

Legal Effect of the Concurrent Position of Notary as the Regional People's Representative Council (DPRD) Based on the Law on The Position of Notary

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Abstract

Notaries are general officials authorized to do authentic deeds; notaries must comply with laws and regulations and professional codes of ethics. One form of action that deviates from the provisions of rules and regulations and professional codes of ethics is concurrent positions, namely as the Regional People's Representative Council (DPRD). The purpose of the research in this study is to analyze the legal consequences of the concurrent position of a Notary as a DPRD based on the Notary Position Law. This research was carried out using the Normative Juridical method. The normative Juridical Method is a legal research method aiming to gain knowledge about a legal event. The results of the study can be concluded that the Notary Position Law does not regulate the legal consequences of the concurrent position of a Notary as a DPRD. DPRD is not a State Official. As a result of the legal consequences, notaries who concurrently serve as DPRD are regulated by UUMD3, which expressly explains that the DPRD is prohibited from together doing as a Notary. Notaries who together do as DPRD will be subject to sanctions in the form of dismissal as members of the DPRD.

I. Introduction

A notary is one of the legal professions that has an important role in society. The main role of notaries in society is to provide legal services to the community in the field of civil law. A Notary in carrying out his position must obey and comply with the notary's code of professional ethics and laws and regulations.¹ On the other hand, a Notary is also a general official, the general official in this case is a person who assumes a position appointed and dismissed by the State

¹ A. Yusticia; et.al, 'Peran Etika Profesi Notaris Sebagai Upaya Penegakan Hukum', *Notarius*, 13.1 (2020), 61.

and is given the authority to provide services to the public in the field of civil law.²

The authority of a Notary in providing public services in the field of civil law is the authority to make authentic deeds as referred to in the Notary Position Law. In carrying out their position as one of the legal professions are obliged to have ethics. Linguistic ethics in this case is about good and bad, as well as that which is accepted by society regarding an attitude, deed, and obligation.³ A Notary who carries out the position of Notary with ethics can carry out his position properly and can avoid various legal problems. Ethics as the basis for the implementation of the position of Notary can implement the position of Notary by the provisions of laws and regulations and the code of professional ethics.

A Notary in carrying out the position of Notary in addition to being obliged to comply with laws and regulations, is also always bound by a code of professional ethics. The code of professional ethics is a norm applied and accepted by certain professional groups that provide direction and guidance to members on how to act, as well as to maintain the moral quality of the profession in social life.⁴ The existence of a professional code of ethics that always binds a Notary as a human being makes a Notary ethical in carrying out the position of Notary. In practice, the professional code of ethics is often violated by a Notary.

In practice, many legal professions, especially Notaries, have committed deviations from the provisions of laws and regulations and provisions in the code of professional ethics. The existence of these deviations is carried out because in carrying out the position of Notary notary is not based on ethics. One form of act that deviate from the provisions of laws and regulations and the code of professional ethics is concurrent positions. The concurrent positions carried out by notaries are deviations from the provisions of the Laws and Regulations, especially the Notary Position Law and deviations from the provisions of the Notary professional code of ethics. The Notary Position Law provides arrangements regarding the prohibition of duplicate positions by Notaries as referred to in the provisions of Article 17 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary, and against such deviations may be subject to sanctions.

It becomes a problem in itself when the position held by a Notary is a certain position that is not regulated in the provisions of the Article. One of them is a Notary who concurrently serves as the Regional People's Representative Council (hereinafter referred to as the DPRD). The Notary Position Law in this case does not provide specific arrangements regarding the prohibition of duplicate notary positions as DPRD. One of the provisions regarding the prohibition of duplicate

² L. P. C Gitayani, 'Penerapan Etika Profesi Oleh Notaris Dalam Memberikan Pelayanan Jasa Kepada Klien', *Jurnal Hukum Kenotariatan*, 3.3 (2018), 427.

³ Mardani, 'Etika Profesi Hukum', in *Cetakan III* (Depok: Rajawali Press, 2020), p. 7.

⁴ Mardani., p. 98.

positions by Notaries is as stipulated in the provisions of Article 17 paragraph (1) letter d that a Notary is not allowed to concurrently hold office as a State Officer.⁵

The Notary Office Act does not provide specific details regarding the definition of a State Officer. In the Explanation of Article 3 letter g of the Notary Position Law, it is stipulated that the definition of a State Officer in this case refers to the provisions in Law Number 43 of 1999 concerning the Principles of Personnel. Article 1 number 4 of Law Number 43 of 1999 concerning the Principles of Personnel basically explains that state officials in this case are leaders and members of the highest / highest institutions of the State as referred to in the 1945 Constitution and other State Officials according to the Law.⁶

Based on the provisions of the Article, it can be concluded that the DPRD is not included in the State Officials, this is because the DPRD is not the highest institution / highest institution of the state. Notaries who concurrently serve as DPRD cannot be categorized as concurrently serving as State Officials. This shows that there are still things that have not been regulated in the Notary Position Law. The author argues that this needs to be researched because it concerns the implementation of the Notary Position and the ethics of the Notary profession. On this basis, the title of this study is the Legal Consequences of Concurrent Notary Positions as DPRD Based on the Notary Position Law.

Based on the description in the introductory part, the formulation of the problem in this study is How the Legal Position of Notary Leave to Serve as the Regional People's Representative Council and how the legal consequences of the concurrent position of a Notary as a DPRD based on the Notary Position Law?

2. Research Method

This research was carried out using the Normative Juridical method. Normative Juridical Method is a legal research method that has the aim of gaining knowledge about a legal event, as well as providing an overview of the legal aspects of a legal event. This research has the descriptive nature of analysis, which is to provide an overview of the mechanism of events that occur and analyze these events and the things behind them. This research was conducted using qualitative analysis methods, namely research that produces descriptive data.

3. Results and Discussion

1) Legal Standing against Notary Leave to Serve as the Regional People's Representative Council.

⁵ W. A. Oktavia, 'Kedudukan Akta Dan Akibat Hukum Terhadap Notaris Yang Melakukan Rangkap Jabatan', *Acta Diurnal*, 3.1 (2019), 26.

⁶ *Undang-Undang Nomor 43 Tahun 1999 Tentang Pokok-Pokok Kepegawaian.*, Pasal 1 angka 4.

Based on The principles *lex specialis derogat legi generali*, “a notary who is a member of the house of representatives is obliged to leave and appoint a substitute notary and be responsible for the deeds obtained before becoming a member of the house of representatives at both the Central and regional levels.” Law Number 17 of 2014 concerning the consultative assembly of arayat, people's representatives, people's representative councils, regional representatives explains that supervision of the implementation of a law, regional regulation or other policies has other functions apart from budgeting and legislation, namely the existence of a supervisory function on the implementation of regional regulations, regulations, and other regulations related to the implementation of local government.

In carrying out his position, the notary is entitled to leave and the amount of notarial leave that can be taken is the leave obtained after carrying out his duties and positions for 2 (two) years. The total amount of leave taken by a notary is not more than 12 (twelve) years. In accordance with the character of the notary position, that is, it must be in accordance with the implementation of his position as long as the notary is still in his term of office he takes leave, then the relevant notary is obliged to appoint a substitute notary.⁷

The supervision referred on the description above is to enter into the context as a political institution which is a form of strategic political supervision and not a supervisory system derived from administrative technical supervision. One form of supervision is "The DPRD in this case acts as a controlling or controlling institution that can approve or even reject altogether or approve certain changes that are included in the draft regional regulations that will be determined to be local regulations. It is understood that in fact, the DPRD is a political institution."⁸

Notaries as general officials who are officials are authorized to make authentic deeds which from legal acts either from a law or from those who have

⁷ Habib Adjie, *Hukum Notaris Indonesia* (Bandung: PT. Refika Aditama, 2008).

⁸ Nur Cahyaningsih dan Akmad Khisni, 'Netralitas Notaris Sebagai Anggota Legislatif: Studi Tentang Peran Notaris Cuti Sebagai Anggota Legislatif Terhadap Notaris Pengganti Terhadap Akta-Akta Yang Dibuatnya', *Jurnal Akta*, 4.2 (2017), 174–82.

an interest in wanting to be poured into an authentic deed, guarantee legal certainty, copies or and everything as long as the preparation of the deed is not prohibited by the provisions of laws and regulations and is not assigned or excluded to other public officials.

Therefore, the exercise of the post of a notary whose leave to be a member of the legislature is basically difficult to maintain neutrality. based on article 11 it states that a notary who is appointed as a state official is obliged to appoint a substitute notary and if it is not appointed a substitute notary who is the temporary holder of the notary protocol, then the Regional Supervisory Board will appoint another notary to accept the notary protocol on leave.

So that based on the description above, the position of a notary who is on leave to become a state official is basically allowed to become a state official or in this case become a regional people's representative council (hereinafter referred to as the DPRD) however, referring to article 3 letter g of the UUJN "requires that to be appointed as a notary must not have the status of a civil servant, state official, advocate or not holding a position prohibited by the Law for concurrent positions." If it is related to Article 11, it is clear that the two provisions above the provisions of Article 11 on notary leave as a state official violate Article 3 letter g which is a requirement of a notary "must not have the status of a state official, the reason is because the position of notary is attached all the time the notary is attached to all the time the notary until the notary's termination or dismissal or death and or because the notary position expires/retires." Meanwhile, notary leave in this case does not mean that the notary does not have the status of a notary and therefore the leave makes the notary a duplicate position so that it basically violates article 17 letter d which prohibits the Notary from concurrently holding the position as a state official.

2) Legal Consequences of The Concurrent Position of Notary As DPRD Based on the Notary Position Law

As previously explained, a Notary in carrying out his position must be based on ethics, and bound by a code of professional ethics and laws and regulations. In practice, there are often deviations from the provisions of laws and regulations and professional codes of ethics, one form of such deviations is the implementation of multiple positions by a Notary. The Notary Position Law has provided regulations regarding the prohibition of duplicate positions by Notaries, but in these arrangements there are still certain positions that are not specifically regulated, one of which is the DPRD.

The Notary Office Act has established a prohibition for Notaries. Prohibition for Notaries is a provision that gives orders to Notaries not to commit an act that violates the provisions of laws and regulations.⁹ One of these provisions is as explained in the provisions of Article 17 paragraph (1) letter d that a Notary is not allowed to concurrently hold office as a State Officer. Against the provisions of the Article, it is necessary to explain further regarding the term State Officer. State officials in this case can also be interpreted as state fittings that run the government for the benefit of society.¹⁰ State officials perform their duties in the interests of the State. The DPRD cannot be categorized as a State Official, because carrying out duties is not in the interests of the State, but for the benefit of the Regions.

The term State Official is also known in the provisions of Article 122 of Law No. 4 of 2014 concerning the State Civil Apparatus, but in the provisions of the Article does not refer to the DPRD as a State Official.¹¹ Based on this explanation, it can be concluded that the DPRD is not a State Official and a Notary who concurrently serves as the DPRD cannot be said to violate the provisions of Article 17 paragraph (1) letter d of the Notary Position Law.

A Notary who concurrently serves as the DPRD still violates ethics in carrying out his position. The violation has not been specifically regulated in the

⁹ H.S. Salim, 'Peraturan Jabatan Notaris', in *Cetakan II* (Jakarta: Sinar Grafika, 2019), p. 209.

¹⁰ Putra dan H.M.R.P M, 'Tinjauam Teoritis Keputusan Pejabat Negara Dikaitkan Dengan Sistem Hukum Negara Indonesia', *Rechtregel*, 1.2 (2018), 378-40.

¹¹ *Undang-Undang Nomor 4 Tahun 2014 Tentang Aparatur Sipil Negara*.

Notary Office Act. In this regard, it is necessary to find arrangements for the DPRD. The DPRD in carrying out its duties must be supervised. Supervision can be interpreted as measuring performance and taking actions to ensure results in accordance with existing wishes and standards.¹² Regulations regarding the position of the DPRD are regulated in Law No. 17 of 2014 concerning the MPR, DPR, DPD, DPRD (hereinafter referred to as the MD3 Law). In the provisions of Article 350 paragraph (2) and the provisions of Article 400 paragraph (2) UUMD3, it is expressly explained that the Provincial DPRD and the City / Regency DPRD are prohibited from concurrently serving as Notaries.¹³ It was further explained that a violation of these two provisions would make the DPRD concerned dismissed as a member of the DPRD as stipulated in the provisions of Article 351 paragraph (2) and Article 401 paragraph (2). Based on these provisions, it can be concluded that although the Notary Position Law does not provide specific arrangements regarding the concurrent positions carried out by notaries as DPRD, in this case UUMD3 has provided strict arrangements for Notaries who concurrently serve as DPRD, namely the DPRD is expressly prohibited from concurrently serving as a Notary and violations committed against the prohibition will be subject to sanctions in the form of dismissal as a member of the DPRD.

For Notaries who concurrently hold positions as DPRD, they will be dismissed from their DPRD positions based on the provisions of UUMD3. This is a strict sanction for violations committed in the form of multiple positions. The Notary Office Law also regulates sanctions for violations committed by notaries against the provisions stipulated in the Notary Office Law. The Law on the Office of a Notary provides for administrative sanctions to Notaries. Administrative sanctions are sanctions given to a person or legal entity that has violated administrative provisions.¹⁴ Administrative sanctions regulated in the Notary

¹² Dadang Suwanda dan Akmal Malik Piliang, 'Penguatan Pengawasan DPRD Untuk Pemerintahan Daerah Yang Efektif', in *Cetakan I* (Bandung: PT Remaja Rosdakarya, 2016), p. 62.

¹³ *Undang-Undang Nomor 17 Tahun 2014 Tentang MPR, DPR, DPD, DPRD.*

¹⁴ H.S. Salim.

Office Law for violations of the provisions regarding the prohibition of concurrent positions as Acting State are regulated in the provisions of Article 8 paragraph (1) letter e, namely the respectful dismissal of the position as a Notary.¹⁵

The sanctions stipulated in the Notary Position Law are enforced by the Notary Supervisory Panel. The main role of the Notary Supervisory Panel is to supervise the implementation of the position of Notary so as not to support from its authority and there is no violation of the provisions of laws and regulations.¹⁶ The sanctions stipulated in the Notary Position Law relating to violations of the dual duties as State Officials cannot be applied to Notaries who concurrently serve as DPRD. This is because the DPRD in this case is not a State Official, so the sanction provisions stipulated in the Notary Position Law in the form of respectful dismissal cannot be applied.

4. Conclusion

The Notary Position Law does not regulate the legal consequences of the notary's double appointment as a DPRD. This is because the DPRD is not a State Official. As a result of the legal consequences of notaries who concurrently serve as DPRD are regulated by UUMD3 which expressly explains that the DPRD is prohibited from concurrently serving as a Notary. Notaries who concurrently serve as DPRD will be subject to sanctions in the form of dismissal as members of the DPRD.

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¹⁵ Habib Adje, 'Sanksi Perdata & Administratif Terhadap Notaris Sebagai Pejabat Publik', in *Cetakan IV* (Bandung: PT Refika Aditama, 2017), p. 20.

¹⁶ Toruan. H.D.L, 'Legalitas Keberadaan Majelis Pengawas Notaris Dan Majelis Kehormatan Notaris', *Jurnal Penelitian Hukum De Jure*, 20.3 (2020), 436.

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