

The Notarial Profession as Quasi-Judicial: The Position of the Notary Supervisory Council within the State Administrative System

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ABSTRACT

The Notary Supervisory Council is an organ appointed by Minister of Law and Human Rights for supervising behavior of the Notary. The purpose of establishment of this organ is to examine supervision towards Notary effectively based on the existing laws. The research examines on how is the authorities of The Notary Supervisory Council in conducting supervision to the Notary and their position in state administrative law. Doctrinal legal research was used and the data were taken from statutes, journals, books, and other trusted internet sites. The results show that how the authorities of The Notary Supervisory Council in conducting supervision and imposing sanctions towards Notary. The imposition of sanction is held by the Notary District Supervisory Council, the Notary Regional Supervisory Council, and the Notary Central Supervisory Council depending on the level of sanctions. Furthermore, the decision which made by the Notary Supervisory Council will be analyzed according to their position and competence on the state administrative law. Therefore, the Notary Supervisory Council has the important role in assisting the Minister of Law and Human Rights to give the supervision in accordance to the related existing regulations.

Keywords	<i>The Notary Supervisory Council; Sanction; State Administrative Law</i>
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PRELIMINARY

The position of a Notary was established due to society's need for authentic deeds that provide legal certainty as strong evidence, in addition to testimony. The institution known as the Notariat emerged from the necessity of interactions among individuals requiring proof of their civil legal relationships. This institution is tasked with creating written evidence with authentic power in accordance with legal requirements or societal needs.¹

¹ G.H.S. Lumban Tobing, (1999), *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 2.

Based on Law Number 2 of 2014 concerning Amendments to Law Number 2 of 2014 on the Position of Notary (UUJN), it is stipulated that a Notary is a public official authorized to create authentic deeds. Several positions related to Notaries are as follows:

1. Temporary Notary Official: an individual who temporarily holds the position of Notary to replace a Notary who has passed away, been dismissed, or temporarily suspended.
2. Substitute Notary: an individual appointed to replace a Notary who is on leave, ill, or otherwise temporarily unable to perform their duties as a Notary. Berdasarkan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris (UUJN) diatur bahwa Notaris merupakan seorang pejabat umum yang memiliki wewenang untuk membuat suatu akta otentik. Adapun beberapa jabatan terkait Notaris.²

A Notary is an esteemed legal profession often referred to as "officium nobile" due to its close association with humanity. Deeds created by a Notary can serve as the legal basis for an individual's property status, rights, and obligations. Errors made by a Notary in drafting a deed can result in the loss of rights or the imposition of obligations on an individual. Therefore, in performing their duties, a Notary must adhere to the provisions set forth in the UUJN and the applicable Professional Code of Ethics.³

In the execution of their duties, Notaries must adhere to the applicable laws and codes of ethics. The existence of the Notary Code of Ethics is a logical consequence of the notarial profession. Without a code of ethics, the dignity and honor of the notarial profession would be lost. Therefore, violations in the notarial office can be classified as breaches of the UUJN and the Professional Code of Ethics. Accountability for such violations may include compensation, imprisonment, fines, or administrative sanctions such as dismissal from the position.⁴

Members of the association who violate the UUJN will be subject to dismissal, either honorably or dishonorably, as a Notary by the authorized authority, and will lose their membership in the association. Notification of temporary suspension, honorable dismissal, or dishonorable dismissal from the association must be conveyed by the central management to the Regional Supervisory Council with a copy to the Minister of Law and Human Rights.⁵ Therefore, Notaries must maintain their conduct and actions, upholding their authority and dignity both in their professional duties and daily lives. As a legal profession, the Notary Code of Ethics is a logical consequence of the job, and without it, the honor and dignity of the notarial profession would be lost.

In performing their duties, Notaries are subject to the UUJN, which regulates the authority and responsibilities of the notarial office. Article 67(1) of the UUJN stipulates that the supervision of Notaries is conducted by the Minister of Law and Human Rights. According to this provision, the authority of the notarial office can be considered as an attributed authority, as it is derived from statutory regulations. In executing this supervision, the Minister establishes the Notary Supervisory Council (MPN) to monitor the performance

² Erniwati, 2022, Apa itu Notaris?, diambil Mei 17, 2024, dari <https://ntb.kemenkumham.go.id/layanan-publik/pelayanan-hukum-umum/mpw-dan-mpd-notaris/apa-itu-notaris>

³ Anugrah Yustica, et. al, (2020), Peran Etika Notaris sebagai Upaya Penegakan Hukum, Jurnal Notarius, 4(1), 61.

⁴ *Ibid.*

⁵ Renata Christa Auli, 2022, Mengenal Profesi Notaris dan Kode Etiknya, diambil Mei 18, 2024, dari https://www.hukumonline.com/klinik/a/mengenal-profesi-notaris-dan-kode-etiknya-lt632d70d53e11f/#_ftn1

and ethics of Notaries. The MPN is the sole body authorized to oversee, inspect, and impose administrative sanctions on Notaries.

The Minister's position as a State Administrative Agency or Official responsible for government affairs related to statutory regulations has implications for the supervisory council. The supervisory council, in this context, assists the Minister and functions as a State Administrative Agency or Official through delegated authority. Consequently, the supervisory council is empowered to issue decisions or decrees related to the outcomes of supervision, inspections, or the imposition of sanctions on the respective Notaries.⁶

Based on the explanation provided above, it is necessary to further examine the extent of the authority of the Notary Supervisory Council in carrying out its duties to oversee the notarial profession and its position within the state administrative system. Therefore, this research is titled "The Judiciary of the Notarial Profession as Quasi-Judicial (A Study on the Position of the Notary Supervisory Council within the State Administrative System)." Research Questions: 1. What is the authority of the Notary Supervisory Council in supervising and imposing sanctions on Notaries? 2. How is the authority of the Notary Supervisory Council viewed within the state administrative system?

METODE

This research is conducted using a doctrinal legal research method, focusing on applicable legal provisions and legal doctrines to address issues related to the notarial profession's quasi-judicial role, viewed through the position of the Notary Supervisory Council within the state administrative system. This study relies on library research and secondary data, including relevant regulations and documents obtained from primary and tertiary legal sources, forming the foundation of this research.

HASIL DAN PEMBAHASAN

The Authority of the Notary Supervisory Council in Overseeing Notaries

As a public official, a Notary has an obligation to provide legal certainty and legal protection to the parties involved in carrying out their responsibilities. As a public official, a Notary is required to act responsibly in fulfilling the duties and prohibitions stipulated in the Notary Position Law (UUJN) and in the Notary Code of Ethics. In carrying out their duties as a public official, a Notary must act in accordance with the provisions outlined in the UUJN and the Notary Code of Ethics.⁷

Article 1, number 6 of the UUJN establishes that the Notary Supervisory Council is a body with the authority and responsibility to provide guidance and supervision over Notaries. The UUJN outlines that the Notary Supervisory Council has the authority to supervise Notaries in carrying out their duties and powers. The authority to conduct supervision and inspections over Notaries lies with the Minister of Law and Human Rights, to assist the President in executing government affairs in the legal and human rights fields.

The Notary Supervisory Council has the authority to guide and oversee Notaries, as well as impose sanctions on Notaries who violate applicable regulations. The authority of the

⁶ Habib Adjie, (2008), *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, Bandung: Refika Aditama, 133.

⁷ Catherine Felicia Sihite, (2023), Akibat Hukum bagi Notaris yang Dijatuhi Sanksi Administratif oleh Majelis Pengawas Notaris, *Jurnal Notarius*, 2(1), 55.

Notary Supervisory Council includes monitoring the execution of Notarial duties to ensure compliance with the Code of Ethics and the Notary Position Law.⁸

The imposition of sanctions on a Notary by the Notary Supervisory Council can occur both before and after receiving a complaint from parties harmed by the Notary's mistakes, whether related to violations of notarial duties or the Notary Code of Ethics. This supervision is carried out both before and after the Notary's appointment.⁹

Furthermore, when a Notary violates the code of ethics, the Notary Supervisory Council collaborates with the Honor Council, which is responsible for examining such violations and can impose sanctions. The sanctions that can be imposed on members who breach the Code of Ethics include: a. Warning; b. Reprimand; c. Temporary suspension; d. Honorable dismissal; and e. Dishonorable dismissal.

The imposition of administrative sanctions is carried out progressively, starting from the mildest sanction to the most severe, in accordance with the sequence stipulated in the Minister of Law and Human Rights regulations. However, in certain cases, a Notary who commits serious violations of notarial duties and prohibitions may directly face administrative sanctions without going through gradual steps.

The procedure for imposing sanctions on Notaries who breach their duties or the code of ethics is based on complaints from the public or inspections conducted by the Notary Supervisory Council, followed by summoning the concerned Notary. Through its authority, the Regional Supervisory Council creates examination reports for the reported Notary and findings reports from the Notary's protocol inspection. Article 4 of Minister of Law and Human Rights Regulation Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions on Notaries (Permenkumham 61/2016) regulates the procedure for imposing sanctions, starting from the Regional Supervisory Council, with the following steps: 1. The Regional Supervisory Council summons the reported Notary or based on inspection findings; 2. After summoning the reported Notary, the Regional Supervisory Council creates examination reports and findings reports from the Notary's protocol inspection; 3. Subsequently, the Regional Supervisory Council submits these reports to the Regional Supervisory Council; and 4. Finally, the Regional Supervisory Council conducts an examination of the report.¹⁰

Article 5 paragraph (1) of Minister of Law and Human Rights Regulation Number 61 of 2016 regulates the authority of the Regional Supervisory Council to impose written warnings on Notaries if they fail to fulfill their obligations, such as: 1. Not performing their duties substantially, failing to submit the oath/swearing-in protocol of the Notarial Position to the Minister, the Notary Organization, and the Regional Supervisory Council, as well as failing to submit their office address, sample signature, initials, and red stamp of the Notarial Position to the Minister and relevant officials as stipulated in Article 7 paragraph (1) of the Notary Position Law (UUJN); 2. Failing to meet their obligations as stipulated in Article 16 paragraph (1) letters a to l of the UUJN; 3. Committing violations as specified in Article 17 paragraph (1) of the UUJN; 4. Having more than one office address, establishing the position of Land Deed Maker outside of the Notarial Position, and performing duties outside of their designated location as outlined in Article 19 paragraph (1) of the UUJN; 5. Not handing over the Notarial Protocol to the Substitute Notary during leave, the Substitute Notary failing to

⁸ E. Patricia, (2019), Sinergitas Dewan Kehormatan Notaris dan Majelis Pengawas Notaris dalam Pemberian Sanksi atas Pelanggaran Kode Etik, *Premise Law Jurnal*, 7(10), 10.

⁹ M. Yoghi Pratama dan Ana Silviana, Peranan Majelis Pengawas Notaris terhadap Pelaksanaan Kode Etik Notaris, *Jurnal Notarius*, 16(2), 866.

¹⁰ Catherine Felicia Sihite, (2023), Akibat Hukum bagi Notaris yang Dijatuhi Sanksi Adminstratif oleh Majelis Pengawas Notaris, *Jurnal Notarius*, 2(1), 57-58.

return the Notarial Protocol after the leave period, and not creating a handover report of the Notarial Protocol as required by Article 32 paragraph (1), (2), and (3) of the UUJN; 6. Not providing notarial legal services for free to indigent individuals as per Article 37 paragraph (1) of the UUJN; 7. Disclosing or showing the contents of a Deed, Deed Copy, Deed Exemplar, or Deed Extract to unrelated parties during the creation of the Deed as per Article 54 paragraph (1) of the UUJN; and 8. Failing to create, store, and hand over the Notarial Protocol in accordance with Article 58 and 59 of the UUJN.¹¹

If the Notary fails to resolve the issue within 14 days after receiving the first written warning sanction or commits another offense, a second written warning sanction will be issued. If the issue remains unresolved within 14 days after the second written warning sanction, or if another violation occurs, a third written warning sanction will be issued. If the Notary's obligations are not fulfilled within the specified timeframe or if another violation occurs, the Regional Notary Supervisory Council may propose a temporary suspension to the Central Notary Supervisory Council.¹²

According to Article 7 of Minister of Law and Human Rights Regulation Number 61 of 2016, the Central Notary Supervisory Council has the authority to propose temporary suspension of a Notary, such as: 1. Temporary suspension, as referred to in Article 6 paragraph (1), is imposed if the Notary fails to fulfill their obligations or commits other violations. This suspension lasts for 3 to 6 months; 2. The Notary Council determines the obligations that must be fulfilled by the Notary during the suspension period as outlined in the temporary suspension decision; 3. In the event that the Notary in question fails to fulfill their obligations after the temporary suspension period ends, the Central Notary Supervisory Council may propose an honorable or dishonorable dismissal to the Minister; and 4. Referring to the proposal from the Central Notary Supervisory Council, the Minister may make a decision regarding the dismissal of the Notary, whether honorable or dishonorable.

If a Notary who has been temporarily suspended fails to fulfill their obligations after the punishment period ends or remains non-neutral in the creation of authentic deeds, the Central Notary Supervisory Council may propose dismissal to the Minister of Law and Human Rights. Subsequently, based on this proposal, the concerned Notary may face honorable or dishonorable dismissal.¹³

During the temporary suspension period, the Notary must hand over the Notarial Protocol to another Notary appointed as the protocol custodian. This appointment is made by the Minister upon the recommendation of the Regional Notary Supervisory Council. The transfer of the protocol must be completed within 14 days from the temporary suspension decision, in the presence of the Regional Notary Supervisory Council. If the Notary has fulfilled their obligations after the temporary suspension period, the transfer of the Notarial Protocol must be completed within 30 days, with the signing of a protocol transfer report.¹⁴

¹¹ Muhammad Rizza Fuady, (2019), Analisis Yuridis terhadap Implementasi Pembinaan dan Pengawasan Notaris oleh Majelis Pengawas Daerah terkait Notaris yang Tidak Menjalankan Jabatannya secara Nyata setelah Dilantik dan Disumpah (Studi MPD Binjai-Langkat), *Premise Law Review*, 16(1), 13-15.

¹² Catherine Felicia Sihite, (2023), Akibat Hukum bagi Notaris yang Dijatuhi Sanksi Administratif oleh Majelis Pengawas Notaris, *Jurnal Notarius*, 2(1), 58-59.

¹³ Cindy Bella N. Tumundo, Hendrik Pondaag, dan Firdja Baftim, (2021), Pemberhentian Sementara Notaris dari Jabatannya berdasarkan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, *Lex Administratum*, 9(3), 211.

¹⁴ Nurin Dyasti Pratiwi, Dominikus Rato, dan Moh. Ali, (2022), Kewenangan Majelis Pengawas Daerah terhadap Urgensi Penyimpanan Protokol Notaris sebagai Arsip Negara, *Jurnal Syntax Transformation*, 3(2), 295.

Within 14 days after the handover, the Notary must report to the Minister with copies to the Central Notary Supervisory Council, Regional Notary Supervisory Council, Regional Notary Supervisory Council, and the Central Management of the Indonesian Notary Association. A Notary who fails to fulfill their obligations or violates provisions during the temporary suspension may be proposed for dishonorable dismissal by the Central Notary Supervisory Council. Dishonorable dismissal may occur if: a. Pursuant to Article 6 paragraph (1) letter a after the temporary suspension period ends, the Notary fails to fulfill the predetermined obligations; b. During the temporary suspension period, the Notary commits violations; and c. The Notary receives three sanctions within a 12-month period during the temporary suspension.

The Notary Supervisory Council proposes dishonorable dismissal based on findings or internal inspections. This proposal is then considered by the Minister of Law and Human Rights before making a final decision. A Notary who is dishonorably dismissed must hand over the Notarial Protocol to another Notary appointed as the protocol custodian by the Minister, based on the appointment by the Regional Notary Supervisory Council. Additionally, if a Notary commits a criminal offense with a potential penalty of five years imprisonment, the Minister may impose administrative sanctions in the form of dishonorable dismissal.¹⁵

The Position of the Notary Supervisory Board Reviewed in the State Administrative System

Viewed in terms of its position, the Minister of Law and Human Rights as an Administrative Official (AO) has the function of carrying out legal affairs assisted by the Notary Supervisory Council (NSC), which is delegated to oversee the Notary profession. The authority regarding Notary supervision refers to Article 67 paragraphs (1) and (2) of Law Number 2 of 2014 concerning Notary Positions (UUJN) in conjunction with Article 1 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning Administrative Court. Therefore, functionally and in terms of its position, the Supervisory Council holds the status of an Administrative Official.¹⁶

There are two ways to obtain authority as an Administrative Official, namely through attribution and delegation. Attribution is the acquisition of authority through provisions regulated in legislation to a government organ. Subsequently, delegation is the transfer of authority granted by one government organ to another government organ.¹⁷

Referring to Article 1 paragraph (1) of Minister of Law and Human Rights Regulation Number 15 of 2020 concerning the Procedure for the Supervisory Council Examination of Notaries, the Notary Supervisory Council (NSC) is an authority empowered to provide guidance and oversight of Notaries. In conducting supervision, examination, and imposing sanctions, the NSC must exercise its authority based on prevailing legal provisions. According to Article 67 paragraph (3) of the Notary Position Law, the Supervisory Council consists of 9 members, comprising: a. Three members from the Government; b. Three members from the Notary Organization; and c. Three members from experts or academia.

The Government members in the Supervisory Council serve as representatives of the Government tasked with ensuring that supervision of Notaries is conducted in accordance

¹⁵ Hardianti Z. Podunge, (2022), Tesis: Kewenangan Notaris Menjalani Jabatannya Pasca Putusan Pidana, Program Studi Kenotariatan, Program Magister Fakultas Hukum, Universitas Islam Indonesia, 77.

¹⁶ Fahrul, (2019), Keputusan Majelis Pengawas Notaris sebagai Bentuk Keputusan Tata Usaha Negara, Recital Review, 1(2), 48.

¹⁷ Sovia Hasanah, (2016), Pengertian Atribusi, Delegasi dan Mandat, diambil Mei 30, 2024, dari <https://www.hukumonline.com/klinik/a/pengertian-atribusi--delegasi-dan-mandat-lt5816ab6ea74a7/>

with legal regulations and government policies. These supervisors also act as a liaison between the Government and the Notary Supervisory Council. The Notary Organization members function as representatives of the Notary Organization tasked with ensuring that professional standards and the Notary Code of Ethics are upheld. This also serves as a representative of the Notary community in the oversight process. Furthermore, the experts or academia members serve as representatives of academia or experts tasked with providing academic and technical perspectives in the oversight process. This also aids in providing an objective and knowledge-based assessment. The combination of these professional elements within the NSC is expected to facilitate objective guidance and oversight of the Notary profession and maintain a balance through internal and external examinations. Moreover, the NSC is not only authorized to conduct supervision and examination of Notaries but also has the authority to impose sanctions on Notaries proven to have violated the provisions of the Notary Position Law and Professional Code of Ethics.¹⁸

Article 1 number 8 and Article 1 number 9 of Law Number 51 Year 2009 concerning the Second Amendment to Law Number 5 Year 1986 concerning Administrative Court Justice stipulate that the Administrative Court Justice Agency or Officer, in this case, the Supervisory Council, has the authority to issue Decisions or Resolutions related to the results of supervision, examination, or imposition of sanctions on the respective Notary. Referring to Article 1 number 10 of the same law, Decisions or Resolutions issued by the Supervisory Council can be subject to litigation by the Notary to the Administrative Court Justice (PTUN) as an Administrative Dispute. Referring to the provisions in Article 77 of the Notary Position Law, the Supervisory Council has the authority to: a. conduct hearings to examine and make decisions at the appellate level regarding the imposition of sanctions and rejection of leave; b. summon the reported Notary for examination as referred to in letter a; c. impose temporary suspension sanctions; and d. propose sanctions in the form of dishonorable dismissal to the Minister.¹⁹

Therefore, in the administrative justice system, the Supervisory Council functions to ensure the implementation of the duties and responsibilities of Notaries in accordance with the prevailing legal provisions. The Supervisory Council plays a role in maintaining the integrity, professionalism, and accountability of Notaries to support good governance in the administrative justice system.²⁰

CLOSING

The Notary Supervisory Council is a body established by the Minister of Law and Human Rights as a regulator and overseer of the Notary profession, empowered to impose administrative sanctions on Notaries who are problematic or violate prevailing legal provisions. The imposition of administrative sanctions by the Notary Supervisory Council is based on the level of violation committed by the Notary. Furthermore, from its position, the Notary Supervisory Council is an Agency or Official of State Administration with a position and authority to carry out its functions in accordance with prevailing legal provisions to assist the Minister of Law and Human Rights in conducting supervision. This authority is obtained through an extension from the Minister of Law and Human Rights through attribution and delegation, subsequently regulated in the Notary Position Law.

¹⁸ Septi Tri Wulandari dan Muttaqin Choiri, (2020), Penguatan Wewenang Lembaga Pengawas Eksternal pada Penegakan Kode Etik Notaris (Kajian Undang-Undang No. 2 Tahun 2014 dan Kode Etik Notaris Tahun 2015), *Al'Adl Jurnal Hukum*, 12(2), 294.

¹⁹ Sri Wahyuni dan Arif Wibowo, (2023), Kewenangan, Subyek dan Objek Sengketa di Peradilan Tata Usaha Negara (PTUN), *Justices: Journal of Law*, 2(1), 36.

²⁰ Winda Oktavia, Dhody A.R.Widjajaatmadja, dan Amelia Nur Widyanti, (2024), Kepastian Hukum Pengawas Notaris (MPN) terkait Notaris yang Melakukan Rangkap Jabatan, *SENTRI: Jurnal Riset Ilmiah*, 3(1), 49.

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