

Role and Assembly Supervisory Authority of Surakarta's Notary in The Supervision of Notary

Agil Arya Rahmanda¹ and Maryanto²

Abstract. Notaries have the legal authority for the preparation of an authentic deed. To improve the quality and quantity of a Public Notary, apply to the Notary, namely Regulation No. M.02.PR08.10 Menkumham of 2004 on the Supervisory Council of Notaries. The purpose of this study was to determine the technical supervision of Notary conducted by MPD Surakarta, Role and Functions of MPD Surakarta and to determine the effectiveness of supervision MPD Surakarta in implementing the Notary supervision in the region. In this study the authors use empirical juridical approach, whereas the method of data collection using interviews and literature. The results showed that the supervision of a Notary by MPD Surakarta include: examination Notary protocols, guidance and counseling, giving approval / consent with respect to the interests of the criminal justice process to call and check Notary deed relating to the making. Notary performance Surakarta, among others: Notary of Surakarta less orderly in the making and reporting Notaries protocols, Notary unknown where the position / office address, and notaries who are rarely in the office so it was hard to see him. Barriers experienced by MPD Surakarta, among others: lack of equipment and adequate infrastructure, the limited time the members of the MPD Surakarta busy with the duties of each, a limited budget, MPD does not have the authority to impose sanctions against notaries who violate of Notary.

Keywords: MPD Authority; Oversight of Notary; Notary Development.

1. Introduction

Notary is a public official who may be appointed by the State to do the state duties in the law services to society in order to achieve legal certainty as official deed maker Authentic in the civil case. The deed itself is set in the Civil Code Article 1868 is a deed made in the form specified act by or in the presence of authorized Public Officials contains agreement or willingness of the parties.

Notary products are office products that are expected to provide legal certainty to the parties. Notary Deed does not require an additional proof, because it is authentic. Given the importance and strategic notarial deed of the Notary deed must be made carefully, meticulous and careful. Notary as positions of trust does not mean anything if it turns out they were performing their duties as a notary office as people who can not be trusted, so that, inter notary office and its officials should be in line like two eyes of the money can not be separated³.

Notary is a profession that runs most of state power in the field of private law and has an important role in creating the authentic act that has the strength of evidence is perfect and therefore an office notary office of trust, then a notary must have good

¹ Master of Notary Law Sultan Agung Islamic University (Unissula) email rahmandaarya@gmail.com

² Lecturer of Faculty of Law Unissula Semarang

³ Habib Adjie, 2008, *sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, PT. Refika Aditama, Bandung, p.35

behavior⁴. Hence the importance of the role and services of a notary in the field of traffic law, particularly for legal acts in the field of civil law in the life of society, it is necessary to develop and supervise continuously against a Notary performing his respective duties so that institutions Notary run in accordance with ethical and legal valid and protected from abuse of authority or trust placed. The purpose of the monitoring is expected to be a Notary in running the office, do not take advantage of his profession and to act in accordance with the applicable legislation in Indonesia. Because any authority granted to the position should be no rule of law⁵. Supervisory Council is a body that has the authority and obligation to implement the guidance and supervision of a Notary. Supervision of the Notary intended for Notaries in performing his respective duties shall be based on and follow the laws and regulations governing the Notary office. Notaries in performing his respective duties shall be adhered to and based on the legislation governing the Notary is attached, meaning that all the things mentioned in the legislation governing mandatory Notary.

Seeing the development of the Notary profession that is increasingly dynamic, both in terms of legal regulations with regard to the profession or office of Public Notary, Notary must be careful in carrying out his profession in order not to stumble legal problems as are often found in Indonesia. Therefore, the effectiveness of supervision become a very important thing to be done by a panel of supervisors Notary well in local level, regional or central. Assembly area supervisors have an important role for Notaries shaded area because the area has a supervisory panel of the scope of authority held a hearing to examine the alleged violation of Notary Code, breach of execution Notary office, and the behavior of the Notary outside run Notary of their office as to interfere with or affect the implementation of the Notary office tasks. Based on the background mentioned above, the authors are interested in doing further research to be manifested in a study entitled: "Role And Assembly Supervisory Authority Of Surakarta's Notary In The Supervision Of Notary".

Research methods

This research is descriptive, which is a research method that simply depict or describe the state of the object to be studied⁶. Empirical juridical approach, namely to identify and conceptualize law as a social institution rill patterned functional life⁷. Sources of data obtained through interviews and literature study.

2. Results And Discussion

2.1 Supervitory Technic that used by MPD Surakarta to the Duties Performance of Notary

⁴ Liliana Tedjosaputro,1994, *Etika Profesi Notaris Dalam Penegakan Hukum Pidana* Bigraf Publishing, Yogyakarta, p.5

⁵ Philipus M.Hadjon & Tatik Sri Djatmiati, 1997, *Tentang Wewenang*, Majalah Yuridka edisi V, Surabaya, p.1

⁶ Winarno Suharman, 1989, *Dasar Teknik Riset*, Tarsito, Bandung, p. 26

⁷ Roni Haryanto, 1990, *Motodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia. Jakarta, p. 34

Notary supervision, which in English is called by the supervision notary whereas in the Dutch language is called *supervisie de notary* has a very important role in order to see and consider the tasks and notary authority. Without supervision, the Notary will do things that are not wanted. Notary supervision consists of two syllables, namely: supervision and notary⁸. Supervision is defined as (1) surveillance and maintenance, (2) viewing and briefing. 1. Concept supervision in this focused on surveillance. Surveillance should be defined as a process, method or action you view, control or inspection. 2. Given conceptualized as (1) look intently, observing, (2) supervise, inspection⁹.

According to Article 67 of Act No. 30 of 2004 concerning Notary who became supervisor to oversee all tasks and positions the Notary is set in is the Minister. As an implementation of the provisions of Article 67 of Act No. 30 of 2004 concerning Notary, then followed up with the Regulation of the Minister of Law and Human Rights M.02.PR.08.10 No. 2004 on Procedures for the Appointment of Members, Termination, Organizational Structure Working Procedures and Inspection Procedures Notary Supervisory Council. While Article I point 5 of the abovementioned regulation, the notion of control is preventive actions and curative including development activities undertaken by the Supervisory Council of the Notary.

There are two Notary Supervisory authority in this definition, which includes the guidance and supervision. According to Article 1 point 5 Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number: M.02.PR.08.10 2004 on the Procedure for the Appointment of Members. Dismissal of Members, Organizational Structure and Work Procedure Inspection Procedures Supervisory Council, the notion of supervision is the activities of a preventive and curative including development activities undertaken by the Supervisory Council of the Notary.

Supervision will be undertaken MPD to the Notary is set in UUJN No. 30 of 2004, namely:

- held a hearing to examine the alleged violation of the code of conduct notary office;
- receive reports from the public regarding the alleged violation or breach Notary Code provisions in the Law on Notary;
- public notary to examine the report and deliver the results of the investigation to the Regional Supervisory Council within 30 (thirty) days, with a copy to the party reporting, a notary is concerned, the Supervisory Council of the Center, and the Organization of Notaries;
- conducting meetings or discussions regularly with members of the association;
- invite or call the office of Public Notary violated;
- notary monitor problematic and reported by the violation.

In addition to conducting surveillance, the MPD Surakarta also conduct coaching and counseling to the Notary of Surakarta for the implementation of his task and be in

⁸ Salim, Hs, 2016, *Teknik Pembuatan Akta Satu*, PT. Rajagrafindo Persada, Jakarta, p.205

⁹ *Ibid*

accordance with UUJN and legislation else so as not to harm themselves or the Public Notary service users¹⁰.

Notary dialing mechanism by the police investigators, prosecutors or judges with its status as a witness / suspect in the case certain advance party sent a letter Investigator License Application to Conduct Inspection Notary called MPD region resident. On the basis of a summons from the investigators, and then MPD formed a small team consisting of three (3) members consisting of individual elements (elements of Notaries, Elements Academics, and Elements of the Government) to call and examine Notary concerned with regard to the principal case described in the Investigator summons¹¹.

If the inspection found violations of the Notary deed made, the MPD may grant approval to the investigators to call the Notary concerned. Conversely, if the examination is done MPD not found violations in deed, the MPD may reject the application for the investigators to call the Notary concerned¹². However, since the issuance of the Decision of the Constitutional Court of the Republic of Indonesia Number 49 / PUU-X / 2012 on March 28, 2013, on Testing of Article 66 paragraph (1), Act No. 30 of 2004 concerning Notary, calling Notary by investigators, prosecutors or judge to be present in the examination relating to the deed of the notary who made or protocols that are in storage notary today no longer need to seek approval from the MPD.

2.2 Role And Assembly Supervisory Authority Of The City Surakarta's Notary In The Supervision Of Notary's Workings of the Notary Office.

MPD formation Surakarta is an implementation of article 67, Act No. 30 of 2004 concerning Notary (UUJN), which requires that the need for the establishment of a body that exercises oversight of the Notary in the areas. Notary oversight bodies in question is the MPP Central Supervisory Council), Regional Supervisory Council (MPW), and the Regional Supervisory Council (MPD). MPD Surakarta legal domicile in the city of Surakarta by having its office at Jl. Slamet Riyadi No. 18, Surakarta. Office of MPD Surakarta City still a part of the House of Detention class I Surakarta¹³.

The role of the Supervisory Council is crucial in fostering and overseeing the ongoing Notary office of behavior in conducting their personal self and outside of his office as a spearhead to ensure legal certainty to people who use services Notary. MPD Surakarta was instrumental in the supervision of the Notary, so that in carrying out his duties did not deviate from its authority and did not violate applicable laws and regulations, in addition also carry out supervision, inspection and sanctions against Notaries, while its function is that all rights and authorities as well as obligations given to the Notary in

¹⁰ Interview with Mrs. Umy Syamsiyah, S.H., as a member MPD Surakarta, 21 September 2018

¹¹ Interview with Mrs. Septarina Budiwati, S.H., M.H., as a member MPD Surakarta from Academic, 21 September 2018

¹² *Ibid.*

¹³ Yonart Nanda, 2013, *Pelaksanaan Pengawasan Notaris Oleh Majelis Pengawas Daerah (Mpd) Berdasarkan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris (Studi: MPD Kota Surakarta)*, Naskah Publikasi, Universitas Muhammadiyah Surakarta, p. 17

the running of their office as provided by the rules legislation in force, always performed on a predetermined path, not only legal, but also on the basis of moral and ethics for the sake of ensuring the legal protection and legal certainty for those who need it. Not less important is the role of the public to oversee and always report the Notary act in carrying out his duties are not in accordance with the applicable law to the local Notary Supervisory Council. With reports such as this can eliminate Notary actions that are inconsistent with the rule of law implementation Notary office tasks.

The role and function of another MPD Surakarta City based on Article 66 UUJN was given approval / permission to the investigator, prosecutor, or judge, linked with the interests of the criminal justice process to call and check Notary Surakarta relates to a deed made or protocols that are in storage Public Notary. MPD Surakarta also can give consent to the investigator to take copies Minuta Deed and or letters attached to Minuta Deed or the Protocol Notary Notaries in storage which incidentally is confidential archives.

2.3 Effectiveness of the Oversight Conducted by the Regional Supervisory Council of Surakarta City of the Workings of the Notary office

Based on the interviews that have been conducted¹⁴, violations committed notary in Surakarta during this time: (1) unfair competition by means of a price war and criticizing each other or each other down; (2) self-promotion by stating the name and title, make the sign does not conform to ethical standards notary; (3) act less neutral to both sides of the client; (4) most notaries do not attend meetings or gatherings; (5) a number of notaries to witness and alleged suspects in the court, and there is a notary who is not willing to appear as a witness in court; (6) notaries who do not master the art.

Implementation guidance and counseling were conducted MPD Surakarta is considered optimal, particularly in the field of ethics Notary coaching. While coaching is done MPD new Surakarta about coaching in the field of substance deed or administration, and even then in practice rarely done¹⁵. In addition there are some Notaries Surakarta less orderly in the making and reporting protocols Notary to MPD Surakarta each month, such as a list of the number of deed, listing the amount of the letter under the hand that was passed, the list of the number of letters under the hands of the recorded list of the number of letters of protest, list the number of applicant names/Klapper, list the number of wills, etc. that must be reported to the MPD a Public Notary in every month. While the results of the MPD to the notary in Surakarta, no Notary Surakarta criminal or administrative offense. However, once there is a case that the MPD Surakarta received from society reports that the notary suspected do a false statement in the deed, but the case is still in the process of trial and has not been decided by the judge¹⁶.

¹⁴ Interview Dra. RR.Sri Widyaningsih, SH, M.Hum.,M.A, 21 September 2018

¹⁵ Interview Amanda Lestari Lubis one of notary in Surakarta, 22 September 2018

¹⁶ *Ibid.*

However, the effectiveness of Surakarta Notary performance based on the results of oversight by MPD Surakarta, on average, in accordance with UUJN, while for some notaries who lack order in the execution of their office will always be given guidance and counseling by MPD Surakarta. Efforts will be made by the MPD Surakarta in the framework of guidance and supervision of a notary in Surakarta, is to implement surveillance that is both preventive and curative, namely the prevention of violations of the Notary office and to provide guidance to the Notary itself. In carrying out the supervision and guidance Notary in Surakarta conducted by MPD Surakarta, its implementation does not always run smoothly according to what is stipulated in UUJN. In terms of infrastructure, MPD Surakarta until now has offices and representative of secretary fixed. While current MPD Surakarta office still a part of the House of Detention class I Surakarta.

The limited time MPD members are too busy, Lecturer, Notary and servants in agencies, so that it would also be an obstacle with regard to the division of time between the profession of origin with its obligations as a member of MPD Surakarta.

Operational budget from the government for MPD Surakarta in carrying out the functions of supervision and coaching are not enough to support the activities of the MPD. With a minimal budget, the members of the MPD Surakarta in carrying out its supervisory duties carried out voluntarily.

The lack of public participation in reporting suspected violations of the Notary due to limited access. It can be seen from the lack of public reports coming in MPD Surakarta. MPD working area of Surakarta covering the entire territory of Surakarta very wide and the number of Notaries Surakarta pretty much reached 75 Notary, not comparable with the number of members of the MPD which only amounted to 9 people. This can be an obstacle in the implementation and supervision of Notaries¹⁷.

Lack of awareness of the law of some Notary Surakarta mainly administrative in submitting reports of disorder in reportorium of Notary.

The measures undertaken to address the MPD Surakarta these barriers include:

- Office infrastructure especially MPD Surakarta temporarily borrowing space in one corner of the building house
- Prisoners class I Surakarta and also borrowed some tools from the Indonesian Notary Association (INI).

Preparation of a commitment or agreement in the form of coordination of the members of the MPD Surakarta to take and pick the right time together gather inspection and supervision of Notaries.

With the budget constraints of the government, the members of the MPD Surakarta using self funding of each bag voluntarily to fund activities Notary examination although there is little additional budget from the government. Disseminating information and open access to the public who wish to report any violations of the regulations on the Notary¹⁸.

¹⁷ Interview with Mrs. Umy Syamsiyah, S.H., *Loc. Cit.*

¹⁸ *Ibid.*

Provide guidance and socialization about the need for legal awareness for Notary in order to be obedient and submissive to UUJN and legislation else about the Notary office.

3. Closing

3.1 Conclusion

From the discussion above it can be concluded as follows:

- Technical supervision by the MPD Perform routine activities such as inspection protocols Notary every 1 (one) year to the offices of Surakarta's Notary, Conducting coaching and Notarial counseling to Surakarta for the implementation of his task and be in accordance with UUJN, giving approval / permission to the investigator, prosecutor, or judge, connected with the interests of the criminal justice process to call and check Surakarta Notary deed relating to the make, receive reports / complaints from the public about alleged violation of UUJN Notary.
- MPD Surakarta contributes to the supervision of the Notary, so that in carrying out his duties did not deviate from its authority and did not violate applicable laws and regulations, in addition also carry out supervision, inspection and sanctions against Notaries, while its function is that all rights and authorities as well as obligations given to the Notary in the running of their office as provided by the legislation in force.
- Performance of Surakarta's Notary effectiveness based on results of monitoring by MPD Surakarta, on average, in accordance with UUJN, while for some notaries who lack order in the execution of their office will always be given guidance and counseling by MPD Surakarta.

3.2 Suggestion

1. With the supervision conducted against a Notary, the Notary should be able to become a professional public official in his post, as well as carrying out his duties and always pay attention to the noble values, dignity and ethics and comply with laws and regulations in force.
2. MPD as the spearhead of the Supervisory Council of Notaries in this case MPD Surakarta should strive to be more creative and careful in making efforts so that the role of guidance and supervision of the Supervisory Council can be maximized. Apart from being the responsibility of MPD, Notaries are also required to disseminate to the public in connection with the duties and obligations of the profession being run.

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