

Critical Legal Studies Approach to the Governance and Effectiveness of Regional Notary Supervisory Boards in Indonesia

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Abstract

This study analyzes the governance and effectiveness of supervision carried out by the Regional Supervisory Council (MPD) of notaries in Indonesia through a Critical Legal Studies (CLS) perspective. As a supervisory institution, the MPD is responsible for ensuring notaries' compliance with regulations and professional codes of ethics to ensure the integrity of legal services. However, in practice, MPD supervision faces a number of challenges, including limited human resources and budget, complicated reporting procedures, and regulations that are not fully adaptive to the dynamics of the notary profession. Using the CLS approach, this study highlights that supervision tends to be too formalistic, focuses on administrative procedures, and pays little attention to aspects of substantive justice that reflect the needs of the community. This study offers a substantive justice-based approach to supervision, which involves regulatory reform, increasing the capacity of MPD members through training and certification, digitizing the reporting system, and providing preventive guidance for notaries. This approach not only aims to enforce legal formalities but also ensures responsive, inclusive, and public interest-oriented supervision. The results of the study indicate that the application of the principle of substantive justice can increase the effectiveness of supervision, minimize the potential for violations, and strengthen public trust in the legal system. This study recommends a more progressive reform of the notary supervision system, with a focus on creating a transparent, accountable and sustainable supervision mechanism.

I. Introduction

Notaries have a strategic role in the Indonesian legal system as public officials appointed by the government through the Ministry of Law and Human Rights.¹ In his capacity as a public official, a notary is responsible for providing legal certainty through the creation of authentic deeds, which have perfect and irrefutable evidentiary power in the judicial system.² An authentic deed produced by a notary becomes a legal document that not only protects the interests of the parties involved in an agreement or transaction, but also plays an important role as an instrument in supporting orderly administration and law enforcement in Indonesia.³ Law Number 30 of 2004 concerning the Position of Notary (UUJN), which was later updated by Law Number 2 of 2014, emphasizes that the notary profession is an integral element in guaranteeing certainty, order and legal protection, in line with the principles of the rule of law adopted by Indonesia based on Pancasila and the 1945 Constitution.⁴

The importance of the role of notaries is becoming more prominent along with the increasing complexity of legal relations in society, both in the business, social and civil fields.⁵ Modern society requires legal services that can provide assurance of the validity of documents and transactions they make. For example, in various activities such as sales and purchase agreements, company formation, transfer of land rights, to debt guarantees, notaries are trusted parties to ensure that the process meets applicable legal provisions. UUJN not only gives notaries the authority to make authentic deeds but also regulates their obligations to act independently, impartially, and in accordance with the professional code of ethics, thus reflecting the importance of integrity in carrying out their duties.

In addition to providing legal certainty, the role of a notary also has a preventive dimension, namely preventing the emergence of legal disputes in

¹ Septian Putri Nindiasari, Dominikus Rato, en Moh. Ali, "Peran Notaris Dalam Perlindungan Hukum Terhadap Pihak Ketiga Atas Pembuatan Perjanjian Perkawinan Setelah Perkawinan Berlangsung", *Mimbar Yustitia* (Universitas Islam Darul Ulum Lamongan, 2022), 42, <https://doi.org/10.52166/mimbar.v6i2.3655>.

² Auly Lutviandany, Fifiana Wisnaeni, en Irma Cahyaningtyas, "Pelaksanaan Pengawasan Majelis Pengawas Daerah Terhadap Kode Etik Notaris Di Kabupaten Grobogan", *Notarius* 14, no 2 (2021): 87, <https://doi.org/10.14710/nts.v14i2.43724>.

³ Irfan Iryadi, "Kedudukan Akta Otentik dalam Hubungannya dengan Hak Konstitusional Warga Negara", *Jurnal Konstitusi* 15, no 4 (2019): 22, <https://doi.org/10.31078/jk1546>.

⁴ Cynthia Kweenedy, "Penolakan Pencatatan Perkawinan Oleh Kantor Dinas Kependudukan Dan Catatan Sipil Akibat Terbitnya Akta Pembatalan Perkawinan", *Jurnal Ilmiah Mandala Education* (Lembaga Penelitian dan Pendidikan (LPP) Mandala, 2021), 221, <https://doi.org/10.58258/jime.v7i1.1750>.

⁵ L Tedjosaputro, *Keadilan dan Masyarakat Aplikasi Hukum Profesi Notaris dalam Kehidupan* (BUTTERFLY MAMOLI PRESS, 2021), 31, <https://books.google.com/books?hl=en%5C&lr=%5C&id=jRItEAAAQBAJ%5C&oi=fnd%5C&pg=PA15%5C&dq=notaris%5C&ots=q7U6kbOu74%5C&sig=5YVAEf2Hiwdc0gOYb4wQgriOh1E>.

the future. With their expertise in civil law and legal procedures, notaries can help parties understand their rights and obligations, identify legal risks, and formulate agreements that are fair and in accordance with applicable regulations. In this context, notaries function as mediators who bridge different interests, so as to create harmony in broader legal relations.

However, along with the increasing public need for notary services, there are also significant challenges related to the implementation of their duties and responsibilities.⁶ Data shows that the number of notaries in Indonesia, especially in areas such as Central Java, continues to increase significantly to meet the increasingly complex demand for services. On the one hand, this reflects the high level of public trust in the notary profession, but on the other hand, it creates a high workload for notaries and supervisory institutions such as the Regional Supervisory Council (MPD). In this situation, efforts to ensure the quality of service, integrity, and accountability of notaries become increasingly important.⁷

Overall, the role of notaries is not only important in providing legal certainty, but also contributes to social and economic stability. By ensuring that legal relations in society run in accordance with the rules and principles of justice, notaries play a role in supporting sustainable legal development in Indonesia. Therefore, strengthening regulations, guidance, and supervision of the notary profession is a very important agenda to ensure that they can continue to carry out their duties with high professionalism and integrity, in accordance with the mandate of the Notary Law.

The reviewed literature reveals various approaches in assessing and improving the effectiveness of notary supervision systems in various legal contexts. The study by Dai et al. (2021)⁸ and Wang et al. (2021)⁹ discusses technology-based supervision mechanisms on blockchain systems through the development of cross-chain algorithms and mechanisms, which demonstrates the importance of using technology to ensure transparency and reliability in supervision. On the other hand, Kustova and Rasskazova (2021)¹⁰ highlighting

⁶ Djoko Sukisno SH.,CN, *Tanggung jawab notaris selaku pejabat umum dalam menjalankan tugas jabatannya*, Center of Documentation and Studies of Bussines Law, Yogyakarta (Yogyakarta, 2003), 45, http://etd.ugm.ac.id/index.php?mod=penelitian_detail&sub=PenelitianDetail&act=view&typ=html&buku_id=21229.

⁷ Muhammad Agung Sapta Sadewa, "Peran Majelis Pengawasan Daerah (MPD) Dalam Melakukan Pengawasan Terhadap Administrasi Nootaris Di Kota Palembang", *Frontiers in Neuroscience* (Universitas Sriwijaya Palembang, 2021), 675.

⁸ B Dai, "Evaluation Model of Cross-Chain Notary Mechanism Based on Improved PageRank Algorithm", *Jisuanji Gongcheng/Computer Engineering* 47, no 2 (2021): 342, <https://doi.org/10.19678/j.issn.1000-3428.0056460>.

⁹ J Wang, "Cross-chain Supervision Mechanism of Distributed Notaries for Consortium Blockchain", *2023 6th International Conference on Artificial Intelligence and Big Data, ICAIBD 2023*, 2023, 42, <https://doi.org/10.1109/ICAIBD57115.2023.10206042>.

¹⁰ V K Margarita, "Notary tariff: Problems of ensuring constitutional balance in determining parameters", *Vestnik Sankt-Peterburgskogo Universiteta. Pravo* 15, no 3 (2024): 221,

the issue of notary fees with a constitutional approach, emphasizing the need for a balance between public and private interests in the notary financing system.

Other research, such as Yetniwati et al. (2021)¹¹, emphasizing the role of education and character building through internship programs for prospective notaries as an important component in ensuring the professionalism and integrity of notaries. Piñas et al. (2023)¹² integrating information and communication technology in notarial supervision to improve efficiency and legal security in the digital era. In the historical context, Woś (2021)¹³ analyzing the position of notaries under Polish law in 1933, showing the combination of public and professional elements in their role as public trust officials. All of this literature underlines the importance of adaptive supervision, education, and technology integration in supporting the effectiveness of the notary profession.

The effectiveness of supervision by the Regional Supervisory Council (MPD) of notaries in Indonesia faces significant challenges. As an institution responsible for ensuring notaries' compliance with laws and regulations and professional codes of ethics, the MPD often experiences operational constraints rooted in structural, regulatory, and resource weaknesses.¹⁴ One of the main problems faced is the limited budget allocated by the government to support the implementation of supervisory duties. Supervisory activities that require preventive guidance and curative actions against notary violations are often constrained by minimal operational funds. This has an impact on the low frequency of field inspections, lack of adequate facilities, and limited training for MPD members to improve their capacity as supervisors.

In addition, MPD faces challenges in terms of limited time and human resources. MPD members, who often come from academics, legal practitioners, and active notaries, have primary responsibilities outside of their duties as supervisors. This condition makes it difficult for them to allocate sufficient time to carry out their supervisory functions optimally. In areas such as Central Java, where there are around 2,635 registered notaries, the number of MPD members, which only reaches 315 people, is not comparable to the burden of supervision that must be borne. This imbalance is exacerbated by

<https://doi.org/10.21638/spbu14.2024.303>.

¹¹ Yetniwati, "Legal Constructions of Apprenticeship for Notary Candidates in the Framework of Rechtsidee", *Jambe Law Journal* 4, no 1 (2021): 86, <https://doi.org/10.22437/jlj.4.1.93-110>.

¹² L F Piñas Piñas, "An Intelligent Fusion Framework for Risk Assessment of Notarial Activities in the Digital Era: Balancing Speed and Legal Security with ICT", *Fusion: Practice and Applications* 15, no 1 (2024): 57, <https://doi.org/10.54216/FPA.150116>.

¹³ T Woś, "Systemic position of the notary under the first polish law on notaries of 27 october 1933. Part two", *Studia Iuridica Lublinensia* 30, no 4 (2021): 762, <https://doi.org/10.17951/sil.2021.30.4.573-592>.

¹⁴ Muhaimin, "Responsibilities of Regional Supervisor Toward Notary Protocols From Other Notaries Which Have Been Aged Twenty-Five Years or More", *Journal of Law, Policy and Globalization*, 2020, 121, <https://doi.org/10.7176/jlpg/98-10>.

the vast area of supervision, making it difficult to coordinate and carry out tasks effectively.

Weaknesses in regulations are also an obstacle to increasing the effectiveness of MPD supervision. Several regulations, as stated in Law Number 30 of 2004 concerning the Position of Notary and Permenkumham Number 16 of 2021,¹⁵ has not fully provided a clear and adaptive framework for the dynamics of the notary profession. For example, the minimum education requirement for MPD members from academic elements is limited to a law degree, while many supervised notaries have master's and even doctoral degrees. In addition, the rule that allows active notaries to become MPD members without being temporarily suspended from their duties as notaries raises the potential for a conflict of interest, considering that the supervisor and the supervised are in the same professional scope.¹⁶

Various forms of violations committed by notaries further emphasize the importance of effective supervision by the MPD. In the Central Java region, several common violations were found, such as not keeping the minutes of the deed with complete data, not reading the deed to the parties during the signing process, and entrusting the deed or minutes to staff to be signed by the client without the presence of the notary. These practices not only violate the provisions of the Notary Law, but also threaten the integrity of the legal documents produced, which can harm the parties who use the services of the notary. In addition, there are violations in the form of unethical promotions carried out by notaries through cooperation with intermediaries to get clients, or inserting advertisements in various events.

Not only that, the phenomenon of notaries being absent from the office for days in a row without a clear reason is another form of violation. This absence often hinders services to the community and reflects a lack of professionalism. External factors, such as the lack of public awareness to report suspected notary violations, also worsen the situation. Many people feel that the reporting procedure is too complicated and choose not to report it, so that potential violations are not optimally detected by the MPD.

These issues indicate that the current supervision system requires fundamental reform to improve its effectiveness. Efforts that can be made include increasing budget allocation, improving regulations to reduce conflicts of interest, and utilizing digital technology in reporting and supervision systems. With these steps, it is hoped that supervision by the MPD

¹⁵ Muammar Khadafi, Iskandar Muda, en Irwan Santosa, "Implementasi Hukum Prinsip Mengenali Pengguna Jasa Dilaksanakan Notaris Terhadap Pelaporan Transaksi Keuangan Mencurigakan Melalui Aplikasi Go-AML Berdasarkan Peraturan PPATK Nomor 3 Tahun 2021", *Jurnal Hukum dan HAM Wara Sains* 2, no 09 (2023): 56, <https://doi.org/10.58812/jhhws.v2i09.614>.

¹⁶ Henry Lbn Toruan Donald, "Legalitas Keberadaan Majelis Pengawas Notaris dan Majelis Kehormatan Notaris", *Jurnal Penelitian Hukum De Jure* 20, no 3 (2020): 21, <https://doi.org/10.30641/dejure.2020.v20.435-458>.

can be more adaptive to the challenges of the times and be able to create a notary supervision system that is fairer, more transparent, and more accountable.¹⁷

Supervision of notaries must be based on the principle of profound justice, both distributive and commutativa justice, to ensure that this profession is able to serve the community with integrity and professionalism. Justitia distributiva, which is based on the principle of proportionality, emphasizes the importance of supervision that distributes obligations and responsibilities in a balanced manner between the supervisor and the supervised.¹⁸ In the context of the Regional Supervisory Council (MPD), distributive justice demands that the workload of supervision be adjusted to the number and work area of the notaries being supervised.

This is important considering the disparities that often occur, such as the inadequate number of MPD members compared to the number of notaries to be supervised in a particular area. Meanwhile, commutativa justitia, which is based on the principle of equality, requires all notaries to be treated equally in the supervision process, without discrimination based on location, professional network, or other factors. In practice, commutativa justice demands that any alleged violation of the code of ethics or regulations by a notary be examined with transparent and fair procedures, so that the results of the supervision can be trusted by all parties. Furthermore, a supervisory approach based on substantive justice values is very relevant in ensuring that supervision of notaries is not only oriented towards administrative compliance, but also reflects the community's need for genuine justice.

In the context of Critical Legal Studies (CLS),¹⁹ Such supervision must be able to expose and address the imbalance of power that may exist in the relationship between notaries, the community of service users, and the supervisory institution. CLS criticizes the law and supervision as tools that are often dominated by the interests of certain groups, rather than serving social justice. In notary supervision, this approach demands that the rules and their implementation not only focus on sanctions for violations, but also on coaching that supports improving the quality of service and public trust in the notary profession. Thus, supervision based on substantive justice not only maintains formal compliance, but also seeks to create a legal system that is inclusive, fair, and effective for the wider community.

¹⁷ Dwi Kukuh Verdyandika, Shinta Hadiyantina, en Endang Sri Kawuryan, "Kewenangan Majelis Pengawas Daerah Notaris terhadap Protokol Notaris yang Telah Berumur 25 Tahun atau Lebih", *Jurnal Mercatoria* (2021), 21, <https://doi.org/10.31289/mercatoria.v14i2.5559>.

¹⁸ NEKY KUNTJORO, "Efektivitas Pengawasan Majelis Pengawas Daerah (MPD) Kota Yogyakarta Terhadap Perilaku Notaris di Kota Yogyakarta menurut Kode Etik Notaris", *Jurnal Lex Renaissance* 1, no 2 (2016): 98, <https://doi.org/10.20885/jlr.vol1.iss2.art5>.

¹⁹ G Binder, "Critical Legal Studies", *A Companion to Philosophy of Law and Legal Theory: Second edition*, 2010, 431, <https://doi.org/10.1002/9781444320114.ch16>.

Existing regulations, such as Law Number 30 of 2004 concerning the Position of Notary (UUJN) and Permenkumham Number 16 of 2021, show efforts to regulate the governance of supervision of notaries, but in practice there are still many gaps that hinder the effectiveness of supervision. One fundamental weakness is the lack of special training or certification for MPD members, which should be a requirement to ensure that they have adequate competence in carrying out supervisory duties. The provisions in Article 9 of Permenkumham Number 16 of 2021, for example, only require MPD members from academic elements to have a law degree with three years of experience in the legal field. This requirement is considered disproportionate to the complexity of supervisory duties, especially when dealing with notaries, most of whom have higher academic qualifications and in-depth legal experience.

In addition, supervision in the field is still minimal in utilizing technology to support transparency and efficiency.²⁰ The digital-based reporting system, which should make it easier for the public to report alleged violations, has not been implemented optimally. This causes the reporting process to often be considered complicated and difficult, so that many people choose not to report even though they know there are violations. These technological limitations also have an impact on the MPD's internal monitoring process, such as documentation and analysis of violation data which is still done manually, thus slowing down the response to problems that arise.

This gap shows that existing regulations have not been fully able to answer the needs of adaptive and progressive supervision. In this context, a revision of the regulations is needed to accommodate changing needs, including increasing the competency requirements of MPD members through certification training, as well as the integration of digital technology in the supervision system. With this step, supervision can run more effectively, efficiently, and be oriented towards substantive justice which is the essence of the notary profession as a guardian of legal certainty.

2. Research Method

The research method in this study uses a socio-legal approach.²¹ which combines normative analysis of legal regulations with empirical studies of the implementation of notary supervision by the Regional Supervisory Council (MPD). Based on the Critical Legal Studies (CLS) theory, this study aims to critique how regulations, such as Law Number 30 of 2004 concerning the Position of Notaries and Permenkumham Number 16 of 2021, work in practice and whether these regulations reflect the values of substantive justice. The data

²⁰ Habib Adjie, "Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global", *Jurnal Hukum Respublica* 16, no 2 (2018): 232, <https://doi.org/10.31849/respublica.v16i2.1436>.

²¹ Reza Banakar en Max Travers, *Theory and method in socio-legal research* (Bloomsbury Publishing, 2005), 32.

used include primary data in the form of in-depth interviews with MPD members, notaries, and the community, as well as direct observation of supervisory practices. Secondary data were collected through document studies including laws and regulations, academic journals, and supervisory reports. The analysis technique uses the abduction method, which combines inductive and deductive approaches to understand the relationship between legal norms and social dynamics in the field. Data validation is carried out by triangulation, comparing the results of interviews, observations, and document analysis to ensure the accuracy and reliability of the findings. This approach is designed to produce in-depth analysis that is relevant in providing recommendations for more effective MPD governance reforms based on substantive justice.

3. Results and Discussion

Analysis of the Gap Between Regulation and Implementation of Notary Supervision by the Regional Supervisory Council (MPD)

The regulations governing the supervision of notaries in Indonesia have provided a clear legal framework regarding the obligations and functions of the Regional Supervisory Board (MPD). The Notary Law (UUJN) and its implementing regulations such as the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 explain in detail the role of the MPD, including the tasks of fostering, supervising, and enforcing the notary code of ethics. However, despite a solid legal basis, the implementation of supervision often encounters various obstacles that hinder its effectiveness.²²

First, there is a gap between normative regulations and their implementation in the field. Many MPD members come from various professional backgrounds who do not always have adequate experience or competence in notary supervision. This is exacerbated by provisions that do not require certification or special training for MPD members, so they often have difficulty carrying out their supervisory duties with the expected professionalism.²³

Second, infrastructure and funding aspects are also serious problems. The limited budget allocated for MPD activities limits their ability to carry out supervisory duties intensively and in a planned manner. Many MPDs do not have adequate special offices, so administrative tasks are often disrupted,

²² Donald, "Legalitas Keberadaan Majelis Pengawas Notaris dan Majelis Kehormatan Notaris", 110.

²³ Kristiana Meinalita Samosir, "Efektivitas Pelaksanaan Kewenangan Pengawasan Majelis Pengawas Daerah Notaris Terhadap Notaris di Kota Pontianak", *Jurnal Nestor Magister Hukum* (2004), 87, <https://www.neliti.com/publications/10571/efektivitas-pelaksanaan-kewenangan-pengawasan-majelis-pengawas-daerah-notaris-te>.

while the wide scope of supervision adds to the complexity of their work.

Third, the role of the community in reporting notary violations is not optimal. Reporting procedures that are considered complicated and the lack of socialization about complaint mechanisms make the community reluctant to report. This creates a situation where violations are often not detected or not handled adequately by the MPD.

Fourth, the legal culture among notaries themselves is also an obstacle. Not all notaries have a high commitment to the code of ethics or laws and regulations. Permissive attitudes and lack of awareness to report violations among fellow notaries also weaken the effectiveness of supervision.²⁴

This gap between regulation and implementation shows the need for reconstruction efforts to the MPD supervision system. Reforms must include strengthening regulations regarding the qualifications of MPD members, increasing budget allocations, digitizing the complaint system to facilitate public access, and fostering a stronger legal culture among notaries. With these steps, the MPD can transform into a more effective and responsive supervisory institution to the dynamics of the needs of the community and the notary profession in Indonesia.²⁵

The implementation of notary supervision regulations by the Regional Supervisory Council (MPD) presents a complex picture of how the established rules are implemented in the field. In practice, the existing regulations provide a normative basis for the MPD to provide guidance, supervision, and enforcement of notaries, both related to job duties and professional codes of ethics. However, the implementation of these regulations often does not go as expected due to a number of structural, technical, and cultural obstacles.²⁶

One of the main challenges in implementing regulations in the field is the mismatch between written rules and the operational capacity of the MPD. Some MPD members, although they come from various elements such as academics, notaries, and government officials, often do not have special training or certification relevant to their supervisory duties. As a result, they do not always have a deep understanding of the examination procedures,

²⁴ Lutviandany, Wisnaeni, en Cahyaningtyas, "Pelaksanaan Pengawasan Majelis Pengawas Daerah Terhadap Kode Etik Notaris Di Kabupaten Grobogan", 120.

²⁵ Rosi Maryana, Endang Purwaningsih, en Irwan Santosa, "Peran Serta Notaris Dalam Pelaporan Transaksi Keuangan Mencurigakan Pendanaan Tindak Pidana Terorisme Di Era 4.0 Dan 5.0", *Jurnal Res Justitia: Jurnal Ilmu Hukum* 3, no 1 (2023): 87, <https://www.resjustitia.lppmbinabangsa.id/index.php/home/article/view/62>.

²⁶ Ratna Madyastuti, "Kewenangan Majelis Pengawas Notaris Dalam Pencegahan Terjadinya Pelanggaran Kewenangan Dan Tugas Jabatan Notaris", *Jurnal Lex Renaissance* 5, no 3 (2020): 98, <https://doi.org/10.20885/jlr.vol5.iss3.art13>.

evidence collection, or application of sanctions stipulated in the relevant laws and regulations. The absence of this special certification or training creates an imbalance between regulatory requirements and the practical ability to implement them effectively.

Other obstacles arise from the infrastructure and funding aspects. In many cases, the MPD does not have a special office adequate to support supervisory and coaching activities. This limitation affects administrative effectiveness and internal coordination, especially when supervision must cover a large area with a large number of notaries. In addition, the budget allocated to the MPD is often insufficient, limiting the frequency and scope of supervisory activities, including surprise inspections or investigations into reports of violations.

Not only that, the implementation of regulations is faced with the challenge of legal culture, both among notaries and the community. Many notaries show a permissive attitude towards violations, either because of the weak sanctions imposed or solidarity among fellow notaries. This is exacerbated by the lack of public awareness of the rights and mechanisms for reporting notary violations. The reporting process is considered complicated, coupled with the lack of socialization from the MPD, making many people reluctant to report or even unaware of the existence of such a mechanism. In daily supervisory practices, the MPD also faces constraints on the schedule and workload of its members. Most MPD members have other main jobs outside of their supervisory duties, so that the division of their time and energy is not optimal. This limitation hinders the implementation of supervisory duties consistently, especially in handling reports of violations or carrying out preventive coaching.²⁷

These constraints indicate the need for integrated reforms in the notary supervision system by the MPD. These reforms include increasing the capacity of members through training and certification, strengthening budget allocations, procuring supporting infrastructure, and digitizing the reporting system that can make it easier for the public to participate in supervision. With this approach, the implementation of regulations can be more responsive to needs in the field, increase the effectiveness of supervision, and create better notary governance in Indonesia.

Supervision of notaries by the Regional Supervisory Council (MPD) is normatively designed to ensure notaries' compliance with laws and regulations, professional codes of ethics, and maintain the integrity of the

²⁷ Tri Ulfi Handayani en Anis Mashdurohatun, "Urgensi Dewan Kehormatan Notaris Dalam Penegakan Kode Etik Notaris Di Kabupaten Pati", *Jurnal Akta* 5, no 1 (2018): 22, <https://doi.org/10.30659/akta.v5i1.2531>.

public office they hold. Regulations such as the Notary Law (UUJN) and the Regulation of the Minister of Law and Human Rights have established a clear framework regarding the objectives, authorities, and responsibilities of the MPD. However, in practice, the supervision carried out often does not fully reflect the objectives desired by the regulation. The gap between legal provisions and the reality in the field is a major challenge in efforts to realize effective and fair supervision.²⁸

One of the most prominent gaps is the effectiveness of MPD supervision in ensuring that the implementation of notary duties is in accordance with regulations. In many cases, supervision is limited to administrative procedures such as document examination or periodic reports, while substantive supervision of the implementation of job duties is often neglected. This is due to limited resources, both in terms of the number of MPD members, the time available, and their technical competence. For example, in some regions, the number of MPD members is not comparable to the number of notaries being supervised, so that supervision is sporadic and not comprehensive. Budget constraints are also a major obstacle to the implementation of effective supervision. Many MPDs face difficulties in funding surprise inspections, investigations of violations, or training to increase the capacity of members. As a result, supervision efforts are often reactive, only responding to public reports without a planned preventive strategy. In addition, the lack of sufficient funding allocation to support the procurement of supporting facilities or technology, such as a digital reporting system, exacerbates this gap.²⁹

Lack of coordination between MPD and related agencies, such as the Ministry of Law and Human Rights, is also a factor causing the gap. In some cases, the lack of synergy in sharing information or handling reports of violations results in a protracted and less transparent monitoring process. In addition, data exchange mechanisms between agencies are often not well integrated, making it difficult for MPD to access relevant information to support their monitoring.³⁰

The gap in legal culture between notaries and the public also worsens this situation. Many notaries tend to ignore their obligations to the code of ethics

²⁸ Yuli Sambira, "Sanctions Mechanism for Notary Who Break the Code of Ethics", *Sultan Agung Notary Law Review* 2, no 3 (2020): 11, <https://doi.org/10.30659/sanlar.2.3.272-281>.

²⁹ Shalahuddin Suriadiredja en Mohamad Fajri Mekka Putra, "Penunjukan Notaris Sebagai Pihak Pelapor Dan Kewajiban Menerapkan Prinsip Mengenali Pengguna Jasa Serta Implikasinya Terhadap Kepastian Hukum", *Jurnal Komunikasi Hukum (JKH)* 8, no 1 (2022): 21, <https://doi.org/10.23887/jkh.v8i1.43876>.

³⁰ Verdyandika, Hadiyantina, en Kawuryan, "Kewenangan Majelis Pengawas Daerah Notaris terhadap Protokol Notaris yang Telah Berumur 25 Tahun atau Lebih", 87.

or job regulations, while the public is often reluctant to report due to complicated procedures or lack of trust in the supervision system. This phenomenon shows that existing regulations have not fully succeeded in creating a supervisory mechanism that is responsive to the needs of the community and is able to instill strong compliance among notaries. By identifying this gap, strategic steps that need to be taken include regulatory reform to improve the supervision mechanism, increasing MPD resources both in terms of budget and member capacity, and strengthening coordination between institutions. Digitalization of the supervision and reporting system is also an important element to overcome physical limitations and accelerate the response to reports of violations. Only with integrated efforts can supervision by the MPD be closer to the ideal goal expected by existing regulations, namely creating supervision that is effective, fair, and oriented towards the public interest.³¹

The gap between the regulation of notary supervision by the Regional Supervisory Council (MPD) and the reality of its implementation in the field can be traced to various fundamental factors. One of the main factors is the lack of training and understanding for MPD members regarding the complex task of supervision. Most MPD members come from diverse backgrounds, such as academics, active notaries, and government officials, but they often do not have direct experience in handling specific issues related to notary supervision. Without formal training or relevant certification, MPD members face difficulties in understanding and implementing supervision procedures in accordance with the standards set out in the regulation. The absence of a continuous training mechanism also exacerbates this situation, as MPD members do not receive updates on new regulations or relevant technologies.³²

In addition, lack of resources is also a significant obstacle. Many MPDs operate on limited budgets, which are not enough to fund oversight activities such as routine inspections, investigations, or community outreach. Supporting infrastructure, such as a proper office or access to digital systems for reporting and documentation, is also often lacking. This results in limitations in the scope of oversight, leaving MPDs only able to respond to a small portion of the total reports or complaints received.³³

Structural constraints within the MPD organization exacerbate this gap. MPD

³¹ Ika Yuli Agustin en Ghansham Anand, "Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective", *Lentera Hukum* 8, no 1 (2021): 23, <https://doi.org/10.19184/ejhl.v8i1.21375>.

³² Sadewa, "Peran Majelis Pengawasan Daerah (MPD) Dalam Melakukan Pengawasan Terhadap Administrasi Nootaris Di Kota Palembang", 47.

³³ Samosir, "Efektivitas Pelaksanaan Kewenangan Pengawasan Majelis Pengawas Daerah Notaris Terhadap Notaris di Kota Pontianak", 87.

members who have main jobs outside of their supervisory duties often have difficulty dividing their time to handle MPD tasks optimally. In addition, the organizational structure that is not fully integrated with related institutions, such as the Ministry of Law and Human Rights, results in a lack of coordination in handling reports or developing supervisory policies. The absence of an efficient data exchange mechanism between the MPD and other agencies also slows down the supervisory and decision-making process.³⁴

This gap has a significant impact on the level of notary compliance with regulations, especially in terms of important obligations such as reporting suspicious financial transactions or complying with the professional code of ethics. The suboptimal supervision by the MPD creates loopholes that can be exploited by notaries to ignore or violate the rules without fear of being subject to serious sanctions. In many cases, weak supervision causes violations such as irregularities in the preparation of deeds or administrative violations to be less detected and not handled firmly.

In addition, low compliance of notaries with regulations is often caused by a lack of urgency to comply with the rules when they see that supervision is not carried out consistently. This not only affects the integrity of the notary profession but also increases the risk of serious violations that can harm the parties who use their services. For example, in the case of reporting suspicious financial transactions, non-compliance can have an impact on disrupting efforts to prevent money laundering or terrorism financing, which should be part of the responsibility of the notary profession.³⁵

Furthermore, this gap can have a domino effect, where the inability of the MPD to carry out supervision effectively weakens the credibility of the institution in the eyes of the public. This distrust then contributes to low public participation in reporting violations or non-compliance by notaries, thus creating a vicious circle that further hinders improvements to the supervision system. Therefore, to reduce the negative impact of this gap, a comprehensive reform is needed that includes increasing the capacity of the MPD through training and certification, adequate budget allocation, and strengthening coordination with related agencies. In addition, the development of a digital system that allows for transparent reporting and supervision can help rebuild public trust while increasing the level of notary

³⁴ Jeremiah, "Pelaksanaan Pengawasan Notaris Oleh Majelis Pengawas Daerah Notaris Di Kota Salatiga", 2008, 54.

³⁵ Mutia Karina Norman, "Penerapan Prinsip Mengenali Pengguna Jasa (Pmpj) Bagi Notaris Dalam Rangka Mutual Evaluation Review (Mer) Financial Action Task Force (Fatf) Terhadap Indonesia", *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 7, no 1 (2023): 89, <https://ejournal.mandalanursa.org/index.php/JISIP/article/view/4086%0Ahttps://ejournal.mandalanursa.org/index.php/JISIP/article/viewFile/4086/3861>.

compliance with applicable regulations.

Substantive Justice-Based Supervision in the Critical Legal Studies (CLS) Framework

Critical Legal Studies (CLS) is a school of legal thought that emerged as a response to traditional legal approaches that were considered too formalistic and value-neutral. CLS highlights that law often does not work fairly, but tends to reflect and reinforce existing power structures in society.³⁶ In other words, CLS sees law not merely as an instrument for creating justice, but also as a tool used by dominant groups to maintain the status quo and reinforce social, economic, and political inequalities. This thinking challenges the notion that law is neutral and objective, and highlights how law is often colored by ideological biases that serve certain interests.

The main principles in CLS include the non-neutrality of law, where law is seen as not being able to be completely free from values or the influence of power. CLS also highlights the dominance of ideology in the formation of law, namely how law often reflects the ideology of the elite groups that dominate society. In addition, CLS criticizes the inability of law to achieve substantive justice, where existing law tends to prioritize procedural formalities rather than the fulfillment of basic human rights. This approach encourages critical reflection on how law works in practice, and demands changes that are more oriented towards social and humanitarian justice.

Substantive justice in the context of CLS refers to the achievement of more meaningful justice, which does not only depend on fulfilling the formal requirements of the law, but also takes into account the real impact of the application of the law on individuals and society. This approach emphasizes the fair and equal treatment of all individuals, taking into account the social, economic, and cultural contexts that affect their lives. Unlike formal justice which only focuses on the universal application of rules without considering the end result, substantive justice seeks to ensure that the law truly protects basic rights and meets human needs.

In the context of supervision of the notary profession, substantive justice can be applied by paying attention to how regulation and supervision of notaries contribute to the protection of society.³⁷ For example, regarding reporting suspicious financial transactions, substantive justice demands that supervision not only focuses on fulfilling formal procedures, but also ensures that supervision is truly effective in preventing illegal practices such as money laundering or

³⁶ J Gilchrist Stewart, "CLS is Haunted! A Perspective on Contemporary Critical Legal Studies", *Law and Literature* 32, no 1 (2020): 67, <https://doi.org/10.1080/1535685X.2019.1635358>.

³⁷ Tedjosaputro, *Keadilan dan Masyarakat Aplikasi Hukum Profesi Notaris dalam Kehidupan*, 112.

terrorism financing. This includes efforts to understand the obstacles faced by notaries, such as a lack of understanding of regulations or technical obstacles in reporting, and providing solutions that not only punish but also help them comply with the rules.

By applying the principle of substantive justice, supervision of the notary profession can be directed towards creating a system that is more inclusive and responsive to the needs of the community. In addition, this approach also allows for a critical evaluation of existing regulations, to ensure that regulations and their implementation not only enforce legal formalities, but also provide real benefits to the wider community. In the context of CLS, this reflects an effort to make the law a more just and egalitarian tool, and minimize the potential for the law to be used as an instrument of domination by certain groups.

From the perspective of Critical Legal Studies (CLS), supervision of notaries, such as that carried out by the Regional Supervisory Council (MPD), can be seen as a reflection of how the law is applied and whether the process supports substantive justice. CLS criticizes the legal system which tends to be oriented towards formality and often ignores the social impact of the implementation of the law.³⁸ In the context of notarial supervision, the MPD often carries out its duties by focusing on fulfilling administrative and technical procedures, such as document examination or verifying compliance with suspicious financial transaction reporting rules. This approach, although in accordance with regulations, can be too formalistic if it is not accompanied by efforts to understand and address the root causes of violations or non-compliance that occur.

Supervision that is truly oriented towards substantive justice should not only assess notarial compliance with formal rules, but also ensure that such supervision results in transparency, accountability, and justice in notarial practice. In the case of suspicious financial transaction reporting, for example, substantive supervision will consider the extent to which notaries understand their obligations, the obstacles they face in carrying out their duties, and how the MPD can help create a conducive environment to encourage compliance. This substantive approach requires the MPD to act not only as a supervisor, but also as a facilitator who supports notaries in carrying out their role as guardians of justice.

The formalistic approach in notarial supervision by the MPD tends to focus only on compliance with technical and procedural rules, without considering the social, economic, or moral context behind the violations.³⁹ The main criticism of

³⁸ S Iain, "Critical legal studies in french", *French Studies Bulletin* 23, no 1 (1987): 89, <https://doi.org/10.1093/frebul/7.23.1>.

³⁹ Niru Anita Sinaga, "Kode Etik Sebagai Pedoman Pelaksanaan Profesi Hukum Yang Baik", *Jurnal Ilmiah Hukum Dirgantara* 10, no 2 (2020): 1-34, <https://doi.org/10.35968/jh.v10i2.460>.

this approach is that it often fails to create meaningful change in notary behavior or improve the oversight system itself. For example, if the MPD only evaluates notaries' monthly reports without examining in depth the reasons behind a particular violation, the oversight will be reactive and unable to prevent similar violations in the future.⁴⁰

A purely formal approach also tends to ignore the importance of a notary's ethical awareness and social responsibility. Notaries, as public officials who play a role in ensuring the validity and legality of legal transactions, have a responsibility to comply not only with written rules, but also with moral principles that support justice and the protection of society. When supervision is focused only on legal formalities, substantive aspects such as integrity, professionalism, and empathy for the needs of the community are neglected. This can weaken the function of supervision as an instrument to improve the quality of the notary profession and strengthen public trust in the legal system.

Formal supervision that is not accompanied by a substantive approach can also create a sense of injustice among notaries. Notaries who may face structural obstacles or lack of resources in fulfilling their obligations, such as reporting suspicious financial transactions, often do not receive adequate assistance from the MPD. Instead, they are only faced with administrative sanctions that do not fix the root of the problem. This shows the need for reform in the supervision approach, which integrates formal elements with attention to substantive justice to create a more sustainable impact.

With this criticism, CLS encourages a paradigm shift in notary supervision, from merely formalistic to more substantive.⁴¹ The MPD needs to adopt a more holistic approach, which not only evaluates compliance with the rules but also supports notaries to fulfill their responsibilities ethically and socially. This approach will create supervision that is more responsive, fair, and relevant to the needs of society and the challenges of the notary profession in the modern era.

The law has a central role in upholding substantive justice,⁴² namely ensuring that rules and policies are not only implemented formally, but also have a real impact that is fair and beneficial to the community. In the context of notary supervision regulations, the law can be used as an instrument to create effective protection for

⁴⁰ F Esfandiari en A E Widiyanto, "Pancasila Legal System: Balancing The Fulfillment Of National Moral Values And Law Enforcement In Indonesia", *Indonesian Journal of Law and ...*, 2024, 87, <https://ijler.umsida.ac.id/index.php/ijler/article/view/999>.

⁴¹ A J Barbieri-Low, "Law, State, and Society in Early Imperial China: A Study with Critical Edition and Translation of the Legal Texts from Zhangjiashan Tomb no. 247", *Sinica Leidensia*, 2015, 98, <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=85187186970&origin=inward>.

⁴² J D Unnever, "Formal versus Substantive Justice: The Legislative History of the Surface Mining Control and Reclamation Act of 1977", *Capitalism Nature Socialism* 6, no 3 (1995): 43, <https://doi.org/10.1080/10455759509358643>.

the community and prevent abuse of authority in the notary profession. Existing regulations, such as the Notary Law (UUJN) and the Regulation of the Minister of Law and Human Rights, are designed to provide clear guidelines and limitations for notaries, while ensuring that public interests are protected. However, the success of these regulations is highly dependent on the extent to which the law is understood and applied with a substantive approach. The current legal approach, which is often oriented towards procedural compliance, is not always sufficient to address the imbalance of power between notaries and other parties, especially in financial transactions. For example, in the case of reporting suspicious financial transactions, notaries have a strategic position to prevent practices such as money laundering. However, if supervision only focuses on technical reporting procedures without considering the social context or obstacles faced by notaries, then the law does not fully function to create substantive justice. Therefore, a more progressive interpretation of the law is needed, which not only enforces the rules but also empowers stakeholders to encourage transparency, accountability and fair treatment in financial transactions.

Fair and Public Interest-Oriented Supervisory Practices

Supervision of notaries must be designed in such a way that it is not only aimed at preventing abuse of the law, but also contributes to the creation of social justice and public protection. To achieve this goal, supervision must be oriented towards the public interest, where every supervisory action not only identifies violations but also addresses their root causes. Fair supervision must consider the needs of the wider community, including victims of financial crimes such as money laundering, as well as provide space for notaries to carry out their duties better through training, guidance, and support.⁴³

One important step in realizing fair supervision is to integrate the principle of substantive justice into every aspect of supervision. For example, the MPD can develop a supervision approach based on risk assessment, where the focus is directed at notaries who are identified as having a greater potential risk of committing violations. In addition, supervision must include mechanisms that allow the public to actively participate, such as through an easily accessible and transparent reporting system. This step not only increases the effectiveness of supervision but also helps build public trust in the legal system.

An approach based on substantive justice also has the potential to improve broader social conditions. By ensuring that notaries comply with regulations related to reporting suspicious financial transactions, supervision can help prevent financial crimes that have a negative impact on society, such as terrorism

⁴³ Suwardi Suwardi, "the Synchronization Necessary of Notary Supervision By Notary Supervisory and Honour Council", *Jurnal Akta* 8, no 2 (2021): 47, <https://doi.org/10.30659/akta.v8i2.14163>.

financing or corruption. Furthermore, supervision that is responsive to the needs of the community can create a more inclusive and fair legal environment, where individual rights are protected and power imbalances can be minimized.

By adopting fair and public interest-oriented supervision practices, the MPD can strengthen its role as an institution that not only maintains the integrity of the notary profession but also contributes to the creation of a more transparent, just, and empowered society. Such supervision is not only relevant to address current violations but also to build a solid foundation to prevent future injustice.

The principles of Critical Legal Studies (CLS) can be a strategic framework for reforming the notary supervision system to create more real substantive justice. In the CLS perspective, notary supervision should not only be oriented towards fulfilling legal formalities, but also towards transforming the legal structure that is able to address power imbalances and provide equal protection for all parties involved, including the public as users of notary services. Thus, reform of the supervision system must be directed towards integrating substantive justice into every aspect of the regulations and their implementation.⁴⁴

One application of the CLS principle in supervisory reform is to create a supervisory mechanism that is not merely technical, but also considers the social and economic context that influences notary behavior. This can start by establishing a risk-based supervisory system, where attention is more focused on notaries who have the potential to commit serious violations, such as involvement in money laundering or violations of the code of ethics. This step not only increases the efficiency of supervision, but also ensures that limited resources can be used to address the most pressing problems.

An inclusive approach must also be at the heart of supervisory reform. The CLS principle emphasizes the importance of involving various stakeholders, including the community, in the supervisory process. This can be realized by developing a digital platform that allows anonymous and transparent reporting of violations, so that the community is more encouraged to participate actively. In addition, comprehensive socialization regarding the role and function of the Regional Supervisory Council (MPD) needs to be carried out to increase public awareness of their rights and obligations in the supervisory system.

Reform also needs to include improvements to the structure and composition of the MPD itself. In accordance with CLS's criticism of the imbalance of power, the MPD must be filled by members who not only represent the interests of notaries but also the wider community. This can be done by tightening the requirements for neutrality and competence of members, including through specific training

⁴⁴ D Herbeck, "Critical Legal Studies and argumentation theory", *Argumentation* 9, no 5 (1995): 87, <https://doi.org/10.1007/BF00744752>.

and certification oriented towards substantive justice. Supervision should also be more transparent, with reports of supervision results accessible to the public to increase accountability.⁴⁵

Another step that can be taken is to strengthen the synergy between the MPD and related agencies, such as the Ministry of Law and Human Rights, to create a more integrated supervision system. In this case, CLS encourages coordination between agencies to be not only administrative but also substantive, with a focus on the common goal of protecting the public from the negative impacts of notary non-compliance.

The ideal concept of good notary supervision by the Regional Supervisory Council (MPD) can be realized through an integrative, responsive, and substantive justice-oriented approach. One example is the development of a digital-based supervision system that allows reporting of violations to be carried out transparently and easily accessible to the public. Through this platform, the public can report alleged violations anonymously with supporting evidence, while the MPD can process the reports efficiently through a data-based system. This system can also include algorithm-based monitoring to identify certain patterns of violations, such as late reporting of suspicious financial transactions or administrative discrepancies, so that supervision can be more proactive than merely reactive.

In addition, ideal supervision also involves a risk evaluation mechanism that ensures that the focus is directed more at notaries who have a high potential to commit serious violations. For example, the MPD can identify notaries with a previous record of violations or who operate in areas with a high risk of financial crime for regular inspection. This way, limited oversight resources can be used effectively to address the most pressing issues. In this case, the MPD can adopt professional audit practices with instruments designed to assess compliance with codes of ethics and regulations in depth.⁴⁶

Another concept that can be implemented is a preventive coaching program for notaries. The MPD can hold regular training that discusses the latest regulations, professional codes of ethics, and reporting obligations for suspicious financial transactions. This training not only improves notaries' understanding of their professional responsibilities, but also helps them develop internal mechanisms to prevent violations. This kind of preventive coaching can be combined with the provision of certification to notaries who have demonstrated high compliance, as

⁴⁵ Dwikky Bagus wibisono en Umar Ma'ruf, "Peranan Majelis Pengawas Daerah (MPD) Terhadap Pengawasan Pelaksanaan Jabatan Notaris Di Kabupaten Tegal", *Jurnal Akta* 5, no 1 (2018): 98, <https://doi.org/10.30659/akta.v5i1.2546>.

⁴⁶ Ariel Doni Dharmawan en Maryanto Maryanto, "Kekuatan Hukum Sertifikat Hak Tanggungan Dalam Hal Musnahnya Obyek Hak Tanggungan Karena Bencana Alam Di Kabupaten Grobogan", *Jurnal Akta* 5, no 1 (2018): 55, <https://doi.org/10.30659/akta.v5i1.2545>.

a form of incentive that encourages professional behavior.⁴⁷

Transparency and accountability in supervision should also be a priority. The MPD can publish an annual report summarizing the results of supervision, violation trends, and sanctions that have been imposed. This report not only increases the accountability of the MPD but also educates the public about the importance of notary supervision. In addition, the MPD can collaborate more closely with law enforcement agencies and financial institutions to ensure that detected violations can be immediately followed up legally if necessary.

Another ideal concept is strengthening the composition of the MPD itself. MPD members must be selected based on competence, integrity, and diversity of backgrounds that can represent various interests, including the community that uses notary services. To increase effectiveness, MPD members need to receive special training on supervision techniques, professional ethics, and current issues relevant to their roles. With a commitment to reform based on this ideal concept, notary supervision by the MPD will not only be more effective in enforcing the law, but also better able to create a system that is fair, transparent, and responsive to the needs of the community.

By adopting the principles of CLS, the notary supervision system can evolve to be more responsive, inclusive, and oriented towards social justice. This reform will not only improve the effectiveness of supervision, but also strengthen public trust in the notary profession and the legal system as a whole. The CLS principle reminds us that law should not be a static tool of power, but rather a dynamic instrument that continues to adapt to create real benefits for society.

4. Conclusion

The supervision of the Regional Supervisory Council (MPD) over notaries in Indonesia still faces a number of significant challenges, both structurally, regulatoryly, and operationally. Although regulations such as the Notary Law and the Permenkumham provide a clear legal framework, their implementation is often hampered by limited resources, lack of training for MPD members, and inefficient reporting procedures. This makes supervision less effective in ensuring notary compliance with the rules and code of ethics, and less responsive to the needs of the community.

To address this gap, a substantive justice-based approach is a strategic solution. From a Critical Legal Studies (CLS) perspective, supervision must be directed not only to enforce legal formalities, but also to create an inclusive, fair, and responsive system. This involves increasing the capacity of MPD members,

⁴⁷ KUNTJORO, "Efektivitas Pengawasan Majelis Pengawas Daerah (MPD) Kota Yogyakarta Terhadap Perilaku Notaris di Kota Yogyakarta menurut Kode Etik Notaris", 67.

digitizing the supervision system, and providing preventive guidance for notaries to support compliance and integrity. With this reform, supervision of notaries can be more effective in creating real legal justice for the wider community.

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