THE ROLE OF THE NOTARY REGIONAL SUPERVISORY BOARD IN RESPONDING TO VIOLATIONS OF NOTARY DUTIES AND POSITIONS

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Abstract

The Notary Supervisory Council (MPN) is here to improve services and legal protection for the public who use notary services. However, nowadays, there are more and more irregularities committed by notaries in carrying out their duties and positions, both administrative in nature and resulting in material losses to the public who use notary services. The imposition of sanctions is an effort by MPN, especially the Regional Supervisory Council (MPW) in order to provide sorrow for notaries who violate and appeal to other notaries. There were 40 violations in the implementation of notary duties and positions in the 2016-2020 period, during this period the increase and decrease in the level of violations of notary duties and positions in the Banten area was inconsistent. The implementation of sanctions imposed by MPW has not been optimal, as evidenced by the results of the study, namely an increase and decrease in the level of violations of notary duties and inconsistent positions in the region. In addition, there are several obstacles encountered by MPW as a body that supervises notaries, namely the lack of cooperation between notaries and MPW in enforcing the UUJN and the Notary Code of Ethics, the indifferent attitude shown by the notary during the examination session and the busy nature of each MPW member in their respective offices. Each relevant agency. Some solutions that can be done are routinely conducting socialization in terms of increasing notary professionalism, strengthening relations between notaries and MPW as well as conducting internal, external, repressive and preventive supervision.

Keywords: Notary Violation, Regional Supervisory Council
A. Introduction

The Notary Profession in Indonesia was originally based on Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) which reads "An authentic deed is a deed in the form determined by law made by or before public officials who have the power to do so at the place where the deed was made." An authentic deed is a perfect means of proof for both parties and their heirs and all those who have rights from them regarding what is contained in the deed.1 As a form of implementation of Article 1868 of the Civil Code, Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary is applied (State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491) as known as UUJN which becomes the main foundation for notaries in order to provide services to the public in Indonesia.

Based on the provisions of Article 1 point 1 UUJN, a Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws. Public official is a translation of the term openbare ambtenaren which is contained in Article 1 of the Notary Position Regulations (hereinafter referred to as PJN) and Article 1868 of the Civil Code. Based on the above understanding, it can be concluded that a notary as a public official who is specifically authorized by law to make an authentic evidence.2 Notaries as public officials are appointed by the state, does not receive an honorarium from the state will but receive an honorarium for legal services rendered by their authority.3 A notary is a public official authorized to do an Authentic Deed regarding all acts, agreements, and stipulations required by a general regulation.4

The position of a notary, a profession as the general official who does authentic deeds, must be connected to problems that lead to conflicts. Conflicts will develop into disputes if the party who feels aggrieved expresses dissatisfaction with the party causing harm to the other party.5 Conflicts and disputes can be avoided if legal action is based on the completeness of a letter or document that has legal force as evidence.6 Notaries as public officials are required to have a good personality, be wise, wise and full of responsibility and are obliged to carry out all the provisions of the applicable laws and regulations. Article 16 paragraph (1) letter a UUJN states that "A notary is expected to act honestly, thoroughly, independently, impartially and safeguard the interests of the parties involved in legal actions." The duties and authorities of a notary in carrying out his position, as stipulated in UUJNP, can be divided into three types: general authority, specific authority, and

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other powers. In addition, notaries are required to have skills or mastery in the field of law that is their competence.

Given the importance of the role of a notary in social life, it is important for a notary to always comply with and carry out every mandate contained in the UUJN and the Notary Code of Ethics. In order to ensure the implementation of the duties and positions of the notary in accordance with the applicable legal corridors, the notary is supervised by the supervisory body. The task of supervising notaries is based on the provisions of Article 67 Paragraph (2) of the UUJN, the Minister (in this case the Minister of Law and Human Rights) establishes a Notary Supervisory Council (MPN). However, it is undeniable that in carrying out the duties and positions of a notary, there are many irregularities in the notary field. There were 40 violations related to the duties and positions of a notary in Banten Province during the 2016-2020 period. The imposition of sanctions for violations of notary duties and positions is carried out by the Regional Supervisory Council (MPW) as the main task as stipulated in the provisions of Article 73 Paragraph (1) letter e of the UUJN that, the Regional Supervisory Council is authorized to give sanctions in the form of verbal or written warnings.

This study uses an empirical juridical approach, with data collection through literature studies and interviews. Novelty this study aims to analyze several things, namely: first, what are the forms of violations of notary duties and positions in the 2016-2020 period? Second, what are the causes of violations in the notary field? Third, what is the role of the notary supervisory board in responding to these violations? Fourth, what are the obstacles for the regional supervisory council in enforcing the UUJN and the Notary Code of Ethics? It is hoped that the results of this study can provide input and understanding to the public and related parties regarding the importance of supervision of Notaries, and can be a guide in understanding the role of the Regional Supervisory Council in responding to violations of the notary's duties and positions.

Considering that research on the notary supervisory board is one of the topics that is not too new in terms of the notary field, but this research meets the requirements because the data on the form of violations of notary duties and positions in 2016-2020 are new data. In addition, it is explained in detail about the form of the violation and how the regional supervisory board acts in dealing with violations against notaries who violate the law.

B. Discussion

1. Forms of Violation of Notary Duties and Positions in the Banten Province Region 2016-2022

   a. Data on the Result of Violation of Notary Duties and Position Reports

      Violations in the notary profession are divided into two, namely violations of the duties of the notary's position and the code of ethics of the notary profession. The position of a notary as a public official is an honorable position given by the state attributively through the law to someone he trusts. For Notaries who commit violations Code of Ethics, Honor Council coordinates with the Supervisory Board authorized to do so examination of the violation and can impose sanctions on violators. This study focuses on violations of the duties of a notary, which is the authority of the Notary Regional Supervisory Council. Throughout 2016 to 2020 there were dozens of notaries who were appointed at the Ministry of Law and Human Rights of the Banten Province Regional Office, this made Banten one of the provinces with the highest

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The number of notaries in Indonesia. This also has an impact on the level of violations that occur in the implementation of the duties and positions of the notary profession.

<table>
<thead>
<tr>
<th>No.</th>
<th>Form Of Violation</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>Making PPJB Deed Not According to Procedure</td>
<td>16</td>
</tr>
<tr>
<td>2.</td>
<td>Making AJB Not According to Procedure</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>Notary Code Of Ethics</td>
<td>5</td>
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<tr>
<td>4.</td>
<td>Deed of Change of Company without GMS</td>
<td>7</td>
</tr>
<tr>
<td>5.</td>
<td>The Deed of Cooperation Agreement Is Not In Accordance With The Procedure</td>
<td>1</td>
</tr>
<tr>
<td>6.</td>
<td>Making HGB Deed Not According to Procedure</td>
<td>1</td>
</tr>
<tr>
<td>7.</td>
<td>The Making of the Deed of Shared Rights is Not In Accordance with the Procedure</td>
<td>1</td>
</tr>
<tr>
<td>8.</td>
<td>Making the Cooperation Agreement Deed Not in accordance with the Procedure</td>
<td>1</td>
</tr>
<tr>
<td>9.</td>
<td>Letters and Deeds of Power of Attorney are not in accordance with the procedure</td>
<td>2</td>
</tr>
<tr>
<td>10.</td>
<td>Acts of Inheritance Not In Accordance With Procedure</td>
<td>1</td>
</tr>
<tr>
<td>11.</td>
<td>Refund of PPh and BPHTB payments</td>
<td>1</td>
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<tr>
<td>12.</td>
<td>Refund for making PT Deed of Establishment</td>
<td>1</td>
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<tr>
<td>13.</td>
<td>Deed of Statement of Meeting Resolutions</td>
<td>1</td>
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<tr>
<td></td>
<td>Total</td>
<td>40</td>
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</tbody>
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Source: Research Results at Kemenkumham Banten January-February 2022

The decision given by the MPW in Banten depends on the level of violation committed by the notary, MPW's decisions include: the report is rejected because it does not meet the criteria for reporting a violation of the duties and position of the notary or the reporter is absent 2 (two) times, written warning, proposal for temporary dismissal and the suggestion of dishonorable dismissal.

Based on the data above, the violation of the duties and positions of a notary is dominated by violations in the preparation of the PPJB deed that are not in accordance with the procedure. This is in line with the statement of respondents who stated that the facts in the field regarding the number of notaries who did not follow the procedure for making the deed were on the basis of negligence. Significant increases and decreases regarding violations that occurred in the Banten area were basically influenced by internal and external factors. The level of violations of the duties and positions of a notary in 2016-2020 is unstable and tends to fluctuate. In addition, from year to year there are more and more variations of violations committed by notaries.

Wurdayanti Handayani as MPW Banten said that there are several factors that can reduce the occurrence of the above violations, namely routine evaluation and socialization of the importance of prioritizing the UUJN and the Notary Code of Ethics in carrying out the notary profession. Evaluations held by the Banten Provincial Supervisory Council under the auspices of the Ministry of Law and Human Rights are routinely held at the end of the year before the notary report is recap. Meanwhile, the socialization held by each element of the supervisory board under the auspices of the Ministry of Law and Human Rights is routinely held every 3 (three) months. This is a form of government concern for a notary whose function is to provide services to the community for the need for an authentic deed as legal evidence.

As a form of renewal from previous research, the data above is one form of such renewal. The importance of renewal in a research is one of the objectives of this research. Starting from
curiosity and anxiety about the many violations of notary duties and positions in Banten province, it is felt that the presence of this research can be a source of reading material for the audience.

a. Causes of Violation of Notary Duties and Positions

Notaries who violate their duties and positions during their tenure are influenced by internal and external factors. Factors that cause Notary violations in Makassar City are caused by HR (human resources), supervision, and guidance of Notaries.10 Based on the research, it was found that there are several factors that greatly influence the occurrence of such violations, including:

1. Urgent economic needs. Economic factors are the main factors in causing violations of the duties of a notary public. Each individual has different needs, this is based on the influence of kinship which causes a high level of economic needs, especially in the notary profession.

2. There are different interpretations of understanding of the UUJN and the Notary Code of Ethics. Notary is a very noble profession (nobile officium), where the profession is closely related to humanity. The human need for justice is one of the purposes of making a notarial deed as one of the authentic evidence. Therefore, in order to guarantee the legality of a deed, the notary is required to understand every inch of the UUJN and the Notary Code of Ethics. Misinterpretation of understanding of UUJN causes many deviations in the notary profession.

3. The quantity of the number of notary professions in the same area, causing unfair competition and the seizure of clients. Moreover, currently throughout Indonesia the number of notaries reaches 17,856 people spread over 514 districts/cities with the number of deeds made per year reaching 5 million deeds. Nowadays people's lives in the era of incessant social media are very influential in the notary world, with a high quantity of notaries causing many deviations in the implementation of notary duties and positions by utilizing social media.

4. The low moral integrity of the notary. UUJN and the Code of Ethics provide moral appeals to its members in carrying out their duties in their fields. The appeal, although it is moral in nature, a professional is reminded to carry out the profession without pressure, coercion or pretense. The implementation of professional morals is something that is noble and sacred. However, with the high needs and lifestyles of individuals, the level of violations in the notary world is also high and the notary's moral integrity is pawned.

The factors causing the violation of the duties and positions of a notary above are the initial door to a violation of the duties and positions of a notary. The solution is the need for reform of notarial regulations so that UUJN and the Code of Ethics are more effective towards legal certainty. The need for organizational revitalization. Public sector revitalization is intended to revitalize public sector organizations in procuring public goods and services based on strategic plans or improvements.11 The need to overcome human resource problems from education, recruitment and practice, as well as anticipating the problems of competition demands, welfare, moral integrity. The need for continuous supervision with the active role of relevant institutions, supported by independent institutions. The need for coaching and improving skills and professionalism through socialization, performance improvement, retention, further studies/scientific activities.12

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Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 confirms that what is meant by supervision is preventive and repressive activities, including coaching activities carried out by the Supervisory Board of Notaries. Also, by regulated in the Decree of the Minister of Justice and Human Rights No. M-O1.HT.03.01 of 2003 concerning Notary is meant by supervision in Article 1 paragraph (8), namely administrative activities that are preventive and repressive measures by the Minister aimed at keeping Notaries in carrying out their positions by statutory regulations.13

Therefore, the notary supervisory board plays an important role in providing repressive and immediate action to identify the symptoms that arise by conducting a series of socialization and evaluations. This outreach aims to:
1. Exploring the problems and obstacles found by the notary in providing services to the community;
2. Provide and find effective solutions and equalize perceptions in dealing with problems and obstacles found by notaries;
3. Disseminate information regarding supervision, guidance and notarial services by the government.

In addition, socialization aims to make the public as users of Notary services more aware of their rights and obligations so that if in the future there is a violation committed by a Notary, they can report the violation to the Regional Supervisory Council.14

1. The Role of the Notary Territory Supervisory Council

In general, the Notary Supervisory Board has the role of holding hearings to examine allegations of violations of the notary code of ethics or violations of the implementation of the notary position, as regulated in Article 70 letter a, Article 73 paragraph (1) letters a and b, Article 77 letters a and b UUJN. Based on the substance of these articles, it is stated that the notary supervisory board conducts a hearing to examine: There is an alleged violation of the code of ethics; There are allegations of violations of the implementation of the duties of a notary public; The behavior of notaries who are outside of carrying out their duties as a notary that can interfere with or affect the implementation of the notary's job duties.15

a. Supervision of Notaries

Every profession must be carried out in accordance with two ethical demands, namely on the one hand it must be carried out responsibly and the results are in accordance with the demands of the legislation and the consequences for others are always considered not to harm others. Notary is a profession that has a heavy duty and is altruistic, because it must place public service above all else. In addition to these professions, notaries are also experts. Therefore, a sense of responsibility, both individual and social, especially adherence to positive legal norms and a willingness to submit to a professional code of ethics, is a must, so that it will strengthen existing positive legal norms, therefore in carrying out the duties of his position Notaries need supervision.16

Supervision is a form of business carried out by an authorized party or body to ensure order, harmony and smooth running of government in an efficient and effective manner. In addition, supervision is functioned to find out and assess the actual reality regarding the implementation

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15 Habib Adjie,Memahami: Majelis Pengawas Notaris (MPN) Dan Majelis Kehormatan Notaris (MKN), (Bandung: PT Refika Aditama, 2017) hlm. 28
of tasks or activities, whether they are in accordance with what they should be. Supervision in the explanation of UUJN Article 67 paragraph (1), which includes also guidance carried out by the Minister to Notaries. As for the supervision according to Article 67 paragraphs (1) and (2) supervision is carried out by the Minister, but in its implementation it is carried out by the Notary Supervisory Council formed by the Minister.

Concrete legal steps that can be taken by the Notary Supervisory Council of Banten Province in order to maximize the function of guidance and supervision are by applying various forms of supervision contained in supervisory theories, including:

1. Internal control is supervision carried out by a body that is organizationally/structurally still included in the government environment. In this case, because the notarial field belongs to the ministry of law and human rights, it is based on Article 67 Paragraph (1) and Paragraph (2) of the UUJN;

2. External supervision is supervision carried out by organizational/structural organs/institutions that are outside the government (executive) for example in the supervision carried out by a notary organization, namely INI Banten province through its honorary council;

3. Legal supervision. The purpose of holding supervision from a legal perspective is that in carrying out their actions, Notaries must pay attention to legal norms in order to provide legal protection for the community, which consists of administrative efforts carried out by the Regional Supervisory Council, Regional Supervisory Council, and Central Supervisory Council in stages.

This, the main objective of supervision is that all rights and authorities as well as obligations given to Notaries in carrying out their duties as outlined in the relevant basic regulations are always carried out on a predetermined path, not only legal channels but also on moral and ethical grounds. professional ethics to ensure legal protection and legal certainty for the community.

b. Inspection By The Supervisory Board

Examination of alleged violations in carrying out the duties of a notary's office is carried out by the Examining Council. The Investigating Council is a team of examiners that has the authority to conduct examinations and impose sanctions established by the Notary Supervisory Council.\(^{17}\)

In terms of examination of a notary, it is carried out in stages, namely the Regional Supervisory Council, Regional Supervisory Council and Central Supervisory Council. Each level has an Investigating Board to conduct an examination of violations in the implementation of the notary position. However, special authority is given to the Examining Council at the level of the Regional Supervisory Council to be able to examine as well as to impose sanctions on the notary concerned.

The examination by the Regional Supervisory Council is explained in Article 24 of the Regulation above, the Examining Council consists of 3 (three) people consisting of 1 (one) chairman and 2 (two) members who come from each element of the Regional Supervisory Council. In conducting the examination, the examining board is assisted by a secretary of the supervisory board.\(^{18}\)

Based on the data in the field, the examination based on the level of the Regional Supervisory Council includes:

1. The regional supervisory council receives the recommendation of the regional supervisory council's examination results;

\(^{17}\) Article 1 point 4 Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Examination of the Supervisory Board of Notaries

\(^{18}\) Article 4 Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Examination of the Supervisory Board of Notaries
2. The chairman of the regional supervisory board forms the regional inspection board;
3. The regional inspection council conducts an examination of the results of the regional supervisory council's examination (closed inspection to the public);
4. The regional examiner council has the authority to make summons to the parties for their statements to be heard (7 calendar days since the file is received);
5. Reading of the decision (within 30 calendar days from receipt of the dossier). The verdict contains: Sufficient reasons and considerations that are used as the basis for making a decision, the decision is signed by the Chair, Members and Secretary of the Regional Examiner's Council, in the event that the report cannot be proven, the decision declares the report is rejected and the reported person is rehabilitated, if the public report can be proven, then the reported (notary) is sanctioned in accordance with the level of violation committed, a copy of the decision of the Regional Examiner Council is submitted to: the Minister, the Reporting Party, the Reported Party, the regional supervisory board, PP INI, within 30 calendar days from the date the decision is pronounced. (If you object to the decision of the regional supervisory board, an appeal may be made to the central supervisory board within 14 calendar days of the appeal being declared). 19

c. Imposition Of Sanctions

In imposing sanctions against a Notary, there are several conditions that must be met, namely fulfilling the formulation of the act prohibited by law, the loss caused by the act and the act must be against the law, both formal and material. Formal in the sense that it has fulfilled the formulation in the law, material has met the test with the code of ethics and UUJN. Aspects of limitations in terms of violations by a Notary are measured based on UUJN. 20

The threat of sanctions for violations by Notaries is given based on UUJN so that in carrying out their duties and positions, a Notary is required to be responsible for himself, his clients or society, and also to God Almighty. The provisions contained in Article 16 and Article 17 of the UUJN clearly state the obligations and prohibitions to be carried out by a notary. Everything that is done by a notary will definitely have sanctions if it is violated, not only notaries but all professions have binding regulations for the benefit of an organization or association. Notaries can receive civil or criminal penalties, depending on what mistakes the notary has made. Many notaries, while carrying out their duties, make negligence.

For example, there is a Notary who does not read the deed so that the deed becomes an underhand deed. In the deed he wrote that the deed "had been read by me, the Notary, even though he did not read it. He lied and thereby fabricated a deed forgery. Moreover, many Notaries allow the appearers to sign the deed in front of their assistants or staff, so that the statement of the Notary "has been in contact with the appearers" needs to be doubted. That by not reading out the deed and not seeing who signed the deed, a Notary who does this reduces the dignity of his job and his noble position. 21

Law enforcement includes supervision and enforcement of sanctions, supervision is a preventive measure to enforce compliance, and the application of sanctions is a repressive measure to enforce compliance. 22 Preventive measures are carried out by conducting periodic inspections 1 (one) time in a year or at any time deemed necessary to check the compliance of the notary in carrying out his duties as seen from the protocol inspection by the MPD. Then the Regional Supervisory Council can notify the MPW, if the report received by the MPD finds a criminal element, then it can also hold a trial to examine the alleged violation of the notary code of ethics or violations of the implementation of the notary's position. If the results of the MPD's

19 Dina Shabrina, dkk, Op Cit, hlm. 229
21 Purwaningsih, Op Cit, hlm. 15
22 Habib Adjie, Op Cit, hlm 21
examination find violations, the MPD cannot impose repressive sanctions on the notary but can only report to the Regional Supervisory Council.

The Regional Supervisory Council can take preventive steps by holding a meeting to examine and make decisions on community reports submitted through MPW and summon a notary as the reported party for examination. MPW also examines and decides on the results of the MPD examination. MPW can take repressive steps, namely imposing sanctions in the form of verbal or written warnings and these sanctions are final and propose sanctions against notaries to the Central Supervisory Council (MPP) based on Article 85 of the UUJN in the form of: Temporary dismissal for 3 (three) months to 6 (six) months, honorable discharge or dishonorable discharge.

MPP does not take preventive action, but holds a hearing to examine and make decisions at the appeal level against the imposition of sanctions and refusal of leave, but repressive measures in the form of imposing temporary sanctions and proposing sanctions in the form of dishonorable dismissal to the Minister.

2. The Constraints Of The Notary Supervisory Board In Law Enforcement

The supervisory board's obstacles in enforcing the code of ethics and UUJN are divided into two aspects, namely administratively covering facilities and infrastructure that support performance in the secretariat and Substantive covering operations in activities that are supervisory and fostering as well as preventing the occurrence of Notary violations considering the number of Notaries that is increasing every year.

In addition, internal factors that hinder the enforcement of the UUJN and the notary code of ethics are the lack of funds in financing operational activities, the lack of facilities and infrastructure to carry out routine inspections, the busyness of each MPW and the lack of closeness and harmonization to build maximum performance synergies.

External factors are also very influential, including: In the implementation of supervision, the notary is not ready to be examined. So that the inspection process must be rescheduled, the lack of awareness of the notary, especially the administrative disorder in collecting monthly protocol reports, the public who do not know the existence, role, and function of the notary supervisory council. This can be seen from the lack of public participation in reporting alleged violations of the notary, the lack of incoming public reports.

To overcome the obstacles encountered in the implementation of the supervision of the code of ethics against notaries, factors that can support the supervision of the code of ethics against notaries include: it is necessary to provide a representative office, additional budgets from the government in connection with the implementation and development of notaries, institutions must be strengthened, with an increase in the number of capacities, supporting facilities and infrastructure as well as their welfare, intensive and scheduled communication between the management, through monthly meetings and self-awareness about the importance that the management position is a mandate.

C. Conclusion

Based on the results of research and discussion conducted by the author, several conclusions can be drawn, including: First, the forms of violations of the duties and positions of notaries in Banten Province are very varied. In the 2016-2020 period, there was a significant increase and decrease in violations of notary duties and positions. Violations of notary duties and positions are dominated by non-compliance with procedures for making PPJB deed, in which the violation rate is 40% in the 2016-2020 period. This is based on various factors, namely internal and external factors. Economic factors and competition are the main factors causing violations of notary duties and positions. Second, the role of the Notary Supervisory Board is closely related to preventive and curative efforts to violate the duties and positions of a notary. The main role of the Notary Regional Supervisory Council is the imposition of
sanctions on Notaries suspected of committing violations, therefore the Banten Provincial Supervisory Council makes full efforts to enforce the Code of Ethics and UUJN in order to reduce the level of violations by routinely conducting socialization and evaluation.

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