

The Authority of the Notary Supervisory Council in Handling Alleged Violations of the Code of Ethics Based on Decision Number: M.03/Pts/Mj.PWN Prov Riau/09/2023



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ABSTRACT: The notary supervisory board is a body that has the authority and obligation carry out guidance and supervision of notaries, regulated in Law Number 2 of 2014 concerning the Notary Position. The supervisory board also has the authority to examine violations of the notary position and code of ethics. The formulation of the problems raised in this research includes, how the authority of the notary supervisory panel in alleged violations of the code of ethics based on Decision Number: M.03/Pts/Mj.PWN Prov Riau/09/ 2023. The research method uses a type of normative legal research, with a statutory approach and a case approach. The results of the study concluded that the notary supervisory board has exercised its authority in accordance with the Notary Position Law and Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Supervisory Board Examination of Notaries in prosecuting violations of the code of ethics based on decision Number M.03/Pts/Mj.PWN Prov Riau/09/ 2023, namely that a supervisory board has been formed to examine violations of the notary position and code of ethics with a lined scope of work, namely the regional examining board, regional examining board and central examining board, issuing examination results by imposing sanctions on notaries in the form of administrative sanctions in the form of the first written warning.

KEYWORDS: Notary Supervisory Council, Authority, Violation Of The Code Of Ethics.

INTRODUCTION

Notary is a profession that carries out part of the state's power in the field of private law and has an important role in making authentic deeds that have perfect evidentiary power and the position of notary is a position of trust, where a notary must have good behavior (Darus M.L.H 2017). The professional position of notary has been regulated in Law Number 30 of 2004 concerning Notary Position in conjunction with Law Number 2 of 2014, hereinafter referred to as UUJN. Article 1 point 1 of the Notary Position Law states that a notary is a public official who is authorized to make authentic deeds and has other powers as referred to in the Notary Position Law and other laws. the presence of the position of notary is desired by the rule of law with the intention of assisting and serving people who need written evidence that is authentic regarding the circumstances of events or other legal acts (Habib Adjie 2008).

Notaries are required to carry out their duties and positions with full responsibility, trustworthiness, honesty, thoroughness and independence, notaries are prohibited from considering only for personal interests. The community needs someone who is competent in their field who can provide legal certainty and legal protection so that the need for notary services increases (Habib Adjie 2013). In carrying out their duties as public officials, notaries are prone to abuse of their positions so that they can harm the parties involved, forms of violations include, promoting through social media, making copies of deeds that are not in accordance with the minutes and signboards that are not in accordance with what has been regulated by the notary code of ethics, these violations violate the Notary Position Law and the notary code of ethics. The code of ethics is a moral rule determined by the Indonesian Notary Association as stipulated in the applicable laws and regulations for and must be obeyed by any and all members of the association and all persons carrying out the duties of a notary office, including temporary notaries, substitute notaries. With this code of ethics, notaries can carry out their duties with morals and dignity and can uphold the values of the prevailing norms (Addulkadir Muhammad 1997).

One form of violation of the notary position and code of ethics appears in the decision issued by the Regional Supervisory Council with Number: M.03/Pts/Mj.PWN Prov Riau/09/ 2023, The chronology of the case is that it starts with notary X borrowing money from A in the amount of Rp. 78,000,000.00 (seventy-eight million rupiah), which will be paid by notary X to A within 2 (two) months. Notary X and party X made an agreement in the form of a debt and credit agreement signed on April 17, 2023. Notary X provided collateral in the form of the original certificate of Building Rights Title Number: 01056/Tanah Merah, in

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the name of DJ but the certificate was not in the name of notary X. Since the signing of the debt and credit agreement, Notary X has not made any payments towards the debt. In the agreement, the debt and credit agreement has been legalized by notary X as the debtor and as a notary.

This case shows that the notary X has violated the Notary Law and the notary code of ethics. In this situation, the notary was found to be using his authority for personal gain, namely legalizing the debt and credit agreement. Article 15 paragraph (1) of the Notary Position Law, notaries are authorized to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations that are desired by interested parties to be stated in an authentic deed. The authority of a notary is not only to make authentic deeds but also has the authority to certify signatures by registering them in a special book, this is in accordance with Article 15 paragraph (2) letter a of the UUJN. The party making this agreement signs in front of a notary, so the date and signing of the document is the same as the date of legalization from the notary. The legalization is that the notary guarantees the validity of the signatures of the parties involved (Willa Wayuni 2023).

Based on this description, it is very important to supervise the notary profession so that it can carry out its duties and authorities in accordance with the notary office law and the notary code of ethics. The supervision aims to minimize the abuse of the notary position against the interests of clients who use notary services so that it is necessary to conduct an in-depth study of the authority of the notary supervisory board in handling alleged violations of the code of ethics, especially based on Decision Number: M.03/Pts/Mj.PWN Prov Riau/09/ 2023.

METHOD

This research uses normative legal research methods, namely research that examines positive legal provisions and legal principles (Murzaki, P.M 2009). In this case, it examines the authority of the notary supervisory board in handling alleged violations of the code of ethics based on Mpw Decision Number: M.03/pts/Mj.PWN Prov Riau/09/ 2023. The approach used is legislation and case approach. The source of legal material for this research is primary legal materials, namely binding legal materials, such as Law Number 2 of 2014 concerning the Position of Notary, Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Supervisory Panel Examinations of Notaries and the Notary Code of Ethics. Secondary legal materials are materials that provide an explanation of primary legal materials such as books, research results, scientific journals, articles and opinions of experts. Tertiary legal materials are materials that can provide guidance and explanation of primary and secondary legal materials. After the necessary data is collected, the legal material is processed and analyzed using the deductive method, which is based on basic principles which the researcher then presents the object to be studied. The author draws conclusions from general rights to specific things. In a deductive thinking pattern, there are two premises for analyzing legal issues, namely major premises which are applicable legal rules and minor premises which are legal facts or conditions of a legal rule which are then drawn to a conclusion (Jonaedi Efendi & Johny Ibrahim 2016).

RESULTS AND DISCUSSION

The Authority of the Notary Supervisory Council in Supervising Notaries

The authority of the notary supervisory board is formed by the Minister, regulated in Article 1 number 6 of Law Number 2 of 2014 concerning the Position of Notary, which states that the supervisory board is a body that has the authority and obligation to carry out guidance and supervision of notaries and conduct examinations of alleged violations of the code of ethics (M. Yoghi Pratama & Ana Silvina 2023). The Minister of Law and Human Rights formed a supervisory panel of 9 (nine) people consisting of, the Government, as many as 3 (three) people, Organizations as many as 3 (three) people, and Experts or / academics as many as 3 (three) people. This supervisory board has a scope of performance that is carried out in stages, starting from the notary regional supervisory board, the notary regional supervisory board, and the notary central supervisory board (Terring 2022).

This supervision is functionally divided into 3 (three), which is in accordance with the division of its working area, namely the regional supervisory assembly is domiciled in the region and its working area is the City / Regency, the regional supervisory assembly is domiciled in the Provincial Capital with its working area covering the Province, the central supervisory assembly is domiciled in the State Capital and its working area covers all of Indonesia. This supervision includes supervision of notaries in the implementation of their positions as public officials carried out by the notary supervisory board and notary organizations by establishing and enforcing a notary code of ethics. Supervision that has been carried out by the notary supervisory board, there are several notaries who are still not subject to applicable regulations, thus committing violations of the code of ethics and violations of the notary position regulated in the Law. Notary supervisory boards have their respective authorities, namely in Article 70 of the UUJN determines that regional supervisory boards are authorized:

1. Organizing a hearing to examine alleged violations of the notary code of ethics or violations of the notary office.
2. Conducting an examination of the notary protocol periodically 1 (one) time in 1 (one) year or at any time deemed necessary.
3. To grant leave of absence for a period of up to 6 (six) months.

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4. Determining a substitute notary by taking into account the proposal of the notary concerned.
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6. Determining the storage place for notarial protocols that at the time of handover of the notarial protocol are 25 (twenty-five) years old or more.
7. Appoint a notary who will act as a temporary holder of the protocol of a notary appointed as a state official as referred to in Article 11 paragraph (4).
8. Receive reports from the public regarding alleged violations of the code of ethics or violations of the provisions of this Law.

Article 71 describes the regional supervisory board's obligation to:

- a. Record in the register book included in the notary protocol, stating, the date of the examination, the number of deeds and the number of letters under the hand that were legalized and opened since the date of the last examination.
- b. Prepare minutes of examination and submit them to the regional supervisory board, with a copy to the notary, the notary organization and the central supervisory board;
- c. Keep the contents of the deed and the results of the examination confidential
- d. Receive notarized copies of deed registers and other registers from notaries and keep them confidential.
- e. Receive reports from the public on notaries and submit the results of the examination to the regional supervisory board within 30 (thirty) days.
- f. Submit an appeal against the rejection decision.

The regional supervisory panel is regulated in Article 72 of the UUJN which states that it has the authority:

- 1) Organizing a hearing to ascertain and make decisions on community reports submitted through the regional supervisory panel.
- 2) Summoning the reported notary for examination of the report as referred to in letter a;
- 3) Grant leave of absence for more than six (6) months to one (1) year;
- 4) Examine and decide on the Decision of the regional supervisory board that rejects the leave submitted by the reporting notary;
- 5) Give sanctions in the form of verbal or written warnings.
- 6) Proposing sanctions against notaries to the central supervisory board in the form of:
 - a. Temporary suspension of 3 (three) months up to 6 (six) months; or
 - b. Dismissal with dishonor.
- 7) Make minutes of each decision to impose sanctions as referred to in letters e and f.

Article 77 of the UUJN stipulates that the central supervisory board is authorized:

- a. Conduct hearings to ascertain and make decisions on appeals against the imposition of sanctions and denial of leave;
- b. Summoning the reported notary for examination as referred to in point a;
- c. Impose a sanction of temporary dismissal; and
- d. Propose sanctions in the form of dishonorable dismissal to the Minister.

As a notary supervisory board authorized to take action to examine violations of the notary position and code of ethics with supervision through an examination mechanism that can be divided into 2, namely: First, periodic examinations are carried out once a year to examine related to notary protocols and examinations deemed necessary. Second, examination due to complaints from the public with alleged violations of the notary code of ethics or violating the notary position or findings of legal facts of alleged violations by notaries under supervision by the regional supervisory board (Lestari 2022).

Public reports of alleged violations of the office of notary and the code of ethics can be made in writing to the regional supervisory panel as stipulated in Article 29 paragraph (1) letter c, which is to receive reports from the public regarding alleged violations of the office of notary or the code of ethics of notaries. This can be followed up by forming an examining panel of 3 (three) people from each element of the supervisory board, 1 (one) chairman and 2 (two) members and assisted by 1 (one) secretary, who is tasked with making a supervisory board report and administering public complaint reports, Article 25 paragraph (2) letters d and e Permen Hukum dan Hak Asasi Manusia Number 16 of 2021 Organizational Structure and Work Procedures, Procedures for Appointment and Dismissal, and Budget of the Notary Supervisory Board. The formation of the examination panel is carried out no later than 14 (fourteen) working days from the submission of the public complaint report to the regional supervisory panel.

Notary Supervisory Panel in Conducting Examinations of Violations of the Code of Ethics

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This case shows that the notary X has violated the Notary Law and the notary code of ethics. The notary was proven to use his authority for personal gain, namely legalizing a debt and credit agreement. Article 15 paragraph (1) of the Notary Position Law states that notaries are authorized to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations that are desired by interested parties to be stated in an authentic deed. The authority of a notary is not only to make authentic deeds but also has the authority to certify signatures by registering them in a special book, this is in accordance with Article 15 paragraph (2) letter a of the UUJN.

In Decision Number: M.03/Pts/Mj.PWN Prov Riau/09/ 2023 the supervisory panel has conducted a tiered examination and the recording of the report is specified in Article 10 paragraph (2) which includes: a. the identity of the reporter and the reported party, b. a report letter submitted to the chairman of the notary supervisory panel, and evidence/legal facts and document attachments. Article 11 paragraph (1) The examining secretary will administer the report as referred to in Article 10 which is recorded in the case registration book which contains:

- a. Case registration number and date
- b. Report letter number and date
- c. Name of the reporter
- d. Reported name
- e. Attachment of evidence or other information deemed necessary by the recorder and
- f. The second name, members and secretary of the examining board that has been established and determined by the supervisor.

The examining panel before conducting the examination hearing, will hold a case title meeting attended by the supervisory panel. This meeting is to hear the case of the alleged violation, then the supervisory panel will determine the day and date of the examination hearing of the reporter and the reported party. The summons to the reporter and the reported party is made by letter by the secretary of the supervisory panel no later than 5 (five) days before the examination session is held. If the complainant is not present within 2 summonses, the panel will declare the report void and cannot be resubmitted by the complainant.

In the examination of alleged violations of the code of ethics or the office of notary by the regional examination panel, the examination is conducted in a closed manner for the public, the examination is carried out no later than 7 (seven) days after the examination panel is appointed. The result of the examination of the alleged violation is no later than 30 (thirty) days after the report is recorded in the case register book. The results of the examination are written in the form of minutes of the examination of the notary protocol and recommendations on the results of the examination, which are submitted by the regional supervisory assembly to the regional supervisory assembly with a cover letter given to the reporter, the reported party, the central supervisory assembly, and the regional board of the Indonesian notary association.

Article 24 of Ministerial Regulation Number 15 of 2020 concerning Procedures for Supervisory Assembly Examination of Notaries explains, after the attachment of a recommendation letter related to the examination of alleged notary violations given by the regional examining panel, after that the regional examining panel conducts legal considerations based on the examination by the regional examining panel. If there is a difference of opinion by the regional examining panel, it will be contained in the decision, when the report cannot be proven to have committed a violation, the examining panel states that the report is rejected, when it is proven guilty, the reported party (notary) is imposed sanctions in accordance with the level of violation that has been committed in accordance with the laws and regulations. The examination by the regional panel is closed with a maximum of 30 (thirty) working days (Sulistya 2023).

The central examining panel examines and decides when it receives a recommendation letter for the imposition of sanctions from the regional examining panel, and the central examiner will examine the case for a maximum of 7 (seven) days, which is closed. The central examining panel can change or cancel the decision of the regional supervisor and issue a separate decision. The imposition of sanctions by the supervisory panel if the notary is proven to have violated the code of ethics and the office of notary will be subject to sanctions in the form of administrative sanctions. In Article 85 of Law Number 2 of 2014 on the Position of Notary and Article 47 paragraph (2) as referred to in paragraph (1) of Ministerial Regulation Number 15 of 2020 concerning Procedures for Examining Supervisory Assemblies Against Notaries, namely in the form of:

- a. Written warning:
- b. Temporary dismissal
- c. Dismissal with dishonor, or
- d. Dismissal with dishonor.

Based on Decision Number: M.03/Pts/Mj.PWN Prov Riau/09/ 2023, the regional supervisory panel has issued a letter of sanction with the administrative sanction of the first written warning. The notary has violated Article 52 paragraph (1) of Law

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Number 2 of 2014 concerning the Position of Notary, which states that a notary is not allowed to make a deed for himself/herself, wife/husband, or other person who has a family relationship with the notary either by marriage or blood relationship in a sideways line up to the third degree, as well as being a party for himself/herself, or in a position or by proxy. That the notary has made a deed under the hand, namely a debt and credit agreement letter for personal gain and legalized the agreement letter by the notary himself. Legalization is the ratification of the signature and establishing the certainty of the date of the letter under the hand by registering it in a special book. A legalized underhand deed provides certainty regarding the date and identity of the parties and provides a different legal force from an unlegalized underhand deed.

Notaries as public officials must play a role in realizing legal certainty, public order in providing legal protection for the community. This role of notary has a preventive nature that prevents legal problems by issuing authentic deeds made before a notary to relate to legal status. Notaries must act honestly, carefully, independently, impartially and safeguard the interests of parties related to legal acts Article 16 of the Law on Notaries. While in the code of ethics violating Article 3 explains that notaries have an obligation, to have good morals, morals and personality, respect and uphold the dignity of the office of notary. After receiving the letter within no later than 14 (fourteen) days the notary must resolve the problem with the reported party. If within the specified time the notary does not fulfill his/her obligations, the regional supervisory panel will issue a second The authority of the notary supervisory board in handling violations of the notary position and code of ethics is in accordance with the theory of authority, namely, according to F.A.M. Stroink and J.G Steenbeek *stating "het begrip bevoegdheid id and ook een kembegrip in he staats-en administratief recht"*. The explanation above states that authority is the core concept of constitutional law and administrative law. Authority or authority is legal power, the right to command or act, the right or power of public officials to comply with legal rules within the scope of carrying out public obligations (Nur Basuki Winanmo 2008). Authority is formal power, power granted by law or from administrative executive power, juridically is the ability given by legislation to cause legal consequences (Irfan Fachrudin 2004). Meanwhile, according to H.D Stout, authority is an understanding derived from the law of government organization, which can be explained as all the rules relating to the acquisition and use of government authorities by public law subjects in public law relations (Ridwan HR 2013).

According to Philipus M. Hadjon, authority or (*bevoegdheid*) can be explained as legal power. In the framework of public law, authority is closely related to power. According to the view of the theory of authority put forward by Philipus M. Hadjon, every action taken by the government should be based on legal authority. There are three sources of authority, namely attribution, delegation, and mandate. Attribution authority is usually determined through the division of state power regulated by law, while delegation authority comes from the delegation of authority by attribution, and mandates do not involve delegation of authority at all (Ridwan, 2006). According to Indroharto, authority in the juridical sense is an ability granted by applicable laws and regulations to cause legal consequences (Indroharto, 2004). The author argues that authority is a right possessed by an official or institution that works based on the relevant law. Every action taken by a public legal subject that has authority must comply with the existing law, given that the legal subject functions in the context of implementing the legal rules underlying its authority

F.A.M Stroink, quoted by Abdul Rasyid Thalib, states that authority must be based on the applicable legal regulations (constitution) so that the authority can be considered valid. Therefore, when officials make decisions, they must be supported by a clear source of authority. The source of authority can be obtained by government officials or institutions through attribution, delegation, and mandate (Thalib A.R, 2006). Authority can be defined as the ability granted by law to produce legal consequences. A person can obtain authority through two ways, namely attribution or delegation of authority. The process of obtaining authority can be explained as follows: 1) attribution is an authority that is automatically attached to a position. In the context of constitutional law, this attribution refers to the authority possessed by government organs in carrying out their roles based on the authority established by law. Attribution refers to authority that is original according to the constitution or law. 2) Delegation of authority is a process in which senior officials grant part of their authority to subordinates to assist in carrying out their duties independently. This delegation aims to support the smooth performance of tasks and ensure organized and responsible communication, as long as there are no special provisions stipulated by applicable laws.

In the case of violations of the code of ethics and abuse of the position of notary, based on the theory of authority above, the notary supervisory board has exercised the authority stipulated in Article 68 to Article 77 of Law Number 2 Year 2024 concerning the Position of Notary in accordance with the authority of attribution, namely the authority inherent in the position of the notary supervisory board to carry out the supervisory function of notaries.

CONCLUSION

Based on the decision of the Notary Regional Supervisory Council Number: M.03/Pts/Mj.PWN Prov Riau/09/2023, the decision contains sanctions against notaries who have been proven to have violated the notary position and code of ethics in the form of administrative sanctions, namely the first written warning letter. By violating Article 52 of the UUJN, namely, a notary is not allowed to make a deed for himself, his wife / husband, or other people who have a family relationship with the notary either by marriage or blood relationship in the line to the side up to the third degree, and become a party for himself, Article 16 of the

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UUJN, namely notaries are obliged to act trustworthy, honest, careful, independent, impartial, and safeguard the interests of parties involved in legal acts, as well as the notary code of ethics Article 3, notaries must have morals. Good morals and personality, respect and uphold the dignity of the office of notary. The notary supervisory panel has exercised its authority in accordance with the Notary Position Law and Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Supervisory Panel Examination of Notaries. In prosecuting violations of the code of ethics related to the decision of the regional supervisory panel Number: M.03/Pts/Mj.PWN Prov Riau/09/ 2023, it has formed an examining panel to examine violations of the notary position and code of ethics. With the scope of performance in stages, namely the regional examining board, the regional examining board and the central examining board, the results of the examination of the central supervisory board, in the supervisory board issued the results of the examination by imposing sanctions on notaries in the form of administrative sanctions in the form of the first written warning.

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