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A critical analysis of the notary supervision implementation: A study in three cities in central Java province and Yogyakarta special region, Indonesia

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Abstract

Notaries have a crucial role in legal relations in society as they create deeds that can provide legal certainty and simultaneously prevent future disputes. There is a need for supervision to prevent notaries from committing reprehensible actions and to maintain the dignity of the profession in Indonesia. This aims to analyze the Local Supervisory Council's implementation of notary supervision, the problems that occur in its implementation, and how to resolve them. This study employed an empirical legal paradigm, meaning that the primary data were collected from interviews with selected sources. The object studied was the implementation of notary supervision by the Local Supervisory Council. The location of this study was the working area of Local Supervisory Councils in Central Java Province, encompassing Sukoharjo Regency, Yogyakarta City, and Semarang City. Results showed that there were two patterns of supervision, namely reactive supervision and proactive supervision. Concerning the problems in its implementation, the Local Supervisory Council was found to have failed to carry out its obligations to store notary protocols. Apart from that, based on the notary office law, there is an overlap of authorities between the two institutions in conducting coaching activities. This paper encourages better supervision of notaries by the Local Supervisory Council, as it was shown that it is crucial to properly carry out supervision. There must be efforts to amend the notary office law to prevent the overlap of authorities and create regulations that support the storage of notary protocols.

Keywords: Critical analysis, Law, Central Java, Implementation, Indonesia, Notary, Supervision, Yogyakarta.

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1. Introduction

A notary is a public official who has the authority to create authentic deeds [1]. A public official is a person who is officially appointed by the state. A public official has the task and authority to provide services to the public. In terms of the notary profession, notaries have the specific task and authority to create evidence in the form of authentic deeds [2]. So, unless there are other specific regulations regarding other officials who are authorized to make authentic deeds [3], notaries are the only public officials who are authorized to make such authentic deeds in the Indonesian state [4].

In a private legal relationship that occurs between two legal subjects, the fulfillment of obligations or the prestation of each party often becomes a source of dispute [5]. If one party fails to fulfill its obligations/prestation, then the other party can file a lawsuit to demand the fulfillment of its rights in court [6]. In the Indonesian Civil Procedural Law, this is known as a breach of contract lawsuit.

When filing a breach of contract lawsuit, the plaintiff must prepare evidence for the claim. In the process of proving civil cases in court, an authentic deed has perfect evidentiary power, meaning that it binds the parties involved in the deed. Apart from that, it also binds the third party, namely the judge. The evidentiary power of an authentic deed is perfect because it contains three values: external evidence, formal evidence, and material evidence.

External proof means that since the authentic deed was officially issued, the power of the deed's perfect proof is created until someone is able to deny it through a lawsuit in court. Formal proof means that the time, place, parties' honesty, and their signatures in the deed are deemed truthful without needing to be reconfirmed or questioned until someone is able to prove otherwise through a lawsuit in court. Meanwhile, material proof means that the contents of the deed in the form of the parties' information or statements are true without needing to be reconfirmed to the related parties [7].

Notaries have a crucial position in legal relations in society. This is because the deeds they make can provide legal certainty to the parties as well as prevent future disputes. Therefore, in carrying out their tasks, notaries must submit to the applicable regulations, namely the Notary Law and Code of Ethics. In addition, there needs to be a prophetic dimension in the implementation of the notary's position.

The transcendental dimension is a thought that begins to raise irrational things as an integral part of understanding science. These 'irrational' things include metaphysics (emotions, feelings, intuition, values, personal experiences, speculation), spirituality, as well as morals [8]. Recognizing the existence of revelation means recognizing the existence of a transcendental structure as well as a constitutive element in interpreting reality. Therefore, in this sense, revelation plays an important role. This element of revelation is what distinguishes Islamic epistemology from Western epistemology, as the latter recognizes that the only source of knowledge is reason or observation [9].

In Indonesia, two norms serve as a guide for notaries in carrying out their duties so that they refrain from committing acts that only benefit themselves while causing harm to society. Notaries who fail to follow norms may commit administrative violations and code of ethics violations [7]. Violations may be in the form of conducting promotions through social media, sending flower arrangements with writings of their positions, installing nameplates that do not comply with the applicable provisions, or holding dual positions. Apart from that, there are also notary violations that are directed toward criminal acts, such as falsifying documents or embezzling client tax money [10].

To prevent a notary from committing reprehensible acts as well as to maintain the dignity of the profession, there is a need for supervision. Notary supervision is urgent not only because this profession is honorable but also because it is vulnerable to being misused for financial gain. Thus, supervision is also carried out to prevent the community from experiencing losses. It is also a form of protection for notaries. Supervision of the implementation of the notary's position is regulated through two norms: (1) legal norms in the form of Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Position of Notaries or the Law on the Position of Notaries and (2) ethical norms, i.e., the Code of Ethics of the Indonesian Notary Association.

The Law on the Position of Notaries determines that supervision of notaries is carried out by the Republic of Indonesia's Minister of Law and Human Rights. In its implementation, the Minister forms a supervisory institution called the Notary Supervisory Council. This institution has hierarchical positions, starting from the regency or city level, which is called the Local Supervisory Council. At the provincial level, it is called the Regional Supervisory Council, while at the central level, it is called the Central Supervisory Council.

The local, regional, and central supervisory boards have the same composition of supervisors, namely nine people consisting of three elements from the government, three elements from the notary organization, and three elements from experts or academics [11]. The authority of the supervisory board is to provide guidance and supervision to notaries [12]. Each supervisory board level, from the district or city level to the central level, has different authorities. Due to this hierarchy as stipulated in the notary law, the regional supervisory board becomes the spearhead in implementing notary supervision related to notaries' behavior and the implementation of their position [13].

The Local Supervisory Board has the authority to directly supervise notaries on a daily basis. Apart from that, it also receives reports from the public. Thus, its role is more complex than that of the Regional Supervisory Council and Central Supervisory Council. In addition to supervising and coaching notaries, the Local Supervisory Council also has local-level administrative authority, including receiving monthly reports, initialing books that notaries must own, recording leave permits, and determining the storage location for notary protocols [14].

There are several challenges to the implementation of notary supervision in the local areas by the Local Supervisory Council, considering that the nine people in this Council must supervise all the notaries in a regency/city. As a comparison, there may be tens or even hundreds of notaries in one city area. In addition, personnel of the Local Supervisory Council are notary elements, academic elements, and government elements who also have day jobs.

It is usually difficult for Local Supervisory Councils to implement supervision activities due to the regulations that provide stipulations on this issue. For example, the Local Supervisory Council has the obligation to store notary protocols [1]. Unfortunately, the provisions regarding this obligation are not supported by technical regulations and infrastructure, making it very difficult to implement. The Law on the Position of Notaries gives the same authority of giving guidance to notaries to two institutions, namely the Supervisory Board and the Honorary Council. This certainly causes confusion regarding each institution's main tasks and functions.

Based on several phenomena above, this paper studies the implementation of notary supervision by the Local Supervisory Board and the problems occurring in its implementation.

2. Method

This study employed an empirical legal paradigm [15]. Empirical research, or field research, is non-library research that studies symptoms, events, and phenomena occurring in society, institutions, or countries through observation [16]. The data were collected through observation and interviews with key respondents. The data were then analyzed using regressive analysis [17].

The object studied in this research was the implementation of notary supervision by the Local Supervisory Board. The location of this study was the working area of the Sukoharjo Regency, Yogyakarta City, and Semarang City Local Supervisory Council. The primary data source, or key informant, was the Local Supervisory Council of Notaries in Semarang City, Yogyakarta City, and Sukoharjo Regency. Furthermore, an additional informant was the Regional Management of the Indonesian Notary Association in that area. In this paper, the primary data collection technique used by the authors was interviews. Furthermore, to analyze the data, the authors employed the qualitative analysis technique, which consisted of three stages: data reduction, data display, and conclusion drawing.

3. Results

To find out about the Local Supervisory Councils' implementation of notary supervision, the author conducted field research in three different local categories. This is based on the Regulation of the Minister of Law and Human Rights, which regulates the formation of notary positions and the determination of local categories. Based on this regulation, areas in Indonesia are divided into three local categories: A Local Category, B Local Category, and C Local Category. These local categories are determined based on considerations of the number or formation of notary positions in that area, the amount of gross local domestic product, and sociological considerations from the Minister [14]. Based on these local categories, the authors then determined the research location in regencies/cities that are part of each category, namely Sukoharjo Regency for C Local Category, Yogyakarta City for B Local Category, and Semarang City for A Local Category.

Supervision of notaries is a preventive and curative activity that also includes coaching activities carried out by the supervisory board [18]. Based on the terminology, it can be understood that the scope of supervision of notaries encompasses: 1. Preventive activities, i.e., supervision carried out as an effort to prevent the occurrence of violations; 2. Curative activities, i.e., supervisory activities carried out after a report on a certain party's complaints regarding a notary is received; and 3. Coaching activities, where the Supervisory Board will provide coaching to notaries who were found to have carried out actions that are not in accordance with the provisions of the laws and codes of ethics during the examination [19].

In this paper, the authors used five indicators to view the Local Supervisory Council's implementation of notary supervision, namely: 1. Conducting routine examinations; 2. Storing protocols; 3. Carrying out administrative activities; 4. Conducting examinations of alleged violations and proposed sanctions; and 5. Maintaining the dignity and honor of the notary profession.

Furthermore, Table 1 presents data obtained from personal interviews with the Chairpersons of the Local Supervisory Councils in the three selected cities/regencies: Semarang City, Yogyakarta City, and Sukoharjo Regency.

Table 1.Local supervisory councils' performance in implementing notary supervision in Sukoharjo Regency, Yogyakarta City, and Semarang City.

No	Category	Indicator	Conformity of supervision implementation with regulations		
110			Semarang (A)	Yogyakarta (B)	Sukoharjo (C)
1	Preventive	Performing routine checks	The council has implemented this, and the evaluation results have been submitted to the notaries.	The council has implemented this, and the evaluation results have been submitted to the notaries.	The council has implemented this, but the evaluation results have not been submitted to the notaries.
		Saving protocols	Not yet saved.	Not yet saved.	Not yet saved.
2	Curative	Performing administrative activities.	The council has received reports from the public, granted leave permits of up to six months, initialed and signed	The council has received written and oral reports from the public at the secretariat, granted leave permits, signed mandatory	The council has carried out administrative activities such as granting leave permits, receiving monthly

NI.	Category	Indicator	Conformity of supervision implementation with regulations		
No			Semarang (A)	Yogyakarta (B)	Sukoharjo (C)
			mandatory notary	books, and received	reports, and signing
			books, and received	monthly reports online.	mandatory books.
			monthly notary		
			reports.		
		Conducting	The council has	Before conducting an	Notaries involved in
		investigations	conducted a case	examination, the Local	issues or similar
		into alleged	titled "Incoming	Supervisory Council	situations will be
		violations and	Reports," summoned	made efforts to resolve	assisted in carrying out
		proposing	the reporter and the	the matter amicably.	mediation efforts with
		sanctions	reported party,	However, if the parties	the reporter.
			conducted	fail to cooperate, the	
			examinations, and	process will proceed	
			reported the	according to the	
			examination results.	provisions.	
		Maintaining the	The council has	The council has	The coaching was
		dignity and	followed up on any	conducted direct	carried out
		honor of the	occurring violations	coaching based on	simultaneously with the
		profession.	by issuing warnings.	information obtained	inspection. It has not
3	Coaching		It has confirmed the	from various sources	yet provided coaching
			implementation of	regarding the	on behavior. Coaching
			the notaries'	implementation of	was only related to the
			positions and	notaries' positions and	implementation of the
			behaviors.	behavior.	position.

The results of the study on the implementation of notary supervision in three cities show that there are two different patterns in its implementation. The first pattern indicates that the Local Supervisory Council has conducted supervision in accordance with the supervision concept determined by law, which includes preventive activities, curative activities, and coaching activities. In this first pattern, supervision is carried out with prevention, enforcement, and coaching approaches. The implementation is also conducted periodically according to schedule. This type of pattern requires greater roles and efforts from the Local Supervisory Council. The advantage of this pattern is that it establishes a good and sustainable supervision system, allowing it to be continued by supervisors who replace their predecessors. This pattern was found in areas categorized as A and B, specifically in the cities of Semarang and Yogyakarta.

The Local Supervisory Council in these two cities has undertaken several positive initiatives, such as following up on the supervision or examination conducted by implementing coaching activities for notaries. Coaching activities are carried out with a cooperative or amicable approach, ensuring that the coached notaries do not feel as though they are being specially supervised. Another aspect that deserves attention is the use of technological support facilities, which have proven to assist in the implementation of the Local Supervisory Council's work. The authors categorized the first pattern as a proactive supervision pattern, considering that the supervisor takes the initiative to perform actions beyond their main obligations to achieve the objectives of supervision.

The second pattern is a supervisory approach that tends to be reactive to existing reports, focusing on taking action or curative activities. This pattern neglects preventive actions, meaning it only addresses ongoing cases or disputes. It does not make coaching efforts to prevent future occurrences of similar incidents. This pattern is found in the area categorized as C, specifically in Sukoharjo Regency. The authors classified this second pattern as a reactive pattern, which emphasizes responding to or taking action on a report.

A comparison between the two supervision patterns is presented in more detail in Table 2:

Table 2. A comparison between the two supervision patterns regarding the implementation of notary supervision in three cities.

No	Comparative aspect	Reactive pattern	Proactive pattern
1	Nature of supervision	Responsive to reports	Active and preventive
2	Frequency of monitoring	As needed and tends to be unscheduled	Continuous and scheduled monitoring
3	Purpose of supervision	Resolving reported cases	Preventing violations and improving performance
4	Supervisory approach	Enforcement	Prevention and coaching
5	Advantage	Works more efficiently	Establishes a sustainable monitoring system
6	Disadvantage	Not preventive	Requires support and resources from stakeholders

4. Discussion

From the results of this research, it was found that the Local Supervisory Councils' efforts in implementing several tasks were still suboptimal. The Local Supervisory Councils in the three cities still faced challenges related to the storage of notary protocols. Notary protocols are important documents that must be properly stored and maintained by the notary concerned because these protocols remain valid as long as the notary's position is still needed by the state [20]. When a notary makes an authentic deed, a copy of the deed is given to the parties involved in the deed, while the minutes of the deed that have been perfectly signed must be kept by the notary himself. When the notary stops practicing his profession for certain reasons, the protocol will be submitted to another notary. Every notary who will be inaugurated is required to make a statement that he is willing to accept protocols from other notaries, i.e., his colleagues. The task of the notary receiving the protocol is to maintain and, if necessary, issue a copy at the request of the parties or their heirs. The laws and regulations require that notary protocols that are 25 years old or more be handed over to the Local Supervisory Council [21].

The problem is that as a body established by order of the Notary Law, the Local Supervisory Council is not equipped with implementing regulations that allow it to overcome such technical problems. As a supervisory body representing the Minister or government, Local Supervisory Councils were not given adequate equipment to carry out the obligations ordered by law. Local Supervisory Councils have the obligation to store notary protocols. However, they cannot implement this task due to limited facilities and infrastructure. Such a condition can be analyzed using Hart's theory approach.

In his legal concept theory, to understand how the law works in a social system, Hart distinguishes law into primary rules and secondary rules. Primary rules are substantive rules that regulate human behavior, such as Local Supervisory Councils' obligation to store notary protocols. Meanwhile, secondary rules are rules that support the primary rules' validity and implementation, such as procedures, institutional structures, or supervision. The occurring phenomenon shows the dysfunction of secondary rules, where there is no adequate mechanism for Local Supervisory Councils to have proper storage facilities and/or budget support from the government. The Local Supervisory Councils' inability to store notary protocols shows institutional weaknesses, as the Indonesian legal system does not fully support the implementation of its rules. According to Hart, this is a condition where the law loses its social functions due to a lack of attention to factual conditions in the field. Therefore, here is where the rule of recognition becomes important. It is the principle that determines a rule's validity in the legal system [22]. The Local Supervisory Councils' failure to carry out their obligation to store notary protocols shows the weakness of secondary rules that make the primary rules impossible to implement. To fix it, it is necessary to strengthen secondary rules by providing infrastructure, adequate funding, and clearer technical arrangements.

Another problem that can be identified is related to the coaching activities carried out on notaries as part or follow-up to supervision. Based on the law on the position of notary, there are two institutions that have the authority to conduct coaching activities, namely the Notary Supervisory Board and the Notary Honorary Council [13]. Based on the results of an interview with Muhammad Hafid, Chairman of the Semarang City Local Supervisory Council, on November 2nd, 2024, it was found that there is an overlap in the authority of the two supervisory bodies. The Notary Honorary Council has the authority to provide guidance in order to maintain the honor and dignity of the notary profession. It also has the authority to provide protection in terms of the notaries' obligation to keep their deeds confidential [23]. Meanwhile, the Notary Supervisory Council is also a body that has the authority to provide guidance in addition to supervision [24]. Guidance activities are, in principle, an effort to improve and enhance notaries' performance to increase their professionalism [18]. So, both bodies have the same authority in terms of providing guidance to notaries. Then, the notary position law provides no stipulations on the limitation of the guidance authority between the two bodies. This overlap certainly has an impact on the supervision and guidance implementation of notaries. If a notary commits an alleged violation and is then examined by both the Notary Supervisory Board and Notary Honorary Council, the two agencies may give different decisions. This leads to the failure to create legal certainty for notaries.

When viewed from H. L. A. Hart's legal concept theory, the root of the problem is in the rule of recognition [25]. In this case, the law gives authority to both bodies to provide guidance to notaries, which means that both bodies are recognized in the Indonesian legal system. However, there is no clear rule of recognition mechanism for conflicts of authority between the two bodies. So, it is necessary to strengthen the rule of recognition to establish a clear mechanism or procedure related to the authority of the two bodies through revision of the law. Or, there can be the issuing of technical regulations related to the relationship or limits of authority between the two bodies.

5. Conclusion

Supervision by the Local Supervisory Council of notaries in three cities illustrates two implementation patterns, namely the reactive and proactive supervision patterns. Reactive supervision is characterized by curative actions or actions oriented towards intervention, while proactive supervision focuses on preventive efforts and organizing coaching.

The legal problems that arise in the notary supervision implementation by Local Supervisory Councils in three cities pertain to legal norms, specifically the notary office law. This law assigns Local Supervisory Councils the task of storing notary protocols; however, it lacks technical regulations and adequate infrastructure support. Furthermore, this law also establishes the existence of two institutions that both possess the authority to supervise notaries, potentially leading to conflicts in its implementation.

Based on Hart's "Concept of Law" theory, the Local Supervisory Councils' failure to fulfill their obligation to store notary protocols, along with the presence of two institutions with overlapping authority to conduct coaching activities, highlights the weakness of the secondary rules, which ultimately results in the failure to implement the primary rules. This

underscores the importance of the rule of recognition, which is the principle that determines the validity of a rule within the legal system.

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