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## The Duty And Authority Of Regional Notary Supervisory Board Regarding Reports From The Public On Alleged Violations Of The Code Of Conducts

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### Abstract

*The notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in the laws. This regulation is stated in Article 1 point 1 of Act No. 2/2014 on the Amendments to Act No. 30/2004 on the Notary (hereinafter referred to as the Notary Act). In the provisions of the Notary Act, there were many changes regarding the authority of the Regional Notary Supervisory Board in supervising and fostering Notaries. The task of the Regional Notary Supervisory Board is to supervise Notaries as referred to in the Notary Act and the Minister of Law and Human Rights Regulation No. M.02.PR.08.10 of 2004 on Procedures for Appointing Members, Dismissing Members, Organizational Structure, Work Procedures, and Audit Procedures. The Regional Notary Supervisor Board has the authority to carry out supervision according to Notary Act, In the provisions of Article 1 point 3 of the Minister of Law and Human Rights Regulation No. 15/2020 on Procedures for Examination of the Supervisory Council Against Notaries which stipulates that a report is a complaint from the public as a party who is harmed due to the behavior and/or implementation of the position of a Notary, as well as reports originating from the exercise of the authority of the Supervisory Board.*

**Keywords:** *Notary Code of Conduct; the Regional Notary Supervisory Board; Notary.*

### INTRODUCTION

Notaries are public officials who have the authority to make authentic deeds and have other authorities as referred to the laws according to Article 1 point 1 of Act 2/2014 on the

Amendments to Act 30/2004 on the Notary (hereinafter referred to as the Notary Act). Supriadi stated that one of the duties of a Notary is to regulate in writing and authenticated legal relations between the parties who use the services of a Notary.<sup>1</sup> Notaries are qualified as General Officials who carry out some of the public functions of the State, especially in the field of civil law.<sup>2</sup>

As a public official, a Notary has the authority as stipulated in Article 15 (1) of the Notary Act<sup>3</sup> which reads

*"The notary has the authority to make an authentic deed regarding all actions, agreements and what is desired by the interested party to be stated in an authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, provides Grosse, copies, and quotations of the deed, all of which is as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law."*<sup>4</sup>

Notaries have obligations in terms of carrying out their duties as regulated in the provisions of Article 16 of the Notary Act, which states "In carrying out his/her profession, a Notary is obligated to:<sup>5</sup>

- a. Act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions;
- b. Make a deed in the form of minutes of deed and save it as part of the notary protocol;
- c. Attaching letters and documents as well as fingerprints of the party on the minutes of the deed;
- d. Issue *a grosse deed*, a copy of a deed, or a deed quote based on the minutes of the deed;
- e. Provide services under the provisions of this law, unless there is a reason to refuse it;
- f. Keep everything confidential regarding the deed he made and all information obtained for making the deed following the oath/promise of office, unless the law provides otherwise;
- g. Bind the deed he made in 1 (one) month into a book containing no more than 50 (fifty) deeds, and if the number of deeds cannot be contained in one book, the deed can be bound into

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<sup>1</sup> Supriadi, *Etika Dan Tanggungjawab Profesi Hukum Di Indonesia* (Jakarta: Sinar Grafika, 2008). Hlm. 50.

<sup>2</sup> Rossel Ezra Johannes Tuwaidan, 'Kewenangan Notaris Menurut Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris', *Lex Privatum*, VI.6 (2018), hlm. 86-9.

<sup>3</sup> Umar Ma'ruf Romanda Arif Kurnia, 'Implementasi Tugas Dan Kewenangan Notaris Dalam Membuat Akta Yang Berkaitan Dengan Pertanahan (Studi Di Wilayah KerjaNotarisKabupaten Kendal)', *Jurnal Akta*, 5.1 (2018), hlm. 295-308.

<sup>4</sup> Hartanti Sulihandari dan Nisya Rifiani, *Prinsip-Prinsip Dasar Profesi Notaris* (Jakarta Timur: Dunia Cerdas, 2013). Hlm. 5.

<sup>5</sup> R. Subekti dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT. Pradnya Paramita, 2009). Hlm. 475.

- more than one book, and record the number of minutes of the deed, month, and year of manufacture on the cover of each book;
- h. Make a list of the deed of protest against non-payment or non-receipt of securities;
  - i. Make a list of deeds relating to wills according to the order in which the deed was made every month;
  - j. Send the list of deeds as referred to in letter i or the list of nil relating to wills to the center of the will register at the ministry that administers government affairs in the field of law within 5 (five) days in the first week of each following month;
  - k. Record in the repertoire the date of sending the list of wills at the end of each month;
  - l. Has a stamp or seal containing the state symbol of the republic of indonesia and in the space surrounding it the name, position, and place of domicile of the person concerned are written;
  - m. Read the deed before the public in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, and signed at the same time by the appearers, witnesses, and the notary; and
  - n. accept the internship of prospective Notaries.<sup>6</sup>

The Notary Supervisory Board established by the Minister of Law and Human Rights needs to be streamlined and improved in quality and quality because Notaries are expected to be able to carry out their professional positions by always improving professionalism and providing legal protection for the public.<sup>7</sup> The role of the Notary Supervisory Board is very important in fostering and monitoring the position of a Notary continuously regarding personal behavior in carrying out their position and outside his position as the spearhead to ensure legal certainty for people who use the services of a Notary. The Regional Supervisory Council (hereinafter referred to as MPD) is formed in the Regency/City to foster and supervise Notaries who have working areas in the Regency/City, if the number of Notaries is not proportional to the number of members of the Regional Supervisory Council, a joint Regional Supervisory Council may be formed for several Regency/Municipality is based on the provisions in Article 69 (2a) of the Notary Act. According to Article 70 of the Notary Act, the authority of the MPD has been determined as follows:

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<sup>6</sup> Marzuki dan Suparman, *Etika Dan Kode Etik Profesi Hukum, Cetakan Pertama* (Yogyakarta: FH UII Press, 2017). Hlm. 56.

<sup>7</sup> Habid Adjie, *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik* (Bandung: PT. Refika Aditama, 2008). Hlm. 34.

- a. to hold a session to examine any alleged violations of the Notary's Code of Conduct or violations of the implementation of the Notary's position;
- b. conduct inspections of the Notary Protocol periodically 1 (one) time in 1 (one) year or at any time deemed necessary;
- c. grant leave permission for a period of up to 6 (six) months; determine the Substitute Notary Public by taking into account the proposal of the Notary concerned;
- d. determine the place of storage of the Notary Protocol which at the time of handover of the Notary Protocol has reached the age of 25 (twenty-five) years or more;
- e. appoint a Notary who will act as the temporary holder of the Notary Protocol who is appointed as a state official;
- f. receive reports from the public regarding alleged violations of the Notary Code of Ethics or violations of the provisions of the Notary Law; and
- g. prepare and submit reports to the Regional Supervisory Council.<sup>8</sup>

### PROBLEM FORMULATION

The research problem that can be drawn from the aforementioned background is as follows:

1. How does the Notary Act regulate the Notary Supervisory Board?
2. What are the Duties and Authorities of the Regional Notary Supervisory Board concerning Reports From the Community on Alleged Violations of the Code of Conduct by Notaries?

### METHOD

Legal research methods are needed to obtain a comprehensive research direction.<sup>9</sup> Legal studies have characteristics of a prescriptive and applied science. In prescriptive, legal studies study the objectives of the law, the values of justice in law, the good and bad of a rule of law, concepts, and legal norms. Whereas in applied science, legal science establishes a procedure, provisions, and limitations in enforcing a legal rule. The dualism of legal research methods in a doctrinal and non-doctrinal sense is influenced by the development of legal philosophers'

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<sup>8</sup> Pengurus Pusat Ikatan Notaris Indonesia, *Jati Diri Notaris Indonesia, Dulu, Sekarang Dan Di Masa Datang* (Jakarta: Gramedia Pustaka, 2008). Hlm. 43.

<sup>9</sup> Yati Nurhayati, 'Perdebatan Metode Normatif Dengan Metode Empirik Dalam Penelitian Ilmu Hukum Ditinjau Dari Karakter, Fungsi Dan Tujuan Ilmu Hukum', *Jurnal Al Adl*, 5.10 (2013), Hlm. 15.

schools of thought.<sup>10</sup> In this study, we used doctrinal legal research focusing on sources of law. This particular method is known as pure legal research or normative legal research. The analysis is performed qualitatively using primary and secondary legal material<sup>11</sup> without numbers, statistical formulas, and mathematics.<sup>12</sup>

## DISCUSSION

### The Supervision Based on the Notary Act

The meaning of term "*Notary as public officials*" refers to the authority possessed by a Notary in the making of an authentic deed as long as it is approved by the parties and/or according to legal rules it must be made in the form of an authentic deed.<sup>13</sup> Then, a notary as a public official is not interpreted as within the framework of government (State Administration Agency or Official).<sup>14</sup> Supervision, in general, has the benefit of knowing and assessing the actual reality of the object being monitored, whether it is under what it should be or not. If it is associated with the problem of irregularities, the benefit of supervision is to find out whether or not violations occur and if they occur, it is necessary to know the causes of these violations. To realize such supervision, referring to Chapter IX that supervision is carried out by the Minister,<sup>15</sup> which is then formed by the Supervisory Board.<sup>16</sup> Based on these provisions, it is clear that the supervision over the Notary is in the hands of the Minister of Law and Human Rights, who will then delegate the authority to the Notary Supervisory Board.

The regulation regarding notary implies that the duties of the Notary Supervisory Board are preventive supervision, repressive supervision, and guidance.<sup>17</sup> In general, the notion of supervision is seeing, paying attention, observing, controlling, observing and maintaining, and

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<sup>10</sup> M.Y. Nurhayati, Y., Ifrani, I., Said, 'Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum', *Jurnal Penegakan Hukum Indonesia (JPHI)*, 2.1 (2021), hlm. 1-20. <<https://doi.org/10.51749/jphi.v2i1.14>>.

<sup>11</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimentri* (Jakarta: Ghalia, Indonesia, 1998). Hlm. 11-12.

<sup>12</sup> Irwansyah dan Ahsan Yunus, *PENELITIAN HUKUM Pilihan Metode & Praktik Penulisan Artikel*, Edisi Revi (Yogyakarta: Mitra Buana Media, 2021).

<sup>13</sup> Pasal 1 angka 1 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris

<sup>14</sup> Habib Adjie, *Sekilas Dunia Notaris Dan PPAT Indonesia (Kumpulan Tuisan)*, Cetakan Pe (Bandung: CV. Mandar Maju, 2009). Hlm. 17-20.

<sup>15</sup> Pasal 67 Ayat (1) Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris

<sup>16</sup> Pasal 67 Ayat (2) Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris

<sup>17</sup> Penjelasan Pasal 67 Ayat (1) Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

giving wise direction. Then, supervision is an activity that is more administrative and functions as a preventive and repressive effort by the Minister which aims to protect notaries in carrying out their duties and authorities following applicable regulations.<sup>18</sup> The Supervisory Board is an agency that has the authority and obligation to provide guidance and supervision to Notaries. As in Article 68 of the Notary Act that the Notary Supervisory Board consists of, namely the Regional Notary Supervisory Board (MPD) formed at the Regency/City level, the Regional Notary Supervisory Board (MPD) formed at the Provincial level, and the Central Supervisory Board established in the State Capital. Where each level of the Supervisory Board has its authority in carrying out supervision and imposing sanctions. The Notary Supervisory Board supervises the Notary in carrying out his/her position, while if he/her is outside in carrying out the position, the authority to supervise it lies with the Notary Honorary Council.

The member of the MPD consists of the elements as referred to in Article 67 paragraph (3) of the Notary Act. At the Regency/City level, if the number of Notaries is not proportional to the number of members of the MPD, a joint MPD may be formed for several Regencies/Cities. The Chair and Deputy Chairperson of the MPD shall be elected from and by the members as referred to in paragraph (2). The term of office of the chairman, deputy chairman, and members of the MPD is 3 (three) years, and may be reappointed.

The MPD in carrying out its duties and authorities is assisted by a secretary appointed at the MPD Meeting. Article 69 (2a) of the Notary Act is a reflection of the condition of the Notary's supervision so far. Before this change, the supervision of the MPD was based on the regency or city area. In some newly formed regions (expansion areas) or areas where there are not many Notaries, there is waste and a lack of efficiency of supervision because there are more members of the MPD than the number of Notaries being supervised. For example, in a district, there are only 2 Notaries, while the MPD consists of 9 members. To save the cost of supervision and improve efficiency, it is deemed necessary to merge several districts/cities into one supervision.<sup>19</sup>

### **The Duties and Authorities of MPD to Process the Report From Community on Alleged Violations of the Code of Conduct by Notaries**

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<sup>18</sup> Pasal 1 Ayat (8) Keputusan Menteri Kehakiman dan Hak Asasi Manusia Republik Indonesia Nomor: M-0L.H.T.03.01 Tahun 2003 tentang Kenotarisan.

<sup>19</sup> Putri Sagung M.E Purwani, 'Pengawasan Notaris Oleh Majelis Pengawas Notaris Daerah Pasca Putusan M.K.No. 49/PUU-X/2012', *Jurnal Megister Hukum Udayana*, 5.4 (2016), hlm. 22-32.

Notaries have an important role in the legal system especially related to one of their duties as public officials who have the authority to make an authentic deed. Considering the duties and authorities of the Notary are not only for personal interests but also for the benefit of the community, many are related to the truth of the deeds they issue. So it is appropriate if the Notary is supervised by a neutral and independent body. The purpose of the supervision is a form of prevention to maintain the dignity and integrity of the Notary.<sup>20</sup> The drafting of the Notary's code of conduct is to serve as a guideline or reference for Notaries. This code of conduct contains obligations, prohibitions, and exceptions for Notaries in carrying out their duties and obligations. The code of conduct is compiled by the “*Indonesian Notary Association*” (hereafter will refer to as INI).<sup>21</sup>

Changes in regulations governing the position of a Notary have also included changes regarding the duties and authorities of the Notary Supervisor. The following changes have occurred in the regulation of the Notary Position regarding the supervision of a Notary:

No	Act 30/2004	Status	Act 2/2014
1	Between Article 69 (2) and (3) is inserted Article 69 (2a)	Insert	Article 69 (2a) “ <i>In the case of a district or city level, if the number of notaries is not proportional to the number of members of the Regional Supervisory Board, a joint Regional Supervisory Board may be formed for several regencies/cities</i> ”
2	Article 73 (1) letter e	Amended	Article 73 (1) letter e “ <i>to impose sanctions in the form of a written warning;</i> ”
3	Article 73 (1) letter g	Revoked	-
4	Article 81	Amended	Article 81 “ <i>Further provisions regarding procedures for appointment and dismissal of members, organizational structure and work procedures, budget and procedures for</i>

<sup>20</sup> Yogi Priyambodo & Gunarto, ‘Tinjauan Terhadap Pelanggaran Kode Etik Notaris Di Kabupaten Purbalingga’, *JURNAL AKTA*, 4.3 (2017), hlm. 332.

<sup>21</sup> Daly Erni Theo Anugrah Pakarti, ‘Jabatan Notaris Dan Kode Etik Notaris: Bagaimana Peran Dan Fungsi Dewan Kehormatan Notaris?’, *Jurnal Kertha Semaya*, 10.7 (2022).

			<i>examination of the Supervisory Board shall be regulated by a Ministry Regulation“</i>
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Furthermore, the Constitutional Court Decision Number 49/PUUX/2012, in which the MPD, not only has the duty and authority to provide guidance, through periodic inspections at least once a year, and examination of public complaints for alleged violations of the Notary's code of conduct or alleged violation of the position of Notary. Meanwhile, to grant permission in allegation of a criminal act for examination by investigators, public prosecutors, or judges and if there is a request for photocopies of the minutes of the deed and/or letters attached to the minutes of the deed or Notary protocol in storage by the notary and summons of the Notary it is the duty and authority of the Notary Honorary Council (MKN) to attend an examination related to a Notary deed or protocol that is in the Notary's custody.<sup>22</sup>

Notary Code of Conducts, namely reprimands, warnings, *schorzing* (temporary dismissal) from members of the association, *onzetting* (dismissal) of members of the association, and dishonorable dismissal of members of the association. The imposition of sanctions is also adjusted to the severity of the violation. If a Notary violates both the code of conduct and the Notary Act which does not harm the community, the Notary is given a warning, and guidance is carried out first. The Notary Honorary Council or the Notary Supervisory Board informs that the Notary concerned has committed a violation as stipulated in the legislation and the code of conducts and is given an explanation and appropriate solution so as not to commit a violation in the future.<sup>23</sup>

The form of preventive supervision by the Notary Supervisory Board is carried out by reflecting on the position of the Notary Code of Conducts to provide material related to the implementation of the Notary position, holding seminars, and the Notary Supervisory Board coming to the Notary's office at least once a month to check the Notary protocol. The notary also said that the form of preventive supervision carried out was passive, meaning that the supervision was carried out based on reports from the public accompanied by various pieces of evidence.

<sup>22</sup> dan Suwari Akhmaddhian Wahdan Ahnaf Al-Azisi, Haris Budiman, Erga Yuhandra, 'Kewenangan Majelis Pengawas Notaris Daerah (MPD) Dalam Pengawasan Kode Etik Notaris Pasca Putusan Mahkamah Konstitusi Nomor; 49/PUU-X/2012', *Logika: Jurnal Penelitian Universitas Kuningan*, 13.01 (2022).

<sup>23</sup> Wiwin Dwi Ratna Febriyanti, 'Eksekuis Obyek Jaminan Fidusia Pasca Putusan Mahkamah Konsitusi No. 18/PUU-XVII/2019', *Jurnal Hukum Acara Perdata*, 6.2, hlm. 40.



## CONCLUSION

Based on the analysis of the study it can be concluded that: first, the Notary Supervisory Board has the authority to supervise the Notaries to prevent violations. The Supervisory Board has a straight and direct coordination with the Minister of Law and Human Rights, considering that the Supervisory Board was formed by the Minister of Law and Human Rights. The Regional Notary Supervisory Board consists of Provincial and Regency/City levels. Meanwhile, the form of supervision is carried out in a preventive and repressive way.

Second, the task of the Regional Notary Supervisory Board is to supervise the Notary as referred to in the Notary Act and the Ministry of Law and Human Rights Regulation Number M.02.PR.08.10 of 2004 on Procedures for Appointment of Members, Dismissal of Members, Organizational Structure of Work Procedures and Procedures for Examination of the Notary Supervisory Board and the Minister of Law and Human Rights Decrees Number M.39-PW.07.10 of 2004 on Guidelines for the Implementation of the Duties of the Notary Supervisory Board. The term of office for members of the Regional Notary Supervisory Board is 3 (three) years as of the appointment as referred to in Article 69 (4) of the Notary Act. In the provisions of Article 1 point 3 of the Ministry of Law and Human Rights Regulation which stipulates that reports are complaints from the public as parties who are harmed due to the behavior and/or implementation of the Notary, as well as reports originating from the exercise of the authority of the Supervisory Board.

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