

The Role of the Regional Supervisory Board in Enforcing the Notary Position Law in East Lombok District

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Abstract: This research aims to analyze the role of the Regional Supervisory Board in enforcing the Notary Position Law in East Lombok District, and the forms of supervision carried out by the Regional Supervisory Board (MPD) over Notaries in the East Lombok region. This study is an empirical juridical legal research, which is legal research on the application and implementation of applicable laws in the existing community conditions. The results of the study show that the supervision carried out by the Regional Supervisory Board (MPD) over notaries in East Lombok District includes conducting seminars on notaryship and holding monthly meetings attended by the MPD and notaries to evaluate the performance of fellow notaries in East Lombok District, as well as conducting visits at least once a year to check the protocols of notaries. The Notary Position Law (UUJN) serves as a guideline for notaries in carrying out their duties and responsibilities. If notaries commit violations, the MPD reports them to the Regional Supervisory Board (MPW) to impose sanctions on the violations.

Keywords: Notary, Regional Supervisory Board, Authority, Supervision.

1 | INTRODUCTION

The profession of Notary in Indonesia has a fairly long history. Notaries have been present in Indonesia since the 17th century, or more precisely since August 27, 1620, when Melchior Kerchem served as the first Notary in Indonesia. At that time, Notaries did not have the freedom they do now because they were employees of the Dutch East Indies, unlike the current situation where Notaries are independent public officials. A notary is a specialized profession that requires extensive knowledge and heavy responsibilities to serve the public interest. The essence of the Notary's duties is to regulate in writing and authentically the legal relationships between parties who voluntarily seek the services of a Notary (Tan Thong Kie, 2007). In achieving legal objectives, one of which is legal certainty, every agreement made by the community requires a public official Notary who plays a role in making authentic deeds as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning

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the Notary Position (hereinafter referred to as UUJN). Legal certainty is essential for investment security, which provides certainty of agreements in fulfilling the rights and obligations of parties in economic cooperation or other important and valuable matters (GHS Lumban Toobing, 1983).

Notaries are no longer government employees but independent public officials authorized to make authentic deeds as long as this authority is not excluded to other officials. With the importance of Notaries in society, especially in the creation of authentic deeds used as evidence, Notaries have a position as public officials authorized to make authentic deeds and are also an extension of the government. Along with the Notary's accountability to the public in carrying out their duties, it must be ensured by continuous supervision and guidance from other parties to ensure that the duties and authorities of the Notary always comply with the legal principles underlying their authority and avoid misuse of authority or trust given by the government and society.

According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN), Notaries are public officials authorized to make authentic deeds and have other authorities as intended in this Law or based on other Laws. Based on the above article, it can be understood that a Notary is a public official specifically authorized by Law to create authentic evidence.

The existence of an institution or state agency must be based on legislation or determined by the law itself. Similarly, the existence of the notary institution must be based on applicable legislation (Salim HS, 2019). Supervision of Notaries aims to fulfill the requirements and carry out their duties by the provisions of the applicable laws for the protection of the general public interest. The main task of supervising Notaries is to ensure that all rights, authorities, and obligations given to Notaries in carrying out their duties as provided by the relevant basic regulations are always conducted in the prescribed manner, not only legally but also based on moral and professional ethics to ensure legal protection and certainty for society.

In West Nusa Tenggara (NTB), there are seven Regional Boards of the Indonesian Notary Association (Pengda INI) that have been formed, including the Mataram City Regional Board, the North Lombok Regency Regional Board (KLU), the West Lombok Regional Board (Lobar), the Central Lombok Regional Board (Loteng), the East Lombok Regional Board (Lotim). Meanwhile, in Sumbawa Island, there are only two Regional Boards, namely the Sumbawa-KSB Regional Board and the Dompu-Kota and Bima Regency Regional Board. In the NTB region itself, especially in East Lombok Regency, there has been observed significant growth of notaries. In some places, for example, there are Notary offices very close to each other. Furthermore, it is not uncommon to find Notary offices located opposite each other along the same street. This can certainly lead to unhealthy competition, which may cause Notaries to act improperly in carrying out their duties and authority by the applicable regulations.

Several cases of Notary misconduct, ranging from violations of professional ethics to criminal violations, have surfaced several times. One of these cases was reported in Kompas.com Magazine, edition of Friday, April 16, 2021, where a Notary in the East Lombok region was suspected of defrauding their clients. This indicates that regardless of the nature of their duties and responsibilities, Notaries are susceptible to legal issues, although their performance should ideally prioritize professional ethics according to the UUJN 2014 and applicable codes of ethics. Additionally, better supervision of Notaries by institutional entities regulated by the law is indeed necessary.

The supervision of Notaries, as defined in Article 1 paragraph 6 of the UUJN 2014, states that the Supervisory Board of Notaries, hereinafter referred to as the Supervisory Board, is a body authorized and obligated to provide guidance and supervision over Notaries. Article 69 of the UUJN 2014 also stipulates the elements of Notary supervision at the regional level, which is carried out by the Regional Supervisory Board (MPD). The authority of the MPD in providing guidance and supervision to Notaries at the regional level remains unchanged based on the UUJN 2014, aligning with the provisions of Law

No. 30 of 2004 concerning the Notary Position (hereinafter referred to as UUJN 2004). Therefore, Notaries need to be given attention regarding the enforcement of the code of ethics by the Supervisory Board of Notaries, especially at the district/city level, namely the Regional Supervisory Board (MPD), to build trust in the public regarding the creation of authentic deeds.

Based on the above background, the issues in this study are how the role of Notaries in carrying out their duties is according to the Notary Position Law in East Lombok Regency and the responsibility of the Regional Supervisory Board in supervising Notaries to prevent violations of the Notary Position Law by Notaries in East Lombok Regency.

2 | RESEARCH METHOD

This research method combines normative legal elements with the addition of empirical data. The normative-empirical research method aims to examine the application of legal regulations using legal concepts and theories as a basis but with a focus on direct observations of the field reality (Amiruddin and Zainal Asikin, 2020).

The approach used includes the statutory approach, conceptual approach, and sociological approach (Amiruddin and Zainal Asikin, 2020). The statutory approach is used to analyze various laws and regulations related to the role of Notaries in carrying out their duties according to the Notary Position Law in East Lombok Regency, while the conceptual approach is used to comprehensively analyze the concept of the role of Notaries in carrying out their duties according to the Notary Position Law in East Lombok Regency. The sociological approach is used to analyze the responsibility of the Regional Supervisory Board in supervising Notaries to prevent violations of the Notary Position Law by Notaries in East Lombok Regency.

The legal materials and data collection techniques used in this research include library research and field data collection. Library data is collected through document study techniques by examining literature books, legislation, official documents, and other library sources related to the research object. Meanwhile, field data is collected through structured interviews, which are planned interviews based on guidelines (Muhaimin, 2020). This field data is obtained directly from informants and respondents in the field.

The analysis used in this research is qualitative analysis, involving the selection and evaluation of collected data, both from interview results and data from library sources, which are then used as the basic sources in compiling this thesis. These data will be systematically organized and analyzed in-depth to produce valid findings and conclusions.

3 | DISCUSSION

1. The Role of the Regional Supervisory Board in Enforcing the Notary Position Law in East Lombok

The essence of the Notary's duties as a public official is to record in writing and authenticate legal relationships between parties who mutually request the Notary's services (Sjaifurrachman and Habib Adje, 2011). Whenever possible, the Notary must strive to ensure that the identities and information provided by the parties are genuine. The Notary may obtain this information from individuals known and trusted by them or may verify the parties' identities through documentation. However, suppose it turns out that the information provided by the parties is false. In that case, it is not the Notary's responsibility, as the Notary is only responsible for the formal accuracy provided by the parties. Therefore, the Notary's accountability for the deeds they create must be supported by a morally justifiable intention.

The authentic deeds produced by the Notary carry the meaning that they are perfect evidence of what is contained within them. In legal proceedings, judges rely heavily on evidence to reach a decision and

resolve cases definitively according to the law based on the evidence presented. Through evidence, legal truth and balanced protection of the parties' rights in litigation are expected to be achieved.

Any event that establishes a right must be proven by the party claiming that right, while any event that extinguishes a right must be proven by the party denying it. If no evidence is presented or insufficient evidence is presented in court, the claim for rights or lawsuits will be rejected or dismissed.

Therefore, the role of the Notary is to provide services to the public, to create authentic evidence with perfect probative force, to free or alert members of the public from fraud or malicious intentions of certain individuals, and to ensure the rights and obligations of the parties involved. Thus, there must be integrity and high moral standards between the Notary and the parties requiring the Notary's services to ensure legal protection and certainty. In civil litigation processes, one of the judge's duties is to investigate whether a legal relationship forming the basis of a claim actually exists. The supervision of Notaries is conducted by the Notary Supervisory Board (Petri, A.R, 2011). Article 66 paragraph (1) of the Notary Position Law states that for the interests of judicial proceedings, investigators, prosecutors, and judges, with the approval of the Regional Supervisory Board, have the authority to:

- a. Take photocopies of the Deed Minutes and/or Letters attached to the Deed Minutes, or the Notary Protocol in the notary's custody.
- b. Summon the notary to appear for examination regarding the deeds they have made or the Notary Protocol in the notary's custody. Regarding the summons of a notary as a witness in court proceedings, whether civil or criminal cases, especially in relation to the deeds they have made, can the notary demand the application of the provision stated in Article 50 of the Criminal Code, which stipulates that whoever performs an act to enforce the law shall not be punished.

The point is that anyone who acts in accordance with a legal regulation cannot or should not be punished. The issue depends on whether the immunity granted to them by the law is merely a right or a duty and whether there is a higher interest involved in this matter.

According to the statement of Notary Hapsan on August 23, 2023, if a client makes an agreement, the notary is obligated to explain the consequences that will occur in the future, both positive and negative. If it is considered detrimental to one party, the authentic deed can be canceled in front of the notary.

If a notary creates an authentic deed and includes something in it that is not as instructed by the parties, then based on Article 1365 of the Civil Code, the Notary can be said to have acted unlawfully. If the consequences of their actions result in harm to another person or their client, the Notary is obliged to pay compensation for the resulting damage.

Furthermore, according to Notary Hapsan, all types of legal regulations are made to balance the interests of various parties in pursuing their respective interests. In carrying out their duties and responsibilities, Notaries are not immune from mistakes because humans are not perfect. Therefore, Notaries must prioritize caution to minimize the possibility of errors, as the deeds they create will be held accountable for the rest of their lives. Even after their death, Notaries are held accountable for the authentic deeds they have made through the protocols they have established.

Generally, the contractual relationship of Notaries is governed by Article 1320 of the Civil Code Book which requires 4 (four) conditions to be valid:

1. Agreement by the parties involved;
2. Capacity to enter into a contract;
3. A specific subject matter;
4. A lawful cause.

Compliance with the Notarial Law is undoubtedly a necessity for Notaries as they are bound by their oath and their role as legal professionals. The legal professional guidelines serve as a reference for Notaries in carrying out their duties and responsibilities in daily life, aiming to align with the Notary Position Law formulated based on existing legislation and also the Notary organization under which Notaries are affiliated. These guidelines constantly serve as a reference for Notaries in performing their duties. Several Notaries in East Lombok Regency express the same sentiment, emphasizing the need to adhere strictly to the Notary Position Law in carrying out their professional duties.

Based on an interview with Johan on August 9, 2022, it was conveyed that in exercising his authority, Notaries have optimally implemented the Notarial Law (UUJN), although the common issue encountered is when handling clients, where often the desires of the parties in the deed do not comply with existing regulations. However, when faced with such clients, Johan strives to explain that such actions cannot be done and would pose problems in the future, as they would violate the existing rules and laws, especially the Notary Position Law (UUJN).

As seen in the case of the violation of duties committed by the Notarial Officer in East Lombok Regency on Friday, April 16, 2021, which, according to Kompas news website, "Notarial Officer in East Lombok Regency Allegedly Commits Fraud Against Clients." According to HR, the number and extent of the losses suffered by the victims may increase. This is because the perpetrator's modus operandi during the act varies, among them is enticing the victim to complete the certificate request quickly, but in reality, the Notarial Officer absconded with a sum of money already handed over by the victim.

"Not only that, another modus operandi employed by the perpetrator is offering to help sell the object to be certified, claiming to have many acquaintances among the National Land Agency (BPN) officials and the money handed over has supposedly been distributed to these officials," said the perpetrator during the interview. However, after the victim handed over the money, it was used for personal purposes.

Thus, the violation committed by the Notarial Officer in question has breached the provisions of the Notarial duty as stipulated in Article 16 of the Notary Position Law regarding Amendments to Law Number 30 of 2004 concerning Notary Positions.

Article 16 paragraph (1) states: In carrying out their duties, Notaries are obliged to:

- a. act with trustworthiness, honesty, diligence, independence, and impartiality, and safeguard the interests of the parties involved in legal actions;
- b. draft Deeds in the form of Deed Minutes and keep them as part of the Notarial Protocol;
- c. attach letters and documents as well as the thumbprints of the appearing parties to the Deed Minutes;
- d. issue Authenticated Deeds, Deed Copies, or Excerpts of Deeds based on the Deed Minutes;
- e. provide services by the provisions of this Law, unless there are reasons to refuse;
- f. maintain confidentiality regarding all matters related to the Deeds made and all information obtained for the preparation of the Deeds, as sworn/pledged in their oath, unless otherwise provided by law;
- g. bind the Deeds made within 1 (one) month into a book containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be accommodated in one book, the Deeds may be bound into more than one book, and record the number of Deed Minutes, month, and year of their creation on the cover of each book;
- h. create a list of Deeds of protest against unpaid or unaccepted securities;
- i. Create a list of Deeds related to wills in chronological order of the Deeds made each month;

- j. send the list of Deeds as referred to in point i or a nil list related to wills to the central registry of wills at the ministry responsible for legal affairs within 5 (five) days in the first week of each subsequent month;
- k. record in the repertory the date of sending the will list at the end of each month;
- l. have a seal or stamp containing the emblem of the Republic of Indonesia and in the surrounding space, write the name, position, and place of residence of the respective person;
- m. read the Deed in the presence of the appearing parties, attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of handwritten wills, and signed at that time by the appearing parties, witnesses, and Notary; and
- n. accept internships from prospective Notaries.

Based on the author's analysis, the Notary has violated the provisions of Article 16 paragraph 1 letter a, which stipulates that Notaries must be honest, trustworthy, diligent, and so forth, in carrying out their official duties, and must not harm the parties (clients). Because the obligations and responsibilities inherent in a Notary's role are heavy, related to the dignity and stature of a public official entrusted by society with the authority they possess.

2. The Responsibility of the Regional Supervisory Board in Supervising Notaries to Prevent Violations of the Notary Position Law by Notaries in East Lombok Regency.

The Notary Supervisory Board is a body with the authority and obligation to carry out supervision and guidance of Notaries. In accordance with the provisions of Article 67 of Law Number 30 of 2004 concerning Notary Positions as amended by Law Number 30 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, which stipulates that supervision of notaries is carried out by the Minister by forming a Supervisory Board consisting of Regional Supervisory Boards, Regional Supervisory Boards, and Central Supervisory Boards.

Supervision of Notaries entails the implementation of duties to guide and supervise the performance of duties and behavior of Notaries. These tasks are carried out by the Notary Supervisory Board as an extension of the Minister of Law and Human Rights.

To improve the work and role of the Notary Supervisory Board as a means of disseminating information and knowledge, it is deemed necessary to establish guidelines for the Notary Supervisory Board in the hope that it can serve as a guide for the Notary Supervisory Board in conducting measured, transparent, effective, and efficient supervision, thus creating a common understanding for the Notary Supervisory Board in carrying out its duties and authorities.

As Supervisors and Guides of Notaries, the Supervisory Board has the authority to:

1. Conduct Supervision in the form of monitoring and evaluation related to the implementation of duties and functions of notaries in their working areas;
2. Guide the administrative implementation of notarial duties;

Authorities of the Notary Supervisory Board

The Administrative Authority of the Regional Supervisory Board, which does not require the approval of the regional Supervisory Board meeting, includes:

- 1) Granting leave permits for notaries for a period of up to 6 months.
- 2) Appointing substitute notaries while considering the proposals of the respective notaries.
- 3) Receiving reports from the public regarding alleged violations of the notary's code of ethics or violations of provisions in the law.
- 4) Maintaining the confidentiality of the contents of deeds and examination results.

- 5) Receiving certified copies of deed registers and other registers from notaries and keeping them confidential.
- 6) Recording in the register book, including the notarial protocol, by stating the examination date, the number of deeds, and the number of underhand letters certified and made since the last examination date.
- 7) Creating and submitting reports to the Regional Supervisory Board.

Johan, as a member of the Regional Supervisory Board in East Lombok Regency, explained that the preventive supervision conducted by the Notary Supervisory Board in overseeing notaries in carrying out their duties is aimed at preventing violations of notary powers. The forms of implementation include, firstly, holding seminars on notarial matters to increase knowledge and provide information about the notary world and holding monthly meetings attended by the Regional Supervisory Board aimed at guiding notaries to comply with the Notary Position Law and Code of Ethics, as well as conducting visits to notary offices to check notarial protocols at least once a year (interview with Johan, Member of the Notary Supervisory Board in East Lombok Regency).

The imposition of sanctions is also adjusted according to the severity of the violation. If a notary commits a violation of the code of ethics or the Notary Position Law that does not harm the public materially, the notary is given a warning and first undergoes guidance. The Notary Honorary Council or the Notary Supervisory Board informs the respective notary that they have committed a violation as regulated by regulations or the code of ethics and provides explanations and appropriate solutions to prevent future violations.

The preventive supervision conducted by the Notary Supervisory Board to prevent violations of the Notary Position Law is done through the reflection of the notarial profession's Code of Ethics to provide material related to the execution of notarial duties, holding seminars, and the Notary Supervisory Board visiting notary offices at least once a month to check notarial protocols. Johan also mentioned that the form of preventive supervision conducted is passive, meaning that supervision is based on reports from the public accompanied by various evidence.

Notary Fanniyah, as a notary and member of the Notary Honorary Council, stated that the preventive supervision conducted by the Notary Supervisory Board to prevent violations of the Notary Position Law is only by increasing knowledge about notarial matters, holding seminars, visiting notary offices at least once a year to check the protocols conducted by the Regional Supervisory Board, holding monthly meetings to coordinate notarial duties. The aim of supervising notaries is to ensure that notaries meet as many requirements as possible. These requirements are not only based on laws or regulations but also on the trust given by clients to the respective notaries. The purpose of supervision is not only aimed at arranging the Code of Ethics but also for broader purposes, namely to ensure that notaries fulfill the requirements set by the law for the security of the public interest they serve.

Based on the above description, it can be observed that there are several ways in which the Notary Supervisory Board supervises to prevent violations of notarial duties. This includes holding seminars on notarial matters, holding monthly meetings attended by the Regional Supervisory Board to guide on complying with the Notary Position Law, and requiring notaries to continue to expand their knowledge of notarial matters. The Regional Supervisory Board also visits notary offices at least once a year to check notarial protocols.

The supervision that the Notary Supervisory Board can carry out to prevent violations of the notarial duties is only passive. The supervision only waits for reports from the public without monitoring each notary individually. Notaries suspected or proven to have violated their duties are only given guidance in the form of sanctions, but the imposition of sanctions is also adjusted according to the severity of the

violation. If a notary commits a minor violation, then the Notary Honorary Council or the Notary Supervisory Board will provide a verbal warning and offer solutions or guidance to prevent future violations.

Notary Syekh Alkaff., S.H., according to an interview conducted at the notary's office on August 21, 2023, stated that the supervision carried out by the Regional Supervisory Board has been optimal. If there are actions that do not comply with the Notary Position Law, then the Regional Supervisory Board does not hesitate to give verbal warnings to the respective notaries. Thus, in facing the rapid growth of notaries in East Lombok Regency, compliance and awareness from each notary are required.

Furthermore, Notary Syekh Alkaff., S.H. revealed that the Regional Supervisory Board provides guidance but cannot impose sanctions on notaries who violate the Notary Position Law; they can only recommend sanctions to the Honorary Council. However, for more optimal supervision, there is a need to increase the number of Regional Supervisory Board members because the current number does not match the ratio of notary growth in East Lombok Regency, as the current supervision is still suboptimal.

In line with the above, Johan., S.H., M.H., hopes for more detailed supervision for the accountability of the Regional Supervisory Board for the deeds made by notaries and to provide solutions to notaries in carrying out their duties. The accountability of the Regional Supervisory Board to prevent violations of the Notary Position Law by notaries in the East Lombok Regency needs to be adjusted to the number of notarial positions in several areas in the East Lombok Regency. Indeed, there should be regulations on standardizing the number of supervisors within a certain distance from a notary's office to anticipate unhealthy competition.

Furthermore, Johan., S.H., M.H. outlined the responsibilities performed by the Regional Supervisory Board (MPD), one of which is regularly inspecting notaries in East Lombok Regency according to the schedule and providing input and advice to notaries detected to deviate from the Notary Position Law, as well as assisting notaries facing obstacles in carrying out their daily tasks and obligations. They also summon notaries reported by the public for issues deemed to be committed by the notaries.

According to the chairwoman of the MPD, Hj. Fanniyah., S.H., who was interviewed on August 21, 2023, the implementation of supervision tasks by the Regional Supervisory Board has been well executed. They carefully supervise, such as monthly reports and inspections of notarial protocols for the deeds they produce. Inspections are carried out periodically, once a year, or whenever necessary, to ensure alignment between notarial performance and public satisfaction with notarial services.

Sanctions for notaries who violate their duties can take the form of civil, criminal, or administrative penalties. If a notary continuously violates their duties under the supervision of the Regional Supervisory Board, they may be subject to sanctions as regulated in the UUJN:

- a) Written warnings
- b) Temporary suspension
- c) Honorable discharge
- d) Dishonorable discharge

According to information from Notary Hapsan, a member of the Regional Supervisory Board, the sanctions imposed by the Regional Supervisory Board of East Lombok Regency only consist of verbal warnings.

Facing the challenge of client ignorance, which often makes it impossible to comply with existing rules, poses a challenge and obstacle to the performance of a notary. This is acknowledged by Notary Fanniyah, who is also a Notary in East Lombok and the chairwoman of the Regional Supervisory Board.

Although the authority and performance of notaries have been effective so far, there are often some obstacles in implementation due to certain authority provisions that, in reality, cannot be fully implemented by notaries, as stated in Article 15 (5) f.

4 | CONCLUSION

The role of notaries in carrying out their duties according to the Notary Position Law in East Lombok Regency is in line with the regulations outlined in the Indonesian Law Number 30 of 2004 concerning Notary Position, which has been amended by Indonesian Law Number 2 of 2014 concerning Amendments to the Indonesian Law Number 30 of 2004 concerning Notary Position (both referred to as UUJN).

The Regional Supervisory Board supervises the performance of notaries in the East Lombok Regency by conducting regular and periodic supervision, as well as holding seminars to increase knowledge about notarial matters. The Regional Supervisory Board also conducts visits to perform protocol inspections and holds regular meetings as a form of refreshing notarial knowledge for notaries in the East Lombok Regency.

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