



## The role of the notary regional supervisory assembly in implementation of fictional meetings of shareholders by notaries

Dian Rizki Fonna, Darmawan, Efendi

Faculty of Law, Universitas Syiah Kuala, Aceh, Indonesia

### Abstract

The Notary Supervisory Board is a body that has the authority and obligation to carry out the guidance and supervision of Notaries. Supervision of Notaries is intended so that Notaries in carrying out their duties must be based on and follow the laws and regulations governing the Notary's position. However, in practice, there are still many notaries who violate their authority even though the supervision carried out by the Notary Supervisory Council is already strict, and it is certainly not easy to carry out such supervision. Sanctions from MPW in the form of oral and written and are final cannot be categorized as sanctions, but are the initial stage of the real coercive procedure aspect in order to be subsequently imposed with other sanctions.

The Regional Supervisory Council can go directly to the community to provide information so that the public understands the role and responsibilities of a notary. The sanctions given by the Notary Supervisory Council are in accordance with the applicable provisions, but actually these sanctions do not provide a deterrent effect for the Notary and other Notaries so that cases like this will still occur in the future. It is good that the Notary Supervisory Board can propose to return a more efficient sanction for violations committed by a Notary. The purpose of this thesis research is to answer the questions specifically stated in the identification of problems, namely to know the role of the notary regional supervisory board in the implementation of the fictitious general meeting of shareholders and to know the implementation of decisions against the regional supervisory board that commits violations and the application of sanctions. The research method used in this study is a normative research method supported by empirical research by identifying the law as a patterned behavior, using a social theory framework regarding law or sociological legal theory whose proof is carried out through the community.

**Keywords:** general meeting of shareholders, fictitious, regional supervisory council

### Introduction

The authority of a Notary in making an authentic deed is regulated in Article 1 number 1 of Law Number 2 of 2014 concerning the Position of a Notary which states that Notary is a public official whose function is to make deeds and has other authorities as referred to in this Act or other laws. A Notary has a very important role and authority for people's lives, so that the behavior and actions of a Notary in carrying out his professional position are vulnerable to abuse that can harm the community, so there needs to be an institution that functions to provide guidance and supervision to Notaries. Since the presence of Notaries in Indonesia, supervision of Notaries is carried out by judicial institutions and the government, the purpose of supervision is so that Notaries when carrying out their duties fulfill all requirements related to the implementation of Notary positions, in order to safeguard the interests of the community, because Notaries are appointed by the government, not for the notary's own interest, but for the benefit of the community he serves.

The Notary Supervisory Board is a body that has the authority and obligation to carry out the guidance and supervision of Notaries. Supervision of Notaries is intended so that Notaries in carrying out their duties must be based on and follow the laws and regulations governing the Notary's position. However, in practice, there are still many notaries who violate their authority even though the supervision carried out by the Notary Supervisory Council is already strict, and of course it is not easy to carry out such

supervision. So this returns to the Notary himself with awareness and full responsibility in his duties following or based on the applicable legal rules. In the provisions of its regulations, the Supervisory Board has the authority to provide guidance and supervision to notaries as well as to conduct examinations of alleged violations of the behavior and implementation of the notary's position. Supervision and examination of Notaries carried out by the Supervisory Council, in which there is a Notary element, is intended by members of the Supervisory Council who understand the world of notaries. The existence of members of the Supervisory Council from the Notary element is an internal control, meaning that it is carried out by fellow Notaries who understand the world of Notaries both theoretically and practically. While the other elements are external elements that represent the academic world, government and society. The supervisory board consists of the regional supervisory board, the regional supervisory board and the central supervisory board.

One of the Deeds related to Limited Liability Companies is the Deed of Statement of Meeting Resolutions (PKR Deed) as a form of the Partij Deed which contains the results of the decisions of the General Meeting of Shareholders (GMS) made privately. Next, the Notary makes a deed in an authentic form. The decision of the Supervisory Council for the Notary Region of the Special Capital Region of Jakarta Number 7/PTS/Mj.PWN.Prov.DKI Jakarta/VII/2018 is one example of a case of violation of office committed by a Notary related to the making of the PKR Deed. The PKR

deed was made based on the Minutes of the Meeting which allegedly originated from the fictitious implementation of the General Meeting of Shareholders. And, another case is against the Palangka Raya District Court Decision Number 69/Pld.B/2016/PN Plk. The case also contains how the Notary made a deed of the minutes of the General Meeting of Shareholders fictitiously, which seemed as if an agreement had been made and the arrangement of the meeting agenda, but in fact the General Meeting of Shareholders never took place.

Based on the description of the background of the problems presented, this research can formulate the following problems:

1. What is the Role of the Regional Notary Supervisory Board in the Implementation of the Fictitious General Meeting of Shareholders?
2. How to Implement Decisions Against Notaries Who Do Violations?

The scope of this research is in accordance with the identification of the problem which consists of the role of the Notary Regional Supervisory Council, and the Implementation of Decisions against the Regional Supervisory Council that commits violations

The purpose of the research is to answer the questions specifically mentioned in the identification of the problem:

1. To know the role of the Notary Regional Supervisory Board in the Implementation of the Fictitious General Meeting of Shareholders
2. To find out the implementation of decisions against the Regional Supervisory Council that commits violations

The research uses in this design consist of theoretical uses and practical uses, namely:

1. The academic use of the results of this research is expected to provide theoretical benefits, at least it can be useful as a contribution of thought to the world of education; and
2. The practical use of the results of this research is expected to be able to provide benefits for Notaries in carrying out their duties and authorities in accordance with the Notary's code of ethics and also the Regional Supervisory Council in supervising the Notary's duties.

## Metode

### 1. Research Type

The research method used in this study is a normative research method supported by empirical research by identifying the law as a patterned behavior, using a social theory framework regarding law or sociological legal theory whose proof is carried out through the community. And the empirical legal research method is carried out by researching directly into the field to see firsthand the application of legislation or legal rules relating to law enforcement, as well as conducting interviews with informants who are considered to be able to provide information regarding the implementation of law enforcement. In this case, the researcher will conduct an interview with the Supervisory Council in Banda Aceh City.

### a. Research Approach

In legal research there are several approaches, this research uses several approaches. The approaches used are the statute approach, the case approach and the conceptual approach.

The Statute Approach is to examine the laws and regulations related to the legal issues being handled. The statutory approach is used to study whether there is conformity between one law and another, which is then the result of the study is an argument for solving the issues at hand. Case Approach is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force. The Conceptual Approach is an approach that moves from the views and doctrines that develop in legal science which will then find ideas that will give birth to legal understandings, legal concepts and legal principles that are relevant to the law. the issue at hand.

### b. Source of Legal Material

Sources of legal materials are the most important part of legal research because without legal materials it is impossible to find answers to the legal issues raised, therefore to solve the legal issues faced, legal materials are used as sources of legal research. In this study, the authors used primary legal materials and secondary legal materials.

#### a. Primary legal material

- Civil Code
- Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary
- Number 40 of 2007 concerning Limited Liability Companies
- Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Examination of the Supervisory Board of Notaries

#### b. Second legal material

- Reading books about Notaries, Companies
- Legal Dictionary
- Legal encyclopedia
- Legal journals related to the Notary Supervisory Board
- Reading material in the form of online (news online)

## 2. Data Collection Techniques

The data collection method used by the author in this research is literature study, which is a way of collecting data by conducting searches and reviewing library materials (laws, research results, scientific magazines, scientific journals, etc.), and through interviews, namely asking questions to informants. and respondents.

Legal materials are collected through identification procedures for laws and regulations, as well as classification and systematization of legal materials according to research problems. Therefore, the data collection technique used in this research is literature study. Literature studies are carried out by reading, studying, taking notes and making reviews of library materials that are related to the role of the notary supervisory board. And if necessary, interviews with the regional supervisory councils in Banda Aceh City will be conducted.

## 3. Analysis of Legal Materials

The data and legal materials in this study were analyzed using existing legal theory and applicable laws and regulations. To analyze the data obtained, the normative juridical analysis method will be used, which is a way of interpreting based on legal understanding, legal norms, legal theories and doctrines related to the subject matter. The data obtained from the results of library research are analyzed and conclusions will be obtained on the problem.

## Discussion

The Notary Supervisory Board is a body that has the authority and obligation to carry out supervision and guidance on the Notary profession. The Supervisory Council has the authority and obligation to carry out guidance and supervision of Notaries so that they remain obedient to the Code of Ethics and the Law on the position of a Notary. The main purpose of supervisory activities is for Notaries when carrying out their duties to fulfill all the requirements related to the implementation of the duties of a Notary office, in order to safeguard the interests of the community, because Notaries are appointed by the government, not for the Notary's own interest, but for the benefit of the community he serves. Another purpose of supervision of Notaries is that Notaries are presented to serve the interests of the community who need evidence in the form of an authentic deed according to the request of the person concerned to the Notary. However, this does not mean that the agency that supervises the Notary is changing, because no matter how tight the supervision is carried out by the Notary Supervisory Council, it is not easy to carry out such supervision. apply.

In practice, there are currently 2 (two) mechanisms for notary supervision, namely, internal supervision in the code of ethics through the INI Honorary Council, and external supervision carried out by the Minister of Law and Human Rights. Supervision of notaries is carried out by the Minister, in that case the Minister then forms a Supervisory Council. The supervisory council formed by the minister will later become the supervisor as well as provide guidance to notaries.

The Supervisory Council is then formed based on the division of its territory, so that it consists of the Regional Supervisory Council, the Regional Supervisory Council and the Central Supervisory Council. The regional supervisory board has the following powers:

- a. hold a session to examine and make decisions on public reports that can be submitted through the Regional Supervisory Council;
- b. summon the reported Notary Public for examination of the report;
- c. examine and decide on the decision of the Regional Supervisory Council which rejects the leave proposed by the reporting Notary;
- d. give sanctions both verbal warnings and written warnings;
- e. propose the imposition of sanctions against Notaries to the Central Supervisory Council in the form of temporary dismissal from 3 (three) months to 6 (six) months or dishonorable dismissal.

The role of the Notary Supervisory Board is to carry out supervision of the Notary, so that in carrying out his duties he does not deviate from his authority and violates the applicable laws and regulations, besides that it also supervises, examines sanctions against Notaries. Supervision and examination of Notaries carried out by the Supervisory Council in which there is a Notary element, aims to ensure that there are members of the Supervisory Council who understand the world of notaries. Having a member of the Supervisory Council from the Notary element is an internal control, meaning that it is carried out by fellow Notaries who understand the world of Notaries both theoretically and practically. While the other elements

are external elements that represent the academic world, government and society. The combined membership of the Supervisory Board is expected to provide objective supervision and examination, so that each supervision is carried out based on the applicable legal rules and the Notaries in carrying out their duties do not deviate from the Law on Notary Positions, because they are monitored internally and externally.

The authority of the Notary Supervisory Board is not only to supervise and examine Notaries, but also has the authority to impose certain sanctions on Notaries who are later proven to have violated the duties of a Notary Public. The regional supervisory council has the authority to examine and decide on reports received. The report can be in the form of an alleged violation of the notary code of ethics and submitted to the regional supervisory board. The notary supervisory board as the only agency authorized to supervise, examine and impose sanctions on notaries in accordance with their respective capacities.

The Notary Supervisory Council also has the authority to impose sanctions on notaries who violate the code of ethics. In this case, the regional supervisory board (MPW) has the authority to impose sanctions in the form of verbal warnings and written warnings, but MPW is also authorized to impose all sanctions as stated in Article 85 of the UUJN. The powers and duties of the regional supervisory board according to Article 26 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004, relating to the examination conducted by the Regional Supervisory Council, namely:

- a. The regional inspection council examines and decides on the results of the regional inspection council's examination;
- b. The regional inspection council begins to examine the results of the regional supervisory council's inspection within a period of no later than 7 (seven) calendar days since the file is received;
- c. The regional examiner council has the authority to summon the reporting party and the reported party to have their statements heard;
- d. The decision is pronounced within a period of no later than 30 (thirty) calendar days from the receipt of the file.

In the implementation of the general meeting of shareholders, the Notary plays an important role in making the minutes of the general meeting of shareholders and the Notary is also tasked with recording the General Meeting of Shareholders then the participants of the General Meeting of Shareholders direct the notary to record all the results of the agreed meeting decisions. The notary also in making the deed must have the ability to identify all the participants of the GMS which is taking place in order to create certainty for the parties in the deed he made because based on the Limited Liability Company Law that the directors, board of commissioners and shareholders can change, therefore the notary has an important role in checking the participants of the General Meeting of Shareholders to avoid negligence in the future.

The deed made by the Notary in practice is called the Deed of Relation which contains a description of the Notary which is seen and witnessed at the request of the parties, so that the actions or actions of the parties carried out are poured into the form of a Notary deed. The deed made

before (ten overstaan) of a Notary, in practice the Notary is called a partij deed or deed of parties, which contains a description or information, statements of the parties given or submitted before a Notary. The parties wish that their descriptions or statements be included in the form of a notarial deed.

However, in reality many Notaries take the opportunity and do not carry out their duties and roles as they should be regulated in the UUJN. In the implementation of the GMS, it should be carried out according to the applicable rules so as not to cause legal defects to the validity of the deed. In this case, the role of the Notary Supervisory Board is needed so that it can supervise the duties and positions of the Notary. The establishment of the Notary Supervisory Council is actually one of the proofs of the implementation of a Notary supervisory body in Indonesia which carries out the supervisory function of Notaries, especially in accordance with the mandate of the legislation with the aim that Notaries can carry out their duties professionally and maximally, although there are still many Notaries who violate. In Aceh itself, in carrying out monitoring efforts, the Regional Supervisory Council also cooperates with Notaries, the aim is to establish good and professional communication and cooperation so as to minimize abuse of the Notary's authority and the Regional Supervisory Council to monitor properly.

General Meeting of Shareholders with amendments to the articles of association that are not made in a notarial deed or not attended by a notary, therefore the notary has a role to make a deed of statement of the decision of the General Meeting of Shareholders. In the event that the deed of the statement of the decision of the Meeting of Shareholders has the role of identifying the identity of the party present at the meeting through the power of attorney given in the statement of the decision of the meeting under the previous hand. Furthermore, the notary will examine the decision of the private meeting whether it is in accordance with the applicable provisions.

There are 2 types of deeds, namely the relaas deed and the partij deed. The relaas deed is a deed whose description is witnessed by the notary himself so that the actions of the parties in the process are poured into the form of a notarial deed. While the partij deed is a deed in which the description or statement of the parties is told before the notary and is poured into the form of a notarial deed.

Minutes of the meeting are classified as relaas deed because the notary witness personally witnessed the General Meeting of Shareholders at the invitation of the meeting from the company's Board of Directors in the form of minutes. Minutes of the meeting are deed made by a notary, while the PKR deed and PKPPS deed are party deed whose notary does not need to be present at the General Meeting of Shareholders held or there has never been a General Meeting of Shareholders in the case of making the PKPPS deed because the decision was taken based on the signature as approval form from the circular letter.

In this case, the notary who was supposed to be responsible for the GMS and the validity of the deed was reported as violating the authority of his/her position. In this case, it can also be reviewed how the role of the Notary Supervisory Board in cases of violations committed by other notaries. It does not rule out the fact that notaries in carrying out their duties, it is not uncommon to find some notaries doing everything they can to get clients and even not complying

with the Code of Ethics and UUJN. The Notary Supervisory Council is required to be able to work professionally, with integrity, impartiality, always prioritizing the principles of certainty, order and legal protection which are cored in truth and justice and take firm action against Notaries who have committed violations.

In imposing sanctions. Basically, not all Supervisory Boards have the authority to impose sanctions. The regional supervisory council does not have the authority to impose any sanctions. Although the MPD has the authority to receive reports from the public and from other notaries and convene hearings to examine allegations of violations of the notary's code of ethics or violations of the implementation of a notary's position, it is not authorized to impose any sanctions. The regional supervisory council is only authorized to report the results of its examination session to the regional supervisory council with a copy to the reporting party, the notary concerned, the central supervisory council, and notary organizations.

The regional supervisory board may impose a verbal or written warning. The regional supervisory board can only impose sanctions in the form of an oral or written warning, and sanctions such as this are final and propose the imposition of sanctions against a notary to the central supervisory board in the form of temporary dismissal from the position of a notary for 3 (three) months to 6 (six) months or dismissal disrespect from the position of a notary. Sanctions from MPW in the form of oral and written and final in nature cannot be categorized as sanctions, but are the initial stage of the real coercive procedure aspect in order to be subsequently imposed with other sanctions, such as temporary dismissal from office.

The central supervisory board can impose limited sanctions. The UUJN stipulates that the MPP has the authority to impose a temporary suspension. This kind of sanction is a period of waiting for a certain period of time before other sanctions are imposed, such as a dishonorable discharge from the position of a notary. Other sanctions MPP is only authorized to propose the dismissal of sanctions in the form of dishonorable discharge from his position to the Minister. The regulation of sanctions contained in Article 85 of the UUJN, sanctions in the form of oral and written warnings can only be imposed by MPW. The supervision carried out by the Supervisory Council is not only the implementation of the duties of a notary position in accordance with the provisions of the UUJN, but also the notary code of ethics and the behavior or behavior of a notary's life that can injure the nobility of the position of a notary in the supervision of the Supervisory Council. This shows the very wide scope of supervision carried out by the Supervisory Board.

The Supervisory Board also cannot impose sanctions with its own rules because it must remain subject to the applicable rules so that there is a need for a revision or review of the sanctions given to Notaries who violated the Code of Ethics of their Office.

A notarial deed as an authentic deed is made according to the forms and procedures stipulated by UUJN. The authority or power of a person or legal entity to do something because it has been determined in the legislation or the right power over something or to demand something <sup>[1]</sup>.

Obligations or also called duty or obligation or responsibility (English) or verplichting (Dutch) are conceptualized as something that must be carried out by a person or legal entity or notary in carrying out their

authority.

In the implementation of the general meeting of shareholders, the notary's role is to prepare the minutes of the General Meeting of Shareholders and the notary also records the proceedings of the General Meeting of Shareholders, then the participants of the general meeting of shareholders direct the notary to record the decisions of the meeting. The notary in making the deed must have the ability to identify the participants in the General Meeting of Shareholders which is to realize the certainty of the parties in the deed he made. Based on the Limited Liability Company Law, the board of directors, board of commissioners and shareholders may change. Therefore, the notary has an important role in checking the participants of the General Meeting of Shareholders.

The supervisory board also gets sanctions if it violates the authority of its position. According to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 24 of 2020 Article 18 paragraph 1 (one) states that members of the Supervisory Council are honorably dismissed from their positions because:

- a. die;
- b. his term of office has ended;
- c. own request;
- d. change work area;
- e. not competent in carrying out legal actions;
- f. lose Indonesian citizenship; or
- g. appointed as a state official.

Whereas in paragraph 2 (two), it states that a member of the Supervisory Board may be honorably dismissed from his position for not attending the meeting and/or the session of the Supervisory Council for 3 (three) times in a row or 6 (six) times not in a row within 1 year. (one) year of office. Article 18 paragraph 3 (three) states that members of the Supervisory Council may be dishonorably dismissed from their positions because:

- a. declared bankrupt based on a court decision that has obtained permanent legal force;
- b. being under continuous care for more than 3 (three) years;
- c. commit acts that demean the honor and dignity of the Supervisory Council;
- d. commit a serious offence;
- e. sentenced based on a court decision that has obtained permanent legal force with the threat of imprisonment of 5 (five) years or more; or;
- f. has violated the oath of office based on the proposal from the Supervisory Board.

The dismissal of a member of the Supervisory Council as referred to in the above shall be submitted based on the recommendation of the chairman of the Supervisory Council to the official who appointed him or her.

### Closing

The role of the Notary Regional Supervisory Council in Supervising the implementation of the Notary Position is in accordance with the provisions of the laws and regulations as it should be, but it is still not effective, because in terms of supervision, the Regional Supervisory Council does not go down directly, because the one that regulates the Regional Supervisory Council is in direct contact with the Regional Supervisory Board. notaries and the public instead

of the Regional Supervisory Council itself. The regional supervisory board may impose a verbal or written warning. The regional supervisory council can only impose sanctions in the form of oral or written warnings, and sanctions such as these are final and propose the imposition of sanctions against a notary to the central supervisory board in the form of temporary dismissal from the position of a notary for 3 (three) months to 6 (six) months or dismissal disrespect from the position of a notary. Sanctions from MPW in the form of oral and written and final in nature cannot be categorized as sanctions, but are the initial stage of the real coercive procedure aspect in order to be subsequently imposed with other sanctions, such as temporary dismissal from office. In legal protection efforts, there are regulations that a Notary who is sanctioned by MPW can appeal to the MPP, and the decision of the Central Examining Council is final and has binding legal force if the report against the Notary cannot be proven wrong by the Notary or is not in accordance with what is stated. actually.

The central supervisory board can impose limited sanctions. The UUJN stipulates that the MPP has the authority to impose a temporary suspension. This kind of sanction is a period of waiting for a certain period of time before other sanctions are imposed, such as a dishonorable discharge from the position of a notary. Other sanctions MPP is only authorized to propose dismissal of sanctions in the form of dishonorable discharge from his position to the Minister. The Supervisory Board also cannot impose sanctions with its own rules because it must remain subject to the applicable rules so that there is a need for a revision or review of the sanctions given to Notaries who violate the Code of Ethics of their Office. Currently, choosing members from the academic field and notaries is appropriate and hopefully in the future they will continue to maintain this consistency because the Supervisory Board that supervises the Notary in carrying out his duties and positions should be supervisors who have knowledge and understand notary, especially in making authentic deeds and also have integrity. high morale. The Regional Supervisory Council can also go directly to the community to provide information so that the public understands the role and responsibilities of a notary. The sanctions given by the Notary Supervisory Council are in accordance with the applicable provisions, but actually these sanctions do not provide a deterrent effect for the Notary and other Notaries so that cases like this will still occur in the future. It is good that the Notary Supervisory Board can propose to return a more efficient sanction for violations committed by a Notary.

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