

Legal Reconstruction of Regional Notary Assembly Supervisor Authority in the Framework of Notary Supervision Optimization Based on Justice Value

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Abstract

The objectives of this study are to analyze and find weaknesses in the Regional Notary Assembly Supervisor Authority in Indonesia currently and how to reconstruct the law to realize a better Regional Notary Assembly Supervisor Authority based on justice value. The method used in this study uses an empirical juridical approach supported by a normative approach with the paradigm used by the constructivism paradigm. The results of the research show that there are that the regulation of the authority of the notary regional supervisory board in the context of supervising notaries is currently not optimal based on the value of justice as there are weaknesses in the regulation of the authority of the notary regional supervisory board in the framework of supervising notaries at this time as the board don't have the authority to impose sanctions on a notary. Therefore, there is a need for reconstruction of the authority of the regional notary supervisory board as stated in article 70 of Law No. 30 of 2004 concerning the position of a notary, in which the notary regional supervisory board must have the authority to impose sanctions on a notary.

Keywords: Legal Reconstruction, Notary, Supervision, Justice Value.

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INTRODUCTION

The Supervisory Board is a body that has the authority and obligation to carry out guidance and supervision of notaries, supervision of notaries is intended so that notaries in carrying out their duties and obligations must be based on and follow the applicable laws and regulations governing the position of notaries, supervisors who carry out supervision of notaries must have understood the duties and functions of a notary as well as the laws and regulations governing that if someone wants to examine the work of another person, the examiner must know the duties, rights, and obligations of the person being examined. In the event that a notary is examined, the inspector must know the work of a notary and must study and master the Notary's Position Regulations, which will then be mentioned as PJN and other laws related to PJN (Aisyiah, 2022).

The supervisory duties carried out by the Notary Supervisory Board include supervising violations of the position and behavior of a notary that

has a direct impact on the community or is considered detrimental to those who use the services of a notary. The Supervisory Board in carrying out this supervision has the authority to receive reports directly from the public on allegations of violations of office and code of ethics committed by notaries.

The Supervisory Council formed by the Minister of Law and Human Rights consists of elements from the government, notary organizations, and experts or academics. The Supervisory Council in question is the Regional Supervisory Council, the Regional Supervisory Council, and the Central Supervisory Council. In the implementation of notary supervision in each district/city area there is a regional notary supervisory board (Ananda, 2022).

Supervision of notaries carried out by the notary supervisory board is carried out by involving academic experts, in addition to departments whose duties and responsibilities are in the field of notary affairs and notary organizations, the establishment of MPD in each district/city is intended to improve service

and legal protection for the public who use notary services. This is because the facts show that there have been many irregularities committed by Notaries, which have the potential to violate the professional code of ethics, even violations of the law, both administrative and criminal irregularities.

Until now, the authority possessed by the Notary Regional Supervisory Council, including the Notary Regional Supervisory Council is limited to recommending the Regional Notary Supervisory Council (MPWN) of North Sumatra Province specifically the authority to impose sanctions on a notary who is proven to have committed an offense.

The existing facts show that there are obstacles faced by the Notary Regional Supervisory Council in carrying out its authority, as stipulated in Article 70 UUN. After the amendment to the UUN, the MPD also does not yet have total authority, especially with regard to the authority stipulated in Article 70 letter, because the substance of the article is not part of the amendment. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Women's Empowerment Government Policies in Realizing Gender Equality*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of the Implementation of Regional Notary Assembly Supervisor Authority in Indonesia currently?
2. How is the Legal Reconstruction on Regional Notary Assembly Supervisor Authority Based on Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from

field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Implementation of Regional Notary Assembly Supervisor Authority in Indonesia currently

Since the presence of the Notary institution in Indonesia, supervision of Notaries has been carried out by the judiciary and the government, the purpose of supervision is so that Notaries when carrying out their duties fulfill all the requirements relating to the implementation of the duties of a Notary's office, in order to safeguard the interests of society (Wahyu, 2018). Because the Notary is appointed by the government, not for the benefit of the Notary himself but for the benefit of the community he serves.

Supervision of the notary public which includes the behavior of the notary public and the implementation of the position of the notary public is carried out by the minister which is carried out by the supervisory assembly. The Supervisory Board is a body that has the authority and obligation to carry out the guidance and supervision of Notaries. Supervision of a Notary is intended so that a Notary in carrying out his duties must comply with and follow the laws and regulations governing the position of a Notary. The Supervisory Board in carrying out its functions and duties adheres to and is based on the provisions, among others:

- a. Law No. 30 of 2004 concerning the position of Notary.
- b. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.
- c. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.39-PW.07.10 of 2004 concerning

- Guidelines for the Implementation of the Duties of the Notary Supervisory Board; and
- d. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 24 of 2020 concerning the Organizational Structure of Work Procedures, Procedures for Appointment and Termination, and Budgets of the Notary Supervisory Council.

The Regional Supervisory Council in carrying out its duties must be guided by the rules mentioned above, but in carrying out its duties and functions the Regional Supervisory Council has weaknesses in enforcing its authority in the form of sanctions against notaries who commit violations in carrying out their positions, which results in the inability to carry out the authority of the Public Notary's Regional Supervisory Council.

Based on the provisions governing the authority of the Notary Regional Supervisory Council is only limited to recommendations and reports to the regional Supervisory Council, therefore to carry out the supervisory function which does not run as a whole against Notaries.

In field research, there are several findings regarding problematic notaries who have not complied with the Notary Office regulations, including (Sajadah, 2022):

- a. Notaries in carrying out their duties and positions do not complete the protocol book ordered by the Notary Office Law and rather asked to make the Recording of the Repertorium, an obligation stated in Article 58 UUJN so that the legal consequences that arise due to negligence in the recording process are violations of the law. The notary's negligence in recording the Repertorium is an administrative negligence that concerns the behavior of the notary.
- b. The whereabouts of a notary who is still active is unknown, which is known to have opened his office and carried out his duties in making notarial deeds. Regarding this matter, it will be detrimental to the public when they will need a second copy of the deed made before the notary, and likewise, if the investigator requires a photocopy of the minute deed for proof in a case from the parties to the dispute from the deed he made. Likewise, when there is a public report to the Supervisory Board regarding the problem of the deed made before him, the summons cannot be carried out because the address of the notary is not known.
- c. An active notary never opens/closes an office and does not operate, but continues to carry out his/her duties and continues to make deeds. Regarding this matter, it will be detrimental to

the community and has violated the provisions of the Notary Office Law. When there is a report from the community to the Supervisory Board regarding the problem of the deed made before him, the summons cannot be submitted to the notary.

- d. The retired notary has yet to submit his protocol to the notary who will accept the protocol and his office is closed.

This has violated the provisions of the Notary Office Law and will be detrimental to the public who will need a second copy of the deed he made.

Although the Regional Supervisory Board has the authority to receive reports from the public and from other notaries and holds hearings to examine alleged violations of the notary's performance, they are not authorized to impose any sanctions (Wahyu, 2019). In this case, the Regional Supervisory Council is only authorized to report the results of its sessions and examinations to the Regional Supervisory Council with copies to the reporting party, the notary concerned, the Central Supervisory Council, and the notary organization; The legal uncertainty contained in the Notary Office Law in terms of determining sanctions by the Regional Supervisory Council is accompanied by the authority granted by the Notary Office Law to the Regional Supervisory Council as an institution, which has legal consequences in stopping legal efforts to seek justice for violations committed detrimental to the parties related to the work of the position of Notary (Toebagus, 2022).

The norms of the Notary Office Law stated above provide legal uncertainty for the Notary supervising agency in determining what sanctions are appropriate and fair for the parties harmed by the Notary, the Regional Supervisory Council cannot determine sanctions for Notaries who commit violations that will legal consequences on the side of justice of the aggrieved parties.

The Notary Supervisory Council has the authority to impose sanctions on a Notary. This sanction is mentioned or regulated in Article 84 and Article 85 of the Notary Office Law, also mentioned again and added to the Decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004.209 With such an arrangement there is a sanction arrangement that is not mentioned in the Notary Office Law but in fact, it is regulated in the Decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004. Thus the sanctions provisions contained in Article 85 of the Notary Office Law, sanctions in the form of verbal warnings and written warnings can only be imposed by the Regional Supervisory Council. Sanctions in the form of temporary dismissal from the position of Notary can

only be carried out by the Central Supervisory Council, and sanctions in the form of a dishonorable discharge from the position of Notary and honorable discharge from the position of Notary can only be carried out by the Central Supervisory Council.

At an ideal level, all levels of the Supervisory Board should have the authority to impose sanctions, in the form of verbal warnings and written warnings, and sanctions of suspension and dishonorable dismissal. All forms of sanctions can be objected to the agency that imposed the sanction and if you are not satisfied you can appeal to a higher agency, in this case, the Regional Supervisory Council, and continue to the Central Supervisory Council.

The authority of the Supervisory Board from the description above can be understood that the Minister as State Administration receives authority in the form of attributive or direct supervision of the Notary from the Law, after which the Minister delegates his supervisory authority to the Notary Supervisory Council. That the delegation issues a decision that is of a State Administrative nature must be from a State Administrative body or position to a TUN Agency or position or another party that is not necessarily a TUN Agency or Position.

2. Legal Reconstruction on Regional Notary Assembly Supervisor Authority Based on Justice Value

The authority of the Notary Supervisory Council is only limited to recommendations that are reported to the Regional Supervisory Council and the Regional Supervisory Council cannot issue decisions on sanctions against a notary if he commits an act that is detrimental to society, while the Regional Supervisory Council and the Central Supervisory Council have the authority to provide witnesses against a notary

In order for the Regional Notary Supervisory Council to carry out its duties, it is necessary to be given the mandate to impose sanctions on notaries who violate the Notary Office Law in carrying out their duties and the decision to impose sanctions does not have to be centralized in the Regional Supervisory Council and the Central Supervisory Council, the authority to impose sanctions should be centralized tiered both the Regional Supervisory Council, the Regional Supervisory Council, and the Central Supervisory Council have the same authority to be able to impose sanctions on a notary who violates the Notary Office Law in carrying out his/her duties,

According to Gijssel, in Oh (2023), every theory used by the science of law can be interpreted as a unified view, opinion, and notions related to reality which is formulated in such a way as to make it possible to describe hypotheses that can be studied. The

common thread of a theory is used to solve problems and form systems. The system referred to in this study is the reconstruction of policies that are useful for application in the supervision of a Notary, with a combination of legal sociology that is useful for assisting the science of law itself from a behavioral perspective. The pattern of legal sociology was also explained by Satjipto Rahardjo, legal sociology is an empirical science, which is based on facts in a descriptive, explanatory way and makes predictions about the workings of the law.

In accordance with the provisions regarding the authority of the Notary Regional Supervisory Council regulated in Article 70 of Law Number 30 of 2004 in conjunction with Regulation of the Minister of Law and Human Rights of the Republic of Indonesia number 40 of 2015 concerning Organizational Structure, procedures for appointing members, dismissing members, and working procedures of the supervisory board The authority of the Supervisory Board, in carrying out the authority of the Notary Regional Supervisory Council, there are obstacles in the absence of rules governing the imposition of sanctions. Therefore, it is necessary to reconstruct Article 70 so that the authority of the Regional Supervisory Board can carry out its supervisory duties on notaries optimally.

The Notary Supervisory Council has the authority to impose sanctions on a Notary. This sanction is mentioned or regulated in Article 84 and Article 85 of the Notary Office Law, also mentioned again and added to the Decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004. With such an arrangement there is an arrangement of sanctions that are not mentioned in the Notary Office Law but in fact, it is regulated in the Decree of the Minister of Law and Human Rights Number M.39-PW.07.10 of 2004. Thus the sanctions provisions contained in Article 85 of the Notary Office Law, sanctions in the form of verbal warnings and warnings in writing can only be dropped by the Regional Supervisory Council. Sanctions in the form of temporary dismissal from the position of Notary can only be carried out by the Central Supervisory Council, and sanctions in the form of a dishonorable discharge from the position of Notary and honorable discharge from the position of Notary can only be carried out by the Central Supervisory Council.

Legal uncertainty contained in the Notary Office Law in terms of determining sanctions by the Notary Regional Supervisory Council accompanied by the authority granted by the Notary Office Law to the Notary Regional Supervisory Council as an institution, which has legal consequences for stopping legal efforts to seek justice for violations that are detrimental to the

parties related to the work of the Notary (Sulistyowati, 2022).

The norms of the Notary Office Law stated above provide legal uncertainty for the Notary supervising agency in determining what sanctions are appropriate and fair for the parties harmed by the Notary, the Notary Regional Supervisory Council cannot determine sanctions for a Notary who commits a violation will have legal consequences on the side of justice from the aggrieved parties.

At an ideal level, all levels of the Supervisory Board should have the authority to impose sanctions, in the form of verbal warnings and written warnings, and sanctions of suspension and dishonorable dismissal. All forms of these sanctions can be objected to by the agency that imposed the sanction and if they are not satisfied they can appeal to a higher agency, in this case, the Regional Supervisory Council, and continue to the Central Supervisory Council.

In order to create a notary regional supervisory board that has justice, certainty, and the benefits of an equitable law, it is necessary to have a policy reconstruction. So supervision of a notary by the notary regional supervisory board has the authority to impose sanctions on a notary who in carrying out his duties has violated the provisions contained in the Notary Office Law, for this reason, article 70 of Law Number 30 of 2004 concerning the position of a notary needs to be reconstructed. so that the authority of the notary regional supervisory board can impose sanctions on the notary and the notary regional supervisory board can work optimally and based on the value of justice. As stated by Stufenbau that the legal system is a hierarchy of law. In this hierarchy, a certain legal provision originates from a higher provision. And this highest provision is the Grundnorm or hypothetical basic norm and the lower provisions are the concretization of the higher provisions.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses in the regulation of the authority of the Regional Notary Supervisory Council in order to optimize the supervision of Notaries are currently not based on the value of justice because the Regional Notary Supervisory Council does not have the authority to impose sanctions on Notaries who violate the Notary Office Law. So; that the level of notary compliance is still very low in implementing the Notary Office Law.
2. The Reconstruction of regulations on the authority of the Regional Notary Supervisory Council in order to optimize the supervision of

notaries based on the value of justice, it is necessary to revise Article 70 of the Notary Office Law which gives authority to the Regional Notary Supervisory Council in imposing sanctions on Notaries who violate the Notary Office Law and also to increase notary compliance in implementing the Notary Office Law.

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