



The Role and Function of Supervision from the Notary Supervisory Board in Dealing with Violations of Ethics and Notary Position in Mataram City

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Abstract

This study discusses the role and function of the Notary Supervisory Board against the notary who violates the code of ethics and notary position. It applies the empirical legal juridical research method that is carried out by examining the conditions in the field related to the implementation of supervision and guidance of notaries by the Supervisory Board in Mataram City. Based on Article 1 paragraph (6) Law on Notary Position, the Notary Supervisory Board is an institution that has the authority and obligation to carry out guidance and supervision of the notary. In carrying out supervision and guidance, the Minister forms a Supervisory Board consisting of 3 (three) levels which include the Regional Supervisory Board in the city/regency, the Provincial Supervisory Board in the province and the Central Supervisory Board in the capital. Each level consists of 9 (nine) different people; each of 3 (three) people came from government, notary, expert/academic elements. The Supervisory Board has very important roles and functions in law enforcement against notaries in their territories in holding hearings to check for suspected violations of the code of ethics and notary position. Law enforcement can be in the form of preventive measures (supervision) and curative steps (implementation of sanctions). Thus, if the notary commits a violation, the Supervisory Board has the right to examine and sanction him/her. Sanctions can be in the form of written warning, temporary dismissal, respectful dismissal and/or disrespectful dismissal.

Keywords: Notary Supervisory Board; Violation; Sanction

Introduction

Notary is a public official who runs the profession in terms of making authentic deeds and providing services to the community with the aim of seeking legal certainty. In carrying out his/her position, a notary is faced with applicable regulations; i.e. the Notary Code of Ethics (KEN) and Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Position. The regulation has guaranteed the public that a notary is actually carrying out

duties and positions for the benefit of the community and the notary must be responsible for making the deeds made by the parties before a notary.

In carrying out his/her office duties, a notary must be under the supervision of a neutral and independent institution. Sociologically, the arrangement of the position of a notary that is included in the form of the Law is due to the many problems that have befallen the notary in exercising his/her authority; for instance, a notary is sued or reported to law enforcement by the parties or by the community in general.¹

Therefore, in this case, it requires an institution that functions to conduct guidance and supervision of the notary. Supervision consists of two (2) mechanisms. First is the internal supervision of the code of ethics through the Indonesian Notary Association (INI). Second is external supervision carried out by the Minister of Law and Human Rights.²

External supervision and guidance of notaries is carried out by the Minister by establishing a Supervisory Board consisting the elements of 3 (three) government people, 3 (three) notary organization people and 3 (three) experts or academics at the level: Regional Supervisory Board (MPD) in the regency/city, the Provincial Supervisory Board (MPW) in the province and the Central Supervisory Board (MPP) in the capital.³

The Notary Supervisory Board (MPN) in general has a scope of authority in holding a hearing to examine suspected violations of the code of ethics or violations of the implementation of positions (Article 70 letter a, Article 73 paragraph (1) letters a and b, Article 77 letters a and b of Law on Notary Position). Based on the substance of the article, the Notary Supervisory Board has the authority to conduct a hearing to examine:

1. There is an allegation of violations of the code of ethics;
2. There is an allegation of violations of the implementation of notary position;

Guidance and supervision are important thingd to do because the Supervisory Board has an important role to the notaries who are in their territory in holding a hearing to examine alleged violations of the code of ethics and the notary position.

Law enforcement by MPN can be in the form of preventive measures (supervision) and curative steps (implementation of sanctions). Preventive steps are carried out through periodic checks of notary protocols related to possible violations in the implementation of notary positions. Whereas, curative steps are taken by imposing sanctions. People who feel harmed by a notary can submit a report to MPN. So, if a violation occurs, the sanctions have been regulated in the Code of Ethics and Law on Notary Position.

The fact that happened especially in Mataram City was that there were violations committed by the notary. That includes administrative violations and those that cause material losses to the public using notary services.

¹ Salim HS, *Technique of Making Deed One (Theoretical Concept, Authority of Notary, Form and Original Deed)*, Rajawali Pers, Jakarta, 2016, page 36

² Executive Board of the Indonesian Notary Association, *Identity of Indonesian Notary*, PT Gramedia Pustaka Utama, Jakarta, 2008, page 228

³ Habib Adjie, *Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 concerning Notary Position*, Refika Aditaman, Bandung, 2011, page 173

Research Problem

Based on the description above, the issue to be discussed is how the role and function of the Notary Supervisory Board in applying sanctions to the notary who violates the code of ethics and the notary position especially in Mataram City?

Research Objective

The objective of this research is to understand and analyze the roles and functions of MPN to notaries violates the code of ethics and the notary position especially in Mataram City.

Theoretical Framework

The theory used to answer the problem formulation in this study is the authority theory from Philipus M. Hadjon. According to him, there are three (3) sources for the agency or official that are used to obtain authority, i.e. by way of attribution, delegation or mandate. The connection with this problem is that the authority of the MPN is more than the authority of the delegation because the authority has been transferred from the Minister of Law and Human Rights of the Republic which was previously mandated by the Law. Preventive and repressive supervision is needed for the implementation of the notary's duties as a public official. Preventive supervision is carried out by the state as the authority that is delegated to the government agencies of the Ministry of Law and Human Rights of the Republic delegated to MPN.

Research Method

The type of legal research is empirical juridical. The approach method used in this research is the statute approach to study and analyze regulations relating to MPN, the conceptual approach in which the object of study departs from views and doctrines, and sociological approach i.e. an approach that analyzes how reactions and interactions occur when the norm system works in society.

1. Research Setting

The research setting is the jurisdiction of MPD of Mataram City and MPW of West Nusa Tenggara Province.

Discussion

After the enactment of Law on Notary Position and its amendments, the judicial institution no longer carries out its duties on the supervision, inspection and imposition of sanctions on the notary. However, all of this is transferred to the Minister of Law and Human Rights by forming MPN. According to the general provisions of Article 1 paragraph (6) Law on Notary Position, MPN is a body that has the authority and obligation to carry out guidance and supervision of the notary. In carrying out supervision and guidance, the Minister forms a Supervisory Board with 3 (three) levels consisting of the Regional Supervisory Board (MPD) in the City/Regency, the Provincial Supervisory Board (MPW) in the Province and the Central Supervisory Board (MPP) in the Capital, which each level consists of 9 (nine) different elements consisting of:

1. Government as many as 3 (three) people;
2. Organization as many as 3 (three) people; and

3. Experts or academics as many as 3 (three) people.

Based on the Letter of the Directorate General of Public Law Administration (DG AHU), Ministry of Law and Human Rights of the Republic of Indonesia No. C.HT.03.10-05. About the Establishment of the Notary Regional Supervisory Board, No. 7.1 states that the establishment of a Regional Supervisory Board domiciled in the capital city of the Province includes the following membership:

Government element consists of employees of the Regional Office of the Ministry of Law and Human Rights, Head of Head of the Government Legal Division at the Regency/City and employees of the Heritage Office for regions that have a Heritage Office;

1. Notary organization element is a member of the notary who is proposed by the local board of the Indonesian Notary Association (INI); and
2. Expert/academic element is teaching staff/ faculty members from the faculties of Law from State/ Private Universities or local law colleges.

According to Mr. Muhaimin, “the duties of the MPD are actually classified into 2 (two) consisting of: examination of the notary due to complaints from the community who feel disadvantaged and periodic examination which MPD examine directly to notary offices.⁴ The following are the authorities of MPD, MPW and MPP as stipulated in Law on Notary Position as follows:

1. *Regional Supervisory Board*

Regional Supervisory Board’s (MPD) authority is regulated in Article 70 Law on Notary Position, as follows:

- a. hold a hearing to examine the alleged violation of the notary code of ethics or violation of the implementation of the notary position;
- b. periodically check notarial protocol 1 (one) time in 1 (one) year or at any time deemed necessary;
- c. give leave permission for up to 6 (six) months;
- d. establish a substitute notary by observing the proposal from the notary concerned;
- e. determine the notarial protocol repository which, at the time of delivery, the notarial protocol is 25 (twenty-five) years or more;
- f. appoint notary who will act as temporary holder of notarial protocol from a notary who is appointed as a state official;
- g. receive reports from the public regarding alleged violations of the notary code of ethics or violations of provisions in the Notary Law; and
- h. make and submit a report to the Provincial Supervisory Board.

2. *Provincial Supervisory Board*

Provincial Supervisory Board’s (MPW) authority is regulated in Article 73 numbers (1) of the Law on New Notary Position, as follows:

- a. hold a hearing to examine and make decisions on public reports that can be submitted through the Regional Supervisory Board;
- b. call the reported notary to carry out the examination of the report;

⁴ Interview with Mr. Muhaimin, Member of the Regional Supervisory Board of Mataram City.

- c. give leave permission for more than 6 (six) months to 1 (one) year;
- d. examine and decide upon the decision of the Regional Supervisory Board that rejects the leave submitted by the reporting notary;
- e. provide sanctions in the form of oral and written warnings;
- f. propose sanctions against the notary to the Central Supervisory Board in the form of:
 - 1) temporary dismissal of 3 (three) months up to 6 (six) months; or
 - 2) disrespectful dismissal.

3. *Central Supervisory Board*

Central Supervisory Board's (MPP) authority is regulated in Article 77 Law on Notary Position, as follows:

- a. hold a hearing to examine and make a decision on the level of appeal against the imposition of sanctions and rejection of leave;
- b. call the reported notary to conduct the examination as referred to in letter a;
- c. impose temporary dismissal sanctions; and
- d. propose sanctions for a notary in the form of disrespectful dismissal to the Minister.

The purpose of supervision carried out by the Minister through the Supervisory Board is so that the notaries fulfill all the requirements relating to the implementation of the duties of the notary office in carrying out their duties. It is carried out for the sake of safeguarding the interests of the community because the notary is appointed by the government not for the self-interest of the notary him/herself, but for the benefit of the community he/she served. Another purpose of supervision of the notary public is that the notary is presented to serve the interests of the people who need evidence in the form of authentic deeds as requested by the notary. So that, without the people who need the notary services, a notary will not be of any use.

Law on Notary Position stipulates that if a notary in carrying out his/her job duties is proven to have committed a violation, the notary may be subject to sanctions in the form of civil, administrative and notary position codes. The sanctions have been arranged in such a way, before the Notary Position Regulations, Law on Notary Position and the Code of Ethics and do not regulate criminal sanctions against the notary.⁵

The role and supervision of the MPD in Mataram City is considered to have gone well even though it was not optimal; for instance, routinely checking each notary according to the schedule, giving input and advice to the notary who encounters obstacles in carrying out his/her daily duties and obligations, and calls a notary if there are obstacles and/or reports from the public about problems related to the notary to MPD.

The community has been given the authority by the Law to supervise the notary, by reporting a notary who commits an act contrary to the code of ethics and the notary position to the Supervisory Board. Then, the community report will be processed by the MPD at the reported notary's place. If that continues, the community report will then be followed up by MPW and subsequently by MPP.

⁵ Habib Adjie, *Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 concerning Notary Position*, Refika Aditaman, First Print, Bandung, 2008, page 25.

The oversight mechanism by MPD is also carried out to resolve problems related to reports from the public. Sometimes, the community itself wants the completion of a process immediately; however, they have not followed the rules or agreements between the two parties. So, they feel disadvantaged and report to MPD. MPD, in carrying out its duties, will examine the notary to listen to the information, examine the supporting evidence available before taking a stand and forward the results of the decisions to be submitted in writing to the public and the reported notary.

In this connection, the Notary Supervisory Board must be objective when conducting the examination. It means that the Notary Supervisory Board must place notarial deed as an examination object containing statements or descriptions of the parties, rather than placing the subject of the notary as the object of examination. Thus, the procedure or procedure for making a deed must be used as a measure in the examination.

According to Mr Muhaimin, “the function of the Supervisory Board is to carry out guidance and supervision of notaries. In this connection, the notary public is advised to be careful in carrying out their duties, work according to applicable regulations, be neutral without taking sides and hold the principle of prudence in making authentic deeds in order to maintain the nobleness and dignity of a notary position.”⁶

According to the author, the roles and functions of Mataram City MPD and West Nusa Tenggara Province MPW, in handling violations of the code of ethics and notary position, are already in the right corridor because in the last 3 (three) years the Mataram City MPD and West Nusa Tenggara Province MPW were able to complete problems related to reports of alleged violations of the code of ethics and the notary position.

Based on the results of the study, in the office period of the West Nusa Tenggara Provincial Notary Supervisory Board for 2017-2019, there were 7 (seven) complaints of violations of the code of ethics and notary positions reported by the public against the notary. The details are as follows:

No.	Institutions that Make Reports	Date of Recommendation Letter from MPD	Reported Notary (i)	Reported Case	Description
1.	MPD of West Lombok & North Lombok Regencies	October 24, 2016	L.M.S.	Violation of the establishment of the Nahdlatul Wathan Executive Board (PBNW)	Terminated
2.	MPD of Mataram City	May 22, 2017	A.T.S.	Code of Ethics	Returned to the National Forestry Council (DKN) of West Nusa Tenggara
3.	MPD of Mataram City	June 29, 2018	P.M.A.I.S.	Request for notary's clarification	Terminated

⁶ Interview with Mr. Muhaimin, Member of the Regional Supervisory Board of Mataram City.

4.	MPD of Mataram City	Augustus 21, 2018	R	The act of harming the community	Mediated for peace
5.	MPD of Central Lombok & East Lombok Regencies	February 13, 2019	L.D.N.	Code of Ethics	In the examination process
6.	MPD of West Lombok & North Lombok Regencies	January 31, 2019	M.S.H.	Code of Ethics	In the examination process
7.	MPD of East Lombok Regency	April 24, 2019	R.F.	Making money-borrowing deed	In the process of forming an examination team

Based on Article 67 of Law on Notary Position, the scope of supervision carried out by the Notary Supervisory Board applies to notaries, temporary notary officials and substitute notaries. Article 85 of Law on Notary Position determines 5 (five) types of administrative sanctions in the form of written warning, temporary dismissal, honorable dismissal or dishonorable dismissal.

These sanctions are applied in stages ranging from verbal reprimands to disrespectful dismissals. However, according to Mr. I Wayan Puspa, “sanctions in the form of verbal reprimands are inappropriate and unethical because in principle an institution must impose sanctions on someone especially a notary in writing.”⁷

Notary, who violates certain articles listed in Law on Notary Position, violates Article 7, Article 16, Article 17, Article 19, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, and Article 59.

Sanctions for notaries who violate the provisions as referred to in Article 85 Law on Notary Position are internal sanctions; i.e. sanctions against a notary do not conduct a series of orderly actions to carry out the duties of a notary work position that must be carried out in the interest of the notary himself.

In its norms, Law on Notary Position authorizes the Notary Supervisory Board to conduct an examination of a notary who violates the provisions of the code of ethics and the notary position. It can be seen from the Regulation of the Minister of Law and Human Rights Number M.02.PR.08.10 of 2004 concerning Procedures for Appointment of Members, Dismissal of Members, Organizational Arrangements, Procedures for Work, and Procedures for Examining the Notary Supervisory Board, which is followed up with Regulation of the Minister of Law and Human Rights No. 40 of 2015 concerning Organizational Structure, Work Procedure for Appointment of Members, Dismissal of Members and Work Procedures for Examination of Notary Supervisory Boards.

Based on the results of research on MPD in Mataram City and MPW of West Nusa Tenggara Province, the stages/mechanism of examination of the notary who violated the code of ethics and notary position were based on the existence of complaints/reports. In this case, MPD forms a Regional Examination Team, the Summoning Team of Reporter and the Reported Party

⁷ Interview with Mr. I Wayan Puspa, Chairperson of the Regional Supervisory Board of Mataram City.

to be asked for clarification. After that, it is the formation of the Regional Examination Team, the Regional Examination Team's decision meeting, the MPD Plenary Meeting, the MPD's recommendation to MPW, the decision making by MPW, the summon of the reporter and the reported parties, the examination by the Regional Examination Team, the decision of the Regional Examination Team, the plenary meeting MPW, MPP's decision, the establishment of the Central Examination Team, summons of the reporter and the reported parties, meeting of the Central Examining Team's decision, the results of the decision, and submitting proposals to the Minister whether or not giving sanctions for honorable or dishonorable dismissal.

According to Mr. Muhaimin, as a member of the MPD of Mataram City, "the mechanism of notary examination conducted by MPD Mataram City originated from reports from the public, then the MPD Chair invited MPD members to hold a meeting to ascertain whether the reported party is called for clarification. If it is approved, a team of 3 (three) members will be formed where each element (government, notary and expert/ academic) must be present. Then, after receiving the assignment letter to be asked for clarification, the reporter and the reported party are summoned, then the team makes a decision, all MPD members (9 people) are invited again to hold a plenary before being submitted to MPW. When the MPD recommends the results of the team's examination to MPW, it is not just a complete submission of the examination but it contains legal opinions that explain whether or not there is a violation of certain articles in the code of ethics and notary position."⁸

In imposing sanctions on the notary, the Notary Supervisory Board must be based on Law on Notary Position. The provisions in the Law on Notary Position, in addition to determining what should not be done by a notary, also contain sanctions for violations committed by a Notary. The sanctions listed in the Law on Notary Position are administrative and apply to the notary profession. According to the Law on Notary Position, administrative sanctions are in the form of:

1. Written Reprimand;
2. Temporary Dismissal;
3. Respectful Dismissal; or
4. Disrespectful Dismissal.

The Notary Supervisory Board has the authority to impose sanctions on the notary. This sanction is stated or regulated in the Law on Notary Position, also mentioned again and added to in the decision of the Minister of Law and Human Rights of the Republic of Indonesia Number M.39-PW.07.10. of 2004 concerning Guidelines for the Implementation of Duties of the Notary Supervisory Board.

Basically, not all Supervisory Boards have the authority to impose sanctions as described below:

1. Regional Supervisory Board (MPD)

MPD does not have the authority to impose any sanctions. According to Mr. Muhaimin, "MPD does have the authority to receive reports from the public and hold hearings to examine allegations of violations of the code of ethics or violations of the conduct of notary positions. However, MPD is not given the authority to impose any sanctions. In this case, the MPD is only authorized to report (recommend) the results of the examination of its clarification toward the reporting and the reported parties to MPW."⁹

⁸ Interview with Mr. Muhaimin, Member of the Regional Supervisory Board of Mataram City.

⁹ Interview with Mr. Muhaimin, Member of the Regional Supervisory Board of Mataram City.

2. *Provincial Supervisory Board (MPW)*

According to Mr. Sazali, “MPW can only impose sanctions in the form of a written warning to the notary who commits a violation. This sanction is final and MPW can propose sanctions against a notary to MPP in the form of a temporary dismissal of the position of notary.”¹⁰

Sanctions from MPW in the form of written warning are final and sanctions are stages that can later be subject to other sanctions; for instance, temporary dismissal from the position. In addition, sanctions imposed by MPW have 3 (three) stages: the first written reprimand sanction is given within 14 days, the second written reprimand sanction is given within 14 days, the third written reprimand sanction is given because the notary does not heed the first written warning or second written warning. Therefore, MPW can submit a proposal for a temporary dismissal to MPP.

3. *Central Supervisory Board*

According to Mr. Sazali, “MPP has the authority to impose sanctions in the form of temporary dismissal. Sanction like this is a period of waiting for a certain period of time before other sanctions are imposed, such as sanctions for respectful dismissal or disrespectful dismissal from a notary position.”¹¹

Thus, there are 2 (two) authorities from MPP in imposing sanctions on notaries as follows:

- a. Impose a temporary dismissal on the notary
- b. Propose to the Minister, in the form of:
 - 1) Respectful dismissal; or
 - 2) Disrespectful dismissal.

According to Article 10 of the Regulation of the Minister of Law and Human Rights No. 61 of 2016 concerning Procedures for Imposing Administrative Sanctions Against Notaries, the factors causing sanctions for disrespectful dismissal by the Minister to notary are due to:

1. The notary does not carry out obligations that must be fulfilled by a notary until the period of temporary dismissal has ended; or
2. The notary is undergoing a temporary dismissal and turns out that he/she is later found to have committed another violation with the same sanction; or
3. The notary receives 3 (three) sanctions for temporary dismissal for a period of 12 (twelve) months.

Based on the explanation above, the author argues that MPW principally has the authority to apply sanctions in the first stage and MPP has the authority to apply sanctions in the second stage. Then, it ends in the final decision of the Minister. Basically, the appointment and dismissal of a notary from his/her position is in accordance with the rule of law that the person who appoints and dismisses a person must be the same agency; i.e. Minister.

¹⁰ Interview with Mr. Sazali, Legal Counseling Staff of the Regional Office of the Ministry of Law and Human Rights, Mataram City.

¹¹ Interview with Mr. Sazali, Legal Counseling Staff of the Regional Office of the Ministry of Law and Human Rights, Mataram City.

Conclusion

In carrying out the roles and functions of violations of the Code of Ethics and the notary position, the Notary Supervisory Board is guided by Ministerial Regulations, Ministerial Decrees and also Law on Notary Position as the basis for their actions. In addition, the implementation in Mataram City is in accordance with the applicable rules although it has not been optimal and maximum because of several constraints. For a notary who violates the code of ethics and position of a notary, the Notary Supervisory Board has the authority to examine and provide sanctions listed in the Articles on Law on Notary Position, but not all levels of the Notary Supervisory Board can impose sanctions. In this case, the Provincial Supervisory Board and the Central Supervisory Board can impose sanctions in the form of verbal reprimand, written reprimand and temporary dismissal. Meanwhile, for respectful dismissal and disrespectful dismissal sanctions are the authority of the Minister's decision.

Suggestion

To improve the performance of the Notary Supervisory Board in terms of minimizing violations of the code of ethics and notary positions especially in Mataram City, it requires the implementation of Express Education (Diklat) so that members of the Notary Supervisory Board succeed in carrying out their duties and functions as supervisors and coaches. In addition, it is necessary to have a special budget and adequate facilities and infrastructure so that the Notary Supervisory Board can work well in the future. Then, in carrying out supervision and coaching, the Notary Supervisory Board must more often hold a counseling or training on a notary on a regular basis so that the notary is protected from fatal mistakes in carrying out their office duties. In addition, it also requires firmness towards the application of sanctions so that it is truly binding and obeyed by notaries.

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