



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> dinasti.info@gmail.com +62 811 7404 455DOI: <https://doi.org/10.38035/jlph>
<https://creativecommons.org/licenses/by/4.0/>

The Authority of the Notary Supervisory Council regarding Unlawful Actions Related to the Notary's Code of Ethics in Making Authentic Deeds

Tiya Nuraini¹, Amad Sudiro².¹Universitas Tarumanagara, Jakarta, Indonesia, tiya.217231019@stu.untar.ac.id.²Universitas Tarumanagara, Jakarta, Indonesia, ahmads@fh.untar.ac.id.Corresponding Author: tiya.217231019@stu.untar.ac.id¹

Abstract: The authority of the Notary Supervisory Council in carrying out supervision and guidance in the implementation of the position of Notary has a big influence and aims to ensure that the implementation of the position is in accordance with existing regulations and runs properly. The Notary Supervisory Council also has the authority to follow up on cases related to violations of the notary's position and violations of the code of ethics committed by Notaries, which can cause problems for the public as Notary clients, because the Notary's position is a position that is trusted and delegated by Law Number 2 of 2014 concerning amendments. Based on Law Number 30 of 2004 concerning the Position of Notaries in making Authentic Deeds which produce strong legal evidence, on this basis Notaries are strictly prohibited in the Law on the position of Notary as well as the Notary Code of Ethics Regulations from committing violations in the implementation of making authentic deeds. Apart from that, Notaries are also obliged to have moral ethics that uphold and maintain the dignity of the Notary's position. Currently, it is not uncommon to find Notaries who commit unlawful acts in carrying out their positions, as in one of the cases that occurred with a Notary in Cirebon in District Court Decision Number 83/Pdt.G/2022/Pn Cbn. The research method used is normative legal research which is descriptive analytical in nature. The results of this research show that in carrying out the office of Notary, the authority of the Notary Supervisory Board is the most important element in creating an orderly and proper implementation of the office of Notary in producing legal products in the form of authentic deeds that are valid and have full legal force.

Keyword: Authority of the Notary Supervisory Board, Unlawful Acts, Notary Position, Notary Code of Ethics, Authentic Deed.

INTRODUCTION

Indonesia is one of the countries that adheres to the Civil Law legal system, where in this legal system there is a recognition of the presence of the notarial field which was born during the colonial era, originating from the Netherlands, namely based on "Notariswet". (Alkatri, 2021). The birth of the position of Notary then developed to the present with the regulations governing

the implementation of the position of Notary, namely having the main focus related to the implementation of the position of Notary in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary. Apart from that, there are other regulations, one of which is regulations related to the code of ethics which was regulated by the Extraordinary Congress of Indonesian Notaries in 2015. These regulations are the basis for Notaries in carrying out their positions properly as public officials who have been appointed by Law. Invite the position of Notary to have authority and duty in making authentic deeds and other legal documents. Apart from that, regarding this authority, it has been explained in Article 15 paragraph (1) of the Law on the position of Notary Public, the making of an authentic deed made by a Notary will be related to all actions, agreements and stipulations which in this case are required by Law or have been required by a person who has a special interest to be expressed in an authentic deed, the Notary also in making an authentic deed guarantees the time when the deed is made, and keeps the deeds that he has made, these matters as long as the making of the deed is not assigned or excluded by the official or other parties as determined by law. Apart from that, the authority of other Notaries is explained in article 15 paragraph (2). Notaries also have the obligation to carry out their authority in making and producing authentic deeds in accordance with all applicable regulations. Notaries are also obliged to guarantee the completeness of the entire process of making the deed, and the deed as previously explained must be stored safely and with great care. The deed is made by observing every explanation from the person present and will be made based on what has been explained by the person present and the needs of the person present, all of these things must be fulfilled in making the deed because these things will produce a deed that can be used as a form of protection. law for the community to carry out certain legal actions. These advantages are what make an authentic deed a deed made before a Notary that has full legal force and is perfect in proof (Erliyani, 2020).

A Notary in carrying out his profession is also obliged to have a good personality and morals in carrying out his duties in providing the best service to the wider community, in this case, the Notary is independently impartial in his notarial field (Budiono, 2007). Apart from that, Notaries are also required to be trustworthy, honest, and impartial and safeguard the interests of the parties in carrying out their position, this is stated in Article 16 paragraph (1) of the Law on the Position of Notaries.

The Notary's responsibility in making an authentic deed is a big responsibility because in this case, the authentic deed that he will produce will be a legal document that has legal force, this is where the Notary is obliged to ensure the material truth in the deed that he creates. This responsibility includes civil responsibility, for which someone in the legal profession can be held accountable for their duties. So in this case, a Notary is not responsible only on moral grounds but also on legal grounds because he can be held responsible for all actions that have been carried out by a person (Nico, 2003).

Currently, in practice, it is not uncommon for Notaries who carry out their positions to violate applicable laws, in the form of unlawful acts. Of course, this will cause problems for the public as clients or other parties, even for the Notary himself. So for the problems that arise, the Notary concerned can be held legally responsible for his actions. Liability for a legal practitioner will arise if the person commits an act that is prohibited and contrary to law as explained in the Civil Code or Civil Code which is referred to as an unlawful act or *onrechtmatige daad* (Prodjodikoro, 1983). An action can be said to be an unlawful act if it meets the following elements (Setiawan, 1999):

- a. Act against the law;
- b. There is an error in it;
- c. There are losses incurred;
- d. There is a causal relationship between actions and losses.

Apart from that, *onrechtmatige daad*, is a term that originates from the Netherlands, which is a term for unlawful acts, namely a form of bond that arises from statutory regulations as a result of human actions that oppose or violate the law (Widjaja, 2017). Within the scope of civil law, unlawful acts have a term known as *onrechtmatige daad*, which is an act: (Djojodirdjo, 1982).

1. Contradicts other people's rights;
2. Contrary to the perpetrator's obligations;
3. Contrary to the circumstances or social life of other people;
4. Causing harm to other people.

Acts against the law also have several categories, including: (Fuady, 2002)

1. There is an element of intent involved and carrying out unlawful acts consciously;
2. Acts against the law without any element of intention;
3. Acts against the law due to negligence involved.

The more widespread the notary profession becomes, the easier it is for people to obtain and obtain legal assistance to create certain legal documents that aim to guarantee legal certainty and legal protection in the legal traffic in social life. However, it needs to be noted again that in practice currently there are quite a few Notaries who commit violations in carrying out their positions and duties as Notaries and this can result in certain problems or losses for the public as Notary clients. One of the cases of unlawful acts in making authentic deeds was carried out by a Notary based in Cirebon, in the District Court decision Number 83/Pdt.G/2022/PN Cbn. Where in this case the Notary was suspected of making a marriage agreement and a gift deed made by him at the request of his client without the approval and signature of his client's partner. It is on this basis that the plaintiff or client's partner only became aware of the existence of these deeds after the divorce occurred, and objected to the deed being executed.

So for one example of a case that occurred in Notary practice which has been explained above, in this case routine supervision and guidance is needed which aims to prevent and overcome problems that occur in the practice of making authentic deeds by each Notary. The Law on Notary Positions regulates and explains that supervision and guidance will be carried out by the authorized body, namely the Notary Supervisory Council. In this case, the authority is a formal power from the powers that have been granted by law. In general, the authority itself is something that consists of several authorities, namely a power over a group of individuals or power in the field of government. This authority is included in the scope of public law, authority within the scope of the government, and at the same time the authority to carry out duties and provide authority and distribution of authority as determined by law. Authority is a legal power (*macht*), which is described as being able to choose to do or not do an action, while legal authority is one that includes rights and obligations therein (*rechten en plichten*) (Nurmayani, 2009).

In this case, the authority of the Notary Supervisory Council is in carrying out the office of Notary because it is one of the front guards that has been trusted by the state to overcome Notary Actions for unlawful acts which can range from violations in the performance of the office of notary to violations of the Notary's code of ethics. Apart from that, the authority of the Notary Supervisory Council also ensures that the rights and obligations of Notaries in carrying out their duties and work are in accordance with those determined by the Law and regarding moral ethics in carrying out the office of Notary must also comply with the applicable code of ethics. So the author is interested in discussing the existing issue regarding the authority of the Notary Supervisory Council regarding unlawful acts related to the Notary's Code of Ethics in Making Authentic Deeds.

METHOD

This research uses Normative legal research methods by carrying out an in-depth understanding of the problems that occur using the Law approach and Case Approach (Marzuki, 2016). The

nature of this research is analytical descriptive, namely connecting the presentation of the law with legal theories and the practice of implementing posited law in statutory regulations (Soemitro, 1988). The data collection technique in this research uses legal materials that support and are related to the research being studied, namely media or means collected through written legal materials in the form of literature studies and document studies (Marzuki, 2011). The type of collection of legal materials obtained came from legal materials consisting of the Civil Code, Law Number 02 of 2014, amendments to Law Number 30 of 2004 concerning the Position of Notaries, Regulation of the Minister of Law and Human Rights Number 16 2021 concerning Organizational Structure and Work Procedures, Procedures for Appointment and Dismissal, as well as the Notary Supervisory Council's Budget as well as Changes to the Notary Code of Ethics by the Extraordinary Indonesian Notary Congress in 2015. Regarding other legal materials used as a complement to what will be presented by the author in this research using books, legal publications, journals, and other scientific works.

The research approach used is a legal approach by examining the law as a whole, including regulations or other rules that are related to the legal issues being handled (Marzuki, 2016). The data analysis technique used is the qualitative analysis technique which is a technique for analyzing the legal material obtained and refers to a theoretical basis (Fajar, 2010).

RESULTS AND DISCUSSION

Notaries as public officials who have been mandated to carry out their duties in making authentic deeds are very important for the community in assisting in the production of legal evidence in the form of legal documents in the form of authentic deeds, which can guarantee the certainty of the content stated by the Notary in the statement of the parties appearing and based on the making of the authentic deed. following applicable laws and regulations. To ensure that the implementation of the Notary's position is appropriate and that the overall implementation of the Notary's position has been fulfilled, in this case, the Law establishes a Notary Supervisory Council which is a form of government body created by the Minister as explained in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, where it has been explained that in this case the Minister formed a Notary Supervisory Council to carry out supervision of Notaries. The basic definition of the Notary Supervisory Council in the Notary Position Law is contained in Article 1 paragraph (6) which explains that the Notary Supervisory Council in this case is a body that has the authority and obligation to carry out guidance and supervision of Notaries, in this case the guidance and supervision is efforts to prevent and overcome violations of the implementation of Notary office and violations of the code of ethics.

The implementation of the authority of the Notary Supervisory Board in this case has different parts based on its level. Article 68 explains that there are several levels of the Notary Supervisory Board in carrying out its authority, including:

- a. Regional Supervisory Council (MPD);
- b. Regional Supervisory Council (MPW);
- c. Central Supervisory Council (MPP).

Furthermore, the explanation of the Notary Position Law explains that each level of the Notary Supervisory Council is related to its formation, authority, and obligations in matters related to handling violations of unlawful acts committed by Notaries, namely as follows:

1. Regional Supervisory Council, in the Notary Position Law, is regulated in the provisions of Article 69 to Article 71, that the Regional Supervisory Council is formed in the district or city. The Regional Supervisory Council has the authority to receive reports from the public regarding alleged violations of the Code of Ethics or the Implementation of the Notary's office, then the Regional Supervisory Council can hold a hearing to investigate alleged violations of the Notary's Code of Ethics or violations of the performance of the Notary's office.

report the report to the Regional Supervisory Council to be continued. Then, in exercising its authority, the Regional Supervisory Council also has obligations, namely to prepare minutes of inspections and submit them to the local Regional Supervisory Council, with a copy to the Notary concerned, the Notary Organization, and the Central Supervisory Council, to keep the contents of the deed and the results of the inspection confidential, to check Public report to the Notary and submit the results of the examination to the Regional Supervisory Council within 30 days by making a copy to the reporting party, the Notary concerned, the Central Supervisory Council and the Notary Organization.

2. Regional Supervisory Council, in the Notary Position Law, is regulated in the provisions of Article 72 to Article 75, that the Regional Supervisory Council is formed and is domiciled in the provincial capital. The Regional Supervisory Council has the authority to hold hearings to examine and make decisions on reports from the public regarding community reports through the Regional Supervisory Council, summon the Notary who is reported to examine reports of alleged violations committed, provide written and verbal sanctions, in this case the Supervisory Council The Notary can propose to the Central Supervisory Council the imposition of sanctions against the Notary in the form of temporary dismissal, namely 3 months to 6 months and/or dishonorable dismissal, then make an official report regarding each decision to impose sanctions. Then, in exercising its authority, the Regional Supervisory Council also should convey its decision to the Notary concerned with a copy to the Central Supervisory Council and the Notary Organization, as well as conveying appeals submitted by the Notary to the Central Supervisory Council against sanctions imposed or refusal of leave.

3. The Central Supervisory Council, in the Law on the Position of Notaries, has been regulated in the provisions of Article 76 to Article 80, that the Central Supervisory Council is formed and located in the state capital. The Central Supervisory Council has the authority to hold hearings for examinations and make decisions at the appeal level regarding the imposition of sanctions and refusal of leave, summon the reported Notary for examination, impose sanctions of temporary dismissal, and make recommendations to the Minister for sanctions in the form of dishonorable dismissal. Then, in exercising its authority, the Central Supervisory Council also should convey decisions to the Minister and Notary regarding copies to the Regional Supervisory Council and the relevant Regional Supervisory Council as well as the Notary Organization. In addition, the Central Supervisory Council can propose a temporary Notary official to the Minister while the Notary is dismissed, and the Minister will appoint a Notary who will receive the Notary Protocol from the temporarily dismissed Notary.

Regarding the authority of the Notary Supervisory Council regarding violations of the Notary's Code of Ethics and violations of the implementation of the Notary's position, in practice, there are currently quite a few found, one example of which is the case in Decision Number 83/Pdt.G/2022/Pn Cbn, in this case, it was decided by The judge stated that the Notary in the decision had committed an unlawful act related to making an authentic deed. The authentic deed that he had made was in the case of the position that the plaintiff had explained that in making the authentic deed the Notary and his client, namely the plaintiff's ex-husband, did not ask for approval and provide a signature from the plaintiff, who was the spouse of the Notary's client. The deed made by the Notary is in the form of an authentic deed in the form of a property separation agreement and a gift deed, these deeds were discovered after the divorce occurred. The results of the Judge's Decision on the case decided that the Notary and his client were proven to have committed an unlawful act, so based on the Judge's Decision stated that the deeds made by the Notary had been declared null and void, and demanded that the Notary be responsible for the losses incurred. incurred by him in making the deed.

An action can be said to be against the law if it fulfills the elements of an unlawful act, where there is an error in it, there is a loss caused and there is a causal relationship between the act and the loss. Apart from that, in this case, the theory of unlawful acts also includes an

explanation in Article 1365 of the Civil Code which also explains that it is an act that is against or against the law that has been carried out by someone, whose act causes harm to another party. Apart from that, there are 3 categories of unlawful acts including:

- a. There is an element of intentionality and consciously committing an unlawful act;
- b. Acts against the law without any element of intention;
- c. An unlawful act due to negligence.

Based on the case example above, it can be said that the Notary has clearly committed an unlawful act because it complies with what is explained in Article 1365 of the Civil Code as well as the elements of an unlawful act, while it is related to the category of unlawful act committed by the Notary in the example. The case above is an unlawful act in which there is an element of intention because in the case of making the deed the Notary should know and understand that in making an authentic deed his authority as an official who makes an authentic deed is clearly regulated in the Notary's Position Law, which in addition to his authority in making authentic deed in Article 15 paragraph (1) there are other regulations that must be implemented in carrying out the office of Notary, namely Article 16 paragraph (1) letter a Notaries are required to act trustworthy, honest, thorough, independent, impartial and safeguard the interests of the parties involved in the action law. Apart from that, in Article 16 paragraph (1) letter M, it is explained that the Notary is obliged to read the deed in front of the presenters and attended by witnesses and the deed must be signed at that time by the presenters, witnesses and the Notary who made the deed.

Then, based on the example of the case above, the Notary, of course, apart from violating the Law on the Position of Notaries, has also violated the provisions of the Notary Code of Ethics, which is a moral rule that has been made by the Indonesian Notary Association which applies to all and every member of the association and all people who carry out their duties and his position as a Notary. The Code of Ethics regulations that have been violated by the Notary are in Article 3, namely that the Notary in this case is required to have good morals, character and personality as well as behave honestly, independently, impartially, trustworthy, thoroughly, full of a sense of responsibility based on statutory regulations. and on the contents of the Notary's oath of office as well as respecting, obeying, and implementing every regulation and Decision of the Association.

Due to the occurrence of this case, it is clear evidence that in practice the Notary Office still has violations committed by Notaries, so based on this, according to the author, in this case, the Notary Supervisory Board is the most important part of preventing and overcoming these problems, because in this case, A notary is the only official who has been trusted and sent by the state and is mandated by law in carrying out his duties and carrying out his position to make authentic deeds whose presence plays a very important role in people's lives in carrying out legal acts, then if in practice there are still A notary who exercises his authority does not comply with existing laws or regulations and commits unlawful acts in making an authentic deed, which will cause problems in that the authentic deed cannot be guaranteed to be authentic or authentic and cannot become a legally binding deed that can provide legal protection. for the community to carry out certain legal acts. In this regard, the Notary is obliged to be responsible for the actions he has committed because in this case the unlawful act is a collection of legal principles which aim to regulate dangerous behavior to provide responsibility for losses that arise and provide compensation for the victim. with the right lawsuit (Fuady, 2002).

The presence of the Notary Supervisory Council in carrying out its authority will also help the wider community as Notary clients who suffer losses due to unlawful acts committed by the Notary through reports of alleged violations of the Code of Ethics and violations of the performance of the Notary's position, in which case the Notary must be held responsible. for his actions, in this case, the Notary Supervisory Council by its authority can impose various sanctions ranging from light sanctions to the heaviest sanctions which will be proposed to the

relevant Minister. Because in this case, apart from ensuring that the implementation of the office of Notary is carried out by applicable regulations, in this case, it can also be realized that the Notary Supervisory Council also plays a role in protecting the wider community to follow-up and overcoming the increasing number of Notaries who have problems in notarial practice in society. In the example of the case previously explained regarding the unlawful act that was committed by the Notary in making the authentic deed, where the Notary made the deed without facing each other, without the consent and agreement of one of the parties to the agreement which will be expressed in the deed he made, then on the basis of If the Notary makes a mistake, sanctions can be imposed which will be decided by the Notary Supervisory Council in the form of a verbal warning, written warning, up to the stage of temporary dismissal to honorable dismissal and even dishonorable dismissal which in this case will be proposed by the Notary Supervisory Council to the Minister.

The authority of the Notary Supervisory Council is also the main guard in supervision and guidance and can also assist law enforcement officials regarding the implementation of the position of Notary. Currently, quite a few of the Notary's professional practices violate the Notary's Code of Ethics in carrying out their position and can cause losses to clients, other parties, and even the Notary himself. So this is where the role of the Notary Supervisory Board plays an important role in supervising and providing guidance in controlling the implementation of the Notary position.

CONCLUSION

Notaries as public officials have the task of making authentic deeds which in this case are necessary in the life of society in carrying out certain legal acts, Notaries also have a big responsibility for this matter, in carrying out the position of Notary Public they are required to comply with the main regulations in carrying out the position of Notary Public, namely Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary Public, which in this case is the basis for carrying out their duties and authority in the Notary profession, but in practice there are still often violations or unlawful acts committed by several implementation of the Notary's position in making authentic deeds, one of which is raised in this writing, namely in Decision Number 83/Pdt.G/2022/Pn Cbn where it is proven that the Notary has committed a legal act because he made a deed only based on information from one of the parties and did not ask approval, signature of the other party concerned in the deed.

So, on this basis, the authority of the Notary Supervisory Board is very necessary in responding to problems that occur in notarial practice today. Where the Notary Supervisory Council is the front guard to carry out supervision and guidance in anticipating, preventing, and overcoming problems that occur in the implementation of the position of Notary, with the aim that in the future in obtaining the legal documents needed as conditions and tools for proof and carrying out legal actions can be achieved. carried out well and wisely if in this case the implementation of the Notary's position in making authentic deeds in practice there are no elements of unlawful acts that make the authentic deed invalid for its authenticity, authenticity and of course, it cannot be used as a strong legal document and can bring losses to the parties. others, including the party listed in the deed, even the Notary himself.

REFERENCE

- Alkatri, Nadhif M. et al. *Perbandingan Tugas dan Wewenang Notaris Indonesia dan Amerika Serikat*. (Yogyakarta: Tanah Air Beta, 2021).
- Budiono, Herlien, *Notaris dan Kode Etiknya*. (Medan: Upgrading & Refreshing Course Nasional Ikatan Notaris Indonesia, 2007).

- Djojodirdjo ,M.A. Moegni. Perbuatan Melawan Hukum, Cetakan ke-2. (Jakarta: Pradnya Paramita, 1982).
- Erliyani ,Rahmida dan Siti Rosyidah Hamdam. Akta Notaris Dalam Pembuktian Perkara Perdata & Perkembangan Cyber Notary. (Yogyakarta: Dialektika, 2020).
- Fajar, Mukti dan Yulianto Achmad. Dualisme Penelitian Hukum Normatif & Empiris. (Yogyakarta :Pustaka Pelajar, 2010) .
- Fuady, Munir. Perbuatan Melawan Hukum. (Bandung: Citra Aditya Bakti, 2002).
- Indonesia. Kitab Undang-Undang Hukum Perdata
- Indonesia. Undang-Undang Nomor 02 Tahun 2014 tentang Perubahan Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3, Tambahan Negara Republik Indonesia Nomor 5491).
- Kongres Luar Biasa Perkumpulan Ikatan Notaris Indonesia. Perubahan atas Kode Etik Notaris. (Banten, 2015).
- Marzuki, Peter Mahmud. Penelitian Hukum. (Jakarta: Kencana Prenada Media Group, 2011).
- Marzuki, Peter Mahmud. Penelitian Hukum Edisi Revisi, Cetakan Ke-9. (Jakarta : Kencana Prenada Media Group, 2016).
- Marzuki ,Peter Mahmud. Penelitian Hukum, Edisi Revisi, Cetakan ke-12. (Jakarta: Kencana, 2016).
- Nico. Tanggungjawab Notaris Selaku Pejabat Umum. (Yogyakarta : Center for Documentation and Studies of Business Law (CDSBL), 2003).
- Nurmayani. Hukum Administrasi Daerah. (Bandar Lampung : Universitas Lampung, 2009).
- Prodjodikoro , R. Wirjono. Asas-Asas Hukum Perdata, Cetakan Kesembilan.(Bandung: Sumur Bandung, 1983).
- Setiawan, Rachmat. Pokok-Pokok Hukum Perikatan, Cetakan Keenam. (Bandung: Bina Cipta, 1999).
- Widjaja, Gunawan. dan Kartini Muljadi. Seri Hukum Perikatan-Perikatan Yang Lahir Dari Undang-Undang. (Jakarta: PT. Raja Grafindo Persada, 2017).