has a legal basis regulating the profession of notary in providing services to the public as an arm of the state. The setting of the copy image capture and retrieval notary deed minuta further provided in Article 66 of Act No. 30 of 2004, namely:

- "(1) For the purposes of judicial proceedings, investigators, prosecutors or judges with the approval of the competent regional supervisory council: a. Taking a copy of minutes of certificates and / or letters are attached to the minutes of a notary deed or protocol in storage notary; and b. Calling the notary to be present in the examination relating to a deed made or protocols that are in storage notary notary.
- (2) Minuta making a copy of a deed or securities referred to in paragraph (1) letter a,

¹²Abdulkadir Muhammad, 2006, *Etika Profesi Hukum*, Citra Aditya Bakti, Bandung, p. 93.

¹³Ira Koesoemawati and Yunirman Rijan, 2009, *Ke Notaris, Raih Asa Sukses*, Jakarta, p. 65.

¹⁴Habib Adjie, 2013, *Sanksi Perdata dan Administratif Terhadap Notaris*, Refika Aditama, Bandung, p. 127.

made news handover".

This provision was reinforced by the enactment of the Minister of Justice and Human Rights M.03.HT.03.10 No. 2007 on Decision Minuta Deed and Notary Dialing. Editors Article 66 UUJN to open up opportunities for investigators to obtain evidence in order to clarify the process of investigation and it is fitting MPD give evidence in question for the purpose of investigation. However, then came the question of where the MPD does not give consent on calling a notary by the investigator to the case investigation regarding the deed made.

As one example of that in 2008 someone applicant named Kamal Kant through his legal counsel has been testing the law to the Constitutional Court regarding Article 66 Paragraph (1) of Act No. 30 of 2004 concerning Notary. Judicial review is carried out because the applicant was' constitutional rights had been impaired because the case is being handled by Investigator Police (Police Metro Jaya) experiencing difficulties in implementing the process of investigation police report made the Applicant in connection with the criminal act of making a false statement in an authentic deed referred Article 266 of the Criminal Code, because investigators did not obtain permission / approval from Regional Supervisory Council of Notaries Cianjur.

In 2014 an amendment Act No. 30 of 2004 concerning Notary by Act No. 2 of 2014 concerning Notary in one clause that mandates the establishment of a Notary Honorary Council (MKN). MKN formation stated in Article 66:

- (1) For the purposes of judicial proceedings, investigators, prosecutors or judges with the approval of the competent notary honor assemblies:
 - a. take a copy of minutes of certificates and / or letters are attached to the minutes of a notary deed or protocol in storage notary; and
 - b. call the notary to be present in the examination relating to the notarial deed or protocols that are in storage notary.
- (2) Minuta making a copy of a deed or securities referred to in paragraph (1) letter a, made news handover.
- (3) Assembly honors notary within a period of 30 (thirty) working days from the receipt of the request for approval referred to in paragraph (1) shall provide the answers to accept or reject the request for approval.
- (4) In the case of notaries honor assemblies not provide an answer within the period referred to in paragraph (3), the panel of honorary notary deemed to accept the request for approval.

MKN formation was conducted to answer the confusion of notaries in the face of the call and related minutes of examination certificates investigator. Notaries are welcome to open the contents of the deed without feeling against the rule if it has obtained approval from MKN. An important role of this MKN replace the role previously performed by the MPD set out in Article 66 UUJN No. 30 of 2004. However, an understanding of MKN not included in the general provisions of Article 1 UUJN. However, the definition of the supervisory council notary listed in Article 1 which stipulates that the supervisory council notary hereinafter called supervisory council is an entity that has the authority and obligation to implement the guidance and supervision of a notary.

Article 66A paragraph (1) determine, that in carrying out the development, the minister formed a notary honor assemblies. The contents of the article shows that, overlapping¹⁵Among the provisions of the MPN and MKN. Both the provisions of article mutually determine their coaching is done by MPN and MKN. Formulation demkian, are

¹⁵ Overlapping legislation with each other legislation.

vague¹⁶ and ambiguity.¹⁷

The formulation according to Act No. 12 Of 2011 on the Establishment Regulation Legislation should be avoided. Thus the presence of the overlapping between the article may cause confusion about the guidance and supervision of a notary can be done by MKN and MPN.

Based on the above background, the authors are interested in conducting further research on the authority to conduct guidance and supervision of a notary after the Constitutional Court Decision No. 49 / PUU-X / 2012 regarding the approval of the Assembly Regional Supervisor Related Judicial Proceedings, duties and functions of the panel of honorary notary in carry out supervision on notary after the Constitutional Court Decision Number 49 / PUU-X / 2012 regarding the approval of the Supervisory Council of judicial Proceedings Related Region, honor assemblies notary consideration in approving or refusing to do an examination of the notary in the court proceedings.

The role is the act of a person to perform an activity in a specific field in accordance with the position. According Soerjono Soekanto (role) is a dynamic aspect of the position (status). If a person is exercising its rights and obligations in accordance with his position, he exercised a role. The importance of the role is because he set the behavior of someone who causes a person in certain limits and norms in force.

The role encompasses three things, as follows:¹⁸

- The role includes norms associated with the position or one's place in society. The role in this sense is a series of rules that guide a person in social life.
- The role is a concept of what can be done by individuals in the community as an organization.
- The role can also be regarded as individual behavior that are important to the social structure of society.

In addition to the role, as well as supervision by SP Siagian is a vetting process of the implementation of all activities of the organization to ensure that all work is being performed can be in accordance with a predetermined plan. UUJN not provide understanding the supervision of a notary, but the manual execution of tasks and administration of justice, the book II which determines that: "Supervision is the administrative activities of preventive and repressive aims to keep notaries in their profession or not overlook dignity of their office."¹⁹

In addition to the surveillance authority is also, according to Max Weber is a right which has been established in a social order to define policies, determine decisions about important issues, and to resolve disagreements. The authority is there are three kinds, namely:²⁰

- Privileges charismatic (charismatic authority); Charismatic authority is not governed by the rules, both traditional and rational. By its very nature tends to be irrational. Sometimes charisma lost because society itself has changed and has a different understanding. Such changes often can not be followed by people who have had the charismatic authority that he left behind by the progress and development of society.
- Traditional authority; Traditional authority can be owned by one or a group of people. In other words, the authority held by people who are members of the group, which was

¹⁶ Vague sense of the word in the Indonesian language is vague, unclear.

¹⁷ Meaning of words in Indonesian ambiguity is to have two meanings, ambiguity.

¹⁸ Soerjono Soekanto, 2006, *Sosiologi Suatu Pengantar*, Rajawali Pers, Jakarta, p. 213.

¹⁹ Yahya Harahap, 2008, *Kekuasaan Mahkamah Agung Pemeriksaan Kasasi dan Peninjauan Kembali Perkara Perdata*, Sinar Grafika, Jakarta, p. 162.

²⁰ Soerjono Soekanto, Op. Cit., p. 250.

long ago have more power within a society. The authority is owned by a person or group of people not because they have special abilities such as the charismatic authority, but because the group has the power and authority was institutionalized even animate the community.

- Their provisions binding traditional rulers who have the authority, as well as others in the community.
- The existence of a higher authority than the position of a person who is present in person.
- As long as no conflict with the provisions of the traditional, people can act freely.
- Privileges rational / legal (traditional / legal authority); Rational or legal authority is the authority that was based on the legal system in society. The legal system here dipahamkan as the rules that have been recognized and adhered to the community and even reinforced by the state. On the authority which is based on the legal system, must be seen also whether the legal system rests on tradition, religion or other factors. Then, it must be examined is also to do with the power system and also tested whether the legal system was compatible or not with the public culture systems for life to go quietly and peacefully.

Then the next, is the theory of differentiated responsibilities with accountability. According to Indonesian dictionary, the meaning of responsibility are: (1) the act of being responsible; (2) something that is accounted for. Thus, the responsibility is more emphasis on the existence of an obligation to bear wearable; whereas accountability in the presence of something that must be accounted for, as a result of doing an act or a particular role. The term is an obligation to bear the legal responsibility of a result according to the applicable law is the norm or rule of law governing responsibility.²¹

3. Closing

3.1. Conclusion

- Guidance and supervision of Notaries, the Supervisory Council of Regency Subang refers to Article 1 (5) Candies M.02.PR.08.10 No. 2004, that oversight as the activities of a preventive and curative, including development activities.
- Supervision and inspection of Notary conducted by the Supervisory Council, in which there are elements of Notaries, thereby at least Notary supervised and examined by the Supervisory Council members who understand the world Notary. The presence of members of the Supervisory Council of Notaries is an internal supervision, meaning done by a fellow who understands the world Notary Notary inside out. While other elements are external elements that represent the academic world, government, and society.

3.2. Suggestion

- Notary Regional Supervisory Council Subang district should strive to be more creative and careful in making efforts so that the role of guidance and supervision of the Supervisory Council can be maximized.
- Coaching and supervision by the Supervisory Council of Subang regency should ideally be able to increase the quality of service Notary. The guidance that should be based on the awareness and understanding of his high moral values and ethics, for it needs to be initiated with a view to first equalize between the parties concerned, especially fellow

²¹Wahyu Sasongko, 2007, *Ketentuan-ketentuan Pokok Hukum Perlindungan Konsumen*, University of Lampung, Lampung, p. 96.

members of the Supervisory Council of Notaries.

4. Bibliography

- [1] Abdulkadir Muhammad, 2006, *Etika Profesi Hukum*, Citra Aditya Bakti, Bandung.
- [2] G.H.S. Luman Tobing, 1983, *Peraturan Jabatan Notaris*, Erlangga, Jakarta.
- [3] Habib Adjie, 2003, *Tebaran Pemikiran dalam Dunia Notaris Dan PPAT "Penegakan Etika Profesi Notaris dari Prespektif Pendekatan Sistem"*, Lembaga Kajian Notaris dan PPAT Indonesia, Surabaya.
- [4] Habib Adjie, 2009, *Meneropong Khazanah Notaris dan PPAT Indonesia*, Citra Aditya Bakti, Bandung.
- [5] Habib Adjie, 2013, *Sanksi Perdata dan Administratif Terhadap Notaris*, Refika Aditama, Bandung.
- [6] Habib Adjie, 2014, *Merajut Pikiran dalam Dunia Notaris & PPAT*, Citra Aditya Bakti, Bandung.
- [7] Ira Koesoemawati dan Yunirman Rijan, 2009, *Ke Notaris, Raih Asa Sukses*, Jakarta.
- [8] Jimly Asshiddiqie, 2012, *Hukum Acara Pengujian Undang-Undang*, Sinar Grafika, Jakarta.
- [9] Liliana Tedjosaputro, 1994, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, Bigraf Publishing, Yogyakarta.
- [10] Mardialis, 2014, *Analisis Pembinaan Koperasi Pada Dinas Koperasi dan UKM (Usaha Kecil Menengah) Kabupaten Kampar (Studi Kasus Kecamatan Tambang)*, Universitas Negeri Sultan Syarif Kasim, Riau.
- [11] Mohammad Taufik Makarao dan Suhasril, 2010, *Hukum Acara Pidana dalam Teori dan Praktek*, Gahlia Indonesia, Subang.
- [12] Soerjono Soekanto, 2006, *Sosiologi Suatu Pengantar*, Rajawali Pers, Jakarta.
- [13] Tan Thong Kie, 2000, *Buku II Studi Notariat Serba Serbi Praktek Notaris*, Ichtiar Baru Van Hoeve, Jakarta.
- [14] Wahyu Sasongko, 2007, *Ketentuan-ketentuan Pokok Hukum Perlindungan Konsumen*, Universitas Lampung, Lampung.
- [15] Yahya Harahap, 2008, *Kekuasaan Mahkamah Agung Pemeriksaan Kasasi dan Peninjauan Kembali Perkara Perdata*, Sinar Grafika, Jakarta.
- [16] Henricus Subekti, *Tugas Notaris (Perlu) Diawasi*, Majalah Renvoi Nomor 11.35.III, Edition 3 April 2006.
- [17] Machmud Fauzi, "Kewenangan Majelis Pengawas Cerminkan Kelembagaan Notaris", *Majalah Renvoi Nomor 8.56.V*, Edition January 2008.
- [18] Monang Sitorus, "Pengaruh Dimensi-dimensi Pengawasan Terhadap Perilaku Aparatur dalam Pelayanan Perijinan Pada Dinas Perindustrian Dan Perdagangan Kota Medan". *Majalah Ilmiah UNIKOM.Vol.7, No.1*.
- [19] N.G. Yudara, "Notaris dan Permasalahannya (Pokok-Pokok Pemikiran di Seputar Kedudukan dan Fungsi Notaris serta Akta Notaris Menurut Sistem Hukum Indonesia)", *Makalah* disampaikan dalam rangka Kongres INI di Jakarta, Majalah Renvoi Nomor 10.34.III, Edition 3 March 2006.
- [20] Act No. 48 Of 2009 regarding Judicial Power.
- [21] Act No. 2 of 2014 tentang Amendment Act No. 30 of 2004 concerning Notary.
- [22] Minister of Justice and Human Rights Decree No. M-01.HT.03.01 of 2003 concerning Notary.