



Received: 21-04-2024
Accepted: 01-06-2024

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

The Authority of the Notary Regional Supervisory Council (MPDN) on the Effectiveness of Notary Supervision in the Municipality of Banda Aceh

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Abstract

The role of MPDN Banda Aceh Municipality is very important in supervising notaries in an effort to prevent abuse of office and criminal offenses. Challenges in the strength of authentic deed proof and notary non-compliance need firmer enforcement and more active coaching from MPDN. This study aims to analyze the authority, implementation, and model of MPDN supervision of notaries in the city of Banda Aceh using empirical juridical research methods with a qualitative approach and a variety

of data sources. The results showed that MPDN has the authority, in accordance with applicable regulations, to conduct guidance, supervision, and examination of notaries, both preventively and curatively. The MPDN monitoring model is preventive by regulating the procedural and notarial protocols and curative by taking action against suspected violations of the Notary Position Law (UUJN) and the Notary Code of Ethics (KEN).

Keywords: Notary Regional Supervisory Council (MPDN), Notary Supervisory

1. Introduction

A notary is a law profession considered noble,¹ also called a nobile officium. They serve the interests of the public, especially in civil law, by creating written evidence that has the power of proof. An act made by a notary can determine the status of a person's property, rights, and obligations. However, errors in the drafting of an act can have serious consequences, such as the waiver of rights or the addition of a duty. Therefore, a notary must abide by the Act of the Notary Department² to preserve its professionalism and integrity.

In the provision of services, the notary must preserve the integrity of the profession and the demands of conscience.³ They must operate in accordance with the rules of law that have been established, as actions beyond their authority can be considered a violation of the law. The Act No. 2 of 2014, which amends Law No. 30 of 2004 on Notaries (UUJN), as well as the Code of Ethics of Notaries (KEN) and the related regulations, became the main guidelines in the exercise of the functions and authority of notaries.

The supervision of notaries is carried out by the state, administered by the Minister of Law and Human Rights. The Minister forms the Supervisory Assembly, which is tasked with overseeing the behavior and performance of the office of the Notary. This is confirmed in Article 67 (1) and (2) UUJN, where supervision of notaries is carried out by the minister, who then forms a Supervisory Council, starting with MPDN, MPWN and MPPN.⁴ The Notary Regional Supervisor Assemblies (MPDN) have an important role in building and overseeing the notaries in their respective districts. They are tasked with holding hearings to

¹ Suhaimi, Nurdin MH, Enzus Tinianus, Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh, *Jurnal Ius Civile*, Volume 7(2), 2023, pp. 27-45.

² Abdul Ghofur Anshori, *Perspektif Hukum dan Etika, Lembaga Kenotariatan Indonesia*, UII Press: Yogyakarta, 2009, hlm. 46.

³ Muhammad Abdulkadir, *Etika Profesi Hukum*, Citra Aditya Bakti, Bandung, 1997, hlm.60.

⁴ Cut Novadilla Halid; Sanusi; Novi Sri Wahyuni; Suhaimi, A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act, *International Journal of Multicultural and Multireligious Understanding*, Volume 10(1), 2023, pp. 65-73.

investigate violations of the Code of Conduct of Notaries, violations in the performance of the functions of notaries, as well as notary behavior that could potentially interfere with their duties. In Banda Aceh Municipality, MPDN has a significant role in supervising notaries. However, there are still problems related to notaries' compliance with the rules, such as not opening offices or errors in the drafting of acts. Therefore, there is a need for more active efforts by MPD in carrying out supervision, inspection, and construction of notaries so that they can perform their duties in accordance with applicable legal provisions. Further research is needed to understand the effectiveness of notary supervision by MPD in Banda Aceh Municipality.

Based on the background of the above problems, there are known problems related to this research. The problems can be identified as follows:

1. How is the authority of the Regional Supervisory Assembly of Notaries (MPDN) in carrying out the supervision of notaries in the Municipality of Banda Aceh?
2. How is the implementation of surveillance carried out by the MPDN in Banda Aceh Municipality?
3. How is the monitoring model of the MPDN against notaries in Banda Aceh Municipality?

2. Research Methods

This study uses empirical legal research methods with a qualitative approach. Data sources are sourced from Field Research and the Library Research, as well as primary data, secondary data, and tertiary data.

3. Results and Discussion

3.1 The authority of the Notary Regional Supervisory Council (MPDN) in conducting supervision of notaries in the Municipality of Banda Aceh

Article 1 Number 6 (UUJN) states that the Supervisory Board is a body that has the authority and obligation to carry out the guidance and supervision of notaries. In order for the guidance and supervision of notaries in Banda Aceh by MPD to be effective, it takes the role of MPD to carry it out. In addition, based on Article 70 UUJN, the authority of the regional supervisory board of notaries has been determined as follows:

1. Organizing a hearing to examine any suspected violation of the notary code of ethics or violation of the implementation of notary positions;
2. Checking the notary protocol periodically, one time per year or every time deemed necessary;
3. Give permission to leave for up to six (six) months;
4. Establish a replacement notary, taking into account the proposal of the notary concerned;
5. Determining the storage place of the notary protocol, which at the time of the handover of the notary protocol had been aged 25 (twenty-five) years or more;
6. Appoints notaries who will act as temporary holders of notarial protocols appointed as state officials;
7. Receive reports from the public regarding suspected violations of the notary code of ethics or violations of provisions in the notary law; and
8. Make and submit reports to the regional supervisory council as referred to in letters a, b, c, d, e, f, and g to the regional supervisory council.

Regarding the authority of the Supervisory Board, which is also set in Permenkumham No. 16 of 2021, contained in Article 27, the Supervisory Board is authorized to conduct:

1. Guidance and supervision of notaries, as well as conducting an examination of alleged violations of the conduct and implementation of notary positions.
2. Administration that does not require the approval of the Supervisory Board meeting.
3. Administration that requires the approval of the Supervisory Board meeting; and
4. Routine inspection.

Based on the explanation above, it can be seen that the notary regional supervisory council (MPDN) in the Municipality of Banda Aceh has authority based on UUJN and Permenkumham No. 16 of 2021. This authority covers various aspects, from coaching and supervision to routine checks. MPDN has the right and obligation to monitor and evaluate the performance of notaries, including conducting an examination of documents issued by notaries. MPD Kota Banda Aceh, as a notary supervisory body, has important authority to ensure that notaries in the region operate in accordance with professional ethical standards and applicable legal provisions.

The MPDN can monitor the performance of the notary as a whole, including the practices carried out and the examination of the documents issued. In addition, MPDN plays a role in setting service quality standards that must be complied with by notaries in the Municipality of Banda Aceh. This includes aspects of professional ethics, timeliness, and quality of service to the community. This standard aims to enable notaries to provide better services to the community. MPDN also has a role in following up on public complaints related to notary behavior that is considered not in accordance with professional ethical standards.

The MPDN may investigate such complaints and impose sanctions if proven violations are found, such as a warning or revocation of a notary practice license. MPDN can also act as a mediator in resolving disputes between notaries and their clients. They can facilitate a fair and equitable settlement process, thus helping to avoid the escalation of disputes into the wider legal realm. Thus, MPDN has a very important role in maintaining discipline, professionalism, and public trust in the notary profession in the Municipality of Banda Aceh.

3.2 Implementation of Supervision is carried out by the notary regional supervisory council (MPD) in the municipality of Banda Aceh

The implementation of the activities of supervision of the notary aims to ensure that each notary, at the time of performing his duties as an official, meets all the requirements relating to the performance of the duties of a notary in order to safeguard the interests of the public, because notaries are appointed by the government not for the benefit of the notary himself but for the public interests that he will serve.

In carrying out its duties, the Supervisory Assembly applies the principles of coordination, integration, and synchronization both within the framework of the assemblies and other bodies. The Chairman of the

Supervisory Assembly oversees its members and secretariat and is responsible for leading and coordinating the implementation of tasks. The Assembly of Notaries Supervisors in Banda Aceh Municipality has a duty of supervision in accordance with the Regulations of the Minister of Law and Human Rights of RI No. M.03-HT.03.10 of 2007, which affirm the authority of the Regional Supervisory Council in carrying out supervision of notaries in the territory of the district or city.

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In this case, the MPDN only has the right to report the outcome of the trial and the results of its inspection to the Notary Regional Supervisory Assembly (MPWN) with copies to the reporting party, the notary concerned, the Notary Central Supervisors' Chamber (MPPN), and the Organization of Notaries.

In addition, although the MPDN of Banda Aceh Municipality has exercised the authority and obligations contained in Article 70 of the UUJN, the implementation of MPDN supervision against notaries in Banda Aceh Municipality has not been effective. Based on records from the Regional Office of the Ministry of Law and Human Rights in Aceh, from 2022 to early 2023 there were around 7 notaries who had been reported or complained about by the public, where the public asked investigators to provide information regarding the deeds that had been made by the notary in question. In connection with the above data, it was also conveyed by one of the Notaries in the Municipality of Banda Aceh, namely Yuniarti, who in his interview said that there were several Notaries in the Municipality of Banda Aceh who committed violations as regulated in the UUJN and KEN. These violations include a Notary who has been officially appointed and appointed and has opened an office in the Municipality of Banda Aceh several years ago, but currently the Notary is not in his office in Banda Aceh, but is in Jakarta for a long period of time (more from 1 year ago). In Banda Aceh there is only an office and the employees are not active. When MPDN carried out supervision, the notary had just returned to Banda Aceh and when he visited his office it was seen that the notary's office was not like a notary's office in general. The notary protocol has been stored in cardboard for years and is not sewn like other notary protocols. Apart from that, there is a violation of office, where a Notary opens an office, but the Notary is not there due to other interests. So that his responsibilities as a Notary are not carried out. And there is a Notary who makes a deed that has already been made by another Notary. This results in allegations that lead to criminal acts.⁵

Based on several research findings, it can be said that MPDN's guidance and supervision of notaries in the Municipality of Banda Aceh has not been implemented effectively. It can be seen that there are still violations committed by Notaries in the Municipality of Banda Aceh and this situation continues without any action from the

supervisory board. MPDN's ineffectiveness in carrying out its role in coaching and supervision is due to several factors explained above. This is as stated by Mrs. Yuniarti that MPDN's authority in supervising Notaries can be said to be effective if there are no more complaints or complaints from the public regarding violations committed by Notaries. So, as long as complaints and complaints from the public are still occurring, it is clear that supervision can be said to be ineffective.⁶ Therefore, it is important to continue to improve the role and performance of MPDN in carrying out the duties of coaching and supervising Notaries in order to overcome existing violations and ensure Notary compliance with applicable regulations.

Examinations carried out on notaries in the event of suspected violations and notarial behavior as well as the implementation of the notary's position are very important in the process of implementing supervision carried out by the Banda Aceh City MPDN. The inspections carried out include tracing, investigating and evaluating reports or complaints submitted by the public and received by MPDN. In the event that reports of alleged violations emerge, the notary supervisor ensures that the investigation of the notary is carried out fairly and objectively. In this case, by collecting evidence related to the alleged report, conducting interviews with related parties, and examining documents related to the report as well as summoning and examining the notary concerned.

As explained in the study of Ahmad Zacky on the role of the Minister of Notary Oversight in exercising his authority over public reporting, in the case of public reports on alleged violations committed by the notary, they will be examined by the MPD. The results of the examination further recommend against the presumption of violation of the KEN as well as UUJN to the MPWN.⁷

The obstacles faced by the MPDN against the too-wide area of work are that if there is a violation against the notary, it is not directly carried out; usually, the MPDN performs construction against the notary. In carrying out the inspection of the notary, many books (repertoires) were found by the Regional Supervisory Assembly, mostly after the inspection found empty books. There are a few things that can cause notaries to make a mistake of opportunity, including competition between notaries, which makes notaries forget to do their job. Based on the principles, morals, and ethics of a notary, the primary purpose of the notary's work is to provide public services freely and impartially.

According to Lailasari Ekaningsih, as the results of the research carried out by MPDN City Semarang show, the effort carried out by MPDN Town Semarang against the obstacles found at the time of carrying out the surveillance of notaries is one of them: To give guarantees to notaries who are negligent and to give socialization to the community.⁸

⁶ Yuniarti, Notaris dan Anggota MPDN Kota Banda Aceh, *Wawancara*, Tanggal 4 Oktober 2023.

⁷ Ahmad Zacky tentang Peran Majelis Pengawas Notaris Dalam Menjalankan Kewenangannya Terhadap Laporan Masyarakat, *Otentik's: Jurnal Hukum Kenotariatan*, Vol 2, No. 2, Juli 2020.

⁸ Lailasari Ekaningsih, *Peranan Majelis Pengawas Daerah Kab. Semarang Menurut UU No. 2 Th. 2014 Tentang Perubahan UU No.30 Th. 2004 Tentang Jabatan Notaris*,

⁵ Yuniarti, Notaris dan Anggota MPDN Kota Banda Aceh, *Wawancara*, Tanggal 4 Oktober 2023.

In order to prevent the occurrence of a violation of the law by a notary, one of the efforts made was to socialize and go straight down to the field. This action is carried out if there is a violation of the law by the notary, i.e., conducting a process of inspection in order to be able to prove whether or not that notary has committed the violation. In the examination, the MPDN must be based on evidence in nature, form, and matrix. If the MPDN is unable to prove it, then the act must be accepted by anyone, including the MPDN himself. Thus, the role of the MPDN before deciding whether the notary is guilty or not against the public report is to examine these 3 aspects first, as provided for in Article 138 HIR (Pasal 164 Rbg, 148 Rv). These three aspects represent the perfection of a notary's act as a means of proof. If associated with the theory presented by Hans Kelsen about the effectiveness of law, it means that people actually act in accordance with the norm of law as they should, that the norm is truly applied and obeyed.⁹

Based on the explanation above, it can be known that the MPDN of Banda Aceh Municipality has not been successful in the implementation of construction and supervision of notaries who are still committing violations. Still breaking the rules can be interpreted as the inability to achieve legal effectiveness, according to the Kelsen concept.

In connection with the matters mentioned above, the factors that cause violations by Notaries in the Municipality of Banda Aceh are due to reports to MPDN by residents of the Municipality of Banda Aceh and also MPDN's own findings some time ago regarding the presence of Notaries who were never present. In his office. And there is a Notary who has opened an office in Banda Aceh, but the Notary's position has been outside Banda Aceh for a long time, for example in the city of Jakarta. Meanwhile, there are also notaries who have activities outside their position as a Notary, even though they work as a notary, for example a Notary who has a side business apart from his position as a Notary. This was proven by the discovery of an empty book when MPDN made a surprise visit or inspection to the Notary's Office in question. Then it was also found that there were Notaries who made deeds that had already been made by other Notaries, regarding the same problems and objects.¹⁰

Furthermore, Notary Nurdhani added that apart from the factors mentioned above, there are also other factors that cause notaries in Banda Aceh to commit violations in carrying out their duties, including due to conflicts of interest. Sometimes it is found that notaries have to deal with situations that interfere with their independence as a notary, namely when the notary has a personal relationship with the parties involved in the transaction. So it is clear that things like this can affect his independence as a notary. A notary should always try and maintain his independence as a notary who is a public official.¹¹

Almost the same opinion was also expressed by Notary Ali Gunawan, where one of the factors that often contributes or influences notaries in committing violations, is the lack of

competence of the Notary concerned. Some notaries may not have an adequate understanding of the regulations and laws that apply in certain cases. So it can result in errors in the process of making an authentic deed.¹²

In carrying out his office, the Notary refers to Article 16 (1) UUJN where the Notary is obliged to act honestly, independently, thoroughly, impartially, and safeguard the interests of the parties involved in a particular legal act.

Based on the results of the interview above, it can be seen that there are various factors that can cause violations by notaries in the Municipality of Banda Aceh in carrying out their duties. So this is the causal factor that causes Notaries to be reported to MPDN for examination.

3.3 The model of supervision of the notary regional supervisory council (MPDN) against notaries in the municipality of Banda Aceh

The supervision model of the notary regional supervision Council (MPDN) is a supervisory system applied to notaries, including in the municipality of Banda Aceh. MPDN notary aims to ensure that notaries carry out their duties in accordance with applicable legal provisions, including the KEN and other laws and regulations.

Regarding the supervisory model, MPDN Banda Aceh municipality implemented a supervisory model based on routine inspection and supervision of notary activities. MPDN has a team consisting of MPDN members who have the duty and responsibility to visit regularly to notary offices to evaluate the services and work processes of notaries.

In addition, MPDN ensures that notaries located in the city of Banda Aceh operate in accordance with established rules. One of the main things that is done is to supervise the notary's compliance with the KEN. Every notary is expected to comply with this code of conduct in carrying out their duties.

Supervision of the KEN of the notary position is carried out through various means. MPDN conducts regular checks of documents made by notaries, such as authentic deeds. MPDN also received complaints from the public regarding the behavior of notaries who allegedly violated the KEN. Each complaint will be reviewed carefully to ensure the truth to be followed up.

Based on the explanation above, it can be seen that the MPDN of Banda Aceh municipality applies the notary supervision model with routine checks and evaluations of notary activities. MPDN visits notary offices to ensure compliance with the KEN. MPDN also checks notary documents and receives public complaints related to alleged violations. In the event of indications of violations, a notary is invited for clarification. Recommendations from the results of supervision, such as warnings or administrative sanctions, are discussed by the Supervisory Assembly. However, the MPDN does not have the authority to sanction, so this recommendation must be submitted to the MPWN. Unresolved cases at the MPDN level will be followed up by MPWN in accordance with MPDN recommendations on public complaints related to violating notaries.

Universitas Darul Ulum Islamic Centre Sudirman Guppi (UNDARIS) UNGARAN, 2020.

⁹ Salim, *Penerapan Teori Hukum Pada Peneliti Tesis dan Disertasi*, Raja Grafindo Persada, Jakarta, 2013, hlm.301

¹⁰ Yuniarti, Notaris dan juga Anggota MPD Kota Banda Aceh, *Wawancara*, Tanggal 4 Oktober 2023.

¹¹ Nurdhani, Ketua Ikatan Notaris Indonesia Kota Banda Aceh, *Wawancara*, Tanggal 4 Oktober 2023

¹² Ali Gunawan, Notaris Kota Banda Aceh, *Wawancara*, Tanggal 4 Oktober 2023

4. Conclusion

MPDN Banda Aceh has the authority, based on UUJN Number 2 of 2014 and Permenkumham RI Number 16 of 2021, to provide guidance, supervision, and examination of alleged violations of behavior and the implementation of notary positions in the region. Supervision is carried out through monitoring and evaluation of notary duties, as well as coaching notary administration. MPDN's model of supervision of notaries in Banda Aceh Municipality is preventive and curative, where preventive activities include regulation of notarial procedures, while curative activities involve action against violations of the UUJN and the KEN.

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