

## Role Implementation of Regional Supervisory Council in the Context of Guidance and Supervision of Notaries

Safri Sendi Alfani<sup>\*)</sup> and Bambang Tri Bawono<sup>\*\*)</sup>

<sup>\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: [safriendialfani@gmail.com](mailto:safriendialfani@gmail.com)

<sup>\*\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: [bambang@unissula.ac.id](mailto:bambang@unissula.ac.id)

**Abstract.** *The purpose of this research is to analyze and find out: 1). The role of the Regional Supervisory Council (MPD) of Central Lampung Regency in the implementation of guidance and supervision of Notaries. 2) Obstacles and solutions for the Regional Supervisory Council of Central Lampung Regency in the implementation of guidance and supervision of Notaries. The approach method in this research is empirical juridical. The data used are primary and secondary data obtained through interviews and literature study, data analysis was carried out by analytical descriptive. The results of the research concluded: 1). The role of the Regional Supervisory Council (MPD) of Central Lampung Regency in the implementation of guidance and supervision of Notaries is based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.39.PW.07 of 2004 as referred to in Article 70 and Article 71 of the UUJN, and Article 13 paragraph (2), Article 14, Article 15, Article 16 and Article 17. Several efforts have been made by the MPD of Central Lampung Regency in maximizing its role in providing guidance and supervision of Notaries in its area, namely: with coaching carried out in the form of workshops and routine socialization . As well as implementing preventive and curative supervision. 2). The obstacles for the MPD of Central Lampung Regency in the implementation of guidance and supervision of Notaries.*

**Keywords:** *Guidance; MPD; Notary; Supervision.*

### 1. Introduction

Notary institutions are one of the social institutions that exist in Indonesia, these institutions arise from the need in the association of fellow human beings who require evidence regarding civil law that exists or occurs between them.<sup>1</sup>

<sup>1</sup> G.H.S Lumban Tobing, (1999), *Peraturan Jabatan Notaris*, Jakarta: Erlangga, p.2

Notaries have an important role in every legal relationship in people's lives, one of which is in providing public services to the community in making authentic deeds as perfect evidence regarding legal actions in the civil sector.<sup>2</sup>An authentic deed made by a notary is evidence that clearly determines a person's rights and obligations as a legal subject, in order to guarantee certainty, order and legal protection. Authentic Deed serves as the strongest and most complete evidence<sup>3</sup>.

The role of the Notary is very complex and often very different from the applicable provisions. Thus, it would be difficult to fully define the duties and work of a Notary.<sup>4</sup> However, as described above, in essence, the task of a Notary is to regulate in writing and authentically legal relations between the parties who unanimously request the services of a Notary. From the main task of the Notary, it can be said that the Notary has a tough task because he has to provide the best service to the community.

Over time, to improve the quality and quantity of Notaries, a new regulation was issued that applies to Notaries, namely Act No. 30 of 2004 concerning Notary Positions in conjunction with Act No. 2 of 2014 concerning Notary Positions (UUJN). With the enactment of this Law, the authority of the District Court as Notary Supervisor ends which is then replaced by a new Supervisory Agency called the Notary Supervisory Council (MPN). Since then, namely when the UUJN was enacted, in principle the authority to supervise and guide Notaries is the Minister who is currently the Minister of Law and Human Rights (Menkum HAM). Then the authority is mandated to the Notary Supervisory Council (MPN). Based on Article 68 of the UUJN it is stated that the Supervisory Council consists of:

- a. Regional Supervisory Council (MPD)
- b. Province Supervisory Council (MPW)
- c. Central Supervisory Council (MPP)

UUJN has a positive impact, namely the establishment of a Notary Professional Court which is run by the Notary Supervisory Council which is tiered in

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<sup>2</sup>N.G Yudara, *Notaris dan Permasalahannya (Pokok-Pokok Pemikiran Di Seputar Kedudukan dan Fungsi Notari Serta Akta Notaris Menurut Sistem Hukum Indonesia)*, *Majalah Renvoi*, Nomor 10.34 III, Edition 3 March 2006, p. 72

<sup>3</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>4</sup>Habib Adjie, (2003), *Tebaran Pemikiran Dalam Dunia Notaris dan PPAT, "Penegakan Etika Profesi Notaris Dari Perspektif Pendekatan System,"* Surabaya: Lembaga Kajian Notaris dan PPAT Indonesia, p. 27

accordance with their respective duties and authorities. The Notary Supervisory Council can be referred to as the Notary Professional Court, because in principle the Notary Supervisory Council has a scope of authority, namely to hold hearings, examinations, and decision making as well as imposing disciplinary sanctions on a Notary who violates the UUJN and the Notary Code of Ethics.<sup>5</sup>

In the implementation of this supervision, it turned out that several problems were still found by the Regional Notary Supervisory Council of Central Lampung Regency, but the problems faced were not ignored but various efforts were made to overcome them even though the results obtained were not as expected.

## 2. Research Methods

The approach method used in this study is an empirical juridical approach with the help of primary data or empirical data as the main data. Primary and secondary data sources obtained by interview and literature review (study document). The data that has been collected both from field research and library research were analyzed using descriptive analysis methods.

## 3. Results and Discussion

### 3.1. The Role of the Regional Supervisory Council (MPD) of Central Lampung Regency in the Implementation of Guidance and Supervision of Notaries

Central Lampung Regency is a district located in the province of Lampung with the district capital located in Gunung Sugih sub-district. This district has an area of 4,789.82 km<sup>2</sup> and a population of 1,391,683 people (2020). Central Lampung is one of the landlocked districts in Lampung province, and this district is located about 57.85 kilometers from Bandar Lampung City.<sup>6</sup>

The responsibilities of a Notary follow the principle of responsibility based on error (based on fault of liability), in making an authentic deed, the Notary must be responsible if the deed made there is an error or intentional violation by the Notary. Conversely, if the element of error or violation occurs from the parties appearing, then as long as the Notary carries out his authority according to the regulations. The Notary concerned cannot be held accountable, because the Notary only records what was conveyed by the parties to be poured into

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<sup>5</sup> Peradilan Profesi Notaris, (2006), Paradigma Baru, *Majalah Renvoi*, No. 642 IV edition 3, p.10

<sup>6</sup> [www.dukcapil.kemendagri.go.id](http://www.dukcapil.kemendagri.go.id), accessed on 20 July 2021

the deed. False information submitted by the parties is not quite enough answer the parties.<sup>7</sup>

With the enactment of the provisions of Act No. 30 of 2004 concerning the Position of a Notary, the District Court is not authorized to supervise Notaries, the supervision is carried out by the Minister of Law and Human Rights as stipulated in Article 67, which states that the supervision of Notaries is carried out by the Minister, then in the next paragraph to carry out supervision, the Minister to form a Supervisory Council totaling (9) people, consisting of elements of the Government, Notary Organizations, and Academics.<sup>8</sup>

The Notary Position Act stipulates that when a Notary does not carry out his duties and responsibilities properly, and violates the above provisions, the Notary may be subject to sanctions, in the form of civil, administrative and code of ethics for the Notary's position. The Law on the Position of Notary and the Code of Ethics for the Position of Notary does not regulate the existence of criminal sanctions against Notaries. In practice, it is found that a legal action or violation committed by a Notary can actually be subject to administrative or civil sanctions or a code of ethics for the position of a Notary, but is later withdrawn or qualified as a crime committed by a Notary<sup>9</sup>.

Some of the definitions that have been given to unlawful acts are as follows:

1. Does not fulfill something that is his obligation other than a contractual obligation or a quasi-contractual obligation that issues the right to ask for compensation.
2. An act or not doing something that results in harm to another person without previously having a legal relationship where the act or not doing something, is either an ordinary act or an act which is an accident.
3. Failure to fulfill an obligation imposed by law, which obligation is directed at everyone in general, and by not fulfilling this obligation can be asked for a compensation.

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<sup>7</sup>Andi Maminanga, (2008), *Pelaksanaan Kewenangan Majelis Pengawas Notaris Daerah dalam Pelaksanaan Tugas Jabatan Notaris berdasarkan UUJN*, Tesis Fakultas Hukum, Yogyakarta: Universitas Gajah Mada, p. 32.

<sup>8</sup> Habib Adjie, (2013), *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Bandung: Refika Aditama, p.173.

<sup>9</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

4. A civil wrong against which an indemnity can be claimed which is not a breach of contract or a default on trust obligations or a default on other equity obligations.
5. A loss that is not caused by a breach of contract or rather, is an act that harms the rights of others created by law that does not arise from a contractual relationship.
6. An act or not doing something that is contrary to the law violates the rights of others created by law and therefore a compensation can be claimed by the injured party.
7. Illegality is not a contract just as chemistry is not physics or mathematics.<sup>10</sup>

An unlawful act is defined as an act of injuring (injury) rather than a breach of contract (breach of contract). Moreover, acts against the law are generally not based on a contractual legal relationship. According to Article 1365 of the Civil Code, what is meant by an unlawful act is an unlawful act committed by a person who because of his fault has caused harm to another person. In law, there are 3 (three) categories of unlawful acts, namely unlawful acts due to intentional acts, unlawful acts without error (without intentional or negligent elements) and unlawful acts due to negligence.<sup>11</sup>

The basic principle of the occurrence of a crime for a Notary is that if a Notary deviates from a deed he made, giving rise to a criminal case, the Notary must be held criminally responsible for what he has done. Criminal liability is born with the continuation of objective reproaches (*verwijbaarheid*) against actions that are declared as criminal acts based on the applicable Criminal Law, and subjectively to perpetrators who meet the requirements to be subject to criminal charges because of their actions.<sup>12</sup>

To avoid violations committed by Notaries, the role of MPD is very important in order to provide legal protection for the community and the Notary himself. In principle, the achievement of a coaching and supervision is very dependent on the MPD itself. In other words, the implementation of supervision must be adjusted to the needs and objectives to be achieved through these activities. Therefore, the steps taken by the Notary Supervisory Board in conducting guidance and supervision must be carefully thought out, and carefully so that they are right on target.

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<sup>10</sup> Munir Fuady, (2005), *Profesi Mulia, (Etika Hukum Bagi Hakim, Jaksa dan Advokat, Notaris, Kurator dan Pengurus*, Bandung: Citra Aditya Bakti, p. 4

<sup>11</sup>Ibid, p. 3

<sup>12</sup> Dwidja Priyatno, (2004), *Kebijakan Legislasi tentang sistem pertanggungjawaban Pidana Korporasi di Indonesia*, Bandung: Utomo, p.30

Based on Article 1 point 1 of the Regulation of the Minister and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 confirms that what is meant by supervision is activities that are preventive and curative in nature, including guidance carried out by the Supervisory Council of Notaries. Some of the efforts made by the MPD of Central Lampung Regency in maximizing its role in providing guidance and supervision of Notaries in their area are:

1. Preventing the occurrence of violations of the position of a Notary through coaching. Coaching is carried out in the form of workshops and routine socialization. Socialization is carried out to parties related to the Notary profession, including community elements, academic elements, the Indonesian National Police, and especially to Notaries who are under their authority. This socialization is intended so that parties related to the Notary profession can better understand the existence of a Notary supervisory agency, regarding its authority in maintaining the enforcement of the Notary Code of Ethics and the implementation of the Notary's duties. In addition, this socialization also aims to make the public as users of Notary services more aware of their rights and obligations so that if in the future there is a violation committed by a Notary,
2. Implement preventive and curative supervision. The supervision carried out by the MPD is not only the implementation of the duties of the Notary's position in accordance with the provisions of the UUJN, but also the Notary's code of ethics and the behavior or behavior of the Notary's life that can injure the nobility of the Notary's position. Supervision of the implementation of the duties of the Notary Office with a definite size in the UUJN, with the intention that all provisions of the UUJN governing the implementation of the duties of the Notary Office are complied with by the Notary, and if a violation occurs, the Supervisory Council can impose sanctions on the Notary concerned.

In connection with one of the efforts made by the MPD of Central Lampung Regency in carrying out supervision of Notaries, namely carrying out preventive and curative supervision, then based on the provisions above, it can be identified which authorities include preventive supervision and other authorities which includes curative supervision, as follows:

1. Preventive supervisory powers, which include matters regulated in Article 70 letters b, c, d, e, f and h UUJN, Article 13 paragraph (2) letters a, b, c, e and f, where these powers are administrative in nature, which regulates more about procedural procedures and notarial protocols.
2. curative supervisory powers which include matters regulated in Article 70 letter a and letter g of the UUJN, Article 13 paragraph (2) letter d which

regulates taking action against allegations of violations committed by a Notary against the UUN and Code of Ethics.

Talking about violations of the position of a Notary or a violation of the Notary Code of Ethics, when a Notary makes mistakes regarding his professionalism, the only institution authorized to examine and try him is the Notary Professional Court, which is run by the Notary Supervisory Board in stages, this is to provide legal guarantees for the Notary profession, especially to avoid interference from any party.<sup>13</sup>

### 3.2. Obstacles and Solutions to the Regional Supervisory Council of Central Lampung Regency in the Implementation of Guidance and Supervision of Notaries

Regional Supervisors (MPD) in carrying out supervision are to provide direction and guidance for Notaries in carrying out their professional positions as public officials who constantly improve their professionalism and quality of work, so as to provide guarantees of legal certainty and protection for Notary service recipients and the wider community.<sup>14</sup>

The obstacles to the Regional Supervisory Council of Central Lampung Regency in the implementation of guidance and supervision of Notaries are:

1. Barrier factor originating from MPD
  - a. The composition of the membership of the Supervisory Board which consists of 3 (three) people from the government element, 3 (three) people from the Notary element and 3 (three) people from the Academic element, it is possible that it will take quite a long time for members who come from the non-Notary element to understand and affect the efficiency of supervision time because it takes longer time for non-Notary members of the supervisory board to make adjustments in maximizing their duties. In addition, these members have other professions that cannot be released, so that it is.
  - b. From each Regional Supervisory Council formed consisting of 9 (nine) people, and seeing that their working area covers a very wide area and there are quite a number of Notaries in an area, so it is more difficult and takes a long time to carry out guidance and supervision.

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<sup>13</sup> Didit Wardito, Lathifah Hanim, Peranan Majelis Pengawas Daerah (MPD) Terhadap Pengawasan Pelaksanaan Tugas Jabatan Notaris Di Kabupaten Sleman, *Jurnal Akta*, Vol 5 No 1 March 2018, p.113

<sup>14</sup> Ponira, Penerapan Kewenangan Pengawasan Majelis Pengawas Daerah (Mpd) Terhadap Pelaksanaan Cuti Notaris Di Kota Palembang, *Jurnal Ilmiah Ilmu Hukum Kenotariatan*, Universitas Sriwijaya Palembang, p.183

- c. The implementation of supervision certainly requires significant operational costs, considering that the area being supervised is quite large. The temporary operational costs come from the results of the members' self-help because there is no clarity regarding the budget from the government. This is quite worrying considering that the supervision work is very dependent on the funds provided by the government, because if there are not enough funds, the supervision operations will be hampered and cannot be carried out properly. So that this inadequate budget has an impact on the implementation of tasks being ineffective.

The solution that can be done to minimize the obstacles that come from the MPD is to increase the number of MPD membership by revising the Regulation of the Minister of Law and Human Rights. With the addition of MPD members, the division of tasks can be carried out more optimally considering the number of Notaries in Central Lampung Regency and the vast territory of this Regency. Another solution is for the government to provide a special budget, because this guidance and supervision is very important in order to achieve legal protection for the public and notaries.

## 2. Barriers from Notaries

- a. Notaries are less able to manage the time between Notary activities and the examination time.
- b. Notaries are also found to be untidy in making Notary Protocols and sometimes these Notary Protocols have not been copied in the Protocol book and are still written in pencil or with a correction-pen.
- c. The inhibiting factor encountered when carrying out supervision was that there were still many Notaries who were negligent in submitting monthly reports, or submitting reports that were not timely so that the Notary Regional Supervisory Council had difficulties in recording and recapitulating the Notary Protocol.

The solutions to the obstacles mentioned above are:

- a. The Notary should make a schedule for the activities to be carried out, so that all Notary activities can be carried out properly.
- b. It would be nice if the Notary was more in-depth and re-learn the theory about the making of a Notary Protocol. The notary must take the time to copy in the protocol book and recheck what has been written is correct or still needs to be corrected again, if it is correct and there is nothing that needs to be corrected, it is better to write it immediately using a bollpoint.
- c. For a Notary who is easily negligent with everything, it is better for the Notary to make special details for himself which contains a



schedule for collecting monthly reports, whether they have been collected or not, so that the report submission process does not experience time delays, and this schedule should be placed in a place that is always available. reached by a notary.

#### 4. Conclusion

The role of the Regional Supervisory Council (MPD) of Central Lampung Regency in the implementation of guidance and supervision of Notaries is based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.39.PW.07 of 2004 as referred to in Article 70 and Article 71 of the UUJN, and Article 13 paragraph (2), Article 14, Article 15, Article 16 and Article 17. Several efforts have been made by the MPD of Central Lampung Regency in maximizing its role in providing guidance and supervision of Notaries in their area, namely through coaching in the form of workshops and routine socialization. Implement preventive and curative supervision. The supervision carried out by the MPD is not only the implementation of the duties of the Notary's position so that it is in accordance with the provisions of the UUJN, but also the Notary's code of ethics and the behavior or behavior of a Notary's life that can injure the dignity of the Notary's position. Supervision of the implementation of the duties of the Notary Office with a definite size in the UUJN, with the intention that all provisions of the UUJN governing the implementation of the duties of the Notary Office are complied with by the Notary, and if there is a violation, the Supervisory Council can impose sanctions on the Notary concerned or submit reports that are not timely so that the Notary Regional Supervisory Council finds it difficult to record and recapitulate the Notary Protocol. The solution that can be done to minimize this obstacle is to increase the number of MPD membership by revising the Regulation of the Minister of Law and Human Rights, providing a special budget, the Notary should make a schedule for the activities to be carried out, the Notary will deepen and re-learn the theory of making protocols. Notaries and for Notaries who are easily negligent with everything, it is better for the Notary to make special details for himself containing the monthly report collection schedule, this schedule should be placed in a place that is always reached by the Notary.

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