

Responsibilities of Regional Supervisor Toward Notary Protocols From Other Notaries Which Have Been Aged Twenty-Five Years or More

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Abstract

Notary Supervisory Board, hereinafter referred to as "Supervisory Board", is a body that has the authority and obligation to carry out guidance and supervision of Notaries. Based on the provisions of Article 63 paragraph (4) of the UUJN, then after the term of office of the Notary has ended, the Notary protocol shall be submitted to another Notary appointed by the Minister at the proposal of the Regional Supervisory Council. Therefore, the legal status of the Notary Protocol is transferred to a Notary who replaces the notary that has ended his term of office, or to the Regional Supervisory Council, as stipulated in Article 63 paragraph (5) of the UUJN. That the Notary protocol from other Notaries who at the time of delivery is 25 (twenty-five) years of age or older is submitted by the Notary recipient of the Notary Protocol to the Regional Supervisory Council (MPD). The submission of the protocol is done no later than 30 (thirty) days by making the minutes of submission of the Notary protocol signed by the person who submits and who receives the Notary Protocol. This provision indicates an empty norm. The empty norm referred to is the absence of certainty as to who is responsible for the Notary Protocol. As for the problem, is the role of the Regional Supervisory Council in the implementation of supervision of the Notary Public and how the responsibility of the Regional Supervisory Council for the Notary Protocol of other Notaries who are twenty-five years old or more. There is a Research Objective to study and analyze the role of the Regional Supervisory Board in carrying out supervision of the Notary Public and to study and analyze the form of responsibility of the Regional Supervisory Board for Notary Protocols from other Notaries who have been aged twenty five years or more. The type of research used in this study is legal research normative. The focus of this normative research is on secondary legal material sources, which are obtained from library materials, in this case in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The approach used is the Conceptual Approach (Legislative Approach) Statute Approach). The results of this study are the first role of the Regional Supervisory Council in the implementation of supervision of the Notary whose main purpose of supervision is so that all rights and authorities and obligations given to the Notary Public in carrying out their duties as provided by the relevant basic regulations, are always carried out above the specified path, not only legal channels but also on the basis of moral and professional ethics for ensuring legal protection and legal certainty for the community. The other side of oversight of a Notary, is the aspect of legal protection for the Notary in carrying out his duties and positions as a public official. the second is the responsibility of the Regional Supervisory Council for the Notary Protocol from other notaries at the time of submission that is twenty-five years or older based on Article 70 letter e, asserting that the Regional Supervisory Council (MPD) has the authority to determine the place of storage of the Notary Protocol at the time the handover of the Notary Protocol has been 25 (twenty five) years or more.

Keywords: Responsibility, Regional Supervisory Council, Notary Protocol from other Notaries

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1. Introduction

Notary Public is the authorized official to make an authentic deed, as long as the making of the authentic deed is not permitted to other public officials. The notary is authorized to make an authentic deed regarding all deeds, agreements and stipulations required by statutory regulations and / or as desired by having an interest to be stated in an authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, giving the grosses, copies and quotation of the Deed, all of it as long as the Deed making is not also assigned or excluded to other officials or others stipulated by law.¹ Notary Deed, hereinafter referred to as Deed, is an authentic deed drawn up by or before a Notary according to the form and procedure stipulated in this Law.² An authentic deed is a deed made in the form determined by the Act, made by or in front of the General Authority authorized for that place where the deed was made.³

In accordance with the provisions described above, the main task of the Notary is to make an authentic deed,

¹ Pasal 15 ayat (1) UUJN

² Pasal 1 angka (7) UUJN

³ Pasal 15 ayat (1) UUJN

that the Notary as a public servant performs part of the duties of the State and therefore it is very important for the Notary in assuming his position to provide services to the public and for the sake of community interests¹. Notary in carrying out its authority and obligations, it must refer to the law and notary code of ethics that governs it. Deed made by a Notary as evidence, must have an element of perfection, both in terms of material and formal. Thus, the Notary is obliged to be responsible for the deed he made. If the deed made is not as stipulated in the law, then the deed is legally flawed and causes the deed to lose its authenticity and the cancellation of the deed. The deviation of an authentic deed can cause Notaries are accountable and may be subject to sanctions for damages that have been experienced by the parties.

Deed is a piece of writing that is merely made to prove a thing or event, therefore a deed must always be signed.² According to Sudikno Mertokusumo, a deed is a signed letter containing the events that form the basis of a right / engagement that was made intentionally for proof.³ So that the making of a notarial deed can be used as proof in a legal dispute, which is used as a tool to recall events that have occurred, which can be used for the purpose of proof.⁴

Authentic deed as the strongest and most complete evidence has an important role in every legal relationship in people's lives. In a variety of business relationships, activities in banking, land, social activities and others, the need for written proof in the form of an authentic deed is increasing in line with the development of demands for legal certainty in various economic and social relations, both at the national, regional and global level. The authentic deed clearly determines the rights and obligations of each party related to the deed, provides legal certainty and with the existence of the authentic deed is expected to avoid problems or disputes between the parties in the future. However, if problems continue to arise, the authentic deed as evidence will be able to provide a real role in resolving disputes between the parties.

In carrying out his position, the Notary is obliged to one of them to make a deed in the form of a deed of minutes and keep it as part of the Notary protocol as regulated in Article 16 paragraph (1) letter (b) of the Notary Position Law, and in the explanation of the article, it is explained that the obligation in storing the minutes of the deed a part of the Notary protocol, is intended to maintain the authenticity of a deed by storing the deed in its original form, so that if there is falsification or misuse of gross, copies, or quotations it can be immediately known by matching it to the original. However, the provisions of the Law of Notary Position does not explain how to store it. Notary Protocol is a collection of documents that constitutes the State archive which must be stored and maintained by a Notary in accordance with statutory provisions. Notary Protocol in the form of minutes of deeds in a bundle and bound in the form of a book which is then stored by a Notary where the minutes of the deed are physical documents made of paper, which certainly has a variety of risks in the context of storage. The loss or damage to the minutes of the deed, or the damage to the condition of the deed due to wet water due to rain or other natural disasters can result in the destruction of the notary deed.

Notary Protocol is a collection of documents that constitutes the State archive which must be stored and maintained by a Notary in accordance with statutory provisions.⁵ Notary Protocol in the form of minutes of deeds in a bundle and bound in the form of a book which is then stored by a Notary where the minutes of the deed are physical documents made of paper, which certainly has a variety of risks in the context of storage. The loss or damage to the minutes of the deed, or the damage to the condition of the deed due to wet water due to rain or other natural disasters can result in the destruction of the notary deed.

Notary Supervisory Board, hereinafter referred to as "Supervisory Board", is a body that has the authority and obligation to carry out guidance and supervision of Notaries.⁶ The implementation of Notary Supervision conducted by the Regional Supervisory Council in accordance with Law No. 2 of 2014 stated that Article 1 number (6) reads: Notary Supervisory Board, hereinafter referred to as the Supervisory Council, is a body that has the authority and obligation to conduct guidance and supervision of Notaries. The Regional Supervisory Council (MPD) was given special authority by the UUJN. The existence of the Regional Supervisory Council (MPD) must be respected by anyone because its presence is ordered by the UUJN. When the investigator, judge and prosecutor will summon a Notary regarding the deed made by the Notary concerned the summons must go through the Regional Supervisory Council (MPD) because it is authorized to first examine it.

Based on the provisions of Article 63 paragraph (4) of the UUJN, then after the term of office of the Notary has ended, the Notary protocol shall be submitted to another Notary appointed by the Minister at the proposal of the Regional Supervisory Council. Therefore, the legal status of the Notary Protocol is transferred to a Notary who replaces the notary that has ended his term of office, or to the Regional Supervisory Council, as stipulated in

¹ Herlien Budiono, 2015, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Ketiga*, PT. Citra Aditya Bakti, Bandung, Hlm. 148.

² R. Subekti. 1996. *Pokok-pokok Hukum Perdata*. Jakarta: Intermasa, hlm. 178.

³ Sudikno Mertokusumo. 1998, *Hukum Acara Perdata Indonesia*, Yogyakarta: Liberty, hlm. 142

⁴ events that have occurred, which can be used for the purpose of proof.

⁵ Pasal 1 angka 13 UUJN

⁶ Pasal 1 angka 6 UUJN

Article 63 paragraph (5) of UUJN. That the Notary protocol from other Notaries at the time of submission is 25 (twenty) five years or more submitted by the Notary recipient of the Notary protocol to the Regional Supervisory Council (MPD). The submission of the protocol is done no later than 30 (thirty) days by making the minutes of submission of the Notary protocol signed by the person who submits and who receives the Notary Protocol. This provision indicates the existence of an empty norm. The meaning of the empty norm referred to is the absence of certainty as to who is responsible for the Notary Protocol.

2. Research methods

This type of research used in this study is normative legal research. The focus of this normative research is aimed at secondary data sources, which are obtained from library materials, in this case in the form of primary legal materials, secondary legal materials, and tertiary legal materials. In this study the approaches used include Conceptual Approach, Statutory Approach. The technique for studying and analyzing primary legal materials, secondary legal materials and tertiary legal materials is by using documentary studies. Documentary study is a study that studies documents, both related to laws and regulations which in this case includes the Civil Code, the Notary Position Law, the Notary Ethics Code and other legislation, as well as documents existing data. After the data obtained from the results of literature study, then the data is processed and analyzed descriptively qualitatively. Qualitative descriptive analysis is an analysis of legal material and data that groups and selects from the study of literature according to the quality of its truth then linked to theory and principles and legal norms in order to obtain answers to the problems formulated. To gain an understanding of the problem, a deductive method of drawing conclusions is used, which is to draw conclusions from things that are general to things that are specific.

3. Results and discussion

3.1 The Role of the Regional Oversight Board in the Implementation of Oversight of Notaries

3.1.1 Overview of Notaries

Historically, a Notary is a State official / public official who can be appointed by the State to carry out the State's duties in providing legal services to the community in order to achieve legal certainty as an official of an authentic deed in civil matters. Understanding Notary can also be seen in separate statutory regulations, namely in Article 1 number (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Position of Notary (UUJN) which states that Notaries are public officials who authorized to make authentic deeds, insofar as the making of authentic deeds is not specific to other public officials. The notary has the authority to make an authentic deed regarding all deeds, agreements, and stipulations required by legislation and / or that is desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving the gross, copy and quotation of the deed , all this as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law.

3.1.2 Notary Supervisory Board

The existence of the Notary Supervisory Council was formed by the Minister of Law and Human Rights of the Republic of Indonesia, because the supervision of the Notary profession is actually carried out by the Minister,¹ Supervision carried out by the Minister is an oversight of the Notary profession which includes the behavior of Notaries and the implementation of Notary positions. According to Article 1 paragraph (6) of Law Number.30 of 2004 Concerning the Position of Notary, the Notary Supervisory Board is a body that has the authority and to conduct guidance and supervision of the Notary Public.² According to Article 1 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 Year 2004 concerning Procedures for Appointing Members, Dismissing Members, Organizational Structure, Work Procedures and Procedures for Inspection of Notary Supervisory Councils, Supervisory Councils Notary Public is a body that has the authority and obligation to carry out supervision and guidance of a Notary Public.³

The scope of supervision of the Notary applies to Notaries, Substitute Notaries, Special Substitute Notaries and Temporary Notary Officials (Article 67 paragraph (6) UUJN). Supervision of a Notary Public shall cover the behavior of a Notary and the implementation of the position of a Notary (Article 67 paragraph (5)). Notary behavior and the implementation of the position of Notary, as already known is described in the LawJN precisely in Chapter III which regulates the Authority, Obligations and Prohibitions besides that in the Notary Ethics Code is also regulated in Chapter III, namely the chapter which regulates the Obligations, Prohibitions and Exceptions. Supervision of a Notary is intended so that the Notary in carrying out the duties of his office must be based on and follow the laws and regulations governing the position of Notary. meaning that everything mentioned in the legislation governing the position of the Notary must be followed.

The Regional Supervisory Council hereinafter referred to as (MPD) was formed in the Regency / City to

¹ Pasal 67 ayat (1) *Undang-Undang Nomor 30 Tahun 2004* Tentang Jabatan Notaris (UUJN).

² Pasal 1 ayat (6), *Undang-Undang Nomor.30 Tahun 2004* Tentang Jabatan Notaris (UUJN).

³ Pasal 1 ayat (1), *Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor M.02.PR.08.10 Tahun 2004* tentang Tata Cara Pengangkatan Anggota, Pemberhentian Anggota, Susunan Organisasi, Tata Kerja dan Tata Cara Pemeriksaan Majelis Pengawas Notaris.

foster and supervise Notaries who have work areas in the Regency / City, if the number of Notaries is not proportional to the number of members of the Regional Supervisory Council, then a joint Regional Supervisory Council may be formed for several Regency / City according to the provisions in Article 69 paragraph (2) a UUJN. Regional Supervisory Council (MPD) has an important role for Notaries who are shaded by their regions because the Regional Supervisory Assembly (MPD) has the scope of authority to hold hearings to examine suspected violations Notary Ethics Code, violation of the implementation of the position of Notary Public, and the behavior of Notaries who are outside carrying out their duties as Notaries that may interfere with or influence the implementation of the duties of Notary Public.

3.1.3 Authority of the Regional Supervisory Council (MPD)

The Authority held by the Regional Supervisory Council (MPD) as stipulated in Law Number 30 of 2004 concerning Notary Position (UUJN) article 70 ayat (1) The Regional Supervisory Council has the authority to hold hearings to examine suspected violations of the Notary Ethics Code, therefore the Supervisory Council Notary Regions have the authority to supervise the prohibitions in the Notary Ethics Code contained in Article 4 of the Indonesian Notary Association Code of Ethics. According to the 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 Inspection of Notary Supervisory Councils. Article 13 paragraph (1) and paragraph (2), the administrative authority of the Notary Regional Supervisory Board shall be carried out by the chairman, deputy chairman, one of the members, who is authorized based on the decision of the Notary Regional Supervisory Board general meeting.

3.1.4 Supervision, Inspection, and Application of Sanctions on Notaries

The authority to supervise attribute notaries is vested in the Minister himself, who was created, created, and ordered in the Law as mentioned in article 67 ayat (1) UUJN. The position of minister as executive (government) who carries out government power in qualifications as a State Administrative body or Position.

Based on article 67 paragraph (2) of the UUJN the Minister delegates the supervisory authority to a body with the name of the Supervisory Board. The supervisory panel according to article 1 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004, is a body that has the authority and obligation to carry out supervision and guidance to the Notary. Thus the Minister as delegans and the Board of Trustees as delegates. The Supervisory Board as a delegate has the authority to supervise the Notary completely, without the need to return his authority to the delegans. Based on the level and authority in the framework of fostering and supervising Notaries in implementing the Law of Notary Position in order to realize legal certainty for the community. The Supervisory Board formed under the Notary Position Act has a strategic role in the framework of applying and enforcing the law to the provisions of the Notary position and the behavior of the Notary Public, has the authority to impose one of the five administrative sanctions available, namely by verbal warning, written warning, dismissal Meanwhile, dismissal with respect, dismissal with disrespect for notaries who violate both their duties as a notary and behavior in daily life.

3.2 The Responsibilities of the Regional Oversight Board Against the Notary Protocol of Other Notaries Aged Twenty-Five Years or More

In the Big Indonesian Dictionary, what is meant by responsibility is the obligation to bear everything if anything happens may be prosecuted, blamed, and sued. Abdul Kadir Muhammad explained about the responsibility is obligatory to bear, obliged to bear the burden, obliged to fulfill all the consequences arising from deeds, willing to serve, and willing to sacrifice for the benefit of other parties.

The concept of legal responsibility is closely related to the concept of rights and obligations.¹ The concept of rights is a concept that emphasizes the notion of rights which is paired with an understanding of obligations. The general opinion is that the rights of a person are always correlated with the obligations of others.² According to Hans Kelsen, the concept related to the concept of legal obligation is the concept of legal responsibility. That a person is legally responsible for a particular act or that he bears legal responsibility.³ The theory of legal responsibility is needed to be able to explain the relationship between the responsibilities of the Regional Supervisory Council relating to the authority of the Regional Supervisory Council based on UUJN in the field of civil law. The Notary Position is an institution created by the state.⁴ According to Habib Adjie, the Notary protocol holder is an effort to maintain the legal age of the Notary Deed as a perfect evidence for the parties or their heirs about everything contained in the deed. Notary Deed in the form of a copy forever will exist if kept by the person concerned, and in the form of a minuta will also exist forever, that is, kept by the Notary himself or by the Notary who holds the protocol or Regional Supervisory Assembly. Even though the notary dies, the notary deed will still

¹ Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, hlm. 55

² *Ibid*, hlm.57

³Hans Kelsen, *Teori Umum hukum dan Negara, dasar-dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Deskriptif-Empirik, (Alih Bahasa oleh Somardi)*, BEE Media Indonesia, Jakarta, 2007, hlm. 81

⁴ Bagir Manan, *Hukum Positif Indonesia*, UII Press, Yogyakarta, 2004, hlm. 15

exist and have a legal age, exceeding the biological age of the notary.¹

The Supervisory Board as a delegate has the authority to supervise the Notary completely, without the need to return his authority to the delegans. which was originally the authority of another Notary as the recipient of the protocol, to subsequently turn into the authority of the Regional Supervisory Council. The authority given by the delegation will then be the responsibility of the authority recipient. In this case the Regional Supervisory Council is responsible for the protocol of the Notary who at the time of delivery is 25 (twenty-five) years of age or older. Law Number 30 of 2004 concerning Notary Position (UUJN). Article 70 letter e confirms that the MPD has the authority to determine the place of deposit of the Notary Protocol at the time the handover of the Notary Protocol is 25 (twenty five) years of age or older. The definition of MPD is authorized to "determine the place of deposit" is unclear, whether "will be appointed and save it in Notary again" or "will be stored by MPD" or MPD "will appoint the Republic of Indonesia's State Archive Office" to save it or in "CLOUD"

In my opinion, if calculated from the enactment of Law Number 30 Year 2004 concerning the Position of Notary in Jakarta on October 6, 2004, notarial deeds made by Notaries based on UUJN will be 25 years old on October 5, 2029, according to the the provisions of Article 70 letter e of the UUJN, the Regional Supervisory Council (MPD) must have determined where the Notary Protocol will be stored.

4. Conclusion

1. The role of the Regional Supervisory Council in carrying out supervision of the Notary whose main purpose of supervision is so that all rights and authorities and obligations granted to the Notary Public in carrying out their duties as provided by the relevant basic regulations, are always carried out above the prescribed paths, not just legal channels but also on the basis of moral and professional ethics for ensuring legal protection and legal certainty for the community. The other side of oversight of a Notary, is the aspect of legal protection for the Notary in carrying out his duties and positions as a public official.
2. The responsibility of the Regional Supervisory Council for the Notary Protocol of other Notaries at the time of submission is twenty-five years old or more based on Article 70 letter e confirms that the Regional Supervisory Council (MPD) is authorized to determine the place of storage of the Notary Protocol at the time of the handover of the Notary Protocol 25 (twenty five) years old or more.

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¹ Ibid. Hlm.45

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