Juridical Analysis of The Role And Functions of The Regional Supervisory Assembly on The Implementation of Notary Positions To Provide Legal Guarantee on The Authentic Deal (Research Study on Notary Regional Supervisory Assembly In Karimun District)

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ABSTRACT

The presence of a Notary is very important in creating legal certainty and providing legal protection for the community. The deed made by or before a notary can be authentic evidence in providing legal protection to any party with an interest in the deed. To provide legal protection to the public based on the Law on Notary Positions, a Notary Supervisory Council was formed, namely the Regional Supervisory Council. The results of the study indicate that there are 2 (two) institutions in terms of fostering a Notary, namely the Notary Supervisory Council and the Notary Honorary Council. Judging from their understanding, the two Councils have the same authority in terms of carrying out guidance to Notaries. However, the two Councils have differences in fostering a Notary. And there are several obstacles or obstacles, first, the place factornamely the Regional Supervisory Council of Karimun Regency until now does not have a permanent and representative Secretariat office, the second factor is the budget, namely the lack of budget from the government for the operation of the Regional Supervisory Council of Karimun Regency in carrying out its supervisory and guidance functions., the three factors of the membership of the Assembly, namely the limited time of the members of the Regional Supervisory Council of Karimun Regency who are too busy with their respective work or main tasks, the four reporting factors, namely the lack of public participation in reporting alleged violations of the Notary. For this reason, the Regional Supervisory Council that has been formed and appointed in accordance with the mandate of the Law on Notary Positions can carry out their duties properly to supervise Notaries and it is hoped that together with the Notary Honorary Council can cooperate and coordinate in making efforts to provide guidance to Notaries.

Keyword: Notary, Supervision And MPD

INTRODUCTION

The presence of a Notary is needed by the community to ensure legal certainty regarding a certain legal act, such as in terms of business activities, family relationships such as marriage and inheritance. Legal certainty is needed to guarantee the rights and obligations of certain legal acts, to protect the parties involved in the legal action. Considering that Indonesia is a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law is to guarantee certainty, order and legal protection with the core of truth and justice, then all actions or legal events that occur, must be in accordance with applicable law in Indonesia.

At this time Notaries are regulated in Law Number 30 of 2004 concerning the Position of Notary, Supplementary Gazette of the State Gazette of 2004 Number 117, which has then been amended by Law Number 2

of 2014 concerning Amendments to Law Number 30 of 2004 concerning Positions Notary, Supplementary Gazette of the State Gazette of 2014 Number 3 (hereinafter referred to as the Law on Notary Positions).

Notaries as one of the professions that provide legal certainty based on Article 1 point 1 of the Law on Notary Positions, which reads: "A public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws."

According to A. Pitlo, a deed is a signed letter made to be used as evidence, and to be used by people, for whose purposes the letter was made.

Notary as a public official is a profession. According to Abdulkadir Muhammad, to be categorized as a profession, namely:

- 1. There is a specialization of work;
- 2. Based on expertise and skills;
- 3. Fixed and continuous;
- 4. Prioritizing service over reward;
- 5. Have a high sense of responsibility;
- 6. Grouped in a professional organization.

The notary's expertise and skills are related to the understanding of a law to be applied in making an authentic deed, so that the authentic deed has the power as perfect evidence that can guarantee legal certainty for the parties in the deed.

The principle of legal certainty in question, namely that a Notary in carrying out his duties must be normatively guided by the rule of law relating to all actions taken to be then stated in the deed. Acting based on applicable law will provide certainty to the parties, that the deed made before or by the Notary is in accordance with the applicable legal rules, so that if a problem occurs, the Notary deed can be used as a guide for the parties.

In carrying out their functions and responsibilities as public officials, it is not uncommon for Notaries to deal with legal processes. In this legal process, the Notary must provide information and testimony regarding the contents of the deed he made. By placing legal and ethical responsibility on the Notary, the mistakes that often occur in the Notary are caused by the negligence of the Notary, because it does not heed the rule of law and ethical values.

As a logical consequence, along with the responsibility of the Notary to the community, it must be guaranteed that there is continuous supervision and guidance so that the Notary is always in accordance with the legal rules that underlie his authority and can avoid abuse of authority or trust given. In order for the ethical and legal values that should be upheld by a Notary can run according to the existing law, it is very necessary to have supervision.

Notary supervision prior to the enactment of the Notary Position Act is carried out by the District Court in this case by a judge. However, after the existence of the District Court was integrated under one roof under the Supreme Court, the supervision and guidance of Notaries shifted to the Ministry of Law and Human Rights of the Republic of Indonesia. Supervision of Notaries is the implementation of the function of coaching and supervising the implementation of positions and behavior of Notaries. This task is carried out by the Notary Supervisory Council as an extension of the Minister of Law and Human Rights of the Republic of Indonesia who has supervisory authority over Notaries.

The Supervisory Council consists of:

- 1. Regional Supervisory Council (MPD).
- 2. Regional Supervisory Council (MPW).
- 3. Central Supervisory Council (MPP).

PROBLEM FORMULATION

- 1. How is the legal arrangement regarding the role and function of the Regional Supervisory Council towards the implementation of the duties of a Notary position in order to realize legal certainty on authentic deeds?
- 2. How is the implementation of the role and function of the Regional Supervisory Council towards the implementation of the duties of a Notary position in order to realize legal certainty on authentic deeds?
- 3. What factors become obstacles or obstacles regarding the role and function of the Regional Supervisory Council in carrying out the duties of a Notary position in order to realize legal certainty on authentic deeds?

LITERATURE REVIEW

Sources play a very important role in the analysis of some of the main issues to be discussed (Idham, 2014). Here the author refers to research reference sources, such as book collections, papers / proceedings, theses / dissertation and journals / magazines

RESEARCH METHODOLOGY

Methods are taken from the word Methodology which means a science that studies the types and forms of methods that will be used by a writer in doing a writing whose purpose is to find a truth.

The specification of this research only analyzes only up to the level of detection, namely analyzing and presenting facts systematically so that it can be easier to understand and conclude. Research Specifications or it can be said that the type of research is a choice of the type of research format in examining the object of research in the field of legal science studied by the researcher. In particular, according to the type, nature and purpose of Soerjono Soekanto's specification of legal research, it is distinguished, namely normative legal research and sociological or empirical legal research.

Based on the explanation in the section above, and taking into account several variables and the formulation of the problem in this paper, the specification of this research is normative legal research, which is supported by sociological/empirical legal research.

In this data collection technique using field research and library research.

Field Research means: Research conducted by direct observation of competent parties through interviews/interviews, to obtain information by directly asking the interviewees. The interview used in this study was a guided free interview, namely by preparing questions as a guide in advance, but did not rule out the possibility of variations in questions according to the situation when the interview took place. Interviews will be conducted with the Chairperson, Deputy Chairperson and members of the Regional Notary Supervisory Council of Karimun Regency.

Library research means the collection of data obtained through library materials containing information about primary materials. Literature study is a technique of collecting data by reviewing the literature to the library and collecting books, written materials.

The literature study in this study includes:

- 1) Primary legal materials, namely binding legal materials in the form of statutory provisions, including:
- a) the 1945 Constitution of the Republic of Indonesia;
- b) Civil Code:
- c) Notary Position Regulations (Reglement-Stbl. 1860-3);
- d) Law on Notary Positions (Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions).
- e) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 15 of 2020 concerning Procedures for Examination of the Supervisory Board of Notaries.
 - 2) Secondary legal materials, namely legal materials that explain that primary law consists of books (literature), articles or papers both presented in print and electronic form as well as expert opinions (doctrine) relating to the problem under study.
 - 3) Tertiary legal materials, namely materials that provide instructions or explanations for primary legal materials and secondary legal materials, such as dictionaries, clippings, encyclopedias and so on.

DISCUSSION

1. LEGAL ARRANGEMENTS REGARDING THE ROLE AND FUNCTIONS OF THE REGIONAL SUPERVISORY COUNCIL

A Notary in carrying out his position even though he already has sufficient legal skills, but is not based on responsibility and without appreciation of the nobility and dignity of his position as well as values and standards ethics, will not be able to carry out the duties of his position, as required by law and the interests of the general public.

Based on this, it is very reasonable that there are legal arrangements regarding the supervision of Notaries, in order to ensure the security of the public interest against Notaries who carry out their positions irresponsibly and do not heed the values and ethical standards and neglect the nobility of their dignity and duties, position.

Since the presence of the Notary Institution in Indonesia, supervision of Notaries has always been carried out by the judiciary and the government, that the purpose of supervision is so that the Notaries when carrying out their duties fulfill all requirements related to the implementation of the Notary's duties, in order to safeguard the interests of the community, because Notaries are appointed by the Notary Public. government, not for the sake of the Notary himself, but for the benefit of the community he serves.

Supervision, examination and imposition of sanctions on Notaries prior to the enactment of the Law on Notary Positions are under the Indonesian Judiciary, which is regulated in:

1. Article 140 of the Reglement op de Rechtelijke Organisatie en Het DerJustitie (Stbl. 1847 No. 23).

- 2. Article 96 of the Buitengewesten Regulation.
- 3. Article 3 Ordonatie Buitengerechtelijke Verrichtingen-State Gazette 1946 Number 135.
- 4. Article 50 PJN.
- 5. Articles 32 and 54 of Law Number 13 of 1965 concerning Courts in the General Courts and the Supreme Court.
- Minister of Justice Number KMA/066/SKB/VII/1987 concerning Procedures for Supervision, Enforcement and Self-Defense of Notaries.
- 7. Article 54 of Law Number 8 of 2004 concerning Judicial Power.

After the amendment to the 1945 Constitution of the Republic of Indonesia, which also changed the Judicial Powers and Law Number 8 of 2004, the Supreme Court carried out the technical guidance of the judiciary, organization, administration and finances of the courts. Further regulated by Presidential Decree No. 21 of 2004 concerning Organization, Administration and Finance in the Supreme Court of Indonesia.

The legal basis for the existence of the Notary Supervisory Council, among others:

- 1. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, State Gazette of the Republic of Indonesia Number 3.
- 2. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures, and Procedures for Examination of the Notary Supervisory Board (Permenkumham M.02/2004).
- 3. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 19 of 2019 concerning Terms and Procedures for Appointment, Leave, Transfer, Dismissal, and Extension of Notary Term (Permenkumham 19/2019).
- 4. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 40 of 2015 concerning Organizational Structure, Procedures for Appointing Members, Dismissing Members and Working Procedures of the Notary Supervisory Council (Permenkumham 40/2015).
- 5. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M. 39-PW. 07. 10. Year 2004 concerning Guidelines for the Implementation of the Duties of the Notary Supervisory Board (Permenkumham M.39/2004).
- 6. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2016 concerning the Honorary Council of Notaries (Permenkumham 7/2016).
- 7. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 27 of 2016 concerning the Formation of Notary Positions and Determination of Regional Categories (Permenkumham 27/2016).
- 8. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 15 of 2020 concerning Procedures for Examination of the Supervisory Board of Notaries (Permenkumham 15/2020).

As a party that supervises and provides guidance to a Notary, there are certain requirements to be appointed as a member of the Notary Supervisory Council, namely:

- 1. Indonesian citizen;
- 2. Be devoted to God Almighty;
- Minimum education is Bachelor of Law;
- 4. Has never been convicted of a criminal offense punishable by imprisonment of 5 (five) years or more;
- 5. Not in a state of bankruptcy;
- 6. Physically and mentally healthy;
- 7. Experience in the field for at least 3 (three) years.

2. IMPLEMENTATION OF THE ROLES AND FUNCTIONS OF THE REGIONAL SUPERVISORY COUNCIL

2.1 Notary Supervisory Board

Supervision is the process of observing rather than carrying out all organizational activities to ensure that all work being carried out goes according to a predetermined plan. In the General Indonesian Dictionary, the word norm is explained as "measurement (to determine something), urgency the word "norma" comes from the Dutch language, norm which by wojowasito is given the meaning as a rule norm, a measure of value.

Siagian P. Sondang argues that supervision is all activities to ensure and guarantee that the tasks/works have been carried out in accordance with the predetermined plan. The wisdom that has been outlined and the orders (rules) given.

The Notary Supervisory Council is divided in stages depending on the duties and authorities of each consisting of:

- 1) Regional Supervisory Council;
- 2) Regional Supervisory Council; and
- 3) Central Supervisory Council.

The Notary Supervisory Council is divided into 3 (three) namely the Regional Supervisory Council domiciled in the Regency/City, the Regional Supervisory Council based in the provincial capital and the Central Supervisory Council domiciled in the State Capital.

The Regional Supervisory Council is formed in the Regency/City. In the event that in a Regency/City, 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 Regencies/Cities. The composition of the Chair and Deputy Chairperson of the Regional Supervisory Council is elected from and by members with a term of office of 3 (three) years and may be reappointed.

- a. The authority of the Regional Supervisory Council:
- 1) to hold hearings to examine allegations of violations of the Notary Code of Ethics or violations of the implementation of the Notary's position;
- 2) conduct inspections of the Notary Protocol periodically 1 (one) time in 1 (one) year or at any time deemed necessary;
- 3) grant leave permission for a period of up to 6 (six) months;
- 4) determine a Substitute Notary Public by taking into account the proposal of the Notary concerned;
- 5) determine the place of storage of the Notary Protocol which at the time of handover of the Notary Protocol is 25 (twenty five) years old or more;
- 6) appoint a Notary who will act as the temporary holder of the Notary Protocol who is appointed as a state official;
- 7) receive reports from the public regarding alleged violations of the Notary Code of Ethics or violations of the provisions of this Law; and
- 8) prepare and submit reports to the Regional Supervisory Council.

The administrative authority of the Regional Supervisory Council is carried out by the Chair, Deputy Chair or one of the members who are authorized based on the decision of the Regional Supervisory Council meeting, including:

- 1) granting leave permission for a period of up to 6 months;
- 2) determine a substitute Notary;
- 3) determine the place of storage of the Notary Protocol which at the time of handover of the Notary Protocol is 25 (twenty five) years old or more;
- 4) receive reports from the public regarding alleged violations of the Notary Code of Ethics or violations of provisions in the law;
- 5) provide initials and sign a list of deeds, a list of legalized private letters, a list of registered private letters, and a list of other documents required by law;
- 6) receive written submission of a copy of the list of deeds, a list of legalized private letters, and a list of registered private letters that have been legalized, drawn up in the previous month no later than 15 (fifteen) calendar days in the following month, which contain at least the number, date, and title of the deed.

Some of the administrative powers of the Regional Supervisory Council that require a meeting decision are:

- 1) appoint a Notary who will act as the holder of the Notary Protocol who is appointed as a state official;
- 2) appoint a Notary who will act as the holder of the Notary Protocol who dies;
- 3) summon the Notary to attend the examination related to the deed he made or the Notary Protocol which is in the Notary's storage.
 - b. Obligations of the Regional Supervisory Council:
- 1) record in the register included in the Notary Protocol by mentioning the date of the examination, the number of deeds and the number of private documents that were legalized and made since the date of the last inspection;
- 2) make an inspection report and submit it to the local Regional Supervisory Council, with a copy to the Notary concerned, the Notary Organization, and the Central Supervisory Council;
- 3) keep the contents of the deed and the results of the examination confidential;
- 4) receive a certified copy of the register of deeds and other registers from the Notary and keep it confidential;
- 5) examine the public's report against the Notary and submit the results of the examination to the Regional Supervisory Council within 30 (thirty) days, with a copy to the reporting party, the Notary concerned, the Central Supervisory Council, and the Notary Organization.

- 6) submit an appeal against the decision to refuse leave.
 - c. Duties of the Secretary of the Regional Supervisory Council:
- 1) Receive and record incoming and outgoing letters;
- 2) Assist the Chair/Vice Chair/Members;
- 3) Assist the Examining Council in the trial process;
- 4) Make minutes of the session of the Regional Supervisory Council;
- 5) Make minutes of the Meeting of the Regional Supervisory Council;
- 6) Prepare reports to the Regional Supervisory Council; and
- 7) Prepare an annual work plan and budget addressed to the Minister of Law and Human Rights of the Republic of Indonesia with a copy to the Regional Supervisory Council.

Implementation related to the role and function of the Notary Regional Supervisory Council of Karimun Regency according to Effendi Wirwanto is to supervise preventive and repressive activities including coaching activities carried out by the Karimun Regency Notary Regional Supervisory Council against Notaries and administrative activities with the aim of keeping Notaries in carrying out their duties. position in accordance with statutory regulations.

2.2 Notary Honorary Council

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 proceedings, for taking photocopies of the minutes of deed and summoning a Notary to attend an examination related to a notary deed or protocol that is in the Notary's custody.

Notary Honorary Council consists of:

- 1. Central Notary Honorary Council; and
- 2. Regional Notary Honorary Council.

The existence of the Notary Honorary Council is contained in Article 66A paragraph (3) of the Law on Notary Positions. To implement the provisions of Article 66A paragraph (3) of the Notary Position Act, the Minister of Law and Human Rights Regulation Number 7 of 2016 concerning the Notary Honorary Council is issued.

The Notary Honorary Council carries out reactive and curative powers.

- 1. Reactive: The Notary Honorary Council acts if there is a request from investigators, public prosecutors and judges, due to the emergence of Notary legal problems and/or Notary legal products.
- 2. Curative: The Regional Notary Honorary Council (based on the examination results of the Examining Council) has the authority to examine and settle legal issues that actually occur, if a dispute arises and/or a Notary criminal act or legal product is made by a Notary.

As explained earlier, there is a Notary Supervisory Council and a Notary Honorary Council. The two Councils in carrying out their duties and positions must remain within the regulatory framework of the law. Deviations or violations of legal channels will cause Notaries to be prosecuted before the law. Because these violations have disrupted order and harmed society. It is a protection for the whole community, especially those who use the services of a Notary, so a Notary supervisor and supervisor is needed.

In addition, to prevent violations committed by Notaries, either intentionally or negligently, there is guidance for Notaries. It is hoped that the existence of these 2 (two) Councils can reduce and eliminate legal cases involving errors and violations by Notaries.

3. OBSTACLES/CONSTRAINTS REGARDING THE ROLES AND FUNCTIONS OF THE REGIONAL SUPERVISORY COUNCIL

In accordance with the provisions described above, the main task of the Notary is to make an authentic deed, that the Notary as a public servant carries out some of the duties of the State and is therefore very important for notaries in holding their positions to provide services to the community and for the benefit of the community.

Since the presence of the Notary Institution in Indonesia, supervision of Notaries has always been carried out by the judiciary and the government, that the purpose of supervision is so that the Notaries when carrying out their duties fulfill all requirements related to the implementation of the Notary's duties, in order to safeguard the interests of the community, because the Notary is appointed by the Notary Public. government, not for the sake of the Notary himself, but for the benefit of the community he serves.

In fact, as a supervisor who supervises a Notary, he understands the duties and functions of a notary, and the laws and regulations that govern it, that if someone wants to conduct an examination of the work of others, the examiner must know the duties, rights, and obligations of the person being examined. So in the event that a Notary

is examined, the examiner must know the work of a Notary and must study and master the PJN and other laws related to the PJN.

Every authority given to a position must have a legal rule. As a limitation so that the position can run well, and not conflict with the authority of other positions.

The Notary Regional Supervisory Council has the authority to supervise the implementation of the duties of a Notary Public. The term supervision is often heard in organizational activities, so there are many meanings of supervision itself. Supervision comes from the basic word awas which means being able to know carefully and thoroughly.

Siagian P. Sondang argues that supervision is all activities to ensure and guarantee that the tasks/works have been carried out in accordance with the predetermined plan. The wisdom that has been outlined and the orders (rules) given.

The regulation regarding the authority of the Regional Supervisory Council as described above is quite complete, but it does not mean that its implementation can take place smoothly, because it often faces various obstacles.

Obstacles/obstacles related to the implementation of the authority of the Regional Supervisory Council of the Notary District of Karimun Regency, among others, are related to:

- 1. Place factor:
- 2. Assembly membership factor;
- 3. Budget factor;
- 4. The factor of the number of Notaries in the jurisdiction of the Assembly; Reporting factor.

CONCLUSIONS AND RECOMMENDATIONS CONCLUSIONS

The legal regulation of the role and function of the Regional Supervisory Council on the implementation of the Notary position is contained in the legislation, namely the Notary Position Act. Besides, it is also regulated in several implementing regulations. In accordance with the provisions of Article 67 of the Law on Notary Positions, it is stated that the supervision of Notaries is carried out by the Minister by forming a Supervisory Council.

There are 2 (two) institutions in terms of fostering a Notary, namely the Notary Supervisory Council and the Notary Honorary Council. Judging from their understanding, the two Councils have the same authority in terms of carrying out guidance to Notaries.

There are several obstacles or obstacles related to the role and function of the Regional Supervisory Council on the implementation of the duties of a Notary ,first,, namely thethe place factornamely the Karimun Regency Regional Supervisory Council until now does not have a permanent and representative Secretariat office, the second is the budget factor, namely the lack of a budget. from the government for the operation of the Regional Supervisory Council of Karimun Regency in carrying out its supervisory and guidance functions, the three factors of the Assembly's membership are the limited time of the members of the Regional Supervisory Council of Karimun Regency who are too busy with their respective work or main tasks, the four reporting factors, namely the lack of community participation in the matter of reporting alleged violations of the Notary.

SUGESTION

The Regional Supervisory Council that has been formed and appointed in accordance with the mandate of the Law on Notary Positions can carry out their duties properly and with sincerity to supervise Notaries so that later Notaries can have high moral integrity in serving as public officials. And carry out their duties and positions really pay attention to noble values, dignity and ethics and comply with applicable laws and regulations.

The Notary Supervisory Council together with the Notary Honorary Council must cooperate and coordinate in making efforts to provide guidance to Notaries. In order to carry out the function of Supervision and Guidance of Notaries by the Regional Notary Supervisory Council of Karimun Regency properly, it is necessary to have a proportional budget to support the performance of the Notary Regional Supervisory Council of Karimun Regency both administratively and substantively.

Even though there are obstacles in the implementation of supervision and guidance to Notaries, it is hoped that with a high sense of devotion from the Regional Supervisory Council of the Notary District of Karimun Regency, they will set aside more time to carry out the tasks they carry out.

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