



## The Urgency of Fostering and Oversight of the Notary Honorary Council in Samarinda City

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**Abstract.** *The guidance and supervision contained in the function of the Notary's Honorary Council really helps maintain the integrity of a notary, ideal guidance of course reduces the level of reporting to the authorized parties regarding notaries regarding legal actions carried out, and the supervision process is to require notaries to make improvements and be accountable for their actions. The following research problem is related to the urgency of guidance and supervision by MKN in the city of Samarinda. The research approach used by the author is a normative juridical approach and a bibliographic data collection method. The approach used is a statutory approach, carried out by reviewing all existing laws and regulations related to the legal issues being handled.*

**Keywords:** *Council; Guidance; Supervision; Urgency.*

### 1. Introduction

Indonesia is a legal state based on Pancasila and the 1945 Constitution (later called the 1945 Constitution) to guarantee certainty, order and legal protection to the community, as stated in Article 28D paragraph (1) of the 1945 Constitution, namely "Everyone has the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law." In Indonesia there are a number of forms of proof, one of which is authentic evidence, namely an authentic deed. In Article 1868 of the Civil Code, it is stated that "an authentic deed is a deed made in the form specified in the law by or before public officials who have the authority to do so, in the place where the deed is made."

Article 1 point 1 Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), Notary is a public official authorized to make authentic deeds and other authorities as referred to in the Position Law Notary or based on other laws. Notaries have the

duties and authority granted by the State to produce authentic evidence in the civil sector. The existence of the authority granted by law and the trust of the people served is a basis for the duties and functions of a notary in legal traffic(Sjaifurrachman, 2017).

Notary is a public official who is a profession, a position that focuses on helping provide legal certainty to the community. Preventing the emergence of legal problems in the future from an authentic deed made as a perfect proof instrument in court. A notary is an honorable profession, always attached to ethics and it is through ethics that a notary is related to his work. Without it, Notary is only a mechanical robot who works without a soul and is therefore called a noble profession (*officium nobile*). (Anshori, 2009).

Notaries as public officials have a central role in enforcing the law, because apart from their large quantity, they are known to belong to the elite group. This means that they are a scientific group that is economically, politically, sociologically, and psychologically at a level that tends to be higher than that of the general public(Anshori, 2016).

The notary's position must be neutral or independent, meaning they are expected to provide legal counseling for and for legal actions carried out at the client's request. Notaries are also not allowed to side with clients, because the notary's job is to prevent problems from arising.(Supriyanta, 2013). If indeed the notary intends to refuse to provide his services to the party who needs them, then the refusal must be a refusal in a legal sense, namely there are reasons or legal arguments that are clear and firm so that the party concerned can understand them.(Manuaba, Parsa, & Ariawan, 2018).

Notaries in carrying out their duties and functions must adhere to the notary's code of ethics. The Notary Code of Ethics is a moral principle determined by the Indonesian Notary Association (INI) which is based on a congressional decision and/or determined by and regulated in laws and regulations governing this matter and which apply to and must be obeyed by all members of the Notary Association. Indonesia (INI) and all people who carry out their duties as a Notary(Indrajaya, Dimmarca, Pamungkas, & Indrajaya, 2020).

Notary is a profession that has an important role in making authentic deeds that have perfect evidentiary power so it can be said that the position of Notary is a position of trust, so the Notary must also have good behavior.(Tedjosaputro, 1994). In this regard, there is a need for guidance and supervision of Notaries, this is because a Notary is nothing more than an ordinary human being who is not free from mistakes and is not a perfect creature, at any time he may violate the rules that have been set for him. In addition, it is also for the realization of a

notary who is professional and superior in serving the needs of the community, especially in the field of law.

In carrying out guidance, the minister formed a Notary Honorary Council. This is in accordance with the provisions in Article 66A of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries, then implemented with the issuance of Government Regulation Number 17 of 2021 concerning Duties and Functions, Requirements and Procedures Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Notary Honorary Council. In the Ministerial Regulation it is explained that the Notary Honorary Council is a body that has the authority to provide guidance to Notaries and the obligation to give approval or rejection for the purposes of investigations and judicial processes.

The Notary Honorary Council consists of the Central Notary Honorary Council and the Regional Notary Honorary Council, the Central Notary Honorary Council is formed by the minister and is domiciled in the State Capital of the Republic of Indonesia while the Regional Notary Honorary Council is formed by the Director General on behalf of the minister and is domiciled in the Provincial Capital. The Notary Honorary Council consists of 7 (seven) people, consisting of 3 (three) members of the Notary, 2 (two) people from the government and 2 (two) experts or academics (Ngadino, 2021a).

The duties and functions of the Regional Notary Honorary Council are stated in Article 24 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Notary Honorary Council, in Article 24 paragraph (1) explains that the Honorary Council of Regional Notaries has the following duties:

- a. Carrying out examinations of applications submitted by investigators, public prosecutors or judges; And
- b. Provide approval or rejection of requests for approval to take photocopies of deed minutes and summon Notaries to attend investigations, prosecutions and judicial processes.

Then in article 24 paragraph (2) it is also explained that the Regional Notary Honorary Council has the function of providing guidance in the context of:

- a. Maintain the dignity and honor of Notaries in carrying out their professional position; And

b. Providing protection to the Notary regarding the Notary's obligation to keep the contents of the deed confidential.

The presence of the Notary Honorary Council is very much needed in conducting guidance and supervision in the implementation of the Notary position considering that the Notary Profession is currently increasingly popular among the public, especially in Samarinda City, this is reinforced by the narrative from Wawan Syahrani, SH, M.Kn., (as chairman of the Supervisory Board) Samarinda City Region) which states that the number of Notaries in Samarinda City occupies the first position in the East Kalimantan region, namely 106 people. With such a large number of notaries, it is certainly inseparable from the possibility of notary violation behavior and the implementation of notary positions (Nuradini, 2022). There are several problems that occur in the implementation of the position of Notary in Samarinda City, namely the reading of deeds without witnesses being present even though in the deed it is stated and stated that witnesses are present, which violates article 40 paragraph (1) of Act No. 2 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions. Apart from that, there are also problems related to the debt acknowledgment deed made at the Samarinda City Notary, but the handover of the money for the debt and the guarantee was not made before the Notary, the party giving the debt stated that the handover The money was transferred to the account of the party in debt, but proof of the transfer to the account in question was not shown.

The following research uses a normative juridical approach, Soerjono Soekantostatewhereas legal research is carried out by examining library materials or secondary data as a basis for research by conducting a search of regulations and literature relating to the problem under study (Marzuki, 2008). The theory used in the research is from Gustav Radbruch, namely justice, benefit and certainty. Gustav Radbruch revealed, the legal aspect of justice gives equal rights before the law, the benefit aspect prioritizes goodness in human life and the certainty aspect guarantees that law contains justice and a number of norms promote goodness. The two aspects, namely justice and expediency, are the ideal legal framework, while the third aspect (certainty) is the legal operational framework. (Bernard, Simanjuntak, & Hage, 2013).

Based on the background above, the author explores the problem of finding related legal solutions, namely what is the ideal concept of coaching and supervising notaries in the city of Samarinda?

In order to prove the originality of this journal, the author has accessed and has not found the same article regarding "The Urgency of Guiding and Supervising the Honorary Council of Notaries in Samarinda City", while the previous research used as a comparison in this journal is:

**First**, Research Journal entitled "Authority of the Notary Honorary Council in the Investigation Process of a Criminal Case Involving a Notary" By Alfiyan Mardiansyah, Neisa Angrum Adisti, Iza Rumesten RS, Rizka Nurliyantika, Muhammad Syafri Ramadhan Discusses the authority of the Notary Honorary Council in the investigation process of a case criminal acts involving Notaries.

**Second**, Research entitled "Development of Notary Honorary Councils and Notary Supervisory Councils Based on the Law on Notary Positions" by S. Rijal Khalis. In his research, he discusses the differences between the guidance of the Notary Honorary Council (MKN) and the Notary Supervisory Council (MPN) as well as the implementation of guidance by the Notary Honorary Council and the Notary Supervisory Council in Yogyakarta City for Notaries.

**Third**, research entitled "The Existence of the Notary Honorary Council in Legal Protection of Notaries" By Made Pramanaditya Widiada, Desak Putu Dewi Kasih, Ni Putu Purwanti Discussing the legal protection implemented by MKN for Notaries regarding criminal allegations, one of which is through MKN's presence in carrying out an inspection first before deciding to take a photocopy of the minute deed.

Based on the above research implicitly has the theme of the Urgency of Guidance and Supervision of the Notary Honorary Council, thus the research that will be conducted by the author has a different essence. This research was conducted with the aim of focusing on the study of creating a reduction in cases of notaries committing violations in the city of Samarinda.

## **2. Research Methods**

Research methods are an effort to develop knowledge according to a number of traditions. As wellabouta number of results achieved, which are called knowledge, both descriptive in nature and in the proportion of low-level, high-level and a number of laws.

The research approach method used by the author in the following research is a normative is a research that examines a valid and competent legislation which is then used as a basic reference in solving problems(Soekanto & Mahmudji, 2003). Therefore the approach used is a statute approach, carried out by examining all laws and regulations concerned with the legal issues handled.(Marzuki, 2011).

The following research focuses on examining legal research regarding a number of rules or norms in Indonesian positive law, namely regulations relating to the guidance and supervision of notaries within the scope of work of the City of Samarinda, for the sake of creating justice, benefit and certainty.

As for data collection techniques on this research uses two legal materials, namely primary legal materials, namely statutory materials, treatises or official notes on the making of laws, as well as secondary legal materials, namely a number of legal books, the results of thesis research, theses, dissertations, legal journals and dictionaries as well as analyzing some literature that examines related problems.

The legal material analysis used is a qualitative descriptive analysis, namely the data collected will be explained in the form of a logical and systematic explanation, then analyzed to gain clarity on solving the problem, then drawn to a conclusion.

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

According to etymology, the term coaching comes from the basic word "bina", which comes from the Arabic word "bana" which means to foster, build, establish, and has the prefix pe and suffix an so that it becomes the word coaching which means business, action and activity.(National, 2008). According to experts, coaching has different meanings. According to the Big Indonesian Dictionary, coaching is an activity carried out effectively to obtain better results and maintain and perfect what already exists in accordance with expectations. In coaching there are elements of goals, materials, processes, methods, updates and coaching actions. In addition, to carry out coaching activities, planning, organizing (implementation) and control (monitoring and evaluation) are required.

Coaching is an action or activity carried out to bring results and benefits so that they can carry out their duties well and correctly. Coaching is basically an activity carried out consciously, planned, directed and responsible in carrying out activities or routine activities in the context of growth, improvement and development of abilities and available resources to achieve goals.

Basically, in every organization, the supervisory function is very important, as well as coaching. The basic definition of supervision is all efforts or activities carried out to find out and assess the actual facts related to the implementation of tasks or activities, which can be measured whether they are in accordance with what they should be or not.(Ngadino, 2021b). It can be said that supervision is also defined as the process of observing the implementation of all organizational activities to ensure that all work being carried out can run according to a predetermined plan.(Sujamto, 1987).

The purpose of fostering and supervising a Notary is so that the Notary seriously fulfills the requirements and carries out his duties in accordance with the provisions of the applicable laws and regulations. Notary guidance and

supervision mechanisms in carrying out their duties and positions are carried out based on:

1. Act No. 30 of 2004 concerning the Position of Notary (UUJN).
2. Act No. 2 of 2014 amendment to Act No. 30 of 2004 concerning the Office of a Notary.

In accordance with the provisions in the Notary Office Act that the guidance and supervision is carried out by the Minister. The Minister formed a Notary Supervisory Council consisting of Regional Supervisory Councils (MPD) in districts/cities, Regional Supervisory Councils (MPW) in Provinces and Central Supervisory Councils (MPP) in Jakarta. Apart from that, the Minister also formed a Notary Honorary Council (MKN) in providing guidance. .

Basically, the person who has the authority to supervise inspections and provide guidance to Notaries is the Minister of Law and Human Rights (hereinafter referred to as MenKumHam). In carrying out guidance, the minister forms the Notary Honorary Council (MKN). This is in accordance with the provisions in Article 66A of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries, then implemented with the issuance of Government Regulation Number 17 of 2021 concerning Duties and Functions, Requirements and Procedures Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Honorary Council of Notaries.

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- a. Maintain the dignity and honor of Notaries in carrying out their professional position; And
- b. Provide protection to the Notary related to the Notary's obligation to keep the contents of the deed confidential.

Assessing related to the process of the scope of the Notary Honorary Council in the work area of Samarinda City, the high level of public complaints about the performance of notaries as public officials who are given the authority to carry out permanent legal actions, the process of improving the quality of Guidance and Supervision of Samarinda notaries must or ideally be given an increase in the quality of coaching According to the author's interview with one of the MKN members in Samarinda City, 80% of the notaries within the scope of work of Samarinda City have gone through the MKN trial process, which means there is a high level of misunderstanding regarding the prohibitions or loopholes that clients can use to report a notary.

Improving the quality of coaching will refer to a decrease in the number of notary violations. It can be analogized to the coaching process, namely the process of preventing a notary from making mistakes while carrying out the task of implementing a notary.

The supervisory process carried out by MKN, according to the author, is only passive because when there is reporting, the MKN supervision process will only take place, ideally if the monitoring process is carried out actively, then it can deal with client or community complaints to the criminal area, the active pattern that the author says must adjust to the MKN work territory itself, so that it can consider according to the size of the area how ideally the monitoring process can be carried out actively.

#### **4. Conclusion**

Improving the pattern of guidance and supervision of the Honorary Notary Council in Samarinda City is considered quite important due to the high number of notary cases which are at 80%, which is quite heavy homework. One of the functions of the MKN, namely maintaining the honor of notaries in carrying out their duties as notaries, is considered quite important. Improving the quality Guidance for notaries in Samarinda City is very necessary so that notaries understand the scope of the prohibitions against notaries being obeyed and if they are still violated then there will be sanctions from the organization and also positive law that applies. The coaching pattern can be analogous to "Prevention is better than cure" in interpretation of this analogy, the coaching process is interpreted as preventing the notary from carrying out notary prohibitions. Within the scope of the supervisory process, the author considers that the



process carried out by MKN in Samarinda city is quite good, and if an active supervision process is carried out, the supervisory processes can further assist notaries in carrying out their positions as notaries. So the function of MKN as an institution that helps Improving the integrity of a notary is very well implemented and will be better so as to reduce the percentage of notary violation cases that are included in the trial of the Notary Honorary Council.

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