



Legal Certainty of Regulation of Notaries Who Confirm Duty as Members of the
Nagari Consultancy Agency
(Case Study of Dharmasraya Regency)

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Abstract

Notaries as one of the bearers of the legal profession are people who have expertise and knowledge in the notarial field, so that they are able to meet the needs of the community who need services in the notarial field. Since the presence of the Notary Institution in Indonesia, legal certainty regarding the regulation of Notaries has always been carried out by the judiciary and the government. This includes notaries who hold concurrent positions as state officials, in this case the Village Consultative Body or Nagari (BAMUS). Legal Certainty Arrangements for Notaries Who concurrently Duties as Members of the Nagari Consultative Body. The case study of Dharmasraya Regency is the title of this thesis. The type of research used in this research is legal. with other research. The legal research method is a systematic way of conducting research. The results of this study are: (1) How is the legal certainty of the arrangement of a notary who concurrently has duties as a member of the deliberative body analyzed based on the UUJN, namely, the legal certainty of a notary setting who has concurrent duties as a member of the Nagari deliberative body, there is still legal ambiguity because in Article 17 UUJN there is no prohibition of a notary having concurrent positions as a member of the agency. Nagari requirements, but in Article 16 UUJN Notaries in carrying out their duties are required to be fair, honest, neutral and impartial, but with a notary concurrently serving as a Nagari Consultative Body, it will give rise to indications of partiality and conflict of interest. (2) What are the legal consequences of a Notary who has concurrent duties as a Member of the Nagari Deliberative Body based on positive law in Indonesia, namely, a Notary who holds concurrent positions as a State Official, namely the degradation of the deed he made into an underhand deed and is subject to sanctions in the form of being temporarily dismissed for 3 months by The local Regional Supervisory Council is then followed up by the Notary Central Supervisory Council with its decision through an open trial giving a sanction, namely being temporarily suspended for 6 months.

Keywords: *Legal Certainty, Notary Arrangements; Concurrently Duties; The Nagari Consultative Body*

Introduction

According to Article 1 UUJN, a Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law or based on other laws. From this article, a difference can be seen from the early days of notaries in Indonesia. Notaries are no longer government employees but are independent public officials who have the authority to make authentic deeds as long as other officials

are not excluded from making the deed. The importance of Notaries in people's lives, especially in making authentic deeds which are used as evidence, so Notaries have the position as public officials who are authorized to make authentic deeds and are at the same time an extension of the government.

The position of a notary is essentially a private notary assigned by the general authority to serve the public's need for authentic evidence that provides civil law certainty. As long as authentic evidence is still needed by the state legal system, the position of a notary will still need its existence in the community. Based on history, a notary is a state official to carry out state duties in service to the community in order to create legal certainty as an acting authentic deed maker in civil matters.

Prohibition of notaries in Article 17 UUJN Notaries are prohibited from carrying out positions outside their area of office, leaving their area of office for more than 7 (seven) consecutive working days without valid reasons, concurrently serving as civil servants, concurrently serving as state officials, concurrently serving as advocates, concurrently serving as state officials. position as leader or employee of a state-owned enterprise, regional-owned enterprise or state-owned enterprise, concurrently serving as an acting land deed maker outside the notary's area of office, becoming a substitute notary, performing other work that is contrary to religious norms, morality or decisions that may affect the honor and dignity of the position of a Notary.

Notary must understand and obey the prohibitions that have been regulated in the notary position regulations, while notaries are prohibited from holding concurrent positions as state officials, but it is the case that a notary holds concurrent positions as a Village Consultative Body, Law No. in West Sumatra, namely the Nagari Consultative Body, abbreviated as BAMUS, Bamus is a Nagari deliberation institution based on the Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 110 of 2016 Article 31 Bamus has the following functions: a) Discuss and agree on Draft Village regulations with the Village head; b) Accommodating and channeling the aspirations of the Village community; and c) Supervise the performance of the village head.

The tasks of the Nagari Deliberative Body based on Article 32 of the Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 110 of 2016 are: a) Exploring the aspirations of the community; b) Accommodating community aspirations; c) Managing the aspirations of the community; d) Channeling Community Aspirations; e) Organizing Village deliberations; f) Forming a village head election committee; g) Organizing special village deliberations for village head elections from time to time; h) Discuss and agree on the draft village regulation with the village head; i) Supervise the performance of the village head; j) Evaluating reports on village government administrators; and k) Creating a harmonious working relationship with the village government and other village institutions and carrying out other tasks regulated in the provisions of the legislation.

Based on the Duties and Functions of the Nagari Deliberative Body and the inauguration of the members of the Nagari Deliberative Body, it is determined by the decision of the Regent/Mayor. Is the Nagari deliberative body prohibited from serving as a Notary, while Bamus is prohibited by Law Number 5 of 2014 concerning State Civil Apparatus. Article 122 is not included in the elements of State officials. However, the duties and authorities of the Nagari Musyarah Board are the same as those of the legislative body, with a Notary concurrently serving as a Nagari Deliberative Body, how to carry out the duties of the Regional Supervisory Council against Personal Notaries who concurrently serve as members of the Nagari Deliberative Body in Dharmasraya Regency.

Along with the accountability of the Notary to the community in carrying out his duties, it must be guaranteed by the existence of continuous supervision and guidance by other parties so that the duties and authorities of the Notary are always in accordance with the underlying legal rules, while the main task of the Notary's supervision is that all rights and The authority and obligations given to Notaries in carrying out their duties as given by the relevant basic regulations are always carried out on a

predetermined path, not only legal channels but also on the basis of morals and professional ethics in order to ensure legal protection and certainty for the community.

The purpose of carrying out the duties of a Notary Superintendent is to fulfill the requirements and carry out his duties in accordance with the provisions of the applicable legislation for the sake of safeguarding the interests of the general public, while the main task of Notary supervision is that all rights and authorities as well as obligations granted to the Notary Public in carrying out its duties as given by the relevant basic regulations, it is always carried out on a predetermined path not only by legal channels but also on the basis of moral and professional ethics in order to ensure legal protection and certainty for the community.

The author wants to observe the legal certainty of the arrangement of a notary who concurrently serves as a member of the Nagari Consultative Body. Case Study of Dharmasraya Regency. To clarify the above, it will be reviewed further about and how the legal certainty of setting the duties of a Notary concurrently as a member of the Nagari Consultative Body in responding to obstacles that arise in the field related to the duties and concurrent positions of a Notary in accordance with the UUJN.

Based on this background, the author wants to take the title of the research on "**Legal Certainty in the Arrangement of Notaries who Concurrently Duties as Members of the Nagari Consultative Body, Case Study of Dharmasraya Regency**".

Research Methods

This research is a legal research (juridical research) which has a method that is different from other research. The legal research method is a systematic way of conducting research. In order not to get caught up in the mistakes that generally occur in legal research by imposing the use of empirical research formats in social science on normative research (juridical-normative), it is very important to know and find the type of research as a component of research methods. Because, accuracy in research methods will greatly affect the process and results of a legal research.

Research Result

Concurrent positions of a notary means that a notary occupies or has another position other than being a notary. In the sense that the Notary has obligations in other positions apart from his obligations as a notary. Concurrent positions by a notary are prohibited by Article 17 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary.

Notaries are prohibited from holding concurrent positions, which is one of the prohibition rules contained in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. In Article 17 UUJN, Notaries are prohibited from:

1. carry out a position outside the area of his office;
2. leaving his/her area of office more than 7 (seven) working days;
3. consecutively without valid reasons;
4. concurrently as a civil servant;
5. concurrently serving as a state official;
6. concurrently serving as an advocate;
7. holding concurrent positions as leader or employee of a state-owned enterprise, regional-owned enterprise or private enterprise;
8. concurrently serving as Land Deed Making Officer and/or Class II Auction Officer outside the Notary's domicile;
9. become a substitute Notary; or

10. perform other work that is contrary to religious norms, decency, or propriety that can affect the honor and dignity of the position of a Notary.

In UUJN, it is not explained in detail about the reasons for not being allowed to hold concurrent positions as State Officials and the absence of benchmarks for the understanding of State Officials in the explanation of the UUJN. In carrying out its duties, the Notary Position is a position that prioritizes a trust, where the Notary service user gives full trust to the Notary so that he is treated fairly and gets his rights accordingly. The position of Notary is an honorable position (*Officium Nobile*) where the Notary is a public servant who is given the trust in making evidence in the form of an authentic deed. The prohibition to carry out concurrent positions of a Notary as a State Official, in this case as a member of BAMUS, is a form of professionalism in which the Notary must focus on one profession that has been taken. The prohibition of concurrent positions is also intended to minimize conflicts of interest or conflicts of interest and is intended to ensure that Notaries remain neutral and able to stand alone or independent.

Legal certainty in the regulation of Notaries who are concurrently Duties as a nagari consultative body, there is still legal ambiguity, so far there has been no explanation for the prohibition of notaries as nagari consultative bodies, but supervision of notaries is necessary to ensure that notaries can carry out their positions as much as possible to meet the requirements that have been set. UUJN for the protection of the public interest. Notaries are appointed not for their own interests, but for the interests of the community they serve. Therefore the law is given such great trust and in general it can be said that any giving of trust to someone puts responsibility on his shoulders, both based on law and morals. Notary supervision is expected by the formation of UUJN as a coaching institution so that Notaries in carrying out their positions can improve the quality of service to the community.

Supervision of Notaries in connection with violations of UUJN rules, namely concurrently serving as a Nagari Consultative Body can only be carried out if there are complaints from the public regarding the existence of a Notary who holds concurrent positions as State Officials. Then the matter can be reported either verbally to be later traced by the Regional Supervisory Council or by submitting a complaint to the Regional Supervisory Council accompanied by strong evidence, for example against the deed made by the notary when concurrently serving as a State Official.

It can be seen that there are limits to the authority of a Notary, namely:

- a. The notary must be authorized as far as the deed he made is concerned. Not every official can make all deeds, but a general official can only make certain deeds, namely those assigned or excluded to him by law.
- b. The notary must be authorized as long as it concerns the people for whom the deed was made. Notaries are not authorized to make deeds for the benefit of everyone. For example, in Article 20 paragraph (1) of the Notary Position Regulations stipulates that a Notary is not allowed to make a deed in which, the Notary, his wife/husband, blood relatives, or the legal family of the Notary, are in a straight line without any degree limitation and in a sideways line. to the third degree, either personally or through power of attorney, becomes a party. This is intended to prevent partiality and abuse of office.
- c. The notary must be authorized as long as it concerns the place where the deed was made. For each Notary, his jurisdiction or area of office is determined, and only in certain areas/areas, the Notary is authorized to make a deed.
- d. The notary must be authorized as long as the time of making the deed is concerned. A notary may not make a deed as long as the notary is still on leave or is dismissed from his position. Notaries are also not allowed to make a deed before taking office or before taking an oath.

Based on the description above, it can be done testing the theory used on the theoretical basis in this thesis that based on the Authority Theory, the authority of the Regional Supervisory Council of the Notary District of Dharmasraya Regency in supervising notaries who hold concurrent positions as State officials has not been carried out optimally, because it is beyond from the focus of supervision carried out by the Notary MPD of Dharmasraya Regency which actively supervises the activities of the notary in carrying out his position.

This is because there are no reports from the public about notaries who hold concurrent positions as State Officials. In the case of a notary who also serves as BAMUS who does not yet have a clear definition of whether he is a State official or not, if it is based on the definition of a state official according to Bagir Manan, BAMUS is a State official because he receives an honorarium from the State. Thus, it can be said that the Theory of Authority has not been fulfilled. And the theory of legal certainty has not been fulfilled because Article 17 of the UUJN does not mention the prohibition of a Notary concurrently serving as a Member of the Nagari Consultative Body.

The legal consequences of a Notary who has concurrent duties as a Member of the Nagari Deliberative Body based on positive law in Indonesia who has concurrent positions as a State Official, namely the degradation of the deed he made into an underhand deed and may be subject to sanctions in the form of being suspended for 3 months by the local Regional Supervisory Council. then followed up by the Notary Central Supervisory Council with its decision through an open trial giving sanctions, namely temporary suspension of 6 months, because the position of a Notary in Article 16 paragraph (1) of the UUJN states that a Notary is obliged to act trustworthy, honest, thorough, independent, impartial, but when a notary concurrently serving as a nagari deliberative body will give birth to an indication of bias. So when a notary violates Article 17 of the UUJN the sanctions are in the form of a written warning, temporary dismissal, honorable dismissal, or dishonorable discharge and the deed that is made does not have legal force or proof strength as an underhand deed, a Notary can be subject to civil sanctions if the deed made by the Notary only has the power of proof under the hand. A deed whose strength of proof becomes an underhand deed can be a reason for interested parties related to the deed who suffer losses to claim reimbursement of costs, compensation and interest from a Notary. The definition of state officials according to strong is people who work are given wages and facilities and authority by the state, the nagari consultative body is part of state officials

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